

**ARCH ESSENTIAL SIDE A<sup>SM</sup>**  
**SIDE A LEAD DIFFERENCE IN CONDITIONS (“DIC”)**  
**& FOLLOW FORM EXCESS**  
**LIABILITY INSURANCE POLICY**

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# ARCH ESSENTIAL SIDE A<sup>SM</sup>

## SIDE A LEAD DIFFERENCE IN CONDITIONS (“DIC”) & FOLLOW FORM EXCESS LIABILITY INSURANCE POLICY

In consideration of the payment of the premium and in reliance upon the **Application**, the Insurer specified in the Declarations (the “**Insurer**”), the **Organization**, and the **Insured Persons** agree as follows:

### 1. INSURING AGREEMENT

If a **Claim** is first made against an **Insured Person** during the **Policy Period** or any extended reporting period or discovery period, if applicable, this Policy shall provide coverage for **Non-Indemnified Loss** as follows:

*Excess Coverage:* This Policy shall provide excess coverage after exhaustion of the **Underlying Limit**. Exhaustion of the **Underlying Limit** shall occur by payment, in legal currency, of covered **Loss** by the insurer of an **Underlying Policy**, the **Organization**, or an **Insured Person**.

*Lead DIC Coverage:* If a **DIC Event** occurs, then exhaustion of any portion of the **Underlying Limit** shall be excused, and this Policy shall drop down and replace such portion of the **Underlying Limit**, if, and to the extent that, such portion of the **Underlying Limit** is not paid because of such **DIC Event**.

### 2. FOLLOW FORM COVERAGE

Except as otherwise provided in this Policy, coverage for **Non-Indemnified Loss** under this Policy shall follow form to, and apply in conformance with, the provisions of the **Followed Policy**, including, without limitation, any coverage extension available to an **Insured Person**. No coverage shall be provided for any other type of **Loss**, including, without limitation, **Loss** incurred by the **Organization**.

### 3. UNDERLYING SUBLIMIT OF LIABILITY

If any **Underlying Policy** grants coverage subject to a Sublimit of Liability, then:

- A. if no **DIC Event** occurs, this Policy shall not offer such sublimited coverage, provided that this Policy shall recognize any reduction of the **Underlying Limit** by any payment under such coverage; or
- B. if a **DIC Event** occurs and this Policy drops down and replaces such **Underlying Policy**, this Policy shall offer such sublimited coverage.

### 4. DEFINITIONS

Whether used in the singular or plural, the following terms shall have the meanings specified below:

- A. “**Application**”, “**Claim**”, “**Defense Costs**”, and “**Wrongful Act**” shall have the same meanings specified for such terms in the **Followed Policy**. If the **Followed Policy** uses equivalent terms (i.e., proposal, inquiry, investigation, claims expenses, etc.) in place of “**Application**”, “**Claim**”, or “**Defense Costs**”, then “**Application**”, “**Claim**”, or “**Defense Costs**” shall have the same meaning as the equivalent terms in the **Followed Policy**.

- B. “DIC Event”** means the insurer of an **Underlying Policy**:
1. rescinding, or attempting to rescind, such **Underlying Policy**;
  2. denying coverage for any reason;
  3. not being liable to provide coverage according to the terms and conditions of such **Underlying Policy**;
  4. failing to respond to a written request for payment on behalf of an **Insured Person** within 60 days of such request;
  5. failing to pay the proceeds of such **Underlying Policy** because such insurer is subject to any receivership, liquidation, bankruptcy, insolvency, dissolution, rehabilitation, or other similar proceeding; or
  6. failing to pay the proceeds of such **Underlying Policy** because such proceeds are subject to an automatic stay under the United States Bankruptcy Code or any similar law or an injunction or other legal order prohibiting payment.
- C. “Followed Policy”** and any **“Underlying Excess Policy(ies)”** means those policies identified in Item 4 of the Declarations as the **“Followed Policy”** and any **“Underlying Excess Policy(ies)”**, as same existed on the inception date of this Policy.
- D. “Independent Director”** means any director or member of a governing board of an **Organization** other than one who is, was or becomes an employee of the **Organization**.
- E. “Insured Person”** means any natural person entitled to coverage under the **Followed Policy**.
- F. “Loss”** has the same meaning specified for such term in the **Followed Policy**. If the definition of **“Loss”** in the **Followed Policy** does not include the following items, **“Loss”** also means any:
1. punitive, exemplary or multiple damages;
  2. civil penalties for any non-willful violation of law by an **Insured Person**; or
  3. taxes imposed upon the **Organization** that an **Insured Person** becomes liable to pay because of the bankruptcy, receivership, conservatorship, or liquidation of the **Organization**.

The insurability of the above types of **Loss** shall be governed by the laws of any applicable jurisdiction that does not prohibit coverage for such **Loss**.

- G. “Non-Indemnified Loss”** means **Loss** of an **Insured Person** that each **Organization**:
1. is neither permitted nor required to indemnify or advance;
  2. refuses to indemnify or advance or is financially unable to indemnify or advance; or
  3. fails to indemnify or advance within 60 days after a written request for indemnification or advancement by or on behalf of an **Insured Person**,

and that has been neither indemnified nor advanced from any other source.

- H. “**Organization**” means the Named Organization specified in Item 1 of the Declarations or any other entity entitled to coverage under the **Followed Policy**.
- I. “**Policy Period**” means the period specified in Item 2 of the Declarations, subject to any cancellation prior to the scheduled expiration date.
- J. “**Underlying Limit**” means the aggregate sum of all limits of liability of all **Underlying Policies** as specified in Item 4.C of the Declarations.
- K. “**Underlying Policies**” means the **Followed Policy** and any **Underlying Excess Policies**.

## 5. EXCLUSIONS

The section of the **Followed Policy** referenced as “Exclusions” shall be deemed deleted and replaced by:

Other than **Defense Costs**, the **Insurer** shall not pay **Non-Indemnified Loss**:

- A. for, based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or advantage to which an **Insured Person** was not legally entitled if established by a final non-appealable adjudication adverse to such **Insured Person** in any proceeding other than in a proceeding initiated by the **Insurer** to determine coverage, provided that this exclusion shall not apply to any **Loss**: (i) attributable to violations of Sections 11, 12 or 15 of the Securities Act of 1933; or (ii) incurred by any **Independent Director**; or
- B. for, based upon, arising from, or in any way related to any deliberately fraudulent or criminal act or omission or any willful violation of law by an **Insured Person** if established by a final non-appealable adjudication adverse to such **Insured Person** in any proceeding other than in a proceeding initiated by the **Insurer** to determine coverage, provided that this exclusion shall not apply to any **Loss** incurred by any **Independent Director**.

Regarding exclusions A and B above, no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person**.

## 6. LIMIT OF LIABILITY

The Limit of Liability specified in Item 3 of the Declarations is the maximum aggregate amount that the **Insurer** shall pay under this Policy for all covered **Non-Indemnified Loss**, including, without limitation, **Defense Costs**.

## 7. DUTIES IN THE EVENT OF A CLAIM

- A. Notice to the **Insurer** of any **Claim** or potential **Claim** shall be given in conformance with the notice provisions of the **Followed Policy** except that such notice shall be delivered to the address specified in Item 7 of the Declarations.
- B. The **Insurer** shall have the right to participate in the investigation, settlement and defense of any **Claim** noticed under this Policy, even if the **Underlying Limit** has not been exhausted.
- C. The **Insured Persons** shall give the **Insurer** all information and cooperation as the **Insurer** may reasonably request. The failure of any **Insured Person** to cooperate with the **Insurer** shall not affect coverage for any other **Insured Person**.

## 8. EXTENDED REPORTING PERIOD

The **Insured Persons** shall be entitled to elect an extended reporting period or discovery period under this Policy. Coverage for such period shall follow form to, and apply in conformance with, the provisions of the **Followed Policy** except that: (i) notice of any election of such period shall be delivered to the address specified in Item 7 of the Declarations; and (ii) the premium for, and duration of, such period shall be as specified in Item 6 of the Declarations, provided that the duration of any such period shall not exceed the duration elected under any **Underlying Policy**.

## 9. APPLICATION SEVERABILITY & NO RESCISSION OF COVERAGE

A. For the purpose of determining coverage:

1. the **Application** shall be construed as a separate application for coverage by each **Insured Person**; and
2. knowledge possessed by an **Insured Person** shall not be imputed to any other **Insured Person**.

B. Notwithstanding any provision of this Policy or the **Followed Policy**, the **Insurer** shall not rescind this Policy.

## 10. SUBROGATION

A. The **Insurer** shall be subrogated to all of the **Insured Persons'** rights of recovery regarding any payment of **Loss** under this Policy. The **Insured Persons** shall do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insured Persons**. The **Insured Persons** shall do nothing to prejudice the **Insurer's** position or any rights of recovery.

B. The **Insurer** shall not subrogate against any **Insured Persons**.

## 11. POLICY CHANGES

This Policy shall not be changed or assigned in any manner except by written agreement of the **Insurer**.