

## Directors and Officers and Private Company Liability Coverage Element

In consideration of the premium charged and in reliance upon the statements made by the **Insureds** in the **Application**, which forms a part of this policy, and subject to all the 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 **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 Private 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 Private 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

In addition to the Definitions in the General Terms and Conditions, 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** of 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 or 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**:
    - (i) once such **Individual Insured** is identified in writing by such investigating authority or enforcement body as a person against whom a proceeding described in subparagraph 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**;
  4. a formal 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**, 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. 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**;

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. **Settlement Opportunity** means an **Insurer** recommended settlement that is within any applicable Limit of Liability and that is acceptable to the claimant.
- Q. **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**.
- R. **Wrongful Act** means
1. any breach of duty, neglect, error, misstatement, misleading statement, omission or act by an **Individual Insured** in their respective capacities as such, or any matter claimed against 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**.

### 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:
1. gaining of any profit, remuneration 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 Private 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 Private 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** of a **Company** or as an **Outside Entity Executive** of an **Outside Entity**;
  - 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. alleging, arising out of, based upon or attributable to any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky securities law, or any other federal, state or local securities law, including any amendments thereto, or any rule or regulation promulgated thereunder or any similar common law imposing liability in connection with the offering, sale or purchase of securities of a **Company** or an **Outside Entity**. This Exclusion will not apply to:
1. any offer, purchase or sale of securities, whether debt or equity, in a transaction or a series of transactions that are exempt from registration under the Securities Act of 1933 and prior to any public offering of securities; or
  2. any **Claim** made by any security holder of a **Company** for the failure of such **Company** to undertake or complete a public offering or sale of securities of such **Company**;
- H. alleging, arising out of, based upon or attributable to the purchase by a **Company** of securities of an entity whose equity securities are traded on any U.S. public stock exchange or has any debt instruments that are traded publicly, which results-in such entity becoming a **Subsidiary** of a **Company**;
- I. for bodily injury, personal injury, emotional distress, mental anguish, sickness, disease or death of any person, or damage to, loss of use or destruction of any tangible property. This Exclusion shall not apply to a **Securities Claim**;
- J. 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**; provided, however, 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**;
- K. for any actual or alleged violations of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification 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;
- L. alleging, arising out of, based upon or attributable to:
1. the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered;
  2. improper payroll deductions taken by any **Insured** from any **Employee** or purported **Employee**; or
  3. failure to provide or enforce legally required meal or rest break periods;
- M. alleging, arising out of, based upon, or attributable to the employment of any individual or any wrongful employment practice, including, but not limited to, wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim;
- N. alleging, arising out of, based upon or attributable to:
1. payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
  2. payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal

- security holders, owners or employees, or affiliates (as defined in the Securities Exchange Act of 1934, including any of their officers, directors, agents, owners, partners, representatives, principal security holders or employees) or any customers of a **Company** or any members of their family or any entity with which they are affiliated; or
3. political contributions, whether domestic or foreign;
- O. with respect to Coverage C of this **Coverage Element** only:
1. alleging, arising out of, based upon or attributable to invasion of privacy, plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret, service mark, trade name or any other intellectual property rights;
  2. for any actual or alleged violation of any law, whether statutory, regulatory or common law, as respects the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
  3. alleging, arising out of, based upon or attributable to any actual or alleged contractual liability of the **Company** or any other **Insured** under any express contract or agreement. This Exclusion shall not apply to liability which would have attached in the absence of such express contract or agreement;
  4. alleging, arising out of, based upon or attributable to any product malfunction or failure of any product to perform as a result of any defect, deficiency, inadequacy or dangerous condition in the product or in the design or manufacture of the product;
  5. for injury resulting from libel, slander, oral or written publication of defamatory or disparaging material, invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, malicious use or abuse of process, assault, battery or loss of consortium;
  6. alleging, arising out of, based upon or attributable to any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed, attempted or allegedly committed or attempted in connection with the rendering of, or actual or alleged failure to render, any professional services for others by any person or entity otherwise entitled to coverage under this **Coverage Element**; or
  7. seeking fines, penalties or non-monetary relief against the **Company**. This Exclusion shall not apply to any **Securities Claim**.
  8. alleging, arising out of, based upon or attributable to any violation of the Fair Debt Collection Practices Act or the Fair Credit Reporting Act or any Amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal state, or statutory law or common law anywhere in the world.
  9. alleging, arising out of, based upon or attributable to any violation of the United States of America CAN-SPAM Act of 2003 or the United States of America Telephone Consumer Protection Act (TCPA) or 1991 or any rules or regulations promulgated thereunder or any similar provisions of federal, state or local statutory law or common law anywhere in the world or any other law, ordinance, regulation or statute used to impose liability in connection with any unsolicited communication, distribution, publication, sending or transmission via telephone, cell or mobile phone, telephone facsimile machine, computer or other telephonic or electronic devices by or on behalf of or with consent of the **Company**.
  10. for the unlawful collection or acquisition of personal information by, or on behalf of, or with the consent or cooperation of any **Insured**.
  11. alleging, arising out of, based upon or attributable to any false advertising, misrepresentation in advertising or unfair or deceptive trade practices, with respects to the advertising of the **Insured's** own goods, products, publication or services; provided that this Exclusion shall not Apply to **Loss** on account of any **Securities Claim**.
- P. 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:
1. alleging, arising out of, based upon or attributable to 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. 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 Private 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. alleging, arising out of, based upon or attributable to 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. alleging, arising out of, based upon or attributable to the hazardous properties of nuclear materials.

#### IV. Limits of Liability

The following provisions shall apply in addition to the provisions of Section IV. Limits 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, and except as otherwise provided under Section IV. D of this **Coverage Element**, the **Coverage Element** Limit of Liability set forth in Item 3(a) of the Directors and Officers and Private 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 Private Company Liability **Coverage Element** Declarations, or the Policy Aggregate Limit of Liability in Item 3 of the General Declarations, the **Insurer's** obligations under this **Coverage Element** shall be deemed completely fulfilled and extinguished, with the exception of **Loss** under Coverage A of this **Coverage Element** which may be subject to the Additional Executive Limit of Liability pursuant to Section IV. D of this **Coverage Element**.
- 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 Private 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**, and 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 Private 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 Private 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** and 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 Private Company Liability **Coverage Element** Declarations which is also part of and not in addition to the Policy Aggregate Policy Limit of Liability set forth in Item 3 of the General Declarations.
- D. In the event the **Coverage Element** Limit of Liability set forth in Item 3(a) of the Directors and Officers and Private Company Liability **Coverage Element** Declarations is exhausted, the **Insurer** will provide an Additional Executive Limit of Liability equal to the amount set forth in Item 3(d) of the Directors and Officers and Private Company Liability **Coverage Element** Declarations applicable to **Claims** under Coverage A of this **Coverage Element**. Such Additional Executive Limit of Liability shall be available solely for **Loss** under Coverage A of this **Coverage Element** for **Claims** against an **Executive** which were not previously noticed, and not involving the same **Wrongful Act** or **Related Wrongful Acts** as any **Claim** noticed to the **Insurer** before such exhaustion. Such Additional Executive Limit of Liability shall apply excess of the **Coverage Element** Limit of Liability and any insurance or indemnification available from any source and shall be in addition to and not erode the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations. If the Additional Executive Limit of Liability is invoked, then the **Insurer's** maximum aggregate limit of liability under this policy shall be the sum of the Additional Executive Limit of Liability set forth in Item 3(d) of the Directors and Officers and Private Company Liability **Coverage Element** Declarations and



the Policy Aggregate Limit of Liability set forth in Item 3 of the General Declarations combined.

## 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 Private Company Liability **Coverage Element** Declarations. The Retention shall be borne by the **Insureds** and shall remain uninsured.
- B. A single Retention shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** or **Related Wrongful Acts**.
- C. The Retention set forth in Item 4(a) of the Directors and Officers and Private 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 Private 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 Private 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 Private 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 or Coverage C 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 VI.C. of this **Coverage Element** and 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. An **Insured** may select a defense counsel different from that selected by other **Insureds** if such selection is required due to an actual conflict of interest and only with the express prior written consent of the **Insurer**. Notwithstanding the foregoing, and solely with respect to a **Claim** under Coverages A, B and C of this **Coverage Element**, the **Insureds** may at their sole option and pursuant to Section VI.B. of this **Coverage Element** tender to the **Insurer** the defense of any **Claim**. The **Insureds'** option to tender the defense does not apply to the coverage afforded under Coverage D or Coverage E of this **Coverage Element**, and it shall remain 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 effectively associate with the **Company** in its response, investigation, evaluation, negotiation or settlement of any such **Adverse Media Event** or **Derivative Demand**.

B. **Insured's Option to Tender Defense**

The **Insureds** shall have the right to tender the defense of a **Claim** under Coverages A, B and C of this **Coverage Element** to the **Insurer**, which right shall be exercised in writing by the **Named Insured** on behalf of all **Insureds** to the **Insurer** pursuant to the notice provisions of Section VI. of the General Terms and Conditions. This right shall terminate if not exercised within thirty (30) days of the date the **Claim** is reported in accordance with Section VI. Reporting and Notice of the General Terms and Conditions. Further, from the date the **Claim** is first made against an **Insured** to the date when the **Insurer** accepts the tender of the defense of such **Claim**, the **Insureds** shall take no action, or fail to take any required action, that prejudices the rights of any **Insured** or the **Insurer** with respect to such **Claim**. Provided that the **Insureds** have complied with the foregoing, the **Insurer** shall be obligated to assume the defense of the **Claim**, even if such **Claim** is groundless, false or fraudulent. The assumption of the defense of the **Claim** shall be effective upon written confirmation sent thereof by the **Insurer** to the **Named Insured**. Once the defense has been so tendered, the **Insured** shall have the right to effectively associate with the **Insurer** in the defense and the negotiation of any settlement of any **Claim**, subject to the provisions of Section VII. of this **Coverage Element**. In the event the **Insurer** accepts the tender of defense of such **Claim**, the **Insurer** shall be responsible for the retention of defense counsel for such **Claim**.

C. **Advancement**

Regardless of whether the defense is so tendered, 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**.

D. **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**.

E. **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**.

When the **Insurer** has assumed the defense of a **Claim** and if the **Insureds** do not consent to the first **Settlement Opportunity** within 30 days of the date the **Insureds** are first made aware of such **Settlement Opportunity** (or in the case of a **Settlement Opportunity** which arises from a settlement offer by the claimant, then within the time permitted by the claimant to accept such settlement offer, but in all events no later than 30 days after the settlement offer was made), then, subject to all applicable Limits of Liability, the **Insurer's** liability for all **Loss** on account of such **Claim** shall not exceed:

1. the amount for which the **Insurer** could have settled such **Claim** plus **Defense Costs** incurred as of the date such settlement was proposed in writing by the **Insurer** ("**Settlement Opportunity Amount**"), plus

2. 80% of covered **Loss** in excess of such **Settlement Opportunity** Amount, it being a condition of this insurance that the remaining 20% of such covered **Loss** excess of such **Settlement Opportunity** Amount shall be carried by the **Insureds** at their own risk and be uninsured.

Notwithstanding the foregoing, this paragraph shall not apply until such **Settlement Opportunity** Amount exceeds the applicable Retention set forth in Item 4 of the Directors and Officers and Private Company Liability **Coverage Element** Declarations or to those **Claims** for which the **Insurer** has not assumed the defense

## 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 shall be specifically 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 apply as follows:

1. **Defense Costs**: 100% of **Defense Costs** incurred by the **Insured** or the **Insurer** on account of such **Claim** will be considered covered **Loss**; and
2. **Loss** other than **Defense Costs**: All remaining amounts incurred by the **Insured** on account of 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**, also based on the number of covered and non-covered counts, causes of action or allegations against the **Insureds**.

Provided the foregoing shall not apply with respects to any **Insured** for whom coverage is excluded pursuant to Exclusion O. Such **Loss** 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 covered and non-covered parties, in the event of a settlement in such **Claim**, also 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:

- A. no presumption as to allocation shall exist in any arbitration, suit or other proceeding; and
- B. 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 understood and agreed that the **Company** shall be entitled to payment:

- A. under Coverage D of this **Coverage Element** for **Adverse Media Event Loss** not 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 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** arising from any **Claim** 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 **Loss** for which coverage is provided under Coverage B of this **Coverage Element**; and
- C. 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 **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.