

ADVERTISING AGENCY LIABILITY POLICY

OneBeacon
PROFESSIONAL INSURANCE®

DEFENSE COSTS ARE IN ADDITION TO THE LIMITS OF LIABILITY OF THIS POLICY AND THE LIMITS OF LIABILITY ARE NOT REDUCED OR EXHAUSTED BY PAYMENT OF **DEFENSE COSTS**. **DEFENSE COSTS** AND **LOSS** SHALL BE APPLIED AGAINST THE RETENTION. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the **underwriter**, and subject to all of the terms and conditions of this Policy (including all endorsements hereto), the **underwriter** and the **insured** agree as follows:

I. COVERAGE AGREEMENTS

(A) Communications and Personal Injury Liability

The **underwriter** will pay on behalf of the **insured** any **loss** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law or **assumed under contract** arising from an **occurrence** committed by the **insured** during the **policy period** that gives rise to a covered **claim** for:

- (1) defamation, however styled in a **claim**, involving disparagement or harm to the character or reputation of any person or organization, including libel, slander, product disparagement or trade libel;
- (2) invasion of or interference with the right of privacy or publicity, however styled in a **claim**, including intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;
- (3) trespass or wrongful entry or eviction;
- (4) false arrest, detention or imprisonment or malicious prosecution;
- (5) infringement of copyright, infringement of **title**, plagiarism, **piracy** and misappropriation of ideas, material or information;
- (6) failure to attribute authorship or to recognize creative moral rights pursuant to a written agreement;
- (7) infringement or dilution of trademark, **slogan**, trade name, trade dress, service mark or service name;
- (8) negligent or intentional infliction of emotional distress, outrage or outrageous conduct, but only when alleged in, and based on the same factual allegations as, a **claim** covered under one or more of subparts 1-7 above;
- (9) **unfair competition**, or violation of Section 43(a) of the Lanham Act or similar state statute, but only when alleged in, and based on the same factual allegations as, a **claim** covered under one or more of subparts 1, 5 or 7 above; and

(10) negligent supervision of an employee, but only when alleged in, and based on the same factual allegations as, a **claim** covered under one or more of subparts 1-7 above.

(B) Contextual Errors and Omissions Liability

The **underwriter** will pay on behalf of the **insured** any **loss** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law or **assumed under contract** arising from an **occurrence** committed by the **insured** during the **policy period** that gives rise to a covered **claim** for negligence, misrepresentation, misstatement or misleading statement in connection with the content of **matter** uttered or disseminated in **advertising**.

(C) Advertising Professional Services Liability

The **underwriter** will pay on behalf of the **insured** any **loss** in excess of the Retention and within the applicable Limit of Liability that the **insured** is legally obligated to pay to third parties because of liability imposed by law as a result of a **claim** for an **occurrence** committed by the **insured** during the **policy period** in the rendering of or failure to render **advertising professional services**.

II. DEFINITIONS

(A) Advertising means the content of **public appearance**, publicity, press releases or promotional material that is:

- (1) disseminated through third party social networking sites by an employee of the **insured** acting within the capacity and scope of such employee's duties as such; or
- (2) publicly disseminated by any other means;

to promote the **insured's** goods, products or services, or to promote the goods, products or services of customers or clients of the **named insured**; provided that **advertising** does not include: (1) one-on-one written or oral communications; (2) the use of or failure to use, expiration dates on any **matter**; (3) any lottery, sweepstakes, coupons, contests or games of chance, including but not limited to any redemption of any of the above; or (4) the design, print, images or information contained in or on the packaging or labeling of any goods or products.

(B) Advertising professional services means those professional services performed by the **insured** for customers or clients of the **named insured** for a fee in the development, maintenance and placement of **advertising** for the goods, products or services of such customers or clients; provided that **advertising professional services** does not include (1) telemarketing; (2) the production of films, videos or any other publication for release to the public that is independent of **advertising** for customers or clients; or (3) the creation, development, manufacture, leasing, licensing, distribution or sale of any technology product.

(C) Assumed under contract means liability assumed by the **insured** in any written, oral or implied hold harmless or indemnification agreement with any third party, but only with respect to **matter** provided by the **insured** and for an **occurrence** that is otherwise covered under this Policy.

(D) Bodily injury means bodily injury, sickness or disease, including death.

(E) Claim means a written demand or suit received by an **insured** seeking money, services or injunctive relief for an **occurrence**, or a written request to toll or waive an applicable statute of limitations relating to a potential **claim** against an **insured**; provided that **claim** shall not include any subpoena or request for information issued by, or any investigation, action or proceeding brought or maintained by or on behalf of, in the name or right of, or for the benefit of, any administrative, governmental or regulatory agency, body, entity or tribunal, including but not limited to the Federal Trade Commission or the Federal Communications Commission.

(F) Defense costs means:

- (1) reasonable and necessary legal fees, costs and expenses incurred by outside counsel in the investigation, adjustment, defense or appeal of a **claim**; or
- (2) the cost of any appeal bond or bond to release attachments as a result of a covered **claim** for a bond amount not exceeding the Limit of Liability, but the **underwriter** shall not be obligated to apply for or furnish any such bond;

provided that **defense costs** shall not include remuneration, salaries, wages, fees, expenses, overhead or benefit expenses of any **insured**.

(G) Independent contractor means an individual or entity providing **matter** or services to the **insured** pursuant to an express contract or agreement.

(H) Insured means:

- (1) the **named insured** and any **subsidiary**;
- (2) any person who was, is or becomes a director, officer, trustee, shareholder, principal, member, partner or employee of the **named insured** or any **subsidiary**, but only for acts committed within the capacity and scope of such person's duties as such;
- (3) the estate, heirs, legal representatives or assigns of a natural person **insured** in the event of the death, incapacity or bankruptcy of such **insured**, but only to the extent that such **insured** would otherwise be provided coverage under this Policy;
- (4) the lawful spouse or domestic partner of a natural person **insured**, but only if the **claim** arises solely from the spouse's or domestic partner's status as such or from the spouse's or domestic partner's ownership interest in the **matter** giving rise to the **claim**; provided that such **claim** would otherwise be covered under this Policy if made against the **insured**; or
- (5) any temporary or leased personnel of the **named insured** or any **subsidiary**, but only for acts committed within the capacity and scope of such individual's duties as such and on behalf of the **named insured** or any **subsidiary**.

(I) Loss means any monetary damages the **insured** is legally obligated to pay as a result of a **claim** covered by this Policy, including: actual damages; statutory damages; punitive or exemplary damages if insurable under applicable law; pre-judgment and post-judgment interest; and plaintiff's attorneys' fees and costs included as part of a judgment. **Loss** shall not include:

- (1) any fine, tax, fee, forfeiture, penalty or sanction (other than punitive or exemplary damages);
- (2) any non-monetary or equitable relief or redress, including but not limited to any cost or expense of complying with any injunctive, declaratory or administrative relief or specific performance award;
- (3) any cost or expense of recall, correction, production, reproduction, redistribution or reprinting of **matter** or any related expenses, or any cost or expense of correction, performance or reperformance of **advertising professional services**;
- (4) any royalty or license fee, deposit, commission or charges for goods or services;
- (5) any loss of profits;
- (6) any multiplied damages, except for multiplied damages awarded in connection with a covered **claim** under the Lanham Act, an unfair competition statute, or other statute or common law relating to copyright or trademark infringement;
- (7) any payment, restitution, return or disgorgement of sums the **insured** is not legally entitled to;

- (8) any return, reduction, offset, or lack of payment or receipt of, any fees, compensation or other payment owed, paid, or to be paid to an **insured**; or
- (9) any matter that is uninsurable under applicable law.

With regard to punitive or exemplary damages, this Policy shall apply to the fullest extent permitted under applicable law. Where the **named insured** determines, based on written opinion of counsel, that punitive or exemplary damages are insurable under the applicable law, the **underwriter** will not challenge the **named insured's** determination of insurability.

(J) Matter means the informational content of any communication, regardless of its nature, form or format or the medium by which such **matter** is communicated.

(K) Named insured means the person or entity named in ITEM 1 in the Declarations of this Policy.

(L) Occurrence means:

- (1) for purposes of the coverage afforded under COVERAGE AGREEMENTS (A) and (B), any actual or alleged act, error or omission committed by the **insured** arising directly out of:
 - (a) the creation, acquisition or compilation of **matter** for **advertising**, or
 - (b) the exhibition, dissemination or display of **advertising**; and
- (2) for purposes of the coverage afforded under COVERAGE AGREEMENT (C), any actual or alleged negligent act, error or omission committed by the **insured** in the rendering of or failure to render **advertising professional services**;

provided that any and all such acts, errors or omissions or series of acts, errors or omissions based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions, decisions or events shall be deemed to constitute a single **occurrence**, regardless of the number of repetitions, versions or forms of such **occurrence**, and shall be deemed to have occurred on the date as determined in accordance with Section IV GENERAL CONDITIONS (C) of this Policy.

(M) Piracy means the wrongful use, reprinting or reproduction of copyrighted **matter**.

(N) Policy period means the period from the Inception Date of this Policy stated in ITEM 2(a) of the Declarations to the Expiration Date of this Policy stated in ITEM 2(b) of the Declarations or to any earlier cancellation or termination of this Policy.

(O) Property damage means:

- (1) physical harm to or destruction of tangible or intangible property, including its loss of use; or
- (2) loss of use of tangible or intangible property that has not been otherwise physically harmed or destroyed.

(P) Public appearance means public speaking, including press conferences, speeches and seminars, and appearances on media outlets owned or operated by third parties, including radio, television and cable, by any natural person **insured** acting within the capacity and scope of such person's duties on behalf of the **named insured** or any **subsidiary**.

(Q) Related claims means all **claims** based upon, arising out of, directly or indirectly resulting from, in consequence of or in any way involving the same or related **occurrences**. All **related claims** shall be treated as a single **claim**, subject to a single Retention and single "Each Claim" Limit of Liability.

(R) Slogan means any distinctive phrase used in **advertising** which has not been copyrighted or trademarked.

- (S) **Subsidiary** means, subject to Section IV GENERAL CONDITIONS (L), any entity during any time in which the **named insured** owns, directly or through one or more **subsidiaries**, greater than fifty percent (50%) of the issued or outstanding voting securities.
- (T) **Title** means the caption or name of a literary or artistic work which has not been copyrighted or trademarked; provided that **title** shall not include the literary or artistic work itself, any goods or products, or any packaging of any goods or products.
- (U) **Underwriter** means the insurance company shown on the Declarations.
- (V) **Unfair competition** means the misuse of an intellectual property right in **matter**.

III. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for any **claim, loss or defense costs**:

- (A) for any actual or alleged: (1) breach of any express or implied contract, agreement, warranty or guarantee; or (2) obligation to make or pay any fee, profit, billing, cost or expense by an **insured**, including but not limited to the **insured's** alleged failure to pay royalties or other payments or to account for same; provided that this EXCLUSION (A) shall not apply to liability **assumed under contract** or to **claims** otherwise covered under SECTION I COVERAGE AGREEMENT (A)(6);
- (B) based upon or arising out of any ownership dispute relating to **matter** or services supplied to the **insured** by any past, present or future **insured**, joint venture participant or **independent contractor**;
- (C) based upon or arising out of usual and ordinary business activities and transactions that do not arise directly from the content of **matter** uttered or disseminated in **advertising** or the rendering of **advertising professional services**;
- (D) based upon or arising out of any actual or alleged misuse or infringement of any patent, inducement to infringe any patent, or any other misuse or violation in connection with patent rights, including any portion of any such **claim** that would otherwise be covered under this Policy;
- (E) based upon or arising out of any actual or alleged intentionally false, fraudulent, deceptive or misleading **advertising** with respect to the **insured's** goods, products or services, or any unfair competition arising therefrom, regardless of whether such **advertising** with respect to the **insured's** own goods, products or services also disparages the goods, products or services of a third party;
- (F) based upon or arising out of any actual or alleged **bodily injury** or **property damage**; provided that this EXCLUSION (F) shall not apply to **bodily injury** arising exclusively from emotional distress;
- (G) brought by or on behalf of or in the name or right of:
 - (1) any **insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **insured**; or
 - (2) any parent company, affiliate, subsidiary, predecessor, successor or assign of any **insured** or any business entity or venture that is currently or was formerly owned, controlled, managed or operated, directly or indirectly or in whole or in part, by any **insured**;

provided that this EXCLUSION (G) shall not apply to a **claim** brought by a business entity in its capacity as a customer of the **named insured** acting independently and without the solicitation, assistance, participation or intervention of any **insured**;

- (H) based upon or arising out of any actual or alleged violation of any responsibility, duty or obligation imposed under the Interstate Commerce Act of 1887, the Sherman Antitrust Act of 1890, the Clayton Act of 1914, the Robinson-Patman Act of 1936, the Cellar-Kefauver Act of 1950, the Racketeer Influenced and Corrupt Organizations Act of 1970, any law involving or prohibiting any antitrust activity, price fixing, price

discrimination, predatory pricing, monopoly or monopolization, restraint of trade, unfair competition, conspiracy, collusion, or unfair, false, deceptive or misleading trade or business practices or advertising, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance, common law, or other law, including but not limited to any amendment thereto or any regulation promulgated thereunder;

- (I) based upon or arising out of any actual or alleged violation of any responsibility, duty or obligation imposed under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisors Act of 1940, any Blue Sky or other securities law, or any similar local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance or common law, including but not limited to any amendment thereto or any regulation promulgated thereunder;
- (J) based upon or arising out of any fraudulent, dishonest or criminal act, which shall have been determined by a judge, jury or adverse admission; provided that for the purposes of determining the applicability of this EXCLUSION (J), no knowledge possessed by or conduct of any **insured** shall be imputed to any other **insured** who was not aware of and did not participate in such conduct, except that knowledge possessed by and conduct of the chief executive officer, chief operating officer, chief financial officer, chief technology/privacy officer, president, general counsel, risk manager, partner or principal, or any equivalent position of the **insured**, shall be imputed to all **insureds**;
- (K) based upon or arising out of any actual or alleged unauthorized or unlawful collection, use or dissemination of internet user information through web cookies or other online profiling processes by or on behalf of the **insured**; or (2) failure to comply with any local, state, federal or foreign act, statute, rule, regulation, requirement, ordinance or common law requiring that individuals be provided with the ability to assent, consent to, or opt-in or withhold or withdraw assent to, consent to, or opt-out from the gathering, collecting, acquiring, receiving, using, obtaining or taking of any information of any type, nature or kind;
- (L) brought by or on behalf of or in the name or right of any trade or licensing agency, body, entity, society or tribunal, including but not limited to the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, the Recording Industry Association of America, or Broadcast Music, Inc.;
- (M) based upon or arising out of an **occurrence** that was first committed before the Inception Date of the Policy set forth in ITEM 2(a) of the Declarations or which, prior to the Inception Date, was the subject of any notice to any **insured** of a claim or a potential claim;
- (N) based upon or arising out of any actual or alleged distribution, dissemination or transmission of any unsolicited facsimile, wireless or telephone communication, electronic mail, direct mail, voice mail, or telemarketing, including but not limited to Short Message Service or Multimedia Message Service; or (2) act, error or omission that violates or allegedly violates the Telephone Consumer Protection Act (TCPA), the Fair Credit Reporting Act (FCRA), the CAN-SPAM Act of 2003 or any amendment of or addition to such laws or any statute, ordinance or regulation other than the TCPA, FCRA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communication or distribution of information of any type, nature or kind;
- (O) based upon or arising out of any (1) denial of service attack; (2) transmission of malicious code; or (3) unauthorized or unlawful accessing, taking, obtaining, using or disclosing of any **insured's** website, network, computer system or other data system, or **matter**, information or data of any type, nature or kind;
- (P) based upon or arising out of any actual or alleged discrimination or harassment of a sexual nature or discrimination or harassment because of race, creed, color, association, age, gender, sexual orientation, national origin, citizenship, ethnicity, ancestry, religion, disability or marital or economic status;
- (Q) based upon or arising out of any actual or alleged liability or breach of any duty or obligation of any **insured** as an employer, including but not limited to any **claim** brought by or on behalf of a current, former or prospective employee in connection with his or her employment or potential employment relationship or the nature, terms or conditions of such employment or potential employment;
- (R) based upon or arising out of any actual or alleged breach of any responsibility, duty or obligation in a fiduciary relationship, including but not limited to any **claim** for theft or disclosure of trade secrets;

- (S) based upon or arising out of any dilution or infringement of copyright committed or allegedly committed by any **insured** in connection with the creation, development, manufacture, display, leasing, licensing, distribution, or sale by the **insured** of any software, application, program, code, or script;
- (T) based upon or arising out of any actual or alleged products liability of any kind, including but not limited to any **claim** for failure of goods, products or services to conform with any statement of quality or performance made in **advertising**;
- (U) based upon or arising out of an **insured's** actual or alleged:
 - (1) rendering of or failure to render professional, technology or consulting services to others for a fee, other than **advertising professional services**; or
 - (2) intentional discontinuing of support for, or intentional withdrawal or termination of, any **advertising professional services**;
- (V) based upon or arising out of:
 - (1) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, seepage, dispersal, escape, treatment, removal, handling, processing or disposal of any "pollutants"; or
 - (2) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, detect, disclose or report any "pollutants" or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

For the purposes of this EXCLUSION (V), "pollutants" means (1) any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any similar local, state, federal or foreign administrative, governmental or regulatory agency, body, entity or tribunal, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials; or (2) any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, or any noise.

IV. GENERAL CONDITONS

(A) Limits of Liability

- (1) The "Each Claim" amount stated in ITEM 3(A) of the Declarations shall be the **underwriter's** maximum Limit of Liability for all **loss** resulting from each **claim** or **related claims** for which this Policy provides coverage.
- (2) The "Aggregate for all Claims" amount stated in ITEM 3(B) of the Declarations shall be the **underwriter's** maximum aggregate Limit of Liability for all **loss** resulting from all **claims** or **related claims** for which this Policy provides coverage.
- (3) The Limits of Liability described in this GENERAL CONDITION (A) of this Policy shall apply regardless of the time of payment by the **underwriter**, the number of persons or entities included within the definition of **insured** or the number of claimants.
- (4) The **underwriter** will have no obligation to pay **loss** or **defense costs**, or to defend or continue to defend, any **claim** after the **underwriter's** applicable "Each Claim" Limit of Liability, as stated in ITEM 3(A) of the Declarations, has been exhausted by payment of **loss** under this Policy. If the **underwriter's** "Aggregate for all Claims" Limit of Liability, as stated in ITEM 3(B) of the Declarations, is exhausted by payments of **loss** under this Policy, the premium will be fully earned, all obligations of the **underwriter** will be completely fulfilled and exhausted, and the **underwriter** will have no further obligations of any kind or nature whatsoever under this Policy.

(B) Retention

The **insured** shall be responsible for payment in full of the Retention identified in ITEM 4 of the Declarations, which shall apply to **loss** and **defense costs** for each **claim** or **related claims**. The **underwriter's** obligation to pay **loss** or **defense costs** under this Policy shall be excess of such Retention. Any amounts paid within the Retention will not reduce the Limit of Liability. The **underwriter** shall have no obligation whatsoever to pay all or any portion of the Retention on behalf of the **insured**. The **underwriter** shall, however, at its sole discretion, have the right and option to do so, in which event the **insured** shall repay the **underwriter** any amounts so paid.

(C) Date of Occurrences and Related Claims

- (1) An **occurrence** shall be deemed to have taken place on the date of the first dissemination of **advertising**, or the first act, error or omission committed by the **insured** in the rendering of or failure to render **advertising professional services** that is the subject of any **claim** or **related claims** arising out of such **occurrence**. In the event a **claim** is made but there has not yet been any such dissemination of **advertising**, the applicable **occurrence** shall be deemed to have taken place on the date of the first act, error or omission in preparation for dissemination, such as the first act of creating, acquiring, or compiling **matter**.
- (2) The **underwriter** shall have no obligation under this Policy to pay any **claim** or portion of any **claim** or **related claim** that is attributable to any **occurrence** that takes place, or is deemed to have taken place by operation of this GENERAL CONDITION (C) of this Policy, prior to or after the **policy period**.

(D) Reporting of Claims and Occurrences

If any **claim** is first made against an **insured**, as a condition precedent to its right to coverage under this Policy, the **insured** shall give the **underwriter** written notice of such **claim**, including suit papers, if any, as soon as practicable thereafter. Timely and sufficient notice by one **insured** of a **claim** shall be deemed timely and sufficient notice for all **insureds** involved in the **claim**. Such notice shall give full particulars of the **claim**, including but not limited to: a description of the **claim** and **occurrence**; the identity of the claimant and any **insureds** involved; and information on the time, place and nature of, and manner in which the **insured** first became aware of such **occurrence**.

If an **insured** becomes aware of an **occurrence** that may subsequently give rise to a **claim** or a potential **claim**, the **insured** shall give the **underwriter** written notice of such **occurrence** as soon as practicable.

(E) Notice

- (1) Notice to any **insured** shall be sent to the first **named insured** at the address designated in ITEM 1 of the Declarations.
- (2) Notice to the **underwriter** shall be sent to the address designated in ITEM 6 of the Declarations.

(F) Defense and Settlement

- (1) The **underwriter** has the right and duty to defend any covered **claim**, even if the allegations of such **claim** are groundless, false or fraudulent. The **underwriter** shall have the right to select counsel to represent the **insured** in connection with any covered **claim**. With respect to any **claim**, the **underwriter** shall have the right to make investigations, direct the defense and conduct negotiations, and, with the consent of the **insured**, enter into a settlement of any **claim** as the **underwriter** deems appropriate. If the **insured** refuses to consent to a settlement acceptable to the claimant in accordance with the **underwriter's** recommendation, then, subject to the **underwriter's** applicable Limits of Liability stated in ITEM 3 of the Declarations, the **underwriter's** liability for such **claim** shall not exceed:

- (a) the amount for which such **claim** could have been settled plus **defense costs** incurred up to the date the **insured** refused to settle such **claim** (the "Potential Resolution Amount"); plus
 - (b) fifty percent (50%) of any **loss** or **defense costs** in excess of the Potential Resolution Amount incurred in connection with such **claim**, with the remaining fifty percent (50%) of any **loss** or **defense costs** in excess of the Potential Resolution Amount being the responsibility of the **insured**.
- (2) No **insured** shall, except at its own cost, incur any expense, make any payment, admit any liability, assume any obligation, or settle or offer to settle any **claim** without the **underwriter's** prior written consent; provided that this paragraph (F)(2) shall not apply to the settlement of any **claim** for which the total of **loss** and **defense costs** is less than the Retention.
- (3) In addition to the Limits of Liability, the **underwriter** will pay **defense costs** incurred in the defense of a covered **claim** that are in excess of the Retention.

(G) Allocation

If both **loss** and **defense costs** covered by this Policy and loss and defense costs not covered by this Policy are incurred, either because a **claim** made against the **insureds** includes both covered and uncovered matters, or because a **claim** is made against both **insureds** and others not included within the definition of "**insured**", the **insureds** and the **underwriter** agree to use their best efforts to determine a fair and proper allocation of all such amounts. The **underwriter's** obligation to pay **loss** and **defense costs** shall relate only to those sums allocated to the **insureds** that are covered under this Policy. In making such determination, the parties shall take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the **claim**. In the event that the **underwriter** and the **insureds** do not reach an agreement with respect to allocation, then the **underwriter** shall be obligated to make an interim payment of the amount of **loss** or **defense costs** which the parties agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

(H) Assistance and Cooperation

In the event of a **claim**, the **insured** shall provide the **underwriter** with all information, assistance and cooperation that the **underwriter** reasonably requests. At the **underwriter's** request, the **insured** shall assist in: the investigation, defense, settlement, or other resolution of any matter; the pursuit or enforcement of any right of contribution or indemnity against another who may be liable to any **insured**; conduct with respect to any action, suit, appeal, or other proceeding, including but not limited to attending any trial, hearing, or deposition, securing and giving evidence, or obtaining the attendance of any witness.

(I) Territory

This Policy applies to an **occurrence** taking place anywhere in the world.

(J) Currency

If judgment is rendered or settlement is made in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the applicable rate of exchange on the date the final judgment is rendered or date such amounts are sustained or incurred.

(K) Premium

The **named insured** shall pay to the **underwriter** the premium stated in Item 5 of the Declarations. The premium may be subject to change during the **policy period** based upon changes in the provisions of the Policy by endorsement as agreed upon by the **named insured** and the **underwriter**.

(L) Mergers, Consolidations and Acquisitions

If, during the **policy period**, the **named insured** creates or acquires a **subsidiary** or another entity, or merges or consolidates with another entity such that the **named insured** is the surviving entity, no coverage will be available under this Policy for any **claim** based upon, arising out of, or in any way involving such created, acquired or merged entity unless the **underwriter** has specifically agreed by written endorsement to this Policy to provide coverage for such entity, and the **named insured** has accepted any terms and conditions, including payment of additional premium, the **underwriter** imposes in connection with such transaction.

(M) Other Insurance

The coverage afforded under this Policy shall be specifically excess of and will not contribute with any other valid and collectible insurance available to the **insured**, whether such other insurance is stated to be primary, *pro rata*, contributory, excess, contingent or otherwise, unless such other insurance is specifically written as excess insurance over the limits of liability provided in this Policy.

(N) Subrogation

In the event of any payment hereunder, the **underwriter** shall be subrogated to the extent of any payment to all of the rights of recovery of the **insured**. The **insured** shall execute all papers and do everything necessary to secure such rights, including but not limited to the execution of any documents necessary to enable the **underwriter** effectively to bring suit in its name. The **insured** shall do nothing that may prejudice the **underwriter's** position or potential or actual rights of recovery. The obligations of the **insureds** under this GENERAL CONDITIONS (N) shall survive the expiration, cancellation, or termination of this Policy. The **underwriter** shall have no subrogation rights against the **insured**.

With respect to a **claim**, any amount recovered upon the exercise of such rights of subrogation will be applied as follows: first, to the repayment of expenses incurred in recovery by exercise of such subrogation rights; second, to **loss** or **defense costs** paid by the **insured** in excess of the Limits of Liability; third, to **loss** or **defense costs** paid by the **underwriter**; and last, to **loss** or **defense costs** paid by the **insured** toward the Retention.

(O) Assignment

No assignment of interest under this Policy shall bind the **underwriter** without the **underwriter's** prior written consent issued as an endorsement to this Policy.

(P) No Action against Underwriter

- (1) No action shall be taken against the **underwriter** by any **insured** unless, as conditions precedent thereto, the **insured** has fully complied with all of the terms of this Policy and the amount of the **insured's** obligation to pay has been finally determined either by judgment against the **insured** after adjudicatory proceedings or by written agreement of the **insured**, the claimant and the **underwriter**.
- (2) No individual or entity shall have any right under this Policy to join the **underwriter** as a party to any **claim** to determine the liability of any **insured**; nor shall the **underwriter** be impleaded by the **insured** or his/her/its legal representative in any such **claim**.

(Q) Bankruptcy or Insolvency

Bankruptcy or insolvency of the **insured** or of the **insured's** estate shall not relieve the **underwriter** of any of its obligations under this Policy.

(R) Cancellation and Non-renewal

- (1) Except as set forth in Section IV GENERAL CONDITION (A)(4), the first **named insured** may cancel this Policy at any time by transmitting to the **underwriter** written notice stating when thereafter such cancellation shall be effective. In such event, the earned premium will be calculated in accordance with the customary short rate table and procedure.
- (2) The **underwriter** may cancel this Policy by mailing written notice to the first **named insured**, at the address shown in the Declarations, stating when, not less than sixty (60) days thereafter, such cancellation shall be effective; except that, in the event of cancellation for non-payment of premium, the **underwriter** may make the cancellation effective upon written notice of only ten (10) days. If the **underwriter** cancels this Policy, earned premium will be calculated *pro rata*. If the **underwriter** receives no premium whatsoever by the premium due date and no premium whatsoever is received by the last day of such ten (10) day notice period, the **underwriter** may cancel this Policy as of the Inception Date stated in ITEM 2(a) of the Declarations.
- (3) The **underwriter** will not be required to renew this Policy upon its expiration. If the **underwriter** elects not to renew this Policy, the **underwriter** will mail written notice of non-renewal to the first **named insured**, at the address shown in the Declarations, at least sixty (60) days prior to the Expiration Date of this Policy. Any offer of renewal on terms involving a change of retention, premium, limit of liability, or other terms and conditions shall not constitute, nor be construed as, a failure or refusal by the **underwriter** to renew this Policy.

(S) Authorization and Notices

The first **named insured** will act on behalf of all **insureds** with respect to: the giving and receiving of any notices under this Policy; the payment of premiums to, and the receiving of return premiums from, the **underwriter**; and the receiving and acceptance of any endorsements issued to form a part of this Policy.

(T) Changes

Notice to or knowledge possessed by any agent or other person acting on behalf of the **underwriter** shall not effect a waiver or change in any part of this Policy, or prevent or estop the **underwriter** from asserting any right under this Policy. This Policy can only be altered, waived or changed by written endorsement issued to form a part of this Policy.

(U) Application Representations and Severability

The **insureds** represent that the particulars and statements contained in the application and all materials submitted in connection therewith are true, accurate and complete and agree that: this Policy is issued and continued in force by the **underwriter** in reliance on the truth of such representations; those particulars and statements are the basis of this Policy; and the application and those particulars and statements are incorporated in and form a part of this Policy. No knowledge or information possessed by any **insured** shall be imputed to any other **insured**, except for material facts or information known to the chief executive officer, chief operating officer, chief financial officer, chief technology/privacy officer, president, general counsel, risk manager, partner or principal, or any equivalent position thereof, or other person whose signature appears on the application. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the application, this Policy shall be void with respect to any **insured** who knew of such untruth, misrepresentation or omission, or to whom such knowledge is imputed.

(V) Risk Management

The **underwriter** directly or indirectly may make available risk management services in connection with this Policy for the purpose of managing and reducing the risks covered under this Policy. Such risk management services may cease or change in the **underwriter's** sole discretion at any time.

(W) Entire Agreement

The **insureds** agree that this Policy, including the application, Declarations and any endorsements, constitutes the entire agreement between them and the **underwriter** or any of its agents relating to this insurance.

In witness whereof, the Underwriter has caused this Policy to be executed by its authorized representative.

Specimen