



INDIVIDUAL SOLUTIONS

The Insurer, the **Entity** and the **Insured Persons** agree as follows, in consideration of the payment of the premium and in reliance upon the **Application**:

I. INSURING AGREEMENT

- A. The Insurer shall pay on behalf of the **Insured Person** all **Non-Indemnified Loss** resulting from any **Claim** first made against the **Insured Person** during the **Policy Period**, or the **Extended Reporting Period**, if applicable, for a **Wrongful Act**. **Claims** must be reported to the Insurer in accordance with Section VIII.

This Policy shall be specifically excess of the limits of insurance stated in the **Underlying Insurance** listed in the Declaration, if any. If **Underlying Insurance** is listed in the Declarations, then liability under this Policy shall attach only if and to the extent:

1. the applicable limits of insurance in all **Underlying Insurance** have been exhausted by reason of losses paid thereunder by the underlying insurer or the **Insured Person**; or
2. any insurer of the **Underlying Insurance**:
 - a. refuses to indemnify the **Insured Persons** as required under the terms of the **Underlying Insurance**; or
 - b. is financially unable to indemnify the **Insured Persons**; or
 - c. rescinds the **Underlying Insurance**;
3. according to the terms and conditions of the **Underlying Insurance**, any insurer of the **Underlying Insurance** is not liable for such **Non Indemnified Loss**; or
4. a liquidation or reorganization proceeding is commenced by or against the **Entity** pursuant to the U.S. Bankruptcy Code, as amended ("Code") and as a result of such proceeding the proceeds of any **Underlying Insurance** cannot legally be paid by the insurer thereof solely because such proceeds are subject to the automatic stay under the Code; provided that:
 - a. as a condition precedent to the Insurer being liable pursuant to this subparagraph 4, the **Insured Persons** or the **Entity** shall request, or arrange for the insurer of the **Underlying Insurance** to request, relief from the automatic stay with respect to such proceeds, and
 - b. any payment made by the Insurer pursuant to this paragraph 4. is not intended to be a payment in satisfaction of the obligations under the **Underlying Insurance**, but, rather, an advance of funds subject to repayment as provided in i. and ii. below, and that, subject to reinstatement pursuant to (i) and (ii) below, all such payments shall reduce and/or exhaust the limits of liability of this Policy to the same extent as any payment of **Non-Indemnified Loss** by the Insurer to the **Insured Persons** hereunder. In the event of any such payment:
 - i. the **Insured Persons** hereby assign to the Insurer all their rights under the **Underlying Insurance** to obtain payment of the amounts of such payments, which assignment shall be the **Insured Persons'** sole obligation as respects their repayment of such payments; and



INDIVIDUAL SOLUTIONS

- ii. notwithstanding any subrogation provisions or other provisions of the Policy, any recoveries by the Insurer pursuant to (i) above shall be the sole property of the Insurer, but an amount equal to the amount of such recoveries, shall reinstate, in such amount, 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 payments.
- B. In the event that:
1. part or all of a **Non-Indemnified Loss** would be payable under the **Underlying Insurance**, but the limits of liability of the **Underlying Insurance** have been exhausted by reason of payments made thereunder; or
 2. part of a **Non-Indemnified Loss** is paid by the **Underlying Insurance**,
- then the Insurer shall be liable only for that part of such **Non-Indemnified Loss** otherwise covered under this Policy, such liability not to exceed the limit of liability as set forth in the Declarations.
- C. In the event of **Non-Indemnified Loss**:
1. that is covered by the **Underlying Insurance**, or
 2. that would be covered by the **Underlying Insurance** except that such insurance has been exhausted or reduced by reason of payments thereunder, and the excess of which **Non-Indemnified Loss** would be payable under this Policy except for terms and conditions of this Policy that are not consistent with the **Underlying Insurance**, then, this Policy follows and is subject to the terms and conditions of the **Primary Policy** with respect to such **Non-Indemnified Loss** except as specifically set forth herein with respect to the premium, Limit of Liability, Defense and Settlement, any notice and reporting provisions and any endorsement to this Policy.
- D. This Policy may not be rescinded by the Insurer for any reason. Further, the acts, omissions, knowledge, representations, or warranties of an **Insured Person** shall not be imputed to any other **Insured Person** with respect to any coverage under this Policy.

II. DEFINITIONS

For purposes of this Policy:

Application means all signed, applications, 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 by the Insurer, or any other policy underwritten by the Insurer or its affiliates of which this Policy is a direct renewal or replacement.

Claim means:

1. a written demand against an **Insured Person** for monetary damages or non-monetary relief which shall be deemed made on the earlier of the **Insured Person's** or Insurer's receipt of notice of such demand;
2. a civil, criminal, judicial, administrative or regulatory proceeding or arbitration against an **Insured Person** or any appeals therefrom which shall be deemed made on the date of service upon or other receipt by an **Insured Person** of a complaint or notice of charge



INDIVIDUAL SOLUTIONS

- against the **Insured Person** in such proceeding or arbitration, or with respect to a criminal proceeding, on the date of the return of an indictment, information or similar document against the **Insured Person**;
3. an investigation of an **Insured Person** by any governmental or regulatory authority which shall be deemed made on the earliest of the date of service upon or other receipt by the **Insured Person** of a subpoena or of a written notice from the governmental or regulatory authority identifying such **Insured Person** as an individual against whom a proceeding may be commenced.

Claim shall also mean an **Extradition**, which shall be deemed made upon receipt of an official request for or order of **Extradition** of an **Insured Person**, or upon the execution of a warrant for the arrest of an **Insured Person** where such execution is an element of **Extradition**.

Company means the organization named in Item 1 of the Declarations, including such organization as a debtor in possession under United States bankruptcy law or an equivalent status under the law of any other country.

Defense Costs means all reasonable and necessary fees, **Prosecution Costs** and expenses incurred by the **Insured Persons** in the investigation, settlement, defense or appeal of any **Claim**, and costs of appeal, costs taxed against the **Insured Persons**, attachment or similar bonds. The Insurer has no obligation to apply for or provide such bonds. **Defense Costs** shall not include salaries, wages, fees, overhead or benefit expenses associated with the directors, officers and employees of the **Entity**.

Domestic Partner means a spouse or any person qualifying as a domestic partner under any federal, state or local laws or under the **Entity's** employee benefit plans.

Entity means the **Company** and its **Subsidiaries**.

Executive Officer means the president, chief executive officer, **Manager**, chief financial officer, executive vice president, comptroller or in-house general counsel of the **Entity**.

Extradition means a process by which one country surrenders an **Insured Person** to another country for prosecution, incarceration or to answer any criminal accusation.

Financial Insolvency means, with respect to the **Entity**:

1. the appointment of a receiver, conservator, liquidator, trustee, rehabilitator or similar official to take control of, supervise, manage or liquidate such organization, or such organization becoming a debtor in possession; and
2. the inability, financially or under applicable law, of such organization to advance **Defense Costs** or indemnify the **Insured Persons** for **Non-Indemnified Loss**.

Foreign Jurisdiction means any jurisdiction, other than the United States or any of its territories or possessions.

For-Profit Outside Entity means any organization, other than the **Company**, any **Subsidiary** if such organization is specifically listed as such in a schedule attached to this Policy.

Independent Director means one or more past, present or future directors or **Managers** of the **Entity** who are not and have never been an officer or employee of any **Entity**.

Independent Director Claim means a **Claim** made against an **Independent Director**.



INDIVIDUAL SOLUTIONS

Insured Persons means any natural person who was, now is or shall be:

1. the **Entity's** duly elected or appointed director, officer, trustee, comptroller or governor (if a corporation), management committee member (if a joint venture) or **Manager** (if a limited liability company);
2. official in an **Entity** organized and operated in a **Foreign Jurisdiction** who is holding a position that is equivalent to an executive position listed in 1.; or
3. In-House General Counsel or Risk Manager (or equivalent position) of the **Company**.

Insured Person also includes all other persons not described in 1., 2. or 3. above who were, now are, or shall be full or part-time employees of the **Entity**, provided coverage for such other persons shall apply only while the **Claim** against such other person is also made against a person described in 1., 2. or 3. above.

Interrelated Wrongful Acts means any **Wrongful Acts** which are logically or causally connected by reason of common facts, circumstances, situations, transactions or events.

Loss means damages, settlements, judgments (including any award of pre-judgment and post-judgment interest on a covered judgment, other than interest on appeals as specified in Section VII, paragraph 5, Appeals) and **Defense Costs** for which **Insured Persons** are legally obligated to pay on account of a covered **Claim**. However, **Loss** shall not include:

1. criminal or civil fines or penalties other than civil penalties assessed against an **Insured Person** pursuant to the Foreign Corrupt Practices Act, Section 15 USC 78dd-2(g)2(B);
2. taxes;
3. any amount that is uninsurable under the law pursuant to which this Policy shall be construed.

Notwithstanding the foregoing paragraph, **Loss** shall include, punitive, exemplary and multiple damages. Enforceability of this paragraph shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages. In addition, the Insurer shall not assert that any **Loss** incurred by an **Insured Person** 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.

Manager means any natural person manager, member of the Board of Managers or equivalent executive of an **Entity** that is a limited liability company.

Non-indemnified Loss means **Loss** that the **Entity**, and with respect to **Insured Persons** in an **Outside Position**, the **Outside Entity**, fails or refuses to indemnify or advance to or on behalf of any **Insured Person** for any reason, including **Financial Insolvency**.

Not-For-Profit Outside Entity means any organization chartered and operated as a not-for-profit organization.

Outside Entity means any **For-Profit Outside Entity** and any **Not-For-Profit Outside Entity**.

Outside Position means the position of director, officer, trustee, regent, governor or partner held by any duly elected or appointed officer of the **Company** or any **Subsidiary** in any **Outside Entity** provided and so long as such service is at the specific written request or direction of the **Company** or any **Subsidiary**.

Policy Period means the period from the effective date of this Policy to the Policy expiration date stated in Item 2 of the Declarations, or its earlier cancellation date. If the Extended Reporting Period is purchased, then such period shall be part of and not in addition to the **Policy Period**.



INDIVIDUAL SOLUTIONS

Policy Premium means the original premium and the fully annualized amount of any additional premiums, other than the Extended Reporting Period premium, charged by the Insurer before or during the **Policy Period**.

Primary Policy means the **Underlying Insurance** that provides the primary layer of insurance as set forth on the Declarations.

Prosecution Costs means reasonable fees, costs and expenses incurred by an **Insured Person** with the **Insurer's** prior written consent (such consent not to be unreasonably withheld) to challenge, resist or defend against any request for or order of **Extradition**, or any appeal of any order of **Extradition**.

Subsidiary means:

1. any entity in which and so long as more than 50% of the voting stock or voting rights, representing the present right to vote for directors or **Managers**, is owned by the **Company** or any **Subsidiary**, either directly or indirectly:
 - A. on or before the effective date of this Policy; or
 - B. after the effective date of this Policy by reason of being created or acquired by the **Company** or any **Subsidiary** after such date, if and to the extent coverage is afforded pursuant to Section XIII; and
2. any foundation, charitable trust or political action committee controlled by one or more entities described in 1 above or by the **Company**.

Takeover means:

1. the acquisition by another entity or person, or group of entities or persons acting in concert, of (i) the ownership or control of voting stock of the **Company** resulting in the ownership or control of more than 50% of the voting stock of the **Company** or (ii) assets of the **Company** resulting in the ownership of more than 50% of the total consolidated assets of the **Company** as of the date of the **Company's** most recent audited consolidated financial statement prior to such acquisition;
2. the merger of the **Company** into another entity such that the **Company** is not the surviving entity;
3. the consolidation of the **Company** with another entity; or
4. the change of 50% or more of the directors of the **Company** as a result of a contested proxy solicitation.

Underlying Insurance means the insurance policies listed in Item 7 of the Declarations.

Wrongful Act means:

1. any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by the **Insured Person** in their capacity as such, or in an **Outside Position**, or
2. any matter claimed against the **Insured Person** by reason of their serving in such capacity, or in an **Outside Position**.

III. EXTENDED REPORTING PERIOD

As used herein, "**Extended Reporting Period**" means the period of time as set forth in Item 5a of the Declarations after the end of the **Policy Period** for **Claims** made against **Insured Persons** during the **Extended Reporting Period** by reason of a **Wrongful Act** that happened prior to the earlier of the end of the **Policy Period** or the effective date of any **Takeover**, if the **Claim** is otherwise covered by this Policy. It is understood and agreed that



INDIVIDUAL SOLUTIONS

the **Extended Reporting Period**, if purchased, shall not be construed to be a new policy. Any **Claim** made during such period shall otherwise be governed by this Policy.

1. If the Insurer or the **Entity** non-renew this Policy, the **Entity**, on behalf of the **Insured Persons**, or an **Insured Person**, on behalf of all **Insured Persons**, shall have the right to purchase, upon payment of an additional premium determined as set forth in Item 5b of the Declarations, an **Extended Reporting Period**.
2. As a condition precedent to the right to purchase the **Extended Reporting Period**, the total premium for this Policy must have been paid. The right to purchase the **Extended Reporting Period** shall end unless the Insurer receives written notice and full payment of the premium for such period within 30 days after the end of the **Policy Period**.
3. If the **Extended Reporting Period** is purchased, the entire premium shall be deemed earned at its commencement without any obligation by the Insurer to return any portion thereof.
4. The Limit of Liability for all **Claims** made during the **Extended Reporting Period** is as set forth in Section **VI, LIMIT OF LIABILITY**.

IV. LEGAL REPRESENTATIVES AND DOMESTIC PARTNERS

The estates, heirs, legal representatives, assigns, and **Domestic Partners** of **Insured Persons** shall be considered an **Insured Person** under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, assigns, and **Domestic Partners** only for a **Claim** arising solely out of their status as such and, in the case of **Domestic Partners**, where such **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the **Domestic Partner**. No coverage is provided for any act, error or omission of an estate, heir, legal representative, assign, or **Domestic Partner**. All terms and conditions of this Policy applicable to **Non-Indemnified Loss** incurred by the **Insured Person** shall also apply to **Non-Indemnified Loss** incurred by such estates, heirs, legal representatives, assigns, and **Domestic Partners**.

V. EXCLUSIONS

The Insurer shall not be liable to pay that part of **Non-Indemnified Loss** under this Policy in connection with any **Claim** against an **Insured Person**:

1. Bodily Injury and Property Damage

for any actual or alleged bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property including loss of its use, except that this exclusion does not apply to:

- a. any **Claim** for emotional distress or mental anguish;
- b. any **Claim** by securities holders of the **Entity** in their capacity as such, including without limitation any shareholder derivative or securities class action lawsuit;
- 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



INDIVIDUAL SOLUTIONS

- d. any **Claim** to the extent it is asserted against an **Insured Person** who is a duly elected or appointed director of the **Entity** and only to the extent it is asserted against such **Insured Person** in his or her capacity as a director of the **Entity**;

2. Prior **Wrongful Acts** of **Subsidiaries**

for:

- a. any **Wrongful Act** by **Insured Persons** of any **Subsidiary** occurring before the date such entity became a **Subsidiary**, or
- b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in paragraph a. above, would constitute **Interrelated Wrongful Acts**;

3. **Claims** by the **Entity**

brought by or on behalf of the **Entity** (if brought in the United States, its territories or possessions, Puerto Rico or Canada) by or with the solicitation, assistance, participation or intervention of two or more **Insured Persons** each of whom are **Executive Officers** at the time such **Claim** is made except and to the extent that:

- a. such **Claim** is brought by a bankruptcy or insolvency trustee, examiner, creditors committee, liquidator, rehabilitator or receiver, or assignee thereof, of the **Entity** or
- b. such **Claim** is first made after the **Takeover** of the **Company**.

However, this exclusion shall not apply to:

1. that portion of **Non-Indemnified Loss** that is **Defense Costs**;
2. any **Claim** if independent legal counsel selected by such **Entity** with the prior consent of the Insurer (such consent shall not be unreasonably withheld) provides a written legal opinion that the failure of the **Entity** to make such **Claim** will likely result in liability to one or more **Insured Persons** for failure to assert such **Claim**;

In addition, if such **Executive Officer** engages in "Whistleblower Activity" or acts solely pursuant to or in compliance with a subpoena, such activity shall not be considered to be "with the solicitation, assistance, participation or intervention" of any such **Insured Person** for the purposes of this exclusion. As used herein, "whistleblower activity" means the kind of activity described in Title 18, Section 1514A, paragraph (a) (1) and (2) under the Whistleblower Protection for Employees of Publicly Traded Companies provision of the Sarbanes-Oxley Act of 2002, regardless of whether or not such activity is done by an employee protected under such statute or any similar State or Federal Statute;

4. Illegal Profits/Deliberate Acts

based upon or arising out of:

- a. the gaining of any profit, remuneration or advantage to which an **Insured Person** was not legally entitled; or
- b. the committing of any deliberate fraudulent or deliberate criminal act by an **Insured Person**

if a final adjudication in the underlying action establishes such **Insured Person** was not legally entitled to such profit or advantage or establishes that such act was committed by such **Insured Person**.

This Exclusion shall not apply to **Independent Director Claims**. Nor shall it apply to **Defense Costs** incurred by an **Insured Person** if the **Independent Directors** of the **Entity** unanimously determine that such covered **Defense Costs** should be paid by the Insurer and not borne by such **Insured Person**.



INDIVIDUAL SOLUTIONS

For purposes of determining the applicability of Exclusion 4, the facts pertaining to and knowledge possessed by the **Entity** or any **Insured Person** shall not be imputed to any other **Insured Person**.

VI. LIMIT OF LIABILITY

1. The amount set forth as the Limit of Liability in Item 6 of the Declarations shall be the maximum aggregate liability of the Insurer for all **Non-Indemnified Loss** under this Policy, regardless of the number of **Claims** made against or **Non-Indemnified Losses** incurred by the **Insured Persons**.
2. The Insurer's obligations under this Policy shall be deemed completely fulfilled and extinguished, if the Limit of Liability is exhausted by payment of **Non-Indemnified Loss**.
3. The Insurer shall pay **Non-Indemnified Loss** as it becomes due and payable by the **Insured Persons** without consideration of other future or potential payment obligations.
4. **Defense Costs** are part of **Non-Indemnified Loss** and subject to the Limit of Liability, and are not payable in addition to such Limit of Liability.
5. The Limit of Liability for all **Claims** made during the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability for the **Policy Period** as set forth in the Declarations.
6. More than one **Claim** involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered as one **Claim** which shall be deemed to have been first made on the date on the earlier of:
 - a. the date on which the earliest such **Claim** was first made, or
 - b. the first date valid notice was given by the **Insured Persons** to the Insurer under this Policy of any **Wrongful Act** or under any prior policy of any **Wrongful Act** or any fact, circumstance, situation, event or transaction which underlies any such **Claim**.

VII. DEFENSE AND SETTLEMENT

1. Defense of **Claims**

The **Insured Persons** and not the Insurer have the duty to defend and contest **Claims**. The Insurer has the right, but not the duty, to associate itself in the defense, prosecution, and negotiation of any settlement of any **Claim** where the **Claim** is or may be covered in whole or in part by this Policy.

2. Insurer's Consent

The **Insured Persons** shall not incur **Defense Costs**, admit or assume liability, consent to any judgment, agree to any settlement or make any settlement offer in any **Claim** covered or which appears reasonably likely to be covered under this Policy without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall not be liable for any **Non-Indemnified Loss** incurred by an **Insured Person** to the extent the **Non-Indemnified Loss** results from such **Insured Person** incurring **Defense Costs**, admitting or assuming liability, consenting to any judgment, agreeing to any settlement or making any settlement offer with respect to such **Claim** without the Insurer's prior written consent. The **Insured Persons** agree that they shall not knowingly



INDIVIDUAL SOLUTIONS

take any action that increases the Insurer's exposure for **Non-Indemnified Loss** under this Policy without the prior written consent of the Insurer.

3. Advancement of **Defense Costs**

Except in those instances where the Insurer has denied liability for a **Claim** under the terms or conditions of this Policy, if the **Entity** and, if applicable, the **Outside Entity** refuses or is financially unable to advance **Defense Costs** in connection with any **Claim**, and if the insurers of the **Underlying Insurance** refuse to advance such **Defense Costs**, or such **Defense Costs** are not payable under any **Underlying Insurance**, then the Insurer on behalf of the **Insured Persons** shall advance such **Defense Costs**.

4. Assistance and Cooperation

The **Insured Persons** and the Insurer shall at all times cooperate in the investigation, settlement and defense of any **Claim** that is or may be covered in whole or in part by this Policy. The **Insured Persons** shall furnish the Insurer with copies of reports, investigations, pleadings, related papers, and any other information, assistance and cooperation as the Insurer may reasonably request.

The failure of the **Entity** to assist and cooperate with the Insurer or the failure of an **Insured Person** to comply with any obligations under this Section **VII, DEFENSE AND SETTLEMENT** shall not impair the rights of any other **Insured Persons** under this Policy.

5. Appeals

In the event the **Insured Persons** or the insurers of the **Underlying Insurance** 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.

VIII. REPORTING AND NOTICE REQUIREMENTS

1. Notice of Demands, Proceedings, Arbitrations and Investigations

The **Entity** or **Insured Persons** shall, as a condition precedent to the obligations of the Insurer under this Policy, give a written notice to the Insurer of a **Claim** made against an **Insured Person** as soon as practicable after an **Insured Person** first becomes aware of the **Claim**, but in no event later than 60 days after the end of the **Policy Period**, provided always that such **Claim** is reported to the Insurer as soon as practicable.

2. Notice of Circumstances:

If during the **Policy Period** the **Insured Persons** first become aware of any facts or circumstances which may reasonably be expected to give rise to a **Claim** and during such period give written notice to the Insurer of:

- a. the names of the potential claimants and the **Wrongful Act** allegations anticipated as the basis of the potential **Claim**,
- b. the identity of the specific **Insured Persons** allegedly responsible for such specific **Wrongful Act**,
- c. the consequences which have resulted or may result from such specific **Wrongful Act**,



INDIVIDUAL SOLUTIONS

- d. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Act**, and
- e. the circumstances by which the **Insured Persons** first became aware of such specific **Wrongful Act**.

then any **Claim** otherwise covered pursuant to this Policy which is subsequently reported by the **Entity** or any **Insured Persons** to the Insurer and which arises out of such **Wrongful Act** shall be deemed to have been first made against the **Insured Persons** at the time 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**.

3. Change in **Underlying Insurance**

The **Entity** or **Insured Persons** shall give written notice to the Insurer within thirty (30) days after the **Entity** or **Insured Persons** receive or have notice of any:

- a. material change in the terms or conditions of the **Underlying Insurance**; or
- b. nonrenewal or cancellation of the **Underlying Insurance**, during the **Policy Period** or any applicable extended reporting period.

4. Where to send Notice

The **Entity** and **Insured Persons** shall give written notice by mail (including electronic mail) or facsimile to the Insurer at the address shown in Item 4 of the Declarations, which shall be effective upon receipt.

IX. CANCELLATION

The Insurer may not cancel this Policy except for non-payment of premium when due. The premium for this Policy is fully earned at policy inception.

X. NOTICES TO THE COMPANY

Any notices by the Insurer to the **Company** under this Policy shall be provided to the **Company** at the last known address and to its insurance agent or broker. The mailing by certified mail of such notice shall be sufficient.



INDIVIDUAL SOLUTIONS

XI. OTHER INSURANCE AND INDEMNIFICATION

If any **Non-Indemnified Loss** resulting from any **Claim** is insured under any other policies, this Policy shall apply only to the extent the **Non-Indemnified Loss** exceeds the amount paid under such other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over this Policy.

Any coverage under this Policy for **Claims** against any **Insured Person** in an **Outside Position** shall be specifically excess of any indemnification from or insurance provided by the **Outside Entity**. Payment by the Insurer or any affiliate of the Insurer under another policy as a result of a **Claim** against an **Insured Person** in an **Outside Position** shall reduce, by the amount of such payment, the Insurer's Limit of Liability under this Policy with respect to such **Claim**.

XII. NEW SUBSIDIARIES

1. If after the effective date of this Policy, (i) an **Entity** creates or acquires an organization other than a partnership, or (ii) an **Entity** merges with another organization other than a partnership such that the **Entity** is the surviving entity, then **Insured Persons** of such created or acquired organization and its subsidiaries shall be covered under this Policy, subject to its terms and conditions, if the total assets (as reflected in the most recent audited consolidated financial statements of such entity and the **Entity**) are fifteen percent (15%) or less of the combined total assets of all **Entities**, as of the inception date of this Policy. If the total assets (as reflected in the most recent audited consolidated financial statements of such entity and the **Entity**) exceed fifteen percent (15%) of the combined total assets of all **Entities**, as of the inception date of this Policy, then the **Company** must give notice of such acquisition or creation to the Insurer as soon as practicable, but in no event later than sixty (60) days after the date of such acquisition or creation, together with such other information as the Insurer may require and shall pay any reasonable additional premium required by the Insurer. If the **Company** fails to give such notice within the time specified above, or fails to pay the additional premium required by the Insurer, coverage for such **Insured Persons** of such acquired or created organization shall terminate with respect to **Claims** first made more than sixty (60) days after such acquisition or creation. Coverage for any such **Insured Persons** shall be subject to such additional or different terms, conditions and limitations of coverage as the Insurer in its sole discretion may require.
2. There shall be no coverage under this Policy for any **Wrongful Act** by any persons considered to be covered **Insured Persons** pursuant to subsection 1 immediately above, where such **Wrongful Act** occurred in whole or in part before the effective date of such creation, acquisition or merger or for any **Wrongful Act** occurring on or after such date which, together with any **Wrongful Act** occurring before such date, would be considered **Interrelated Wrongful Acts**.

XIII. CHANGE OF STATUS OF ENTITY

1. Takeover of the Company

In the event of a **Takeover** of the **Company**, coverage under this Policy shall continue until this Policy is otherwise terminated but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of the **Takeover**, unless (i) the Insurer is notified in



INDIVIDUAL SOLUTIONS

writing of the **Takeover** prior to the **Takeover** date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and (ii) the **Company** accepts any special terms, conditions, exclusions or additional premium charge required by the Insurer.

2. Cessation or **Takeover** of **Subsidiary**

If any organization ceases to be a **Subsidiary**, there shall be no coverage under this Policy for any **Wrongful Act** by any **Insured Person** of such organization occurring after the date such organization ceased to be a **Subsidiary**.

In the event of a **Takeover** of a **Subsidiary**, coverage under this Policy with respect to such **Subsidiary** and its **Insured Persons** shall continue until this Policy is otherwise terminated, but only with respect to **Claims** for **Wrongful Acts** occurring before the effective date of the **Takeover**, unless (i) the Insurer is notified in writing of the **Takeover** prior to the **Takeover** effective date and agrees in writing to provide coverage for **Wrongful Acts** occurring on or after such effective date, and (ii) the **Company** and **Subsidiary** accept any special terms, conditions, exclusions or additional premium charge required by the Insurer.

XIV. SUBROGATION AND RECOVERY

To the extent it pays any **Non-Indemnified Loss**, the Insurer shall be subrogated to all the **Insured Persons**' rights of recovery therefor, including without limitation an **Insured Persons**' right to indemnification or advancement from the **Entity**, or any **Underlying Insurance**. The **Entity** and **Insured Persons** shall execute all papers necessary to secure such rights, including executing any documents necessary to enable the Insurer effectively to bring suit in their name, and shall take no action which impairs the Insurer's rights of subrogation or recovery. The Insurer shall not exercise its right to subrogate against any **Insured Person** unless and to the extent that Exclusion 4, Illegal Profits/Deliberate Acts is applicable to such **Insured Person**.

XV. CHANGES

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer shall not effect a waiver or a change in any part of this Policy or stop the Insurer from asserting any right under the provisions of this Policy, nor shall the provisions be waived or changed except by written endorsement issued to form a part of this Policy.

XVI. COMPANY AUTHORIZATION

The **Entity** and **Insured Persons** agree that the **Company** will act on behalf of the **Entity** and all **Insured Persons** with respect to giving of all notices to the Insurer (except notice provided in Section VIII.1 or 2), the receipt of notices from the Insurer, the payment of the premiums, the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XVII. NO ACTION AGAINST INSURER

1. No action shall be taken against the Insurer unless, as a condition precedent, there shall have been full compliance with all the provisions of this Policy.



INDIVIDUAL SOLUTIONS

- No person or organization shall have any right under this Policy to join the Insurer as a party to any **Claim** against the **Insured Person** to determine the **Insured Person's** liability, nor shall the Insurer be impleaded by the **Insured Person** or their legal representatives in any such **Claim**.

XVIII. ASSIGNMENT OF INTEREST

Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed to this Policy.

XIX. TERRITORY

Coverage shall apply worldwide.

XX. ENTIRE AGREEMENT

The **Entity** and the **Insured Persons** agree that this Policy, the **Application** and any written endorsement hereto constitute the entire contract existing between them, the Insurer and any of its agents relating to this insurance.

XXI. HEADINGS

The section headings in this Policy (including the Declarations) are for expediency only and do not form a part of the terms and conditions of the Policy.

XXII. VALUATION

All premiums, limits, retentions, **Non-Indemnified Loss** and other amounts under this Policy are expressed and payable in United States of America currency. If any judgment, settlement or any part of **Non-Indemnified Loss** is expressed or calculated in any other currency, payment of such **Non-Indemnified Loss** due under this Policy will be made in the currency of the United States of America, at the rate of exchange published in The Wall Street Journal on the date the Insurer's obligation to pay such **Loss** is established, or, if not published on that date, on the date of next publication.

XXIII. ALTERNATIVE DISPUTE RESOLUTION PROCESS

All disputes or differences between the **Insured Person** and Insurer which may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Non-Indemnified Loss**, shall be submitted to the alternative dispute resolution ("**ADR**") process set forth in this Section.

Either the Insurer or an **Insured Person** may elect the type of **ADR** process discussed below; provided, however, that such **Insured Person** shall have the right to reject the Insurer's choice of the type of **ADR** process at any time prior to its commencement, in which case such **Insured Person's** choice of **ADR** process shall control.

The Insurer and each and every **Insured Person** agrees that there shall be two choices of **ADR** process:



INDIVIDUAL SOLUTIONS

1. non-binding mediation administered by the American Arbitration Association, in which the Insurer and any such **Insured Person** shall try in good faith to settle the dispute by mediation under or in accordance with its then-prevailing Commercial Mediation Rules; or
2. arbitration submitted to the American Arbitration Association in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall consist of three disinterested individuals.



In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. The mediator or arbitrators shall also give due consideration to the general principles of the law of the state where the **Entity** is incorporated in the construction or interpretation of the provisions of this Policy. In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorney's fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until the mediation shall have been terminated and at least 60 days shall have elapsed from the date of the termination of the mediation. In all events, each party shall share equally the expenses of the **ADR** process.

Either choice of **ADR** process may be commenced in New York or Illinois or in the state indicated in the Declarations as the mailing address for the **Entity**.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its Chairman and Secretary, but the same shall not be binding upon the Insurer unless countersigned by a duly authorized representative of the Insurer.

Chairman

Secretary

	
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Thomas F. Motamed

Jonathan D. Kantor