



DIRECTORS AND OFFICERS DIFFERENCE IN CONDITIONS LIABILITY INSURANCE DECLARATIONS

NOTICE: PLEASE READ CAREFULLY. This **Policy** is a claims-made policy. Except as otherwise provided herein, this **Policy** covers only claims first made against the Insureds during the **Policy Period**. The limit of liability available to pay judgments or settlements shall be reduced by **Defense Costs**. Please read this **Policy** carefully.

POLICY NUMBER:

Item 1. **Named Insured:**
Address:

Item 2. **Policy Period:** From: <<Effective Date>> To: <<Expiration Date>>
(12:01 AM Standard Time on both dates at the address of the **Named Insured** noted above.)

Item 3. Aggregate Limit of Liability: \$

Item 4. Reinstated Independent Director Limit of Liability: \$

Item 5. A. Discovery Period Premium: % of the annualized Premium indicated in Item 7.
B. **Discovery Period:** years

Item 6. Schedule of **Underlying Policies:**

Insurer	Policy No.	Policy Period	Limit of Liability	Attachment

Item 7. Premium: \$ <<Premium>>

Item 8. Notice:
A. Claims or Potential Claims:

B. All Other:

Policy Issuance Date: <<Policy Issuance Date>>

Policy Issuance Office: <<Endurance Issuance Office>>

<<Endurance Insurer>>

<<DIC 0001 0712>>

Item 9. Forms and Endorsements Effective at Inception:
See attached Forms and Endorsements Schedule, IL 0101.

Item 10. Producer:
Address:

These Declarations, the attached policy form and any written endorsements thereto, shall constitute the contract between the **Company**, the **Insured Persons** and the Insurer.

The Insurer hereby causes this **Policy** to be signed on the Declarations page by a duly authorized representative of the Insurer.

Authorized Representative

Date

Policy Issuance Date: <<Policy Issuance Date>>
Policy Issuance Office: <<Endurance Issuance Office>>

<<Endurance Insurer>>
<<DIC 0001 0712>>

DIRECTORS AND OFFICERS DIFFERENCE IN CONDITIONS LIABILITY INSURANCE POLICY

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DIRECTORS AND OFFICERS DIFFERENCE IN CONDITIONS LIABILITY INSURANCE POLICY

THIS POLICY CONTAINS CLAIMS MADE COVERAGES. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES AND WHAT IS AND WHAT IS NOT COVERED.

In consideration of premium paid or payable and in reliance on all statements made and information furnished by the **Insureds** in the underwriting of this **Policy**, and subject to the terms, conditions and limitations of this **Policy**, <<Endurance Insurer>> (herein referred to as the "Insurer") agrees as follows:

I. INSURING CLAUSES

A. INSURED PERSON LIABILITY

The Insurer shall pay on behalf of the **Insured Persons** any **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of any **Claim** first made against the **Insured Persons** during the **Policy Period** or any applicable **Discovery Period** for any **Wrongful Acts** taking place prior to the end of the **Policy Period** if and to the extent such **Loss** is not paid by any **Underlying Policies**; provided that if and to the extent an insurer of an **Underlying Policy** is financially able and legally permitted to pay such **Loss** out of the remaining limit of liability of the **Underlying Policy**, the Insurer shall be liable to pay such **Loss** under this **Policy** only after the insurer of the **Underlying Policy** refuses to pay such **Loss** or fails to pay such **Loss** within sixty (60) days after the **Insured Persons** request such payment, whichever is earlier.

This **Policy** shall follow and be subject to the broader terms and conditions of any **Underlying Policies** if and to the extent:

1. any **Loss** would be covered under such **Underlying Policies** but for the exhaustion of the **Underlying Policies'** limit of liability; and
2. such **Loss** is not covered under this **Policy** pursuant to the terms and conditions of this **Policy**;

however, this **Policy** shall not follow and shall not be subject to the broader terms and conditions of any **Underlying Policies** with respect to the first paragraph of this Section I.A., the **Policy Period**, the Limit of Liability, any notice provisions, the **Discovery Period** information in Item 5 of the Declarations, the definition of **Underlying Policies**, Exclusion A.1, Section IV.L (Subrogation) or any endorsements to this **Policy**, and in no event shall this **Policy** cover any claim against the **Company** or any amount the **Company** indemnifies, advances or pays on behalf of an **Insured Person**.

B. OUTSIDE POSITION LIABILITY

Subject to its other terms and conditions, Insuring Clause A includes coverage for an **Insured Person** while serving in an **Outside Position**. Any such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity** in which the **Insured Person** serves in the **Outside Position**.

C. REINSTATED INDEPENDENT DIRECTOR LIABILITY

If the Limit of Liability stated in Item 3 of the Declarations is exhausted by reason of payment by the Insurer of covered **Loss**, then this **Policy** will afford coverage for any additional covered **Loss** incurred by the **Independent Directors** as a result of any other covered **Claims**, provided such additional coverage for the **Independent Directors**: (i) shall be excess of all other insurance specifically excess of this **Policy**, subject to Section IV.Q below, (ii) shall not apply to any **Claim** for which the Insurer paid or is obligated to pay **Loss** under the Limit of Liability stated in Item 3 of the Declarations, (iii) shall be subject to the Reinstated Independent Director Limit of Liability

stated in Item 4 of the Declarations, which shall be the maximum aggregate additional liability of the Insurer under this Policy for all Loss incurred by Independent Directors and covered by reason of this paragraph, and (iv) shall be subject to all other terms and conditions of this Policy. If the amount of covered Loss which is otherwise due and owing by the Insurer under this Policy is subject to both the then-remaining Limit of Liability in Item 3 of the Declarations and the Reinstated Independent Director Limit of Liability in Item 4 of the Declarations, and if such Loss is incurred by both Independent Directors and other Insured Persons, then such Loss shall be allocated to and paid by the Insurer under the respective Limits of Liability in whatever portions will maximize the total amount of such Loss being paid under this Policy.

II. DEFINITIONS

When used in this Policy:

A. **Claim** means:

1. a written demand for monetary damages or other relief against any **Insured Person** for a **Wrongful Act**,
2. a civil proceeding against any **Insured Person** for a **Wrongful Act**, commenced by the service of a complaint or similar pleading,
3. an arbitration proceeding against any **Insured Person** for a **Wrongful Act**,
4. a criminal proceeding against any **Insured Person** for a **Wrongful Act**, commenced by a return of an indictment, information or similar document,
5. any official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**,
6. a formal administrative or regulatory adjudicatory or investigative proceeding against any **Insured Person** for a **Wrongful Act**, commenced by the filing of a notice of charge, formal investigative order or similar document,
7. a civil, criminal, administrative or regulatory investigation against an **Insured Person** for a **Wrongful Act**, commenced by the service upon or other receipt by the **Insured Person** of a written notice, including a Wells Notice, or subpoena from the investigating authority identifying the **Insured Person** as an individual against whom a formal proceeding may be commenced,
8. any request, demand or subpoena by a regulatory, administrative, governmental or similar authority, or by or on behalf of the **Company** (including a **Company's** Board of Directors or a committee of the Board of Directors), to interview or depose an **Insured Person**, or for the production of documents by an **Insured Person**, in his or her capacity as such, whether or not such **Insured Person** allegedly committed a **Wrongful Act**, provided that such request, demand or subpoena (i) is not part of a routine or regularly scheduled audit, inspection or general oversight or compliance activity, (ii) shall constitute a **Claim** under this **Policy** only if the **Insured Person** or the **Company** elects to give to the Insurer written notice thereof pursuant to Section IV.D below, and (iii) shall not preclude coverage under this **Policy** for any related subsequent **Claim** first made during the **Policy Period** or the **Discovery Period**, if applicable, if the **Insured Persons** and the **Company** do not give notice to the Insurer of such request, demand or subpoena,
9. a notice of circumstance as described in the second paragraph of Section IV.D. of this **Policy**, or
10. a written request that the **Insured Persons** toll or waive a statute of limitations with respect to a potential or threatened claim against any **Insured Persons** for a **Wrongful Act**.

- B. **Company** means, collectively, the **Named Insured** and the **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- C. **Defense Costs** means reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Company**) incurred by the **Insured Persons** in defending **Claims** and the premium for appeal, attachment or similar bonds, provided the Insurer shall have no obligation to apply for or furnish such bonds. **Defense Costs** include such reasonable fees and expenses incurred by the **Insured Persons** at the Insurer's request to assist the Insurer in investigating a **Claim** or costs assessed against the **Insured Persons** in a **Claim**.
Defense Costs also include such reasonable fees and expenses (including the premium or origination fee for a loan or bond) incurred by the **Insured Persons** to defend against or facilitate the **Insured Person's** payment, return, forfeiture, disgorgement or restitution of compensation or other amounts as required by Section 304(a) of the Sarbanes-Oxley Act of 2002, Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any rules, regulations or policies pursuant to such Sections, provided the Insurer shall not be liable under this **Policy** for the **Insured Person's** payment, return, forfeiture, disgorgement or restitution of such compensation or other amounts as required by such Sections, rules, regulations or policies.
- D. **Discovery Period** means the period for the extension of coverage, if exercised, described in Section IV (B) or IV(G)(2) of this **Policy**.
- E. **Domestic Partner** means any natural person qualifying as a **Domestic Partner** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- F. **Executive Officers**, either in the singular or plural, means with respect to any **Company** its chairperson, president, chief executive officer, chief financial officer and in-house general counsel.
- G. **Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- H. **Independent Directors** means one or more past, present or future directors or **Managers** of the **Company** who are not and have never been an officer or employee of any **Company**.
- I. **Insured Persons**, either in the singular or plural, means:
1. any one or more natural persons who were, now are or shall become duly elected or appointed directors, trustees, **Managers**, officers, in-house general counsel, controller, director of investor relations, director of human resources, or risk manager of the **Company**, or, with respect to a **Company** incorporated outside the United States, their functional equivalent;
 2. any one or more other natural persons not described in subparagraph (1) above who were, now are or shall become full or part-time employees of the **Company**; provided such other employees shall be considered **Insured Persons** only (a) if the **Company** agrees to advance **Defense Costs** or indemnify such other employees to the same extent as the **Company** agrees to indemnify the natural persons described in subparagraph (1) above, and (b) while a **Claim** against such other employees is also made against a natural person described in subparagraph (1) above; and
 3. any one or more natural persons described in subparagraph (1) above while serving in an **Outside Position**.

- J. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- K. **Loss** means the amount which the **Insured Persons** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs**. **Loss**, other than **Defense Costs**, does not include:
1. any amount for which the **Insured Persons** are absolved from payment,
 2. fines or penalties imposed by law, other than civil money penalties assessed against an **Insured Person** for an unintentional or non-willful violation of any federal, state, local or foreign law, including without limitation any such violation of the Foreign Corrupt Practices Act or the U.K. Bribery Act and any such civil fines or penalties described in Section 308 of the Sarbanes-Oxley Act of 2002,
 3. taxes, other than (i) taxes imposed on a **Company** for which the **Insured Persons** are legally liable solely by reason of the **Company's** insolvency, or (ii) taxes imposed on an **Insured Person** solely by reason of the Insurer's payment of covered **Loss** incurred by such **Insured Person**, or
 4. matters uninsurable under the law pursuant to which this **Policy** is construed.
- The insurability of punitive, exemplary or multiple damages, fines, penalties or taxes otherwise covered under this **Policy** shall be determined under the internal laws of any jurisdiction which has a substantial relationship to the **Company**, the **Insured Persons**, the Insurer, this **Policy** or such **Claim**. The Insurer shall not assert that any **Loss** incurred by an **Insured Person**, in the **Insured Persons'** capacity as such, is uninsurable due to the **Insured Person's** actual or alleged violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended.
- L. **Managers** means any natural person who was, now is or shall become a manager, member of the Board of Managers or equivalent executive of a **Company** that is a limited liability company.
- M. **Non-Profit Entity** means any organization chartered and operated as a not-for-profit organization.
- N. **Outside Entity** means:
1. any **Non-Profit Entity** or any for-profit entity if the securities of such entity are not publicly owned or traded, or
 2. any other entity specifically included as an **Outside Entity** by endorsement to this **Policy**, provided such entity is not included in the definition of **Company**.
- O. **Outside Position** means the position of director, officer, manager, trustee or other equivalent executive position held by an **Insured Person** in an **Outside Entity** if service in such position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Company**.
- P. **Named Insured** means the organization first named in Item 1 of the Declarations.
- Q. **Policy** means, collectively, the Declarations, this policy form and any endorsements attached hereto.
- R. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination in accordance with Section IV (I) of this **Policy**.
- S. **Subsidiary**, either in the singular or plural, means:

1. any organization, other than a joint venture or partnership, in which more than fifty percent (50%) of the outstanding voting securities or voting rights representing the present right to vote for election of directors, trustees, **Managers** or equivalent executives is owned or controlled, directly or indirectly, in any combination, by one or more **Companies**,
 2. any organization, other than a joint venture or partnership, in which one or more **Companies**, in any combination, directly or indirectly have the right, pursuant to a written contract with or the bylaws, charter, operating agreement or similar document of such organization, to elect or appoint a majority of the directors, **Managers** or equivalent executives of such organization, and
 3. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Companies**.
- T. **Underlying Policy(ies)** means the directors and officers liability insurance policies scheduled in Item 6 of the Declarations.
- U. **Wrongful Act** means:
1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the **Insured Persons** in their capacity as such, or in an **Outside Position**, or
 2. any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Position**.

III. EXCLUSIONS

- A. The Insurer shall not be liable for **Loss** on account of that portion of any **Claim** made against any **Insured Person**:
1. for which the **Company** or, with respect to **Insured Persons** serving in an **Outside Position**, the **Outside Entity** (a) actually pays or indemnifies, or (b) is required or permitted by law to pay on behalf of or indemnify, provided this exclusion shall not apply if and to the extent the **Company** and the **Outside Entity** fail or refuse within sixty (60) days after the **Insured Person's** request, or are financially unable, to pay, advance or indemnify such **Loss**;
 2. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement; provided the insurer of such prior policy does not reject such notice as invalid;
 3. for **Wrongful Acts** actually or allegedly committed or attempted by **Insured Persons** of a **Subsidiary** before the date such organization became a **Subsidiary**;
 4. based upon, arising out of, or attributable to such **Insured Person** having gained any personal profit or remuneration or having committed any deliberate fraud or willful violation of law, if a final and non-appealable judgment in the underlying proceeding establishes that such **Insured Person** in fact gained any such personal profit or remuneration or committed such deliberate fraud or willful violation of law; however, this exclusion shall not apply to:
 - a. **Defense Costs**; or
 - b. **Independent Directors**;
 5. for a **Wrongful Act** actually or allegedly committed or attempted by **Insured Persons** in their capacity as a director, officer, trustee, manager or employee of any organization other than an **Outside Entity** or the **Company**, even if service in such capacity is with the

knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Company**.

B. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of any Exclusion set forth in this Section III, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Persons**.

IV. GENERAL TERMS AND CONDITIONS

A. ESTATES, LEGAL REPRESENTATIVES, SPOUSES AND DOMESTIC PARTNERS

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this **Policy** applicable to **Loss** incurred by the **Insured Person** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

B. DISCOVERY PERIOD

If the **Named Insured** terminates this **Policy** or the **Named Insured** or Insurer refuses to renew this **Policy**, the **Company** and the **Insured Persons** shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this **Policy** for the **Discovery Period** set forth in Item 5(B) of the Declarations following the effective date of such termination or nonrenewal, but only with respect to **Claims** first made during the **Discovery Period** for covered **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Company** or **Insured Persons** to the Insurer within thirty (30) days following the effective date of termination or nonrenewal.

The premium due for such **Discovery Period** shall equal that percent set forth in Item 5(A) of the Declarations of the Annual Premium. The entire premium for such **Discovery Period** shall be deemed fully earned and non-refundable upon payment.

The **Insured Persons** shall not be entitled to elect the **Discovery Period** under Section IV(B) if a **Discovery Period** is elected pursuant to Section IV(G)(2) of this **Policy**.

C. LIMIT OF LIABILITY

For the purposes of this **Policy**, all **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insured Persons** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against them, regardless of whether such date is before or during the **Policy Period**.

Subject to Insuring Clause I.C., the amount stated in Item 3 of the Declarations shall be the maximum aggregate liability of the Insurer under this **Policy** for all covered **Loss** resulting from all **Claims**, regardless of the number of **Claims** or the time of payment by the Insurer.

The Limit of Liability for the **Discovery Period**, if exercised, shall be part of and not in addition to the Limit of Liability for the **Policy Period**. The purchase of the **Discovery Period** shall not

increase or reinstate the aggregate Limit of Liability, which shall be the maximum liability of the Insurer for the **Policy Period** and **Discovery Period**, combined.

Defense Costs shall be part of and not in addition to the applicable aggregate Limit of Liability, and **Defense Costs** shall reduce such Limit of Liability. If the Limit of Liability is exhausted by payment of **Loss**, the Insurer's obligations under this **Policy** shall be completely fulfilled and extinguished. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insured Persons**, without consideration of other future payment obligations.

D. NOTICE

The **Company** and the **Insured Persons** shall, as a condition precedent to their rights under this **Policy**, give to the Insurer written notice of any **Claim** made against the **Insured Persons** as soon as practicable after the in-house general counsel or risk manager of the **Company** first learns of such **Claim**, but in no event later than (i) ninety (90) days after the expiration of the **Policy Period**, or (ii) expiration of any applicable **Discovery Period**.

If during the **Policy Period** or any applicable **Discovery Period** the **Insured Persons** or the **Company** shall become aware of any circumstances that may reasonably be expected to give rise to a **Claim** against the **Insured Persons** and shall give written notice to the Insurer of the circumstances and the reasons for anticipating a **Claim**, with particulars as to dates and the persons involved, then any **Claim** that is subsequently made against the **Insured Persons** arising out of such circumstances shall be treated as a **Claim** made during the **Policy Period** or **Discovery Period** in which such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

The **Insured Persons** and/or the **Company** shall give written notice to the Insurer within thirty (30) days after the in-house general counsel or risk manager of the **Company** first receives or has notice of any:

1. material change in the terms or conditions of any **Underlying Policies**; or
2. nonrenewal or cancellation of any **Underlying Policies**,

occurring during the **Policy Period** or any applicable **Discovery Period**. Any additional premium reasonably required by the Insurer as a result of such change, nonrenewal or cancellation shall be paid within thirty (30) days of the request therefor by the Insurer.

Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is properly sent, whichever is earlier.

All notices under this Policy shall be in writing and properly addressed to the appropriate party. Notice to the **Insured Persons** may be given to the **Named Insured** at the address as shown in Item 1. of the Declarations. Notice to the Insurer of any **Claim** or potential **Claim** under this **Policy** shall be given to the Insurer at the address as shown in Item 8.A. of the Declarations. All other notices to the Insurer under this **Policy** shall be given to the Insurer at the address as shown in Item 8.B. of the Declarations.

Any notice to the insurer of an **Underlying Policy(ies)** shall not constitute notice to the Insurer unless also given to the Insurer as provided in this Section IV.D.

E. DEFENSE AND SETTLEMENT

Subject to this Section IV (E), it shall be the duty of the **Insured Persons** and not the duty of the Insurer to defend any **Claim**.

The Insurer shall have the right, but not the duty, and shall be given the opportunity to effectively associate with the **Insured Persons** regarding the investigation, defense, negotiation

of settlement and settlement of any **Claim** that is or reasonably could be covered in whole or in part by this **Policy**.

The **Insured Persons** shall not offer to settle or settle, assume any obligation, admit any liability or stipulate to any judgment with respect to any **Claim** that is or reasonably could be covered in whole or in part by this **Policy** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for or as a result of any offer to settle, settlement, assumed obligation, admission of liability or stipulated judgment to which it has not given its prior written consent.

The **Insured Persons** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** the **Insured Persons** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary. The failure of any one **Insured Person** or the **Company** to comply with this paragraph shall not impair the rights of any other **Insured Persons** under this **Policy**.

The Insurer shall advance on a current basis, but no later than forty-five (45) days after receipt by the Insurer of properly itemized invoices, **Defense Costs** which the Insurer believes to be covered under this **Policy**. Any advancement of **Defense Costs** shall be repaid to the Insurer by the **Insured Persons**, and by the **Company** to the full extent legally permitted, severally according to their respective interests if and to the extent the **Insured Persons** shall not be entitled under the terms and conditions of this **Policy** to coverage for such **Defense Costs**. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insured Persons**, without considering the potential for other future **Loss**.

If the **Insured Persons** or the insurer(s) of the **Underlying Policies** elect not to appeal a judgment, the Insurer may elect to make such appeal at its own expense, and shall be liable for any increased award, taxable costs and disbursements and any additional interest incidental to such appeal, to the extent such payments are not covered by other valid and collectible insurance.

The Insurer shall not unreasonably withhold any consent referenced in this Section IV (E).

F. OTHER INSURANCE

If any **Loss** under this **Policy** is insured under any other valid and collectible policy(ies), prior or current, then this **Policy** shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is an **Underlying Policy** or is written only as specific excess insurance over the Limits of Liability provided in this **Policy**.

G. TRANSACTIONS CHANGING COVERAGE

1. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Company**:

- a. acquires voting securities in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- b. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this **Policy**, the **Insured Persons** of such organization shall be covered under this **Policy** but only with respect to covered **Wrongful Acts** taking place after such acquisition or creation unless the Insurer agrees by endorsement to this **Policy** to provide coverage for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired organization as reflected in the organization's then most recent consolidated financial statements exceeds twenty five percent (25%) of the total assets of the **Named Insured** as reflected in the **Named Insured's** then most recent consolidated financial statements, then such automatic coverage shall terminate ninety (90) days after the acquisition or upon expiration of the **Policy Period**, whichever is sooner, unless during the ninety (90) days the **Named Insured** shall give written notice of such acquisition or creation to the Insurer and shall agree to any additional terms and conditions, and pay any reasonable additional premium, required by the Insurer.

2. Acquisition of **Named Insured**

If, during the **Policy Period**, any of the following events occurs:

- a. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by any person, entity or group of persons or entities acting in concert, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
- b. the obtaining by any person, entity or group of persons or entities acting in concert of the right to elect, appoint or designate at least fifty percent (50%) of the directors or **Managers** of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for covered **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.

If such event occurs, the **Company** and the **Insured Persons** shall have the right, upon payment of the additional premium described below, to an extension of the coverage described in the preceding paragraph for either a 1 year, 3 year, or 6 year **Discovery Period** following the termination of the **Policy Period**; but the Insurer may, in its sole discretion and subject to any additional terms, conditions and premiums required by the Insurer, agree by written endorsement to this **Policy** to any other **Discovery Period** requested by the **Company** or the **Insured Persons**. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Company** or the **Insured Persons** to the Insurer within thirty (30) days following the effective date of such event.

Upon request from the **Company** or any **Insured Person** following notice to the Insurer of such event, the Insurer shall notify the **Company** or such **Insured Person** of the additional premium amount for this extension of coverage.

The **Company** or **Insured Persons** shall not be entitled to elect this extension of coverage if a **Discovery Period** is elected pursuant to Section IV (B) of this **Policy**.

3. Cessation of Subsidiaries

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Insured Persons** of such **Subsidiary** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for covered **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

H. NON-RESCINDABLE POLICY

This **Policy** shall not be rescinded or voided by the Insurer in whole or in part for any reason.

I. CANCELLATION

1. The **Named Insured** may cancel this **Policy** by surrender of this **Policy** to the Insurer or by giving prior written notice to the Insurer stating when such cancellation shall take effect; provided the **Named Insured** may not cancel this **Policy** after a liquidation or reorganization proceeding described in Section IV.O, Bankruptcy, is commenced by or against the **Named Insured**
2. The Insurer may cancel this **Policy** only for nonpayment of premium. In such event, the Insurer shall mail written notice of cancellation for nonpayment of premium to the **Named Insured**. Such notice shall state the effective date of cancellation, which shall not be less than fifteen (15) days after mailing such notice.
3. In the event of cancellation, the Insurer shall refund the unearned premium computed pro rata

J. NONRENEWAL

If the Insurer elects not to renew this **Policy**, the Insurer shall mail to the **Named Insured** written notice thereof at least sixty (60) days prior to the expiration of the **Policy Period**. The Insurer's offer of renewal terms and conditions or premiums different from those in effect prior to renewal shall not constitute an election by the Insurer not to renew this **Policy**.

K. TERRITORY AND VALUATION

All premiums, limits, retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world, to the extent legally permitted.

L. SUBROGATION

In the event of any payment under this **Policy**, the Insurer shall be subrogated to the extent of such payment to all the **Insured Persons'** rights of recovery, including without limitation the **Insured Persons'** rights to indemnification or advancement from the **Company**. The **Insured Persons** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insured Persons** against the **Company** or the insurer(s) of the **Underlying Policies** for nonpayment of indemnity due and owing to the **Insured Persons** by the **Company** or the insurer(s), respectively.

In no event shall the Insurer exercise its right of subrogation against an **Insured Person**.

M. AUTHORIZATION AND CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of the **Insured Persons** with respect to the giving and receiving of notice of **Claim** or circumstances, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this **Policy** (except the giving of notice to apply for the **Discovery Period**), and the **Insured Persons** agree that the **Named Insured** shall act on their behalf with respect thereto.

N. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the Insurer.

The titles and headings to the various sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such sections, subsections or endorsements.

O. BANKRUPTCY

Bankruptcy or insolvency of **Insured Persons** or of the estate of any **Insured Person** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this **Policy**.

In the event a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Company** and the **Insured Persons** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such Bankruptcy Code or law, and (ii) agree not to oppose or object to any efforts by the Insurer, the **Company** or any **Insured Person** to obtain relief from any such stay or injunction.

P. TERMS CONFORMED TO STATUTE

Notwithstanding anything in the **Policy** to the contrary, the terms of this **Policy** shall conform to the requirements of any state insurance laws or regulations applicable to this **Policy**.

Q. INDEMNIFICATION AND OTHER INSURANCE

1. The **Insured Persons** and the **Company** understand and agree that all coverage under this **Policy** shall be specifically excess over, and shall not contribute with:

- a. All indemnification (other than insurance) to which the **Insured Persons** may be entitled from any source, including but not limited to the **Company** or any **Outside Entity**; and
- b. The **Underlying Policies** and any other valid and collectible insurance maintained by the **Company**, an **Outside Entity** or any other entity, whether such other insurance is stated to be primary, contributory, excess, or otherwise, unless such other insurance is expressly excess of this **Policy** by specific reference in such other policy to this **Policy**.

However, if non-indemnifiable **Loss** which is otherwise covered under this **Policy** is not paid by the **Underlying Policies** or by such other insurance or indemnification, this **Policy** will pay such non-indemnifiable **Loss** notwithstanding the existence of the **Underlying Policies** or such other insurance or indemnification right, subject to all of the terms, conditions and limitations of this **Policy** and without prejudice to the Insurer's excess position or subrogation rights against the **Underlying Policies** or such other insurance or indemnification.

2. The **Company** agrees to indemnify and advance on behalf of the **Insured Persons** all **Defense Costs** and other non-indemnifiable **Loss** otherwise covered under this **Policy**, to the fullest extent permitted or required by applicable law. If the Insurer pays under this **Policy** any **Defense Costs** or other non-indemnifiable **Loss** for which the **Company** is legally permitted or required and financially able to advance or indemnify as provided in this subsection, then the **Company** shall reimburse the Insurer for such amounts, and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the Insurer.

3. Except as provided in Insuring Agreement I.A above, this **Policy** shall not be subject to the terms or conditions of any other insurance. The Insurer does not waive, compromise or release any of its rights to recover non-indemnifiable **Loss** paid under this **Policy** from the insurer(s) of the **Underlying Policies** or any other insurance under which coverage may be owed, or from any person or entity from which **Insured Persons** are entitled to indemnification.