



- ACE American Insurance Company
- Illinois Union Insurance Company
- Westchester Fire Insurance Company
- Westchester Surplus Lines
Insurance Company

ACE Advantage[®] Management Protection Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the **Declarations** and the terms and conditions of this **Policy**, the **Named Insured**, the **Insureds** and the **Insurer** agree as follows:

I. INSURING AGREEMENTS

A. Directors' and Officers' Liability

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

B. Company Reimbursement

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** has indemnified the **Insured Persons** and which the **Insured Persons** have become legally obligated to pay by reason of a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

C. Company Liability

The **Insurer** shall pay on behalf of the **Company** all **Loss** for which the **Company** becomes legally obligated to pay by reason of a **Securities Claim** first made against the **Company** during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**.

D. Outside Entity Directors' and Officers' Liability

The **Insurer** shall pay on behalf of the **Outside Entity Insured Persons** all **Loss** for which the **Outside Entity Insured Persons** are legally obligated to pay by reason of a **Claim** first made against them during the **Policy Period** or, if elected, the **Extended Reporting Period**, and reported to the **Insurer** pursuant to the terms of this **Policy**, for any **Wrongful Acts** taking place prior to the end of the **Policy Period**, but only excess of: (i) any indemnification provided by an **Outside Entity**; and (ii) any insurance coverage afforded to an **Outside Entity** or its executives applicable to such **Claim**.

II. DEFINITIONS

When used in this **Policy**:

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy of which this **Policy** is a renewal, replacement or which it succeeds in time. **Application** also includes any public documents filed by the **Company** within 12 months prior to inception of this **Policy** with the Securities and Exchange Commission and any similar state, local or foreign regulatory agency. All such applications, attachments,

information, materials and documents are deemed attached to and incorporated into this Policy.

B. Claim means:

1. a written demand for monetary damages or non-monetary or injunctive relief;
2. a civil, criminal, arbitration, administrative or regulatory proceeding for monetary damages or non-monetary or injunctive relief commenced by: (i) service of a complaint or similar pleading; (ii) with respect to a criminal proceeding, a return of an indictment, information, or similar document; or (iii) the receipt or filing of a notice of charges; or
3. a civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by any **Insured Person** of a written notice or subpoena from the investigating authority identifying such **Insured Person** as an individual against whom such a proceeding described in paragraph 2 immediately above may be commenced.

C. Company means the Named Insured and any Subsidiary, including any such organization as a debtor-in-possession or the bankruptcy estate of such entity under United States bankruptcy law or an equivalent status under the law of any other jurisdiction.

D. Defense Costs means reasonable and necessary costs, charges, fees and expenses incurred by any Insured in defending Claims and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. Defense Costs do not include wages, salaries, fees or other compensation of the Insured Persons or Company employees.

E. Insured means any Insured Person, and, solely with respect to a Securities Claim under Insuring Agreement C, Company Liability, the Company.

F. Insured Person means any person who was, now is or shall become:

1. a duly elected or appointed director, officer, governor, trustee (excluding the bankruptcy trustee), general counsel, and risk manager of the **Company** and, where the **Company** is incorporated outside the United States, the functional equivalent;
2. a duly elected manager, member of the board of managers or equivalent executive of the **Company** if it is a limited liability company; or
3. any one or more natural persons who are past, present or future employees of the **Company**, including such persons who are or were full-time, part-time, seasonal and temporary employees, but solely with respect to: (i) a **Securities Claim**; and, (ii) any other **Claim**, that is, and only so long as such other **Claim** is, brought and maintained concurrently against an **Insured Person** as defined in paragraphs 1 or 2 immediately above. Such natural person employees are not included as **Insured Persons** for purposes of exclusion E, **Insured vs. Insured**, of this Policy.

G. Insurer means the insurance company providing this insurance.

H. Interrelated Wrongful Acts means all Wrongful Acts that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

- I. **Loss** means the damages, judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs** which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies. **Loss** does not include:
1. any amount for which the **Insured** is not financially liable or which is without legal recourse to an **Insured**;
 2. taxes, fines or penalties;
 3. any amount incurred by any **Insured** in a proceeding or investigation that is not at that time a **Claim**, even if such amount also benefits the defense of a **Claim** and even if such proceeding or investigation subsequently gives rise to a **Claim**;
 4. any amount representing the amount by which the price of or consideration paid or proposed to be paid by an **Insured** for the acquisition or completion of the acquisition of all or substantially all of the ownership interest in, or assets of, an entity was inadequate. However, this paragraph shall not apply to **Defense Costs** and shall not apply to any **Claim** otherwise covered under Insuring Agreement A; or
 5. matters uninsurable under the laws pursuant to which this **Policy** is construed.
- Loss** includes punitive and exemplary damages and the multiplied portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.
- J. **Named Insured** means the organization first named in Item 1 of the Declarations.
- K. **Outside Entity** means any not-for-profit organization, and any other entity listed as an **Outside Entity** by endorsement to this **Policy**.
- L. **Outside Entity Insured Person** means any duly elected or appointed director, officer, governor, trustee (excluding a bankruptcy trustee) or similar executive of a **Company**, and any manager or member of the management board of a limited liability company, who is or was acting as a director of an **Outside Entity** at the specific written request or direction of such **Company**, or any other person listed as an **Outside Entity Insured Person** by endorsement to this **Policy**.
- M. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements.
- N. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVII, Termination of the **Policy**.
- O. **Securities Claim** means any **Claim**, other than a civil, criminal, administrative or regulatory investigation of a **Company**, which, in whole or in part, is:
1. brought by one or more securities holders of the **Company**, in their capacity as such, including derivative actions brought by one or more shareholders to enforce a right of the **Company**; or
 2. alleging a violation of any federal, state, local or foreign regulation, rule or statute regulating securities, including but not limited to the purchase or sale of, or offer to purchase or sell, or solicitation of any offer to purchase or sell, any securities issued by the **Company**, whether such purchase, sale, offer or solicitation involves a transaction with the **Company** or occurs in the open market, including any such **Claim** brought by the Securities and Exchange Commission or any other claimant.
- P. **Subsidiary** means any entity, other than a partnership, in which the **Named Insured**:
1. owns interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the board of directors if such entity is a corporation, the

management committee members if such entity is a joint venture, or the members of the management board if such entity is a limited liability company; or

2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of a **Company**, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a joint venture, or the members of the management board if such entity is a limited liability company,

on or before the inception date of the **Policy**, either directly or indirectly, in any combination, by one or more other **Subsidiaries**.

Q. Wrongful Act means any error, misstatement, misleading statement, act, omission, neglect, or breach of duty, including but not limited to a **Wrongful Employment Practice**, actually or allegedly committed or attempted by:

1. Solely with respect to coverage under Insuring Agreements A and B, any **Insured Person** in his or her capacity as such, or any matter claimed against any **Insured Person** solely by reason of his or her serving in such capacity;
2. Solely with respect to coverage under Insuring Agreement C, the **Company**, but solely with respect to a **Securities Claim**; and
3. Solely with respect to Insuring Agreement D, **Outside Entity Directors' and Officers' Liability**, any **Outside Entity Insured Person** in his or her capacity as such, or any matter claimed against any **Outside Entity Insured Person** solely by reason of his or her serving in such capacity.

R. Wrongful Employment Practice means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, state or local laws (common or statutory) concerning discrimination in employment, or violation of an employee's civil rights;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline of employees;
7. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an employee reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure;

but only if the **Wrongful Employment Practice** relates to an employee or applicant for employment with the **Company** or an **Outside Entity**.

In addition, with respect to any customer, client, or other group or natural person other than an employee or applicant for employment with the **Company**, **Wrongful Employment Practice** means

only any violation of discrimination laws anywhere in the world, including but not limited to violations based on race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, military status, or sexual harassment, or a violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, intentional or unintentional, by the **Insured Persons** in their capacity as such.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

III. EXCLUSIONS

The **Insurer** shall not be liable for **Loss** on account of any **Claim**:

- A. alleging, based upon, arising out of, or attributable to the gaining in fact of any profit, remuneration or financial advantage to which any **Insured** was not legally entitled.
- B. alleging, based upon, arising out of, or attributable to any deliberately fraudulent or deliberately criminal act, error or omission. However, this exclusion shall not apply unless and until there is a final adjudication against any **Insured** as to such conduct.
- C. for bodily injury, mental anguish or emotional distress (other than mental anguish or emotional distress in a **Claim** for a **Wrongful Employment Practice**), sickness, disease or death of any person, or damage to or destruction of any tangible or intangible property, including loss of use thereof, whether or not such property is physically injured.
- D. for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, or any similar state or local law, any similar common law, or any similar law in a country other than the United States, or any rules and regulations promulgated thereunder and amendments thereto.
- E. brought or maintained by, on behalf of, or in the right of any **Insured Person** or the **Company**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Company**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Insured Person** or the **Company**; provided, however, this exclusion shall not apply to:
 1. any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**;
 2. an employment-related **Claim** brought by an **Insured Person**, including but not limited to a **Claim** under any statute, rule or regulation to protect an employee from discrimination by his or her employer if such employee discloses or threatens to disclose to a superior or a governmental agency, or if such employee gives testimony relating to, any activity within such employer's operations which may be in violation of a statute, rule or regulation or any professional codes of ethics, including the Federal False Claims Act; provided, however, this paragraph 2 shall not apply to a **Claim** brought by an **Insured Person** who is or was a member of the Board of Directors (or equivalent governing body) of the **Company**;
 3. any **Claim** brought by any past **Insured Person** of the **Company** who has not provided service as a duly elected or appointed director, officer, trustee, governor, management committee member, member of the management board, general counsel, risk manager (or equivalent position) of or consultant for the **Company** for at least four years prior to such **Claim** being first made against any person;
 4. any **Claim** brought by any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Company**; or

5. any **Claim** brought and maintained by an executive of an organization formed and operating solely in a country other than the United States of America, Canada, or any other common law country.
- F. for a **Wrongful Act** actually or allegedly committed or attempted by any **Insured Person** in his or her capacity as a director, officer, governor, trustee, manager, member of the board of managers or equivalent executive of a limited liability company or employee of, or independent contractor for or in any other capacity or position with, any organization other than an **Outside Entity** or the **Company**, even if service in such capacity or position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by the **Company**.
- G. brought or maintained by, on behalf of, or in the right of any **Outside Entity**, or any past, present or future duly elected or appointed director, officer, trustee, governor, manager, or management committee member of any **Outside Entity**, or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for the **Outside Entity**, in any respect and whether or not collusive, or which is brought by any securities holder or member of the **Outside Entity**, whether directly or derivatively, unless the **Claim** of such securities holder or member is instigated and continued totally independent of, and totally without the solicitation, assistance, active participation, or intervention of, any **Outside Entity** or such person.
- H. with respect to any **Outside Entity Insured Person**, for any **Wrongful Act** occurring prior to the effective date of this **Policy** or any **Policy** issued by the **Insurer**, or any affiliate thereof, of which this **Policy** is a direct or indirect renewal or replacement, if any **Insured**, as of such date, knew or could have reasonably foreseen that such **Wrongful Act** could lead to a **Claim** under this **Policy**.
- I. alleging, based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; including without limitation any **Claim** by or on behalf of the **Company** or **Outside Entity**, its securities holders or creditors based upon, arising out of, or attributable to the matters described in this exclusion. However, this exclusion shall not apply, except as to **Clean Up Costs**, to any **Claim** against **Insured Persons** for which the **Company** does not indemnify the **Insured Persons** either because the **Company** is neither permitted nor required to grant such indemnification, because of the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

For purposes of this exclusion, **Pollutants** mean any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county, municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, noise, fungus (including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi, but does not include any fungi intended by the **Insured** for consumption) and electric or magnetic or electromagnetic field.

For purposes of this exclusion, **Clean Up Costs** means expenses, including but not limited to legal and professional fees, incurred in testing for, monitoring, cleaning up, removing, containing, treating, neutralizing, detoxifying or assessing the effects of **Pollutants**.

- J. alleging, based upon, arising out of, or attributable to any **Wrongful Act**, fact, or circumstance which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time.
- K. alleging, based upon, arising out of, or attributable to any prior or pending litigation or administrative or regulatory proceeding which was filed against an **Insured**, and of which an **Insured** had notice, on or before the prior or pending proceeding date shown in Item 6 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein.
- L. alleging, based upon, arising out of, or attributable to any **Wrongful Act** actually or allegedly committed or attempted by a **Subsidiary** or **Insured Persons** thereof before the date the **Subsidiary** became an **Insured**, or after the date the **Subsidiary** ceased to be an **Insured**.

IV. SEVERABILITY OF EXCLUSIONS

For the purpose of determining the applicability of exclusions A and B, facts pertaining to and knowledge possessed by one **Insured Person** shall not be imputed to any other **Insured Person**, and only facts pertaining to and knowledge possessed by the **Company's** chief executive officer or chief financial officer shall be imputed to the **Company**.

V. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives, assigns, spouses of **Insured Persons**, and any natural person qualifying as a domestic partner of **Insured Persons** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**, shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Loss** incurred by **Insured Persons** shown in Item 4 of the Declarations, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and domestic partners.

VI. EXTENDED REPORTING PERIOD

- A. If the **Insurer** or the **Named Insured** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 7B of the Declarations, to a continuation of the coverage granted by this **Policy** for an extended reporting period of one year following the effective date of such termination or nonrenewal ("**Extended Reporting Period**"), but only with respect to **Claims** first made during the **Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This right to continue coverage shall lapse unless the **Named Insured** gives written notice of such election and pays the **Extended Reporting Period** premium to the **Insurer** within 30 days following the effective date of termination or nonrenewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Extended Reporting Period**.
- B. The **Extended Reporting Period** is not cancelable and the entire premium for the **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.
- C. The Limit of Liability applicable to the **Extended Reporting Period**, if elected, shall be part of and not in addition to the Limit of Liability shown in Item 3 of the Declarations for the

immediately preceding **Policy Period**. The purchase of the **Extended Reporting Period** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Period**, combined.

VII. LIMIT OF LIABILITY

- A. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.
- B. The **Aggregate Limit** stated in Item 3 of the **Declarations** shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.
- C. **Defense Costs** shall be part of and not in addition to the **Limit of Liability** shown in Item 3 of the **Declarations**, and **Defense Costs** shall reduce such **Limit of Liability**. If the **Limit of Liability** is exhausted by payment of **Loss**, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. Subject to the terms of Section XV, **Payment Priority**, the **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

VIII. RETENTIONS

- A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable **Retention** amount shown in Item 4 of the **Declarations**. Such **Retention** shall be borne uninsured by the **Insureds** and at their own risk. If different parts of a single **Claim** are subject to different applicable **Retentions**, the applicable **Retentions** will be applied separately to each part of such **Loss**, but the sum of such **Retentions** shall not exceed the largest applicable **Retention**.
- B. A single **Retention** amount shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act** and any **Interrelated Wrongful Acts**.
- C. No **Retention** shall apply to any **Loss** incurred by any **Insured Person** except when and to the extent that the **Company** has indemnified the **Insured Person**.

IX. NOTICE

- A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable after the general counsel or risk manager, or equivalent positions, first learn of the **Claim**, but in no event later than: (i) the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**; or (ii) with respect to any **Claim** first made during the last 30 days of the **Policy Period**, or, if elected, the **Extended Reporting Period**, 30 days after termination of the **Policy Period**, or if elected, **Extended Reporting Period**.
- B. If, during the **Policy Period** or, if elected, the **Extended Reporting Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** or, if elected, the **Extended Reporting Period**, of the identity of the potential claimants; a description of the anticipated **Wrongful Act** allegations; the identity of the **Insureds** allegedly involved; the circumstances by which the **Insureds** first became aware of the facts or circumstances; the consequences which have resulted or may result; and the nature of the potential monetary damages and non-monetary relief; then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 5A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 5B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.

X. DEFENSE AND SETTLEMENT

- A. It shall be the duty of the **Insureds** and not the duty of the **Insurer** to defend any **Claim**.
- B. The **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs** or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**, which consent shall not be unreasonably withheld. The **Insurer** shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented. The **Insureds** shall promptly send to the **Insurer** all settlement demands or offers received by any **Insured** from the claimant(s). However, if the **Insureds** are able to settle all **Claims** which are subject to a single Retention for an aggregate amount, including **Defense Costs**, not exceeding such Retention, the consent of the **Insurer** shall not be required for the settlement of such **Claims**.
- C. The **Insurer** shall have the right and shall be given the opportunity to effectively associate with the **Insureds** regarding the defense and negotiation of any settlement of any **Claim**.
- D. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery. The **Insurer** may make any investigation it deems necessary.
- E. Subject to Section XII, Allocation, the **Insurer** shall, no later than quarterly, advance on behalf of the **Insureds** covered **Defense Costs** which the **Insureds** have incurred in connection with **Claims** made against them, prior to disposition of such **Claims**. Any advancement of **Defense Costs** shall be subject to the condition that such advanced amounts shall be repaid to the **Insurer** by the **Insureds** severally according to their respective interests if and to the extent the **Insureds** shall not be entitled to coverage for such **Defense Costs** under the terms and conditions of this **Policy**.

XI. PRESUMPTIVE INDEMNIFICATION

- A. The **Company** agrees to indemnify the **Insured Persons** to the fullest extent permitted by law, taking all steps necessary or advisable in furtherance thereof, including the making in good faith of any application for court approval. The **Company** further agrees to advance **Defense Costs** actually and reasonably incurred by any **Insured Person** in defending any threatened, pending or contemplated action, suit or proceeding prior to a final disposition of any such action, suit or proceeding and shall not require any determination or adjudication, interim or final, of the entitlement of the **Insured Person** to indemnification, where permitted by law to do so. The financial ability of any **Insured Person** to make repayment shall not be a prerequisite to the making of such an advance, and the right to receive advancement of **Defense Costs** herein is a contractual right. The agreements contained in this paragraph are binding upon the **Company** and enforceable by the **Insurer** or the **Insured Persons**.
- B. Notwithstanding anything in this section to the contrary, the **Company's** indemnification obligations under this section shall not apply in the event the **Company** is neither permitted nor required to grant such indemnification either because of the appointment by any state or

federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or because of the **Company** becoming a debtor-in-possession.

XII. ALLOCATION

- A. If a **Claim** includes both **Loss** that is covered under this **Policy** and loss that is not covered under this **Policy**, either because the **Claim** is made against both **Insureds** and others, or the **Claim** includes both covered allegations and allegations that are not covered, the **Insureds** and the **Insurer** shall allocate such amount between covered **Loss** and loss that is not covered based upon the relative legal and financial exposures and the relative benefits obtained by the parties. The **Insurer** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Loss**.
- B. If there is an agreement on an allocation of **Defense Costs**, the **Insurer** shall advance, on a quarterly basis, **Defense Costs** allocated to **Loss**. If there can be no agreement on an allocation of **Defense Costs**, the **Insurer** shall advance on a quarterly basis **Defense Costs** which the **Insurer** believes to be covered under this **Policy** until a different allocation is negotiated, arbitrated or judicially determined.
- C. Any negotiated, arbitrated or judicially determined allocation of **Defense Costs** on account of any **Claim** shall be applied retroactively to all **Defense Costs** on account of the **Claim**, notwithstanding any prior advancement to the contrary. Any allocation or advancement of **Defense Costs** on account of any **Claim** shall not apply to or create any presumption with respect to the allocation of other **Loss** on account of the **Claim** or any other **Claim**.

XIII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy**.

XIV. MATERIAL CHANGES IN CONDITIONS

- A. If, during the **Policy Period**, the **Company** acquires voting securities in another organization or creates another organization which as a result of such acquisition or creation becomes a **Subsidiary**, or acquires any organization by merger into or consolidation with the **Company**, then, subject to the terms and conditions of this **Policy** including the following paragraphs of this subsection A, such organization and its **Insured Persons** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Insurer** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired or created organization, as reflected in the then most recent consolidated financial statements of the organization, exceed 10% of the total assets of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, coverage shall be provided for such acquired or created organization for a period of 30 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, so long as the **Named Insured** gives written notice of such acquisition or creation to the **Insurer** prior to the end of the **Policy Period**. Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 30 days after the effective date of such acquisition or creation, or at the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

- B. If, during the **Policy Period**, any of the following events occurs:
1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
 2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event. This **Policy** may not be canceled after the effective time of the event, and the entire premium for this **Policy** shall be deemed earned as of such time.

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

XV. PAYMENT PRIORITY

- A. If the amount of any **Loss** which is otherwise due and owing by the **Insurer** exceeds the then-remaining **Limit of Liability** applicable to the **Loss**, the **Insurer** shall pay the **Loss** (subject to such **Limit of Liability**) in the following priority:
1. first, the **Insurer** shall pay any **Loss** covered under Section I, Insuring Agreement A, **Directors' and Officers' Liability**, in excess of any applicable **Retention** shown in Item 4 of the **Declarations**;
 2. second, the **Insurer** shall pay any **Loss** covered under Section I, Insuring Agreement B, **Company Reimbursement**, in excess of any applicable **Retention** shown in Item 4 of the **Declarations**;
 3. third, the **Insurer** shall pay any **Loss** covered under Section I, Insuring Agreement D, **Outside Entity Directors' and Officers' Liability**, in excess of any applicable **Retention** shown in Item 4 of the **Declarations**;
 4. fourth, only if and to the extent the payments under paragraphs 1 through 3 above, inclusive, do not exhaust the applicable **Limit of Liability**, the **Insurer** shall pay any **Loss** in excess of the **Retention** shown in Item 4 of the **Declarations** covered under Section I, Insuring Agreement C, **Company Securities Liability**.
- B. Subject to the foregoing paragraph, the **Insurer** shall, upon receipt of a written request from the chief executive officer of the **Named Insured**, delay any payment of **Loss** otherwise due and owing to or on behalf of the **Company** until such time as the chief executive officer of the **Named Insured** designates, provided the liability of the **Insurer** with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

XVI. REPRESENTATIONS

- A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and are the basis of this **Policy**, are to be considered as incorporated into and constituting a part of this **Policy**, and shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**. It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

- B. In the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive or which materially affects either the acceptance of the risk or the hazard assumed by the **Insurer** under this **Policy**, this **Policy** shall be void ab initio as to:
1. with respect to Insuring Agreement A, any **Insured Person** who knew the facts misrepresented or the omissions, whether or not such **Insured Person** knew of the **Application** or this **Policy**. For purposes of this paragraph 1, the knowledge of an **Insured Person** shall not be imputed to any other **Insured Person**; and
 2. with respect to Insuring Agreement B, any **Insured Person** who knew the facts misrepresented or the omissions, whether or not such **Insured Person** knew of the **Application** or this **Policy**. For purposes of this paragraph 2, the knowledge of an **Insured Person** shall not be imputed to any other **Insured Person**; and
 3. with respect to Insuring Agreement C, any **Company** if the chief executive officer or chief financial officer of the **Company** knew the facts misrepresented or the omissions, whether or not such chief executive officer or chief financial officer knew of the **Application** or this **Policy**. For purposes of this paragraph 3, the knowledge of only the chief executive officer or chief financial officer of the **Company** shall be imputed to the **Company**; and
 4. with respect to Insuring Agreement D, any **Insured Person** who knew the facts misrepresented or the omissions, whether or not such **Insured Person** knew of the **Application** or this **Policy**. For purposes of this paragraph 4, the knowledge of an **Insured Person** shall not be imputed to any other **Insured Person**.

XVII. TERMINATION OF THE POLICY

- A. This **Policy** shall terminate at the earliest of the following times:
1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
 2. 15 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 15 day period;
 3. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
 4. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.
- B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the customary short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVIII. TERRITORY AND VALUATION

- A. All premiums, limits, retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States of America dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or if not published on such date, the next date of publication of *The Wall Street Journal*.
- B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made or **Loss** sustained anywhere in the world.

XIX. SUBROGATION

In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

XX. ACTION AGAINST THE INSURER

Except as provided in Section XXIV, Alternative Dispute Resolution, no action shall lie against the **Insurer**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives.

XXI. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured Person** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**. The insurance provided by this **Policy** is intended as a matter of priority to protect and benefit the **Insured Persons** such that, in the event of bankruptcy of the **Company**, the **Insurer** shall first pay **Loss** covered under Section I, Insuring Agreement A, Directors' and Officers' Liability, prior to paying **Loss** under any other Insuring Agreement.

If a liquidation or reorganization proceeding is commenced by the **Named Insured** or any other **Company** (whether voluntary or involuntary) 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 **Insureds** hereby waive and release any automatic stay or injunction ("**Stay**") to the extent such **Stay** may apply to the proceeds of this **Policy** under such **Bankruptcy Law**, and agree not to oppose or object to any efforts by the **Insurer** or any **Insured** to obtain relief from the **Stay** applicable to the proceeds of this **Policy** as a result of such **Bankruptcy Law**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claim** or **Loss** or termination, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. ALTERNATIVE DISPUTE RESOLUTION

The **Insureds** and the **Insurer** shall submit any dispute or controversy arising out of or relating to this **Policy** or the breach, termination or invalidity thereof to the alternative dispute resolution ("**ADR**") process described in this section.

Either an **Insured** or the **Insurer** may elect the type of ADR process discussed below; provided, however, that the **Insured** shall have the right to reject the choice by the **Insurer** of the type of ADR

process at any time prior to its commencement, in which case the choice by the **Insured** of ADR process shall control.

There shall be two choices of ADR process: (1) non-binding mediation administered by any mediation facility to which the **Insurer** and the **Insured** mutually agree, in which the **Insured** and the **Insurer** shall try in good faith to settle the dispute by mediation in accordance with the then-prevailing commercial mediation rules of the mediation facility; or (2) non-binding arbitration submitted to any arbitration facility to which the **Insured** and the **Insurer** mutually agree, in which the arbitration panel shall consist of three disinterested individuals. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. In the event of arbitration, the decision of the arbitrators shall be provided to both parties, and the award of the arbitrators shall not include attorneys' fees or other costs. In the event of either mediation or arbitration, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the conclusion of the arbitration, or in the event of mediation, at least 60 days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the ADR process.

Either ADR process may be commenced in New York, New York or in the state indicated in Item 1 of the Declarations as the principal address of the **Named Insured**. The **Named Insured** shall act on behalf of each and every **Insured** in connection with any ADR process under this section.