

## ACCOUNTANTS' PROFESSIONAL LIABILITY POLICY

NOTICE - THIS IS A CLAIMS MADE AND REPORTED POLICY.

PLEASE READ IT CAREFULLY.

COVERAGE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR APPLICABLE EXTENDED REPORTING PERIOD AND REPORTED IN WRITING TO THE COMPANY IMMEDIATELY BUT IN NO EVENT LATER THAN SIXTY (60) CALENDAR DAYS AFTER THE EXPIRATION DATE OF THE POLICY PERIOD OR WITHIN ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMITS OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED AS CLAIMS EXPENSES. THE DEDUCTIBLE IS APPLICABLE TO CLAIMS EXPENSES AND DAMAGES.

All words or phrases (other than captions) that appear in bold face are defined in **SECTION I: B. DEFINITIONS**. The descriptions in the headings and subheadings of this policy are solely for convenience and form no part of the terms, conditions, exclusions and limitations of this policy.

Throughout the policy the words "you" and "your" refer to the **named insured** and any **predecessor firm(s)**. The words "we", "us" and "our" refer to the company providing this insurance as shown in the Declarations.

In consideration of the payment of the premium as set forth in the Declarations, and in reliance upon the statements, representations, and warranties in the application which are made part of this policy, we agree with you as follows:

### SECTION I: SCOPE OF COVERAGE

#### A. COVERAGE AGREEMENT

Subject to the limits of liability as set forth in the Declarations and to all the exclusions, conditions, and other terms of this policy, we will pay on behalf of each **insured** all sums in excess of the deductible amount, as stated in the Declarations, that such **insured** shall become legally obligated to pay as **damages** resulting from any covered **claim** and we will defend all **insureds** against whom a covered **claim** is made. Our agreement to pay and/or defend a **claim**, however, shall only apply if:

1. such **claim** is first made against any **insured** during the **policy period** or applicable extended reporting period and reported in writing to us immediately, but in no event later than sixty (60) calendar days after the expiration date of the **policy period** or within any applicable extended reporting period;
2. such **claim** arises solely from a **wrongful act** or **personal injury** that occurred on or after the **retroactive date** and before the end of the **policy period**; and
3. with respect to such **claim**, no **insured** as of the inception date of this policy was aware of any **wrongful act, personal injury**, fact, circumstance or other situation that he or she (i) knew might result in a **claim** or (ii) could reasonably have foreseen might result in a **claim**.

## B. DEFINITIONS

Whenever used in the policy:

1. **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.
2. **Claim** means an allegation of a **wrongful act** or **personal injury** in conjunction with:
  - a. A written demand received by an **insured** seeking **damages** against, or services from, an **insured**; or
  - b. A complaint, counterclaim, cross-claim, petition, or claim for relief seeking **damages** against or services from an **insured** filed in a lawsuit or arbitration proceeding that has been received or served upon an **insured**; or
  - c. A request received by an **insured** for a tolling agreement with respect to statutes of limitations or other bars against the filing or maintenance of a lawsuit or arbitration proceeding seeking **damages** against or services from an **insured**.
3. **Claims expenses** mean all reasonable and necessary fees charged by attorneys designated or approved in writing by us and all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** incurred by us or by an **insured** with our written consent. **Claims expenses** shall not include loss of earnings, except as set forth below, salaries, fees, remuneration, overhead or any other benefit expenses associated with any **insured**. **Claim expenses** shall include but are not limited to:
  - a. Costs taxed against an **insured** in **claims** or suits; and
  - b. Premiums on appeal bonds in any suit and premium on bonds to release attachments in any suit for an amount not in excess of the applicable limit of liability shown in the Declarations. We shall not be obligated to apply for or furnish any bonds; and
  - c. Reasonable and necessary expenses incurred with our written consent by an **insured** in the investigation or litigation of any **claim**, including actual loss of earnings up to \$500 a day for each **insured** because of time off from work, subject to a limit of \$5,000 for each individual **insured** and subject to a maximum limit of \$10,000 per **policy period**.
4. **Damages** mean compensatory damages that an **insured** becomes legally obligated to pay as a result of any judgment, award or settlement of any actual or alleged **wrongful act** or **personal injury**, provided any settlement is made with our prior approval and we had the opportunity to meaningfully participate or assist in the negotiations. **Damages** include interest on the entire amount of any judgment which accrues after the entry of judgment and before we have paid or tendered or deposited into court that part of the judgment which does not exceed the applicable limit of liability shown in the Declarations.

**Damages** does not include:

- a. Any fines, sanctions or penalties, or punitive or exemplary damages; or
  - b. Restitution, reduction, or set off of any fees, other consideration, and/or expenses paid to or charged by an **insured** for **professional accounting services**; or
  - c. Any damages which are a multiple of compensatory **damages** awarded against an **insured**; or
  - d. Matters deemed uninsurable by law; or
  - e. Equitable, injunctive or other non-monetary relief.
5. **Insured** means:
- a. The **named insured** or any **predecessor firms**;
  - b. Any person who was, is now or hereafter becomes a principal, officer, director, employee, principal shareholder or member of yours, but only for **professional accounting services** performed on your behalf; and
  - c. Any accountant or accounting firm while under contract with you, but only for **professional accounting services** performed on your behalf; and
  - d. The estate, heirs, executors, administrators, and legal representatives of any **insured** in the event of the **insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that the **insured** would otherwise be provided coverage under this policy.
6. **Interrelated Claims** means all **claims** that include, in whole or in part, allegations of **wrongful acts** or **personal injury** that are based on, arising (directly or indirectly) out of or in any way involving the same or related facts or circumstances or series of facts or circumstances. **Claims** shall be **interrelated claims** if there is either (a) a causal connection in the sense that one or more of the **wrongful acts** or **personal injury** alleged in one or more of such **claims** give rise (directly or indirectly) to the **wrongful acts** or **personal injury** alleged in the other of such **claims** or (b) a logical connection in the sense that there is either (i) a goal, motive or methodology common to the matters alleged in such **claims** or (ii) a substantial overlap or resemblance between or among such **claims**. **Claims** may be **interrelated claims** regardless of whether such **claims** are legally distinct **claims** that may also allege different **wrongful acts** to or different **damages** suffered by different people.
7. **Named Insured** means the individual or entity stated in the Declarations, including **predecessor firms**.
8. **Personal Injury** means injury, other than **bodily injury**, arising out of one or more of the following acts, errors or omissions committed in the performance or failure to perform **professional accounting services**:

- a. False arrest, detention or imprisonment; or
  - b. Abuse of process or malicious prosecution; or
  - c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor; or
  - d. The publication or utterance of a libel or slander or other defamatory or disparaging material or publication or utterance in violation of an individual's right of privacy.
9. **Policy Period** means the period from the inception date of this policy to the policy expiration date as stated in the Declarations or the date of cancellation, whichever is earliest.
10. **Predecessor firm** means any accounting firm disclosed as such to us whose financial assets and liabilities the **named insured** is the majority successor in interest; provided such entity is listed in the Predecessor Firm Endorsement attached to this policy.
11. **Professional accounting services** means services performed or advice given by you or on your behalf for others in the conduct of your practice as a:
- a. An accounting professional, including but not limited to services performed or advice given in connection with the American Institute of Certified Public Accountants or any state society of certified public accountants; and
  - b. A member of a formal accreditation, standards review, or other professional board or committee for the accounting profession; and
  - c. A personal financial planner, consultant, arbitrator, mediator, notary public, trustee, receiver or executor.
- Professional accounting services** also includes training, consulting, sales, installation, integration, maintenance and development of hardware and packaged software products related to these services.
12. **Property Damage** means
- a. Physical injury to tangible property, including all resulting loss of use of that property; or
  - b. Loss of use of tangible property that is not physically injured.
13. **Retroactive date** means the date specified in the Declarations, or in any endorsement attached to this policy, on or after which the **wrongful act**, or **personal injury** must have occurred in order for any **claim** or any notification given to us pursuant to **SECTION III: A. AWARENESS OF CIRCUMSTANCES** or **B. NOTICE OF CLAIM** to be covered under this policy.

14. **Wrongful act** means an actual or alleged negligent act, error or omission committed in the performance or failure to perform **professional accounting services**.

### C. DEFENSE AND SETTLEMENT

1. Subject to all terms and conditions of the policy, we shall have the right and duty to defend in an **insured's** name and on an **insured's** behalf a **claim** covered by this policy even if any of the allegations of the **claim** are groundless, false or fraudulent. We shall have the right to appoint counsel and to make such investigation and defense of a **claim** as is deemed necessary by us. If a **claim** is subject to arbitration or mediation, we are entitled to exercise all of the **insured's** rights, including the choice of arbitrators or mediators, in the arbitration or mediation proceeding.
2. We shall not settle a **claim** without an **insured's** consent, which consent will not be unreasonably withheld. If, however, an **insured** refuses to consent to a settlement recommended by us and acceptable to the claimant and elects to pursue the defense of the **claim** or continue proceedings in connection with the **claim**, then our liability for **damages** and **claim expenses** relating to that **claim** will not exceed the total amount for **damages** and **claim expenses** which we would have paid up to the date of our settlement recommendation minus any applicable deductible.

Bankruptcy, insolvency, or dissolution of an **insured** or of an **insured's** estate shall not relieve us or the **insured** of its obligations under this policy. In the event of your bankruptcy, insolvency, or dissolution, we shall have, at our sole option, the right to settle any **claim** without obtaining your consent.

We shall not be obligated to pay **damages** or **claim expenses** or defend or continue to defend any **claim** after the applicable limit of liability as stated in the Declarations has been exhausted by payment of **damages** or **claim expenses** or a combination of both.

### D. LIMITS OF LIABILITY AND DEDUCTIBLE

Regardless of the number of **insureds** under this policy, the number of persons or organizations seeking **damages**, the number of **claims** made or the number of extended reporting periods purchased, our liability is limited as follows:

1. **Limits of Liability - Each Claim**

The amount stated in the Declarations as applicable to each **claim** is the most we will pay for all **damages** and **claims expenses** arising out of any one **claim** or any one set of **interrelated claims**.

2. **Limits of Liability - In the Aggregate**

The amount shown in the Declarations as the aggregate limit is the most we will pay for all **damages** and **claims expenses** for all **claims** to which this insurance applies.

3. **Interrelated Claims**

All **interrelated claims** shall be treated as a single **claim** for purposes of the limits of liability and deductible. Each **claim** included among two or more **interrelated claims** shall be a separate **claim** with respect to any applicable exclusion. If a **claim** is first reported under a policy that inceptioned prior to the inception of this policy, all subsequent **claims** that are **interrelated claims** with such **claim** shall not be covered under this policy. Provided that we timely receive a sufficient notice of circumstances, as described in **Section III A. AWARENESS OF CIRCUMSTANCES** of this policy, with respect to any subsequent **claim** that would, once made and reported, be included with one or more other **claims** as **interrelated claims**, this policy shall apply to such **claim** even if first made and reported after the expiration of this **policy period** and even if it alleges **wrongful acts** or **personal injury** occurring after the expiration of this **policy period**.

4. **Limits of Liability – Disciplinary Proceedings**

Notwithstanding any other provisions of this policy, but subject to all terms and conditions of this policy, we shall pay **claims expenses** (but not **damages**) incurred for defending a proceeding initiated by a regulatory or disciplinary official or agency to investigate allegations of professional misconduct in the rendering of or failure to render **professional accounting services** up to a maximum payment by us, regardless of the number of proceedings brought by a regulatory or disciplinary official or agency, of \$10,000 in the aggregate. This amount will be included within (and shall serve to reduce) the limit of liability and is not subject to any deductible obligation of the **insured**. In order to receive coverage under this provision, you must give us written notice within thirty (30) days of receipt of any regulatory or disciplinary allegation made against any **insured**.

5. **Deductible**

- a. Our obligation to pay **damages** and **claims expenses** under this policy applies only to the amount of **damages** and **claims expenses** which are in excess of the deductible amount stated in the Declarations.
- b. The deductible amount applies to all **damages** and **claims expenses** incurred as the result of each **claim**.
- c. The terms of this policy, including those with respect to our right and duty to defend suits and your duties in the event of a **claim**, suit or circumstances which may give rise to a **claim**, apply irrespective of the application of the deductible.
- d. We may pay any part or all of the deductible amount in the investigation or settlement of any **claim**. Upon notification of the action we have taken, you shall reimburse us for that part of the deductible amount we have paid. If we make a payment under the deductible and you do not reimburse us within sixty (60) days, we will be entitled to recover reasonable attorney's fees incurred in collecting the amount we have paid.
- e. The limits of liability will not be reduced by the amount of any **damages** and/or **claims expenses** within the deductible amount unless (but only to the extent)

that such **damages** and/or **claim expenses** have been paid by us and not reimbursed by you.

- f. We will reduce the deductible amount stated in the Declarations by fifty percent (50%) if you agree with a request we make, and agree with the terms and conditions we specify, to submit a **claim** made against you to binding arbitration or mediation. While the right to submit a **claim** to binding arbitration or mediation shall be ours solely, no **claim** shall be submitted to arbitration without your prior written consent. In the case of mediation, the maximum dollar amount by which the deductible will be reduced under this provision is \$25,000.
- g. We will reduce the deductible amount stated in the Declarations by fifty percent (50%) for **claims** made against you for **professional accounting services**, other than audit or attest services, provided the engagement letter was signed within one year prior to the rendering of **professional accounting services** and the **claim** is otherwise covered under the policy. The maximum dollar amount by which the deductible will be reduced under this provision is \$10,000.
- h. In the event that provisions f. and g. above both apply to a **claim**, the maximum dollar amount by which the deductible will be reduced shall not exceed \$25,000.

## E. TERRITORY

This policy applies to any **wrongful act** or **personal injury** in the rendering of or failure to render **professional accounting services** anywhere in the world, provided that **claim** is made and suit, if any, is brought within the United States of America (including its territories or possessions), Puerto Rico or Canada.

## F. EXTENDED REPORTING PERIODS

1. We will provide an extended reporting period if you or we cancel or non-renew the policy for any reason other than non-payment of premium or the deductible amount.

- a. **Extended Reporting Period**

You will have the right to purchase an extended reporting period. You must exercise such right by providing written notice to us accompanied by the additional premium within sixty (60) days after the termination of the policy. If any extended reporting period is exercised, an endorsement will be processed. This endorsement will cover **claims** first made during the extended reporting period for **wrongful acts** or **personal injury** which occurred prior to the end of the **policy period** and are otherwise covered by the policy. The additional premium for the extended reporting period is based on a percentage of the full annual premium for the **policy period** and shall be:

- i. 100% of the policy's annual premium for one year;
- ii. 165% of the policy's annual premium for three years;

- iii. 200% of the policy's annual premium for five years;
- iv. 250% of the policy's annual premium for an unlimited period.

b. Retiree extended reporting period for a sole proprietor

If you are a sole proprietor and have been continuously insured for Accountants Professional Liability coverage with a member of the Hartford Financial Services Group, Inc. group of companies for three or more full consecutive years, an unlimited extended reporting period will be provided without additional charge if you;

- i. Cancel or fail to renew this policy due to your retirement from the accounting profession within the **policy period**; and
- ii. Cease the performance of all **professional accounting services** covered by this policy; and
- iii. Are fifty-five (55) years of age or older,

You must notify us in writing if this coverage is desired within sixty (60) days after the termination of the policy. This retirement extended reporting period does not apply to **claims** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**.

c. Death or disability extended reporting period for a sole proprietor

If you die or become totally and permanently disabled during the **policy period**, a death or disability extended reporting period for a sole proprietor shall be provided without additional charge. Coverage for reporting **claims** is extended until the executor or administrator of the estate is discharged or your disability ends. You or your estate must, within sixty (60) days after the end of this policy, notify us in writing if this coverage is desired. This death or disability extended reporting period for a sole proprietor does not apply to **claims** that are covered under any subsequent insurance available to you, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims**. We also require:

- i. Written proof of your permanent and total disability, including the date it happened, certified by your attending physician. You agree to submit to medical examination(s) by any physician(s) we designate if requested; or
- ii. Written proof of the date of your death.

2. **Extended Reporting Period Coverage**

The limit of liability available for any extended reporting period is part of, and not in addition to, the limits of liability as shown in the Declarations. The deductible shown on the Declarations will apply separately to each **claim** reported under any extended



reporting period. The deductible will be waived in the event of the **insured's** death or if the **insured** becomes totally and permanently disabled.

None of the extended reporting periods are cancelable or renewable. The additional premium for the extended reporting period is fully earned at the inception of the extended reporting period.

## SECTION II: EXCLUSIONS

**EXCLUSIONS** – We shall not pay **damages** or **claim expenses** in connection with any **claim**:

- A. Made against an **insured** arising, in whole or in part, out of any actual dishonest, fraudulent, criminal or malicious act, or omission, committed by, at the direction of, or with the knowledge of such **insured**. This exclusion does not apply, however, to an **insured** who, in fact, did not personally commit, direct, participate in committing or have knowledge of such **wrongful acts** when they occurred.
- B. Arising out of **bodily injury** or **property damage** except that this exclusion does not apply to **claims** of mental injury, mental anguish, mental tension, or emotional distress caused by **personal injury**.
- C. Made, directly or indirectly, by or on behalf of an **insured**.
- D. Arising out of or based upon the actual or alleged discrimination, humiliation, harassment or misconduct by an **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.

However, to the extent that a **claim** arises out of or is based upon an **insured's** refusal to provide **professional accounting services** due to discrimination 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; we will reimburse the **insured** for **claims expenses** incurred in the defense of the **claim** up to a maximum of \$50,000 per **policy period**, provided;

1. Such allegations are disproved by a final adjudication favorable to the **insured**; and
2. The demand is otherwise payable under this policy except for the failure or refusal to provide **professional accounting services**.

Reimbursement of such **claims expenses** is subject to the deductible stated in the Declarations.

- E. Arising out of an **insured's** activities and/or capacity as a fiduciary under the Employee Retirement Income Security Act of 1974 as amended, or similar responsibility under state statutory or common law, except if the **insured** is deemed to be a fiduciary solely by reason of **professional accounting services** rendered with respect to any employee benefit plan.
- F. Arising out of an **insured's** capacity as:

1. A public official or employee of a governmental body, subdivision or agency thereof unless the **insured** is deemed to be such solely by virtue of rendering **professional accounting services** to such governmental body, the remuneration for which services inures to your benefit; or
  2. An officer, director, partner, employee, principal shareholder or member of any organization other than yours or a **predecessor firm**.
- G.** Arising, in whole or in part, out of a **wrongful act, personal injury** or other circumstances with respect to which the **insured** has given notice under any other professional liability insurance policy the term of which incepted prior to the inception date of this policy.
- H.** Arising out of:
1. The promotion, sale or solicitation for sale of securities, real estate, or other investments by any **insured**; or
  2. Recommendations, representations, or opinions concerning specific investment advice by an **insured** or any person or organization referred to by an **insured** in connection with portfolio or trust account management, or the performance or nonperformance of securities, real estate, or other investments.
- I.** Arising out of **professional accounting services** performed for or on behalf of any organization other than you if, at any time when those services were performed, the organization was or was intended to be:
1. Directly or indirectly controlled, operated or managed by an **insured**; or
  2. Owned by an **insured**, or by a spouse of any **insured**, in a percentage which exceeds:
    - a. Five (5) percent of the issued and outstanding voting stock of the shares of a publicly traded organization; or
    - b. Ten (10) percent of the legal and/or equitable ownership of such other organization.
- J.** Against an **insured** as a beneficiary or distributee of any trust or estate.
- K.** Arising out of liability assumed by an **insured** under an indemnity, hold harmless or liquidated damages provision or similar provisions or agreements, but this exclusion does not apply to liability an **insured** would have in the absence of such agreements.
- L.** Arising out of the actual or alleged conversion, misappropriation or improper commingling of client funds or the gaining, in fact, of any personal profit or advantage to which an **insured** is not legally entitled.
- M.** Arising out of the alleged notarized certification or acknowledgment by any **insured**, in their capacity as a notary public, of a signature on a document when the **insured** did not witness the signature being placed on the document.

- N. Arising out of any express or implied contract of employment with you and alleging a breach thereof.
- O. Arising out of the misappropriation of advertising ideas or style of doing business or infringement or violation of copyright, patent, trademark or any other intellectual property rights or laws.
- P. Arising out of the actual or alleged violation of any state or federal antitrust, restraint of trade, unfair or deceptive business practices, unfair competition or other consumer protection laws.
- Q. Arising out of computer or electronic information technology services performed by an **insured** involving custom software development, internet access, network design and installation, website design and hosting, systems facilities management, application services, including but not limited to application rentals and leasing.
- R. Arising out of **professional accounting services** performed by an accountant with whom you shared office space or common office facilities and who is not an **insured** under this policy.

### SECTION III: CONDITIONS – CLAIMS

#### A. AWARENESS OF CIRCUMSTANCES

If during the **policy period** an **insured** becomes aware of any **wrongful act, personal injury** or other fact, circumstance or situation that he or she (i) believes might result in a **claim** or (ii) could reasonably have foreseen might result in a **claim**, the **insured** shall immediately and in all instances prior to the expiration of the **policy period**, give written notice to us of the particulars of:

1. The nature and dates of the specific act, error, omission or other fact, circumstance or situation giving rise to the potential of a **claim**, including, without limitation, the identity of each **insured** who participated and/or had supervisory responsibility for the matter and the reasons why it seems foreseeable that the matter may give rise to a **claim**; and
2. The identity of each potential claimant and the alleged injury or damage which has resulted or may result from such **wrongful act, personal injury** or other fact, circumstance or situation and the steps, if any, undertaken or proposed to be undertaken to mitigate **damages**; and
3. The conditions under which the **insured** first became aware of such **wrongful act, personal injury** or other fact, circumstance or situation.

This policy shall then apply to any **claim** that is subsequently made against the **insured** and arises out of **wrongful act, personal injury** or other fact, circumstance or situation reported as a notice of circumstances in accordance with these **Awareness of Circumstances Provisions**.

Written notice shall be provided to us, at the address specified in the notice endorsement attached to this policy.

## B. NOTICE OF CLAIM

### 1. Reporting of a **claim** made against an **insured**

If, during the **policy period** or applicable extended reporting period, a **claim** is made against an **insured**, you must give written notice in accordance with paragraph 2. below.

### 2. **Insured's** duties in the event a **claim** is received by an **insured**

- a. You and any other involved **insured** must see to it that we are notified immediately, but in no event later than sixty (60) calendar days after the expiration date of the **policy period** or within any applicable extended reporting period of any **claim** made against you. To the extent possible, written notice should include:
  - i. The specific **wrongful act** or **personal injury** including the date the **claim** was made and or received; and
  - ii. The **damages** that may reasonably result.
- b. You and any other involved **insured** must:
  - i. Immediately send us copies of any demands, tolling agreements, complaints, notices, summonses or similar documents received in connection with the **claim**; and
  - ii. Authorize us to obtain records and other information; and
  - iii. Provide us with such information and cooperation as we may reasonably require in the investigation, evaluation, settlement or defense of the **claim** or suit; assist in making statements, in the conduct of suits or similar legal proceedings, attend hearings, depositions, and trials, assist on securing and giving evidence and obtaining the attendance of witnesses; and
  - iv. Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to an **insured** because of **damages** to which this insurance may also apply.
- c. No **insured** will, except at their own cost, voluntarily make a payment, assume any obligation, assume or admit liability, settle any **claim** or incur any expense without our prior written consent.

## C. PROTECTION FOR INNOCENT INSUREDS

Whenever insurance coverage under this policy would be void, excluded, suspended or lost because of noncompliance with **Section III: CONDITIONS-CLAIMS**, we agree that such insurance as afforded under this policy shall nonetheless apply with respect to each and every **insured** who neither knew nor reasonably should have known that an **insured** had a duty to report the matter but failed to satisfy such duty; provided, however, this

protection shall not be available if an owner or member of management of the **named insured** became aware of the matter but failed to timely report it.

#### **D. FALSE OR FRAUDULENT CLAIMS**

If any **insured** notifies us of a **claim** knowing it to be false or fraudulent, this policy shall become void.

#### **E. SUBROGATION**

When any payment is made under this policy, we shall be subrogated to the **insured's** right of recovery in connection with that payment. Each **insured** shall do whatever is necessary to secure the right of recovery and shall do nothing to waive or prejudice such right.

#### **F. NO ACTION AGAINST COMPANY**

No action shall lie against us, unless, as a condition precedent, the **insured** has fully complied with all the terms of the policy, and the amount of the **insured's** obligation to pay shall have been fully determined either:

1. By written agreement of the **insured**, the claimant, and us; or
2. By final judgment against the **insured**.

#### **G. ALLOCATION**

If a **claim** is made that includes both covered and non-covered matters, or a **claim** is made against covered and non-covered parties, we and the **insureds** shall use reasonable efforts to achieve a fair and reasonable allocation based upon such relative exposure of such covered and non-covered matters and/or the proportionate fault of such covered and non-covered parties. We shall advance all **claim expenses** incurred with respect to such **claim** prior to the final disposition of such **claim**; provided, however, that the foregoing shall not preclude us from subsequently allocating pursuant to this provision.

### **SECTION IV: GENERAL CONDITIONS**

#### **A. CANCELLATION**

1. You may cancel this policy by returning it to us. You may also cancel this policy by written notice to us stating at what future date cancellation is to be effective.
2. We may cancel or non-renew this policy by mailing written notice to you at the address last known to us. We will provide written notice at least sixty (60) days before cancellation is to be effective. If we cancel this policy because you have failed to pay a premium when due or the applicable deductible when due or have failed, after demand, to pay us such amounts as we have paid for **damages** or for **claims expenses** in excess of the applicable Each **Claim** or Aggregate Limit of Liability, then this policy may be canceled by us by mailing to you written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The time of surrender of this policy or the effective date and hour of

cancellation stated in the notice shall become the end of the current **policy period**. Delivery (where permitted by law) of such written notice either by you or by us shall be the equivalent of mailing.

3. If we cancel this policy, the earned premium shall be computed pro rata. If you cancel this policy, unearned premium shall be calculated at our customary short rates. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition precedent to the effectiveness of a cancellation.

## **B. ASSIGNMENT**

Your rights and duties under this policy may not be transferred without our written consent.

## **C. AUTHORIZATION OF NAMED INSURED**

This policy contains all the agreements between you and us concerning the insurance afforded. The **named insured** shown in the Declarations shall act on behalf of all **insureds** with respect to all matters under this policy, including, without limitation, giving and receiving of notices regarding **claims**, cancellation, election of extended reporting period, payment of premiums, receipt of any return premiums and acceptance of any endorsements to this policy.

## **D. CHANGES**

This policy's terms can be amended or waived only by an endorsement issued by us as part of this policy.

## **E. CHANGES IN EXPOSURE**

### **1. Mergers and Acquisitions**

If during the **policy period**, the **named insured**:

- a. merges with another entity such that the **named insured** is the surviving entity;  
or
- b. acquires another entity,

then such newly merged or acquired entity shall be **insureds** to the extent such entities and persons would otherwise qualify as **insureds**, but only for a **wrongful act** or **personal injury** occurring after such merger or acquisition. No coverage shall be available for any **wrongful act** or **personal injury** of such **insureds** occurring before such transaction or for any interrelated **wrongful acts** thereto.

If the number of professionals increases by more than five professionals as the result of such merger or acquisition, the **named insureds** shall give us full details of the transaction in writing as soon as practicable but no later than thirty (30) days after the date of the merger or acquisition and we shall be entitled to impose such additional terms, conditions, and premium as we, in our absolute discretion, choose.

There shall be no coverage under the **policy** for any newly merged or acquired entity unless the **insureds** comply with the terms of this provision.

## 2. **Takeover of named insured**

If, during the **policy period** the **named insured** merges into or consolidates with another entity such that the **named insured** is not the surviving entity then coverage shall continue under the policy, but only for a **wrongful act** or **personal injury** occurring before such transaction. No coverage shall be available for any **wrongful act** or **personal injury** occurring after such transaction. Upon such transaction, this policy shall not be cancelled and the entire premium for this policy shall be deemed fully earned.

The **named insureds** shall give us written notice of such transaction as soon as practicable, but not later than thirty (30) days after the effective date of such transaction.

## F. **BANKRUPTCY**

Bankruptcy or insolvency of the **insured** shall not relieve us of our obligations nor deprive us of our rights or defenses under the policy.

## G. **APPLICATION**

By accepting this policy, you agree:

1. The statements and representations in the application submitted to us are accurate and complete; and
2. We have issued this policy in reliance upon your statements and representations.

## H. **ARBITRATION**

Any controversy arising out of or relating to this policy, including the scope of this provision, shall be settled by binding arbitration in accordance with the rules promulgated by the American Arbitration Association in effect at the time of such arbitration, as modified by the following sentence. The arbitration panel shall consist of one arbitrator selected by us, one arbitrator selected by you, and one arbitrator selected by the two arbitrators. If the two arbitrators selected cannot agree on a third arbitrator, then the American Arbitration Association shall appoint an arbitrator.

The arbitration will be held in New York, New York unless the arbitrators agree that it be held elsewhere. The laws of the State of New York will govern any dispute resolved by arbitration as provided herein.

## I. **OTHER INSURANCE**

With respect to any **claim** reported under this policy, if there is available any other valid and collectible insurance, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits 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 or policies to this Policy's Policy Number.

**SPECIMEN**