

Policy Number:

## MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE POLICY

### IMPORTANT NOTICE

THIS IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD AND ARE THE RESULT OF WRONGFUL ACTS COMMITTED ON OR AFTER THE RETROACTIVE DATE BUT BEFORE THE END OF THE POLICY PERIOD.

THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES, SETTLEMENTS AND JUDGMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF CLAIM EXPENSES. PLEASE READ THE POLICY CAREFULLY.

TERMS THAT APPEAR IN **BOLDFACE** TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II. OF THIS POLICY.

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In consideration of payment of the premium and in reliance on all statements made and information provided to the **Insurer**, including but not limited to the statements contained in or provided with the **Application** that is made a part of this Policy, and subject to all terms and conditions of this Policy, the **Insurer** agrees with the **Insured** as follows:

#### I. **INSURING AGREEMENTS**

The **Insurer** will pay on behalf of the **Insured** all **Damages** and **Claim Expenses** in excess of the Retention and up to the applicable Limit of Liability specified in Item 4. of the Declarations that any **Insured**, in the performance of **Professional Services**, becomes legally obligated to pay because of **Claims** first made and reported during the **Policy Period** or any **Extended Reporting Period** and resulting from a **Wrongful Act** allegedly committed on or subsequent to the **Retroactive Date** and before the end of the **Policy Period**.

#### II. **DEFINITIONS**

Some **Boldfaced** words may be defined in other parts of the Policy.

- A. **Application** means the signed application for the Policy including any attachments and other materials submitted in conjunction with the signed **Application**. The **Application** shall be maintained by the **Insurer** and shall be deemed a part of this Policy as if physically attached. If this Policy is a renewal or replacement of a previous policy or policies issued by the **Insurer**, all signed applications and other materials that were attached to and became a part of these previous policies shall be considered as part of the **Application** for this Policy.
- B. **Bodily Injury** means physical injury, sickness, disease or death, as well as mental anguish, mental injury, shock or fright resulting in or from physical injury, sickness, disease or death.
- C. **Claim** means any written demand received by the **Insured** for **Damages** or for non-monetary relief based on any actual or alleged **Wrongful Act**.

- D. **Claim Expenses** means expenses incurred by the **Insurer** in the investigation, adjustment, negotiation, arbitration, mediation, settlement and defense of **Claims**.
1. **Claim Expenses** include:
    - a. expenses the **Insurer** incurs, other than salary, wages or expenses of the regular employees of the **Insurer**;
    - b. reasonable and necessary fees charged by attorneys selected or pre-approved by the **Insurer** to defend an **Insured**;
    - c. the cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limit of Liability. The **Insurer** will not apply for or furnish these bonds; and
    - d. reasonable and necessary expenses incurred by an **Insured** at the request of the **Insurer**.
  2. **Claim Expenses** do not include:
    - a. loss of earnings or profit by any **Insured** except those expenses as described in Section III.C.; or
    - b. salaries, wages, fees, or other compensation payable to any **Insured**.
- E. **Damages** means:
1. amounts which an **Insured** is legally obligated to pay as a result of a covered judgment, award or settlement;
  2. costs charged against an **Insured** in any suit defended by the **Insurer** unless such costs are assessed as a sanction for the delay or misconduct in the litigation process by an **Insured**;
  3. pre-judgment interest and post-judgment interest assessed before the **Insurer** has paid, offered to pay or deposited in court the part of the judgment that is covered by this Policy and that is within the applicable Limit of Liability; and
  4. punitive, exemplary or multiple damages, and to the extent such damages are insurable by law, the enforceability of the foregoing coverage shall be governed by such applicable law that most favors coverage for punitive or exemplary damages or the multiplied portion of any multiplied damage award, if and to the extent that such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages; provided such jurisdiction has a substantial relationship to the relevant **Insured**, to the **Insurer**, or to the **Claim** giving rise to such damages.
  5. **Damages** do not include:
    - a. taxes, criminal or civil fines or penalties imposed by law;
    - b. the cost of correcting, performing or re-performing **Professional Services**;
    - c. any amounts, including any return, withdrawal or reduction of professional fees, profits or other charges or fines, sanction, penalties or awards, deemed uninsurable pursuant to any applicable law; or
    - d. the loss of any money or securities resulting directly from theft, including funds transfer.
- F. **Extended Reporting Period** means that period described in Section VI.B.4. of the policy.
- G. **Individual Insured** means:
1. any past, present or future partner, director, officer, member, board member or employee, including any temporary, leased or volunteer employee of the **Named Insured**, but only for acts within the scope of their duties for the **Named Insured**; and

2. any independent contractor of the **Named Insured**, but only for **Professional Services** performed on behalf of and at the direction of the **Named Insured**.
- H. **Insured** refers individually and collectively to:
1. **Named Insured(s)**;
  2. **Individual Insured(s)**; and
  3. a **Joint Venture** in which the **Named Insured** participates as a joint venture pursuant to a written joint venture agreement, but only with respect to the liability imposed on the **Named Insured** for its participation in such **Joint Venture** and only with respect to **Wrongful Acts** committed or allegedly committed by the **Named Insured**. This definition does not extend coverage and no coverage will be provided for **Damages** or **Claim Expenses** to the **Joint Venture** itself or any other entity or individual that is part of the **Joint Venture**.
- I. **Insurer** refers to the **Insurer** named on the Declarations.
- J. **Joint Venture** means a business endeavor, confirmed in a written agreement, between the **Named Insured** and one or more entities or individuals in which the participation of the **Named Insured** is the performance of **Professional Services**.
- K. **Mediation** means a non-binding process in which a neutral panel or individual assists the parties in reaching their own settlement. To be considered **Mediation** as used under this Policy, the process must be of a kind set forth in the Commercial Mediation Rules of the American Arbitration Association. The **Insurer**, however, at its sole option, may recognize any mediation process or forum presented for prior approval.
- L. **Named Insured** means:
1. the person(s) or entity (ies) specified in Item 1. of the Declarations;
  2. any **Subsidiary** acquired before the policy inception date set forth in Item 2. of the Declarations;
  3. any entity or **Subsidiary** which is created or acquired during the **Policy Period**, but only with respect to **Wrongful Acts** occurring or allegedly occurring on or after the effective date of the acquisition or creation. However, if the revenues of the newly acquired or created entity or **Subsidiary** exceed ten percent (10%) of the current annual revenues of the **Named Insured**, then coverage for such newly acquired or created entity or Subsidiary will not apply, unless within ninety (90) days period of such acquisition or creation:
    - a. the **Named Insured** provides the **Insurer** with prior written notice of such creation or acquisition and provides all necessary information as requested by the **Insurer** for our evaluation for coverage;
    - b. the **Named Insured** pays any additional Premium the **Insurer** assesses as a result of the change; and
    - c. the **Insurer** issues an endorsement to include the newly created or acquired entity.
- M. **Policy Period** means the period of time specified in Item 2. of the Declarations or a shorter period resulting from cancellation of the Policy.
- N. **Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to:
1. smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, mold or asbestos;
  2. hazardous, toxic or radioactive matter or nuclear radiation;
  3. waste, which includes material to be recycled, reconditioned or reclaimed; or

4. any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances;
- O. **Professional Services** means performance of services for others as specified in Item 6. of the Declarations.
- P. **Property Damage** means:
1. physical injury to tangible property including all resulting loss of use of that property; or
  2. loss of use of property that is not physically injured.
- Q. **Related Wrongful Acts** means **Wrongful Acts** that are the same, related or continuous, or **Wrongful Acts** that arise from a common nucleus of facts. **Claims** can allege **Related Wrongful Acts** regardless of whether such **Claims** involve the same or different claimants, **Insured** or legal causes of action.
- R. **Retroactive Date** means the date specified in Item 3. of the Declarations.
- S. **Subsidiary** means:
1. any entity in which the **Insured** owns or controls, directly or through one or more **Subsidiaries**, more than fifty percent (50%) of the outstanding securities of such entity or the right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees;
  2. any limited liability company in which the **Insured** owns or controls directly or through one or more **Subsidiaries**, the right to elect, appoint or designate more than fifty percent (50%) of such entity's managers; or
  3. any corporation in which the **Insured** both (i) owns, directly or through one or more **Subsidiaries**, exactly fifty percent (50%) of such corporation's issued and outstanding voting stock and (ii) solely controls the management and operation of such corporation pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock of such corporation.
- An entity will cease to be a **Subsidiary** as defined under this Policy on the date during the Policy Period that the **Named Insured's** ownership, either directly or indirectly, ceases to meet the fifty percent (50%) threshold under 1., 2., or 3. above.
- T. **Wrongful Act** means the following actual or alleged conduct by an **Insured**, or by any person or organization for which an **Insured** is legally liable, in the performance of or failure to perform **Professional Services** for others:
1. a negligent act, error or omission;
  2. false arrest, detention or imprisonment;
  3. malicious prosecution;
  4. the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
  5. oral or written publication of material that slanders, libels or defames a person or organization or disparages the goods, products or services of a person or organization;
  6. oral or written publication of material that violates a person's right of privacy; or
  7. misappropriation of name or likeness.

### III. COVERAGE EXTENSIONS

- A. Estates, Heirs, and Legal Representatives

In the event of the death or incapacity of an **Individual Insured**, or the bankruptcy of an **Insured**, any **Claim** made against any of the heirs, executors, administrators, trustees in bankruptcy, assignees and legal representatives of any **Insured**, based upon actual or alleged **Wrongful Acts** of such **Insured**, shall be deemed to be a **Claim** against such **Insured** for the purposes of this Policy.

B. Spousal and Domestic Partner Liability

If a **Claim** is asserted against the lawful spouse, or a person qualifying as a domestic partner under the provisions of any applicable federal, state or local law, of any **Individual Insured** solely as a result of:

1. the status of the spouse as spouse or domestic partner of any **Individual Insured**; or
2. the ownership interest of the spouse or domestic partner in property, which the claimant seeks as recovery for actual or alleged **Wrongful Acts** of any **Individual Insured**.

Then, such **Claim** shall be deemed a **Claim** against the **Individual Insured** for the purpose of this Policy; provided, however, that, subject to all of the terms, conditions, limitations, restrictions and exclusions of the Policy, coverage shall only apply to **Claims** for actual or alleged **Wrongful Acts** of the **Insured** and no coverage will be provided for any **Claim** for any actual or alleged **Wrongful Acts** of the spouse or domestic partner.

C. Supplemental Payments

Subject to all other terms and condition of this Policy, the following Supplemental Payments will be paid by the **Insurer**. No retention shall apply to such Supplemental Payments, and the Limits of Liability shall not be reduced by, any payments made by the **Insurer** under this section.

1. Pre-Claim Assistance

If during the **Policy Period**, the **Insured** reports a **Wrongful Act** in accordance with Section VI.B.3. of this Policy, the **Insurer**, at its sole option, may investigate such specific **Wrongful Act** as it deems appropriate. Any payment made by the **Insurer** for such investigation shall be at the **Insurer's** expense until such time that a **Claim** arising from such specified **Wrongful Act** has, or is deemed to have been made as determined by the **Insurer**. Notwithstanding the foregoing, once the **Insurer** has incurred \$10,000 of expenses for such investigation then the **Insurer** shall deem that a **Claim** arising from such specific **Wrongful Act** has been made and the **Insurer** will not be responsible for any further expenses under this section.

2. Reimbursement of Expenses

The **Insurer** will pay: the reasonable expenses incurred by the **Insured**, including loss of wages, if the **Insured** is required by the **Insurer** to attend arbitration proceedings or trial in the defense of a covered **Claim**. Such payments made by the **Insurer** are subject to the following:

- a. the maximum reimbursement for such expenses shall not exceed \$500 per day for each **Insured** who attends such proceedings at the request of the **Insurer**; and
- b. the maximum total liability of the **Insurer** for such reimbursement shall not exceed \$7,500 per **Claim** regardless of the number of **Insureds** who attend such proceedings at the request of the **Insurer**.

IV. EXCLUSIONS

A. The **Insurer** is not obligated to pay **Damages** or **Claim Expenses** or defend **Claims** arising out of actual or alleged:

1. **Bodily Injury** or **Property Damage**;
2. infringement of copyright, patent, trademark, trade name, trade dress, service mark, service name, title or slogan or misappropriation or theft of trade secrets;
3. unfair competition, restraint of trade, or any other violation of antitrust laws;

4. discrimination, including that based upon race, creed, color, religion, national origin, age, disability, sex, marital status or sexual orientation, harassment or retaliation, and any wrongful employment practice;
5. gain, profit or advantage to which an **Insured** is not legally entitled; however, this exclusion shall not apply to any **Insured** that did not commit, participate in or have knowledge of such gain, profit or advantage;
6. dishonest, fraudulent, criminal or malicious act, error or omission or any intentional or knowing violation of any law, statute, ordinance, rule or regulation by an **Insured**. However, this exclusion shall not apply to:
  - a. **Claim Expenses** or the duty of the **Insurer** to defend any such **Claim** until there is a judgment against, binding arbitration against, adverse admission by, finding of fact against, or pleas of *nolo contendere* or no contest by the **Insured**, at which time the **Insured** shall reimburse the **Insurer** for all **Claim Expenses** paid by the **Insurer**;
  - b. any **Insured** that did not commit, participate in or have knowledge of such act, error, omission or violation.
7. acts by an **Insured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provisions of the Employee Retirement Income Security Act of 1974, or any amendment, regulation, ruling or order issued pursuant to the Act or any similar provisions of any federal, state or local law;
8. the purchase, sale or offer or solicitation of an offer to purchase or sell securities, including a violation of:
  - a. The Securities Act of 1933 as amended;
  - b. The Securities Exchange Act of 1934 as amended;
  - c. any state blue sky or securities law;
  - d. any similar state or federal law; or
  - e. any order, ruling or regulation issued pursuant to the above laws;
9. bankruptcy, insolvency, receivership, liquidation and/or cessation of operations of an **Insured** or other entity over which an **Insured**, by reason of ownership interest or otherwise, asserts influence or control;
10. electrical failure, including any electrical power interruption or surge, brownout, blackout, short circuit, over voltage, induction, power fluctuations or satellite failure; regardless whether the electrical failure was caused by another event or condition;
11. actual or threatened discharge, dispersal or release of any **Pollutant**; or the creation of an injurious condition involving any **Pollutant**; or the existence of any **Pollutant** on any property; or the cleanup, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any **Pollutant**. This exclusion is effective whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable and whether or not an **Insured** caused or contributed to the pollution;
12. breach of contract; however, this will not exclude coverage for **Claims** alleging negligent performance of **Professional Services**;
13. liability assumed under any contract or agreement, but this exclusion does not apply to liability an **Insured** would have in the absence of such contract or agreement;
14. breach of warranty or guarantee but this exclusion does not apply to liability an **Insured** would have in the absence of such warranty or guarantee;
15. administrative or regulatory actions brought by any governmental agency or entity;
16. co-mingling or improper use of, or failure to segregate or safeguard any client or customer funds, monies or securities;

17. violation of any federal, state or local statutes, ordinances or regulations regarding or relating to unsolicited telemarketing, solicitations, emails, faxes or any other communications of any type or nature, including, but not limited to any anti-spam and do-not-call statutes, ordinances or regulations, including the Telephone Consumer Protection Act (“TCPA”) or CAN SPAM Act of 2003 and any amendment thereto;
18. breach of security, unauthorized access to, or use of, or tampering with data systems, including any resulting alleged failure to protect any confidential corporate information or non-public, personally identifiable information in the care, custody and control of the **Named Insured**.

B. The **Insurer** is not obligated to pay **Damages** or **Claim Expenses** or defend **Claims** made by or on behalf of:

1. any **Insured**;
2. any entity which is a parent, affiliate, subsidiary, or co-venture of an **Insured** or any other entity over which an **Insured**, by reason of ownership interest or otherwise, asserts influence or control; or
3. any entity directly or indirectly controlled, operated or managed by an entity described in Section IV.B.2. above.

#### V. DEFENSE AND SETTLEMENT OF CLAIMS

The **Insurer** has the right and duty to defend a covered **Claim** against an **Insured**, regardless whether the allegations of the **Claim** are meritless, false or fraudulent. The **Insurer** has the right to select defense counsel to defend the **Insured**.

The **Insured** shall not admit liability for or settle any **Claim** or incur any cost or expense without the prior written consent of the **Insurer**. The **Insurer** shall have the right to investigate and conduct negotiations and, with the written consent of the **Named Insured**, settle any **Claim** as the **Insurer** deems in the best interest of the **Named Insured** and the **Insurer**. If the **Named Insured** refuses to consent to any settlement recommended by the **Insurer**, the liability of the **Insurer** shall not exceed:

- A. the amount for which the **Claim** could have been settled for when recommended to do so by the **Insurer**;  
or
- B. the costs and expenses incurred by the **Insured** with the consent of the **Insurer** up to the date of such refusal to settle by when recommended to do so by the **Insurer**;

whichever is greater, plus fifty percent (50%) of the costs and expenses incurred by the **Insured** with the consent of the **Insurer** subsequent to the date of such refusal by the **Insured**. The failure of the **Named Insured** to express consent to a settlement recommended by the **Insurer** will be deemed refusal to consent to the settlement.

#### VI. WHERE AND WHEN POLICY APPLIES

##### A. TERRITORY

This Policy applies to **Wrongful Acts** committed anywhere in the world. If **Damages** or **Claim Expenses** are paid in a currency other than United States of America dollars, then the payment under this Policy will be considered to have been made in United States of America dollars at the conversion rate that was used for the payment.

##### B. WHEN

###### 1. **Claims** First Made and Reported

This Policy applies to **Claims** first made and reported to the **Insurer** during the **Policy Period**, or any applicable Extended Reporting Period. The **Insurer** will consider a **Claim** to be first made

against an **Insured** when a written **Claim** is first received by an **Insured** during the **Policy Period** or any **Extended Reporting Period**. All terms and conditions in effect on the date the **Claim** is made will apply to the **Claim**.

2. **Wrongful Acts**

This Policy applies to **Claims** arising from **Wrongful Acts** that occur after the **Retroactive Date** and before the Expiration Date of the Policy. Such **Claims** will be covered, subject to all terms and conditions of this Policy, unless an **Insured** had, prior to the Effective Date of the first Miscellaneous Professional Liability Policy issued by the **Insurer** to an **Insured**, actual or constructive knowledge of the circumstance or incident(s) which led to the **Claim** and reason to believe it would result in a **Claim**.

3. Reporting **Wrongful Acts**

If during the **Policy Period**, any **Insured** becomes aware of an actual or alleged **Wrongful Act** which may reasonably give rise to a **Claim** and all of the following conditions are met:

- a. the **Wrongful Act** is committed between the **Retroactive Date** and the end of the **Policy Period**;
- b. the **Insurer** receives written notice from an **Insured** during the **Policy Period** of the **Wrongful Act**. The notice must include all of the following information:
  - (1) the names of all persons and/or organizations involved in the **Wrongful Act**;
  - (2) the specific person or organization likely to make the **Claim**;
  - (3) a description of the time, place and nature of the **Wrongful Act**; and
  - (4) a description of the potential **Damages**;
- c. no **Insured** had actual or constructive knowledge, prior to the Effective Date of the first Miscellaneous Professional Liability Policy issued by the **Insurer** to an **Insured**, of a circumstance or incident that could reasonably have been expected to lead to the **Claim**; and
- d. there is no other valid and collectible insurance for the **Claim**;

then any **Claim** which arises out of such **Wrongful Act** will be deemed to have been first made at the time such written notice was first received by the **Insurer**. All terms and conditions in effect on that day will apply to the **Claim**.



4. **Extended Reporting Period**

a. In the event of cancellation or non-renewal of this Policy for reasons other than non-payment of Premium and/or Retention or non-compliance with the terms and conditions of this Policy, the **Named Insured** will have the right upon payment of additional premium to purchase an **Extended Reporting Period** for a period of:

- (1) twelve (12) months for an additional premium of one hundred percent (100%) of the annual premium; or
- (2) twenty-four (24) months for an additional premium of one hundred-fifty percent (150%) of the annual premium; or
- (3) thirty-six (36) months for an additional premium of two hundred percent (200%) of the annual premium

to begin following the effective date of such cancellation or non-renewal.

The right to purchase the **Extended Reporting Period** will terminate unless written notice of the intention of the **Named Insured** to purchase it, together with payment of the additional Premium due, is received by the **Insurer** within sixty (60) days after the effective date of the termination or cancellation.

The additional Premium for the **Extended Reporting Period** will be fully earned. Once purchased, the **Extended Reporting Period** may not be cancelled.

b. A **Claim** made during the **Extended Reporting Period** will be deemed to have been made on the last day of the **Policy Period**. All terms and conditions in effect on that day will apply to the **Claim**.

c. The **Extended Reporting Period** does not extend the **Policy Period** or change the scope of coverage provided nor does it provide an additional or renewed Aggregate Limit of Liability. It applies only to **Claims** made against an **Insured** during the **Extended Reporting Period** for **Wrongful Acts** that occur after the **Retroactive Date** and before the cancellation effective date or expiration date of the Policy, whichever applies

5. **Multiple Claims**

All **Claims** arising from the same **Wrongful Act** or **Related Wrongful Acts** will be considered to have been made on the earlier of the following times:

- a. the date the first of those **Claims** is made against an **Insured**; or
- b. the date the **Insurer** first receives written notice from an **Insured** of the **Wrongful Act**. Such notice must include information as requested in Section VI.B.3.b) of this Policy.

The provisions of this Policy in effect on that date will apply.

6. **Related Wrongful Acts**

All **Wrongful Acts** and **Related Wrongful Acts** that take place between the **Retroactive Date** and the end of the **Policy Period** of the last Miscellaneous Professional Liability Policy issued by the **Insurer** to an **Insured**, and are logically or causally connected by common facts, circumstances, transactions, events and/or decisions will be treated as one **Wrongful Act** and will be deemed to have occurred on the date the first of the **Wrongful Acts** occurred during coverage of Miscellaneous Professional Liability Policy issued by the **Insurer** to an **Insured**.

VII. **LIMIT AND RETENTION**

A. **LIMIT OF LIABILITY**

1. Each **Wrongful Act** Limit of Liability

The Each **Wrongful Act** Limit of Liability specified in Item 4.a. of the Declarations is the most the **Insurer** will pay for **Damages** and **Claim Expenses** combined for the total of all **Claims** made

during the **Policy Period** and any **Extended Reporting Period** arising from each **Wrongful Act** or **Related Wrongful Act**, no matter how many:

- a. **Insureds** this Policy covers;
- b. **Claims** that are made; or
- c. persons or organizations that make **Claims**.

2. Aggregate Limit of Liability

The Aggregate Limit of Liability specified in Item 4.b. of the Declarations is the most the **Insurer** will pay for **Damages** and **Claim Expenses** combined for the total of all **Claims** made during the **Policy Period** and any **Extended Reporting Period**, no matter how many:

- a. **Insured** this Policy covers;
- b. **Claims** that are made;
- c. persons or organizations that make **Claims**; or
- d. **Wrongful Acts** or **Related Wrongful Acts** that are alleged or committed.

Each payment the **Insurer** makes for **Damages** or **Claim Expenses** reduces the Each **Wrongful Act** Limit of Liability and the Aggregate Limit of Liability.

The **Insurer** will not be obligated to pay or reimburse any **Claim Expenses** or **Damages** or defend any **Claim** after the applicable Limit of Liability is exhausted.

B. RETENTION

The Retention amount is the amount specified in Item 5. of the Declarations for each **Wrongful Act**. The obligation of the **Insurer** to pay applies only to **Damages** and **Claim Expenses** in excess of the Retention. The application of the Retention will not erode the Each **Wrongful Act** Limit of Liability or the Aggregate Limit of Liability.

If the total of **Claim Expenses** and **Damages** for any **Claim** is within the Retention, the **Insurer** will have no duty to pay **Claim Expenses** or **Damages** for the **Claim**.

The **Insured** shall be responsible for, and shall hold the **Insurer** harmless from any amount owed by the **Insured** within the Retention.

VIII. CONDITIONS

A. NAMED INSURED AUTHORIZATION

The **Named Insured** is responsible for payment of all Premiums and Retentions. The **Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to providing and receiving notices of cancellation or nonrenewal, receiving any return Premium, and purchasing an **Extended Reporting Period**. In the event of a disagreement between any **Insured**, the **Named Insured** will have exclusive authority to act on behalf of all other **Insured** with respect to negotiation of settlements and the decision to appeal or not to appeal any judgment.

B. WHAT TO DO IF AN INSURED HAS A CLAIM

If there is a **Claim**, the **Insured** must, as soon as practicable, but no later than ninety (90) days after the expiration of this Policy:

1. notify the **Insurer** in writing; this notice must:
  - a. identify the **Insured** and the Claimant, and provide reasonably obtainable information concerning the time, place and other details of the **Wrongful Act** and **Claim** or potential **Claim**; and
  - b. be sent to the address shown under Item 9. A. of the Declarations.

2. send the **Insurer** copies of all demands, notices, settlement offers, summonses or legal papers received in connection with the **Claim** or potential **Claim**;
3. upon the request of the **Insurer**, authorize the **Insurer** to obtain records and other information;
4. cooperate with and assist the **Insurer** in the investigation, settlement and defense of the **Claim**; and
5. cooperate with and assist the **Insurer** in enforcing any rights of contribution or indemnity against another party who may be liable to an **Insured**.

C. LEGAL ACTION AGAINST THE **INSURER**

1. No person or organization has a right under this Policy to join the **Insurer** as a party or otherwise bring the **Insurer** into a suit against an **Insured**.
2. No action may be brought against the **Insurer** unless the **Insured** has fully complied with all terms and conditions of this Policy.

D. BANKRUPTCY

The bankruptcy or insolvency of an **Insured** or of the estate of an **Insured** will not relieve the **Insurer** of its obligations under this Policy nor deprive the **Insurer** of its rights or defenses under this Policy.

E. SUBROGATION

The **Insured** and the **Insurer** may have rights to recover all or part of any payment an **Insured** or the **Insurer** makes under this Policy. If so, those rights are transferred to the **Insurer**.

The **Insured** must do nothing to impair such rights. The **Insured** will do everything necessary to secure such rights and help the **Insurer** enforce them, including the execution of documents necessary to enable the **Insurer** to effectively bring suit. Any recoveries will be applied as follows:

1. first, to the **Insurer** up to the amount of its payment for **Damages** and **Claim Expenses**;
2. then, to the **Insured** as recovery of Retention amounts paid as **Damages** and **Claim Expenses**.

F. DISPUTE RESOLUTION

1. In the event any dispute arises in connection with this **Policy** that cannot be resolved, the **Insurer** and the **Insured** shall participate in a non-binding **Mediation** in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute. Either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until termination of the **Mediation** and until at least ninety (90) days has passed from the termination of the **Mediation**. Each party will bear its own legal fees and expenses. The costs and expenses of a mediation, or any arbitration, shall be split equally by the parties.
2. If a **Claim** is fully and finally resolved to the satisfaction of the claimant and the **Insurer** as a result of **Mediation**, then the applicable Retention for such **Claim** shall be retroactively reduced by fifty percent (50%) up to a maximum reduction amount of \$10,000.

G. CHANGE IN OPERATIONS

This Policy applies only to **Professional Services** specified in Item 6. of the Declarations. The **Named Insured** agrees to notify the **Insurer** of any material changes to any operations and activities of the **Insured**. If these changes in operations or activities result in a substantial change to the exposure of an **Insured**, the **Insurer** has the right to modify the coverage provided or make adjustments to the Premium or rates charged for any coverage provided.

H. TRANSFER OF RIGHTS AND DUTIES UNDER THIS POLICY

Any rights and duties of the **Insured** under this Policy may not be transferred without the prior written consent of the **Insurer**.

I. NO WAIVER OR CHANGE OF TERMS

Notice or knowledge possessed by any person will not effect a waiver or a change in any part of this Policy or estop the **Insurer** from asserting any rights under the terms of the Policy; nor will the terms of this Policy be waived or changed except by written endorsement issued by the **Insurer**.

J. CANCELLATION; NO OBLIGATION TO RENEW

1. The **Named Insured** may cancel this Policy by mailing or delivering to the **Insurer** advance written notice of cancellation. If the **Named Insured** cancels this Policy, the earned Premium will be calculated using the customary short rate table and procedure.
2. The **Insurer** may cancel this Policy only for nonpayment of premium. The **Insurer** will mail or deliver written notice of cancellation to the last known mailing address of the **Named Insured** at least ten (10) days before the effective date of cancellation or as otherwise specified by state law.
3. The **Insurer** will mail or deliver its notice to the last known mailing address of the **Named Insured**. Notice of cancellation will state the effective date of the cancellation. This Policy will expire on that date. If this Policy is cancelled, the **Insurer** will send the **Named Insured** any Premium refund due. The payment or tender by the **Insurer** of unearned Premium is not a condition of cancellation. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. The **Insurer** will not be obligated or required to renew this Policy. Any offer of renewal terms involving a change of Retention, Premium, Limit of Liability, or other terms and conditions will not constitute, nor be construed as, a refusal by the **Insurer** to renew this Policy. The **Insurer** may elect to non-renew this Policy by mailing to the **Named Insured** at least sixty (60) days advanced written notice or notice as otherwise specified by state law.

K. OTHER INSURANCE

The insurance afforded by this Policy is in excess over any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **Named Insured** to apply in excess of this insurance.

L. WARRANTIES AND COVENANTS

The **Insured** warrants and agrees, the warranties are a condition for any obligations of the **Insurer** hereunder:

1. that statements made in the **Application** and in its attachments and any materials submitted therewith are true and are the basis of the Policy and are to be considered as incorporated into and constituting a part of this Policy; and
2. that the statements made in the **Application** and in its attachments and any materials submitted therewith are representations the **Named Insured** made on behalf of the **Insured**; that they shall be deemed material to the acceptance of the risk assumed by the **Insurer** under the Policy and that this Policy is issued in reliance upon the truth of such representations; and

3. that in the event the **Application**, including its attachments and any materials submitted therewith, contains misrepresentations which materially affect the acceptance of the risk assumed by the **Insurer** under this Policy, this Policy shall be void and of no effect whatsoever.

**IN WITNESS WHEREOF**, the **Insurer** has caused this Policy to be executed and attested, but this Policy will not be valid unless countersigned by a duly authorized representative of the **Insurer**, to the extent required by applicable law.