

# DIRECTOR AND OFFICER AND CORPORATE SECURITIES LIABILITY INSURANCE POLICY



THIS IS A "CLAIMS MADE AND REPORTED" POLICY. SUBJECT TO ITS TERMS AND PROVISIONS, THIS POLICY ONLY AFFORDS COVERAGE FOR CLAIMS FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER IN WRITING DURING THE POLICY PERIOD OR DISCOVERY PERIOD, IF APPLICABLE. IN ADDITION, DEFENSE COSTS ARE INCLUDED IN AND WILL REDUCE THE LIMITS OF LIABILITY.

PLEASE READ THIS ENTIRE POLICY CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THIS POLICY.

In consideration of the payment of the premium, and in reliance upon the statements made in the **Application**, which is incorporated into this Policy and forms a part hereof, the insurer identified on the Declarations, herein called the "**Insurer**", agrees as follows:

## I. Insuring Agreements

### A. Director and Officer Liability Insurance

The **Insurer** shall pay, on behalf of the **Directors and Officers**, **Loss** for which the **Company** has not indemnified them arising from any **Claim** first made against the **Directors and Officers** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** during such period pursuant to the terms of this Policy.

### B. Director and Officer Indemnification Insurance

The **Insurer** shall pay, on behalf of the **Company**, **Loss** for which the **Company** has indemnified the **Directors and Officers** arising from any **Claim** first made against the **Directors and Officers** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** during such period pursuant to the terms of this Policy.

### C. Corporate Securities Liability Insurance

The **Insurer** shall pay, on behalf of the **Company**, **Loss** arising from any **Securities Claim** first made against the **Company** during the **Policy Period** or the Discovery Period (if applicable) and reported to the **Insurer** during such period pursuant to the terms of this Policy.

## II. Definitions

### A. "Application" means:

1. the application for this Policy and for any policy of which this Policy is a direct or indirect renewal or replacement, any attachment to any such application(s), any other materials submitted with or incorporated into any such application(s) and any documents submitted in connection with the underwriting of any such policy (ies); and,
2. to the extent made by or required of the **Insureds**:

any public documents filed prior to the inception date of this Policy by the **Named Insured** with the Securities and Exchange Commission or any similar federal, state, local or foreign regulatory body, and any other written public statement or certification required by law to be made by the chief

executive officer, chief financial officer or other executive officer of the **Named Insured** regarding the accuracy, completeness or adequacy of such **Insured's** financial statements, SEC filings, or internal controls;

whether or not such public documents, statements or certifications are furnished to the **Insurer**.

The **Insureds** agree that all warranties and representations contained in the **Application** are deemed made to the **Insurer**. The **Insureds** agree further that the **Application** is deemed attached to and incorporated into this Policy.

B. **"Claim"** means:

1. a written demand for monetary or non-monetary relief made upon an **Insured** for a **Wrongful Act**, including a **Securities Claim** against the **Company**;
2. a civil or criminal proceeding for monetary or non-monetary relief against an **Insured** for a **Wrongful Act**, including a **Securities Claim** against the **Company**, which is commenced by service of a complaint or similar pleading or return of an indictment or information in the case of a criminal proceeding;
3. any administrative or regulatory proceeding for monetary or non-monetary relief against any of the **Directors and Officers** for a **Wrongful Act** which is commenced by receipt of a notice of charges; or
4. a civil, criminal, administrative or regulatory investigation (including a Securities and Exchange Commission or grand jury investigation) of the **Directors and Officers** for a **Wrongful Act**, but only after such of the **Directors and Officers** is identified in writing by the investigating authority as a person against whom a proceeding described in 2. above may be commenced.

C. **"Company"** means the **Named Insured** and any **Subsidiary** created or acquired on or before the inception date and time stated in Item 2. of the Declarations or, subject to General Conditions 10.D., during the **Policy Period**, including any such company as a debtor in possession under United States bankruptcy law or an equivalent status under foreign law.

D. **"Company Takeover"** means:

1. the **Named Insured** consolidating with or merging into, or selling all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert, or
2. any person or entity or group of persons and/or entities acting in concert that acquire an amount of the outstanding securities representing more than fifty percent (50%) of the outstanding stock or other interest representing the present right to vote, designate or select a majority of the board of directors of the **Named Insured**.

E. **"Defense Costs"** means reasonable and necessary fees, costs and expenses consented to by the **Insurer** (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against the **Insureds**, but excluding the **Company's** overhead expenses or any salaries, wages, fees or benefits of any employees or **Directors and Officers** of the **Company**.

F. **"Directors and Officers"** means:

1. any natural person who was, now is or shall be a duly elected or appointed director, manager or member of the board of managers (if the **Company** is a limited liability company), officer or in-house general counsel of any **Company** chartered in the United States of America;

2. any natural person who was, now is or shall be a holder of a title, position or capacity equivalent to a position described in 1. above of any **Company** chartered in any jurisdiction outside of the United States of America;
3. any natural person who was, now is or shall be an employee of the **Company** (other than an officer or in-house general counsel of the **Company**), but solely with respect to a **Securities Claim**;
4. the estate, heir, or legal representative of any person identified in 1., 2. or 3. above, in the event of that person's death, incompetency, insolvency or bankruptcy;
5. the lawful spouse (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of any person identified in 1., 2. or 3. above for a **Claim** arising solely out of his or her status as the spouse of that person, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the spouse and that person, or property transferred from that person to such spouse; provided, however, no coverage shall be provided under this Policy for any **Claim** for any actual or alleged **Wrongful Act** of such spouse;
6. any individual identified in 1. above who, at the specific written request of the **Company**, is serving as a director, officer, trustee, regent or governor of any **Not-For-Profit Entity**.

G. "**Financial Insolvency**" means the appointment of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Company**, or the **Company** becoming a debtor in possession under United States law or the equivalent of a debtor in possession under the law of any other country.

H. "**Insureds**" means the **Company** and the **Directors and Officers**.

I. "**Interrelated Wrongful Acts**" means any **Wrongful Acts** that are:

1. similar, repeated or continuous; or
2. connected by reason of any common facts, circumstance, situation, transaction, casualty, event, decision or policy or one or more series of facts, circumstances, situations, transactions, casualties, events, decisions or policies.

J. "**Loss**" means damages, judgments, settlements and **Defense Costs**; provided, however, **Loss** shall not include:

1. civil or criminal fines or penalties imposed by law;
2. taxes;
3. any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;
4. any damages, judgments or settlements representing the amount which the **Company** in any **Securities Claim** is obligated to pay as the result of any allegation that the consideration for the purchase of another entity's securities was inadequate; provided, however, this paragraph 5. shall not apply to any **Defense Costs** or any **Loss** under Insuring Agreement A.; or
5. any matter which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.

**Loss** shall include punitive, exemplary or multiple damages not resulting from employment-related **Wrongful Acts** to the fullest extent permitted by any applicable law bearing a reasonable relationship to the **Insureds**, the **Insurer** or the **Claim**. Where the **Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under such applicable law, the Insurer shall not challenge that determination.

K. "**Named Insured**" means the entity identified in Item 1. of the Declarations.

- L. **"Not-For-Profit Entity"** means any corporation or organization other than the **Company**, which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code as amended or any rule or regulation promulgated thereunder.
- M. **"Policy Period"** means the period of time from the inception date and time stated in Item 2. of the Declarations to the earlier of the expiration date and time stated in Item 2. of the Declarations or the effective date and time of the cancellation of this Policy.
- N. **"Pollutants"** means:
1. any substance that exhibits any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any foreign, state, county, municipal or local counterpart thereto, including, but not limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, dust, soot, fumes, acids, alkalis, chemicals or waste materials (including but not limited to materials to be recycled, reconditioned or reclaimed sewage or waste water, nuclear materials, infectious or medical waste); or
  2. any air emission, magnetic or electric waves or emissions, odor, oil or oil products, asbestos or asbestos products, fibers, mold, spores, fungi, germs, bacteria, viruses or any noise.
- O. **"Securities Claim"** means that portion of a **Claim** that:
1. a security holder of the **Company** brings in his or her capacity as a security holder of the **Company**, whether (a) directly or by class action alleging any **Wrongful Act** by the **Company** or the **Directors and Officers** or (b) derivatively on behalf of the **Company** alleging any **Wrongful Act** by the **Directors and Officers**; or
  2. alleges the **Company** or the **Directors and Officers** (a) violated any federal, state, local or foreign securities law or rule (or regulation promulgated thereunder) or (b) committed a **Wrongful Act** in connection with the purchase or sale or offer or solicitation of an offer to purchase or sell, any securities of the **Company**;
- provided, however, **Securities Claim** does not include any **Claim** by or on behalf of any of the **Directors and Officers** arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving the loss of, or the failure to receive or obtain from the **Company**, any stock, stock warrants or options or other securities of the **Company** or the benefit of stock, stock warrants or options or other securities of the **Company**.
- P. **"Subsidiary"** means any corporation or limited liability company during any time in which the **Named Insured** owns, directly or indirectly through one or more of its **Subsidiaries**, more than fifty percent (50%) of the outstanding stock or other interest representing the present right to vote, designate or select a majority of the board of directors of a corporation or the management board of a limited liability company.
- Q. **"Wrongful Act"** means:
1. with respect to the **Directors and Officers**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Directors and Officers** in their respective capacities as such, or any matter claimed against them solely by reason of their status as **Directors and Officers**, or
  2. with respect to the **Company**, any breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Company**, but solely as respects a **Securities Claim**.

### III. Exclusions

This Policy provides no coverage in connection with any **Loss** arising from any **Claim**:

A. brought about or contributed to by the gaining in fact of any profit or advantage to which an **Insured** was not legally entitled or the committing in fact of any intentionally criminal or deliberately fraudulent act, if such profit or advantage or intentionally criminal or deliberately fraudulent act is established by:

1. admission of such **Insured** evidenced in written form; or
2. any judgment, final adjudication or alternative dispute resolution proceeding;

provided that for the purpose of determining the applicability of this exclusion, the **Wrongful Act** of the Chief Executive Officer, the Chief Financial Officer, the in-house General Counsel, the President or the Chairman of the Board of Directors of the **Named Insured** shall be imputed to the **Company**; the **Wrongful Act** of any of the **Directors and Officers** shall not be imputed to any other of the **Directors and Officers**;

B. for any actual or alleged bodily injury, mental anguish or emotional distress, sickness, disease, death of any person, libel, slander, defamation or disparagement, violation of any person's right of privacy, or damage to or destruction of any tangible property, including the loss of use thereof; provided, however, this exclusion shall not apply to any **Claim** for wrongful termination of employment, employment discrimination, or sexual or other workplace harassment;

C. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any actual or alleged violation(s) of any of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, or amendments thereto or regulations thereunder or any similar foreign, state, local or common law;

D. by, on behalf of or in the right of the **Insureds** and/or any **Not-For-Profit Entity** on behalf of which the **Directors and Officers** are or were serving at the specific written request of the **Company**, in any respect and whether or not collusive; provided, however, this exclusion does not apply to:

1. any **Securities Claim** by any security holder of the **Company**, whether directly or derivatively, provided such **Securities Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Insured**;
2. any **Claim** by any of the **Directors and Officers** who has not served with, been employed by or provided consultation to the **Company** in any capacity for at least five (5) years prior to the date such **Claim** is first made and who brings such **Claim** totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, the **Company** or any of the **Directors and Officers** who is serving with, is employed by or is providing consultation to the **Company** or who has served with, been employed by or provided consultation to the **Company** in any capacity in the last five (5) years;
3. any **Claim** brought on behalf of the **Company** by any receiver, conservator, liquidator, trustee, examiner, rehabilitator or similar official appointed to take control of, supervise, manage or liquidate the **Company** (or any assignee of any such receiver, conservator, liquidator, trustee, examiner, rehabilitator or similar official);
4. any **Claim** by any of the **Directors and Officers** for contribution or indemnity, if such **Claim** directly results from another **Claim** covered under this Policy; or

5. any **Claim** for wrongful termination of employment, employment discrimination, or sexual or other workplace harassment brought by a **Director and Officer**, other than a **Director and Officer** who was, now is or shall be a director or member of the board of managers (if the **Company** is a limited liability company) of the **Company**;
- E. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any actual or alleged act or omission of the **Directors and Officers** serving in their capacities or by reason of their status as directors, officers, trustees, regents, governors, managers or members of the board of managers of any entity other than the **Company** or any **Not-For-Profit Entity** while serving at the specific written request of the **Company**;
- F. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:
1. any demand, suit, proceeding or other claim, or any investigation of which any **Insured** had notice, pending on or prior to the Pending or Prior Date stated in Item 7. of the Declarations; or
  2. any fact, matter, circumstance, situation, transaction or event underlying or alleged in such demand, suit, proceeding, claim or investigation;
- regardless of the legal theory upon which such **Claim** is predicated;
- G. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:
1. the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants**; or
  2. any direction to test for, treat, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- including but not limited to any **Claim** alleging damage to the **Company**, its security holders or its creditors; provided, however, this exclusion shall not apply to any **Claim** against any of the **Directors and Officers** under Insuring Agreement A.;
- H. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:
1. any **Wrongful Act** occurring on or prior to the Retroactive Date set forth in Item 8. of the Declarations; or
  2. any **Wrongful Act** occurring after the Retroactive Date set forth in Item 8. of the Declarations which, together with a **Wrongful Act** occurring on or prior to such Retroactive Date, would constitute **Interrelated Wrongful Acts**; or
- I. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:
1. any **Wrongful Act** alleged in any demand, suit, proceeding or other claim which has been reported, or in any circumstance of which notice has been given, under any policy of which this Policy is a renewal or replacement or which it may succeed in time; or
  2. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice, would constitute **Interrelated Wrongful Acts**.

#### IV. Limit of Liability and Retentions

- A. The Limit of Liability stated in Item 3. of the Declarations is the limit of the **Insurer's** liability for all **Loss** arising out of all **Claims** first made against the **Insureds** during the **Policy Period** and the Discovery Period (if applicable); however, the Limit of Liability for the Discovery Period is part of, and not in addition to, the Limit of Liability for the **Policy Period**. If the Limit of Liability stated in Item 3. of the Declarations is exhausted by payment of **Loss**, the **Insurer's** obligations under this Policy shall be completely fulfilled and extinguished.
- B. The **Insurer** shall only be liable for that part of covered **Loss** that is in excess of the applicable Retention stated in Item 4. of the Declarations arising from a **Claim**, such Retention to be borne by the **Insureds** uninsured and at their own risk.
- C. **Defense Costs** are part of, and not in addition to, the Limit of Liability and the **Insurer's** payment of **Defense Costs** shall reduce and may exhaust the Limit of Liability.
- D. If different parts of a single **Claim** are subject to more than one Retention, each applicable Retention will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- E. If the **Company** refuses to pay the Retention under Insuring Agreement B. due to **Financial Insolvency**, then the **Insurer** shall advance **Defense Costs** on behalf of the **Directors and Officers** within the Retention and the **Company** shall reimburse the **Insurer** for such **Defense Costs** up to the amount of the Retention.
- F. With respect to all **Claims**, the applicable Retention shall only apply to the percentage of **Loss** which shall be payable by the **Insurer** (as set forth in Section 6.) and the applicable Retention shall not apply to the percentage of **Loss** payable by the **Company**.

#### V. **Defense, Indemnification and Cooperation**

- A. The **Insurer** shall advance, at the written request of the **Insured**, **Defense Costs** prior to the final disposition of a **Claim**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds** or the **Company**, severally according to their respective interests, to the extent that the **Insureds** or the **Company** shall not be entitled under the terms and conditions of this Policy to payment of such **Loss**.
- B. The **Insureds**, and not the **Insurer**, have the duty to defend any **Claim** made against the **Insureds**. The **Insurer** shall be entitled to effectively associate in the defense and the negotiation of any settlement of any **Claim**. The **Insureds** shall give the **Insurer** full cooperation and shall not admit or assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**. Only those settlements, stipulated judgments and **Defense Costs** to which the **Insurer** has consented shall be recoverable as **Loss** under this Policy. The **Insurer's** consent shall not be withheld unreasonably, provided that the **Insurer** shall be entitled to full information and all particulars it may request as to such **Claim**.
- C. The **Company** agrees, as a condition to the coverage afforded under this Policy, to provide indemnification and advancement to the **Directors and Officers** to the fullest extent permitted by law. The certificate of incorporation, charter, articles of association or other organizational documents of the **Company**, including bylaws and resolutions, will be deemed to have been adopted or amended to provide indemnification to the **Directors and Officers** to the fullest extent permitted by law.

#### VI. **Coinsurance and Allocation**

- A. The **Company** is not covered in any respect under Insuring Agreement A. The **Company** is covered, subject to this Policy's terms and conditions, only with respect to its indemnification of its **Directors and Officers** under Insuring Agreement B. with respect to a **Claim** against such **Directors and Officers**, and subject to this Policy's terms and conditions, under Insuring Agreement C. for a **Securities Claim** made against the **Company**. The **Insurer** has no obligation under this Policy for legal fees and expenses incurred by, judgments against or settlements by the **Company** arising out of a **Claim** made against the **Company** other than a covered **Securities Claim**.
- B. To the extent **Loss** arising from any **Securities Claim** is covered under Insuring Agreements B. or C. and is in excess of the applicable Retention, the **Insureds** shall bear uninsured and at their own risk that percentage of **Loss** specified as the Coinsurance Percentage in Item 5. of the Declarations for a **Securities Claim** and the **Insurer's** liability under this Policy shall only apply to the remaining percentage of such **Loss**.
- C. To the extent **Defense Costs** are jointly incurred by, any joint settlement is made by, and/or any adjudicated judgment of joint and several liability is entered against the **Company** and any of the **Directors and Officers** in any **Claim** other than a **Securities Claim**, the **Company** and the **Directors and Officers** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of the amounts as between the **Company** and the **Directors and Officers** and the **Insurer**, taking into account the relative legal and financial exposures of and the relative benefits obtained by the **Directors and Officers** and the **Company**. In the event that a determination as to the amount of **Defense Costs** to be advanced under this Policy cannot be agreed to, then the **Insurer** shall advance such **Defense Costs** which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this Policy and applicable law.

#### VII. Notice of Claim or Wrongful Act

- A. As a condition precedent to the obligations of the **Insurer** under this Policy, the **Insureds** shall give the **Insurer** written notice of any **Claim** made against an **Insured** as soon as practicable, but in no event later than either:
1. the end of the **Policy Period** or the Discovery Period (if applicable); or
  2. thirty (30) days after the end of the **Policy Period**, as long as such **Claim** is first made within the final thirty (30) days of the **Policy Period**.
- B. If during the **Policy Period**, the **Insureds** become aware of a specific **Wrongful Act** which reasonably may be expected to give rise to a **Claim** being made against the **Insureds** and give written notice to the **Insurer** of the specific **Wrongful Act**, the reasons for anticipating such a **Claim**, the identities of the potential claimants and the **Insureds** allegedly responsible for such specific **Wrongful Act**, the amount of actual or potential damages, and the circumstances by which the **Insureds** first became aware of such specific **Wrongful Act**, then any **Claim** subsequently made against the **Insureds** arising out of such specific **Wrongful Act**, shall be deemed to have been made at the time such notice was received by the **Insurer**.
- C. The **Insureds** shall give notice to the **Insurer** under this Section as specified in Item 9. of the Declarations.

### VIII. Single Claim/Interrelated Wrongful Acts

All **Claims** based upon or arising out of the same **Wrongful Act** or out of **Interrelated Wrongful Acts** shall be considered a single **Claim**, and each such single **Claim** shall be deemed to have been made on the earlier of the following:

- A. when the earliest **Claim** arising out of such **Wrongful Act** or **Interrelated Wrongful Acts** first was made; or
- B. when notice pursuant to Section 7.B. above of a fact, circumstance, or situation giving rise to such **Claim** was given.

### IX. Discovery Period

- A. If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this Policy, the **Named Insured** shall have the right, upon payment of the Additional Premium for the Discovery Period specified in Item 6. of the Declarations, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of time specified in Item 6. of the Declarations immediately following the effective date of such cancellation or non-renewal, but only with respect to any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this Policy. Such period shall be referred to as the "Discovery Period". The right to purchase the Discovery Period shall terminate, however, unless the **Insurer** receives within thirty (30) days of the effective date of cancellation or non-renewal, written notice of such election together with the additional premium due.
- B. The Additional Premium for the Discovery Period shall be fully earned at the inception of the Discovery Period. The Discovery Period is not cancelable.

### X. General Conditions

- A. Cancellation and Non-Renewal
  - 1. The **Insurer** may only cancel this Policy for non-payment of any premium when due by providing written notice to the **Named Insured** stating when, not less than ten (10) days thereafter, such cancellation shall be effective.
  - 2. The **Named Insured** may cancel this Policy by providing written notice to the **Insurer** at the address stated in Item 9. of the Declarations stating when thereafter such cancellation shall be effective. The **Insurer** shall retain the customary short rate proportion of the premium; provided, however, if at the time of cancellation the Limit of Liability has been exhausted, the entire premium shall be considered earned. 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.
  - 3. If the **Insurer** decides not to renew this Policy, the **Insurer** shall provide written notice to the **Named Insured** at least sixty (60) days prior to the end of the **Policy Period**. The notice shall include the reason for such non-renewal. In no event shall an offer to renew this Policy on terms that involve any change in Retention amount, premium, Limit of Liability or other terms and conditions constitute a refusal by the **Insurer** to renew this Policy.
  - 4. Any notices to be given to the **Named Insured** under this section shall be provided to the **Named Insured** at the last known principal address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.

B. Action Against the Insurer

No action shall lie against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insureds'** obligation to pay shall have been finally determined either by judgment against the **Insureds** after actual trial or by written agreement of the **Insureds**, the claimant and the **Insurer**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the **Insurer** as party to any action against the **Insureds** to determine the **Insureds'** liability, nor shall the **Insurer** be impleaded by the **Insureds** or their legal representatives.

C. Company Takeover

If during the **Policy Period** there is a **Company Takeover**, then this Policy shall continue in full force and effect as to **Wrongful Acts** occurring prior to the effective time of the **Company Takeover**, but there shall be no coverage afforded under this Policy for any actual or alleged **Wrongful Act** occurring after the effective time of the **Company Takeover**. This Policy may not be canceled after the effective time of the **Company Takeover** and the entire premium for this Policy shall be deemed earned as of such time. The **Named Insured** shall give the **Insurer** written notice of the **Company Takeover** as soon as practicable but not later than 30 days after the effective date of the **Company Takeover**.

D. Mergers and Acquisitions

1. If during the **Policy Period** the **Company** acquires another entity by merger or by consolidation with a **Subsidiary**, acquires all or substantially all of the assets of another entity, or creates or acquires a **Subsidiary** and if the assets acquired through such transaction are ten percent (10%) or less of the total consolidated assets of the **Named Insured** as of the inception of this Policy then, subject to all the other provisions of this Policy, coverage shall apply to any **Claim** involving the merged or consolidated entity, **Subsidiary**, or assets.
2. If during the **Policy Period** the **Company** acquires another entity by merger or by consolidation with a **Subsidiary**, acquires all or substantially all of the assets of another entity, or creates or acquires a **Subsidiary** and if the assets acquired through such transaction are more than ten percent (10%) of the total consolidated assets of the **Named Insured** as of the inception of this Policy then, subject to all the other provisions of this Policy, coverage shall apply to any **Claim** involving the merged or consolidated entity, **Subsidiary**, or assets for a period of sixty (60) days from the date of consummation of the transaction (unless the **Policy Period** shall end sooner). No coverage shall apply to any **Claim** made after such sixty (60) day period involving the merged or consolidated entity, **Subsidiary** or assets unless the **Named Insured** provides the **Insurer** with full particulars of such transaction, agrees to any additional premium and/or amendment of the provisions of this Policy the **Insurer** requires and pays any premium required.
3. There shall be no coverage for any **Wrongful Act** involving the merged or consolidated entity, **Subsidiary**, or assets that occurred prior to the consummation of a transaction described in 1. or 2. above, or for any other **Wrongful Act** whenever occurring which together with a **Wrongful Act** that occurred prior to the consummation of such transaction would constitute **Interrelated Wrongful Acts**.

4. There shall be no coverage for any **Wrongful Act** of any **Subsidiary** or any of its **Directors and Officers** occurring on or after the date such entity ceases to be a **Subsidiary**.

E. Bankruptcy

Bankruptcy or insolvency of the **Company** or the **Directors and Officers** shall not relieve the **Insurer** of any of its obligations hereunder.

In the event of bankruptcy of the **Company**, the **Insurer** shall first pay, subject to the Limit of Liability, **Loss** on behalf of the **Directors and Officers** under Insuring Agreement A. until all **Claims** against the **Directors and Officers** are resolved, and only then pay **Loss** on behalf of the **Company** under Insuring Agreements B. and C.

F. Representations

The **Insureds** agree that the **Application** is deemed attached to this Policy and incorporated herein. The **Insureds** further agree that all statements, representations and information contained in or incorporated into the **Application** are their representations and are material to the acceptance of the risk assumed by the **Insurer** under this Policy. This Policy is issued in reliance upon the truth of such representations.

The **Insureds** further agree that in the event of any material misstatement, misrepresentation or omission in the **Application**, this Policy will be void as to any **Insured** who knew of such misstatement, misrepresentation or omission and as to any **Insured** to whom such knowledge is imputed. For the purpose of determining such imputation, the **Insureds** agree that any knowledge possessed by the Chief Executive Officer, the Chief Financial Officer, the in-house General Counsel, the President or the Chairman of the Board of Directors of the **Named Insured** shall be imputed to the **Company**. The knowledge of any of the **Directors and Officers** shall not be imputed to any other **Directors and Officers**.

G. Other Insurance/Service with Not-For-Profit Entity

1. Such insurance as is provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this 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**.
2. In the event of a **Claim** made against **Directors and Officers** of a **Not-For-Profit Entity**, coverage as is afforded by this Policy shall be specifically excess of: (1) any indemnification provided by such **Not-For-Profit Entity**; and (2) any insurance coverage afforded to such **Not-For-Profit Entity** or its **Directors and Officers** applicable to such **Claim**. Further, in the event such other **Not-For-Profit Entity** insurance is provided by the **Insurer** or any of its parents, subsidiary or affiliated companies (or would be provided but for the application of the retention amount, exhaustion of the limit of liability or failure to submit a notice of a claim as required) then the **Insurer's** maximum aggregate Limit of Liability for all **Loss** under this Policy, as respects any such **Claim**, shall be reduced by the amount of the limit of liability (as set forth on the Declarations) of the other insurance provided to such **Not-For-Profit Entity**.

H. Subrogation

1. In the event of payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all of the rights of recovery of the **Insureds** against any person or organization. The **Insureds** shall execute and deliver all papers and instruments required and shall do whatever else is necessary to enable the **Insurer** effectively to bring suit in their name and otherwise secure such rights. The **Insureds** shall do nothing to prejudice any such rights.
2. Any amount recovered after payment under this Policy shall be apportioned in the inverse order of payment to the extent of the actual payment. The expenses incurred in obtaining any such recoveries shall be apportioned in the ratio of the respective recoveries.

I. Assignment

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

J. Entire Agreement

By acceptance of this Policy, the **Insureds** and the **Insurer** agree that this Policy (including the **Application**) and any written endorsements attached hereto constitute the entire agreement between the parties.

K. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy are hereby amended to conform to such laws.

L. Authorization

The **Insureds** agree that the **Named Insured** will act on behalf of the **Insureds** with respect to the giving of all notices to the **Insurer**, the receipt of notices from the **Insurer**, the payment of premiums, and the receipt of any return premiums that may become due under this Policy.

M. Worldwide Territory

The Policy shall apply to **Claims** made against the **Insureds** anywhere in the world.

XI. **Service of Suit**

If the **Insurer** fails to pay any amount claimed to be due under this Policy, the **Insurer**, at the request of any of the **Insureds**, will submit to the jurisdiction of any court of competent jurisdiction within the United States, and will comply with all requirements necessary to give such court jurisdiction. Nothing in this Clause constitutes or should be understood to constitute a waiver of the **Insurer's** rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

The **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance or similar officer specified by law for that purpose, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any **Insured** under the Policy. Upon receipt of process lawfully served, that official may mail such process to Claim Manager- Professional Liability at the address stated at Item 9. of the Declarations.

**XII. 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 the terms or conditions hereof.

THIS POLICY SHALL NOT BE VALID UNLESS COMPLETED BY THE ATTACHMENT HERETO OF A DECLARATION PAGE AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF THE **INSURER**.

SPECIMEN