

## **AFB MEDIA TECH<sup>®</sup> (amended)**

### **TECHNOLOGY, MEDIA AND PROFESSIONAL LIABILITY INSURANCE**

**NOTICE: This Coverage is Provided on a Claims Made and Reported Basis.** Except to such extent as may otherwise be provided herein, the coverage afforded under this Insurance Policy is limited to liability for only those covered **Claims** that are first made against the **Assured** and reported to the Underwriters while the insurance is in force that arise from acts, errors or omissions committed on or after the Retroactive Date and before the end of the **Period of Insurance**. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. The deductible applies to **Damages** and **Claims Expenses** resulting from each and every **Claim**. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

The Underwriters agree with the Named Assured, set forth at Item 1. of the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the application which is made a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, exclusions, conditions and other terms of this Insurance:

#### **I. INSURING AGREEMENTS**

##### **A. Coverage I: Professional Liability Coverage**

To pay on behalf of the **Assured**:

**Damages and Claims Expenses**, in excess of the deductible, which the **Assured** shall become legally obligated to pay because of any **Claim** first made against any **Assured** and reported to the Underwriters during the **Period of Insurance** or **Extended Reporting Period** (if applicable) arising out of any negligent act, error or omission committed on or after the Retroactive Date and before the end of the **Period of Insurance** by the **Assured** in rendering or failing to render **Professional Services** or by any person for whose **Professional Services** the **Assured** is legally responsible.

##### **B. Coverage II: Technology and Multimedia Coverage**

To pay on behalf of the **Assured**:

**Damages and Claims Expenses** in excess of the deductible which the **Assured** shall become legally obligated to pay because of any **Claim** first made against any **Assured** and reported to Underwriters during the **Period of Insurance** or **Extended Reporting Period** (if applicable) arising out of one or more of the following acts committed on or after the Retroactive Date and before the end of the **Period of Insurance** in the course of the **Assured's** performance of **Media Services** or **Technology Based Services**:

- (a) defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
- (b) invasion or interference with the right to privacy or of publicity;
- (c) misappropriation of any name or likeness for commercial advantage;
- (d) false arrest, detention or imprisonment or malicious prosecution;
- (e) infringement of any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;
- (f) plagiarism, piracy or misappropriation of ideas under implied contract;
- (g) failure to prevent a party other than any **Assured** from unauthorized access to, use of or tampering with data or systems;
- (h) negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content;
- (i) failure to prevent a party other than any **Assured** from introducing **Malicious Code** into data or systems;
- (j) inability of a third party, who is authorized to do so, to gain access to your services unless such inability is caused by a mechanical, telecommunications or electrical interruption or failure;
- (k) failure to prevent **Theft of Data** by a person other than any **Assured**;

## II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions in this Policy, any **Claim** against the **Assured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Assured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Agreement Coverage II if:
  - 1. the **Claim** is first made and reported to Underwriters during the **Period of Insurance** or **Extended Reporting Period** (if applicable); and
  - 2. the act or acts were committed by the **Assured** after the Retroactive Date and before the end of the **Period of Insurance** in the course of the **Assured's** performance of **Media Services** or **Technology Based Services**.
- C. It is agreed that Underwriters' right and duty to defend shall be limited to payment of **Claims Expenses**. The Limit of Liability available to pay **Damages**

shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Deductible.

- D. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to the application and statements made in the application and with respect to coverage.

However, notwithstanding the above, the **Assured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Services** in respect of which the **Assured** has asserted a **Claim** of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

- E. If the **Assured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, Underwriters' liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Assured**. The portion of any proposed settlement or compromise that requires the **Assured** to cease or limit actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** shall not be considered in determining the amount for which a **Claim** could have been settled.

- F. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable limit of the Underwriters' liability has been exhausted by payment of **Damages** or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Assured**.

### III. THE ASSURED AND THE ASSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Assured**" shall mean:

- A. The Named Assured and any **Subsidiaries** of the Named Assured (together the "**Assured Organization**");
- B. A director, officer or employee of the **Assured Organization**, but only while acting in that capacity solely on behalf of the **Assured Organization**;
- C. A principal if the Named Assured is a sole proprietorship, or a partner if the Named Assured is a partnership, but only while acting in that capacity solely on behalf of the Named Assured;

- D. Any person who previously qualified as an **Assured** under B or C above prior to the termination of the required relationship with the **Assured Organization**, but only while acting in that capacity solely on behalf of the **Assured Organization**;
- E. The estate, heirs, executors, administrators, assigns and legal representatives of any **Assured** in the event of such **Assured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Assured** would otherwise be provided coverage under this Insurance; and
- F. An independent contractor while acting solely on behalf of the **Assured Organization**, but only for a **Claim** also made against the **Assured Organization**.

#### IV. TERRITORY

This Insurance applies to **Claims** made anywhere in the world.

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## V. EXCLUSIONS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- A. Arising out of or resulting from any criminal, dishonest, fraudulent or malicious act, error or omission committed by any **Assured** with actual, criminal, dishonest, fraudulent or malicious purpose or intent; however, the insurance afforded by this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the forgoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Assured**, or admission by the **Assured**, establishing such conduct at which time the Named Assured shall reimburse Underwriters for all **Claims Expenses** incurred defending the **Claim** and Underwriters shall have no further liability for **Claims Expenses**;
- B. By or on behalf of one or more **Assureds** under this Insurance against any other **Assured** or **Assureds** under this Insurance;
- C. For or arising out of **Bodily Injury** or **Property Damage**;
- D. Arising out of or resulting from the insolvency or bankruptcy of any **Assured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses, or benefits due to the insolvency, liquidation or bankruptcy of any such individual or entity;
- E. Made by any business enterprise in which any **Assured** has greater than a 15% ownership interest, or arising out of or resulting from any **Assured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Assured Organization**;
- F. Arising out of or resulting from any act, error or omission committed prior to the inception date of this Insurance:
  - 1. if any **Assured** on or before the inception date knew or could have reasonably foreseen that such act, error or omission might be expected to be the basis of a **Claim**; or
  - 2. in respect of which any **Assured** has given notice of a circumstance which might lead to a **Claim** to the insurer of any other policy in force prior to the inception date of this Policy;
- G. For or arising out of the liability of others assumed by the **Assured** under any contract or agreement, either oral or written, except and to the extent the **Assured** would have been liable in the absence of such contract or agreement;
- H. For or arising out of actual or alleged infringement or misappropriation of any intellectual property right, including but not limited to infringement of patent, copyright, title, trademark, servicemark, design, trade dress, or misappropriation of trade secret;

- I. For or arising out of the any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;
- J. Arising out of or resulting from any employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees;
- K. For or arising out of or resulting from actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- L. Arising out of or resulting from acts of the **Assured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act;
- M. For or arising out of the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky or securities law, any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws;
- N. For or arising out of any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty if the **Claim** is brought by the Named Assured, a **Subsidiary**, or any directors, officers, stockholders, or employees of the Named Assured or a **Subsidiary** in their capacity as such;
- O. For or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising;
- P. Arising out of **Professional Services, Media Services or Technology Based Services** performed for any entity which:
1. is operated, managed or controlled by the **Assured** or in which any **Assured** has an ownership interest in excess of 15%; or in which any **Assured** is an officer or director; or
  2. wholly or partly owns, operates, controls or manages the **Assured**;
- Q. For or arising out of any breach of express warranty, guarantee, or service level agreement, or for or arising out of any delay of delivery, failure to deliver, or non-acceptance of products or services;
- R. For or arising out of the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or as a result of your cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;

- S. Arising out of any related or continuing acts, errors or omissions where the first such act, error or omission was committed prior to the Retroactive Date;
- T. Directly or indirectly arising out of or resulting from the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibers or dust;
- U. Directly or indirectly arising out of or resulting from 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 property;
- V. Directly or indirectly arising out of or resulting from the presence or actual, alleged, or threatened discharge, seepage, dispersal, migration, release, escape, generation, transportation, storage, or disposal of pollutants at any time, including any request, demand or order that the **Assured** or others test for, monitor, clean up, remove, assess, or respond to the effects of pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, odors, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

## VI. DEFINITIONS

Wherever used in this Policy, the following definitions shall apply.

- A. “**Bodily Injury**” means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- B. “**Claim**” means a demand received by any **Assured** for money or services, including the service of suit or institution of arbitration proceedings. “**Claim**” shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

Multiple **Claims** arising from or related to the same act, error or omission or any continuing acts, errors or omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

- C. “**Claims Expenses**” means:
  1. reasonable and necessary fees charged by an attorney designated by the Underwriters; and
  2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by the Underwriters, or by the **Assured** with the written consent of the Underwriters;

3. **Claims Expenses** does not include any salary, overhead or other charges by the **Assured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Insurance.
- D. **“Computer System”** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities operated by and under the direct control of the **Assured Organization**, or operated by and under the direct control of a third party that processes, maintains or stores the **Assured Organization’s** computer data pursuant to written contract with the **Assured Organization**.

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E. “**Damages**” means a monetary judgment, award or settlement.

The term **Damages** shall not include:

1. future royalties or future profits, restitution, disgorgement of profits by an **Assured**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. any damages which are a multiple of compensatory damages, or fines, sanctions or penalties;
4. punitive or exemplary damages, unless insurable by law; or
5. any amounts for which the **Assured** is not liable, or for which there is no legal recourse against the **Assured**.

F. “**Extended Reporting Period**” means the 12-month period of time after the end of the **Period of Insurance** for reporting **Claims** as provided in Section X of this Policy.

G. “**Malicious Code**” means any virus, Trojan Horse, worm or other software program, code or script that inserts itself into computer memory or onto a computer disk and spreads itself from one computer to another, is not written, licensed, owned, or controlled by the **Assured**, and is introduced into a **Computer System** without the authorization or knowledge of the **Assured**.

H. “**Media Communication**” means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Assured Organization**.

I. “**Media Material**” means information in the form of words, numbers, images, or graphics in electronic, print or broadcast form, but does not mean computer software.

J. “**Media Services**” means **Media Communications** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Assured Organization’s** business.

K. “**Period of Insurance**” means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Extended Reporting Period**.

L. “**Professional Services**” means professional services or professional activities performed for others.

M. “**Property Damage**” means injury to or destruction of any tangible property, including the loss of use thereof.

N. “**Subsidiary**” means any corporate entity while more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the Named Assured directly or indirectly, if such entity:

1. was so owned on the inception date of this Policy;
2. becomes so owned after the inception date of this Policy provided the revenues of the entity do not exceed 10% of the Named Assured's Annual Revenues as set forth in their most recent application for insurance; or
3. becomes so owned after the inception date of this Policy provided that if the revenues of the entity exceed 10% of the Named Assured's Annual Revenues as set forth in their most recent application for insurance, the provisions of Provision XVII, Mergers and Acquisitions, must be fulfilled.

O. “**Technology Based Services**” means electronic media operations, digital services, data processing, Internet services, information services and other electronic activities, performed for others in the ordinary course of the **Assured Organization's** business.

P. “**Theft of Data**” means the **Unauthorized** taking or misuse of information, including but not limited to charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information while stored in a **Computer System** protected by security practices and procedures equal to or superior to those disclosed in response to questions in the Application for Insurance relating to **Computer System** access protection, data back up procedures, and data encryption procedures.

Q. “**Unauthorized**” means:

1. the use of or access to **Computer Systems** by a person not authorized to do so by the **Assured Organization**; or
2. the authorized use of or access to **Computer Systems** in a manner not authorized by the **Assured Organization**.

## VII. LIMIT OF LIABILITY

A. The “Annual Aggregate” stated in Item 3(b) of the Declarations is Underwriters' combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** or circumstances which might lead to a **Claim** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Assured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.

- B. The Limit of Liability stated in Item 3(a) of the Declarations for “Each **Claim**” is the limit of Underwriters Liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- C. The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Period of Insurance**.

## VIII. DEDUCTIBLE

The “Each **Claim** deductible” stated in Item 4. of the Declarations applies separately to each and every **Claim**. The Deductible shall be satisfied by payments by the Named Assured of **Damages** and **Claims Expenses** resulting from **Claims** first made and reported to the Underwriters during the **Period of Insurance** and the **Extended Reporting Period** as a condition precedent to the payment by the Underwriters of any amounts hereunder, and the Underwriters shall be liable only for the amounts in excess of such Deductible subject to Underwriters' total liability not exceeding the limits stated in Items 3(a) and 3(b) of the Declarations. The Named Assured shall make direct payments within the deductible to appropriate other parties designated by the Underwriters.

## IX. INNOCENT ASSURED

A. Whenever coverage under this Insurance would be excluded, suspended or lost:

1. because of Exclusion V.A relating to criminal, dishonest, fraudulent or malicious acts, errors or omissions by any **Assured**, and with respect to which any other **Assured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof; or
2. because of non-compliance of Condition XI.A or B relating to the giving of notice of **Claim** to the Underwriters with respect to which any other **Assured** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more **Assureds** responsible for the loss or damage otherwise insured hereunder;

then Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Assureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of:

1. one or more of the acts, errors or omissions described in Exclusion A; or
2. such failure to give notice, provided that the **Assured** entitled to the benefit of this provision under condition XI.A or B shall comply with such condition promptly after obtaining knowledge of the failure of any other **Assured** to comply therewith, and that the reporting of any such **Claim** must be made during the **Policy Period** or the **Extended Reporting Period**, if applicable.

This provision is inapplicable to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Assured Organization** arising

from acts, errors or omissions known to any present or former principal, partner, director or officer of the **Assured Organization**.

- B. With respect to this provision, the Underwriters' obligation to pay in such event shall be in excess of the full extent of any recoverable assets of any **Assured** to whom Exclusion V.A applies and shall be subject to the terms, conditions and limitations of this Policy.

#### **X. EXTENDED REPORTING ENDORSEMENT**

- A. In the event of cancellation or non-renewal of this Insurance by the Underwriters, the Named Assured designated in Item 1. of the Declarations shall have the right, upon payment in full and not proportionally or otherwise in part of 100% of the Premium set forth in Item 5. of the Declarations, to have issued an endorsement providing a 12-month **Extended Reporting Period** for **Claims** first made against any **Assured** and reported to the Underwriters during the **Extended Reporting Period**, and arising out of any act, error or omission committed on or after the Retroactive Date and before the end of the **Period of Insurance**, subject to the conditions set forth in the definition of **Extended Reporting Period** herein. In order for the Named Assured to invoke the **Extended Reporting Period** option, the payment of the additional premium for the **Extended Reporting Period** must be paid to Underwriters within 30 days of the non-renewal or cancellation.
- B. The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Limit of Liability of the Underwriters for the **Period of Insurance**.
- C. The quotation by Underwriters of a different premium or deductible or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.
- D. The right to the **Extended Reporting Period** shall not be available to the Named Assured where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Assured** to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- E. All notices and premium payments with respect to the Extended Reporting option shall be directed to Underwriters through the entity named in Item 8. of the Declarations.
- F. At the commencement of the **Extended Reporting Period** the entire premium shall be deemed earned, and in the event the Named Assured terminates the **Extended Reporting Period** for any reason prior to its natural expiration, Underwriters will not be liable to return any premium paid for the **Extended Reporting Period**.

#### **XI. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM**

- A. If any **Claim** is made against the **Assured**, the **Assured** shall immediately forward to Underwriters through persons named in Item 7. of the Declarations every demand, notice, summons or other process received by the **Assured** or the **Assured's** representative.
- B. If during the **Period of Insurance** the **Assured** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it must give written notice to Underwriters through persons named in Item 7. of the Declarations as soon as practicable during the **Period of Insurance** of:
1. the specific details of the act, error or omission in the provision of **Professional Services, Media Services or Technology Based Services** that could reasonably be the basis for a **Claim**;
  2. the injury or damage which may result or has resulted from the circumstance; and
  3. the facts by which the **Assured** first became aware of the act, error or omission.

Any subsequent **Claim** arising out of such circumstance made against the **Assured** who is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to Underwriters.

- C. A **Claim** shall be considered to be reported to the Underwriters when notice is first given to Underwriters through persons named in Item 7. of the Declarations of the **Claim** or of an act, error, or omission, which could reasonably be expected to give rise to a **Claim** if provided in compliance with Section B above.
- D. In the event of non-renewal of this Insurance by the Underwriters, the **Assured** shall have thirty (30) days from the expiration date of the **Period of Insurance** to notify Underwriters of **Claims** made against the **Assured** during the **Period of Insurance** which arise out of acts, errors, or omissions committed prior to the termination date of the **Period of Insurance** and otherwise covered by this Insurance.
- E. If any **Assured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

## **XII. ASSISTANCE AND COOPERATION OF THE ASSURED**

The **Assured** shall cooperate with the Underwriters in all investigations, including investigations regarding the application for and coverage under this Policy. The **Assured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters.

Upon the Underwriters' request, the **Assured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Assured** because of acts, errors or omissions with respect to which insurance is afforded under this Policy; and the **Assured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Assured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgement or award or dispose of any **Claim** without the consent of Underwriters.

Expenses incurred by the **Assured** in assisting and cooperating with Underwriters, as described above, do not constitute **Claims Expenses** under the Policy.

### **XIII. OTHER INSURANCE**

This Insurance shall apply in excess of any other valid and collectible insurance available to any **Assured**, including any self insured retention or deductible portion thereof unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

### **XIV. ACTION AGAINST UNDERWRITERS**

No action shall lie against the Underwriters or their representatives unless, as a condition precedent thereto: (1) there shall have been full compliance with all terms of this Insurance; and (2) until the amount of the **Assured's** obligation to pay shall have been finally determined either by judgment or award against the **Assured** after actual trial or arbitration or by written agreement of the **Assured**, the Claimant and the Underwriters.

Any person or organization or the legal representative thereof who has secured such judgment, award or written agreement shall thereafter be entitled to make a claim under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Insurance to join the Underwriters as a party to an action or other proceeding against the **Assured** to determine the **Assured's** liability, nor shall the Underwriters be impleaded by the **Assured** or his legal representative.

Bankruptcy or insolvency of the **Assured** or of the **Assured's** estate shall not relieve the Underwriters of its obligations hereunder.

### **XV. SUBROGATION**

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Assureds'** rights of recovery therefore against any person or organization, and the **Assured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Assured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by Underwriters, and third to the deductible. Any additional amounts recovered shall be paid to the Named Assured.

### **XVI. ENTIRE AGREEMENT**

By acceptance of the Policy, all Assureds agree that this Policy embodies all agreements between them and the Underwriters relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Insurance or stop the Underwriters from asserting any right under the terms of this Insurance; nor shall the terms of this Insurance be waived or changed, except by endorsement issued to form a part of this Insurance, signed by Underwriters.

## **XVII. MERGERS AND ACQUISITIONS**

A. During the **Period of Insurance**, if the Named Assured or any **Subsidiary**:

1. purchases assets or acquires liabilities from another entity in an amount greater than ten percent (10%) of the Named Assured's assets as listed in its most recent financial statement; or
2. acquires another entity whose annual revenues are more than ten percent (10%) of the Named Assured's total annual revenues as set forth in the most recent Application for insurance;

then no **Assured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission, whether committed either before or after such merger, purchase or acquisition:

1. at the premises of the acquired entity;
2. by the acquired entity or any person employed by the acquired entity;
3. involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity; or
4. involving or relating to the purchased assets or liabilities,

unless the Named Assured gives the Underwriters written notice prior to the purchase or acquisition, obtains the written consent of Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by Underwriters.

B. If during the **Period of Insurance** the Named Assured consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless Underwriters have issued an endorsement extending coverage under this Policy, and the Named Assured has agreed to any additional premium and terms of coverage required by Underwriters.

C. All notices and premium payments made under this section shall be directed to Underwriters through the entity named in Item 8. of the Declarations.

## **XVIII. ASSIGNMENT**

The interest hereunder of any **Assured** is not assignable. If the **Assured** shall die or be adjudged incompetent, such insurance shall cover the **Assured's** legal representative as the **Assured** as would be permitted by this Policy.

#### **XIX. CANCELLATION**

- A. This Policy of Insurance may be cancelled by the Named Assured by surrender thereof to Underwriters or by mailing to Underwriters through the entity named in Item 8. of the Declarations written notice stating when thereafter the cancellation shall be effective. The Underwriters may cancel this Insurance by mailing to the Named Assured at the address shown in the Declarations written notice stating when not less than 60 days thereafter such cancellation shall be effective. However, if the Underwriters cancel this Insurance because the **Assured** has failed to pay a premium when due, this Insurance may be cancelled by the Underwriters by mailing a written notice of cancellation to the Named Assured at the address shown in the Declarations stating when not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Period of Insurance**. Delivery (where permitted by law) of such written notice either by the Named Assured or by the Underwriters shall be equivalent to mailing.
- B. If the Named Assured cancels this Insurance prior to reporting any **Claim** under this Policy, thirty percent (30%) of the premium shall be deemed earned upon inception of the policy, and the remaining earned premium shall be computed in accordance with the customary short rate table and procedure.
- C. If the Underwriters cancel this Insurance prior to any **Claim** being reported under this Policy, earned premium shall be computed pro rata.
- D. The premium shall be deemed fully earned if any **Claim** under this Policy is reported to Underwriters on or before the date of cancellation.
- E. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

#### **XX. SINGULAR FORM OF A WORD**

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

#### **XXI. TITLES OF PARAGRAPHS**

The titles of paragraphs sections, provisions or endorsements of or to this policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy.



## **XXII. WARRANTY BY THE ASSURED**

By acceptance of this Policy, all **Assureds** agree that the statements contained in the Application, any Application for Insurance of which this policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, that they shall be deemed material to the risk assumed by Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Assured** or its agent in the Application, any Application for insurance of which this Policy is a renewal, or any supplemental materials submitted therewith will render the Policy null and void and relieve the Underwriters from all liability under the Policy.

The Application and any Application for Insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are deemed incorporated into and made a part of this Policy.

## **XXIII. NAMED ASSURED AS AGENT**

The Named Assured specified in Item 1. of the Declarations shall be considered the agent of all **Assureds**, and shall act on behalf of all **Assureds** with respect to the giving of or receipt of all notices pertaining to this Policy, the acceptance of any endorsements to this policy, and the Named Assured shall be responsible for the payment of all premiums and deductibles.

## **XXIV. WAR AND TERRORISM EXCLUSION**

Notwithstanding any provision to the contrary within this Insurance or any endorsement thereto, it is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- A. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- B. any act of terrorism.

For the purpose of this endorsement, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to A or B above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Insurance, the burden of proving the contrary shall be upon the **Assured**.

In the event any portion of this Section XXIV is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## **XXV. SERVICE OF SUIT CLAUSE (U.S.A.)**

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due under this Insurance, the Underwriters hereon, at the request of the **Assured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' 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 the Underwriters' representative, designated in Item 9. of the Declarations, 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 any Appellate Court in the event of an appeal.

The Underwriters' representative designated in Item 9. of the Declarations is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **Assured** to give a written undertaking to the **Assured** 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 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 **Assured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the Underwriters' representative, designated in Item 9. of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

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