



ALLIED WORLD ASSURANCE COMPANY (U.S.) INC.

SIDE 'A' DIRECTORS & OFFICERS EXCESS AND LEAD DIFFERENCE-IN-CONDITIONS ("DIC") INSURANCE POLICY

In consideration of the payment of the premium and in reliance upon the **Application**, ALLIED WORLD ASSURANCE COMPANY (U.S.) INC., herein called the "**Insurer**", agrees as follows:

1. INSURING AGREEMENT

A. NON-INDEMNIFIABLE LOSS AND DIC COVERAGE

This policy shall pay the **Non-Indemnifiable Loss** of any **Insured Person**, arising from any **Claim** first made during the **Policy Period** (or Discovery Period if applicable) and reported to the **Insurer** in accordance with the terms of this policy against such **Insured Person** for any **Wrongful Act**. If a **DIC Event** occurs, this policy will drop down and pay that portion of the **Non-Indemnifiable Loss** not otherwise paid by any **Underlying Insurer**.

B. FOLLOW FORM EXCESS NON-INDEMNIFIABLE LOSS AND DIC COVERAGE

In the event:

- (i) a **Claim** is covered, in whole or in part, by an **Underlying Policy**, or would be covered if the limits of such policy had not been reduced or exhausted; and
- (ii) such **Claim** would be covered under this policy except that the terms and conditions of this policy are inconsistent with those of the **Underlying Policy**,

then this policy is amended solely with respect to such **Claim** to provide coverage in accordance with the terms and conditions of the **Underlying Policy**; however, such coverage shall be subject to the following terms of this policy: Item 3 of the Declarations (Limit of Liability); Item 4 of the Declarations (Reinstated Limit of Liability); Clause 4. LIMIT OF LIABILITY; Clause 5. NOTICE PROVISIONS; Clause 6. ADVANCEMENT OF DEFENSE COSTS; Clause 7. CLAIM PARTICIPATION; Clause 9. REPRESENTATIONS AND SEVERABILITY; Clause 10. CANCELLATION CLAUSE; Clause 11. ORGANIZATIONAL CHANGES; Clause 12. OTHER INSURANCE AND INDEMNIFICATION; Clause 17. SUBROGATION; and Clause 18. ALTERNATIVE DISPUTE RESOLUTION.

This policy shall not cover the **Company** for any **Claim** made against the **Company** or for any amounts that the **Company** pays to indemnify, or pays on behalf of, any **Insured Person**.

2. DEFINITIONS

- (a) "**Application**" means each and every signed application, including any attachments and other materials submitted therewith or incorporated therein, submitted in connection with the underwriting of this policy or the underwriting of any other policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time, and any public documents filed by the **Company** with any federal, state, or local or foreign regulatory agency, including but not limited to the U.S.

Securities and Exchange Commission (“SEC”), during the twelve (12) months prior to the inception of the **Policy Period**.

- (b) **“Claim”** means any:
- (i) written demand for monetary, non-monetary or injunctive relief made against an **Insured Person**;
 - (ii) judicial, administrative, regulatory or arbitration proceeding, whether civil or criminal, for monetary, non-monetary or injunctive relief commenced against an **Insured Person**, including any appeal therefrom;
 - (iii) civil, criminal, administrative or regulatory investigation of an **Insured Person**, including any investigation by the SEC or any similar authority in any jurisdiction, which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying any **Insured Person** as a person against whom a proceeding identified in (ii) above may be commenced; or
 - (iv) written notice to the **Insurer** by the **Insured Person** and/or the **Company** during the **Policy Period** of any circumstances that reasonably may be expected to give rise to a **Claim** described in (i), (ii) or (iii) above.

“Claim” includes any **Employment Practices Claim**.

Multiple demands, proceedings, investigations or circumstances arising from or involving the same or related **Wrongful Act(s)** shall be deemed a single **Claim** and shall be considered made at the time when the first such demand, proceeding, investigation or circumstance was first reported to the **Insurer**.

- (c) **“Company”** means:
- (i) the entity identified in Item 1 of the Declarations;
 - (ii) any **Subsidiary** of the entity described in (i) above; and
 - (iii) any entity described in (i) or (ii) above as a debtor, a debtor-in-possession or equivalent status.
- (d) **“Defense Costs”** means:
- (i) reasonable and necessary fees, costs, charges or expenses resulting from the investigation, defense or appeal of a **Claim**;
 - (ii) premium for an appeal, attachment or similar bonds, but without any obligation to apply for and obtain such bonds;
 - (iii) reasonable and necessary fees, costs, charges and expenses incurred in response to any extradition or similar proceeding brought against an **Insured Person** in connection with a **Wrongful Act**; and
 - (iv) any fees, costs, charges or expenses incurred by the **Insured Person** at the request of the **Insurer** to assist the **Insurer** in the investigation, defense or appeal of a **Claim**.

“Defense Costs” does not include: (i) amounts incurred prior to the date a **Claim** is first made, or (ii) except as stated in (iv) above, compensation or benefits of any **Insured Person** or other employees of the **Company** or any overhead expenses of the **Company**.

- (e) **“DIC Event”** means any of the following:
 - (i) actual or intended avoidance, rescission or cancellation of any **Underlying Policy** by an **Underlying Insurer**;
 - (ii) during or after the **Policy Period**, any **Underlying Insurer** being subject to a receivership, liquidation, dissolution, rehabilitation or any similar proceeding or being taken over by any regulatory authority;
 - (iii) wrongful refusal of an **Underlying Insurer** to provide coverage to any **Insured Person(s)** as required by the terms and conditions of the **Underlying Policy**;
 - (iv) rightful refusal of an **Underlying Insurer** to provide coverage to any **Insured Person(s)** pursuant to the terms and conditions of the **Underlying Policy**; or
 - (v) inability of an **Underlying Insurer** to provide coverage to any **Insured Person(s)** due to an order in a liquidation or reorganization proceeding of a **Company**, but only in the event such order (or any similar order) does not also apply to the **Insurer**.
- (f) **“Employment Practices Claim”** means a **Claim** brought and maintained by or on behalf of any past, present or prospective employee of the **Company** or **Outside Entity**, or any applicant for employment with the **Company** or **Outside Entity**, alleging an **Employment Practices Wrongful Act**.
- (g) **“Employment Practices Wrongful Act”** means any actual, alleged or constructive:
 - (i) refusal to employ;
 - (ii) termination of employment; or
 - (iii) coercion, demotion, retaliation, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, or other employment-related practices, policies, acts or omissions.
- (h) **“Independent Director(s)”** means any past, present or future director or **Manager** of the **Company** who is not, and never has been, an executive officer or employee of any **Company**.
- (i) **“Insured Person(s)”** means:
 - (i) any past, present or future duly elected or appointed director, officer, trustee or governor of a corporation, or management committee member of a joint venture or a **Manager**;
 - (ii) any past, present or future general counsel, comptroller or risk manager of the **Company** or the equivalent of any such position;
 - (iii) with respect to any **Company** incorporated or based outside the United States, the equivalent of any position described in (i) or (ii) above in any such other jurisdiction;

- (iv) any other persons not described in (i), (ii) or (iii) above who were, now are or shall be full-time, part-time, seasonal or temporary employees of the **Company**; however, such persons are **Insured Persons** only if the **Claim** against such person is also made against a person described in (i), (ii) or (iii) above; or
- (v) any **Outside Entity Insured Person**.

“Insured Person(s)” will not be construed to include the **Company** or any other entity.

- (j) **“Loss”** means any and all amounts the **Insured Persons** are legally liable to pay on account of a **Claim**, including:
 - (i) damages, settlements or judgments;
 - (ii) pre-judgment or post-judgment interest;
 - (iii) costs or fees awarded in favor of the claimant;
 - (iv) punitive, exemplary or the multiplied portion of a multiple damages award, except with respect to an **Employment Practices Claim**, but only to the extent such damages are insurable under the applicable law most favorable to the insurability of such damages; provided, however, if an **Insured Person** presents a written opinion from legal counsel stating that such damages are insurable under such applicable law, the **Insurer** shall not challenge that determination;
 - (v) civil or criminal fines or penalties imposed by law, including civil penalties assessed under Section 308 of the Sarbanes-Oxley Act of 2002, but only to the extent such fines or penalties are insurable under the applicable law most favorable to the insurability of such fines or penalties, as established in (iv) above;
 - (vi) civil penalties assessed against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. 78dd-2(g)(2)(B), or similar law in any other jurisdiction; or
 - (vii) **Defense Costs**.

“Loss” does not include:

- (i) any amounts for which the **Insured Persons** are not legally liable;
- (ii) any amounts which are without legal recourse to the **Insured Persons**;
- (iii) taxes;
- (iv) any amounts paid or incurred in complying with a judgment or settlement for non-monetary or injunctive relief; or
- (v) matters which may be deemed uninsurable under applicable law.

However, this policy shall provide coverage for **Defense Costs** incurred in a **Claim** involving any amounts, taxes or matters described in (i) to (v) above.

- (k) **“Manager”** 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** or an **Outside Entity** that is a limited liability company.
- (l) **“Non-Indemnifiable Loss”** means:
- (i) **Loss** for which the **Company** or **Outside Entity** is neither permitted nor required to indemnify an **Insured Person**; or
 - (ii) **Loss** for which the **Company** or **Outside Entity** either has refused to indemnify an **Insured Person**, as permitted or required, or is financially unable to indemnify.

However, **Loss** referenced in (ii) above shall be deemed **Non-Indemnifiable Loss** only if such **Insured Person** complies with Clause 17. SUBROGATION.

- (m) **“Outside Entity”** shall mean (i) any not-for-profit entity or (ii) any other entity listed as such by endorsement to this policy, for which an **Insured Person** acts as a director, officer, trustee or governor (or the equivalent thereof). Any such **Insured Person** shall be referred to hereafter as an **“Outside Entity Insured Person”**.
- (n) **“Policy Period”** shall mean the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.
- (o) **“Subsidiary”** shall mean any for-profit entity in which more than 50% of the outstanding securities representing the present right to vote for the election of directors or **Managers**:
- (i) is owned by the **Company**, directly or indirectly, through one or more **Subsidiaries** on or before the inception of the **Policy Period**; or
 - (ii) is first owned by the **Company**, directly or indirectly, through one or more **Subsidiaries** during the **Policy Period** and:
 - (a) whose assets total less than 35% of the total consolidated assets of the **Company** as of its most recently filed Form 10-Q; or
 - (b) whose assets total 35% or more than the total consolidated assets of the **Company** as of its most recently filed Form 10-Q, but only if the **Company** shall have provided the **Insurer** with full particulars of the new **Subsidiary** within sixty (60) days after its creation or acquisition and pays any additional premium with respect to such entity within thirty (30) days after requested by the **Insurer**.

In any event, coverage as is afforded under this policy relating to any **Wrongful Act** concerning a subsidiary with respect to a **Claim** made against any **Insured Person** shall only apply for **Wrongful Acts** committed or allegedly committed after the effective time a **Subsidiary** became a **Subsidiary**, and prior to the effective time that such **Subsidiary** ceases to be a **Subsidiary**.

- (p) **“Underlying Aggregate Limit”** means an amount equal to the aggregate of all the limits of liability of the **Underlying Policies** combined (excess of their retentions).
- (q) **“Underlying Insurer(s)”** means the insurer(s) that have issued the **Underlying Policies**.

- (r) **“Underlying Policies”** means the Primary and Underlying Excess Policies set forth in Item 8 of the Declarations.
- (s) **“Whistleblower Activity”** means any activity specified in 18 U.S.C. 1514A(a) other than the activity of “filing or causing to be filed” any proceeding under 18 U.S.C. 1514A(a)(2) and any other activity specified in 18 U.S.C. 1514A(a)(2).
- (t) **“Wrongful Act(s)”** means any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, misleading statement, professional service or advice provided to the **Company**, by an **Insured Person** in his or her capacity as such or any matter claimed against an Insured Person by reason of such capacity. **“Wrongful Act(s)”** also means, with respect to an **Outside Entity Insured Person**, any actual or alleged act, error, omission, neglect, breach of duty, breach of trust, misstatement, misleading statement by an Insured Person in his or her capacity as an **Outside Entity Insured Person** or any matter claimed against such **Outside Entity Insured Person** by reason of such capacity.

3. EXCLUSIONS

This policy shall not cover any **Loss** in connection with any **Claim**:

- (a) for which the **Insured Person** is indemnified by reason of having given notice of a claim or circumstances under any policy, whether excess or underlying, of which this policy is a renewal or replacement or which it may succeed in time.
- (b) for bodily injury, sickness, disease or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, that this exclusion shall not apply to:
 - (i) any **Claim** for emotional distress or mental anguish;
 - (ii) any **Claim** by shareholders of the **Company** in their capacity as such, including any shareholder derivative action or equivalent action under any other jurisdiction which alleges damage to the **Company** and/or its shareholders; or
 - (iii) any **Claim** for the actual or alleged discharge, dispersal, release, or escape of any liquid, solid, gaseous, or thermal irritant, contaminant, or other pollutant; provided, however, that any coverage under this policy with respect to such a **Claim** shall be specifically excess of any coverage available to the **Company** under any general liability, environmental impairment or similar insurance policy with respect to such **Claim**.
- (c) brought by or on behalf of the **Company** in the United States (or any possession or territory thereof) with the solicitation, approval, assistance or active participation of two or more persons each of whom at the time such **Claim** is brought is the president, chief executive officer, chief financial officer, **Manager** or general counsel of the **Company**; provided, however, that this exclusion shall not apply:
 - (i) if between the inception of the **Policy Period** and the date such **Claim** is made, the **Company** has had an **Organizational Change** as defined in Clause 11;
 - (ii) if the **Company** has filed a liquidation or reorganization proceeding; or
 - (iii) to **Defense Costs**.

If the president, chief executive officer, chief financial officer, **Manager** or general counsel of the **Company** is voluntarily engaging in any **Whistleblower Activity**, such **Claim** shall not be deemed to be a **Claim** brought with the solicitation, approval or active participation of such persons.

- (d) arising out of, based upon or attributable to the gaining of any personal profit to which a final judgment or adjudication or an arbitration proceeding commenced pursuant to Clause 18 herein or a guilty plea or other written admission under oath by an **Insured Person** establishes that such **Insured Person** was not legally entitled to such personal profit; provided, however, that this exclusion shall not apply to **Defense Costs** incurred prior to the date this exclusion is triggered or to **Independent Directors**.
- (e) arising out of, based upon or attributable to any improper or illegal remuneration paid to an **Insured Person** if a final judgment or adjudication or an arbitration proceeding commenced pursuant to Clause 18 herein or a guilty plea or other written admission under oath of an **Insured Person** establishes that such remuneration was improper or illegal; provided, however, that this exclusion shall not apply to **Defense Costs** incurred prior to the date this exclusion is triggered or to **Independent Directors**.
- (f) arising out of, based upon or attributable to any deliberate fraud or any wilful violation of law by an **Insured Person** if a final judgment or adjudication or an arbitration proceeding commenced pursuant to Clause 18 herein or a guilty plea or other written admission under oath of an **Insured Person** establishes that such fraud or violation occurred; provided, however, that this exclusion shall not apply to **Defense Costs** incurred prior to the date this exclusion is triggered or to **Independent Directors**.

It is agreed that for the purpose of determining the applicability of Exclusions (d), (e) or (f), the facts pertaining to, the knowledge possessed by, or any **Wrongful Act** committed by, any **Insured Person** shall not be imputed to any other **Insured Person**.

4. LIMIT OF LIABILITY

Except in the event the Reinstated Limit of Liability (as defined below) applies, the Limit of Liability stated in Item 3 of the Declarations is the aggregate limit of the **Insurer's** liability for all **Loss** arising out of all **Claims** reported to the **Insurer** in accordance with the terms and conditions of this policy, including all **Claims** reported to the **Insurer** during the Discovery Period (if applicable). The **Insurer's** maximum liability for any combination of **Losses** during the same **Policy Period** or Discovery Period (if applicable) shall be the Limit of Liability listed in Item 3 of the Declarations.

This policy shall, subject to its terms, conditions and exclusions, drop down to the attachment point of the **Underlying Insurer** that is the subject of the **DIC Event** and will pay **Loss** on behalf of the **Insured Person(s)** up to the Limit of Liability stated in Item 3 of the Declarations. In the event one or more **Underlying Insurers** also drop down, this policy shall remain excess to the aggregate limit of liability of such **Underlying Insurer(s)** after such drop-down. Nothing contained herein shall be construed to increase the Limit of Liability stated in Item 3 of the Declarations.

In the event the Limit of Liability stated in Item 3 of the Declarations is exhausted due to payment of **Loss** covered under this policy, such Limit of Liability shall be reinstated in the amount stated in Item 4 of the Declarations (the "Reinstated Limit of Liability") without any additional premium being charged by the **Insurer**. The Reinstated Limit of Liability shall not apply to any **Claim** based upon, arising out of or in any way connected to a **Claim** for which there has been any payment of **Loss** under the Limit of Liability set forth in Item 3 of the Declarations.

The Reinstated Limit of Liability shall apply only to **Loss** incurred by **Independent Directors** and shall be: (i) subject to the limit of liability stated in Item 4 of the Declarations; (ii) excess of all other insurance policies specifically excess of this policy, subject to any difference-in-conditions event involving such policies as set forth in Definition (e) of this policy; and (iii) subject to all other terms and conditions of this policy.

Defense Costs are not payable by the **Insurer** in addition to any Limit of Liability. **Defense Costs** are part of **Loss** and as such are subject to the Limit of Liability stated in Item 3 and Item 4 of the Declarations.

5. NOTICE PROVISIONS

The **Insured Person(s)** shall give written notice of a **Claim** to the **Insurer** at the address indicated in Item 7 A. of the Declarations. If mailed, the date of mailing shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

The **Company** or an **Insured Person** shall, as a condition precedent to the obligations of the **Insurer** under this policy, give written notice to the **Insurer** of a **Claim** made against an **Insured Person** as soon as practicable after the **Company's** general counsel or risk manager (or individuals with equivalent responsibilities) or the **Insured Person** seeking indemnity hereunder becomes aware of the **Claim**. In no event shall such notice be provided later than thirty (30) days after the end of the **Policy Period** (or Discovery Period if applicable).

In the event the **Company** or the **Insured Persons** fail to provide notice of a **Claim** in accordance with the above, the **Insurer** shall not be entitled to deny coverage for the **Claim** based solely upon late notice, unless the **Insurer** can establish that its interests were materially prejudiced by reason of such late notice. Notwithstanding the foregoing, no amounts incurred in connection with a **Claim** prior to the time notice is provided to the **Insurer** shall be considered **Loss** under this policy.

The **Company** or the **Insured Person(s)** shall also give written notice to the **Insurer** at the address indicated in Item 7 B. of the Declarations within thirty (30) days after the **Company's** general counsel or risk manager (or individuals with equivalent responsibilities) becomes aware of:

- (i) any material change in the terms and conditions of any **Underlying Policy**; or
- (ii) any **Underlying Policy** ceasing to be in effect or being uncollectible, in part or in whole, due to cancellation or non-renewal.

6. ADVANCEMENT OF DEFENSE COSTS

In the event the **Company** refuses or is financially unable to advance **Defense Costs** and if the **Underlying Insurers** fail to advance such **Defense Costs**, then upon the **Insured Person's** request and if proper documentation accompanies this request, the **Insurer** shall advance such **Defense Costs** on a current basis. The **Insurer** shall not advance **Defense Costs** on a current basis with respect to any **Claim** for which the **Insurer** has denied liability in full. In the event of any advance payments by the **Insurer**, the **Insured Persons** agree that they shall repay to the **Insurer**, severally according to their respective interests, all such payments in the event and to the extent it is finally determined that any such **Insured Person** is not entitled under this policy to coverage for such **Loss**.

7. CLAIM PARTICIPATION

The **Insurer** does not assume any duty to defend. However, the **Insurer** shall have the right, but not the duty, to fully and effectively associate with the **Insured Person(s)** in the control, investigation, defense and settlement of any **Claim**.

The **Insured Person(s)** shall defend and contest any **Claim** made against them. The **Insured Person(s)** shall not admit or assume any liability, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. As a condition precedent, in order for a settlement amount, stipulated judgment or judgment to be recoverable as **Loss** under the terms of this policy, the following is required: (i) with respect to settlements or stipulated judgments, the **Insurer's** written consent to the terms of the settlement or stipulated judgment must be obtained in advance, or (ii) with respect to all other judgments, the **Insurer** must have been permitted, upon its request, to fully and effectively associate in the defense of the **Claim**, and the **Insurer's** consent to the trial or arbitration strategy must have been obtained, prior to such judgment.

Without prejudice to the foregoing, each and every **Insured Person** shall give the **Insurer** full cooperation and such information as it may reasonably require relating to the defense of any **Claim** and the prosecution of any counterclaim, cross-claim or third-party claim, including without limitation, the assertion of indemnification rights.

8. DISCOVERY CLAUSE

If the **Company** or the **Insurer** shall refuse to renew this policy or upon the occurrence of an **Organizational Change** as defined in Clause 11, the **Insured Person(s)** shall be entitled to a Discovery Period of one year, two years or three years following the effective date of such non-renewal or **Organizational Change**, upon payment of the Discovery Period Premium specified in Item 6 of the Declarations, within which to give to the **Insurer** written notice pursuant to Clause 5 of this policy of **Claims** made against an **Insured Person** solely with respect to **Wrongful Acts** occurring prior to the end of the **Policy Period** and otherwise covered by this policy. The Discovery Period Premium shall be deemed fully earned at the inception of the Discovery Period. The Discovery Period is not cancellable. The Discovery Period Premium is calculated as a percentage of the annual premium, and shall in no event be less than the highest percentage of the comparable premium of any **Underlying Policy**. The rights contained in this Clause 8 shall terminate unless written notice of election of a Discovery Period together with any additional premium due is received by the **Insurer** no later than thirty (30) days subsequent to the effective date of the non-renewal or **Organizational Change**.

9. REPRESENTATIONS AND SEVERABILITY

It is agreed that the **Insurer** has relied upon the information contained in the **Application** in issuing this policy. The **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**. No knowledge, statement or representation made in the **Application** by any **Insured Person** will be imputed to any other **Insured Person** for the purpose of determining coverage under this policy for any **Insured Person**.

The **Insurer** irrevocably waives any right it may have to rescind this policy, in whole or in part, on any grounds.

In the event any portion of this policy shall be declared or deemed invalid or unenforceable under applicable law, such invalidity or unenforceability shall not affect the invalidity or unenforceability of any other portion of this policy.

10. CANCELLATION CLAUSE

This policy may be cancelled by the **Company**, provided that it has obtained the written consent of all **Insured Persons**, only by sending written prior notice to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent at the address set forth in Item 7 B. of the Declarations and written notice stating when thereafter the cancellation shall be effective. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender.

This policy shall not be cancelled by or on behalf of the **Insurer** except by reason of non-payment of the premium set forth in Item 5 of the Declarations. The **Insurer** may cancel the policy by delivering to the **Company** or by mailing to the **Company**, by registered mail, or by courier at the **Company's** address set forth in the Declarations, written notice stating when, not less than twenty (20) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. In the event of such cancellation, the policy will be deemed terminated as of the inception of the **Policy Period**.

If this policy is cancelled by the **Company**, the **Insurer** shall retain the customary short rate proportion of the premium herein.

Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

11. ORGANIZATIONAL CHANGES

If during the **Policy Period**:

- (i) the **Company** shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or
- (ii) any person or entity or group of persons or entities acting in concert shall acquire more than 50% of the **Company**,

(any of the events described in (i) or (ii) above is deemed an “**Organizational Change**”) then this policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Organizational Change**. However, there shall be no coverage afforded by this policy for any actual or alleged **Wrongful Act** occurring after the effective time of the **Organizational Change**. The **Insured Person(s)** shall also have the right to a Discovery Period described in Clause 8 in the event of an **Organizational Change**.

12. OTHER INSURANCE AND INDEMNIFICATION

The insurance provided by this policy shall apply only as excess over any other valid and collectible insurance whether such insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this policy or which is not an **Underlying Policy**. This policy shall specifically be excess of any other valid and collectible insurance pursuant to which any other insurer has a duty to defend a **Claim** for which this policy may be obligated to pay **Loss**.

In connection with any **Claim** made against an **Outside Entity Insured Person**, this policy shall apply specifically excess of any indemnification from an **Outside Entity** and any insurance coverage provided to an **Outside Entity** or its directors, officers, trustees or governors (or equivalent). In the event such insurance coverage provided to an **Outside Entity** or its directors, officers, trustees or governors (or equivalent) is provided by the **Insurer** (or would be except for the application of any retention, exhaustion of a limit of liability or failure to submit notice of a claim) then the maximum Limit of Liability under this policy shall be reduced by the amount of the limit of liability of the other insurance provided to such **Outside Entity** or its directors, officers, trustees or governors (or equivalent) by the **Insurer** as to any such **Claim**.

13. NOTICE AND AUTHORITY

It is agreed that the **Company** identified in Item 1 of the Declarations shall act (unless the **Insurer** is advised expressly in writing to the contrary) on behalf of each and every **Insured Person** with respect to the giving and receiving of notice of cancellation or non-renewal, the payment of premiums and the receiving of any return premiums that may become due under this policy, the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining of any right to a Discovery Period.

14. COVERAGE EXTENSIONS

This policy shall cover **Loss** arising from any **Claims** made against the estates, heirs, or legal representatives of any deceased **Insured Person**, and the legal representatives of any **Insured Person** in the event of incompetency, insolvency or bankruptcy, who were **Insured Persons** at the time the **Wrongful Acts** upon which such **Claims** are based were committed.

This policy shall cover **Loss** arising from all **Claims** made against the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of an **Insured Person** for all **Claims** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; provided, however, that this extension shall not afford coverage for any **Claim** for any actual or alleged **Wrongful Act** by or on the part of the spouse or domestic partner, but shall apply only to **Claims** arising out of any actual or alleged **Wrongful Acts** of an **Insured Person**.

The coverage extensions set forth in this Clause 14 are subject to all other terms and conditions of this policy.

15. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

16. BANKRUPTCY

Bankruptcy or insolvency of any **Company** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations hereunder.

It is understood and agreed that the coverage provided under this policy is intended to protect and benefit the **Insured Persons**. Further, if a liquidation or reorganization proceeding involving the **Company** is commenced (whether voluntarily or involuntarily) under Title 11 of the United States Code (as amended), or any similar state,

local or foreign law (collectively, "Bankruptcy Law") then, in regard to a covered **Claim** under this policy, the **Insured Persons** shall:

- (i) waive and release any automatic stay or injunction to the extent it may apply in such proceeding to the policy or its proceeds under such Bankruptcy Law; and
- (ii) agree not to oppose or object to any efforts by the **Company**, the **Insurer** or any **Insured Person** to obtain relief from any such stay or injunction.

In the event the **Company** becomes a debtor-in-possession or equivalent status under such Bankruptcy Law, and the aggregate **Loss** under this policy exceeds the remaining available Limit of Liability, the **Insurer** shall:

- (i) first pay the **Loss** allocable to **Wrongful Acts** that were actually or allegedly caused, committed, or attempted by any **Insured Person** prior to the **Company** being a debtor-in-possession or some equivalent status, then
- (ii) pay any remaining **Loss** allocable to **Wrongful Acts** that were actually or allegedly caused, committed, or attempted by any **Insured Person** after the **Company** became a debtor-in-possession or some equivalent status.

17. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, in the event of any payment by the **Insurer** under this policy the **Insurer** shall be subrogated to the extent of such payment to all of the **Company's** and the **Insured Person(s)**' rights of recovery, including but not limited to, any of the **Company's** and the **Insured Person(s)**' rights of recovery against any **Underlying Insurer** that is the cause or subject of the **DIC Event**. The **Company** and the **Insured Person(s)** shall execute all papers required (including those documents necessary for the **Insurer** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights. However, the **Insurer** shall not exercise its subrogation rights against an **Insured Person** unless and to the extent that Exclusions (d), (e) or (f) applies to such an **Insured Person**.

18. ALTERNATIVE DISPUTE RESOLUTION

It is hereby understood and agreed that all disputes or differences which may arise under this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss** or the formation and validity of this policy, shall be subject to the alternative dispute resolution ("ADR") process set forth in this clause.

Either the **Insurer** or the **Insured Persons** may elect the type of ADR discussed below; provided, however, that the **Insured Persons** shall have the right to reject the **Insurer's** choice of ADR at any time prior to its commencement, in which case the **Insured Persons'** choice of ADR shall control.

The **Insurer** and **Insured Persons** agree that there shall be two choices of ADR: (1) non-binding mediation administered by the American Arbitration Association, in which the **Insurer** and **Insured Persons** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or (2) arbitration submitted to the American Arbitration Association under or in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall be composed of three disinterested individuals. In either mediation or arbitration, the mediator(s) or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

The arbitrators shall also give due consideration to the general principles of the law of the state where the **Company** is incorporated in the construction or interpretation of the provisions of this policy; provided, however, that the terms, conditions, provisions and exclusions of this policy are to be construed in an even-handed fashion in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorneys' fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least one-hundred-twenty (120) days shall have elapsed from the date of the termination of the mediation.

Either choice of ADR may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1 of the Declarations as the mailing address for the **Company**.

19. CHOICE OF LAW

Except for arbitration proceedings commenced pursuant to Clause 18, this policy shall be governed by and construed in accordance with the laws of New York without regard to conflict of laws principles.

20. HEADINGS

The descriptions in the headings and any subheading of this policy (including any titles given to any endorsement attached hereto) are inserted solely for convenience and do not constitute any part of this policy's terms or conditions.