



**PROFESSIONAL LIABILITY
ERRORS AND OMISSIONS INSURANCE**



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

ABOUT THIS POLICY

This is a **Claims made and Reported Policy** in which **Claim Expenses** are included within the **Limit of Liability** unless otherwise noted. **Please read the entire policy carefully and consult with your insurance broker or advisor. Those words (other than the words in the captions) which are printed in Boldface are defined in the Policy.**

In consideration for the payment of premium and in reliance on the statements made and information provided to Underwriters, including but not limited to the statements made and information provided in and with the **Application** which is made a part of this Policy, as well as subject to the Limits of Liability, the deductible and all of the terms, conditions, limitations and exclusions of this Policy, Underwriters and the **Insured** agree as follows:

I. INSURING AGREEMENT

Underwriters will pay on behalf of the **Insured** all **Damages** and **Claim Expenses** in excess of the deductible and subject to the applicable Limit of Liability that the **Insured** becomes legally obligated to pay as a result of any covered **Claim** that is first made against the **Insured** and reported in writing to Underwriters during the **Policy Period** or during any properly exercised and applicable **Extended Reporting Period**, for any **Wrongful Act** by the **Insured** or by anyone for whom the **Insured** is legally responsible, provided, however, that such **Wrongful Act** was committed or allegedly committed on or after the **Retroactive Date** set forth in Item 8 of the Declarations and further provided that the **Insured** had no knowledge of the actual or alleged **Wrongful Act** prior to the inception date of this Policy.

II. DEFENSE AND SETTLEMENT

- A. Underwriters shall have the right and the duty to defend any covered **Claim**, including but not limited to the appointment of legal counsel, subject to the limits of liability, the deductible and all applicable terms and conditions of this Policy, even if such **Claim** is groundless, false, or fraudulent.
- B. Notwithstanding Section II.A. above, the **Insured** may request in writing the right to appoint defense counsel to defend any covered **Claim**, but only with the prior written consent of Underwriters, who shall have the sole discretion to consent to such an appointment. The appointment by the **Insured** of defense counsel pursuant to this provision shall not waive or alter the rights of Underwriters with respect to review and determination as to the reasonableness of any **Claim Expenses** presented for payment.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

- C. Underwriters shall have the right to investigate and to solicit settlement demands or proposals as to any covered **Claim** as Underwriters deem reasonable and the **Insured** shall, as a condition to any coverage under this Policy, have the duty to cooperate with Underwriters in such investigation and in the solicitation of settlement demands or proposals including, but not limited to:
1. upon request, submit to examination and interrogation under oath by Underwriters' representative,
 2. attend hearings, depositions and trials as requested by Underwriters,
 3. assist in securing and giving evidence and obtaining the attendance of witnesses,
 4. provide written statements to Underwriters' representative and meet with such representative for the purpose of investigation and/or defense, all without charge to Underwriters.
- D. Underwriters shall not settle any **Claim** without the consent of the **Insured**, which consent the **Insured** will not unreasonably withhold.
- E. If the **Insured** shall refuse to consent to any settlement recommended by Underwriters and shall elect to contest the claim or continue any legal proceedings in connection with such **Claim**, then Underwriters' liability for the **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. Such amounts are subject to the Limits of Liability set forth in Sections VI.A. and B. of this Policy and Item 4. of the Declarations.
- F. Underwriters shall not be obligated to settle any **Claim**, pay any **Damages** or **Claim Expenses**, or continue to defend any **Claim** after the applicable Limit of Liability has been exhausted.

III. DEFINITIONS

- A. The term "**Application**" means the signed application for the Policy including any attachments and other materials submitted in conjunction with the signed **Application**. The **Application** shall be maintained by Underwriters and shall be deemed a part of this Policy as if physically attached. If this Policy is a renewal or replacement of a previous policy or policies issued by Underwriters, all signed applications and other materials that were attached to and became a part of these previous policies shall be considered as part of the Application for this Policy.
- B. The term "**Affiliate**" means any person or entity, which is related to any **Insured** through common ownership, control or management. **Affiliate** shall not include **Subsidiary**.
- C. The term "**Bodily Injury**" means physical injury to or sickness, disease or death of a person, or mental injury, mental anguish, emotional distress, pain or suffering, or shock sustained by a person, as a result of **Bodily Injury**.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

- D. The term “**Claim**” means any notice received by the **Insured** of a demand for **Damages** or for non-monetary relief based on any actual or alleged **Wrongful Act**, whether or not the nature or extent of the **Damages** or non-monetary relief is known or asserted at the time of receipt of any notice.
- E. The term “**Claim Expenses**” means:
1. all reasonable and necessary fees, costs and expenses, including the fees of attorneys and experts, incurred by or on behalf of Underwriters in the investigation, defense, appeal and settlement of a **Claim**;
 2. all other reasonable and necessary fees, costs and expenses incurred by the **Insured** with the written approval of Underwriters; and
 3. premiums on appeal bonds, attachment bonds or similar bonds; however, Underwriters shall have no obligation to apply for or furnish any such bonds.
- F. **Claim Expenses** shall not include and no coverage shall be afforded for:
1. salaries, wages or expenses of **Individual Insureds**; or
 2. the loss of earnings of the **Named Insured** or any **Individual Insured** except to the extent such constitutes Supplemental Payments pursuant to Section IV.C. of this Policy; or
 3. the defense of any criminal investigation, criminal grand jury proceeding, or criminal action.
- G. 1. The term “**Damages**” means a monetary judgment or award the **Insured** is legally obligated to pay for any covered **Claim** (including pre- or post-judgment interest) or a settlement negotiated by Underwriters with the consent of the **Insured**.
2. **Damages** does not include any of the following:
- a. fines, penalties, taxes, sanctions or that portion of any multiplied damages award which exceeds the damage award so multiplied;
 - b. any punitive or exemplary damages, provided, however, that, if such damages are otherwise insurable under applicable law and regulation, Underwriters will pay an award of punitive or exemplary damages made against the **Insured** for or based upon a **Wrongful Act** in the performance of **Professional Services**, in excess of the deductible and up to a maximum sum of \$ 250,000. The enforceability of this section shall be governed by such applicable law that most favors coverage for punitive damages. This limit shall be a part of and not in addition to the Limits of Liability set forth in items 4.A. and B. of the Declarations.
 - c. the return or restitution of fees, commissions, profits, or charges for goods provided or services rendered; or
 - d. any amounts deemed uninsurable by the law pursuant to which this Policy is construed.
- H. The term “**Extended Reporting Period**” means that period described in **Section VII** of the Policy.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

- I. The term “**Individual Insured**” means:
1. any past, present or future partner, director, officer, member, board member, or employee of the **Named Insured**, but only for acts within the scope of their duties for the **Named Insured**;
 2. any independent contractor of the **Named Insured**, but only for **Professional Services** performed on behalf of and at the direction of the **Named Insured**.
- J. The term “**Insured**” means:
1. the **Individual Insureds**;
 2. the **Named Insured**;
 3. any **Subsidiary** of the **Named Insured**;
 4. a **Joint Venture** in which the **Named Insured** participates as a joint venturer pursuant to a written joint venture agreement, but only with respect to the liability imposed on the **Named Insured** for its participation in such **Joint Venture** and only with respect to **Wrongful Acts** committed or allegedly committed by the **Named Insured**. This definition does not extend coverage and no coverage will be provided for **Damages** or **Claim Expenses** to the **Joint Venture** itself or any other entity or individual that is part of the **Joint Venture**.
- K. **Joint Venture** means a business endeavor, confirmed in a written agreement, between the **Named Insured** and one or more entities or individuals in which the **Named Insured’s** participation is the performance of **Professional Services**.
- L. **Named Insured** means the individual, corporation, partnership, limited liability company, limited partnership, or other entity named in Item 1 of the Declarations.
- M. **Personal Injury** means injury, other than **Bodily Injury**, arising out of one of more of the following offenses:
1. False arrest, detention or imprisonment;
 2. Malicious prosecution;
 3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of premises that a person occupies, committed by or on behalf of its owner, landlord, or lessor;
 4. Oral or written publication of material that slanders, libels, or defames a person or organization or disparages the goods, products or services of a person or organization; or
 5. Oral or written publication or material that violates a person’s right of privacy.
- N. **Policy Period** means the period of time specified in Item 7 of the Declarations.
- O. **Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, including but not limited to smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, radon, asbestos, electromagnetic radiation, or waste of any like substances. In addition to pollutants to be disposed of, waste also includes materials to be recycled, reconditioned or reclaimed.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

- P. **Professional Services** means only those services specified in Item 3 of the Declarations, as performed by or on behalf of the **Named Insured** for others for a fee or other compensation.
- Q. **Property Damage** means physical loss of or physical damage to or destruction of any property including the loss of use thereof.
- R. **Subsidiary** means any entity identified in the **Application** of which the **Named Insured** owns on or before the **Policy Period** more than 50% of the issued and outstanding voting securities, either directly or indirectly through one or more of its Subsidiaries.
- S. **Retroactive Date** means the date specified in Item 8 of the Declarations.
- T. **Wrongful Act** means any actual or alleged breach of duty, neglect, act, error, omission, or **Personal Injury** committed solely in the performance of the **Professional Services** of the **Insured**.

IV. EXTENSIONS OF COVERAGE

A. **Estates, Heirs, and Legal Representatives**

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

B. **Spousal Liability**

If a **Claim** is asserted against the lawful spouse of any **Individual Insured** solely as a result of:

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

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



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

C. Supplemental Payments

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

1. The maximum reimbursement for such expenses shall not exceed \$250 per day for each **Insured** who attends such proceedings at Underwriters' request.
2. Underwriters' maximum total liability for such reimbursement shall not exceed \$5,000 per **Claim** regardless of the number of **Insureds** who attend such proceedings at Underwriters' request.
3. Such payments shall be part of and shall reduce the available Limit of Liability.
4. The Deductible amount applicable to each **Claim** including **Claim Expenses** shall not apply to the payments made by Underwriters pursuant to this provision of this Policy.

V. EXCLUSIONS

This Policy does not apply to and Underwriters shall have no obligation to pay any **Damages, Claim Expenses, or Supplemental Payments** for any **Claim**:

- A. alleging fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or deliberate acts or omissions, provided, however, that Underwriters will pay **Claim Expenses** in the defense of **Claims**, alleging such conduct in relation to the performance by the **Insured** of **Professional Services** unless and until there is a final adjudication establishing that the **Insured** committed such conduct and further provided that:
 1. notwithstanding the above, Underwriters shall have no obligation to provide a defense or pay **Claim Expenses** for or relating to any criminal investigation, grand jury proceeding, or criminal action, and
 2. this exclusion shall not apply to any **Individual Insured** who did not commit or participate in such fraudulent, dishonest, criminal, or knowingly wrongful, malicious or deliberate acts or omissions.
- B. based upon, arising out of or attributable to the gaining of any profit or advantage to which the **Insured** was not legally entitled:
- C. alleging discrimination of any type or nature, including, but not limited to any violations of federal, state, or local law or ordinance, as to any past, present, or future employee of the **Insured**, or any applicant for employment with or potential employee of the **Insured**.
- D. any **Claim** alleging a **Wrongful Act**:
 1. committed or allegedly committed prior to the **Retroactive Date**; or



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

2. which has been the subject of any notice given under any other policy prior to the beginning of the **Policy Period** and of which this Policy is a renewal or replacement; or
 3. as to which the **Insured** had knowledge prior to the **Policy Period** and the **Insured** had a reasonable basis to believe that such **Wrongful Act** could give rise to a **Claim**; provided, however, that, if this Policy is a renewal or replacement of a previous policy issued by Underwriters providing materially identical coverage, the **Policy Period** referred to in this Section V.D.3 will be deemed to refer to the inception date of the first such policy issued by Underwriters;
- E. brought by one **Insured** against another **Insured**, or brought by any **Affiliate** or by any **Joint Venture** in which the **Insured** participates, as against any **Insured**;
 - F. for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, or amendments thereto or similar provisions of any federal, state or local statutory law or common law;
 - G. based upon or arising out of any violation of the Securities Act of 1933 as amended; the Securities Exchange Act of 1934 as amended; any state blue sky or securities laws or amendments thereto; any similar state or federal laws or amendments thereto; or any regulation issued pursuant to any of the foregoing statutes;
 - H. based upon or arising out of any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;
 - I. based upon or arising out of bodily injury, sickness, disease, or death of any employee of the **Insured** arising out of and in the course of employment by the **Insured**; or any obligation for which the **Insured** or any insurer may be liable under any Workers' Compensation, Unemployment Compensation, Employers Liability, or Disability Benefit Law, or any similar law, regulation, or ordinance, or the failure of the **Insured** to comply with any such statutes or any obligations thereunder;
 - J. based upon or arising out of the liability of others that is assumed by any **Insured** under any contract or agreement unless such liability would have attached to the **Insured** even in the absence of such contract or agreement;
 - K. based upon, arising out of, or attributable to **Bodily Injury** or **Property Damage**;
 - L. which would not have occurred in whole or in part but for the actual, alleged or threatened existence, discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time, including, but not limited to any loss, cost or expense arising out of any:
 - a. Request, demand or order that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the existence, non-existence or effects of **Pollutants**; or



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

- b. **Claim** by or on behalf of a governmental authority or others for **Damages** because of testing for, identifying, detecting, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, communicating information about, responding to, or assessing the existence, non-existence or effects of **Pollutants**; including the failure to perform any of these activities.
- M. based upon, arising out of or attributable to the actual or alleged infringement of any copyright, trademark, trade dress, trade name, service mark, service name, title, slogan or patent;
- N. with respect to any **Subsidiary**, for, based upon, arising out of, or attributable to, either directly or indirectly:
 - 1. any **Wrongful Act** committed or allegedly committed before the date it became a **Subsidiary**;
 - 2. any **Wrongful Act** committed or allegedly committed after the date it ceased to be a **Subsidiary**;
- O. any **Claim** based upon or arising out of any breach of express warranties, guarantees, or contracts, including, but not limited to any agreements to refund, repurchase, or indemnify any person or entity.
- P. any actual or alleged violation of any federal, state, or local statutes, ordinances, or regulations regarding or relating to unsolicited telemarketing, solicitations, emails, faxes, or any other communications of any type or nature, including but not limited to any anti-spam and do-not-call statutes, ordinances, or regulations.
- Q. the failure to procure or maintain adequate insurance or bonds.

VI. LIMITS OF LIABILITY AND DEDUCTIBLE

- A. The Limit of Liability shown in Item 4.A of the Declarations as applicable to “**Each Claim**” is the maximum amount that Underwriters are or can be liable for **Damages, Claim Expenses** and Supplemental Payments for each covered **Claim** first made against the **Insured** and reported to Underwriters during the **Policy Period** or **Extended Reporting Period**, if applicable, regardless of when such payments are made.
- B. The amount shown in Item 4.B of the Declarations applicable to “**Aggregate for all Claims**” is subject to Section VI.A. above regarding “**Each Claim**”, and is the maximum amount that Underwriters are or can be liable to pay for all **Damages, Claim Expenses** and Supplemental Payments for all **Claims** first made against the **Insureds** and reported to Underwriters during the **Policy Period** or **Extended Reporting Period**, if applicable, regardless of when such payments are made.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

- C. All **Claims** based upon or arising out of any and all continuous, repeated or related **Wrongful Acts** committed or allegedly committed by one or more of the **Insureds** shall be considered a single **Claim** first made against the **Insured** on the date when the first of such **Claims** was first made against and received by the **Insured**, or when notice of such continuous, repeated or related **Wrongful Acts** was first reported to the applicable insurer. If the **Claims** are deemed to have been first made against the **Insured** during this Policy, such will be deemed to be a single **Claim** for all purposes, including but not limited to, the applicability of one Deductible and the Limit of Liability per **Claim** as set forth in Section VI.A. above and in Item 4.A. of the Declarations.

VII. EXTENDED REPORTING PERIOD

- A. If Underwriters or the **Named Insured** cancels or nonrenews this Policy, then the **Named Insured** shall have the right, upon payment of the applicable additional premium based on the percentage of the expiring premium specified in Item 12.B. of the Declarations, to an extension of the coverage granted by this Policy during the period set forth in Item 12.A of the Declarations, which period shall be referred to as the **Extended Reporting Period**. This **Extended Reporting Period** will apply only to **Claims** first made against the **Insured** during the **Extended Reporting Period** for or based upon **Wrongful Acts** committed or allegedly committed prior to such effective date of cancellation or nonrenewal and otherwise covered by this Policy. The right to purchase the **Extended Reporting Period** shall not apply if this Policy is canceled by Underwriters for nonpayment of premium.
- B. As a condition precedent to the right to purchase the **Extended Reporting Period** the total premium for this Policy must have been paid. The right to purchase the **Extended Reporting Period** shall lapse unless a written notice of the election of the **Extended Reporting Period**, together with full payment of the additional premium for the **Extended Reporting Period**, is received by Underwriters within 30 days after the effective date of cancellation or the expiration date of this Policy. In the event such written notice of election and the payment of the additional premium are not received by Underwriters within such 30-day period, there shall be no right to purchase the **Extended Reporting Period** at a later date.
- C. If the **Extended Reporting Period** is purchased, the entire premium shall be deemed earned at its commencement without any obligation by Underwriters to later return any portion thereof.
- D. The Limits of Liability available during the **Extended Reporting Period** shall be the remaining available Limits of Liability under this canceled or nonrenewed Policy. There shall be no separate or additional Limit of Liability available for the **Extended Reporting Period** and the purchase of the **Extended Reporting Period** shall in no way increase the Limit of Liability set forth in Item 4 of the Declarations.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

VIII. CONDITIONS

A. Reporting of claims

1. In the event a **Claim** is first made against any **Insured**, the **Insured**, as a condition precedent to any right to coverage under this Policy, shall:
 - a. give written notice to Underwriters of any such **Claim** as soon as practicable but in no event later than sixty (60) days after the end of the **Policy Period** or, if applicable during the **Extended Reporting Period**; or
 - b. if the **Insured** receives any summons, arbitration demand, or notice of any legal, quasi-legal, or other adjudicatory or adversarial proceeding, provide immediate notice in writing to Underwriters of such receipt.
 - c. The written notice set forth in Sections VIII.A.1.a. and b. above shall include any and all documents, including every demand, notice, summons or other applicable information received by the **Insured** or by the **Insured's** representatives and should be sent to the representative of Underwriters set forth in Item 6. of the Declarations.
2. If the **Insured** has the right to either accept or reject the arbitration of any **Claim**, the **Insured** shall exercise such right only with the written consent of Underwriters.

B. Notice of potential claims

If, during the **Policy Period** an **Insured** first becomes aware of a **Wrongful Act** to which this Insurance applies and which might subsequently give rise to a **Claim**, the **Insured** may give written notice to Underwriters of a potential **Claim** during the **Policy Period**. Such notice must include:

1. the identity of the potential claimant;
2. the identity of the person(s) who allegedly committed the **Wrongful Act**;
3. the date of the alleged **Wrongful Act**;
4. specific details of the alleged **Wrongful Act**; and
5. any written notice from the potential claimant describing the **Wrongful Act**.

If this notice is submitted to Underwriters during the **Policy Period**, then any **Claim** that is subsequently made against the **Insured** arising from the **Wrongful Act** about which notice was given to Underwriters shall be deemed for the purpose of this Policy to have been first made during the **Policy Period**. This provision shall not apply to, nor shall the reporting of potential **Claims** be permitted during the **Extended Reporting Period**.

- C. The **Insured** shall not, except at its own cost, make any payment, incur any expense, admit any liability, settle any **Claim**, or assume any obligation without the prior written consent of Underwriters.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

D. **Acquisition or Creation of Another Entity.**

This Policy is issued and the premium computed on the basis of the information submitted to Underwriters as part of the **Application**. If, after the beginning of the Policy Period, the **Named Insured**:

1. acquires substantially all of the assets of another entity;
2. acquires voting securities in another entity or creates another entity, which as a result of such acquisition or creation become a **Subsidiary**; or
3. acquires another entity by merger such that the **Named Insured** is the surviving entity,

Then the coverage provided under this Policy shall apply to such new creation or acquisition; but only with respect to **Wrongful Acts** occurring or allegedly occurring after the acquisition, merger or creation. As a condition for any coverage under this Section VIII.D., if the revenues of the newly created or acquired entity exceed 10% of the current annual revenues of the **Named Insured** as reflected in Question number 6 of **Application**, then coverage for such newly created or acquired entity or asset acquisition will cease ninety (90) days after the effective date of such creation or acquisition unless, within such ninety (90) day period:

- a. the **Named Insured** provides Underwriters with written notice of such creation or acquisition;
- b. the **Named Insured** provides Underwriters with such information in connection therewith as Underwriters may deem necessary;
- c. the **Named Insured** accepts any special terms, conditions, exclusions, or additional premium charge as may be required by the Insurer; and
- d. Underwriters, at their sole discretion, agree by written endorsement to provide such coverage.

Nothing contained in Section VIII. D. shall provide coverage for the newly created or acquired entity for **Wrongful Acts** occurring or allegedly occurring prior to the effective date of such creation or acquisition.

E. **Action against Underwriters**

No action shall be taken against Underwriters unless, as a condition precedent thereto, there shall have been full compliance by the **Insured** with all the terms and conditions of this Policy; nor shall any such action be taken against Underwriters until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the claimant and Underwriters. No person or organization shall have any right under this Policy to join Underwriters as a party to any **Claim** against the **Insured** nor shall Underwriters be impleaded by the **Insured** or their legal representatives in any such **Claim**.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

F. **Service of suit**

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due hereunder, Underwriters hereon at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such Court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

It is further agreed that service of process in such suit may be made upon WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP, 150 East 42nd Street, New York, New York 10017-5639, U.S.A. and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of an Appellate Court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **Insured** to give a written undertaking to the Insured that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further pursuant to any statute of any state, territory or district of the United States which makes provision therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this Policy of insurance, and hereby designate the above named as the firm to whom the said officer is authorized to mail such process or a true copy thereof.

G. **Other insurance**

This Policy shall be excess insurance over any other valid and collectable insurance available to the **Insured**, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limit of Liability provided in this Policy.

H. **Subrogation**

In the event of any payment under this Policy, Underwriters shall be subrogated to the extent of such payment to all of the **Insured's** rights of recovery thereof, and the **Insured** shall execute all papers required and do everything that may be necessary to secure and preserve such rights, including but not limited to the execution of such documents necessary to enable the Insurer to effectively bring suit in Underwriters' name. The **Insured** shall do nothing to prejudice such rights without first obtaining the written consent of Underwriters. Any recovery shall first be paid to Underwriters to the extent of any **Damages** or **Claim Expenses** paid by Underwriters, with the balance paid to the **Insured**. However, no subrogation shall be had against any **Insured**.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

I. **Notice of cancellation**

This Policy may be canceled by the **Named Insured** by giving advance written notice to Underwriters stating when thereafter such cancellation shall be effective. This Policy may also be canceled by Underwriters by mailing to the **Named Insured** by registered, certified or other first class-mail, at the **Named Insured's** address shown in Item 2 of the Declarations, written notice stating when not less than sixty (60) days thereafter [or ten (10) days thereafter when cancellation is due to nonpayment of premium], the cancellation shall be effective. The mailing of such notice shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice. If this Policy shall be canceled by the **Named Insured**, Underwriters shall retain the customary short rate proportion of the premium. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of the cancellation, but such payment shall be made as soon as practicable.

J. **Alteration and assignment**

No change in, modification of, or assignment of interest under this Policy shall be effective unless made by written endorsement to this Policy signed by an authorized representative of Underwriters. Notice to or knowledge received by any representative of Underwriters or by any other person regarding any such change, modification, or assignment shall not be effective to stop Underwriters from asserting any rights under this Policy, unless such is made by written endorsement signed by an authorized representative of Underwriters.

K. **Warranties and covenants**

The **Insured** warrants, which warranties are a condition for any of Underwriters' obligations hereunder:

1. that the statements made in the **Application** and in its attachments and any materials submitted therewith are true and are the basis of the Policy and are to be considered as incorporated into and constituting a part of this Policy; and
2. that the statements made in the **Application** and in its attachments and any materials submitted therewith are their representations; that they shall be deemed material to the acceptance of the risk assumed by Underwriters under the Policy and that this Policy is issued in reliance upon the truth of such representations; and
3. that in the event the Application, including its attachments and any materials submitted therewith, contains misrepresentations which materially affect either the acceptance of the risk assumed by Underwriters under this Policy, this Policy shall be void and of no effect whatsoever.

L. **Bankruptcy or insolvency**

The bankruptcy or insolvency of the **Insured** shall not relieve Underwriters of any of their obligations under this Policy.



PROFESSIONAL LIABILITY ERRORS AND OMISSIONS

M. Territory

This Policy shall apply worldwide, provided that any action, arbitration, or other proceeding for, in relation to, or arising from the **Claim** is brought within the United States, its territories or possessions, or Canada.

N. False or fraudulent claims

If any **Insured** shall commit fraud in proffering any claim as regards amount or otherwise, this Insurance shall become void as to such **Insured** from the date such fraudulent claim is proffered.

O. Titles

Titles of sections of this Policy are inserted solely for convenience of reference and shall not be deemed to limit, expand or otherwise affect the provisions to which they relate.