

INSURANCE COMPANY PROFESSIONAL LIABILITY

THIS IS A CLAIMS MADE POLICY WITH DEFENSE INCLUDED IN THE LIMIT OF LIABILITY.

PLEASE READ AND REVIEW THE ENTIRE POLICY CAREFULLY.

NOTICE: THE COVERAGES AFFORDED UNDER THIS POLICY ARE CLAIMS MADE COVERAGES, WHICH APPLY ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD," OR, IF PURCHASED, THE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS UNDER THIS POLICY WILL BE REDUCED BY THE PAYMENT OF "DEFENSE EXPENSES," AND "DEFENSES EXPENSES" WILL BE APPLIED AGAINST THE RETENTION. THE COVERAGE AFFORDED UNDER THIS POLICY DIFFERS IN SOME RESPECTS FROM THAT AFFORDED UNDER OTHER POLICIES. PLEASE READ THE ENTIRE CAREFULLY.

In consideration of the payment of premium, and in reliance on all statements made and information furnished to the Company for the Insurer identified in the Declarations (hereinafter the Insurer) including the Application and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

I. Insuring Agreement

The Insurer will pay on behalf of the **Insured Loss** from **Claims** first made against the **Insured** during the **Policy Period** or, if applicable, the Extended Reporting Period, for **Wrongful Acts** first committed on or after the **Retroactive Date**.

II. Definitions

- (A) "**Application**" means the application attached to and forming part of this Policy and any materials submitted and statements made by or on behalf of the **Insured** in connection with such **Application**, all of which are a part of this Policy, as if physically attached.
- (B) "**Claim**" means:
- (1) any civil proceeding in a court of law or equity, including any mediation or other alternative dispute resolution ordered or sponsored by such court;
 - (2) any criminal proceeding in a court of law;
 - (3) any administrative or regulatory proceeding, commenced by the filing of a notice of charges, formal investigative order or similar document;
 - (4) any arbitration proceeding initiated or compelled pursuant to a written arbitration agreement; and
 - (5) a written demand or notice to an **Insured** indicating that a person or entity intends to hold an **Insured** responsible for a **Wrongful Act**.
- (C) "**Defense Expenses**" means reasonable legal fees and expenses incurred by or on behalf of any **Insured** in the defense or appeal of any **Claim**, including costs of appeal, attachment or similar bonds, provided that the Insurer shall have no obligation to procure or furnish any bond. **Defense Expenses** will not include

salaries, wages, fees, or other compensation, overhead, or benefit expenses of any **Insured**.

- (D) **“Express Contract or Agreement”** is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making.
- (E) **“Independent Insurance Agent”** means an insurance agent who is not an **Insured**.
- (F) **“Insurance Company”** means the **Named Insured** and any **Subsidiary** created or acquired on or before the Inception Date set forth in ITEM 2(a) of the Declarations.
- (G) **“Insured”** means the **Insurance Company** and any **Insured Persons**. **Outside Services Providers** and **Independent Insurance Agents** are not **Insureds** under this Policy.
- (H) **“Insured Person”** means any past, present or future director, officer, or employee of the **Insurance Company**.
- (I) **“Loss”** means damages, judgements, awards, settlements, and the **Defense Expenses** which an **Insured** is legally obligated to pay as a result of a **Claim**. **Loss** includes punitive or exemplary damages when insurable under the law pursuant to which this Policy shall be construed. Where the **Insurance Company** has determined in good faith that punitive or exemplary damages are insurable under applicable law, the Insurer will not raise as a defense to coverage the insurability of such damages; provided, however, that in the event of a challenge to such a determination by any other person or entity, the Insurer shall be obligated to reimburse such damages only if a court of competent jurisdiction specifically determines that they are insurable. **Loss** shall not include:
- (1) fines, sanctions, taxes, penalties imposed by law or any multiplied damage award which is in excess of the damages award so multiplied;
 - (2) matters which are uninsurable under the law pursuant to which this Policy shall be construed;
 - (3) salaries, wages, fees, or other compensation, overhead, or benefit expenses of any **Insured**;
 - (4) fees, commissions, compensation, or interest charged to or due from clients or customers of the **Insurance Company**;
 - (5) the cost of complying with any settlement for, or award of, non-monetary relief; or
 - (6) any amount due under any contract or policy of insurance or reinsurance underwritten, issued, assumed, or subscribed to by the **Insurance Company**.
- (J) **“Named Insured”** means the entity designated in ITEM 1 of the Declarations.
- (K) **“Outside Service Providers”** means any person or entity that is not an **Insured** that performs **Professional Services** at the direction or on behalf of the **Insurance Company** pursuant to an **Express Contract or Agreement**.

- (L) **"Policy Period"** means the period from the Effective Date and time of this Policy to the Policy Expiration Date and time stated in ITEM2 of the Declarations.
- (M) **"Professional Services"** means services performed by the **Insurance Company** or by an **Outside Service Provider** on behalf of the **Insurance Company** for a policyholder, customer or client of the **Insurance Company**, which, alone or in combination with other services, are performed for monetary consideration pursuant to a policy of insurance or other **Express Contract or Agreement**.

In clarification and not in limitation of the foregoing, **Professional Services** includes **Professional Supervision**, the provision of computer and Internet services, administrative services, and publication of any materials prepared or written by any **Insured**, provided that such services are rendered in connection with the **Insurance Company's** business operations.

- (N) **"Professional Supervision"** means the **Insurance Company's** qualification, selection, oversight, and/or direction of **Independent Insurance Agents** and its selection, oversight, and/or direction of **Outside Service Providers** in rendering **Professional Services**.
- (O) **"Regulator"** means any federal, state or local regulatory or supervisory agency, authority or bureau, department of insurance, insurance commission or commissioner, any other governmental or quasi-governmental entity, or any self-regulatory entity, or any affiliate of or successor or predecessor to any of the foregoing.
- (P) **"Related Claims"** means all **Claims** for **Wrongful Acts** based on or directly or indirectly arising out of or resulting from the same or related facts, circumstances, situations, transactions, or events or the same or related series of facts, circumstances, situations, transactions, or events.
- (Q) **"Retroactive Date"** means the date and time stated in ITEM 6 of the Declarations.
- (R) **"Subsidiary"** means any entity during any time in which the **Named Insured** owns or controls, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities representing the right to vote for the election of its directors.
- (S) **"Wrongful Act"** means:
- (1) any actual or alleged act, error, omission, misstatement, misleading statement, or breach of fiduciary or other duty committed by an **Insured** in rendering, or in failing to render, **Professional Services**;
 - (2) any actual or alleged libel, slander, or oral or written publication of defamatory or disparaging material committed by an **Insured** in rendering **Professional Services**;
 - (3) any actual or alleged act, error or omission of an **Outside Service Provider** for which an **Insured** is alleged to be liable, but only in connection with the **Outside Service Provider's** rendering of, or failure to render, **Professional Services** for or on behalf of the **Insurance Company**; and
 - (4) any actual or alleged act, error or omission of an **Independent Insurance Agent** for which the **Insurance Company** is alleged to be liable, but only in connection with the **Independent Insurance Agent's** rendering of, or failure

to render, **Professional Services** for or on behalf of the **Insurance Company**

III. EXCLUSION

The Coverage under this Policy does not apply to any **Claim**:

- (A) brought about or contributed to in fact by:
- (1) any dishonest, fraudulent or criminal act or omission by an **Insured, Independent Insurance Agent, or Outside Service Provider**;
 - (2) any willful or intentional violation of any statute, rule or law by an **Insured, Independent Insurance Agent, or Outside Service Provider**; or
 - (3) the gaining of any profit, remuneration or advantage by an **Insured, Independent Insurance Agent, or Outside Service Provider** to which the **Insured, Independent Insurance Agent, or Outside Service Provider** was not legally entitled;

provided, that this EXCLUSION (A) shall not apply to (i) any **Claim** for fraud and/or bad faith in claims handling or adjusting or (ii) an **Insured** unless it is established that the **Insured** participated in or acquiesced in the dishonest, fraudulent or criminal act or omission, the willful or intentional violation, or the gaining of profit, remuneration or advantage;

- (B) based on or directly or indirectly arising out of or resulting from:
- (1) any **Wrongful Act**, or any matter, fact, circumstance, transaction, or event which has been the subject of , or which is logically or casually connected to, any **Claim** made or notice given under any policy of insurance prior to the Inception Date set forth in ITEM 2 (a) of the Declarations;
 - (2) any **Wrongful Act**, or any matter, fact, circumstance, transaction, or event which was described or was required to be described in the **Application** or in any application for a policy of which this Policy is a renewal or replacement; or
 - (3) any civil, criminal, administrative, or arbitration proceeding as to which any **Insured** has received written notice prior to the Inception Date set forth in ITEM 2 (a) of the Declarations or any matter, fact, circumstance, transaction, or event underlying or alleged in such proceeding;
- (C) based on or directly or indirectly arising out of or resulting from:
- (1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal, or disposal of any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed), or other irritants, pollutants or contaminants;
 - (2) any actual or alleged nuclear reaction, nuclear radiation, radioactive contamination, or radioactive substance;
 - (3) any regulation, order, direction, or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize any of the foregoing or any

action taken in contemplation or anticipation of any such regulation, order, direction, or request; or

- (4) any dispute over the existence or absence of, or particular terms, conditions or amount of, insurance coverage for any matter described in EXCLUSIONS (C)(1)-(3) above;
- (D) for any actual or alleged invasion of privacy, malicious use or abuse of process, malicious prosecution, wrongful entry or eviction, false arrest, false imprisonment, assault, or battery;
- (E) for any bodily injury, emotional distress, mental anguish, sickness, disease, or death of any person or loss of consortium, support, companionship, or services of any kind resulting therefrom; provided, that this EXCLUSION (E) will not apply to allegations of emotional distress or mental anguish if and only to the extent that they arise solely from an **Insured's** rendering of **Professional Services**;
- (F) for damages to, destruction of, loss of, or loss of use of tangible property; provided, that this Exclusion (F) will *not* apply to any **Claim** arising from damage to, destruction of, loss of, or loss of use of policyholder, customer or client records in an **Insured's** possession;
- (G) for libel, slander, or oral or written publication of defamatory or disparaging material; provided, that this EXCLUSION (G) will not apply to any actual or alleged libel, slander or oral or written publication of defamatory or disparaging material committed by an **Insured** in rendering **Professional Services**;
- (H) for an **Insured's** liability under any contract or agreement, regardless of whether such liability is direct or assumed; provided, that this EXCLUSION (H) will not apply to **Loss** an **Insured** would have sustained even in the absence of a contract or agreement or to preclude coverage for **Wrongful Acts** committed, or allegedly committed, in rendering **Professional Services** pursuant to a policy of insurance or other **Express Contract or Agreement**;
- (I) for any actual or alleged warranty or guarantee; provided, that this EXCLUSION (I) will not apply to **Loss** an **Insured** would have sustained even in the absence of the warranty or guarantee, or to preclude coverage for **Wrongful Acts** committed, or allegedly committed, in rendering **Professional Services** with respect to any insurance product that may, in whole or in part, constitute a warranty or guarantee;
- (J) based on or directly or indirectly arising out of or resulting from:
 - (1) any estimate of costs; or
 - (2) any representation or promise regarding any payment of dividends or the performance or value of any product with any investment component;
- (K) brought by or on behalf of, or in the name or right of, any:
 - (1) **Insured**;
 - (2) **Outside Service Provider**;
 - (3) **Independent Insurance Agent**; or
 - (4) reinsurer of the **Insurance Company**;

provided, that this EXCLUSION (K) will not apply to any **Claim** in the form of a crossclaim, third party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Policy; or to any **Claim** brought solely by such person or entity in its capacity as a policy holder under an insurance policy issued by the **Insurance Company**;

- (L) brought by or on behalf of, or in the name or right of, any person or entity with a legal or equitable interest in any form of security, including, without limitation, stocks, bonds and debentures, of, or ownership interest in, the **Insurance Company**, where the **Claim** is based on or directly or indirectly arises out of or results from such person's or entity's interest in such security or ownership interest or any actual or alleged breach of duty owed to such person or entity in its capacity as a security holder or owner of the **Insurance Company**;
- (M) brought by or on behalf of, or in the name or right of, any pool, association or syndicate (including any director, officer, member, or employee thereof) in which an **Insured** is a participant, or by any other participant (including directors, officers, members, or employees thereof) in such a pool, association or syndicate, regarding the business or operations of such pool, association or syndicate;
- (N) based on or directly or indirectly arising out of or resulting from the underwriting of insurance, including, without limitation, the classification of risks, the determination of rates and/or premiums to insure or reinsure risks, and the cancellation of, non-renewal of, issuance of, or failure to issue any policy of insurance, but only if such **Claim** is brought by or on behalf of, or in the name or right of, a **Regulator**;
- (O) based on or directly or indirectly arising out of or resulting from the service by any **Insured** as a member, partner principal, director, officer, trustee, or employee of:
 - (1) any entity other than the **Insurance Company**, even if such service is directed or requested by the **Insurance Company**; or
 - (2) any entity acquired by the **Insurance Company**, whether by merger, consolidation or otherwise, at any time prior to the **Insurance Company's** acquisition of such entity;
- (P) based on or directly or indirectly arising out of or resulting from:
 - (1) the provision of investment banking services, including service as an Insurer, consultant, adviser or specialist, or the giving of financial, economic or investment advice relating to or in connection with any aspect of corporate mergers, acquisitions, securities offerings, restructuring, divestitures, or other forms of investment banking;
 - (2) the formation, syndication, operation, administration, or termination of any real estate investment trust or limited partnership;
 - (3) activities or services as a "broker" or "dealer" in securities, as defined in Section 3(a)(5) and 3(a)(6), respectively, of the Securities and Exchange Act of 1934, as amended; or
 - (4) activities or services as a construction manager, real estate broker or agent, title agent, escrow agent, property manager, or real estate consultant;

- (Q) based on or directly or indirectly arising out of or resulting from medical, dental or other health care services; health care cost review; health care professional peer review or utilization review, credentialing and provider selection; or the administration, operation or management of any health care plan;
- (R) based on directly or indirectly arising out of or resulting from any actual or alleged violation of the Employee Retirement Income Security Act of 1974 or any regulations promulgated thereunder or relating thereto or of any similar provisions of international, federal, state, or local statutory or common law, or any regulations pertaining thereto, in connection with the **Insurance Company's** own pension, employee benefit and/or welfare plans;
- (S) based on or directly or indirectly arising out of or resulting from the grant, extension, funding, purchase, sale, origination, participation, restructuring, acceleration, transfer, repossession, withdrawal, termination, assignment or foreclosure of any loan, lease, extension of credit or other funding commitment; or the failure or refusal to do any of the foregoing; or the rendering of advice in connection with any loan, lease, extension of credit or other funding commitment; or the operation or control of any entity or property acquired as security or collateral for any loan, lease, extension of credit, or funding commitment;
- (T) based on or directly or indirectly arising out of or resulting from the adequacy or inadequacy of any entity's claim reserves;
- (U) based on or directly or indirectly arising out of or resulting from:
- (1) the bankruptcy, insolvency, receivership, conservatorship, or liquidation of any **Insured** or of any entity to which an **Insured** provides **Professional Services**;
 - (2) the financial inability of any **Insured** or any entity to which an **Insured** provides **Professional Services** to pay **Claims** or perform **Professional Services**; or
 - (3) the bankruptcy, insolvency, receivership, conservatorship, or liquidation of, or suspension of payments or failure or refusal in whole or in part to pay by, any broker or dealer in securities or commodities; any bank or banking firm; any investment company or investment banking firm; any insurance or reinsurance agent, broker or intermediary; or any joint underwriting association;
- (V) based on or directly or indirectly arising out of or resulting from any breakdown, malfunction, error, failure, or unauthorized use of or access to any machine, motor, electronic equipment, voice or video communications system, computer, or computer network, equipment, hardware, software, programs, or data, including, without limitation, any **Claim** based on or directly or indirectly arising out of or resulting from any statement or representation regarding the capabilities or adequacy of any of the foregoing; or
- (W) against any **Subsidiary** or any **Insured Person** of any such **Subsidiary** for any **Wrongful Act** committed during any time such entity is not a **Subsidiary**.

IV. Conditions

(A) **Notice; Timing and Interrelationship of Claims:**

- (1) As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the Insurer written notice of such **Claim**, with full details, as soon as practicable after the **Claim** is first made but in no event later than sixty (60) days after the end of the **Policy Period**. A **Claim** is first made when an **Insured** first receives notice of the filing of a complaint, notice of charges, a formal investigative order or similar document or by the return of an indictment against an **Insured** or when an **Insured** first receives the written demand or notice that constitutes a **Claim** under DEFINITION (B).
- (2) If, during the **Policy Period**, the **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter, but before the expiration or cancellation of the Policy:
 - (a) gives the Insurer written notice of the **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from the **Wrongful Act**, the damages which may result from the **Wrongful Act**, and the circumstances by which the **Insured** first became aware of the **Wrongful Act**; and
 - (b) requests coverage under this Policy for any subsequently resulting **Claim** for the **Wrongful Act**;

then any such subsequent resulting **Claim** will be deemed made when the notice was provided. As a condition precedent to any right to payment in respect to any such subsequently resulting **Claim**, the **Insured** must give the Insurer written notice of such **Claim**, with full details, as soon as practicable after the **Claim** is made.

- (3) All notices under CONDITIONS (A)(1) and (A)(2) must be sent by certified mail to the address set forth in ITEM 9 of the Declarations.
- (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION (A)(2), whichever is earlier.

(B) **Limit of Liability; Retention:**

- (1) The amount stated in ITEM 3 of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under the Policy for all **Loss**, including **Defense Expenses**, from all **Claims** made or deemed made during the **Policy Period**.
- (2) **Defense Expenses** will be part of and not in addition to the Insurer's Limit of Liability and payment of **Defense Expenses** by the Insurer will reduce and may exhaust its Limit of Liability.
- (3) With respect to each **Claim** under the Policy, the Insurer shall be obligated to pay **Loss**, including **Defense Expenses**, only in excess of the retention state in ITEM 4 of the Declarations. The Insurer will have no obligation whatsoever, either to the **Insureds** or to any other person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although

the Insurer will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the Insurer any amounts so paid.

(C) **Defense and Settlement of Claims; Payments and Allocation of Loss:**

- (1) The Insurer will have no duty under this Policy to defend any **Claim**. Except as set forth in CONDITION (C)(2) below, no **Defense Expenses** may be incurred and no settlement of any **Claim** may be made without the Insurer's consent, such consent not to be unreasonably withheld. The Insurer shall have the right to consent to the **Insured's** selection of counsel, such consent not to be unreasonably withheld. If more than one **Insured** is involved in a **Claim**, it shall not be unreasonable for the Insurer to withhold its consent to separate counsel for one or more of such **Insureds** unless there is an actual or potential material conflict of interest between or among such **Insureds**. Subject to CONDITION (C)(2) below, no **Insured** shall admit any liability or consent to entry of judgement against any **Insured** without the Insurer's prior written consent.
- (2) Notwithstanding CONDITION (C)(1) above, the **Insured** may settle any **Claim** without the Insurer's prior written consent if the total **Loss** resulting from such **Claim** does not exceed fifty percent (50%) of the amount of the applicable retention set forth in ITEM 4 of the Declarations; provided, however, the **Insured** must promptly advise the Insurer of any such settlement and provide any information in connection therewith that the Insurer may request. If the **Insured** reasonably expects that the **Loss** resulting from any **Claim** will exceed fifty percent (50%) of the applicable retention, the Insurer shall have the right to participate in any settlement negotiations, and the **Insured** agrees to obtain the written consent of the Insurer prior to making any settlement offer or responding to any settlement demand.
- (3) After the applicable retention set forth in ITEM 4 of the Declarations has been met, the Insurer will, upon written request, pay on a current basis **Defense Expenses** for which this Policy provides coverage. Otherwise, the Insurer will pay **Loss** only upon the final disposition of a **Claim**.
- (4) As a condition of any payment of **Defense Expenses** under CONDITION (C)(3) above, the Insurer may, at its sole option, require a written undertaking on terms and conditions satisfactory to the Insurer guaranteeing the repayment of any **Defense Expenses** paid to or on behalf of any **Insured** if it is finally determined that **Loss** incurred by such **Insured** would not be covered.
- (5) If both **Loss** covered by this Policy and **Loss** not covered by this Policy are incurred, either because a **Claim** made against the **Insured** includes both covered and uncovered matters or because a **Claim** is made against both the **Insured** and others not included within the definition of **Insured**, the **Insured** and the Insurer agree to use their best efforts to determine a fair and proper allocation of all such amounts. The determination of a fair and proper allocation shall take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **Claim** by, the **Insureds**. In the event that an allocation cannot be agreed to, then the Insurer will make an interim payment of the amount of **Loss**, including **Defense Expenses**, which the parties agree is not in dispute until a final amount is agreed upon or determination pursuant to the provisions of this Policy and applicable law.

- (6) With respect to any **Wrongful Act** reported in accordance with CONDITION (A)(2) which may subsequently give rise to a **Claim** for which coverage may be provided under this Policy, the Insurer may, but shall not be obligated to, pay costs incurred by the **Insured** with the Insurer's written consent to mitigate loss or otherwise compensate any client or customer of the **Insurance Company** prior to any **Claim** being made in connection therewith. For the purposes of this CONDITION (C)(6), **Loss** shall not include diminution in value, or damages resulting from the diminution in value, of money, securities, property, or in any other item of value, unless caused by a **Wrongful Act** of an **Insured** in the performance of **Professional Services**, or loss of actual money, securities, property, or any other item of value in the custody, care or control of an **Insured**.

(D) Spouses of Insured Persons:

- (1) The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations, and exclusions, be extended to apply to **Loss** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse of an **Insured Person**, but only if:
- (a) the **Claim** against such spouse results from a **Wrongful Act** actually or allegedly committed by the **Insured Person** to whom the spouse is married; and
 - (b) such **Insured Person** and his or her spouse are represented by the same counsel in connection with such **Claim**.
- (2) No spouse of an **Insured Person** will, by reason of this CONDITION (D), have any greater right to coverage under this Policy than the **Insured Person** to whom such spouse is married.
- (3) The Insurer will not be liable under this CONDITION (D) to make any payment of **Loss** in connection with any **Claim** against a spouse of an **Insured Person** for any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty by such spouse.

(E) Cancellation; No Obligation to Renew

- (1) The Insurer may not cancel this Policy except for failure to pay a premium when due, in which case twenty (20) days' written notice will be given.
- (2) The **Named Insured** may cancel this Policy by mailing the Insurer written notice stating when thereafter, but no later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
- (3) The Insurer shall not be required to renew this Policy upon its expiration. If the Insurer elects not to renew this Policy, the Insurer will deliver or mail to the **Named Insured** written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations.

(F) Adjustments for Acquisitions, Mergers, and Other Changes in Control:

(1) Automatic Coverage

If, after the effective date of this Policy, the **Insurance Company** acquires another entity or merges with another entity such that the **Insurance Company** is the surviving entity or the acquired or merged entity becomes a **Subsidiary**, and;

- (a) at the time of such transaction, the assets of the entity so acquired do not exceed twenty-five percent (25%) of the total assets of the **Insurance Company** as reflected in the **Insurance Company's** most recent audited financial statement; and
- (b) the **Named Insured** gives written notice of such acquisition or merger to the Insurer within thirty (30) days after the effective date of such acquisition or merger;

then such acquired or merged entity and the directors, officers and employees of such entity who join the **Insurance Company** or new **Subsidiary** as a result of such acquisition or merger shall be deemed to be **Insureds** as of the effective date of such acquisition or merger, but only if and to the extent they otherwise are within the definition of **Insured** under DEFINITION (G) of this Policy. No coverage will be available under its Policy for **Loss** from any **Claim** against any such acquired or merged entity, or the directors, officers and employees of such entity, for any **Wrongful Act** committed or allegedly committed before the date of such acquisition or merger.

(2) Optional Coverage – Acquired Entity

If after the effective date of this Policy, the **Insurance Company** acquires another entity or merges with another entity such that the **Insurance Company** is the surviving entity or the acquired or merged entity becomes a **Subsidiary**, and;

- (a) at the time of such transaction, the assets of the entity so acquired exceed twenty-five percent (25%) of the total assets of the **Insurance Company** as reflected in the **Insurance Company's** most recent audited financial statement; and
- (b) the **Named Insured** gives written notice of the acquisition or merger to the Insurer within thirty (30) days after the effective date of such acquisition or merger;

then the Insurer may require such additional information, impose such additional coverage terms, and/or charge such additional premium in connection with the acquisition or merger as the Insurer, in its sole discretion, deems appropriate: provided, however, that the acquired or merged entity and the directors, officers and employees of such entity who join the **Insurance Company** or new **Subsidiary** as a result of such acquisition or merger shall be deemed to be **Insureds** if and to the extent they otherwise are within the definition of **Insured** for the period from the effective date of the acquisition or merger until the later of (i) sixty (60) days after the effective date of the acquisition or merger, or (ii) thirty (30) days after the Insurer has notified the **Named Insured** of any additional coverage terms imposed or

additional premium charged in connection with the acquisition or merger. No coverage will be available under this Policy for **Loss** from any **Claim** against such acquired or merged entity, or the directors, officers and employees of such entity, for any **Wrongful Act** committed or allegedly committed before the date of such acquisition or merger.

(3) Optional Coverage-Failure to Provide Notice

If, after the effective date of this Policy, the **Insurance Company** acquires another entity or merges with another entity such that either the **Insurance Company** is the surviving entity or the acquired or merged entity becomes a **Subsidiary**, and the **Named Insured** fails to give written notice of such acquisition or merger to the Insurer within thirty (30) days after the effective date of such acquisition or merger, then the acquired or merged entity and the directors, officers and employees of such entity who join the **Insurance Company** or the new **Subsidiary** as a result of such acquisition or merger shall not be entitled to any coverage under this Policy, unless the Insurer, in its sole discretion, agrees to provide such coverage and then only to the extent agreed to by the Insurer and on such terms as the Insurer, in its sole discretion, may impose.

(4) Conversion of Coverage under Certain Circumstances

If, after the effective date of this Policy, any of the following events occurs:

- (a) the acquisition of the **Insurance Company**, or all or substantially all of its assets, by another entity or the merger or consolidation of the **Insurance Company** into or with another entity such that the **Insurance Company** is not the surviving entity;
- (b) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official for or with respect to the **Insurance Company**;
- (c) the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of the directors of the **Insurance Company**; or
- (d) a change in control of the **Insurance Company** as defined under applicable law or regulation;

then coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, this Policy may not be canceled, regardless of Condition (E), and the entire premium for the Policy will be deemed fully earned.

(5) Continuation of Coverage

The provisions of CONDITIONS (F)(1)-(F)(4) shall not apply to any merger or acquisition involving only the **Named Insured** and/or **Subsidiaries**. If, after the effective date of this Policy, any such acquisition or merger involving only the **Named Insured** and/or **Subsidiaries** occurs, the **Named Insured** shall provide notice thereof as soon as practicable, but coverage under this Policy shall remain in full force and effect with respect to the surviving **Insurance**

Company and all directors, officers and employee, as applicable, of the surviving **Insurance Company** after the effective date of the acquisition or merger.

(G) Extended Reporting Period

- (1) If the **Named Insured** or the Insurer decides not to renew this Policy, the **Named Insured** will have the right to purchase an extension of the coverage otherwise afforded by the Policy for **Loss** from **Claims** first made during the period of one (1) year after the Expiration Date set forth in ITEM 2(b) of the Declarations (the "Extended Reporting Period") but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION (F)(4), whichever is earlier. The additional premium for the Extended Reporting Period is set forth in ITEM 7 of the Declarations. The election of, and the payment of the premium for, the Extended Reporting Period must be made within thirty (30) days after the Expiration Date set forth in ITEM 2(b) of the Declarations. If such election and payment are not made within thirty (30) days after the Expiration Date set forth in ITEM 2(b) of the Declarations, the **Named Insured** will have no right to purchase the Extended Reporting Period at any later date.
- (2) If the **Named Insured** purchases the Extended Reporting Period in accordance with CONDITION (G)(1) above, any **Claim** made during the Extended Reporting Period shall be deemed to have been made during the **Policy Period**. The Insurer's Limit of Liability in respect of **Claims** made during the Extended Reporting Period shall be part of, and not in addition to, the aggregate Limit of Liability for all **Claims** under this Policy, all as set forth in ITEM 3 of the Declarations.
- (3) As a condition precedent to the right to purchase the Extended Reporting Period, the total premium for this Policy must have been paid. If the **Named Insured** cancels this Policy under CONDITION (E)(2), it shall not have the right to purchase the Extended Reporting Period.
- (4) In the event that the Extended Reporting Period is purchased, the entire premium for the Extended Reporting Period will be deemed to have been fully earned at its commencement.

(H) Other Insurance; Other Indemnification:

- (1) All **Loss** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically in excess of this Policy. For purposes of this CONDITION (H)(1), "other valid insurance" shall not be deemed to include any coverage for extra contractual obligations (including judgements or settlements in excess of policy limits) available to the **Insured** under any of its reinsurance agreements. This Policy will not be subject to the terms of any other insurance.
- (2) All coverage for **Loss** from **Claims** against **Insureds** for **Wrongful Acts** in connection with the performance of, or failure to perform, services by any **Outside Service Provider** or **Independent Insurance Agent** will be specifically excess of, and will not contribute with:

- (a) any other valid insurance (whether collectible or not) maintained by such Outside Provider or Independent Insurance Agent; and
- (b) any indemnification by such **Outside Service Provider** or **Independent Insurance Agent**;

which is available to such **Insureds** in connection with such services.

(I) **Exhaustion:**

If the Insurer's Limit of Liability is exhausted by the payment of **Loss**, the premium will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind or nature whatsoever under this Policy.

(J) **Cooperation; Subrogation:**

The **Insured** will provide the Insurer with all information, assistance and cooperation that the Insurer reasonably requests and will do nothing that may prejudice the Insurer's position or potential or actual rights of recovery. The Insurer will be subrogated to the extent of any payment to all of the rights of recovery of the **Insureds**. The **Insureds** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Insurer effectively to bring suit in their name. The obligations of the **Insureds** under this CONDITION (J) will survive the cancellation or other termination of this Policy.

(K) **Representations; Severability:**

The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete and agree that this Policy is issued in reliance on the truth of the representation and that such particulars and statements which are deemed to be incorporate into and to constitute a part of this Policy, are the basis of this Policy. No knowledge or information possessed by any **Insured** will be imputed to any other **Insured** except for material facts or information known to the person or persons who signed the **Application**. In the event that any of the particulars or statements in the **Application** is untrue, this Policy will be void with respect to any **Insured** who knew of such untruth or to whom such knowledge is imputed.

(L) **No Action against the Insurer:**

- (1) No action may be taken against the Insurer unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insureds** to pay is established in fact, or by written agreement of the **Insureds**, the claimant and the Insurer.
- (2) No person or entity will have any right under this Policy to join the Insurer as a party to any **Claim** to determine the liability of any **Insured**; nor may the Insurer be impleaded by an **Insured** or his or her or its legal representative in any such **Claim**. The Insurer will not be relieved of any of its obligations under the Policy by the bankruptcy or insolvency of any of the **Insureds** or, in the case of the **Insured Persons**, their estates.

(M) **Authorization and Notices:**

The **Named Insured** will act on behalf of the **Insureds** with respect to the giving and receiving of any notices and the payment and return of premiums from the Insurer.

(N) **Territory:**

This Policy applies to any **Wrongful Act** occurring and any **Claim** made anywhere in the world.

(O) **Changes:**

Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not effect a waiver or change in any part of this Policy or estop the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.

(P) **Assignment**

No assignment of interest under this Policy will bind the Insurer without its consent.

(Q) **Entire Agreement:**

The **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the Insurer or any of its agents relating to this Insurance.

(R) **Headings:**

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