

# DIRECTORS AND OFFICERS LIABILITY AND COMPANY REIMBURSEMENT

**TUDOR INSURANCE COMPANY**  
**KEENE, NEW HAMPSHIRE**  
(A stock company, herein called the Insurer)

THIS IS A CLAIMS MADE POLICY  
PLEASE READ CAREFULLY

IN CONSIDERATION of the payment of the premium and in reliance upon the statements made to the Insurer, including the statements made in the Application Form attached hereto, and subject to the insuring agreements, exclusions, terms and conditions of this Policy, the Insurer agrees as follows:

## INSURING AGREEMENTS

### A. DIRECTORS AND OFFICERS LIABILITY

The Insurer shall pay the Loss of each and every Director or Officer (hereinafter called the Insureds) arising from any claim first made against the Insureds and reported to the Insurer during the Policy Period by reason of any Wrongful Act.

### B. COMPANY REIMBURSEMENT

The Insurer shall reimburse the Company for Loss arising from any claim first made against the Insureds and reported to the Insurer during the Policy Period by reason of any Wrongful Act but only when and to the extent the Company has indemnified the Insureds for such Loss pursuant to law, statutory or common, or pursuant to the Charter or By-Laws of the Company.

## SECTION 1 DEFINITIONS

A. "Company" shall mean the Company named in Item 1 of the Declarations and any Subsidiary.

B. "Subsidiary" shall mean any Company of which the Company owns at the inception of the Policy Period more than 50% of the voting stock. "Subsidiary" also means any Company which becomes a Subsidiary during the Policy Period but only upon the condition that within ninety (90) days of its becoming a Subsidiary, the Company shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium and/or amendment of the provisions of this policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Company paying when due any additional premium required by the Insurer relating to such new Subsidiary. A Company becomes a Subsidiary when the Company owns more than 50% of its issued and outstanding voting stock.

C. "Insureds" shall mean all persons who were, now are, or shall be duly elected or appointed Directors or Officers of the Company named in Item 1 of the Declarations. "Insureds" shall also mean the estate, heirs or legal representatives of deceased Directors or Officers who were Directors or Officers at the time the Wrongful Acts upon which a claim is based were committed and the legal representatives of Directors or Officers in the event of their incompetency, insolvency or bankruptcy.

D. "Policy Period" shall mean the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this Policy.

E. "Loss" shall mean damages, judgments, settlements and Defense Costs; however, Loss shall not include fines or penalties imposed by law, punitive or exemplary damages, the multiplied portion of multiplied damages, taxes or any amount which may be incurred in connection with any matter uninsurable under the law pursuant to which this Policy shall be construed.

F. "Wrongful Act" shall mean any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission by the Insureds solely in the discharge of their duties in their capacity as Directors or Officers of the Company, or any matter claimed against them solely by reason of their being Directors or Officers of the Company.

G. "Defense Costs" shall mean reasonable and necessary fees, costs and expenses consented to by the Insurer (including premiums for any appeal bond, attachment bond or similar bond, but without obligation to apply for or furnish any such bond) resulting solely from the defense and appeal of any claim against the Insureds, but excluding salaries of officers or employees of the Company.

## SECTION 2 EXCLUSIONS

The Insurer shall not be liable under this Policy to make any payment for Loss in connection with any claim made against the Insureds:

- A. brought about or contributed to by the committing in fact of any fraudulent, criminal or dishonest act of an Insured;
- B. based upon or attributable to their gaining in fact of any personal profit or advantage to which they were not legally entitled or for the return by an Insured of any remuneration paid in fact to an Insured if payment of such remuneration shall be held to be in violation of law or for the return to the Company under a settlement agreement any remuneration paid to an Insured;
- C. for an accounting of profits made from the purchase or sale by the Insureds of securities of the Company named in Item 1 of the Declarations within the meaning of Section 16 (b) of the Securities Exchange Act of 1934 and amendments thereto or similar provisions of any federal, state or local statutory law or the common law;

NOTE: IT IS AGREED THAT ANY FACT PERTAINING TO ANY INSURED SHALL NOT BE IMPUTED TO ANY OTHER INSURED FOR THE PURPOSE OF DETERMINING THE APPLICATION OF THE ABOVE EXCLUSIONS (A), (B) OR (C).

- D. which are brought by an Insured or the Company or which are brought by any security holder of the Company, whether directly or derivatively, unless such claim is instigated and continued totally independent of, and totally without solicitation of, or assistance of, or active participation of, or intervention of, any Insured or the Company;
- E. alleging, arising out of, based upon or attributable to any failure or omission on the part of the Insureds or the Company to effect and maintain insurance;
- F. alleging, arising out of, based upon or attributable to any pending or prior litigation as of the inception date of this Policy, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation;
- G. alleging or arising out of the facts alleged in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this Policy is a renewal or replacement or which it may succeed in time;
- H. for libel or slander or the publication of material that violates a person's right of privacy;
- I. for bodily injury, sickness, disease, death or emotional distress of any person, or for damage to or destruction of any tangible property including loss of use thereof;

- J. based upon an actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 and amendments thereto or similar provisions of any federal, state or local statutory law or common law;
- K. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly the 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, including, but not limited to, claims alleging damage to the Company or its shareholders.  
  
Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.
- L. alleging, arising out of, based upon or attributable to any act or omission in their capacities as Directors or Officers of any entity other than the Company, or by reason of their status as a Director or Officer of such other entity;
- M. under Insuring Agreement A for which the Insureds are indemnified or entitled to indemnification by the Company.

## SECTION 3 LIMIT AND RETENTION

- A. The Limit of Liability stated in Item 3 of the Declarations, regardless of the time of payment by the Insurer, shall be the maximum liability of the Insurer for all Loss under Coverage A and B combined (a) during the Policy Period, and (b) the Discovery Period. The Limit of Liability for the Discovery Period is part of, not in addition to, the Limit of Liability for the Policy Period.
- B. The Insurer shall be liable to pay 100% of the Loss in excess of the amount of the retentions stated in Item 4 of the Declarations, up to the Limit of Liability stated in Item 3 of the Declarations, it being warranted that the retentions stated in Item 4 of the Declarations shall be carried by the Company and/or the Insureds at their own risk and uninsured.
- C. This Policy is only to pay Loss, excess of the retentions stated in Item 4 of the Declarations.
  - 1. As respects Insuring Agreement A, the retention amount stated in Item 4(a) of the Declarations shall apply separately to each Insured for each Loss, subject to the aggregate retention each Loss as stated in Item 4(b) of the Declarations. When the retention stated in Item 4(b) of the Declarations applies, the retention shall be prorated among the Insureds against whom claim is made.

2.As respects Insuring Agreement B, the retention amount stated in Item 4(c) shall apply to each Loss.

- D. Defense Costs are not payable in addition to the Limit of Liability. The Limit of Liability available to pay judgments or settlements shall be reduced by Defense Costs.
- E. Loss arising out of the same Wrongful Act or interrelated, repeated or continuous Wrongful Acts of one or more of the Insureds shall be considered a single Loss.

## SECTION 4 DEFENSE COSTS

The Insurer does not have a duty to defend. Defense Costs shall not be incurred without the Insurer's consent, which consent shall not be unreasonably withheld. Defense Costs are included in Loss and, as such, Defense Costs are subject to the Limit of Liability stated in Item 3 of the Declarations. The retentions stated in Item 4 of the Declarations are applicable to Defense Costs.

## SECTION 5 LOSS PROVISIONS

- A. The Company or the Insureds shall, as a condition precedent to the obligations of the Insurer under this Policy, give to the Insurer notice in writing of any claim made against the Insureds as soon as practicable and during the Policy Period or during the Discovery Period, if effective in accordance with Section 7.
- B. If during the Policy Period or during the Discovery Period, if effective in accordance with Section 7, the Insureds or the Company shall become aware of any circumstances which may subsequently give rise to a claim being made against the Insureds, the Insureds or the Corporation shall give written notice as soon as practicable during the Policy Period or during the Discovery Period of the circumstances and the reasons for anticipating a claim, with full particulars as to dates and persons involved. Any claim which is subsequently made against the Insureds arising out of such circumstances shall be treated as a claim made during the Policy Period.
- C. Notice hereunder shall be given the Insurer, 400 Parson's Pond Drive, Franklin Lakes, New Jersey 07417-2600.

## SECTION 6 COOPERATION CLAUSE

- A. The Insureds and the Company shall cooperate with the Insurer in respect to any claim against an Insured. The Insureds shall not admit or assume any liability, agree to any settlement or stipulate to any judgment without the prior written consent of the Insurer.
- B. The Insurer does not under this policy have a duty to

defend. The Insurer shall have the right to associate with the Insureds in the defense and settlement of any claim that appears reasonably likely to involve the Insurer.

- C. The Company and the Insureds shall provide the Insurer with such pleadings, reports, investigations and other information as the Insurer shall reasonably request.
- D. With respect to Defense Costs and any joint settlement of any claim made against the Company and the Insureds, the Company, the Insureds and the Insurer agree to use their best efforts to determine a fair and proper allocation of the amount of Defense Costs and joint settlement as between the Company, the Insureds and the Insurer.
- E. This Policy and any and all rights hereunder are not assignable without the written consent of the Insurer.

## SECTION 7 DISCOVERY PERIOD

If the Insurer shall cancel or refuse to renew this Policy, the Company and/or the Directors and/or Officers shall have the right, upon payment of an additional premium of 35% of the one (1) year premium hereunder, for a period of ninety (90) days following the effective date of such cancellation or refusal to renew, to give written notice to the Insurer, pursuant to Section 5 of the Policy, but only in respect of any Wrongful Act committed before the effective date of such cancellation or non-renewal. This right of extension shall terminate, however, unless written notice is given and the additional premium is paid to the Insurer by the Company or the Insureds within ten (10) days after the effective date of such cancellation or non-renewal. This paragraph and the rights contained herein shall not apply in the event of cancellation resulting from the non-payment of premium. The offer by the Insurer of renewal terms, conditions, limits of liability and/or premium different from those of the expiring Policy shall not constitute a refusal to renew.

## SECTION 8 CANCELLATION

This Policy may be cancelled by the Company or the Insureds at any time by written prior notice or by surrender of this Policy to the Insurer or its authorized agent. This Policy may also be cancelled by the Insurer by delivering to the Company or by mailing to the Company, by registered, certified or other first class mail, at the Company's address shown in this Policy, written notice stating when, not less than thirty (30) days thereafter (except for non-payment of premium when ten (10) days shall apply) the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice.

If this Policy shall be cancelled by the Company or the

Insureds, the Insurer shall retain the customary short rate proportion of the premium hereon.  
If this Policy shall be cancelled by the Insurer, the Insurer shall retain the pro rata proportion of the premium hereon.

Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

If the period, as set forth in the Policy, relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

### **SECTION 9 SUBROGATION**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the Insureds' rights of recovery therefore, and the Insureds or the Company shall execute all papers required and shall do everything that may be necessary

to secure such rights, including the execution of such documents as may be necessary to enable the Insurer effectively to bring suit in the name of the Insureds or the Company.

### **SECTION 10 OTHER INSURANCE**

The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance.

### **SECTION 11 NOTICE**

The Company agrees to act on behalf of all Insureds with respect to a notice of claim or cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of endorsements to this Policy and the exercising of any rights under Section 7, Discovery Period.

IN WITNESS WHEREOF the INSURER has caused this Policy to be signed by its President and a Secretary and countersigned on the Declarations page by a duly authorized representative of the Insurer.

Secretary

President