



Directors & Officers Side A Statement

SIDE A DIRECTORS & OFFICERS LIABILITY INSURANCE POLICY

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In consideration of the payment of the premium, and each of their respective rights and obligations in this policy, the **Insureds** and the **Insurer** agree as follows:

1. INSURING AGREEMENTS

All coverage granted for **Loss** under this policy is provided solely with respect to **Claims** first made against an **Insured** during the **Policy Period** or any applicable **Discovery Period** and reported to the **Insurer** as required by this policy. Subject to the foregoing and the other terms, conditions and limitations of this policy, this policy affords the following coverage:

A. *Non Indemnified Loss Coverage*

The **Insurer** shall pay the **Non Indemnified Loss** of any **Insured** arising from any **Claim** made against such **Insured**.

2. EXTENSIONS

A. *Worldwide And Cross-Border*

- | | |
|---|---|
| (1) <i>Worldwide Territory</i> | The coverage afforded by this policy shall apply anywhere in the world. |
| (2) <i>Global Liberalization</i> | For Loss from that portion of any Claim maintained in a Foreign Jurisdiction or to which the law of a Foreign Jurisdiction is applied, the Insurer shall apply the terms and conditions of this policy as amended to include those of the Foreign Policy in the Foreign Jurisdiction that are more favorable to Insureds in the Foreign Jurisdiction . This <i>Global Liberalization Clause</i> shall not apply to any provision of any policy addressing limits of liability (primary, excess or sublimits), retentions, other insurance, nonrenewal, duty to defend, defense within or without limits, taxes, conformance to law or excess liability coverage, any claims made provisions, and any endorsement to this policy that excludes or limits coverage for specific events or litigation or that specifically states that it will have worldwide effect. |
| (3) <i>Passport Master Policy Program</i> | If the Passport option box has been checked on the Declarations, then this policy shall act as a master policy and the coverage afforded by this policy shall be provided in conjunction with the Passport foreign underlyer policy issued in each jurisdiction selected by the Named Entity . The specific structure of the coverage provided by this master policy in conjunction with each Passport foreign underlyer policy is set forth in the Passport Structure Appendix attached to this policy. |

B. *Spousal, Domestic Partner And Legal Representative*

If a **Claim** against an **Insured** includes a **Claim** against: (1) the spouse or domestic partner (as recognized under applicable law or the provisions of any formal program or policy established by an **Organization**) of such **Insured**; or (2) a property interest of such spouse or domestic partner, and such **Claim** arises from any actual or alleged **Wrongful Act** of such **Insured** which occurred during the time when such **Insured** met the definition of **Insured**, this policy shall pay **Loss** arising from the **Claim** made against such spouse or domestic partner or the property of such spouse or domestic partner to the extent that such **Loss** does not arise from a **Claim** for any actual or alleged act, error or omission of such spouse or domestic partner. This policy shall pay **Loss** arising from a **Claim** made against: (a) the estates, heirs or legal representatives of any deceased **Insured**; (b) any trust or estate planning vehicle of an **Insured**; or (c) the legal representatives of any **Insured** in the event of incompetence, insolvency or bankruptcy; but only with respect to **Wrongful Acts** which are



alleged to have been committed by such **Insured** during the time that such **Insured** met the definition of **Insured**.

C. Bankruptcy And Insolvency

Bankruptcy or insolvency of any **Organization** or any **Insured** shall not relieve the **Insurer** of any of its obligations under this policy.

In such event, the **Insurer** and each **Organization** and **Insured** agree to cooperate in any efforts by the **Insurer** or any **Organization** or **Insured** to obtain relief for the benefit of the **Insured** from any stay or injunction applicable to the payment of this policy's proceeds.

In the event that any **Insured** seeks any order, ruling or other determination from any court or other authority directing that amounts may be paid under this policy notwithstanding the **Financial Insolvency** of any **Organization**, then all reasonable fees, costs and expenses incurred by an **Insured** with respect to such request shall be considered **Defense Costs** within the meaning of this policy.

3. EXCLUSIONS

A. Exclusions

The **Insurer** shall not be liable to make any payment for **Loss**:

- | | |
|---|---|
| (1) <i>Conduct</i> | in connection with any Claim arising out of, based upon or attributable to any:
(a) remuneration, personal profit or other financial advantage to which an Insured was not legally entitled; or
(b) deliberate criminal or deliberate fraudulent act by the Insured ;
if established by any final, non-appealable adjudication in any action or proceeding other than an action or proceeding initiated to determine coverage under the policy; provided, however:
(i) Conduct exclusion subparts (a), above, shall not apply in a Securities Claim alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, to the portion of any Loss attributable to such violations; and
(ii) with respect to Conduct exclusion subpart (b), for acts or omissions which are treated as a criminal violation in a Foreign Jurisdiction that are not treated as a criminal violation in the United States of America, the imposition of a criminal fine or other criminal sanction in such Foreign Jurisdiction will not, by itself, be conclusive proof that a deliberate criminal or deliberate fraudulent act occurred; |
| (2) <i>Pending & Prior Litigation</i> | in connection with any Claim arising out of, based upon or attributable to, as of the Continuity Date , any pending or prior: (a) litigation; or (b) administrative or regulatory proceeding or investigation of which any Insured had notice; or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation; |

B. Severability Of Conduct Exclusion

In determining whether the *Conduct* exclusion applies, the **Wrongful Acts** of any **Insured** shall not be imputed to any other **Insured**.



4. POLICY LIMITS

The **Limit of Liability** stated in the Declarations is the aggregate limit of the **Insurer's** liability for all **Loss** under this policy. The **Limit of Liability** and all sublimits of liability are collectively referred to in this policy as the "**Policy Limits**".

Each aggregate sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Loss** under this policy that is subject to that aggregate sublimit of liability. Each per **Executive** sublimit of liability in this policy is the maximum limit of the **Insurer's** liability for all **Loss** of each **Executive** under this policy that is subject to that per **Executive** sublimit of liability. All sublimits of liability shall be part of, and not in addition to, the **Limit of Liability**. Each per **Executive** sublimit of liability shall be part of, and not in addition to, its corresponding aggregate sublimit of liability.

The **Policy Limits** for the **Discovery Period** shall be part of, and not in addition to, the **Policy Limits** for the **Policy Period**. Further, all **Claims** that are deemed made during the **Policy Period** or **Discovery Period** pursuant to Clause 5.B. *Notice And Reporting*, shall also be subject to the applicable **Policy Limits** set forth in this policy.

Defense Costs are not payable by the **Insurer** in addition to the **Policy Limits**. **Defense Costs** are part of **Loss** and as such are subject to the **Policy Limits**.

5. NOTICE AND REPORTING

Notice hereunder shall be given in writing to the **Insurer** at the **Claims Address** indicated in the Declarations. If mailed or transmitted by electronic mail, the date of such mailing or transmission shall constitute the date that such notice was given and proof of mailing or transmission shall be sufficient proof of notice.

- A. *Reporting a Claim* As a condition precedent to the obligations of the **Insurer** under this policy, the **Named Entity** or an **Insured** shall notify the **Insurer** in writing of a **Claim** made against an **Insured** as soon as practicable after the **Insured** first becomes aware of the **Claim**. In all such events, notification must be provided no later than:
- (a) prior to the date this policy is canceled, if this policy is canceled;
 - (b) sixty (60) days after the end of the **Policy Period** or the **Discovery Period** (if applicable), if the policy is not canceled but also is not renewed with the **Insurer**; or
 - (c) one hundred and eighty (180) days after the end of the **Policy Period** or **Discovery Period** (if applicable), if the expiring policy is renewed with the **Insurer**.
- B. *Reporting of Potential Claims* If during the **Policy Period** or **Discovery Period** (if applicable) the **Named Entity** or an **Insured** first becomes aware of and notifies the **Insurer** in writing of circumstances that may give rise to a **Claim** being made against an **Insured** and provides details as required below, then any **Claim** that is subsequently made against an **Insured** that arises from such circumstances shall be deemed to have been first made at the time of the notification, provided that such subsequent **Claim** is reported to the **Insurer** in writing as soon as practicable after the **Insured** first becomes aware of such **Claim**. In order to be effective, notification of circumstances must specify the reasons for anticipating such **Claim**, and the underlying facts, circumstances, acts and omissions of such anticipated **Claim**, including full particulars as to dates, persons and entities involved. Coverage for **Loss** arising from any such subsequent **Claim** shall only apply to **Loss** incurred after that subsequent **Claim** is actually made against an **Insured** and reported by



an **Insured** to the **Insurer**.

6. DISCOVERY

- A. *Bilateral Discovery Options* If the policy is canceled or is not renewed, the **Insureds** shall have the right to a **Discovery Period** of one (1) to six (6) years following the effective date of such cancellation or nonrenewal, upon payment of the respective "**Additional Premium Amount**" described below, in which to give to the **Insurer** written notice pursuant to Clause 5.A. and Clause 5.B. of the policy of: (1) **Claims** first made against an **Insured**; and (2) circumstances of which an **Insured** shall become aware, in either such case, during said **Discovery Period** and solely with respect to **Wrongful Acts** (or as regards any **Investigation, Extradition or Inquiry**, to any facts, circumstances, situations, events, transactions or causes) occurring prior to the end of the **Policy Period**.
- The **Additional Premium Amount** for: (a) one (1) year shall be no more than one hundred and twenty five percent (125%) of the **Full Annual Premium**; (b) two (2) to six (6) years shall be an amount to be determined by the **Insurer**. As used herein, "**Full Annual Premium**" means the premium level in effect immediately prior to the end of the **Policy Period**.
- B. *Change in Control Option* In the event of a **Change in Control**, the **Named Entity** and the **Insureds** shall have the right to request an offer from the **Insurer** of a **Discovery Period** (with respect to **Wrongful Acts**, or as regards any **Investigation, Extradition or Inquiry**, to any facts, circumstances, situations, events, transactions or causes, occurring prior to the effective time of the **Change in Control**). The **Insurer** shall offer such **Discovery Period** pursuant to such terms, conditions, exclusions, and additional premium as the **Insurer** may reasonably decide. In the event of a **Change in Control**, the right to a **Discovery Period** shall not otherwise exist except as indicated in this paragraph.
- C. *General Provisions* The **Discovery Period** is not cancelable and the additional premium charged is non-refundable in whole or in part. This Discovery Clause shall not apply to any cancellation resulting from non-payment of premium. The rights contained in this Discovery Clause shall terminate unless written notice by the **Named Entity** or any **Insured** of election of a **Discovery Period**, together with the additional premium due, is received by the **Insurer** no later than thirty (30) days subsequent to the effective date of the cancellation, nonrenewal or **Change in Control**.

7. DEFENSE AND SETTLEMENT

- A. *For Claims*
- (1) *No Duty to Defend or Investigate* The **Insureds** shall defend any **Claim** made against them. The **Insurer** does not assume any duty to defend or investigate.
- (2) *Advancement* Once the **Insurer** has received written notice of a **Claim** under this policy, it shall advance covered **Defense Costs** on a current basis, but no later than ninety (90) days after the **Insurer** has received itemized bills detailing such **Defense Costs** and all other information reasonably requested by the **Insurer** with respect to such bills. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by each and every **Insured**, severally according to their respective interests, in the event



and to the extent that any such **Insured** shall not be entitled under this policy to payment of such **Loss**.

(3) *Claims
Participation and
Cooperation*

The **Insurer** shall have the right, but not the obligation, to fully and effectively associate with each and every **Insured** in the defense and prosecution of any **Claim** that involves, or appears reasonably likely to involve the **Insurer**, including, but not limited to, negotiating a settlement. Each and every **Organization** and **Insured** shall give the **Insurer** full cooperation and such information as it may reasonably require.

The rights of any **Insured** under this policy shall not be impaired by the failure of any other **Insured** or **Organization** to give the **Insurer** cooperation and information as required in the preceding paragraph.

The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs**, without the prior written consent of the **Insurer**.

B. *Allocation*

If both **Loss** covered under this policy and **Loss** not covered under this policy are incurred by the **Insureds**, either because a **Claim** is made against both **Insureds** and others or because a **Claim** pertains to both covered and uncovered **Wrongful Acts, Loss** or matters, such **Loss** shall be allocated between covered **Loss** and uncovered **Loss** based upon the relative legal and financial exposures of the parties to covered and uncovered **Wrongful Acts, Loss** or matters. 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 **Defense Costs** which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined in any arbitration or judicial proceeding pursuant to the provisions of this policy and applicable law.

8. CHANGES TO INSURED

A. *Change In Control*

In the event of a **Change in Control** during the **Policy Period**, this policy shall continue in full force and effect as to **Wrongful Acts**, or as regards any **Investigation, Extradition** or **Inquiry**, to any facts, circumstances, situations, events, transactions or causes, occurring prior to the effective time of the **Change in Control**, but there shall be no coverage afforded by any provision of this policy for any **Wrongful Act**, or as regards any **Investigation, Extradition** or **Inquiry**, to any facts, circumstances, situations, events, transactions or causes, alleged to have occurred after the effective time of the **Change in Control**. This policy may not be canceled after the effective time of the **Change in Control** and no portion of the premium paid for this policy shall be refundable. The **Named Entity** and the **Insureds** shall also have the right to an offer by the **Insurer** of a **Discovery Period** described in the *Change in Control Option* paragraph of Clause 6. *Discovery*.

B. *Subsidiary Additions*

Notwithstanding the definition of **Subsidiary**, any entity with assets exceeding twenty five percent (25%) of the total consolidated assets of each and every **Organization** as reported in the **Named Entity's** most recent public filing which first becomes a **Subsidiary** during the **Policy Period** shall only be a **Subsidiary**: (1) for a period of ninety (90) days from the date the **Named Entity** first had **Management Control** of such entity; or (2) until the end of the **Policy Period**, whichever expires or ends first (the "**Auto-Subsidiary Period**").

The **Insurer** shall extend coverage for any **Insured** of any such **Subsidiary** beyond such **Subsidiary's** respective **Auto-Subsidiary Period** if during such **Auto-Subsidiary Period**, the **Named Entity** provides the **Insurer** with full particulars of the new **Subsidiary** and agrees to any additional premium and amendment of the provisions of this policy required by the **Insurer** relating to such **Subsidiary**. Further, coverage as shall be



afforded to such **Insureds** is conditioned upon the **Named Entity** paying when due any additional premium required by the **Insurer** relating to such **Subsidiary**.

C. Scope Of Subsidiary Coverage

Coverage as is afforded under this policy with respect to a **Claim** made against any **Insured** of any **Subsidiary** shall only apply to **Wrongful Acts** occurring, or as regards any **Investigation**, **Extradition** or **Inquiry**, to any facts, circumstances, situations, events, transactions or causes occurring, during the time when such **Subsidiary** is a **Subsidiary**.

9. APPLICATION AND UNDERWRITING

A. Application And Reliance

The **Insurer** has relied upon the statements, warranties and representations contained in the **Application**, and all such statements, warranties and representations are to be considered as incorporated into this policy.

B. Non-Rescindable

Under no circumstances shall the coverage provided by this policy be deemed void, whether by rescission or otherwise, once the premium has been paid.

C. Severability Of The Application

The **Application** shall be construed as a separate application for coverage by each **Insured**. With respect to the **Application** no knowledge possessed by any **Insured** shall be imputed to any **Insured**.

10. GENERAL TERMS AND CONDITIONS

A. Payments And Obligations Of Organizations And Others

1. INDEMNIFICATION BY ORGANIZATIONS

The **Organizations** agree to indemnify the **Insureds** and/or advance **Defense Costs** to the fullest extent permitted by law. If the **Insurer** pays under this policy any indemnification or advancement owed to any **Insured** by any **Organization**, then that **Organization** shall reimburse the **Insurer** for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Organization** to the **Insurer**. The failure of an **Organization** to perform any of its obligations to indemnify the **Insureds** and/or advance **Defense Costs** under this policy shall not impair the rights of any **Insured** under this policy. In no event shall any advancement by the **Insurer** relieve any **Organization** of any duty it may have to provide advancement, make any payment or provide indemnification to any **Insured**.

2. OTHER INSURANCE AND INDEMNIFICATION

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance available to an **Insured**, including, but not limited to, any directors and officers liability, employment practices liability, fiduciary and employee benefit plan liability, professional liability, cyber and general liability insurance policy, unless such other insurance is specifically written as 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**. Notwithstanding the foregoing, such insurance as is provided by this policy shall apply as primary to any personal management, professional or "umbrella excess" liability insurance purchased by or on behalf of an **Insured**.

In the event of a **Claim** made against an **Outside Entity Executive**, coverage as is afforded by this policy shall be specifically excess of: (a) any indemnification provided by an **Outside Entity**; and (b) any valid and collectible insurance coverage afforded to an **Outside Entity** or its **Executives** applicable to such **Claim**. Further, in the event such other **Outside Entity** insurance is provided by the **Insurer** or any other insurance



company affiliate thereof ("**Other Policy**"), 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 recoverable under such **Other Policy** for loss incurred in connection with such **Claim**. In no event shall any advancement by the **Insurer** relieve any **Outside Entity** of any duty it may have to provide advancement, make any payment or provide indemnification to any **Insured**.

In the event that an insurer providing coverage to which this policy is excess fails to pay **Loss** covered under this policy, the **Insurer** shall advance and indemnify such **Loss** unless and until such other insurance pays. If and to the extent the **Insurer** pays **Loss** covered by other insurance to which this policy is excess, the **Insurer** shall be subrogated to the **Insureds'** rights of recovery under such other insurance and the **Insureds** will comply with Clause 10.A.3. *Subrogation* to secure such rights.

3. SUBROGATION

To the extent of any payment under this policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery. Each **Insured** shall execute all papers reasonably required and provide reasonable assistance and cooperation in securing or enabling the **Insurer** to exercise subrogation rights or any other rights, directly or in the name of the **Organization** or any **Insured**.

In no event, however, shall the **Insurer** exercise its rights of subrogation against an **Insured** under this policy unless the *Conduct* exclusion applies with regard to such **Insured**.

4. RECOVERY OF LIMITS

In the event the **Insurer** recovers amounts it paid under this policy, the **Insurer** will reinstate the **Policy Limits** of this policy to the extent of such recovery, less its costs incurred in administering and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts paid under this policy.

B. Relationship Of Claims

All **Claims**, including any **Investigation**, official request for **Extradition** or **Inquiry**, involving, in whole or part, the same **Wrongful Act** or any **Related Wrongful Acts**, or the same or related facts, circumstances, situations, events, transactions or causes, whether involving the same or different claimants or **Insureds**, shall be deemed to be a single **Claim** first made on the earliest of the following dates, regardless of whether such date is prior to or during the **Policy Period**:

- (1) the earliest date that any such **Claim** was made or deemed to have been made;
- (2) the date any such **Claim** was deemed made pursuant to Clause 5.B.; or
- (3) the earliest date that such **Wrongful Act**, any **Related Wrongful Acts**, fact, circumstance, situation, event, transaction or cause was reported under any other policy providing the same or similar coverage.

No coverage is provided by this policy for any **Claim** first made, or deemed first made, prior to the **Policy Period**.

C. Cancellation

The **Named Entity** may cancel this policy at any time by mailing written prior notice to the **Insurer** or by surrender of this policy to the **Insurer** or its authorized agent. This policy may only be canceled by or on behalf of the **Insurer** in the event of non-payment of premium by the **Named Entity**. In the event of non-payment of premium by the **Named Entity**, the **Insurer** may cancel this policy by delivering to the **Named Entity** or by mailing to the **Named Entity**, by registered, certified, or other first class mail, at the **Named Entity Address**, written notice stating when, not less than fifteen (15) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice. The **Policy Period** terminates at the date and hour specified in such notice, or at the date and time of surrender. The **Insurer** shall have the right to the premium amount for the portion of the **Policy Period** during which the policy was in effect. If the **Named Entity** shall cancel this policy, the **Insurer** shall retain the *pro rata* proportion of the



premium herein.

D. Consent

Wherever in this policy or any endorsement thereto a provision requires the consent of the **Insurer** or any **Insured**, such consent shall not be unreasonably withheld.

E. Notice And Authority

The **Named Entity** shall act on behalf of each and every **Insured** with respect to the giving of notice of a **Claim** or circumstance, the giving and receiving of notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this policy, and the receipt and acceptance of any endorsements issued to form a part of this policy and the exercising or declining of any right to a **Discovery Period**; provided, however, that the foregoing shall not limit the ability of any **Insured** to provide notice of a **Claim** or circumstance in accordance with Clause 5. *Notice And Reporting*, or to elect discovery and pay the **Additional Premium Amount** (as defined in Clause 6. *Discovery*).

F. Currency

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 other elements of **Loss** are stated or incurred in a currency other than United States of America dollars, payment of **Loss** due under this policy (subject to the terms, conditions and limitations of this policy) will be made either in such other currency (at the option of the **Insurer** and if agreeable to the **Named Entity**) or, in United States of America dollars, at the rate of exchange published in The Wall Street Journal on the date the **Insurer's** obligation to pay such **Loss** is established (or if not published on such date the next publication date of The Wall Street Journal).

G. Assignment

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

H. Disputes

1. ALTERNATIVE DISPUTE RESOLUTION

ADR Options

All disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **Loss**, shall be submitted to an alternative dispute resolution (ADR) process as provided in this clause. The **Named Entity** may elect the type of ADR process discussed below; provided, however, that absent a timely election, the **Insurer** may elect the type of ADR. In that case, the **Named Entity** shall have the right to reject the **Insurer's** choice of the type of ADR process at any time prior to its commencement, after which, the **Insured's** choice of ADR shall control.

Mediation

In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until sixty (60) days after the mediator has provided written notice to the parties of the mediation's termination. However, in the event that the applicable statute of limitations shall expire during such sixty (60) day period, the **Insurer** and **Insureds** agree to toll such statute of limitations by the number of days necessary to allow either party to commence a judicial proceeding at any time within such sixty (60) day period.

Arbitration

In the event of arbitration, the decision of the arbitrator(s) shall be final, binding and provided to both parties, and the arbitration award shall not include attorney's fees or other costs.



ADR Process

Selection of Arbitrator(s) or Mediator: The **Insurer** and the **Named Entity** shall mutually consent to: (1) in the case of arbitration, an odd number of arbitrators which shall constitute the arbitration panel, or (2) in the case of mediation, a single mediator. The arbitrator, arbitration panel members, or mediator must be disinterested and have knowledge of the legal, corporate management or insurance issues relevant to the matters in dispute. In the absence of agreement, the **Insurer** and the **Named Entity** each shall select one arbitrator, the two arbitrators shall select a third arbitrator, and the panel shall then determine applicable procedural rules.

ADR Rules: At the election of the **Named Entity**, either choice of ADR process shall be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state reflected in the **Named Entity Address**. The **Named Entity** shall act on behalf of each and every **Insured** under this *Alternative Dispute Resolution Clause*. In all other respects, the **Insurer** and the **Named Entity** shall mutually agree to the procedural rules for the mediation or arbitration. In the absence of such an agreement, after reasonable diligence, the arbitrator(s) or mediator shall specify commercially reasonable rules.

2. ACTION AGAINST INSURER

Except as provided in Clause 10.H.1. *Alternative Dispute Resolution*, 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, or until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against such **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Insurer**.

Any **Insured** 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 entity shall have any right under this policy to join or implead the **Insurer** as a party to any action against any **Insured** to determine such **Insured's** liability.

I. Conformance To Law

In the event that there is an inconsistency between any: (1) state amendatory attached to this policy, or any other wording attached to this policy to comply with applicable law; and (2) any other term, condition or limitation of this policy; then, to the extent permitted by law, subject to the limitations below, the **Insurer** will resolve the inconsistency by applying the terms, conditions or limitations that are more favorable to the **Insured**.

Coverage under this policy shall not be provided to the extent prohibited by any law, rule or regulation, including, but not limited to, any law, rule or regulation regarding non-admitted insurance.

J. Headings

The descriptions in the headings and the Guide of this policy are solely for convenience and form no part of the terms and conditions of coverage.



11. DEFINITIONS

Terms with “**Bold**” typeface are used in this policy with the meanings and values ascribed to them below, in the Declarations, or elsewhere in this policy:

- Application** means:
- (1) the written statements and representations made by an **Insured** and provided to the **Insurer** during the underwriting of this policy, or contained in any application or other materials or information provided to the **Insurer** in connection with the underwriting of this policy; provided that public filings by or on behalf of an **Organization** made with the SEC shall only include those as set forth in subparagraph (3) below;
 - (2) all warranties executed by or on behalf of an **Insured** and provided to the **Insurer** in connection with the underwriting of this policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **Insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time; and
 - (3) each and every public filing by or on behalf of an **Organization** made with the SEC, including, but not limited to, an **Organization’s** Annual Report(s), 10Ks, 10Qs, 8Ks and proxy statements, any financial information in such filings, and any certifications relating to the accuracy of the foregoing, provided that such public filing was filed during the 12 month period immediately preceding the inception of the **Policy Period**.
- Asset Protection Costs** means reasonable fees, costs and expenses consented to by the **Insurer** incurred by an **Executive** of an **Organization** to (1) oppose any efforts by an **Enforcement Body** to seize or otherwise enjoin the personal assets or real property of such **Executive** or; (2) obtain the discharge or revocation of a court order entered during the **Policy Period** which in any way impairs the use of such personal assets or real property. “**Asset Protection Costs**” shall not include the compensation of any **Insured**.
- Change in Control** means:
- (1) the **Named Entity** consolidating with or merging into another entity such that the **Named Entity** is not the surviving entity, or selling all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert;
 - (2) any person or entity or group of persons or entities acting in concert acquiring **Management Control** of the **Named Entity**; or
 - (3) the appointment by any **Enforcement Body** of, or where any **Enforcement Body** assumes the role of, a trustee, receiver, conservator, rehabilitator, liquidator or similar official to take control of, supervise or oversee the **Named Entity**, or to liquidate or sell all or substantially all of the assets of the **Named Entity**.
- Claim** means any:
- (1) written demand (other than any matter described in (2) through (8) below) for civil monetary damages or other civil relief (including injunctive or other equitable relief), which is deemed made when an **Insured** first receives such demand;
 - (2) civil proceeding (other than an investigation or any administrative or regulatory proceeding) for monetary, non-monetary or injunctive relief, including a mediation, arbitration or other alternative dispute resolution proceeding, which is deemed



made when an **Insured** first receives service of a complaint, demand or similar pleading commencing such proceeding, or the equivalent in a **Foreign Jurisdiction**;

(3) criminal proceeding (other than an investigation or any administrative or regulatory proceeding), which is deemed made when an **Insured** is first arrested or indicted, or first served with an accusation, information, complaint, summons or similar charging document commencing such proceeding, or the equivalent in a **Foreign Jurisdiction**;

(4) administrative or regulatory proceeding (other than an investigation), which is deemed made when an **Insured** is first served a notice of charges, complaint or similar document, or the equivalent in a **Foreign Jurisdiction**;

any and all of the preceding, for a **Wrongful Act**;

(5) **Investigation**, which is deemed made when an **Insured**:

(a) first receives or is first served a writing or subpoena described in subparagraphs (1) or (2) of the definition of **Investigation**; or

(b) is arrested and detained or incarcerated for more than 24 hours by any law enforcement authority in such **Foreign Jurisdiction**;

(6) official request for **Extradition** of any **Insured**, or the execution of a warrant for the arrest of an **Insured** where such execution is an element of such **Extradition**, which is deemed made when an **Insured** first receives such request or warrant;

(7) **Inquiry**, which will only be deemed a **Claim** if the **Insured** reports such **Inquiry** pursuant to Clause 5.A. of this policy, at which time such **Inquiry** is deemed made; or

(8) request to toll or waive a period or statute of limitations which is applicable to a **Claim** (as described in (1) and (7) above) that could be made for a **Wrongful Act** of an **Insured**; provided, however, a request to toll or waive a period or statute of limitations will only be deemed a **Claim** if an **Insured** reports such request pursuant to Clause 5.A. of this policy, at which time such request is deemed made.

All allegations, causes of action and **Wrongful Acts** alleged in, and all demands for monetary or other relief sought in, the same proceeding, shall be deemed one and the same **Claim**.

Class Certification

Event Study

Expenses

Clawback Assistance

Costs

means the reasonable fees, costs and expenses of an expert witness consented to by the **Insurer**, and incurred by an **Insured** to conduct an event study regarding class certification in a **Securities Claim**.

means the reasonable fees, costs and expenses (including the premium or origination fee for a loan or bond) and incurred by an **Executive** of an **Organization** solely to facilitate the return of amounts required to be repaid by such **Executive** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002, Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or pursuant to any similar local, state or foreign statute, law, rule or regulation under the securities laws. "**Clawback Assistance Costs**" do not include the payment, return, reimbursement, disgorgement or restitution of any such amounts requested or required to be repaid by such **Executive**. "**Clawback Assistance Costs**" shall not include the compensation of any **Insured**.

Controlling Person

means any natural person that actually or allegedly controls an **Organization** within the meaning of Section 15 of the Securities Act of 1933 (as amended), Section 20(a) of the Securities Exchange Act of 1934 (as amended), or any similar law.

**Defense Costs**

means reasonable fees, costs and expenses consented to by the **Insurer** (including the cost of **E-Discovery Consultant Services** and premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) incurred:

- (1) in the investigation, adjustment, defense and/or appeal of a **Claim** against an **Insured**; or
- (2) by an **Insured** lawfully: (i) opposing, challenging, resisting, or defending against any request for or any effort to obtain the **Extradition** of that **Insured**; or (ii) appealing any order or other grant of **Extradition** of that **Insured**.

Notwithstanding the foregoing:

- (a) with regard to any **Inquiry**, “**Defense Costs**” shall mean only **Inquiry Costs**; and
- (b) “**Defense Costs**” shall not include the compensation of any **Insured**.

Derivative Demand

means a written demand by any security holder of an **Organization** upon the board of directors (or equivalent management body) of such **Organization** to commence a civil action on behalf of the **Organization** against any **Executive** of the **Organization** for any **Wrongful Act** on the part of such **Executive**.

Derivative Investigation

means, after receipt by any **Insured** of a **Claim** that is either a **Derivative Suit** or a **Derivative Demand**, any investigation conducted by the **Organization**, or on behalf of the **Organization** by its board of directors (or the equivalent management body) or any committee of the board of directors (or equivalent management body), as to how the **Organization** should respond.

Derivative Suit

means a lawsuit purportedly brought derivatively on behalf of an **Organization** by a security holder of such **Organization** against an **Executive** of such **Organization**.

Discovery Period

means a period of extended coverage described in Clause 6. *Discovery*.

E-Discovery Consultant Services

means solely the following services performed by a vendor qualified to perform such services (“**E-Discovery Vendor**”) which is chosen by an **Insured** and consented to by the **Insurer**:

- (1) assisting the **Insured** with managing and minimizing the internal and external costs associated with the development, collection, storage, organization, cataloging, preservation and/or production of electronically stored information (“**E-Discovery**”);
- (2) assisting the **Insured** in developing or formulating an **E-Discovery** strategy;
- (3) serving as project manager, advisor and/or consultant to the **Insured**, defense counsel and the **Insurer** in executing and monitoring the **E-Discovery** strategy; or
- (4) such other services provided by the **E-Discovery Vendor** that the **Insured**, **Insurer** and **E-Discovery Vendor** agree are reasonable and necessary given the circumstances of the **Securities Claim**.

Employee

means any past, present or future employee, other than an **Executive** of an **Organization**, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any full-time, part-time, seasonal and temporary employee.

Notwithstanding the foregoing, “**Employee**” shall not include any natural person who is or claims to be a joint employee of both (1) an **Organization** or **Outside Entity** and (2) another entity or natural person.



Enforcement Body	means: (1) any federal, state, local or foreign law enforcement authority or other governmental investigative authority (including, but not limited to, the U.S. Department of Justice, the U.S. Securities and Exchange Commission and any attorney general), or (2) the enforcement unit of any securities or commodities exchange or other self-regulatory organization.
Executive	means any: <ol style="list-style-type: none">(1) past, present and future duly elected or appointed director, officer, trustee or governor of a corporation, management committee member of a joint venture and member of the management board of a limited liability company (or equivalent position);(2) past, present and future person in a duly elected or appointed position in an entity organized and operated in a Foreign Jurisdiction that is equivalent to an executive position listed in subparagraph (1) above, or a member of the senior-most executive body (including, but not limited, to a supervisory board); or(3) past, present and future General Counsel and Risk Manager (or equivalent position) of the Named Entity.
Extradition	means any formal process by which an Insured located in any country is sought to be surrendered to any other country for trial, or otherwise to answer any criminal accusation, concerning such Insured's insured capacities or the business of an Organization .
Foreign Jurisdiction	means any jurisdiction, other than the United States of America or any of its territories or possessions.
Foreign Policy	means the standard executive managerial liability policy (including all mandatory endorsements, if any) approved by the Insurer or any of its affiliates to be sold within a Foreign Jurisdiction that provides coverage substantially similar to the coverage afforded under this policy. If more than one such policy exists, then " Foreign Policy " means the standard basic policy form most recently offered for sale for comparable risks by the Insurer or any of its affiliates in that Foreign Jurisdiction . " Foreign Policy " shall not include any partnership managerial, pension trust or professional liability coverage.
Insured	means any: <ol style="list-style-type: none">(1) Executive of an Organization;(2) Employee of an Organization; or(3) Outside Entity Executive.
Inquiry	means any: <ol style="list-style-type: none">(1) verifiable request for an Insured of any Organization: (a) to appear at a meeting or interview; (b) to provide sworn statement or testimony; or (c) produce documents that, in either case, concerns the business of that Organization or that Insured's insured capacities; but only if such request came from any:<ol style="list-style-type: none">(i) Enforcement Body;(ii) Organization, or, on behalf of an Organization, by its board of directors (or the equivalent management body) or any committee of the board of directors (or the equivalent management body), including, but not limited to, any special litigation committee:<ol style="list-style-type: none">(A) arising out of an inquiry or investigation by an Enforcement Body



concerning the business of that **Organization** or that **Insured's** insured capacities; or

(B) as part of its **Derivative Investigation**; or

(iii) court-appointed examiner, trustee (including a trustee or agent approved by a court under a chapter 11 plan of reorganization), receiver, liquidator or rehabilitator of the **Organization** in any bankruptcy proceeding by or against the **Organization**; or

(2) arrest or confinement of an **Executive** of an **Organization** to a: (a) specified residence; or (b) secure custodial premises operated by or on behalf of an **Enforcement Body**, in connection with the business of any **Organization** or an **Insured's** capacity as an **Executive** or **Employee** of an **Organization**.

"**Inquiry**" shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in an **Organization** and/or an **Enforcement Body's** normal review or compliance process.

Inquiry Costs

means:

(1) the reasonable fees, costs and expenses consented to by the **Insurer** and incurred by or on behalf of an **Insured** solely in connection with (a) the preparation for and response to an **Inquiry** directed to such **Insured**, including attendance at an interview or meeting requested by an **Enforcement Body**, and (b) the cost of such **Insured** in producing documents in such **Insured's** possession; and

(2) **Liberty Protection Costs**.

"**Inquiry Costs**" shall not include the compensation of any **Insured**.

Investigation

means any civil, criminal, administrative or regulatory investigation of an **Insured**:

(1) once the **Insured** is identified in writing by an **Enforcement Body** as a target of an investigation that may lead to a criminal, civil, administrative, regulatory or other enforcement proceeding as prescribed by such **Enforcement Body's** procedures; including, but not limited to, a formal order of investigation, Wells Notice, subpoena or target letter;

(2) in the case of an investigation by the SEC or any state, local or foreign body with similar regulation or enforcement authority, after the service of a subpoena (or in a **Foreign Jurisdiction**, the equivalent legal process) upon the **Insured**; or

(3) commenced by the arrest and detainment or incarceration for more than 24 hours of an **Insured** by any law enforcement authority in a **Foreign Jurisdiction**.

Liberty Protection Costs

means reasonable fees, costs and expenses consented to by the **Insurer** and incurred by or on behalf of an **Insured** in order for an **Insured** to lawfully seek the release of the **Insured** from any pre-**Claim** arrest or confinement to a (1) specified residence or (2) secure custodial premises operated by or on behalf of any law enforcement authority; including, but not limited to, reasonable premiums (but not collateral) consented to by the **Insurer** and incurred by an **Insured** for a bond or other financial instrument necessary to obtain such release, if such arrest or confinement is in connection with the business of any **Organization** or the **Insured's** capacity as an **Executive** or **Employee** of an **Organization**.



Loss

means:

- (1) damages (including punitive, exemplary and multiplied damages), settlements and judgments (including pre/post-judgment interest on a covered judgment), including damages, settlements and judgments attributable to violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended;
- (2) civil penalties assessed against any **Insured** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2(g)(2)(B);
- (3) **Defense Costs**;
- (4) **Clawback Assistance Costs**;
- (5) **Class Certification Event Study Expenses**;
- (6) **Asset Protection Costs**, subject to a \$50,000 per **Executive** and a \$250,000 aggregate sublimit of liability; and
- (7) plaintiffs' attorneys' fees and claimants' legal costs awarded pursuant to a covered judgment or settlement.

The insurability of penalties and punitive, exemplary and multiplied damages described in this definition shall be governed by such applicable law that most favors coverage for such penalties and punitive, exemplary and multiplied damages.

Notwithstanding the foregoing, "**Loss**" (other than **Defense Costs**) shall not include:

- (a) civil or criminal fines or penalties (other than civil penalties described in subparagraph (2) above);
- (b) taxes;
- (c) cleanup costs relating to hazardous materials, pollution or product defects that result in the release of hazardous materials or pollutants;
- (d) amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; and
- (e) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed; provided, however, the **Insurer** shall not assert that, in a **Securities Claim** alleging violations of Section 11, 12 or 15 of the Securities Act of 1933, as amended, the portion of any amounts incurred by **Insureds** which is attributable to such violations constitutes uninsurable loss.

Management Control

means:

- (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation; the management committee members of a joint venture; the members of the management board of a limited liability company; or the duly elected or appointed positions of an entity organized and operated in a **Foreign Jurisdiction** that are equivalent to the executive positions listed above; or
- (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an entity, to elect, appoint or designate a majority of: the Board of Directors of a corporation; the management committee of a joint venture; the management board of a limited liability company; or the duly elected or appointed positions of an entity organized and operated in a **Foreign Jurisdiction** that are equivalent to the executive positions listed above.



**Non Indemnified
Loss**

means **Loss** for which an **Organization** or **Outside Entity**:

- (1) is not permitted to advance, pay or indemnify pursuant to law, contract or the charter, bylaws, operating agreement or similar documents of such **Organization** or **Outside Entity**;
- (2) fails to advance, pay or indemnify; or
- (3) refuses to advance, pay or indemnify.

Advancement, payment or indemnification by an **Organization** or **Outside Entity** is deemed "failed" if it has been requested by an **Insured Person** in writing and:

- (a) an **Organization** or **Outside Entity** has not provided or agreed to provide such advancement, payment or indemnification within sixty (60) days of such request; or
- (b) an **Organization** or **Outside Entity** has agreed to provide such advancement, payment or indemnification, but is in default of such agreement.

Advancement, payment or indemnification by an **Organization** or **Outside Entity** is deemed "refused" if an **Organization** or **Outside Entity** gives a written notice of the refusal to the **Insured Person**.

Organization

means:

- (1) the **Named Entity**;
- (2) each **Subsidiary**; and
- (3) in the event a bankruptcy proceeding shall be instituted by or against any of the foregoing entities, the resulting debtor-in-possession (or equivalent status outside the United States of America), if any.

Outside Entity

means: (1) any not-for-profit entity other than an **Organization**; (2) with respect to service as a **Shadow Director** only, any entity chartered, incorporated and/or domiciled in the United Kingdom for which an **Outside Entity Executive** serves as a **Shadow Director**; or (3) any other entity made an "**Outside Entity**" by an endorsement attached to this policy.

**Outside Entity
Executive**

means any: (1) **Executive** of an **Organization** who is or was acting at the specific request or direction of an **Organization** as an **Executive**, **Shadow Director** or board observer of an **Outside Entity**; or (2) any other person made an "**Outside Entity Executive**" by an endorsement attached to this policy.

In the event of a disagreement between the **Organization** and a person as to whether such person was acting "at the specific request or direction of the **Organization**," this policy shall abide by the determination of the **Organization** on this issue and such determination shall be made by written notice to the **Insurer** within ninety (90) days after the **Claim** against such person is made. In the event no notice of any such determination is given to the **Insurer** within such period, this policy shall apply as if the **Organization** determined that such person was not acting at the **Organization's** specific request or direction.



Plan	means any qualified or non-qualified plan, fund, trust or program, including, but not limited to any pension plan, welfare plan, health savings account plan, IRA-based plan, stock option plan, stock purchase plan, deferred compensation program, supplemental executive retirement program, top-hat plan, excess benefit plan, cafeteria plan, dependent care assistance program, fringe benefit plan or voluntary employees' beneficiary association as defined in the Internal Revenue Code of 1986, as amended ("VEBA") established anywhere in the world, which is sponsored solely by an Organization , and with respect to a collectively bargained Plan, operated jointly by an Organization and a labor organization, in each case solely for the benefit of such Organization's current or former employees or Executives .
Policy Period	means the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in such Item 2 or the effective date of cancellation of this policy.
Related Wrongful Acts	means Wrongful Acts arising out of a common nexus with any fact, circumstance, situation, event, transaction, cause, or series of related facts, circumstances, situations, events, transactions or causes.
Securities Claim	means a Claim : <ol style="list-style-type: none">(1) arising out of, based upon or attributable to the purchase or sale or offer or solicitation of an offer to purchase or sell any securities of an Organization which alleges a violation of any statute, rule or regulation regulating securities. "Securities Claim" shall include any alleged violation of common law accompanying any above described violation of statute, rule, or regulation regulating securities;(2) brought by a security holder of an Organization with respect to such security holder's interest in securities of such Organization which alleges a violation of any statute, rule or regulation regulating securities, or a violation of any common law; or(3) which is a Derivative Suit.
Shadow Director	means any natural person who is deemed a "shadow director" as defined under Section 251 of the United Kingdom's Companies Act of 2006, as amended.
Subsidiary	means, subject to Clause 8.B. <i>Subsidiary Additions</i> : <ol style="list-style-type: none">(1) any for-profit entity (other than an entity formed as a partnership) during the time when the Named Entity has or had Management Control of such entity, either directly or indirectly through one or more of its other Subsidiaries; and(2) any not-for-profit entity sponsored exclusively by an Organization during the time when such entity was exclusively sponsored by such Organization.
Wrongful Act	means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act: <ol style="list-style-type: none">(a) by an Executive of an Organization, (i) in such Executive's capacity as an Executive of an Organization; (ii) in such Executive's capacity as a Controlling Person; (iii) in such Executive's capacity as an agent of a Controlling Person; (iv) in such Executive's capacity as a fiduciary of a Plan; or (v) in any matter claimed against such Executive solely by reason of such Executive's status as an Executive of an Organization;(b) by an Employee in such Employee's capacity as an Employee, but solely in regard to any: (i) Securities Claim; or (ii) other Claim so long as such other Claim



is also made and continuously maintained against an **Executive** of an **Organization**; or

- (c) by an **Outside Entity Executive** in such **Outside Entity Executive's** capacity as an **Outside Entity Executive** or in any matter claimed against such **Outside Entity Executive** solely by reason of such **Outside Entity Executive's** status as an **Outside Entity Executive**.