

LEXINGTON INSURANCE COMPANY

Administrative Offices: 100 Summer Street, Boston, Massachusetts 02110
(hereinafter called the "Company")

LEXASSURESM ACCOUNTANTS PROFESSIONAL LIABILITY POLICY
DECLARATIONS – DEDUCTIBLE

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. LOSS AMOUNTS INCLUDE DEFENSE COSTS AND THUS, DEFENSE COSTS ARE INCLUDED WITHIN AND REDUCE THE LIMITS OF LIABILITY OF THIS POLICY.

Policy No.: **XXXXXXXX**

Renewal of: **XXXXXXXX**

Item 1. Named Insured and Address:

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Item 2. Policy Period:

From: **XX/XX/XXXX** To: **XX/XX/XXXX**
(12:01A.M. Standard Time at the Address of the Named Insured shown above.)

Item 3. Limits of Liability:

- A. Aggregate Limit of Liability: **\$XXX,XXX,XXX**
- B. Each Claim Limit of Liability: **\$XXX,XXX,XXX**

Item 4. Deductible: **\$XXX,XXX,XXX** Each and Every **Claim**

Item 5. Optional Extended Reporting Period:

- XX** months at **XXX%** of the Premium shown in Item 6. of the Declarations
- XX** months at **XXX%** of the Premium shown in Item 6. of the Declarations
- XX** months at **XXX%** of the Premium shown in Item 6. of the Declarations

Item 6. Premium: **\$XXX,XXX,XXX**

Minimum Earned Premium: **XX%** of the above Premium

Item 7. Endorsements: As per Schedule attached to the Policy

Authorized Representative or
Countersignature Where Required by Law

LEXINGTON INSURANCE COMPANY

Administrative Offices: 100 Summer Street, Boston, Massachusetts 02110
(hereinafter called the "Company")

LEXASSURESM ACCOUNTANTS PROFESSIONAL LIABILITY POLICY (DEDUCTIBLE VERSION)

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. LOSS AMOUNTS INCLUDE DEFENSE COSTS AND THUS, DEFENSE COSTS ARE INCLUDED WITHIN AND REDUCE THE LIMITS OF LIABILITY OF THIS POLICY.

In consideration of the payment of the premium by the **Named Insured** and in reliance upon the statements in the **Insured's** Application incorporated herein by reference, the Company agrees with the **Insured** subject to all terms, exclusions and conditions of the is policy as follows:

I. INSURING AGREEMENTS

A. COVERAGE:

The Company will pay on behalf of the **Insured** those sums that the **Insured** shall become legally obligated to pay as **Loss Amounts** resulting from a **Claim** that is first made against the **Insured** and reported to the Company during the **Policy Period** or the **Extended Reporting Period**, if applicable, as a result of a **Wrongful Act** by the **Insured**.

For this coverage to apply, all the following conditions must be satisfied:

1. prior to the effective date of this policy, no partner, principal, officer or owner of the **Insured Firm** or any person authorized to receive notice of a **Claim** had knowledge of a **Wrongful Act, Interrelated Wrongful Act**, or fact or circumstance likely to give rise to a **Claim**; and
2. the **Insured** did not give notice to a **Prior Company** of any **Wrongful Act, Interrelated Wrongful Act** or **Claim**; and
3. the **Wrongful Act** or **Interrelated Wrongful Act** forming the basis of the **Claim** occurred prior to the end of the **Policy Period**, and
4. the **Claim** must be first made against the **Insured** during the **Policy Period**, and
5. the **Insured** must report the **Claim** to the Company, in writing, as soon as practicable, but in no event later than sixty (60) days after the end of the **Policy Period**. Any **Claim** so reported will be deemed reported during the **Policy Period** if so reported no later than sixty (60) after the end of the **Policy Period**.

B. TERRITORY:

The insurance afforded by this policy applies to **Wrongful Acts** that take place in and result in a **Claim** brought within:

1. the United States of America, its territories or possessions or Puerto Rico; and
2. the rest of the world.

C. DEFENSE PROVISIONS:

1. When any **Claim** against the **Insured** for which coverage is provided under this policy is made or brought within the United States of America, its territories or possessions, or Puerto Rico, the Company has the right to investigate such **Claim**, and the duty to defend such **Claim** with defense counsel of the Company's choice, even if such **Claim** is groundless, false or fraudulent. The Company's obligation to defend or to continue to defend any **Claim** as provided in this subparagraph 1. shall no longer exist after the applicable limit of the Company's liability has been exhausted by the payment of **Loss Amounts**.
2. When any **Claim** against the **Insured** for which coverage is provided under this policy is made or brought outside the areas described in subparagraph C.1. above, the Company shall not be obligated to assume charge of the investigation, defense or settlement of any such **Claim**, but the Company shall have the right and shall be given the opportunity to associate with the **Insured** in the investigation and defense of any such **Claim**. The **Insured** shall, under the Company's supervision, make or cause to be made such investigation and defense as is reasonably necessary. Subject to prior written authorization by the Company, the **Insured** may also effect settlement. The Company shall reimburse the **Insured** for damages and the reasonable and necessary **Defense Costs** in excess of the applicable Deductible.

D. SETTLEMENT PROVISIONS:

The Company will not settle or compromise any **Claim** without the consent of the **Insured**. If, however, the **Insured** refuses to consent to a settlement or compromise recommended by the Company and elects to contest such **Claim** or continue legal proceedings in connection with such **Claim**, then the Company's liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus **Defense Costs** incurred up to the date of such refusal subject to the applicable limit of liability under this policy.

E. DEFENSE COSTS:

Loss Amounts include **Defense Costs** and as such, **Defense Costs** are included within and reduce the applicable limit of liability.

II. EXCLUSIONS

The Company shall not be liable to pay **Loss Amounts** in connection with any **Claim** made against an **Insured**:

- A. when it has been established by final adjudication against an **Insured** that the **Insured** committed any dishonest, fraudulent or criminal act or omission, provided however, this exclusion shall not apply to any **Insureds** who are not adjudicated to have acted dishonestly or fraudulently. Criminal proceedings or investigations are not covered under this policy regardless of cause or the allegations made against an **Insured**;
- B. by or on behalf of any other **Insured**;
- C. for damage to, destruction of, or loss of use of tangible property; provided, however, this exclusion does not apply to client records or data for which the **Insured** is legally responsible;
- D. for any **Bodily Injury**;

- E. based on or arising out of liability assumed under any contract or agreement unless the **Insured** would have been liable in the absence of such contract or agreement;
- F. based on or arising out of a **Wrongful Act** by any **Insured** in their capacity as a **Benefit Plan Fiduciary**, regardless of whether the **Claim** is brought against the **Insured** under the Employee Retirement Income Security Act of 1974, its amendments or any other similar state or local law.
- G. based on or arising out of a **Wrongful Act** by any **Insured** in their capacity as:
 - 1. an owner, officer, director or other similarly titled position of any entity, other than the **Insured Firm**;
 - 2. a broker or dealer in securities, as those terms are defined in Sections 3(a)(4) and 3(a)(5), respectively, of the Securities Exchange Act of 1934, or any amendments thereto;
 - 3. a public official; or
 - 4. a trustee of any organization or entity, or of a pension, welfare, profit-sharing, mutual or investment fund or trust; provided, however, this exclusion shall not apply to an **Insured** while acting as a trustee for a trust established by an individual or a family for their sole benefit, or as a trustee for a charitable remainder trust as defined under Internal Revenue Code Section 664, or amendment thereto, or as a court-appointed bankruptcy trustee or receiver;
- H. based upon or arising out of **Wrongful Termination, Discrimination** and/or **Sexual Harassment**;
- I. based upon or arising out of any legal advice or services, or actuarial advice or services;
- J. based upon or arising out of the manufacture, mining, use, sale, installation, removal, distribution of, or exposure to asbestos, materials or products containing asbestos, or asbestos fibers or dust, or any obligation of any **Insured** to indemnify any party for **Loss Amounts** arising out of such liability;
- K. based upon or arising out of a **Pollution Condition** in connection with any real property or facility which is or was at any time owned, operated, rented or occupied by the **Insured** or by any entity that wholly or partly owns, operates, manages or otherwise controls the **Insured**, or any entity that is wholly or partly owned, operated, managed or otherwise controlled by the **Insured**; or
- L. based upon or arising out of nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a **Nuclear Facility**.

III. DEFINITIONS

- A. **Advertising Injury** means injury that arises in the course of advertising **Professional Services** by an **Insured** by reason of:
 - 1. oral or written publication of material that slanders or libels an individual or entity or disparages its goods, products or services;
 - 2. use of another's advertising ideas or style of doing business; or

3. infringement of copyright, title or slogan.
- B. **Affiliated Firm** means any person or entity with which the **Insured Firm** has entered into a professional relationship and/or agreement to perform **Professional Services** at the direction or on behalf of the **Insured Firm**.
- C. **Benefit Plan Fiduciary** means any **Insured** while exercising any discretionary authority or discretionary control:
1. respecting management of an employee benefit plan; or
 2. respecting disposition of the assets of an employee benefit plan, including but not limited to purchasing or selling investments on behalf of such a plan; or;
 3. in the administration of an employee benefit plan.
- D. **Bodily Injury** means bodily injury, sickness or disease sustained by any person and death resulting from any of the foregoing at any time and includes emotional distress or mental anguish sustained by any person, whether or not resulting any of the foregoing; and all injuries that are a consequence of the foregoing. However, **Bodily Injury** does not include emotional distress or mental anguish resulting from a **Personal Injury**.
- E. **Claim** means:
1. a civil or administrative adjudicatory proceeding or an arbitration proceeding, including any appeal therefrom; or
 2. a written demand received by an **Insured** for monetary damages;
- naming an **Insured** and alleging a **Wrongful Act**.
- F. **Defense Costs** means the reasonable and necessary legal fees and expenses incurred to defend the **Insureds** against any **Claim** and costs of appeal, attachment or similar bonds; but the Company shall have no obligation to procure or furnish any bond.
- G. **Discrimination** means a **Wrongful Act** based upon or arising out of discrimination with respect to race, color, religion, age, sex, disability, pregnancy, natural origin, sexual orientation or other protected category or characteristic established pursuant to any applicable United States federal, state, or local law, regulation or ordinance.
- H. **Insured** means:
1. the **Insured Firm**;
 2. any person who is, was, or becomes a partner, principal, officer, owner, or employee of the **Insured Firm**, but only while performing **Professional Services** for others on behalf of the **Insured Firm**;
 3. the estate, heirs, executors, administrators, and legal representatives of any person described in subparagraph 2. above, in the event of such person's death, incapacity, insolvency, or bankruptcy, but only as respects liability arising out of **Professional Services** rendered prior to such person's death, incapacity, insolvency, or bankruptcy.

An **Affiliated Firm** is not an **Insured** under this Policy.

- I. **Insured Firm** means the **Named Insured**, any **Predecessor Firm**, or any **Newly Acquired Entity**.
- J. **Interrelated Wrongful Acts** means all **Wrongful Acts** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.
- K. **Loss Amounts** means monetary damages, judgments (including any award of prejudgment and post-judgment interest), awards, settlements, and **Defense Costs**. **Loss Amounts** shall not include:
1. civil or criminal fines, penalties, sanctions or forfeitures imposed on any **Insured** by law, statute or court rule;
 2. matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
 3. amounts for which an **Insured** admits liability, but is not obligated to pay such amounts;
 4. amounts that are without legal recourse to any **Insured**; or
 5. amounts paid to or due the **Insured** for **Professional Services** rendered or expenses incurred on behalf of a client, or the value of any such **Professional Services** or expenses.
- L. **Named Insured** means the entity shown in Item 1. of the Declarations.
- M. **Newly Acquired Entity** means any sole proprietorship or entity that the **Named Insured** acquires, merges with, or purchases the assets of during the **Policy Period**, provided that, all of the following conditions have been met:
1. more than 50% of the partners, principals, officers or owners of such sole proprietorship or entity have joined the **Named Insured**, and
 2. the revenues produced by such partners, principals, officers or owners have been assigned to or otherwise obtained by the **Named Insured**, and
 3. prior to the effective date of the acquisition, merger or asset purchase, the subject sole proprietorship or entity was engaged in the business of providing **Professional Services**, and
 4. the **Named Insured** is the surviving entity, and
 5. such sole proprietorship or entity had gross annual revenues of less than \$5,000,000 as reflected in its most recent consolidated financial statements prior to the effective date of the acquisition, merger or asset purchase, and
 6. the revenues assigned to or otherwise obtained by the **Named Insured** as a result of the acquisition, merger or asset purchase do not exceed 10% of the gross annual revenues of the **Named Insured** as reflected in its most recent consolidated financial statements prior to the effective date of the acquisition, merger or asset purchase, and

7. within thirty (30) days of the effective date of said transaction, the **Named Insured** submits written notice of the acquisition, merger or asset purchase to the Company, in the form of a completed questionnaire so designated by the Company.
- N. **Nuclear Facility** means the site at which a nuclear reactor is located or where nuclear waste or material is disposed of or stored.
- O. **Personal Injury** means libel, slander, disparagement, false arrest, wrongful detention, false imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, malicious prosecution or violation of an individual's or entity's right of privacy. **Personal Injury** also includes emotional distress or mental anguish resulting from any of the above.
- P. **Policy Period** means the period of time starting with the effective date of this policy shown in Item 2. of the Declarations ending on the expiration date or earlier termination date, if any, of this policy.
- Q. **Pollution Condition** means the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment.
- R. **Potential Claim** means any act, error, omission, fact or circumstance in the rendering of **Professional Services** that an **Insured** knew or should reasonably have known could form the basis of a subsequent **Claim** against any **Insured**.
- S. **Predecessor Firm** means a sole proprietorship, partnership, professional corporation or other organization properly established under state law and operated for the purpose of rendering **Professional Services** that, prior to the inception of the **Policy Period**, underwent a change in name or organizational structure and from which more than 50% of the partners, principals, officers or owners have joined the **Named Insured**, provided that:
1. the revenues produced by such partners, principals, officers or owners have been assigned to or otherwise obtained by the **Named Insured**, and
 2. the **Named Insured** is the surviving entity.
- Notwithstanding the definition of **Predecessor Firm** as set forth herein, any firm who qualified as a **Predecessor Firm** under an accountants professional liability insurance policy previously issued by the Company, is deemed to be a **Predecessor Firm** within the definition of this Policy.
- T. **Prior Company** means a Company, including us and any subsidiary or affiliate of ours, who has issued prior accountants professional liability or errors and omissions insurance policies.
- U. **Professional Services** means advice given or services performed for others by or on behalf of an **Insured** or an **Affiliated Firm** for a fee, provided that the fee or a portion of the fee always inures to the benefit of the **Insured Firm**.

Professional Services also means advice given or services performed by any **Insured** in connection with any institute of accountants, any professional standards board or similar professional body pertaining to the practice of public accountancy, whether or not on behalf of the **Insured Firm**.

- V. **Sexual harassment** means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that (1) are made a condition of employment and/or (2) are used as a basis for employment decisions and/or (3) create a work environment that interferes with performance.
- W. **Wrongful Act** means any actual or alleged act, error or omission, breach of duty, or **Personal Injury** arising out of:
1. the rendering of or failure to render **Professional Services** for others; or
 2. **Advertising Injury**.
- X. **Wrongful termination** means termination of an employment relationship in a manner which is against the law, wrongful, or in breach of an implied or written agreement to continue employment.

IV. LIMITS OF LIABILITY AND DEDUCTIBLE

A. AGGREGATE LIMIT OF LIABILITY:

Regardless of the number of **Insureds, Claims** made or suits brought, or persons or organizations making **Claims** or bringing suits, the most the Company will pay for all covered **Claims** under this policy is the Aggregate Limit of Liability shown in Item 3.A. of the Declarations. This Aggregate Limit of Liability is the total for all **Loss Amounts** that the Company will pay under this policy for all covered **Claims** including those reported as provided for in Section V. Paragraph D., Extended Reporting Period below.

Once the Aggregate Limit of Liability has been exhausted by the payment of **Loss Amounts**, Company shall no further obligations with respect to this policy.

B. EACH CLAIM LIMIT OF LIABILITY

Subject the Aggregate Limit of Liability shown in Paragraph A. above, the most the Company with pay for all **Wrongful Acts** or **Interrelated Wrongful Acts** arising out of a single covered **Claim** shall be the Each Claim Limit of Liability as shown in Item 3.B. of the Declarations. This Each Claim Limit of Liability shall apply in excess of the Deductible. This Each Claim Limit of Liability is the maximum amount of **Loss Amounts** that the Company will pay for each covered **Claim** including those reported as provided for in Section V. Paragraph D., Extended Reporting Period below.

Once the Each Claim Limit of Liability has been exhausted by the payment of **Loss Amounts**, the Company shall no further obligations with respect to such **Claim**.

C. DEFENSE COSTS:

Loss Amounts include **Defense Costs** and as such, **Defense Costs** are included within and reduce the applicable limit of liability.

D. MULTIPLE CLAIMS:

All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall will be deemed to be a single **Claim** and shall be deemed to have been made at the time the first of such **Claims** is made against the **Insured**. These provisions apply regardless of the number of

Insureds involved in such a **Claim**, the number of **Claims** made, or the number of people or organizations that make the **Claims**.

E. DEDUCTIBLE:

The Deductible amount shown in Item 4. of the Declarations applies to each and every **Claim** and shall be paid by the **Insured**. The Deductible shall be reduced by the payment of **Loss Amounts** (which includes **Defense Costs**).

The Company may advance payment of part or all of the Deductible amount and, upon notification of such payment made, the **Insured** must promptly reimburse the Company for the Deductible amounts advanced by the Company.

V. CONDITIONS - CLAIMS

A. INSURED'S DUTIES WHEN THERE IS A CLAIM:

As a condition precedent to the right of coverage under this policy, the **Insured** must do the following:

1. If a **Claim** to which this policy applies is made against the **Insured**, the **Insured** must give written notice, as soon as practicable, and as otherwise required by this policy..
2. Cooperate with the Company and upon the Company's request submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and shall assist in effecting settlement, obtaining the attendance of witnesses in the conduct of suits, as well as the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, and all without charge to the Company.
3. The **Insured** must do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the **Insured** may have.
4. The **Insured** shall refrain from discussing the facts and circumstances of any **Claim** with anyone other than legal counsel or representatives of the Company.

B. REPORTING OF POTENTIAL CLAIM

If during the **Policy Period** an **Insured** first becomes aware of a **Potential Claim** and prior to the expiration of the **Policy Period** the Company receives written notice from the **Insured** of the following specific information:

1. the names of the potential claimants,
2. a description of the **Potential Claim**,
3. the consequences which have resulted or may result from such **Potential Claim**,
4. the nature of the alleged or potential damages arising from such **Potential Claim**, and
5. the circumstances by which the **Insureds** first became aware of the **Potential Claim**,

then any **Claim** otherwise covered under this Policy subsequently made arising out of such **Potential Claim** shall be deemed to have been made at the time such written notice was received by the Company.

C. REPORTS OF CLAIMS AND POTENTIAL CLAIMS:

Claim and **Potential Claim** reports should be sent to:

Lexington Insurance Company
100 Summer Street
Boston, Massachusetts 02110
Attn: Professional Liability Claims Manager, Claim Department

D. EXTENDED REPORTING PERIOD:

As used herein, **Extended Reporting Period** means the period of time beginning with the end of the **Policy Period** for reporting **Claims** to the Company that are first made against the **Insured** during such applicable **Extended Reporting Period**, by reason of a **Wrongful Act** which occurred prior to the end of the **Policy Period**. There is no coverage for **Potential Claims** reported during an **Extended Reporting Period**.

1. Automatic Extended Reporting Period

If the **Named Insured** cancels or chooses not to renew this Policy or if the Company decides to cancel or non-renew this Policy, the Company shall provide to the **Named Insured** an automatic non-cancelable **Extended Reporting Period** starting at the termination of the **Policy Period**, if the **Named Insured** has not obtained another policy of accountants professional liability insurance. This automatic **Extended Reporting Period** will terminate either after sixty (60) days or at 12:01 A.M. on the date another policy of professional liability insurance applicable to the **Named Insured** takes effect, whichever occurs first.

2. Optional Extended Reporting Period

If the **Named Insured** cancels or chooses not to renew this Policy or if the Company decides to cancel or non-renew this Policy, then the **Named Insured** shall have the right to purchase an **Extended Reporting Period**. Such right must be exercised by the **Named Insured** within thirty (30) days after the end of the **Policy Period** by providing written notice to the Company together with the additional premium as shown in Item 5. of the Declaration corresponding to the applicable Optional Extended Reporting Period. The **Named Insured** right to elect the Optional Extended Reporting Period shall terminate thirty (30) after the end of the **Policy Period**.

If the Optional Extended Reporting Period is purchased, the entire premium therefore shall be deemed fully earned at its commencement without any obligation by the Company to return any portion thereof.

The limit of liability for the Automatic and Option Extended Reporting Periods shall be part of and not in addition to the Limits of Liability for the **Policy Period** as shown in Item 2. of the Declarations.

E. TRANSFER OF RIGHTS OF RECOVERY:

If there is a payment made by the Company, the Company shall be subrogated to all the **Insured's** rights of recovery against any person or organization as respects any payment made by the Company for **Loss Amounts**. The **Insured** shall cooperate with the Company and do whatever is necessary to secure these rights. The **Insured** shall do nothing after a **Claim** to waive or prejudice such rights. The Company agrees to waive this right of subrogation against the client of the **Insured** to the extent that the **Insured** had, prior to **Claim**, a written agreement to waive such rights.

VI. OTHER CONDITIONS

A. ACQUISITIONS, MERGERS, AND MATERIAL CHANGES:

1. AUTOMATIC COVERAGE

If after the effective date of this Policy, the **Named Insured** acquires, merges with, or purchases the assets of another sole proprietorship or entity, and as a result such sole proprietorship or entity qualifies as a **Newly Acquired Entity** under this Policy, then coverage shall be provided under this Policy, subject to its terms, conditions, limitations and exclusions, for any **Claim** made against the **Insureds** arising from the **Professional Services** of such sole proprietorship or entity.

Additionally, the sole proprietorship's or entity's partners, principals, officers, owners and employees who have joined the **Named Insured** shall be deemed to be within the definition of **Insured** from the effective date of the acquisition, merger, or asset purchase, provided that, within thirty (30) days of the effective date of said transaction, the **Named Insured** submits written notice of the acquisition, merger or asset purchase to the Company, in the form of a completed questionnaire so designated by the Company.

2. OPTIONAL COVERAGE

If after the effective date of this Policy, the **Named Insured** acquires, merges with, or purchases the assets of another sole proprietorship or entity that does not qualify as a **Newly Acquired Entity** under this Policy, the **Named Insured** shall have the right to purchase additional coverage under the Policy for such sole proprietorship or entity and its partners, principals, officers, owners and employees who have joined the **Named Insured**, provided all of the following conditions have been met:

- a. the **Named Insured** is the surviving entity,
- b. prior to the effective date of the acquisition, merger or asset purchase, the subject sole proprietorship or entity was engaged in the business of providing **Professional Services**,
- c. more than 50% of the gross annual revenues of the subject sole proprietorship or entity as reflected in its most recent consolidated financial statements prior to the effective date of the acquisition, merger or asset purchase were derived from professional fees for providing **Professional Services**, and
- d. within thirty (30) days after the effective date of said acquisition, merger or asset purchase, the **Named Insured** submits, in writing, to the Company notice of the transaction in the form of a completed questionnaire so designated by the

Company and a request for coverage under this Policy for the sole proprietorship or entity that is the subject of the transaction.

Upon receipt of the required information listed in VI.A.2.d., above, the Company agrees to provide the **Named Insured** with the coverage terms and conditions, including the additional premium, available under the Policy for the sole proprietorship or entity that is the subject of the transaction and its partners, principals, officers, owners and employees who have joined the **Named Insured**. The Company reserves the right to modify the terms, conditions, and exclusions of the Policy with respect to coverage offered for these parties.

3. LIMITATION OF COVERAGE

This Policy shall not apply to any **Claim** involving a sole proprietorship or entity that was the subject of an acquisition, merger or asset purchase by the **Named Insured**, if, prior to the date of said transaction:

- a. Notice had been given to a **Prior Company** on any other policy of professional liability insurance in effect prior to the date of said transaction of such **Claim** or a **Potential Claim** upon which such **Claim** is based, or directly or indirectly arises out of; or
- b. Any partner, principal, officer, owner or employee of the sole proprietorship or entity that was the subject of such transaction or any entity containing such practice knew of a **Wrongful Act** or **Interrelated Wrongful Act** which they should have reasonably expected could result in a **Claim** at some time in the future.

B. HOW OTHER INSURANCE APPLIES:

This insurance shall be excess over other valid insurance, whether collectable or not, and whether provided on a primary, excess, contingent or any other basis unless such other insurance is written as specific excess over this policy.

C. CHANGES MADE TO THIS POLICY:

The terms and conditions of this policy cannot be waived or changed except by written endorsement issued by the Company and made part of the policy.

D. ASSIGNMENT OF THE INSURED'S INTEREST:

The interest of the **Insured** under this policy is not assignable to any other person or organization.

E. CANCELLATION:

1. The **Named Insured** may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. The Company may cancel this policy by mailing or delivering to the **Named Insured** written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

- b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. The Company will mail or deliver the Company's notice to the **Named Insured's** mailing address as shown in Item 1. of the Declarations.
4. Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date.
5. If this policy is canceled, the Company will send the **Named Insured** any premium refund due. If the Company cancels, the refund will be pro rata. If the **Named Insured** cancels, earned premium will be calculated in accordance with the customary short-rate table and procedure, or the Minimum Earned Premium at inception of the policy shown in Item 6. of the Declarations, which ever is greater. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

F. **BANKRUPTCY:**

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Company of any of its obligations under this policy.

G. **APPLICATION:**

It is represented by the **Insureds** and it is agreed by and among the **Insureds** and the Company as follows:

1. the particulars and statements contained in the Application and any materials submitted or required, (all of which shall be maintained by the Company) are true and are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy;
2. the statements in the Application and in any materials submitted or required are the **Insureds'** representations and this Policy is issued in reliance upon the truth of such representations; and
3. in the event the Application, including materials submitted or required, contains any misrepresentation:
 - a. made with the intent to deceive, or
 - b. that materially affects either the acceptance of the risk or the hazard assumed by the Company under the Policy; then this Policy shall be void and of no effect whatsoever.

H. **ACTION AGAINST THE COMPANY:**

No action shall be maintained against the Company by the **Insured** to recover for any loss under this policy unless, as a condition precedent thereto:

1. the **Insured** has fully complied with all the terms and conditions of this policy; and
2. the amount of such loss has been fixed or rendered certain;

- a. by final judgment against the **Insured** after trial of the issues; or
- b. the time to appeal such judgment has expired without an appeal being taken; or
- c. if appeal is taken, after the appeal has been determined; or
- d. the **Claim** is settled in accordance with the terms and conditions of this policy.

In no event shall any action brought by anyone be maintained against the Company unless such action is brought within twenty-four (24) months from the time the right to bring action first becomes available.

I. FALSE OR FRAUDULENT CLAIMS:

If the **Insured** refers any **Claim** knowing such **Claim** to be false or fraudulent, this policy shall become void and all insurance coverage hereunder shall be forfeited.

J. SERVICE OF SUIT

In the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, Lexington Insurance Company, 100 Summer Street, Boston, Massachusetts, 02110 or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its 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 designates the above named Counsel as the person to whom the said officer is authorized to send such process or a true copy thereof.

K. ARBITRATION

Notwithstanding the Service of Suit Condition above, in the event of a disagreement as to the interpretation of this policy (except with regard to whether this policy is void or voidable), it is mutually agreed that such dispute shall be submitted to binding arbitration before a panel of three (3) Arbitrators consisting of two (2) party-nominated (non-impartial) Arbitrators and a third (impartial) Arbitrator (hereinafter "umpire") as the sole and exclusive remedy.

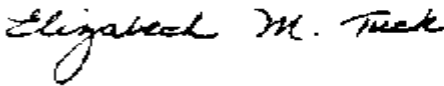
The party desiring arbitration of a dispute shall notify the other party, said notice including the name, address and occupation of the Arbitrator nominated by the demanding party. The other party shall, within 30 days following receipt of the demand, notify in writing the demanding party of the name, address and occupation of the Arbitrator nominated by it. The two (2) arbitrators so selected shall, within 30 days of the appointment of the second Arbitrator, select an umpire. If the Arbitrators are unable to agree upon an umpire, the selection of the umpire shall be

submitted to the Judicial Arbitration and Mediation Services (hereinafter, "JAMS"). The umpire shall be selected in accordance with Rule 15 (as may be amended from time to time) of the JAMS Comprehensive Arbitration Rules and Procedures for the selection of a sole arbitrator.

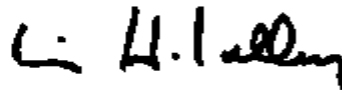
The parties shall submit their cases to the panel by written and oral evidence at a hearing time and place selected by the umpire. Said hearings shall be held within 30 days of the selection of the umpire. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two (2) of the three (3) panel members shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the Arbitrators. The award will be issued within 30 days of the close of the hearings. Each party shall bear expenses of its designated Arbitrator and shall jointly and equally share with the other the expense of the umpire and the arbitration.

The arbitration proceeding shall take place in the vicinity of the first **Named Insured's** mailing address as shown in the Declarations or such other place as may be mutually agreed by the first **Named Insured** and us. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the JAMS Comprehensive Arbitration Rules and Procedures.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of its duly authorized representatives.



Secretary



Chairman of the Board & CEO