

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

**A-SIDE EXCESS DIFFERENCE IN CONDITIONS
DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY**

THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED PERSONS 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**), the **Entity** and the **Insured Persons** agree as follows:

I. INSURING AGREEMENT

A. FOLLOW FORM EXCESS NON-INDEMNIFIABLE LOSS COVERAGE

The **Company** shall provide the **Insured Persons** with insurance coverage in accordance with the same terms, definitions, conditions, exclusions, warranties and limitations as are contained in the **Followed Policy**; provided, however, in all events, coverage under this Policy shall be limited to the **Non-Indemnifiable Loss of Insured Persons** excess of the **Total Underlying Limits**, and shall be subject to the following terms and conditions of this Policy and shall not follow inconsistent terms of the **Underlying Policies**:

The Declarations, Section **I. INSURING AGREEMENT**, Section **II. DEFINITIONS F., G., T. and U.**, Section **IV. LIMIT OF LIABILITY**, Section **V. PRESUMPTIVE INDEMNIFICATION**, Section **VI. NOTICES**, Section **VII. DEFENSE COSTS**, Section **VIII. ALLOCATION**, Section **IX. DISCOVERY PERIOD**, Section **X. CANCELLATION AND NON-RENEWAL**, Section **XII. CHANGES IN UNDERLYING INSURANCE**, Section **XIII. SUBROGATION**, Section **XIV. OTHER INSURANCE AND INDEMNIFICATION**, Section **XV. ARBITRATION** and Section **XVIII. NON-RESCINDABLE**.

B. UNINSURED NON-INDEMNIFIABLE LOSS DIFFERENCE-IN-CONDITIONS COVERAGE

The **Company** will pay on behalf of the **Insured Persons** any **Non-Indemnifiable 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**, but only if:

- (1) the insurers of the **Underlying Policies** refuse to pay such **Loss** and either file an action to rescind the coverage for such **Insured Person** or otherwise provide written notice of intent to rescind;
- (2) the insurers of the **Underlying Policies** wrongfully refuse to indemnify such **Insured Person** for such **Loss** as required under the terms and conditions of the **Underlying Policies**;
- (3) the insurers of the **Underlying Policies** are financially unable to indemnify such **Insured Person**;
- (4) the **Underlying Policies** are not liable for such portion of the **Loss** and such **Claim** according to the terms and conditions of the **Underlying Policies**; or
- (5) a liquidation or reorganization proceeding is commenced by or against the **Named Insured** and/or any **Subsidiary** pursuant to the United States Bankruptcy Code, as amended ("Code"), and as a result of such proceeding the proceeds of any of the **Underlying Policies** cannot legally be paid by the insurer thereof solely because such proceeds are subject to the automatic stay under the Code; provided, however, as a condition precedent to the **Company** being liable pursuant to this Section **I.B.(5)**, the **Insured Persons** or the **Entity** shall request, or arrange for the insurer of the applicable **Underlying Policy** to request, relief from the automatic stay with respect to such proceeds;

provided, however, if and to the extent that any **Non-Indemnifiable Loss** is excluded under this Policy pursuant to Section **III. EXCLUSIONS** but is not excluded under the **Underlying Policies**, this Policy is amended to delete such exclusion in Section **III. EXCLUSIONS** with respect to such **Non-Indemnifiable Loss**.

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 **Entity** with the Securities and Exchange Commission (“SEC”) or any similar state, local, or foreign regulatory agency, including the **Entity’s** Annual Reports, 10Ks, 10Qs, 8Ks and proxy statements.

B. “Claim” means:

- (1) an oral or written demand for monetary, non-monetary or injunctive relief;
- (2) 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;
- (3) 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;
- (4) a criminal proceeding commenced by the return of an indictment, information or similar document; or
- (5) a civil, administrative or regulatory investigation by the SEC or a similar state, local or foreign government authority after the service of a subpoena.

C. “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 **Insured Persons**, but shall not include salaries, wages, overhead or benefit expenses associated with **Insured Persons** or employees of the **Entity**.

D. “Entity” means the **Named Insured** and any **Subsidiary** thereof.

E. “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.

F. “Followed Policy” means the policy, as constituted at its inception, named in **Item 4.** of the Declarations.

G. “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 **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) any other person not described in (1) or (2) above who has been, now is or shall be a employee of the **Entity**, but only while a **Claim** made against any such person is also made against a person described in (1) or (2) above;
- (4) the estates, heirs, or legal representatives of any person described in (1) or (2) 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) or (2) 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) or (2) above for a **Wrongful Act** of such person listed in (1) or (2) 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**.

H. “**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.

I. “**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 **Insured Persons** are not financially liable or which are without legal recourse to the **Insured Persons**; or
- (4) 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.

J. “**Named Insured**” means the entity designated in **Item 1.** of the Declarations.

K. “**Non-Indemnifiable Loss**” means **Loss** for which the **Entity** is neither permitted nor required by law to indemnify the **Insured Persons** or for which the **Entity** is unable to indemnify the **Insured Persons** due to **Financial Impairment**.

L. “**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).

M. “**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.

N. “**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**.

O. “**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.

P. “**Pollutants**” means, but is not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalies, 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 re-claimed), and any electric, magnetic or electromagnetic field of any frequency.

Q. “**Securities Claim**” means a **Claim** made against any **Insured Person**:

(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 an **Entity**; or

(b) brought by a security holder of an **Entity** with respect to such security holder's interest in securities of such **Entity**; or

(2) brought derivatively on the behalf of an **Entity** by a security holder of such **Entity**.

R. “**Subsidiary**” means:

(1) any not-for-profit organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, if sponsored exclusively by the **Entity**;

(2) any foundation, charitable trust or political action committee, if controlled by the **Entity**;

(3) 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**; and

(4) 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 percent (20%) of the total consolidated assets of the **Entity** as of the inception of this Policy; or

(b) twenty percent (20%) or more of the total consolidated assets of the **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**.

S. “**Total Underlying Limits**” means the total amount of the limits of the **Underlying Policies** as set forth in **Item 4** of the Declarations.

T. “**Underlying Policies**” mean all policies, as constituted at their inception, listed in **Item 4** of the Declarations.

U. “**Wrongful Act**” means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Insured Persons**:

(1) as fiduciaries of any employee benefit plan sponsored solely by the **Entity** for the benefit of its employees, or any matter claimed against them solely by reason of their status as such; or

(2) in their respective capacities as such 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**.

III. EXCLUSIONS

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

- A. based upon, arising out of or attributable to any **Insured Person** committing any deliberate criminal or deliberate fraudulent act, if established by a final judgment; in applying this exclusion, knowledge possessed by an **Insured Person** shall not be imputed to another **Insured Person**; provided, however, this exclusion shall not apply to **Defense Costs**;
- B. based upon, arising out of or attributable to any **Insured Person** in fact gaining any profit or advantage to which such **Insured Person** was not legally entitled, if established by a final judgment or if such **Insured Person** agrees to disgorge or repay such profit or advantage; provided, however, this exclusion shall not apply to:
 - (1) **Defense Costs**; or
 - (2) 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 4.** of the Declarations, either made against an **Insured Person** or of which an **Insured Person** had notice; 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 **Entity**; provided, however, this exclusion shall not apply to an **Outside Position**;
- F. brought by, on behalf of or in the right of the **Entity** if two or more persons each whom at the time of such **Claim** is brought is the **Entity's** president, chief executive officer, chief financial officer, executive vice president and/or in-house general counsel authorize, approve, assist or participate in such **Claim**; provided, however, this exclusion shall not apply to:
 - (1) **Defense Costs**;
 - (2) any **Claim** brought and maintained outside of the United States or Canada or their territories or possessions;
 - (3) any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency receiver, trustee, examiner, conservator, liquidator or rehabilitator for an **Entity**, or any assignee thereof; or
 - (4) any **Claim** if, between the inception date of this Policy and the date such **Claim** is made, a **Transaction** as described in Section **XI.** of this Policy has occurred; or
- G. for bodily injury, sickness, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof; provided, however, this exclusion shall not apply to any **Claim** for actual or alleged discharge, dispersal, release or escape of any **Pollutants**; provided that coverage under this Policy shall be specifically excess of the amount of coverage available under any general liability, environmental impairment or similar insurance policy with respect to such **Claim**.

IV. LIMIT OF LIABILITY

The **Limit of Liability** stated in **Item 2.** of the Declarations is the aggregate limit of the **Company's** liability for all **Loss**, including **Defense Costs**, under the Policy as a result of all **Claims** first made against the **Insured Persons** 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**.

V. PRESUMPTIVE INDEMNIFICATION

The **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** and 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.

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 **Entity** or the **Insured Persons** shall give written notice to the **Company** of a **Claim** made against an **Insured Person** as soon as practicable, 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 Person** 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 **Entity** or the **Insured Persons** first become aware of any circumstance which may reasonably be expected to give rise to a **Claim** being made against an **Insured Person** 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 Person** arising out of such **Wrongful Act** and reported to the **Company** shall be considered made at the time such notice of circumstance was given to the **Company**.
- D. 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.

VII. DEFENSE COSTS

- A. At the written request of the **Insured Persons**, the **Company** shall advance **Defense Costs** prior to the final disposition of a **Claim**; provided that the **Insured Persons** severally, according to their respective interests, agree to repay the **Company's** advance payments in the event and to the extent that such **Insured Persons** are not entitled under the terms of this Policy to payment of such **Defense Costs**.
- B. The **Insured Persons**, and not the **Company**, have the duty to defend any **Claim** made against the **Insured Persons**. The **Insured Persons** shall not admit or assume any liability, enter into any settlement agreement, make any settlement offer or stipulate to any judgment 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 **Insured Persons** in the defense of any **Claim** that involves or appears reasonably likely to involve the **Company**, including negotiating a settlement. The **Insured Persons** shall give the **Company** full cooperation and such information as it may reasonably require. Upon the **Company's** request, the **Insured Persons** 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 as a result of a **Claim** made against an **Insured Person** and any **Entity**, any **Insured Person** and any **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 **Entity**, the **Insured Persons**, such **Entity** and the **Company** agree to use their best efforts to reach a fair and proper allocation as between such **Insured Person**, such **Entity** and the **Company**, taking into account the relative legal and financial exposures and the relative benefits obtained by such **Insured Person** and such **Entity**, without any presumption that coverage afforded to the **Insured Person** in any way reduces the allocation to the **Entity**.

If the **Insured Persons** 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 6.(a)** of the Declarations, to an additional period stated in **Item 6.(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 **Claim** first made against the **Insured Persons** during the **Discovery Period** or notice of circumstance under Section VI.C. for any **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. CANCELLATION AND NON-RENEWAL

- A. This Policy may be canceled by the **Named Insured** 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. This Policy may be canceled by the **Company** solely for non-payment of premium by mailing to the **Named Insured** at the address shown in the Declarations written notice stating when not less than twenty (20) days thereafter such cancellation shall be effective.
- 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.

XI. 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** until the later of:

- (1) the fifth (5th) anniversary of the effective date of the **Transaction** if prior to the effective date the **Entity** or the **Insured Persons** give notice to the **Company** of their desire to elect such extension (no additional premium shall be required);
- (2) any subsequent date to which the **Company** may agree by endorsement; or
- (3) the expiration of the **Policy Period**.

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**.

XII. CHANGES IN UNDERLYING POLICIES

As a condition precedent to this Policy's coverage, the **Insureds** shall notify the **Company** in writing of any of the following events as soon as practicable thereafter, with full particulars:

- (1) the reduction or exhaustion of any of the **Total Underlying Limits**;
- (2) the cancellation or termination of, or failure to maintain in full effect, any of the **Underlying Policies**;
- (3) any change to any of the **Underlying Policies**; or
- (4) the insurer of any of the **Underlying Policies** becoming subject to a receivership, liquidation, dissolution, rehabilitation or similar proceeding or being taken over by any regulatory authority.

XIII. SUBROGATION

If the **Company** pays any **Loss**, the **Company** shall be subrogated to the **Insured Persons'** right of recovery against any other person or organization for such **Loss** (including against the **Entity** for advancement or indemnification), and the **Insured Person** 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 Person**. 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**. In no event shall the **Company** exercise its rights of subrogation against an **Insured Person** under this Policy unless such **Insured Person** has committed a deliberate criminal or deliberate fraudulent act or gained any profit or advantage to which such **Insured Person** was not legally entitled, but only as evidenced by a final judgment adverse to such **Insured Person**.

XIV. OTHER INSURANCE AND INDEMNIFICATION

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**.

In the event of a **Claim** made against **Insured Persons** in an **Outside Position** or by reason of their service in an **Outside Position**, such coverage as is afforded by this Policy shall be specifically excess of: **(1)** any indemnification provided by an **Outside Entity**; and **(2)** any insurance coverage afforded to an **Outside Entity** or the **Insured Person** for such **Claim**.

XV. ARBITRATION

If requested by the **Insured Persons**, 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 Persons**, 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 all **Insured Persons** with respect to 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 Persons'** obligation to pay shall have been finally determined either by judgment against the **Insured Persons** after actual trial or by written agreement of the **Insured Persons**, 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 any **Insured Person** to determine the **Insured Person's** liability, nor shall the **Company** be impleaded by the **Insured Persons** or their legal representatives. Bankruptcy or insolvency of any **Insured Person** or the **Insured Person's** estate shall not relieve the **Company** of any of its obligations hereunder.

XVIII. NON-RESCINDABLE

The **Company** shall not rescind this Policy or any coverage hereunder under any circumstances.

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 Persons**, the **Entity** and the **Company** or any of their 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.