

Directors and Officers and Public Company Liability Coverage Element

In consideration of the premium charged, in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all terms and conditions of this policy, the **Insurer** agrees as follows:

I. Insuring Agreements

Coverage A: Individual Insurance Coverage

The **Insurer** shall pay **Loss** of an **Individual Insured** arising from a **Claim** first made against such **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any actual or alleged **Wrongful Act** of such **Individual Insured**, except when and to the extent that a **Company** has indemnified the **Individual Insured** for such **Loss**.

Coverage B: Company Reimbursement Coverage

The **Insurer** shall pay **Loss** of a **Company** arising from a **Claim** first made against an **Individual Insured** during the **Policy Period** or the Extended Reporting Period, if applicable, for any actual or alleged **Wrongful Act** of such **Individual Insured**, but only when and to the extent that such **Company** has indemnified such **Individual Insured** for such **Loss**.

Coverage C: Company Coverage

The **Insurer** shall pay **Loss** of a **Company** arising from a **Securities Claim** first made against a **Company** during the **Policy Period** or the Extended Reporting Period, if applicable, for any actual or alleged **Wrongful Act** of a **Company**.

Coverage D: Adverse Media Event Coverage

The **Insurer** shall pay **Adverse Media Event Loss** up to the amount of the **Adverse Media Event Loss** Sub-Limit of Liability set forth in Item 3(b) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations incurred by a **Company** solely with respect to an **Adverse Media Event** that first occurs and is reported to the **Insurer** during the **Policy Period**. Payment of any **Adverse Media Event Loss** under this **Coverage Element** shall not waive any of the **Insurer's** rights under this policy or at law. Coverage under this Coverage D shall apply regardless of whether a **Claim** ever is made against an **Insured** arising from such **Adverse Media Event** and, in the case where a **Claim** is made, regardless of whether the amount is incurred prior to or subsequent to the **Claim** being made.

Coverage E: Derivative Demand Investigation Costs Coverage

The **Insurer** shall pay **Investigation Costs** up to the amount of the **Derivative Demand Investigation** Sub-Limit of Liability set forth in Item 3(c) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations incurred by a **Company** solely in response to a **Derivative Demand** first made and reported to the **Insurer** during the **Policy Period**. Payment of any **Investigation Costs** under this **Coverage Element** shall not waive any of the **Insurer's** rights under this policy or at law.

II. Definitions

The following terms whenever set forth in boldface type in this **Coverage Element**, whether in singular or in plural, shall have the meanings indicated.

- A. **Adverse Media Event** means a public announcement first made during the **Policy Period** that one of the following events which, in the good faith opinion of a **Company**, did cause or is reasonably likely to cause the publication, broadcast or circulation of unfavorable information regarding a **Company** which can reasonably be expected to lessen public confidence in the competence of the **Company** or its products or services:
1. the death, incapacity or criminal indictment of any **Individual Insured** for whom a **Company** maintains key person life insurance;
 2. a **Company** intends to file for bankruptcy protection or a third party is seeking to file for involuntary bankruptcy on behalf of such **Company**;
 3. a **Company** has defaulted or intends to default on any debt obligation;
 4. the closing or forced sale of a department, unit, division of a **Company**;
 5. the commencement or threat of litigation or other proceedings by any governmental or regulatory agency against a **Company**;

6. an accusation that an **Individual Insured** (or an individual for which an **Insured** is legally responsible) has intentionally caused bodily injury to or death of any person in the performance of his or her duties with a **Company**;
 7. an **Employee** was the victim of a violent crime while on the premises of a **Company**; or
 8. a child was abducted or kidnapped while under the care or supervision of a **Company**.
- B. **Adverse Media Event Loss** means the reasonable and necessary consulting fees and expenses charged by a risk management, public relations or law firm, including any related costs of printing, advertising or mailing by such firm of materials related thereto, and which are incurred with the **Insurer's** prior written consent:
1. for the purposes of minimizing potential harm to or maintaining or restoring public confidence in a **Company** because of an **Adverse Media Event**; and
 2. during the pendency of or within the 90 day period prior to and in anticipation of an **Adverse Media Event**,
- and only until the time when a risk management, public relations or law firm advises a **Company** that such **Adverse Media Event** no longer exists.
- C. **Claim** means
1. a written demand, other than a **Derivative Demand**, for monetary, non-monetary or injunctive relief (including any request to toll or waive any statute of limitations);
 2. a civil, criminal, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
 - (i) service of a complaint or similar pleading;
 - (ii) return of an indictment, information or similar document (in the case of a criminal proceeding); or
 - (iii) receipt or filing of a notice of charges;
 3. a civil, criminal, administrative or regulatory investigation of an **Individual Insured** by a federal, state, local or foreign law enforcement authority or the enforcement body of any securities exchange:
 - (i) once such **Individual Insured** is identified in writing by such authority or enforcement body as a person against whom a proceeding described in paragraph 2 of this Definition may be commenced; or
 - (ii) in the case of an investigation by the Securities and Exchange Commission ("SEC") or a similar state or foreign government authority, after:
 - (a) the service of a subpoena upon such **Individual Insured**; or
 - (b) the **Individual Insured** is identified in a written "Wells" or other notice from the SEC or a similar state or foreign government authority that describes actual or alleged violations of laws by such **Individual Insured**; or
 4. an official request for the extradition of an **Individual Insured** in any country by another country for trial or to answer a criminal accusation.
- D. **Defense Costs** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond), resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against an **Insured**, including the defense or appeal of any request or order of extradition, but excluding compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- E. **Derivative Demand** means a written demand, by one or more security holders of a **Company** without the assistance, participation or solicitation of any **Executive**, upon the board of directors (or equivalent management body) of such **Company** requesting that it file on behalf of the **Company** a civil proceeding in a court of law against any **Executive** for a **Wrongful Act**.
- F. **Employee** means any past, present or future employee of a **Company**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including
1. any part-time, seasonal and temporary employee,
 2. any volunteer, individual who is contracted to perform work for a **Company**, or independent contractor for a **Company** in his or her capacity as such, or
 3. any individual who is leased to a **Company**,

but only if such **Company** provides indemnification to such employees, volunteers or individuals in the same manner as is provided to such **Company's** own employees; provided, however, a **Company** may request that no coverage be provided under this **Coverage Element** for an independent contractor or leased employee named in a specific **Claim**. Such request must be made in writing and within 90 days of the **Claim** being reported to the **Insurer**. If no such request is made, this **Coverage Element** shall apply as if the **Company** determined that such independent contractor or leased employee shall receive coverage.

G. **Executive** means

1. any past, present or future duly elected or appointed director, officer, management committee member of a duly constituted committee or member of the Board of Managers of a **Company**;
2. any past, present or future person in a duly elected or appointed position in a **Company** which is organized and operated in a jurisdiction other than the United States of America or any of its territories or possessions that is equivalent to an executive position listed in paragraph 1 of this Definition; or
3. any past, present or future General Counsel or Risk Manager (or equivalent position) of the **Named Insured**.

H. **Individual Insured** means any:

1. **Executive**
2. **Employee; or**
3. **Outside Entity Executive**

I. **Insured** means any:

1. **Company; or**
2. **Individual Insured.**

J. **Investigation Costs** means the reasonable and necessary costs, charges, fees and expenses consented to by the **Insurer** (including, but not limited to, attorney's fees and expert's fees but not including any settlement, judgment or damages and not including any compensation or fees of any **Individual Insured**) incurred by the **Company** or its board of directors (or any equivalent management body), or any committee of the board of directors (or any equivalent management body), solely in connection with the investigation or evaluation of a **Derivative Demand**.

K. **Loss** means

1. the amount that any Insured becomes legally obligated to pay in connection with any covered **Claim**, including, but not limited to:
 - (i) judgments (including pre-judgment and post-judgment interest on any covered portion thereof) and settlements; and
 - (ii) damages, including punitive or exemplary damages and the multiple portion of multiplied damages relating to punitive or exemplary damages. The enforceability of this subparagraph (ii) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages;
2. **Defense Costs;**
3. with respect to Coverage D of this **Coverage Element, Adverse Media Event Loss;** and
4. with respect to Coverage E of this **Coverage Element, Investigation Costs.**

Loss shall not include, other than **Defense Costs**:

1. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
2. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
3. civil or criminal fines or penalties;
4. taxes or tax penalties (whether imposed by federal, state, local or other governmental authority);
5. the costs and expenses of complying with any injunctive relief or other form of non-monetary relief;
6. compensation, salary, wages, fees, benefits, overhead, charges or expenses of any **Insured**;
7. any amounts owed pursuant to the terms of any contract or agreement, including any amounts related to any such exposures based on the contract or agreement;

8. any amount representing the increase in price or consideration where the **Claim** involves allegations that the price or consideration paid or offered to be paid for a merger, consolidation or acquisition of all or a majority of stock issued by or assets owned by any person or entity is inadequate or unfair; or
 9. any reimbursement required under the Sarbanes-Oxley Act of 2002 or any rules, regulations or amendments promulgated thereunder, or any other type of reimbursement, restitution or disgorgement.
- L. **Outside Entity** means any not-for-profit organization, other than a **Subsidiary**.
- M. **Outside Entity Executive** means any **Executive** of a **Company** serving in the capacity as director, officer, trustee, trustee emeritus or governor of an **Outside Entity**, but only if such service is at the specific request or direction of a **Company**. In the event of a disagreement between a **Company** and an individual as to whether such individual was acting at the specific request or direction of such **Company**, this **Coverage Element** shall abide by the determination of the **Named Insured** on this issue and such determination shall be made by written notice to the **Insurer** within 90 days after the **Claim** first is reported to the **Insurer** pursuant to the terms of the policy. In the event no determination is made within such period, this **Coverage Element** shall apply as if the **Named Insured** determined that such **Executive** was not acting at such **Company**'s specific request or direction.
- N. **Pollutants** means any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and Waste. "Waste" includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- O. **Securities Claim** means a **Claim** made against any **Insured**:
1. alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities, including, but not limited to, the purchase or sale, or offer or solicitation of an offer to purchase or sell, securities which is:
 - (i) brought by any person or entity alleging, arising out of, based upon or attributable to the purchase or sale of, or offer or solicitation of an offer to purchase or sell, any securities of a **Company**; or
 - (ii) brought by a security holder of a **Company** with respect to such security holder's interest in securities of such **Company**; or
 2. brought derivatively on behalf of a **Company** by a security holder of such **Company**.
- P. **Subsidiary** means:
1. any for-profit entity in which the **Company** has or had **Management Control** on or before the inception date of the policy either directly or indirectly through one or more other **Subsidiaries**;
 2. any for-profit entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries**; and whose assets do not exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary**; or
 3. any for-profit entity in which the **Company** acquires **Management Control** during the **Policy Period**, either directly or indirectly through one or more other **Subsidiaries** and whose assets exceed 35% of the assets of the **Company**, prior to the **Company** acquiring **Management Control** of the **Subsidiary** but only for a period of 90 days subsequent to the **Company** acquiring **Management Control** of the **Subsidiary**.
- Q. **Wrongful Act** means
1. any breach of duty, neglect, error, misstatement, misleading statement, omission or act by any **Individual Insureds** in their respective capacities as such, or any matter claimed against any such **Individual Insured** solely by reason of his or her status as an **Executive, Employee, or Outside Entity Executive**; or
 2. any breach of duty, neglect, error, misstatement, misleading statement, omission or act by a **Company** in connection with a **Securities Claim**.

III. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. alleging, arising out of, based upon or attributable to the:
 - 1. gaining of any profit or advantage to which the **Insured** was not legally entitled, as established in any final adjudication;
 - 2. purchase or sale by an **Insured** of securities of the **Company** within the meaning of Section 16(b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any state statutory law, if any final adjudication establishes that such Section 16(b) violation occurred;
 - 3. payment to any **Insured** of any remuneration without the previous approval of the security holders of the **Company**, if any final adjudication establishes such payment was illegal; or
 - 4. committing of any deliberate criminal or deliberate fraudulent act, or any willful violation of any statute, rule or law, if any final adjudication establishes that such deliberate criminal or deliberate fraudulent act, or willful violation of statute, rule or law was committed. For purposes of determining the applicability of this Exclusion (i) the facts pertaining to and knowledge possessed by any **Insured** shall not be imputed to any **Individual Insured**; and (ii) only facts pertaining to and knowledge possessed by any past, present or future chairman, chief executive officer or chief financial officer (or equivalent positions) of a **Company** or the signatory of the **Application** shall be imputed to such **Company**;
- B. alleging, arising out of, based upon or attributable to the circumstances alleged or the same **Wrongful Act** or **Related Wrongful Act** alleged or contained in any claim or demand which has been reported, or to any circumstances, **Wrongful Act** or **Related Wrongful Act** of which notice has been given, under any prior insurer's policy or policy of which this **Coverage Element** is a renewal or replacement or which it may succeed in time;
- C. alleging, arising out of, based upon or attributable to any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Directors and Officers and Public Company Liability **Coverage Element** Declarations, or the alleging of any **Wrongful Act** which is the same as or a **Related Wrongful Act** to that alleged in such pending or prior demand, suit or proceeding or in the underlying demand, order, decree or judgment;
- D. alleging, arising out of, based upon or attributable to any **Wrongful Act** committed or allegedly committed by an **Individual Insured** in his or her capacity as an **Outside Entity Executive** prior to the Continuity Date set forth in Item 5 of the Directors and Officers and Public Company Liability **Coverage Element** Declarations if any **Insured**, as of such Continuity Date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Coverage Element**;
- E. alleging, arising out of, based upon or attributable to any actual or alleged act, error or omission of an **Individual Insured** serving in any capacity other than as an **Executive** or **Employee** or as an **Outside Entity Executive**;
- F. which is brought by or on behalf of a **Company**, **Outside Entity** or any **Executive** or **Outside Entity Executive**; or which is brought by any security holder of the **Company** or **Outside Entity** or any director, officer, trustee or governor of such **Outside Entity**, whether directly or derivatively, unless such security holder's **Claim** is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation or intervention of any **Company**, **Outside Entity**, **Executive** or **Outside Entity Executive** or any director, officer, trustee or governor of such **Outside Entity**. This Exclusion shall not apply to:
 - 1. any **Claim** brought by an **Executive** or **Outside Entity Executive** in the form of a cross-claim or third-party claim for contribution or indemnity which is part of and results directly from a **Claim** which is covered by this policy;
 - 2. any **Claim** brought by the examiner, trustee, receiver, liquidator or rehabilitator (or any assignee thereof) of such **Company** or **Outside Entity** in any bankruptcy proceeding by or against such **Company** or **Outside Entity**;

3. any **Claim** brought by any past **Executive** of a **Company** provided that he or she has not served as an **Executive**, General Counsel, Risk Manager or consultant of a **Company** at any time during the three years prior to the **Claim** being first made against any **Insured** and provided it is brought without the solicitation, assistance, active participation or intervention of any current **Executive** of a **Company** or anyone who has served in such capacity during the three years prior to the **Claim** being first made;
 4. any **Claim** brought by an **Executive** of a **Company** formed and operating in a jurisdiction other than the United States of America or any of its territories or possessions, or an **Outside Entity Executive** of an **Outside Entity** formed and operating in a jurisdiction other than the United States of America or any of its territories or possessions, against such **Company**, **Executive**, **Outside Entity** or **Outside Entity Executive** thereof, provided that such **Claim** is brought and maintained outside the United States of America or any of its territories or possessions, Canada or any other common law country (including any territories thereof);
 5. any **Claim** brought by an **Outside Entity** or any director, officer, trustee or governor of such **Outside Entity** against a **Company**, **Executive** or **Employee**; or
 6. any **Claim** brought by an **Executive** or **Outside Entity Executive** protected as a whistleblower under applicable laws or regulations;
- G. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, injury resulting from libel, slander, defamation or disparagement, violation of a person's right of privacy, or damage to, loss of use or destruction of any tangible property. This Exclusion shall not apply to a **Securities Claim**;
- H. for any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**. Other than for expenses (including, but not limited to, legal and professional fees) incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**, this Exclusion shall not apply to:
1. a **Claim** under Coverage A of this **Coverage Element**; or
 2. **Loss** in connection with a **Securities Claim**;
- I. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, the Occupational Safety and Health Act, any workers' compensation, unemployment compensation, unemployment insurance, retirement benefits, social security benefits, disability benefits, any rules or regulations of the foregoing promulgated thereunder, and amendments thereto, or any similar federal, state, local or foreign statutory law or common law. This Exclusion shall not apply to a **Securities Claim**;
- J. The **Insurer** shall not be liable to make any payment for **Adverse Media Event Loss** in connection with any **Adverse Media Event** under Coverage D or any **Investigation Costs** in connection with any **Derivative Demand** under Coverage E alleging, arising out of, based upon or attributable to:
1. any fact, circumstance, situation, transaction, event or **Wrongful Act** which has been reported under any policy of which this **Coverage Element** is a renewal or replacement or which it may succeed in time;
 2. any demand, suit or other proceeding pending against, or order, decree or judgment entered for or against, any **Insured** on or prior to the Continuity Date set forth in Item 5 of the Directors and Officers and Public Company Liability **Coverage Element** Declarations, or involving any **Adverse Media Event** or **Derivative Demand** which is the same or related to that at issue in any pending or prior demand, suit, proceeding or in the underlying demand, order, decree or judgment;
 3. any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
 4. the hazardous properties of nuclear materials.

IV. Limit of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limit of Liability of the General Terms and Conditions:

- A. Subject to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the Coverage Element Limit of Liability set forth in Item 3(a) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations shall be the maximum aggregate limit of the **Insurer's** liability for all **Loss** under this **Coverage Element**. Upon exhaustion of the Limit of Liability set forth in Item 3(a) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations or the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Element** shall be deemed completely fulfilled and extinguished.
- B. The maximum limit of the **Insurer's** liability for all **Adverse Media Event Loss** incurred with respect to **Adverse Media Events** occurring during the **Policy Period**, in the aggregate, shall be the **Adverse Media Event Loss** Sub-Limit of Liability set forth in Item 3(b) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations. The **Adverse Media Event Loss** Sub-Limit of Liability shall be the maximum limit of the **Insurer** under this **Coverage Element** for all **Adverse Media Event Loss**, regardless of the number of **Adverse Media Events** occurring during the **Policy Period**. The **Adverse Media Event Loss** Sub-limit of Liability shall be part of, and not in addition to, the **Coverage Element** Limit of Liability set forth in Item 3(a) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations which is also part of and not in addition to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations.
- C. The maximum limit of the **Insurer's** liability for all **Investigation Costs** incurred in response to **Derivative Demands** made during the **Policy Period**, in the aggregate, shall be the **Derivative Demand Investigation** Sub-Limit of Liability set forth in Item 3(c) of this Directors and Officers and Public Company Liability **Coverage Element** Declarations. The **Derivative Demand Investigation** Sub-Limit of Liability shall be the maximum limit of the **Insurer** under this **Coverage Element** for all **Investigation Costs** regardless of the number of **Derivative Demands** made during the **Policy Period** or the number of **Executives** subject to such **Derivative Demands**. The **Derivative Demand** Investigation Sub-limit of Liability shall be part of, and not in addition to, the **Coverage Element** Limit of Liability set forth in Item 3(a) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations which is also part of and not in addition to the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations.

V. Retentions

The following provisions shall apply in addition to the provisions of Section V. Retentions of the General Terms and Conditions:

- A. The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the applicable Retention set forth in Item 4. of the Directors and Officers and Public Company Liability **Coverage Element** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured, with regard to:
 - (i) all Loss for which the **Company** is required or permitted to provide indemnification to an **Individual Insured**; and
 - (ii) **Loss** of a **Company**.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Act(s)**.
- C. The Retention set forth in Item 4(a) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations shall apply to each **Claim** under Coverage A of this **Coverage Element**. The Retention set forth in Item 4(b) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations shall apply to each **Adverse Media Event** under Coverage D of this **Coverage Element**. The Retention set forth in Item 4(c) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations shall apply to each **Derivative Demand** under Coverage E of this **Coverage Element**.

- D. The Retention set forth in Item 4(d) of the Directors and Officers and Public Company Liability **Coverage Element** Declarations shall apply to each **Securities Claim** under Coverage B or Coverage C of this **Coverage Element**. The Retention set forth in Item 4(e) shall apply to each **Claim** other than a **Securities Claim** under Coverage B of this **Coverage Element**. The Retention applicable to Coverage B shall apply to **Indemnifiable Loss**, whether or not actual indemnification is made, unless such indemnification is not made by a **Company** solely by reason of its **Financial Insolvency**. A **Company's** certificate of incorporation, charter or other organization documents, including by-laws and resolutions, shall be deemed to require indemnification and advancement to an **Individual Insured** to the fullest extent permitted by law.
- E. In the event a **Company** is unable to pay the applicable Retention due to **Financial Insolvency**, then the **Insurer** shall advance payment for **Loss** within the applicable Retention. The **Insurer** shall be entitled to recover the amount of **Loss** advanced within the Retention from such **Company** pursuant to Section X. Subrogation of the General Terms and Conditions.

VI. Defense Costs, Defense Counsel, Settlements & Judgments

- A. Defense
The **Insurer** does not assume any duty to defend a **Claim**. The **Insureds** shall defend and contest any **Claim** made against them. An **Insured** shall not retain defense counsel or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. With the express prior written consent of the **Insurer**, an **Insured** may select defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest.
- B. Advancement
The **Insurer** shall advance **Defense Costs** in excess of the applicable Retention on behalf of the **Insured** prior to final disposition of the **Claim**. Such advanced payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event and to the extent that any such **Insured** shall not be entitled under the Terms and Conditions of this **Coverage Element** to payment of such **Loss**.
- C. General Provisions
The **Insurer** shall have the right to associate fully and effectively with each and every **Insured** in the defense of any **Claim** that appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Insured** agrees to provide such information as the **Insurer** may reasonably require and to give the **Insurer** full cooperation and take such actions which, in such **Insurer's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**.
- D. Settlement
The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, incur any **Defense Costs**, **Adverse Media Event Loss** or **Investigation Costs**, or retain a risk management, public relations or law firm, without the prior written consent of the **Insurer**. If the **Insured** admits or assumes any liability in connection with any **Claim** without the consent of the **Insurer**, then the **Insurer** shall not have any obligation to pay **Loss** with respect to such **Claim**. Only those settlements, stipulated judgments, **Defense Costs**, **Adverse Media Event Loss** and **Investigation Costs** which have been consented to by the **Insurer** shall be recoverable as **Loss** under the terms of this **Coverage Element**. The **Insurer** shall not unreasonably withhold any consent required under this **Coverage Element**, provided that in all events the **Insurer** may withhold consent to any settlement, stipulated judgment or **Defense Costs**, or any portion thereof, to the extent such **Claim** (or any portion thereof) is not covered under the terms of this **Coverage Element**. In addition, the **Insured** shall not take any action which prejudices the **Insurer's** rights under this **Coverage Element**.

VII. Other Insurance

Such insurance as is provided by this **Coverage Element** shall apply only as excess over any other valid and collectible insurance, unless such other insurance is expressly written to be excess over any applicable Limit of Liability for this policy or any **Coverage Element**. This policy specifically shall be excess of any other policy pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**. For any **Claim** involving an **Outside Entity Executive**, this policy specifically shall be excess of any indemnification by the **Outside Entity** and any insurance coverage afforded to any such **Outside Entity Executive** or **Outside Entity**.

VIII. Allocation

If both **Loss** covered under this **Coverage Element** and loss not covered under this **Coverage Element** are incurred by the **Insureds** on account of any **Claim** because such **Claim** against the **Insureds** includes both covered and non-covered matters, then coverage under this **Coverage Element** with respect to such **Claim** shall be allocated by the **Insurer** pro rata between covered **Loss** and non-covered loss based on the legal liability and financial exposures of the **Insureds** to covered and non-covered matters and, in the event of a settlement in such **Claim**, based on the number of covered and non-covered counts, causes of action or allegations against the **Insureds**.

If the **Insureds** and the **Insurer** cannot agree on an allocation of covered **Loss** and non-covered loss:

1. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
2. the **Insurer**, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the **Insurer**, and a third independent arbitrator selected by the first two arbitrators.

IX. Coverage under Coverage D and Coverage E

It is the duty of the **Company** and not the duty of the **Insurer** to respond to, investigate or otherwise evaluate any **Adverse Media Event** or **Derivative Demand**. The **Insurer** shall be entitled to associate effectively with the **Company** in its response, investigation, evaluation, negotiation or settlement of any such **Adverse Media Event** or **Derivative Demand**. The **Company** shall be entitled to payment:

- A. under Coverage D of this **Coverage Element** for **Adverse Media Event Loss** no greater than 90 days after receiving written consent of the **Insurer**; and
- B. under Coverage E of this **Coverage Element** for **Investigation Costs** not greater than 90 days after the **Company** has made its final decision not to bring a civil proceeding in a court of law against any of its **Executives**, and such decision has been communicated to the security holders who made the demand upon the **Company**. However, such payment shall be subject to an undertaking by the **Company**, in a form acceptable to the **Insurer**, that the **Company** shall return to the **Insurer** such payment in the event any **Company** or any security holder of the **Company** brings a **Claim** alleging, arising out of, based upon or attributable to any **Wrongful Acts** which were the subject of the **Derivative Demand**.

Nothing in this **Coverage Element**, including Coverage E, shall be construed to afford coverage for any **Claim** brought by the **Company** against one or more of its own **Executives**, other than **Investigation Costs** incurred in a covered **Derivative Demand** or as otherwise provided under Section III.F. of this **Coverage Element**.

X. Order of Payments

In the event of **Loss** for which payment is due under the provisions of this **Coverage Element** but which **Loss**, in the aggregate, exceeds the remaining available Limits of Liability applicable to

this **Coverage Element** (including by virtue of the depletion of the Policy Aggregate Limit of Liability), then the **Insurer** shall:

- A. first pay such **Loss** for which coverage is provided under Coverage A of this **Coverage Element**;
- B. then pay such other **Loss** for which coverage is provided under this policy.

Upon the written request of the **Named Insured**, the **Insurer** shall either pay or withhold payment for such other **Loss** otherwise payable under Coverages B, C, D or E. In the event that the **Insurer** withholds payment as requested by the **Named Insured**, then the **Insurer** shall at any time in the future, at the request of the **Named Insured**, release such **Loss** payment to a **Company**, or make such **Loss** payment directly to the **Individual Insured** in the event of any **Claim** under Coverage A of this **Coverage Element**. The **Insurer's** liability with respect to any payments of **Loss** withheld shall not be increased, and shall not include any interest, as a result of such withholding.

The **Financial Insolvency** of any **Company** or any **Individual Insured** shall not relieve the **Insurer** of any of its obligations to prioritize payment of covered **Loss** under this **Coverage Element** pursuant to this Section X.