





**TOKIO MARINE**  
**HCC**

## **HOUSTON CASUALTY COMPANY**

**ADMINISTRATIVE OFFICES: 13403 NORTHWEST FREEWAY, HOUSTON, TEXAS 77040**

### **SEXUAL MISCONDUCT AND MOLESTATION LIABILITY INSURANCE DECLARATIONS**

#### **Schedule of Endorsements**

It is hereby agreed that the following endorsements are attached to, and are made a part of, this Policy at time of issue:

«Endorsements.EndoNum»

«Endorsements.FormCode»

«Endorsements.FormName»

«Declarations.SignedBy(image)»

SPECIMEN

## Sexual Misconduct and Molestation Liability

**THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS SEXUAL MISCONDUCT AND MOLESTATION 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 set forth in the Declarations of this Policy.

### I. INSURING AGREEMENT

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** becomes legally obligated to pay as a result of a **Claim** for a **Wrongful Act**, provided always that:

- (1) the **Claim** is first made against an **Insured** during the **Policy Period** or the Optional Extended Reporting Period, if applicable;
- (2) the **Claim** is reported to the Company in writing during the **Policy Period**, or within sixty (60) days after the end of the **Policy Period**, or during the Optional Extended Reporting Period, if applicable;
- (3) an **Insured Organization's** partners, principals, officers, directors, members, trustees, in-house counsel or risk managers had no knowledge of any act, event, circumstance, situation or incident that gave rise to such **Claim** prior to the Knowledge Date set forth in the Declarations of this Policy; and
- (4) the **Wrongful Act** takes place on or after the Retroactive Date set forth in the Declarations of this Policy.

### II. DEFENSE, INVESTIGATION & SETTLEMENT OF CLAIMS

#### (A) Defense

The Company shall have the right and duty to defend any **Claim** to which this Policy applies, even if the allegations are groundless or false. The Company has the sole 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 and, in such event, an **Insured** shall promptly take over control of the defense in accordance with Section **XI**. of this Policy.

**(B) Investigation and Settlement of Claims**

- (1) An **Insured** shall not, except at its own expense, incur any **Claim Expenses**, engage in settlement negotiations, enter into any settlement agreement, make any payment, agree to make any payment, admit any liability, assume any obligation or incur any expense without the prior written consent of the Company, such consent not to be unreasonably withheld. The Company shall not be liable for any **Claim Expenses**, settlement or other amount, or assumed obligation or admission to which it has not given its prior written consent.
- (2) The Company shall have the right and sole discretion to conduct any investigation it deems necessary.
- (3) The Company may, with the consent of the **Named Insured**, settle any **Claim** it deems reasonable and necessary.
- (4) If any **Insured** refuses to consent to any settlement recommended by the Company, and the **Claim** later results in a judgment or settlement that exceeds the recommended settlement, then the Company's liability for such **Claim** shall not exceed the amount of the recommended settlement plus **Claim Expenses** incurred up to the date of an **Insured's** refusal to consent to the recommended settlement, subject always to all other applicable terms and conditions of this Policy, including, but not limited to, the Deductible and the Limit of Liability.

**III. DEFINITIONS**

**(A) Application**

**"Application"** means 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 direct renewal or replacement.

**(B) Claim**

**"Claim"** means:

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

**"Claim"** does not include any criminal or regulatory proceedings initiated against any **Insured**, or subpoenas served upon any **Insured**.

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

**(C) Claim Expenses**

**“Claim Expenses”** means:

- (1) reasonable and necessary legal fees and expenses charged by an attorney selected and appointed by the Company in defense of a **Claim**; and
- (2) other reasonable and necessary fees, costs or expenses incurred in the investigation, settlement, 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, including the cost of appeal bonds and the cost of bonds to release property being used to secure a legal obligation, but only for bond amounts within the Limit of Liability. However, the Company shall have no obligation to apply for or furnish any bond for appeal, injunction, attachment or similar purpose.

**“Claim Expenses”** does not include:

- (1) salary expenses, wages or lost earnings of any **Insured**;
- (2) any fees, costs or expenses incurred in any criminal proceedings or criminal actions against any **Insured**;
- (3) any fees, costs or expenses incurred by an **Insured** to respond to a subpoena; or
- (4) salaries and expenses of the Company’s employees, or its in-house or coverage attorneys, or the fees and expenses of independent adjusters the Company hires.

**(D) Employee**

**“Employee”** means:

- (1) any individual whose labor or service is engaged by and directed by an **Insured Organization**, including leased, part-time, seasonal and temporary workers;
- (2) any individual employed by an **Insured Organization** in a supervisory or managerial position; and
- (3) substitute teachers, student teachers, coaches, counselors and clergy, but only while performing activities on behalf of an **Insured Organization** which are authorized and/or sponsored by such **Insured Organization**.

The status of an individual as an **Employee** shall be determined as of the date of an alleged **Wrongful Act**.

“**Employee**” does not include:

- (1) any individual who is leased to any entity or employer other than an **Insured Organization**;
- (2) any volunteer; or
- (3) any independent contractor or sub-contractor unless specifically added to this Policy by Endorsement.

**(E) Insured**

“**Insured**” means:

- (1) any **Insured Organization**;
- (2) if the **Named Insured** is an individual, his or her spouse is an **Insured**, but only for the conduct of a business of which the **Named Insured** is the sole owner;
- (3) if an **Insured Organization** is a corporation or organization other than a partnership or joint venture, the **Insured Organization’s** stockholders are **Insureds**, but only with respect to their liability as such;
- (4) if an **Insured Organization** is a partnership or joint venture, the **Insured Organization’s** partners and their spouses are **Insureds**, but only for the conduct of the **Insured Organization’s** business;
- (5) if an **Insured Organization** is a limited liability corporation (LLC) or limited liability partnership (LLP), the **Insured Organization’s** members, partners and shareholders are **Insureds**, but only with respect to the conduct of the **Insured Organization’s** business;
- (6) any natural person who is a current or former **Employee** is an **Insured**, but only while acting within the scope of his or her duties on behalf of an **Insured Organization**; and
- (7) any natural person who is a current or former executive officer, director or trustee of an **Insured Organization** is an **Insured**, but only while acting within the scope of his or duties on behalf of the **Insured Organization**.

**(F) Insured Organization**

“**Insured Organization**” means the **Named Insured** and its **Subsidiaries**.

**(G) Interrelated Wrongful Acts**

“**Interrelated Wrongful Acts**” means all **Wrongful Acts** committed by an **Insured** against any one **Victim** which have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally or logically connected facts, circumstances, situations, events, transactions or causes.

**(H) Loss**

“**Loss**” means a monetary judgment, award or settlement for damages, including statutory attorneys’ fees and costs, and pre-judgment and post- judgment interest awarded against an **Insured** on that part of any judgment paid or to be paid by the Company.

“**Loss**” shall not include:

- (1) any amount which any **Insured** is not legally obligated to pay;
- (2) non-monetary relief;
- (3) civil or criminal fines or penalties, taxes or sanctions;
- (4) the multiple portion of any multiplied damages award or punitive or exemplary damages; or
- (5) any matters, judgments, damages or other amounts which are deemed uninsurable under the law pursuant to which this Policy is construed.

**(I) Named Insured**

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

**(J) Policy Period**

“**Policy Period**” means the period from the Effective Date of this Policy to its Expiration Date as set forth in the Declarations of this Policy, or this Policy’s earlier termination date, if any. “**Policy Period**” specifically excludes the sixty (60) days following expiration referenced in Section **VII.(A)(1)** of this Policy and specifically excludes the Optional Extended Reporting Period.

**(K) Sexual Misconduct and Molestation**

“**Sexual Misconduct and Molestation**” means any actual or alleged abuse, molestation, mistreatment or maltreatment of a sexual nature, including, but not limited to, any sexual involvement, sexual conduct or sexual contact, regardless of consent.

**(L) Subsidiary**

“**Subsidiary**” means any:

- (1) corporation, in which and for as long as, the **Named Insured** owns or controls, either directly or indirectly, more than fifty percent (50%) of the issued and outstanding voting securities representing a right to vote for the election of the board of directors of such corporation;

- (2) limited liability company, in which and for as long as, the **Named Insured** owns or controls, either directly or indirectly, the right to elect, appoint or designate more than fifty percent (50%) of the members of the board of managers or management committee of such limited liability company; or
- (3) any other entity in which the **Named Insured** owns or controls more than fifty percent (50%) of the ownership equity, including any limited or general partnership.

Notwithstanding the above, any entity that becomes a **Subsidiary** after the Effective Date of this Policy shall not be automatically deemed a **Subsidiary** if such entity's annual gross revenues exceed twenty percent (20%) of the **Named Insured's** consolidated annual gross revenues as of the Effective Date of this Policy.

**(M) Victim**

“**Victim**” means any individual who alleges that he or she is the object of an act of **Sexual Misconduct and Molestation**.

**(N) Wrongful Act**

“**Wrongful Act**” means any of the following committed by an **Insured** against any one **Victim** while such **Insured** is performing duties in relation to an **Insured's Organization's** business:

- (1) any act of **Sexual Misconduct and Molestation**; or
- (2) any actual or alleged negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, any person(s) who committed, or is alleged to have committed, any act of **Sexual Misconduct and Molestation**.

#### IV. EXCLUSIONS

This Policy does not apply to:

- (A)** any **Claim** made by, on behalf of, or at the direction of any **Insured** against another **Insured**.
- (B)** any **Claim** for, based upon or arising out of any actual or alleged employment-related practice, policy, act or omission, even if an act of **Sexual Misconduct and Molestation** is involved; provided, however, this exclusion shall not apply to allegations of negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, any person(s) who committed, or is alleged to have committed an act of **Sexual Misconduct and Molestation**.
- (C)** any **Claim** against any natural person **Insured** who personally committed, participated in, or assisted in any act of **Sexual Misconduct and Molestation**.

Notwithstanding, the Company will afford a defense to which such **Insured** would



be otherwise entitled under this Policy until: (1) such **Insured** is judicially determined to have committed, participated in or assisted in such act of **Sexual Misconduct and Molestation**; or (2) such **Insured** admits in any context to having committed, participated in or assisted in such act of **Sexual Misconduct and Molestation**.

- (D) any **Claim** if, prior to the date of the **Wrongful Act** giving rise to such **Claim**, any **Insured** was aware of any allegation or complaint of **Sexual Misconduct and Molestation** being made against the same individual(s) as accused in such **Claim**.
- (E) any **Claim** for, based upon or arising out of any **Insured's** activities as a trustee, partner, officer, director or employee of any organization, corporation, company or business other than that of an **Insured Organization**.
- (F) any **Claim** for, based upon or arising out of any actual or alleged violation of any worker's compensation, disability benefits, unemployment compensation, social security or other employment benefit law, or any similar law.
- (G) any **Claim** for, based upon or arising out of the 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.
- (H) any **Claim** for, based upon or arising out of any actual or alleged violation of the Employee Retirement Income Security Act of 1974 Public Law 93-406, or any amendments thereto, including any rules or regulations issued in relation to such act, or any similar federal, state or local law, rule, regulation or ordinance.
- (I) any **Loss** resulting from, or attributable to, any allegations made by or solely for the benefit of a claimant's domestic partner, spouse, child, parent, brother or sister.
- (J) any **Claim** for, based upon or arising out of any actual or alleged fraud or collusion committed by any **Insured**.

Without limiting the foregoing, the Company will pay **Claim Expenses** incurred in defense of allegations of fraud and collusion against an innocent **Insured** named in such **Claim** so long as such **Claim** also contains allegations of a **Wrongful Act** against that innocent **Insured**.

- (K) any **Claim** for, based upon or arising out of any **Wrongful Act** which has been the subject of any notice of a **Claim** or potential **Claim** given prior to the **Policy Period** under any other policy.
- (L) any **Claim** made against a **Subsidiary**, or against any person performing duties on behalf of such **Subsidiary**, for, based upon or arising out of:
  - (1) any **Wrongful Act** committed prior to the date such entity became a **Subsidiary** or after the date such entity ceased to be a **Subsidiary**; or
  - (2) any **Wrongful Act** committed while such entity was a **Subsidiary** which, together with a **Wrongful Act** committed prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**.

- (M) any **Claim** made by or on behalf of, against or in any way involving any person working on behalf of an **Insured Organization** as a volunteer.
- (N) any **Claim** for, based upon, arising out of, directly or indirectly involving, or in any way relating to any actual, alleged or threatened act of **Sexual Misconduct and Molestation** committed at any overnight activity sponsored by an **Insured Organization**.

## V. LIMIT OF LIABILITY / DEDUCTIBLE

### (A) Limit of Liability

- (1) The amount shown in the Declarations of this Policy as the “Per **Victim** Limit” is the most the Company will pay for **Loss** and **Claim Expenses** resulting from all **Claims** first made during the **Policy Period** (and any Optional Extended Reporting Period, if applicable) for **Wrongful Acts** against any one **Victim**, regardless of the number of acts of **Sexual Misconduct and Molestation** against any one **Victim**, the number of individuals participating in acts of **Sexual Misconduct and Molestation** against any one **Victim**, the number of **Claims** or the number of **Insureds**. The “Per Victim Limit” is part of and not in addition to the Total Policy Aggregate Limit shown in the Declarations of this Policy.
- (2) The “Per Victim Limit” notwithstanding, the amount shown in the Declarations of this Policy as the “Per Perpetrator Aggregate Limit” is the most the Company will pay for **Loss** and **Claim Expenses** resulting from all **Claims** first made during the **Policy Period** (and any Optional Extended Reporting Period, if applicable) for **Sexual Misconduct and Molestation** committed or alleged to have been committed by any one perpetrator, regardless of the number of acts of **Sexual Misconduct and Molestation** committed or alleged to have been committed by such perpetrator, the number of **Victims** or claimants, the number of **Claims** or the number of **Insureds**. The “Per Perpetrator Limit” is part of and not in addition to the Total Policy Aggregate shown in the Declarations of this Policy.
- (3) The amount shown in the Declarations of this Policy as the “Total Policy Aggregate Limit” is the most the Company will pay for **Loss** and **Claim Expenses** resulting from all **Claims** first made during the **Policy Period** (and any Optional Extended Reporting Period, if applicable) for all **Wrongful Acts** against all **Victims**, regardless of the number of **Victims** or claimants, the number of perpetrators who committed or are alleged to have committed acts of **Sexual Misconduct and Molestation**, the number of **Claims** or the number of **Insureds**.

### (B) Exhaustion of Limit of Liability

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

- (2) The payment of **Loss** or **Claim Expenses** by the Company reduces and may totally exhaust the applicable Limit of Liability.

**(C) Deductible**

- (1) The Deductible amount set forth in the Declarations of this Policy shall apply to **Loss** and **Claim Expenses** resulting from each **Claim**; however, the Deductible shall only apply once to all **Claims** for **Wrongful Acts** against any one **Victim**, regardless of the number claimants bringing such **Claims**.
- (2) The Company shall not be obligated to pay **Loss** or **Claim Expenses** until an **Insured** pays the Deductible in full. No Limit of Liability shall be reduced by the amount of the Deductible.
- (3) Any payments made to satisfy the retention or deductible under another policy of insurance shall not satisfy or apply towards the Deductible, or any portion thereof, under this Policy.

**(D) Multiple Claims**

Two or more **Claims** based upon, arising out of or involving the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be considered a single **Claim** and shall be deemed to have been made when the earliest of such **Claims** was made against any **Insured**. Further, any **Interrelated Wrongful Acts** shall be deemed to have been committed at the time when the earliest of such **Wrongful Acts** was committed.

**(E) Non-Stacking of Limits**

If any **Claim** is covered, in whole or in part, under this Policy, and any other policy issued by the Company, even if by Endorsement, then the total limit of liability for such **Claim** shall not exceed the single largest limit of liability available for such **Claim**. The largest applicable limit of liability shall apply only once to such **Claim** and shall operate to reduce this Policy's Limit of Liability. The retention or deductible for each policy shall be applied to the portion of such **Claim** that is allocated to the respective **Insured**.

**(F) Allocation**

If a **Claim** made against any **Insured** includes both covered and uncovered allegations or is made against both an **Insured** and others not insured under this Policy, the **Named Insured** and the Company agree that there must be an allocation between insured and uninsured **Loss** and **Claim Expenses**. Additionally, the **Named Insured** and the Company agree that in determining a fair and appropriate allocation of insured and uninsured **Loss** and **Claim Expenses**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with, the defense and/or settlement of the **Claim** by the **Named Insured** and others. If there is no agreement as to the allocation of **Claim Expenses**, the Company shall pay the allocated portion of **Claim Expenses** which the Company deems fair and appropriate until such time as an agreement can be reached. In addition, 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.

## VI. TERRITORY

This Policy shall apply to **Wrongful Acts** occurring anywhere in the world, provided always that a **Claim** is made and maintained against an **Insured** within the United States of America, its territories and possessions, or Canada.

## VII. NOTIFICATION

### (A) Notice of Claim

- (1) As a condition precedent to any available rights under this Policy, if any **Claim** is made against any **Insured**, any **Insured** shall give written notice of the **Claim** to the individual designated in the Declarations of this Policy as soon as practicable but no later than sixty (60) days after the end of the **Policy Period** or during the Optional Extended Reporting Period, if applicable.
- (2) Notice to the Company of any **Claim** should include:
  - (a) the identity of the person(s) alleging the **Wrongful Act(s)**;
  - (b) the identity of any **Insured(s)** who allegedly committed the **Wrongful Act(s)**;
  - (c) the identity of any witnesses to the alleged the **Wrongful Act(s)**; and
  - (d) the date(s) the alleged the **Wrongful Act(s)** were committed.

### (B) Notice of Potential Claim

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

- (a) the circumstances (including the names of the parties involved);
- (b) the specific alleged **Wrongful Act**; and
- (c) the consequences that have resulted or may result therefrom;

then any **Claim** subsequently made against any **Insured** arising in whole or in part out of such **Wrongful Act** shall be deemed for the purposes of this Policy to have been first made on the date such **Wrongful Act** was first reported to the Company. The Company shall have no obligation to pay any fees, expenses, or other amounts incurred prior to the time the reported circumstance becomes a **Claim** and written notice of such **Claim** is provided to the Company pursuant to Section **VII.(A)** of this Policy.

## VIII. CONDITIONS

### (A) Assistance and Cooperation

- (1) 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. 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.
- (2) 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** to which this Policy applies and agrees that it shall not take any action which in any way increases the Company's exposure under this Policy.

### (B) Subrogation

- (1) If any payment is made under this Policy, the Company shall be subrogated to the extent of such payment to all rights of recovery thereof, and any **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**, and shall provide all other assistance and cooperation which the Company may reasonably require. An **Insured** shall do nothing after a **Claim** is made against an **Insured** to prejudice the Company's subrogation rights.
- (2) All recoveries (after first deducting the legal fees 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**.

### (C) 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 as set forth in the Declarations of this Policy.

**(D) Cancellation**

- (1) The **Named Insured** may cancel this Policy by giving advance written notice to the Company stating when thereafter cancellation shall take effect.
- (2) If the Company decides to cancel this Policy, the Company will mail 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 non-payment 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.
- (3) 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 earned premium will be computed on a short rate basis subject to a minimum earned of twenty-five percent (25%) of the total annual premium. Notwithstanding the foregoing, if a **Claim** or potential **Claim** is made against an **Insured**, and reported under this Policy, no return premium will be provided. Cancellation is not contingent upon acceptance by the **Named Insured** of the unearned premium.

**(E) Non-Renewal**

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

**(F) Optional Extended Reporting Period**

- (1) 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 of 12 months upon written request and payment of an additional premium of 100% of the full annual premium.
- (2) At the commencement of the Optional Extended Reporting Period, the entire premium shall be considered fully earned.
- (3) Any such Optional Extended Reporting Period:
  - (a) shall only apply with respect to any **Claim** first made during the Optional Extended Reporting Period and only with respect to any

**Wrongful Acts** committed on or after the Retroactive Date set forth in the Declarations of this Policy and before 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; and
  - (e) shall be effective on the effective date of such cancellation, if applicable, or the Expiration Date of this Policy.
- (4) The aggregate Limit of Liability for the Optional Extended Reporting Period shall be part of, and not in addition to, this Policy's Aggregate Limit of Liability for the **Policy Period** set forth in the Declarations. The purchase of the Optional Extended Reporting Period shall not increase or reinstate any Limit of Liability set forth in the Declarations, which shall be the Company's maximum liability for all **Loss**, including **Claim Expenses**, for all **Claims** first made during the **Policy Period** and Optional Extended Reporting Period.
- (5) 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**, including any additional premium for endorsements.
- (6) A change in Policy terms, conditions or exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the **Named Insured's** right to purchase the Optional Extended Reporting Period.
- (7) 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 thirty (30) days of the effective date of cancellation, if applicable, or the Expiration Date of this Policy. 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.

**(G) Action Against the Company**

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

**(H) Assignment**

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

**(I) Authorization Clause**

(1) 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 exercise of the rights provided in Section **II.(B)(4)** regarding consent to settlement; and (4) the exercise of the rights provided in Section **VIII.(F)** regarding the Optional Extended Reporting Period.

(2) By acceptance of this Policy, every **Insured** under this Policy understands and agrees that the **Named Insured** shall have the authority set forth in this Section **VIII.(I)**.

**(J) Representations**

(1) Each **Insured** represents and acknowledges that the statements made in the **Application**, and the information submitted therewith, are true and accurate, and that such statements and information:

(a) are the bases 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**.

**(K) False or Fraudulent Claims**

If any **Insured** shall commit fraud in proffering any **Claim** with regard to amount or otherwise, this Policy in its entirety shall be void from the date such fraudulent **Claim** is proffered.



**(L) 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.

**(M) Office of Foreign Assets Control**

Payment of **Loss** or **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").

**(N) Headings**

The titles of the various paragraphs of this Policy and its Endorsements are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provision to which they relate.

**(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.

**IX. MATERIAL CHANGES**

**(A)** If after the Effective Date of this Policy:

- (1) the **Named Insured** merges with, or is consolidated with, another entity such that the **Named Insured** is the surviving entity; or
- (2) the **Named Insured** creates, or directly or indirectly acquires, a **Subsidiary** whose annual gross revenues exceed twenty percent (20%) of the **Named Insured's** annual gross revenues as of the acquisition date;

coverage shall be afforded to the **Named Insured** or its **Subsidiary** for **Claims** first made within ninety (90) days of the effective date of such transaction or event, involving the assets acquired or the assets, liabilities or directors, officers or employees of the entity acquired or merged with, or such **Subsidiary**, but only for **Claims** wholly involving **Wrongful Acts** occurring after the effective date of such transaction or event.

**(B)** The Company shall have the option of providing coverage for the **Named Insured** or its **Subsidiary** beyond the ninety (90) days provided that:

- (1) the **Named Insured** gives the Company notice of such transaction or event as soon as practicable, but no later than thirty (30) days after the effective date of the transaction or event;

- (2) the **Named Insured** gives the Company information regarding the transaction or event as the Company may reasonably require; and
- (3) the **Named Insured** accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the Company, within its sole discretion, may impose.

If the Company, at its sole discretion, elects to provide coverage for any entity subject to this provision, this Policy shall not apply to, and the Company shall not pay any **Loss** or **Claim Expenses** for any **Claim** based upon, arising out of, or directly or indirectly resulting from, or in any way involving any **Wrongful Act** occurring before: (a) the effective date of the transaction or event; or (b) the effective date of coverage under this Policy as set forth in an Endorsement, whichever is later.

#### **X. CHANGE OF CONTROL**

If during the **Policy Period**:

- (1) the **Named Insured** merges into, or consolidates with, another entity such that the **Named Insured** is not the surviving entity; or
- (2) another entity, person or group of entities and/or persons acting in concert acquires securities or voting rights which results in ownership or voting control by the other entity(ies) or person(s) of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of an **Insured's** directors;

(either of the above events are hereinafter referred to as the "Transaction") then the coverage provided by this Policy shall continue until the later of the expiration date of this Policy or such other date to which the Company may agree, but solely for **Claims** for **Wrongful Acts** which wholly occurred on or after the Retroactive Date set forth in the Declarations and prior to the Transaction and are otherwise covered by this Policy. The premium shall be considered fully earned.

The **Named Insured** shall give written notice of such Transaction to the Company within thirty (30) days of the Transaction.

#### **XI. TRANSFER OF CONTROL WHEN THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED**

- (A) The **Named Insured** must take over control of any outstanding **Claim** if the applicable Limit of Liability is exhausted.
- (B) When the applicable Limit of Liability has been exhausted:
  - (1) The Company will notify the **Named Insured** in writing as soon as practicable that: (a) such Limit of Liability has been exhausted; and (b) the Company's obligation to defend or pay any amounts, including **Loss** and **Claim Expenses**, has ended.

- (2) The Company will initiate and cooperate in the transfer of control to the appropriate **Insured** of all outstanding **Claims** which are subject to the Limit of Liability that has been exhausted. The **Named Insured**, and any other **Insured**, must cooperate in the transfer of control of such **Claims**. The **Named Insured**, and any other **Insured** involved in a **Claim**, must arrange for the defense and payment of such **Claim** within the period agreed to by the appropriate **Insured** and the Company. Absent any such agreement, arrangements for defense and payment of the **Claim** must be made as soon as practicable. The Company will take such steps as deemed appropriate to avoid default in, or continue the defense or handling of, such **Claim** until transfer of control is completed, provided the **Insured** is cooperating in completing such transfer. The **Insured** shall agree to reimburse the Company for **Claim Expenses** it incurs in transferring control of any **Claim**.

## **XII. 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 its agents relating to this Policy. Notice to any agent 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.