

MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE POLICY

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY AND SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO CLAIMS WHICH ARE BOTH FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR AN EXTENDED REPORTING PERIOD, IF APPLICABLE. IN ADDITION, DEFENSE COSTS ARE INCLUDED IN AND WILL REDUCE THE LIMITS OF LIABILITY.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

In consideration of the payment of premium and in reliance upon the statements in the **Application**, each of which is acknowledged and understood to be material to the decision by the Company indicated in the Declarations (hereafter called the Insurer) to underwrite this risk, and which is made a part hereof and subject to the Declarations, terms, conditions and exclusions in this Policy, the Insurer and the **Insureds** agree as follows:

I. INSURING AGREEMENT

A. Professional Liability

Subject to the Limit of Liability for Each **Claim** set forth in Item 3. A. and the Aggregate for all **Claims** set forth in Item 3. B. of the Declarations, the Insurer shall pay on behalf of the **Insured** all **Loss** which the **Insured** shall become legally obligated to pay because of a **Claim** that is both first made against the **Insured** and reported to the Insurer in writing during the **Policy Period**, or an Extended Reporting Period, if applicable, for a **Wrongful Act** committed on or after the **Retroactive Date** by the **Insured**, or any other natural person for whose **Wrongful Acts** the **Insured** is legally responsible, solely in rendering or failing to render **Professional Services** for a client for a fee or other compensation.

B. Defense Costs for Disciplinary Proceedings

Subject to the Limit of Liability set forth in Item 3. C. of the Declarations, which is a part of and not in addition to the Each **Claim** and Aggregate Limits of Liability set forth in Item 3. A. and B. of the Declarations, the Insurer shall pay, on behalf of the **Insured**, **Defense Costs** which the **Insured** shall become legally obligated to pay because of a **Disciplinary Proceeding** first commenced against the **Insured** during the **Policy Period**, or an Extended Reporting Period, if applicable, for a **Wrongful Act** committed on or after the **Retroactive Date** by the **Insured** solely in the rendering or failing to render **Professional Services** for a client for a fee or other compensation.

C. Expense Reimbursement

Subject to the Supplemental Limit of Liability set forth in Item 3. D. of the Declarations, the Insurer shall reimburse the **Insured's** actual loss of earnings and reasonable expenses incurred when the **Insured** attends a hearing, deposition or trial at the request of the Insurer in the course of defending an otherwise covered **Claim**.

With respect to Insuring Agreement A and B, coverage is only provided if, prior to the Effective Date of the first policy issued by the Insurer or any **Affiliate of the Insurer** and continuously renewed, no **Insured** had knowledge of any actual or alleged **Wrongful Act**, circumstance or situation which could reasonably be expected to result in a **Claim** or **Disciplinary Proceeding**."

II. DEFENSE AND SETTLEMENT

The Insurer shall have the right and duty to defend any **Claim** against the **Insureds** seeking sums payable under this Policy, even if the allegations of the **Claim** are groundless or false. The **Insured** shall not assume or admit liability, make any payment, consent to any judgment, settle any **Claim** or incur any **Defense Costs** without the prior written consent of the Insurer, which consent shall not be unreasonably withheld. The Insurer shall not be liable for any expense, settlement, assumed obligation or admission to which they have not consented.

The Insurer has the right to investigate, conduct negotiations and with the **Named Insured's** written consent, settle any **Claim** as it deems expedient. If the **Named Insured** refuses to consent to a settlement or compromise recommended by the Insurer and acceptable to the claimant, then the Insurer's Limit of Liability under this Policy with respect to such **Claim** shall be reduced to the amount of **Loss** for which the **Claim** could have been settled, including all **Defense Costs** incurred up to the time the Insurer made its recommendation to the **Named Insured**.

The Insurer shall have no obligation to pay any **Loss** or **Defense Costs**, or to defend, continue to defend, or indemnify any **Claim** after the Limit of Liability has been exhausted by payment of **Loss**, or any deposit or tender of the Limit of Liability into Court.

III. DEFINITIONS

For purposes of this Policy:

- A. Application** means all signed applications and any attachments and materials submitted therewith for this Policy and for any policy in an uninterrupted series of policies issued by the Insurer or any **Affiliate of the Insurer** of which this Policy is a renewal or replacement. All such applications, attachments, materials and information are deemed attached to and incorporated into this Policy.
- B. Affiliate of the Insurer** means any insurer controlling, controlled by or under common control with the Insurer.
- C. Claim** means:
1. a written demand for compensatory monetary damages received by an **Insured**, including, but not limited to, the institution of arbitration proceedings against the **Insured**;
 2. a civil proceeding commenced by the service of a complaint or similar pleading in which monetary damages are sought; or
 3. a **Disciplinary Proceeding** but only to the extent of coverage provided by Insuring Agreement **I.B.** including any appeal from the proceedings identified in paragraphs **1.** and **2.** and **3.** above.
- Claim** does not include a demand or proceeding for non-monetary or injunctive relief, except a **Disciplinary Proceeding**, or any form of criminal proceeding.
- D. Defense Costs** means reasonable and necessary fees, costs and expenses incurred by or at the direction of the Insurer in the defense of a **Claim**, pre- and post- judgment interest, and the premium for appeal, attachment or similar bonds. The Insurer shall have no obligation to apply for or provide such bonds. **Defense Costs** shall not include, any remuneration, salaries, regular or overtime wages, benefits, or fees of directors, officers, **Managers** and employees of the **Insured** or Insurer or fees and expenses of independent adjusters, except to the extent that coverage is afforded for same as an Expense Reimbursement pursuant to Insuring Agreement **I.C.**
- E. Disciplinary Proceeding**, either in the singular or plural, means a proceeding by a regulatory or disciplinary official, board or agency to investigate charges of professional misconduct by the **Insured** solely in the rendering or failing to render **Professional Services** for a client for a fee or other compensation.
- F. Insured** means:
1. the **Named Insured** and any **Predecessor Firm**;
 2. any present or former partner, director, officer, **Manager**, employee or independent contractor of the **Named Insured** or a **Predecessor Firm** solely while acting on behalf of the **Named Insured** or a **Predecessor Firm**;
 3. any **Subsidiary** of the **Named Insured** but only during the time period in which the entity is a **Subsidiary**;
 4. any independent contractor but only if, prior to the date a **Claim** is made:
 - (i) the **Named Insured** had, in writing, agreed to provide insurance for the independent contractor's **Professional Services**;

(ii) a fee incurred to the **Named Insured** for subject **Professional Services**; Such independent contractor is only afforded coverage under the Policy for otherwise covered **Claims** arising from the rendering or failing to render **Professional Services** solely on behalf of the **Named Insured** to a client of the **Named Insured**.

5. any natural person who during the **Policy Period** becomes:

(i) an officer, employee, independent contractor and becomes a party to a valid contract with or employed by the **Named Insured**; or

(ii) affiliated with the **Named Insured** as a partner, director or **Manager**, shall be an **Insured** upon the effective date of such contract, employment or affiliation.

6. the estate, heirs, executors, administrators or legal representatives of an **Insured** in the event of such **Insured's** death, incapacity or bankruptcy, but only to the extent such **Insured** would otherwise be provided coverage under this Policy.

G. Loss means compensatory monetary damages, judgments, awards or settlements that an **Insured** is legally obligated to pay on account of a covered **Claim**, and taxes, fines or penalties incurred by a third party and included in such third party's **Claim** against the **Insured**, and **Defense Costs**. **Loss** includes punitive or exemplary damages and multiple damages up to one time the amount of compensatory monetary damages, if insurable under state law or jurisdiction which has a Substantial Relationship to the **Insureds**, the Insurer, this Policy or the **Claim**. For purposes of this Definition, Substantial Relationship shall mean any state or jurisdiction where: (1) the punitive or exemplary damages were awarded or imposed; (2) any **Wrongful Act** underlying the **Claim** was committed; (3) either the Insurer or the **Insured** is incorporated, has its principal place of business or resides; or (4) this Policy was issued or became effective.

Loss does not include:

1. civil or criminal fines or penalties imposed by law or regulation;
2. the return, withdrawal, or restitution of fees, expenses or charges;
3. costs incurred as a result of any non-pecuniary or injunctive relief;
4. taxes assessed against the **Insured**; or
5. matters which are deemed uninsurable by law.

H. Manager means any natural person who is a past, present or future manager, managing member, member of the board of managers or equivalent executive of the **Named Insured** or a **Predecessor Firm** that is a Limited Liability Company or Limited Liability Partnership.

I. Named Insured means the entity stated in Item 1. of the Declarations.

J. Personal Injury means injury or damage arising out of:

1. false arrest, detention or imprisonment;
2. malicious prosecution;
3. libel or slander or other defamatory or disparaging material or a publication or utterance in violation of an individual's right of privacy;
4. libel or slander that defames a person or organization, or disparages the goods, products or services of a person or organization; or

5. wrongful entry or eviction or other invasion of the right to private occupancy; solely in rendering or failing to render **Professional Services** for a client for a fee or other compensation.
- K. **Predecessor Firm** means any entity listed in Item 7. of the Declarations.
- L. **Policy Period** means the period from the Effective Date to the Expiration Date of this Policy as set forth in Item 2. of the Declarations, or earlier termination date, if any.
- M. **Pollutants** mean 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 federal, state, county, municipality or locality counterpart thereof. Such substances include, without limitation, any solid, liquid, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste material. Waste materials include, without limitation, materials to be recycled, reconditioned or reclaimed. **Pollutants** also means any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos, asbestos fibers or asbestos products, silica, noise and electric or magnetic or electromagnetic field.
- N. **Professional Services** means only those services which are performed for a client for a fee and which are specified in Item 6. of the Declarations.
- O. **Related Claims** means all **Claims**, whether made against more than one **Insured** or by more than one claimant, arising out of a single **Wrongful Act** or a series of **Wrongful Acts** that have a common nexus, are interrelated or are logically or causally connected by reason of any fact, circumstance, situation, event, transaction, practice, act, error, omission, decision or cause or series of causally-connected facts, circumstances, situations, events, transactions, practices, acts, errors, omissions, decisions or causes.
- P. **Retroactive Date** means either 1. or 2. below.
1. For all **Insureds** the Retroactive Date shown in Item 5. of the Declarations, provided that any **Insured** other than the **Named Insured** was employed by or contracted or affiliated with the **Named Insured** on the **Retroactive Date** shown in the Declarations.
 2. For any **Insured**, other than the **Named Insured**, who was not employed by or contracted or affiliated with the **Named Insured** on the Retroactive Date shown in Item 5. of the Declarations, the date on which the **Insured** was first employed by or contracted or affiliated with the **Named Insured**.
- Q. **Subsidiary** means any organization identified in the **Application** in which the **Named Insured** owns or controls the right to elect or appoint more than 50 percent (50%) of such organization's directors or **Managers**.
- R. **Wrongful Act** means a negligent act, error or omission or **Personal Injury** committed by an **Insured** or any natural person for whose **Wrongful Acts** the **Insured** is legally responsible solely in the rendering or failing to render **Professional Services** for a client for a fee or other compensation.

IV. EXCLUSIONS

The Insurer will not be liable to make any payment for **Loss**, including **Defense Costs**, in connection with any **Claims**:

- A. Based upon, arising out of or in any way involving: (i) any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this Policy is a direct or indirect renewal or replacement or any other policy which preceded this Policy; or (ii) any prior or pending litigation against any **Insured** filed on or before the Effective Date of this Policy or under any other policy of which this Policy is a direct or indirect renewal or replacement, whichever is earlier, or which is related in any way to the same or substantially the same facts, circumstances or situations which are the subject of or the basis for such prior and pending litigation;
- B. Based upon or arising out of the **Insured** gaining, in fact, any personal profit or advantage to which any **Insured** was not legally entitled, including but not limited to, misappropriation, conversion, embezzlement, commingling or defalcation of funds or other property;

- C. Based upon, arising out of or in any way involving: (i) an actual or alleged violation of any securities laws, including provisions of the Securities Act of 1933 or Securities Exchange Act of 1934, and any amendments thereto, or any state blue sky or securities law or similar state or federal securities related statute and any order or regulation issued pursuant to the foregoing statutes; (ii) any actual or alleged obligations for which an **Insured** or any carrier acting as his, hers or its insurer may be liable under any workers' compensation, unemployment compensation, disability or pension benefits law, or any similar laws, including but not limited to, the Employee Retirement Income Security Act of 1974, Public Law 93-406 (ERISA), or any of its amendments, or any other similar state or local law, or any non-qualified plan, while any **Insured** is acting as a fiduciary within the meaning of said laws; or (iii) any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, Title 18 United States Code, Sections 1961-1968 (RICO), or any of its amendments, or any other similar state or local law;
- D. Arising out of:
1. bodily injury, sickness, disease or death of any person; or
 2. physical injury, damage to or destruction of or loss of use of tangible property;
- E. Based upon, arising out of or in any way involving any employment-related act, error, omission or **Personal Injury**, or any discrimination on any basis as defined by federal, state or local statute, regulation, law or ordinance;
- F. Brought or maintained, directly or indirectly, by or on behalf of:
1. an **Insured**;
 2. any entity which owns, operates, controls or manages an **Insured**;
 3. any entity which an **Insured** owns, operates, controls or manages;
 4. any entity which is affiliated with any **Insured** through any common ownership, operation or control;
 5. any governmental or quasi-governmental official, agency or licensing organization; however, this Exclusion shall not apply to a **Claim** brought by or on behalf of such entity in its capacity as a client of an **Insured**;
 6. any individual, company or entity that is not a client of an **Insured**;
- G. Based upon, arising out of or in any way involving the breach of any contract, warranty, guarantee or promise unless such liability would have attached to the **Insured** even in the absence of such contract, warranty, guarantee or promise;
- H. Arising out of a dishonest, fraudulent, criminal or malicious act or omission, or intentional misrepresentation, (including, but not limited to, actual or alleged violations of state or federal antitrust, price-fixing, restraint of trade or deceptive trade practice statutory or common laws, rules or regulations) committed by, at the direction of, or with the knowledge of any **Insured**; however, for such **Claims** otherwise covered by this policy, the Company will provide a defense until such time as the act, error, or omission or **Personal Injury** is found to be dishonest, fraudulent, criminal, malicious or deliberate by trial, court ruling, regulatory ruling or admission. In such event, the **Insured** shall reimburse the Company for all **Claims Expenses** incurred by the Insurer;
- I. Based upon or arising out of the rendering of or failure to render **Professional Services** by any **Insured** in their capacity as an employee, owner, partner, stockholder, director or officer of any sole proprietorship, partnership or corporation or other business enterprise which is not defined as **Named Insured** or **Predecessor Firm**;
- J. Based upon or arising out of **Professional Services** performed for any entity if at the time of the act, error or omission or **Personal Injury** giving rise to the **Claim**, the **Insured** or its spouse was an officer, director, partner or **Manager** of such entity or the owner of more than a 10% equity interest in such entity;
- K. Based upon or arising out of any disputes involving any **Insured's** fees or charges, or any commingling of or improper use of client funds;

- L. Based upon, arising out of or in any way involving:
1. the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any **Pollutants**;
or
 2. any request, demand, order, statutory or regulatory requirement that any **Insured** abate, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, remediate or dispose of or in any way respond to or assess the effects of **Pollutants**;

M. Based upon or arising out of failure to effect or maintain any insurance or bond.

No **Wrongful Act** of any individual **Insured** nor any fact pertaining to any individual **Insured** shall be imputed to any other partner, director, officer or employee for the purposes of determining the applicability of Exclusion H. above.

V. LIMIT OF LIABILITY, RETENTION, RELATED CLAIMS AND NON-STACKING OF LIMITS

A. Limit of Liability

1. **Limit of Liability Each Claim:** The Limit of Liability of the Insurer for all **Loss**, including **Defense Costs**, for each **Claim** or all **Related Claims** both first made and reported during the **Policy Period** and Extended Reporting Period, if applicable, shall not exceed the amount stated in Item 3. A. of the Declarations for Each **Claim**.
2. **Limit of Liability in the Aggregate for the Policy Period:** The Limit of Liability of the Insurer for all **Loss** for all **Claims** both first made and reported during the **Policy Period** and Extended Reporting Period, if applicable, shall not exceed the amount stated in Item 3. B. of the Declarations as the Aggregate for the **Policy Period**.
3. **Limit of Liability Defense Costs for all Disciplinary Proceedings:** The Limit of Liability of the Insurer for all **Defense Costs** for all **Disciplinary Proceedings** both first made and reported during the **Policy Period** and Extended Reporting Period, if applicable, shall not exceed the amount stated in Item 3. C. of the Declarations. Such Limit of Liability shall be part of, and not in addition to, each **Claim** and Aggregate Limits of Liability set forth in Item 3. A. and B. of the Declarations.
4. **Supplemental Limit of Liability for Expense Reimbursement:** The Insurer will pay, in addition to the applicable Limit of Liability and subject to the amount stated in Item 3. D. of the Declarations as loss of earnings and expenses pursuant to Insuring Agreement I.C. incurred at the direction of the Insurer in the defense of any **Claim** to which this insurance applies.

B. Retention

The Retention Amount stated in Item 4. of the Declarations is applicable to each **Claim** and applies to the payment of **Loss** and **Defense Expenses**. The Retention Amount shall be paid by the **Named Insured** and shall be uninsured and remain uninsured during the **Policy Period**. The Limits of Liability set forth in Item 3. of the Declarations are in addition to and in excess of the Retention Amount.

C. Related Claims

All **Related Claims** shall be deemed a single **Claim**, and such **Claim** shall be considered first made on the date the earliest such **Related Claim** is first made against an **Insured**, regardless of whether such date is before or during the **Policy Period**.

D. Non-Stacking of Limits

If a **Claim** covered under this Policy is also covered under one or more policies issued by the Insurer or an **Affiliate of the Insurer**, then with respect to such **Claim**:

1. the Insurer shall not be liable under this Policy for a greater portion of the **Loss** than the applicable Limit of Liability under this Policy bears to the total limits of liability of all other policies which provide the same coverage as is provided under this Policy and issued by the Insurer or an **Affiliate of the Insurer**; and

2. the maximum amount payable under all such policies shall not exceed the limit of liability of that policy which has the highest applicable limit of liability.

VI. EXTENDED REPORTING PERIODS

In the case of cancellation or nonrenewal of this Policy by either the Insurer or the **Named Insured**, the **Named Insured** shall have the right to Extended Reporting Periods as follows:

A. Automatic Extended Reporting Period

The **Insured** shall have a period of sixty (60) days after the expiration of the **Policy Period** to report to the Insurer any **Claim** which is first made during said sixty (60) day period and arises out of a **Wrongful Act** committed on or after the **Retroactive Date** and prior to the end of the **Policy Period**. This Automatic Extended Reporting Period shall terminate, and the **Insured** shall not be entitled to any such Automatic Extended Reporting Period, in the event that this insurance is replaced with the same or similar insurance issued by the Insurer or any other professional liability insurer, whether or not the terms, limits or retentions are identical to those provided under this policy. This Automatic Extended Reporting Period option shall not be available if this policy is canceled effective as of policy inception for non-payment of premium.

B. Optional Extended Reporting Period

The **Named Insured** shall have the right to purchase an Optional Extended Reporting Period during which to report **Claims** arising from **Wrongful Acts** committed on or after the **Retroactive Date** and prior to the end of the **Policy Period**, upon payment of an additional premium. The premium for and length of the Optional Extended Reporting Period shall be negotiated at the time of purchase.

The Total Annual Premium is the sum of the original annualized premium and the fully annualized amount of any additional premiums charged by the Insurer during the **Policy Period**.

The rights contained in this section shall terminate unless written notice of such election together with the additional premium due is received by the Insurer within sixty (60) days after the effective date of cancellation or nonrenewal. The entire premium for such Optional Extended Reporting Period shall be deemed fully earned and non-refundable upon payment.

The first sixty (60) days of the Optional Extended Reporting Period, if purchased, shall run concurrently with the Automatic Extended Reporting Period.

- C. If the Insurer cancels this Policy because the **Named Insured** failed to pay a premium or other amounts when due or the **Insureds** are not in compliance with the terms and conditions of the Policy, the **Insureds** shall not have the right to the Automatic Extended Reporting Period or to purchase the Optional Extended Reporting Period as described in paragraphs **A.** and **B.** above.
- D. The quotation of a different premium, retention amount, limit of liability or policy terms or conditions for renewal shall not constitute a cancellation or nonrenewal for purposes of paragraphs **A.** and **B.** above.
- E. The Extended Reporting Periods do not reinstate or increase the Limit of Liability beyond the limits shown on the Declarations, nor extend the **Policy Period**.
- F. **Claims** which are properly reported during an Extended Reporting Period will be deemed to have been made on the last day of the **Policy Period**.

VII. CONDITIONS

A. Notice and Cooperation

1. The **Insured** shall, as a condition precedent to the availability of rights provided under this Policy, give written notice to the Insurer as soon as practicable during the **Policy Period**, or Extended Reporting Period, if

applicable, but in no event later than sixty (60) days after the end of the **Policy Period** of any **Claim** made against the **Insured**, as long as such **Claim** was first made during the final sixty (60) days of the **Policy Period**.

2. The **Insured** shall furnish the Insurer with copies of demands, reports, investigations, pleadings and related papers, and provide other such information, assistance and cooperation as the Insurer may reasonably request in the investigation, settlement and defense of a **Claim**.
3. The **Insured** shall further cooperate with the Insurer and do whatever is necessary to secure and affect any rights of indemnity, contribution or apportionment that the **Insured** may have.
4. All written notices provided for in this Policy shall be in writing and addressed to the Insurer at:

For Claims and potential Claims:

Protective Specialty Insurance Company
Attn: Director of Professional Liability Claims
1099 N. Meridian St., Suite 700
Indianapolis, IN 46204
Phone: (800) 494-6586
Fax: (317) 636-0120
plclaims@baldwinandlyons.com

All other notices:

Protective Specialty Insurance Company
Attn: Ed Velasquez
1099 N. Meridian St., Suite 700
Indianapolis, IN 46204
Phone: (317) 429-2644
Fax: (317) 429-2645
evelasquez@protectivespecialty.com

B. Notice of Circumstances Giving Rise to a Claim

If during the **Policy Period**, an **Insured** becomes aware of a **Wrongful Act** that could give rise to a **Claim** against an **Insured** and gives written notice to the Insurer prior to the end of the **Policy Period** of the following:

1. the names of all potential claimants;
2. the names of each **Insured** who committed the **Wrongful Act**;
3. a detailed description of the **Wrongful Act**;
4. the damage which has or may result from the **Wrongful Act**; and
5. the circumstances by which the **Insured** first became aware of such **Wrongful Act**;

then any **Claim** which subsequently arises out of such **Wrongful Act** shall be treated as a **Claim** first made during the **Policy Period**.

C. Mediation of Claims

If a **Claim** is fully and finally resolved, with the Insurer's consent, through mediation, the Retention Amount for such **Claim** shall be reduced by fifty percent (50%) up to a maximum of \$25,000.

D. Territory

This Policy applies to **Wrongful Acts** committed anywhere in the world provided that the **Claim** is made against the **Insured** in the United States of America, its territories or possessions, Puerto Rico or Canada.

E. Other Insurance

If the **Insured** has other insurance which applies to any **Loss** insured under this Policy, this Policy shall be excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written as specific excess insurance over this Policy.

F. Subrogation

In the event of any payment under this Policy, the Insurer shall be subrogated to all the **Insured's** rights of recovery thereof and the **Insured** shall execute and deliver all instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after loss to waive or prejudice such rights. Any amounts recovered in excess of the Insurer's total payment shall be paid to the **Insureds**, less the cost to the Insurer of recovery.

G. Changes

Notices to any agent or knowledge possessed by any agent shall not affect a waiver or a change in any part of this Policy or prevent the Insurer from asserting any rights under the terms of this Policy, nor shall the terms of this Policy be waived or changed, unless endorsed hereon.

H. Action Against the Insurer

No action shall be taken against the Insurer unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Insurer.

Any person or organization or the legal representative thereof who has secured a judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Insurer in any action against the **Insured** to determine the **Insured's** liability, nor shall the Insurer be impleaded by the **Insured** or their legal representative.

I. Assignment of Interest

No assignment of interest under this Policy shall be binding on the Insurer unless its consent is endorsed hereon.

J. Cancellation and Termination

1. Termination:

This Policy shall terminate at the earliest of the following times:

- (i) upon the Expiration Date of the **Policy Period** as set forth in Item 2. of the Declarations, or the effective date of cancellation, if earlier; or
- (ii) ten (10) days after receipt by the **Named Insured** of a written notice of termination from the Insurer for failure to pay a premium when due.

2. Cancellation

- (i) This Policy may be cancelled by the **Named Insured** by surrender thereof to the Insurer or by providing written notice to the Insurer stating when thereafter cancellation shall be effective. If this Policy is cancelled by the **Named Insured**, the Insurer shall retain the customary short rate proportion of the premium.
- (ii) This Policy may be cancelled by the Insurer by providing written notice of cancellation to the **Named Insured** at the address shown in Item 1. of the Declarations, with the effective date of the cancellation not less than sixty (60) days thereafter. Proof of mailing the notice of cancellation shall be sufficient proof of notice and this Policy shall terminate on the date and time specified in such notice. If the Insurer cancels this Policy, the earned premium shall be computed pro-rata. Payment or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation.

K. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Named Insured**:

1. acquires voting securities in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires any organization by merger into or consolidation with the **Named Insured**;

Then, subject to the terms and conditions of this Policy, such organization shall be covered under this policy but only with respect to any **Claim for Wrongful Acts** taking place after such acquisition or creation.

If the total revenue of such acquired organization, as reflected in the then most recent consolidated financial statements of the organization, exceeds fifteen percent (15%) of the total revenue of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, the **Named Insured**, as a condition precedent to coverage with respect to such **Insureds**, shall, no later than sixty (60) days after the effective date of such acquisition or creation:

1. give written notice of such acquisition or creation to the Insurer;
2. pay any additional premium required by the Insurer; and
3. agree to any additional terms and conditions of this Policy as required by the Insurer.

L. Change of Control of the Named Insured

If during the **Policy Period**, the **Named Insured** consolidates with or merges into, or sells all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert, or any person or entity or group of persons or entities acting in concert shall acquire an amount of the outstanding securities representing more than fifty percent (50%) of the voting power for election of directors or **Managers** of the **Named Insured**, or acquires the voting rights of such an amount of securities, then this Policy shall continue in full force and effect but only as to **Wrongful Acts** occurring prior to the effective date of such event.

The **Named Insured** shall give the Insurer written notice of any such event as soon as practicable but no later than thirty (30) days after the date of such event.

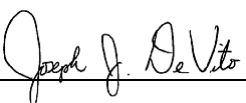
M. Authorization Clause

By acceptance of this Policy, the **Named Insured** shall act of behalf of the **Insureds** for all purposes including, but not limited to, the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy and giving and receiving notice of cancellation, termination or nonrenewal.

N. Service of Suit

In the event of failure of the Insurer to pay the amount claimed to be due hereunder, the Insurer will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States or to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such action may be made upon General Counsel and that in any such action instituted against the Insurer relating to this Policy, the Insurer will abide by the final nonappealable decision of such court or of any appellate court in the event of any appeal.

IN WITNESS WHEREOF, the insurer has caused this Policy to be signed by its President and Secretary, but this Policy shall not be valid unless countersigned by a duly authorized representative of the Insurer.



Joseph J. DeVito, Chief Operating Officer & President



Michael J. Case, General Counsel