

# OLD REPUBLIC INSURANCE COMPANY

## A-SURE INDIVIDUAL DIRECTORS AND OFFICERS LIABILITY INSURANCE

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# OLD REPUBLIC INSURANCE COMPANY

## A-SURE INDIVIDUAL DIRECTORS AND OFFICERS LIABILITY INSURANCE

This is a claims made Policy that applies only to **Claims** first made during the **Policy Period** or the Extended Reporting Period, if purchased. **Defense Expenses** paid by the Insurer shall reduce and may exhaust the Limit of Liability of the Policy. This Policy shall not be rescinded by the Insurer in whole or in part for any reason other than non-payment of premium.

**Please Read the Entire Policy Carefully.**

In consideration of payment of the premium and subject to the Declarations and the limitations, conditions, provisions and other terms of this Policy (including any endorsements hereto), Old Republic Insurance Company (herein called the Insurer), the **Company** and the **Insured Persons** agree as follows:

### I. INSURING AGREEMENT

- A. The Insurer will pay on behalf of the **Insured Persons** all **Non-Indemnified Loss** resulting from a **Claim** first made against the **Insured Persons** during the **Policy Period** or, if applicable, the Extended Reporting Period, for a **Wrongful Act** if and to the extent the insurer(s) of the **Underlying Insurance** do not pay such **Non-Indemnified Loss** for any reason, including a **DIC Event** or **Underlying Exhaustion**.
- B. Except as provided in paragraph 5. of Subsection V. B. (Indemnification and Other Insurance) below, this Policy is amended to follow and be subject to any terms and conditions of any **Underlying Insurance** which afford broader coverage than is afforded under this Policy; provided that (i) this Subsection I. B. shall not amend this Policy's Insuring Agreement I. A., the **Policy Period**, the Limits of Liability, the Extended Reporting Period information in Item 4. of the Declarations, the definition of **Underlying Insurance** or any endorsements to this Policy, and (ii) in no event shall this Policy cover any claim against the **Company** or any amount the **Company** indemnifies, advances or pays on behalf of an **Insured Person**.

### II. COVERAGE EXTENSIONS

#### A. Inquiry Costs

The Insurer will pay on behalf of the **Insured Persons** the **Non-Indemnified Loss** resulting from an **Inquiry** first received by the **Insured Persons** during the **Policy Period** or, if applicable, the Extended Reporting Period, if the **Company** or the **Insured Persons** elect in their sole discretion to report the **Inquiry** to the Insurer as provided in paragraph 3. of Subsection V. D. (Notice) below.

#### B. Asset Protection Costs

The Insurer will pay on behalf of the **Insured Persons** reasonable fees, costs, charges and expenses incurred by the **Insured Persons** to oppose any efforts by any **Enforcement Authority** or by a claimant in a **Claim** to seize or otherwise enjoin the personal assets or real property of the **Insured Person** in connection with a **Claim** covered under this Policy, or to revoke, overturn or set aside a court order relating to a **Claim** covered under this Policy which in any way impairs the use of such assets or property; provided such fees, costs, charges and expenses are not indemnified by the **Company** as described in the definition of **Non-Indemnified Loss** and are not otherwise covered under this Policy. The Insurer's maximum liability for all such fees, costs, charges and expenses incurred by all **Insured Persons** shall be the Asset Protection Costs Sublimit of Liability set forth in Item 3. D. 1. of the Declarations, which is part of and not in addition to the Aggregate Limits of Liability set forth in Items 3. A. and B. of the Declarations.

C. Reputational Costs

The Insurer will pay on behalf of the **Insured Persons** the reasonable fees, costs, charges and expenses incurred by the **Insured Persons** in connection with using a public relations firm to mitigate the adverse effects to the reputation of the **Insured Person** from a **Claim** against the **Insured Person** which is covered under this Policy, including without limitation from any negative public statement regarding the **Insured Persons** by an **Enforcement Authority** or by the **Company** relating to such **Claim** or the **Wrongful Acts** alleged therein; provided such fees, costs, charges and expenses are not indemnified by the **Company** as described in the definition of **Non-Indemnified Loss** and are not otherwise covered under this Policy. The Insurer's maximum liability for all such fees, costs, charges and expenses incurred by all **Insured Persons** shall be the Reputational Costs Sublimit of Liability set forth in Item 3. D. 2. of the Declarations, which is part of and not in addition to the Aggregate Limits of Liability set forth in Items 3. A. and B. of the Declarations.

D. Policy Access Costs

The Insurer will pay on behalf of the **Insured Persons** the reasonable fees, costs, charges and expenses incurred by the **Insured Persons** to defend against efforts by the **Company**, other **Insured Persons** or third parties to seize or attach this Policy, or otherwise enjoin the **Insured Person** from gaining access to this Policy's proceeds; provided such fees, costs, charges and expenses are not indemnified by the **Company** as described in the definition of **Non-Indemnified Loss** and are not otherwise covered under this Policy. The Insurer's maximum liability for all such fees, costs, charges and expenses incurred by all **Insured Persons** shall be the Policy Access Costs Additional Limit of Liability set forth in Item 3. E. of the Declarations, which is in addition to and not part of the Aggregate Limits of Liability set forth in Items 3. A. and B. of the Declarations.

E. Mitigation Costs

The Insurer will pay on behalf of the **Insured Persons** the **Mitigation Costs** that are incurred by the **Insured Persons** and that are reasonably expected to reduce the likelihood or severity of **Non-Indemnified Loss** resulting from a potential **Claim** which would be covered under this Policy.

F. Extended Reporting Period

If this Policy terminates, the following extensions of the coverage granted by this Policy shall apply, but only with respect to **Claims** first made or deemed to be first made during the respective Extended Reporting Period described below to the extent such **Claims** are for **Wrongful Acts** taking place prior to expiration or termination of the **Policy Period** or prior to the effective date of a **Change in Control**, whichever is earlier.

1. Former Insured Persons Extended Reporting Period

If this Policy terminates without the **Company** purchasing similar coverage for the **Former Insured Persons**, then a ten (10) year Extended Reporting Period shall automatically apply to the **Former Insured Persons** for no additional premium. This Former Insured Persons Extended Reporting Period shall not apply to any **Insured Person** who ceases to serve as an **Insured Person** on account of a **Change in Control**.

2. Insolvency Extended Reporting Period

If following the commencement during the **Policy Period** of a liquidation or reorganization proceeding described in paragraph 2. of Subsection V. N. (Bankruptcy) below this Policy terminates without the **Company** purchasing similar coverage for the **Insured Persons**, then a ten (10) year Extended Reporting Period shall automatically apply to all **Insured Persons** for no additional premium.

3. General Extended Reporting Period

If the **Parent Company** or the Insurer does not renew this Policy, then the **Parent Company** and/or the **Insured Persons** shall have the right to purchase an Extended Reporting Period for

the period set forth in Item 4. B. of the Declarations commencing as of the effective date of such non-renewal. This right to purchase an Extended Reporting Period shall lapse unless the **Parent Company** and/or the **Insured Persons** give to the Insurer written notice of such purchase, together with the payment of the additional premium described in Item 4. A. of the Declarations, within sixty (60) days following the effective date of such non-renewal. The entire premium for such Extended Reporting Period shall be deemed fully earned and non-refundable.

4. Extended Reporting Period Limit of Liability

The existence of any Extended Reporting Period described above will not in any way increase the Limits of Liability set forth in Item 3. of the Declarations, and the Limits of Liability with respect to **Claims** made during any Extended Reporting Period shall be part of and not in addition to the respective Limit of Liability set forth in Item 3. of the Declarations.

5. Multiple Extended Reporting Periods

If more than one Extended Reporting Period is afforded or purchased under this Policy, such Extended Reporting Periods shall run concurrently and not sequentially and shall not increase the Insurer's maximum liability otherwise applicable under this Policy.

### III. DEFINITIONS

When used in this Policy either in the singular or the plural:

A. **"Change In Control"** means:

1. the merger or acquisition of the **Parent Company**, or the acquisition of all or substantially all of its assets, by another person, entity or affiliated group of persons or entities, such that the **Parent Company** is not the surviving entity; or
2. the acquisition by any person, entity, or affiliated group of persons or entities, of securities or voting rights resulting in such person, entity or affiliated group of persons or entities possessing the right to vote for, select, or appoint more than fifty percent (50%) of the directors of the **Parent Company**.

B. **"Claim"** means:

1. a written demand for monetary, non-monetary, injunctive, equitable 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 or demand for mediation or any other dispute resolution 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 or any formal application to a court to prevent the commencement of a criminal proceeding against any **Insured Person** for a **Wrongful Act**,
5. a formal administrative, regulatory, supervisory or disciplinary proceeding, whether such proceeding is adjudicatory or investigative, against any **Insured Person** for a **Wrongful Act**, commenced by the filing of a notice of charge, formal investigative order or similar document,
6. a civil, criminal, administrative or regulatory investigation against any **Insured Person** for a **Wrongful Act**, commenced by the service upon or other receipt by the **Insured Person** of a "Wells Notice," target letter or other written notice from the investigating authority identifying the **Insured Person** as an individual against whom a formal proceeding may be commenced,

7. a 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**,
8. the arrest, detainment or confinement for more than twenty-four (24) hours of any **Insured Person** to (i) a specified residence, or (ii) a secure custodial premises, by or on behalf of any **Enforcement Authority** for a **Wrongful Act**, or
9. a written notice to the Insurer of **Wrongful Acts** or circumstances which may reasonably give rise to a **Claim**, as provided in paragraph 2. of Subsection V. D. (Notice) below, if and when the **Insured Persons** or the **Company** elect at their option to give to the Insurer such written notice,

including any appeal from any matter described in Subsection III. B. 2. through III. B. 8. above.

For purposes of coverage under Subsection II. A. (Inquiry Costs) above, "**Claim**" means any **Inquiry**, which shall be deemed first made when the **Insured Person** first receives such **Inquiry**.

- C. "**Company**" means the **Parent Company** and any **Subsidiary** created or acquired on or before the inception date set forth in Item 2. of the Declarations or, subject to Subsection V. C. (Mergers and Acquisitions) below, during the **Policy Period**, including any such entity as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.
- D. "**Defense Expenses**" means reasonable fees, costs, charges and expenses incurred by the **Insured Persons** in the investigation, defense, negotiation, settlement or appeal of a **Claim** or in responding to an **Inquiry** (including the preparation of such response), including without limitation (i) reasonable fees, costs, charges and expenses incurred by the **Insured Persons** at the Insurer's request to assist the Insurer in investigating the **Claim** or in securing and enforcing the Insurer's subrogation rights pursuant to paragraph 2. of Subsection V. G. (Assistance, Cooperation and Subrogation) below, (ii) reasonable fees, costs, charges and expenses incurred by the **Insured Persons** in opposing, challenging, resisting or defending against any request for, or an effort to obtain, an **Extradition** of an **Insured Person** or appealing any order or other grant of such **Extradition**, (iii) costs assessed against the **Insured Persons** in the **Claim**, (iv) the premium for any appeal, attachment or similar bond provided the Insurer shall have no obligation to apply for or furnish such bond, and (v) reasonable fees, costs, charges and expenses incurred by an **Insured Person** to defend against or facilitate the return of amounts required to be repaid by such **Insured Person** pursuant to the Food, Drug and Cosmetic Act, Section 304(a) of the Sarbanes-Oxley Act of 2002 or Section 210 or 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended or any internal policy of the **Company** requiring the return of compensation, provided the Insurer shall not assert the fees, costs, charges and expenses described in this subpart (v) are uninsurable. **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its directors, officers, or employees. The Insurer shall accept as reasonable the retention of separate defense counsel for separate **Insured Persons** if such **Insured Persons** have an actual or reasonably likely conflict of interest between them.
- E. "**DIC Event**" means any of the following with respect to any **Non-Indemnified Loss**:
  1. the insurer(s) of the **Underlying Insurance**:
    - (a) refuses to indemnify or advance such **Non-Indemnified Loss**;
    - (b) fails to indemnify or advance such **Non-Indemnified Loss** within sixty (60) days after the **Insured Persons'** written request for such payment;
    - (c) is financially unable to indemnify or advance such **Non-Indemnified Loss**;
    - (d) rescinds, voids or cancels the **Underlying Insurance** or refuses to indemnify or advance such **Non-Indemnified Loss** while attempting to rescind, void or cancel the **Underlying Insurance**; or
    - (e) does not hold a local license or is not authorized in the applicable jurisdiction to underwrite or afford the coverage described in the **Underlying Insurance**;

2. according to the terms and conditions of the **Underlying Insurance**, the insurer(s) of the **Underlying Insurance** are not liable for such **Non-Indemnified Loss**;
  3. a liquidation or reorganization proceeding described in Subsection V. N. (Bankruptcy) below is commenced by or against the **Company** and as a result of such proceeding the insurer(s) of the **Underlying Insurance** fails or refuses to indemnify or advance such **Non-Indemnified Loss** because the proceeds of such **Underlying Insurance** are or allegedly are subject to an injunction, automatic stay or similar legal restriction prohibiting payment of such proceeds;
- 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. **"Enforcement Authority"** means any regulatory, administrative, governmental, judicial (including a court-appointed examiner, trustee, receiver, liquidator, rehabilitator or similar official of the **Company**) or law enforcement official or authority, or the enforcement unit of any self-regulatory organization.
- H. **"Extradition"** means any formal process by which an **Insured Person** located in any country is or is sought to be surrendered to any other country for a trial or otherwise to answer any accusation.
- I. **"Former Insured Person"** means an **Insured Person** described in paragraph 1. or 2. of Subection III. L. (**Insured Person** Definition) below who, prior to the expiration of the **Policy Period**, ceases to hold any position as an **Insured Person**.
- J. **"Independent Directors"** means past, present or future directors of the **Company** who are not and have not been an officer or employee of any **Company** over the past twelve (12) months.
- K. **"Inquiry"** means:
1. any request, demand or subpoena by an **Enforcement Authority**, or by or on behalf of the **Company** (including a **Company's** Board of Directors or a committee of the Board of Directors) or a court-appointed examiner, trustee, receiver, liquidator or rehabilitator of the **Company**, to interview or depose or conduct a meeting with an **Insured Person**, or for the production of documents by an **Insured Person**, in his or her capacity as such, whether or not such **Insured Person** allegedly committed a **Wrongful Act**, or
  2. any request to toll or waive the applicable statute of limitations or contractual time-bar relating to a potential **Claim** against any **Insured Person**;

provided that such request, demand or subpoena (i) is not part of a routine or regularly scheduled meeting, audit, inspection or general oversight or compliance activity, and (ii) shall not preclude coverage under this Policy for any related subsequent **Claim** first made during the **Policy Period** or the Extended Reporting Period, if applicable, if the **Insured Persons** and the **Company** do not give notice to the Insurer of such request, demand or subpoena. Any coverage under this Policy for **Loss** incurred by an **Insured Person** resulting from an **Inquiry** shall only apply to **Loss** incurred by such **Insured Person** after the date notice of such **Inquiry** is given to the Insurer by or on behalf of the **Company** or such **Insured Person**.

- L. **"Insured Persons"** means:
1. any natural persons who were, now are or shall become a director (including a shadow or de facto director), trustee (other than a bankruptcy or insolvency trustee), officer, **Manager**, in-house general counsel, controller, director of investor relations, director of human resources, or risk manager of the **Company** and those persons serving in a functionally equivalent role for any **Company**;
  2. any natural persons who were, now are or shall become (i) prospective directors of the **Company** named as such in any prospectus, registration statement or similar offering document, or (ii) a representative of an entity that serves as a director of the **Company**;

3. any other natural persons not described in paragraph 1. or 2. 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** with respect to any **Claim** only (i) if, for purposes of determining **Non-Indemnified Loss** of such other employee(s), the **Company** agrees to advance **Defense Expenses** and indemnify such other employee(s) with respect to such **Claim** to the same extent as the **Company** agrees to indemnify the natural persons described in paragraph 1. or 2. above, or (ii) while such **Claim** is brought and maintained by securities holders of the **Company** and is against both such other employee(s) and an **Insured Person** described in paragraph 1. or 2. above;
4. any individual identified in paragraph 1. or 2. above who has served or is serving as a director, officer, manager, trustee (other than a bankruptcy or insolvency trustee), regent, or governor of any **Outside Entity** if (i) such service is at the request of the **Company** or at the direction of the **Company**, (ii) such service is part of the duties regularly assigned to such individual by the **Company**, or (iii) such individual is a member of a class of persons directed to so serve by the **Company**; or
5. the lawful spouse or **Domestic Partner** of any person identified in paragraph 1. or 2. above, but only to the extent the spouse or **Domestic Partner** is a party to any **Claim** solely in his/her capacity as a spouse or **Domestic Partner** of such person and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and spouse or **Domestic Partner**, or property transferred from any such person to the spouse or **Domestic Partner**.

Any **Claim** against the estate, trust, estate planning vehicle, heirs, legal representatives or assigns of any **Insured Person** identified in paragraphs 1., 2., and 3. above for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.

- M. "**Interrelated Wrongful Acts**" means any **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or related, or series of related, facts, circumstances, situations, transactions, or events.
- N. "**Loss**" means **Defense Expenses**, damages, judgments, settlements, pre-judgment and post-judgment interest with respect to damages, and other amounts that the **Insured Persons** are obligated to pay resulting from a **Claim** against the **Insured Persons**, including without limitation any such amounts constituting (i) punitive, exemplary, aggravated or multiple damages, (ii) claimant attorney fees and costs, (iii) civil fines or penalties described in the last paragraph of this definition, or (iv) taxes for which the **Insured Persons** are liable solely by reason of the **Company's** insolvency or the Insurer's payment of **Loss** incurred by such **Insured Person**. For purposes of coverage under Subsection II. B. (Asset Protection Costs), C. (Reputational Costs) or D. (Policy Access Costs) above, **Loss** means the reasonable fees, costs, charges and expenses described therein. For purposes of coverage under Subsection II. E. (Mitigation Costs) above, **Loss** means **Mitigation Costs**.

**Loss**, other than **Defense Expenses**, does not include:

1. taxes, other than taxes described above;
2. any amount requested or required to be paid by an **Insured Person** pursuant to Section 304(a) of the Sarbanes-Oxley Act of 2002 or Sections 210 or 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended, or any rules, regulations or policies pursuant thereto; or
3. matters which are uninsurable under the law pursuant to which this Policy is construed.

The insurability of any amount otherwise included within this definition shall be determined under the internal laws of the jurisdiction most favorable to the insurability of such amount, provided such jurisdiction has a substantial relationship to the relevant **Insured Persons**, to the **Company**, to the Insurer or to the **Claim** giving rise to such damages. If the **Company** or an **Insured Person** presents a written opinion from legal counsel stating that an amount included within this definition is insurable under the internal laws of any applicable jurisdiction, the Insurer shall not challenge that determination.

The Insurer shall not assert that any **Loss** incurred by **Insured Persons** in their capacity as such is uninsurable due to the **Insured Persons'** actual or alleged violation of (i) Section 11, 12 or 15 of the Securities Act of 1933, (ii) Section 304(a) of the Sarbanes-Oxley Act of 2002 or Sections 210 or 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or any rules, regulations or policies pursuant thereto, or (iii) the Food, Drug and Cosmetic Act, all as amended.

For purposes of this definition, "civil fines or penalties" means (i) civil fines or penalties assessed against the **Insured Person** in a **Claim**, and (ii) criminal fines or penalties assessed against the **Insured Person** in a **Claim** in a jurisdiction outside the United States of America and its territories or possessions for violations of law that are not treated as criminal violations of law in the United State of America; provided that payment by an insurer of the fine or penalty described in subpart (i) or (ii) above is not expressly prohibited by applicable law or by the assessment itself. If the **Insured Person** and the Insurer cannot reasonably determine whether a fine or penalty is assessed for a civil or a criminal violation of law, such fine or penalty shall be considered a civil fine or penalty for purposes of this Policy unless and until a contrary determination is made.

- O. **"Manager"** means any natural person who is a former, present or future manager, managing member, general partner, or member of the board of managers or equivalent executive of a **Company** that is a limited liability company or partnership, including without limitation any such natural person serving in a management position in such limited liability company or partnership in accordance with such organization's operating agreement or partnership agreement.
- P. **"Mitigation Costs"** means the reasonable fees, costs, charges and expenses consented to by the Insurer and incurred by an **Insured Person** to reduce the likelihood or severity of any **Non-Indemnified Loss** resulting from any potential **Claim** which would be covered under this Policy.
- Q. **"Non-Indemnified Loss"** means **Loss** (i) which the **Company** and the **Outside Entity** are neither permitted nor required to indemnify or advance, (ii) which the **Company** and the **Outside Entity** refuse to indemnify or advance or fail to indemnify or advance within forty-five (45) days after the **Insured Person's** request for such indemnification or advancement, or (iii) for which the **Company** and the **Outside Entity** are financially unable to indemnify or advance.
- R. **"Outside Entity"** means any non-profit or for-profit organization which is not a **Company**.
- S. **"Parent Company"** means the entity named in Item 1. of the Declarations.
- T. **"Policy Period"** means the period set forth in Item 2. of the Declarations.
- U. **"Prior Admitted Non-Indemnified Loss Policy"** means the Side A Directors and Officers Liability policy maintained by the **Parent Company** immediately preceding the Inception date in Item 2. of the Declarations if (i) this Policy is a renewal or replacement of such policy, and (ii) such policy was issued by any insurer admitted to conduct business in the state of the **Parent Company** as set forth in Item 1. of the Declarations.
- V. **"Subsidiary"** means any entity during any time in which the **Parent Company** owns, directly or through one or more **Subsidiary(ies)**, (i) more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of such entity's directors or their functional equivalent, or (ii) the right to elect, appoint or designate more than fifty percent (50%) of the entity's directors or their functional equivalent. **Subsidiary** also means any foundation, charitable trust or political action committee controlled or exclusively sponsored by one or more **Companies**. Coverage for **Insured Persons** of a **Subsidiary** shall only apply for **Wrongful Acts** occurring after such **Subsidiary** became a **Subsidiary** and prior to such **Subsidiary** ceasing to be a **Subsidiary**.
- W. **"Underlying Exhaustion"** means with respect to any **Non-Indemnified Loss** the limit(s) of liability or any applicable sublimit of liability of the **Underlying Insurance** is exhausted by reason of the insurer(s) of the **Underlying Insurance**, the insureds thereunder or another source paying losses under the **Underlying Insurance** or losses covered under another policy if such other policy payment erodes the limit of liability of an **Underlying Insurance** by reason of a provision in such **Underlying Insurance**; or

- X. **“Underlying Insurance”** means the directors and officers liability insurance policies scheduled in Item 6. of the Declarations.
- Y. **“Unpaid Wages”** means any unpaid wages and salaries of employees of the **Company** for which an **Insured Person** is personally liable, including without limitation unpaid wages, salary, overtime, vacation or holiday pay, severance pay, pension/retirement contributions, and any other remuneration due for services that an employee rendered for the **Company**, but shall not include any amount due under a written contract or agreement unless the **Insured Person** would be liable for such amount absent the contract or agreement.
- Z. **“Wrongful Act”** means any actual or alleged act, error, or omission, misstatement, misleading statement, neglect or breach of duty by any **Insured Persons** while acting in their capacity as:
1. **Insured Persons** of the **Company**;
  2. a fiduciary of any employee benefit plan sponsored by the **Company**;
  3. an employer, owner or shareholder of the **Company**, but only with respect to a **Claim** against the **Insured Person** for **Unpaid Wages**; or
  4. a director, officer, manager, trustee (other than a bankruptcy or insolvency trustee), regent or governor of an **Outside Entity** if the **Insured Person** and such service is described in paragraph 4. of Subsection III. L. (**Insured Person** Definition) above;
- or any other matter claimed against **Insured Persons** in a capacity described above.

#### IV. CONDUCT EXCLUSION

The Insurer shall not pay **Non-Indemnified Loss** resulting from that portion of any **Claim** against any **Insured Persons** for such **Insured Person** deliberately gaining any personal financial profit to which such **Insured Person** is not legally entitled or committing any deliberately fraudulent act, if a final and non-appealable adjudication adverse to such **Insured Person** in the underlying proceeding establishes that such **Insured Person** deliberately gained such personal financial profit or committed such deliberately fraudulent act; however, this exclusion shall not apply to (i) **Defense Expenses**, (ii) any employment-related **Claim**, (iii) **Independent Directors**, or (iv) a violation of Section 11, 12 or 15 of the Securities Act of 1933, as amended.

No conduct, intent or knowledge of any **Insured Persons** or the **Company** will be imputed to any other **Insured Persons** to determine the application of this Exclusion.

#### V. CONDITIONS

##### A. Limit of Liability

1. The amount set forth in Item 3. A. of the Declarations shall be the maximum aggregate liability of the Insurer under this Policy for all **Non-Indemnified Loss** resulting from each **Claim** first made during the **Policy Period** and, if applicable, the Extended Reporting Period.
2. The amount set forth in Item 3. B. of the Declarations shall be the maximum aggregate liability of the Insurer under this Policy for all **Non-Indemnified Loss** resulting from all **Claims** first made during the **Policy Period** and, if applicable, the Extended Reporting Period.
3. If the Limit of Liability set forth in Item 3. B. of the Declarations is exhausted, an additional aggregate Limit of Liability shall be reinstated in the amount set forth in Item 3. C. 1. of the Declarations (“First Reinstated Limit of Liability”). Such reinstated Limit of Liability shall not apply with respect to (i) any **Claim** for which **Non-Indemnified Loss** was paid under this Policy prior to such reinstatement, or (ii) any other **Claim** based upon, arising out of or related to any facts, circumstances or wrongdoing alleged in or underlying such **Claim**. Such reinstated Limit of Liability shall be excess of amounts payable under all other insurance policies that are specifically excess of this Policy and all **Underlying Insurance** providing a similar reinstated limit of liability.

4. With respect to exhaustion of the limits of liability under any other insurance policies for purposes of attachment of the First Reinstated Limit of Liability, the limits of liability under such other insurance policies shall be deemed to be reduced or exhausted by payment of loss thereunder by the insurer of such insurance policy, the insureds thereunder and/or another source.
5. Payment of **Non-Indemnified Loss**, including **Defense Expenses**, by the Insurer shall reduce and may exhaust the applicable Limit(s) of Liability.

B. Indemnification and Other Insurance

1. The **Insured Persons** and the **Company** understand and agree that all coverage under this Policy shall be specifically excess over, and shall not contribute with:
  - (a) all indemnification to which **Insured Persons** may be entitled from any source, including but not limited to the **Company** or any **Outside Entity**; and
  - (b) the **Underlying Insurance** and any other valid and collectible insurance maintained by an **Outside Entity** or any other entity, whether such other insurance is stated to be primary, contributing, excess, or otherwise.

However, if **Non-Indemnified Loss** which is otherwise covered under this Policy is not paid by the **Underlying Insurance** or by such other insurance or indemnification, this Policy will pay such **Non-Indemnified Loss** notwithstanding the existence of the **Underlying Insurance** or such other insurance or indemnification rights, subject to all of the terms, conditions and limitations of this Policy and without prejudice to the Insurer's excess position or subrogation rights against the **Underlying Insurance** or such other insurance or indemnification.

2. The **Company** agrees to indemnify and advance on behalf of the **Insured Persons** all **Defense Expenses** and other **Loss** otherwise covered under this Policy, to the fullest extent permitted or required by applicable law. If the Insurer pays under this Policy any **Defense Expenses** or other **Loss** for which the **Company** is legally permitted or required and financially able to advance or indemnify as provided in this subsection, then the **Company** shall reimburse the Insurer for such amounts and such amounts shall become immediately due and payable as a direct obligation of the **Company** to the Insurer.
3. Except as provided in Section I. (Insuring Agreement) or Section V. F. (Prior Admitted Policy), this Policy shall not be subject to the terms or conditions of any other insurance. The Insurer does not waive, compromise or release any of its rights to recover **Non-Indemnified Loss** paid under this Policy from the insurer(s) of the **Underlying Insurance** or any other insurance under which coverage may be owed, or from any person or entity from which **Insured Persons** are entitled to indemnification.
4. Notwithstanding the foregoing, coverage under this Policy shall be primary to, and not excess of, any personal umbrella insurance purchased by an **Insured Person**.
5. If any **Underlying Insurance** contains a sublimit of liability applicable to a specific grant of coverage for **Non-Indemnified Loss** incurred by **Insured Persons**, then the Insurer's maximum liability under this Policy for all **Non-Indemnified Loss** otherwise subject to such sublimit of liability shall be the amount of the largest such sublimit of liability applicable to such **Non-Indemnified Loss** in any of the **Underlying Insurance**. Such sublimit of liability is part of and not in addition to the aggregate Limit of Liability and any applicable reinstated Limit of Liability set forth in Item 3. of the Declarations.

C. Mergers and Acquisitions

1. If during the **Policy Period**, the **Company** creates or acquires a **Subsidiary**, or acquires any entity by merger, consolidation or otherwise, coverage shall be provided under this Policy for **Insured Persons** of such new **Subsidiary** or entity but only with respect to **Wrongful Acts** occurring after the consummation of such transaction.

2. If during the **Policy Period** any entity ceases to be a **Subsidiary**, the coverage provided under this Policy for **Insured Persons** of such entity shall continue until termination of this Policy but only with respect to **Wrongful Acts** occurring prior to the time such entity ceased to be a **Subsidiary** of the **Company**.
3. If during the **Policy Period** there is a **Change In Control**, the coverage provided under this Policy for all **Insured Persons** shall continue until termination of this Policy but only with respect to **Wrongful Acts** occurring prior to the effective date of the **Change In Control**; and
  - (a) coverage will cease with respect to any **Wrongful Acts** occurring subsequent to the **Change In Control**; and
  - (b) the entire premium for this Policy will be deemed to be fully earned immediately upon the consummation of a **Change In Control**.

D. Notice

1. The **Insured Persons** or the **Company** shall give to the Insurer written notice of any **Claim** against an **Insured Person**, other than an **Inquiry**, as soon as reasonably practicable after the **Parent Company's** in-house general counsel or risk manager (or an individual in an equivalent position) first learns of such **Claim**, but in no event shall notice of a new **Claim**, including notice of a new **Inquiry**, be given later than (i) ninety (90) days after expiration of the **Policy Period** if this Policy is not renewed with the Insurer, or (ii) expiration of an applicable Extended Reporting Period. If the **Company** and/or the **Insured Persons** fail to provide notice of a **Claim** to the Insurer as soon as reasonably practicable as specified above, the Insurer shall not be entitled to deny coverage for the **Claim** based solely upon late notice unless the Insurer can demonstrate its interests were materially prejudiced by reason of such late notice.
2. If during the **Policy Period** or an applicable Extended Reporting Period, the **Insured Persons** or the **Company** first become aware of any circumstances which may reasonably give rise to a future **Claim** under this Policy and during such **Policy Period** or applicable Extended Reporting Period give written notice to the Insurer of the circumstances, the anticipated **Wrongful Act** allegations, the reasons for anticipating such **Claim** and full particulars as to dates, persons and entities involved, then any **Claim** which arises out of such circumstances shall be deemed to have been first made during the **Policy Period** or Extended Reporting Period in which such written notice was received by the Insurer.
3. All notices under any provision of this Policy shall be in writing and given by certified mail, prepaid express courier, email or facsimile properly addressed to the appropriate party. Notice to the **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 potential **Claim** shall be given to the Insurer at the address set forth in Item 5. of the Declarations, attention: Claims Department. All other notices to the Insurer under this Policy shall be given to the Insurer at the same address, attention: Underwriting Department. 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 sent, whichever is earlier.

E. Defense and Settlement of Claims

1. It shall be the duty of the **Insured Persons** and not the duty of the Insurer to defend **Claims**. The Insurer shall have the right, but not the duty, to effectively associate with the **Insured Persons** in the defense and settlement of any **Claim** that appears to be reasonably likely to involve this Policy.
2. No **Insured Persons** may admit liability for, make any settlement offer with respect to, or settle any **Claim** that is reasonably likely to be covered in whole or in part by, or that is otherwise reasonably likely to involve this Policy, without the Insurer's prior written consent, such consent not to be unreasonably withheld or delayed. However, such consent is not required before: (i) entering into a plea agreement, deferred prosecution agreement or similar resolution of any pending or potential criminal charge; or (ii) reporting to, and subsequently communicating with,

the **Company** or any **Enforcement Authority** that a breach of law or regulation or policy has or may have occurred.

3. Upon written request from the **Insured Persons**, the Insurer will advance on a current basis, but no later than forty-five (45) days after receipt by the Insurer of such request and receipt of properly itemized invoices, any **Defense Expenses** incurred by **Insured Persons** covered under this Policy. The **Insured Persons** agree that any **Defense Costs** advanced by the Insurer shall be repaid to the Insurer by the **Insured Persons** severally according to their respective interests if and to the extent it is finally determined that such **Defense Expenses** are not covered under this Policy, provided, however, the Insurer shall have no right to the repayment of **Defense Expenses** by reason of Section IV. (Conduct Exclusion) applying.
4. The Insurer is entitled to pay **Non-Indemnified Loss** as it becomes due and payable by the **Insured Persons**, without considering the potential for other future **Non-Indemnified Loss**.
5. If and while an attorney representing an **Insured Person** with regard to any criminal **Claim** against the **Insured Person** asserts that providing to the Insurer descriptions of the work performed for the **Insured Person** could prejudice such **Insured Person** in any criminal **Claim**, then the Insurer shall accept, and the **Insured Person** and his or her attorney shall make a good faith effort to provide, a general description of the work performed in a format that allows the Insurer to confirm that the **Defense Expenses** incurred by the **Insured Person** are reasonable but that does not prejudice the **Insured Person**.

F. Terms of Prior Admitted Non-Indemnified Loss Policy

1. If the **Parent Company** or all **Insured Persons** against whom a **Claim** has been first made during the **Policy Period** elect, in their sole discretion, to apply the terms and conditions of the **Prior Admitted Non-Indemnified Loss Policy** to such **Claim**, then coverage under this Policy for such **Claim** shall be in accordance with the terms and conditions of the **Prior Admitted Non-Indemnified Loss Policy**, subject to the following:
  - (a) The terms and conditions of the **Prior Admitted Non-Indemnified Loss Policy** in their entirety must be provided to the Insurer prior to or on the Inception date set forth in Item 2. of the Declarations;
  - (b) The right to elect coverage pursuant to this Subsection V. F. shall lapse unless written notice of such election is given by the **Parent Company** and/or such **Insured Persons** to the Insurer within thirty (30) days after the Insurer's initial substantive coverage letter which evaluates coverage under this Policy for such **Claim**; and
  - (c) If such election is timely given to the Insurer, then coverage under this Policy for such **Claim** in its entirety shall be determined pursuant to all of the terms and conditions of the **Prior Admitted Non-Indemnified Loss Policy**, and none of the terms and conditions of this Policy shall apply to such **Claim**, except as follows:
    - (i) the Limit of Liability (including any sublimit or reinstated limit), the definitions of **Policy Period**, and **Underlying Insurance** and Subsection V. D. (Notice) set forth in this Policy shall apply to such **Claim**; and
    - (ii) any endorsement to this Policy shall apply to such **Claim**.

G. Assistance, Cooperation and Subrogation

1. In the event of a **Claim**, the **Insured Persons** and the **Company** agree to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request.
2. In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all of the potential or actual rights of recovery of the **Insured Persons**, including without limitation the rights of recovery for indemnification by the **Company** and for coverage under the **Underlying Insurance**. The **Insured Persons** shall execute all papers required and will do everything reasonably necessary to secure such rights including but not limited to the

execution of such documents as are necessary to enable the Insurer to effectively bring suit in their names, and will provide all other assistance and cooperation which the Insurer may reasonably require. The Insurer shall not exercise its rights of subrogation against an **Insured Person**.

3. Any recoveries by the Insurer of **Non-Indemnified Loss** paid or advanced under this Policy, minus all costs incurred by the Insurer to obtain such recoveries, shall reinstate, in such amount and as of the date each recovery is received by the Insurer, the Limits of Liability of this Policy that were eroded or exhausted by such payment or advancement.
4. The failure of any **Insured Person** or the **Company** to comply with this Subsection IV. G. shall not impair the rights of any other **Insured Persons** under this Policy.

H. Interrelated Claims

All **Claims** arising from the same **Wrongful Act** or **Interrelated Wrongful Acts**, including **Inquiries** arising from the same or related facts, circumstances, situations, transactions or events, shall be deemed to constitute a single **Claim** and shall be deemed to have been made at the earliest time at which the earliest such **Claim** is made or deemed to have been made pursuant to Subsection V. D. (Notice) above, if applicable.

I. Exhaustion

If the Insurer's Limit of Liability as set forth in Item 3. B. of the Declarations is exhausted by the payment of **Non-Indemnified Loss**, the premium as set forth in Item 7. of the Declarations will be fully earned and non-refundable.

J. Cancellation and Renewal of Coverage

1. Neither the **Company** nor the **Insured Persons** may cancel this Policy, including any Extended Reporting Period, except that the **Parent Company** may cancel this Policy by giving to the Insurer advance written notice of cancellation if a financial strength rating for the Insurer is issued below A- by A.M. Best Co., or below BBB by Standard & Poor's Ratings Services. In the event of such cancellation, the Insurer shall return to the **Parent Company** the unearned pro-rata portion of the Policy premium as of the effective date of cancellation.
2. The Insurer may only cancel this Policy, including any Extended Reporting Period, for non-payment of premium. The Insurer will provide not less than twenty (20) days prior written notice of such cancellation to the **Parent Company** and to this Policy's broker of record, stating when the Policy will be canceled thereafter.
3. The Insurer is under no obligation to renew this Policy upon its expiration. If the Insurer decides to non-renew this Policy, the Insurer will mail to the **Parent Company** written notice stating such intent at least sixty (60) days before the expiration date set forth in Item 2. of the Declarations.

K. Non-Rescission

This Policy shall not be rescinded or voided by the Insurer in whole or in part for any reason other than non-payment of premium.

L. Authorization Clause

By acceptance of this Policy, the **Parent Company** agrees to act on behalf of the **Insured Persons** with respect to 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, and the **Insured Persons** agree that the **Parent Company** shall so act on their behalf.

M. Alteration, Assignment and Headings

1. 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 officer or employee of the Insurer.
2. The titles and headings to the various sections, subsections and endorsements of this 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.

N. Bankruptcy

1. Bankruptcy or insolvency of any **Company** or any **Insured Person** shall not relieve the Insurer of any of its obligations hereunder.
2. 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, local or foreign law ("Bankruptcy 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 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.
3. In the event the **Company** becomes a debtor in possession or an equivalent status under such Bankruptcy Law and the aggregate **Non-Indemnified Loss** due under this Policy exceeds the remaining available Limit of Liability under this Policy, the Insurer shall:
  - (a) first pay such **Non-Indemnified Loss** allocable to **Wrongful Acts** that are actually or allegedly caused, committed, or attempted prior to the **Company** becoming a debtor in possession or such equivalent status, then
  - (b) with respect to whatever remaining amount of the Limit of Liability is available after payment under paragraph 3. (a) above, pay such **Non-Indemnified Loss** allocable to **Wrongful Acts** that are actually or allegedly caused, committed, or attempted after the **Company** became a debtor in possession or such equivalent status.

O. Entire Agreement

The **Insured Persons** and the **Company** agree that this Policy, including the Declarations, endorsements and application for this Policy, shall constitute the entire agreement between the Insurer, the **Insured Persons** and the **Company** with respect to this Policy and the coverage afforded hereunder.

P. Territory

This Policy shall apply worldwide.