



Technology and Information E&O Liability Insurance *Tech//404*[®]

THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ AND REVIEW THE ENTIRE POLICY CAREFULLY.

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**

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

- A. **TECHNOLOGY WRONGFUL ACTS;**
- B. **PRIVACY WRONGFUL ACTS;**
- C. **NETWORK SECURITY WRONGFUL ACTS;**
- D. **MEDIA/CONTENT WRONGFUL ACTS;**
- E. **INTELLECTUAL PROPERTY WRONGFUL ACTS - OPTIONAL.**

As part of and subject to any applicable Limit of Liability, the **Insurer** will have the right and duty to defend any **Claim** which is covered in whole or in part, even if such **Claim** is groundless, false, or fraudulent.

II. **DEFINITIONS**

When used in this Policy:

- A. **Advertising** means electronic promotional material and media, publicly disseminated on any **Internet Website** either on behalf of the **Insured** or by the **Insured** on behalf of others, including banner and buttons, beacons and tracking, branding, click tags and cookies, co-branding, directory listings, flash sites, metatags and coded media, rectangles and pop-ups, search engine endorsements, sponsorships, skyscrapers, and/or endorsements.
- B. **Application** means the application submitted to the **Insurer**, and any and all materials and information submitted to or obtained by the **Insurer** in connection with such application, including all financial statements of the **Insured** or other material disseminated publicly (including any information contained on any **Internet Web sites**

maintained by or on behalf of the **Insured** or any other **Electronic Content**), 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. **Bodily Injury** means injury to the body, sickness, or disease, and death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.
- D. **Claim** means:
1. any written demand for monetary, non-monetary, or injunctive relief, including a written cease and desist letter;
 2. 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;
 3. any administrative or regulatory investigation or proceeding;
 4. any arbitration proceeding;
 5. any prosecution or governmental action related to **Privacy Wrongful Acts**; or
 6. any written request to toll or waive a statute of limitations.
- E. **Company** means the **Named Insured** and any **Subsidiary** created or acquired on or before the Inception Date in ITEM 2(a) of the Declarations or, subject to Condition H, during the **Policy Period**.
- F. **Computer System** means computer hardware, software, middleware, network, storage, applications, tools, the **Company's Websites** and the **Electronic Content** stored thereon, as well as associated call centers, on-line, off line or wireless input and output devices, data storage repositories, multimedia, networking and telecommunication equipment and related electronic backup facilities.
- G. **Defense Expenses** means reasonable legal fees and expenses incurred by or on behalf of the **Insured** by the **Insurer** in the defense or appeal of a **Claim**; provided that **Defense Expenses** will not include the **Company's** overhead expenses or any salaries, wages, fees, or benefits of its **Employees**. In the event of a finding that no coverage exists for a **Claim**, the **Insurer** shall have the right to recover any **Defense Expenses** paid by the **Insurer** in connection with such **Claim**.
- H. **Employee** means any individual whose labor or service is engaged by and directed by the **Insured**. This includes part-time, seasonal, leased and temporary employees, **Independent Contractors** and volunteers, but only to the extent that each are acting under the direction and control of the **Insured**.
- I. **Electronic Content** means any data, e-mails, graphics, images, net or web casting, sounds, text, web site or similar matter disseminated electronically, including matter disseminated electronically on the **Company's Internet Website**, **Computer System** or the **Internet** but shall not mean content disseminated by other means of media transmittal by the **Company**. **Electronic Content** shall not include **Technology Products**.
- J. **Executive Officer** means the **Company's** Chairman, President, Chief Executive Officer, Chief Operating Officer, Chief Compliance Officer, Chief Financial Officer, Chief Information Officer, Chief Technology Officer, Chief Privacy Officer, General Counsel or their functional equivalent.
- K.. **Independent Contractor** means a natural person who is engaged by or on behalf of the **Company** pursuant to a written agreement, and only if they are acting within the scope of

the terms of that written agreement, and if such natural person is listed on the schedule included with the **Application** or specifically included by endorsement to this Policy.

L. **Insured** means:

1. The **Company**;
2. if any **Company** is a corporation, any past, present, or future director, officer or **Employee** of such **Company**;
3. if any **Company** is a sole proprietorship, any past, present, or future owner, officer, or **Employee** of such **Company**;
4. if any **Company** is a partnership, any past, present, or future partner or **Employee** of such **Company**; or
5. if any **Company** is a limited liability company, any past, present, or future member, manager, officer or **Employee** of such **Company**.

M. **Insurer** means the entity identified on the Declarations page.

N. **Internet** means the worldwide public network of computers which enables the transmission of electronic data and which includes intranets, extranets and virtual private networks.

O. **Intellectual Property Wrongful Act** means:

1. plagiarism, piracy or misappropriation of ideas, infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name in connection with the **Technology Products or Technology Services**; or
2. subject to the Sub-Limit of Liability set forth in ITEM 3(b) of the declarations, which limit shall be part of and not in addition the Maximum Limit of Liability set forth in ITEM 3(a) of the Declarations, infringement of a patent or theft of trade secret other than:
 - a. a business process patent as defined by the U.S. Patent and Trademark Office;
 - b. a patent or trade secret which is the subject of any litigation as of the Inception Date of the Policy; or
 - c. infringement of a patent filed, owned or controlled by a direct competitor or misappropriation of a trade secret owned or controlled by a direct competitor.

P. **Loss** means **Defense Expenses** and monetary damages, pre-judgment interest, post-judgment interest, judgments, settlements, punitive or exemplary damages where insurable under applicable law, or other amounts that an **Insured** is legally obligated to pay as a result of a **Claim**.

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

1. **is the location of the court which awarded or imposed such punitive damages;**
2. **is where the Insured is incorporated or otherwise organized or has a place of business; or**
3. is where the **Insurer** is incorporated or otherwise organized or has its principal place of business.

Loss will not include:

1. fines, penalties, taxes or the multiplied portion of multiplied damages except fines and penalties for **Privacy Wrongful Acts**;
2. future profits, future royalties, costs of licensing, or other costs of obtaining future use; restitution; or disgorgement by any **Insured**; or the costs to comply with orders granting injunctive relief or non-monetary relief, including specific performance, or any agreement to provide such relief;
3. return or offset of fees, charges, royalties, or commissions for goods or services already provided or contracted to be provided;
4. sums due pursuant to a contractual provision for liquidated damages, agreed penalties, or similar remedy;
5. any amount which the **Insured** is not financially or legally obligated to pay; or
6. matters which are uninsurable under applicable law.

Q. **Malicious Code** means unauthorized and either corrupting or harmful software code, including but not limited to computer viruses, Trojan horses, worms, logic bombs, spy ware or spider ware.

R. **Media/Content Wrongful Act** means:

1. unfair competition, dilution, deceptive trade practices, false advertising or misrepresentation wrongful publication, defamation, slander or libel, product or service disparagement, trade libel or other tort related to disparagement or harm to the reputation or character of any person or organization in the **Company's Electronic Content** or in the **Company's Advertising**; or
2. misappropriation or misdirection of messages or media of third parties by the **Insured**, including metatags, web site domains and names, and related cyber content.

S. **Named Insured** means the entity named in ITEM 1 of the Declarations.

T. **Network Security Wrongful Act** means a breach of security which results in the **Unauthorized Access** or **Unauthorized Use** of the **Company's Computer System**, the consequences of which include, but are not limited to:

1. the failure to prevent **Unauthorized Access** to, use of or tampering with a third party's **Computer Systems**;
2. the inability of an authorized third party to gain access to the **Insured's** services;
3. the failure to prevent denial or disruption of **Internet** service to an authorized third party;
4. the failure to prevent identity theft or credit/debit card fraud; or
5. the inadvertent transmission of **Malicious Code**.

U. **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.

V. **Privacy Wrongful Act** means:

1. wrongful entry or eviction, trespass, eavesdropping, false arrest or malicious prosecution;
2. invasion, infringement, interference with the right to privacy or of publicity, including false light, public disclosure of private facts, intrusion or commercial appropriation of name or likeness; or

3. any breach or violation of U.S. federal, state and local statutes and regulations associated with the control and use of personally identifiable financial or medical information including but not limited to:
 - a. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA"), known as HIPAA, including Title II that requires protection of confidentiality and security of electronic protected health information and the rules and regulations promulgated thereunder as they currently exist and as amended;
 - b. Gramm-Leach-Bliley of 1999 ("G-L-B"), also known as the Financial Services Modernization Act of 1999, including sections concerning security protection and standards for customer records maintained by financial services companies, and the rules and regulations promulgated thereunder as they currently exist and as amended;
 - c. State privacy protection laws, such as California Database Protection Act of 2003 (Cal. SB 1386) and California A.B. 1950, as they currently exist now or in the future, that require commercial **Internet** sites or on-line services that collect personal information or medical information (as defined by such laws or acts) to post privacy policies and adopt specific privacy controls or to notify those impacted by identity or data thief, abuse or misuse;
 - d. Federal and state consumer credit reporting laws, such as the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA).
- W. **Property Damage** means physical injury to, loss or destruction of, or loss of use of tangible property.
- X. **Retroactive Date** means the date specified in Item 7 of the Declarations.
- Y. **Related Claims** means all **Claims** for **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related series of facts, circumstances, situations, transactions or events, whether related logically, causally, or in any other way.
- Z. **Subsidiary** means any entity during any time which the **Company**:
1. owns more than fifty percent (50%) of its outstanding voting shares, partnership interest or member units; or
 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 sole control over the management and operations of the entity through a written agreement.
- AA. **Technology Wrongful Act** means any **Wrongful Act** arising out of the **Insured's** rendering or failure to render **Technology Service** to others for a fee or business consideration.
- BB. **Technology Product** means computer, telecommunications or wireless hardware, measurement, media, middleware, network, software, storage, tools or related electronic equipment, devices, instruments, integrated circuits, memory chips, peripherals, printed circuit boards, and semi-conductors, including the design, development, manufacturing, assembly, distribution, licensing, leasing, sale, installation, repair or maintenance thereof.

CC. **Technology Service** means:

1. Operation and use of the **Company's Website** and **Computer Systems**;
2. information technology consulting and information systems or network analysis, design, installation, programming, integration, maintenance, repair or work;
3. database design and the caching, collecting, compiling, processing, mining, or recording or analysis of data;
4. archiving, browser, directory and search engine, and storage consulting, design, operation or work;
5. information system outsourcing;
6. information technology training and education;
7. **Website** design, programming or maintenance;
8. information system or **Website** hosting, including Internet Service Providers and Application Service Providers; or
9. other technology services or consulting activities, but only if specifically identified in the declarations or agreed by endorsement.

DD. **Toxic Substances** mean:

1. any actual, alleged, or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any smoke, vapors, soot, fumes, acids alkalis, toxic chemicals, liquids or gases, water 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. any actual, alleged or threatened discharge, dispersal, seepage, migration, release, growth, infestation, spread, or escape of 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 a 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. planning, construction, maintenance, operation or use of any nuclear reactor, nuclear waste, storage or disposal site, or any other nuclear facility; the transportation of nuclear material, or any nuclear reaction or radiation, or radioactive contamination, regardless of its cause

EE. **Unauthorized Access** means the gaining of access to a **Computer System** by an unauthorized person or persons, or by an authorized person or persons in an unauthorized manner.

FF. **Unauthorized Use** means the use of a **Computer System** by a person unauthorized by the **Insured** or a person authorized by the **Insured** who uses the **Computer System** for a purpose not intended by the **Insured**.

GG. **Website** means the software, content and other materials accessible via the **Internet** at a designated Uniform Resource Locator address.

HH. **Wrongful Act** means any act, error, misstatement, misleading statement, omission, neglect or breach of duty by the **Insured**, in connection with a **Computer System** or the **Company's Electronic Content**, actually or allegedly committed or attempted by any **Insured** and which constitute a **Technology Wrongful Act; Privacy Wrongful Act;**

Network Security Wrongful Act; Media/Content Wrongful Act or Intellectual Property Wrongful Act.

III. EXCLUSIONS

- A. No coverage will be available under this Policy for **Loss**, other than **Defense Expenses**, from **Claims**:
1. against any **Insured** brought about or contributed to by any criminal, intentional, dishonest or fraudulent act or omission or any willful violation of any statute, rule, or law by an **Insured**;
 2. against any **Insured** brought about or contributed to by the gaining of 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 is engaged in the conduct specified in EXCLUSIONS A.1. and A.2., or if such conduct is imputed to the **Company**, such **Insured** and the **Company** will reimburse the **Insurer** for any **Defense Expenses** advanced to or on behalf of such **Insured**. For purposes of determining the applicability of this exclusion, the **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured**; except that the **Wrongful Act** of an **Executive Officer** shall be imputed to the **Company**; or
 3. seeking relief or redress in any form other than money damages, including without limitation the cost of complying with any injunctive, declaratory, or administrative relief.
- B. No coverage will be available under this Policy for **Loss**, including **Defense Expenses**, from **Claims** based upon, arising out of or attributable to any actual or alleged:
1. **Malicious Code** other than the inadvertent transmission of **Malicious Code**;
 2. liability under any express contract or agreement. For purposes of this EXCLUSION B.2., 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. This EXCLUSION B.2., however, does not apply to liability that the **Insured** would have in the absence of the express contract or agreement;
 3. inability to use, or lack of performance of software programs:
 - a. due to the expiration or withdrawal of technical support by the software vendor; or
 - b. that are in development, or are in ‘beta’ or similar testing stage, and/or have not yet been authorized for general commercial release;
 4. withdrawal, recall, replacement or correction of the **Insured’s Technology Product** which arise from similar or common defects or deficiencies which effect multiple customers or users;
 5. inaccurate, inadequate, or incomplete description of the price of goods, products or services, or as a result of the **Insured’s** cost guarantees, cost representations, contract price, pricing guarantees or estimates of probable costs or cost estimates being exceeded or other product or service guarantee;
 6. **Bodily Injury or Property Damage**;
 7. transfer of funds, money or securities;

8. the sale and placement of **Advertising** by the **Insured** for others unless expressly described in the **Application**;
9. false, deceptive or unfair business practices, violation of consumer protection laws, or false or deceptive **Advertising** other than a **Media/Content Wrongful Act**;
10. fact, circumstance, situation, transaction, event, **Wrongful Act**:
 - a. underlying or alleged in any prior and/or pending litigation or administrative or regulatory proceeding of which any **Insured** had received written notice before the Inception Date of the Policy; or
 - b. which, before the Inception Date of the Policy, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance;
 - c. which was known to the **Insured** before the Inception Date in ITEM 2 and could reasonably be expected to give rise to a **Claim**.

If, however, this Policy is a renewal of one or more policies previously underwritten by Darwin Professional Underwriters to the **Company**, and the coverage provided by such policies to the **Company** 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 references in this EXCLUSION B.10. to the Inception Date will be deemed to refer instead to the inception date of the first such policy.

11. electrical or mechanical failures and/or interruption, including but not limited to any electrical disturbance, surge, spike, brownout or blackout; and outages to gas, water, telephone, **Internet**, cable, satellite, telecommunications or other infrastructure; fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;
12. **Claims** against any **Subsidiary**, assets, or other entity acquired by the **Company**, whether by merger, consolidation, or otherwise, or against any **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 **Company's** acquisition of such asset or entity;
13. **Claim** brought or maintained by, on behalf of, or in the right of any **Insured**, or any other natural person or entity for whom or which an **Insured** is legally liable; provided that this Exclusion B.13 shall not apply to an otherwise covered **Claim** by an **Employee** alleging a **Privacy Wrongful Act**;
14. unsolicited electronic dissemination of faxes or e-mails to multiple actual or prospective customers of the **Insured**, any **Subsidiary**, or any other third party, including but not limited to actions brought under the Telephone Consumer Protection Act, any federal or state anti-spam statutes, and/or any other federal or state statute, law or regulation relating to a person's or entity's right of seclusion;
15. discrimination of any kind, including but not limited to, race, creed, religion, age, handicap, sex, marital status or financial condition; refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or any other employment-related practices, policies, acts, errors, or omissions;
16. price fixing, restraint of trade, monopolization, unfair trade practices including violations of the Sherman Anti-Trust Act, the Clayton Act, or any similar

provision of any federal, state, or local statutory law or common law anywhere in the world; the Employee Retirement Income Security Act of 1974, as amended; the Securities Act of 1933, the Securities Exchange Act of 1934, or any other federal, state or local securities law;

17. **Toxic Substances;** or
18. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power except as specifically required under the Terrorism Risk Insurance Act ("TRIA").

IV. **CONDITIONS**

A. Limit of Liability:

1. Regardless of the number of **Claims**, the number of persons or entities included within the claimants who make a **Claim** against the **Insureds**, the amount stated in ITEM 3(a) of the declarations shall be the maximum aggregate Limit of Liability of the **Insurer** for all **Loss**, including **Defense Expenses**, resulting from all **Claims** and **Related Claims** for which this Policy provides coverage, regardless of whether such **Claims** and **Related Claims** are made during the **Policy Period** or the Extended Reporting Period, and regardless of the time of payment by the **Insurer**.
2. **Defense Expenses** are part of and not in addition to the **Insurer's** Limit of Liability.

B. Application of Retention:

The obligation of the **Insurer** to pay **Loss**, including **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 **Insureds** or to any person or entity, to pay all or any portion of any retention amount on behalf of any **Insured**, although the **Insurer** will, at its sole discretion, have the right and option to do so, in which event the **Insureds** agree to repay the **Insurer** any amounts so paid.

C. Defense and Settlement of **Claims**:

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**, 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** recommendations, then, subject to the **Insurer's** maximum aggregate Limit of Liability set forth in ITEM 3(a) of the Declarations, or if applicable ITEM 3(b) of the Declarations, the **Insurer's** liability for such **Claims** will not exceed:
 - a. 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**; plus

- b. fifty percent (50%) of any **Loss** and/or **Defense Expense** in excess of clause a. above, incurred in connection with such **Claim**. The remaining **Loss** and/or **Defense Expenses** will be carried by the **Insured** at its own risk and will be uninsured.

- 2. The **Insurer** will have no obligation to pay **Loss**, including **Defense Expenses**, or to defend or continue to defend any **Claim** after the **Insurer's** maximum aggregate Limit of Liability, as set forth in ITEM 3(a) of the Declarations, or if applicable ITEM 3(b) of the Declarations, has been exhausted by the payment of **Loss**, including **Defense Expenses**. If the **Insurer's** maximum aggregate Limit of Liability, as set forth in ITEM 3(a) of the Declarations, or if applicable ITEM 3(b) of the Declaration, is exhausted by the payment of **Loss**, including **Defense Expenses**, the entire premium will be deemed fully earned.

D. Other Insurance:

- 1. All **Loss** payable under this Policy will be specifically excess of and will not contribute with other valid insurance (whether collectible or not), including but not limited to any 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 CONDITIONS D1. above, with respect to any **Claim** under this Policy for which any coverage is available under any insurance policy(ies) which applies to **Claims** for **Bodily Injury** and/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, Recourse and Waiver of Recourse:

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. Any sums recovered after expense shall be paid first to reimburse the **Company** for any sums paid to a claimant and any funds remaining shall be paid to the **Insurer** although the **Insurer** shall control any recovery action, including settlement in return for advancing funds for the subrogation action. The obligations of the **Insured** under this CONDITION E will survive the expiration or cancellation of the Policy.

F. Extended Reporting Period:

If the **Insurer** cancels, refuses or declines to renew this Policy for any reason and, within thirty (30) days of the end of the **Policy Period**, the **Named Insured** elects to purchase

the Extended Reporting Period set forth in ITEM 8(a) of the Declarations by paying the additional premium set forth in ITEM 8(b) of the Declarations, then the coverage otherwise afforded by this Policy will be extended to apply to **Loss** from **Claims** first made during the Extending 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 I whichever is earlier. 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.

G. Notice; Timing, and Interrelationship of **Claims**:

1. As a condition precedent to any right to payment in respect of any **Claim**, the **Insureds** must give the **Insurer** written notice of such **Claim**, with full details, as soon as practicable after it is first made and in no event later than seventy-five (75) days after the expiration date of the **Policy 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 **Loss** which may result from 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 had been first made during the **Policy Period**.
3. All notices under CONDITIONS G.1. and 2. must be sent by certified mail or prepaid courier to the address set forth in ITEM 5 of the Declarations.
4. All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claim** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with CONDITION G.2., whichever is earlier.

H. Adjustments:

If, during the **Policy Period**, the **Company** acquires any assets or acquires a **Subsidiary**, or acquires any entity by merger (each a "New Entity") and, at the time of the transaction, the assets of the New Entity exceed twenty-five percent (25%) of the total assets of the **Company** as reflected in the most recent **Application** (a "Transaction"), then for a period of ninety (90) days after the effective date of the Transaction, the New Entity will be included within the definition of **Insured**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of the Transaction. Upon the expiration of the ninety (90)-day period, there shall be no coverage under this Policy for **Wrongful Acts** committed or allegedly committed by the New Entity, unless the **Company** has provided the **Insurer** with written notice of the Transaction, containing full details thereof, and the **Company** and the **Insurer** have agreed to add coverage for

the New Entity upon such terms, conditions, and limitations of coverage and such additional premium as the **Insurer**, in its sole discretion, may require.

I. 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**; or
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 or trustees of the **Named Insured**:

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

J. 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 twenty (20) days before the effective date of cancellation. Such notice shall state the reason for 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 6 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.

K. Representations: Severability:

The **Insured** represents 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.

In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy will be void with respect to the **Company** and any **Insured** who knew of such untruth, misrepresentation or omission.

L. No Action against the **Insurer**:

1. No action may be taken against the **Insurer** unless, as conditions precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the **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**.

M. Mandatory Non-Binding Alternative Dispute Resolution

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Policy promptly by negotiation. If the dispute has not been resolved by negotiation within forty-five (45) days of the disputing party's notice, either party may demand that the dispute be submitted for non-binding resolution under the then current CPR Model Mini-Trial Procedures in effect on the date of this agreement. Unless otherwise agreed, the parties will select a mini-trial neutral advisor from the CPR Panels of Neutrals and shall notify CPR and request CPR to initiate the selection process. All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified herein are pending. The parties will take such action, if any, required to effectuate such tolling.

The parties agree that no suit will be filed by either party against the other party seeking resolution of any dispute arising out of or relating to this Policy until the parties have (1) attempted to negotiate a resolution, (2) completed the non-binding CPR Mini-Trial proceeding through decision, and (3) thirty days have elapsed since the conclusion of the non-binding CPR Mini-Trial proceeding.

N. Death, Incapacity, or Insolvency of an **Insured**:

The **Insurer** will not be relieved of any its obligations under this Policy by the death, incapacity, or insolvency of any **Insured**. In the event of the death, incapacity, or insolvency of an **Insured**, any **Claim** against the estate, heirs, legal representatives, or assigns of such **Insured** for a **Wrongful Act** of such **Insured**, will be deemed to be a **Claim** against such **Insured**.

O. Spousal Extension

The coverage afforded under this Policy will, subject to all of its terms, conditions, limitations, and exclusions, be extended to apply to **Loss** resulting from a **Claim** against a person who, at the time the **Claim** is made, is a lawful spouse of an **Insured**, but only if: (a) the **Claim** against such spouse results from a **Wrongful Act** actually or allegedly

committed by the **Insured**, to whom the spouse is married; and (b) such **Insured** and his or her spouse are represented by the same counsel in connection with such **Claim**.

P. Territory:

This Policy applies to **Wrongful Acts** committed by any **Insured** anywhere in the world but only to those **Claims** brought against the **Insured** in the United States of America, Canada, the European Union or their respective territories or possessions, or such other jurisdictions identified by endorsement and attached to this policy.

Q. Authorization and Notices:

The **Named Insured** will act on behalf of all other **Insureds** 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 stop 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 **Insureds** agree that this Policy, including the **Application** and any endorsements, constitutes the entire agreement between them and the **Insurer** or any of its agents relating to this insurance.

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 on the Declarations Page.