

Private Company Directors, Officers and Entity Liability Coverage

Part

("D&O Coverage Part")

Notice: Pursuant to section I. of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, and made part of, and are expressly applicable to this D&O Coverage Part, unless expressly stated to the contrary in either the General Terms and Conditions or in this D&O Coverage Part.

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Insurer**, and subject to all provisions of this policy the **Insurer** and **Insureds** agree as follows:

I. Insuring Agreements

Coverage A. Directors and Officers Liability Coverage

The **Insurer** shall pay on behalf of an **Insured Person**, **Loss** which the **Insured Person** is legally obligated to pay resulting from any **Claim** first made against the **Insured Person** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy for any actual or alleged **Wrongful Act**, except and to the extent that the **Company** has indemnified the **Insured Person** for such **Loss**.

Coverage B. Entity Indemnification Coverage

The **Insurer** shall pay on behalf of the **Company**, **Loss** which the **Company** is legally obligated to pay resulting from any **Claim** first made against an **Insured Person** (including an **Insured Person** in his or her **Outside Entity Position**) during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, for any actual or alleged **Wrongful Act**.

Coverage C. Private Entity Coverage

The **Insurer** shall pay on behalf of the **Company**, **Loss**:

- (1) which the **Company** is legally liable to pay resulting from any **Claim** first made against the **Company** during the **Policy Period** or the **Extended Reporting Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, for any actual or alleged **Wrongful Act**; or
- (2) subject to the sub-limit of liability set forth in item 6. of the Declarations, incurred as **Derivative Demand Investigation Costs** resulting from any **Shareholder Derivative Demand** first made against the **Company** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, or

first brought during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the **Insurer** pursuant to the terms of this policy.

Coverage D. Outside Entity Directors and Officers Liability Coverage

The **Insurer** shall pay on behalf of an **Insured Person** all **Loss** for which the **Insured Person** is legally obligated to pay resulting from any **Claim** first made against an **Insured Person** in his or her **Outside Entity Position** during the **Policy Period** or the Extended Reporting Period (if applicable) and reported to the

Insurer pursuant to the terms of this policy, for any actual or alleged **Wrongful Act**; except and to the extent that the **Company** has indemnified the **Insured Person** for such **Loss** of, or paid such **Loss** on behalf of the **Insured Person**. Further, **Loss** paid under this policy shall be specifically excess to any indemnification from the **Outside Entity** and any insurance coverage afforded to the **Outside Entity**.

II. DEFINITIONS

Whenever printed in boldface type, and whether in the singular or plural form in this policy, the following terms shall have the meanings indicated below.

A. "Claim" means:

- (1) a written demand for monetary, non-monetary or injunctive relief, including any demand for mediation, arbitration, or any other alternative dispute resolution process;
- (2) a proceeding for monetary, non-monetary, or injunctive relief which is commenced by:
 - a. service of a complaint or similar pleading or equivalent document in a **Foreign Jurisdiction**;
 - b. return of an indictment, information or similar document or equivalent document in a **Foreign Jurisdiction** (in the case of a criminal proceeding); or
 - c. receipt or filing of a notice of charges;
- (3) a formal civil, criminal, administrative or regulatory investigation of an **Insured Person**:
 - a. which is commenced by service of a subpoena or formal order of investigation or receipt of another similar document;
 - b. in the event of an investigation by the Securities Exchange Commission ("SEC") or a similar state or foreign government authority or agency, after:
 - (i) service of a subpoena upon such **Insured Person**; or
 - (ii) the **Insured Person** is identified in a written "Wells" notice or other notice from the SEC or a similar state or foreign government authority or agency that describes actual or alleged violations of laws by such **Insured Person**.
- (4) an official request for **Extradition** of an **Insured Person**, including the execution of a warrant for the arrest of an **Insured Person** where the warrant execution is an element of **Extradition**; and
- (5) a written request to toll or waive the statute of limitations relating to any of the above.

Claim shall also mean any **Securities Claim** and any **Shareholder Derivative Demand**.

Further, a **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

- B. "Corporate Manslaughter Act (UK) Costs" means the Defense Costs incurred by an Insured Person solely in connection with the investigation, defense or appeal of a Claim against the Company for violation of the United Kingdom Corporate Manslaughter and Corporate Homicide Act of 2007 or any similar statute in any other jurisdiction.**
- C. "Defense Costs" means: the reasonable and necessary fees, costs and expenses (including costs of electronic discovery and premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) consented to by the Insurer and resulting solely from the investigation, adjustment, defense and appeal of a Claim against an Insured, but excluding wages, salaries, fees or any other compensation of officers or employees of the Company.**

Defense Costs shall not include **Derivative Demand Investigation Costs**.

- D. “**Derivative Demand Investigation Costs**” means the reasonable fees, costs and expenses consented to by the **Insurer** and incurred by the **Company** or by its board of directors (or an equivalent managing body or equivalent foreign body) or any committee thereof in connection with the investigation or evaluation of a **Shareholder Derivative Demand**. **Derivative Demand Investigation Costs** shall not include any wages, salary, fees or other compensation of any **Employee** of the **Company** or of any **Insured Person** or plaintiff attorney fees.
- E. “**Employee**” means any past, present or future employee or officer of the **Company** while acting solely in his or her capacity as such, whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal and temporary employee or volunteer of the **Company** but only for **Wrongful Acts** committed or attempted or allegedly committed or attempted while employed by the **Company**. **Employee** also means an independent contractor, but only to the extent that the **Company** provides indemnification to such independent contractor, and only while such independent contractor is performing work for or on behalf of the **Company** pursuant to a written contract.
- F. “**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 trial or otherwise to answer any criminal accusation, for a **Wrongful Act**.
- G. “**Insured**” means **Insured Person(s)** and the **Company**.
- H. “**Insured Person**” means:
- (1) any **Executive**;
 - (2) any past, present or future **Employee** of the **Company**;
 - (3) in the event of the death, incapacity or bankruptcy of an **Insured Person**, the estate, heirs, legal representatives or assigns of such **Insured Person**;
 - (4) the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable domestic or **Foreign Jurisdiction**) of an **Insured Person** for a **Claim** arising solely out of his or her status as the spouse or domestic partner of an **Insured Person**, including a **Claim** that seeks damages recoverable from marital community property, property jointly held by the **Insured Person** and the spouse or domestic partner, or property transferred from the **Insured Person** to the spouse or domestic partner; *provided, however*, that this extension shall not afford coverage for any **Claim** for any act, error or omission of the spouse or domestic partner, but shall apply only to **Claims** arising out of any **Wrongful Act** of an **Insured Person**.

Coverage will automatically apply to all new **Insured Persons** after the policy inception date.

- I. (1) “**Loss**” means:
- a. damages, judgments (including any award of pre-judgment and post-judgment interest), and settlements;
 - b. **Defense Costs**,
 - c. **Derivative Demand Investigation Costs**, subject to the sub-limit of liability set forth in Item 6. of the Declarations,
 - d. **Corporate Manslaughter Act (UK) Costs**, subject to the sub-limit of liability set forth in Item 6. of the Declarations.
 - e. punitive, exemplary or multiple damages.
- (2) “**Loss**” (other than **Defense Costs**) shall not include:
- a. taxes;
 - b. civil or criminal fines or penalties;

- c. **Cleanup Costs, Pollutants**, or product defects;
 - d. any amount for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; or
 - e. matters which are uninsurable under the law pursuant to which this policy is construed.
- (3) Solely for the purpose of resolving any dispute between the **Insurer** and the **Insured** regarding whether punitive, exemplary or multiplied damages are insurable under this policy, the law of the jurisdiction most favorable to the insurability of those damages shall control, provided that such jurisdiction is where:
- a. the damages were awarded or imposed, or
 - b. any **Wrongful Act** occurred for which such damages were awarded or imposed, or
 - c. the **Insured** resides, is incorporated or has its principal place of business, or
 - d. the **Insurer** is incorporated or has its principal place of business.
- (4) The **Insurer** shall not assert that any portion of any settlement in a **Securities Claim** constitutes disgorgement or uninsurable **Loss** due to alleged violations of Sections 11, 12 or 15 of the Securities Act of 1933, including amendments thereto.
- J. **"Securities Claim"** means a **Claim**, other than an administrative or regulatory action against or investigation of the **Company**, made against any **Insured**:
- (1) alleging a violation of any federal, state, local or foreign regulation, rule, statute or common law regulating securities, that is brought by:
- a. any person or entity alleging, arising out of, based upon or attributable to, in whole or in part, the purchase or sale, or offer or solicitation of an offer to purchase or sell, any securities or membership interests in the **Company**, or
 - b. a security holder of the **Company** with respect to such security holder's interest in the **Company**.
- (2) brought derivatively on behalf of a **Company** by a security holder of a **Company**.
- K. **"Shareholder Derivative Demand"** means a written request by one or more shareholders of the **Company**, in their capacity as such, upon the board of directors of the **Company** (or an equivalent managing body) to investigate or evaluate any fact, circumstance or situation that may reasonably be expected to give rise to a **Claim** being made against an **Insured Person**. A **Shareholder Derivative Demand** shall be deemed to have been first made at the time an **Insured** receives such written request by a shareholder(s).
- L. **"Third Party Wrongful Act"** means any actual or alleged harassment (including sexual harassment and hostile work environment) or unlawful discrimination (including but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, or disability), or the violation of the civil rights of an individual relating to such harassment or discrimination, when such acts are alleged to be committed by an **Employee** against any individual other than an **Insured Person** or applicant for employment with the **Company** or with an **Outside Entity**, including, but not limited to, students, patients, members, customers, vendors and suppliers.
- M. **"Wrongful Act"** means:
- (1) with respect to any **Insured Person**, any actual or alleged breach of duty, neglect, error, act, omission, misstatement, or misleading statement by any **Insured Person** in their capacity as such or in an **Outside Entity Position**, or any matter claimed against them by reason of their status as an **Insured Person**; or

- (2) with respect to the **Company**, any actual or alleged breach of duty, neglect, error, misstatement, misleading statement, omission or act by the **Company**.

III. EXCLUSIONS

The **Insurer** shall not be liable to make payment for **Loss** in connection with any **Claim** made against any **Insured**:

- A. based upon, arising out of, or attributable to any remuneration, profit or other advantage to which an **Insured** was not legally entitled if established by any final and non-appealable adjudication in the underlying action adverse to such **Insured**;
- B. based upon, arising out of, or attributable to any deliberate criminal or deliberate fraudulent act if established by any final and non-appealable adjudication in the underlying action adverse to an **Insured**. Imposition of criminal fines, penalties, or sanctions pursuant to the law of a **Foreign Jurisdiction** shall not constitute, by itself, proof that an **Insured** has committed a deliberate criminal act or deliberate fraudulent act.
- C. for:
- (1) physical injury to or destruction of any tangible property, including the loss of use thereof; or
- (2) bodily injury, sickness, disease, and death of any person, injury from libel, slander, defamation or disparagement, or a violation of a person's right of privacy; provided, however, this exclusion shall not apply to a **Securities Claim** or **Corporate Manslaughter Act (UK) Costs**.
- D. based upon, arising out of, or attributable to any **Wrongful Act** of an **Insured Person** serving in their capacity as director, officer, trustee, or governor of any other entity other than the **Company** or an **Outside Entity**, or by reason of their status as director, officer, employee, trustee or governor of such other entity;
- E. for any actual or alleged violations of **ERISA** or any other similar state, local or foreign law or regulation;
- F. based upon, arising out of, or attributable to, as of the applicable **Prior or Pending Date**:
- (1) any prior or pending **Claim**, litigation, administrative or arbitration proceeding, or investigation; or
- (2) any **Wrongful Act** or **Related Wrongful Act**, fact, circumstance, situation, transaction or event underlying or alleged in such prior or pending **Claim**, litigation, administrative or arbitration proceeding, or investigation;
- G. based upon, arising out of, or attributable to, or in any way involving:
- (1) any **Wrongful Act** alleged in any matter which has been reported, or in any circumstance of which notice has been given, prior to the **Policy Period**, under any other policy of which this **D&O Coverage Part** is a renewal or replacement of, in whole or in part, or which it may succeed in time.
- (2) any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** which has been the subject of such claim or notice in G(1), would constitute **Related Wrongful Acts**;
- H. based upon, arising out of, or attributable to:

- (1) any actual or alleged violations of responsibilities, obligations or duties imposed by the Fair Labor Standards Act (except the Equal Pay Act), Worker's Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, the National Labor Relations Act, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law or regulations promulgated pursuant to such Acts; or
- (2) any actual or alleged unpaid wages (including overtime pay), benefits, obligations under any workers' compensation, social security, disability benefits, or unemployment compensation law or regulation, including amendments thereto, or any similar state, local or foreign law or regulation, improper payroll deductions, improper employee classification, failure to maintain accurate time records, or failure to grant meal and rest periods;

provided, however, this exclusion shall not apply to a **Securities Claim**.

- I. based upon, arising out of, or attributable to the employment of any individual or any employment practice violation;
- J. brought by or on behalf of the **Company** or any **Insured Person**, or by any **Outside Entity** or any director or officer of an **Outside Entity**; *provided, however* this exclusion shall not apply to:
 - (1) Any **Claim** brought by an **Insured Person** in the form of a cross claim or third party claim for contribution or indemnity which is part of and results directly from a **Claim** which is covered under this policy;
 - (2) Any **Claim** brought by any past **Executive** of the **Company** provided he/she has not served as a director or officer during the 2 years prior to the **Claim** being first made against any **Insured**;
 - (3) any **Shareholder Derivative Demand** or shareholder derivative action that is not brought by, controlled by, or materially assisted by the **Company**, any **Insured Person** or any **Outside Entity**;
 - (4) in connection with a bankruptcy proceeding of the **Company**, any **Claim** brought on behalf of the **Company** by the debtor in possession (or foreign equivalent) or by any trustee, receiver, liquidator, rehabilitator, examiner or creditors committee of the **Company**;
 - (5) Any **Insured Person** engaging in any whistleblowing activity;
 - (6) Any **Claim** brought by an **Employee**, other than an **Executive**, in his/her capacity as a shareholder of the **Company**; or
 - (7) Any **Claim** brought by an **Executive** of the **Company** formed and operating in a foreign jurisdiction against such **Company** or any executive thereof, provided that such **Claim** is brought and maintained outside the U.S, Canada or any common law country.
- K. based upon, arising out of, or attributable to any public offering of securities of a **Company** or an **Outside Entity**, or alleging a purchase or sale of such securities subsequent to such public offering; *provided, however*, this exclusion shall not apply to:
 - (1) any purchase or sale of securities exempted pursuant to Section 3(b) of the Securities Act of 1933, provided the **Parent Organization** shall give the **Insurer** written notice of any public offering exempted pursuant to Section 3(b) as soon as practicable, but not later than 30 days after the effective date of such public offering; or
 - (2) any **Securities Claim** for **Loss** alleging a **Wrongful Act** which occurred during the **Insureds'** preparations to commence an initial public offering ("IPO") and which occurred at any time prior to 12:01 a.m. on the date the IPO commences ("IPO Effective Time"),

including any **Claim** for **Loss** alleging a **Wrongful Act** which occurred during the road show; *provided, however*, that the coverage otherwise afforded under this subparagraph (2) shall be deemed to be void *ab initio* effective as of the IPO Effective Time;

- (3) Any **Claim** made by a security holder for the failure of the **Company** to undertake or complete an initial public offering or sale of securities.
- L. based upon, arising out of, or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; *provided, however*, this exclusion shall not apply to **Loss** incurred under Coverage A or to **Loss** in connection with a **Securities Claim**, other than **Cleanup Costs**;
- M. based upon, arising out of, or attributable to a **Third Party Wrongful Act**; *provided, however*, this exclusion shall not apply to a **Securities Claim**;
- N. based upon, arising out of, or attributable to:
 - (1) Payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time domestic or foreign governmental or armed services officials, agents, representatives, employees or any members of their family or any entity with which they are affiliated;
 - (2) Payments, commissions, gratuities, benefits or any other favors to or for the benefit of any full or part-time officials, directors, agents, partners, representatives, members, principal shareholders, owners, employees or affiliates of any customers of the **Company** or any members of their family or any entity with which they are affiliated; or
 - (3) political contributions, whether domestic or foreign.
- O. Solely with respect to Coverage C. (1):
 - (1) based upon, arising out of, or attributable to actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, service mark, trade secret or any other intellectual property rights; *provided however*, that this exclusion shall not apply to **Securities Claims**;
 - (2) for any actual or alleged violation of any law, whether statutory, regulatory or common law, respecting any of the following activities: anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;
 - (3) based upon, arising out of, or attributable to any actual or alleged contractual liability of the **Company** under any express contract or agreement; *provided, however*, this exclusion shall not apply to liability that would attach in the absence of such express contract or agreement; or
 - (4) seeking fines or penalties or non-monetary relief against the **Company**; *provided however*, that this exclusion shall not apply to **Securities Claims**.

For the purpose of determining the applicability of any Exclusion, other than **III.F.** and **III.G.**, the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any **Insured Person** shall not be imputed to any other **Insured Person**; only the **Wrongful Acts** of, facts pertaining to, and knowledge possessed by any past, present, or future Chief Executive Officer or Chief Financial Officer (or equivalent position) of the **Company** shall be imputed to the **Company**.

IV. LIMIT OF LIABILITY AND RETENTION

Section III, LIMIT OF LIABILITY AND RETENTION, of the General Terms and Conditions, shall be amended to add the following provisions.

Limit of Liability

Sub-limit for Derivative Demand Investigative Costs

The **Derivative Demand Investigative Costs** sub-limit of Liability stated in Item 6. of the Declarations ("**Derivative Demand Investigative Costs Sub-limit**") is the maximum aggregate limit of the **Insurer's** liability for all **Derivative Demand Investigative Costs** arising out of all **Shareholder Derivative Demands** first made against the **Company** during the **Policy Period** and the Extended Reporting Period (if applicable) regardless of the time of payment, the number of **Shareholder Derivative Demands**, or the number of claimants. The **Derivative Demand Investigative Costs Sub-limit** shall be part of, and not in addition to, the **Coverage Part Limit of Liability** applicable to the **D&O Coverage Part**. In the event the **Derivative Demand Investigative Costs Sub-limit** is exhausted by payment by the **Insurer**, or has been tendered to or on behalf of an **Insured**, then any and all obligations of the **Insurer** with respect to any **Shareholder Derivative Demands** subject to the **Derivative Demand Investigative Costs Sub-limit** shall be deemed to be completely fulfilled and extinguished.

Sub-limit for Corporate Manslaughter Act (UK) Costs

The **Corporate Manslaughter Act (UK) Costs** sub-limit of Liability stated in Item 6. of the Declarations ("**Corporate Manslaughter Act (UK) Costs-Sub-limit**") is the maximum aggregate limit of the **Insurer's** liability for all **Corporate Manslaughter Act (UK) Costs**, arising out of all **Claims** first made against the **Company** during the **Policy Period** and the Extended Reporting Period (if applicable) regardless of the time of payment, the number of **Claims**, or the number of claimants. The **Corporate Manslaughter Act (UK) Costs Sub-limit** shall be part of, and not in addition to, the **Coverage Part Limit of Liability** applicable to the **D&O Coverage Part**. In the event the **Corporate Manslaughter Act (UK) Costs Sub-limit** is exhausted by payment by the **Insurer**, or has been tendered to or on behalf of an **Insured**, then any and all obligations of the **Insurer** with respect to any **Claim** subject to the **Corporate Manslaughter Act (UK) Costs Sub-limit** shall be deemed to be completely fulfilled and extinguished.

Reinstated Limit of Liability for Loss under Coverage A

Solely with respect to Coverage A of the D&O Coverage Part, there shall be an additional limit of liability of \$1,000,000 ("**Non-Indemnifiable Additional Limit**"). The **Non-Indemnifiable Additional Limit** shall be in addition to, and not part of, the Policy Aggregate Limit of Liability set forth in Item 6a. of the Declarations. The **Non-Indemnifiable Additional Limit** shall be subject to the following terms and conditions:

- (i) The **Non-Indemnifiable Additional Limit** shall apply solely with respect to **Loss** arising from any **Claim** against any **Executive** for which coverage would otherwise apply under Coverage A of this **D&O Coverage Part**; and
- (ii) The **Non-Indemnifiable Additional Limit** shall be excess to any coverage provided under Coverage A of this **D&O Coverage Part** and any other insurance that is specifically excess to the coverage provided under Coverage A of this **D&O Coverage Part**. Such excess insurance must be completely exhausted by the payment of Loss covered thereunder before the Insurer shall have any obligation to make any payment on account of the **Non-Indemnifiable Additional Limit**.

Retention

The **Insurer** shall only be liable for the amount of **Loss** arising from a **Claim** which is in excess of the Retention set forth in the Declarations as applicable to the **D&O Coverage Part**. Such Retention amount shall be borne by the **Insured** with regard to all **Loss**.

No Retention amount shall apply to **Loss** in the event the **Company** is permitted or required to indemnify the **Insured Persons** but the **Company** is financially or legally unable to pay such **Loss** by reason of **Insolvency**.

If the **Company** fails or refuses in writing to advance, pay or indemnify **Loss** of an **Insured Person** within the applicable Retention for any reason (including but not limited to **Insolvency**) or if an **Insured Person** submits a written request to the **Company** for advancement, payment or indemnification of **Loss** incurred and the **Company** fails to provide, agree or acknowledge an obligation to provide such advancement, payment or indemnification within 90 days, then the **Insurer** shall advance such amounts on behalf of the **Insured Person** until such Retention is either satisfied or the **Company** provides such advancement, payment or indemnification.

If the **Insurer** pays any indemnification or advancement owed to an **Insured Person** by the **Company** within the applicable Retention, such amounts shall become due and owing as an obligation of the **Company** to the **Insurer** and the **Company** shall reimburse the **Insurer** for such amounts.

Any advancement or payment by the **Insurer** within the applicable Retention shall apply toward exhaustion of the applicable Limit of Liability.

In the event the applicable Retention is paid in whole or in part by a "DIC Insurer", the **Insurer** shall recognize such payment as eroding the Retention to the extent of such payment. For purposes of this section, "DIC Insurer" shall mean an insurer providing coverage excess of this policy on a difference in conditions basis that requires such insurer to drop down and pay the Retention amount.

The certificate of incorporation, by-laws and shareholder and board of director resolutions of any **Company** or **Outside Entity** shall be deemed to provide indemnification to the **Insured Person(s)** to the fullest extent permitted by law.

V. DEFENSE, COOPERATION AND SETTLEMENT

- A. The **Insurer** does not assume any duty to defend or investigate. The **Insureds** shall defend and contest any **Claim** made against them. The **Insured** shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. If all **Insured** defendants are able to dispose of all **Claims** which are subject to one Retention, inclusive of **Defense Costs**, for an amount not exceeding the Retention, then the **Insurer's** consent shall not be required for such disposition.
- B. At the written request of the **Insured**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis prior to the final disposition of a **Claim**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insured**, severally according to their respective interests, in the event and to the extent that the **Insured** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.
- C. Under all Coverages of this policy, at the written request of the **Insured**, the **Insurer** shall advance, excess of any applicable Retention, covered **Defense Costs** on a current basis prior to the final disposition of a **Claim**. Such advance payments by the **Insurer** shall be repaid to the **Insurer** by the **Insureds**, severally according to their respective interests, in the event and to the extent that the **Insureds** shall not be entitled under the terms and conditions of this policy to payment of such **Loss**.
- D. Each **Company** and **Insured Person** shall provide the **Insurer** with full cooperation and such information as the **Insurer** may reasonably require. The **Insurer** shall have the right, but not the obligation, to effectively associate in the defense of any **Claim** that involves or appears reasonably likely to involve the policy, including but not limited to the negotiating of any settlement. The failure of any **Insured Person** to give the **Insurer** cooperation and information as required herein shall not impair the rights of any other **Insured Person** under this policy.
- E. If both **Loss** covered by this policy and **Loss** not covered by this policy are incurred, either because a **Claim** is made against both **Insureds** and others or because a **Claim** includes both covered and uncovered matters, the **Insureds** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of amounts between covered and uncovered **Loss** taking into account the relative legal and financial exposure of the **Insureds**. In the event that a

determination as to the amount of **Defense Costs** to be advanced under this policy cannot be agreed to, then the **Insurer** shall advance such **Defense Costs** which the **Insurer** states to be fair and proper until a different amount shall be agreed upon or determined pursuant to the provisions of this policy and applicable law.

- F.** In the event of **Loss** arising from one or more covered **Claims** for which payment is due under the provisions of this policy, then the **Insurer** shall in all events:
- (1) first, pay all non-indemnified **Loss** of an **Insured Person** for which coverage is provided under this policy;
 - (2) second, pay all indemnified **Loss** of an **Insured Person** (or the **Company** to the extent that it has paid indemnification to, on behalf of or for the benefit of an **Insured Person**) for which coverage is provided under this policy;
 - (3) only after payments of all **Loss** have been made pursuant to subsection 1. of this paragraph F, then with respect to whatever remaining amount of the Limit of Liability is available after such payment paid pursuant to subsection 2. of this paragraph F., at the written request of the Chief Financial Officer of the **Company**, either pay or withhold payments of such other **Loss** for which coverage is provided or may be available under this policy.

In witness whereof, the **Insurer** has caused this policy to be signed by its President and Secretary, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President



Secretary