



HUDSON INSURANCE COMPANY

Primary DEFENDER Policy

Executive Liability and Corporate Securities Liability Insurance

THIS IS A CLAIMS-MADE INSURANCE POLICY AND DEFENSE EXPENSES ARE INCLUDED WITHIN THE LIMIT OF LIABILITY. PLEASE CAREFULLY REVIEW THE ENTIRE POLICY.

In consideration of the payment of the premium stated in the Declarations and subject to those Declarations and all provisions of this Policy, the Insurer, the **Company** and the **Insured Executives** agree as follows:

I. INSURING AGREEMENTS

A. EXECUTIVE LIABILITY

Except for **Loss** which the Insurer pays pursuant to Section I. B. of this Policy, the Insurer will pay **Loss** on behalf of an **Insured Executive** which such **Insured Executive** has become legally liable to pay as a result of a **Claim** first made against her or him during the **Policy Period** or **Discovery Period**, if applicable, for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

B. COMPANY INDEMNIFICATION LIABILITY

The Insurer will pay **Loss** on behalf of the **Company** for which the **Company** has, to the extent permitted or required by applicable law, indemnified an **Insured Executive**, and which such **Insured Executive** has become legally liable to pay as a result of a **Claim** first made against her or him during the **Policy Period** or **Discovery Period**, if applicable, for a **Wrongful Act** that takes place during or prior to the **Policy Period**.

C. COMPANY SECURITIES LIABILITY

The Insurer will pay **Loss** on behalf of the **Company**, which the **Company** has become legally liable to pay as a result of a **Claim** first made against it during the **Policy Period** or **Discovery Period**, if applicable, solely for a **Securities Wrongful Act** that takes place during or prior to the **Policy Period**.

D. SECURITIES HOLDER DERIVATIVE DEMAND INVESTIGATIVE LIABILITY

The Insurer will pay **Investigative Costs** on behalf of the **Company** that the **Company** has incurred as a result of a **Securities Holder Derivative Demand** first made during the **Policy Period** or **Discovery Period**, if applicable.

Loss paid by the Insurer pursuant to this Section I. D. shall be subject to the sub-limit of liability set forth in **ITEM 3 (B)** of the Declarations. This sub-limit shall be the maximum aggregate amount the Insurer shall pay under this Policy for all **Investigative Costs** as a result of any and all **Securities Holder Derivative Demands**. This sub-limit shall be subject to, part of, and not in addition to, the Limit of Liability set forth in **ITEM 3 (A)** of the Declarations.

II. DEFINITIONS

A. "Claim" means:

- (1) a written demand for monetary or non-monetary relief, including any arbitration or mediation that is commenced by a written request or demand for such proceeding, or a written request to waive or toll a statute of limitation; or
- (2) a civil or criminal judicial proceeding seeking monetary or non-monetary relief, including any appeal therefrom; or
- (3) a formal civil, criminal, administrative, **Extradition** or regulatory proceeding (including a proceeding brought by, on behalf of or before the Securities Exchange Commission (SEC), Equal Employment Opportunity Commission (EEOC) or similar federal, state or local governmental agencies), including any appeal therefrom; or
- (4) solely with respect to an **Insured Executive**, a formal investigation of such **Insured Executive** in which such **Insured Executive** has been identified by name in a subpoena, formal order or notice of investigation, including but not limited to a "Wells Notice" issued by the SEC, as someone against whom a civil or criminal lawsuit or other legal proceeding may later be commenced;
- (5) solely with respect to an **Insured Executive**, a subpoena or other written request or demand from a governmental agency, securities exchange or similar self-regulatory entity for an interview, testimony, information or documents in connection with any matter described in subsections (1) through (4) of this definition against any **Insured** for a **Wrongful Act**.

A **Claim** shall be deemed to have been first made at the earliest date of receipt by the **Company** or **Insured Executive** or agent on her or his behalf of a written demand, criminal indictment or information, notice of charges or service of summons, subpoena or similar document commencing an investigation, lawsuit or other proceeding as described in subsections (1) through (5) of this definition against such **Insured Executive** or the **Company**.

B. "**Company**" means the entity named in **ITEM 1** of the Declarations or any **Subsidiary** created or acquired before or during the **Policy Period**, including such entity or **Subsidiary** when operating as a debtor in possession under Chapter 11 of the United States Bankruptcy Code or any similar bankruptcy law of any jurisdiction in the world."

C. "**Defense Expenses**" means all reasonable and necessary legal fees and expenses incurred in the defense or investigation of any **Claim** after such **Claim** has been made, and shall also include the reasonable and necessary expenses in connection with any appeal of such **Claim** but shall not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of any **Insured Executive** or agents or employees of the **Company**.

Defense Expenses also includes, but always subject to the Sub-Limit of Liability set forth in **ITEM 3 (B)** of the Declarations, reasonable and necessary legal fees and expenses incurred by the **Company** or any committee formed by it (other than the **Company's** overhead expenses or any salaries, wages, fees, or benefits of any **Insured Executive**



or agents or employees of the **Company**), solely in connection with the investigation and evaluation of a **Securities Holder Derivative Demand**.

- D. **"Discovery Period"** means the period set forth in **ITEM 6** of the Declarations, if duly elected and purchased pursuant to Section V. I. of this Policy.
- E. **"Extradition"** means any formal and lawful process or proceeding commenced against an **Insured Executive** located in any jurisdiction in an attempt to obtain the voluntary or involuntary surrender of such **Insured Executive** to another jurisdiction.
- F. **"Insured"** means the **Company** and any **Insured Executive** as delineated in the Insuring Agreements set forth in Section I of this Policy.
- G. **"Insured Executive"** means any or all of the following:
- (1) a past, present or future elected director, appointed officer or elected or appointed member of a board of managers of the **Company**, including any general counsel who is also an employee of the **Company** and other lawyers who are employees of the **Company**; or
 - (2) the functional equivalent of such director, officer or manager of the **Company** when serving in such capacity outside the United States of America; or
 - (3) the lawful spouse or domestic partner of an **Insured Executive**, but solely for a **Wrongful Act** by such **Insured Executive**; or
 - (4) the estate, heirs, legal representatives or assigns of an **Insured Executive**, but solely in the event of his or her death, incapacity or bankruptcy and solely for a **Wrongful Act** by such **Insured Executive**; or
 - (5) any employee of the **Company**, but solely for a **Securities Wrongful Act** by such employee.
- H. **"Interrelated Wrongful Acts"** means **Wrongful Acts** that are logically, causally or otherwise based upon, arising from, resulting from, or in consequence of the same or related facts, circumstances, situations, transactions, causes or events, regardless of whether such **Wrongful Acts** are alleged by way of a single or multiple **Claims** under this Policy or any other policy in effect prior to the inception of this **Policy Period**.
- I. **"Investigative Costs"** means reasonable and necessary expenses incurred by the **Company** or an **Insured Executive**, directly or indirectly through any duly constituted board or committee, incurred in the investigation of a **Securities Holder Derivative Demand**, provided that **Investigative Costs** shall not include salaries, wages, remuneration, overhead or benefit expenses of or associated with any **Insured Executive**.
- J. **"Loss"** means judgment and settlement amounts (including pre- or post-judgment interest, punitive or exemplary damages, and the multiplied portion of any damages award, provided that such amounts are insurable pursuant to the law in any jurisdiction whose law may reasonably be applicable and which does not hold such amounts to be uninsurable), **Investigative Costs** pursuant to Section I. D. of this Policy, and **Defense Expenses** that an **Insured** is legally liable to pay. In determining applicable law with respect to any amounts referenced in this Definition, only the following factors shall be considered:



- (1) the state in which the **Company** is incorporated;
- (2) the state in which the **Company** has its principal place of business;
- (3) the state in which the litigation awarding punitive or exemplary damages was filed and maintained; or
- (4) the state in which any **Wrongful Act** takes place and on which the punitive or exemplary damages award is predicated.

The Insurer shall not challenge any written opinion of counsel retained by or on behalf of an **Insured** asserting that the award of punitive or exemplary damages at issue is insurable, provided that such counsel is duly licensed to practice law in the jurisdiction whose law is opined to be applicable and such counsel agrees in writing that the Insurer is a party that may rely upon its opinion.

Loss shall also include taxes imposed by law upon any **Insured Executive** in his or her capacity as such solely in connection with any bankruptcy, receivership, conservatorship or liquidation of the **Company**, provided always that such taxes are insurable under applicable law.

Loss shall also include reasonable and necessary fees and expenses incurred with the prior written consent of the Insurer and by the Chief Executive Officer or Chief Financial Officer of the **Company** solely to facilitate the return of any amounts required to be repaid by such Chief Executive Officer or Chief Financial Officer pursuant to § 304 (a) of the Sarbanes-Oxley Act of 2002, exclusive of the actual amounts required to be repaid pursuant to § 304 (a) of the Sarbanes-Oxley Act of 2002.

With regard to any portion of a settlement, judgment, or **Defense Expenses** that is predicated on liability arising under Section 11, 12 or 15 of the Securities Act of 1933 or any amendments thereto, the Insurer shall not contend that such portion is uninsurable as a matter of law.

Loss shall in no event include the following:

- (1) taxes (other than when imposed as described above in this Definition);
- (2) the cost of complying with any non-monetary relief;
- (3) any amounts otherwise uninsurable pursuant to applicable law;
- (4) fines and penalties, except for civil penalties imposed upon an **Insured Executive** pursuant to the Foreign Corrupt Practices Act (FCPA).; and
- (5) any costs incurred in connection with the testing, monitoring, clean-up, removal, containment, treatment, detoxification, neutralizing or assessment of the effects of **Pollutants**.

K. "**Outside Wrongful Act**" means an actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by an **Insured Executive**, while serving in the capacity of a director, officer, trustee, regent, or governor or functional equivalent of the foregoing, of an **Outside Entity** or any matter asserted against an **Insured Executive** solely by reason of his or her status as such.

L. "**Outside Entity**" means any entity, other than the **Company**, which is:



- (1) a not-for-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986;
 - (2) an entity organized for a religious or charitable purpose under any not-for-profit statute; or
 - (3) an entity listed as an **Outside Entity** in a written endorsement issued by the Insurer to form a part of this Policy.
- M.** “**Policy Period**” means the period set forth in **ITEM 2** of the Declarations, or any shorter period resulting from termination of this Policy pursuant to its terms and conditions.
- N.** “**Pollutants**” means any solid, liquid, gaseous or thermal irritant, or contaminant, including, smoke, vapor, soot, fumes, acids, alkalis, chemicals, asbestos or asbestos-containing products, or waste. Waste includes material to be recycled, reconditioned or reclaimed.
- O.** “**Securities Holder Derivative Demand**” means any written demand by a securities holder of the **Company**, in her, his or its capacity as such, upon the **Company** or one or more **Insured Executives** to commence a civil judicial proceeding against any **Insured Executives for Wrongful Acts** of such **Insured Executives**.
- P.** “**Securities Wrongful Act**” means any actual or alleged act based upon or arising from the purchase or sale or offer to purchase or sell securities issued by the **Company** in the open market or in a direct transaction with the **Company**. **Securities Wrongful Act** shall also mean any breach of fiduciary duty or other act on the part of an **Insured Executive** in an action brought by any securities holder of the **Company** derivatively on the **Company’s** behalf.
- Q.** “**Subsidiary**” means any corporation or other entity, in which and solely during the time period when, the **Company** owns, directly or through one or more other **Subsidiaries**:
- (1) more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of the directors of such entity; or
 - (2) the right to elect, appoint or designate more than fifty percent (50%) of the members of any board of managers of such entity.
- R.** “**Wrongful Act**” means:
- (1) an actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty or **Wrongful Employment Practice** by an **Insured Executive** in her or his capacity as such;
 - (2) any matter asserted against an **Insured Executive** solely by reason of his or her status as such; or
 - (3) an **Outside Wrongful Act**; or
 - (4) a **Securities Wrongful Act** by an **Insured Executive** in her or his capacity as such or by the **Company**.



- S. “Wrongful Employment Practice”** means any of the following alleged by an employment applicant, employee, or former employee of the **Company** or an **Outside Entity**:
- (1) violation of any federal, state or local law applicable to employment discrimination or sexual or other workplace harassment; or
 - (2) retaliatory or other adverse employment action against an individual on account of such individual’s exercise or attempted exercise of rights protected by law, refusal to violate any law, or on account of the individual having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law; or
 - (3) wrongful termination of employment, including constructive or retaliatory discharge; or
 - (4) wrongful deprivation of career opportunity, refusal to hire in violation of any applicable federal, state or local law, employment-related misrepresentation, failure to promote, or wrongful discipline, demotion, or evaluation.

III. EXCLUSIONS

The Insurer shall not pay **Loss** in connection with that portion of any **Claim** made against an **Insured Executive** for any **Wrongful Act**, or against the **Company** for a **Securities Wrongful Act** that is:

- A.** a wrongful act, circumstance, incident or potential or actual claim that has been reported to and accepted by any insurer providing similar type insurance as provided by this Policy to any **Insured Executive** or the **Company** under a policy in force prior to the inception date of the **Policy Period**;
- B.** for emotional distress, mental anguish, humiliation, outrage, libel, slander or other defamation (except when any or all of the foregoing are alleged to be employment-related), physical or bodily injury, sickness, disease, death, invasion of privacy, trespass, nuisance or wrongful entry or eviction, assault, battery or loss of consortium, or for damage to or destruction of any tangible (real or personal) property, including loss of use or diminution of value thereof;
- C.** for any violation of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, or any similar law;
- D.** for:
 - (1) deliberately fraudulent, or deliberately criminal act or deliberately fraudulent or deliberately criminal omission or any deliberate violation of any statute, rule, or law by the **Company** or an **Insured Executive**; or
 - (2) profit or remuneration gained by the **Company** or any **Insured Executive** to which she, he or it is not legally entitled. This subparagraph D.(2) exclusion shall not apply with regard to any portion of a settlement or judgment that is predicated on liability arising under Section 11 or 12 of the Securities Act of 1933 or any amendments thereto; or
 - (3) for any “short swing” profit amounts in violation of Section 16 (b) of the Securities Exchange Act of 1934;

provided that the acts or conduct underlying the foregoing exclusions in this Section III. D. are determined by a final adjudication, after exhaustion of all appeals (including petitions for rehearing), in the underlying action establishes that such **Insured Executive** committed such act, omission or violation, or gained such profit or remuneration. These exclusions shall not be applicable to that part of **Loss**, which is comprised of **Defense Expenses**;

- E. based upon, arising from, or in any way related to any prior or pending litigation or proceeding against any **Insureds** as of the applicable Prior Litigation Date set forth in **ITEM 7** of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such litigation or proceeding;
- F. based upon, arising from, or in any way related to unpaid wages (including overtime pay), workers' compensation benefits, unemployment compensation, disability benefits, improper payroll deductions, improper employee classification, failure to maintain accurate time records, failure to grant meal and rest periods, or social security benefits;
- G. based upon, arising from, or in any way related to a violation of the Fair Labor Standards Act (FLSA), Worker Adjustment and Retraining Notification Act (WARN), the National Labor Relations Act (NLRA), the Occupational Safety and Health Act (OSHA), the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), or any rule or regulation promulgated thereunder, or similar federal, state, local, or common law, rules or regulations;
- H. a **Claim** brought or maintained by or on behalf of a **Company** or **Outside Entity**, against:
 - (1) any other **Company** or **Outside Entity**; or
 - (2) an **Insured Executive** in any **Company** or **Outside Entity**, except with regard to any **Claim** that is brought:
 - (a) outside of United States of America or Canada;
 - (b) as a securities holder derivative action; or
 - (c) by or on behalf of any Examiner, Trustee, Receiver, Liquidator, Creditors Committee of the **Company** or **Outside Entity** or any assignee thereof.
- I. a settlement or judgment amount that represents the amount by which the purchase price or consideration is effectively increased in connection with a **Claim** alleging that the price or consideration paid or proposed to be paid in a transaction involving all or substantially all of the ownership interest in or assets of any entity is inadequate, as well as plaintiff counsel fees and costs awarded or settled as part of such **Claim**; or
- J. based upon, arising from, or in any way related to the liability of others assumed by an **Insured** under any employment contract or agreement; provided, however, this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement.

Unless otherwise provided by way of endorsement to this Policy, neither the intent, knowledge nor **Wrongful Act** of any **Insured Executive** or the **Company** shall be imputed to any other **Insured Executive** to determine the application of the foregoing exclusions.

IV. REPORTING OF WRONGFUL ACTS, CIRCUMSTANCES AND CLAIMS

- A.** If, during the **Policy Period** or **Discovery Period**, if applicable, any **Insured** first becomes aware of a **Wrongful Act** or circumstances that might reasonably give rise to a **Claim** for a **Wrongful Act** and if, during the **Policy Period** or **Discovery Period**, if applicable, the **Insured** provides the Insurer with written notice of the specific circumstances and actual, alleged or potential **Wrongful Act**, the consequences which have resulted or may result from such **Wrongful Act** or circumstances (including but not limited to actual or potential damages), the identities or descriptions of potential claimants, and the manner in which the **Insured** first became aware of such circumstances or **Wrongful Act**, then, any **Claim** subsequently made arising from such **Wrongful Act** or circumstances will be treated as if it had been first made during the **Policy Period**.
- B.** Any and all **Claims** and **Securities Holder Derivative Demands** shall be reported to the Insurer as soon as practicable after they are first made against an **Insured** and first known by either the **Company's** chief executive officer, chief financial officer, chief operating officer, general counsel or risk manager but in no event later than one hundred twenty (120) days after the termination of the **Policy Period**, and by the end of any **Discovery Period**, if applicable. If the **Company** proves to the Insurer's satisfaction, however, that it was not reasonably possible to provide such notice within the one hundred twenty (120) day time period and that the later notice was given as soon as reasonably possible thereafter, the Insurer agrees to waive the foregoing time period for reporting.
- C.** All notices intended for the Insurer under this Policy, whether with regard to **Claims**, **Wrongful Acts**, circumstances or any other matter pertaining to this Policy, should be directed to the appropriate address set forth in **ITEM 9** of the Declarations.

V. COVERAGE EXTENSIONS

A. Spouses and Domestic Partners

Coverage under this Policy shall extend to the lawful spouse or domestic partner of an **Insured Executive** for a **Claim** made against such spouse or domestic partner, provided that:

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



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

B. Estates and Legal Representatives

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

VI. GENERAL CONDITIONS

A. Limits of Liability, Retentions and Indemnification

The Insurer's maximum aggregate liability for all **Loss**, on account of all **Claims** first made during the **Policy Period** shall be the Limit of Liability set forth in **ITEM 3** of the Declarations. **Defense Expenses** shall be part of and not in addition to such Limit of Liability and shall reduce and may exhaust the Limit of Liability.

The Insurer shall have no obligation to pay **Loss**, including **Defense Expenses**, after the Limit of Liability has been exhausted.

The Insurer shall have no obligation to pay **Loss**, including **Defense Expenses**, unless and until the applicable Retention set forth in **ITEM 5** of the Declarations is satisfied. The Retention and payment of any defense expenses, settlement or judgment amount within the Retention shall be the responsibility of the **Insureds**, each according to their interest, and shall not be insured under any policy of insurance. There shall be no retention amount for either **Insuring Agreement I A. "Executive Liability"** or **Insuring Agreement I D. "Securities Holder Derivative Demand Investigative Liability"**.

If a **Claim** is covered under more than one Insuring Agreement set forth in Section I. of this Policy and where such Insuring Agreements are each subject to a Retention, then the applicable Retentions will apply severally, but the maximum total Retention shall in no event exceed the amount of the largest applicable Retention.

If the **Company** is permitted or required by applicable law to indemnify the **Insured Executives** or advance **Defense Expenses** on their behalf, but refuses in writing or otherwise fails to indemnify, advance or otherwise pay such **Insured Executives** (other than for the fact that it is financially insolvent as defined in the United States Bankruptcy Code), then the Insurer shall advance such **Defense Expenses** under this Policy, subject to and in reduction of the applicable Limit of Liability set forth in **ITEM 3** of the Declarations, until such time that the **Company** accepts its obligation or the Retention amount set forth in **ITEM 5** of the Declarations as being applicable to the Insuring Agreement set forth in Section I.B. is satisfied.

B. Defense and Settlement

The **Insured** shall have the right to select counsel with respect to the defense of any **Claim** under this Policy, subject to the consent of the Insurer, which shall not be unreasonably withheld. Otherwise, the **Insured** may only incur **Defense Expenses** or admit liability for, make any settlement offer with respect to, or settle any **Claim** without the Insurer's consent during the period within thirty (30) days prior to report of such **Claim** pursuant to Section IV. of this Policy.

The Insurer will pay on a current basis, i.e. no later than ninety (90) days after receipt by the Insurer of appropriately itemized invoices, all reasonable and necessary **Defense Expenses** before the disposition of the **Claim** for which this Policy provides coverage. In the event of such advancement, the **Insureds** agree that they shall repay the Insurer, severally according to their interests, any **Loss**, including **Defense Expenses** paid pursuant to a written reservation of the Insurer's rights, if it is finally determined in any judicial or alternative dispute resolution proceeding that the **Loss** incurred is not covered under this Policy. Such repayment obligation, however, shall not apply with respect to any **Defense Expenses** that become uninsured pursuant to Section III, D. of this Policy, unless there has been a final adjudication as described therein.

The **Insureds** may also settle any **Claim** without the Insurer's prior written consent only if the amount of the settlement plus **Defense Expenses** does not exceed the amount of the applicable Retention set forth in **ITEM 5** of the Declarations. In all such instances, however, the Insurer must be promptly provided with any requested information and documents with respect to such settled **Claim**.

C. Other Insurance

This Policy shall only apply specifically excess of and in no event shall be contributory with any valid and collectible policy of insurance providing coverage to an **Insured**, regardless of whether such other insurance is stated to be primary, contributory, contingent, excess or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's policy number.

D. Assistance and Cooperation

The **Insured Executives** and the **Company** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and agree that they will do nothing which in any way increases the Insurer's exposure under this Policy or in any way prejudices the Insurer's potential or actual rights of recovery against any party after a **Claim** is first made against an **Insured**.

Unless prohibited by applicable law or as a result of financial insolvency, the **Company** shall satisfy all of its indemnification and advancement obligations to the **Insured Executives** upon their written request to do so. The **Insured Executives**, upon the Insurer's request, agree to cooperate fully with the Insurer in the pursuit of all appropriate permissive or mandatory indemnification and advancement from any and all sources.

E. Subrogation

This Policy has been issued to the **Company** in consideration of the **Company's** agreement to honor its indemnification and advancement obligations to the **Insured Executives** to the fullest extent of all applicable law, any charter or by-law provision with regard to indemnification or advancement of **Defense Expenses**, and any other contract or agreement providing for the indemnification, or advancement of **Defense Expenses** of or to **Insured Executives**.

In the event of any payment under this Policy, including **Loss** payments that the Insurer makes in the event the **Company** fails to honor its indemnification and advancement obligations described in the previous paragraph, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the **Company** and/or the **Insured Executives**. The **Company**, through its employees or other agents, and the **Insured Executives** shall

execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require. The Insurer does not waive, compromise or release any of its rights to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed.

The Insurer shall not be entitled to subrogation against any **Insured Executive** based upon conduct within the scope of any of the exclusions set forth in Section III. D. of this Policy unless there has been a final adjudication as otherwise prescribed in that Section III, D.

F. Transactions and Change in Control During the Policy Period

- (1) If, during the **Policy Period**, the **Company** consummates any of the following transactions:
- (a) makes an asset acquisition; or
 - (b) acquires any entity, including one that is a **Subsidiary**; or
 - (c) assumes the liability of another entity,

then, insurance under this Policy shall only apply to a **Claim** for a **Wrongful Act** made against an **Insured**, provided that such **Wrongful Act** is committed or alleged to have been committed after such transaction closes.

- (2) If, during the **Policy Period**, any entity ceases to be a **Subsidiary**, such **Subsidiary** and its **Insured Executives** shall only be covered under this Policy with respect to a **Claim** for a **Wrongful Act** that occurred or allegedly occurred prior to the time such entity ceased to be a **Subsidiary**.
- (3) If, during the **Policy Period**, there is a "change in control" of the **Company** listed in **ITEM 1** of the Declarations, the coverage provided under this Policy shall continue to apply but only with respect to a **Claim** for a **Wrongful Act** occurring prior to the time of the "change in control". The entire premium for the Policy will be deemed to be fully earned immediately upon the consummation of the "change in control" transaction.

"Change in control" means:

- (a) the merger or acquisition of the entity listed in **ITEM 1** of the Declarations, or of all or substantially all of its assets, by any other entity such that another entity becomes the surviving entity; or
- (b) the acquisition by any person, entity, or affiliated group or persons or entities of the right to vote for, select, or appoint more than fifty percent (50%) of the directors of the entity listed in **ITEM 1** of the Declarations.

G. Claims Arising From Interrelated Wrongful Acts

All **Claims** arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the time at which the earliest such **Claim** is made or deemed to have been made, regardless of whether such time is during the **Policy Period** or prior thereto.

H. Cancellation or Non-Renewal of Policy

- (1) The **Company** as listed in **ITEM 1** of the Declarations or any duly authorized party acting on its behalf shall have the exclusive right to cancel this Policy on behalf of any or all **Insureds**. Such cancellation may be effected by mailing to the Insurer written notice stating when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in **ITEM 2 (B)** of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the premium. Return or tender of the unearned premium is not a condition of cancellation.
- (2) The Insurer may cancel this Policy only for nonpayment of premium. In such event, the Insurer will deliver or mail written notice of cancellation to the **Company** at the address stated in **ITEM 1** of the Declarations not less than twenty (20) days before the effective date of cancellation. The notice will state the reason for cancellation.
- (3) The Insurer is under no obligation to renew this Policy upon its expiration. Upon the Insurer's election to non-renew this Policy, the Insurer will deliver or mail written notice of non-renewal to the **Company**, at the address listed in **ITEM 1** of the Declarations at least sixty (60) days before the Expiration Date set forth in **ITEM 2 (B)** of the Declarations.

I. Discovery Period

- (1) If either the **Company** or the Insurer does not renew this Policy, the **Insured Executives** or the **Company** shall have the right, upon payment of the additional premium set forth in **ITEM 6** of the Declarations, to an extension of the coverage provided by this Policy with respect solely to any **Claim** first made during the **Discovery Period** set forth in **ITEM 6** of the Declarations, but only with respect to a **Wrongful Act** occurring prior to the Policy Expiration Date.
- (2) As a condition precedent to the right to purchase the **Discovery Period**, the total premium for this Policy must have been paid in full. The right of the **Insureds** to purchase the **Discovery Period** will be immediately terminated if the Insurer does not receive written notice from or on behalf of an **Insured** advising that any or all **Insureds** wish to purchase the **Discovery Period** together with full payment of the premium for the **Discovery Period** on a non-refundable basis within thirty (30) days after the Policy Expiration Date.
- (3) The purchase of the **Discovery Period** will not in any way increase the Limit of Liability set forth in **ITEM 3** of the Declarations, and the Limit of Liability with respect to **Claims** made during the **Discovery Period** shall be part of and not in addition to the Limit of Liability for all **Claims** made during the **Policy Period**.

J. Representations, Non-Rescindability and Severability

The insurance provided under the Insuring Agreement set forth in Section I. A. of this Policy shall not be rescindable under any circumstances.



The application(s) for insurance under this Policy shall be construed as separate application(s) for each **Insured Executive** and the **Company**. The Insurer and all **Insureds** agree that in issuing this Policy, the Insurer has relied upon all representations, documents and information submitted in or in connection with the application(s), and such application(s) are deemed incorporated into and a part of this Policy. Each **Insured Executive** and the **Company** represents that, to the best of his, her or its knowledge, the statements and particulars contained in the application(s) are true, accurate and complete.

No knowledge or information possessed by any **Insured** will be imputed to any **Insured Executive**, other than the **Insured Executive** possessing such knowledge or information, for the purposes of determining the availability of insurance with respect to **Claims** made against such other **Insured Executive** or with respect to any rescission of this Policy. However, the knowledge of the signatory on any application(s), any chief executive officer, and any chief financial officer shall be imputed to the **Company** with respect to rescission or insurance available pursuant to the Insuring Agreements set forth in Sections I. B., C., and D. of this Policy.

K. No Action Against the Insurer and No Assignment

- (1) Except for an action undertaken by or on behalf of an **Insured**, no action may be taken against the Insurer unless, as a condition precedent thereto:
 - (a) there has been full compliance with all of the terms and conditions of this Policy; and
 - (b) the amount of any liability of the **Insured** has been finally determined either by judgment against such **Insured** after actual trial, or by written agreement of the **Insured**, the claimant and the Insurer.
- (2) Nothing contained herein shall give any person or entity the right to join the Insurer as a party to any **Claim** against an **Insured** to determine its liability, nor may an **Insured** implead or join the Insurer in any such **Claim**.
- (3) Assignment of the interest of any **Insured** under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

L. Authorization and Notices

The **Company** as set forth in **ITEM 1** of the Declarations will act on behalf of any and all **Insureds** with respect to the giving and receiving of notices involving the Insurer and this Policy, as well as payment and any other action with regard to premiums.

M. Entire Agreement

The **Insureds** agree that the Declarations, the Policy, including any endorsements and attachments, and all application(s) for the Policy shall constitute the entire agreement between the Insurer and the **Insureds** in relation to the insurance afforded under the Policy.

Notice to any agent or knowledge possessed by any agent or other person acting or purporting to act on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and



limitations of this Policy. The terms, conditions and limitations of this Policy may only be waived or changed by written endorsement to the Policy signed by the Insurer.

N. Territory and Currency

Insurance provided under this Policy shall apply to **Claims** that are made anywhere in the world.

The premiums, limits, **Loss** and other amounts set forth in this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, a 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 such dollars at the applicable rate of currency exchange published in *The Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Loss** is due.

O. Insolvency of the Company and Waiver of Automatic Stay in Bankruptcy

In the event that an insolvency or bankruptcy proceeding is commenced by or against the **Company**, the **Company**, the **Insured Executives** and the Insurer waives and releases any automatic stay or injunction which may apply to its benefit and advantage in such proceeding in connection with this Policy or its proceeds, and agrees not to oppose or object to any efforts by the Insurer or any **Insured Executive** to obtain relief from any such stay or injunction that may be applied against their interests.

However, the rights of an **Insured Executive** or the **Company** under this Policy shall not otherwise be affected by the bankruptcy or insolvency of the **Company** or any **Insured Executive**.

P. Headings and Titles

Any headings or titles used with respect to any section or sub-section in this Policy are solely for descriptive convenience and shall not be construed as substantive provisions for purposes of interpreting any provision in the Policy.

Q. Priority of Payments

If any amount sought as **Loss** payable under this Policy exceeds the available Limits of Liability or is subject to competing claims of different **Insureds**, then **Loss** shall be paid not exceeding the available Limits of Liability in the following order of priority:

- (1) First to **Loss** covered under Section I.A.;
- (2) Second to **Loss** covered under Sections I. B., C., or D. of this Policy at the election of the **Company** as to the timing of payment and applicable Section.

R. Conformity to Statute and Regulation

If any provision in this Policy conflicts with any mandatory applicable law, regulation or rule or the provisions of a state amendatory endorsement attached to this Policy as required by applicable state insurance law, regulation or rule, then the terms of such law, regulation, rule or amendatory endorsement shall apply in place of the Policy provision.