

## INSURANCE AGENCY PROFESSIONAL LIABILITY POLICY

THIS IS A "CLAIMS MADE AND REPORTED" POLICY. SUBJECT TO ITS TERMS AND PROVISIONS, THIS POLICY ONLY AFFORDS COVERAGE FOR CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER IN WRITING DURING THE POLICY PERIOD OR DISCOVERY PERIOD, IF APPLICABLE. IN ADDITION, DEFENSE COSTS ARE INCLUDED IN AND WILL REDUCE THE LIMITS OF LIABILITY.

PLEASE READ THIS ENTIRE POLICY CAREFULLY. CONSULT YOUR BROKER OR OTHER REPRESENTATIVE IF YOU DO NOT UNDERSTAND ANY TERMS OR PROVISIONS OF THIS POLICY.

In consideration of the payment of premiums and in reliance upon the statements contained in the **Application**, which is incorporated into this Policy and forms part hereof, the insurer identified on the Declarations, herein called the "**Insurer**," agrees as follows:

### I. Insuring Agreement

The **Insurer** shall pay, on behalf of an **Insured**, **Loss** which the **Insured** becomes legally obligated to pay because of a **Claim** that is both made against the **Insured** and reported to the **Insurer** in writing during the **Policy Period** or Discovery Period, if applicable, for a **Wrongful Act** committed solely in the rendering or failing to render **Professional Services** for a **Client**, provided:

1. Such **Wrongful Act** occurred on or after the **Retroactive Date**; and
2. As of the inception date of this Policy or the first policy issued to the **Named Insured** by the **Insurer** or any of the **Insurer's** parents, subsidiaries or affiliates of which this Policy is the last in a series of continuously renewed policies, no **Insured** had knowledge or reasonable basis upon which to anticipate that the **Wrongful Act** or any **Interrelated Wrongful Act** could result in a **Claim**.

### II. Defense and Settlement

The **Insurer** shall have the right and duty to defend any civil litigation or arbitration that constitutes a **Claim** against an **Insured** that is covered by this Policy. At its discretion, the **Insurer** may appoint counsel to represent the **Insureds** for any other matters that constitute **Claims** that are covered by this Policy. The **Insurer**, however, does not have a duty to defend such other matters. The **Insurer** shall appoint counsel of its selection to defend the **Insureds** and pay associated **Defense Costs**.

The **Insurer** has the right to investigate, conduct negotiations and with the **Insured's** written consent, settle any **Claim** as it deems expedient. If the **Insured** refuses to consent to a settlement or compromise recommended by the **Insurer** and acceptable to the claimant, then the **Insurer's** Limit of Liability under this Policy with respect to such **Claim** shall be reduced to the amount of **Loss** for which the **Claim** could have been settled, including all **Defense Costs** incurred up to the time the **Insurer** made its recommendation to the **Insured**.

### III. Additional Coverages

#### A. Defense Costs for Regulatory Proceedings

1. Subject to the Regulatory Proceedings Limit of Liability set forth in Item 3.C. of the Declarations, which is in addition to the each **Claim** and Aggregate Limits of Liability set forth in Item 3.A. and 3.B. of the Declarations, the **Insurer** shall pay on behalf of the **Insured Defense Costs** which the **Insured** shall become legally obligated to pay because of a **Regulatory Proceeding** first commenced against the **Insured** during the **Policy Period** for a **Wrongful Act** committed on or after the **Retroactive Date** by an **Insured** solely in the rendering of or failing to render **Professional Services** for a **Client**.

2. The **Insurer** shall not be liable for any direct or indirect **Loss**, losses, fines, penalties or any form of award or relief whatsoever resulting from a **Regulatory Proceeding**.

B. Litigation Expense Reimbursement

Subject to the Litigation Expense Limit of Liability set forth in Item 3. D. of the Declarations, which is in addition to the each **Claim** and Aggregate Limits of Liability set forth in Item 3.A. and B. of the Declarations, the **Insurer** shall reimburse the **Insured's** actual loss of earnings and reasonable expenses incurred when the **Insured** attends a hearing, deposition or trial at the request of the **Insurer** in the course of defending an otherwise covered **Claim**.

C. Subpoena Expenses

Subject to the Subpoena Expenses Limit of Liability set forth in Item 3.E. of the Declarations, which is in addition to the each **Claim** and Aggregate Limits of Liability set forth in Item 3.A. and 3.B. of the Declarations, the **Insurer** shall, at the **Insured's** request, retain counsel and pay such counsel's reasonable and necessary fees and costs to advise the **Insured** regarding the production of documents and/or represent the **Insured** during the preparation and giving of testimony, in response to a subpoena not involving a **Claim** against any **Insured** that is both served on the **Insured** and reported to the **Insurer** in writing during the **Policy**.

- D. Any notice to the **Insurer** of a **Regulatory Proceeding** or subpoena shall be deemed notice of a **Wrongful Act** under Section VI.B. of the Policy.

#### IV. Definitions

For purposes of this Policy, the terms in bold type shall have special meanings that are designated below. All other terms shall have those meanings commonly understood by professionals who are engaged in the business of insurance:

- A. **Application** means all signed applications and any attachments and materials submitted therewith for this Policy and for any policy in an uninterrupted series of policies issued by the **Insurer** or any of its **Affiliate of the Insurer** of which this Policy is a renewal or replacement. All such applications, attachments, materials and information are deemed attached to and incorporated into this Policy.
- B. **Affiliate of the Insurer** means any insurer controlling, controlled by or under common control with the **Insurer**.
- C. **Claim** means a written demand received by any **Insured** for monetary damages (including pleadings received in a civil litigation, arbitration, mediation or alternative dispute resolution) for an actual or alleged **Wrongful Act**. A **Claim** does not include the following:
  1. a demand for declaratory, injunctive or other non-monetary relief;
  2. any form of criminal proceeding;
  3. any demand by a governmental or quasi-governmental official or agency or any self-regulatory official or agency except if the agency or official is a **Client** of the **Insured** in connection with the rendering of **Professional Services**.
- D. **Client** means an individual, company or entity for whom or which an **Insured** renders **Professional Services** to gain monetary compensation.

- E. **Company** means the **Named Insured** and any **Subsidiary** created or acquired on or before the inception date and time stated in Item 2. of the Declarations or, subject to General Conditions XI.E., during the **Policy Period**, including any such company as a debtor in possession under United States bankruptcy law or equivalent status under foreign law.
- F. **Defense Costs** means reasonable and necessary fees, costs and expenses incurred by or at the direction of the **Insurer** in the defense of a **Claim**, pre and post judgment interest, and the premium for appeal, attachment or similar bonds. The **Insurer** shall have no obligation to apply for or provide such bonds. **Defense Costs** shall not include any remuneration, regular or overtime wages, salaries, benefits or fees of the directors, officers, managers and employees, of the **Insured** or **Insurer** or fees and expenses of independent adjusters.
- G. **Insured** means:
1. the **Company** and any **Predecessor Firm**;
  2. any present or former partner, director, officer, manager, employee or independent contractor of the **Company** or a **Predecessor Firm** solely while acting on behalf of the **Company** or a **Predecessor Firm**;
  3. any present or former **Licensed Producer** solely while acting on behalf of the **Company** or a **Predecessor Firm**;
  4. any natural person who during the **Policy Period** becomes:
    - a. an officer, employee, independent contractor or **Licensed Producer** and becomes a party to a valid contract with or employed by the **Company**; or
    - b. affiliated with the **Company** as a partner, director or manager,shall be an **Insured** upon the effective date of such contract, employment or affiliation provided that if they are a **Licensed Producer** that they are licensed with any governmental or regulatory entity charged with regulating the solicitation and sale of any **Professional Services** on:
    - a. the effective date of their contract, employment or affiliation with the **Company**; and
    - b. any date on which a **Wrongful Act** is alleged to have occurred.
  5. the lawful spouse of any natural person described herein, but solely with respect to a **Claim** arising out of such status as spouse, and provided that it does not include any **Wrongful Acts** by such spouse;
  6. the estate, heirs, executors, administrators or legal representatives of an **Insured** in the event of such **Insured's** death, incapacity or bankruptcy but only to the extent such **Insured** would otherwise be provided coverage under this Policy.
- H. **Insurer** means:
1. the insurance company providing coverage as shown on the Declarations.

I. **Interrelated Wrongful Acts** means any **Wrongful Acts** that are:

1. similar, repeated or continuous; or
2. connected by reason of any common fact, circumstance, situation, transaction, causality, event, decision or policy or one or more series of facts, circumstances, situations, transactions, casualties, events, decisions or policies.

J. **Licensed Producer** means any natural person who is a:

1. Licensed Property and Casualty Insurance Agent, Broker, General Agent, Brokerage General Agent, Surplus Lines Broker, Wholesaler, Retailer, MGA, MGU or Program Administrator; or
2. Licensed Accident and Health Insurance Agent, Broker, General Agent or Brokerage General Agent, Surplus Lines Broker, Wholesaler, Retailer, MGA, MGU or Program Administrator,

while acting on behalf of and within the scope of his or her duties for the **Company** provided they are licensed by any federal, state or local governmental or regulatory entity charged with regulating the solicitation and sale of **Professional Services** on the:

- a. effective Date of this Policy, and
- b. any date on which a **Wrongful Act** is alleged to have occurred.

K. **Loss** means **Defense Costs** and compensatory monetary damages, judgments, settlements or awards that an **Insured** is legally obligated to pay on account of a covered **Claim**.

**Loss** includes taxes, fines or penalties incurred by a third party and included in such third party's **Claim** against the **Insured**.

**Loss** also includes punitive or exemplary damages to the fullest extent permitted by the law of any state or jurisdiction where: (1) the punitive or exemplary are awarded or imposed; (2) any **Wrongful Act** underlying the **Claim** was committed; (3) either the **Insurer** or the **Insured** is incorporated, has its principal place of business or resides; or (4) this Policy was issued or became effective.

**Loss** does not include:

1. civil or criminal fines or penalties imposed by law or regulation;
2. the multiplied portion of a multiplied damage award;
3. the return, withdrawal, or restitution of fees, commissions, expenses or charges;
4. costs incurred as a result of any non-pecuniary or injunctive relief;
5. taxes assessed against the **Insured**; or
6. matters which are deemed uninsurable by law.

L. **MEWA** means a Multiple Employer Welfare Arrangement, as the term is defined in the Employee Retirement Income Security Act of 1974, Public Law 93-406, and any amendments thereto.

M. **Named Insured** means the entity stated in Item 1. of the Declarations.

- N. **Personal Injury** means injury or damage arising out of:
1. false arrest, detention or imprisonment;
  2. malicious prosecution;
  3. libel or slander or other defamatory or disparaging material or a publication or utterance in violation of an individual's right of privacy, including utterances made in the course of or related to any form of advertising activities conducted by or on behalf of an **Insured**; or
  4. wrongful entry or eviction or other invasion of the right to private occupancy;
- solely in the rendering of or failing to render **Professional Services**.
- O. **Policy Period** means the period of time from the inception date and time stated in Item 2. of the Declarations to the earlier of the expiration date and time stated in Item 2. of the Declarations or the effective date and time of the cancellation of this Policy.
- P. **Pollutants** mean:
1. any substance that exhibits any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any foreign, state, county, municipal or local counterpart thereto, including, but not limited to, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, dust, soot, fumes, acids, alkalis, chemicals or waste materials (including but not limited to materials to be recycled, reconditioned or reclaimed, sewage or waste water, nuclear materials, infectious or medical waste); or
  2. any air emission, magnetic or electric waves or emissions, odor, oil or oil products, asbestos or asbestos products, fibers, mold, spores, fungi, germs, bacteria, viruses or any noise.
- Q. **Predecessor Firm** means any entity listed in Item 6. of the Declarations.
- R. **Professional Services** are solely limited to the following activities undertaken pursuant to a valid license in both the state where an **Insured** is located and the state where a **Client** is located or transaction is undertaken:
1. the soliciting, placing, selling or servicing of any of the following:
    - a. property and casualty insurance;
    - b. life insurance, accident and health insurance, long-term care insurance, disability income insurance or fixed annuities;
    - c. variable annuities, flexible and scheduled premium annuities and variable life insurance;
    - d. employee benefit plans, including but not limited to Group Plans, Group Ordinary Pension or Profit Sharing Plans, 401(K) or 501(b) Plans, Retirement Annuities, Life, Accident and Health or Disability Plans;
  2. insurance consulting and expert witness services for a **Client** in connection with insurance related matters;
  3. appraising real or personal property for a **Client** in connection with the products set forth above;

4. arrangement of premium financing for a **Client** in connection with the placement of insurance coverage;
5. safety consulting, loss control services, teaching insurance/risk management courses/seminars and risk management services for a **Client** in connection with the products set forth above;
6. claims adjusting and administration for a **Client** in connection with the products set forth above; and
7. services as a notary public.

**Professional Services** shall not include the sale, attempted sale, servicing or any activities in connection with (i) mutual funds; (ii) securities, including but not limited to, stocks, bonds, limited partnerships, promissory notes, viatical settlements, leasing arrangements, real estate trusts, and investment participation or pooling arrangements.

**Professional Services** shall not include the **Insured** acting as a:

1. Third-party claims administrator;
  2. Financial planner or advisor;
  3. Registered Investment Advisor; or
  4. Registered Representative.
- S. **Regulatory Proceeding** means a proceeding by a state or other regulatory or disciplinary official, board or agency to investigate charges of professional misconduct by the **Insured** solely in the rendering of or failing to render **Professional Services**.
- T. **Retroactive Date** means either 1. or 2. below:
1. for all **Insureds** the Retroactive Date shown in Item 5. of the Declarations, provided that any **Insured** was employed by or contracted or affiliated with the **Company** on the **Retroactive Date** shown in the Declarations.
  2. for any **Insured** who was not employed by or contracted or affiliated with the **Company** on the Retroactive Date shown in Item 5. of the Declarations, the date on which the **Insured** was first employed by or contracted or affiliated with the **Company**.
- U. **Subsidiary** means any corporation or limited liability company during any time in which the **Named Insured** owns, directly or indirectly through one or more of its **Subsidiaries**, more than fifty percent (50%) of the outstanding stock or other interest representing the present right to vote, designate or select a majority of the board of directors of a corporation or the management board of a limited liability company.
- V. **Wrongful Act** means a negligent act, error or omission or **Personal Injury** committed by an **Insured** or any natural person for whose **Wrongful Acts** the **Insured** is legally responsible solely in the rendering of or failing to render **Professional Services**.

## V. Exclusions

This Policy shall not apply to and the **Insurer** shall not pay **Loss** for any **Claim**:

- A. for bodily injury, sickness, disease or damage to or destruction of any tangible property, including loss of use thereof;

- B. brought or maintained, directly or indirectly, by or on behalf of:
1. an **Insured**;
  2. any entity other than the **Company** in which any **Insured** was or is a partner, director, officer, manager or employee, or which an **Insured** operates or manages; or
  3. any entity which an **Insured** owns, directly or indirectly, outstanding securities representing more than ten percent (10%) of the voting power for election of directors if the securities of such entity are publicly traded or outstanding securities representing more than thirty percent (30%) of the voting power for election of directors if the securities of such entity are privately held;
- C. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving the placement of insurance on any property in the care, custody or control of the **Insured** at any time;
- D. arising out of, based upon or in any way involving any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Policy is a direct or indirect renewal or replacement or any other policy which preceded this Policy;
- E. arising out of, based upon or in any way involving any known prior or pending litigation against any **Insured** filed on or before the Effective Date of this Policy or under any other policy of which this Policy is a direct or indirect renewal or replacement, whichever is earlier, or which is related in any way to the same or substantially the same facts, circumstances or situations which are the subject of or the basis for such prior and pending litigation;
- F. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any actual or alleged dishonest, purposeful, malicious, fraudulent or criminal act or willful violation of any federal, state or local statute by, at the direction of or with the knowledge of any **Insureds** or any gaining of profit, remuneration or monetary advantage to which any **Insureds** are not legally entitled; however, the **Insurer** shall continue to defend the **Insureds** that are alleged to have committed such acts, but the **Insureds** shall reimburse the **Insurer** for **Defense Costs** if such conduct is established as a matter of fact in a civil, criminal, or alternative dispute resolution proceeding or is admitted by the **Insureds**;
- provided that for the purposes of determining the applicability of Exclusion F., any actual or alleged dishonest, purposeful, malicious, fraudulent or criminal act or willful violation of any federal, state or local statute committed by any natural person who was, now is or shall be an officer, employee, independent contractor or member of the **Company** shall not be imputed to any other officer, employee, independent contractor or member of the **Company**, but such dishonest, purposeful, malicious, fraudulent or criminal act or willful violation of any federal, state or local statute shall be imputed to the **Company**.
- G. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:
1. any actual or alleged commingling of or failure to collect or safeguard funds; or
  2. any disputes with another agent or broker, including but not limited to commissions, fees, client lists or entitlements.
- H. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any actual or alleged liability of others assumed by an **Insured** under an agreement, contract, guarantee or warranty unless the **Insured** would be liable in the absence of such agreement, contract, guarantee or warranty;

- I. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any actual or alleged rendering of services as an actuary, accountant, attorney, enrolled agent, tax advisor, tax preparer, real estate agent, real estate broker, third-party administrator, financial planner or adviser, Registered Investment Adviser, securities Registered Representative or broker/dealer, regardless of whether such services are incidental to the rendering of **Professional Services**;
- J. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any actual or alleged sale, attempted sale, servicing, advice or planning with respect to any form of insurance placed directly or indirectly with any organization, entity or vehicle of any kind, nature or structure which is not licensed or authorized to do business in the state or jurisdiction with authority to regulate such business; however, this Exclusion shall not apply to a **Claim** based upon or arising out of the placement of insurance or coverage with an eligible surplus lines insurer in the state or jurisdiction with authority to regulate such business;
- K. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving insolvency, receivership, conservatorship, liquidation, bankruptcy or inability to pay:
1. of any company, organization, entity, vehicle or arrangement of any nature in which any **Insureds** placed, recommended to be placed or obtained coverage or alleged coverage; however, this Exclusion shall not apply to a **Claim** based upon or arising out of the insolvency, receivership, conservatorship, liquidation, bankruptcy or inability to pay of any (a) insurance company rated by A.M. Best as B+ or better at the time when the **Insureds** placed such coverage; or (b) municipal, state or federal governmental body; or
  2. of the **Insured**;
- L. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any benefit plan, insurance program, organization, association or trust owned or sponsored by any **Insureds** or in which any **Insured** is a participant, trustee or named fiduciary;
- M. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving the design, implementation, ownership, formation, operation or administration of any health maintenance organization, employee benefit plan, preferred provider organization, insurance company, captive, risk retention group, self-insurance program or purchasing group;
- N. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving actual or alleged unfair competition, restraint of trade, misuse of confidential or proprietary information or copyright, patent, trade mark or trade secret infringement, or illegal, improper or deceptive advertisement of **Professional Services**;
- O. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any employment-related **Wrongful Acts** or any discrimination on any basis as defined by federal, state or local statute, regulation, law or ordinance; provided, however, this exclusion does not apply to the soliciting, placing, selling or servicing of insurance for a **Client** of the **Insured**;
- P. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:
1. the creation, distribution, sale, licensing, installation or maintenance of any computer program, website or software; or



2. the unauthorized accessing, viewing, copying, dissemination, transmission or use of electronic data or systems, or proprietary, privileged, confidential or non-public material, information or intellectual property in any form by any person, even if such activity is characterized as theft and whether or not such unauthorized activity is by or on behalf of the **Insured** or by or on behalf of anyone else;

Q. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any notarized certification or acknowledgement of a signature without the physical appearance before the **Insured** of the person who is, or claims to be, the person signing the instrument;

R. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:

1. the actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** and any consultation, advice, sale, marketing, appraising, or financing in connection therewith; or
2. any direction to test for, treat, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants** and any consultation, advice, sale, marketing, appraising, or financing in connection therewith;

provided, however, this exclusion does not apply to the soliciting, placing, selling or servicing of insurance for a **Client** of the **Insured**;

S. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any employee benefit plan or pension plan, including violation of the Employee Retirement Income Security Act of 1974, and any amendments thereto, or similar federal, state or local statutory or common law or any rules and regulations promulgated hereunder; provided, however, this exclusion does not apply to the soliciting, placing, selling or servicing of insurance for a **Client** of the **Insured**;

T. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any actual or alleged sale, attempted sale, servicing or advice with respect to:

1. any **MEWA**;
2. Voluntary Employee Beneficiary Associations, within the meaning of the Employee Retirement Income Security Act of 1974 and amendments thereto; or
3. any similar arrangements and associations involving the pooling of funds for the provision of benefits of any nature; or
4. a Professional Employer Organization, or any other similar organization;

that is self-funded in whole or in part;

U. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving:

1. any actual or alleged guarantees, promises or warranties as to interest rates, market values, earnings, future values or future premiums or payments in connection with insurance or annuities;

2. a violation of any securities laws, including provisions of the Securities Act of 1933 or Securities Exchange Act of 1934, and any amendments thereto, or any state blue sky or securities law or similar state or federal securities related statute and any order or regulation issued pursuant to the foregoing statutes; provided, however, this exclusion does not apply to the soliciting, placing, selling or servicing of insurance for a **Client** of the **Insured**;
  3. the recommendation, sale, marketing, development or establishment of life settlements, structured settlements, viatical settlements or viatical investment pools.
- V. arising out of, based upon or in consequence of, directly or indirectly resulting from or in any way involving any unauthorized access to, failure, malfunction and/or breakdown of any computer, electrical, electronic or mechanical systems, or machines.

## VI. Limits of Liability and Retentions

### A. Limit of Liability

1. Limit of Liability Each Claim: The Limit of Liability of the **Insurer** for all **Loss**, including **Defense Costs**, for each **Claim** both first made and reported during the **Policy Period** and Discovery Period, if applicable, shall not exceed the amount stated in Item 3. A. of the Declarations for Each **Claim**.
2. Limit of Liability in the Aggregate for the Policy Period: The Limit of Liability of the **Insurer** for all **Loss**, including **Defense Costs**, for all **Claims** both first made and reported during the **Policy Period** and Discovery Period, if applicable, shall not exceed the amount stated in Item 3. B. of the Declarations as the Aggregate for the **Policy Period**.
3. Regulatory Proceedings Limit of Liability: The Regulatory Proceedings Limit of Liability set forth in Item 3.C. of the Declarations is the maximum amount payable under the additional coverage provided at Section III.A. of the Policy regardless of the number of **Regulatory Proceedings** initiated against **Insureds** during the **Policy Period** or the number of **Insureds** involved in such proceedings.
4. Litigation Expense Limit of Liability: The Litigation Expense Limit of Liability set forth in Item 3.D. of the Declarations is the maximum amount payable in the aggregate for all **Insureds** under the additional coverage provided at Section III.B. of the Policy.
5. Subpoena Expenses Limit of Liability: The Subpoena Expenses Limit of Liability set forth in Item 3.E. of the Declarations is the maximum amount payable under the additional coverage provided at Section III.C. of the Policy regardless of the number of subpoenas served on **Insureds** during the **Policy Period** or the number of **Insureds** subject to subpoenas.

### B. Retention

The Retention Amount stated in Item 4. of the Declarations is applicable to each **Claim** and applies to the payment of **Loss**, including **Defense Costs**. The Retention Amount shall be paid by the **Named Insured** and shall be uninsured and remain uninsured during the **Policy Period**. The Limits of Liability set forth in Items 3.A. and 3.B. of the Declarations are in addition to and in excess of the Retention Amount. No Retention Amount shall apply with respect to the additional coverages provided pursuant to Section III. of the Policy.

## VII. Notice and Cooperation

- A. As a condition precedent to the obligations of the **Insurer** under this Policy, the **Insureds** shall give the **Insurer** written notice of **Claims** made against the **Insureds** as soon as practicable during the **Policy Period**, or Discovery Period (if applicable), but in no event later than sixty (60) days after the end of the **Policy Period** of any **Claim** made against the **Insured**.
- B. The **Insured** shall furnish the **Insurer** with copies of demands, reports, investigations, pleadings and related papers, and provide other such information, assistance and cooperation as the **Insurer** may reasonably request in the investigation, settlement and defense of a **Claim**.
- C. The **Insured** shall further cooperate with the **Insurer** and do whatever is necessary to secure and affect any rights of indemnity, contribution or apportionment that the **Insured** may have.
- D. All written notices provided for in this Policy shall be in writing and addressed as provided in the claims notice attached to this Policy.

## VIII. Notice of Circumstances Giving Rise to a Claim

- A. If during the **Policy Period**, the **Insureds** become aware of a specific **Wrongful Act** which reasonably may be expected to give rise to a **Claim** being made against the **Insureds** and give written notice to the **Insurer** of the specific **Wrongful Act**, the reasons for anticipating such a **Claim**, the identities of the potential claimants and the **Insureds** allegedly responsible for such specific **Wrongful Act**, the amount of actual or potential damages, and the circumstances by which the **Insureds** first became aware of such specific **Wrongful Act**, then any **Claim** subsequently made against the **Insureds** arising out of such specific **Wrongful Act**, shall be deemed to have been made at the time such notice was received by the **Insurer**.
- B. The **Insureds** shall give notice to the **Insurer** under this Section at the address set forth in the claims notice attached to this policy.

## IX. Single Claim and Retention/Interrelated Wrongful Acts

All **Claims** based upon or arising out the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered a single **Claim** and each such single **Claim** shall be deemed to have been made on the earlier of the following:

- A. When the earliest **Claim** arising out of such **Wrongful Act** or **Interrelated Wrongful Acts** was first made or
- B. When notice was provided to the **Insurer** pursuant to Section VIII.B. herein concerning a **Wrongful Act** giving rise to such **Claim**.

## X. Discovery Period

- A. Automatic Discovery Period

If the **Named Insured** cancels or if the **Insurer** or the **Named Insured** refuses to renew this Policy, the **Insured** shall have a period of sixty (60) days after the expiration of the **Policy Period** to report to the **Insurer** any **Claim** which is first made during said sixty (60) day period and arises out of a **Wrongful Act** committed on or after the **Retroactive Date** and prior to the end of the **Policy Period**. Such period shall be referred to as the "Automatic Discovery Period".

B. Optional Discovery Period

1. If the **Insurer** or **Named Insured** cancels or refuses to renew this Policy, the **Named Insured** shall have the right, upon payment of additional premium in the amount of either:
  - a. one hundred twenty-five percent (125%) of the premium stated in Item 7. of the Declarations, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of twelve (12) months immediately following the effective date of such cancellation or non-renewal, or
  - b. one hundred seventy-five percent (175%) of the premium stated in Item 7. of the Declarations, to an extension of the coverage granted by this Policy with respect to any **Claim** first made during the period of thirty-six (36) months immediately following the effective date of such cancellation or non-renewal;

but only with respect to any **Wrongful Act** occurring prior to the end of the **Policy Period** and otherwise covered by this Policy. Such period shall be referred to as the "Optional Discovery Period".

2. The right to purchase the Optional Discovery Period shall terminate, however, unless the **Insurer** receives within thirty (30) days of the effective date of cancellation or non-renewal, written notice of such election together with the additional premium due.
  3. The additional premium for the Optional Discovery Period shall be fully earned at the inception of the Optional Discovery Period. The Optional Discovery Period is not cancelable.
  4. The first sixty (60) days of the Optional Discovery Period, if purchased, shall run concurrently with the Automatic Discovery Period.
- C. If the **Insurer** cancels this Policy because the **Named Insured** failed to pay a premium or other amounts when due or the **Insureds** are not in compliance with the terms and conditions of the Policy, the **Insureds** shall not have the right to the Automatic Discovery Period or to purchase the Optional Discovery Period as described in Paragraphs A. and B. above.
- D. The quotation of a different premium, retention amount, limit of liability or policy terms or conditions for renewal shall not constitute a cancellation or nonrenewal for purposes of Paragraphs A. and B. above.
- E. Claims which are properly reported during the Discovery Period will be deemed to have been made on the last day of the **Policy Period**.
- F. Notwithstanding any of the provisions of this Policy, the Discovery Period provided herein shall not apply if an **Insured** has other insurance that applies to a **Claim** in whole or in part.
- G. The Discovery Period provided herein shall not reinstate, increase or affect the applicable Limits of Liability or the **Policy Period**.

XI. General Conditions

A. Termination/Cancellation

1. The coverage afforded by this Policy shall terminate upon the earlier of:
  - a. the Expiration Date of the **Policy Period** as stated in Item 2. of the Declarations; or
  - b. receipt by the **Named Insured** of written notice by the **Insurer** that the Policy is terminated because of a failure to pay a premium when due or as provided by Section XI.A.3., below.

2. Other than for failure to pay a premium when due, the **Insurer** may cancel this Policy by providing written notice to the **Named Insured** at the address shown in Item 1. of the Declarations with the effective date of termination being not less than sixty (60) days thereafter. Proof of mailing the notice of cancellation shall be sufficient proof of such notice. In such event, the **Named Insured** shall receive a return of premium to be computed on a pro rata basis proportional to the length of time from the inception date of the **Policy Period** to the termination date.
3. The **Insurer** may cancel this Policy because of failure to pay a premium when due by providing written notice to the **Named Insured** at the address shown in Item 1. of the Declarations with the effective date of cancellation being not less than ten (10) days thereafter. Proof of mailing the notice of termination shall be sufficient proof of such notice.
4. The **Named Insured** may cancel the Policy by providing written notice to the **Insurer** at the address stated in Policy Declarations with the effective date of termination being not less than thirty (30) days thereafter. Proof of mailing the notice of termination shall be sufficient proof of such notice. If the **Named Insured** terminates the Policy, the **Insurer** shall retain the customary short rate proportion of the premium.

B. Mediation of Claims

If a **Claim** is fully and finally resolved with the **Insurer's** consent through voluntary mediation within one year from the date such **Claim** is first made, the Retention Amount for such **Claim** shall be reduced by fifty percent (50%) up to a maximum of \$25,000.

C. Action Against the Insurer

1. No action shall be taken against the **Insurer** unless, as a condition precedent thereto, the **Insureds** have fully complied with all the terms and provisions of this Policy. In addition, no action shall be taken against the **Insurer** until the amount of any **Insured's** obligation or liability to a third party has been finally determined by an award or judgment against any **Insured** in an actual adjudicatory proceeding.
2. No person, organization or entity shall have the right under this Policy to join any **Insureds** in any action or proceeding against an **Insurer** to determine the **Insurer's** liability nor shall the **Insurer** be impleaded in an action or proceeding by any **Insureds** or his/her/its legal representative.

D. Change of Control of the Named Insured

If during the **Policy Period**, the **Named Insured** consolidates with or merges into, or sells all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert, or any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than fifty (50%) of the voting power for election of directors or managers of the **Named Insured**, or acquires the voting rights of such an amount of securities, then this Policy shall continue in full force and effect but only as to **Wrongful Acts** occurring prior to the effective date of such event.

The **Named Insured** shall give the **Insurer** written notice of any such event as soon as practicable but no later than thirty (30) days after the date of such event.

E. Mergers and Acquisitions

1. If during the **Policy Period** the **Named Insured** acquires another entity by merger or by consolidation with a **Subsidiary**, acquires all or substantially all of the assets of another entity, or creates or acquires a **Subsidiary** and if the assets acquired through such transaction are fifteen percent (15%) or less of the total consolidated assets or total revenues of the **Named Insured** as of the inception of this Policy then, subject to all the other provisions of this Policy, coverage shall automatically apply to any **Claim** involving the merged or consolidated entity, **Subsidiary**, or assets.
2. If during the **Policy Period** the **Named Insured** acquires another entity by merger or by consolidation with a **Subsidiary**, acquires all or substantially all of the assets of another entity, or creates or acquires a **Subsidiary** and if the assets acquired through such transaction are more than fifteen percent (15%) of the total consolidated assets or total revenues of the **Named Insured** as of the inception of this Policy then, subject to all the other provisions of this Policy, coverage shall automatically apply to the merged or consolidated entity or **Subsidiary** for a period of thirty (30) days after such creation or acquisition. For coverage to apply to such merged or consolidated entity or **Subsidiary** after such thirty (30) day period, the **Named Insured** must provide the **Insurer** with full particulars of the transaction, agree to any additional premium and/or amendment of the provisions of this Policy the **Insurer** requires and pay any premium required.
3. There shall be no coverage for any **Wrongful Act** involving the merged or consolidated entity, **Subsidiary**, or assets that occurred prior to the consummation of a transaction described in 1. or 2. above, or for any other **Wrongful Act** whenever occurring which together with a **Wrongful Act** that occurred prior to the consummation of such transaction would constitute **Interrelated Wrongful Acts**.
4. There shall be no coverage for any **Wrongful Act** of any **Subsidiary** or any of its directors, officers or employees occurring on or after the date such entity ceases to be a **Subsidiary**.

F. Other Insurance

1. If any **Insureds** have other insurance for a **Claim** made and reported during the **Policy Period**, then this Policy shall be excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.
2. The foregoing shall not apply if such other insurance is specifically intended to be excess over the coverage afforded by this Policy.
3. If a **Claim** is insured by another policy provided by the **Insurer** or any of its parents, subsidiaries or affiliated companies, then the Limit of Liability for all **Loss** and **Defense Costs** under this Policy, as respects any such **Claim**, shall be reduced by any amounts paid or payable under such other insurance policy.

G. Subrogation

1. In the event of payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all of the rights of recovery of the **Insureds** against any person or organization. The **Insureds** shall execute and deliver all papers and instruments required and shall and do whatever else is necessary to enable the **Insurer** effectively to bring suit in their name and otherwise secure such rights. The **Insureds** shall do nothing to prejudice any such rights.

2. Any amount recovered after payment under this Policy shall be apportioned in the inverse order of payment to the extent of the actual payment. The expenses incurred in obtaining any such recoveries shall be apportioned in the ratio of the respective recoveries.

H. Assignment

This Policy and any and all rights hereunder are not assignable without the written consent of the **Insurer**.

I. Entire Agreement

The terms and provisions of this Policy shall not be waived, changed or modified, unless by endorsement. Notices to, by or from any agent, representative or servant of any **Insureds** or the **Insurer** shall not affect a waiver, change or modification of the Policy and shall not prevent the Insurer from asserting any rights under the Policy.

J. Conformity to Statute

Any terms of this Policy which are in conflict with the terms of any applicable laws construing this Policy are hereby amended to conform to such laws.

K. Authorization

By acceptance of this Policy, the **Named Insured** agrees to act on behalf of all of the **Insureds** for all purposes including but not limited to the negotiation of the terms of the Policy, payment of or return of premiums, receipt and acceptance of any endorsement issued to form a part of the Policy and giving and receiving notice of cancellation, termination or non-renewal of the Policy.

L. Territory

This Policy affords coverage for a **Wrongful Act** committed anywhere in the world provided that the **Claim** is made against the **Insureds** in the United States, its territories or possessions or Canada.

**XII. Service of Suit**

In the event of failure of the **Insurer** to pay the amount claimed to be due hereunder, the **Insurer**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the **Insurer's** rights to commence an action in any court of competent jurisdiction in the United States or to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such action may be made upon General Counsel, Law Department; and that in any such action instituted against the **Insurer** relating to this Policy, the **Insurer** will abide by the final nonappealable decision of such court or of any appellate court in the event of any appeal.

**XIII. Headings**

The descriptions in the headings and any subheading of this Policy (including any titles given to any Endorsement attached hereto) are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

This Policy shall not be valid unless completed by the attachment hereto of a Declaration Page and signed by a duly authorized representative of the **Insurer**.