

# THE HARTFORD PROFESSIONAL CHOICE LIABILITY POLICY<sup>SM</sup>

In consideration of and subject to the payment of the premium, and in reliance upon the particulars, statements, representations, attachments and exhibits contained in and submitted with the **Application**, which shall be the basis of this Policy and deemed to be incorporated herein, and subject to all the terms and conditions, whether herein or by any endorsement(s) to this Policy, the Insurer and **Insured** agree as follows:

## I. INSURING AGREEMENT

The Insurer will pay on behalf of the **Insured** all sums in excess of the applicable Retention that the **Insured** shall become legally obligated to pay as **Loss** and/or **Defense Costs** resulting from **Claims** first made against the **Insured** during the **Policy Period**, or **Extended Reporting Period**, if applicable, for a **Wrongful Act** by the **Insured**, or an **Entity** for whom an **Insured Entity** is legally responsible, provided, however, as conditions precedent to coverage hereunder:

- (A) as of the inception date no partner, principal, officer, director, or member of the **Insured** was aware of any **Wrongful Act**, fact, circumstance or situation that he or she knew, or could reasonably have foreseen, might result in a **Claim** under this Policy,
- (B) such **Wrongful Act** was committed on or after the **Retroactive Date** and before the end of the **Policy Period**, and
- (C) the **Insured** shall report **Claims** in writing to the Insurer as soon as practicable but in no event later than 60 days after expiration of this Policy, or during the **Extended Reporting Period**, if applicable.

## II. EXTENSIONS

Unless otherwise specified, subject to all of its terms and conditions applicable to **Claims** for **Wrongful Acts**, this Policy affords the following extensions of coverage:

### (A) DISCIPLINARY PROCEEDING EXTENSION

If a **Disciplinary Proceeding** is commenced against the **Insured** during the **Policy Period**, the Insurer will reimburse the **Insured** for **Defense Costs** incurred in responding to such **Disciplinary Proceeding**. The foregoing notwithstanding, the maximum payment made by the Insurer pursuant to this Extension II(A) shall be \$10,000 for each **Policy Period** regardless of the number of **Disciplinary Proceedings**. Any payment made by the Insurer under this Extension II(A) shall not be subject to a Retention and shall not reduce the Limit of Liability. The Insurer shall not pay **Loss** pursuant to this Extension II(A).

### (B) SPOUSAL EXTENSION

If a covered **Claim** against an **Insured** also includes a claim against the lawful spouse of such **Insured** solely by reason of (a) such spousal status, or (b) such spouse's ownership interest in property or assets that are sought as recovery for such **Claim**, any sums for which such spouse becomes legally obligated to pay on account of such **Claim** shall be deemed **Loss**. This Extension II(B) shall not apply to the extent the **Claim** alleges any wrongful act or omission by such spouse.

### (C) PERSONAL INJURY EXTENSION

If a covered **Claim** against an **Insured** also includes a claim arising out of **Personal Injury** committed in the performance of **Professional Services**, this Policy covers **Loss** and **Defense Costs** the **Insured** becomes legally obligated to pay as a result of such **Personal Injury**.

### (D) JOINT VENTURE PARTICIPATION EXTENSION

This Policy covers **Loss** and **Defense Costs** the **Insured** becomes legally obligated to pay as a result of **Claims** arising out of the **Insured's** legal liability for its participation in a joint venture with any **Entity**. The extension of coverage afforded by this Extension applies only to the **Insured's Wrongful**

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**Acts** and does not afford coverage to the joint venture itself or any other **Entity** that is part of the joint venture.

### III. TERRITORY, DEFENSE, CONSENT AND SETTLEMENT

The coverage afforded by this Policy applies anywhere.

For all covered **Claims** brought in the United States of America, its territories and possessions, Puerto Rico or Canada, the Insurer has the right and duty to defend. The Insurer has the sole right to appoint counsel and may investigate any **Claim** as we deem appropriate.

For all covered **Claims** brought outside the United States of America, Puerto Rico or Canada, the Insurer has the right but not the duty to defend, appoint counsel and investigate. If the Insurer chooses not to defend, appoint counsel and investigate such a **Claim**, the **Named Insured**, under the Insurer's supervision, will arrange for investigation and defense of the **Claim** as reasonably appropriate. Subject to the Limits of Liability and Retention, we will reimburse the **Named Insured** for paying **Loss** or **Defense Costs** for covered **Claims**.

As a condition precedent to coverage under this Policy, the **Insured** shall not admit liability for or settle any **Claim** or incur any **Defense Costs** without the written consent of the Insurer. However, the **Insured** must take all reasonable action within its ability to prevent or mitigate any **Claim** that would be covered under this Policy. The Insurer has the right to make such investigation and conduct negotiations and, with the written consent of the **Insured**, effect settlement of any **Claim** as the Insurer deems reasonable.

If the **Insured** refuses to consent to a settlement or compromise recommended by the Insurer and elects to contest or continue to contest the **Claim**, the Insurer's liability shall not exceed the amount for which the Insurer would have been liable for **Loss** and **Defense Costs** if the **Claim** had been so settled when and as so recommended, and the Insurer shall have the right to withdraw from the further defense of the **Claim** by tendering control of the defense thereof to the **Insured**. The operation of this paragraph shall be subject to the Limit of Liability and Retention provisions of this Policy.

The Insurer shall not be obligated to pay any **Loss** or **Defense Costs**, or to undertake or continue the defense of any **Claim** after the Limit of Liability has been exhausted by payment of **Loss** and/or **Defense Costs** or after deposit of the applicable Limit of Liability with or subject to control of a court of competent jurisdiction.

### IV. COOPERATION

The **Insured** shall cooperate with the Insurer. Upon the Insurer's request, the **Insured** shall submit to examination and interrogation by a representative of the Insurer, under oath if required, and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The **Insured** shall also assist in the giving of a written statement or statements to the Insurer's representatives and meeting with such representatives for the purpose of investigation and/or defense, and shall provide the Insurer with any available information and documentation relevant to any matter under investigation by the Insurer, without charge to the Insurer. The **Insured** shall take such action as may be necessary to secure and effect any rights of indemnity, contribution or apportionment that the **Insured** and/or the Insurer may have.

### V. DEFINITIONS

- (A) **Application** means all signed applications, including attachments and other materials submitted therewith or incorporated therein, submitted by the **Insureds** to the Insurer for this Policy or any policy of which this Policy is a renewal or replacement. **Application** shall also include all documents provided by the **Insureds** to the Insurer in connection with the underwriting or issuance of this Policy, including quarterly and annual reports, financial statements, proxy statements and other notices to shareholders, whether provided to the Insurer directly or indirectly through the use of public databases or similar sources.
- (B) **Bodily injury** means bodily injury, sickness or disease sustained by a person, including the death of any person, resulting at any time. **Bodily injury** includes mental anguish and emotional distress.

- (C) **Claim(s)** means receipt by the **Insured** of a written demand naming the **Insured** seeking **Loss**, **Professional Services**, or **Equitable Relief** brought or submitted by or on behalf of an **Entity**. A **Claim** also means a written request to toll or waive a statute of limitations relating to a potential **Claim** described in Section VIII. (A) of this Policy.
- (D) **Defense Costs** means (a) reasonable and necessary fees charged by the attorney(s) designated by the Insurer to defend a **Claim** and (b) all other fees, costs and charges resulting from the investigation, adjustment, defense, and appeal of a **Claim**, if incurred by the Insurer. The determination by the Insurer as to the reasonableness of **Defense Costs** shall be conclusive on the **Insured**. **Defense Costs** do not include salary, charges, wages or expenses of partners, principals, officers, directors, members or employees of either the Insurer or **Insured**.
- (E) **Disciplinary Proceeding** means any proceeding by a regulatory or disciplinary official, board or agency to investigate charges of professional misconduct in the performance of **Professional Services**.
- (F) **Entity** means any individual, partnership, corporation or limited liability company other than those that qualify as **Insureds** under this Policy.
- (G) **Equitable Relief** means a remedy not involving the payment of money damages.
- (H) **Extended Reporting Period** means the applicable period of time after the end of the **Policy Period**, stated in Item 7 of the Declarations, for reporting **Claims** arising out of **Wrongful Acts** committed or alleged to have been committed prior to the end of the **Policy Period** and on or subsequent to the **Retroactive Date**, and otherwise covered by this Policy.
- (I) **Insured(s)** includes the **Insured Entities** and/or **Insured Persons** solely in the performance of **Professional Services** while acting under the direct supervision, and exclusively on behalf of, an **Insured Entity**.
- (J) **Insured Entity(ies)** includes:
1. the **Named Insured** and/or
  2. any **Subsidiary** while it qualifies as such.
- (K) **Insured Person(s)** means:
1. Any natural person who is, was, or hereafter becomes a partner, principal, officer, director, or member of an **Insured Entity**,
  2. Any natural person employee, temporary or leased personnel, or retired personnel of the **Insured Entities**;
  3. The estate, heirs, executors, administrators, and legal representatives of an **Insured** mentioned in 1 and/or 2 above in the event of such **Insured's** death, disability, incapacity, insolvency, or bankruptcy, but only to the extent such **Insured** would have otherwise been provided coverage under this Policy.
- (L) **Interrelated Claims** means all **Claims** that include, in whole or in part, allegations of **Wrongful Acts** or **Personal Injury**, facts or circumstances that have a causal or logical connection. **Wrongful Acts** or **Personal Injury**, facts or circumstances shall be deemed to have a causal connection if one or more of the **Wrongful Acts** or **Personal Injury**, facts or circumstances alleged in one or more of such **Claims** give rise (directly or indirectly) to the **Wrongful Acts** or **Personal Injury**, facts or circumstances alleged in the other of such **Claims**. **Wrongful Acts** or **Personal Injury**, facts or circumstances shall be deemed to have a logical connection if there is a goal, motive or methodology that is both common and central to the matters alleged in such **Claims**.

(M) **Loss** means a compensatory monetary amount for which the **Insured** may be held legally liable, including judgments (inclusive of any pre- or post-judgment interest), awards, or settlements negotiated with the approval of the Insurer.

**Loss** does not include:

1. any return, withdrawal, restitution or reduction of professional fees, profits or other charges;
2. fines, sanctions, taxes, penalties;
3. awards deemed uninsurable pursuant to any applicable law; or
4. costs or expenses incurred by the **Insured** to comply with a demand for **Equitable Relief** even if such compliance is compelled as a result of a judgment, award or settlement.

**Loss** shall, however, include punitive and/or exemplary damages or the multiple portion of any multiplied damage award unless such loss is uninsurable pursuant to applicable law. The insurability of such loss shall be governed by the internal laws of any applicable jurisdiction that permits coverage of such loss. The Insurer shall not contend for any reason, unless appropriate to do so as a matter of public policy, that such damages are uninsurable.

(N) **Named Insured** means the entity designated in Item 1 of the Declarations.

(O) **Personal Injury** means false arrest, detention or imprisonment, or malicious prosecution; the publication or utterance of a libel or slander or other defamatory or disparaging material; invasion, infringement or interference with rights of privacy or publicity; wrongful entry or eviction; and/or invasion of the right of private occupancy.

(P) **Policy Period** means the period set forth in Item 3 of the Declarations or any shorter period that may occur as a result of a cancellation of this Policy, and specifically excludes any **Extended Reporting Period** hereunder.

(Q) **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos-containing products, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

(R) **Professional Services** means those services set forth in Item 9 of the Declarations requiring special learning or intellectual skill, performed by the **Insured**, in the ordinary conduct of its profession, for others for a fee, remuneration or other consideration, or as otherwise defined by endorsement to this Policy.

(S) **Retroactive Date** means the date specified in Item 8 of the Declarations;

(T) **Subsidiary** means any entity that:

1. performs **Professional Services** during any time in which the **Named Insured** owns or controls, through one or more of its subsidiaries, greater than fifty percent (50%) of such entity or the right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees; and
2. exists or existed as of the inception of this **Policy Period** and during the **Policy Period**.

This policy does not cover any **Claim** against a **Subsidiary** or any **Insured Person** thereof for any **Wrongful Act** that occurred when the **Named Insured** did not own or control, through one or more of its subsidiaries, greater than fifty percent (50%) of such entity or the right to elect or appoint more than fifty percent (50%) of such entity's director or trustees.

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If, before or during the **Policy Period**, any entity ceases to qualify as a **Subsidiary**, then coverage shall be available under the Policy for such former **Subsidiary** and its **Insured Persons**, but only for a **Wrongful Act** of such **Insureds** occurring before such **Subsidiary** ceases to qualify as a **Subsidiary**. No coverage shall be available for any **Wrongful Act** of such **Insureds** occurring after such **Subsidiary** ceases to qualify as a **Subsidiary**.

- (U) **Wrongful Act** means any actual or alleged negligent act, error or omission in the rendering of or failure to render **Professional Services**.

## VI. EXCLUSIONS

- (A) The Insurer shall not be liable for **Loss** and/or **Defense Costs**:

1. for any **Claim** by or on behalf of or with the assistance of any:
  - (i) former or present **Insured**, or
  - (ii) **Entity** that at the time of the **Wrongful Act** or the time of the **Claim** or during the pendency of the **Claim** is or was:
    - (a) to any extent owned or controlled by any **Insured**;
    - (b) affiliated with any **Insured** through any common ownership or control; or
    - (c) acting with any **Insured** as a director, officer, partner, or principal stockholder;
2. for any **Claim** by an employee, former employee or job applicant of the **Insured**;
3. for, based upon, or arising from **Bodily Injury**, provided, however, that this exclusion shall not apply to actual or alleged mental anguish or emotional distress arising directly from a **Personal Injury** afforded coverage pursuant to Section II. (C);
4. for, based upon, or arising from injury to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed;
5. for, based upon, or arising from the liability of others assumed by the **Insured** under any contract or agreement unless such liability would have attached to the **Insured** even in the absence of such an agreement;
6. for, based upon, or arising from any **Wrongful Act**, fact or circumstance which before the effective date of the Policy was reported to the Insurer or any other insurer;
7. for, based upon, or arising from any actual or alleged infringement of copyright, patent, service mark, trademark, or trade name, or misappropriation of ideas or trade secrets or any other intellectual property right;
8. for, based upon, or arising from any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
9. for, based upon, or arising from any actual or alleged violation of:
  - (i) Securities Act of 1933;
  - (ii) Securities Exchange Act of 1934;
  - (iii) Rules or Regulations of the Securities Exchange Commission adopted thereunder;
  - (iv) Employee Retirement Income Security Act of 1974;
  - (v) Crime Control Act of 1970 (commonly known as "Racketeer Influenced and Corrupt Organizations Act" or "RICO")

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or any amendment to or any rule or regulation promulgated under or in connection with any such statute; or any similar provision of any federal, state, or local statutory law or common law anywhere in the world;

10. for, based upon, or arising from actual or alleged price fixing, restraint of trade, monopolization, unfair or deceptive trade practices or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act or any similar law regulating anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, including but not limited to violations of any local, state or federal consumer protection laws;
11. for, based upon, or arising from any alleged unsolicited sending of information by fax, electronic mail (e-mail), or via any other means, where prohibited by law;
12. for, based upon, or arising from the gaining in fact of any personal profit or advantage to which the **Insured** is not legally entitled;
13. where all or part of such **Claim** is for, based upon, or arising from any dishonest, malicious or fraudulent act or omission, any willful violation of law by an **Insured**, or any **Wrongful Act** committed with the knowledge that it was a **Wrongful Act**, if an admission, judgment or other final adjudication adverse to the **Insured**, in the same or separate proceeding, establishes such an act, omission or willful violation;
14. for, based upon, or arising from actual or alleged discrimination, humiliation, harassment, or misconduct by the **Insured** because of race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, marital status, or any other class protected under federal, state, local or other law;

**(B) SEVERABILITY OF EXCLUSIONS**

With respect to the Exclusions (A) 12 and 13:

1. no **Wrongful Act** by an **Insured Person**, as defined in Section V. (K) 1 and/or 2 shall be imputed to any other **Insured Person** to determine if coverage is available, and
2. only **Wrongful Acts** by any past, present or future Chief Financial Officer, President, Chief Executive Office or Chairperson of any **Insured Entity** shall be imputed to all **Insured Entities**;

**VII. INTERRELATIONSHIP OF CLAIMS**

For the purposes of this Policy, all **Interrelated Claims** shall be deemed to be a single **Claim** first made on the earliest date that:

- (A)** any of such **Claims** was first made, regardless of whether such date is before or during the **Policy Period**;
- (B)** notice of any **Wrongful Act** alleged in any such **Claims** was given to the Insurer pursuant to Section VIII. (A) of this Policy; or
- (C)** notice of any **Wrongful Act** alleged in any such **Claims** was given under any prior insurance policy, regardless of whether such policy was issued by the Insurer.

**VIII. CONDITIONS**

**(A) REPORTING OF WRONGFUL ACTS THAT MAY GIVE RISE TO A CLAIM**

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If during the **Policy Period** the **Insured** becomes aware of a specific **Wrongful Act** that may reasonably be expected to give rise to a **Claim** against the **Insured**, and if the **Insured** reports such specific **Wrongful Act** to the Insurer during the **Policy Period** in writing, then any **Claim** subsequently arising from such specific **Wrongful Act** duly reported in accordance with this paragraph shall be deemed under this Policy to be a **Claim** made during the **Policy Period**. Such written notice to the Insurer shall include:

1. particulars as to the reasons for anticipating such a **Claim**;
2. the nature and dates of the alleged **Wrongful Act**,
3. the alleged injuries or **Loss** sustained;
4. the names of potential claimants, if available; and
5. the manner in which the **Insured** first became aware of the specific **Wrongful Act**.

**(B) DUTIES IN THE EVENT OF A CLAIM**

In the event of a **Claim** the **Insured** shall as a condition precedent to the coverage afforded by this Policy:

1. Give written notice containing particulars sufficient to identify the **Insured** and claimant and full information with respect to the time, place and circumstances of the event complained of, and the names and addresses of the injured and of available witnesses, to the Insurer as soon as practicable, but in no event later than 60 days after the expiration of the **Policy Period**, or during the **Extended Reporting Period**, if applicable.
2. Together with written notice of a **Claim**, the **Insured** shall immediately provide copies of all demands, notices, summons or other process including institution of arbitration proceedings received by the **Insured**.

Notice of any **Claim** or **Wrongful Act** shall be sent in writing to the address referenced in Item 10 of the Declarations. Notice shall not be effective until the date of receipt by the Insurer at this address.

All other notices under this Policy shall be sent in writing to the address referenced in Item 10 of the Declarations, and with referral to the Policy Number indicated in the Declarations.

**(C) LIMIT OF LIABILITY**

The Insurer's maximum liability for all **Loss** and/or **Defense Costs** resulting from each **Claim** shall be the Limit of Liability for each **Claim** set forth in Item 4(A) of the Declarations. The Insurer's maximum aggregate liability for all **Loss** and/or **Defense Costs** resulting from all **Claims** covered by this Policy shall be the aggregate Limit of Liability for all **Claims** set forth in Item 4(B) of the Declarations.

The Limit of Liability of the Insurer for the **Extended Reporting Period**, if applicable, shall be part of, and not in addition to, the Limit of Liability of the Insurer for the **Policy Period**.

Any payment of **Loss** and/or **Defense Costs** by the Insurer shall reduce the Limit of Liability.

**Claims** made against more than one **Insured** under this Policy shall not operate to increase the Limit of Liability.

**(D) ALLOCATION**

If a **Claim** results in both **Loss** and/or **Defense Costs** covered under this Policy and loss and/or defense costs not covered under this Policy, either because a **Claim** against an **Insured** includes both covered and non-covered elements, or because a **Claim** is made against an **Insured** and others who are not **Insureds**, then payment under this Policy shall be allocated as follows:

1. **Defense Costs:** all reasonable and necessary **Defense Costs** incurred in defense of the **Claim** will be advanced by the Insurer, pursuant to the other terms, limitations, and conditions of this Policy.
2. **Loss:** any **Loss** incurred in connection with such a **Claim** will be allocated between covered **Loss** and non-covered loss based on the relative exposure of such covered and non-covered **Loss** and/or the proportionate fault of such **Insured** and others who are not **Insureds**.

Nothing contained herein shall be construed as a waiver of the Insurer's rights to seek reimbursement, pursuant to any state or federal law, regulation, or judicial decision, for any payments determined to be non-covered.

**(E) RETENTION**

The Insurer shall only be liable for those amounts payable hereunder for **Loss** and/or **Defense Costs** that are in excess of the Retention stated in Item 5 of the Declarations. This Retention shall apply separately to each **Claim** and shall be borne by the **Insured** and remain uninsured. For purposes of the Retention, **Claims** arising out of the same **Wrongful Act** shall be considered one **Claim**, and only one Retention amount shall apply thereto. The Retention shall not reduce or increase the Limit of Liability.

The **Insured** shall promptly make direct payments within the Retention to appropriate parties as designated by the Insurer. The Insurer shall have no obligation to make payments within the Retention and to then seek reimbursement from the **Insured**.

**(F) EXTENDED REPORTING PERIOD**

If the **Named Insured** shall cancel or fail to renew this Policy, or if the Insurer shall cancel or refuse to renew this Policy for reasons other than material misrepresentation in the **Application** for this Policy or non-payment of premium or Retention, the **Named Insured** shall have the right upon payment of an additional premium, to an extension of coverage under this Policy subject to all other terms, conditions, limitations of and any endorsements to this Policy for a period and additional premium indicated in Item 7 of the Declarations plus the annualized amount of any additional premiums charged during the **Policy Period**, following the effective date of such cancellation or refusal to renew but only with respect to any **Wrongful Act** committed before the date of such cancellation or non-renewal.

The offer of renewal terms, conditions, Limit of Liability and/or premiums different from those of this Policy shall not constitute a cancellation or refusal to renew.

The **Extended Reporting Period** shall terminate on the effective date and hour of any other insurance issued to the **Named Insured** or successor to the **Named Insured** which replaces in whole or in part the coverage afforded by the **Extended Reporting Period**.

As a condition precedent to the **Named Insured's** right to purchase the **Extended Reporting Period**, the full premium for this Policy and **Policy Period** must have been paid.

The **Named Insured's** right to purchase the **Extended Reporting Period** must be exercised by notice in writing not later than sixty (60) days following the non-renewal or cancellation date of this Policy, and must include payment of premium for the applicable **Extended Reporting Period** as well as payment of all premiums due the Insurer. If such notice is not so given to the Insurer, the **Named Insured** shall not, at a later date, be able to exercise such right.

At the commencement of any **Extended Reporting Period**, the entire premium thereafter shall be deemed earned and in the event the **Named Insured** terminates the **Extended Reporting Period** before its expiration date, the Insurer shall not be liable to return to the **Named Insured** any portion of the premium for the **Extended Reporting Period**.

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The fact that this Policy may be extended by virtue of an **Extended Reporting Period** shall not in any way increase the Limit of Liability as set forth in the Declarations. The **Extended Reporting Period** shall be renewable at the sole option of the Insurer.

**(G) OTHER INSURANCE**

If any **Claim** or **Wrongful Act** noticed to the Insurer under this Policy is insured by another valid policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limit of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to the Policy Number indicated on this Policy's Declarations.

**(H) SUBROGATION**

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

Any amount(s) recovered by the Insurer through subrogation shall first be applied toward reimbursement of any payments made by the **Insured** pursuant to the **Insured's** Retention and any remaining balance shall be the Insurer's.

**(I) ALTERATION AND ASSIGNMENT**

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement signed by an authorized representative of the Insurer.

**(J) REIMBURSEMENT OF THE INSURER**

If the Insurer has paid any **Loss** and/or **Defense Costs** in excess of the applicable Limit of Liability or within the amount of the applicable Retention, the **Insured** shall be liable to the Insurer for any and all such amounts and, upon demand, shall pay such amounts to the Insurer promptly.

**(K) ENTIRE CONTRACT**

By acceptance of this Policy the **Insured** agrees that the statements in the Declarations and **Application** are its agreements and representations and that this Policy embodies all agreements existing between the **Insured** and the Insurer.

**(L) NOTICE OF CANCELLATION**

This Policy may be cancelled by the **Named Insured** by surrender of this Policy to the Insurer or by giving written notice to the Insurer stating when thereafter such cancellation shall be effective. The Insurer may cancel this Policy only for material misrepresentation in the **Application** for this Policy, or non-payment of premium or Retention, by mailing to the **Named Insured** by registered, certified, or other first class mail, at the **Named Insured's** address shown in Item 1 of the Declarations, written notice stating when, not less than sixty (60) days thereafter (or ten (10) days thereafter when cancellation is due to non-payment of premium), the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice. If this Policy shall be cancelled by the **Named Insured**, the Insurer shall retain the customary short rate proportion of the premium hereon, except as otherwise provided in this Policy. If this Policy shall be cancelled by the Insurer, the Insurer shall retain the pro rata proportion of the premium hereon.

**(M) NAMED INSURED SOLE REPRESENTATIVE**

The **Named Insured** shall be the sole representative of all **Insureds** hereunder for the purpose of:

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1. effecting or accepting any amendments to or cancellation of this Policy,
  2. receiving such notices as may be required by law and/or any provision(s) of this Policy,
  3. the completing of any **Application** and the making of any representations,
  4. the payment of any premium and the receipt of any return premium that may become due under this Policy,
  5. the payment of any Retention obligations that may become due under this Policy, and
  6. the exercising or declining to exercise any right under this Policy, including declining or exercising any **Extended Reporting Period**.

**(N) REPRESENTATIONS & SEVERABILITY:**

The **Insureds** represent that the declarations and statements contained in the **Application** are true, accurate and complete. This Policy is issued in reliance upon the **Application**. If the **Application** contains intentional misrepresentations or misrepresentations that materially affect the acceptance of the risk by the Insurer, no coverage shall be afforded under this Policy for any:

1. **Insured Entity**; and
2. **Insured Person** who knew on the inception date of this Policy of the facts that were so misrepresented, whether or not such **Insured Person** knew that such misrepresentation was manifest in the **Application**.

**(O) TAKEOVER OF NAMED INSURED**

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;
2. greater than 50% of the **Named Entity** or the right to elect or appoint more than fifty percent (50%) of the **Named Entity's** directors or trustees is acquired by another person or **Entity**, group of persons or **Entities**, or persons and **Entities** acting concert; or
3. all or substantially all of the **Named Insured's** assets are sold to another **Entity** or person or group of **Entities** or persons acting in concert,

then coverage for all **Insureds** shall continue under the Policy, but only for **Wrongful Acts** occurring prior to such transaction as described in 1, 2, or 3 above. No coverage shall be available for any **Wrongful Act** of any **Insured** occurring after such transaction. Notwithstanding Section VIII. (L), upon such transaction, this Policy shall not be cancelled and the entire premium for this Policy shall be deemed fully earned.

The **Insureds** shall give the Insurer written notice of such transaction as soon as practicable, but not later than ninety (90) days after the effective date of such transaction.

**(P) CHANGE IN EXPOSURE**

If during the **Policy Period**, the **Named Insured**:

1. merges with another **Entity** such that the **Named Insured** is the surviving entity;
2. acquires an **Entity**; or

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3. creates a new entity;

such entity shall be treated as a **Subsidiary**, notwithstanding Section V. (T) 2. of this Policy, to the extent such entity would otherwise qualify as **Subsidiary** under the Policy, provided, however, that if the annual revenues of any such entity merged, acquired or created during the **Policy Period** exceeds ten percent (10%) of the total revenues of the **Named Insured** as reflected in its most recent consolidated audited financial statements prior to such merger, acquisition or creation, the **Named Insured** shall give written notice to the Insurer of its merger, acquisition or creation of such entity as soon as practicable but in no event more than ninety (90) days after the effective date of such merger, acquisition or creation, together with such information that the Insurer may require. Upon receipt of such notice, the Insurer may at its sole option agree to appropriately endorse this Policy subject to additional premium and/or changed terms and conditions. If the **Named Insured** fails to provide such notice and/or requested information to the Insurer, coverage otherwise afforded under this provision to such newly merged, acquired or created entity shall terminate ninety (90) days after the effective date of such merger, acquisition or creation.

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