

Architects, Engineers, Surveyors, Consultants and Construction Managers Professional Liability

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS ARCHITECTS, ENGINEERS, SURVEYORS, CONSULTANTS AND CONSTRUCTION MANAGERS PROFESSIONAL LIABILITY POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR AN OPTIONAL EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE COMPANY IN WRITING PURSUANT TO THE TERMS AND CONDITIONS OF THIS POLICY. LOSS AND CLAIM EXPENSES REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the **Named Insured** to pay the Deductible herein and in reliance upon all statements made and information in the **Application**, which is deemed attached hereto and made a part of this Policy, and subject to the Limit of Liability and Deductible as well as all the terms, conditions, limitations and exclusions of this Policy, the Company agrees with the **Named Insured** as follows:

The Company shall mean the insurance carrier stated in the Declarations of this Policy.

I. INSURING AGREEMENTS

(A) Professional Services Liability Coverage

The Company shall pay **Loss and Claim Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services**, provided always that: (1) the **Claim** is first made against an **Insured** during the **Policy Period** or an Optional Extended Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, within sixty (60) days after the end of the **Policy Period** or during an Optional Extended Reporting Period (if applicable); (2) an **Insured's** partners, principals, officers, directors, members or insurance managers had no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Knowledge Date stated in the Declarations of this Policy; and (3) the **Wrongful Act** takes place on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**.

(B) Pollution Liability Coverage

The Company shall pay **Loss and Claim Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services** and resulting in a **Pollution Incident**, provided always that: (1) the **Claim** is first made against an **Insured** during the **Policy Period** or an Optional Extended Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, within sixty (60) days after the end of the **Policy Period** or during an Optional Extended Reporting Period (if applicable); (2) an **Insured's** partners, principals,

officers, directors, members or insurance managers have no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Knowledge Date stated in the Declarations of this Policy; and (3) the **Wrongful Act** takes place on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**.

The following Insuring Agreement is applicable only when the Declarations of this Policy reflect that such Insuring Agreement has been purchased:

(C) Network Security and Privacy Liability Coverage

The Company shall pay **Loss** and **Claim Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services** and resulting in a **Privacy Breach** or a **Security Breach**, provided always that: (1) the **Claim** is first made against an **Insured** during the **Policy Period** or an Optional Extended Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, within sixty (60) days after the end of the **Policy Period** or during an Optional Extended Reporting Period (if applicable); (2) an **Insured's** partners, principals, officers, directors, members or insurance managers have no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Effective Date stated in the Declarations of this Policy; and (3) such **Wrongful Act** takes place on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**.

II. SUPPLEMENTAL COVERAGES

All payments made by the Company pursuant to coverage provided by this Section shall not be subject to any Deductible and shall not operate to reduce this Policy's Limit of Liability.

(A) Disciplinary Proceedings

The Company shall reimburse an **Insured**, upon written request, up to a maximum of \$7,500 under this Policy, for reasonable and necessary legal fees and expenses incurred by an **Insured**, with the prior written consent of the Company, in responding to a disciplinary proceeding brought directly against an **Insured** by or before a state licensing board, provided always that the following conditions are satisfied:

- (1) the disciplinary proceeding arises out of **Professional Services**; and,
- (2) the disciplinary proceeding is first initiated against an **Insured** during the **Policy Period** and is also reported to the Company, in writing, during the **Policy Period** or Optional Extended Reporting Period (if applicable).

After the Company has paid \$7,500 under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any

disciplinary proceeding under this Policy.

When this provision is applicable, the Company shall have the right, but not the duty, to defend any **Insured** in the disciplinary proceeding.

(B) ADA, FFHA and OSHA Proceedings Reimbursement

The Company shall reimburse an **Insured**, upon written request, up to a maximum of \$15,000 under this Policy, for reasonable and necessary legal fees and expenses incurred by an **Insured**, with prior written consent of the Company, in responding to a regulatory or administrative proceeding brought directly against an **Insured** by a government agency under the Americans with Disabilities Act (“ADA”), the Federal Fair Housing Act (“FFHA”), or the Occupational Safety and Health Act (“OSHA”) provided always that the following conditions are satisfied:

- (1) the regulatory or administrative proceeding arises out of **Professional Services**; and,
- (2) the regulatory or administrative proceeding is first initiated against an **Insured** during the **Policy Period** and is reported, in writing, to the Company during the **Policy Period** or Optional Extended Reporting Period (if applicable).

After the Company has paid \$15,000 under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any regulatory or administrative proceeding under this Policy.

When this provision is applicable, the Company shall have the right, but not the duty, to defend any **Insured** in the regulatory or administrative proceeding.

(C) Insured’s Expense Reimbursement

The Company shall reimburse an **Insured**, upon written request, for reasonable and necessary expenses incurred by an **Insured** and provable loss of wages sustained by an **Insured**, if an **Insured** is required, by the Company, to attend legal proceedings in connection with the defense of a **Claim**. Such reimbursement shall be subject always to the following:

- (1) the maximum reimbursement for such expenses shall not exceed \$300 per day for any **Insured** who attends such proceedings at the Company’s request; and,
- (2) the Company’s maximum total liability for reimbursement of reasonable and necessary expenses shall not exceed \$7,500 under this Policy.

III. DEFENSE, INVESTIGATION & SETTLEMENT

(A) Defense

The Company shall have the right and duty to defend any **Claim** covered by this

Policy that is brought against an **Insured** alleging a **Wrongful Act** arising from **Professional Services**, even if the allegations are groundless or false. The Company has the right to select and appoint legal counsel to represent any **Insured** with respect to any **Claim** to which this Policy applies. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.

(B) Investigation and Settlement of Claim

An **Insured** shall not, except at its own expense, make any payment, admit any liability, assume any obligation or incur any expense without the prior written consent of the Company. The Company shall not be liable for any settlement, expense, assumed obligation or admission to which it has not given its prior written consent.

The Company shall have the right and sole discretion to conduct any investigation it deems necessary. The Company may, with the consent of the **Named Insured**, settle any **Claim** it deems reasonable and necessary. If the **Named Insured** refuses to consent to any settlement recommended by the Company, then the Company's liability for such **Claim** shall not exceed the amount for which the **Claim** could have been so settled, plus **Claim Expenses** incurred up to the date of such refusal, subject to the applicable Limit of Liability.

IV. DEFINITIONS

(A) Application

"Application" shall mean all applications and/or proposals, including any attachments thereto, and all other information and materials submitted by or on behalf of any **Insured** to the Company in connection with the underwriting of this Policy, or any other policy or policies of which this Policy is a renewal or replacement.

(B) Bodily Injury

"Bodily Injury" shall mean physical or mental injury to, or sickness, disease or death of a person, including any mental anguish, emotional distress or pain and suffering resulting therefrom.

(C) Claim

"Claim" shall mean:

- (1) a demand made against any **Insured** for monetary damages or services; or
- (2) any civil, judicial, administrative, regulatory or arbitration proceeding commenced by the service of a complaint or similar pleading and initiated against any **Insured**.

A **Claim** will be deemed to have been first made against an **Insured** when any **Insured** first receives notice of such **Claim**.

(D) Claim Expenses

“**Claim Expenses**” shall mean (1) reasonable and necessary legal fees and expenses charged by an attorney selected and appointed by the Company in defense of a **Claim** or circumstance that may lead to a **Claim**; and (2) all other reasonable and necessary fees, costs or expenses incurred in the investigation, adjustment, defense and appeal of a **Claim** if incurred by the Company or an attorney selected and appointed by the Company, or by an **Insured** with the prior written consent of the Company. “**Claim Expenses**” shall not include: (1) salary expenses, wages or lost earnings of any **Insured** except as provided in **Section II. (C)**, or (2) any fees, costs, or expenses incurred with respect to any criminal proceedings or criminal actions against any **Insured**.

(E) Cleanup Costs

“**Cleanup Costs**” shall mean reasonable and necessary costs, charges and expenses incurred in the investigation, removal or neutralization of a **Pollution Incident** on property not owned, rented or occupied by any **Insured**.

(F) Computer System

“**Computer System**” shall mean computer hardware, software, firmware, and components thereof, including electronic data stored therein, which are linked together through a network of two or more computers, including such networks accessible through the **Internet**, intranets, extranets, clouds or other virtual private networks.

(G) Domestic Partner

“**Domestic Partner**” shall have the meaning prescribed by applicable state or local law, or in the absence of such law, means one of two natural persons who form a couple living together in a committed, long standing relationship, provided that such persons:

- (1) have a common residence that they have shared for a period of two years or more; and,
- (2) are not blood relatives and are not married or in a domestic partnership with someone else; and,
- (3) are mentally competent, at least 18 years of age and registered as **Domestic Partners** in a local registry, if one exists.

(H) Insured

“**Insured**” shall mean:

- (1) the **Named Insured** designated as such in the Declarations of this Policy;
- (2) any current, retired or former partner, principal, officer, director, trustee,

member or employee of any **Insured** with respect to a **Wrongful Act** committed only while acting within the scope of his or her duties on behalf of any **Insured**;

- (3) any **Insured** with regard to its participation in a joint venture but solely for that **Insured's** legal liability with respect to a **Wrongful Act** arising from **Professional Services** by the joint venture. **Insured** shall not include the joint venture itself or any other entity that is part of the joint venture;
- (4) any contract, temporary or leased personnel rendering **Professional Services**, but only with respect to a **Wrongful Act** committed while acting under the direct supervision of and on behalf of any **Insured**;
- (5) the lawful spouse or **Domestic Partner** of an **Insured** (as stated in subsections 1-4 above) for any **Claim** made against such spouse or **Domestic Partner** solely by reason of his/her status as a spouse or **Domestic Partner** of an **Insured** or ownership interest in marital property/assets that are sought as recovery for such **Claim**, but only if the **Claim** does not allege any **Wrongful Act** by such spouse or **Domestic Partner**;
- (6) the estate, heirs, assigns or legal representatives (in the event of death or incompetency) of any individual **Insured** under this Policy; and,
- (7) any other individual or entity specifically added as an **Insured** by Endorsement to this Policy.

(I) Internet

“**Internet**” shall mean the worldwide public network of computers commonly known as the internet, as it currently exists or may exist in the future.

(J) Interrelated Wrongful Acts

“**Interrelated Wrongful Acts**” shall mean all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

(K) Loss

“**Loss**” shall mean a monetary judgment, award or settlement for damages including an award by a court of reasonable attorney's fees and costs to a claimant. **Loss** shall also include the non-multiplied portion of punitive and exemplary damages to the extent such damages are insurable under the law of the most favorable applicable jurisdiction that allows coverage for such damages. **Loss** shall not include:

- (1) any amount for which any **Insured** is not legally obligated to pay;
- (2) all fines, penalties, taxes or sanctions sought from or awarded against any **Insured**;

- (3) the multiple portion of any multiplied award;
- (4) discounts, coupons, prizes, awards or other incentives offered to any **Insured's** clients or customers;
- (5) the return, reduction, loss, disgorgement, restitution or offset of money, assets, fees, charges, royalties, profits or commissions;
- (6) liquidated damages, to the extent that such damages exceed the amount for which any **Insured** would have been liable in the absence of such liquidated damages agreement;
- (7) all costs with respect to injunctive, non-monetary or declaratory relief orders, including costs associated with the performance of any services or any agreement to provide such services;
- (8) any matters, judgments, damages or other amounts uninsurable under the laws pursuant to which this Policy is construed; or,
- (9) any amount allocable to uncovered **Loss** under this Policy.

(L) Malicious Code

“**Malicious Code**” shall mean unauthorized, corrupting or harmful software code, including but not limited to computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms and logic bombs.

(M) Mediation

“**Mediation**” shall mean the voluntary, non-binding process by which a qualified, professional third party neutral intercedes between the parties to a **Claim** with the intention to resolve such **Claim**. The term **Mediation** shall not include any court-ordered dispute resolution nor shall the term include arbitrations.

(N) Named Insured

“**Named Insured**” shall mean the individual or entity designated as such in the Declarations of this Policy.

(O) Network Security

“**Network Security**” shall mean any hardware or software with a function or purpose of loss mitigation or prevention of a computer attack. **Network Security** shall include, but shall not be limited to the following: firewalls, filters, DMZs, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users, and encryption.

(P) Personal Information

“**Personal Information**” shall mean an individual's first and last name together

with any one or more of that individual's:

- (1) social security number;
- (2) medical or healthcare data or other protected health information;
- (3) drivers license number, state identification number, or zip code;
- (4) account number, debit or credit card number together with any required security code, access code or password that would permit access to the individual's financial account; or,
- (5) any other non-public **Personal Information** as such might be defined by any federal, state or local **Privacy Regulation**.

Personal Information shall not include any information that is lawfully available to the general public for any reason including, but not limited to, any information contained in federal, state or local government records.

(Q) Personal Injury

"Personal Injury" shall mean any injury arising out of one or more of the following offenses:

- (1) false arrest, detention, or imprisonment;
- (2) wrongful entry, wrongful eviction, or other invasions of privacy;
- (3) assault or battery;
- (4) harassment or humiliation in any form, including, but not limited to sexual harassment;
- (5) malicious prosecution; or,
- (6) libel, slander, or defamation of character.

(R) Policy Period

"Policy Period" shall mean the period from the Effective Date of this Policy to its Expiration Date stated in the Declarations of this Policy, or its earlier termination date, if any, and specifically excludes any Optional Extended Reporting Period.

(S) Pollution Incident

"Pollution Incident" shall mean the actual or alleged discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials (including materials to be recycled, reconditioned or reclaimed) on, in, into, or upon land and structures thereupon, the atmosphere, any watercourse, body of water, or groundwater, which results in **Bodily Injury** or **Property Damage**.

(T) Privacy Breach

“**Privacy Breach**” shall mean a common law or statutory breach of confidence or violation of any common law or statutory rights to privacy, including but not limited to a breach of an **Insured’s Privacy Policy**, a breach of a person’s right of publicity, false light, intrusion upon a person’s seclusion, or public disclosure of a person’s **Personal Information**.

(U) Privacy Policy

“**Privacy Policy**” shall mean an **Insured’s** policies in written or electronic form that govern the collection, dissemination, confidentiality, integrity, accuracy or availability of **Personal Information** provided to an **Insured’s** employees or third parties.

(V) Privacy Regulation

“**Privacy Regulation**” shall mean any federal, state or local statute, legislative act or regulation governing the confidentiality, control and use of personally identifiable financial, medical or other sensitive information, including but not limited to:

- (1) Health Insurance Portability and Accountability Act of 1996 (as amended) and its implementing regulation;
- (2) Gramm-Leach-Bliley Act of 1999; and,
- (3) any other similar federal, state or local identity theft and privacy protection legislation that requires commercial entities that collect **Personal Information** to post privacy policies, adopt privacy policies and/or controls or notify individuals in the event **Personal Information** has potentially been compromised.

(W) Professional Services

“**Professional Services**” shall mean those services performed for others, by or on behalf of an **Insured**, for a fee or pro bono, as:

- (1) an Architect;
- (2) an Engineer;
- (3) a Construction Manager;
- (4) a Land Surveyor;
- (5) a Landscape Architect;
- (6) an Environmental Consultant;
- (7) an Expert or Forensic Witness;
- (8) a Scientist;
- (9) a Laboratory Testing Consultant;
- (10) a Technical Consultant;

- (11) a Building Information Modeling Consultant;
- (12) a Computer Aided Design and Drafting Consultant;
- (13) an Interior Designer;
- (14) a Land Planner;
- (15) a Space Planner; or,
- (16) a LEED professional or sustainable development professional.

(X) Property Damage

“**Property Damage**” shall mean:

- (1) physical injury to, or destruction of, tangible property of parties other than any **Insured**, including loss of use resulting therefrom;
- (2) loss of use of tangible property of parties other than any **Insured**, that has not been physically injured or destroyed; or,
- (3) **Cleanup Costs** incurred by a third party to the extent mandated by a court order or by any governmental agency or to prevent clear and imminent danger to an individual or to property.

(Y) Security Breach

“**Security Breach**” shall mean:

- (1) the failure by any **Insured** to prevent the transmission of a **Malicious Code**;
- (2) the failure by any **Insured** to provide any authorized user of an **Insured’s** website, or an **Insured’s** computer or communications network, with access to such website, or computer or communications network;
- (3) the failure by any **Insured** to prevent unauthorized access to, or use of, data containing **Personal Information** of others; or,
- (4) the failure by any **Insured** to provide notification of any actual or potential unauthorized access to, or use of, data containing **Personal Information** of others if such notification is required by any federal or state regulation or statute.

A series of related or repeated **Security Breaches**, or multiple **Security Breaches** resulting from a failure(s) of **Network Security**, shall be considered a single **Security Breach** and be deemed to have first occurred at the time of the first such **Security Breach**.

(Z) Wrongful Act

“**Wrongful Act**” shall mean any actual or alleged negligent act, error or omission committed or allegedly committed by any **Insured** or by an individual

or entity for whom an **Insured** is legally liable.

V. EXCLUSIONS AS TO THE ENTIRE POLICY

This Policy does not apply to any **Claim, Claim Expenses** or **Loss**:

- (A) based upon or arising out of any dishonest, criminal, fraudulent, malicious or intentional acts, errors or omissions committed or allegedly committed by any **Insured** or any individual or entity for whom any **Insured** is legally liable;
- (B) based upon or arising out of the rendering or failure to render **Professional Services** by any **Insured** for any individual or entity (or any employee, principal, owner, shareholder, director, partner, stockholder, assignee or subrogee of such individual or entity) that:
 - (1) wholly or partly owns, operates, controls, or manages any **Insured**; or,
 - (2) at any time during or subsequent to the performance or failure to perform **Professional Services** is, or was operated, managed or controlled by any **Insured**, or for which any **Insured** was an officer or director, or in which any **Insured** has an ownership interest of 49% or more;
- (C) based upon or arising out of any actual or alleged wrongful employment practices, including but not limited to:
 - (1) any actual or alleged discrimination, harassment, or wrongful employment conduct by any **Insured**; or,
 - (2) any actual or alleged violation of any local, state, or federal law, regulation or ordinance by any **Insured**;
- (D) based upon or arising out of any liability of others assumed by any **Insured** under any oral or written contract or agreement, unless such liability would have attached to that **Insured** even in the absence of such contract or agreement;
- (E) based upon or arising out of any assertions, allegations, causes of action, demands or **Claims** by or on behalf of any **Insured** under this Policy against another **Insured** hereunder;
- (F) based upon or arising out of the design, fabrication or manufacture of any goods or products that are sold or supplied by any **Insured** or by others under license from any **Insured**. This exclusion shall not apply to software or programming developed, created or tailored for others for a specific application or project when furthering or supplementing an **Insured's** rendering of **Professional Services**;
- (G) based upon or arising out of any cost to repair or replace faulty workmanship due to the performance or the failure to perform by any **Insured**, its agents or subcontractors, any actual construction including but not limited to construction, fabrication, assembling, erection, excavation, installation, demolition, or related work on any structure, facility, element, earthwork, or component;

- (H) based upon or arising out of:
 - (1) **Personal Injury, Bodily Injury**, sickness, disease or death to any employee of any **Insured** arising out of and in the course of employment by any **Insured**; or,
 - (2) any obligation for which any **Insured** or any insurer may be liable under any Workers' Compensation, Unemployment Compensation, Employers Liability, or Disability Benefits law, or any similar law or regulation;
- (I) based upon or arising out of any **Insured's** advising or requiring, or failure to advise or require, or failure to maintain any form of insurance, suretyship, or bond, either with respect to any **Insured** or any other individual or entity;
- (J) based upon or arising out of any warranty or guarantee made by any **Insured**. This exclusion shall not apply to the warranty or guarantee that **Professional Services** adhere to the generally accepted standard of care applicable to those **Professional Services**;
- (K) based upon or arising out of a nuclear reaction, radiation, or contamination or originating from a nuclear facility where nuclear material is stored or disposed of, or where a nuclear reactor is located, under any circumstances and regardless of cause;
- (L) based upon or arising out of a **Pollution Incident**, except to the extent covered under Insuring Agreement B; and,
- (M) based upon or arising out of a **Privacy Breach** or a **Security Breach**, except to the extent covered under Insuring Agreement C.

VI. EXCLUSIONS AS TO INSURING AGREEMENT C ONLY

With respect to Insuring Agreement C only, this Policy does not apply to any **Claim, Claim Expense** or **Loss**:

- (A) based upon or arising out of war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military acts or usurped power;
- (B) based upon or arising out of fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, regardless of the cause;
- (C) based upon or arising out of any **Insured's** intentional failure to disclose the loss of **Personal Information** in violation of any federal, state or local law, regulation or ordinance;
- (D) based upon or arising out of any actual or alleged false, deceptive or unfair business practices, violation of consumer protection laws, or false or deceptive

advertising;

- (E) based upon or arising out of any actual or alleged misappropriation of any trade secret by, or with active cooperation, participation, or assistance of any **Insured**, or any of an **Insured's** successors or assignees;
- (F) based upon or arising out of any failure, outage, surge, brownout or blackout, or any other disruption of power, utility services, satellites, or telecommunications services not within any **Insured's** direct operational control;
- (G) based upon or arising out of any failure of telephone lines, cable lines, data transmission lines or other infrastructure comprising or supporting the **Internet**;
- (H) based upon or arising out of any failure or defective design, architecture or configuration of any **Insured's Computer System**, including but not limited to the failure to design for traffic and capacity requirements;
- (I) based upon or arising out of the failure to ensure that any **Insured's Computer System** is reasonably protected by security practices and systems maintenance procedures that are equal to or superior to those disclosed in the **Application** for this Policy;
- (J) based upon or arising out of any of the following:
 - (1) any inadequacy or weakness in any **Insured's Network Security** that any **Insured** had knowledge of prior to the Effective Date of this Policy;
 - (2) any **Insured's** failure to take reasonable steps to use, design, maintain, and/or upgrade its **Network Security**; or,
 - (3) the inability to use, or lack of performance of, any software: (a) due to expiration, cancellation, or withdrawal of such software; (b) that had not yet been released to the production environment; or (c) that has not passed all test runs or proven successful in daily operations.
- (K) based upon or arising out of actual or alleged infringement or misuse of copyright, patent or patent rights;
- (L) based upon or arising out of actual or alleged restraint of trade, unfair competition, violation of the Sherman Antitrust Act, the Clayton Antitrust Act of 1914, the Robinson-Patman Act of 1936, or any similar federal, state or local law; and,
- (M) based upon or 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 real or personal property or that actually or allegedly causes **Bodily Injury** or **Property Damage**.

VII. INNOCENT INSUREDS

Section V. (A) shall not apply to any **Insured**, who is a natural person, who did not commit, participate in, or have prior knowledge of any dishonest, criminal, fraudulent, malicious, or intentional, acts, errors or omissions to which **Section V. (A)** would otherwise apply.

VIII. LIMIT OF LIABILITY / DEDUCTIBLE

(A) Limit of Liability

Regardless of anything, the Company's total liability under this Policy shall not exceed the amount stated in the Declarations of this Policy as Limit of Liability. The Limit of Liability shall be excess of the Deductible amount.

(B) Exhaustion of Limit of Liability

The Company shall not be liable to pay any **Loss** or **Claim Expenses** or continue the defense of any **Claim** after the Limit of Liability has been exhausted.

(C) Deductible

The Deductible amount stated in the Declarations of this Policy shall apply to **Loss** and **Claim Expenses**. The Company shall not be obligated to pay **Loss** or **Claim Expenses** until an **Insured** pays the applicable Deductible in full.

(D) Mediation of Claims Deductible Credit

The applicable Deductible amount stated in the Declarations of this Policy will be decreased by 50%, subject to a maximum reduction of \$15,000, if a **Claim** is fully and finally resolved to the satisfaction of all parties, including the Company, through **Mediation**. In the event such **Mediation** does not fully and finally resolve the **Claim**, there shall be no reduction of the Deductible obligation, and all **Claim Expenses** incurred in the **Mediation** shall be included in the total **Claim Expenses** for the **Claim**.

(E) Multiple Claims

Two or more **Claims** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered a single **Claim** and shall be deemed to have been made when the first such **Claim** was made against any **Insured**. Further, any **Interrelated Wrongful Acts** shall be deemed to have been committed at the time when the first such **Wrongful Act** was committed. A single Deductible and a single per **Claim** Limit of Liability shall apply to any **Claim** or the total of all **Claims** arising from the same **Wrongful Act** or **Interrelated Wrongful Acts**.

(F) Allocation

If both **Loss** covered under this Policy and **Loss** not covered by this Policy are incurred in connection with any **Claim**, the **Named Insured** and the Company shall use reasonable efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and **Claim Expenses** and uncovered **Loss** and

Claim Expenses based on the relative legal exposure of the parties to covered and uncovered matters. If there is no agreement on allocation of **Loss** and **Claim Expenses**, no presumption as to allocation shall exist in any arbitration, suit or other proceeding.

IX. TERRITORY

Coverage under this Policy shall apply to **Wrongful Acts** arising from **Professional Services** worldwide, provided always that a **Claim** is made and maintained against an **Insured** within the United States of America, its territories and possessions, or Canada.

X. NOTICE OF CIRCUMSTANCE

If, during the **Policy Period**, any **Insured** first becomes aware of any circumstance that may lead to a **Claim**, and if that **Insured**, during the **Policy Period**, gives written notice to the Company of:

- (A) the circumstances (including parties involved); and
- (B) the consequences that have or may result therefrom; and
- (C) the circumstances by which that **Insured** first became aware thereof;

then any **Claim** subsequently made against any **Insured** arising in whole or in part out of such circumstances shall be deemed for the purposes of this Policy to have been first been made on the date such circumstances were first reported to the Company.

Notwithstanding the foregoing, this **Section X.** shall not apply to coverage provided in **Section I. (C)** of this Policy.

XI. CONDITIONS

(A) Notification

- (1) As a condition precedent to any available rights under this Policy, in the event any **Claim** is first made against any **Insured** during the **Policy Period**, that **Insured** shall give written notice of the **Claim** to the individual designated in the Declarations of this Policy as soon as practicable, but in no event later than sixty (60) days after the end of the **Policy Period**, containing particulars sufficient to identify any **Insured** and including, but not limited to, information regarding the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses. Notice of a **Claim** to an **Insured's** insurance representative, agent or broker shall not constitute notification of a **Claim** to the Company.
- (2) If the institution of arbitration proceedings or suit is brought against any **Insured**, that **Insured** shall immediately forward to the individual designated in the Declarations of this Policy every demand, notice, summons or other process received by any **Insured** or any **Insured's** representative.

(B) Assistance and Cooperation

Every **Insured** shall cooperate with the Company and its representatives and, upon the Company's request, shall submit to examination and interrogation by a representative of the Company, under oath if required; shall attend hearings, depositions and trials; shall assist in effecting settlement; shall cooperate in securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and shall give a written statement or statements to the Company's representatives and meet with such representatives for the purpose of investigation and/or defense, all without charge to the Company, except as stated in **Section II. (C)** of this Policy. Every **Insured** shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that any **Insured** may have. As a condition precedent to every **Insured's** rights under this Policy, every **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Claim Expenses**, or otherwise assume any contractual obligation, or admit any liability with respect to any **Claim** without the prior written consent of the Company. Every **Insured** must take all reasonable action, within its ability, to prevent and/or mitigate any **Claim** or **Loss** which could be covered under this Policy and agrees that it shall not take any action which in any way increases the Company's exposure under this Policy.

(C) Audit

The Company may examine and audit any **Insured's** books and records at any time during the **Policy Period** and after the final termination of this Policy and may require reports as far as they relate to the subject matter of this Policy.

(D) Subrogation

In the event of any **Claim** or payment under this Policy, the Company shall be subrogated to the extent of such **Claim** or payment to all rights of recovery therefore, and an **Insured** shall execute all documents required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit in the name of any **Insured**. An **Insured** shall do nothing after a **Claim** is made against them to prejudice such rights. However, it is agreed that the Company waives its rights to recover against any **Insured's** client to the extent that any **Insured** had, prior to the **Claim** at issue, a written agreement with the client to waive such subrogation rights. Any and all such subrogation rights that may accrue as against any and all other parties shall remain intact and unchanged.

Any more recovery (after first deducting the costs and expenses incurred by the Company in obtaining such recovery) shall first be paid to the Company to the extent of any **Loss** or **Claim Expenses** incurred by the Company, with the balance paid to an **Insured**.

(E) Other Insurance

This Policy shall be excess over any other valid and collectible insurance, including the amount of any deductibles and/or retentions, available to any **Insured**, including any insurance under which there is a duty to defend and regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such insurance is written specifically as excess insurance of this Policy by reference in such other policy to the Policy number stated in the Declarations of this Policy.

(F) Cancellation

The **Named Insured** may cancel this Policy by mailing to the Company a written notice stating that cancellation shall take effect upon the date notice is received or at a specified date subsequent to the date of receipt. The date of receipt will be deemed the date of postmark.

If the Company decides to cancel this Policy, the Company will mail a written notice to the **Named Insured** stating on what date cancellation shall be effective and the reason for cancellation. If the reason is because of nonpayment of premium, then the date of cancellation will be at least ten (10) days from the date of the Company's notice of cancellation. If it is for any other reason, then the date of cancellation will be at least sixty (60) days from the date of the Company's notice of cancellation. After this Policy has been in effect for sixty (60) days or more, the Company shall limit the reasons for which it would cancel this Policy to the following:

- (1) nonpayment of premium;
- (2) fraud or material misrepresentation or omission in obtaining this Policy;
- (3) substantial breach of Policy terms and conditions; or,
- (4) the risk originally accepted has significantly increased or materially changed.

If this Policy is cancelled by the Company before the Expiration Date the return portion of the premium shall be computed on a prorated basis. If the **Named Insured** elects to cancel this Policy before the Expiration Date, the Company will return 90% of the unearned premium as computed on a prorated basis. Cancellation is not contingent upon the Company tendering or paying the unearned premium or its acceptance by the **Named Insured**.

(G) Non-Renewal

If the Company elects to non-renew this Policy, it will mail a written notice to the **Named Insured** stating the reason for non-renewal at least sixty (60) days before the Expiration Date of this Policy.

(H) Optional Extended Reporting Period

If this Policy is cancelled or non-renewed by the Company for any reason other than fraud, material misrepresentation, material omission or for the non-payment of premium, or if the **Named Insured** cancels or chooses not to renew

this Policy, then the **Named Insured** shall have the right, following the effective date of such cancellation, if applicable, or the Expiration Date of this Policy, to purchase an Optional Extended Reporting Period, upon written request and payment of an additional premium of up to the percentage of the full annual premium not to exceed:

For 12 months: 100% of the full annual premium.

For 24 months: 150% of the full annual premium.

For 36 months: 185% of the full annual premium.

At the commencement of the Optional Extended Reporting Period, the entire premium shall be considered earned.

Any such Optional Extended Reporting Period:

- (a) shall extend the time within which to report a **Claim** but shall not provide coverage for **Professional Services** rendered subsequent to the effective date of cancellation, if applicable, or the Expiration Date of this Policy;
- (b) shall be evidenced by issuance of an Endorsement to this Policy;
- (c) is subject to all of the terms, conditions, limitations and exclusions of this Policy;
- (d) shall require payment within thirty (30) days from the **Named Insured's** written request to bind such Optional Extended Reporting Period;
- (e) shall be effective on the effective date of such cancellation, if applicable, or the Expiration Date of this Policy and,
- (f) shall not apply to any **Claim** where, prior to the date that the Optional Extended Reporting Period is bound, any **Insured** had knowledge of a **Wrongful Act** that did or was about to give rise to a **Claim**.

The aggregate Limit of Liability for any Optional Extended Reporting Period shall be part of, and not in addition to, the aggregate Limit of Liability for the **Policy Period**. As used herein, "full annual premium" means the equivalent annual premium level for the coverage terms in effect immediately prior to the end of the **Policy Period**.

The rights contained in this provision shall terminate, however, unless the **Named Insured** provides written notice of such election to purchase the Optional Extended Reporting Period to the Company within sixty (60) days of the effective date of cancellation, if applicable, or the Expiration Date of this Policy. This provision and the rights contained herein shall not apply to any cancellation resulting from fraud, material misrepresentation, material omission or for the non-payment of premium to the Company or the finance company. Furthermore, as a condition precedent to the **Named Insured's** rights to purchase the Optional Extended Reporting Period, the total premium for this Policy must have been paid in full and any outstanding Deductible fully satisfied.

(I) Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of an **Insured's** obligation to pay with respect to a **Claim** shall have been finally determined either by judgment against an **Insured** after actual trial or by written agreement of an **Insured**, the claimant and the Company.

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

(J) Assignment

No assignment of interest under this Policy shall bind the Company unless its prior written consent is endorsed hereon.

(K) Authorization Clause

The **Named Insured**, designated in the Declarations of this Policy, shall have the sole authority and responsibility to act on behalf of every **Insured** with respect to: (1) the payment or return of premium; (2) the receipt and agreement of any Endorsements issued to form a part of this Policy; (3) the giving and receiving of any notice provided for or required by this Policy; (4) the payment of any Deductible; and, (5) the exercise of the rights provided in **Section XI. (H)** regarding the Optional Extended Reporting Period.

Each **Insured** under this Policy understands and agrees that the **Named Insured** shall have the authority set forth in this **Section XI. (K)**.

(L) Representations

- (1) Each **Insured** represents and acknowledges that statements made in the **Application**, and the information submitted therewith, are true and accurate, and that such statements and information:
 - (a) are the basis upon which this Policy was issued and are considered to be incorporated herein and form a part of this Policy; and,
 - (b) are deemed material to the acceptance of the risk assumed by the Company under this Policy.
- (2) Each **Insured** understands and agrees that this Policy was issued in reliance upon the truth and accuracy of the representations, statements, and information made in or submitted with the **Application**.

(M) Bankruptcy

Bankruptcy or insolvency of any **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this Policy.

(N) Office of Foreign Assets Control

Payment of **Loss** and **Claim Expenses** under this Policy shall only be made in full compliance with all United States of America economic or trade sanctions, laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

(O) Policy Conformance

Any terms of this Policy that are in conflict with any local or state law, regulation or ordinance of the state that applies, will be thereby amended to the extent necessary in order to conform to such local or state law, regulation or ordinance.

XII. MATERIAL CHANGES

If, during the **Policy Period**, any **Insured** acquires or creates another entity, affiliate partnership or subsidiary or any **Insured** becomes a partner in a partnership which is not designated in the Declarations of this Policy; or if any **Insured** merges or consolidates with another entity (any of which events is referred to as a "Transaction" in this condition); then, the Company shall have the option of providing coverage for such entity, affiliate, partnership or subsidiary.

No coverage shall be afforded under this Policy for any **Claim** in any way involving any entity, affiliate, partnership or subsidiary which is acquired, created, merged with or consolidated into, unless:

- (1) the **Named Insured** gives the Company notice of such Transaction as soon as possible, but in no event later than sixty (60) days after the effective date of the Transaction;
- (2) the **Named Insured** gives the Company information regarding the Transaction as it may reasonably require; and,
- (3) the Company specifically agrees, by written Endorsement to this Policy, to provide coverage to such entity, affiliate, partnership or subsidiary and the **Named Insured** accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the Company, in its sole discretion, may impose. If the Company, at its sole discretion, elects to provide coverage with respect to such entity, affiliate, partnership or subsidiary, this Policy shall not apply to, and the Company shall not pay any **Loss** or **Claim Expenses** for any **Claim** based upon or arising out of any **Wrongful Act** by such entity, affiliate, partnership or subsidiary or any **Insured** thereof happening before: (a) the effective date of the Transaction; or (b) the effective date of coverage under this Policy for such entity, affiliate, partnership or subsidiary stated in an Endorsement to be issued

to extend coverage to such entity, affiliate, partnership or subsidiary, whichever is later.

XIII. LIBERALIZATION

If the Company files and adopts any revision to this Policy during the **Policy Period** that results in broadened coverage without collecting additional premium, then the broadened coverage shall apply to this Policy as of the effective date that the filed revision is approved for use in the state shown in the mailing address for the **Named Insured**, but the broadened coverage shall not apply to **Claims** first made against any **Insured** prior to the effective date of approval of the filed revision.

XIV. ENTIRE AGREEMENT

By acceptance of this Policy, the **Named Insured** agrees that this Policy embodies all agreements existing between the **Named Insured** and the Company or any of the Company's agents relating to this Policy. Notice to, or knowledge possessed by, any agent or other individual acting on behalf of the Company shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy, nor shall the terms be waived or changed except by written Endorsement or rider issued by the Company and signed by an authorized representative of the Company to form a part of this Policy.