

U.S. SPECIALTY INSURANCE COMPANY

Broadest Form Directors and Officers Liability Insurance Policy



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**THIS IS A CLAIMS MADE INDEMNITY POLICY
WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY
PLEASE READ THE ENTIRE POLICY CAREFULLY.**

U.S. SPECIALTY INSURANCE COMPANY

BROADEST FORM DIRECTORS AND OFFICERS LIABILITY INSURANCE

U.S. Specialty Insurance Company (the "Insurer"), the Insured Persons and the Company, subject to all of the terms, conditions and limitations of this Policy, agree as follows:

I. INSURING AGREEMENT

The Insurer will pay, on behalf of the **Insured Persons**, **Loss** from **Claims** first made during the **Policy Period**, except to the extent that such **Loss** is paid by any other insurance or as indemnification from any source.

II. DEFINITIONS

- (A) **"Claim"** means (1) written notice received by an **Insured Person** or the **Company** that any person or entity intends to hold an **Insured Person** responsible for a **Wrongful Act**, including but not limited to a legal, injunctive or administrative proceeding against an **Insured Person** for a **Wrongful Act**, or (2) a legal, injunctive or administrative proceeding against an **Insured Person** solely by reason of his or her status as a director or officer of the **Company**.
- (B) **"Company"** means the **Parent Corporation** and/or any **Subsidiary**, including any **Subsidiary** created or acquired during the **Policy Period**.
- (C) **"Defense Expenses"** means reasonable legal fees and expenses incurred by an **Insured Person** in defense of a **Claim**. **Defense Expenses** shall not include remuneration, overhead or benefit expenses associated with directors, officers or employees of the **Company**.
- (D) **"Insured Person"** means any past, present or future director or officer of the **Company**. In the event of the death, incapacity or bankruptcy of an **Insured Person**, a **Claim** against the estate, heirs, legal representatives or assigns of such individual for a **Wrongful Act** by such individual shall be considered a **Claim** against the **Insured Person**.
- (E) **"Loss"** means any amount, including **Defense Expenses**, which an **Insured Person** is obligated to pay as a result of a **Claim**, including but not limited to punitive, exemplary or multiple damages where insurable under applicable law; provided, that **Loss** shall not include matters which are uninsurable under applicable law or taxes, fines or penalties (for purposes of this Policy, an award of punitive or exemplary damages or a multiple of compensatory damages shall not be considered a "fine or penalty"), regardless of the nature of the conduct or action that is the basis for the imposition of any such taxes, fines or penalties.
- (F) **"Outside Entity"** means any corporation other than the **Company** of which any **Insured Person** serves as a director or officer, but only if such service is at the express written direction of the **Company**.
- (G) **"Parent Corporation"** means the entity named in ITEM 1 of the Declarations.

- (H) **"Policy Period"** means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations, or to any earlier cancellation date.
- (I) **"Subsidiary"** means any corporation during any time in which the **Parent Corporation** owns or formerly owned, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of its directors.
- (J) **"Wrongful Act"** means any actual or alleged act, error, omission, misstatement, misleading statement or breach of duty by an **Insured Person** in his or her capacity as:
- (1) a director or officer of the **Company**, or
 - (2) a director or officer of an **Outside Entity**, but only during such time that such service is at the specific written request of the **Company**.

III. EXCLUSIONS

- (A) Except for **Defense Expenses**, the Insurer shall not pay **Loss** in connection with any **Claim**:
- (1) by or at the behest of, or in the name or right of, the **Company**. This Section III. Exclusion (A)(1) shall not apply to any **Claim**, whether direct or in the form of a derivative action, by a security holder of the **Company** acting independently and without the solicitation or assistance of the **Company** or any **Insured Person**;
 - (2) by or at the behest of, or in the name or right of, an **Outside Entity** against an **Insured Person** for a **Wrongful Act** in his or her capacity as a director or officer of such **Outside Entity**. This Section III. Exclusion (A)(2) shall not apply to any **Claim**, whether direct or in the form of a derivative action, by a security holder of such **Outside Entity** acting independently and without the solicitation or assistance of such **Outside Entity**, the **Company** or any **Insured Person**; or
 - (3) brought about or contributed to in fact by any dishonest or fraudulent act or omission or any criminal act or omission or any willful violation of any statute, rule or law by an **Insured Person**, or by an **Insured Person** gaining any personal profit, remuneration or advantage to which he or she was not legally entitled; provided, that
 - (a) for purposes of determining the applicability of this exclusion, no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**, and the existence of allegations in a **Claim** which, if proven, would be subject to this Section III. Exclusion (A)(3) shall not affect the right of the **Insured Persons** to the current payment of **Defense Expenses**; and
 - (b) if it is finally determined that this Section III. Exclusion (A)(3) applies to any **Claim** against an **Insured Person**, such **Insured Person** will repay the Insurer any **Defense Expenses** paid on his or her behalf in connection with such **Claim**.
- (B) The Insurer shall not pay **Loss**, including **Defense Expenses**, in connection with any **Claim**;

- (1) for bodily injury, sickness, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof. This Section III Exclusion (B)(1) shall not apply
 - (a) to any **Claim** in the form of a derivative action by any security holder of the **Company** acting independently and without the solicitation or assistance of the **Company** or any **Insured Person**, or
 - (b) to the extent such **Claim** is for any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934 or any state securities statute; or
- (2) based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any fact, circumstance or situation which was the subject of any notice given before the Inception Date in ITEM 2(a) of the Declarations under any policy of insurance.

IV. **CONDITIONS**

(A) **Notice:**

- (1) As a condition precedent to the right of the **Insured Persons** to payment under the Policy, the **Insured Persons** or the **Company** must give the Insurer written notice by certified mail of any **Claim** as soon as practicable after it is first made.
- (2) If an **Insured Person** or the **Company** becomes aware of any circumstances which may subsequently give rise to a **Claim** against any **Insured Person** and, during the **Policy Period**, gives the Insurer written notice by certified mail of such circumstances with full particulars of the specific **Wrongful Act** involved, then any **Claim** subsequently made against an **Insured Person** arising out of such **Wrongful Act** shall be deemed to have been made during the **Policy Period**.

(B) **Interrelationship of Claims:**

All **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances or situations, or the same or related series of facts, circumstances or situations, shall be deemed to be a single **Claim** made at the time the earliest such **Claim** was first made, or at the time notice thereof was first given under Section IV. Condition (A), whichever occurred first.

(C) **Defense and Settlement of Claims:**

It shall be the duty of the **Insured Persons** and not the duty of the Insurer to defend **Claims**. No **Defense Expenses** shall be incurred and no settlement of any **Claim** shall be made without the Insurer's consent, such consent not to be unreasonably withheld.

(D) **Advancement of Defense Expenses; Payment of Loss:**

- (1) Upon written request, the Insurer will pay on a current basis any **Defense Expenses** for which this Policy provides coverage.
- (2) Except for such **Defense Expenses**, the Insurer shall pay or reimburse **Loss** only upon the final disposition of any **Claim**.

(E) **Limit of Liability:**

- (1) The amount stated in ITEM 3 of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer for all **Loss**, regardless of the time of payment by the Insurer, and regardless of whether the **Claim** or **Claims** giving rise to such **Loss** shall be first made during the **Policy Period** or during any Discovery Period. **Defense Expenses** shall be part of and not in addition to such Limit of Liability, and payment of **Defense Expenses** by the Insurer shall reduce such Limit of Liability.
- (2) Notwithstanding Section IV. Condition (F) below, if any **Claim** for a **Wrongful Act** by an **Insured Person** in his or her capacity as a director or officer of any corporation other than the **Company** gives rise to coverage both under this Policy and under any policy or policies of directors' and officers' liability or other similar insurance issued by the Insurer to any entity or entities other than the **Company**, the Insurer's maximum aggregate limit of liability under all such policies, including this Policy, for all **Loss**, including **Defense Expenses**, in respect of such **Claim** shall not exceed the largest single available limit of liability under any of such policies, including this Policy. Under such circumstances, some or all of the maximum aggregate Limit of Liability set forth in ITEM 3 of the Declarations may be unavailable to pay **Loss**, including **Defense Expenses**, otherwise payable under this Policy in respect of such a **Claim**. Nothing in this Section IV. Condition (E)(2) is intended, nor shall it be construed, to obligate or require the Insurer to pay **Loss**, including **Defense Expenses**, under this Policy in any amount exceeding the available Limit of Liability under this Policy.

(F) **Nature of Coverage; Other Insurance and Indemnification:**

All coverage under this Policy is excess over, and will not contribute with, all other insurance and indemnification to which an **Insured Person** is entitled, and the premium for this Policy has been calculated accordingly. However, if **Loss** is not paid by such other Insurance or as indemnification, this Policy will respond on behalf of the **Insured Persons** as if it were primary, subject to all of its terms, conditions and limitations and without prejudice to the Insurer's excess position. By so responding, the Insurer does not waive, compromise or release its right to recover **Loss** paid under this Policy from the issuers of any other insurance under which coverage may be owed, or from any person or entity from which an **Insured Person** is entitled to indemnification. To that end, the **Insured Persons** and the **Company** agree with the Insurer that:

- (1) all coverage under this Policy shall be specifically excess over, and shall not contribute with:
 - (a) any directors' and officers' liability and other similar insurance, and
 - (b) other existing insurance, including but not limited to any insurance under which there is a duty to defend;

whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise; provided, that this Policy shall not be subject to the terms of any other insurance; and

- (2) all coverage under this Policy shall also be specifically excess over, and shall not contribute with, all indemnification to which an **Insured Person** may be entitled from any source, including but not limited to the **Company**.

(G) **Cooperation, Assignment and Subrogation:**

- (1) In the event of a **Claim**, or after giving the Insurer notice of circumstances which may subsequently give rise to a **Claim**, the **Insured Persons** and the **Company** will provide the Insurer with all information, assistance and cooperation as the Insurer may reasonably request. The **Insured Persons** and the **Company** shall give notice and request coverage in respect of such **Claim** or circumstances under such other policy or policies of insurance as may be available or as the Insurer may reasonably require, including but not limited to any policy or policies of directors' and officers' liability insurance. The **Insured Persons** further agree that, if a **Claim** is made, they will promptly seek indemnification in respect of such **Claim** from the **Company** and from such other sources as the Insurer may reasonably require.
- (2) The **Insured Persons** and the **Company** will do nothing that may prejudice the Insurer's position or the Insurer's potential or actual rights of recovery in the event of a **Claim**.
- (3) In the event of payment under this Policy, the Insurer shall be subrogated to, and entitled to an assignment of, all of the rights of recovery therefore of the **Insured Persons**, including without limitation their rights of recovery (a) under any other insurance, including but not limited to any policy or policies of directors' and officers' liability insurance, and (b) against any entity, including but not limited to the **Company**, for nonpayment of indemnification. The **Insured Persons** shall execute all papers and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the Insurer effectively to pursue and enforce such rights and to bring suit in their name.

(H) **Cancellation:**

- (1) The Insurer may cancel this Policy only for failure to pay a premium when due, and then only by mailing or delivering to the **Parent Corporation** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective.
- (2) Except as provided in Section IV. Condition (J), the **Parent Corporation** may cancel this Policy by mailing the Insurer written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation shall be effective, and the earned premium shall be computed in such event in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (3) the Insurer shall not be required to renew this Policy upon its expiration.

(I) **Discovery Period:**

- (1) If this Policy is cancelled by the **Parent Corporation** or is not renewed for any reason, the **Company** and the **Insured Persons** shall have the right to purchase an extension of the coverage granted by this Policy (a "Discovery Period"), but only with respect to any **Wrongful Act** committed before the effective date of such cancellation or non-renewal or the date of any conversion of coverage under Section IV. Condition (J), whichever is earlier. A Discovery Period may be purchased extending coverage for either one (1) year or two (2) years after

the date cancellation or non-renewal takes effect. The premium for a Discovery Period of one (1) year shall be seventy-five percent (75%) of the premium set forth in ITEM 4 of the Declarations, or the premium for a Discovery Period of two (2) years shall be one hundred twenty-five percent (125%) of the premium set forth in ITEM 4 of the Declarations. The election of, and the payment of the premium for, a Discovery Period must be made within thirty (30) days of the effective date of cancellation or non-renewal.

- (2) If a Discovery Period is purchased in accordance with Section IV. Condition (I)(1) above, any **Claim** made during such Discovery Period shall be deemed to have been made during the **Policy Period**. The Insurer's Limit of Liability in respect of **Claims** made during the Discovery Period shall be part of, and not in addition to, the Insurer's Limit of Liability for all **Claims** made during the **Policy Period**.

(J) **Conversion of Coverage Under Certain Circumstances:**

Immediately upon the occurrence of any of the following events:

- (1) the acquisition of the **Parent Corporation** or of all or substantially all of its assets by another entity, or the merger or consolidation of the **Parent Corporation** into or with another entity such that the **Parent Corporation** is not the surviving entity, or
- (2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Parent Corporation**, or
- (3) any transaction or event as a result of which any person, entity or affiliated group of persons or entities has record or beneficial ownership or control of fifty percent (50%) or more of the outstanding securities representing the right to vote for the election of the directors of the **Parent Corporation**;

coverage under this Policy shall continue with respect to **Claims** for **Wrongful Acts** committed before such event, and coverage shall cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, the Policy may not be cancelled, and the entire premium for the Policy shall be deemed fully earned. The occurrence of any of the foregoing events shall not affect the right of the **Company** or the **Insured Persons** to purchase a Discovery Period under Section IV. Condition (I).

(K) **Exhaustion:**

If the Limit of Liability is exhausted by the payment of **Loss**, including **Defense Expenses**, any and all obligations of the Insurer under this Policy shall be completely fulfilled and extinguished, and the Insurer shall have no further obligations of any kind or nature whatsoever under this Policy.

(L) **Entire Agreement:**

For purposes of this Policy, "Application" means the application attached to and forming part of this Policy, including any materials submitted in connection with such application, which are on file with the Insurer and are a part of this Policy, as if physically attached. The **Insured Persons** and the **Company** agree that this Policy, including the Application and any endorsements, constitute the entire agreement existing between them and the Insurer or any of its agents relating to this insurance.

(M) **Representations; Severability:**

The **Insured Persons** and the **Company** represent that the particulars and statements contained in the Application are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are incorporated into and constitute a part of this Policy, are the basis of this Policy and are material to the Insurer's acceptance of this risk. Except for material facts or circumstances known to the person or persons who signed the Application, no knowledge or information possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine whether coverage shall be available.

(N) **No Action Against the Insurer:**

- (1) No action shall be taken against the Insurer unless, as conditions precedent thereto, there shall have been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insured Persons** to pay shall have been finally determined either by judgment against the **Insured Persons** after adjudicatory proceedings, or by written agreement of the **Insured Persons**, the claimant and the Insurer.
- (2) No person or entity shall have any right under this Policy to join the Insurer as a party to any **Claim** against an **Insured Person** to determine the liability of such **Insured Person**; nor shall the Insurer be impleaded by an **Insured Person** or his or her legal representative in any such **Claim**. Bankruptcy or insolvency of any of the **Insured Persons** or of any of their estates shall not relieve the Insurer of any of its obligations hereunder.

(O) **Authorization and Notices:**

Unless otherwise expressly agreed in writing, the **Parent Corporation** shall act on behalf of the **Insured Persons** with respect to all matters under this Policy, including but not limited to the receipt of notices and other communications and any return premiums.

(P) **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 change in any part of this Policy or estop the Insurer from asserting any right under the terms, conditions and limitations hereof; nor shall the terms, conditions and limitations hereof be waived or changed except by written endorsement issued to form a part of this Policy.

(Q) **Assignment:**

No assignment of interest under this Policy or of any claim or cause of action against the Insurer arising out of its performance of, or alleged failure to perform in accordance with, the terms and conditions of this Policy shall be effective without the Insurer's written consent.

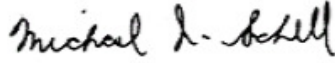
(R) **Headings:**

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof the Insurer has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Insurer.



Secretary



President