



Endurance American Insurance Company

(Hereinafter referred to as the "Insurer")

Wilmington, Delaware

EXCESS DIRECTORS AND OFFICERS DIFFERENCE IN CONDITIONS LIABILITY INSURANCE DECLARATIONS

NOTICE: PLEASE READ CAREFULLY

THIS POLICY IS A CLAIMS-MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED PERSONS DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY DEFENSE COSTS INCURRED. PLEASE READ THIS POLICY CAREFULLY.

Declarations

Policy No:

Item **Parent Company:**

1.

Principal Address:

Item **Policy Period:**

2.

From:

To:

(12:01 A.M. local time at the address stated in Item 1.)

Item **Aggregate Limit of Liability:**

3.

Item **A. Discovery Period Premium:**

% of the annualized Premium indicated in Item 7.

4.

B. Discovery Period:

Item **Notice to Insurer:**

Endurance American Insurance Company

5.

767 Third Avenue, 5th Floor, New York, NY. 10017

Item **Schedule of Underlying Policies:**

6.

Insurer	Policy No.	Policy Period	Limit of Liability	Attachment
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Item Premium:

7.

Item Forms and Endorsements Effective at Inception:

8.

Title

Form No.

Item Producer's Name and Address:

9.

These Declarations, together with the **Application** (including all information furnished by the **Insureds** in the underwriting of this **Policy**), the attached policy form and any written endorsements thereto, shall constitute the contract between the **Company**, the **Insured Persons** and the Insurer.

The Insurer hereby causes this **Policy** to be signed on the Declarations by a duly authorized representative of the Insurer.

Authorized Representative

Date

**EXCESS DIRECTORS AND OFFICERS LIABILITY DIFFERENCE IN CONDITIONS
INSURANCE POLICY**

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EXCESS DIRECTORS AND OFFICERS LIABILITY DIFFERENCE IN CONDITIONS INSURANCE POLICY

All words and phrases that appear in bold type (except headings) have special meaning and are defined under DEFINITIONS (Section II) of this policy.

In consideration of the payment of the premium and in reliance on all statements made and information furnished to the Insurer in the **Application**, which is hereby made a part hereof, and subject to the foregoing Declarations and to all other terms of this **Policy**, the **Company**, the **Insured Persons**, and the Insurer agree as follows:

I. INSURING CLAUSES

A. Insured Person Liability

The Insurer shall pay on behalf of the **Insured Persons** any **Loss** for which the **Insured Persons** are not indemnified by the **Company** and which the **Insured Persons** become legally obligated to pay by reason of any **Claim** first made against the **Insured Persons** during the **Policy Period** and any applicable **Discovery Period** for any **Wrongful Acts** taking place prior to the end of the **Policy Period**; provided the Insurer shall be liable for any such **Loss** only if and to the extent:

1. the insurer(s) of the **Underlying Policies**:
 - a. wrongfully refuse(s) to indemnify the **Insured Persons** with respect to such **Loss** as required under the terms of the **Underlying Policies**; or
 - b. fail(s) to indemnify the **Insured Persons** with respect to such **Loss** within sixty (60) days after the **Insured Persons** request such indemnification; or
 - c. is financially unable to indemnify the **Insured Persons** with respect to such **Loss**; or
 - d. rescinds the **Underlying Policy**; or
2. according to the terms and conditions of the **Underlying Policies**, the insurer(s) of the **Underlying Policies** are not liable for such **Loss**; or
3. the limit(s) of liability of the **Underlying Policies** has been exhausted by reason of **Loss** paid thereunder; or
4. a liquidation or reorganization proceeding is commenced by or against the **Company** pursuant to the U.S. Bankruptcy Code, as amended, or any similar law in another country ("Code") and as a result of such proceeding the insurer(s) of the **Underlying Policies** fails or refuses to indemnify the **Insured Persons** for such **Loss** solely because the proceeds of the **Underlying Policies** are subject to an injunction prohibiting payment of such proceeds or to the automatic stay under the Code; provided that as a condition precedent to the Insurer being liable pursuant to this subparagraph 4, the **Insured Persons** or the **Company** shall request, or arrange for the insurer of the **Underlying Policies** to request, relief from the injunction or automatic stay with respect to such proceeds.

If and to the extent coverage for any **Loss** is excluded under this **Policy** pursuant to Section III, Exclusions, but is not excluded under any **Underlying Policy**, this **Policy** is amended to delete such exclusion with respect to such **Loss**; provided, however, this paragraph does not apply with respect to Exclusion III.A.1 below or any exclusion contained in an endorsement to this **Policy**.

B. Outside Position Liability

Subject to its other terms and conditions, Insuring Clause A includes coverage for an **Insured Person** while serving in an **Outside Position**. Any such coverage shall be specifically excess of any indemnity and insurance available from or provided by the **Outside Entity** in which the **Insured Person** serves in the **Outside Position**.

II. DEFINITIONS

When used in this Policy:

- A. **Application** means all materials and information, including all signed applications and any materials attached thereto or incorporated therein, submitted by or on behalf of the **Insured Persons** or the **Company** for this **Policy** or for any policy issued by the Insurer of which this **Policy** is a direct or indirect renewal or replacement. **Application** shall also include all publicly available documents filed by the **Company** with the Securities and Exchange Commission during the twelve (12) months preceding inception of the **Policy Period**. All such materials, information and filings are deemed attached to and incorporated into this **Policy**.
- B. **Claim** means:
1. a written demand for monetary damages or other relief against any **Insured Person** for a **Wrongful Act**,
 2. a civil proceeding against any **Insured Person** for a **Wrongful Act**, commenced by the service of a complaint or similar pleading,
 3. an arbitration proceeding against any **Insured Person** for a **Wrongful Act**,
 4. a criminal proceeding against any **Insured Person** for a **Wrongful Act**, commenced by a return of an indictment, information or similar document,
 5. any official request for the **Extradition** of any **Insured Person** or the execution of a warrant for the arrest of any **Insured Person** where such execution is an element of **Extradition**,
 6. a formal administrative or regulatory adjudicatory or investigative proceeding against any **Insured Person** for a **Wrongful Act**, commenced by the filing of a notice of charge, formal investigative order or similar document,
 7. a civil, criminal, administrative or regulatory investigation against an **Insured Person** for a **Wrongful Act**, commenced by the service upon or other receipt by the **Insured Person** of a written notice or subpoena from the investigating authority identifying the **Insured Person** as an individual against whom a formal proceeding may be commenced, or
 8. any request or demand by a regulatory, administrative, governmental or similar authority to interview or depose an **Insured Person**, including any appeal therefrom.
- C. **Company** means, collectively, the **Parent Company** and the **Subsidiaries**, including any such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- D. **Defense Costs** means reasonable and necessary costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Company**) incurred by the **Insured Persons** in defending **Claims** and the premium for appeal, attachment or similar bonds, provided the Insurer shall have no obligation to apply for or furnish such bonds. **Defense Costs** include such reasonable fees and expenses incurred by the **Insured Persons** at the Insurer's request to assist the Insurer in investigating a **Claim** or costs assessed against the **Insured Persons** in a **Claim**.
- E. **Discovery Period** means the period for the extension of coverage, if exercised, described in Section IV (B) or IV(G)(2) of this **Policy**.
- F. **Domestic Partner** means any natural person qualifying as a **Domestic Partner** under the provisions of any applicable federal, state or local law or under the provisions of any formal program established by the **Company**.
- G. **Executive Officers**, either in the singular or plural, means with respect to any **Company** its chairperson, president, chief executive officer, chief financial officer and in-house general counsel.

- H. **Extradition** means any formal process by which an **Insured Person** located in any country is surrendered to any other country for trial, or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- I. **Independent Directors** means one or more past, present or future directors or **Managers** of the **Company** who are not and have never been an officer or employee of any **Company**.
- J. **Insured Persons**, either in the singular or plural, means:
1. any one or more natural persons who were, now are or shall become duly elected or appointed directors, trustees, **Managers**, officers, in-house general counsel, controller or risk manager of the **Company**, or, with respect to a **Company** incorporated outside the United States, their functional equivalent;
 2. any one or more other natural persons not described in subparagraph (1) above who were, now are or shall become full or part-time employees of the **Company**; provided such other employees shall be considered **Insured Persons** only (a) if the **Company** agrees to indemnify such other employees to the same extent as the **Company** agrees to indemnify the natural persons described in subparagraph (1) above, and (b) while a **Claim** against such other employees is also made against a natural person described in subparagraph (1) above; and
 3. any one or more natural persons described in subparagraph (1) above while serving in an **Outside Position**.
- K. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- L. **Loss** means the amount which the **Insured Persons** become legally obligated to pay on account of **Claims** made against them for **Wrongful Acts** for which coverage applies, including, but not limited to, damages, judgments, any award of pre-judgment and post-judgment interest, settlements and **Defense Costs**. **Loss** does not include (1) any amount for which the **Insured Persons** are absolved from payment, (2) taxes, fines or penalties imposed by law, other than civil penalties assessed against an **Insured Person** pursuant to Section 2(g)(2)(B) of the Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2(g)(2)(B), or (3) matters uninsurable under the law pursuant to which this **Policy** is construed. This definition does not exclude punitive, exemplary or multiple damages to the extent such damages are insurable under the internal laws of any jurisdiction which has a substantial relationship to the **Company**, the **Insured Persons**, the Insurer, this **Policy** or such **Claim**. The Insurer shall not assert that any **Loss** incurred by an **Insured Person**, in the **Insured Persons'** capacity as such, is uninsurable due to the **Insured Person's** actual or alleged violation of Section 11 or 12 of the Securities Act of 1933, as amended.
- M. **Managers** means any natural person who was, now is or shall become a manager, member of the Board of Managers or equivalent executive of a **Company** that is a limited liability company.
- N. **Non-Profit Entity** means any organization chartered and operated as a not-for-profit organization.
- O. **Outside Entity** means:
1. any **Non-Profit Entity**, or
 2. any other entity specifically included as an **Outside Entity** by endorsement to this **Policy**,
- provided such entity is not included in the definition of **Company**.
- P. **Outside Position** means the position of director, officer, manager, trustee or other equivalent executive position held by an **Insured Person** in an **Outside Entity** if service in such position is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Company**.
- Q. **Parent Company** means the organization first named in Item 1 of the Declarations.

- R. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements attached hereto.
- S. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination in accordance with Section IV (I) of this **Policy**.
- T. **Subsidiary**, either in the singular or plural, means:
1. any organization, other than a partnership, in which more than 50% of the outstanding voting securities representing the present right to vote for election of directors or **Managers** is owned, directly or indirectly, in any combination, by one or more **Companies**, and
 2. any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Companies**.
- U. **Underlying Policies** means the directors and officers liability insurance policies scheduled in Item 6 of the Declarations.
- V. **Wrongful Act** means:
1. any error, misstatement, misleading statement, act, omission, neglect, or breach of duty actually or allegedly committed or attempted by any of the **Insured Persons** in their capacity as such, or in an **Outside Position**, or
 2. any matter claimed against the **Insured Persons** solely by reason of their serving in such capacity or in an **Outside Position**.

III. EXCLUSIONS

- A. The Insurer shall not be liable for **Loss** on account of that portion of any **Claim** made against any **Insured Person**:
1. for which the **Company** or, with respect to **Insured Persons** serving in an **Outside Position**, the **Outside Entity** (a) actually pays or indemnifies, or (b) is required or permitted by law to pay on behalf of or indemnify, provided this exclusion shall not apply if and to the extent the **Company** and the **Outside Entity** fail or refuse within sixty (60) days after the **Insured Person's** request, or are financially unable, to pay, advance or indemnify such **Loss**;
 2. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement;
 3. for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property including **Loss** of use thereof, but this exclusion shall not apply to:
 - a. any **Claim** by securities holders of the **Company** in their capacity as such, including, without limitation, any shareholder derivative or securities class action lawsuit;
 - b. any **Claim** for emotional distress or mental anguish;
 - c. any **Claim** for the actual or alleged discharge, dispersal, release or escape of any solid, liquid, gaseous, or thermal irritant, contaminant or other pollutant, provided any coverage under this **Policy** with respect to any such **Claim** 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**; or
 - d. **Independent Directors**;
 4. for **Wrongful Acts** actually or allegedly committed or attempted by **Insured Persons** of a **Subsidiary** before the date such organization became a **Subsidiary**;

5. based upon, arising out of, or attributable to such **Insured Person** having gained any improper or illegal personal profit or remuneration or having committed any deliberate fraud or willful violation of law if a final and non-appealable judgment or adjudication adverse to such **Insured Person** in any proceeding not brought by the Insurer, or if a written admission under oath by such **Insured Person**, establishes that such **Insured Person** in fact gained any such personal profit or remuneration or committed such deliberate fraud or willful violation of law; however, this exclusion shall not apply:
 - a. to **Defense Costs**;
 - b. to **Independent Directors**; or
 - c. by reason of a written admission under oath by such **Insured Person** if a majority of disinterested directors of the **Parent Company** elect to waive the applicability of this exclusion with respect to such **Insured Person** by reason of such written admission;
6. by or on behalf of a **Company**, if brought within the United States, Canada or their territories or possessions by or with the active assistance or participation of two or more persons each of whom at the time such **Claim** is brought is an **Executive Officer** of such **Company**; however, this exclusion shall not apply to:
 - a. any **Claim** if, between inception of the **Policy Period** and the date of the **Claim**, such **Company** shall have undergone any of the events listed in Section IV(G)(2) below, and the **Claim** is brought after the date of such event;
 - b. any **Claim** brought or maintained by or on behalf of a bankruptcy or insolvency trustee, examiner, receiver, creditors committee or similar official for such **Company** or any assignee of such trustee, examiner, receiver, committee or similar official;
 - c. **Defense Costs**;
 - d. any **Claim** if independent legal counsel selected by such **Company** with the prior consent of the Insurer (such consent not to be unreasonably withheld) opines in writing that the failure of the **Company** to make such **Claim** could reasonably result in liability to one or more **Insured Persons** of such **Company** for failure to assert such **Claim**; or
 - e. any **Claim** if the only assistance or participation described above is (i) solely pursuant to or in compliance with a subpoena or similar legal process, or (ii) protected pursuant to Section 806 of the Sarbanes-Oxley Act of 2002 or any similar whistleblower statute;
7. for a **Wrongful Act** actually or allegedly committed or attempted by **Insured Persons** in their capacity as a director, officer, trustee, manager or employee of any organization other than an **Outside Entity** or the **Company**, even if service in such capacity is with the knowledge and consent of, at the direction or request of, or part of the duties regularly assigned to the **Insured Person** by, the **Company**.

B. Severability of Exclusions

For the purpose of determining the applicability of any Exclusion set forth in this Section III, the **Wrongful Act** or knowledge of any **Insured Person** shall not be imputed to any other **Insured Persons**.

IV. GENERAL TERMS AND CONDITIONS

A. Estates, Legal Representatives, Spouses and Domestic Partners

The estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of a spouse or **Domestic Partner**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or **Domestic Partner**. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or **Domestic Partner**. All terms and conditions of this **Policy** applicable to

Loss incurred by the **Insured Person** shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and **Domestic Partners**.

B. Discovery Period

If the **Parent Company** or the Insurer refuses to renew this **Policy**, the **Company** and the **Insured Persons** shall have the right, upon payment of the additional premium described below, to an extension of the coverage granted by this **Policy** for the **Discovery Period** set forth in Item 4(B) of the Declarations following the effective date of such nonrenewal, but only with respect to **Claims** first made during the **Discovery Period** for covered **Wrongful Acts** taking place prior to the effective date of such nonrenewal. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Company** or **Insured Persons** to the Insurer within thirty (30) days following the effective date of nonrenewal.

The premium due for such **Discovery Period** shall equal that percent set forth in Item 4(A) of the Declarations of the Annual Premium. The entire premium for such **Discovery Period** shall be deemed fully earned and non-refundable upon payment.

The **Insured Persons** shall not be entitled to elect the **Discovery Period** under Section IV(B) if a **Discovery Period** is elected pursuant to Section IV(G)(2) of this **Policy**.

C. Limit of Liability

For the purposes of this **Policy**, all **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insured Persons** shall be deemed one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made against them, regardless of whether such date is before or during the **Policy Period**.

The amount stated in Item 3 of the Declarations shall be the maximum aggregate liability of the Insurer under this **Policy** for all covered **Loss** resulting from all **Claims**, regardless of the number of **Claims** or the time of payment by the Insurer.

The Limit of Liability for the **Discovery Period**, if exercised, shall be part of and not in addition to the Limit of Liability for the **Policy Period**. The purchase of the **Discovery Period** shall not increase or reinstate the aggregate Limit of Liability, which shall be the maximum liability of the Insurer for the **Policy Period** and **Discovery Period**, combined.

Defense Costs shall be part of and not in addition to the aggregate Limit of Liability set forth in Item 3 of the Declarations, and **Defense Costs** shall reduce such Limit of Liability. If the Limit of Liability is exhausted by payment of **Loss**, the Insurer's obligations under this **Policy** shall be completely fulfilled and extinguished. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insured Persons**, without consideration of other future payment obligations.

D. Notice

The **Company** and the **Insured Persons** shall, as a condition precedent to their rights under this **Policy**, give to the Insurer written notice of any **Claim** made against the **Insured Persons** as soon as practicable after the in-house general counsel or risk manager of the **Company** first learns of such **Claim**, but in no event later than (i) ninety (90) days after the expiration of the **Policy Period**, or (ii) expiration of any applicable **Discovery Period**.

If during the **Policy Period** or any applicable **Discovery Period** the **Insured Persons** or the **Company** shall become aware of any circumstances that may reasonably be expected to give rise to a **Claim** against the **Insured Persons** and shall give written notice to the Insurer of the circumstances and the reasons for anticipating a **Claim**, with particulars as to dates and the persons involved, then any **Claim** that is subsequently made against the **Insured Persons** arising out of such circumstances shall be treated as a **Claim** made during the **Policy Period** or **Discovery Period** in which such written notice was received by the Insurer. No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

The **Insured Persons** and/or the **Company** shall give written notice to the Insurer within thirty (30) days after the in-house general counsel or risk manager of the **Company** first receives or has notice of any:

- i) material change in the terms or conditions of any **Underlying Policies**; or
- ii) nonrenewal or cancellation of any **Underlying Policies**,

occurring during the **Policy Period** or any applicable **Discovery Period**. Any additional premium reasonably required by the Insurer as a result of such change, nonrenewal or cancellation shall be paid within thirty (30) days of the request therefor by the Insurer.

Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is properly sent, whichever is earlier.

Mailing of Notices

Notice to **Insured Persons** may be given to the **Parent Company** at the address as shown in Item 1. of the Declarations. Notice to the Insurer of any **Claim** or circumstances under this **Policy** shall be in writing and properly addressed to the appropriate party by prepaid express courier, certified mail or fax at the following address:

Vice President and Manager – Claims
Endurance American Insurance Company
C/O Endurance Specialty Insurance Marketing Corp.
725 South Figueroa Street, Suite 2100
Los Angeles, California 90017

Telephone : (213) 270-7017 Fax: (213) 270-7800

E-Mail addressed to: Eclaims@enhinsurance.com

All other notices to the Insurer under this **Policy** shall be given to the Insurer at the address set forth in Item 5. of the Declarations, Attention: Underwriting Department. Any notice to the insurer of an **Underlying Policy(ies)** shall not constitute notice to the Insurer unless also given to the Insurer as provided in this Section IV. D.

E. Defense and Settlement

Subject to this Section IV (E), it shall be the duty of the **Insured Persons** and not the duty of the Insurer to defend any **Claim**.

The Insurer shall have the right, but not the duty, and shall be given the opportunity to effectively associate with the **Insured Persons** regarding the investigation, defense, negotiation of settlement and settlement of any **Claim** that is or reasonably could be covered in whole or in part by this **Policy**.

The **Insured Persons** shall not offer to settle or settle, assume any obligation, admit any liability or stipulate to any judgment with respect to any **Claim** that is or reasonably could be covered in whole or in part by this **Policy** without the Insurer's prior written consent, which shall not be unreasonably withheld. The Insurer shall not be liable for or as a result of any offer to settle, settlement, assumed obligation, admission of liability or stipulated judgment to which it has not given its prior written consent.

The **Insured Persons** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests and agree that in the event of a **Claim** the **Insured Persons** will do nothing that shall prejudice the Insurer's position or its potential or actual rights of recovery. The Insurer may make any investigation it deems necessary.

The Insurer shall advance on a current basis **Defense Costs** which the Insurer believes to be covered under this **Policy**. Any advancement of **Defense Costs** shall be repaid to the Insurer by the **Insured Persons**, and by the **Company** to the full extent legally permitted, severally according to their respective interests if and to the extent the **Insured Persons** shall not be entitled under the terms and conditions of this **Policy** to coverage for such **Defense Costs**.

If the **Insured Persons** or the insurer(s) of the **Underlying Policies** elect not to appeal a judgment, the Insurer may elect to make such appeal at its own expense, and shall be liable for any increased award, taxable costs and disbursements and any additional interest incidental to such appeal, to the extent such payments are not covered by other valid and collectible insurance.

The Insurer shall not unreasonably withhold any consent referenced in this Section IV (E).

F. Other Insurance

If any **Loss** under this **Policy** is insured under any other valid and collectible policy(ies), prior or current, then this **Policy** shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is an **Underlying Policy** or is written only as specific excess insurance over the Limits of Liability provided in this **Policy**.

G. Transactions Changing Coverage

1. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Company**:

- a. acquires voting securities in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
- b. acquires any organization by merger into or consolidation with the **Company**;

then, subject to all terms and conditions of this **Policy**, the **Insured Persons** of such organization shall be covered under this **Policy** but only with respect to covered **Wrongful Acts** taking place after such acquisition or creation unless the Insurer agrees by endorsement to this **Policy** to provide coverage for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total assets of such acquired organization as reflected in the organization's then most recent consolidated financial statements exceeds fifteen percent (15%) of the total assets of the **Parent Company** as reflected in the **Parent Company's** then most recent consolidated financial statements, the **Parent Company**, as a condition precedent to coverage with respect to such **Insured Persons**, shall give written notice of such acquisition or creation to the Insurer as soon as practicable and shall agree to any additional terms and conditions, and pay any reasonable additional premium, required by the Insurer.

2. Acquisition of Parent Company

If, during the **Policy Period**, any of the following events occurs:

- a. the acquisition of the **Parent Company**, or of all or substantially all of its assets, by any person, entity or group of persons or entities acting in concert, or the merger or consolidation of the **Parent Company** into or with another entity such that the **Parent Company** is not the surviving entity; or
- b. the obtaining by any person, entity or group of persons or entities acting in concert of the right to elect, appoint or designate at least fifty percent (50%) of the directors or **Managers** of the **Parent Company**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for covered **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.

If such event occurs, the **Company** and the **Insured Persons** shall have the right, upon payment of the additional premium described below, to an extension of the coverage described in the preceding paragraph for either a 1 year, 3 year, or 6 year **Discovery Period** following the termination of the **Policy Period**; but the Insurer may, in its sole discretion and subject to any additional terms, conditions and premiums required by the Insurer, agree by written endorsement to this **Policy** to any other **Discovery**

Period requested by the **Company** or the **Insured Persons**. This right of extension shall lapse unless written notice of such election, together with payment of the additional premium due, is given by the **Company** or the **Insured Persons** to the Insurer within thirty (30) days following the effective date of such event.

Upon request from the **Company** or any **Insured Person** following notice to the Insurer of such event, the Insurer shall notify the **Company** or such **Insured Person** of the additional premium amount for this extension of coverage.

The **Company** or **Insured Persons** shall not be entitled to elect this extension of coverage if a **Discovery Period** is elected pursuant to Section IV (B) of this **Policy**.

3. Cessation of Subsidiaries

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Insured Persons** of such **Subsidiary** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for covered **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.

H. Severability

The **Application** shall be construed as a separate **Application** for coverage by each **Insured Person**. No statement in the **Application** or knowledge possessed by any one **Insured Person** shall be imputed to any other **Insured Person** for the purpose of determining the availability of coverage with respect to **Claims** made against any other **Insured Person**.

This **Policy** shall not be rescinded by the Insurer in whole or in part for any reason.

I. Cancellation

1. The **Company** shown in the Declarations may cancel this **Policy** by mailing or delivering advance written notice of cancellation to the Insurer.
2. The Insurer may cancel this **Policy** by mailing or delivering to the **Company** written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if cancellation is for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if cancellation is for any other reason.
3. The Insurer will mail or deliver notice to the **Company's** last mailing address known to the Insurer.
4. Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date.
5. If this **Policy** is cancelled, the Insurer will send the **Company** any premium refund due. If the Insurer cancels, the refund will be pro rata. If the **Company** cancels, the return premium will be computed at .90 of the pro rata unearned premium. The cancellation will be effective even if the Insurer has not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

J. When The Insurer Does Not Renew

If the Insurer decides not to renew this **Policy**, the Insurer will mail or deliver to the **Parent Company** shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date of the **Policy Period**.

If notice is mailed, proof of mailing will be sufficient proof of notice.

K. Territory and Valuation

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 another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the rate of exchange published in *The*

Wall Street Journal on the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively.

Coverage under this **Policy** shall extend to **Wrongful Acts** taking place or **Claims** made anywhere in the world, to the extent legally permitted.

L. Subrogation

In the event of any payment under this **Policy**, the Insurer shall be subrogated to the extent of such payment to all the **Insured Persons'** rights of recovery, including without limitation the **Insured Persons'** rights to indemnification or advancement from the **Company**. The **Insured Persons** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the Insurer effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insured Persons** against the **Company** or the insurer(s) of the **Underlying Policies** for nonpayment of indemnity due and owing to the **Insured Persons** by the **Company** or the insurer(s), respectively.

In no event shall the Insurer exercise its right of subrogation against an **Insured Person** unless and to the extent Exclusion A. 5 in Section III above applies to such **Insured Person**.

M. Authorization Clause

By acceptance of this **Policy**, the **Parent Company** agrees to act on behalf of the **Insured Persons** with respect to the giving and receiving of notice of **Claim** or circumstances, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this **Policy** (except the giving of notice to apply for the **Discovery Period**), and the **Insured Persons** agree that the **Parent Company** shall act on their behalf with respect thereto.

N. Alteration, Assignment and Headings

No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the Insurer.

The titles and headings to the various sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such sections, subsections or endorsements.

O. Bankruptcy

Bankruptcy or insolvency of **Insured Persons** or of the estate of any **Insured Person** shall not relieve the Insurer of its obligations nor deprive the Insurer of its rights or defenses under this **Policy**.

In the event a liquidation or reorganization proceeding is commenced by or against a **Company** pursuant to the United States Bankruptcy Code, as amended, or any similar state or local law, the **Company** and the **Insured Persons** hereby (i) waive and release any automatic stay or injunction which may apply in such proceeding to this **Policy** or its proceeds under such Bankruptcy Code or law, and (ii) agree not to oppose or object to any efforts by the Insurer, the **Company** or any **Insured Person** to obtain relief from any such stay or injunction.

P. Terms Conformed to Statute

Notwithstanding anything in the **Policy** to the contrary, the terms of this **Policy** shall conform to the requirements of any state insurance laws or regulations applicable to this **Policy**.