



# Professional Liability Insurance with Employment Practices Liability Coverage

**THIS IS A CLAIMS-MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. DEFENSE EXPENSES ARE PAID IN ADDITION TO THE LIMIT OF LIABILITY UNDER INSURING AGREEMENT I(A). HOWEVER, THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS UNDER INSURING AGREEMENT I(B) WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ AND REVIEW THE POLICY CAREFULLY.**

**THIS POLICY ONLY PROVIDES COVERAGE IF THE NAMED INSURED QUALIFIES AS A "CLAIMS-FREE ACCOUNT," AS DEFINED IN SECTION III. DEFINITIONS, OF THE POLICY.**

**In consideration of the payment of the premium, in reliance on the Application, and subject to all of the terms, conditions and limitations of, and any endorsements to this Policy, the Insurer and the Insured agree as follows:**

## **I. INSURING AGREEMENT**

### **(A) Professional Liability**

The **Insurer** will pay on behalf of the **Insured**, **Loss** in excess of the applicable Retention from any **Claim** first made against the **Insured** and reported to the **Insurer** during the **Policy Period** or any applicable Extended Reporting Period, for a **Professional Services Wrongful Act** committed on or after the applicable **Retroactive Date** and before the end of the **Policy Period**.

In addition to the Limits of Liability set forth in ITEMS 3(a) and 3(b) of the Declarations, and subject to CONDITION V(D)(2), the **Insurer** has the right and duty to defend any **Claim** for a **Professional Services Wrongful Act** which is covered in whole or in part under the Policy, even if such **Claim** is groundless, false or fraudulent.

### **(B) Employment Practices Liability**

The **Insurer** will pay on behalf of the **Insured**, **Loss** and **Defense Expenses** in excess of the applicable Retention from any **Claim** first made against the **Insured** and reported to the **Insurer** during the **Policy Period** or any applicable Extended Reporting Period, for an **Employment Practices Wrongful Act** committed on or after the applicable **Retroactive Date** and before the end of the **Policy Period**; provided, however, that the most the **Insurer** shall pay in connection with each **Claim** and in the aggregate for all **Claims** for **Employment Practices Wrongful Acts** shall be \$25,000, unless a different amount is indicated in ITEMS 3(c) and 3(d) of the Declarations.

As part of and subject to the Limits of Liability set forth in ITEMS 3(c) and 3(d) of the Declarations, and subject to CONDITION V(D)(2), the **Insurer** has the right and duty to defend any **Claim** for a **Employment Practices Wrongful Act** which is covered in whole or in part under the Policy, even if such **Claim** is groundless, false or fraudulent.

In connection with the defense of any **Claim** under either Insuring Agreement I(A) or I(B) of this Policy, as long as there are allegations asserted which are within the coverage afforded by this Policy, the **Insurer** will not allocate any portion of **Defense Expenses** to the **Insured** even if there are allegations which are outside of the

coverage afforded by this Policy.

## II. SUPPLEMENTAL PAYMENTS

### (A) Reimbursement for Lost Earnings and Reasonable Expenses

The **Insurer** shall reimburse the **Insured** up to \$350.00 for actual loss of earnings and reasonable and necessary expenses incurred, for each day such **Insured**, at the **Insurer's** express request, attends a trial, hearing or arbitration arising from a **Claim**; provided, however, that the maximum aggregate amount payable under this provision, regardless of the number of **Claims**, the number of **Insureds**, or the number of days attended, shall be \$5,000. Any payment made by the **Insurer** under this provision shall be in addition to the applicable Limit of Liability and shall not be subject to any Retention.

### (B) Disciplinary Proceedings Coverage

The **Insurer** shall reimburse the **Insured, Loss and Defense Expenses** incurred, with respect to any **Disciplinary Proceeding** initiated against the **Insured** and reported to the **Insurer** during the **Policy Period**; provided, however, that the maximum aggregate amount payable under this provision for **Loss and Defense Expenses** for all **Disciplinary Proceedings**, regardless of the number of **Insureds**, shall be \$5,000. Any payment made by the **Insurer** under this provision shall be in addition to the applicable Limit of Liability and shall not be subject to any Retention.

No coverage shall be available under this Policy for any fines, sanctions or penalties assessed against an **Insured** as a result of any **Disciplinary Proceeding**.

It shall be the obligation of the **Insured**, and not the **Insurer** to defend any **Disciplinary Proceeding**.

Notwithstanding the foregoing, the maximum amount payable by the **Insurer** under this Section II. for Supplementary Payments, for any and all **Claims** and **Disciplinary Proceedings** based on or arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way, shall be \$5,000.

## III. DEFINITIONS

(A) “**Affiliate**” means any entity under common ownership, control or management with any **Insured**. An **Affiliate** shall not include a **Subsidiary**.

(B) “**Application**” means:

- (1) the application submitted to the **Insurer**; or
- (2) any application submitted to any competitor of the **Insurer**, which is provided to the **Insurer** for the purposes of procuring coverage hereunder, and which shall be treated as if it were submitted directly to the **Insurer**;

any and all materials and information submitted to the **Insurer** in connection with any such application, and all publicly available material promulgated by the **Insured** about the **Insured** that the **Insurer** obtained prior to the Inception Date of the Policy, all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form a part of, this Policy, as if physically attached.

(C) “**Claim**” means:

- (1) any written demand for monetary, non-monetary, or injunctive relief;

- (2) any written request to toll or waive any statute of limitations;
- (3) any civil proceeding in a court of law or equity, including any appeal therefrom, which is commenced by the filing of a complaint, motion for judgment, or similar proceeding;
- (4) any criminal proceeding which is commenced by the return of an indictment or similar document;
- (5) any administrative or regulatory proceeding or investigation, including a proceeding brought by or before the Equal Employment Opportunity Commission or any similar state or local agency, commenced by the filing of a notice of charges, formal order of investigation or similar document; or
- (6) any arbitration proceeding.

A **Claim** does not include a **Disciplinary Proceeding**.

A **Claim** will be deemed to have been first made when an **Insured** receives notice of the **Claim**.

- (D) “**Claims-Free Account**” means the **Named Insured** if, at the time such entity first applied for professional liability coverage with the **Insurer**, the **Named Insured**, its **Subsidiaries** and its **Insureds** were not aware of a **Wrongful Act** which a reasonable person who is an **Insured** would believe could give rise to a **Claim** for a **Professional Services Wrongful Act** and in the preceding five (5) years had not been named as a respondent or defendant in any **Claim** for a **Professional Services Wrongful Act**.
- (E) “**Contaminant-Toxin**” means any of the following:
- (1) smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants;
  - (2) mold(s), mildew(s), fungi and/or spore(s); or any materials, goods or products containing, harboring or nurturing any such mold(s), mildew(s), fungi and/or spore(s);
  - (3) lead, silica or asbestos, whether or not airborne as a particle, contained in or formed as part of a product, structure or other real or personal property, ingested or inhaled or transmitted in any fashion, or found in any form whatsoever; or
  - (4) nuclear reaction, radioactive contamination or any radiation of any kind, including but not limited to nuclear radiation and electromagnetic radiation.
- (F) “**Defense Expenses**” means reasonable legal fees and expenses incurred by or on behalf of the **Insured** in the defense or appeal of a **Claim** or **Disciplinary Proceeding**; provided that **Defense Expenses** will not include the **Insured’s** overhead expenses or any salaries, wages, fees, or benefits of any natural person **Insureds**. **Defense Expenses** shall include the cost of any bond or appeal bond required in any civil suit; provided that the **Insurer** shall not be obligated to apply for or furnish any such bond.
- (G) “**Disciplinary Proceeding**” means any proceeding by a regulatory or disciplinary official, board or agency which regulates or oversees the **Insured’s** Profession as set forth in ITEM 5 of the Declarations, to investigate charges of professional misconduct by an **Insured** in the performance of or failure to perform **Professional Services**.
- (H) “**Domestic Partner**” shall have the meaning prescribed under applicable state law, or in the absence of such law, means one of two natural persons who form a couple living together in a committed, long standing relationship, provided that such persons:
- (1) have a common residence that they have shared for a period of two (2) years or more; and
  - (2) are not blood relatives and are not married or in a domestic partnership with someone else; and
  - (3) are mentally competent, at least 18 years of age and registered as domestic partners in a local registry, if one exists.

- (I) **“Employee”** means any W-2 wage-earning full-time or part-time employee of the **Named Insured** or any **Subsidiary**.
- (J) **“Employment Practices Wrongful Act”** means any of the following when alleged against an **Insured** by any past or present **Employee**, or any applicant for employment with the **Named Insured** or any **Subsidiary**, in connection with that person’s actual or proposed employment relationship with the **Named Insured** or any **Subsidiary**:
- (1) harassment (including sexual harassment whether “quid pro quo,” hostile work environment, or otherwise);
  - (2) discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy or disability or any basis prohibited by federal, state, or local laws;
  - (3) breach of any manual of employment policies or procedures issued by the **Named Insured** or any **Subsidiary**;
  - (4) retaliatory action in response to that **Employee’s**:
    - (a) disclosure or threat of disclosure of any act by an **Insured** alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder;
    - (b) actual or attempted exercise of any right that **Employee** has under law;
    - (c) filing of any **Claim** under the Federal False Claims Act or any other federal, state, local, or foreign “whistle-blower” law; or
  - (5) misrepresentation, libel, slander, humiliation, defamation, or invasion of privacy, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion or evaluation or wrongful discipline.
- (K) **“Insured”** means:
- (1) the **Named Insured**;
  - (2) any **Subsidiary**;
  - (3) any past, present, or future director, officer, owner, partner, member, manager, or **Employee** of the **Named Insured** or any **Subsidiary**, only while acting within the scope of their duties for the **Named Insured** or any **Subsidiary**;
  - (4) an independent contractor, but only while performing **Professional Services** solely on behalf of the **Named Insured** or any **Subsidiary**; and
  - (5) any **Joint Venture** and any employee of any such **Joint Venture**, but only if such **Joint Venture** is specifically scheduled on an Endorsement to this Policy and only with respect to the performance of or failure to perform **Professional Services** by the **Named Insured**.

In the event of the death, incapacity, or bankruptcy of a natural person **Insured**, any **Claim** against the estate, heirs, legal representatives, or assigns of such natural person **Insured** for a **Wrongful Act** of such natural person **Insured** will be deemed to be a **Claim** against such natural person **Insured**.

- (L) **“Insurer”** means the company identified on the Declarations page.
- (M) **“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 **Named Insured’s** participation is the performance of **Professional Services**.
- (N) **“Loss”** means damages, pre-judgment interest, post-judgment interest, judgments, settlements, punitive, exemplary or multiplied damages where insurable under applicable law, or other amounts that an **Insured** is legally obligated to pay as a result of a **Claim** or **Disciplinary Proceeding**; provided that in connection

with any **Claim** under Insuring Agreement I(B), coverage for multiplied damages is limited to **Specified Multiplied Damages**.

**Loss** shall not include:

- (1) fines, taxes or penalties;
- (2) **Defense Expenses**;
- (3) relief or redress in any form other than damages, including but not limited to costs associated with compliance with the Americans with Disabilities Act or similar provisions of any federal, state, or local statutory or common law;
- (4) the return of fees or other compensation paid to the **Insured**;
- (5) the cost of correcting, re-performing or completing any **Professional Services**; or
- (6) salary, wages, or other employment-related benefits which any **Insured** is obligated to pay to any **Employee** under a written contract either to commence employment or to make any payment in the event of termination of employment.

For the purpose of determining the insurability of punitive, exemplary or multiplied damages, including **Specified Multiplied Damages**, under this Policy, the laws of the jurisdiction most favorable to the insurability of such damages shall control, provided that such jurisdiction:

- (i) is the location of the court which awarded or imposed such punitive, exemplary or multiplied damages; or
- (ii) is where the **Named Insured** is incorporated or otherwise organized or has a place of business; or
- (iii) is where the **Insurer** is incorporated or has its principal place of business.

The most the **Insurer** shall pay under this Policy for punitive, exemplary or multiplied damages in excess of the applicable Retention shall be the amounts shown in ITEMS 3(e) or 3(f) of the Declarations, which amounts shall be part of, and not in addition to, the applicable per **Claim** and aggregate Limits of Liability for each Insuring Agreement set forth in ITEM 3 of the Declarations.

- (O) “**Named Insured**” means the entity named in ITEM 1 of the Declarations.
- (P) “**Personal Injury**” means one or more of the following offenses:
- (1) false arrest, detention or imprisonment;
  - (2) malicious prosecution;
  - (3) defamation, including libel and slander, and disparagement;
  - (4) a publication or utterance in violation of an individual’s right or privacy;
  - (5) invasion of the right to private occupancy, including wrongful entry or eviction.
- (Q) “**Policy Period**” means the period from the Inception Date to the Expiration Date in ITEM 2 of the Declarations, or to any earlier cancellation date.
- (R) “**Professional Services**” means services performed by an **Insured** for others:
- (1) in the usual and customary conduct of the Profession set forth in ITEM 5 of the Declarations for a fee or other business consideration inuring to the benefit of the **Named Insured** or any **Subsidiary**; and
  - (2) in the capacity of a Notary Public where such notary services are incidental to the performance of such Profession, whether or not such notary services are performed for a fee.
- (S) “**Professional Services Wrongful Act**” means any actual or alleged:

- (1) Negligent act, error, omission, misstatement, misleading statement, neglect or breach of duty; or
- (2) **Personal Injury**;

by an **Insured**, in the performance of or failure to perform **Professional Services**.

- (T) “**Related Claims**” means all **Claims** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.
- (U) “**Retroactive Date**” means the applicable date specified in ITEM 8 of the Declarations.
- (V) “**Specified Multiplied Damages**” means that portion of a multiplied damages award under the Age Discrimination in Employment Act or the Equal Pay Act that exceeds the damage award so multiplied.
- (W) “**Subsidiary**” means any entity, other than a **Joint Venture** or an **Affiliate**, during any time which the **Named Insured** and/or one or more of its **Subsidiaries**:
- (1) owns more than fifty percent (50%) of its outstanding voting shares, partnership interest or member units;
  - (2) controls, directly or indirectly, the right to elect or appoint more than fifty percent (50%) of such entity’s directors or trustees; or
  - (3) has majority control over the management and operations of the entity through a written agreement;
- provided such entity was created or acquired by the **Named Insured** or one or more of its **Subsidiaries**:
- (a) on or before the Inception Date in ITEM 2(a) of the Declarations;
  - (b) during the **Policy Period**, and the amount of such entity’s latest total annual revenues are less than or equal to twenty-five percent (25%) of the latest total annual revenues of the **Insured** entities reported in the most recent **Application**; or
  - (c) during the **Policy Period**, subject to CONDITION (I).
- (X) “**Wrongful Act**” means any **Professional Services Wrongful Act** or **Employment Practices Wrongful Act**.

#### IV. EXCLUSIONS

- (A) No coverage will be available under this Policy for **Loss** or **Defense Expenses**, from any **Claim** or **Disciplinary Proceeding**:
- (1) against any **Insured** brought about or contributed to by any dishonest or fraudulent act or omission or any willful violation of any statute, rule, or law by any **Insured**; or
  - (2) against any **Insured** brought about or contributed to by the gaining by any **Insured** of any profit, remuneration or advantage to which such **Insured** is not legally entitled;

The applicability of EXCLUSIONS A(1) and A(2) may be determined by an admission, final adjudication or a finding in the proceeding constituting the **Claim** or in a proceeding separate from or collateral to the **Claim**. If any **Insured** in fact engaged in the conduct specified in EXCLUSIONS (A)(1) or (A)(2), such **Insured** and the **Named Insured** will reimburse the **Insurer** for any **Defense Expenses** advanced to or on behalf of such **Insured**. No **Wrongful Act** of any natural person **Insured** will be imputed to any other

natural person **Insured** to determine the application of EXCLUSIONS A(1) or (A)(2);

- (3) for any actual or alleged violation of or any benefits due under:
    - (a) the Fair Labor Standards Act, the National Labor Relations Act, the Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, any workers' compensation, unemployment insurance, social security, or disability benefits law, any amendments to, or rules or regulations promulgated under such statutes or any other similar provisions of any federal, state, or local statutory or common law, including but not limited to any actual or alleged improper payroll practices, wage and hour policies, or payment of overtime or vacation pay;
    - (b) any federal, state or local law or regulation relating to unsolicited telemarketing, solicitations, emails, faxes or any other communications or any type or nature, including but not limited to do-not-call laws or regulations, the Telephone Consumer Protection Act, any federal or state anti-spam statutes, or any other federal or state law relating to a person's or entity's right of seclusion;
  - (4) by or on behalf of, or in the name or right of, any **Insured**, in any capacity, except that this EXCLUSION (A)(4) will not apply to any **Claim**:
    - (a) in the form of a cross-claim, third party claim, or other **Claim** for contribution or indemnity by an **Insured** which is part of or results directly from a **Claim** which is not otherwise excluded by the terms of this Policy; or
    - (b) by an **Employee** for an **Employment Practices Wrongful Act**, subject to the EPL Limits of Liability set forth in ITEMS 3(c) and 3(d) of the Declarations,;
  - (5) against any **Subsidiary**, assets, or other entity acquired by the **Named Insured**, whether by merger, consolidation or otherwise, or against any natural person **Insured** of such **Subsidiary**, assets, or other entity, in his or her capacity as such, for any **Wrongful Act** committed during any time in which such entity is not a **Subsidiary** or at any time before the **Named Insured's** acquisition of such asset or entity;
  - (6) brought by or against any **Affiliate, Joint Venture**, or any entity or individual that is part of a **Joint Venture**, other than the **Named Insured** itself; provided however, that this EXCLUSION (A)(6) shall not apply to any **Claim** against a **Joint Venture** that is specifically scheduled by Endorsement;
  - (7) for any actual or alleged liability under any express contract or agreement, unless such liability would have attached in the absence of such contract or agreement. For the purposes of this EXCLUSION (A)(7), an "express contract or agreement" is an actual agreement among the contracting parties, the terms of which are openly stated in distinct or explicit language, either orally or in writing, at the time of its making; or
  - (8) under Insuring Agreement I(A) based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving any **Employment Practices Wrongful Act**.
- (B) No coverage will be available under this Policy for **Loss and Defense Expenses**, from any **Claim** or **Disciplinary Proceeding** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
- (1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any **Contaminant-Toxin**, or any regulation, order, direction or

request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Contaminant-Toxin**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request;

- (2) any fact, circumstance, situation, transaction, event, or **Wrongful Act**:
  - (a) underlying or alleged in any prior and/or pending litigation, administrative or regulatory proceeding or arbitration proceeding of which any **Insured** had received written notice before the Inception Date in ITEM 2(a) of the Declarations;
  - (b) which, before the Inception Date in ITEM 2(a) of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance;
  - (c) which, on or before the Inception Date in ITEM 2(a) of the Declarations, a reasonable person who is an **Insured** would believe could give rise to a **Claim** or **Disciplinary Proceeding** for which coverage may be provided under this Policy;

If, however, this Policy is a renewal of one or more policy or policies previously issued by the **Insurer** to the **Named Insured**, and the coverage provided by the **Insurer** to the **Named Insured** was in effect, without interruption, for the entire time between the inception date of the first such other policy and the Inception Date of this Policy, the reference in this EXCLUSION (B)(2) to the Inception Date will be deemed to refer instead to the inception date of the first policy under which the **Insurer** began to provide the **Named Insured** with the continuous and uninterrupted coverage of which this Policy is a renewal;

- (3) any actual or alleged violation of: the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Advisors Act of 1940 or any state "blue sky" law; the Racketeering Influenced and Corrupt Organizations Act of 1970; the Employee Retirement Income Security Act of 1974; any statute protecting any patent, copyright, trademark, trade name, service mark, trade dress, trade secret, confidential information or similar interest; the Federal Trade Commission Act, the Sherman Anti-Trust Act or the Clayton Act; or Title VIII of the Civil Rights Act of 1968, the Fair Housing Amendment Act of 1988 or the Fair Credit Reporting Act, 15 USC Section 1681 et seq.; any amendments to or rules or regulations promulgated under such statutes; or any other similar provisions of any international, federal, state, or local statutory or common law;
- (4) any actual or alleged malfunction of any good or product manufactured, sold or supplied by any **Insured** or supplied by others under license to the **Insured**; the failure of any such good or product to perform in any manner as a result of any defect, deficiency, inadequacy, or dangerous condition in such good or product; the improper or negligent design or manufacture of any such good or product; or the cost of any recall or removal from the marketplace of, or any repair, replacement, upgrading or supplementing of, any such good or product;
- (5) any of the following services or activities: insurance advice or agent or brokerage services; failing to procure or maintain adequate insurance or bonds; financial or investment advice or services, including as to any security, instrument or other investment; advice or services relating to any corporate merger or acquisition, securities offering, restructuring, divestiture, leveraged buy out, tender offer, proxy contest or recapitalization; selecting any investment manager, investment advisor or custodial firm; legal or actuarial services; auditing, certification, review, compilation, or attestation of financial statements, or valuation of a firm or business; architectural, engineering or design services; real estate agent or brokerage services; appraising or inspecting; or dentistry, nursing, midwifery or any other medical services;
- (6) any actual or alleged:
  - (a) loss, disappearance, pilferage or shortage of, or commingling or improper use of, or failure to properly segregate or safeguard, any client or customer funds, monies or



- securities, including any loss resulting from computer theft, computer virus or any electronic transfer or from the insolvency, receivership, bankruptcy or liquidation of any business or organization in which the **Insured** has placed or invested such funds;
- (b) warranty, guarantee or promise as to (i) the price of any goods or services, costs or cost estimates, contract price or budget, (ii) the future value of any security, financial instrument, real property or other investment, (iii) the rate of return or interest, (iv) potential sales, earnings, profitability or economic value, or (v) the availability of funds;
  - (c) formation, promotion, sale, pooling, syndication, securitization, operation, administration or servicing of (i) any limited or general partnership or interest therein or (ii) any financial assets, including but not limited to leases, loans, credit cards, real estate mortgages or any form of collateralized debt obligations; or
  - (d) purchase, sale, origination, participation, grant, commitment, extension, restructuring, termination, transfer, repossession or foreclosure of any loan, financing, lease or extension of credit; or any transaction involving any loan, financing or extension of credit funded, in whole or in part, by any **Insured**, or in which any **Insured** has a direct or indirect beneficial ownership or financial interest;
- (7) the rendering of **Professional Services** by any **Insured** who:
    - (a) at the time such **Professional Services** were rendered, was not properly qualified, certified, bonded or licensed to render such **Professional Services**, if such qualification, certification, bonding or license is legally required to provide such **Professional Services**; or
    - (b) misrepresented such **Insured's** qualifications, certifications, licensing, experience, knowledge, education, ability or background;
  - (8) misuse, or unauthorized use or disclosure, of confidential, proprietary or personally identifiable information, including medical or financial information, or the actual or alleged failure to inform customers of any security breach that has impacted or may impact their personal information;
  - (9) sexual abuse or molestation of any person, or sexual harassment of any customer, client or business invitee of an **Insured**;
  - (10) any actual or alleged bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or damage to or destruction of any tangible property including loss of use thereof; provided however, subject to EXCLUSION (B)(9), this EXCLUSION (B)(10) shall not apply to:
    - (a) a **Claim** for such injury or damage if such injury or damage resulted solely and directly from the actual performance of **Professional Services** and does not involve in any way:
      - (i) any such injury to any **Employee**;
      - (ii) the condition of, or property damage to: property owned or rented by, loaned to, or occupied by, any **Insured**; premises sold, given away, or abandoned by the **Insured**, or; property in the care, custody and control of any **Insured**; or
      - (iii) the ownership, maintenance, operation, use, loading or unloading, or entrustment to others, of any motor vehicle, automobile, aircraft, watercraft or mobile vehicle of any kind; or
    - (b) mental anguish or emotional distress alleged in a **Claim** for **Employment Practices Wrongful Acts**; or
  - (11) the notarized certification or acknowledgement of a signature without the physical appearance at the time of such notarization before the notary public of the person who is, or claims to be, the person signing.

## V. CONDITIONS

(A) **Limit of Liability:**

Regardless of the number of **Claims** brought under this Policy, the number of persons or entities included within the definition of **Insured**, or the number of claimants, the **Insurer's** liability is limited as follows:

- (1) Professional Liability
  - (a) The maximum Limit of Liability of the **Insurer** for all **Loss**, in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from each **Claim** under Insuring Agreement I(A) for which this Policy provides coverage, shall be the amount set forth in ITEM 3(a) of the Declarations.
  - (b) The maximum aggregate Limit of Liability of the **Insurer** for all **Loss**, in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from all **Claims** under Insuring Agreement I(A) for which this Policy provides coverage, shall be the amount set forth in ITEM 3(b) of the Declarations.
- (2) Employment Practices Liability
  - (a) The maximum Limit of Liability of the **Insurer** for all **Loss** and **Defense Expenses**, in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from each **Claim** under Insuring Agreement I(B) for which this Policy provides coverage, shall be the amount set forth in ITEM 3(c) of the Declarations.
  - (b) The maximum aggregate Limit of Liability of the **Insurer** for all **Loss** and **Defense Expenses**, in excess of the applicable Retention set forth in ITEM 4 of the Declarations, resulting from all **Claims** under Insuring Agreement I(B) for which this Policy provides coverage, shall be the amount set forth in ITEM 3(d) of the Declarations.
- (3) Defense Expenses
  - (a) **Defense Expenses** payable under Insuring Agreement I(A) are in addition to the **Insurer's** applicable Limit of Liability, and payment of such **Defense Expenses** shall not reduce such Limit of Liability.
  - (b) **Defense Expenses** payable under Insuring Agreement I(B) are part of, and not in addition to, the **Insurer's** applicable Limit of Liability, and payment of **Defense Expenses** by the **Insurer** will reduce such Limit of Liability.

(B) **Application of Retention; Presumption of Indemnification:**

- (1) The obligation of the **Insurer** to pay **Loss** or **Defense Expenses** will only be in excess of the applicable Retention set forth in ITEM 4 of the Declarations. The **Insurer** will have no obligation whatsoever, either to the **Insured** or to any other person or entity, to pay all or any portion of any Retention amount on behalf of any **Insured**, although the **Insurer** will, at its sole discretion, have the right and option to do so, in which event the **Insured** agrees to repay the **Insurer** promptly upon demand any amounts so paid.
- (2) If different Retentions are applicable to different parts of any **Claim**, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions on any one individual **Claim** will not exceed the largest applicable Retention as set forth in ITEM 4 of the Declarations.

(C) **Defense and Settlement of Claims:**

- (1) No **Insured** may incur any **Defense Expenses** or admit liability for, or settle, or offer to settle, any **Claim** without the **Insurer's** written consent. The **Insurer** will have the right to make investigations and conduct negotiations and, with the consent of the **Insured** which shall not be unreasonably withheld, enter into such settlement of any **Claim** as the **Insurer** deems appropriate. If the **Insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **Insurer's** recommendation, then, subject to the applicable Limit of Liability, the **Insurer's** liability for such **Claim** will not exceed the amount for which such **Claim** could have been settled by the **Insurer** plus **Defense Expenses** up to the date the **Insured** refused to settle such **Claim**.
- (2) The **Insurer** will have no obligation to pay **Loss** or **Defense Expenses**, or to defend or continue to defend any **Claim**, after the **Insurer's** applicable maximum aggregate Limit of Liability, has been exhausted by the payment of **Loss**. If the **Insurer's** maximum aggregate Limit of Liability under Insuring Agreement I(A) set forth in ITEM 3(b) of the Declarations is exhausted by the payment of **Loss**, the entire premium will be deemed fully earned.

(D) **Other Insurance; Other Indemnification:**

- (1) All **Loss** and **Defense Expenses** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any other insurance under which there is a duty to defend, unless such other insurance is specifically stated to be in excess of this Policy. This Policy will not be subject to the terms of any other insurance.
- (2) Notwithstanding CONDITION (D)(1) above, with respect to any **Claim** under this Policy for which coverage is available under any other insurance policy, including any commercial general liability, automobile or workers' compensation insurance policy, which applies to claims for bodily injury, sickness, mental anguish, emotional distress, disease or death of any person or property damage, the **Insurer** will have no duty to defend such **Claim**, or to pay **Defense Expenses** incurred by or on behalf of any **Insured** in connection with such **Claim**, or to contribute to any defense provided to any **Insured** under such other insurance policy(ies), or to reimburse any other insurer, in whole or in part, for **Defense Expenses** incurred in connection with such **Claim**.

(E) **Cooperation; Subrogation:**

In the event of a **Claim**, the **Insured** will provide the **Insurer** with all information, assistance, and cooperation that the **Insurer** reasonably requests, and will do nothing that may prejudice the **Insurer's** position or potential or actual rights of recovery. At the **Insurer's** request, the **Insured** will assist in any actions, suits, or proceedings, including but not limited to attending hearings, trials and depositions, securing and giving evidence, and obtaining the attendance of witnesses, and will also assist in making settlements. In the event of payment, the **Insurer** will be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** will execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in their name. The obligations of the **Insured** under this CONDITION (E) will survive the expiration or cancellation of the Policy.

(F) **Spouse and Domestic Partner Extension:**

The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations and

exclusions, be extended to apply to **Loss** and **Defense Expenses** resulting from a **Claim** made against a person who, at the time the **Claim** is made, is a lawful spouse or **Domestic Partner** of an natural person **Insured**, but only if: (a) the **Claim** against such spouse or **Domestic Partner** results from a **Wrongful Act** actually or allegedly committed by the natural person **Insured**, to whom the spouse is married or with whom the **Domestic Partner** is residing; and (b) such natural person **Insured** and his or her spouse or **Domestic Partner** are represented by the same counsel in connection with such **Claim**.

(G) **Extended Reporting Period:**

- (1) If either the **Insurer** or the **Named Insured** cancels, refuses or declines to renew this Policy for any reason other than non-payment of premium, and, within thirty (30) days of the end of the **Policy Period**, the **Named Insured** elects to purchase the Extended Reporting Period by paying the additional premium set forth in ITEM 9 of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made during the Extended Reporting Period, but only if such **Claims** are for **Wrongful Acts** committed before the end of the **Policy Period** or the date of any conversion of coverage under CONDITION (J), whichever is earlier.
- (2) The Extended Reporting Period does not increase or reinstate any Limit of Liability and may only be purchased if all premiums and retentions due under the Policy have been paid. Once purchased, the Extended Reporting Period may not be canceled and the premium shall be deemed fully earned.

(H) **Notice; Timing, and Interrelationship of Claims:**

- (1) As a condition precedent to any right to payment in respect of any **Claim**, the **Insured** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after it is first made and:
  - (a) with respect to a **Claim** made during the **Policy Period**, in no event later than sixty (60) days after the expiration date of the **Policy Period**; or
  - (b) with respect to a **Claim** made during the Extended Reporting Period, if purchased pursuant to CONDITION (G), in no event later than ten (10) days after the expiration date of the Extended Reporting Period.
- (2) If, during the **Policy Period**, the **Insured** first becomes aware of a **Wrongful Act** which may subsequently give rise to a **Claim** and, as soon as practicable thereafter but before the expiration or cancellation of this Policy:
  - (a) gives the **Insurer** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the identities of the potential claimants, the consequences which have resulted or may result from such **Wrongful Act**, the damages which may result from such **Wrongful Act** and the circumstances by which the **Insured** first became aware of such **Wrongful Act**; and
  - (b) requests coverage under this Policy for any subsequently resulting **Claim** for such **Wrongful Act**;then the **Insurer** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**.
- (3) All notices under CONDITIONS (H)(1) and (2) must be sent in writing or electronically, to the address set forth in ITEM 6 of the Declarations.

- (4) All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION (H)(2), whichever is earlier.

(I) **Adjustments:**

If, during the **Policy Period**, any **Insured**:

- (1) acquires or creates a **Subsidiary**, or acquires any entity by merger (each a “New Entity”) and, at the time of the acquisition or creation, the amount of the New Entity’s latest total annual revenues exceed twenty-five percent (25%) of the latest total annual revenues of the **Insured** entities reported in the most recent **Application**; or
- (2) acquires any assets or assumes any liabilities, and, at the time of the acquisition or assumption, the assets or liabilities so assumed exceed twenty-five percent (25%) of the total annual assets or liabilities of the **Insured** entities reported in the most recent **Application**;

(each a “Transaction”), then during a period of sixty (60) days after the effective date of the Transaction or until the end of the **Policy Period**, whichever is earlier:

- (i) the New Entity will be included within the definition of **Insured**; or
- (ii) any **Claim** first made during such period not otherwise excluded relating to such acquired assets or assumed liabilities will be covered under this Policy,

but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of the Transaction.

Upon the expiration of such sixty (60)-day period, there shall be no coverage under this Policy for any **Wrongful Act** committed or allegedly committed thereafter by the New Entity or its natural person **Insureds**, or for any **Claim** first made thereafter relating to the acquired assets or assumed liabilities, unless the **Named Insured** has provided the **Insurer** with written notice of the Transaction, containing full details thereof, and the **Named Insured** and the **Insurer** have agreed to add coverage for the New Entity and its natural person **Insureds**, or for the acquired assets or assumed liabilities, upon such terms, conditions, and limitations of coverage and such additional premium as the **Insurer**, in its sole discretion, may require.

(J) **Conversion of Coverage Under Certain Circumstances:**

If, during the **Policy Period**, any of the following events occurs:

- (1) the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity;
- (2) the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to the **Named Insured**, provided that this CONDITION (J) shall not apply where the appointment of any such official is a result of the **Insured** declaring bankruptcy pursuant to Chapter 11 of the U.S. Bankruptcy Code;
- (3) the obtaining by any person, entity, or affiliated group of persons or entities of the right to elect, appoint, or designate at least fifty percent (50%) of the directors, trustees, management committee or management board members, of the **Named Insured**;
- (4) any person or entity acquires majority control over the management and operation of the **Named Insured** through a written agreement; or
- (5) with respect to the sale or offering of securities through an initial public offering by the **Named Insured**, either:

- (a) the U.S. Securities and Exchange Commission provides the **Named Insured** with notice that the Registration Statement filed by the **Named Insured** is effective; or
- (b) any foreign exchange commission through which the securities are being sold or offered, declares such sale or offering effective;

then coverage under this Policy will continue in full force and effect with respect to **Claims for Wrongful Acts** committed before such event, but coverage will cease with respect to **Wrongful Acts** committed after such event. After any such event, this Policy may not be canceled, regardless of CONDITION (K)(2), and the entire premium for the Policy will be deemed fully earned.

(K) **Cancellation; No Obligation to Renew:**

- (1) The **Insurer** may not cancel this Policy except for failure to pay a premium when due. The **Insurer** will deliver or mail by first class, registered or certified mail to the **Named Insured** at its last known address, written notice of cancellation at least ten (10) days before the effective date of cancellation. A copy of such notice shall be sent to the agent of record.
- (2) The **Named Insured** may cancel this Policy by mailing to the **Insurer** written notice stating when, not later than the Expiration Date set forth in ITEM 2(b) of the Declarations, such cancellation will be effective. In such event, return premium will be computed as 0.90 times the pro rata unearned premium shown in ITEM 7 of the Declarations and rounded to the nearest whole dollar. Premium adjustment may be made either at the time cancellation by the **Named Insured** is effective or as soon as practicable thereafter.
- (3) The **Insurer** will not be required to renew this Policy upon its expiration. If the **Insurer** elects not to renew this Policy, the **Insurer** will deliver or mail by first class, registered, or certified mail to the **Named Insured** at its last known address written notice to that effect at least sixty (60) days before the Expiration Date set forth in ITEM 2(b) of the Declarations. Such notice shall state the specific reason(s) for non-renewal. A copy of such notice shall be sent to the agent of record.

(L) **Representations:**

- (1) The **Insureds** represent that the particulars and statements contained in the **Application** are true, accurate and complete, and agrees that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.
- (2) The **Insureds** represent and warrant that the **Named Insured** qualifies as a **Claims-Free Account**.

(M) **Severability:**

- (1) In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, the knowledge of one natural person **Insured** will not be imputed to any other natural person **Insured**, provided, however, that this Policy will be void:
  - (a) with respect to any natural person **Insured** who knew of such untruth, misrepresentation or omission; and
  - (b) with respect to the **Named Insured** or any **Subsidiary**, if, and only if, the Owner, Chief Executive or Chief Financial Officer, President or Manager of the **Named Insured** or such **Subsidiary**, or any natural person holding a functionally equivalent position within the

**Named Insured** or such **Subsidiary**, knew of such untruth, misrepresentation or omission.

(2) In the event of any misrepresentation in connection with CONDITION (L)(2), this Policy will be void in its entirety.

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

(1) No action may be taken against the **Insurer** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings, or by written agreement of the **Insured**, the claimant, and the **Insurer**.

(2) No person or entity will have any right under this Policy to join the **Insurer** as a party to any **Claim** to determine the liability of any **Insured**; nor may the **Insurer** be impleaded by an **Insured** or his, her, or its legal representative in any such **Claim**.

(O) **Insolvency of Insured:**

The **Insurer** will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured**.

(P) **Territory:**

This Policy applies to **Wrongful Acts** committed by any **Insured**, or to any **Claim** brought against the **Insured**, anywhere in the world.

(Q) **Authorization and Notices:**

The **Insureds** agree that the **Named Insured** will act on their behalf with respect to receiving any notices and return premiums from the **Insurer**.

(R) **Changes:**

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

(S) **Assignment:**

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

(T) **Entire Agreement:**

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

(U) **Headings:**

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

In witness whereof, the **Insurer** has caused this Policy to be executed by its authorized officers, but this Policy will not be

valid unless countersigned on the Declarations page by a duly authorized representative of the **Insurer**.