

THE HARTFORD D&O PREMIER DEFENSESM POLICY

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In consideration of, and subject to, the payment of the premium, the Insurer and the **Insureds** agree as follows:

I. INSURING AGREEMENTS

This Policy affords the following coverages:

(A) NON-INDEMNIFIABLE DIRECTORS' AND OFFICERS' LIABILITY

Except for **Loss** which the Insurer pays pursuant to Insuring Agreement (B) of this Policy, the Insurer will pay **Loss** on behalf of the **Insured Persons** which the **Insured Persons** have become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, against the **Insured Persons** for a **Wrongful Act** which takes place during or prior to the **Policy Period**.

(B) INDEMNIFIABLE DIRECTORS' AND OFFICERS' LIABILITY

The Insurer will pay **Loss** on behalf of the **Entity** for which the **Entity** has, to the extent permitted or required, indemnified the **Insured Persons**, and which the **Insured Persons** have become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, against the **Insured Persons** for a **Wrongful Act** which takes place during or prior to the **Policy Period**.

(C) ENTITY SECURITIES CLAIM LIABILITY

The Insurer will pay **Loss** on behalf of the **Entity** which the **Entity** has become legally obligated to pay as a result of a **Securities Claim** first made during the **Policy Period** or Extended Reporting Period, if applicable, against the **Entity** for a **Wrongful Act** which takes place during or prior to the **Policy Period**.

(D) DERIVATIVE DEMAND INVESTIGATION COSTS

The Insurer will pay **Investigation Costs** on behalf of an **Entity** that the **Entity** has incurred resulting from a **Derivative Demand** first made during the **Policy Period** or Extended Reporting Period, if applicable.

This Insuring Agreement shall be subject to the sub-limit of liability as set forth in Item C (2) of the Declarations. Such sub-limit of liability shall be the maximum aggregate amount the Insurer shall pay under this Insuring Agreement for all **Investigation Costs** from all **Derivative Demands** covered under this Insuring Agreement. Such sub-limit of liability shall be subject to, part of, and not in addition to, the Limit of Liability set forth in Item C (1) of the Declarations.

II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

(A) "Application" means any:

- (1) application for this Policy, including any materials or information submitted therewith or made available to the Insurer by the **Insured** during the underwriting process, which application shall be on file with the Insurer and deemed a part of this Policy and attached hereto;
- (2) application for any policy in an uninterrupted series of policies issued by the Insurer or any insurance company controlling, controlled by or under common control with the Insurer of which this Policy is a renewal or replacement; and
- (3) any publicly available information filed by an **Entity** within the preceding two years with the United States Securities and Exchange Commission.

(B) "Claim" means:

- (1) a written demand for civil damages or for other civil relief; a written demand shall include, without limitation, a demand to toll the running of the statute of limitations;
- (2) a civil proceeding, including but not limited to an arbitration proceeding or other alternative dispute resolution proceeding, for civil damages or other civil relief;
- (3) a regulatory or administrative proceeding; provided, however, that such regulatory or administrative proceeding is not an investigation; or
- (4) a criminal proceeding;

against an **Insured Person** or, solely with respect to Insuring Agreement (C), the **Entity**, alleging a **Wrongful Act**; or

- (5) solely with respect to Insuring Agreements (A) and (B), a civil, criminal, administrative or regulatory investigation of an **Insured Person** in which such **Insured Person** has been identified by name in a formal order of investigation, Wells Notice, target letter (within the meaning of Title 9, §11.151 of the United States Attorney's Manual) or similar document, as someone against whom a proceeding as set forth in (2) through (4) above may be brought.

(C) "**Damages**" means amounts, other than **Defense Costs**, which the **Insured Persons** or, with respect to Insuring Agreement (C), the **Entity**, are legally obligated to pay solely as a result of any **Claim** insured by this Policy, including:

- (1) settlements, judgments, and costs awarded pursuant to judgments and appeals;

If any such settlement or judgment includes **Section 11 and 12 Damages**, the Insurer shall adhere to the following principles:

(a) In the event that **Insured Persons** and **Entities** are defendants in such **Claim**, the Insurer agrees to allocate 100% of such **Section 11 and 12 Damages** to **Insured Persons**. Under no circumstance shall the Insurer assert that **Section 11 and 12 Damages** allocated to **Insured Persons** constitute uninsurable damages;

(b) In the event that only **Entities** are defendants in such **Claim**, the insurability of **Section 11 and 12 Damages** shall be governed by the laws of any applicable jurisdiction that does not prohibit coverage for such damages.

- (2) punitive or exemplary damages or the multiple portion of any multiplied damage award unless such damages are uninsurable pursuant to applicable law. Notwithstanding subparagraph (4) below, the insurability of such punitive or exemplary damages or the multiple portion of any multiplied damage award shall be governed by the laws of any applicable jurisdiction that does not prohibit coverage of such damages; and
- (3) pre- and post-judgment interest arising from (1) or (2) above.

Damages shall not include:

- (1) taxes, fines or penalties;
- (2) non-monetary relief;
- (3) "short-swing" profits made from the purchase or sale by an **Insured** of securities of the **Entity** within the meaning of Section 16(b) of the Securities Exchange Act of 1934; or
- (4) amounts for matters uninsurable pursuant to applicable law; and

Solely with respect to an **Employment Practices Claim**:

- (5) costs associated with providing any accommodations required by the Americans With Disabilities Act;
 - (6) future compensation, including benefits, for any person hired, promoted or reinstated pursuant to a judgment, settlement, order or other resolution of such **Employment Practices Claim**; or
 - (7) salaries, wages, or bonuses, except as a component of a front or back pay award, or any severance payments, accrued benefits or future benefits.
- (D) “**Debtor in Possession**” means a debtor in possession as such term is defined in Chapter 11 of the United States Bankruptcy Code as well as any equivalent status under any similar law.
- (E) “**Defense Costs**” means reasonable and necessary legal fees and expenses incurred in the defense or appeal of a **Claim**, including **Extradition Costs** and the costs of appeal, attachment or similar bonds, provided that the Insurer shall have no obligation to furnish such bonds. **Defense Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insured**.
- (F) “**Derivative Action**” means any civil proceeding against an **Insured Person** for a **Wrongful Act** of such **Insured Person** made on behalf of, or in the name or the right of, an **Entity** by a securities holder of such **Entity** in his or her capacity as such.
- (G) “**Derivative Demand**” means any written demand by a securities holder of an **Entity**, in his or her capacity as such, upon the **Directors** of such **Entity** to bring a **Derivative Action**.
- (H) “**Directors**” and/or “**Officers**” means:
- (1) a natural person who is, was, or shall become during the Policy Period a duly elected or appointed director and/or officer of an **Entity**;
 - (2) with respect to any **Entity** that is a limited liability company (“LLC”), a natural person who is, was, or shall become during the Policy Period a duly elected, appointed, or designated manager of such LLC; or
 - (3) with respect to a **Subsidiary** incorporated outside the United States, the functional equivalents of (1) and/or (2) above.
- (I) “**Domestic Partner**” means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.
- (J) “**Employed Lawyer**” means any employee of an **Entity** in his or her capacity as legal counsel to an **Entity**.
- (K) “**Employment Practices Claim**” means any **Claim** (other than a criminal proceeding or criminal investigation) brought or submitted against a **Director** and/or **Officer** by or on behalf of an employee of the **Entity** or an applicant for employment with the **Entity**, alleging an **Employment Practices Wrongful Act** by such **Director** and/or **Officer**.
- “**Employment Practices Claim**” shall not mean any labor or grievance proceeding or arbitration that is subject to a collective bargaining agreement.
- (L) “**Employment Practices Wrongful Act**” means actual or alleged:
- (1) wrongful dismissal, discharge, or termination of employment (including constructive dismissal, discharge, or termination), wrongful failure or refusal to employ or promote, wrongful discipline or demotion, failure to grant tenure, negligent employment evaluation, or wrongful deprivation of career opportunity;
 - (2) sexual or other workplace harassment, including *quid pro quo* and hostile work environment;
 - (3) employment discrimination, including discrimination based upon age, gender, race, color, national origin, religion, creed, marital status, sexual orientation or preference, gender identity or

expression, genetic makeup, or refusal to submit to genetic makeup testing, pregnancy, disability, HIV or other health status, Vietnam Era Veteran or other military status, or other protected status established under federal, state, or local law;

(4) **Retaliation;**

(5) breach of any oral, written, or implied employment contract, including, any obligation arising from a personnel manual, employee handbook, or policy statement; or

(6) violation of the Family and Medical Leave Act.

Employment Practices Wrongful Act shall also mean the following, but only when alleged in addition to or as part of any **Employment Practices Wrongful Act** described above:

(7) employment-related wrongful infliction of emotional distress;

(8) failure to create, provide for or enforce adequate or consistent employment-related policies and procedures; or

(9) negligent retention, supervision, hiring or training.

(M) **“Entity”** means:

(1) the **Named Entity**; or

(2) any **Subsidiary**.

Entity shall include any such **Entity** as a **Debtor in Possession**.

(N) **“Executive Officer”** means the chief executive officer, chief financial officer or in-house general counsel of an **Entity**.

(O) **“Extradition Costs”** means reasonable and necessary fees and expenses directly resulting from a **Claim** in which a **Director** or **Officer** lawfully opposes, challenges, resists or defends against any request for the extradition of such **Director** or **Officer** from his or her current country of employ and domicile to any other country for trial or otherwise to answer any criminal accusation, including the appeal of any order or other grant of extradition of such **Director** or **Officer**.

(P) **“Financial Insolvency”** means the status of an **Entity** as a result of:

(1) the appointment of any conservator, liquidator, receiver, rehabilitator, trustee, or similar official to control, supervise, manage or liquidate such **Entity**; or

(2) such **Entity** becoming a **Debtor in Possession**.

(Q) **“Insureds”** means any **Insured Person** and, solely with respect to Insuring Agreements (B), (C) and (D), an **Entity**.

(R) **“Insured Person”** means any natural person who is or was:

(1) a **Director** and/or **Officer**;

(2) an employee solely with respect to **Securities Claims**; or

(3) an **Employed Lawyer**.

(S) **“Interrelated Wrongful Acts”** means **Wrongful Acts** that are based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or series of related, facts, circumstances, situations, transactions, or events whether such **Wrongful Acts** are alleged in a single or multiple **Claim(s)**.

- (T) “**Investigation Costs**” means reasonable and necessary expenses incurred by an **Entity**, including its board of directors, board of managers, or any committee thereof in the investigation and evaluation of a **Derivative Demand**, provided that **Investigation Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses associated with any **Insureds**.
- (U) “**Loss**” means **Damages, Defense Costs** and **Investigation Costs**.
- (V) “**Management Control**” means:
- (1) owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation, the members of the management board of a limited liability company, or the general partners of a limited partnership; or
 - (2) having the right, pursuant to a written contract or the by-laws, charter, operating agreement, partnership agreement or similar documents of an entity, to elect, appoint or designate a majority of the Board of Directors of a corporation, the management board of a limited liability company, or the general partners of a limited partnership.
- (W) “**Named Entity**” means the entity named in Item A of the Declarations.
- (X) “**Notice Managers**” mean the natural persons in the offices of the chief executive officer, chief financial officer, general counsel or risk manager of the **Named Entity**.
- (Y) “**Outside Capacity**” means the past or present service by an **Insured Person** as a director, officer, trustee, or equivalent executive of an **Outside Entity** at the written request of an **Entity**.
- (Z) “**Outside Entity**” means any:
- (1) not-for-profit corporation that is not an **Entity** and that is exempt from federal income tax as an organization described in Section 501(c)(3), (4) or (10) or Section 527 of the Internal Revenue Code; or
 - (2) entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy.
- (AA) “**Policy Period**” means the period from the Inception Date to the Expiration Date set forth in Item B of the Declarations at the local time of the address set forth in Item A of the Declarations, or any earlier termination date.
- (BB) “**Pollutants**” means any solid, liquid, gaseous or thermal irritant, nuisance or contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed. **Pollutants** also means any substance located anywhere in the world identified on a list of hazardous substances issued by any federal agency (including, nonexclusively, the Environmental Protection Agency) or any state, county, municipality or locality or counterpart thereof, or any foreign equivalent thereof.
- (CC) “**Retaliation**” means alleged adverse treatment of an employee based upon such person:
- (1) exercising or threatening to exercise any rights under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, the Employee Retirement Income Security Act of 1974, or the Americans with Disabilities Act;
 - (2) refusing to violate any law;
 - (3) assisting, testifying, or cooperating with a proceeding or investigation regarding alleged violations of law by any **Insured**;

- (4) disclosing or threatening to disclose alleged violations of law to a superior or to any governmental agency; or
- (5) filing any **Whistleblowing** claim against any **Insured** under the federal False Claims Act, the Sarbanes-Oxley Act of 2002, or any similar **Whistleblowing** law.

(DD) "**Securities Claim**" means any **Claim** that:

- (1) is brought by one or more securities holders of an **Entity**, in their capacity as such, including any **Derivative Actions**;
- (2) is brought by any person or entity, based upon or arising from the purchase or sale of, or offer to purchase or sell, any securities issued by the **Entity**, whether such purchase, sale or offer involves a transaction with the **Entity** or occurs in the open market; or
- (3) is brought by any Federal, state, local, or foreign governmental agency (including without limitation the Securities & Exchange Commission) as a formal proceeding (other than an investigation) to enforce securities laws with respect to securities issued by an **Entity**.

(EE) "**Section 11 and 12 Damages**" means the portion of any judgment or settlement of a **Securities Claim** allocable to alleged violations of Section 11 or 12 of the Securities Act of 1933.

(FF) "**Subsidiary**" means any:

- (1) for-profit entity in which, and so long as, the **Named Entity**, directly or indirectly through one or more **Subsidiaries**, has **Management Control**; or
- (2) not-for-profit foundation, charitable trust or political action committee in which, and so long as, the **Named Entity** has **Management Control**.

(GG) "**Whistleblowing**" means the lawful act of an **Insured Person**, in which such **Insured Person** provides information, causes information to be provided, or otherwise assists in an investigation regarding any conduct which the **Insured Person** reasonably believes constitutes a violation of any federal, state, local or foreign law, when the information or assistance is provided to, or the investigation is conducted by:

- (1) a federal, state, local or foreign regulatory or law enforcement agency;
- (2) any member of Congress or any committee of Congress; or
- (3) a person with supervisory authority over the **Insured Person** (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct).

(HH) "**Wrongful Act**" means:

- (1) any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty, committed or attempted by an **Insured Person**, in his or her capacity as such, or in an **Outside Capacity**, or, with respect to Insuring Agreement (C), an **Entity**; or
- (2) any matter claimed against an **Insured Person** solely by reason of their serving in such capacity or in an **Outside Capacity**.

III. CLAIMS MADE DATE AND INTERRELATIONSHIP OF CLAIMS

(A) Subject to Section III., (C), the date that a **Claim** is deemed to be first made is determined by the following:

- (1) If the **Claim** is a written demand, as described in Section II.DEFINITIONS, (B) **Claim** (1), then the **Claim** is first made when an **Insured** receives such demand;

- (2) If the **Claim** is a civil, regulatory or administrative proceeding, as described in Section II. DEFINITIONS, (B) **Claim** (2) and (3), then the **Claim** is first made when an **Insured** receives: (i) the complaint or similar pleading; (ii) a filed notice of charges; or (iii) with respect to a foreign proceeding, any similar document;
- (3) If the **Claim** is a criminal proceeding, as described in Section II. DEFINITIONS, (B) **Claim** (4), then the **Claim** is first made when an **Insured** is made the subject of an indictment that has been returned by a grand jury, or has been served with an accusation, information, complaint, summons or similar charging document filed in a criminal court; or
- (4) If the **Claim** is an investigation, as described in Section II. DEFINITIONS, (B) **Claim** (5), then the **Claim** is first made when an **Insured Person** receives a Wells Notice, target letter, formal order of investigation or other formal investigative document.

(B) A **Derivative Demand** is deemed to be first made upon receipt by a **Director** of such written demand.

(C) All **Claims** or **Derivative Demands** that include allegations of the same **Wrongful Act** or any **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** for all purposes under this Policy, first made on the earliest date that:

- (1) the earliest of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**;
- (2) satisfactory notice of any **Wrongful Act** alleged in any such **Claims** was given to the Insurer pursuant to Section IV (B), Notice of Potential Claim to the Insurer, of this Policy; or
- (3) notice of any **Wrongful Act** or circumstance alleged in any such **Claims** was given under any other directors and officers, management liability or similar insurance policy commencing before the Inception Date in Item B of the Declarations, regardless of whether such policy was issued by the Insurer.

IV. NOTICES

(A) **Notice of Claim or Derivative Demand to the Insurer**

As a condition precedent to coverage under this Policy, the **Insureds** shall give the Insurer written notice of any **Claim** or **Derivative Demand** at the address set forth in Item H (A) of the Declarations, as soon as practicable after a **Notice Manager** is notified of such **Claim**, but in no event later than sixty (60) calendar days after the termination of the **Policy Period**, or any Extended Reporting Period.

(B) **Notice of Potential Claim to the Insurer**

If, during the **Policy Period**, the **Insureds** become aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim**, and if written notice of such **Wrongful Act** is given to the Insurer at the address set forth in Item H (A) of the Declarations, during the **Policy Period**, including the reasons for anticipating such a **Claim**, the nature and date of the **Wrongful Act**, the identity of the **Insureds** allegedly involved, the alleged injuries or damages sustained, the names of potential claimants, and the manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made during the **Policy Period** on the date that the Insurer receives the above notice.

(C) **Notices to the Insurer (other than Claims, Derivative Demands or Potential Claims)**

All notices required by this policy or in connection with this policy shall be sent to the address set forth in Item H (B) of the Declarations.

(D) **Notices to the Insureds**

All notices to the **Insureds** shall be sent to the **Named Entity** at the address set forth in Item A of the Declarations.

V. EXCLUSIONS

(A) **ALLOCABLE EXCLUSIONS**

Pursuant to Section VI., ADVANCEMENT AND ALLOCATION OF DEFENSE COSTS and Section VII. ALLOCATION OF DAMAGES, the Insurer shall not pay **Loss**:

- (1) for bodily injury (except for employment-related wrongful infliction of emotional distress or mental anguish), sickness, disease, death, defamation (including libel and slander), invasion of privacy, trespass, nuisance or wrongful entry or eviction, assault, battery or loss of consortium, or for damage to or destruction of any tangible (real or personal) property, including loss of use or diminution of value thereof;
- (2) for any violation of the Employee Retirement Income Security Act of 1974 or any similar law; or
- (3) of an **Insured Person** based upon, arising from, or in any way related to such **Insured Person's** service at any time as a director, officer, trustee, or equivalent executive or as an employee of any entity other than an **Entity**, even if such service is at the direction or request of the **Entity**, provided that this exclusion shall not apply to the portion of **Loss** directly resulting from a **Wrongful Act** by an **Insured Person** while serving or having served in an **Outside Capacity**.

(B) EXCLUSIONS WITHOUT EXCEPTIONS

The Insurer shall not pay **Loss** in connection with:

- (1) any **Claim** for, based upon, arising from, or in any way related to any prior or pending written demand or proceeding against any **Insureds** as of the applicable Prior Litigation Date in Item F of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand or proceeding; or
- (2) any **Employment Practices Claim** for, based upon, arising from, or in any way related to:
 - (a) any claims for unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits; or
 - (b) a violation of the Fair Labor Standards Act (except for Equal Pay Act), Worker Adjustment and Retraining Notification Act, the National Labor Relations Act, the Occupational Safety and Health Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, or any rule or regulation promulgated thereunder, or similar federal, state, local, or common laws, rules or regulations.

(C) EXCLUSIONS WITH SPECIFIED EXCEPTIONS

Pursuant to Section VI, ADVANCEMENT AND ALLOCATION OF DEFENSE COSTS and Section VII., ALLOCATION OF DAMAGES, the Insurer shall not pay **Loss** in connection with:

- (1) any **Claim** for, based upon, arising from, or in any way related to any:
 - (a) discharge, dispersal, release, or escape of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release or escape; or
 - (b) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste,

provided that this exclusion shall not apply to the portion of **Loss** directly resulting from any **Derivative Demand, Derivative Action** or to any **Securities Claim**; or

- (2) any **Claim** brought or maintained by or on behalf of the **Entity**, any **Director** and/or **Officer** (in any capacity), or any security holder of the **Entity**, provided that this exclusion shall not apply to the portion of **Loss** directly resulting from:

- (a) a **Securities Claim, Derivative Action or Derivative Demand** brought or maintained without the solicitation, assistance, or active participation of any **Director** and/or **Officer**. **Whistleblowing** alone shall not be deemed solicitation, assistance or active participation;
- (b) an **Employment Practices Claim**;
- (c) a **Claim** for contribution or indemnity, if the **Claim** directly results from another **Claim** that is otherwise covered under this Policy;
- (d) a **Claim** by the Examiner, Trustee, Receiver, Liquidator, Creditor(s) Committee of the **Entity** or any assignee thereof, or a **Claim** by the **Entity** as **Debtor-In-Possession** after such Examiner, Trustee, Receiver or Liquidator has been appointed, in the event of **Financial Insolvency**, if such **Claim** is made without the solicitation, assistance or active participation of any **Director** and/or **Officer**; or
- (e) a **Claim** brought and maintained in a jurisdiction outside the United States of America, Canada, Australia or any other common law country, including territories thereof (hereinafter a "Non-Common Law Jurisdiction") by a **Director** and/or **Officer** of a **Subsidiary** organized and operating in such Non-Common Law Jurisdiction, if such **Claim** is brought by such **Director** or **Officer** pursuant to a pleading or procedural requirement of such jurisdiction.

Solely for purposes of this exclusion (C) (2), **Director** and/or **Officer** shall not mean any such person who has not served in either capacity for at least four years prior to such **Claim** being first made.

(D) EXCLUSIONS APPLICABLE TO DAMAGES BUT NOT TO DEFENSE COSTS

Pursuant to Section VII. ALLOCATION OF DAMAGES, the Insurer shall not pay **Damages**:

- (1) of an **Insured**, based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or financial advantage to which such **Insured** is not legally entitled if any final adjudication establishes such gain; provided, however, that this exclusion shall not apply to **Section 11 and 12 Damages**;
- (2) of an **Insured**, based upon, arising from, or in any way related to any criminal or deliberately fraudulent act or omission by such **Insured**, if any final adjudication establishes such an act or omission;
- (3) under Insuring Agreements (B) or (C) that represent the amount by which the purchase price or consideration is effectively increased in connection with a **Claim** alleging that the price or consideration paid or proposed to be paid in a transaction involving all or substantially all of the ownership interest in or assets of an entity is inadequate, or plaintiff counsel fees and costs arising out of such **Claim**; or
- (4) based upon, arising from, or in any way related to the liability of others assumed by an **Insured** under any employment contract or agreement; provided, however, this exclusion shall not apply to (i) liability that would have been incurred in the absence of such contract or agreement; or (ii) to the portion of **Damages** directly resulting from any **Derivative Demand, Derivative Action** or to any **Securities Claim**.

Regarding exclusions (D) (1) and (D) (2) above, no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**, and only the **Wrongful Acts** of an **Executive Officer** shall be imputed to the **Entity**.

VI. ADVANCEMENT AND ALLOCATION OF DEFENSE COSTS

- (A) It shall be the duty of the **Insureds**, and not the Insurer, to defend any **Claim**.
- (B) Upon written request by any **Insured**, the Insurer shall advance **Defense Costs** in excess of the applicable Retention amount, in defense of any **Claim** covered by this Policy.

However if such **Defense Costs** are only partially covered by this Policy because: (i) such **Claim** involves both **Insureds** and persons or entities who are not **Insureds**; or (ii) a portion of such **Defense Costs** are subject to one or more exclusions set forth in Section V. (A), ALLOCABLE EXCLUSIONS; or (iii) a portion of such **Claim** is subject to one or more specified exceptions to the exclusions set forth in Section V. (C) EXCLUSIONS WITH SPECIFIED EXCEPTIONS, then the **Insureds** and the Insurer agree to use their best efforts to fairly and reasonably allocate such **Defense Costs** on the basis of the relative legal and financial exposures of the covered and non-covered parties and/or the covered and non-covered portions of such **Claim** and/or such **Defense Costs**.

If the Insurer and the **Insureds** agree on the amount of **Defense Costs** that constitute covered **Defense Costs**, the Insurer shall advance such **Defense Costs** on a current basis.

If the Insurer and the **Insureds** cannot agree on the amount of **Defense Costs** that constitute covered **Defense Costs**, then:

- (1) the Insurer shall advance on a current basis **Defense Costs** that it believes to be covered until a different allocation is negotiated, arbitrated or judicially determined; and
- (2) the Insurer, if requested by the **Insureds**, shall submit the dispute to binding arbitration. The rules of the American Arbitration Association shall apply except with respect to the selection of the arbitration panel, which shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Insurer and a third independent arbitrator selected by the first two arbitrators.

Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of a **Claim** shall be applied retroactively to all **Defense Costs** on account of such **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of a **Claim** shall not apply to or create any presumption with respect to the allocation of **Damages** on account of such **Claim**.

VII. ALLOCATION OF DAMAGES

If a **Claim** results in a settlement or judgment that includes both **Damages** and amounts that do not constitute **Damages**, then the **Insureds** and the Insurer agree to use their best efforts to fairly and reasonably allocate the amount of such settlement or judgment on the basis of the relative legal and financial exposures to the covered **Damages** and the non-covered amounts.

If **Damages** with respect to a **Claim** are only partially covered by this Policy because: (i) such **Claim** involves both **Insureds** and persons or entities who are not **Insureds**, or (ii) a portion of such **Damages** are subject to one or more exclusions set forth in Section V. (A), ALLOCABLE EXCLUSIONS; or (iii) a portion of such **Claim** is subject to one or more specified exceptions to the exclusions set forth in Section V. (C), EXCLUSIONS WITH SPECIFIED EXCEPTIONS; or (iv) a portion of such **Damages** are excluded in Section V. (D), EXCLUSIONS APPLICABLE TO DAMAGES BUT NOT TO DEFENSE COSTS then the **Insureds** and the Insurer agree to use their best efforts to fairly and reasonably allocate such **Damages** on the basis of the relative legal and financial exposures of the covered and non-covered parties and/or to the covered and non-covered portions of such **Claim** and/or such **Damages**.

If the Insurer and the **Insureds** can agree on the amount that constitutes covered **Damages**, the Insurer shall pay such amount as soon as practicable.

If the Insurer and the **Insureds** cannot agree on the amount of covered **Damages**, then 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.

VIII. AGGREGATE LIMIT OF LIABILITY AND ORDER OF PRIORITY OF PAYMENTS

- (A) The Limit of Liability in Item C of the Declarations shall be the maximum aggregate amount that the Insurer shall pay under this Policy for all **Loss** from all **Claims** and **Derivative Demands** covered under this Policy. **Defense Costs** and **Investigation Costs** shall be part of, and not in addition to, the Limit of Liability. Payment of **Defense Costs** and/or **Investigation Costs** by the Insurer shall reduce the Limit of Liability.
- (B) Covered **Loss** shall be paid by the Insurer in the following order of priority:
- (1) first pay **Loss** that is covered under Insuring Agreement (A) of the Policy;
 - (2) with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss** under Insuring Agreement (A), pay **Loss** that is covered under Insuring Agreement (B) of this Policy;
 - (3) with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss** under Insuring Agreements (A) and (B), pay **Investigation Costs** incurred by the **Entity** that are covered under Insuring Agreement (D); and
 - (4) with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss** under Insuring Agreements (A), (B) and (D), pay **Loss** incurred by the **Entity** that is covered under Insuring Agreement (C).

IX. SELF-INSURED RETENTION AND PRESUMPTION OF INDEMNIFICATION

- (A) The Insurer shall only pay **Loss** in excess of the Retention applicable to each **Claim** as specified in Item D of the Declarations. **Defense Costs** are applied against the Retention. The Retention shall be borne by the **Insureds** uninsured at the **Insureds'** own risk. However, if:
- (1) the Insurer's liability under Insuring Agreement (A) is subject to the Insuring Agreement (B) Retention, as set forth in subparagraph (C) below; and
 - (2) covered **Loss** up to the amount of the Retention is paid by an insurer pursuant to an excess drop down insuring agreement A difference in conditions policy written as specific excess insurance to this Policy;

then, the Insurer shall recognize such payment as uninsured at the **Insureds'** own risk, in satisfaction of this sub-paragraph (A).

- (B) If **Loss** arising from any **Claim** is covered in whole or in part under more than one Insuring Agreement, the applicable Retention shall be applied separately to that part of **Loss** covered by each Insuring Agreement and the sum of the Retentions so applied shall constitute the Retention applicable to such **Claim**; provided, however, the largest Retention amount set forth in Item D of the Declarations shall be the maximum retention applicable to such **Claim**.
- (C) For the purpose of determining if an **Entity** is permitted or required to indemnify an **Insured Person**, as set forth in Insuring Agreement (B), the organizational and corporate governance documents of any **Entity**, including, without limitation, any certificate of incorporation, articles of organization, or bylaws, as well as any agreements relating to indemnification of **Insured Persons**, shall be presumed to permit indemnification and advancement of **Defense Costs** to the maximum extent permissible under any applicable law, regardless of the actual provisions of such documents. Notwithstanding any other provision of this Policy to the contrary, if any **Entity** is permitted or required by common or statutory law to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on his or her behalf, and fails to do so other than because of **Financial Insolvency**, then the Insurer's liability under Insuring Agreement (A) shall be subject to the Insuring Agreement (B) Retention amount set forth in Item D of the Declarations.

- (D) If a **Subsidiary** is unable to indemnify an **Insured Person** for any **Loss**, or to advance **Defense Costs** on his or her behalf because of **Financial Insolvency**, then subject to Section IX (C) above, the **Named Entity** shall indemnify such **Insured Person** and advance **Defense Costs** on their behalf.

X. CONSENT AND COOPERATION

- (A) The **Insureds** shall, as a condition precedent to their rights under this Policy, give to the Insurer all information and cooperation as the Insurer may reasonably require and shall do nothing that may prejudice the Insurer's position or its potential or actual rights of recovery, whether by subrogation or otherwise.
- (B) The **Insureds** shall not admit nor assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** regarding any **Claim** without the prior written consent of the Insurer, such consent not to be unreasonably withheld. The Insurer shall not be liable for any admission, assumption, settlement, stipulation, or **Defense Costs** to which it has not consented.
- (C) The Insurer shall have the right to effectively associate in the defense of any **Claim**, even if such **Claim** is groundless, false or fraudulent. The Insurer may make any investigation it deems appropriate.

XI. COVERAGE EXTENSIONS

(A) Spousal/Domestic Partner Liability Coverage

Coverage shall apply to the lawful spouse or **Domestic Partner** of an **Insured Person** for a **Claim** made against such spouse or **Domestic Partner**, provided that:

- (1) such **Claim** arises solely out of:
 - (a) such person's status as the spouse or **Domestic Partner** of an **Insured Person**; or
 - (b) such spouse's or **Domestic Partner's** ownership of property sought as recovery for a **Wrongful Act** by an **Insured Person**;
- (2) the **Insured Person** is named in such **Claim** together with the spouse or **Domestic Partner**; and
- (3) coverage of the spouse or **Domestic Partner** shall be on the same terms and conditions, including any applicable Retention, as apply to coverage of the **Insured Person** for such **Claim**.

No coverage shall apply to any **Loss** resulting from any act, error or omission of such spouse or **Domestic Partner**.

(B) Estates and Legal Representatives

In the event of the death, incapacity or bankruptcy of an **Insured Person**, any **Claim** made against the estate, heirs, legal representatives or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** shall be deemed to be a **Claim** made against such **Insured Person**. No coverage shall apply to any **Loss** directly resulting from any act, error or omission of such estate, heirs, legal representatives or assigns.

(C) Outside Directorship Liability

Subject to the terms and conditions of this Policy, coverage is afforded for **Loss** resulting from any **Claim** against an **Insured Person** for a **Wrongful Act** in an **Outside Capacity**. Such coverage shall be specifically excess of and not contribute with any insurance or indemnity available from or provided by the **Outside Entity**. Payment by the Insurer or any insurance company controlling, controlled by or under common control with the Insurer under any other insurance policy as a result of such **Claim** shall reduce, by the amount of such payment, the Insurer's Limit of Liability available under this Policy for such **Claim**.

XII. REPRESENTATIONS AND SEVERABILITY OF THE APPLICATION

- (A) The **Insureds** represent that the statements, representations, and information contained in the **Application** are true and accurate. This Policy is issued in reliance upon the **Application**.

The **Insureds** agree that if the **Application** contains intentional misrepresentations or misrepresentations that materially affect the acceptance of the risk by the Insurer, no coverage shall be afforded to any of the following **Insureds**:

- (1) any **Insured Person** who had actual knowledge as of the Inception Date of this Policy of the facts that were not truthfully or accurately disclosed; or
- (2) an **Entity**, under Insuring Agreement (B), to the extent it indemnifies any **Insured Person** in (A) (1) above; or
- (3) an **Entity**, under Insuring Agreement (C), if any **Executive Officer** had actual knowledge as of the Inception Date of this Policy of the facts that were not truthfully or accurately disclosed.

For purposes of this paragraph (A), (i) the actual knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**, and (ii) only the actual knowledge possessed by any **Executive Officer** shall be imputed to the **Entity**.

- (B) The above paragraph (A) shall be the Insurer's sole remedy with respect to misrepresentations in the **Application**. Under no circumstances shall the Insurer be entitled to rescind the Policy.

XIII. GENERAL CONDITIONS

(A) CANCELLATION

- (1) The Insurer may cancel this Policy for non-payment of premium by sending not less than 10 days written notice to the **Named Entity**. This Policy may not otherwise be cancelled by the Insurer.
- (2) Except as provided in Section XIII. (E), CHANGES IN EXPOSURE (2), the **Named Entity** may cancel this Policy by sending written notice of cancellation to the Insurer. Such notice shall be effective upon receipt by the Insurer unless a later cancellation time is specified therein.
- (3) If the Insurer cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Named Entity** cancels this Policy, unearned premium shall be calculated at the Insurer's customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of a cancellation. The Insurer shall make payment of any unearned premium as soon as practicable.

(B) EXTENDED REPORTING PERIOD

- (1) If this Policy is cancelled or non-renewed for any reason other than non-payment of premium, the **Named Entity** or **Insured Persons** shall have the right to elect an extension of time to report **Claims** under this Policy (the Extended Reporting Period).
- (2) To elect the Extended Reporting Period, the **Named Entity** or **Insured Persons** shall send a written notice of election of the Extended Reporting Period together with the premium therefore directly to the Insurer. The right to elect the Extended Reporting Period shall end unless the Insurer receives such notice and premium within thirty (30) days of cancellation or non-renewal. There shall be no right to elect the Extended Reporting Period after such time.
- (3) The premium for the Extended Reporting Period shall be that percentage specified in Item E of the Declarations of the sum of the original annual premium plus the annualized amount of any additional premium charged by the Insurer during the **Policy Period**. Such premium shall be deemed fully earned at the inception of the Extended Reporting Period.

- (4) The Extended Reporting Period shall be for the duration specified in Item E of the Declarations following the end of the **Policy Period**.
- (5) Coverage during the Extended Reporting Period shall only apply to (i) **Claims** first made during the Extended Reporting Period and (ii) **Loss** directly resulting from **Wrongful Acts** occurring prior to the earlier of the end of the **Policy Period** or the time of any transaction described in Section XIII. CHANGES IN EXPOSURE (2). No coverage shall apply for any **Wrongful Act** occurring after such time.
- (6) There is no separate or additional Limit of Liability for the Extended Reporting Period.

(C) OTHER INSURANCE

If **Loss** arising from any **Claim** is insured under any other valid and collectible policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's policy number.

(D) SUBROGATION

The Insurer shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss** by the Insurer under this Policy. The **Insureds** shall execute all papers required and do everything necessary to secure and preserve such rights, including the execution of any documents necessary to enable the Insurer to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the Insurer's position or any potential or actual rights of recovery.

Notwithstanding the above, the Insurer shall not exercise its rights of subrogation against an **Insured Person** under this Policy.

(E) CHANGES IN EXPOSURE

(1) Mergers Where the Entity is the Surviving Entity or Acquisition of New Subsidiaries

If, before or during the **Policy Period**, any **Entity**:

- (a) merges with another entity such that the **Entity** is the surviving entity; or
- (b) acquires a **Subsidiary**;

then such entity and its **Insured Person(s)** shall be **Insureds** under this Policy, but only for a **Wrongful Act** occurring after such merger or acquisition. No coverage shall be available for any **Wrongful Act** of an **Insured** occurring before such transaction or for any **Interrelated Wrongful Acts** thereto.

If the fair value of the assets of, or total consideration paid for, any newly merged or acquired entity exceeds 20% of the total assets of the **Named Entity** as reflected in its most recent consolidated audited financial statements as of the inception date of this Policy, the **Named Entity** as a condition precedent to such coverage with respect to such new **Insureds** shall give the Insurer full details of the transaction in writing as soon as practicable but in no event later than ninety (90) days after the effective date of such transaction, together with such information as the Insurer may require, and shall pay any additional premium so required by the Insurer. If the **Named Entity** fails to comply with such condition precedent, coverage otherwise afforded by this section shall terminate as of ninety (90) days after the effective date of such transaction.

(2) Mergers where the Entity is not the Surviving Entity, Acquisition of the Named Entity

If, during the **Policy Period**:

- (a) the **Named Entity** merges into or consolidates with another entity such that the **Named Entity** is not the surviving entity; or
- (b) more than 50% of the securities representing the right to vote for the **Named Entity's** board of directors or managers is acquired by another person or entity, group of persons or entities, or persons and entities acting in concert,

then coverage shall continue under this Policy, but only for a **Wrongful Act** occurring before such transaction. No coverage shall be available for any **Wrongful Act** occurring after such transaction. Upon such transaction, this Policy shall not be cancelled and the entire premium for this Policy shall be deemed fully earned.

The **Named Entity** shall give the Insurer written notice of such transaction as soon as practicable, but not later than ninety (90) days after the effective date of such transaction.

(3) **Loss of Subsidiary Status**

If, before or during the **Policy Period**, any **Entity** ceases to be a **Subsidiary**, then coverage shall be available under this Policy for any **Insured Person** of such **Subsidiary**, but only for a **Wrongful Act** occurring before such transaction. No coverage shall be available for any **Wrongful Act** of such **Insured Person** occurring after such transaction.

(4) **Bankruptcy**

(a) In the event of **Financial Insolvency**, the **Insureds** hereby:

- (i) waive and release any automatic stay or injunction which may apply in any corresponding bankruptcy proceeding to this Policy or its proceeds under any bankruptcy code or law; and
- (ii) agree not to oppose or object to any efforts by the Insurer to obtain relief from any such stay or injunction.

(b) Bankruptcy or insolvency of any **Insured** shall not relieve the Insurer of any of its obligations under this Policy.

(F) **AUTHORIZATION OF THE NAMED ENTITY**

The **Named Entity** shall act on behalf of all **Insureds** with respect to all matters under this Policy, including, without limitation, giving and receiving of notices regarding **Claims**, cancellation, election of the Extended Reporting Period, payment of premiums, receipt of any return premiums, and acceptance of any endorsements to this Policy.

(G) **WORLDWIDE COVERAGE TERRITORY**

- (1) Coverage under this Policy applies to **Claims** made anywhere in the world, for **Wrongful Acts** committed or allegedly committed anywhere in the world.
- (2) If a judgment is rendered, settlements are denominated or other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of covered **Loss** under this Policy (subject to the terms, conditions and limitations of this Policy) will be made either in such other currency (at the option of the Insurer and if agreeable to the **Named Entity**) or in United States of America dollars at the rate of exchange published in the Wall Street Journal on the date the Insurer's obligation to pay such **Loss** is established. This clause is not intended to, and shall not be interpreted to, narrow the scope of coverage otherwise provided under this Policy.

(H) **ACTION AGAINST THE INSURER**

- (1) No action shall be taken against the Insurer unless there shall have been full compliance with all the terms and conditions of this Policy.

- (2) No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against any **Insured Person** nor shall the Insurer be impleaded by any **Insured Person** in any such **Claim**.

(I) ASSIGNMENT

Assignment of interest under this Policy shall not bind the Insurer without its consent as specified in a written endorsement issued by the Insurer to form a part of this Policy.

(J) HEADINGS

The headings and Table of Contents of this Policy are intended for reference only and shall not be part of the terms and conditions of coverage.

(K) REFERENCES TO LAWS

- (1) Wherever this Policy mentions any law, including, without limitation, any statute, Act or Code of the United States of America, such mention shall be deemed to include all amendments of, and all rules or regulations promulgated under, such law.
- (2) Wherever this Policy mentions any law, including, without limitation, any statute, Act or Code of the United States of America, and such mention is followed by the phrase "or any similar law", such phrase shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, statutes and any rules or regulations promulgated under such statutes as well as common law.

(L) CHANGES

This Policy shall not be changed or modified except in a written endorsement issued by the Insurer to form a part of this Policy.

(M) ENTIRE AGREEMENT

This Policy, including the Declarations, **Application** and any written endorsements attached hereto, constitute the entire agreement between the **Entities, Insured Persons** and the Insurer relating to this insurance.