

## Miscellaneous Professional Liability

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS MISCELLANEOUS PROFESSIONAL LIABILITY POLICY IS LIMITED TO ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR THE OPTIONAL EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE COMPANY IN WRITING PURSUANT TO THE TERMS AND CONDITIONS OF THE POLICY. THE PAYMENT OF LOSS AND CLAIM EXPENSES REDUCES AND MAY EXHAUST THE POLICY'S LIMIT OF LIABILITY. CLAIM EXPENSES AND LOSS PAYMENTS SHALL BE APPLIED AGAINST THE DEDUCTIBLE. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, and in reliance upon the statements, representations, attachments and information contained in and submitted with the **Application**, which is deemed attached hereto and made a part of this Policy, and subject to the Limit of Liability as well as all the terms, conditions, limitations and exclusions of this Policy, the Company agrees with the **Named Insured** as follows:

The Company shall mean the insurance carrier set forth in the Declarations of this Policy.

### I. INSURING AGREEMENTS

#### (A) Professional Services Liability Coverage

The Company shall pay **Loss** and **Claim Expenses**, in excess of the Deductible and subject always to the Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services**, provided always that: (1) the **Claim** is first made against an **Insured** during the **Policy Period** or the Optional Extended Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, or within sixty (60) days after the end of the **Policy Period**, or during the Optional Extended Reporting Period (if applicable); (2) an **Insured's** partners, principals, officers, directors, members or risk managers had no knowledge of any circumstances, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Knowledge Date stated in the Declarations of this Policy; and, (3) the **Wrongful Act** takes place on or after the Retroactive Date set forth in the Declarations of this Policy and prior to the end of the **Policy Period**.

The following Insuring Agreement is applicable only when the Declarations of this Policy reflect that such Insuring Agreement has been purchased.

#### (B) Network Security and Privacy Liability Coverage

The Company shall pay **Loss** and **Claim Expenses**, in excess of the Deductible and subject always to the Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** first made against an **Insured** for a **Wrongful Act** arising from **Professional Services** and resulting in a **Privacy Breach** or a **Security Breach**, provided always that: (1) the **Claim** is first made against an **Insured** during the **Policy Period** or during the Optional Extended

Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, or within sixty (60) days after the end of the **Policy Period**, or during the Optional Extended Reporting Period (if applicable); (2) an **Insured's** partners, principals, officers, directors, members or risk managers had no knowledge of any circumstances, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Effective Date stated in the Declarations of this Policy; and (3) such **Wrongful Act** takes place on or after the Retroactive Date set forth in the Declarations of this Policy and prior to the end of the **Policy Period**.

## II. SUPPLEMENTAL COVERAGES

All payments made by the Company pursuant to coverage provided by this Section shall not be subject to any Deductible and shall not operate to reduce the Policy's Limit of Liability.

### (A) Disciplinary Proceedings

The Company shall pay upon written request, reasonable and necessary legal fees and expenses of up to \$10,000 in the aggregate during the **Policy Period**, incurred by an **Insured**, with the prior written consent of the Company, in responding to a disciplinary proceeding brought against an **Insured** by or before a state licensing board, provided always that the following conditions are satisfied:

- (1) the disciplinary proceeding arises out of an **Insured's Professional Services**; and
- (2) the disciplinary proceeding is first initiated against an **Insured** during the **Policy Period** and is also reported to the Company, in writing, during the **Policy Period** or within sixty (60) days after the end of the **Policy Period**.

After the Company has paid \$10,000 under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any disciplinary proceeding under this Policy.

### (B) Insured's Expense Reimbursement

The Company shall pay, upon written request, reasonable and necessary expenses incurred by an **Insured** and provable loss of wages sustained by an **Insured**, if an **Insured** is required, by the Company, to attend legal proceedings in connection with the defense of a **Claim**. Such reimbursement shall be subject always to the following:

- (1) the maximum payment for such expenses shall not exceed \$300 per day for an **Insured** who attends such proceedings at the Company's request; and
- (2) the Company's maximum aggregate liability for payment of reasonable and necessary expenses shall not exceed \$7,500 under this Policy.

**(C) Subpoena Response Assistance**

The Company shall pay upon written request, reasonable and necessary legal fees and expenses of up to \$10,000 in the aggregate during the **Policy Period**, incurred by an **Insured**, with the prior written consent of the Company, in responding to a subpoena served upon an **Insured**, provided always that the following conditions are satisfied:

- (1) the subpoena arises out of an **Insured's Professional Services**; and,
- (2) the subpoena is served upon an **Insured** during the **Policy Period** and is also reported to the Company, in writing, during the **Policy Period** or within sixty (60) days after the end of the **Policy Period**.

After the Company has paid \$10,000 under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any subpoena under this Policy.

**III. DEFENSE, INVESTIGATION & SETTLEMENT OF CLAIMS**

**(A) Defense**

The Company shall have the right and duty to defend any **Claim** covered by this Policy that is brought against an **Insured** alleging a **Wrongful Act** arising from **Professional Services**, a disciplinary proceeding pursuant to the coverage afforded under **Section II.(A)**, or a subpoena pursuant to the coverage afforded under **Section II.(C)**, even if the allegations are groundless or false. The Company has the sole right to select and appoint legal counsel to represent any **Insured** with respect to: (i) any **Claim** to which this Policy applies; (ii) a disciplinary proceeding pursuant to the coverage afforded under **Section II.(A)**; and, (iii) a subpoena pursuant to the coverage afforded under **Section II.(C)**. The Company's duty to defend any **Claim** shall cease upon exhaustion of the Limit of Liability and, with respect to any matter under **Section II.(A)** or **Section II.(C)**, the Company's duty to defend shall cease once the Company has paid the applicable aggregate amount for the **Policy Period**.

**(B) Investigation and Settlement of Claims**

- (1) An **Insured** shall not, except at its own expense, incur any **Claim Expenses**, engage in settlement negotiations, enter into any settlement agreement, make any payment, agree to make any payment, admit any liability, assume any obligation or incur any expense without the prior written consent of the Company, such consent not to be unreasonably withheld. The Company shall not be liable for any **Claim Expenses**, settlement, expense, assumed obligation or admission to which it has not given its prior written consent.
- (2) The Company shall have the right and sole discretion to conduct any investigation it deems necessary, including without limitation, any investigation with respect to the **Application**, any statements made in the **Application** and coverage.

- (3) The Company may, with the consent of the **Named Insured**, settle any **Claim** it deems reasonable and necessary. If the **Named Insured** refuses to consent to any settlement recommended by the Company and acceptable to the claimant, then the Company's liability for such **Claim** shall not exceed the amount for which the **Claim** could have been so settled, plus **Claim Expenses** incurred up to the date of such refusal, subject to the Limit of Liability, and the Company shall have the right to withdraw from the further defense of the **Claim** by tendering control of the defense thereof to the **Named Insured**.

#### IV. DEFINITIONS

##### (A) Application

“**Application**” shall mean all applications and/or proposals, including any attachments thereto, and all other information and materials submitted by or on behalf of any **Insured** to the Company in connection with the underwriting of this Policy, or any other policy or policies of which this Policy is an indirect or direct renewal or replacement.

##### (B) Bodily Injury

“**Bodily Injury**” shall mean physical injury, sickness, disease, death of a person, mental anguish, emotional distress, mental injury, shock, humiliation, pain and suffering, or any similar injury to any person.

##### (C) Claim

“**Claim**” shall mean:

- (1) a written demand, made against any **Insured** for monetary damages or non-monetary relief; or
- (2) any civil, arbitration or administrative proceeding commenced by the service of a complaint or similar pleading and initiated against any **Insured**; including any appeal thereof.

However, **Claim** does not include any criminal, investigative or regulatory proceedings initiated against any of the **Insureds** or subpoenas served upon any of the **Insureds**.

A **Claim** will be deemed to have been first made against an **Insured** when any **Insured** first receives written notice of such **Claim**.

All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.

**(D) Claim Expenses**

“**Claim Expenses**” shall mean (1) reasonable and necessary legal fees and expenses incurred by an attorney selected and appointed by the Company in defense of a **Claim**; and (2) all other reasonable and necessary fees, costs or expenses incurred in the investigation, defense and appeal of a **Claim** if incurred by or on behalf of an **Insured** with the prior written consent of the Company (provided, however, that the Company shall have no obligation to apply for or furnish any bond for appeal, injunction, attachment or similar purpose). **Claim Expenses** shall not include: (1) salary expenses, wages or lost earnings of any **Insured**; (2) amounts incurred by an **Insured** in connection with a disciplinary proceeding; or (3) amounts incurred by an **Insured** in connection with responding to a subpoena.

**(E) Computer System**

“**Computer System**” shall mean computer hardware, software, firmware, and components thereof, including electronic data stored therein, which are linked together through a network of two or more computers, including such networks accessible through the **Internet**, intranets, extranets, clouds or other virtual private networks.

**(F) Domestic Partner**

“**Domestic Partner**” shall have the meaning prescribed by applicable state or local 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 years or more;
- (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.

**(G) Insured**

“**Insured**” shall mean:

- (1) the **Named Insured** designated as such in the Declarations of this Policy;
- (2) any natural person who is a current or former partner, principal, officer, director, member or employee of any **Insured** with respect to a **Wrongful Act** committed only while acting within the scope of his or her duties on behalf of any **Insured**;
- (3) any natural person who is contract, temporary or leased personnel rendering **Professional Services**, but only with respect to a **Wrongful**

**Act** committed while acting under the direct supervision of and on behalf of an **Insured**;

- (4) the lawful spouse or **Domestic Partner** of an **Insured** (as set forth in subsections 2 or 3 above) for any **Claim** made against such spouse or **Domestic Partner** solely by reason of his/her status as a spouse or **Domestic Partner** of an **Insured** or his/her ownership interest in marital property/assets that are sought as recovery for such **Claim**, but only if the **Claim** does not allege any **Wrongful Act** by such spouse or **Domestic Partner**;
- (5) the estate, heirs, assigns or legal representatives of any **Insured** (as set forth in subsections 2 or 3 above) in the event of such **Insured's** death, incapacity or insolvency, for any **Claim** made against the estate, heirs, assigns or legal representatives of such **Insured** solely by reason of his/her/its status as the estate, heirs, assigns or legal representatives of such **Insured** and only to the extent that coverage would have otherwise been provided under this Policy to such **Insured**;
- (6) **Subsidiary**; and
- (7) within the meaning of the United States Bankruptcy Code or similar statute or status under foreign law, the debtor-in-possession of any entity identified in subsections 1 and 6 above.

**(H) Internet**

**"Internet"** shall mean the worldwide public network of computers commonly known as the internet, as it currently exists or may exist in the future.

**(I) Interrelated Wrongful Acts**

**"Interrelated Wrongful Acts"** shall mean all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

**(J) Loss**

**"Loss"** shall mean a monetary judgment, award or settlement for damages including statutory attorneys' fees and costs. **Loss** shall also include pre and post judgment interest, the non-multiplied portion of punitive and exemplary damages to the extent such damages are insurable under the law of the most favorable applicable jurisdiction that allows coverage for such damages. **Loss** shall not include:

- (1) any amount for which any **Insured** is not legally obligated to pay;
- (2) criminal or civil fines, penalties, taxes or sanctions;
- (3) the multiple portion of any multiplied damages award;

- (4) discounts, coupons, prizes, awards or other incentives offered to any **Insured's** clients or customers;
- (5) the return, reduction, disgorgement, restitution or offset of money, assets, fees, charges, royalties, profits or commissions;
- (6) liquidated damages,
- (7) all costs with respect to any orders or agreements to provide affirmative, equitable, injunctive or non-monetary relief, other than **Claim Expenses** associated with such relief;
- (8) any amounts uninsurable under the law pursuant to which this Policy is construed; or
- (9) any amount allocable to uncovered **Loss** under this Policy.

**(K) Malicious Code**

“**Malicious Code**” shall mean unauthorized, corrupting or harmful software code, including but not limited to computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms and logic bombs.

**(L) Mediation**

“**Mediation**” shall mean the voluntary, non-binding process by which a qualified, professional third-party neutral intercedes between the parties to a **Claim** with the intention to resolve such **Claim**. The term **Mediation** shall not include any court-ordered dispute resolution nor shall the term include arbitrations.

**(M) Named Insured**

“**Named Insured**” shall mean the entity or individual designated as such in the Declarations of this Policy.

**(N) Network Security**

“**Network Security**” shall mean any hardware or software with a function or purpose of loss mitigation or prevention of a computer attack. **Network Security** shall include, but shall not be limited to the following: firewalls, filters, DMZ's, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users, and encryption.

**(O) Personal Information**

“**Personal Information**” shall mean an individual's first and last name together with any one or more of that individual's:

- (1) social security number;

- (2) medical or healthcare data or other protected health information;
- (3) driver's license number, state identification number, or zip code;
- (4) account number, debit or credit card number together with any required security code, access code or password that would permit access to the individual's financial account; or
- (5) any non-public information of an individual as such might be defined by a **Privacy Regulation**.

**Personal Information** shall not include any information that is lawfully available to the general public for any reason including, but not limited to, any information contained in federal, state or local government records.

**(P) Personal Injury**

**"Personal Injury"** shall mean any actual or alleged:

- (1) false arrest, detention, or imprisonment;
- (2) wrongful entry, wrongful eviction, or other invasions of private occupancy;
- (3) malicious prosecution; or
- (4) libel, slander, or defamation of character.

**(Q) Policy Period**

**"Policy Period"** shall mean the period from the Effective Date of this Policy to its Expiration Date as set forth in the Declarations of this Policy, or the Policy's earlier termination date, if any. **Policy Period** specifically excludes the sixty (60) days following expiration referenced in Section **IX.(A)** and specifically excludes the Optional Extended Reporting Period.

**(R) Privacy Breach**

**"Privacy Breach"** shall mean a common law or statutory breach of confidence or violation of any common law or statutory rights to privacy, including but not limited to a breach of an **Insured's Privacy Policy**, or public disclosure of a person's **Personal Information**.

**(S) Privacy Policy**

**"Privacy Policy"** shall mean an **Insured's** policies in written or electronic form that govern the collection, dissemination, confidentiality, integrity, accuracy or availability of **Personal Information** provided to an **Insured's** employees or third parties.

**(T) Privacy Regulation**

**"Privacy Regulation"** shall mean any federal, state or local statute, legislative act or regulation governing the confidentiality, control and use of personally identifiable financial, medical or other sensitive information, including but not



limited to:

- (1) Health Insurance Portability and Accountability Act of 1996 or any regulations promulgated thereunder;
- (2) Gramm-Leach-Bliley Act of 1999 or any regulations promulgated thereunder;
- (3) The Identity Red Flags under the Fair and Accurate Credit Transactions Act of 2003 or any regulations promulgated thereunder; and
- (4) any other similar federal, state or local identity theft and privacy protection statutes or regulations that require commercial entities that collect **Personal Information** to post privacy policies, adopt privacy policies and/or controls or notify individuals in the event **Personal Information** has potentially been compromised.

**(U) Professional Services**

**“Professional Services”** shall mean the performance of services for others for a fee as set forth by endorsement.

**(V) Property Damage**

**“Property Damage”** shall mean:

- (1) physical injury to, or destruction of, tangible property of parties including loss of use resulting therefrom; or
- (2) loss of use of tangible property that has not been physically injured or destroyed.

**(W) Security Breach**

**“Security Breach”** shall mean:

- (1) the failure by any **Insured** to prevent the transmission of a **Malicious Code** from a **Computer System** to a third-party’s computers and systems;
- (2) the failure by any **Insured** to provide any authorized third party user of an **Insured’s** website, or an **Insured’s** computer or communications network, with access to such website, or computer or communications network;
- (3) the failure by any **Insured** to prevent unauthorized access to, or use of, data containing **Personal Information** of others; or
- (4) the failure by any **Insured** to provide notification of any actual or potential unauthorized access to, or use of, data containing **Personal Information** of others if such notification is required by **Privacy Regulation**.

**(X) Subsidiary**

“**Subsidiary**” shall mean any:

- (1) corporation, in which and for as long as, the **Named Insured** owns or controls, either directly or indirectly, more than fifty percent (50%) of the issued and outstanding voting securities representing a right to vote for the election of the board of directors of such corporation;
- (2) limited liability company, in which and for as long as, the **Named Insured** owns or controls, either directly or indirectly, the right to elect, appoint or designate more than fifty percent (50%) of the members of the board of managers or management committee of such limited liability company; or,
- (3) any other entity in which the **Named Insured** owns or controls more than fifty percent (50%) of the ownership equity, including any limited or general partnership;

provided that with respect to any entity that becomes a **Subsidiary** after the inception date of this Policy, such entity shall not be automatically deemed a **Subsidiary** if such entity’s annual gross revenues exceed ten percent (10%) of the **Named Insured’s** consolidated annual gross revenues as of the inception date of this Policy.

In all events there is no coverage for **Claims for Wrongful Acts** committed by a **Subsidiary**, occurring prior to the time such entity became a **Subsidiary** or when such entity is no longer a **Subsidiary**.

**(Y) Wrongful Act**

“**Wrongful Act**” shall mean:

- (1) any actual or alleged negligent act, error or omission committed or allegedly committed by any **Insured** solely in connection with the rendering of **Professional Services** and, if purchased, solely in connection with the rendering of **Professional Services** resulting in a **Privacy Breach** or a **Security Breach**; or,
- (2) **Personal Injury** actually or allegedly caused by an **Insured** solely in connection with the rendering of **Professional Services** and, if purchased, **Personal Injury** actually or allegedly caused by an **Insured** solely in connection with the rendering of **Professional Services** resulting in a **Privacy Breach** or a **Security Breach**.

For all purposes under this Policy, the same **Wrongful Act** or any **Interrelated Wrongful Acts** shall be deemed to have been committed at the time when the first such **Wrongful Act** was committed.

## V. EXCLUSIONS AS TO THE ENTIRE POLICY

The Company shall not be required to make any payment for **Loss or Claim Expenses** in connection with any **Claim** against an **Insured**:

- (A) for, based upon or arising out of, any actual or alleged dishonest, criminal, fraudulent or malicious act, error or omission, or any intentional or knowing violation of the rights of another committed by an **Insured**; provided however, that in the event that a **Claim** asserts a **Wrongful Act** in addition to any actual or alleged dishonest, criminal, fraudulent, malicious act, error or omission or intentional or knowing violation of the rights of another committed by an **Insured**, and notwithstanding Section VII. (E) (“**Allocation**”), the Company will pay **Claim Expenses** incurred in connection with the defense of such actual or alleged dishonest, criminal, fraudulent, or malicious act, error or omission or intentional or knowing violation of the rights of another committed by an **Insured**, until such time as there is a final adjudication, binding arbitration decision, conviction, or plea of *nolo contendere* or no contest, by an **Insured** establishing such dishonest, criminal, fraudulent, or malicious act, error or omission or intentional or knowing violation of the rights of another committed by an **Insured**.

This exclusion will apply separately to each **Insured** who is a natural person and will only apply to the **Named Insured** or **Subsidiary** if the conduct was committed by any partner, director, officer or member of the **Named Insured** or **Subsidiary** as determined by a final adjudication, binding arbitration decision, conviction, or plea of *nolo contendere* or no contest to such actual or alleged dishonest, criminal, fraudulent or malicious act, error or omission or intentional or knowing violation of the rights of another committed by an **Insured**.

- (B) for, based upon or arising out of, any actual or alleged violations of any federal, state, local, foreign or common law, prohibiting any kind of discrimination, harassment, retaliation, misconduct or wrongful employment conduct. This exclusion applies whether an **Insured** may be liable as an employer, prospective employer or in any other capacity.
- (C) for, based upon or arising out of, 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, the Employee Retirement Income Security Act of 1974, any workers’ compensation, unemployment insurance, social security, disability benefits or wage and hour law, or similar provisions of any federal, state, local or foreign statute law, rule, regulation or common law. This exclusion applies whether any **Insured** may be liable as an employer, prospective employer or in any other capacity.
- (D) for the liability of others assumed by any **Insured** under any oral or written contract or agreement, unless such liability would have attached to that **Insured** even in the absence of such contract or agreement.
- (E) by or on behalf of any:

- 1) **Insured**;
  - 2) entity in which the **Insureds** collectively own a ten percent (10%) or greater financial interest;
  - 3) entity that is or was operated, managed or controlled by any **Insured**;
  - 4) entity in which any **Insured** is an officer, director, partner, principal, or an employee; or,
  - 5) parent company or other entity which owns greater than ten percent (10%) of any **Insured**.
- (F)** for, based upon or arising out of, any actual or alleged plagiarism, piracy, misuse or infringement of any proprietary information, patent, copyright, trade secrets, trademark, trade dress, trade name, service mark, service name, title or slogan.
- (G)** for, based upon or arising out of, any actual or alleged violation of:
- 1) The Racketeer Influenced and Corrupt Organizations Act;
  - 2) The Securities Act of 1933;
  - 3) The Securities Exchange Act of 1934;
  - 4) The Sarbanes-Oxley Act of 2002;
  - 5) Any State Blue Sky or Securities Law;
  - 6) Section 113, Truncation of Credit Card and Debit Card Numbers, of the Fair and Accurate Trade Transactions Act (FACTA), as defined in 15 U.S.C Section 1681;
- or any amendments thereto, including any rules or regulations issued in relation to such acts, or any other similar local, state, federal or foreign statutes, laws, rules, regulations or ordinances.
- (H)** for, based upon or arising out of, any actual or alleged deceptive or unfair business practices, violation of consumer protection laws (except **Privacy Regulations** for **Claims** under Insuring Agreement **I.(B)**) or false or deceptive advertising, any antitrust violation, restraint of trade, unfair competition, violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, or any amendments thereto, or any other similar federal, state, local or foreign statutes, laws, rules, regulations or ordinances.
- (I)** for:
- (1) **Bodily Injury**; or
  - (2) **Property Damage**.

- (J) for, based upon or arising out of, any **Insured's** failure to procure or maintain any form of insurance, suretyship or bond.
- (K) for, based upon or arising out of, breach of any warranty or guaranty made by any **Insured** unless such liability would have attached to that **Insured** even in the absence of such warranty or guaranty.
- (L) for, based upon or arising out of, breach of contract by any **Insured**, unless such liability would have attached to that **Insured** even in the absence of such contract.
- (M) for, based upon or arising out of, a nuclear reaction, radiation, or contamination or originating from a nuclear facility where nuclear material is stored or disposed of, or where a nuclear reactor is located, under any circumstances and regardless of cause.
- (N) for, based upon or arising out of, the actual or alleged discharge, dispersal, release, escape, migration or seepage of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials or waste materials (including materials to be recycled, reconditioned or reclaimed) on, in, into, or upon land and structures thereupon, the atmosphere, any watercourse, body of water or groundwater.
- (O) for, based upon or arising out of, any actual or alleged **Privacy Breach** or a **Security Breach**, except to the extent covered under Insuring Agreement **I.(B)**, if purchased.
- (P) for, based upon or arising out of, any person's actual or alleged performance, or failure to perform professional services as an attorney, certified financial planner, certified public accountant, registered investment advisor, insurance agent or broker, or architect or engineer.
- (Q) for, based upon or arising out of, any actual or alleged violation of local, state, federal or foreign law, regulation or ordinance pertaining to unsolicited telemarketing, solicitations, emails, faxes, text messages or any other communications of any type or nature.
- (R) brought by any federal, state, provincial or local governmental entity (with the exception of the coverage afforded under **Section II.(A)** for Disciplinary Proceedings or the coverage afforded under **Section II.(C)** for Subpoena Response Assistance), including but not limited to, any actions, decisions, orders, proceedings or investigations by the United States Federal Trade Commission, the United States Federal Communications Commission and the United States Department of Health and Human Services.
- (S) for any actual or alleged overcharging of fees for **Professional Services**.

## VI. EXCLUSIONS AS TO INSURING AGREEMENT B ONLY

With respect to Insuring Agreement **I.(B)** only, this Policy does not apply to any **Claim, Claim Expenses** or **Loss**:

- (A) for, based upon or arising out of, 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 acts or usurped power.
- (B) for, based upon or arising out of, fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, regardless of the cause.
- (C) for, based upon or arising out of, an **Insured's** intentional failure to disclose the loss of **Personal Information** in violation of any **Privacy Regulation** or common law.
- (D) for, based upon or arising out of, any failure, outage, surge, brownout or blackout, or any other disruption of power, utility services, satellites, or telecommunications services not within an **Insured's** direct operational control.
- (E) for, based upon or arising out of, any failure of telephone lines, cable lines, data transmission lines or other infrastructure comprising or supporting the **Internet** not within an **Insured's** direct operational control.
- (F) for, based upon or arising out of, the failure to ensure that an **Insured Computer System** is protected by security practices and systems maintenance procedures that are equal to or superior to those disclosed in the **Application** for this Policy.
- (G) for, based upon or arising out of, any of the following:
  - (1) the inability to use, or the lack of performance of, any software: (a) due to the expiration, cancellation or withdrawal of such software; (b) that had not yet been released to the production environment; or (c) that has not passed all test runs or proven successful in daily operations;
  - (2) any **Insured's** failure to take reasonable steps to use, design, maintain and/or upgrade its **Network Security**; or
  - (3) any inadequacy or weakness in any **Insured's Network Security** that any **Insured** had knowledge of prior to the Effective Date of this Policy.
- (H) for, based upon or arising out of, the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment or that affects the value, marketability, condition or use of any real or personal property or that actually or allegedly causes **Bodily Injury** or **Property Damage**.
- (I) for, based upon or arising out of, any failure or defective design, architecture or configuration of any **Insured's Computer System**, including but not limited to the failure to design for traffic and capacity requirements.

## VII. LIMIT OF LIABILITY / DEDUCTIBLE

### (A) Limit of Liability

The amount shown in the Declarations at Item 9 shall be the Company's per **Claim** and maximum aggregate Limit of Liability for all **Loss**, including **Claim Expenses**, on account of all **Claims** first made during the **Policy Period** and Optional Extended Reporting Period (if purchased) combined.

### (B) Exhaustion of Limit of Liability

The Company shall not be liable to pay any **Loss** or **Claim Expenses**, or continue the defense of any **Claim**, after the Limit of Liability has been exhausted.

The payment of **Claim Expenses** by the Company reduces and may totally exhaust the applicable Limit of Liability.

### (C) Deductible

(1) The Deductible amount stated in the Declarations of this Policy shall apply to **Loss** and **Claim Expenses**. The Company shall not be obligated to pay **Loss** or **Claim Expenses** until an **Insured** pays the applicable Deductible in full. Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the applicable Deductible, or any portion thereof, under this Policy.

(2) One Deductible shall apply to a **Claim** alleging the same **Wrongful Act** or **Interrelated Wrongful Acts**.

### (D) Mediation of Claims Deductible Credit

The applicable Deductible amount stated in the Declarations of this Policy will be decreased by fifty percent (50%) and reimbursed to the **Insured** that paid the Deductible, subject to a maximum aggregate reduction of \$15,000, if a **Claim** is fully and finally resolved through **Mediation**. In the event such **Mediation** does not fully and finally resolve the **Claim**, there shall be no reduction of the Deductible obligation.

### (E) Allocation

If a **Claim** made against any **Insured** includes both covered and uncovered matters or is made against both an **Insured** and others not insured under this Policy, the **Insureds** and the Company agree that there must be an allocation between insured and uninsured **Loss** and **Claim Expenses**. Additionally, the **Insureds** and the Company agree that in determining a fair and appropriate allocation of insured and uninsured **Loss** and **Claim Expenses**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with, the defense and/or settlement of the **Claim** by the **Insureds** and others. If there is no agreement as to the allocation of

**Claim Expenses**, the Company shall pay the allocated portion of **Claim Expenses** which the Company deems fair and appropriate. In addition, if there is no agreement on allocation of **Loss** and **Claim Expenses**, no presumption as to allocation shall exist in any arbitration, suit or other proceeding.

## VIII. TERRITORY

Coverage under this Policy shall apply to **Wrongful Acts** arising from **Professional Services** worldwide, provided always that the **Claim** against the **Insured** is made, filed and maintained within the United States of America, its territories and possessions or Canada.

## IX. NOTIFICATION

(A) As a condition precedent to any available rights under this Policy, in the event any **Claim** is made against any **Insured**, any **Insured** shall give written notice of the **Claim** to the individual designated in the Declarations of this Policy no later than sixty (60) days after the end of the **Policy Period** or during the Optional Extended Reporting Period (if applicable).

(B) Solely with respect to the coverage provided in Section I.(A) only, if, during the **Policy Period**, any **Insured** first becomes aware of any circumstance that may lead to a **Claim**, and if any **Insured**, during the **Policy Period** only (and not during the sixty (60) days after the end of the **Policy Period** or during the Optional Extended Reporting Period), gives written notice, to the Company of:

- (1) the circumstances (including the names of the parties involved);
- (2) the specific **Wrongful Act**;
- (3) the consequences that have or may result therefrom; and
- (4) the circumstances by which that **Insured** first became aware thereof;

then any **Claim** subsequently made against any **Insured** arising in whole or in part out of such circumstances shall be deemed for the purposes of this Policy to have been first made on the date such circumstances were first reported to the Company. There shall be no coverage for any fees, expenses, or other costs incurred prior to the time such circumstances become a **Claim** and written notice of such **Claim** is provided to the Company pursuant to Section IX.(A). In no event shall this Section IX.(B) apply to coverage under Insuring Agreement I.(B).

## X. CONDITIONS

### (A) Assistance and Cooperation

Every **Insured** shall cooperate with the Company and its representatives and, upon the Company's request, shall attend hearings, depositions and trials; shall



assist in effecting settlement; shall cooperate in securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. Every **Insured** shall further cooperate with the Company and do whatever is necessary to secure and effectuate any rights of indemnity, contribution or apportionment that any **Insured** may have.

Expenses incurred by any **Insured** in assisting and cooperating with the Company, as described above, do not constitute **Claim Expenses**; however, the Company will pay expenses incurred by any **Insured** as provided in Section II. **(B)**.

As a condition precedent to every **Insured's** rights under this Policy, every **Insured** agrees not to enter into any settlement agreement, engage in settlement negotiations, incur any **Claim Expenses**, legal fees and expenses or other amounts under the coverages provided in Section II.**(A)**, Section II.**(B)** or Section II.**(C)**, or otherwise assume any contractual obligation, or admit any liability with respect to any **Claim** without the prior written consent of the Company.

Every **Insured** agrees that it shall not take any action which in any way increases the Company's exposure under this Policy.

**(B) Subrogation**

In the event of any payment under this Policy, the Company shall be subrogated to the extent of such payment to all rights of recovery thereof, and any **Insured** shall execute all documents required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit in the name of any **Insured**, and shall provide all other assistance and cooperation which the Company may reasonably require. An **Insured** shall do nothing after a **Claim** is made against an **Insured(s)** to prejudice the Company's subrogation rights.

All recoveries (after first deducting the legal fees and expenses incurred by the Company in obtaining such recovery) shall first be paid to the Company to the extent of any **Loss** or **Claim Expenses** incurred by the Company, with the balance paid to an **Insured**.

**(C) Other Insurance**

This Policy shall be excess over any other valid and collectible insurance, including the amount of any deductibles and/or retentions, available to any **Insured**, including any insurance under which there is a duty to defend and regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such insurance is written specifically as excess insurance of this Policy by reference in such other policy to the Policy number as set forth in the Declarations of this Policy.

**(D) Cancellation**

The **Named Insured** may cancel this Policy by giving advance written notice to

the Company stating when thereafter cancellation shall take effect.

If the Company decides to cancel this Policy, the Company will mail a written notice to the **Named Insured** stating on what date cancellation shall be effective and the reason for cancellation. If the reason is because of non-payment of premium, then the date of cancellation will be at least ten (10) days from the date of the Company's notice of cancellation. If it is for any other reason, then the date of cancellation will be at least thirty (30) days from the date of the Company's notice of cancellation.

If this Policy is cancelled by the Company before the Expiration Date the return portion of the premium shall be computed on a prorated basis. If the **Named Insured** elects to cancel the Policy before the Expiration Date, the Company will return ninety percent (90%) of the unearned premium as computed on a prorated basis. Cancellation is not contingent upon acceptance by the **Named Insured** of the unearned premium.

**(E) Optional Extended Reporting Period**

If this Policy is cancelled or non-renewed by the Company for any reason other than fraud, material misrepresentation, material omission or for the non-payment of premium, or if the **Named Insured** cancels or chooses not to renew this Policy, then the **Named Insured** shall have the right, following the effective date of such cancellation, if applicable, or the Expiration Date of the Policy, to purchase an Optional Extended Reporting Period, upon written request and payment of an additional premium of up to the percentage of the full annual premium not to exceed:

For 12 months: 100% of the full annual premium.

For 24 months: 150% of the full annual premium.

For 36 months: 185% of the full annual premium.

At the commencement of the Optional Extended Reporting Period, the entire premium shall be considered earned.

Any such Optional Extended Reporting Period:

- (a) shall only apply with respect to any **Claim** first made during the Optional Extended Reporting Period and only with respect to any **Wrongful Acts** committed before the effective date of cancellation, if applicable, or the Expiration Date of the Policy;
- (b) shall be evidenced by issuance of an Endorsement to this Policy;
- (c) is subject to all of the terms, conditions, limitations and exclusions of this Policy;
- (d) shall require payment within thirty (30) days from the **Named Insured's** written request to bind such Optional Extended Reporting Period; and

- (e) shall be effective on the effective date of such cancellation, if applicable, or the Expiration Date of the Policy.

The aggregate Limit of Liability for the Optional Extended Reporting Period shall be part of, and not in addition to, the aggregate Limit of Liability for the **Policy Period** set forth in the Declarations. The purchase of the Optional Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in the Declarations, which shall be the Company's maximum liability for all **Loss**, including **Claim Expenses**, on account of all **Claims** first made during the **Policy Period** and Optional Extended Reporting Period.

As used herein, "full annual premium" means the equivalent annual premium level for the coverage terms in effect immediately prior to the end of the **Policy Period**.

A change in Policy terms, conditions or exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the **Named Insured's** rights to purchase the Optional Extended Reporting Period.

The rights contained in this provision shall terminate, however, unless the **Named Insured** provides written notice of such election to purchase the Optional Extended Reporting Period to the Company within thirty (30) days of the effective date of cancellation, if applicable, or the Expiration Date of the Policy. Furthermore, as a condition precedent to the **Named Insured's** rights to purchase the Optional Extended Reporting Period, the total premium for this Policy must have been paid in full and any outstanding Deductible fully satisfied.

**(F) Action Against the Company**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of an **Insured's** obligation to pay with respect to a **Claim** shall have been finally determined either by judgment against an **Insured** after actual trial or by written agreement of an **Insured**, the claimant and the Company.

Any individual or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No individual or organization shall have any right under this Policy to join the Company as a party to any action against any **Insured** to determine an **Insured's** liability, nor shall the Company be impleaded by any **Insured** or their legal representative.

**(G) Assignment**

No assignment of interest under this Policy shall bind the Company unless its prior written consent is endorsed hereon.

**(H) Authorization Clause**

The **Named Insured**, designated in the Declarations of this Policy, shall have the

sole authority and responsibility to act on behalf of every **Insured** with respect to: (1) the payment or return of premium; (2) the receipt and agreement of any Endorsements issued to form a part of this Policy; (3) the exercise of the rights provided in Section **III.(B)** regarding consent to settlement; and (4) the exercise of the rights provided in Section **X.(E)** regarding the Optional Extended Reporting Period.

By acceptance of this Policy, each **Insured** under this Policy understands and agrees that the **Named Insured** shall have the authority set forth in this Section **X.(H)**.

**(I) Representations**

- (1) Each **Insured** represents and acknowledges that statements made in the **Application**, and the information submitted therewith, are true and accurate, and that such statements and information:
  - (a) are the basis upon which this Policy was issued and are considered to be incorporated herein and form a part of this Policy; and
  - (b) are deemed material to the acceptance of the risk assumed by the Company under this Policy.
- (2) Each **Insured** understands and agrees that this Policy was issued in reliance upon the truth and accuracy of the representations, statements and information made in or submitted with the **Application**.
- (3) In the event the **Application** contains misrepresentations that materially affect either the acceptance of this risk or the nature of the risk assumed by the Company under this Policy, this Policy in its entirety shall be void.

**(J) False or Fraudulent Claims**

If any **Insured** shall commit fraud in proffering any **Claim** with regard to amount or otherwise, this Policy in its entirety shall be void from the date such fraudulent **Claim** is proffered.

**(K) Bankruptcy**

Bankruptcy or insolvency of any **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this Policy.

**(L) Office of Foreign Assets Control**

Payment of **Loss** and **Claim Expenses** under this Policy shall only be made in full compliance with all United States of America economic or trade sanctions, laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

**XI. MATERIAL CHANGES**

In the event that after the inception date of this Policy:

- (1) the **Named Insured** merges with or is consolidated with another entity such that the **Named Insured** is the surviving entity; or
- (2) the **Named Insured** creates or directly or indirectly acquires, a **Subsidiary** whose annual gross revenues exceed ten percent (10%) of the **Named Insured's** annual gross revenues as of the acquisition date;

coverage shall be afforded to the **Named Insured** or its **Subsidiary** for **Claims**, first made within ninety (90) days of the effective date of such transaction or event, involving the assets acquired or the assets, liabilities or directors, officers or employees of the entity acquired or merged with, or such **Subsidiary**, but only for **Claims** wholly involving **Wrongful Acts** occurring after the effective date of such transaction or event.

The Company shall have the option of providing coverage for the **Named Insured**, or its **Subsidiary** beyond the ninety (90) days provided that:

- (A) the **Named Insured** gives the Company notice of such transaction or event as soon as possible, but in no event later than thirty (30) days after the effective date of the transaction or event
- (B) the **Named Insured** gives the Company information regarding the transaction or event as the Company may reasonably require; and
- (C) the **Named Insured** accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the Company, in its sole discretion, may impose.

If the Company, at its sole discretion, elects to provide coverage this Policy shall not apply to, and the Company shall not pay any **Loss** or **Claim Expenses** for any **Claim** based upon, arising out of, or directly or indirectly resulting from, or in any way involving any **Wrongful Act** occurring before: (a) the effective date of the transaction or event; or (b) the effective date of coverage under this Policy as set forth in an Endorsement, whichever is later.

## **XII. CHANGE OF CONTROL**

If during the **Policy Period**:

- a) the **Named Insured** merges into or consolidates with another entity such that the **Named Insured** is not the surviving entity; or
- b) Another entity, person or group of entities and/or person acting in concert acquires securities or voting rights which results in ownership or voting control by the other entity(ies) or person(s) of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of an **Insured's** directors;

(either of the above events are hereinafter referred to as the "Transaction") then the

coverage provided by this policy shall continue until the later of the expiration date of the Policy or such other date to which we may agree, but solely for **Claims for Wrongful Acts** which wholly occurred prior to the Transaction and are otherwise covered by this Policy, and the premium shall be considered fully earned.

The **Named Insured** shall give written notice of such event to the Company within thirty (30) days of the Transaction.

### **XIII. ENTIRE AGREEMENT**

By acceptance of this Policy, the **Named Insured** agrees that this Policy embodies all agreements existing between it and the Company or any of its agents relating to this Policy. Notice to any agent or knowledge possessed by any agent or other individual acting on behalf of the Company shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by the Company and signed by an authorized representative of the Company to form a part of this Policy.