

INDIAN HARBOR INSURANCE COMPANY
(herein called the Company)

This is a claims made Policy with defense expenses included. Please read and review the Policy carefully.

INSURANCE AGENTS AND BROKERS ERRORS & OMISSIONS LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, and in reliance upon the statements in the application and Declarations attached hereto and made a part hereof, and subject to the Limits of Liability stated in Item 3 of the Declarations and the terms and conditions contained herein, the Company hereby agrees as follows:

1. INSURING AGREEMENT

To pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as damages resulting from any claim or claims first made against the **Insured** and reported in writing to the Company during the **Policy Period** for any **Wrongful Act** of the **Insured** or of any other person for whose actions the **Insured** is legally responsible, but only if such **Wrongful Act** occurs during or prior to the **Policy Period** and solely in rendering or failing to render professional services for others for a fee in the **Insured's** capacity as an Insurance Agent, Insurance Broker, Insurance Consultant or Notary Public.

2. DEFENSE COSTS, CHARGES & EXPENSES (INCLUDED IN THE LIMIT OF LIABILITY)

With respect to any such **Wrongful Act** for which insurance is afforded by this Policy under Insuring Agreement 1 above, the Company shall, as part of and subject to the Limits of Liability:

- a) have the right and duty to defend any suit brought against the **Insured** seeking damages on account of a **Wrongful Act**, even if such suit is groundless, false or fraudulent, but the **Insured** shall not admit liability for or settle any claim or suit or incur any cost, charge or expense without the written consent of the Company, and the Company shall have the right to make such investigation and conduct negotiations and, with the written consent of the **Insured**, enter into such settlement of any claim or suit as the Company deems expedient.

If the **Insured** refuses to consent to any settlement recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter at the **Insured's** own expense negotiate or defend such claim or suit independently of the Company and the Company's liability shall not exceed the amount of damages for which the claim or suit could have been settled if such recommendation was consented to, plus defense costs, charges and expenses incurred by the Company, and defense costs, charges and expenses incurred by the **Insured** with the Company's written consent up to date of such refusal.

The Company shall not be obligated to pay any claim or judgment or to defend or continue to defend any suit after the applicable Limit of Liability set forth in Item 3 of the Declarations has been exhausted by payments of judgments and/or settlements and/or other items included within the Limits of Liability.

- b) Pay all expenses incurred by the Company in any suit defended by the Company and brought against the **Insured** alleging a **Wrongful Act**, all costs taxed against the **Insured** in any such suit, and all interest on the entire amount of any judgment therein which accrues after entry on the judgment and before the Company has paid, tendered or deposited in court that part of the judgment which does not exceed the Limit of Liability set forth in Item 3 of the Declarations.

- c) Pay all premiums on appeal bonds required in any suit defended by the Company and brought against the **Insured** alleging a **Wrongful Act**, and/or premiums on bonds to release attachments for an amount not in excess of the applicable Limit of Liability of this Policy, but without any obligation to apply for or furnish any such bonds.
- d) Pay all reasonable expenses, other than loss of earnings, incurred by the **Insured** at the Company's request.

3. DEFINITIONS

- a) **Insured** means the individual, partnership, corporation or other entity named in Item 1 of the Declarations and shall include any partner, director, officer or employee thereof solely while acting within the scope of his or her duties as such.
- b) **Policy Period** means the period from the inception date of this Policy shown in Item 2 of the Declarations to the earlier of the expiration shown in Item 2 of the Declarations or the effective date of cancellation of this Policy.
- c) **Wrongful Act** means any actual or alleged:
 - 1. negligent act, error or omission;
 - 2. false arrest, detention, or imprisonment;
 - 3. the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; or
 - 4. wrongful entry or eviction or other invasion of the right of private occupancy.

4. EXCLUSIONS

This Policy does not apply:

- a) to any claim alleging fraud, dishonesty, criminal or malicious acts or omissions; however, if such allegations are subsequently not proven by a final adjudication favorable to the **Insured**, then the Company shall reimburse the **Insured** for all reasonable defense costs, charges and expenses which could have been collectible under this Policy;
- b) to any claim alleging discrimination;
- c) to any claim for or alleging bodily injury to, or sickness, disease or death of any person, or damage to or destruction of any property, including the loss of use thereof;
- d) to any claim seeking non-pecuniary relief;
- e) to any claim based upon, arising out of, due to or involving directly or indirectly, the insolvency, receivership, bankruptcy, liquidation or financial inability to pay, of any insurance company in which the **Insured** has placed or obtained any insurance or bond;
- f) to any claim brought about or contributed to by any commingling of funds or accounts, nor to any claim for sums received by any **Insured** or credited to any **Insured's** account nor to any claim for fees, premiums, taxes, commissions or brokerage monies;

- g) to any **Wrongful Act** committed prior to the beginning of the **Policy Period**, if on or before the inception date of this Policy any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** did or could lead to a claim or suit;
- h) to any claim arising out of the activities of any **Insured** in regard to any "employee pension benefit plan" and/or "employee welfare benefit plan", as those terms are defined in the Employee Retirement Income Security Act of 1974, as amended, sponsored by any **Insured** or any firm which any **Insured** owns or controls, or in regard to any such plan in which any **Insured** is a participant or a named fiduciary as that term is used under the Employee Retirement Income Security Act of 1974 as amended;
- i) to any claim arising out of or connected with the performance or failure to perform services for any person or entity:
 - 1. which is owned by or controlled by any **Insured**;
 - 2. which owns or controls any **Insured**;
 - 3. which is affiliated with any **Insured** through any common ownership or control; or
 - 4. in which any **Insured** is a director, officer, partner, or principal stockholder;
- j) to any claim arising directly or indirectly out of any actual or alleged discharge, dispersal, release, escape, or use of asbestos, toxic substances or pollutants, including but limited to any failure to effect and maintain insurance or bond with respect thereto;
- k) to any claim brought by one **Insured** under this Policy against another **Insured**;
- l) to fines, penalties, or punitive, exemplary or multiplied damages; however, only where permitted by law, this Policy shall cover, subject to all the terms, conditions and exclusions contained herein, up to \$5,000 punitive, exemplary or multiplied damages, as part of and not in addition to the Limits of Liability otherwise afforded by this Policy;
- m) to any **Wrongful Act** committed with knowledge that it was a **Wrongful Act**; or
- n) to any claim arising out of notarized certification or acknowledgment of a signature without the physical appearance at the time of said notarization before such notary public as **Insured** hereunder of the person who is or claims to be the person signing.

5. SPECIAL PROVISIONS

a) **Limit of Liability**

The Limit of Liability stated in Item 3(a) of the Declarations as applicable to "Each **Wrongful Act** or series of continuous, repeated or interrelated **Wrongful Acts**" is the Limit of Liability for all amounts payable hereunder in settlement or satisfaction of claims, judgments or awards and defense costs, charges and expenses arising out of the same **Wrongful Act** or series of continuous, repeated or interrelated **Wrongful Acts**, without regard to the number of **Insureds**, claims, demands, suits or proceedings or claimants. If additional claims are subsequently made which arise out of the same **Wrongful Act** or series of continuous, repeated or interrelated **Wrongful Acts** as claims already made and reported to the Company, all such claims, whenever made, shall be considered first made within the **Policy Period** or the extended reporting period in which the earliest claim arising out of such **Wrongful Act** was first made and reported to the Company, and all such claims shall be subject to one Limit of Liability.

The Limit of Liability stated in Item 3(b) of the Declarations as "Aggregate" is subject to the above provisions respecting "Each **Wrongful Act** or series of continuous, repeated or interrelated **Wrongful Acts**", the Limit of Liability for all amounts payable hereunder in settlement or satisfaction of claims, judgments or awards and defense costs, charges and expenses arising out of claims first made and reported to the Company during the **Policy Period** or during the extended reporting period. The aggregate limit of liability for the extended reporting period shall be part of, and not in addition to, the aggregate Limit of Liability for the Policy as set forth in Item 3(b) of the Declarations.

The inclusion herein of more than one **Insured** shall not operate to increase the Limits of Liability as set forth in Item 3 of the Declarations.

Defense costs, charges and expenses, as well as amounts paid in settlement or satisfaction of claims, judgments or awards are subject to the applicable Limits of Liability. All defense costs, charges and expenses shall first be subtracted from the Limit of Liability with the remainder, if any, being the amount available to pay damages.

b) **Retention**

The Company shall only be liable for those amounts payable hereunder in settlement or satisfaction of claims, judgments or awards, defense costs, charges and expenses which are in excess of the of the retention stated in Item 4 of the Declarations. This retention shall apply to each **Wrongful Act** and shall be borne by the **Insured** and remain uninsured. For purposes of the retention, claims arising out of the same **Wrongful Act** or out of a series of continuous, repeated or interrelated **Wrongful Acts** shall be considered as arising out of one **Wrongful Act**, and only one retention amount shall apply thereto.

c) **Loss Provisions**

The **Insured** shall, as a condition precedent to the availability of the rights provided under this Policy, give written notice to the Company as soon as practicable during the **Policy Period**, or during the extended reporting period (if applicable), of any claim made against the **Insured**. Notice given by or on behalf of the **Insured** to any authorized representative of the Company, with particulars sufficient to identify the **Insured**, shall be deemed notice to the Company.

d) **Special Reporting Clause**

If during the **Policy Period** or during the extended reporting period (if applicable), the **Insured** shall become aware of any occurrence which may reasonably be expected to give rise to a claim against the **Insured** for a **Wrongful Act** which first occurs during or prior to the **Policy Period**, and provided the **Insured** gives written notice to the Company during the **Policy Period** or the extended reporting period (if applicable) of the nature of the occurrence and specifics of the possible **Wrongful Act**, any claim that is subsequently made against the **Insured** arising out of such **Wrongful Act** shall be treated as a claim made during the **Policy Period**.

e) **Extended Reporting Period**

If the Company or the **Insured** shall cancel or refuse to renew this policy, the **Insured** shall have the right, upon payment of an additional premium set forth in Item 5 of the Declarations, to a period of time set forth in Item 5 of the Declarations following the effective date of such cancellation or non-renewal (herein referred to as the extended reporting period) in which to give written notice to the Company of claims first made against the **Insured** during such extended reporting period for any **Wrongful Act** committed during or prior to the **Policy Period** and otherwise covered by this Policy. The

rights contained in this clause shall terminate, however, unless written notice of such election together with the additional premium due is received by the Company within thirty (30) days of the effective date of cancellation or non-renewal. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium.

6. GENERAL CONDITIONS

- a) This Policy only applies to **Wrongful Acts** committed in, and suits brought against the **Insured** in, the United States of America, its territories or possessions, or Canada.
- b) All notices of claims, applications, demands or requests provided for in this Policy shall be in writing and addressed to:

XL Insurance
100 Constitution Plaza, 17th Floor
Hartford, CT 06103.
- c) The **Insured** shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits or proceedings, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured**. The **Insured** shall attend hearings, trials and depositions and shall assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.
- d) No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, nor until the amount of the **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 and the Company. Any person or organization or the legal representative 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 organization 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 **Insured** or his legal representative implead the Company.
- e) In the event of any payment under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery thereof, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. Any amount recovered in excess of the Company's total payment shall be restored to the **Insured**, less the cost to the Company of recovery.
- f) Such insurance as is provided under this Policy shall apply only as excess over any other valid and collectible insurance.
- g) This Policy may be cancelled by the **Insured** by surrender of this Policy to the Company or by giving written notice to the Company stating when thereafter such cancellation shall be effective. This Policy may also be cancelled by the Company by mailing to the **Insured** by registered, certified, or other first class mail, at the **Insured's** address shown in Item 1 of the Declarations, written notice stating when, not less than thirty (30) days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice. If this Policy shall be cancelled by the **Insured**, the Company shall retain the customary short rate proportion of the premium hereon. If the Company

shall cancel this Policy, the Company shall retain the pro rata proportion of the premium hereon. Payment or tender of any unearned premium by the Company shall not be condition of cancellation, but such payment shall be made as soon as practicable.

- h) Assignment of interest under this Policy shall not bind the Company until its consent is endorsed hereon; however, subject otherwise to the terms hereof, this Policy shall cover the estate, heirs, legal representative or assigns of the **Insured** in the event of the **Insured's** death, bankruptcy, insolvency or being adjudged incompetent.
- i) Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Company of any obligation hereunder.
- j) Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop 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 endorsement issued to form a part of this Policy and signed by an authorized representative of the Company.
- k) The **Insured** first named in Item 1 of the Declarations shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any amendments to or cancellation of this Policy, for the payment of premium and the receipt of any return premiums that may become due under this Policy and the exercising or declining to exercise any right to an extended reporting period.

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