

# AXIS<sup>®</sup> PRO MPL SOLUTIONS INSURANCE POLICY

## IMPORTANT NOTICE

**CLAIM EXPENSE** IS INCLUDED IN THE POLICY LIMIT AND THE **RETENTION**.

ALL WORDS OR PHRASES, OTHER THAN CAPTIONS, PRINTED IN BOLD FACE ARE DEFINED IN THE POLICY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT INSURED.

**CLAIMS MADE POLICY:** THIS INSURANCE COVERAGE IS ON A CLAIMS MADE BASIS. COVERAGE APPLIES ONLY TO THOSE **CLAIMS** THAT ARE FIRST MADE DURING THE **POLICY PERIOD** AND ANY EXTENDED REPORTING PERIOD, IF APPLICABLE, AS THOSE TERMS ARE DESCRIBED IN THIS POLICY. COVERAGE DOES NOT APPLY TO ANY **WRONGFUL ACT** COMMITTED BEFORE THE **RETROACTIVE DATE** STATED IN THIS POLICY.

In consideration of the payment of the premium and in reliance on the statements in the **Application** and subject to all other terms of this policy, the **Company** designated in the Declarations agrees with the **First Named Insured** to the following:

## SECTION I. INSURING AGREEMENTS

### A. What The Company Insures

1. The **Company** will pay on the **Insured's** behalf those sums, in excess of the **Retention** and within the applicable Limit of Insurance, that the **Insured** becomes legally obligated to pay as **Damages** or **Claim Expense** because of **Claims** first made during the **Policy Period** or Extended Reporting Period (if applicable) as a result of **Wrongful Acts** committed in the performance of **Insured Services**.
2. For the purposes of this policy of insurance, "**Wrongful Act**" shall mean the following conduct or alleged conduct by an **Insured**, or any person or organization for whom an **Insured** is legally liable:
  - a. A negligent act, error or omission;
  - b. Any form of defamation or other tort related to disparagement or harm to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, infliction of emotional distress, malicious falsehood, outrage or outrageous conduct;
  - c. Any form of invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion, breach of confidence, and commercial appropriation of name or likeness;
  - d. Wrongful entry or eviction, trespass, eavesdropping or other invasion of the right of private occupancy;
  - e. False arrest, detention or imprisonment; or
  - f. Malicious prosecution.

All **Wrongful Acts** that take place between the **Retroactive Date** and the end of the **Policy Period** of the last policy the **Company** issued to the **Insured** and are related by common facts, circumstances, transactions, events and/or decisions will be treated as one **Wrongful Act**.

### B. Defense and Settlement of a Claim

The **Company** will have the right and duty to appoint an attorney and defend a covered **Claim**, even if the allegations are groundless, false or fraudulent. However:

1. The **Company** may, at the **Company's** discretion, investigate and settle a covered **Claim**.
2. No offer to settle any **Claim** will be made or accepted by the **Insured** without prior written agreement by the **Company**. Notwithstanding the foregoing, it is understood that the **Insured** may settle any **Claim** for which the total cost of **Damages** and **Claim Expense** associated therewith is less than the amount of the remaining **Retention**.
3. If the **Company** is willing to accept the judgment of the trial or appellate court or any negotiated settlement or settlement offer and the **Insured** is not willing to accept such judgment or settlement, the **Company's** liability for any **Claim Expense** and/or **Damages** incurred after the **Company** indicated its willingness to accept such judgment or settlement shall be limited to the amount for which the **Company** could have resolved the **Claim** plus an additional fifty percent (50%) of that amount. Nothing in this provision will cause the **Company's** liability to exceed the applicable Limits of Insurance set forth on the Declarations Page.
4. The **Company's** right and duty to defend and pay on the **Insured's** behalf ends when the **Company** has used up the applicable Limit of Insurance in payment of **Damages** or **Claim Expense**, or has met its payment obligations in connection with a **Claim** subject to **Section I.B.3**.

Nothing in this **Section I.B.** will relieve the **Insured** from any notice or cooperation requirements contained in the **GENERAL CONDITIONS** section or any other part of this policy.

### C. Spousal Coverage

If a **Claim** made against an **Individual Insured** includes a **Claim** against that **Individual Insured's** lawful spouse solely by reason of:

1. Such spouse's status as the **Individual Insured's** spouse, or
2. Such spouse's ownership interest in property from which the claimant seeks recovery for the **Individual Insured's Wrongful Acts**,

all **Claim Expense** and **Damages** which such spouse becomes legally obligated to pay on account of such **Claim** shall be treated for purposes of this policy as **Claim Expense** and **Damages** which the **Individual Insured** is legally obligated to pay on account of the **Claim** made against the **Individual Insured**. Such **Claim Expense** and **Damages** shall be covered under this policy only if and to the extent that such **Claim Expense** and **Damages** would be covered under this policy if incurred by the **Individual Insured**. The coverage extension afforded by this subsection does not apply to any **Claim** alleging any **Wrongful Act** or omission by the **Individual Insured's** spouse. The term "spouse" as used in this section shall include any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law in the United States of America.

## SECTION II. LIMITS OF INSURANCE, RETENTION AND REIMBURSEMENT

### A. Limits of Insurance

#### 1. Each **Wrongful Act**

The Each **Wrongful Act** Limit of Insurance stated in Item 5.a. on the Declarations Page is the most the **Company** will pay for **Damages** and **Claim Expense** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period arising from one **Wrongful Act**, no matter how many:

- a. **Insureds** this policy covers;
- b. **Claims** are made; or
- c. Persons or organizations make **Claims**.

#### 2. Total Limit of Insurance

The Total Limit of Insurance stated in Item 5.b. on the Declarations Page is the most the **Company** will pay for **Damages** and **Claim Expense** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period, no matter how many:

- a. **Insureds** this policy covers;
- b. **Claims** are made;
- c. Persons or organizations make **Claims**; or
- d. **Wrongful Acts** are committed.

#### 3. Sub-Limits

##### a. **Disciplinary Proceedings Claim Expense**

The most the **Company** will pay for all **Claim Expense** incurred in connection with **Disciplinary Proceedings** commenced during the **Policy Period** and any applicable Extended Reporting Period shall be \$10,000, no matter how many:

- (1) **Insureds** this policy covers;
- (2) **Disciplinary Proceedings** are commenced;
- (3) Persons, organizations, or authorities institute **Disciplinary Proceedings**; or
- (4) **Wrongful Acts** are committed.

#### b. Insured's Claim Attendance Expense

If the **Insured** is requested by the **Company** to attend hearings, depositions and trials in connection with the defense of a covered **Claim**, the most the **Company** shall pay for the **Insured's Claim Attendance Expense** incurred as a direct result of such attendance, after any applicable **Retention** is satisfied, will be the lesser of: the **Insured's** actual **Claim Attendance Expense**, or \$500 per day. In any event, the **Company's** total payment for all such **Claim Attendance Expense** shall not exceed \$10,000 for each **Policy Period**, no matter how many:

- (1) **Insureds** this policy covers;
  - (2) **Claims** are made;
  - (3) Persons or organizations make **Claims**;
  - (4) Trials, depositions, hearings or related appearances the **Insured** attends; or
  - (5) **Wrongful Acts** are committed.
- c. These sub-limits, and any other sub-limit which may be stated in any endorsement to this policy, shall be part of, and not in addition to, the Total Limit of Insurance stated in Item 5.b. of the Declarations. Payment for **Claim Expense** or **Damages** to which a sub-limit applies will reduce the Total Limit of Insurance available to pay **Claims** covered under this policy.
- d. If more than one sub-limited coverage applies to a **Claim** covered under this policy, the **Company** shall not be obligated to pay more than the largest applicable sub-limit for all **Claim Expense** and **Damages** in connection with such **Claim**.

#### B. Retention

The **Company** shall be liable for only that part of **Damages** and **Claim Expense** covered under this policy which is excess of the **Wrongful Act Retention** as described below and in the amount set forth in Item 6. of the Declarations. Such **Retention** shall be borne by the **Insureds** uninsured and at their own risk.

With respect to **Claims** for **Wrongful Acts**, the **Retention** set forth in Item 6. of the Declarations shall apply to each **Wrongful Act** covered by this policy. All **Wrongful Acts** that involve the same or related subject, person, class of person or have common facts or circumstances or involve common transactions, events or decisions, regardless of the number of repetitions, alterations, actions, or forms of communication will be treated as one **Wrongful Act** for the purposes of applying the **Retention**. The **Retention** applies to **Damages** and **Claim Expense** combined. The **Retention** shall not apply to **Claim Expense** incurred in connection with **Disciplinary Proceedings**.

If more than one **Retention** applies to a **Claim** covered under this policy, the **Insured's Retention** obligation shall not exceed the largest applicable **Retention** in connection with such **Claim**.

The Limit of Insurance shall not be reduced by the application of the **Retention**. All other rights, duties and obligations under the policy shall remain the same regardless of whether or not the **Retention** has been satisfied, including, but not limited to, the **Company's** right and duty to investigate, defend and settle **Claims** and the **Insured's** notice and cooperation duties set forth in this policy.

#### C. Reimbursement

If, at the **Company's** option, the **Company** has paid any amounts for **Damages** or **Claim Expense** in excess of the applicable Limit of Insurance, including any amounts paid in excess of the **Company's** obligation to pay **Damages** and **Claim Expense** pursuant to **Section I.B.3.** of this policy, or if the **Company** has paid part or all of any **Retention**, the **Insured** shall reimburse the **Company** for such amounts upon demand.

The **Company** will have the right to seek recovery from any **Insured** of any **Claim Expense** or **Damages** paid by the **Company** as a result of any portion of a **Claim** that is not covered by this policy.

### SECTION III. EXCLUSIONS – What the Company Does Not Insure

- A. The **Company** is not obligated to pay **Damages** or **Claim Expense** or defend **Claims** for or arising directly or indirectly out of:
1. **Bodily Injury** or **Property Damage**.
  2. An act or omission that is dishonest, fraudulent, criminal, malicious or was intentionally committed while knowing it was wrongful, as evidenced by any judgment, final adjudication, alternate dispute resolution proceeding or written admission by the **Insured**. This exclusion does not apply to any **Individual Insured** that did not commit, acquiesce or participate in the actions that gave rise to the **Claim**. Pursuant to **Section II.C.** of this policy, the **Company** shall have a right to reimbursement of any **Damages** or **Claim Expense** paid by the **Company** as a result of a **Claim** to which this exclusion applies.
  3. Infringement, misappropriation or theft of:
    - a. Copyright;
    - b. Trademark, trade dress, trade name, service mark, service name, title or slogan;
    - c. Patent; or
    - d. Trade secrets.
  4. Unfair competition, restraint of trade or any other violation of antitrust laws.
  5. Harassment, misconduct or discrimination because of or relating to:
    - a. Race, creed, color or age;
    - b. Sex, sexual preference, national origin or religion; or
    - c. Handicap, disability or marital status,but only if the harassment, misconduct or discrimination was knowingly committed, as evidenced by any judgment, final adjudication, alternate dispute resolution proceeding or written admission by the **Insured**. Pursuant to **Section II.C.** of this policy, the **Company** shall have a right to reimbursement of any **Damages** or **Claim Expense** paid by the **Company** as a result of a **Claim** to which this exclusion applies.
  6. Gain, profit or advantage to which any **Insured** is not legally entitled, as evidenced by any judgment, final adjudication, alternate dispute resolution proceeding or written admission by the **Insured**. Pursuant to **Section II.C.** of this policy, the **Company** shall have a right to reimbursement of any **Damages** or **Claim Expense** paid by the **Company** as a result of a **Claim** to which this exclusion applies.
  7. Violation of any provisions of the Employee Retirement Income Security Act of 1974 (the “Act”) or:
    - a. Any amendment to the Act; or
    - b. Any regulations, rulings or orders issued pursuant to the Act.
  8. Violation of the Securities Act of 1933 as amended, The Securities Exchange Act of 1934 as amended, the Investment Advisers Act of 1940, any state blue sky or securities law, any similar state or federal law, or any order, ruling or regulation issued pursuant to the above laws.
  9. The actual or threatened discharge, dispersal or release of any **Pollutant**; or the creation of an injurious condition involving any **Pollutant**; or the existence of any **Pollutant** on any property; or the clean up, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any **Pollutant**. This exclusion shall apply whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable or whether or not any **Insured** caused or contributed to the pollution.
  10. The performance of services which can only be performed by a:

- a. Architect or licensed engineer;
  - b. Attorney;
  - c. Certified public accountant;
  - d. Medical practitioner or other health care provider, including, but not limited to, physicians or nurses, and including any **Claims** arising directly or indirectly out of medical malpractice, including the giving or receiving of professionally qualified medical opinions, or the administration of or failure to administer or summon medical care or first aid;
  - e. Actuary;
  - f. Licensed insurance agent or broker;
  - g. Certified financial planner; or
  - h. Securities or investment advisor or broker/dealer.
11. Malfunction or defect of any hardware, equipment or component. This exclusion does not apply when the malfunction or defect is solely the result of any **Insured's Wrongful Act** in performing **Insured Services**.
  12. Electrical or mechanical failure, including power interruption, surge, spike, brownout or blackout, and outages to gas, water, telephone, cable, satellite, telecommunications or other infrastructure; except this exclusion does not apply when the failure is solely the result of the **Insured's Wrongful Act** in performing **Insured Services**.
  13. Gathering, acquisition or obtaining of information about Internet users in any manner, including but not limited to, placement and/or use of spyware or adware.
  14. Unsolicited faxes, unsolicited electronic mail, unsolicited telephone calls or other unsolicited electronic communications. This exclusion shall include alleged violations of state, local or federal law, including non-U.S. laws, any amendment to such laws, or violation of any order, ruling or regulation issued pursuant to such laws that regulate such communication.
  15. Actions, decisions, orders or proceedings by the Federal Trade Commission, Federal Communications Commission or any other federal, state or local governmental regulatory agency, except for **Disciplinary Proceedings**.
  16. Unauthorized access to, unauthorized use of, or unauthorized alteration of any computer or system, hardware, software, program, network, data, database, communication network or service, including the introduction of malicious code or virus, or repetitively accessing a website under the control of an **Insured** with the intent to deny others access to such website or with the intent to cause such website's functionality to fail, including what is commonly referred to as denial of service attacks.
  17. **Advertising by the Insured**, including inaccurate, inadequate or incomplete description of the price of the **Insured's** goods, products or services, or the failure of the **Insured's** goods, products or services to conform with any represented quality or performance contained in **Advertising by the Insured**.
- B. The Company** is not obligated to pay **Damages** or **Claim Expense** or defend **Claims** made by:
1. Any enterprise that is a parent, affiliate or partner of any **Insured**;
  2. Any enterprise directly or indirectly controlled, operated or managed by the **Insured** or an enterprise described in **Section III.B.1.** above;
  3. Any **Insured**;
  4. Any present, former or prospective employees, officers, directors of any **Insured** when the **Claim** is in any way related to the present, former or prospective employment relations between the claimant and any **Insured**; or

5. Any regulatory authority, or any federal, state or local governmental agency; except this exclusion does not apply to a **Claim** brought by any of these entities if such entity is also a client, and the **Claim** arises from actual or alleged **Wrongful Acts** in the **Insured's** performance of **Insured Services** for or on behalf of such agency or entity.
- C. The **Company** is not obligated to pay **Damages** or **Claim Expense** or defend **Claims** for the breach of express warranties, guarantees or contracts; provided, however, with respect to allegations of breach of contract this exclusion shall not apply to any liability that would have attached in the absence of such contract nor to coverage for **Claims** for actual or alleged negligent performance of **Insured Services**.
- D. The **Company** is not obligated to pay **Damages** or **Claim Expense** or defend **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving:
  1. Any fact, circumstance, transaction, event or **Wrongful Act** that:
    - a. before the **First Inception Date** was the subject of any notice of claim or loss, or notice of potential claim or potential loss, given under any other policy of insurance; or
    - b. which, as of the **First Inception Date** any **Insured** had knowledge and that was reasonably likely to give rise to a **Claim** that would fall within the scope of the insurance afforded by this policy; or
    - c. any other **Wrongful Act** whenever occurring, which together with a **Wrongful Act** described in a. or b. above, constitute one **Wrongful Act** as defined in this policy;
  2. Any demand, suit or other proceeding pending, or order, decree or judgment entered:
    - a. against any **Insured** on or prior to the **First Inception Date** or any **Wrongful Act**, fact, circumstance or situation underlying or alleged therein; or
    - b. any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in a. above, constitute one **Wrongful Act** as defined in this policy.

## SECTION IV. WHERE AND WHEN THE COMPANY INSURES

### A. Where The Company Insures

Coverage under this policy applies to **Wrongful Acts** committed anywhere and to **Claims** made in any jurisdiction in the world. If **Damages** or **Claim Expense** are paid in a currency other than United States of America dollars, then the payment under this policy will be considered to have been made in United States dollars at the conversion rate published in *The Wall Street Journal* at the time of the payment.

### B. When The Company Insures

#### 1. Claims First Made

This insurance applies when a **Claim** is first made against any **Insured** during the **Policy Period**. To be covered, the **Claim** must also arise from a **Wrongful Act** committed during the **Policy Period**, except as otherwise provided below in **Sections IV.B.2.** and **IV.B.3.**

The **Company** will consider a **Claim** to be first made against an **Insured** when a written **Claim** is first received by any **Insured**.

This insurance also applies to **Claims** under the following conditions:

#### 2. Prior **Wrongful Acts**

This policy will apply to a **Claim** first made against any **Insured** arising from a **Wrongful Act** committed between the **Retroactive Date** and the Inception Date of the policy, but only if all of the following conditions are met:

- a. The **Claim** is first made against any **Insured** during the **Policy Period**. The **Company** will consider a **Claim** to be first made against the **Insured** when a **Claim** is received by any **Insured**;

- b. No **Insured** knew, prior to the **First Inception Date**, of a circumstance that could reasonably be expected to lead to the **Claim**; and
- c. There is no other valid and collectible insurance applicable to the **Claim**.

### 3. Reported **Wrongful Acts**

This policy will apply to a **Claim** first made against any **Insured** after the end of the **Policy Period**, but only if all of the following conditions are met:

- a. The **Wrongful Act** giving rise to the **Claim** is committed between the **Retroactive Date** and the end of the **Policy Period**;
- b. Prior to the **First Inception Date**, no **Insured** knew of the **Wrongful Act**, alleged **Wrongful Act** or circumstance that could reasonably be expected to lead to the **Claim**;
- c. The **Company** receives written notice from the **Insured** during the **Policy Period** of the **Wrongful Act**. The notice must include all of the following information:
  - (1) The names of those persons or organizations involved in the **Wrongful Act**;
  - (2) The specific person or organization likely to make the **Claim**;
  - (3) A description of the time, place and nature of the **Wrongful Act**; and
  - (4) A description of the potential **Damages**; and
- d. There is no other valid and collectible insurance applicable to the **Claim**.

The provisions of the policy in effect on the date the **Company** receives the notice of the **Wrongful Act** under this paragraph 3. will apply to any resulting **Claim**.

### 4. Extended Reporting Period

If the **Insured** did not report **Wrongful Acts** during the **Policy Period** as described in **Section IV.B.3.**, above, and **Claims** arising from such **Wrongful Acts** are first made after the end of the **Policy Period**, such **Claims** are not covered under this policy unless the **First Named Insured** purchases an Extended Reporting Period from the **Company**.

- a. If the **First Named Insured** purchases an Extended Reporting Period, the **Company** will cover a **Claim** first made against any **Insured** after the end of the **Policy Period** but during the Extended Reporting Period, only if all of the following conditions are met:
  - (1) The **Wrongful Act** giving rise to such **Claim** is committed between the **Retroactive Date** and the end of the **Policy Period**;
  - (2) No **Insured** knew prior to the **First Inception Date** of a circumstance that could reasonably be expected to lead to the **Claim**; and
  - (3) There is no other valid or collectible insurance applicable to the **Claim**.

The **Company** will consider a **Claim** to be made during the Extended Reporting Period only if the **Claim** is first received by any **Insured** after the Expiration Date of the **Policy Period** and prior to the Expiration Date stated in the Extended Reporting Period Endorsement.

- b. The following provisions and conditions also apply to the Extended Reporting Period:



(1) If the **Company** or the **First Named Insured** cancels or nonrenews the policy, and upon request by the **First Named Insured**, the **Company** will sell one of the Extended Reporting Period options listed on the Extended Reporting Period Option Endorsement, unless the **Company** cancels or nonrenews the policy because:

- (a) Any **Insured** failed to pay the premium or **Retention**; or
- (b) Any **Insured** failed to comply with policy provisions.

Changes or proposed changes in premium or policy provisions shall not be construed as cancellation or nonrenewal of the policy by the **Company**.

(2) The **Company** must receive the **First Named Insured's** request for the Extended Reporting Period in writing within thirty (30) days after the end of the **Policy Period**. On receipt and acceptance of the request, the **Company** will issue an endorsement showing the Extended Reporting Period in accordance with the option requested by the **First Named Insured**. At the same time, the **Company** will bill the additional premium, and the **Company** must receive payment within thirty (30) days after the billing date for the endorsement to be effective.

(3) The endorsement shall also include the provisions and conditions applicable to the Extended Reporting Period. Once in effect, the Extended Reporting Period may not be canceled.

(4) A **Claim** that is first made during the Extended Reporting Period will be deemed to have been made on the last day of the **Policy Period**. The provisions of the policy in effect on the last day of the **Policy Period** will apply.

(5) The Extended Reporting Period does not reinstate or increase the Limit of Insurance.

(6) The Extended Reporting Period does not extend the **Policy Period** or change the scope of coverage provided.

#### 5. Multiple **Claims**

All **Claims** arising from the same **Wrongful Act** will be deemed to have been made on the earlier of the following times:

- a. The date the first of those **Claims** is made against any **Insured**; or
- b. The first date the **Company** receives the **Insured's** written notice of the **Wrongful Act**.

The provisions of the policy in effect on that date will apply.

### SECTION V. DEFINITIONS USED IN THIS POLICY

**A. "Advertising by the Insured"** means advertising, publicity or promotion of any kind of the **Insured's** products and services.

**B. "Application"** means all of the following:

- 1. The **Insured's** AXIS<sup>®</sup> PRO MPL Solutions insurance policy application, and, if this policy is a renewal of a policy issued by the **Company**, the **Insured's** AXIS<sup>®</sup> PRO MPL Solutions insurance renewal application, including all applications and renewal applications submitted for such policies;
- 2. Other companies' insurance policy applications, if accepted by the **Company**; and
- 3. All attachments to the **Application** or renewal **Application** and any other information furnished to the **Company** for the purpose of applying for the insurance. All such attachments and information will be kept on file by the **Company**, deemed attached to the policy as if physically attached to it and shall become incorporated in and constitute a part of this policy.

C. "**Bodily Injury**" means physical injury to the body, or sickness or disease sustained by a person, including death resulting therefrom.

**Bodily Injury** also means mental injury or mental anguish, including emotional distress, shock or fright, if resulting from injury to the body, sickness, disease or death of any person. However, **Bodily Injury** does not include such mental injury or mental anguish if directly resulting from a covered **Wrongful Act** arising out of the performance or failure to perform **Insured Services**.

D. "**Claim**" means a written demand or written assertion of a legal right made against any **Insured** seeking **Damages** or non-monetary relief, including arbitration proceedings and **Disciplinary Proceedings**, including any appeal therefrom.

E. "**Claim Attendance Expense**" means the **Insured's** actual loss of earnings and reasonable expenses incurred directly in order for the **Insured** to attend hearings, depositions and trials at the request of the **Company** in connection with the defense of a covered **Claim**.

F. "**Claim Expense**" means expenses incurred by the **Company** or by the **Insured** with the **Company's** consent in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the **Company** or **Insured** with the **Company's** consent. **Claim Expense** includes:

1. Attorneys fees;
2. Costs taxed against an **Insured** in any suit defended by the **Company**;
3. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. The **Company** does not have to furnish these bonds; and
4. Reasonable expenses incurred by an **Insured** at the **Company's** request, excluding:
  - a. Loss of earnings (except to the extent covered as **Claim Attendance Expense**); and
  - b. Salaries or other compensation paid to any **Insured**.

G. "**Company**" means the insurance company stated at the top of the Declarations Page.

H. "**Damages**" means monetary judgment, award or settlement, including those that are actual, statutory, punitive, multiplied or exemplary, if permitted by law in an applicable jurisdiction; and legal expense or other costs included as part of a judgment, award or settlement. **Damages** also includes interest on any part of any judgment that accrues after entry of the judgment and before the **Company** has paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Insurance.

**Damages** does not include fines, penalties, taxes or return of fees, deposits, commissions or charges for goods or services.

**Damages** also does not include costs of correcting, performing or re-performing **Insured Services** by:

1. Any **Insured**; or
2. Another party, when an **Insured** had the opportunity to correct, perform or re-perform the service that generated the cost.

In determining the insurability of punitive or exemplary damages, or the multiplied portion of any multiplied damage award, the law of the jurisdiction most favorable to the insurability of those damages will control for purposes of resolving any dispute between the **Company** and the **Insureds**, provided that such jurisdiction is:

1. Where the punitive, exemplary or multiplied damages were awarded or imposed;
2. Where the **Wrongful Act** giving rise to the **Claim** took place;
3. Where either the **Company** or any **Insured** is incorporated, has its principal place of business or resides; or
4. Where this policy was issued or became effective.

- I. **"Disciplinary Proceeding"** means any action, investigation or request for information by a regulatory or disciplinary official, board or agency authorized by law or administrative order to oversee, investigate or institute actions regarding the **Insured's** professional misconduct in the performance of **Insured Services**.
- J. **"First Inception Date"** is the Inception Date of the earliest errors and omissions insurance policy the **Company** issued to the **First Named Insured** that provides similar coverage by the **Company**, provided that there has been uninterrupted coverage by the **Company** for the **First Named Insured** from that earliest policy to this policy.
- K. The **"First Named Insured"** is the **Named Insured** first listed on the Declarations Page.
- L. **"Individual Insured"** means, individually and collectively:
1. Any **Named Insured** that is an individual person;
  2. Any **Named Insured's** stockholders for their liability as stockholders;
  3. Any **Named Insured's** and **Subsidiary's** partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity in the performance of **Insured Services** by the **Named Insured** or any **Subsidiary**; and
  4. Any **Named Insured's** and **Subsidiary's** former partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in the capacity of the **Named Insured's** partners, officers, directors or employees in the performance of **Insured Services** by the **Named Insured**.

In the event of death, incompetency, insolvency or bankruptcy of any **Insured**, the **Insured's** legal representative shall be considered an **"Individual Insured"**, but only with respect to its activities within the scope of its duties in such capacity in the performance of **Insured Services** by a **Named Insured**.

- M. **"Insured"** means, individually and collectively:
1. A **Named Insured**; and
  2. The **Individual Insureds**.
- N. **"Insured Services"** means those services performed for others as stated in Item 4. on the Declarations Page, or as otherwise stated by endorsement to this policy.
- O. **"Named Insured"** means the person or entity listed in Item 1. of the Declarations Page and its **Subsidiaries**.
- P. **"Policy Period"** means the period of time stated in Item 2. on the Declarations Page, or any shorter period resulting from policy cancellation.
- Q. **"Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
1. Smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, silica, mold or asbestos;
  2. Hazardous, toxic or radioactive matter or nuclear radiation;
  3. Waste, which includes material to be recycled, reconditioned or reclaimed; or
  4. Any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.
- R. **"Property Damage"** means:
1. Physical injury to tangible property, including all resulting loss of use of that property; or
  2. Loss of use of tangible property that is not physically injured.
- S. **"Retention"** means the amount stated in Item 6. on the Declarations Page and described in **Section II.B.** of this policy.

T. "**Retroactive Date**" means the date, if any, stated in Item 3. on the Declarations Page.

U. "**Subsidiary(ies)**" means any entity in which, and so long as, a **Named Insured**, either directly or indirectly:

1. Owns more than fifty (50) percent of the issued and outstanding voting equity securities; or
2. Controls voting rights representing the present right to vote for election or to appoint more than fifty (50) percent of the directors or trustees;

on or before the effective date of this policy, or after the effective date of this policy; provided that, with any respect to any entity that becomes a **Subsidiary** after the effective date of the policy, and the entity's gross revenues exceed ten percent (10%) of the **Insured's** annual gross revenues at the Inception Date of the policy, the entity shall only be deemed a **Subsidiary** under this policy for a period of ninety (90) days from the date it became a **Subsidiary**.

If the **Insured** gives written notice within ninety (90) days of the creation or acquisition of the **Subsidiary**, including the necessary underwriting information the **Company** may require and pay any reasonable additional premium as the **Company** may require, then the **Company** will issue an endorsement including such entity in the definition of **Subsidiary** for the duration of the **Policy Period**.

In all events there is no coverage for **Wrongful Acts, Damages** or **Claim Expense** relating to any activities of a **Subsidiary**, or **Insured** thereof, occurring prior to the time such entity became a **Subsidiary**.

V. "**Wrongful Act**" means conduct or alleged conduct by an **Insured**, or any person or organization for whom an **Insured** is legally liable, as described in Insuring Agreement **Section I.A.** of this policy or as amended by applicable endorsement(s) attached hereto.

All **Wrongful Acts** that take place between the **Retroactive Date** and the end of the **Policy Period** of the last policy the **Company** issued to the **Insured** and are related by common facts, circumstances, transactions, events and/or decisions will be treated as one **Wrongful Act**.

## SECTION VI. GENERAL CONDITIONS

### A. Time of Inception; Policy Period

This policy will begin at 12:01 A.M. on the Inception Date shown in the Declarations. This policy will continue to apply until 12:01 A.M. on the Expiration Date also shown in the Declarations unless terminated at an earlier date.

### B. Premium

The **First Named Insured** will pay to the **Company** the amount of premium stated in Item 7. of the Declarations. The premium may be adjusted at any time during the **Policy Period** or any extensions of the **Policy Period** based upon changes in the provisions of this policy as may be agreed upon by the **First Named Insured** and the **Company**.

### C. Insured's Duties in the Event of a Claim

1. If there is a **Claim**, the **Insured** must do the following after the **Named Insured** has knowledge of the **Claim**:
  - a. Notify the **Company** in writing as soon as practicable. This notice must contain details that identify the **Insured**, the claimant and also reasonably obtainable information concerning the time, place and other details of the **Wrongful Act** and **Claim**;
  - b. Immediately send the **Company** copies of all demands, notices, summonses or legal papers received in connection with the **Claim**;
  - c. Authorize the **Company** to obtain records and other information;
  - d. Cooperate with and assist the **Company** in the investigation, settlement or defense of the **Claim**; and
  - e. Assist the **Company**, upon the **Company's** request, in enforcing any rights of contribution or indemnity against another who may be liable to any **Insured**.

2. No **Insured** will, except at the **Insured's** own cost, voluntarily make a payment, admit liability, assume any obligation or incur any expense without the **Company's** prior written consent.
3. When this policy requires that an **Insured** provide notice of a **Claim**, we will consider the **Insured** to have knowledge of that **Claim** when any of the offices of the **Named Insured's** chairperson of the board of directors, president, chief executive officer, chief operating officer, chief financial officer, risk manager or in-house counsel has that knowledge.

#### D. Bankruptcy

The bankruptcy or insolvency of the **Insured** or **Insured's** estate will not relieve the **Company** of the **Company's** obligation under this insurance. However, this insurance will not apply to liability directly or indirectly due to such bankruptcy, insolvency, receivership or subsequent liquidation.

#### E. Other Insurance

If other valid and collectible insurance applies to a **Claim** covered under this policy, this insurance is excess over such other insurance, except when the other insurance is specifically arranged by or on behalf of the **Named Insured** to apply in excess of this insurance, and no other insurance applies to the **Claim**.

#### F. Subrogation and Recovery

In the event of any payment under this policy, the **Company** will be subrogated to all the **Insured's** rights of recovery therefore against any person or organization, and the **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights. The **Company** will have no rights of subrogation against any **Insured** hereunder. Any recoveries shall be applied as follows:

1. First, to the **Company** up to the amount the **Company** has paid for **Damages** and **Claim Expense**.
2. Then, to the **First Named Insured** as recovery of Retention amounts paid as **Damages** and **Claim Expense**.

#### G. Changes in Insured's Operations

This policy applies only to **Insured Services** as described in the **Application**. This policy will not apply to any other activities or entities unless, with the **Company's** consent, such activities or entities are added to this policy by endorsement. The **Named Insured** will promptly pay any additional premium that may become due as a result of such addition.

#### H. Assignment

Assignment of any interest under this policy will not bind the **Company** unless and until its written consent is endorsed hereon.

#### I. Cancellation and Nonrenewal

##### 1. Cancellation

- a. The **First Named Insured** may cancel this policy by mailing or delivering written notice of cancellation to the **Company** or the **Company's** authorized representative, at the address shown on the Declarations Page of this policy. Such notice of cancellation will state the effective date of cancellation or, if no effective date is stated, the effective date of cancellation shall be thirty (30) days after receipt of notice. The **Policy Period** will end on that date.
- b. The **Company** may cancel this policy by mailing or delivering to the **First Named Insured** written notice of cancellation at least:
  - (1) Ten (10) days before the effective date of cancellation if the **Company** cancels for nonpayment of premium; or

(2) Thirty (30) days before the effective date of cancellation if the **Company** cancels for any other reason.

- c. If this policy is canceled, the **Company** will send the **First Named Insured** any premium refund due. If the **Company** cancels, the refund will be the pro rata unearned amount of the annual premium. If the **First Named Insured** cancels, the refund, if any, will be the pro rata unearned amount of the annual premium calculated at the customary short rate. Return of premium to the **First Named Insured** is not a condition precedent to cancellation.
- d. The **Company** will mail or deliver the notice to the address stated in Item 1. on the Declarations Page.
- e. If notice of cancellation is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

## 2. **Nonrenewal**

The **Company** may elect not to renew this policy by mailing or delivering written notice of nonrenewal to the **First Named Insured** at the address shown on the Declarations Page of this policy. The **Company** will mail or deliver the notice at least sixty (60) days before the expiration of the policy.

If notice of nonrenewal is mailed, proof of mailing will be sufficient proof of notice. Delivery of the notice will be the same as mailing.

## J. **Action Against the Company**

1. No action will lie against the **Company** unless, as a condition precedent thereto, there has been full compliance with all of the terms of this policy by all **Insureds**, nor until the amount of the **Insured's** obligation to pay has been fully determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement among the **Insured**, the claimant and the **Company**. Any person or organization, or the legal representative thereof, who has secured such judgment or written agreement, will thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy.
2. No person or organization will have any right under this policy to join the **Company** as a party to any action against the **Insured** to determine the **Insured's** liability, nor will the **Company** be impleaded by the **Insured** or the **Insured's** legal representative.

## K. **Representations**

By accepting this policy, the **Named Insured** agrees:

1. The statements made and information contained in the **Application** for this insurance furnished to the **Company** are true, accurate and complete;
2. Those statements furnished to the **Company** are representations the **Named Insured** made to the **Company** on behalf of all **Insureds**;
3. Those representations are a material inducement to the **Company** to issue this policy;
4. The **Company** has issued this policy in reliance upon those representations;
5. This policy embodies all agreements existing between the **Insured** and the **Company** or any of its agents relating to this insurance;
6. The **Insured** has and will provide true, accurate and complete information with regard to audits, claims, and assessments as required by the **Company**;
7. The **Application**, including any attachments, and all other information and materials submitted by or on behalf of the **Insureds** to the **Company** in connection with the **Company** underwriting this policy, will be kept on file by the **Company**, deemed attached to this policy as if physically attached to it and shall become incorporated in and constitute a part of this policy;

8. If such representations or such information are not true, accurate and complete, this policy shall be null and void in its entirety and the **Company** shall have no liability hereunder.

**L. Severability**

With regard to the information provided on any insurance **Application** or with regard to knowledge of any **Wrongful Acts** or **Claims** as referenced in this policy, only facts pertaining to and knowledge possessed by any of the offices of the **Named Insured's** chairperson of the board of directors, president, chief executive officer, chief operating officer, chief financial officer, risk manager, in-house counsel or any person whose signature appears on any **Application**, shall be imputed to the **Insured**.

**M. Changes to the Policy**

Notice or knowledge possessed by any person will not effect a waiver or a change in any part of this policy or estop the **Company** from asserting any rights under the terms of this policy; nor will the terms of this policy be waived or changed except by written endorsement issued to form a part of this policy.

**N. Authorization**

The **First Named Insured** is responsible for assurance of payment of all premiums and **Retentions**. The **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to providing and receiving notices of cancellation or nonrenewal, receiving any return premium, and purchasing an Extended Reporting Period. In the event of a disagreement between any **Insureds**, the **First Named Insured** will have exclusive authority to act on behalf of all other **Insureds** with respect to negotiation of settlements and the decision to appeal or not to appeal any judgment.

**O. Notice**

All notices to the **Company**, required or permitted under this policy, must be mailed to the **Company**, in care of the **Company's** AXIS PRO Business Unit, Two Pershing Square, Suite 800, 2300 Main Street, Kansas City, Missouri 64108-2404.

IN WITNESS WHEREOF, the **Company** has caused the policy to be signed by the **Company's** President and Secretary; but, this policy is not binding unless countersigned on the Declarations Page by the **Company's** authorized representative.

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President

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Secretary