



# Insurance Agents and Brokers Professional Liability Insurance Policy

**SUBJECT TO ITS TERMS, THIS POLICY PROVIDES COVERAGE FOR CLAIMS FIRST MADE DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED TO THE INSURER IN ACCORDANCE WITH SECTION VII.A OF THE POLICY. EXCEPT WITH RESPECT TO INSURING AGREEMENT B, DEFENSE EXPENSES ARE PAID IN ADDITION TO THE LIMITS OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon all statements made and information furnished to the **Insurer**, including the statements made in the **Application**, the **Insurer** and the **Insured**, subject to all of the terms, conditions and limitations of this Policy and any endorsements thereto, agree as follows:

## **I. INSURING AGREEMENTS**

**A.** The **Insurer** will pay on behalf of the **Insured**, subject to the Limit of Liability set forth in Item 3(b) of the Declarations, **Loss** in excess of the Retention set forth in Item 4 of the Declarations, which the **Insured** shall become legally obligated to pay because of **Claims**, other than **Governmental Claims**, provided always that:

1. such **Claim** is first made against the **Insured** during the **Policy Period** or any applicable Extended Reporting Period; and
2. such **Claim** arises out of a **Wrongful Act** or **Personal Injury** committed on or after the Retroactive Date stated in Item 7 of the Declarations; and
3. notice of such **Claim** is given to the **Insurer** in accordance with Section VII of the Policy.

In addition to the Limit of Liability set forth in Item 3(b), the **Insurer** shall have the right and duty to defend any **Claim** to which this Insuring Agreement applies, even if the allegations of the **Claim** are groundless, false or fraudulent.

**B.** The **Insurer** will pay on behalf of the **Insured**, subject to the Limit of Liability set forth in Item 3(c) of the Declarations, **Loss** and **Defense Expenses** which the **Insured** shall become legally obligated to pay because of **Governmental Claims**, provided always that:

1. such **Governmental Claim** is first made against the **Insured** during the **Policy Period** or any applicable Extended Reporting Period; and
2. such **Governmental Claim** arises out of a **Wrongful Act** committed on or after the Retroactive Date stated in Item 7 of the Declarations; and
3. notice of such **Governmental Claim** is given to the **Insurer** in accordance with Section VII of the Policy.

There shall be no retention applicable to **Governmental Claims**. The aggregate Limit of Liability shown in Item 3(c) of the Declarations is the most the **Insurer** will pay, no matter how many **Governmental Claims** are made during the **Policy Period**, and shall be part of, and not in addition to the Limit of Liability stated in Item 3(d) of the Declarations.

As part of, and subject to the Limit of Liability set forth in Item 3(c), the **Insurer** shall have the right and duty to defend any **Claim** to which this Insuring Agreement applies, even if the allegations of the **Claim** are groundless, false or fraudulent.

## II. DEFINITIONS

A. "**Application**" means the application for this Policy and for all previous policies issued by the **Insurer** providing continuous coverage until the Inception Date of this **Policy**, any and all materials and information submitted to the **Insurer** in connection with such applications, and all publicly available material that is created by the **Insured** about the **Insured** that the **Insurer** obtained prior to the Inception Date of this Policy, all of which are deemed to be on file with the **Insurer** and are deemed to be attached to, and form a part of, this Policy, as if physically attached.

B. "**Claim**" means:

1. any written notice or demand for monetary relief;
2. any civil proceeding in a court of law; or
3. any administrative proceeding;

made against any **Insured** seeking to hold such **Insured** responsible for damages for a **Wrongful Act** or **Personal Injury**.

A **Claim** does not include criminal proceedings of any type, and, except for a **Governmental Claim**, any proceeding that seeks injunctive, declaratory, equitable or non-pecuniary relief or remedies of any type.

C. "**Defense Expenses**" means:

1. reasonable and necessary legal fees and expenses incurred by the **Insurer** to defend the **Insureds**; and
2. all other fees, costs, costs of Subpoenas or Appeal Bonds or similar undertakings (but without any obligation on the part of the **Insurer** to furnish such bonds) and expenses incurred by the **Insurer** resulting from the investigation, adjustment, defense and appeal of a **Claim**.

**Defense Expenses** does not include:

1. any salary or loss of income;
2. punitive or exemplary damages, the multiplied portion of any multiplied damage award, criminal or civil fines or penalties, or taxes of the **Insured**.

D. "**Executive Officer**" means any Director, Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, President, General Counsel or Risk Manager of the **Named Insured**, or any person in a functionally equivalent position within the **Named Insured**.

E. "**Governmental Claim**" means a **Claim** or investigation brought by any federal, state or municipal agency, insurance department, or other governmental or quasi-governmental authority, in any capacity, whether in its own right, on behalf of an individual or entity, or by an individual or entity on the agency's or authority's behalf.

A **Governmental Claim** shall not include any **Claim** brought by a governmental entity

solely in its capacity as a customer or client of the **Insured**, and seeking only remedies available to a similarly situated private claimant. Such **Claims** may be covered under Insuring Agreement A of this Policy, if not otherwise excluded under the terms, conditions and exclusions of this Policy.

- F.** “**Insured**” means any of the following:
1. the **Named Insured** stated in the Declarations;
  2. any past, present or future principal, partner, officer, director, trustee or employee of the **Named Insured** while acting within the scope of their duties as such;
  3. any solicitor, sub-agent, sub-broker or independent contractor of the **Named Insured** but only as respects insurance placed through the facilities of the **Named Insured**; and,
  4. in the event of death, incompetence, insolvency or bankruptcy of any **Insured**, such **Insured’s** legal representative but only while engaged in conduct of the **Insured’s** business.
- G.** “**Insurer**” means the Company identified in the Declarations.
- H.** “**Interrelated Wrongful Acts**” means all **Wrongful Acts** based on, arising out of, directly or indirectly resulting from, or in any way involving the same or related facts, circumstances, situations, transactions or events.
- I.** “**Loss**” means any monetary amount paid on account of an award, judgment or settlement, including punitive or exemplary damages where insurable by law, in excess of the applicable Retention, which the **Insured** is legally obligated to pay as a result of a **Claim**.

Provided, however, that the most the **Insurer** shall pay, in the aggregate for all **Claims**, for punitive or exemplary damages is an amount not to exceed fifty percent (50%) of the maximum aggregate Limit of Liability set forth in ITEM 3(d) of the Declarations, which amount shall be part of and not in addition to the Limit of Liability set forth in ITEM 3(d) of the Declarations.

**Loss** shall not include:

1. **Defense Expenses**;
2. any salary or loss of income;
3. the multiplied portion of any multiplied damage award, criminal or civil fines or penalties, or taxes of the **Insured**.

For the purpose of determining the insurability of punitive or exemplary damages under this Policy, the **Insurer** and the **Insureds** agree that the laws of the jurisdiction most favorable to the insurability of punitive or exemplary damages shall control, provided that such jurisdiction:

- (a) is the location of the court which awarded or imposed such punitive or exemplary damages; or
- (b) is where the **Named Insured** is incorporated or otherwise organized or has a place of business; or
- (c) is where the **Insurer** is incorporated or has its principal place of business.

- J.** “**Mold, Spores and/or Fungus**” means any mold, mildew, mycotoxins, allergens, spores, scents, vapors, gases, fungus, or any byproduct released by fungi, of any type or nature whatsoever, that can cause or threaten harm to any living organism (including human health or human welfare, or the health or welfare of any animal or plant) or can cause or threaten

physical damage, deterioration, loss of use and/or loss of value or marketability, to any tangible property whatsoever. This includes, but is not limited to, any type(s) of **Mold, Spores and/or Fungus** that are harmful or potentially harmful to health or welfare (such as *Stachybotrys* and others) or that are damaging or potentially damaging to tangible property (such as wet or dry rot, mildew and others) or that can otherwise cause or threaten to cause damages of any kind whatsoever.

**K.** “**Named Insured**” means the individual or entity identified in Item 1. of the Declarations.

**L.** “**Personal Injury**” means:

1. wrongful entry or eviction or other invasion of private occupancy;
2. false arrest, detention or imprisonment; and
3. the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual’s right of privacy.

**M.** “**Policy Period**” means the period from the Inception Date stated in Item 2. of the Declarations to the earlier of the Expiration Date stated in Item 2. of the Declarations or the cancellation date.

**N.** “**Pollutant**” means any of the following:

1. smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including medical or pharmaceutical supplies and materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants;
2. **Mold, Spores and/or Fungus**; or any materials, goods or products containing, harboring or nurturing any such **Mold, Spores and/or Fungus**;
3. lead, silica or asbestos, whether or not airborne as a particle, contained in or formed as part of a product, structure or other real or personal property, ingested or inhaled or transmitted in any fashion, or found in any form whatsoever; or
4. nuclear reaction, radioactive contamination or any radiation of any kind, including but not limited to nuclear radiation and electromagnetic radiation.

**O.** “**Professional Services**” means insurance services performed for others for a fee or a commission as an insurance agent, insurance broker, insurance consultant, general agent, managing general agent, managing general underwriter, program administrator, surplus lines broker, wholesale broker, insurance claims appraiser, claims handler or claims adjuster, risk manager, notary and premium financier.

**P.** “**Wrongful Act**” means any actual or alleged negligent act, error or omission of an **Insured** arising solely from the **Insured’s** rendering or failing to render **Professional Services**.

### **III. EXCLUSIONS**

**A.** This Policy shall not apply to any **Claim, Loss, or Defense Expenses** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

1. any actual or alleged criminal, fraudulent, dishonest, or malicious act, error, or omission by or at the direction of any **Insured**; provided, however that this Exclusion shall not apply:

- a. unless there is an admission, finding or a final adjudication in any proceeding establishing that such conduct occurred; or
- b. to any natural person who did not actually commit, or have prior knowledge of, or participate in a concealment of such criminal, fraudulent, dishonest, or malicious act, error, or omission.

If any **Insured** is found to have engaged in, or admits to engaging in, the conduct specified in this Exclusion A.1., such **Insured** shall reimburse the **Insurer** for any **Defense Expenses** advanced to or paid on behalf of such **Insured**.

2. any failure to pay or delay in paying all or part of any benefit or payment due or alleged to be due under any insurance contract, bond or any benefit plan, or any actual or alleged lack of good faith or fair dealing in the handling of any claim or obligation due or alleged to be due under any insurance contract, bond or any benefit plan; provided however, that this Exclusion A.2. will not apply unless there is an admission, finding or a final adjudication in any proceeding establishing that such conduct occurred.

If any **Insured** is found to have engaged in, or admits to engaging in, the conduct specified in this Exclusion A.2., such **Insured** shall reimburse the **Insurer** for any **Defense Expenses** advanced to or paid on behalf of such **Insured**.

3. any breach of underwriting or binding authority provided however, that this Exclusion will not apply unless there is an admission, finding or a final adjudication in any proceeding establishing that such conduct occurred;

If any **Insured** is found to have engaged in, or admits to engaging in, the conduct specified in this Exclusion A.3., such **Insured** shall reimburse the **Insurer** for any **Defense Expenses** advanced to or paid on behalf of such **Insured**.

4. any fact, circumstance, situation, transaction, event, or **Wrongful Act**:
  - a. underlying or alleged in any prior and/or pending litigation, or administrative or regulatory proceeding or investigation, of which any **Insured** had received written notice before the Inception Date in Item 2 of the Declarations; or
  - b. which, before the Inception Date in Item 2 of the Declarations, was known to any **Insured**, and could reasonably be expected to give rise to a **Claim**; or
  - c. which, before the Inception Date in Item 2 of the Declarations, was the subject of any notice given by or on behalf of any **Insured** under any other policy of insurance.

If, however, this Policy is a renewal of one or more policies previously issued by the **Insurer** or underwritten by Darwin Professional Underwriters, Inc. and issued to the **Named Insured** (hereinafter referred to as the "Prior Policy/ies"), and the coverage provided was in effect, without interruption, for the entire time between the inception date of the first Prior Policy and the Inception Date of this Policy, the references in this Exclusion A.4.a or A.4.b. to the Inception Date will be deemed to refer instead to the inception date of the first Prior Policy.

5. any actual or alleged guarantee of any future premium payment, of any investment

result or return, of any interest rate or yield, or any tax consequence in connection with any insurance product, annuity, mutual fund or security.

6. any **Claim** made against any **Insured** by an entity:
  - a. which is operated, managed, or controlled by any **Insured** or in which any **Insured** has a legal or beneficial ownership interest in excess of ten percent (10%); or
  - b. which operates, manages, or controls any **Insured** or which has a legal or beneficial ownership interest in any **Insured** in excess of ten percent (10%).
7. any actual or alleged commingling of, or inability or failure to pay, collect, safeguard or return any money or failure to perform any actuarial service.
8. any liability assumed by the **Insured** under contract, unless the **Insured** would have been legally liable in the absence of such contract.
9. any actual or alleged placement or failure to place reinsurance.
10. any actual or alleged sale or failure to sell any securities, other than variable annuities or variable life insurance.
11. any **Claim** that seeks injunctive, declaratory, equitable or other non-monetary relief or remedies of any type, except for **Governmental Claims** subject to the Limit of Liability in Item 3(c) of the Declarations.
12. any actual or alleged placement of a risk or an insurance or reinsurance contract, policy or other risk transfer mechanism, device or funding vehicle with any insurance company, self-insured trust, group insurance trust, risk retention group, joint underwriting association or other risk assuming entity that is unable to meet a financial, legal or other obligation to another party, including but not limited to a policy holder.

This Exclusion shall not apply to any placement with an entity which:

- a. is rated B+(stable) or higher by A.M. Best Company at the time of binding of coverage, provided that if such entity was rated B+(stable) at the time of binding of coverage it must not have been downgraded by A.M. Best Company within one (1) year prior to such placement; or
  - b. is specifically listed in an Endorsement attached hereto.
13. any actual or alleged establishment, ownership, operation, administration of: any healthcare organization, including any Health Maintenance Organization or Preferred Provider Organization; any Self Insurance Program; Captive Insurer; Multi-Employer Trust; Risk Retention Group or Risk Purchasing Group (including those formed under the Federal Liability Risk Retention Act of 1981 and 1986, as amended or any amendment thereto).
  14. from any nuclear reaction, nuclear radiation or radioactive contamination or to any act or condition, incident to the foregoing.
  15. the return of any commission, fee, cost or expense previously paid or retained, whether by way of restitution of specific funds or other return of commissions or fees or reimbursement of premiums.

- B.** Except for **Claims** resulting from any actual or alleged failure of the **Insured** to effect or maintain any insurance or bond, in whole or in part, or on any particular terms or with any particular limits, this Policy shall not apply to any **Claim, Loss, or Defense Expenses** based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the following:
1. any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment **Company** Act of 1940, the Investment Advisers Act of 1940, any similar state statute, any rule or regulation promulgated under any of the foregoing, or any amendment to any of the foregoing, or any provision of the common law imposing liability in connection with the offer, sale or purchase of securities.
  2. any actual or alleged discrimination of any kind, including but not limited to, race, creed, religion, age, handicap, sex, marital status or financial condition.
  3. any actual or alleged refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or any other employment-related practices, policies, acts, errors, or omissions.
  4. any actual or alleged infringement of copyright, patent, trademark or service mark or any other intellectual property violation.
  5. any actual or alleged bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property including the **Loss** of use thereof.
  6. any **Insured's** actual or alleged activities in a fiduciary capacity as respects any employee benefit or pension plan, including any **Claim** involving the Employee Retirement Income Security Act of 1974 (ERISA), as now hereafter amended, or any similar state laws.
  7. any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, seepage, migration, release, growth, infestation, spread, escape, treatment, removal or disposal of, any **Pollutant**, or any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutant**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

#### **IV. LIMITS OF LIABILITY AND RETENTION**

Regardless of the number of **Insureds** under this Policy, **Claims** made or suits brought on account of **Wrongful Acts, Personal Injury** or otherwise, the **Insurer's** liability is limited as follows:

- A.** The Limit of Liability specified in Item 3(d) of the Declarations shall be the maximum aggregate liability for all **Loss** and **Defense Expenses** from all **Claims** under all Insuring

Agreements to which this Policy applies.

- B.** The Limit of Liability specified in Item 3(a) of the Declarations shall be the maximum liability for **Loss** for each **Claim** under Insuring Agreement A to which this Policy applies.
- C.** The Limit of Liability specified in Item 3(b) of the Declarations shall be the maximum aggregate liability for all **Loss** from all **Claims** under Insuring Agreement A to which this Policy applies.
- D.** The Limit of Liability specified in Item 3(c) of the Declarations shall be the maximum aggregate liability for all **Loss** and **Defense Expenses** from all **Governmental Claims** under Insuring Agreement B to which this Policy applies.
- E.** The Retention amount stated in Item 4 of the Declarations shall apply to **Loss** and **Defense Expenses** and shall apply to each and every **Claim** under Insuring Agreement A. The **Insurer** shall only be liable to pay, subject to the Limit of Liability provisions stated above, for **Loss** and **Defense Expenses** in excess of such Retention, and such Retention shall not be insured under this Policy.
- F.** **Claims** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts**, shall be considered a single **Claim** and shall be considered first made during the **Policy Period** or Extended Reporting Period, if applicable, in which the earliest **Claim** arising out of such **Wrongful Act(s)** or **Interrelated Wrongful Acts** was first made. All **Loss** and **Defense Expenses** from such **Claims** shall be subject to one Limit of Liability.
- G.** With respect to all **Claims** under Insuring Agreement A, **Defense Expenses** are paid in addition to the applicable Limit of Liability, and payment of **Defense Expenses** shall not reduce or exhaust such Limit of Liability.
- H.** With respect to all **Claims** under Insuring Agreement B, **Defense Expenses** are part of and not in addition to the applicable Limit of Liability, and payment of **Defense Expenses** shall reduce and may exhaust such Limit of Liability.
- I.** The **Insurer** shall not be obligated to pay any **Loss** or **Defense Expenses** or to defend or continue to defend any **Claim** after the applicable Limit of Liability has been exhausted by the payment of **Loss** under Insuring Agreement I.A. and/or **Loss** and **Defense Expenses** under Insuring Agreement I.B.

## **V. DEFENSE AND SETTLEMENT**

The **Insurer** will have the right to make investigations and conduct negotiations and enter into the settlement of any **Claim** as the **Insurer** deems appropriate, and no **Insured** shall admit any liability for or offer to settle any **Claim** or incur any costs, charges or expenses without the **Insurer's** prior written consent.

## **VI. EXTENDED REPORTING PERIOD**

In case of cancellation or non-renewal of this Policy by the **Insurer** or the **Named Insured**, for reasons other than the **Named Insured's** non-payment of premium or Retention or non-compliance with the terms and conditions of this Policy, the **Named Insured** shall have the right to an Extended Reporting Period as follows:

**A.** Automatic Extended Reporting Period

If this Policy has been in force for at least six (6) months, or if it has been in force for fewer than six (6) months and the **Insurer** consents, the **Named Insured** shall have the right to a period of sixty (60) days following the effective date of such cancellation or non-renewal (referred to as the Automatic Extended Reporting Period), in which to give notice to the **Insurer** of **Claims** first made against the **Insured** during said sixty (60) days period for any **Wrongful Act** committed prior to the effective date of such cancellation or non-renewal and otherwise covered by this Policy.

**B.** Optional Extended Reporting Period

1. If this Policy has been in force for at least six (6) months, or if it has been in force for fewer than six (6) months and the **Insurer** consents, the **Named Insured** shall have the right upon payment of an additional premium to have issued an endorsement providing an Extended Reporting Period covering **Claims** first made and reported to the **Insurer** during the Extended Reporting Period for **Wrongful Acts** committed prior to the effective date of such cancellation or non-renewal and otherwise covered by this Policy. The additional premium for the Extended Reporting Period shall be one hundred percent (100%) of the total policy premium set forth in Item 6. of the Declarations. The **Named Insured** must notify the **Insurer** in writing of its intent to purchase an Extended Reporting Period and must pay the additional premium set forth above no later than sixty (60) days after the effective date of such cancellation or non-renewal.
2. The duration of the Optional Extended Reporting Period shall be twelve (12) months from the effective date of cancellation or non-renewal of the Policy.
3. All premiums paid with respect to the Optional Extended Reporting Period shall be deemed fully earned as of the first day of the Extended Reporting Period.

**C.** The **Limit of Liability** with respect to **Claims** made during any Extended Reporting Period will be part of, and not in addition to the **Limit of Liability** for all **Claims** made during the **Policy Period**.

**VII. REPORTING REQUIREMENTS**

**A.** In the event a **Claim** is made against the **Insured**, the **Insured** shall immediately, and in no event later than sixty (60) days after the Expiration Date set forth in Item 2. of the Declarations, or, in the event that an Extended Reporting Period has been purchased, no later than the expiration of the Extended Reporting Period, forward to the **Insurer** every demand, notice, summons or other process and pleadings received by the **Insured** or their representatives. Said documents and information should be mailed to the address set forth in Item 6 of the Declarations.

**B.** If, during the **Policy Period**, the **Insured** first become aware of a specific **Wrongful Act** which may subsequently give rise to a **Claim**, and the **Insured** as soon as practicable after such **Wrongful Act** first occurs, and in no event later than the Expiration Date set forth in Item 2. of the Declarations, gives the **Insurer** written notice of such **Wrongful Act**, including a description of the **Wrongful Act** in question, the date such **Wrongful Act** occurred, the identities of the persons and entities involved, the consequences which have resulted or may result from such **Wrongful Act**, the damages which have resulted or may result from such **Wrongful Act** and the circumstances by which the **Insured** first became

aware of such **Wrongful Act**, and then the **Insurer** will treat any such subsequently resulting **Claim** as if it had been first made during the **Policy Period**. Notice of any subsequently resulting **Claim** must be given to the **Insurer** as soon as practicable after it is first made against the **Insured**.

#### **VIII. CANCELLATION; NO OBLIGATION TO RENEW; RETURN PREMIUMS**

- A.** The **Named Insured** may cancel this Policy by mailing or delivering to the **Insurer** advance written notice of cancellation.
- B.** The **Insurer** may cancel this Policy for nonpayment of premium by mailing or delivering to the **Named Insured** written notice of cancellation at least ten (10) days before the effective date of cancellation.
- C.** The **Insurer** may cancel this Policy for reasons other than nonpayment of premium by mailing or delivering to the **Named Insured** written notice of cancellation at least sixty (60) days before the effective date of cancellation.
- D.** The **Insurer** will not be obligated or required to renew this Policy.
- E.** The **Insurer** will mail or deliver any notice of cancellation or non-renewal to the **Named Insured's** last known mailing address. Notice of cancellation will state the effective date of the cancellation and the reason for cancellation. The **Policy Period** will end on that date. If this Policy is cancelled, the **Insurer** will send the **Named Insured** any premium refund due. Earned premium will be computed in accordance with the customary short rate table and procedure, except that in the event of cancellation by the **Named Insured**, earned premium will be the greater of the short rated premium or twenty-five percent (25%) of the total policy premium shown in ITEM 6. of the Declarations. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### **IX. CHANGE IN CONTROL; MERGERS AND ACQUISITIONS**

- A.** If, during the **Policy Period**, any of the following events occur:
  - 1. the acquisition of any **Insured**, or all or substantially all of its assets, by another entity or the merger or consolidation of any **Insured** into or with another entity such that the **Insured** is not the surviving entity;
  - 2. the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to any **Insured**;

coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, this Policy may not be canceled by the **Insured** and the entire premium for this Policy will be deemed fully earned.

- B.** If during the **Policy Period**, any **Insured**:
  - 1. acquires any assets, acquires a Subsidiary or acquires any entity by merger and, at the time of such transaction, the assets so acquired or the assets of the entity so acquired

exceed fifteen percent (15%) of the total assets of the **Insured** as reflected in the **Insured's** most recent audited consolidated financial statements; or

2. assumes any liabilities and, at the time of such assumption, the liabilities so assumed exceed fifteen percent (15%) of the total liabilities of the **Insured** as reflected in the **Insured's** most recent audited consolidated financial statements.

(in any such case, a "Transaction"), the acquired entity will be included within the term **Insured** and **Claims** relating to the acquired assets or assumed liabilities will be covered under this Policy, subject to its terms and conditions, for a period of thirty (30) days after the date of such Transaction or until the end of the **Policy Period**, whichever is earlier. The acquired entity will not be included within the term **Insured** and **Claims** relating to the acquired assets or assumed liabilities will not be covered under this Policy, after the expiration of thirty (30) days after the date of such Transaction unless the **Insurer** has received written notice containing full details of such Transaction and the **Insurer**, in its sole discretion, has agreed to provide coverage upon such terms, conditions and limitations of coverage and such additional premium as it may require. No coverage will be available under this Policy for **Loss**, or **Defense Expenses**, from any **Claim** against any entity or persons, included within the term "**Insured**" by reason of this provision, for any **Wrongful Act** committed or allegedly committed before the date of such Transaction, or for any **Wrongful Act** involving the acquired assets or assumed liabilities committed or allegedly committed before the date of such Transaction.

## X. GENERAL CONDITIONS

### A. POLICY TERRITORY

This Policy applies to **Wrongful Acts** committed by the **Insured** anywhere in the world; provided, however, that any such **Claim** must be brought and maintained against the **Insured** in the United States of America, its territories or possessions.

### B. ASSISTANCE AND COOPERATION

The **Insured** shall cooperate with the **Insurer** and upon the **Insurer's** request shall attend hearings and trials and shall assist in effecting settlements, securing and giving of evidence, obtaining the attendance of witnesses and in the conduct of suits in connection with any **Claim** covered by the insurance afforded by this Policy. The **Insurer** shall reimburse the **Insured's** actual, out of pocket costs for attendance at hearings or trials, in an amount not to exceed Two Hundred Fifty Dollars (\$250.00) per day. The **Insured** shall assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to the **Insured** because of **Wrongful Acts** with respect to which insurance is afforded under this Policy.

### C. ACTION AGAINST THE INSURER

1. No action may be brought against the **Insurer**, unless as a condition precedent thereto, there has been full compliance with all of the terms of this Policy and the amount of the obligation of the **Insureds** to pay has been finally determined either by a judgment against the **Insureds** after actual trial, or by written agreement of the **Insureds**, the claimant and the **Insurer**.

2. No person or entity will have any right under this Policy to join the **Insurer** as a party to any **Claim** to determine the liability of any Insured; nor may the **Insurer** be impleaded by an **Insured** or his or her legal representatives in any such **Claim**.

#### **D. BANKRUPTCY**

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the **Insurer** of any of its obligations hereunder.

#### **E. SUBROGATION**

In the event of any payment for any **Claim** under this Policy, the **Insurer** shall be subrogated in the amount of such payment to the **Insured's** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights.

#### **F. OTHER INSURANCE**

This insurance shall be excess over any other valid insurance, whether such insurance is stated to be primary, contributory, excess, contingent, or otherwise. This provision does not apply to insurance which is purchased by the **Insured** specifically to apply in excess of this insurance.

#### **G. ASSIGNMENT**

No assignment of interest of the **Insured** under this Policy shall be valid, unless the written consent of the **Insurer** is endorsed hereon. In the event of the death or incompetence of the **Insured**, this Policy shall cover the **Insured's** legal representative as an **Insured** with respect to any liability previously incurred and covered by this Policy.

#### **H. REPRESENTATIONS**

The **Named Insured** represents on behalf of all **Insureds** that the particulars and statements contained in the **Application** are true, accurate and complete, and agrees that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and to constitute a part of this Policy, are the basis of this Policy.

#### **I. SEVERABILITY**

In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, the knowledge of one **Insured** person will not be imputed to any other **Insured** person, provided, however, that this Policy will be void:

1. with respect to any **Insured** person who knew of such untruth, misrepresentation or omission; and
2. with respect to the **Named Insured**, if, and only if, the signer of the **Application** or an **Executive Officer** knew of such untruth, misrepresentation or omission.

### **XI. TERMS OF POLICY CONFORMED TO STATUTE**

The terms of this Policy which are in conflict with the statutes of the state wherein this Policy is issued are hereby amended to conform to such statutes in effect at the Effective Date of this Policy.

**IN WITNESS WHEREOF, the Insurer has caused this Policy to be executed on the Declarations Page.**