

# Scottsdale Indemnity Company

A Stock Insurance **Company**, herein called the **Company**

## DIRECTORS, OFFICERS AND ENTITY LIABILITY INSURANCE POLICY

**THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR DISCOVERY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY PAYMENT OF DEFENSE COSTS. DEFENSE COSTS ARE SUBJECT TO THE APPLICABLE RETENTION. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon the statements in the **Application**, which is made a part hereof and subject to the Declarations, terms and conditions of this Policy, the insurance **Company** indicated in the Declarations (herein called the **Company**) and the **Insured** agree as follows:

### I. INSURING AGREEMENT

#### A. Director and Officer Liability

Except for **Loss** for which the **Insured Entity** has indemnified the **Insured Persons**, the **Company** will pay on behalf of the **Insured Persons** any **Loss** the **Insured Persons** become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against them for a **Wrongful Act**.

#### B. Corporate Reimbursement

The **Company** will pay on behalf of the **Insured Entity** any **Loss** for which the **Insured Entity** has, to the extent permitted or required by law, indemnified **Insured Persons**, as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against such Insured Persons for a **Wrongful Act**.

#### C. Corporate Liability for Securities Claims

The **Company** will pay on behalf of the **Insured Entity** any **Loss** the **Insured Entity** becomes legally obligated to pay as a result of a **Securities Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against it for a **Wrongful Act**.

#### D. Outside Position Liability

Except for **Loss** for which the **Insured Entity** has indemnified the **Insured Persons**, the **Company** will pay on behalf of the **Insured Persons** any **Loss** the **Insured Persons** become legally obligated to pay as a result of a **Claim** first made during the **Policy Period** or **Discovery Period**, if applicable, against them for a **Wrongful Act** in an **Outside Position**, but only excess of any indemnification the **Outside Entity** is required or permitted to be provided to them and any insurance coverage afforded by the **Outside Entity** for such **Claim**.

#### E. Shareholder Derivative Demand Investigation Costs

The **Company** will pay on behalf of the **Insured Entity** any **Investigation Costs** the **Insured Entity** becomes legally obligated to pay as a result of a **Shareholder Derivative Demand** first received by the **Insured Entity** during the **Policy Period** or **Discovery Period**, if applicable, for a **Wrongful Act**.

#### F. Crisis Costs

The **Company** will pay on behalf of the **Insured Entity** any **Crisis Costs** the **Insured Entity** becomes legally obligated to pay as a result of a **Crisis** first occurring and reported to the **Company** during the **Policy Period** or **Discovery Period**, if applicable.

## II. DEFINITIONS

### A. "Application" means:

- (1) each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this Policy or the underwriting of any other directors and officers (or equivalent) liability policy issued by the **Company**, or any of its affiliates, of which this Policy is a renewal, replacement or successor in time; and
- (2) all public documents filed by the **Insured Entity** with the Securities and Exchange Commission ("SEC") or any similar state, local, or foreign regulatory agency, including the **Insured Entity's** Annual Reports, 10Ks, 10Qs, 8Ks and proxy statements.

### B. "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief;
- (2) a civil, administrative, regulatory or arbitration proceeding for monetary, non-monetary or injunctive relief which is commenced by:
  - (a) service of a complaint or similar pleading; or
  - (b) receipt or filing of a notice of charges;
- (3) a criminal proceeding against an **Insured Person** commenced by the return of an indictment, information or similar document; or
- (4) a civil, administrative or regulatory investigation of an **Insured Person** by the SEC or a similar state, local or foreign government authority after the service of a subpoena upon such **Insured Person**.

**Claim** shall include:

- i. a **Securities Claim**; provided, however, that solely with respect to **INSURING AGREEMENT C.**, neither **Claim** nor **Securities Claim** shall include any administrative or regulatory proceeding against the **Insured Entity** except while such proceeding is also pending against an **Insured Person**; and
  - ii. a formal or informal interview of an **Insured Person** by any governmental or self-regulatory authority, including the SEC, the United States Department of Justice, any state attorney general, or a similar foreign government authority, commenced by a request in writing for such interview, but solely with respect to the coverage afforded under **INSURING AGREEMENT A.**
- C. "**Crisis**" means the publication, in a daily newspaper of general circulation or a radio, internet or television news report, of unfavorable information regarding an **Insured Entity** that is reasonably likely to lessen public confidence in the competence, integrity or viability of the **Insured Entity** to conduct business.
- D. "**Crisis Costs**" means the following expenses, when incurred by **Insured Entity** during the pendency of or within ninety (90) days prior to, and in the anticipation of, a **Crisis**, regardless of whether a **Claim** is ever made against an **Insured** arising from such **Crisis**, and, in the event that a **Claim** is made, regardless of whether the expenses are incurred prior to or subsequent to the **Claim**:
- (1) reasonable and necessary fees and expenses incurred by a **Public Relations Firm** in the performance of **Public Relations Services** for the **Insured Entity** arising from a **Crisis**; or
  - (2) reasonable and necessary printing, advertising, mailing of materials, or travel by **Insured Persons** or the **Public Relations Firm**, in connection with a **Crisis**;

provided, however, that **Crisis Costs** shall not include salaries, wages, overhead or benefit expenses associated with **Insured Persons** or employees of the **Insured Entity**.

- E. "**Defense Costs**" means reasonable and necessary fees, costs and expenses consented to by the **Company** (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or

furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a **Claim** against the **Insureds**, but shall not include salaries, wages, overhead or benefit expenses associated with **Insured Persons** or employees of the **Insured Entity**.

- F. “**Financial Impairment**” means the status of the **Insured Entity** resulting from:
- (1) the appointment by any state or federal official, agency or court of any receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate the **Insured Entity**, or
  - (2) the **Insured Entity** becoming a Debtor-In-Possession.
- G. “**Insured**” means:
- (1) **Insured Persons**; and
  - (2) solely with respect to **INSURING AGREEMENT B., C., E. and F.**, the **Insured Entity**.
- H. “**Insured Entity**” means the **Named Insured** and any **Subsidiary** thereof.
- I. “**Insured Person**” means:
- (1) any person who has been, now is or shall be a duly elected or appointed director, officer, general counsel, risk manager, and in the case of a limited liability **Company**, a member of the management board (or equivalent position), of the **Insured Entity**;
  - (2) in the event a **Subsidiary** operates outside the United States, any person who has held, now holds or shall hold a title, position or capacity in such foreign **Subsidiary** equivalent to a position listed in (1) above in an organization incorporated within the United States;
  - (3) with respect to a **Securities Claim**, any person who has been, now is or shall become an employee of the **Insured Entity**, including any full-time, part-time, seasonal or temporary employee;
  - (4) the estates, heirs, or legal representatives of any person described in (1) through (3) above, in the event of their death, incompetency, insolvency or bankruptcy; or
  - (5) the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of any person described in (1) through (3) above, but solely with respect to a **Claim** arising out of his or her status as the spouse or domestic partner of any person listed in (1) through (3) above for a **Wrongful Act** of such person listed in (1) through (3) above; provided, however, **Insured Person** shall not include a lawful spouse or domestic partner with respect to a **Claim** against that person for his or her own **Wrongful Acts**.
- J. “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- K. “**Investigation Costs**” means reasonable and necessary legal fees and expenses (other than wages, salaries, fees or benefits of **Insured Persons** or the **Insured Entity’s** overhead expenses) incurred by the **Insured Entity** (including its board of directors or committee thereof) in investigating and evaluating any **Shareholder Derivative Demand**.
- L. “**Loss**” means damages, judgments (including pre/post-judgment interest on a covered judgment), settlements and **Defense Costs**; provided, however, **Loss** shall not include:
- (1) civil or criminal fines or penalties imposed by law, except civil penalties assessed against **Insured Persons** pursuant to Section 2(g)(2)(C) of the Foreign Corrupt Practices Act;
  - (2) taxes or non-monetary relief;
  - (3) any amount for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**;

- (4) any amount that represents or is substantially equivalent to an increase in the consideration paid or proposed to be paid in connection with any purchase of any securities or assets, except and to the extent such amount is incurred by an **Insured Person** and the **Insured Entity** is either not permitted by law to indemnify or is unable by reason of **Financial Impairment** to indemnify such amount; or
- (5) any matter which may be deemed uninsurable under the law pursuant to which this Policy shall be construed; provided, however, the **Company** shall not assert in a **Securities Claim** alleging a violation of Section 11 or 12 of the Securities Act of 1933, as amended, that the portion of any amounts incurred by any **Insured** attributable to such a violation constitutes uninsurable **Loss** and shall treat that portion of all such settlements, judgments and **Defense Costs** as **Loss**.

**Loss** shall include punitive or exemplary damages or the multiplied portion of multiplied damages, unless uninsurable under the applicable law most favoring coverage for such damages.

- M. **“Named Insured”** means the entity designated in **Item 1.** of the Declarations.
- N. **“Non-Profit Entity”** means any not-for-profit organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986 (as amended).
- O. **“Outside Entity”** means:
  - (1) any **Non-Profit Entity**; and
  - (2) any other entity, if **Outside Position** coverage with respect to such entity is scheduled by endorsement to this Policy.
- P. **“Outside Position”** means any **Insured Person’s** service as a director, officer, trustee or other equivalent position in an **Outside Entity** at the specific request of the **Insured Entity**.
- Q. **“Policy Period”** means the period from the effective date to the expiration date of this Policy as set forth in **Item 3.** of the Declarations, or any earlier cancellation date.
- R. **“Pollutants”** means, but is not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold, fungi, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products and waste (including any material to be recycled, reconditioned or reclaimed), and any electric, magnetic or electromagnetic field of any frequency.
- S. **“Public Relations Firm”** means any public relations firm, crisis management firm or law firm hired by the **Insured Entity** with the **Company’s** prior written consent to perform **Public Relations Services** in connection with a **Crisis**.
- T. **“Public Relations Services”** means those services performed by a **Public Relations Firm** to minimize potential harm to public confidence in the competence, integrity or viability of the **Insured Entity** to conduct business arising from a **Crisis**, including maintaining and restoring public confidence in the **Insured Entity** and providing advice to the **Insured Entity** or **Insured Persons**.
- U. **“Securities Claim”** means a **Claim** made against any **Insured**:
  - (1) alleging a violation of any law, regulation or rule, whether statutory or common law which is:
    - (a) brought by any person or entity alleging, 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 a **Insured Entity**; or
    - (b) brought by a security holder of an **Insured Entity** with respect to such security holder’s interest in securities of such **Insured Entity**; or
  - (2) brought derivatively on the behalf of an **Insured Entity** by a security holder of such **Insured Entity**.
- V. **“Shareholder Derivative Demand”** means a written demand by one or more security holders of an **Insured Entity** upon the board of directors of an **Insured Entity** to bring a civil proceeding in a court of law against any **Insured Person** for a **Wrongful Act**.

**W. “Subsidiary” means:**

- (1) any corporation in which the **Named Insured** owns on or before the inception of this Policy more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **Subsidiaries**;
- (2) any corporation in which the **Named Insured** acquires after the inception of this Policy more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **Subsidiaries**, provided that the assets of such corporation total:
  - (a) less than twenty-five percent (25%) of the total consolidated assets of the **Insured Entity** as of the inception of this Policy; or
  - (b) twenty-five percent (25%) or more of the total consolidated assets of the **Insured Entity** as of the inception of this Policy, and within ninety (90) days of such acquisition, the **Named Insured** has provided the **Company** with full particulars, paid any additional premium and agreed to any amendment of this Policy required by the **Company** relating to such new **Subsidiary**.

A corporation ceases to be a **Subsidiary** when the **Named Insured** ceases to own more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly through one or more of its **Subsidiaries**.

No coverage shall be afforded under this Policy with respect to a **Claim** made against a **Subsidiary** or any **Insured Person** thereof for **Wrongful Acts** committed or allegedly committed before the effective time that such corporation became a **Subsidiary** or after the time that such **Subsidiary** ceased to be a **Subsidiary**.

**X. “Wrongful Act” means:**

- (1) with respect to **Insured Persons**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Insured Persons**:
  - (a) as fiduciaries of any employee benefit plan sponsored solely by the **Insured Entity** for the benefit of its employees or any matter claimed against them solely by reason of their status as such, but solely with respect to the coverage afforded under **INSURING AGREEMENT I.A.**; or
  - (b) in their respective capacities as **Insured Persons** or in an **Outside Position**, or any matter claimed against them solely by reason of their status as **Insured Persons** or by reason of their service in an **Outside Position**; and
- (2) with respect to the **Insured Entity**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Insured Entity**, but solely as respects a **Securities Claim**.

**III. EXCLUSIONS**

The **Company** shall not be liable to pay any **Loss** from any **Claim** made against an Insured:

- A.** based upon, arising out of or attributable to any **Insured** committing any deliberate criminal or deliberate fraudulent act, if established by a final judgment; in applying this exclusion, knowledge possessed by an **Insured** shall not be imputed to another **Insured Person**, but knowledge possessed by an **Insured Entity’s** past, present or future chairman of the board, president, chief executive officer, chief operating officer, chief financial officer, controller or general counsel shall be imputed to the **Insured Entity**;
- B.** based upon, arising out of or attributable to any **Insured** in fact gaining any profit or advantage to which such **Insured** was not legally entitled; provided, however, this exclusion shall not apply to that portion of **Loss** from a **Securities Claim** attributable to an alleged violation of Section 11 or 12 of the Securities Act of 1933, as amended;
- C.** based upon, arising out of or attributable to:
  - (1) any **Wrongful Act**, matter, fact, circumstance, situation, transaction, or event which has been the subject of notice under any prior policy of which this Policy is a renewal or replacement or to which it may succeed in time; or

(2) any other **Wrongful Act** which, together with a **Wrongful Act** described in (1) above, constitute **Interrelated Wrongful Acts**;

D. based upon, arising out of or attributable to:

(1) any **Claim** pending as of or made prior to the date stated in **Item 5.** of the Declarations; or

(2) any **Wrongful Act** alleged in such **Claim**, or any **Wrongful Act** whenever occurring, which together with any **Wrongful Act** alleged in such **Claim**, constitute **Interrelated Wrongful Acts**;

E. based upon, arising out of or attributable to any actual or alleged act, error or omission by any **Insured Person** serving as, or any **Insured Person's** status as, a director, officer, trustee, governor, member of a management board, general counsel or risk manager of any other organization other than the **Insured Entity** or an **Outside Entity**;

F. brought by, on behalf of or in the right of any **Insured**; provided, however, this exclusion shall not apply to a **Claim**:

(1) brought by a security holder or member of an **Insured Entity**, whether directly or derivatively, unless such **Claim** is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any **Insured**;

(2) brought by an **Insured Person** in the form of a cross-claim or third party **Claim** for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this Policy;

(3) brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator or rehabilitator for an **Insured Entity**, or any assignee thereof;

(4) brought by an **Insured Person** who has not served as an **Insured Person** for at least four (4) years prior to the date such **Claim** was made and who brings such **Claim** without the solicitation of, or assistance of, or active participation of, or intervention of, the **Insured Entity** or any other **Insured Person** who is serving or has served as an **Insured Person** within such four (4) year period;

G. for bodily injury, sickness, disease, emotional distress, mental anguish or death of any person, or damage to or destruction of any tangible property including **Loss** of use thereof;

H. based upon, arising out of or attributable to:

(1) any actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time; or

(2) any request, demand or order to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**;

including a **Securities Claim**; provided, however, this exclusion shall not apply to **Loss** that an **Insured Person** incurs from a **Securities Claim** made against such **Insured Person** for which the **Insured Entity** is either not permitted by law to indemnify or is unable by reason of **Financial Impairment** to indemnify; or

I. for violation(s) of any of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, or amendments thereto or any similar provisions of state or foreign statutory or common law; provided, however, this exclusion shall not apply to **Loss** that an **Insured Person** incurs from a **Claim** made against such **Insured Person** for which the **Insured Entity** is either not permitted by law to indemnify or is unable by reason of **Financial Impairment** to indemnify.

#### IV. LIMITS OF LIABILITY AND RETENTIONS

A. The **Limit of Liability** stated in **Item 2.(a)** of the Declarations is the aggregate limit of the **Company's** liability for all **Loss**, including **Defense Costs**, under **INSURING AGREEMENT A., B., C. and D.**, combined, as a result of all **Claims** first made against the **Insureds** during the **Policy Period** and the **Discovery Period**, if applicable. The **Company's** payment of **Defense Costs** shall reduce, and may exhaust, the **Limit of Liability**.

- B. The **Limit of Liability** stated in **Item 2.(b)** of the Declarations is the aggregate limit of the **Company's** liability for all **Investigation Costs** under **INSURING AGREEMENT E.** as a result of all **Shareholder Derivative Demands** first received by the **Insured Entity** during the **Policy Period** and the **Discovery Period**, if applicable.
- C. The **Limit of Liability** stated in **Item 2.(c)** of the Declarations is the aggregate limit of the **Company's** liability for all **Crisis Costs** under **INSURING AGREEMENT F.** as a result of all **Crises** first occurring during the **Policy Period** and the **Discovery Period**, if applicable.
- D. The **Company** shall only be liable for the amount of **Loss** from a **Claim** in excess of the applicable **Retention** stated in **Item 4.** of the Declarations, such **Retention** to be borne by the **Insureds** uninsured. No **Retention** applies to **INSURING AGREEMENT A.** The **Retention** stated in **Item 4.(a)** of the Declarations applies to **Loss** from any **Claim** other than a **Securities Claim.** The **Retention** stated in **Item 4.(b)** of the Declarations applies to **Loss** from a **Securities Claim.** If more than one **Retention** applies to a **Claim**, the maximum **Retention** payable by the **Insureds** for such **Claim** shall be the highest applicable **Retention.**
- E. All **Claims** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** will be treated as a single **Claim** made when the earliest such **Claim** was first made, or when the earliest such **Claim** is treated as having been made in accordance with Section **VI.C.**, whichever is earlier. A single **Retention** shall apply to **Loss** as a result of all **Claims** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts.**

## V. INDEMNIFICATION

- A. If the **Insured Entity** is permitted or required by law to indemnify the **Insured Persons** for **Loss** or to advance **Defense Costs** on their behalf and fails or refuses to do so other than for reason of **Financial Impairment**, then any payment by the **Company** of such **Loss** or **Defense Costs** shall be subject to the single highest applicable **Retention** stated in **Item 4.** of the Declarations.

The **Insured Entity** shall be deemed to provide indemnification to the **Insured Persons** for such **Loss** or advancement of such **Defense Costs** to the fullest extent permitted or required by law, and hereby agrees to indemnify the **Insured Persons** for such **Loss** or to advance such **Defense Costs** to the fullest extent permitted or required by law, including the making in good faith of any required application for court approval.

- B. If the **Insured Entity** is unable to fully indemnify the **Insured Persons** for **Loss** or to advance **Defense Costs** for reasons of **Financial Impairment**, the **Insured Entity** shall be deemed to provide indemnification for such **Loss** or advancement of such **Defense Costs** to the fullest extent permitted or required by law, including the making in good faith of any required application for court approval, and the **Company** shall pay such **Loss** or advance such **Defense Costs** regardless of whether some or all of the **Retention** is unpaid.

## VI. NOTICES

- A. All notices to the **Company** shall be given in writing and sent by mail, prepaid express courier or by facsimile, to the address listed in **Item 9.** of the Declarations and shall be effective upon receipt.
- B. As a condition precedent to the obligations of the **Company** under this Policy, the **Insureds** shall give written notice to the **Company** of a **Claim** made against an **Insured** as soon as practicable after the **Named Insured's** risk manager or general counsel (or equivalent position) first becomes aware of the **Claim**, but in no event later than:
  - (1) the end of the **Policy Period** or the **Discovery Period** (if applicable); or
  - (2) ninety (90) days after the end of the **Policy Period** or the **Discovery Period** (if applicable), if such **Claim** was first made against an **Insured** within the final ninety (90) days of the **Policy Period** or the **Discovery Period** (if applicable).
- C. If during the **Policy Period** or the **Discovery Period** (if applicable) the **Insureds** first become aware of any circumstance which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and give written notice to the **Company** of the circumstance, the anticipated **Wrongful Act** allegations and the reason for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** subsequently made against such **Insured** arising out of such **Wrongful Act** and reported to the **Company** shall be considered made at the time the **Insured** gave such notice of circumstance to the **Company.**

- D. Any actual, alleged or anticipated **Crisis** shall be reported to the **Company** as soon as practicable, but in no event later than thirty (30) days after the **Insured Entity** first incurs **Crisis Costs** for which coverage will be requested, or thirty (30) days after the end of the **Policy Period** or the **Discovery Period** (if applicable), whichever is earlier.

## VII. DEFENSE COSTS

- A. At the written request of the **Insureds**, the **Company** shall advance **Defense Costs** under **INSURING AGREEMENT A., B., C. and D.** of this Policy prior to the final disposition of a **Claim**; provided that the **Insureds** severally, according to their respective interests, agree to repay the **Company's** advance payments in the event and to the extent that such **Insureds** are not entitled under the terms of this Policy to payment of such **Defense Costs**.
- B. The **Insureds**, and not the **Company**, have the duty to defend any **Claim** made against the **Insureds**. The **Insureds** shall not admit or assume any liability, enter into any settlement agreement, make any settlement offer, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Company**, such consent not to be unreasonably withheld.

The **Company** shall have the right to effectively associate with the **Insureds** in the defense of any **Claim** that involves or appears reasonably likely to involve the **Company**, including negotiating a settlement. The **Insureds** shall give the **Company** full cooperation and such information as it may reasonably require. Upon the **Company's** request, the **Insureds** shall attend proceedings, hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits.

## VIII. ALLOCATION

If any **Claim** made against an **Insured** includes both covered and uncovered matters and/or is also asserted against others who are not extended coverage for such **Claim**, the **Insureds** and the **Company** shall use their best efforts to determine a fair and proper allocation as between such insured and uninsured **Loss**.

If as a result of a **Claim** other than a **Securities Claim** any **Insured Person** and any **Insured Entity** jointly incur any **Defense Costs**, jointly settle or become the subject of an insured final judgment of joint and several liability against them, then the **Insureds** and the **Company** agree to use their best efforts to reach a fair and proper allocation as between such **Insured Person**, such **Insured Entity** and the **Company**, taking into account the relative legal and financial exposures and the relative benefits obtained by such **Insured Person** and such **Insured Entity**, without any presumption that coverage afforded to the **Insured Person** in any way reduces the allocation to the **Insured Entity**.

If the **Insureds** and the **Company** cannot agree upon the amount of **Defense Costs** to be advanced under the Policy, then the **Company** shall advance the **Defense Costs** in excess of any applicable **Retention** which the **Company** concludes to be fair and proper allocation until a different amount can be agreed upon or determined pursuant to the terms of this Policy and applicable law.

## IX. DISCOVERY PERIOD

- A. Except as provided in **B.** below, if either the **Company** or the **Named Insured** shall cancel or refuse to renew this Policy, the **Named Insured** shall have the right, upon payment of the **Discovery Period** Premium stated in **Item 7.(a)** of the Declarations, to an additional period stated in **Item 7.(b)** of the Declarations immediately following the effective date of such cancellation or non-renewal (herein referred to as the "**Discovery Period**") in which to give to the **Company** written notice of any **Crisis** first occurring during the **Discovery Period**, any **Claim** first made against the **Insureds** during the **Discovery Period**, any notice of circumstance under Section **VI.C.** or any **Shareholder Derivative Demand** first received by the **Insured Entity** during the **Discovery Period**, but only if such notice of circumstance, **Claim** or **Shareholder Derivative Demand** is for a **Wrongful Act** otherwise covered by this Policy that occurs prior to the earlier of any **Transaction** or the effective date of such cancellation or non-renewal. The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Company** within thirty (30) days of the effective date of cancellation or non-renewal.
- B. The additional premium for the **Discovery Period** shall be fully earned at the inception of the **Discovery Period**. The **Discovery Period** is not cancelable. This Section and the rights contained herein shall not apply to any

cancellation resulting from non-payment of premium, or as a result of a renewal quotation with different terms and conditions.

C. The purchase of the **Discovery Period** shall not increase or reinstate any **Limit of Liability**.

#### X. PAYMENT PRIORITY

If the amount of any covered **Loss** otherwise due and owing by the **Company** under this Policy exceeds the then-remaining **Limit of Liability** of this Policy under **Item 2.(a)** of the Declarations, the **Company** shall pay **Loss** (subject to such **Limit of Liability**) in the following priority:

- A. first, the **Company** shall pay any **Loss** covered under **INSURING AGREEMENT A.**;
- B. second, only if and to the extent the payment under **INSURING AGREEMENT A.** does not exhaust the **Limit of Liability**, the **Company** shall pay any **Loss** covered under **INSURING AGREEMENT B., C. and/or D.**

Subject to the foregoing, the **Company** shall, upon receipt of a written request from the **Named Insured**, delay any payment of covered **Loss** otherwise due and owing under **INSURING AGREEMENT B., C. and/or D.** until such time as the **Named Insured** designates; provided the **Company's** liability with respect to any such delayed **Loss** payment shall not be increased, and shall not include any interest, on account of such delay.

#### XI. CANCELLATION AND NON-RENEWAL

- A. The **Named Insured** may cancel this Policy by surrender thereof to the **Company** or any of its authorized representatives or by mailing to the **Company** written notice stating when thereafter the cancellation shall be effective.
- B. The **Company** may cancel this Policy solely for non-payment of premium by mailing to the **Named Insured** at the address shown in the Declarations and to its agent of record written notice stating when, not less than twenty (20) days thereafter, such cancellation shall be effective. The notice shall state the precise reason for the cancellation. Proof of mailing will be sufficient proof of notice.
- C. The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**.
- D. If the **Named Insured** cancels this Policy, earned premium shall be the customary short rate amount of the annual premium, and if the **Company** cancels this Policy, earned premium shall be the pro rata amount of the annual premium; provided, however, if at the time of cancellation the **Limit of Liability** has been exhausted, the entire premium shall be considered earned. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. Mailing of the **Company's** check shall be sufficient tender of any refund of premium due to the **Named Insured**.
- E. If the **Company** chooses to non-renew this Policy, the **Company** will deliver or mail to the **Named Insured** and to its agent of record written notice stating such at least sixty (60) days before the expiration of the **Policy Period**. Proof of mailing is sufficient proof of notice. The notice of non-renewal shall state the precise reason for such non-renewal.

#### XII. CHANGE IN CONTROL OF THE NAMED INSURED

If during the **Policy Period**:

- A. the **Named Insured** shall consolidate with or merge into, or sell all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert;
- B. any person or entity or group of persons and/or entities acting in concert shall acquire an amount of the outstanding securities representing more than fifty percent (50%) of the voting power for the election of directors of the **Named Insured**, or acquires the voting rights of such an amount of such securities; or
- C. the appointment of a receiver, conservator, trustee, liquidator or rehabilitator or any similar official for or with respect to the **Named Insured**;

(any such event referred to herein as a "**Transaction**") then, this Policy shall continue in full force and effect as to any **Wrongful Act** occurring prior to the effective date of the **Transaction**, but there shall be no coverage afforded by

any provision of this Policy for any actual or alleged **Wrongful Act** after the effective date of the **Transaction**. This Policy may not be canceled after the effective date of the **Transaction** and the entire premium for this Policy shall be deemed earned as of such date. The **Named Insured** shall give the **Company** written notice of the **Transaction** as soon as practicable, but not later than thirty (30) days after the effective date of the **Transaction**.

### **XIII. SUBROGATION**

If the **Company** pays any **Loss**, the **Company** shall be subrogated to the **Insured's** right of recovery against any other person or organization for such **Loss**, and the **Insured** shall execute all papers required, and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Company** effectively to bring suit in the name of the **Insured**. Any recovery (after expenses) shall be used to reduce the **Loss**, and so much of such recovery shall be paid to the **Company** as will reduce the **Loss** ultimately borne by the **Company** to what it would have been had the recovery preceded any payment of such **Loss** by the **Company**.

### **XIV. OTHER INSURANCE**

The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the applicable **Limit of Liability** provided by this Policy. This Policy shall also be specifically excess over 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**.

### **XV. ARBITRATION**

If requested by the **Insured**, the **Company** shall submit any dispute, controversy or **Claim** arising out of or relating to this Policy or the breach, termination or invalidity thereof to final and binding arbitration pursuant to such rules and procedures as the parties may agree. If the parties cannot so agree, the arbitration shall be administered by the American Arbitration Association in accordance with its then prevailing commercial arbitration rules. The arbitration panel shall consist of one arbitrator selected by the **Insured**, one arbitrator selected by the **Company**, and a third independent arbitrator selected by the first two arbitrators. Each party will bear its own legal fees and expenses.

### **XVI. NOTICE AND AUTHORITY**

It is agreed that the **Named Insured** shall act on behalf of its **Subsidiaries** and all **Insured Persons** with respect to giving notice of **Claim**, giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy and the exercising or declining to exercise any right to a **Discovery Period**.

### **XVII. ACTION AGAINST COMPANY**

No action shall lie against the **Company** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the **Claimant** and the **Company**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of any insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the **Company** as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the **Company** be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the **Company** of any of its obligations hereunder.

### **XVIII. REPRESENTATIONS**

By accepting this Policy the **Insureds** agree that the statements in the **Application** are their agreements and representations and that this Policy is issued in reliance upon the truth of such agreements and representations, which are deemed material to the acceptance of the risk or the hazard assumed by the **Company** under the Policy.

The **Insureds** further agree that in the event of any material misstatement, misrepresentation or omission in the **Application**, this Policy will be void as to:

- A. any **Insured Person** who knew of such misstatement, misrepresentation or omission (whether under **INSURING AGREEMENT A.** or **D.** or under **INSURING AGREEMENT B.** as to the **Insured Entity's** indemnification of such **Insured Person**); and
- B. any other **Insured** to whom knowledge of such misstatement, misrepresentation or omission is imputed. For the purpose of determining imputation, the **Insureds** agree that:
  - (1) any knowledge possessed by the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, General Counsel, President or the Chairman of the Board of Directors of the **Named Insured** shall be imputed to the **Insured Entity**; and
  - (2) the knowledge of an **Insured Person** shall not be imputed to any other **Insured Person**.

Except as to any **Insured Person** who knew of such misstatement, misrepresentation or omission, **INSURING AGREEMENT A.** shall be non-rescindable.

#### **XIX. ASSIGNMENT**

No assignment of interest under this Policy shall be valid unless endorsed in writing by the **Company**.

#### **XX. ENTIRE AGREEMENT**

This Policy, together with the Declarations, **Application** and Endorsements, embodies all agreements existing between the **Insured** and the **Company** or any of its agents relating to this insurance.

#### **XXI. CAPTIONS**

The headings or captions used in this Policy are for reference only and do not affect the meaning of this Policy.