

S P E C I M E N
GENESIS
GENESIS INSURANCE COMPANY

**DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY
DECLARATIONS PAGE**

Policy Number:

NOTE: **THIS IS A CLAIMS MADE POLICY, PLEASE READ IT CAREFULLY.** AMOUNTS INCURRED AS DEFENSE COSTS SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS AND SHALL ALSO BE APPLIED AGAINST THE RETENTION. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND THOSE INSURED UNDER THIS POLICY.

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ITEM 1. Insured Entity.....:
Principal Office.....:

ITEM 2. Policy Period.....: From: _____ To: _____
(Both dates at 12:01 a.m. at the Principal Address of the **Insured Entity**)

ITEM 3. Limit of Liability (Inclusive of Defense Costs):
\$ _____ Aggregate Limit of Liability for the Policy Year

ITEM 4. Retentions Applicable to Insuring Agreements:

A. For **Securities Claims**:

1. **Defense Costs:**

\$ _____ Each **Director** or **Officer** for each single **Securities Claim** under Insuring Agreement Section I.A., and in no event exceeding
\$ _____ for all **Directors** and **Officers** under Insuring Agreement Section I.A. for each single **Securities Claim**; and
\$ _____ for each single **Securities Claim** to which Insuring Agreements Sections I.B. or I.C. apply.

2. **Settlements** and Judgments:

NONE for **Settlements** and Judgments in **Securities Claims**.

B. For **Claims** other than **Securities Claims**:

\$ _____ Each **Director** or **Officer** for each single **Claim** under Insuring Agreement Section I.A., and in no event exceeding
\$ _____ for all **Directors** and **Officers** under Insuring Agreement Section I.A. for each single **Claim**; and
\$ _____ for each single **Claim** to which Insuring Agreement Section I.B. applies.

ITEM 5. Premium:
\$ _____ year pre-paid premium.

ITEM 6. Premium for Discovery Period:
% of the Premium in ITEM 5 above, to be paid only if the eligibility requirements are met and the **Discovery Period** option is properly exercised

ITEM 7. Endorsements:
This Policy includes the following attached endorsements, and all other endorsements issued by the **Insurer** to be attached hereto after the issuance of this Policy.

ITEM 8. Notices and Information:
All notices and information required to be provided to the **Insurer** under this Policy shall be addressed to: Genesis Insurance Company, 25550 Chagrin Boulevard, Suite 300, Beachwood, Ohio 44122.

These Declarations along with the Application, including all materials submitted therewith, and the Directors and Officers Liability Insurance Policy, shall constitute the entire contract between the **Directors, Officers, the Company** and the **Insurer, GENESIS INSURANCE COMPANY**.

Date:

By: _____
Company Officer or Authorized Agent

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GENESIS INSURANCE COMPANY

DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY

THIS IS A CLAIMS MADE POLICY, PLEASE READ IT CAREFULLY

In consideration of the premium paid and in reliance upon the information provided in and with the Application, and subject to the terms, conditions and limitations of this Policy, the **Insurer**, the **Company** and the **Directors** and **Officers** agree as follows:

SECTION I. INSURING AGREEMENTS

- A. The **Insurer** will pay, on behalf of the **Directors** and **Officers**, **Loss** arising from **Claims** first made during the **Policy** (or **Discovery**) **Period** against the **Directors** or **Officers**, individually or collectively, for a **Wrongful Act**, except for such **Loss** which the **Company** pays to or on behalf of the **Directors** and **Officers**;
- B. The **Insurer** will pay, on behalf of the **Company**, **Loss** which the **Company** is required to indemnify, or which the **Company** may legally indemnify, the **Directors** or **Officers**, arising from **Claims** first made during the **Policy** (or **Discovery**) **Period** against the **Directors** or **Officers**, individually or collectively, for a **Wrongful Act**; and
- C. The **Insurer** will pay, on behalf of the **Company**, **Loss** arising from **Securities Claims** first made against the **Company** during the **Policy** (or **Discovery**) **Period** for a **Wrongful Act**.

SECTION II. DEFINITIONS

- A. "**Claim**" shall mean the following proceedings initiated against a **Director** or **Officer** for money damages or other relief, whether brought within or outside of the United States:
 - (1) any civil, arbitration or administrative proceeding commenced by: (a) service of a complaint or similar pleading, or (b) receipt of a notice of charges;
 - (2) any criminal proceeding commenced by the return of an indictment or an information;
 - (3) any appeal from the above proceedings; or
 - (4) other written or verbal demand for money or services.

"**Claim**" shall also mean any of the above-listed proceedings initiated against a **Director**, **Officer** or the **Company** which is a **Securities Claim**.
- B. "**Company**" shall mean the **Insured Entity** and its **Subsidiaries** under Insuring Agreements Sections I.A. and I.B. Under Insuring Agreement Section I.C., "**Company**" shall mean the Insured Entity only.
- C. "**Defense Costs**" shall mean reasonable and necessary legal fees and expenses incurred in the investigation and/or defense of any Claim, including costs of attachment or similar bonds; provided, however, **Defense Costs** shall not include salaries, wages, overhead or benefit expenses of or associated with **Directors**, **Officers**, employees of the **Company**, or the **Company**.
- D. "**Determination of No Liability**" shall mean: (1) a final judgment of no liability in a **Securities Claim** in favor of all **Directors** and **Officers** and the **Company**, after the exhaustion of all appeals, or (2) a dismissal of a **Securities Claim** without prejudice, and without the payment of any consideration by the **Directors**, **Officers**, and/or the **Company**.
- E. "**Directors**" and "**Officers**" shall mean:

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- (1) all past, current or prospective duly elected or appointed directors and officers of the **Company**, and their foreign equivalents for **Company** operations outside of the United States, including their estates, heirs, legal representatives or assigns in the event of their death, incapacity or bankruptcy;
- (2) for **Securities Claims** only, all past, current and future employees of the **Company**; and
- (3) spouses of duly elected or appointed directors and officers of the **Company**, but only for **Claims**
 - (i) which are based upon **Wrongful Acts** of the directors or officers, and not upon any alleged conduct of a spouse, and
 - (ii) which are based upon either the legal status as a spouse or the joint ownership of property between a spouse and a director or officer.

- F. "**Loss**" shall mean any amounts which the **Directors** or **Officers** are legally obligated to pay, such amounts which the **Company** is required to indemnify the **Directors** or **Officers**, or such amounts which the **Company** may legally indemnify the **Directors** or **Officers**, for **Claims** made against the **Directors** or **Officers**, or any amounts which the **Company** is legally obligated to pay for **Securities Claims** made against the **Company**, in excess of the applicable Retention, including damages, judgments, orders, **Settlements**, and **Defense Costs**; provided, however, **Loss** shall not include criminal or civil fines or penalties imposed by law, multiplied portions of damages in excess of actual damages, taxes, or any matter which may be deemed uninsurable under the law pursuant to which this Policy shall be construed.
- G. "**Outside Entity**" shall mean any nonprofit entity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for which any of the **Directors** or **Officers** serve as directors or officers with the consent of the **Company**.
- H. "**Policy Period**" shall mean the time period from the inception date of this Policy to the expiration date as stated in Item 2 of the Declarations, or to its earlier cancellation or termination date.
- I. "**Securities Claim**" means any **Claim** brought by any person or entity, directly or derivatively, based upon, arising out of, or attributable to, the purchase or sale, or offer to purchase or sell, any securities of the **Company**, brought by a securities holder of the **Company** in their capacity as a securities holder, or brought by the United States Securities and Exchange Commission.
- J. "**Settlement**" shall mean a compromise of any **Claim** to which the **Insurer** has given its written consent pursuant to Section VI.A.
- K. "**Subsidiary**" shall mean:
- (1) any entity in which the **Insured Entity** owns or at any time owned more than fifty percent (50%) of the issued and outstanding voting securities, directly or indirectly, subject to clauses (2) and (3) below for acquisitions made by the **Company** during the **Policy Period**;
 - (2) any entity in which the **Insured Entity** acquires more than 50% of the issued and outstanding voting securities or substantially all of the assets, directly or indirectly, during the **Policy Period**, if such entity's total assets represent less than 20% of the **Company's** total assets prior to the acquisition; and
 - (3) for forty-five (45) days immediately following the acquisition date, any entity in which the **Insured Entity** acquires more than 50% of the issued and outstanding voting securities or substantially all of the assets, directly or indirectly, during the **Policy Period**, if such entity's total assets represent more than 20% of the **Company's** total assets prior to the acquisition; provided, however, such entity will not be considered a **Subsidiary** or included within the definition of **Company** beyond such automatic forty-five (45) day period unless the **Insurer** specifically agrees in writing to provide such coverage, subject to such additional information, coverage terms and premium as the **Insurer** may require.

The term "**Subsidiary**" shall also include any subsidiary of a **Subsidiary**.

- L. "**Wrongful Act**" shall mean:
- (1) under Insuring Agreements Sections I.A. and B., any actual or alleged act, omission, misstatement, misleading statement, neglect, error or breach of duty by the **Directors** or **Officers** in their capacity as **Directors** or

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Officers of the **Company** or in their capacity as directors or officers of an **Outside Entity**, individually or collectively;

- (2) under Insuring Agreement Section I.C., any actual or alleged act, omission, misstatement, misleading statement, neglect, error or breach of duty by the **Company**, or by persons for whose actual or alleged conduct the **Company** is legally responsible.

SECTION III. DISCOVERY PERIOD

- A. If either the **Insurer** or **Insured Entity** cancels this Policy pursuant to Section VIII, or if either the **Insurer** or **Insured Entity** chooses to not renew this Policy, for any reason other than the **Company's** nonpayment of premium or non-compliance with the terms of this Policy, then the **Insured Entity** shall have the right, upon payment of the additional premium set forth in Item 6 of the **Declarations**, to an extension of the **Policy Period** for **Claims** first made during the period of one year after the effective date of such cancellation or nonrenewal, but only with respect to **Wrongful Acts** committed before such effective date and otherwise covered by this Policy. This one year extension period shall be referred to as the **Discovery Period**.
- B. The right to purchase the **Discovery Period** shall terminate unless a written request for the **Discovery Period** is provided to the **Insurer** within thirty (30) days after the effective date of cancellation or nonrenewal, together with full payment of the premium for the **Discovery Period**.
- C. Purchase of the **Discovery Period** shall not in any way increase the **Limit of Liability**.
- D. The additional premium paid for the **Discovery Period** shall be fully earned at its commencement.

SECTION IV. EXCLUSIONS

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

- A. Arising out of, based upon or attributable to the **Directors** or **Officers** or the **Company** gaining in fact any profit or advantage to which they were not legally entitled;
- B. Arising out of, based upon or attributable to the committing in fact of deliberate fraudulent, dishonest or criminal acts by the **Directors** or **Officers**, or by employees, agents or representatives of the **Company**;
- C. Which is insured in whole or in part by another valid policy or policies, including policies issued to an **Outside Entity**, regardless of whether or not any **Loss** arising from such **Claim** is collectible or recoverable under such other policy or policies; provided, however, this exclusion shall not apply to policies which are specifically excess of this Policy by reference hereto (including the Policy Number);
- D. Arising out of, based upon or in any way involving: (1) any **Wrongful Act**, or any fact, circumstance or situation which has been the subject of any notice given prior to the **Policy Period** under any insurance policy providing protection for the **Directors** or **Officers** or the **Company**, including any matter in any way related thereto; or (2) any other **Wrongful Act** which has as a common nexus any fact, circumstance, situation, event, or transaction with any fact, circumstance or situation which has been the subject of notice as described in clause (1) of this exclusion;
- E. For actual or alleged: (1) bodily injury, sickness, disease, or death of any person, assault, battery, mental anguish, emotional distress, loss of consortium; (2) damage to or destruction of any tangible property, including loss of use thereof; or (3) invasion of privacy, wrongful entry, eviction, false arrest, false imprisonment, malicious prosecution, defamation or false light, libel or slander;
- F. For actual or alleged violations of the Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder;

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- G. For any actual or alleged act, omission, misstatement, misleading statement, neglect, error or breach of duty committed in the capacity as a director or officer of any entity other than the **Company** or an **Outside Entity**;
- H. Arising out of, based upon, or in any way involving, directly or indirectly:
- (1) the actual, alleged or threatened discharge, disposal, migration, dispersal, release or escape of pollutants, or
 - (2) any direction, order or request to test for, monitor, remediate, clean up, remove, contain, treat, detoxify or neutralize pollutants, or to pay for or contribute to the costs of undertaking such actions including claims alleging damage to the **Company** or its shareholders.

Pollutants include (but are not limited to) any solid, liquid, nuclear, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, organisms or other hazardous substances, and waste. Waste includes materials to be recycled, reconditioned or reclaimed;

- I. Brought by, at the behest of, or with the assistance or active participation of, the **Insured Entity** or a **Subsidiary** (or any affiliated person), or any **Director** or **Officer** of the **Insured Entity** or a **Subsidiary**; however, this exclusion shall not apply to wrongful termination of employment actions, shareholder derivative actions which are not brought by, at the behest of, or with the assistance or active participation of a **Director** or **Officer** of the **Insured Entity** or a **Subsidiary**, crossclaims, or to other claims for contribution or indemnity which are part of or arise directly from a **Claim**;
- J. Arising out of, based upon, or in any way involving actual or alleged conduct in the capacity as a director, officer or employee of any **Subsidiary**, which actual or alleged conduct occurred prior to or after the time period when such subject entity was a **Subsidiary** of the **Insured Entity**;
- K. Which is indemnified by an **Outside Entity**.

NOTE: THE ACTUAL OR ALLEGED CONDUCT OF ANY DIRECTOR, OFFICER OR THE COMPANY SHALL NOT BE IMPUTED TO ANY OTHER DIRECTOR OR OFFICER FOR THE PURPOSE OF DETERMINING THE APPLICABILITY OF THE ABOVE EXCLUSIONS.

SECTION V. LIMIT OF LIABILITY, RETENTIONS, ALLOCATION

- A. The **Insurer** shall be liable to pay one hundred percent (100%) of covered **Loss** in excess of the applicable Retention up to the **Limit of Liability** stated in Item 3 of the **Declarations**. The **Limit of Liability** is the **Insurer's** maximum aggregate limit of liability for all **Loss** under all of the Insuring Agreements combined, arising out of all **Claims** first made during the **Policy Period** and **Discovery Period** (if applicable), regardless of the time of payment by the **Insurer**.
- B. **Defense Costs** shall be part of and not in addition to the **Limit of Liability**, and such **Defense Costs** shall reduce the **Limit of Liability** and shall also be applied against the Retention.
- C. More than one **Claim** based upon or arising out of the same **Wrongful Act(s)**, or facts, circumstances or situations, or one or more series of similar, repeated or continuous **Wrongful Acts**, shall be considered a single **Claim**, and only one Retention shall be applicable to such single **Claim**. Such single **Claim** shall be deemed to be first made on the date when the earliest **Claim** is first made, or on the date within the **Policy Period** in which notice of a potential **Claim** pursuant to Section VII.B. is given.
- D. One Retention amount shall apply to the covered portion of each and every single **Claim**. In the event a single **Claim** is covered under more than one Insuring Agreement, the Retentions stated in Item 4 of the **Declarations** shall be applied separately to the portion of the **Claim** covered by each Insuring Agreement, and the sum of the Retentions so applied shall constitute the Retention for each single **Claim**, which in total shall not exceed the largest of the applicable Retentions. Notwithstanding other Policy provisions, for purposes of determining the applicable Retention(s), the Retentions applicable to Insuring Agreement Section I.B. shall apply to **Claims** made against **Directors** or **Officers**, and indemnification (including advancement of defense costs) by the **Company** will be presumed to be required or permissible, whenever indemnification is legally permissible under the broadest

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applicable laws, regardless of whether the **Company** has agreed in its by-laws or otherwise to provide such indemnification, unless indemnification cannot be provided due to financial insolvency.

- E. Notwithstanding the foregoing provisions of Section V, the Retention(s) applicable to **Securities Claims** shall apply only to **Defense Costs**. Further, no Retention shall apply in the event of a **Determination of No Liability** in a **Securities Claim**, in which event the **Insurer** shall reimburse any **Defense Costs** paid by the **Directors** and **Officers** or the **Company** within the Retention amount. Such reimbursement shall be made within sixty (60) days of the **Determination of No Liability**, only if:
- (1) the subject **Securities Claim**, or another **Claim** which would be treated as a single **Claim** with the subject **Securities Claim** under Section V.C., is not brought or refiled within such sixty (60) day period;
 - (2) the **Determination of No Liability** is not challenged by motion or appeal within such sixty (60) day period; and
 - (3) only with respect to a dismissal of or stipulation to dismiss a **Securities Claim** without prejudice, the **Company** provides a written undertaking satisfactory to the **Insurer** which states that such reimbursement shall be returned to the **Insurer** if the subject **Securities Claim**, or another **Securities Claim** which would be treated as a single **Claim** with the subject **Securities Claim** under Section V.C., is brought or refiled after the sixty (60) day period.
- F. The **Company** is not covered under Insuring Agreement Section I.A.; the **Company** is covered, subject to the Policy's terms and conditions, only with respect to indemnification of **Directors** or **Officers** under Insuring Agreement Section I.B. for **Claims** made against the **Directors** and **Officers**; but the **Company** is covered, subject to the Policy's terms and conditions, under Insuring Agreement Section I. C. for **Securities Claims** made against the **Company**. Accordingly, the **Insurer** has no obligation under this Policy for defense fees and costs incurred by, judgments against or settlements by the **Company** arising out of any **Claims** or other actions in which the **Company** is a party other than a covered **Securities Claim**, nor any obligation to pay any amount arising out of any legal liability that the **Company** has except with respect to covered **Securities Claims** against the **Company**.
- G. If both **Loss** covered by this Policy and other loss are incurred, either because a **Claim** includes both covered and non-covered matters, or because a **Claim** is made against both covered and non-covered parties, then the **Directors**, **Officers**, the **Company** and the **Insurer** agree to use their best efforts to determine a fair and proper allocation of all such amounts. In making such determination, the parties shall take into account the relative legal and financial exposures, and the relative benefits obtained in connection with the defense and/or settlement, of and between the covered and non-covered parties and matters involved in the **Claim**. In the event the parties cannot agree to an appropriate allocation percentage for the **Claim**, then the **Insurer** shall be obligated to make an interim payment of the amount of **Loss**, including **Defense Costs**, which the parties agree is not in dispute until a final allocation is agreed upon or determined pursuant to the terms of this Policy.

SECTION VI. DEFENSE COSTS AND SETTLEMENTS

- A. The **Directors**, **Officers** and the **Company** shall not admit liability for or settle any **Claim**, or incur **Defense Costs** in connection with any **Claim**, without the **Insurer's** prior written consent, which consent shall not be unreasonably withheld. The **Insurer** shall be entitled to full information and all particulars it may request in order to reach a decision as to such consent. Any **Defense Costs** incurred, and/or settlements or judgments agreed to prior to the **Insurer's** consent thereto shall not be covered by this Policy.
- B. The **Insurer** shall, upon request, advance **Defense Costs** prior to the final disposition of a **Claim**, subject to an allocation, if any, determined in accordance with Sections V.F. and V.G., and subject further to prior satisfaction of the applicable Retention. Any agreement by the **Insurer** to advance **Defense Costs** shall be on the condition that the parties for whom the **Defense Costs** are advanced provide a written undertaking satisfactory to the **Insurer** which states that in the event it is finally established that the **Insurer** has no liability under the Policy to the **Directors**, **Officers** or the **Company**, or any of them separately, for such **Claim**, they agree to repay to the **Insurer** upon demand all **Defense Costs** advanced on their behalf.
- C. It shall be the duty of the **Directors**, **Officers** and the **Company** and not the duty of the **Insurer** to defend **Claims**, and the **Directors**, **Officers** and the **Company** shall obtain the consent of the **Insurer** as to the choice of defense counsel, which consent shall not be unreasonably withheld. The **Insurer** shall at all times have the right, but not

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the duty, to associate in the investigation, defense or **Settlement** of any **Claim** that appears reasonably likely to involve the **Insurer**.

- D. The **Directors, Officers** and the **Company** shall give the **Insurer** such information, assistance and cooperation as the **Insurer** reasonably requests, including furnishing the **Insurer** with copies of reports, investigations, pleadings and any other information requested by the **Insurer** in connection therewith.
- E. The **Insurer** shall have the right but not the obligation to make any investigation it deems expedient with respect to a **Claim** and, with the consent of the **Company** or the person(s) against whom the **Claim** is made, make **Settlement** within the available **Limit of Liability** (whether above or below the applicable Retention).

SECTION VII. NOTICE OF CLAIMS AND POTENTIAL CLAIMS

- A. The **Directors, Officers** and/or the **Company** shall give the **Insurer** written notice as soon as practicable of any **Claim** first made during the **Policy** (or **Discovery**) **Period**, and in no event later than thirty (30) days after the expiration of the **Policy** (or **Discovery**) **Period**, and, for **Claims** deemed to be first made during the **Policy Period** under Section VII.B., within sixty (60) days from when such **Claims** are made.
- B. If, prior to the effective date of the expiration of the **Policy Period**, the **Directors, Officers** or the **Company** first become aware of circumstances which may subsequently give rise to a **Claim**, and the **Directors, Officers** or the **Company** as soon as practicable during the **Policy Period** give written notice to the **Insurer** of the circumstances and the reasons for anticipating a **Claim**, then any **Claim** subsequently made based upon such circumstances (of which the **Insurer** receives proper notice under Section VII.A.) shall be deemed for the purposes of this Policy to have been first made during the **Policy Period**; provided, however, as a condition precedent for any coverage to arise hereunder, such notice must be specific and contain full particulars as to the facts and circumstances potentially giving rise to the **Claim**, including a narrative setting forth dates, names of the potential plaintiffs and affected **Directors** or **Officers**, names of other parties involved, the nature and scope of the anticipated **Claim**, and all reasons why such a **Claim** is reasonably to be anticipated.

SECTION VIII. GENERAL CONDITIONS

A. CANCELLATION OR NON-RENEWAL

- (1) By acceptance of this Policy, the **Company** and the **Directors** and **Officers** hereby confer the exclusive power and authority to cancel this Policy to the **Insured Entity**. The **Insured Entity** may cancel this Policy by surrender thereof to the **Insurer**, or by mailing to the **Insurer** written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- (2) This Policy may be canceled by the **Insurer** by mailing to the **Insured Entity** written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the **Insurer** shall be equivalent to mailing.
- (3) If this Policy is canceled by the **Insured Entity**, the **Insurer** shall retain the customary short rate portion of the premium. If this Policy is canceled by or on behalf of the **Insurer**, the **Insurer** shall retain the pro-rata portion of the premium. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.
- (4) If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Insured Entity** with no less than sixty (60) days advance notice thereof, unless any of the events described in Section VIII.B. occur.

B. SUBSEQUENT MAJOR EVENTS

If in the event of:

- (1) the acquisition by another entity or persons of the **Insured Entity**, a majority of its voting securities, or substantially all of its assets;
- (2) the merger or consolidation of the **Insured Entity** into or with another entity such that the **Insured Entity** is

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(not the surviving entity; or

- (3) the appointment of a receiver, liquidator, conservator, trustee or similar official with respect to the **Insured Entity**;

then the Policy will remain in effect until the end of the **Policy Period** as stated in Item 2 of the **Declarations**, but only with respect to **Wrongful Acts** occurring prior to such acquisition, merger, consolidation or appointment. Further, the premium will be considered fully earned upon the occurrence of any of the above events in consideration of the coverage extended.

C. REPRESENTATIONS

It is agreed that the information and statements contained in the Application for this Policy, a copy of which is attached hereto, and any materials submitted therewith (which are on file with the **Insurer** and shall be deemed to be attached to and part of the Application as if physically attached hereto), are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy.

By acceptance of this Policy the **Directors** and **Officers** and the **Company** agree:

- (1) That the statements in the Application and in any materials submitted therewith are their representations, that they shall be deemed material to the acceptance of the risk or hazard assumed by the **Insurer** under this Policy, and that this Policy is issued in reliance upon the truth of such representations; and
- (2) That in the event that the Application, including materials submitted therewith, contains misrepresentations made with the actual intent to deceive, or contain misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the **Insurer** under this Policy, no coverage shall be afforded under this Policy (including under Insuring Agreement Section I.B.) for any **Director** or **Officer** who did not sign the Application but who knew on the inception date of this Policy the facts that were so misrepresented, and this Policy in its entirety shall be void and of no effect whatsoever if such misrepresentations were known to be untrue on the inception date of the Policy by one or more of the individuals who signed the Application.

D. ACTION AGAINST THE INSURER

- (1) No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all terms of this Policy, and until the **Directors'**, **Officers'** or the **Company's** obligation to pay shall have been finally determined, either by an adjudication or by written agreement of the **Directors**, **Officers**, and/or the **Company**, and the **Insurer**.
- (2) No persons or entities shall have any right under this Policy to join the **Insurer** as a party to any **Claim**, nor shall the **Insurer** be impleaded by the **Directors**, **Officers**, or the **Company** or their legal representatives in any **Claim**.

E. SUBROGATION

In the event of any payment under this Policy, the **Insurer** shall be subrogated to any of the **Directors'**, **Officers'** and the **Company's** rights to recovery thereof. The **Directors** or **Officers** and the **Company** shall execute all papers required and shall do everything that may be necessary to secure or transfer such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Director**, **Officer** or the **Company**. The **Insurer** shall not exercise these rights of subrogation against a **Director** or **Officer** with respect to **Loss** excluded by Section IV.B., however, unless such individual has been judicially determined to have committed deliberate fraudulent, dishonest or criminal acts.

F. ASSIGNMENT

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

G. CONFORMITY TO STATUTE

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Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy, including any endorsement to this Policy which is required by any state Department of Insurance (or equivalent authority) ("State Amendatory Endorsement"), are hereby amended to conform to such laws. Nothing herein shall be construed to restrict the terms of any State Amendatory Endorsement. In addition, to the extent permissible by law, nothing in any State Amendatory Endorsement shall be construed to restrict the terms of this Policy.

H. ENTIRE AGREEMENT

By acceptance of this Policy, the **Directors, Officers** and the **Company** and the **Insurer** agree that this Policy (including the Application and any materials submitted therewith) and any written endorsements attached hereto constitute the entire agreement between the parties.

I. 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 terms of this Policy. This Policy cannot be waived or changed, except by written endorsement issued to form a part of this Policy.