

MPL SECURE: MISCELLANEOUS PROFESSIONAL AND NETWORK SECURITY LIABILITY INSURANCE POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY OPTIONAL EXTENSION PERIOD, IF PURCHASED. AMOUNTS INCURRED AS CLAIMS EXPENSES SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE APPLIED TO THE DEDUCTIBLE. THE UNDERWRITERS ARE NOT LIABLE FOR CLAIMS EXPENSES OR DAMAGES ONCE THE LIMIT OF LIABILITY IS EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE HEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

The Underwriters agree with the Named Insured, set forth at Item 1. of the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the **Application** which is made a part of and deemed attached to this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Insurance:

I. INSURING CLAUSES

A. Professional Services Coverage

To pay on behalf of any **Insured**:

Damages and Claims Expenses, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period** (if applicable) arising out of any negligent act, error or omission in rendering or failing to render **Professional Services**, on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission the **Insured Organization** is legally responsible.

B. Personal Injury Coverage

To pay on behalf of any **Insured**:

Damages and Claims Expenses, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period** (if applicable) arising out of any act, error or omission in rendering or failing to render **Professional Services** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission the **Insured Organization** is legally responsible that results in:

1. defamation, libel, slander, product disparagement, trade libel, prima facie tort, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. misappropriation of any name or likeness for commercial advantage;
3. invasion of or interference with the right to privacy or publicity, including but not limited to false light, public disclosure of private facts, intrusion and invasion; or
4. false arrest, detention or imprisonment.

C. **Computer Network Security Coverage**

To pay on behalf of any **Insured**:

Damages and Claims Expenses, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the **Policy Period** or **Optional Extension Period** (if applicable) arising out of any act, error or omission in rendering or failing to render **Professional Services** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission the **Insured Organization** is legally responsible that results in:

1. the inability of a third party, who is authorized to do so, to gain access to **Computer Systems**;
2. the failure to prevent **Unauthorized Access** to **Computer Systems** that results in:
 - a. the destruction, deletion or corruption of electronic data on **Computer Systems**;
 - b. **Theft of Data** from **Computer Systems**; or
 - c. denial of service attacks against Internet sites or computers; or
3. the failure to prevent transmission of **Malicious Code** from **Computer Systems** to third party computers and systems.

II. **DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS**

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. When the Underwriters defend a **Claim**, they will pay **Claims Expenses** incurred with their prior written consent. The Limit of Liability available to pay **Damages** shall be reduced and may be

completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible.

- C. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.
- D. If the **Insured** refuses to consent to any settlement or compromise recommended by the Underwriters and acceptable to the claimant and elects to contest the **Claim**, the Underwriters' liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, and fifty percent (50%) of any **Damages** and **Claims Expenses** incurred after the date of such settlement or compromise was recommended to the **Insured** with the remaining fifty percent (50%) of such **Damages** and **Claims Expenses** to be borne by the **Insured** or the applicable Limit of Liability whichever is less.
- E. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

III. THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. The Named Insured and any **Subsidiaries** of the Named Insured (together the "**Insured Organization**");
- B. A director or officer of the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- C. An employee of the **Insured Organization**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Insured Organization's** business;
- D. The lawful spouse, including any natural person qualifying as a domestic partner under the provisions of any applicable state, federal or local law in the United States, of any **Insured**, but solely by reason of any act, error or omission of an **Insured** other than such spouse or domestic partner;
- E. A principal if the Named Insured is a sole proprietorship, or a partner if the Named Insured is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- F. Any person who previously qualified as an **Insured** under B., C., or E. above prior to the termination of the required relationship with the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**; and

- G. The estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Policy.

IV. EXCLUSIONS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

- A. Arising out of or resulting from any criminal, dishonest, fraudulent or malicious act, error or omission committed by any **Insured**; however, this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, fraudulent or malicious conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the Named Insured shall reimburse the Underwriters for all **Claims Expenses** incurred defending the **Claim** and the Underwriters shall have no further liability for **Claims Expenses**;
- B. Arising out of or resulting from any act, error or omission committed prior to the inception date of this Insurance:
1. if any **Insured** on or before the Continuity Date of this Policy, stated in Item 7. of the Declarations knew or could have reasonably foreseen that such act, error or omission might be expected to be the basis of a **Claim**; or
 2. in respect of which any **Insured** has given notice of a circumstance which might lead to a **Claim** to the Underwriters of any other policy in force prior to the inception date of this Policy;
- C. For or arising out of, or resulting from **Bodily Injury** or **Property Damage**;
- D. For or arising out of, or resulting from any liability or obligation of the **Insured** under any contract or agreement, either oral or written, including but not limited to any warranties, representations, liquidated damages or guarantees, except and only to the extent the **Insured** would have been liable in the absence of such contract or agreement;
- E. For or arising out of, or resulting from delay in delivery or performance, or failure to deliver or perform at or within an agreed upon period of time; however this exclusion shall not apply if such delay or failure to deliver or perform is a consequence of a negligent act, error or omission committed during the course of providing **Professional Services** if the **Insured** has made diligent efforts to deliver or perform such **Professional Services**;
- F. For or arising out of or resulting from:
1. inaccurate, inadequate, or incomplete description of the price of the **Insured Organization's** goods, products or services;

2. cost guarantees, cost representations, contract price estimates of probable costs or cost estimates actually or allegedly exceeded;
 3. the failure of the **Insured Organization's** goods, products or services to conform with any represented quality or performance contained in advertising; or
 4. any actual or alleged gambling, contest, lottery, promotional game or other game of chance;
- G. For or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, as amended, violation of consumer protection laws (except consumer privacy protection laws for **Claims** under Insuring Clause C.) or false, deceptive or unfair trade practices;
- H. Brought by or on behalf of any governmental entity, quasi-governmental entity or other regulatory entity, in such entity's regulatory or official capacity provided, however that this exclusion shall not apply to a **Claim** brought by a governmental entity in its capacity as a customer or client of the **Insured**;
- I. For or arising out of any actual or alleged:
1. infringement or misappropriation of any intellectual property right, including but not limited to infringement of patent, copyright, title, trademark, servicemark, design, trade dress or misappropriation of trade secret; or
 2. plagiarism, piracy or misappropriation of ideas under implied contract;
- J. For or arising out of any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal law or legislation, or law or legislation of any state, province or other jurisdiction similar to the forgoing, whether such law is statutory, regulatory or common law;
- K. For or arising out of any actual or alleged violation of any securities law, regulation or legislation, including but not limited to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Act of 1940, the Sarbanes-Oxley Act of 2002, any state or provincial blue sky or securities law, any other federal securities law or legislation, or any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above laws, or any violation of any order, ruling or regulation issued pursuant to the above laws;
- L. By or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Insurance;
- M. Made by any business enterprise in which any **Insured** has greater than a fifteen percent (15%) ownership interest or made by any parent company or other entity which owns more than fifteen percent (15%) of the Named Insured, or arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Insured Organization**;

- N. Arising out of **Professional Services** performed for any entity which:
1. is operated, managed or controlled by an **Insured** or in which any **Insured** has an ownership interest in excess of fifteen percent (15%); or in which any **Insured** is an officer or director; or
 2. operates, controls or manages the Named Insured, or has an ownership interest of more than fifteen percent (15%) in the Named Insured;
- O. Arising out of or resulting from the insolvency or bankruptcy of any **Insured**;
- P. For or arising out of or resulting from:
1. any employer-employee relations, policies, practices, acts or omissions, or any actual or alleged refusal to employ any person, or misconduct with respect to employees, whether such **Claim** is brought by an employee, former employee, applicant for employment, or relative of such person;
 2. any actual or alleged violation of the Fair Labor Standards Act of 1938, the National Labor Relations Act, the Worker Adjustment and Retraining Act of 1988, the Certified Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970, any similar law or legislation of any state, province or other jurisdiction, or any amendment to the above law or legislation, or any violation of any order, ruling or regulation issued pursuant to the above laws or legislation;
 3. any actual or alleged acts, errors or omission related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any other violation of any provision of the Employee Retirement Income Security Act of 1974, or any similar federal law or legislation of any state, province, or other jurisdiction, or any amendment to any Act or any violation for any regulation, ruling or order issued pursuant to the Act or such similar laws or legislation;
- Provided, that Exclusions 1. to 3. above shall only apply to the **Insured's** capacity as an employer;
- Q. For or arising out of resulting from:
1. any actual or alleged employment-related discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy; or
 2. any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by the Named Insured, a **Subsidiary**, or any directors, officers, stockholders, or employees of the Named Insured or a **Subsidiary** in his or her capacity as such;
- R. For or arising out of any failure to pay any bond, interest on any bond, any debt, financial guarantee or debenture;

S. Either in whole or in part, directly or indirectly arising out of, or resulting from or in consequence of, or in any way involving:

1. asbestos, or any materials containing asbestos in whatever form or quantity;
2. the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; or any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins.

The Underwriters will have no duty or obligation to defend any **Insured** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which either in whole or in part, directly or indirectly arises out of, or results from or in consequence of, or in any way involves the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind;

3. the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property;
4. the actual, alleged, or threatened discharge, dispersal, release or escape of Pollutants; or any governmental, judicial or regulatory directive or request that the **Insured** or anyone acting under the direction or control of the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize Pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including gas, acids, alkalis, chemicals, heat, smoke, vapor, soot, fumes or waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.

V. DEFINITIONS

Wherever used in this Policy in boldface type, the following definitions shall apply.

- A. "**Application**" means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other professional liability policy issued by the Underwriters, of which this Policy is a renewal or replacement or which succeeded it in time.
- B. "**Bodily Injury**" means physical injury, sickness, disease or the death of any person including any mental anguish or emotional distress resulting therefrom.

- C. “**Claim**” means a written demand received by any **Insured** for money or services, including the service of suit or institution of arbitration proceedings.

Multiple **Claims** arising from the same or a series of related or repeated acts, errors or omissions or from any continuing acts, errors or omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

- D. “**Claims Expenses**” means:

1. reasonable and necessary fees charged by an attorney designated by the Underwriters; and
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the Underwriters, or by an **Insured** with the written consent of the Underwriters.

Claims Expenses does not include any salary, overhead or other charges of or by an **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Insurance.

- E. “**Computer Systems**” means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:

1. operated by and either owned by or leased to the **Insured Organization**; or
2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization’s** electronic data, pursuant to written contract with the **Insured Organization** for such services.

- F. “**Damages**” means a monetary judgment, award or settlement.

The term **Damages** shall not include or mean:

1. profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. punitive or exemplary damages, or any damages which are a multiple of compensatory damages, fines, taxes or loss of tax benefits, sanctions or penalties unless insurable by law in the applicable venue that most favors coverage for such punitive or exemplary damages;

4. discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients;
 5. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
 6. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- G. "**Malicious Code**" means any virus, Trojan horse, worm or other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- H. "**Optional Extension Period**" means the period described in Clause X.
- I. "**Policy Period**" means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- J. "**Professional Services**" means those services scheduled in Item 10. of the Declarations performed for others by or on behalf of the **Insured Organization** for a fee, but does not include work or activities performed by or on behalf of the **Insured Organization** or for the **Insured Organization** as an accountant, architect, surveyor, health care provider, lawyer, insurance or real estate agent or broker, or civil or structural engineer.
- K. "**Property Damage**" means physical injury to or destruction of any tangible property, including any resulting loss of use thereof.
- L. "**Subsidiary**" means any corporate entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the Named Insured directly or indirectly, if such entity was so owned on the inception date of this Policy, or:
1. was so owned prior to the inception date of this Policy and was insured under a policy issued by the Underwriters of which this Policy is a renewal;
 2. becomes so owned after the inception date of this Policy provided the revenues of the entity do not exceed ten percent (10%) of the Named Insured's Annual Revenues as set forth in their most recent **Application**; or
 3. becomes so owned after the inception date of this Policy provided that if the revenues of the entity exceed ten percent (10%) of the Named Insured's Annual Revenues as set forth in their most recent **Application**, the provisions of Clause XV., Mergers and Acquisitions, must be fulfilled.

Provided that this Policy only provides coverage for negligent acts, errors or omissions taking place while the corporate entity is so owned by the Named Insured.

M. **"Theft of Data"** means the unauthorized taking, misuse or disclosure of information on **Computer Systems**, including but not limited to charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information.

N. **Unauthorized Access** means:

1. the use of or access to **Computer Systems** by a person not authorized to do so by the **Insured Organization**; or
2. the authorized use or access to **Computer Systems** in a manner not authorized by the **Insured Organization**.

VI. LIMIT OF LIABILITY

- A. The Limit of Liability stated in Item 3.(a) of the Declarations for "Each **Claim**" is the limit of the Underwriters' Liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The "Aggregate for the **Policy Period**" stated in Item 3.(b) of the Declarations is the Underwriters' combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** or circumstances which might lead to a **Claim** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- C. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

VII. DEDUCTIBLE

The "Each **Claim** Deductible" stated in Item 4. of the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by monetary payments by the Named Insured of **Damages** and **Claims Expenses** resulting from **Claims** first made and reported to the Underwriters during the **Policy Period** and the **Optional Extension Period**. Satisfaction of the Each **Claim** Deductible is a condition precedent to the payment by the Underwriters of any amounts hereunder, and the Underwriters shall be liable only for the amounts in excess of the Each **Claim** Deductible subject to the Underwriters' total liability not exceeding the Limits of Liability stated in Items 3.(a) and 3.(b) of the Declarations. The Named Insured shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Underwriters.

VIII. INNOCENT INSURED

- A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion IV.A relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally

participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion IV.A.

This provision is inapplicable to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Insured Organization** arising from acts, errors or omissions known to any present or former principal, partner, director or officer of the **Insured Organization**.

- B. With respect to this provision, the Underwriters' obligation to pay in such event shall be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion IV.A applies and shall be subject to the terms, conditions and limitations of this Policy.

IX. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. If any **Claim** is made against the **Insured**, the **Insured** shall as soon as practicable forward to the Underwriters through persons named in Item 9.(a) of the Declarations written notice of such **Claim** in the form of telecopy, or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative.
- B. All **Claims** made against any **Insured** must be reported no later than the end of the **Policy Period**, in accordance the requirements of the **Optional Extension Period** (if applicable) or 45 days after the expiration date of the **Policy Period** in the case of **Claims** first made against the **Insured** during the last 45 days of the **Policy Period**.
- C. If during the **Policy Period** the **Insured** first becomes aware of any circumstance that could reasonably be the basis for a **Claim**, and gives written notice to the Underwriters in the form of a telecopy, or express or certified mail through persons named in Item 9.(a) of the Declarations as soon as practicable during the **Policy Period** of:
 - 1. the specific details of the negligent act, error or omission that could reasonably be the basis for a **Claim**;
 - 2. the injury or damage which may result or has resulted from the circumstance; and
 - 3. the facts by which the **Insured** first became aware of the negligent act, error or omission;any subsequent **Claim** made against the **Insured** arising out of such circumstances who is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriters.
- D. A **Claim** shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of telecopy, or express or certified mail through persons named in Item 9.(a) of the Declarations of the **Claim** or of a negligent act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with Clause IX.C. above.

X. Optional Extension Period

- A. If this Policy is cancelled or nonrenewed by the Named Insured or the Underwriters then the Named Insured shall have the right, upon payment of an additional premium calculated at that

percentage shown in Item 8.(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the period of time set forth in Item 8.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission committed on or after the Retroactive Date and before the effective date of cancellation or nonrenewal.

- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the Underwriters within thirty (30) days after the effective date of cancellation or nonrenewal. If such notice and premium payment is not so given to the Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The purchase of the **Optional Extension Period** shall not in any way increase the Limit of Liability of the Underwriters.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause X.

XI. REPRESENTATIONS BY THE INSURED

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

XII. OTHER INSURANCE

This Insurance shall apply in excess of any other valid and collectible insurance available to any **Insured**, including any self insured retention or deductible portion thereof unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

XIII. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable. If the **Insured** shall die or be adjudged incompetent, such Insurance shall cover that **Insured's** legal representative as an **Insured** as would be permitted by this Policy.

XIV. CANCELLATION/NONRENEWAL

- A. The Named Insured may cancel this Policy by surrender thereof to the Underwriters, or by mailing to the Underwriters written notice stating when thereafter the cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.

- B. The Underwriters may cancel this Policy by mailing or delivering to the Named Insured written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Policy because the **Insured** has failed to pay a premium due, this Policy may be cancelled by the Underwriters by mailing or delivering a written notice of cancellation to the Named Insured stating when not less than ten (10) days thereafter such cancellation shall be effective. The notice of cancellation shall state the reason for such cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Underwriters shall be equivalent to mailing.
- C. If this Policy is cancelled pursuant to A. hereinabove, the Underwriters shall retain the customary short rate portion of the premium hereon. If this Policy is cancelled pursuant to B. hereinabove, the Underwriters shall retain the pro rate portion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation.
- D. If the Underwriters decide not to renew this Policy, the Underwriters shall mail or deliver written notice to the Named Insured at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

XV. MERGERS AND ACQUISITIONS

- A. During the **Policy Period**, if the Named Insured or any **Subsidiary** acquires a privately held entity whose annual revenues are more than ten percent (10%) of the Named Insured's total annual revenues as set forth in the most recent **Application**; then, subject to the **Policy Period** and all other terms and conditions of this Policy, coverage under this Policy shall be afforded for a period of 60 days, but only for any **Claim** that arises out of any act, error or omission committed after the entity becomes so owned. After such 60 day period, no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission, whether committed either before or after such acquisition:

1. by the acquired entity or any person employed by the acquired entity; or
2. involving or relating to the assets or liabilities or **Computer Systems** of the acquired entity.

Unless the Named Insured provides a written notice to the Underwriters, obtains written consent of the Underwriters to extend coverage beyond such 60 day period and agrees to pay any additional premium required by the Underwriters.

- B. During the **Policy Period**, if the Named Insured or any **Subsidiary** acquires any other entity then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission, whether committed either before or after such acquisition:
1. by the acquired entity or any person employed by the acquired entity; or
 2. involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity;

unless the Named Insured provides written notice to the Underwriters at least thirty (30) days prior to the acquisition, obtains the written consent of the Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by the Underwriters.

- C. If during the **Policy Period** the Named Insured consolidates or merges with another entity such that the Named Insured is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall continue until termination of this Policy, but only with respect to any **Claim** that arises out of any act, error or omission committed, attempted, or allegedly committed by the **Insureds** prior to such merger or consolidation. The Named Insured shall provide written notice of such merger or consolidation to the Underwriters as soon as practicable, together with such information as the Underwriters may require.

XVI. ASSISTANCE AND COOPERATION OF THE INSURED

The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters' exposure under the Policy.

Upon the Underwriters' request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of negligent acts, errors or omissions with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgement or award or dispose of any **Claim** without the written consent of the Underwriters.

Expenses incurred by the **Insured** in assisting and cooperating with the Underwriters, as described above, do not constitute **Claims Expenses** under the Policy.

XVII. ACTION AGAINST THE UNDERWRITERS

No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insured** shall have fully complied with all terms of this Policy nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representatives in any **Claim**.

XVIII. SUBROGATION

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute

and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Underwriters, and third to the Each **Claim** Deductible. Any additional amounts recovered shall be paid to the Named Insured.

XIX. ENTIRE AGREEMENT

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements between them and the Underwriters relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

XX. TERRITORY

This Insurance applies to **Claims** made and acts, errors or omissions committed anywhere in the world.

XXI. VALUATION AND CURRENCY

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

XXII. BANKRUPTCY

Bankruptcy or insolvency of the Named Insured shall not relieve the Underwriters of their obligations nor deprive the Underwriters of their rights or defenses under this Policy.

XXIII. AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the Named Insured will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXIV. HEADINGS

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