

SPECIFIED PROFESSIONS PROFESSIONAL LIABILITY COVERAGE FORM

NOTICE: This is a Claims-Made Policy. This Policy covers only those Claims first made against the Insured during the Policy Period or Extended Reporting Period, if purchased.

In consideration of the payment of the premium and reliance upon all statements made and information furnished to the **Company**, including the statements made in the **Application** and all attachments and materials submitted therewith and subject to all the provisions of this Policy, the **Company** agrees as follows:

I. INSURING AGREEMENTS

- A.** The **Company** will pay on behalf of the **Insured**, **Loss** in excess of the Deductible not exceeding the Limit of Liability shown on the Policy Declarations for which this coverage applies that an **Insured** shall become legally obligated to pay because of **Claims** first made against an **Insured** during the **Policy Period** or if applicable, during the Extended Reporting Period, for **Wrongful Acts** or **Wrongful Acts** resulting in **Personal Injury**, arising solely out of an **Insured's** duties on behalf of the **Named Insured** or **Subsidiary**.
- B.** The **Company** will pay on behalf of the **Insured** any **Loss** in excess of the Deductible not exceeding the Limit of Liability as described in Section VI.C. to which this coverage applies that an **Insured** shall become legally obligated to pay because of a **Claim(s)** alleging **Third Party Discrimination**, provided that such **Claim(s)** arises out of a **Wrongful Act** of an **Insured** and is first made against an **Insured** during the **Policy Period** or if applicable during the Extended Reporting Period.
- C.** The **Company** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of the **Claim** are groundless, false or fraudulent.
- D.** The **Company** will reimburse the reasonable expenses incurred by an **Insured**, including loss of wages, if the **Insured** is required by the **Company** to attend arbitration proceedings, trial or a hearing in defense of a **Claim**, in the amount of \$250 per day for each **Insured** who attends such proceedings at the **Company's** request, subject to a maximum of \$5,000 per **Claim**. Payments made pursuant to this provision shall be in addition to the Limits of Liability shown in the Policy Declarations. The Deductible amount stated in the Policy Declarations shall not apply to the payments made by the **Company** pursuant to this provision.

II. FULL PRIOR ACTS COVERAGE PROVISION

Coverage shall apply to any **Claim** made against an **Insured** for a **Wrongful Act** arising solely out of the **Insured's** duties on behalf of the **Named Insured** or **Subsidiary** committed prior to the expiration date of this Policy or the effective date of cancellation or non-renewal of this Policy, if applicable, provided that the SP (07-09)

Claim is first made during the **Policy Period**, or the Extended Reporting Period, if applicable.

However, coverage shall not apply to any **Claim** based upon or arising out of any **Wrongful Act** or circumstance likely to give rise to a **Claim** of which the person or persons signing the **Application** had knowledge, or otherwise had a reasonable basis to anticipate might result in a **Claim**, prior to the earlier of:

- A.** The inception date of this Policy; or
- B.** The inception date of the first Policy of this type the **Company** has issued to the **Named Insured**, provided the **Company** has written continuous coverage for the **Named Insured** from such date to the inception date of this Policy.

III. DEFINITIONS

The following defined words have a special meaning and are highlighted throughout this Policy by bold print.

A. "Application" means:

- 1.** An application(s) and any material submitted for this Policy, and
- 2.** An application(s) and any material submitted, for all previous Policies issued by the **Company** providing continuous coverage until the inception date of this Policy.

The content of **1.** and **2.**, above, are incorporated by reference in this Policy as if physically attached hereto.

B. "Claim" means:

- 1.** A demand for money as compensation for a **Wrongful Act**, or
- 2.** Any judicial or administrative proceeding, including a **Disciplinary Proceeding**, mediation or arbitration initiated against any **Insured** seeking to hold such **Insured** responsible for a **Wrongful Act**, including any appeal therefrom;
- 3.** Any request to toll the statute of limitations relating to a potential **Claim** involving an alleged **Wrongful Act**.

A **Claim** shall be considered first made when any **Insured** or the **Insured's** legal representative or agent first receives notice of a **Claim**.

C. "Claim Expenses" means reasonable and necessary legal fees and expenses incurred by

the **Company** or by any attorney designated by the **Company** to defend any Insured and all other fees, costs, costs of attachment or similar bonds (without any obligation on the part of the **Company** to apply for or furnish such bonds) resulting from the investigation, adjustment, defense and appeal of a **Claim**, but does not include salaries, wages, overhead or benefits expenses of any **Insured**.

- D. "**Company**" means the insurer identified in the Policy Declarations.
- E. "**Disciplinary Proceeding**" means any proceeding by a licensing board, accreditation body or governmental agency with authority to regulate the **Professional Services** performed by an **Insured** or to investigate charges of wrong doing by an **Insured** in the rendering or failing to render **Professional Services**.
- F. "**Domestic Partner**" means any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law.
- G. "**Insured**" means:
1. The individual, partnership, corporation or other entity specified as the **Named Insured** in ITEM I. of the Policy Declarations and shall include any partner, director, officer or employee thereof while acting within the scope of their duties as such;
 2. Any former or retired partner, director, officer or employee of the **Named Insured**, but only for those **Professional Services** rendered on behalf of the **Named Insured** or **Subsidiary** prior to the date of separation or retirement from the **Named Insured** or **Subsidiary**;
 3. Any independent contractor under contract with the **Named Insured** while acting solely on the **Named Insured's** behalf;
 4. Any **Subsidiary** of the **Named Insured**;
 5. In the event of death, incompetency, insolvency or bankruptcy of any **Insured**, such **Insured's** legal representative while acting within the scope of his or her duties as such.
- H. "**Loss**" means damages and settlements and pre-judgment and post-judgment interest awarded by a court and punitive or exemplary damages to the extent such damages are insurable under applicable law, but does not include that portion of any multiplied damage award which exceeds the amount multiplied, criminal or civil fines or penalties imposed by law, taxes, matters deemed uninsurable under the law pursuant to which this Policy shall be construed, or the return or dispute over, in whole or in part, of any fees charged or collected by the Insured. For the purpose of determining the insurability of punitive damages and exemplary damages, the

laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction has a substantial relationship to the **Named Insured** or to the **Claim** giving rise to the damages.

- I. "**Named Insured**" means the **Named Insured** stated in the Policy Declarations.
- J. "**Parent Organization**" means any entity that owns more than fifty percent (50%) of the **Named Insured** as of the effective date of this Policy.
- K. "**Personal Injury**" means:
1. Wrongful entry or eviction or other invasion of private occupancy; or
 2. The publication or utterance of a libel or slander or other defamatory or disparaging material, including libel, slander, defamation or disparagement of the goods, products or services of a third-party; or
 3. A publication or an utterance constituting an invasion, infringement or interference with a third-party's right of privacy or publicity; or
 4. False arrest, detention or imprisonment or malicious prosecution.
- L. "**Policy Period**" means the period from the effective date of this Policy set forth in the Policy Declarations to the expiration date or the effective date of cancellation or non-renewal, if any.
- M. "**Professional Services**" means services rendered to others for a fee solely in the conduct of the Insured's profession as stated in ITEM VIII. of the Policy Declarations, including such services provided electronically utilizing the Internet or a network of two or more computers.
- N. "**Subsidiary**" means, for the purpose of this Policy, any entity which is more than fifty percent (50%) owned or controlled by the **Named Insured** as of the effective date of this Policy and is disclosed as a subsidiary in an **Application** to the **Company** or any entity which becomes more than fifty percent (50%) owned or controlled by the **Named Insured** during the **Policy Period** subject to the provisions of Section XXI. of this Policy.
- O. "**Third Party Discrimination**" means discrimination by an **Insured** against any person with whom an **Insured** in their capacity as such interacts while providing **Professional Services** related to the conduct of the **Named Insured's** business on the basis of age, sex, race, color, religion, disability, pregnancy, familial status, marital status, national origin, sexual preference or other protected class or characteristic established under applicable federal, state or local statute or ordinance.
- P. "**Wrongful Act**" means any actual or alleged error, omission or negligent act committed solely in the rendering of or failure to render **Professional Services** by an **Insured** or any

person, including an independent contractor acting on the behalf of the **Named Insured** or **Subsidiary**, for whom the **Insured** is legally liable in the rendering of **Professional Services**.

The same **Wrongful Act**, an interrelated series of **Wrongful Acts** or a series of similar or related **Wrongful Acts** by one or more **Insureds** shall be deemed to be one **Wrongful Act** and to have commenced at the time of the earliest **Wrongful Act**.

IV. EXCLUSIONS

The **Company** shall not be liable to make payment for **Loss** or **Claims Expenses** in connection with any **Claim** made against an **Insured** arising out of, directly or indirectly resulting from or in consequence of or in any way involving:

- A. Conduct by any person that is criminal, fraudulent, dishonest or with the intent to cause damage or the gaining by any **Insured** of any personal profit, remuneration or advantage to which an **Insured** was not legally entitled; provided however, this exclusion shall not apply to **Claims Expense** incurred until a final judgment or adjudication is rendered against the **Insured** as to this conduct; or
- B. Any **Claim** by or on behalf of any **Insured** against any other **Insured**; or
- C. Any actual or alleged bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including the loss of use thereof; or
- D. Any actual or alleged failure to effect or maintain any insurance or bond; or
- E. Any actual or alleged activity by any **Insured** in a fiduciary capacity as respects any employee benefit or pension plan under the Employee Retirement Income Security Act of 1974 (ERISA) or any amendments thereof or similar state, federal or local statutory laws or common law; or
- F. Any actual or alleged violation of any securities, anti-trust, restraint of trade, unfair trade practices, consumer protection, or other similar law by any person, including but not limited to any **Insured**; or
- G. Any express warranties or guarantees by any **Insured**, or liability assumed by any **Insured** under a contract unless the **Insured** would have been legally liable in the absence of such contract; or
- H. Any prior or pending litigation, administrative, disciplinary or regulatory proceeding, **Claim**, demand, arbitration, decree, or judgment of which any **Insured** had notice before the effective date of this Policy, or any fact, circumstance, event, situation, or **Wrongful Act** which before the effective date of this Policy was the subject of any notice to any **Insured**; or any future **Claims** or litigation based upon such prior

actions or proceedings or derived from the same or essentially the same actual or alleged facts; provided that, if this Policy is a renewal of a Policy or Policies previously issued by the **Company** and if the coverage provided by the **Company** was continuous from the effective date of the first such other Policy to the effective date of this Policy, the reference in this exclusion to "effective date" will mean the effective date of the first Policy under which the **Company** first provided continuous coverage to the **Insured**; or

- I. Any actual or alleged refusal to employ, termination of employment, or employment related coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination of employment, or other employment-related practices, policies, acts or omissions; or
- J. The actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, lead, liquids or gases, waste materials, or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, whether or not such actual, alleged or threatened discharge, dispersal, release or escape is sudden, accidental or gradual in nature, or any cost or expense arising out of any request, demand, or order that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutants; or
- K. The performance of or failure to perform **Professional Services** for:
 - 1. Any **Insured**, or
 - 2. Any entity owned or controlled by any person or entity included within the definition of **Insured**, or
 - 3. Any person or entity which owns or controls any entity included within the definition of **Insured**, or
 - 4. Any entity which is under common ownership or control with any entity included within the definition of **Insured**, or
 - 5. Any entity of which any person included within the definition of **Insured** is a director, officer, partner or more than a three percent (3%) shareholder; or
- L. Any actual or alleged infringement of any copyright, patent, trademark, trade name, trade dress or service mark; or wrongful appropriation, use, or disclosure of trade secrets by any person, including but not limited to any **Insured**; or
- M. Any actual or alleged failure of any **Insured's** products or services to prevent unauthorized access to or use of any electronic system or program unless such unauthorized access or use is the result of a malfunction of a product or service provided by an **Insured** which is

specifically intended to prevent such unauthorized access or use; or

- N. Any actual or alleged failure of any **Insured** to honor an **Insured's** cost guarantee or cost estimates for **Professional Services** rendered or to be rendered; or
- O. Any fee dispute or suit for fees initiated by any **Insured** against any past or current client of the **Insured**; or
- P. Any actual or alleged rendering or failure to render investment or insurance counseling or advice; the purchase or selling of, or failure to purchase or sell an investment or insurance of any kind; or any **Insured's** advice, promise(s) or guarantee(s) regarding the future value of any investments or interest rate or rate of return; or any **Insured's** advice, promise(s) or guarantee(s) regarding the coverage provided or not provided by insurance of any kind.

V. DEFENSE AND SETTLEMENT

- A. The **Company**, as it deems expedient, has the right to investigate, adjust, defend, appeal and, with the consent of an **Insured**, negotiate the settlement of any **Claim** whether within or above the Deductible. If an **Insured** refuses to consent to a settlement recommended by the **Company**, the **Company's** obligation to any **Insured** for **Loss** and **Claims Expense** attributable to such **Claim(s)** shall be limited to:
 1. The amount of the covered **Loss** in excess of the Deductible which the **Company** would have paid in settlement at the time the **Insured** first refused to settle;
 2. Plus covered **Claims Expenses** incurred up to the date the **Insured** first refused to settle;
 3. Plus seventy-five percent (75%) of covered **Claims Expenses** and **Loss** in excess of the first settlement amount recommended by the **Company** to which the **Insured** did not consent.

Payment of 1., 2. and 3., above, is the limit of the **Company's** liability under this Policy on any **Claim** in which the **Insured** fails or refuses to consent to the **Company's** settlement recommendation, subject at all times to the Limits of Liability and Deductible provisions. The remaining twenty-five percent (25%) of **Loss** and **Claims Expenses** in excess of the amount referenced in 1. and 2., above, shall be the obligation of the **Insured**.

- B. All **Insureds** agree to cooperate with the **Company**, and provide such assistance and information as the **Company** may reasonably request. Upon the **Company's** request, any **Insured** shall submit to examination and interrogation by a representative of the **Company**, under oath if required, and shall attend hearings, depositions, trials and shall

assist in the conduct of suits, including but not limited to effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, giving written statements to the **Company's** representatives and meeting with such representatives for the purpose of investigation and/or defense, all of the above without charge to the **Company**. All **Insureds** further agree not to take any action which may increase any **Insured's** or the **Company's** exposure for **Claims Expense** or **Loss**.

- C. All **Insureds** shall execute all papers required and shall do everything that may be necessary to secure and preserve any rights of indemnity, contribution or apportionment which an **Insured** or the **Company** may have, including the execution of such documents as are necessary to enable the **Company** to bring suit in an **Insured's** name, and shall provide all other assistance and cooperation which the **Company** may reasonably require.
- D. An **Insured** shall not demand or agree to arbitration of any **Claim** without the written consent of the **Company**. An **Insured** shall not, except at personal cost, make any offer or payment, admit any liability, settle any **Claim**, assume any obligation, or incur any expense without the **Company's** written consent.

VI. LIMITS OF LIABILITY AND DEDUCTIBLE

Regardless of the number of **Insureds** under this Policy, **Claim(s)** made or brought on account of **Wrongful Act(s)** or otherwise, the **Company's** liability is limited as follows:

- A. For **Claims** arising under Section I.A. of this Policy, the Limit of Liability specified in the Policy Declarations as the ANNUAL AGGREGATE shall be the maximum liability for **Loss** for all **Claims**;
- B. For **Claims** arising under Section I.A. of this Policy, the Limit of Liability specified in the Policy Declarations as the Limit for EACH CLAIM shall be the maximum liability for **Loss** for each **Claim**;
- C. For **Claims** arising under Section I.B. of this Policy, subject to the ANNUAL AGGREGATE Limit of Liability specified in the Policy Declarations, the Limit of Liability for the total of **Loss** plus **Claims Expense** shall not exceed \$25,000.
- D. For **Claims** arising under Section I.A. of this Policy, **Claims Expenses** shall be in addition to the LIMITS OF LIABILITY as shown in the Policy Declarations.
- E. The DEDUCTIBLE amount stated in the Policy Declarations shall apply to **Loss** and **Claims Expenses** and shall apply to each and every **Claim**. The **Company** shall only be liable to pay, subject to the Limits of Liability provisions stated above, for **Loss** plus **Claims Expenses** in

excess of such Deductible, and such Deductible shall not be insured under this Policy.

- F. The Limit of Liability for the Extended Reporting Period, if applicable, shall be part of and not in addition to the LIMITS OF LIABILITY specified in the Policy Declarations.
- G. **Claims** based upon or arising out of the same **Wrongful Act**, interrelated **Wrongful Acts**, or a series of similar or related **Wrongful Acts** shall be considered a single **Claim** subject to one Claim Limit and shall be considered first made during the **Policy Period** or Extended Reporting Period, if applicable, in which the earliest **Claim** arising out of such **Wrongful Act(s)** was first made and all **Loss** from such **Claims** shall be subject to the one Limit of Liability that applies to such earliest **Claim**.
- H. The Limits of Liability of this Policy apply separately to each consecutive annual period and to any remaining period of less than twelve (12) months, starting with the beginning of the **Policy Period** shown in the Policy Declarations, unless the **Policy Period** is extended after issuance for an additional period of less than twelve (12) months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Liability.

VII. ADDITIONAL INSURED STATUS FOR PARENT ORGANIZATION

The **Parent Organization** is named as an Additional Insured, but only as respects **Claims** arising out of any negligent act, error, omission or **Personal Injury** in rendering or failure to render **Professional Services** by any individual or entity of the **Named Insured**.

VIII. SPOUSAL AND DOMESTIC PARTNER EXTENSION

If a **Claim** against an **Insured** includes a **Claim** against the lawful spouse or **Domestic Partner** of such **Insured**, based solely on (a) such spouse's or **Domestic Partner's** status or (b) such spouse's or **Domestic Partner's** ownership interest in property or assets that are sought as recovery for **Wrongful Acts**, then any **Loss** which such spouse or **Domestic Partner** becomes legally obligated to pay on account of (a) or (b) above shall be deemed a **Loss** which the **Insured** becomes legally obligated to pay.

All definitions, exclusions, terms and conditions of this Policy, including the Deductible, applicable to any **Claim** against or **Loss** sustained by such **Insured** shall also apply to this coverage extension.

The extension of coverage afforded by this section, Section VIII., shall not apply to any **Claim** arising out of, resulting from, caused by directly or indirectly any **Wrongful Act**, error, omission, misstatement,

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misleading statement or neglect or breach of duties by a spouse or **Domestic Partner**.

IX. POLICY TERRITORY

This policy shall extend to any **Wrongful Act** committed anywhere in the world provided the **Claim** is first made against the **Insured** within the United States of America, its territories or possessions, or Canada.

X. EXTENDED REPORTING PERIOD

- A. If the Policy expires, is cancelled or non-renewed for any reason other than non payment of premium, the **Named Insured** shall have the right to purchase an Extended Reporting Period to report any **Claim(s)** first made against an **Insured** during the twelve (12) months, or twenty-four (24) months or thirty-six (36) months after the effective date of such expiration, cancellation or non-renewal (depending upon the Extended Reporting Period purchased). An Extended Reporting Period shall only apply to a **Wrongful Act** committed before the date of the Policy expiration, cancellation or non-renewal. For the purpose of this clause, any change in premium terms or terms on renewal shall not constitute a refusal to renew.
- B. The additional premium for the Extended Reporting Period shall be sixty-five percent (65%) of the annual premium set forth in the Policy Declarations for the twelve (12) month period; one hundred twenty-five percent (125%) of the annual premium set forth in the Policy Declarations for the twenty-four (24) month period; and one hundred ninety-five percent (195%) of the annual premium set forth in the Policy Declarations for the thirty-six (36) month period. The Extended Reporting Period begins on the expiration date or the effective date of cancellation or non-renewal of the Policy. The **Named Insured** must notify the **Company** in writing and must pay the additional premium due no later than thirty (30) days after the effective date of such expiration, cancellation or non-renewal.
- C. All premiums paid with respect to the Extended Reporting Period shall be deemed fully earned as of the first day of the Extended Reporting Period.
- D. The Limits of Liability available during the Extended Reporting Period shall not exceed the balance of the Limits of Liability available on the expiration date or effective date of the cancellation or non-renewal of the Policy.
- E. Coverage for **Claim(s)** first received and reported during the Extended Reporting Period shall be excess over any other valid and collectible insurance providing coverage for such **Claim(s)**.

XI. NOTICE/CLAIM REPORTING PROVISIONS

Notice hereunder shall be given in writing to the **Company**. If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

- A. As a condition precedent to exercising any right to coverage under this Policy, the **Insured** shall give to the **Company** written notice of a **Claim** or circumstance which could be expected to give rise to a **Claim** being made against an **Insured** as soon as practicable, but:
 - 1. If the Policy expires, is cancelled or is non-renewed and if no Extended Reporting Period is purchased, no later than sixty (60) days after the expiration date or the effective date of such cancellation or non-renewal; or
 - 2. If an Extended Reporting Period is purchased, no later than the last day of the Extended Reporting Period.
- B. If written notice of a **Claim** or circumstance which could be expected to give rise to a **Claim** being made against an **Insured** has been given to the **Company** pursuant to Subsection A. above, then any **Claim** which is subsequently made against the **Insured** and reported to the **Company** alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** or circumstance which could be expected to give rise to a **Claim** being made against an **Insured** of which notice was given, shall be considered made at the time such notice was given.

XII. CANCELLATION OR NON-RENEWAL

- A. This Policy may be canceled by the **Named Insured** by either (1) surrender of the Policy thereof to the **Company** at its address stated on the Policy Declarations or (2) by delivering to the **Company** written notice requesting cancellation and in either case stating when, thereafter such cancellation shall be effective.
- B. If the Policy is canceled by the **Named Insured** for a reason other than the closing or sale of the **Named Insured's** business or the death of the sole proprietor where the **Named Insured** is a sole proprietorship, the **Company** shall retain the customary short rate proportion of the premium.
- C. If the Policy is canceled by the **Named Insured** due to the closing or sale of the **Named Insured's** business or the death of the sole proprietor where the **Named Insured** is a sole proprietorship, the **Company** will calculate the return premium on a pro-rata basis.
- D. The **Company** may cancel this Policy only in the event of the failure of the **Insured** to pay the premium when due by mailing to the **Named Insured** written notice when, not less than ten (10) days thereafter, such cancellation shall be effective.

- E. In the event the **Company** refuses to renew this Policy, the **Company** shall mail to the **Named Insured**, not less than sixty (60) days prior to the end of the **Policy Period**, written notice of non-renewal. Such notice shall be binding on all **Insureds**.
- F. The **Company** shall mail notice of Cancellation or Non-renewal with a certificate of mailing stating the effective date of Cancellation or Non-renewal and the specific reason(s) for Cancellation or Non-renewal, which shall become the end of the **Policy Period**. Mailing of such notice shall be sufficient notice of Cancellation or Non-renewal.
- G. If the Policy is canceled by the **Company**, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is affected or as soon as practicable thereafter.

XIII. REPRESENTATIONS AND SEVERABILITY

- A. The **Insureds** represent that the particulars and statements contained in the **Application** are true and agree that (1) those particulars and statements are the basis of this Policy and are to be considered as incorporated into and constituting a part of the Policy; (2) those particulars and statements are material to the acceptance of the risk assumed by the **Company**; and (3) this Policy is issued in reliance upon the truth of such representations.
- B. Except for material facts or circumstances known to the person or persons signing the **Application**, no statement in the **Application** of knowledge or information possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining the availability of coverage.

XIV. SUBROGATION

In the event of any payment under this Policy, the **Company** shall be subrogated to an **Insured's** right of recovery therefore against any person or entity and the **Insured** shall execute and deliver such instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall not do anything to prejudice such rights.

XV. CHANGES

Notice to any agent or knowledge by any agent shall not effect a waiver or change in any part of this Policy or stop the **Company** from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except by an endorsement, issued to form a part of this Policy.

XVI. AUTHORIZATION CLAUSE AND NOTICES

By acceptance of this Policy, the **Insured** agrees that the **Named Insured** shall act on behalf of all **Insureds** with respect to the giving and receiving of

any return premiums that may become due under the Policy. Notice to the **Named Insured** shall be directed to the individual named in the **Application**, or such other person as shall be designated by the **Named Insured** in writing, at the address of the **Named Insured**.

Such notice shall be deemed to be notice to all **Insureds**. The **Named Insured** shall be the agent of all **Insureds** to effect changes in the Policy or purchase an Extended Reporting Period.

XVII. ASSIGNMENT

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

XVIII. OTHER INSURANCE

The Policy is excess of other existing insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically written to be in excess of this Policy.

XIX. TERMS OF POLICY CONFORMED TO STATUTE

Terms of this Policy which are in conflict with the statutes of the state wherein this Policy is issued are hereby amended to conform to such statutes.

XX. CHANGES IN CONTROL

If after the Inception Date of this Policy:

1. The **Named Insured** merges into or consolidates with another entity such that the **Named Insured** is not the surviving entity; or
2. Another entity, person, or group of entities or persons acting in concert acquire more than fifty percent (50%) of the assets of the **Named Insured**; or
3. Another entity, person, or group of entities and/or persons acting in concert acquires the right to elect or select a majority of the directors of the **Named Insured**; or
4. The **Named Insured** sells all or substantially all of its assets,

the above events being referred to as a "Transaction,"

this Policy shall continue in full force and effect until the expiration date of the Policy, or the effective date of non-renewal, if applicable, with respect to **Wrongful Acts** occurring before the Transaction, but there shall be no coverage under this Policy for actual or alleged **Wrongful Acts** occurring on or after the Transaction.

The **Named Insured** shall give the **Company** written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction. As of the effective date of any Transaction, the entire premium for this Policy shall be deemed fully earned. In the event of a

Transaction, the **Named Insured** shall have the right to an offer of coverage by the **Company** for an Extended Reporting Period to report **Wrongful Acts** occurring prior to the effective date of the Transaction.

XXI. ACQUISITION OR CREATION OF ANOTHER ENTITY

If, after the beginning of the **Policy Period**, the **Named Insured**:

1. Acquires substantially all of the assets of another entity; or
2. Acquires voting securities in another entity or creates another entity, which as a result of such acquisition or creation becomes a **Subsidiary**; or
3. Acquires another entity by merger such that the **Named Insured** is the surviving entity,

then the coverage provided under this Policy shall apply to such new creation or acquisition; but only with respect to **Wrongful Acts** occurring or allegedly occurring after the acquisition, merger or creation. As a condition for any coverage under this section (Section XXI.), if the current year annual gross receipts of the new entity created or acquired under Paragraphs 1., 2. or 3., above, exceed fifteen percent (15%) of the current year annual gross receipts of the **Named Insured** as reflected in the most recent **Application** on file with the **Company**, then coverage for such newly created or acquired entity will cease ninety (90) days after the effective date of such creation or acquisition unless, within such ninety (90) day period:

1. The **Named Insured** provides the **Company** with written notice of such creation or acquisition; and
2. The **Named Insured** provides the **Company** with such information in connection therewith as the **Company** may deem necessary; and
3. The **Named Insured** accepts any special terms, conditions, exclusions, or additional premium charge as may be required by the **Company**; and
4. The **Company**, in its sole discretion, agrees by written endorsement to provide such coverage.

The **Named Insured** is not required to provide written notice to the **Company** under this section if (1) the current year annual gross receipts of the newly created or acquired entity do not exceed fifteen percent (15%) of the current year annual gross receipts of the **Named Insured** as reflected in the most recent **Application** on file with the **Company**; or (2) the creation or acquisition occurs less than ninety (90) days prior to the end of the **Policy Period**.

XXII. ACTION AGAINST THE COMPANY

- A. No action shall lie against the **Company** unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and until the amount of an **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the Claimant or the Claimant's legal representative, and the **Company**.
- B. Any person or the legal representatives thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or entity shall have any right under this Policy to join the

Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the **Company** be impleaded by the **Insured** or their legal representatives. Bankruptcy or insolvency of the **Insured** or their successors in interest shall not relieve the **Company** of its obligations hereunder.

XXIII. ACCEPTANCE

This Policy embodies all agreements existing between the parties hereunder or any of their agents relating to this insurance.