

THIS IS A CLAIMS MADE AND REPORTED POLICY WITH CLAIMS EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. COVERAGE APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD AND REPORTED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE. COVERAGE DOES NOT APPLY TO ANY WRONGFUL ACTS COMMITTED BEFORE THE RETROACTIVE DATE STATED ON THE DECLARATIONS PAGE. WORDS PRINTED IN BOLD FACE, OTHER THAN CAPTIONS, ARE DEFINED IN THE POLICY. VARIOUS PROVISIONS IN THIS POLICY RESTRICT COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY.

MISCELLANEOUS PROFESSIONAL LIABILITY COVERAGE FORM

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer** shown in the Declarations, including those furnished in the **Application**, which is deemed incorporated into this Policy, and subject to all terms, conditions and limitations of this Policy, the **Insureds** and **Insurer** agree as follows:

I. Insuring Agreements

A. Miscellaneous Professional Liability

Subject to the applicable Limit of Liability, the **Insurer** will pay on behalf of the **Insured** all **Damages** and **Claim Expenses** in excess of the **Retention** that an **Insured** becomes legally obligated to pay as a result of a covered **Claim** first made against the **Insured** during the **Policy Period** and reported in writing to the **Insurer** during the **Policy Period**, or **Extended Reporting Period** if applicable, for a **Wrongful Act** by an **Insured** or by anyone for whom the **Insured** is legally responsible, in the rendering of **Professional Services** provided, however, that such **Wrongful Act** was committed or allegedly committed on or after the **Retroactive Date** set forth in Item 8 of the Declarations, and provided further that the **Insured** had no knowledge of the actual or alleged **Wrongful Act** prior to the inception date of this Policy.

B. Claims Expenses and Settlements

1. The **Insurer** will have the right and duty to defend any covered **Claim**, including the right to select and appoint defense counsel, even if the allegations are groundless, false or fraudulent. The **Insurer**, at its discretion, has the right to investigate and settle a covered **Claim**.
2. The **Insured** shall not admit liability, assume any financial obligation or agree to pay money without the **Insurer's** prior written consent and shall not take any action, or fail to take any action, which prejudices the rights of the **Insurer**. Notwithstanding the foregoing, it is understood that the **Insured** may settle any **Claim** for an amount which, together with **Claim Expenses**, is less than the amount of the remaining **Retention**.
3. If the **Insured** refuses to consent to any settlement opportunity or judgment recommended by the **Insurer** and instead elects to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the **Insurer's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been resolved, including **Claim Expenses**.
4. **Claims Expenses** are part of and subject to the Limit of Liability. The **Insurer's** duty to defend ends after the applicable Limit of Liability has been exhausted by payment of **Claims Expenses** and **Damages**. The **Insurer** shall not be obligated to settle any **Claim**, pay any **Damages** or **Claims Expenses**, or continue to defend any **Claim** after the applicable Limit of Liability has been exhausted, except where specifically noted otherwise in this Policy. Nothing in this provision will cause the **Insurer's** liability to exceed the applicable Limits of Liability set forth in Item 4 of the Declarations.

5. Nothing in this Subsection I.B. shall relieve an **Insured** from any notice requirement or cooperation obligation contained elsewhere in this Policy.

C. Coverage Extensions

1. Lawful Spouse or Domestic Partner Provision

The coverage provided by this Policy shall also apply to the lawful spouse or domestic partner of an **Individual Insured**, but only for a **Claim** arising out of any actual or alleged **Wrongful Act** of such **Individual Insured**.

2. Estates and Legal Representatives

The coverage provided by this Policy shall also apply to the estates, heirs, legal representatives or assigns of any **Insured** in the event of the death, incapacity of an **Individual Insured** or the bankruptcy of an **Insured**, but only for **Claims** arising out of any actual or alleged **Wrongful Act** of such **Insured**.

II. Definitions

- A. "**Application**" means the **Insured's** signed Miscellaneous Professional Liability insurance policy application and any attachments and other information furnished to the **Insurer** for the purpose of applying for the insurance. All such attachments and information shall be deemed attached to the policy as if physically attached to it. If this policy is a renewal or replacement of a previous policy or policies issued by the **Insurer**, all signed applications and other materials that were attached to and became a part of these previous policies shall be considered part of the **Application** for this Policy.
- B. "**Bodily Injury**" means physical injury, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily Injury** also includes disability, mental anguish, mental injury, emotional distress, pain or suffering, or shock or fright resulting in or from **Bodily Injury**.
- C. "**Claim**" means a written demand received by an **Insured** for **Damages** or non-monetary relief based on any actual or alleged **Wrongful Act**, whether or not the nature or extent of the **Damages** or non-monetary relief is known or asserted at the time of the demand. **Claim** includes a civil proceeding for monetary, non-monetary or injunctive relief commenced by service of a complaint or similar pleading, including a demand for arbitration.

A **Claim** will be considered first made when it is received by any **Insured**.

All **Claims** arising out of the same **Wrongful Act** or **Related Wrongful Acts** shall be deemed to be a single **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.

- D. "**Claim Expenses**" means expenses incurred by the **Insurer** or by the **Insured**, with the **Insurer's** consent, in the defense, investigation, adjustment, negotiation, arbitration or mediation of a covered **Claim**, whether paid by the **Insurer** or the **Insured**, with the **Insurer's** consent. **Claim Expenses** include: 1) all reasonable and necessary fees, costs and expenses, including the fees of attorneys and experts, incurred by or on behalf of the **Insured** in the investigation, defense, appeal, and settlement of a **Claim**; 2) the cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable Limit of Liability. The **Insurer** does not have any obligation to apply for or furnish any such bond.

Claim Expenses shall not include any loss of earnings; salaries, wages or expenses of any **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim**; or the defense of any criminal investigation, criminal grand jury proceeding, or criminal action.

E. **"Damages"** means any monetary amount that any **Insured** is legally obligated to pay because of a judgment or arbitration award rendered against the **Insured**, or for settlements negotiated by the **Insurer** with the **Insured's** consent on account of a covered **Claim**. **Damages** shall include, but are not limited to:

1. pre-judgment interest;
2. post-judgment interest that accrues after the entry of judgment and before the **Insurer** has paid, or offered to pay or deposited in court that part of the judgment within the applicable Limit of Liability, and
3. punitive, exemplary and multiple damages (where insurable by law).

Damages do not include: 1) fines, penalties, taxes, sanctions or that portion of any multiplied damages award which exceeds the damage award so multiplied; 2) disputes over or return or restitution of fees, deposits, commissions, profits or charges for goods or services rendered; 3) discounts, coupons, prizes, awards or other incentives offered to the **Insured's** customers or clients; 4) any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or 5) amounts paid to resolve matters deemed uninsurable under the law pursuant to which this Policy shall be construed. **Damages** also do not include costs of correcting, performing or re-performing **Professional Services** by:

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

For purposes of insuring punitive damages under this policy, the law of the jurisdiction most favorable to the insurability of punitive damages shall control, provided such jurisdiction is where:

1. any **Insured** is incorporated or otherwise organized or has a place of business; or
2. the **Insurer** is incorporated or has its principle place of business.

F. **"Extended Reporting Period"** means that period described in Section VIII of the Policy.

G. **"First Inception Date"** is the Inception Date of the earliest errors and omissions insurance policy the **Insurer** issued to the **Named Insured**, provided that there has been uninterrupted coverage by the **Insurer** for the **Named Insured** from that earliest policy to this Policy.

H. **"Insured"** means:

1. **Named Insured**
2. the **Individual Insureds**, and
3. any **Subsidiary** of the **Named Insured**.

I. **"Individual Insured"** means, individually and collectively:

1. any past or present partner, officer, director or employee of the **Named Insured** or any **Subsidiary**, but only with respect to their activities within the scope of their duties in such capacity in the performance of **Professional Services** by the **Named Insured** or any **Subsidiary**;
2. any independent contractor, temporary worker, or leased employee of the **Named Insured** but only for **Professional Services** performed on behalf of and at the direction of the **Named Insured**.

- J. "Insurer"** means the company stated in the Declarations.
- K. "Named Insured"** means the person or entity listed in Item 1. of the Declarations and its **Subsidiaries**.
- L. "Personal Injury"** means injury, other than **Bodily Injury**, arising out of one or more of the following offenses:
1. oral or written publication of material that slanders, libels or defames a person or organization or disparages a person's or organization's goods, products or services;
 2. oral or written publication of material that violates a person's right to privacy;
 3. false arrest, detention or imprisonment;
 4. wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies; or
 5. malicious prosecution.
- M. "Policy Period"** means the period of time between the inception date stated in Item 3. of the Declarations and the effective date of termination, expiration or cancellation of this Policy.
- N. "Pollutant"** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to:
1. smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, lead or materials containing lead, silica, radon, mold or asbestos;
 2. hazardous, toxic or radioactive matter or nuclear radiation;
 3. waste, which includes material to be recycled, reconditioned or reclaimed; or
 4. any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.
- O. "Pollution"** shall mean the actual, alleged or threatened discharge, release, migration, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere. **Pollution** also means any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- P. "Professional Services"** means those services stated in Item 2 of the Declarations when performed by the **Insured** in the ordinary conduct of the **Insured's** profession for or on behalf of a customer or client for a fee or other compensation.
- Q. "Property Damage"** means:
1. physical injury to or destruction of tangible property, including all resulting loss of use of that property; or
 2. loss of use of tangible property that is not physically injured.
- For the purposes of this definition, tangible property shall not include electronic data.
- R. "Related Wrongful Acts"** shall mean any **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, transaction, event or cause or series of causally connected facts, circumstances, situations, transactions, events or causes.

- S. **"Retention"** means the amount stated in Item 6. of the Declarations and described in Section V. of the Policy.
- T. **"Retroactive Date"** means the date, if any, stated in Item 8 of the Declarations.
- U. **"Subsidiary"** shall mean any entity in which, on or before the effective date of this Policy the **Named Insured**, either directly or indirectly:
1. owns more than fifty (50) percent of the issued and outstanding voting equity securities; or
 2. controls voting rights representing the present right to vote for election or to appoint more than fifty (50) percent of the directors or trustees.
- Subsidiary** shall also include any entity that shall become owned or controlled, as described above, after the effective date of this Policy; provided that, with respect to any entity that becomes a **Subsidiary** after the effective date of the Policy, should the entity's gross revenues exceed 10% of the **Insured's** annual gross revenues at the inception date of the policy, the entity shall only be deemed a **Subsidiary** under this Policy for a period of ninety (90) days from the date it became a **Subsidiary**. If the **Insured** gives written notice, within ninety (90) days of the creation or acquisition of the **Subsidiary**, including the necessary underwriting information the **Insurer** may require and pay any reasonable additional premium as the **Insurer** may require, then the **Insurer** will issue an endorsement including such entity in the definition of **Subsidiary** for the duration of the **Policy Period**. There is no coverage for **Wrongful Acts** by any **Subsidiary**, or **Individual Insured** thereof, occurring prior to the time such entity became a **Subsidiary**, nor occurring after a **Subsidiary** ceases to be a **Subsidiary**.
- V. **"Wrongful Act"** means any actual or alleged breach of duty, negligent act, error, omission or **Personal Injury** offense committed by an **Insured** solely in the performance of, or failure to perform, **Professional Services**.

III. Exclusions

- A. This Policy does not apply to any **Claim**, and the **Insurer** is not obligated to defend or pay **Damages** or **Claim Expenses** for any **Claim** based upon or arising out of, directly or indirectly,
1. false advertising, misrepresentation in advertising, antitrust, unfair competition, restraint of trade, unfair or deceptive business practices, misappropriation of advertising ideas or style of doing business.
 2. **Bodily Injury** or **Property Damage**;
 3. any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law or the gaining of any profit or advantage to which any **Insured** is not legally entitled. The **Insurer** will, however, defend **Claims** alleging any of the foregoing conduct until there is a judgment, final adjudication, adverse finding of fact, or adverse admission, establishing that the **Insured** committed such conduct, at which time the **Named Insured** shall reimburse the **Insurer** for **Claim Expenses**; provided, however, the **Insurer** will not defend such **Claims** where the **Insured** was the subject of a criminal proceeding in which the **Insured** was found guilty, or pleaded guilty or no contest for any such conduct.
- This exclusion does not apply to any **Individual Insured** that did not commit, acquiesce or participate in the actions that gave rise to the **Claim**.
4. infringement of a copyright; trademark, trade dress, trade name, service mark, service name, title or slogan; or patent violation;

5. harassment, misconduct or discrimination because of or relating to. race, creed, color, age, gender sex, sexual preference, national origin, religion, handicap, disability, marital status, or any other status or class protected under anti-discrimination laws whether federal, state or local;
6. any **Insured's** acts related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; including but not limited to any actual or alleged violation of the provisions of the Employee Retirement Income Security Act of 1974, or any amendment, regulation, ruling or order thereto or similar provisions of any federal, state or local statutory law or common law;
7. any violation of The Securities Act of 1933 as amended, The Securities Exchange Act of 1934 as amended, the Investment Advisor's Act of 1940, any state blue sky or securities law, any similar state or federal law or amendments thereto, or any order, rule or regulation issued pursuant to the above laws;
8. insolvency or bankruptcy of:
 - a. any **Insured**; or
 - b. any enterprise over which the **Insured** exercises control or in which any **Insured** owns an interest;
9. any Claim arising out of based upon or attributable directly or indirectly resulting from, or in consequence of, or in any way involving **Pollution** or the actual, alleged or threatened existence, discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time, including, but not limited to any loss, cost or expense arising out of any:
 - a. request, demand or order that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to, or assess the existence, non-existence or effects of **Pollutants**; or
 - b. **Claim** by or on behalf of a governmental authority or others for **Damages** because of testing for, identifying, detecting, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, communicating information about, responding to, or assessing the existence, non-existence or effects of **Pollutants**; including the failure to perform any of these activities;
10. any **Wrongful Act**:
 - a. committed or allegedly committed prior to the **Retroactive Date**, including but not limited to any **Related Wrongful Acts**;
 - b. that was the subject of any notice given under any other policy prior to the beginning of the **Policy Period**; or
 - c. about which the **Insured** had knowledge prior to the **Policy Period** if the **Insured** had a reasonable basis to believe that such **Wrongful Act** could give rise to a **Claim**; provided, however, that if this Policy is a renewal or replacement of a previous policy issued by the **Insurer** providing materially identical coverage, the **Policy Period** referred to in this section will be deemed to refer to the inception date of the first such policy issued by the **Insurer** for purposes of this exclusion;
11. by or on behalf of any **Insured** claiming against another **Insured**, or any **Claim** brought by any **Subsidiary** or affiliate or by any **Joint Venture** in which the **Insured** participates;
12. damage to property in any **Insured's** care, custody, or control; or

13. for the breach of express warranties, guarantees or contracts; provided, however, with respect to allegations of breach of contract this exclusion shall not apply to any liability that would have attached in the absence of such contract.

IV. Limit of Liability

The Insurer's maximum liability for **Damages** and **Claims Expenses** combined on account of each **Claim** first made during the Policy Period shall be the Limit of Liability set forth in Item 4(a) of the Declarations. The Insurer's maximum liability for **Damages** and **Claims Expenses** combined on account of all **Claims** first made during the same Policy Period combined shall be the Aggregate Limit of Liability set forth in Item 4 (b) of the Declarations, regardless of the time of payment or the number of **Claims**.

Claims Expenses shall be part of, and not in addition to, the Limit of Liability stated in Item 4 (a)-(b) of the Declarations. Such **Claims Expenses** shall reduce the Limit of Liability.

V. Retention

- A. The applicable **Retention** specified in Item 6 of the Declarations shall be a condition precedent and must be paid by the **Named Insured** before the **Insurer** has any payment obligation, and shall apply to both covered **Damages** and **Claims Expense**.
- B. One **Retention** shall apply to each **Claim** alleging the same **Wrongful Act** or **Related Wrongful Acts**. The **Named Insured** shall be responsible for any amount within the **Retention**.
- C. More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a single **Claim**, and only one **Retention** shall be applicable to such single **Claim**. All such **Claims** constituting a single **Claim** shall be deemed to have been first made on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which the notice of circumstance involving any such **Wrongful Act** or **Related Wrongful Acts** were reported under this Policy or any other policy providing similar coverage.

VI. Reimbursement and Allocation

A. Reimbursement

If, for any reason, the **Insurer** advances, at its sole option, any amounts for **Damages** or **Claim Expenses** in excess of the Limit of Liability or within the **Retention**, or for non-covered liabilities or defenses, the **Insured** shall reimburse such amounts to the **Insurer** upon demand.

B. Allocation

If a **Claim** made against an **Insured** includes both covered and uncovered matters, or is made against an **Insured** and others not insured, the **Insured** and the **Insurer** recognize that there must be an allocation between covered and uncovered amounts. The **Insured** and the **Insurer** shall use their best efforts to agree upon a fair and proper allocation between covered and uncovered amounts, taking into account the relative legal and financial exposures, and the relative benefits obtained by each **Insured** or uninsured party.

VII. Notice of Claim

- A. The **Insured** shall, as a condition precedent to their rights under this Policy, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period** or Discovery Period, if applicable. Such

notice shall be given as soon as practicable, but in no event later 1) than thirty (30) days after the end of the **Policy Period** or 2) the expiration date of the Discovery Period, if applicable.

Notice to the **Insurer** shall include details that identify the **Insured**, the claimant and also reasonably obtainable information concerning the time, place and other details of the **Wrongful Act** and **Claim**;

The **Insured** shall:

1. immediately send the **Insurer** copies of all demands, notices, summonses, complaints or other legal papers received in connection with the **Claim**;
2. authorize the **Insurer** to obtain records and other information;
3. cooperate with and assist the **Insurer** in the investigation, settlement or defense of the **Claim**; and
4. assist the **Insurer**, upon its request, in enforcing any rights of contribution or indemnity against another who may be liable to any **Insured** or owe contribution or indemnity.

If notice is provided pursuant to this section, any **Claim** subsequently made against an **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to the prior noticed **Claim** or alleging any **Related Wrongful Acts**, shall be considered related to the prior **Claim** and made at the time notice of the prior **Claim** was first provided.

B. If during the **Policy Period** or during the Discovery Period, if applicable, the **Insured** becomes aware of any **Wrongful Acts** committed between the **Retroactive Date** and the end of the **Policy Period** which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and gives written notice to the **Insurer** of the circumstances, the **Wrongful Act** allegations and the reasons for anticipating such a **Claim**, then a **Claim** which is subsequently made against such **Insured** and reported to the **Insurer** alleging, arising out of, based upon or attributable to such circumstances or alleging any **Related Wrongful Acts**, shall be considered made at the time notice of such circumstances was given, provided, however

1. The notice must include all of the following information:
 - a. the names of those persons or organizations involved in the **Wrongful Act**;
 - b. the specific person or organization likely to make the **Claim**;
 - c. a description of the time, place and nature of the **Wrongful Act**; and
 - d. a description of the potential **Damages**.
2. No **Insured** knew prior to the **First Inception Date** of the **Wrongful Act** or circumstance that could reasonably be expected to lead to the **claim**; and
3. There is no other valid and collectible insurance for the **Claim**.

VIII. Extended Reporting Period

A. In the event the **Insurer** or the **Named Insured** refuses to renew this Policy, the **Named Insured** shall have the right, upon payment of one hundred percent (100%) of the annual premium (or if the **Policy Period** is other than annual, one hundred percent (100%) of the annualized premium), to an extension of the coverage provided by this Policy with respect to any **Claim** first made against any **Insured** during the period of twelve (12) months after the end of the **Policy Period** and reported to the **Insurer** during such twelve (12) month period, but only with respect to any **Wrongful Act** committed or alleged to have been committed before the end of the **Policy Period**. This twelve (12) month period shall be referred to in this Policy as the Discovery Period.

- B. As a condition precedent to the right to purchase the Discovery Period, the total premium for this Policy must have been paid and a written request, together with payment of the appropriate premium for the Discovery Period, must be provided to the **Insurer** no later than thirty (30) days after the end of the original **Policy Period**.
- C. The fact that the coverage provided by this Policy may be extended by virtue of the purchase of the Discovery Period shall not in any way increase the Limit of Liability stated in Item 4 of the Declarations. For purposes of the Limit of Liability, the Discovery Period is considered to be part of, and not in addition to, the **Policy Period**.

IX. General Conditions

A. Cancellation or Non-Renewal

1. This Policy may be cancelled by the **Named Insured** at any time by written notice to the **Insurer**. Upon cancellation by the **Named Insured**, the **Insurer** shall retain the customary short rate portion of the premium, unless this Policy is converted to Run-Off pursuant to Section IX.N. wherein the entire premium for this Policy shall be deemed fully earned.
2. This Policy may only be cancelled by the **Insurer** if the **Named Insured** does not pay the premium when due.
3. If the **Insurer** elects not to renew this Policy, the **Insurer** shall provide the **Named Insured** with no less than sixty (60) days advance notice thereof.

B. Application

It is agreed by the **Named Insured** and the **Individual Insureds** that the particulars and statements contained in the **Application** and any information provided therewith (which shall be on file with the **Insurer** and be deemed attached hereto as if physically attached hereto) are the basis of this Policy and are to be considered as incorporated in and constituting a part of this Policy. It is further agreed by the **Named Insured** and the **Individual Insureds** that the statements in the **Application** or in any information provided therewith are their representations, that they are material, and that this Policy is issued in reliance upon the truth of such representations.

C. Severability

Except with respect to Limits of Liability and any rights and duties assigned in this Policy to the **Named Insured**, this insurance applies as if each **Insured** were the only **Insured** and separately to each **Insured** against whom a **Claim** is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one **Individual Insured** shall not by itself affect coverage for another **Individual Insured** under this Policy. However, this condition shall not apply to the **Named Insured** or any **Individual Insured** who is the CEO, Chairman, President, CFO or General Counsel of the **Named Insured** who committed the misrepresentation, act or omission referenced above.

D. Action Against the Insurer

1. No action shall be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, and until the obligation of the **Insured** to pay shall have been finally determined by an adjudication against the **Insured** or by written agreement of the **Insured**, claimant and the **Insurer**.
2. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against an **Insured** nor shall the **Insurer** be impleaded by any **Insured** or their legal representative in any such **Claim**.

E. Other Insurance

All amounts payable under this Policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. Nothing in this provision shall prevent the **Insurer** or the **Insureds** from seeking contribution or coverage from any other insurer or indemnitor.

F. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the **Insurer** to effectively bring suit in the name of any **Individual Insured** or the **Named Insured**. Any recoveries shall be applied as follows:

1. First, to the **Insurer** up to the amount of the **Insurer's** payment for **Damages** and **Claims Expenses**.
2. Then, to the **Named Insured**, as recovery of **Retention** amounts paid as **Damages** and **Claims Expenses**.

G. Dispute Resolution

In the event any dispute arises in connection with this Policy that cannot be resolved by agreement, the **Insurer** and the **Insured** shall first participate in a non-binding mediation in which the **Insurer** and the **Insured** shall attempt in good faith to resolve such dispute in accordance with the American Arbitration Association's ("AAA") then-prevailing Commercial Mediation Rules. In the event that such non-binding mediation does not result in a settlement of the subject dispute or difference, either the **Insured** or the **Insurer** shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration under the then-prevailing AAA Commercial Arbitration Rules, to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced until at least 90 days has passed from the termination of the mediation. Each party will bear its own legal fees and expenses. The costs and expenses of mediation, or arbitration, shall be split equally by the parties.

H. Choice of Law

All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of Arizona notwithstanding Arizona's conflicts of law rules.

I. Assignment

This Policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**, which consent shall be in the sole and absolute discretion of the **Insurer**.

J. Named Insured Represents All Insureds

By acceptance of this Policy, the **Named Insured** identified in Item 1. of the Declarations shall be designated to act on behalf of all **Insureds** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, the cancellation or non-renewal of this Policy, the payment of premiums, and the receipt of any return premiums that may be due under this Policy.

K. Representative of the Insurer

Rockhill Underwriting Management, Kansas City, MO shall act on behalf of the **Insurer** for all purposes including, but not limited to, the giving and receiving of all notices and correspondence, provided, however, notice of **Claims** shall be given pursuant to Section VII of the Policy.

L. Service of Suit

In the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer** at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this condition constitutes or shall be understood to constitute a waiver of the right of the **Insurer** to commence an action in any court of competent jurisdiction within 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 in the United States.

Service of process in any such suit may be made upon Rockhill Insurance Company, 700 W. 47th Street, Suite 350, Kansas City, MO. In any suit instituted against the **Insurer** upon this Policy, the **Insurer** will abide by the final decision of such court or of any appellate court in the event of any appeal.

Pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office, as its true and lawful attorney upon whom may be served lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this Policy, and hereby designates the above named Rockhill Insurance Company 700 W. 47th Street, Suite 350, Kansas City, MO, as the entity to whom said officer is authorized to mail such process or a true copy thereof.

M. Bankruptcy

Bankruptcy or insolvency of the **Named Insured**, any **Subsidiary** or any **Insured Person** shall not relieve the **Insurer** of any of its obligations under this Policy.

N. Conversion to Run-Off Coverage

If, during the **Policy Period**, a transaction occurs wherein another entity gains control of the **Named Insured** identified in Item 1 of the Declarations through the ownership of more than fifty percent (50%) of the voting stock of the **Named Insured**, or the **Named Insured** merges into another entity or consolidates with another entity such that the **Named Insured** is not the surviving entity, then:

1. this Policy shall only apply to **Wrongful Acts** actually or allegedly committed on or before the effective date of such transaction; and
2. the entire premium for this Policy shall be deemed earned as of the date of such transaction.

O. Territory

Coverage applies to **Wrongful Acts** committed anywhere in the world provided that any action, arbitration, or other proceeding for, in relation to, or arising from the **Claim** is brought within the United States of America, its territories or possessions or Canada. If **Damages** or **Claim Expenses** are paid in a currency other than United States of America dollars, then the payment under this policy will be considered to have been made in United States dollars at the conversion rate which is in effect at the time of the payment.

P. Headings

The descriptions in the headings of this Policy form no part of the terms and conditions of the coverage under this Policy.

Q. Entire Agreement

1. By acceptance of this Policy, all **Insureds** and the **Insurer** agree that this Policy (including the Declarations, **Application** submitted to the **Insurer** and any information provided therewith) and any written endorsements attached hereto constitute the entire agreement between the parties. The terms, conditions and limitations of this Policy can be waived or changed only by written endorsement.
2. This Policy applies only to the **Professional Services** described in Item 2 of the Declarations page and **Insured(s)** as defined in the Policy or by endorsement as of the Inception Date of the Policy Period. This Policy shall not apply to any other services or enterprises unless such services or enterprises are added by written endorsement issued by the **Insurer** and made a part of this Policy. If an endorsement is added, the **Insured** shall promptly pay any additional premium charged.

R. Premiums

The First **Named Insured** shown in the Declarations:

1. is responsible for the payment of all premiums; and
2. will be the payee for any return premiums we pay.