

# Capitol Specialty Insurance Corporation

P. O. Box 5900  
Madison, WI 53705-0900

## Marketing and Media Services E&O Policy

**THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD. COVERAGE IS SUBJECT TO ALL TERMS AND CONDITIONS OF THE POLICY. THE POLICY DOES NOT COVER CLAIMS ARISING OUT OF ERRONEOUS ACTS THAT OCCUR PRIOR TO THE RETROACTIVE DATE OF THE POLICY OR AFTER THE EXPIRATION DATE OF THE POLICY. THE LIMIT OF INSURANCE AVAILABLE TO PAY DAMAGES, SETTLEMENTS AND JUDGMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF CLAIM EXPENSES. PLEASE READ THE ENTIRE POLICY CAREFULLY. CERTAIN PROVISIONS RESTRICT COVERAGE.**

**WORDS AND PHRASES, OTHER THAN TITLES OR CAPTIONS, THAT APPEAR IN BOLD PRINT HAVE SPECIAL MEANINGS AND ARE DEFINED SEPARATELY. WHENEVER A SINGULAR FORM OF A WORD IS USED, THE SAME WILL INCLUDE THE PLURAL WHEN REQUIRED BY CONTEXT.**

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In consideration of payment of premium and in reliance on all statements made and the information contained in the Application for Insurance and subject to all terms and conditions of this Policy, the **Company** agrees with the **Insured** as follows:

### **PART I INSURING AGREEMENT**

- A. The **Company** will pay on an **Insured's** behalf, those sums in excess of the Deductible and up to the applicable Limit of Insurance specified on the Declarations Page that an **Insured** becomes legally obligated to pay, as **Damages** or **Claim Expenses** because of **Claims** first made during the **Policy Period** or any Extended Reporting Period and resulting from **Erroneous Acts**.
- B. **Erroneous Act** means the following actual or alleged conduct by an **Insured**, or by any person or organization for which an **Insured** is legally liable, and which results from the performance of **Insured Activities** for others:
1. A negligent act, error or omission;
  2. Libel, trade libel, slander, product disparagement, or any other form of defamation or harm to the character, feelings or reputation of any person or entity;
  3. Infliction of emotional distress, mental anguish, outrage, or outrageous conduct;
  4. Publication of material that violates a person's right to privacy, including false light and breach of confidence;
  5. Infringement of the right of private occupancy including trespass, eavesdropping, intrusion, public disclosure of private facts, and wireless signal interception;
  6. False arrest, detention or imprisonment;
  7. Wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies;
  8. Malicious prosecution;

9. Misappropriation of name or likeness;
10. False attribution of authorship, passing off, plagiarism or misappropriation of ideas under implied contract;
11. Infringement of copyright;
12. Failure to prevent a person or entity other than an **Insured**, and other than a person who would be an **Insured** if not for that person having acted outside the scope of his or her duties, from unauthorized access to, use of, or tampering with data or systems;
13. Failure to prevent a person or entity other than an **Insured**, and other than a person who would be an **Insured** if not for that person having acted outside the scope of his or her duties, from introducing a virus or other malicious code into data or systems;
14. Unintentional introduction of a virus or other malicious code into data or systems; or
15. Failure to provide access to services of the **Insured**; or
16. Any of the following except when alleged in conjunction with advertising about an **Insured** or its goods or services:
  - a. Infringement of trademark, trade name, trade dress, service mark, service name, title or slogan;
  - b. Deceptive trade practices, civil actions for consumer fraud and conduct that could give rise to **Claims** under Section 43(a) of the Lanham Act or similar state statutes; and
  - c. Unfair competition when alleged in conjunction with allegations covered by **PART I B. 16. a. and b. above.**

## **PART II EXCLUSIONS**

- A. The **Company** is not liable for **Damages** or **Claim Expenses** or obligated to defend **Claims** arising out of actual or alleged:
  1. **Bodily Injury** or **Property Damage**;
  2. Infringement of patent;
  3. Infringement of trademark, trade name, trade dress, service mark, service name, title or slogan when any of these arise in any way out of advertising about an **Insured** or its goods or services;
  4. Deceptive trade practices, civil actions for consumer fraud, false or misleading advertising or conduct that could give rise to **Claims** under Section 43(a) of the Lanham Act or similar state statutes, when any of these arise in any way out of advertising about an **Insured** or its goods or services;
  5. Restraint of trade or violation of antitrust laws, or unfair competition except unfair competition covered by **PART I B. 16. c.**;
  6. Misappropriation or theft of trade secrets;
  7. Unlawful discrimination or harassment including that based upon race, creed, color, religion, national origin, age, disability, sex, marital status or sexual orientation;
  8. Employment related practices and policies of the **Insured**;
  9. Gain, profit or advantage to which an **Insured** is not legally entitled;
  10. Liability assumed under any contract or agreement, but this exclusion does not apply to liability an **Insured** would have in the absence of such contract or agreement;
  11. Acts by an **Insured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provisions of the Employee Retirement Income Security Act of 1974 (the "Act"), or any amendment, regulation, ruling or order issued pursuant to the Act or any similar provisions of any federal, state or local law;
  12. Violation of:
    - a. The Securities Act of 1933 as amended;

- b. The Securities Exchange Act of 1934 as amended;
  - c. Any state blue sky or securities law;
  - d. Any similar state or federal law; or
  - e. Any order, ruling or regulation issued pursuant to the above laws;
13. Bankruptcy, insolvency, receivership, liquidation and/or cessation of operations of an **Insured** or other entity over which an **Insured**, by reason of ownership interest or otherwise, asserts influence or control;
  14. Electrical failure, including any electrical power interruption or surge, brownout, blackout, short circuit, over voltage, induction, power fluctuations or satellite failure; regardless whether the electrical failure was caused by another event or condition;
  15. 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 cleanup, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any **Pollutant**. This exclusion is effective whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable and whether or not an **Insured** caused or contributed to the pollution.

**Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to:

- a. Smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, mold or asbestos;
  - b. Hazardous, toxic or radioactive matter or nuclear radiation;
  - c. Waste, which includes material to be recycled, reconditioned or reclaimed; or
  - d. Any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances;
16. Unauthorized access to, use of, or tampering with data or systems by an **Insured** or by a person who would be an **Insured** if that person had not acted outside the scope of his or her duties;
  17. Intentional introduction of a virus or other malicious code into data or systems by an **Insured** or by a person who would be an **Insured** if that person had not acted outside the scope of his or her duties;
  18. Criminal, dishonest, fraudulent, malicious or knowingly wrongful acts by any **Insured**. If a **Claim** would invoke the **Company's** duty to defend but for allegations of such acts, then the **Company** will defend the **Claim** until there is a finding by a jury, judge or arbitrator or an admission by an **Insured**, or by a person who would be an **Insured** if that person had not acted outside the scope of his or her duties, that there were such acts. The **Company** will not pay any settlement or judgment associated with such finding or admission, and the **Company** retains the right to seek reimbursement of **Claim Expenses** paid from the party found to have committed such acts or made such an admission.  
In no event will the **Company** defend the **Insured** against or in criminal proceedings, regardless of the allegations;
  19. Design, development, management, fulfillment, seeding or administration of lotteries;
  20. Financial inability to pay, insolvency, receivership, bankruptcy or liquidation of any vendor or supplier;
  21. Conversion, misappropriation, or improper commingling of funds or misconduct in the handling of lockbox services;
  22. **Over-redemption**;
  23. Intentional removal from or denial of access to services an **Insured** has agreed to provide;
  24. Malfunction, defect, installation, repair, service, or modification of any hardware, equipment, component, or machinery;
  25. Breach of contract; however this will not exclude coverage for **Claims** alleging negligent performance of **Insured Activities**;
  26. Breach of warranty or guarantee, including any warranty or guarantee of future earnings, assets, or rate of return; or

27. Misconduct raised in an administrative or regulatory action brought by any governmental agency or entity.
- B. The **Company** is not liable for **Damages** or **Claim Expenses** or obligated to defend **Claims** made by or on behalf of:
1. Any entity which is a parent, affiliate, subsidiary, or co-venturer of **Insured** or any other entity over which an **Insured**, by reason of ownership interest or otherwise, asserts influence or control;
  2. Any entity directly or indirectly controlled, operated or managed by an entity described in **PART II B. 1.** above;
  3. Any provider who has supplied, is supplying or is to supply **Content**, goods or services, if the **Claim** arises out of a dispute over fees for, or title, ownership or exercise of rights in the **Content**, goods or services provided; or
  4. Any **Insured**.

### **PART III DEFINITIONS**

(Some bold-faced words may be defined in other parts of the Policy.)

- A. **Bodily Injury** means physical injury, sickness, disease or death.
- B. **Claim** means a suit, a written demand or a written assertion of a legal right, any of which seek **Damages** against an **Insured**, or a suit for injunctive relief.
- C. **Claim Expenses** means expenses incurred by the **Company** in the investigation, adjustment, negotiation, arbitration, mediation, settlement and defense of **Claims**.

**Claim Expenses** include:

1. Expenses the **Company** incurs, other than salary, wages or expenses of the **Company's** regular employees;
2. Reasonable fees charged by attorneys selected or pre-approved by the **Company** to defend an **Insured**;
3. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limit of Insurance. The **Company** will not apply for or furnish these bonds; and
4. Reasonable expenses incurred by an **Insured** at the **Company's** request.

**Claim Expenses** do not include:

1. Loss of earnings or profit by any **Insured**; or
2. Salaries, wages, fees, or other compensation payable to any **Insured**.

- D. **Company** refers to the Insurer named on the Declarations Page
- E. **Content** means informational data including words, pictures, graphics, artwork, and code however transmitted and however received, including advertising about an **Insured** or its goods or services. **Content** does not include messages sent on an individual basis or other one-to-one communications.
- F. **Damages** means:
1. Amounts which an **Insured** is legally obligated to pay as a result of a covered judgment, award or settlement;
  2. Costs assessed against an **Insured** in any suit or proceeding defended by the **Company** unless such costs are assessed as a sanction for an **Insured's** delay or misconduct in the litigation process;

3. Pre-judgment interest and post-judgment interest assessed before the **Company** has paid, offered to pay or deposited in court the part of the judgment that is covered by this Policy and that is within the applicable Limit of Insurance; and
4. Punitive, exemplary or multiple damages, where insurable by law.

**Damages** does not include:

1. Taxes, criminal or civil fines or penalties imposed by law;
2. Production costs, or the cost of reprinting, recalling, recovering, shipping, correcting, reprocessing, restoring, repairing, replacing, reproducing or re-performing **Insured Activities** by the **Insured** or another party when the **Insured** had the expertise to correct or re-perform the activity that initiated the cost; or
3. Royalties or restitution paid or payable by an **Insured**; fines, fees or penalties charged by a licensing organization; disgorgement of an **Insured's** profits; costs of complying with an order granting injunctive relief; or disputed: fees, charges, or commissions for goods or services.

G. **First Named Insured** means the **Named Insured** specified on the Declarations Page.

H. **Insured Activities** means performance of services for others as specified on the Declarations Page. **Insured Activities** also means creation and/or dissemination of **Content** when done in the normal course of performing the specified services.

I. **Insured** refers individually and collectively to:

1. The **First Named Insured**;
2. **Named Insured(s)**;
3. A **Named Insured's** partners, officers, directors, employees or stockholders while acting within the scope of their duties on behalf of the **Named Insured**;
4. A **Named Insured's** former partners, officers, directors, employees or stockholders while acting within the scope of their duties on behalf of the **Named Insured**; and
5. The estate, the heirs, assigns or legal representatives of an **Insured** in the event of death, bankruptcy or incompetency of an **Insured** under this Policy but only for **Claims** arising from the **Erroneous Acts** of such deceased, bankrupt or incompetent **Insured**.

J. **Named Insured** means:

1. The person(s) or entity (ies) specified on the Declarations Page; and
2. Any entity which is created or acquired during the **Policy Period** and which after the creation or acquisition is wholly owned by a **Named Insured**; however, such entity only has coverage under this Policy:
  - a. For **Insured Activities** performed on or after the date of creation or acquisition of the new entity; and
  - b. If the **Named Insured** advises the **Company** of the creation or acquisition and provides information as requested by the **Company** for evaluation; and
  - c. If the **First Named Insured** pays any additional Premium the **Company** assesses as a result of the change; and

d. If the **Company** issues an endorsement to include the newly created or acquired entity.

The **Company** will consider a created or acquired entity to be wholly owned by a **Named Insured** if the **Named Insured** has a greater than 50% ownership interest in the entity.

If all of the requirements of this **PART III J. 2.** are met and the **Company** agrees to include the newly created or acquired entity as a **Named Insured**, such newly created or acquired entity will be a **Named Insured** retroactively as of the date of creation or acquisition. However, if all of the requirements of this **PART III J. 2.** are not met within sixty (60) days of the acquisition or creation, such newly created or acquired entity may be included as a **Named Insured**, but only if the **Company** agrees and the **Company** will determine the effective date on which the newly created or acquired entity will be a **Named Insured**.

- K. **Over-redemption** means payment to contestants, entrants, registrants or other promotion participants, whether such payment is in the form of money, prizes, property or other valuable remuneration, in excess of the amount expected. It also means receipt of requests or demands for payment in any form, from contestants, entrants, registrants or other promotion participants, in excess of the amount expected.
- L. **Policy Period** means the period of insurance specified on the Declarations Page or a shorter period resulting from cancellation of the Policy.
- M. **Property Damage** means:
1. Injury to, or impairment or destruction of, any tangible property, including the loss of use thereof; or
  2. Loss of use of tangible property which has not itself been physically injured, impaired, or destroyed.
- Tangible property does not include electronically stored information or data.
- N. **Retroactive Date** means the date specified on the Declarations Page.

#### **PART IV DEFENSE AND SETTLEMENT OF CLAIMS**

A. **DEFENSE/SELECTION OF DEFENSE COUNSEL**

The **Company** has the right and duty to defend a covered **Claim** against an **Insured**, regardless whether the allegations of the **Claim** are meritless, false or fraudulent. The **Company** has the right to select defense counsel to defend the **Insured**.

B. **SETTLEMENT**

1. An **Insured** may not, except at its own non-reimbursable cost, settle any **Claim**, admit any liability or incur any expense without the **Company's** prior written consent.
2. The **Company** has the right to settle all **Claims** subject to the **First Named Insured's** consent. The **Company** will not settle any **Claim** without the consent of the **First Named Insured**. However, if the **First Named Insured** refuses to consent to any settlement recommended by the **Company**, then the **Company's** liability for the **Claim** will be limited to the amount equal to the amount for which the **Claim** could have been settled plus **Claim Expenses** incurred up to the date of the **First Named Insured's** refusal to consent to settlement minus the amount of the Deductible specified on the Declarations Page. The **Company** will mail payment of that amount to the **First Named Insured** and will have no further obligation with respect to the **Claim**.

The **First Named Insured's** failure to express consent to a settlement recommended by the **Company** will be deemed refusal to consent to the settlement.

## PART V WHERE AND WHEN COVERAGE APPLIES

### A. TERRITORY AND CURRENCY

The territory of this Policy is universal. If **Damages** or **Claim Expenses** are paid in currency other than United States of America dollars, then the payment under this Policy will be considered to have been made in United States of America dollars at the conversion rate as published in *The Wall Street Journal* on the date of payment.

### B. WHEN

#### 1. **Claims First Made**

This Policy applies to **Claims** first made against an **Insured** during the **Policy Period**. The **Company** will consider a **Claim** to be first made against an **Insured** when a written **Claim** is first received by an **Insured** during the **Policy Period** or any Extended Reporting Period. All terms and conditions of this Policy in effect on the date the **Claim** is first made will apply to the **Claim**.

#### 2. **Erroneous Acts**

This Policy applies to **Claims** arising from **Erroneous Acts** that occur after the **Retroactive Date** and before the Expiration Date of the Policy. Such **Claims** will be covered:

- a. Subject to all terms and conditions of the Policy; and
- b. Unless an **Insured** had actual or constructive knowledge of the circumstances or incident(s) which led to the **Claim** and reason to believe it would result in a **Claim**, prior to the Effective Date of the first Marketing and Media Services E&O Policy issued to an **Insured** by the **Company** or any affiliate thereof.

#### 3. **Reported Erroneous Acts**

The **Company** will cover a written **Claim** first made against an **Insured** after the end of the **Policy Period**, but only if all of the following conditions are met:

- a. The **Erroneous Act** is committed after the **Retroactive Date** and before the Expiration Date of the Policy;
- b. The **Company** receives written notice from an **Insured** during the **Policy Period** of the **Erroneous Act**. The notice must include all of the following information:
  - (1) The names of all persons and/or organizations involved in the **Erroneous Act**;
  - (2) The specific person or organization likely to make the **Claim**;
  - (3) A description of the time, place and nature of the **Erroneous Act**; and
  - (4) A description of the potential **Damages**;
- c. No **Insured** had actual or constructive knowledge, prior to the Effective Date of the first Marketing and Media Services E&O Policy issued by the **Company** or any affiliate thereof to an **Insured**, of a circumstance or incident that could reasonably have been expected to lead to the **Claim**; and
- d. There is no other valid and collectible insurance for the **Claim**.

A **Claim** first made after the end of the **Policy Period** and meeting all of the above conditions will be deemed to have been made on the last day of the **Policy Period**. All terms and conditions of this Policy in effect on that day will apply to the **Claim**.

4. Extended Reporting Period

a. In the event of cancellation or non-renewal of this Policy by the **Company**, for reasons other than non-payment of Premium and/or Deductible or non-compliance with the terms and conditions of this Policy, the **First Named Insured** will have the right to purchase an Extended Reporting Period as follows:

- (1) The right to purchase the Extended Reporting Period will terminate unless written notice of the **First Named Insured's** intention to purchase it, together with payment of the additional Premium due, is received by the **Company** within thirty (30) days after the effective date of the cancellation or non-renewal;
- (2) The additional Premium for the Extended Reporting Period will be calculated as a percentage of the annual Premium subsequent to the chart below. The percentages shown are the minimums; the actual additional Premium Surcharge may be higher:

Length of ERP	Minimum Surcharge of Annual Premium
One Year	75%
Two Years	125%
Three Years	150%
Four Years	175%
Five Years	200%

The additional Premium for the Extended Reporting Period will be fully earned upon inception of the Extended Reporting Period. Once purchased, the Extended Reporting Period may not be cancelled;

- (3) A **Claim** made during the Extended Reporting Period will be deemed to have been made on the last day of the **Policy Period**. All terms and conditions of this Policy in effect on that day will apply to the **Claim**; and
  - (4) The Extended Reporting Period does not extend the **Policy Period** or change the scope of coverage provided nor does it provide an additional or renewed Aggregate Limit of Insurance. It applies only to **Claims** made against an **Insured** during the Extended Reporting Period for **Erroneous Acts** that occur after the **Retroactive Date** and before the expiration of the Policy.
- b. In the event the **First Named Insured** elects to cancel or non-renew this Policy, the **Company** may offer an Extended Reporting Period at its discretion.

5. Multiple Claims

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

- a. The date the first of those **Claims** is made against an **Insured**; or
- b. The date the **Company** first receives an **Insured's** written notice of the **Erroneous Act**. Such notice must include information as required in **PART V B. 3. b.** of this Policy.

The terms and conditions of this Policy in effect on that date will apply to all such **Claims**.

6. Related Erroneous Acts

All **Erroneous Acts** that:

- a. are committed after the **Retroactive Date** and before the Expiration Date of the last Marketing and Media Services E & O Policy issued to an **Insured** by the **Company** or any affiliate thereof; and



- b. are logically or causally connected by common facts, circumstances, transactions, events and/or decisions;

will be:

- a. treated under this Policy as one **Erroneous Act**; and
- b. deemed to have occurred on the date of the first of the **Erroneous Acts**.

## **PART VI LIMIT AND DEDUCTIBLE**

### **A. LIMIT OF INSURANCE**

#### **1. Each Erroneous Act Limit of Insurance**

The Each **Erroneous Act** Limit of Insurance specified on the Declarations Page is the most the **Company** will pay for **Damages** and **Claim Expenses** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period arising from each **Erroneous Act**, no matter how many:

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

#### **2. Aggregate Limit of Insurance**

The Aggregate Limit of Insurance specified on the Declarations Page is the most the **Company** will pay for **Damages** and **Claim Expenses** 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. **Erroneous Acts** are committed.

Each payment the **Company** makes for **Damages** or **Claim Expenses** reduces the Each **Erroneous Act** Limit of Insurance and the Aggregate Limit of Insurance.

The **Company** will not be obligated to pay or reimburse any **Damages** or **Claim Expenses** or defend any **Claim** after the applicable Limit of Insurance is exhausted.

### **B. DEDUCTIBLE**

The Deductible amount is the amount specified on the Declarations Page for each **Erroneous Act**. The **Company's** obligation to pay **Damages** and **Claim Expenses** applies only to sums in excess of the Deductible. The application of the Deductible will not erode the Each **Erroneous Act** Limit of Insurance or the Aggregate Limit of Insurance.

If the total of **Damages** and **Claim Expenses** for any **Claim** is within the Deductible, the **Company** will have no duty to pay **Damages** or **Claim Expenses** for the **Claim**.

If, at the **Company's** option, the **Company** has paid part or all of any Deductible, the **Insured** will be obligated to reimburse such amounts to the **Company** upon demand.

## PART VII CONDITIONS

### A. SPECIAL RIGHTS AND DUTIES OF THE **FIRST NAMED INSURED**

The **First Named Insured** is responsible for the payment of all Premiums and Deductibles. The **First Named Insured** has exclusive authority to act on behalf of all **Insureds** with respect to matters relating to this Policy, including:

1. Giving and receiving of all required notices;
2. Receiving of return Premiums;
3. Agreeing to any changes to this Policy; and
4. Purchasing an Extended Reporting Period.

### B. WHAT TO DO IF AN **INSURED** HAS A **CLAIM**

If there is a **Claim**, or a circumstance or incident likely to result in a **Claim**, the **Insured** must promptly do the following:

1. Notify the **Company** in writing; this notice must:
  - a. Be sent to:  
Specialty Global Insurance  
Attn: Claims Manager  
800 West 47th Street, Suite 515  
Kansas City, Missouri 64112
  - and
  - b. Identify the **Insured** and the Claimant, and provide reasonably obtainable information concerning the time, place and other details of the **Erroneous Act** and **Claim** or potential **Claim**;
2. Send the **Company** copies of all demands, notices, settlement offers, summonses or legal papers received in connection with the **Claim** or potential **Claim**;
3. Upon the **Company's** request, authorize the **Company** to obtain records and other information;
4. Cooperate with and assist the **Company** in the investigation, settlement and defense of the **Claim**; and
5. Cooperate with and assist the **Company**, upon the **Company's** request, in enforcing any rights of contribution or indemnity against another party who may be liable to an **Insured**.

### C. LEGAL ACTION AGAINST THE **COMPANY**

1. No person or organization has a right under this Policy to join the **Company** as a party or otherwise bring the **Company** into a suit against an **Insured**.
2. No action may be brought against the **Company** unless the **Insured** has fully complied with all terms and conditions of this Policy.

### D. BANKRUPTCY

The bankruptcy or insolvency of an **Insured** or an **Insured's** estate will not relieve the **Company** of its obligations under this Policy nor deprive the **Company** of its rights or defenses under this Policy.

E. SUBROGATION

The **Insured** and the **Company** may have rights to recover all or part of any payment an **Insured** or the **Company** makes under this Policy. If so, the rights of the **Insured** are transferred to the **Company**.

The **Insured** must do nothing to impair such rights. At the **Company's** request, the **Insured** will do everything necessary to secure such rights and help the **Company** enforce them, including the execution of documents necessary to enable the **Company** to effectively bring suit. Any recoveries will be applied as follows:

1. First, to the **Company** up to the amount of its payment for **Damages** and **Claim Expenses**; and
2. Second, to the **Insured** as recovery of Deductible amounts paid as **Damages** and **Claim Expenses**.

F. CHANGE IN OPERATIONS

This Policy applies only to **Insured Activities** specified on the Declarations Page. The **First Named Insured** agrees to notify the **Company** of any material changes to any **Insured's** operations and activities. If these changes in operations or activities result in a substantial change to an **Insured's** exposure, the **Company** has the right to modify the coverage provided or make adjustments to the Premium or rates charged for any coverage provided.

G. TRANSFER OF **INSURED'S** RIGHTS AND DUTIES UNDER THIS POLICY

An **Insured's** rights and duties under this Policy may not be transferred without the **Company's** prior written consent.

H. NO WAIVER OR CHANGE OF TERMS

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 the Policy; nor will the terms of this Policy be waived or changed except by written endorsement issued by the **Company**.

I. CANCELLATION; NO OBLIGATION TO RENEW

1. The **First Named Insured** may cancel this Policy by mailing or delivering to the **Company** advance written notice of cancellation. If the **First Named Insured** cancels this Policy, the return Premium will be calculated as 90% of the pro-rated return Premium.
2. The **Company** may cancel this Policy by mailing or delivering to the **First Named Insured** written notice of cancellation at least:
  - a. Ten (10) days before the effective date of cancellation for nonpayment of Premium; or
  - b. Thirty (30) days before the effective date of cancellation for any other reason or as otherwise specified by state law.
3. The **Company** will mail or deliver its notice to the **First Named Insured's** last known mailing address. Notice of cancellation will state the effective date of the cancellation. This Policy will expire on that date. If this Policy is cancelled, the **Company** will send the **First Named Insured** any return Premium due. The **Company's** payment or tender of unearned Premium is not a condition of cancellation. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. The **Company** will not be obligated or required to renew this Policy. Any offer of renewal of terms involving a change of Deductible, Premium, Limit of Insurance, or other terms and conditions will not constitute, nor be construed as, a refusal by the **Company** to renew this Policy. The **Company** may elect to non-renew this Policy by mailing to the **First Named Insured** at least thirty (30) days advanced written notice or notice as otherwise specified by state law.

J. OTHER INSURANCE

The insurance afforded by this Policy is in excess over any other valid and collectible insurance available to the **Insured**, except insurance specifically arranged by the **First Named Insured** to apply in excess of this insurance.

K. REPRESENTATIONS

By accepting this Policy, the **Insured** agrees:

1. The statements in the Application or Renewal Application furnished to the **Company** are accurate and complete;
2. The statements and representations in any and all attachments submitted with the Application, Renewal Application, or in connection with the application process and other information furnished to the **Company** are true and accurate;
3. Those statements furnished to the **Company** are representations the **First Named Insured** made on behalf of all **Insureds**;
4. Those representations are a material inducement to the **Company** to issue this Policy;
5. The **Company** has issued this Policy in reliance upon those representations; and
6. If this Policy is a renewal of a Policy issued by the **Company**, the **Insured's** representations include the representations made in all previous Applications for previous Policies issued by the **Company**. The representations made by the **Insured** on an Application apply as of the Effective Date of the Policy issued in reliance upon that Application.

**PART VIII APPLICATION IS PART OF POLICY**

The Application or Renewal Application, as well as any attachments thereto, furnished to the **Company** as part of the application process will be kept on file by the **Company** and deemed attached to the Policy as if physically attached to it.

**Capitol Specialty Insurance Corporation**

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

Secretary

*Alan A. Ogilvie*

President

*James J. McIntyre*