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## Introductory Clause

THIS POLICY IS A CONTRACT FOR INSURANCE FOR CONSIDERATION BETWEEN YOU AND US. THE COVERAGE IS PROVIDED AS DESCRIBED BELOW SUBJECT ALWAYS TO OUR RECEIPT OF THE PREMIUM AND OUR RELIANCE UPON THE STATEMENTS MADE BY YOU IN THE APPLICATION WHICH FORMS PART OF YOUR POLICY AND THE BASIS OF YOUR INSURANCE COVER. THE POLICY IS SUBJECT TO THE LIMIT OF LIABILITY, EXCLUSIONS, CONDITIONS AND OTHER TERMS SET OUT BELOW.

READ THIS POLICY CAREFULLY TO DETERMINE THE EXTENT OF COVERAGE. VARIOUS PROVISIONS IN THIS POLICY RESTRICT YOUR COVERAGE.

Words and phrases that appear in bold print have special meanings and are defined separately. Whenever a singular form of a word is used, the same shall include the plural when required by context.

### IMPORTANT:

THIS IS A CLAIMS FIRST MADE AND NOTIFIED POLICY. THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AND NOTIFIED TO US DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, ARISING FROM ANY CIRCUMSTANCES WHICH TOOK PLACE ON OR AFTER ANY RETROACTIVE DATE SPECIFIED IN ITEM 7 OF THE SCHEDULE AND BEFORE THE EXPIRY DATE OF THE POLICY PERIOD.

### I. Insuring Agreement

We shall pay on **your** behalf all **damages** and **claims expenses** within the Limit of Liability in excess of **your** Deductible which **you** become legally obliged to pay as a result of any **claim** arising from any **wrongful act** first made against **you** and notified by **you** to **us** in writing during the **policy period** or any Extended Reporting Period.

### II. Defense and Settlement of Claims

- (a) It is **our** duty to defend a **claim** against **you** even if such **claim** is groundless or fraudulent however **our** right and duty to defend **you** under this Policy ends when the applicable Limit of Liability has been exhausted by payments of **damages** or **claims expenses**.
- (b) **We** have the right and duty to defend, subject to the Limit of Liability, Exclusions, and other terms and conditions in this Policy, any **claim** against **you** seeking **damages** including injunctive or other non-monetary relief first made against **you** and notified to **us** during the **policy period** or any Extended Reporting Period, for any **wrongful act** first committed by **you** on or after any **retroactive date** and before the end of the **policy period**.
- (c) **You** may not make any payment (except at **your** own cost), assume any obligation, or incur any expense in relation to a **claim** without **our** written consent, provided that such consent may not be unreasonably withheld. Only reasonable and necessary costs will be paid.



- (d) **We** have the right to select and appoint defense counsel to defend any **claim** notified under this Policy. If **you** have appointed defense counsel, at **our** request **you** shall instruct them to turn over all their relevant files, materials and work product and co-operate with counsel who **we** select and appoint as defense counsel.
- (e) **We** have the right to investigate and settle any **claim** in the manner and to the extent that **we** believe is proper unless the total cost of **damages** and **claims expenses** is less than the amount remaining within **your** Deductible. If **you** refuse to consent to any settlement or compromise recommended by **us** which is also acceptable to the claimant and then elect to contest the **claim**, **our** liability for any **damages** and **claims expenses** shall not exceed the amount for which the **claim** could have been settled, less the remaining Deductible, plus the **claims expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and **we** shall have the right to withdraw from further defense by tendering control of said defense to **you**.

### III. Definitions

- 1. **Bodily injury** means physical injury, sickness, disease or death of any person.
- 2. **Claim** means
  - (a) a civil proceeding for **damages** commenced by the filing of a complaint or similar pleading; or
  - (b) an arbitration or mediation proceeding in which **damages** are sought; or
  - (c) a written demand for **damages**; or
  - (d) notice by a third party to **you** of circumstances that could reasonably be expected to result in any of the foregoing;

All **claims** arising out of:

- (a) the same covered event; or
- (b) covered events of one or more insureds which have as a common nexus any fact, circumstance, situation, event, transaction, cause, or series of connected facts, circumstances, situations, events, transactions, or causes;

shall be considered a single **claim** regardless of the number of **claims**, claimants, defendants or causes of action. The date when any such **claim** is made will be the date that the first **claim** is made.

- 3. **Claims expenses** means;
  - (a) fees charged by a lawyer(s) designated by **us** to defend any **claim**, and
  - (b) all other reasonable fees, costs and expenses resulting from investigation, adjustment, defense and appeal of a **claim**, suit or proceeding arising in connection therewith, if incurred by **us**, or by **you** with the written consent of **us**.



**Claim expenses** do not include any salaries, overheads or other charges **you** incur for any time **you** spent in cooperating in the defense and investigation of any **claim** or circumstance which might lead to a **claim** under this Policy.

**Claim expenses** are part of and not in addition to the Limit of Liability.

4. **Computer system** means electronic, wireless, web or similar systems (including all hardware and software) used to process data or information in an analogue, digital, electronic or wireless format including computer programs, electronic data processing media, electronic data, electronic data communications equipment, operating systems, computer network and networking equipment, firmware, servers, websites, extranet, and all input, output, processing, storage and on-line or off-line media libraries, music, graphic, entertainment and other content (to the extent that they hold electronic data).
5. **Computer virus** means computer instructions placed on a **computer system** without the owner or user's knowledge or consent that are designed to harm, impede, corrupt, erase, remove, disrupt or destroy the **computer system**, electronic data or software (or any part of them). **Computer virus** includes malicious codes, malware, Trojan horses, worms, and time or logic bombs.
6. **Damages** means a compensatory monetary judgment, award or settlement, other than;
  - (a) **your** future royalties or future profits, restitution, disgorgement of profits, or the costs of complying with orders granting injunctive relief;
  - (b) return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
  - (c) punitive, exemplary (unless insurable by law), treble or other damages that are assessed in part to punish the defendant or to deter others;
  - (d) damages pursuant to federal, state or local statutory law other than compensatory;
  - (e) any amounts owed under any express or implied contract; and
  - (f) any amounts for which **you** are not liable, or for which there is no legal recourse against **you**.
7. **Denial of service** means inability of a third party to gain access to **your computer system** through the **Internet** due to unauthorized attacks or deliberate overloading of bandwidth connections and/or web servers by means of the sending of substantial quantities of repeat or irrelevant communication or data with the intent of blocking access to the **computer system** by third parties.
8. **Directors and officers** mean all persons who were, or shall be directors or officers and all persons serving in a functionally equivalent role for the Parent Company, or any Subsidiary.
9. **Hacker attack** means unauthorized use of or gaining access to **computer systems** by a person not authorized to do so or in an unauthorized manner.



10. **Internet** means the worldwide public network of computer networks which enables the transmission of electronic data between different users.
11. **Offline media** means newspapers, newsletters, magazines, books and literary works in any form, monographs, brochures or other types of publications, video cassettes and digitally stored data products, advertising materials including packaging, photographs and digital images.
12. **Policy period** means the period of insurance stated in item 4 of the Schedule.
13. **Professional services** means **your** professional activities which are performed for and on behalf of **your** clients or customers in the course of **your** business arising from activities, advice or products relating to information technology, **computer systems**, communications and media services; services include consulting, data caching, data collecting, data storage, database designing, data processing, mining and analysis, software programming, researching, systems integration or development, design, installation, repair, outsourcing or maintenance of computer or telecommunication equipment, products and components, networks or systems including Internet Service Providers and portals and exchanges; software code and security services including Active Server Pages; analyzing, digesting, collecting, compiling, gathering, mining, recording or other use of materials including the advertising, broadcasting, directing, digitalizing, net casting, producing, publication, selling, disseminating, releasing or using materials and related telemarketing, customer support and similar services.
14. **Property damage** means injury to, impairment, destruction, corruption or distortion of any tangible property, including the loss of use thereof or loss of use of tangible property which has not itself been physically impaired, injured or destroyed.
15. **Retroactive date** means the date specified in Item 7 of the Schedule.
16. **Subsidiary** shall mean any corporation of which **you** own on or before the inception date of the **policy period** more than 50% of the issued and outstanding voting stock either directly or indirectly through a subsidiary.

This Policy does not cover any **claim** against a **subsidiary** or any partner, director, officer or employee thereof for any **wrongful act** that occurred when **you** did not own more than 50% of the issued and outstanding voting stock of such **subsidiary**, either directly or indirectly through one or more of its **subsidiaries**.

**Subsidiary** shall also mean any corporation which becomes a **subsidiary** during the **policy period** provided that such corporation does not represent more than a ten percent (10%) increase in **your** total assets, employee count or gross revenue as of the date of the acquisition. Where such corporation represents an increase in **your** total assets, employee count or gross revenue of more than 10 percent (10%), such corporation shall be deemed a **subsidiary** under the Policy, but only upon the condition that within 30 days of it becoming a **subsidiary**, **you** shall have provided **us** with full particulars of the new **subsidiary** and agreed to any additional premium and/or amendment of the provisions of this Policy required by **us** relating to such new **subsidiary**,



subject to the review and acceptance by **us** of full and complete underwriting information. Further, coverage as shall be afforded to the new **subsidiary** is conditioned upon **you** paying when due any additional premium required by **us** relating to such new **subsidiary**. A corporation becomes a **subsidiary** when **you** own more than 50% of the issued and outstanding voting stock either directly or indirectly through one or more of its **subsidiaries**, and ceases to be a **subsidiary** at such time when **you** cease to own more than 50% of the issued and outstanding voting stock.

17. **Theft of data** means the unauthorized taking or misuse of information by a party which for the purposes of this definition only, shall include **you** whilst excluding any and all of your partners or directors;
- (a) that exists in electronic form, or which is in the course of transmission to or from a mobile or wireless device which is intended to interact with a **computer system**, while stored in a **computer system** maintained to the minimum standards in respect of security and back up procedures as specified in your Application.
  - (b) Or the physical theft of paper documents, hardware or firmware which is owned or controlled by **you** on which information is stored and which is under **your** care, custody and control.

**Theft of data** includes account information, confidential information, proprietary information and personal information and also mean failure to prevent identity theft and credit or debit card fraud.

18. **Trade secret** means information, including a formula, pattern, compilation, program, device, method, technique or process, that:
- (a) derives independent economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who would obtain value from its disclosure for use, so long as reasonable efforts have been made to maintain its secrecy; and
  - (b) that a business uses, which gives it an opportunity to obtain an advantage over competitors who do not know it or use it.
19. "**We**", "**us**" or "**our**" means the Underwriters providing this insurance.
20. **Wrongful act(s)** means any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission in the rendering of **professional services** to others or arising from **your** legal liability in respect of **your** own professional activities relating to information technology, **computer systems**, communications utilizing the **internet** and **offline media**, including but not limited to;
- (a) disparagement or harm to the reputation or character of any person or organization, defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, mental anguish, wrongful entry or eviction, trespass, eavesdropping, false arrest, malicious prosecution, outrage or outrageous conduct;
  - (b) invasion, infringement or interference with the right to privacy or of publicity, including false light, public disclosure of private facts, intrusion or commercial appropriation of name or likeness;
  - (c) plagiarism, piracy or misappropriation of ideas in connection with the **internet** and **offline media**;



- (d) infringement of copyright, domain name, trade dress, title or slogan, or the dilution or infringement of trademark, service mark, service name or trade name;
  - (e) liability arising out of **your** negligent failure to prevent a party from unauthorized access to, use of or tampering with **computer systems** (including **your** employees who are not **directors** or **officers**) including;
    - (i) **hacker attacks**,
    - (ii) **computer virus** attacks, and
    - (iii) **theft of electronic data**;
  - (f) liability arising out of **your** negligence in respect of any **internet** and **offline media** content for which **you** are responsible;
  - (g) inability of an authorized third party to gain access to **your** services including **denial of service**, unless caused by a mechanical or electrical failure;
  - (h) negligent and inadvertent transmission by **you** to a third party of any **computer virus**;
  - (i) breach of confidence or misuse of any information which is either confidential or subject to statutory restriction on its use.
21. “**You**” or “**your**” or “**yours**” means;
- (a) the legal entity(s) shown in Item 2 of the Schedule;
  - (b) any **subsidiary** of **yours**, but only with respect to **wrongful acts** which occur while it is a **subsidiary** and otherwise covered by this Policy;
  - (c) any past, present or future officer, director, trustee or employee and in the event that **you** are a partnership, limited liability partnership or limited liability company, then any general or managing partner or principal, stockholder, owner thereof, but only while acting within the scope of their duties as such;
  - (d) any agent or independent contractor, including distributors, licensees and sub-licensees, but only whilst acting on **your** behalf of or at **your** direction, and under **your** control; and
  - (e) any entity whom **you** are required by contract to add as an insured under this Policy, but only for **your wrongful acts** and with **our** consent.

#### IV. Exclusions

**We** shall not be liable for any **damages** or **claims expenses** directly or indirectly arising out of or in any way attributable to;

- (a) any **claim** made against **you** arising out of any, willful, deliberate, malicious, fraudulent, dishonest or criminal act. However, notwithstanding the foregoing, the insurance afforded by this Policy shall apply to **claims expenses** incurred in defending any such **claim** or circumstance which might lead to a **claim**, but shall not apply to any **damages** which **you** might become legally obligated to pay, however upon the determination by a court, jury, or arbitrator, **we** will have the right to recover those **claims expenses** incurred from those parties found to have committed criminal, dishonest, fraudulent or malicious acts;
- (b) any **claim** made by one Insured against another Insured;
- (c) **bodily injury** or **property damage**;





- (d) **your** insolvency;
- (e) any **claim** arising out of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the Named Insured;
- (f) any **claim** or circumstance arising from any **wrongful act** prior to the **retroactive date** of this Policy or where **you** knew or could reasonably have foreseen such **wrongful act** may be the basis of a **claim**;
- (g) any **claim** or circumstance previously notified to a prior insurer;
- (h) any liability assumed under any contract or agreement including any breach of express warranty or guarantee, except and to the extent **you** would have been liable in the absence of such contract or agreement;
- (i) actual or alleged infringement of any patent or **trade secret**;
- (j) any actual or alleged violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;
- (k) any action brought by or on behalf of the Federal Trade Commission ("FTC"), Federal Communications Commission ("FCC") or any other federal, state or local government agency or ASCAP, SESAC, BMI or other licensing organizations in such entity's regulatory, quasi-regulatory or official capacity, function or duty;
- (l)
  - (a) employment or work place practices, including **claims** arising under worker compensation laws or **claims** in respect of alleged discrimination, harassment or inappropriate employment conduct of any sort;
  - (b) any acts related to the violation of any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act;
- (m) any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, rules and regulations of the Securities Exchange Commission, the securities laws or regulations of any state, or any common law claim relating to any transaction arising out of, involving, or relating to the purchase or sale or offer to purchase or sell securities of **your** Company or any other entity;
- (n) any actual or alleged antitrust, restraint of trade, unfair competition, false, deceptive or unfair business practices, violation of consumer protection laws or false or deceptive advertising including violations of any local, state or federal laws regarding the aforementioned conduct;



- (o) **professional services** performed for any entity which:
  - (a) **you** own, operate, manage or control either directly or indirectly in whole or in part or in which **you** have an ownership interest in excess of 15%; or in which **you** are an officer or director; or
  - (b) wholly or partly owns, operates, controls or manages **you**;
  
- (p) coupons, prize discounts, prizes, awards, or any other valuable consideration given in excess of the total contracted or expected amount;
  
- (q) the actual or alleged inaccurate, inadequate, or incomplete description of the price of goods, products or services; or as a result of **your** cost guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;
  
- (r) any fundamental failure of PKI as a method of encrypting data including policies, procedures, methods, equipment, hardware, firmware, or software for creating, maintaining or managing any secure means for transmitting, receiving or exchanging electronic information using or involving digital certificates, digital signatures, certification authorities, public or private keys or scrambling technologies, or any other similar type of technology however denominated; however this exclusion shall not apply to a **wrongful act** by **you** in the performance of **your professional services** for any customer or client.
  
- (s) alleged or actual electrical or mechanical failures and/or interruption, including an electrical disturbance, surge, spike, brownout or blackout; or outages to gas, water, telephone, cable, satellite, telecommunications or other infrastructure comprising or supporting the **Internet** including service provided by the Internet Service Provider who hosts **your** website, unless under **your** operational control;
  
- (t) any wear or tear, latent or time-delayed damages arising from services provided prior to the **policy period** or gradual deterioration or **your** failure (or the failure of those acting on **your** behalf) to maintain any computer, **computer system** or network, computer software, or any other equipment;
  
- (u) any **claim** arising out of or resulting from the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos or asbestos fibers or dust;
  
- (v) **any** claim arising out of;
  - (1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - (2) any act of terrorism.

For the purpose of this Exclusion an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar



purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

**We** also exclude loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If **we** allege that by reason of this Exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon **you**.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect;

- (w) alleged or actual fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, an act of God or any other physical event, however caused;
- (x) any **claim** arising out of the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property;
- (y) directly or indirectly arising out of or resulting from the presence or actual, alleged, or threatened discharge, seepage, dispersal, migration, release, escape, generation, transportation, storage, or disposal of pollutants at any time, including any request, demand or order that **you** or others test for, monitor, clean up, remove, assess, or respond to the effects of pollutants. Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, odors, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed; and
- (z) gambling, pornography, or the sale or provision of prohibited, restricted or regulated items including but not limited to alcoholic beverage, firearms, tobacco, or drugs.

## V. General Conditions

### A. Limit of Liability

**Our** maximum aggregate liability for all **damages** including **claims expenses** on account of all **claims** and circumstances covered by this Policy, shall be the Limit of Liability set forth in Item 5 of the Schedule.

In the event of the exhaustion of the Limit of Liability, **we** shall have no further liability whatsoever.

The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, **our** Limit of Liability for the **policy period**.



## B. Deductible

The Deductible stated in Item 6. of the Schedule shall be satisfied by payments by **you** and apply to both **damages** and **claims expenses** or any combination thereof resulting from **claims** notified during the **policy period** and any Extended Reporting Period. **We** will only be liable for amounts excess of any Deductible and not exceeding **our** Limit of Liability as stated in Item 5 of the Schedule.

## C. Extended Reporting Provisions

### 1. Automatic Extended Reporting Period

If either **you** or **us** shall cancel or non-renew this policy, **you** shall have the right following the effective date of such cancellation or non-renewal, to a period of 60 days in which to give written notice to **us** of **claims** first made against **you** for any **wrongful act** prior to the end of the **policy period** and otherwise covered by this Policy.

### 2. Additional Extended Reporting Period

- (a) In the event of cancellation or non-renewal of this Insurance, **you** shall have the right, upon payment of an additional premium in full of the total policy premium, to purchase a 12 month Extended Reporting Period at either, 100% of the total policy premium if **we** cancel or non-renew, or 150% if **you** cancel or non-renew, for **claims** first made against **you** and notified to **us** during the Extended Reporting Period, and arising out of any **wrongful acts** committed on or after the **retroactive date** and before the end of the **policy period**, subject to the conditions set forth herein. In order for **you** to invoke the Extended Reporting Period option, **you** must pay **us** within 30 days of the non-renewal or cancellation.
- (b) The Limit of Liability for the Extended Reporting Period shall be part of, and not in addition to, **our** Limit of Liability for the **policy period**.
- (c) **Your** right to the Extended Reporting Period shall not be available where cancellation or non-renewal by **us** is due to non-payment of premium or **your** failure to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- (d) All notices and premiums payments with respect to the Extended Reporting option shall be directed to **us** through the entity named in Item 10 of the Schedule.
- (e) At the commencement of the Extended Reporting Period the entire premium shall be deemed earned; in the event that **you** terminate the Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid for the Extended Reporting Period.



## D. Notice/ Claims Reporting Provisions

1. If any **claim** is made against **you**, **you** shall as soon as practicable forward to **us** through persons named in Item 9 of the Schedule every letter of claim, demand, notice, summons or other process received by **you** or **your** representative.
2. If during the **policy period** **you** first become aware of any circumstance that could reasonably be the basis for a **claim** **you** must give written notice to **us** through persons named in Item 9 of the Schedule during the **policy period** of;
  - i. the specific details of any **wrongful act** that could reasonably be the basis for a **claim**;
  - ii. the injury or damage which may result or has resulted from the circumstance; and
  - iii. the facts by which **you** first became aware of this.

Any subsequent **claim** arising out of such circumstance made against **you** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to **us**.

3. A **claim** shall be considered to be notified to **us** when written notice is first given to **us** through persons named in Item 9 of the Schedule of the **claim** or of any **wrongful act**, which could reasonably be expected to give rise to a **claim** if provided in compliance with 2. above.
4. If **you** shall make any **claim** knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all **claims** hereunder shall be forfeited.

## E. Your Duties

1. In the event of a **claim** or potential **claim** as covered by this Policy, **you** shall at all times co-operate with **us**. At **your** own cost, **you** shall make available **your** employees so as to reduce or avoid circumstances which might lead to a **claim** as covered under this Policy.
2. **You** shall at **your** own expense take all reasonable precautions to prevent and thereafter mitigate **claims** at all times and adhere to and maintain all security systems as outlined in the Application Form.
3. **You** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or otherwise dispose of any **claim** without **our** consent.

Expenses incurred by **you** in assisting and cooperating with **us** as described above, do not constitute **claims expenses** under this Policy.



## F. Other insurance

The cover provided by this Policy is excess over and above any other valid insurance, (including any deductible portion) or agreement of indemnity available to **you**.

## G. Legal Action Against Us

No person or organization has a right under this Policy to (1) join **us** as a party or otherwise bring **us** into a suit asking for **damages** from **you**, or (2) sue **us** under this Policy in the absence of compliance with all of the terms and conditions of this Policy by **you**.

A person or organization may sue **us** to recover on an agreed settlement or on a final judgment against **you** obtained after an actual trial, but **we** will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by **us**, by **you**, and by the claimant or the claimant's legal representative.

## H. Choice of Law Provision

For all purposes, this Policy shall be interpreted according to the law in New York which conflict of law principles shall not be used to adopt the law of other states in the United States.

## I. Subrogation

In the event of **us** being required to make any form of payment under this Policy, **we** shall be subrogated to all **your** rights of recovery against any person or organization and **you** must execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** must not do anything to prejudice such rights. Subrogation recovery shall reimburse **us** for all **claims expenses** as well as costs of pursuing the subrogation and additional amounts, if any, shall be emitted to **you** to the extent of **your damages** paid.

## J. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Insurance or stop **us** from asserting any right under the terms of this Insurance; nor shall the terms of this Insurance be waived or changed, except by endorsement issued to form a part of this Insurance, signed by **us**.

## K. Mergers and Acquisitions

In the event that **you** consolidate, merge or are acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and **you** have agreed to any additional premium and terms of coverage required by **us**.



## L. Assignment

This Policy may not be assigned to any party without **our** written consent.

## M. Cancellation

1. This Policy may be cancelled by **you** by surrender thereof to **us** or by mailing to **us** through the entity named in Item 10 of the Schedule written notice stating when thereafter the cancellation shall be effective. **We** may cancel this Insurance by mailing to **you** via the broker written notice stating when not less than 60 days thereafter such cancellation shall be effective. However, if **we** cancel this Insurance because **you** have failed to pay a premium when due this Insurance may be cancelled by **us** by mailing a written notice of cancellation to **you** at the address shown in the Schedule stating when not less than 10 days thereafter such cancellation shall be effective.
2. If **you** cancel this Insurance, thirty percent (30%) of the premium shall be deemed earned upon inception of this Policy, and the remaining earned premium shall be computed in accordance with the Lloyd's short rate table and procedure; provided that the premium shall be deemed fully earned if any **claim** under this Policy is notified to **us** on or before the date of cancellation. If **we** cancel this Insurance, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## N. Dispute Resolution

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Policy promptly by negotiation. If the dispute has not been resolved by negotiation within forty-five (45) days of the disputing party's notice, either party may demand that the dispute be submitted for non-binding resolution under the then current CPR Model Mini-Trial Procedures in effect on the date of this agreement. Unless otherwise agreed, the parties will select a mini-trial neutral advisor from the CPR Panels of Neutrals and shall notify CPR and request CPR to initiate the selection process. All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified herein are pending. The parties will take such action, if any, required to effectuate such tolling.

The parties agree that no suit will be filed by either party against the other party seeking resolution of any dispute arising out of or relating to this Policy until the parties have (1) attempted to negotiate a resolution, (2) completed the non-binding CPR Mini-Trial proceeding through decision, and (3) thirty days have elapsed since the conclusion of the non-binding CPR Mini-Trial proceeding.



## O. Service of Suit

It is agreed that in the event of the failure of **us** to pay any amount claimed to be due, **we** at your request, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of **our** rights 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 in the United States. It is further agreed that service of process in such suit may be made upon the firm noted in Item 11 of the Schedule Sedgwick, Detert, Moran & Arnold, 3 Park Plaza, 17<sup>th</sup> Floor, Irvine, California 92614-8540, U.S.A., and that in any suit instituted against any one of **us** upon this contract, **we** will abide by the final and unappealable decision of such Court or of any Appellate Court including in the event of an appeal.

The above named are authorized and directed to accept service of process on **our** behalf in any such suit and/or upon **your** request to give a written undertaking to **you** that they will enter a general appearance upon **our** behalf in the event that such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, **we** designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or their successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on **your** behalf or any beneficiary hereunder arising out of this contract of insurance, and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.