

***This Policy Provides Claims-Made and Reported Coverage.
Please Read the Entire Policy Carefully.***

MISCELLANEOUS ERRORS AND OMISSIONS

CLAIMS MADE INSURANCE POLICY

Words and phrases that appear in **bold** have special meaning.
Refer to **Part I.B. Insured**, and **Part III. Definitions**.

Part I. Coverages

A. INSURING AGREEMENT

In consideration of payment of the premium, and in reliance upon the **Application**, the Underwriters agree to pay on behalf of any **Insured** all sums, in excess of the Deductible and within the Limit of Liability, that such **Insured** becomes legally obligated to pay as **Damages** and related **Claims Expenses** resulting from **Claims** first made against the **Insured** during the **Policy Period** or during the Extended Reporting Period, if purchased, and reported to the Underwriters in accordance with the Claim Reporting Provisions, but in no event later than sixty (60) days after expiration of the **Policy Period** or the Extended Reporting Period, if purchased, alleging a **Wrongful Act** in the performance of or failure to perform **Insured Services**, provided that:

1. The entirety of such **Wrongful Act** happens during the **Policy Period** or after the **Retroactive Date** stated in the Declarations;
2. Prior to the effective date of this Policy, the **Insured** did not know of such **Wrongful Act** or any fact, circumstance, situation or incident that reasonably could be expected to give rise to a **Claim** under this Policy, including but not limited to any prior or pending **Claim** or any matter that was referenced or disclosed in the **Application**.

B. INSURED

Insured(s) means those persons and entities for which this Policy provides coverage, subject to all terms, conditions and exclusions herein, and includes:

1. Each and every **Named Insured** as stated in the Declarations or by endorsement, and if the **Named Insured** is an individual, his or her spouse, but solely in connection with **Insured Services** rendered, or which should have been rendered, by or on behalf of such **Named Insured**;

2. Current partners, directors, officers, or employees of any **Named Insured**, but solely in connection with **Insured Services** rendered, or which should have been rendered, by or on behalf of such **Named Insured**;
3. Former partners, directors, officers, or employees of any **Named Insured**, but solely in connection with **Insured Services** rendered, or which should have been rendered, by or on behalf of such **Named Insured** while such person was a partner, director, officer, or employee of the **Named Insured**;
4. The estate, heirs, executors, administrators and legal representatives of any **Insured**, in the event of the **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent such **Insured** otherwise would have been entitled to coverage under this Policy.

C. DEFENSE AND SETTLEMENT

Underwriters have the right and duty to defend an **Insured** in respect of any **Claim** made against an **Insured** for which coverage under this Policy applies, even if the allegations of the **Claim** are groundless, false or fraudulent. Underwriters have the right to appoint defense counsel and to investigate any **Claim** as they deem necessary. Underwriters shall not be obligated to investigate or defend any **Claim** after Underwriters' Limit of Liability has been exhausted by payment of **Damages** or **Claim Expenses**.

The **Insureds** shall not settle any **Claim** without Underwriters' prior written consent, even if the amount of such settlement is within the **Insured's** Deductible. The **Insureds** shall not admit any liability for any **Claim**, nor incur or agree to pay any costs, charges or expenses, or **Claims Expenses**, without the prior written consent of Underwriters.

Underwriters shall not settle any **Claim** without the **Insureds'** consent. If, however, an **Insured** refuses to consent to any settlement recommended by Underwriters and elects to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then Underwriters' duty to defend will cease, control of the defense will be tendered to the **Named Insured**, and Underwriters' duty to pay will be limited to that amount, excess of the Deductible, for which the **Claim** could have been settled, including any **Claim Expenses** incurred up to the date of the **Insured's** refusal to settle. Underwriters' obligation to pay shall in all events be subject to the provisions of **Part II. Limit of Liability and Deductible**.

D. COVERED TERRITORY

The coverage afforded by this Policy applies to a **Claim** arising out of a **Wrongful Act** committed by an **Insured** anywhere in the world, provided that suit

is first brought or **Claim** is first made within the United States of America, its territories or possessions, or Canada.

E. EXTENDED REPORTING PERIOD

If this Policy is not renewed for any reason, or is cancelled for any reason other than for non-payment of premium or the Deductible, whether by Underwriters or the **First Named Insured**, then the **First Named Insured** will have the right to purchase, within 30 days of policy termination, an Extended Reporting Period. If purchased, the Extended Reporting Period will extend the coverage provided by this Policy for a period of up to one (1) year immediately following the termination of the Policy, but only for a **Claim** first made during the Extended Reporting Period for a **Wrongful Act** committed before the effective date of such cancellation or non-renewal, provided that such **Claim** is otherwise covered by this Policy.

The additional premium for this coverage extension will be no more than 200% percent of the full annual policy premium, as measured by the level of premium in effect immediately prior to the end of the Policy Period, including any additional premium for endorsements. Such premium will be fully earned immediately upon inception of the Extended Reporting Period.

Payment of the additional premium, in full, shall be a condition precedent to this coverage extension, and once the premium is paid and this Policy is endorsed, the Extended Reporting Period cannot be cancelled. The aggregate **Limit of Liability** for any Extended Reporting Period will be part of, and not in addition to, Underwriters' Limit of Liability for the **Policy Period** as stated in the Declarations.

If the **First Named Insured** does not request this coverage extension in writing within 30 days of policy termination, and if the additional premium is not paid within 30 days of policy termination, all **Insureds'** rights to this coverage extension shall terminate.

Part II. Limit of Liability and Deductible

A. LIMIT OF LIABILITY

Underwriters' Limit of Liability, as stated in the Declarations, is the maximum amount that Underwriters will pay under this Policy, and is limited as follows:

1. The Each **Claim** Limit is the most Underwriters will pay for **Damages** and **Claim Expenses**, combined, resulting from each **Claim** first made against an **Insured** during the **Policy Period** and the Extended Reporting Period, if purchased;
2. The Aggregate Limit is the most Underwriters will pay for all **Damages** and all **Claim Expenses**, combined, resulting from all **Claims** first made against all **Insureds** during the **Policy Period** and the Extended

Reporting Period, if purchased.

Underwriters' Limit of Liability, as stated above, will not increase regardless of (a) the number of persons or entities that may be insured or included in **Part I. B. INSURED**, (b) the number of persons or entities that may make **Claims**, or (c) the number of **Claims** that may be made against the **Insureds**. In the event two or more **Claims** arise out of a single **Wrongful Act**, or related **Wrongful Acts**, all such **Claims** will be treated as a single **Claim**, subject to the limits stated above, and such **Claim** will be deemed first made when, during the **Policy Period**, the earliest **Claim** arising out of such **Wrongful Act** or related **Wrongful Acts** was first made and reported to Underwriters. **Wrongful Acts** will be deemed related if they are logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision.

Underwriters will have no liability to pay any **Damages** or to defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claim Expenses**, or any combination thereof. **Claim Expenses** are a part of, and not in addition to, the applicable Limit of Liability, and payment of **Claim Expenses** by Underwriters will reduce the remaining and available Limit of Liability.

B. DEDUCTIBLE PROVISIONS

The deductible amount shown in the Declarations will apply to each **Claim**, and will be paid by the **Insured**. In the event two or more **Claims** arise out of a single **Wrongful Act**, or related **Wrongful Acts**, all such **Claims** will be treated as a single **Claim**, and only one Deductible will apply. The Deductible applies to **Damages** and **Claim Expenses**, whether or not **Damages** are paid.

Part III. Definitions

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted to Underwriters by or on behalf of any **Insured** in connection with the underwriting of this Policy or any policy of which this Policy is a direct or indirect renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this Policy.
- B. **Bodily Injury** means physical or mental injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- C. **Claim** means a written or verbal demand for money or services received by the **Insured**, including the service of suit or the institution of arbitration proceedings against the **Insured**.
- D. **Claim Expenses** means expenses incurred by or at the direction of

Underwriters, and expenses incurred by an **Insured** with the Underwriters' prior written consent, in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, and include:

1. Reasonable and necessary attorney fees and costs;
2. The premium for an appeal bond or a bond to release property that may be attached, but only for premium amounts within the available Limit of Liability, and only if the **Claim** is otherwise covered by this Policy, it being further understood that Underwriters have no obligation to prosecute any appeal or obtain any bond;

Claim Expenses does not include any (a) loss of earnings, (b) salaries or other compensation, or (c) expenses, of any **Insured** or any employee of any **Insured**.

- E. **Damages** means a monetary judgment or arbitration award, except those for which insurance is prohibited by law; and any settlement to which Underwriters have consented; and interest on any judgment that accrues after entry of the judgment, but before the Underwriters have paid, offered to pay or deposited into court that part of the judgment within the applicable Limit of Liability. **Damages** shall not include (1) punitive, exemplary or multiple damages, or fines, penalties, sanctions or taxes; or (2) fees, deposits, commissions, charges for goods or services;. **Damages** also shall not include any amounts for which the **Insured** is not financially liable or for which there is no legal recourse against the **Insured**; nor shall **Damages** include the cost or expense of complying with any non-monetary, injunctive or equitable relief.
- F. **First Named Insured** means the first natural person or entity named in the Declarations as a **Named Insured**.
- G. **Insured Services** means the services provided by a **Named Insured** to third parties for a fee or other consideration, as described in the Declarations, for which coverage under this Policy is provided.
- H. **Named Insured** means each and every natural person or entity named in the Declarations as a **Named Insured**.
- I. **Policy Period** means the period of time stated in the Declarations, or any shorter period resulting from policy cancellation of or amendment to this Policy.
- J. **Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, including but not limited to, smoke, vapor, soot, fumes, dust, fibers, mold, spores, fungi, germs, acids, alkalis, chemicals,

metals, silica, lead, lead compounds or materials containing lead, asbestos, asbestos compounds or materials containing asbestos, radon, waste or any like substances.

K. **Property Damage** means injury to tangible property, including all resulting loss of use of that property, and loss of use of tangible property that is not physically injured.

L. **Retroactive Date** means the date stated in the Declarations on or after which any alleged or actual **Wrongful Act** must have taken place in order to be considered for coverage under this Policy.

M. **Wrongful Act** means:

1. Any negligent act, error or omission in the performance of or failure to perform **Insured Services**, except as provided in M.2. through M.7., below; and
2. False arrest, detention or imprisonment;
3. Malicious prosecution;
4. Wrongful entry or eviction, or invasion or violation of the right of private occupancy;
5. Oral or written publication of material that slanders or libels a person or organization, or disparages a person's or organization's goods, products or services;
6. Oral or written publication of material that violates a person's right of privacy;
7. Misappropriation of advertising ideas or style of doing business;

in the performance of or failure to perform **Insured Services**, *provided always* that coverage for any **Claim** alleging a **Wrongful Act** as defined in M.2 through M.7., above, shall not apply if there is available to the **Insured** any other insurance, including but not limited to general liability insurance, that provides for a duty to defend such **Claim**. It is the intention of this Policy to provide coverage for such **Claim** only in the absence of other insurance.

Part IV. Exclusions

Underwriters shall not be obligated to pay **Damages** or **Claim Expenses**, nor shall Underwriters have a duty to defend, **Claims** for, based upon, or arising out of, any of the following:

- A. Actual or alleged **Bodily Injury** or **Property Damage**;
- B. Actual or alleged infringement, in any form, of patent, copyright, trademark, trade dress, trade name, service mark, service name, title, slogan or other intellectual property right;
- C. Any dishonest, fraudulent, criminal, malicious, or intentional **Wrongful Act**, or any knowing or intentional violation of law, committed by or at the direction of an **Insured**, if established in any adverse finding, judgment, adjudication or admission by an **Insured** in any judicial or administrative proceeding;
- D. Any business, joint venture or enterprise not named in the Declarations which is owned, controlled, operated or managed, in whole or in part, by any **Insured**; nor will this Policy respond to any **Claim** involving any **Insured** acting as a principal, director, officer, trustee or employee of any organization, cause or purpose other than the **Named Insured**;
- E. Any person or entity that is an **Insured** under this Policy bringing suit, or having suit brought against, another **Insured** under this Policy;
- F. Actual or alleged violation of any of the following laws, as they may exist or be amended:
 - 1. Securities Act of 1933;
 - 2. Securities Exchange Act of 1934;
 - 3. Investment Advisors Act of 1940;
 - 4. Trust Indenture Act of 1993;
 - 5. Any state Blue Sky or securities laws;
 - 6. Any similar state or federal laws;
 - 7. Racketeer Influenced and Corrupt Organizations Act; and
 - 8. All orders, rulings, laws or regulations issued in connection with or attaching to the above;
- G. Actual or alleged violation of any provisions of the Employee Retirement Income Security Act of 1974, or any amendment, regulation, ruling or order issued pursuant thereto; or any acts related to any pension, healthcare, welfare, profit sharing, investment plan or trust;
- H. Actual or alleged misappropriation of trade secrets, or proprietary or confidential information;
- I. Any **Wrongful Act**, fact, circumstance, situation, transaction, event or decision which is or has been the subject of any notice or **Claim** under any prior policy; or any other **Wrongful Act**, whenever committed, which

is logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision, with any **Wrongful Act** which is the subject of such notice or such claim;

- J. Actual or alleged performance of or failure to perform **Insured Services** for or on behalf of:
 - 1. Any **Insured**,
 - 2. Any entity owned, controlled, operated or managed by any person or entity that is or would be an **Insured**,
 - 3. Any person or entity that owns, controls, operates or manages any entity that is or would be an **Insured**,
 - 4. Any entity which is under common ownership, control, operation or management of any entity that is or would be an **Insured**, or
 - 5. An entity for which any person that is or would be an **Insured** acts as a director, officer, partner or principal shareholder;
- K. Actual or alleged obligation of, or liability assumed by, an **Insured** under any contract or oral or written agreement, unless such liability would have attached in the absence of such a contract or agreement;
- L. Actual or alleged breach of an express or implied warranty or guarantee;
- M. Actual or alleged failure to perform work or services, including **Insured Services**, for a specified fee, and any dispute involving an **Insured's** fees, or the collection or return or refund of same;
- N. Actual or alleged unfair competition, restraint of trade, or any violation of antitrust laws, including false advertising or misrepresentation in advertising based thereon, or regarding intentionally false, misleading, deceptive or fraudulent trade practices, or misrepresentations in advertising an **Insured's** products and services;
- O. Regulatory or administrative investigations, actions, proceedings or orders brought by any federal, state or local governmental body, agency or entity, or by any professional or trade licensing organization;
- P. Actual or alleged liability of any person or entity under any worker's compensation, unemployment compensation, employer's liability, social security, disability benefits, or any similar law;
- Q. Bankruptcy, insolvency or financial impairment of any **Insured** or any business, joint venture or enterprise in which any **Insured** has a financial interest;
- R. Actual, alleged or threatened formation, discharge, dispersal, seepage,

release or escape of any **Pollutants**; the presence of **Pollutants**; and any direction, order or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, or in any way respond to or assess the effects of **Pollutants**;

- S. Any actual or alleged employment practices or employment-related practices or liability or any discrimination on any basis, including but not limited to any refusal to employ or promote, termination of employment, wrongful discharge, coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, breach of contract, retaliation, negligent hiring or supervision, wage and hour claims, discrimination of any kind, or other employment-related practices, procedures, policies, acts or omissions.

Part V. Conditions

A. CLAIM AND POTENTIAL CLAIM REPORTING PROVISIONS

1. In the event a **Claim** is made against any **Insured**, notice of such **Claim** shall be provided to Underwriters as soon as practicable, but in all events, and as a condition precedent to coverage, such notice shall be provided to Underwriters during the **Policy Period**, or within sixty (60) days after the expiration of the Policy or the Extended Reporting Period, if purchased.

2. In the event an **Insured** becomes aware of a specific **Wrongful Act** that reasonably may be expected to give rise to a **Claim**, and if the **Insured** notifies Underwriters during the **Policy Period**, in writing, of such **Wrongful Act**, then any **Claim** subsequently made, if notified to Underwriters in accordance with this Policy, and if arising from such specific **Wrongful Act**, shall be deemed a **Claim** first made during the **Policy Period**. Such **Claim** shall be deemed made when, during the Policy Period, Underwriters receive notice of the specific **Wrongful Act**, which shall include: a) the reasons for anticipating a **Claim**, b) the nature and dates of the alleged **Wrongful Act**, c) the potential damages sustained, d) the identities of the potential claimant(s), and e) the manner in which the **Insured** first became aware of the specific **Wrongful Act**.

All notices under this section V.A. must be sent to:

NAS Insurance Services, Inc.
16501 Ventura Blvd., Suite 200
Encino, CA 91436
(818) 382-2030

The **Insureds** shall *immediately* send copies of any demands, notices, summonses or legal documents received in connection with any **Claim** to NAS Insurance Services, Inc.

The **Insureds** shall authorize Underwriters to obtain records and other information, and must cooperate with and assist Underwriters with the investigation, defense and settlement of the **Claim**. Upon Underwriters' request, the **Insureds** will submit to examination and interview by Underwriters' representatives, under oath if required, and attend hearings and trials, and assist in affecting settlements, securing and giving evidence and in obtaining the attendance of witnesses.

The **Insureds** must not make any payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of dispute resolution, waive any rights or incur any expenses, without prior written approval by the Underwriters.

B. CANCELLATION

The **First Named Insured** may cancel this Policy by mailing or delivering to Underwriters advance, written notice of cancellation. If this Policy is canceled by the **First Named Insured**, the earned premium will be computed on a short rate basis subject to a minimum earned of 25% of the total annual premium.

Underwriters may cancel this Policy for non-payment of premium or Deductible by providing the **First Named Insured** 10 days written notice prior to the cancellation by mailing or delivering such notice to the last known mailing address of the **First Named Insured**. If Underwriters cancel this Policy for any reason other than non-payment of premium or Deductible, Underwriters will give the **First Named Insured** 30 days' written notice prior to cancellation.

The cancellation notice will state the effective date of the cancellation and this Policy will terminate on that date. If Underwriters cancel this Policy, the earned premium will be computed pro-rata.

C. AUTHORIZATION

The **First Named Insured** listed in the Declarations shall act for all **Insureds** with respect to the giving and receiving of all notices, the exercising of the Extended Reporting Period option, canceling of this Policy, paying of all premiums and Deductibles, and the receiving of any return premiums that may become due.

D. SUBROGATION

In the event of a **Claim** under this Policy, Underwriters shall be subrogated to the rights of recovery of each and every **Insured** against any person or organization, and the **Insureds** will execute and deliver instruments and papers, and do whatever else is necessary, to secure such rights, including the execution of all documents to enable Underwriters to effectively bring suit in the name of an **Insured**. The **Insureds** shall do nothing to prejudice such rights.

E. OTHER INSURANCE

This Policy will be excess over, and will not contribute or share with, any other existing insurance, unless such other insurance is specifically written to be excess of this Policy. Except as provided in Part III.M.2., if it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, Underwriters will not be liable under this Policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under this Policy bears to the total applicable Limit of Liability of all other insurance or self insurance, whether or not collectible, applicable to such **Claims**.

F. ACTION AGAINST THE UNDERWRITERS

No action will be taken against Underwriters unless, as a condition precedent, the **Insureds** are in full compliance with all of the terms and conditions of this Policy, nor until the amount of an **Insured's** obligations to pay have been finally determined, either by judgment against such **Insured** after actual trial, or by written agreement of Underwriters.

G. PREMIUM AND AUDIT

Premiums for this coverage are computed in accordance with Underwriters' rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, Underwriters will compute the earned premium for that period. Audited premiums are due and payable upon notice. Underwriters have the right to examine and audit the **Insureds'** records at any time during the **Policy Period**, and after the termination of this Policy, as the records may relate to this Policy.

H. ASSIGNMENT

The **Insureds'** rights and duties under this Policy may not be transferred without the written consent of Underwriters.

I. CHANGES

This Policy reflects all of the agreements and understandings between the **Insureds** and Underwriters concerning the insurance provided. The **First Named Insured**, as shown in the Declarations, is hereby authorized by all **Insureds** to act on their behalf with respect to effecting or accepting any amendments to or cancellation of this Policy. No changes to the Policy may be made or effected without Underwriters' written consent, and all agreed changes must be by affixed to this Policy by written endorsement issued by Underwriters.

J. APPLICATION

By acceptance of this Policy, the **Insureds** agree that all statements in the **Application** are representations that are material to the risks assumed and insured, and material to Underwriters' decision to issue this Policy on the terms

and conditions reflected herein. It also is agreed that this Policy is issued in reliance upon the truth of all such representations and that this Policy is a single unitary contract, and not a severable contract of insurance or series of individual contracts of insurance with each of the persons or entities insured hereunder.

K. SERVICE OF SUIT

It is agreed that in the event of the failure of Underwriters to pay any amount claimed to be due hereunder, Underwriters, at the request of any person or entity insured hereunder, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be deemed to constitute a waiver of Underwriters' right to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court, as permitted by the laws of the United States or of any state, territory, or district in the United States. It is further agreed that service of process in such suit may be made upon Mendes and Mount at the address indicated in Item H. of the Declarations and that in such suit instituted against any one of them upon this Policy, Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above-named party is authorized and directed to accept service on behalf of Underwriters in any such suit upon the request of any person or entity to enter a general appearance on behalf of Underwriters in the event such a suit shall be instituted.

Further, pursuant to the applicable statute of any state, territory or district of the United States, Underwriters shall designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute or any successor in office, as Underwriters' true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any person or entity insured hereunder or any beneficiary hereunder arising out of this Policy, and hereby designate Mendes and Mount as the party to whom such officer is authorized to mail such process.