

PROTECH

Venture Edition

TECHNOLOGY ERRORS & OMISSIONS

In consideration of the payment of the premium, and in reliance upon the **application** and the statements therein, which form a part of this policy, **we** agree as follows:

1. INSURING AGREEMENTS

For Coverages A and B in this policy, solely with respect to **claims** first made against an **insured** and reported to **us** during the **policy period** or any applicable **extended reporting period**, and subject to the other terms, conditions, exclusions and other limitations of this policy, this policy affords the following coverage:

COVERAGE A: LIABILITY FOR DAMAGES

We shall pay amounts, in excess of the applicable Retention, **you** or any **additional insureds** are legally obligated to pay as **damages** arising from a **claim**:

- (i) made against **you** or such **additional insured**, or
- (ii) for **liability from others**,

for **wrongful acts**.

COVERAGE B: DEFENSE OF INSUREDS

- (1) **Our Duty To Defend Insureds:** **We** have the right and duty to defend a **suit** brought against any **insured** in the **coverage territory** for covered **wrongful acts**, even if the **suit** is groundless or fraudulent.
- (2) **Claim Expenses:** **We** shall pay for **claim expenses** any **insured** incurs with **our** prior written consent in the defense of a **suit** for covered **wrongful acts**.
- (3) **Our Right To Investigate And Settle Claims:** **We** have the right, but not the duty, to investigate any **claim** against any **insured**, and settle any **claim**, with **your** written consent, against an **additional insured** or **leased worker** or against **you**.
- (4) **Your Right To Settle:** **You** may settle any **claim** to which this insurance applies provided that **you** do so (i) on behalf of all **insureds**, and (ii) without incurring **loss** in excess of all applicable Retentions.
- (5) **When Our Duty To Defend Ends:** **Our** duty to defend ends upon the exhaustion of the **policy limit of liability** or any applicable **sublimit of liability** by payment of **loss**, including **claim expenses**. **Our** duty to defend also ends if **you** fail or refuse to consent to a settlement **we** recommend and the claimant will accept. **You** must then defend the **claim** at **your** own expense. As a consequence of such failure or refusal, **our** liability for **loss** shall not exceed the amount for which **we** could have settled such **claim** had **you** consented, plus **claim expenses** incurred prior to the date of such failure or refusal.

2. DEFINITIONS

- (a) **"Additional insured"** means any natural person or entity (i) that an **organization** has expressly agreed in writing, prior to the commission of a **wrongful act**, to add as an **insured** under this policy, but only for the **wrongful acts** of the **organization**; or, (ii) any **employee** of any such described or listed entity.
- (b) **"Application"** means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this policy or the underwriting of any other errors and omissions liability policy issued by the **insurer**, or any of its affiliates, of which this policy is a renewal, replacement or which it succeeds in time.
- (c) **"Bodily injury"** means physical injury, sickness, disease, pain or death, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or emotional distress at any time.
- (d) **"Claim"** means:
- (1) a written or oral demand for money, services, non-monetary relief or injunctive relief; or
 - (2) a **suit**.
- (e) **"Claim expenses"** means the reasonable and necessary (i) fees and disbursements charged by an attorney appointed by **us**, and (ii) other fees, costs and expenses incurred in the defense or investigation of a **claim** against an **insured**, either incurred by **us** or by an **insured** with **our** prior written consent. **"Claim expenses"** shall also include premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required in any **claim** against an **insured** for **your wrongful acts**; however, **we** have no obligation to appeal or to obtain bonds. This Definition is subject to the limitations set forth in Definition 2(s).
- (f) **"Computer attack"** means **unauthorized access, unauthorized use, receipt or transmission of a malicious code or denial of service attack**, arising out of **your professional services**, which:
- (1) alters, copies, misappropriates, corrupts, destroys, disrupts, deletes, damages or prevents, restricts or hinders access to, a **computer system**;
 - (2) results in the disclosure of private or confidential information stored on a **computer system**; or
 - (3) results in **identity theft**,
- whether any of the foregoing is intentional or unintentional, malicious or accidental, fraudulent or innocent, and regardless of whether the perpetrator is motivated for profit.
- (g) **"Computer system"** means computer hardware, software, firmware, and components thereof, including electronic data stored thereon, which are linked together through a network of two or more computers, including such networks accessible through the **Internet**, intranets, extranets or virtual private networks.
- (h) **"Coverage territory"** means a **wrongful act** anywhere in the world, provided the **claim** is brought in the United States, its territories and possessions, Puerto Rico, or Canada.
- (i) **"Damages"** means any amount that any **insured** shall be legally required to pay because of judgments, arbitration awards or the like rendered against an **insured**, or for settlements negotiated by **us** or by **you** in accordance with Coverage B, including, but not limited to:
- (1) pre-judgment interest;
 - (2) post-judgment interest that accrues after entry of judgment and before **we** have paid, offered to pay or deposited in court that part of the judgment within the applicable Limit of Liability; and
 - (3) subject to this policy's other terms, conditions, exclusions and other limitations, including but not limited to exclusions relating to profit or advantage, deliberate fraud or deliberate criminal acts: (i) punitive, (ii) exemplary and (iii) multiple damages; provided, however, the enforceability of this Subparagraph 2(i)(3) shall be governed by such applicable law that most favors coverage for such punitive, exemplary and multiple damages.

This Definition is subject to the limitations set forth in Definition 2(s).

- (j) **"Denial of service attack"** means an attack launched by a person(s) that sends an excessive volume of electronic data to a **computer system** in order to deplete such **computer system's** capacity, and prevents

those who are authorized to do so from gaining access to such **computer system** in a manner in which they are legally entitled.

- (k) **"Employee"** means any past, present or future employee, including any part-time, seasonal and temporary employee, but only for **wrongful acts** committed in their capacity as such. **Employee** also includes any past, present or future **leased worker**, but only for **wrongful acts** committed in their capacity as such.
- (l) **"Extended reporting period"** means whichever extended reporting period described in Paragraphs 8(a) through 8(c), if any, is applicable.
- (m) **"First inception date"** means the date set forth in Item 3 of the Declarations as the inception date of the first errors and omissions, professional, or other liability policy that (i) provides or provided the same or essentially the same coverage as this policy and (ii) was issued by **us** or any other member company of Chartis to the **named insured** and continually renewed by **us** or any other Chartis member company through the inception date of this policy; or such other date specified in Item 3 of the Declarations as such.
- (n) **"Identity theft"** means the misappropriation of personal identity information of customers or members that is stored on a **computer system**, including without limitation, social security numbers, account numbers, passwords, credit card numbers, addresses or phone numbers, arising out of **your professional services**, and that has resulted in, or could reasonably result in the wrongful or fraudulent use of such information.
- (o) **"Insured"** means each (1) of **you**; and (2) **additional insured**.
- (p) **"Internet"** means the worldwide public network of computers commonly known as the Internet, as it currently exists or is manifested in the future.
- (q) **"Leased worker"** means any person provided by an employment contractor or agency under an agreement between an **organization** and the employment contractor or agency to perform duties related to the conduct of an **organization's professional services**.
- (r) **"Liability from others"** means vicarious liability of any **insured** for **damages** from **wrongful acts**.
- (s) **"Loss"** means the total sum of **damages** and **claim expenses**. **"Claim expenses," "damages"** and **"loss"** shall not mean and this policy shall not cover: (1) compensation, benefits, overhead, charges or expenses of any **insured** or such **insured's employees**; (2) production costs or the cost of recall, reproduction, reprinting or correction of material by any person or entity; (3) **your** cost of providing, correcting or re-performing or completing any **professional services**; (4) any costs or expenses incurred by any person or entity to withdraw or recall material, media, medium (including CD's, DVD's, cassettes and LP's), products (including products of others which incorporate **your** products) or professional services from the marketplace, or from loss of use arising out of such withdrawal or recall; (5) civil or criminal fines or penalties; (6) taxes; (7) any amounts for which an **insured** is not financially liable or which are without legal recourse to an **insured**; (8) the costs and expenses of complying with any injunctive or other form of equitable relief; (9) the monetary value of any electronic fund transfer or transaction by an **insured** or on **your** behalf, which is lost or diminished during transfer into, out of or between an **insured's** accounts; (10) liquidated damages; and (11) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- (t) **"Malicious code"** means an unauthorized corrupting or harmful piece of code. **Malicious code** includes, but is not limited to, computer viruses, "Trojan horses," "worms," and "time or logic bombs."
- (u) **"Management control"** means: (1) owning interests representing more than fifty percent (50%) of the voting, appointment or designation power for the selection of a majority of: the Board of Directors of a corporation, the management committee members of a joint venture or partnership, or the members of the management board of a limited liability company; or (2) having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **organization**, to elect, appoint or designate a majority of: the Board of Directors of a corporation, the management committee of a joint venture or partnership or the management board of a limited liability company.
- (v) **"Named insured"** means the entity listed as such in Item 1 of the Declarations.

- (w) **“Over-redemption”** means coupons, price discounts, prizes, awards or any other valuable consideration given in excess of the total contracted or expected amount.
- (x) **“Organization”** means (1) the **named insured**; and (2) each **subsidiary**.
- (y) **“Policy limit of liability”** means the aggregate limit of liability set forth as such in Item 3 of the Declarations.
- (z) **“Policy period”** means the period set forth as such in Item 2 of the Declarations.
- (aa) **“Pollutants”** means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and **Waste**. **“Waste”** includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- (bb) **“Privacy policy”** means statements in written or electronic form regarding the collection, dissemination or treatment of information regarding customers, visitors to an **Internet** site, or other persons.
- (cc) **“Professional services”** means the:
- (1) performance of **your technology services**; or
 - (2) creation, manufacture, development, distribution, license, lease or sale of **your technology products** incidental to **your technology services**.
- (dd) **“Property damage”** means (1) physical injury to or loss or destruction of tangible property including the resulting loss of use thereof, and/or (2) loss of use of tangible property which has not been physically injured or destroyed; provided, however, for the purpose of this definition, **“tangible property”** shall not include electronic data.
- (ee) **“Retroactive date”** means the respective dates set forth in the Declarations as such in the Declarations.
- (ff) **“Subsidiary”** means the entities listed as such on an endorsement to this policy.
- (gg) **“Suit”** means a civil proceeding for monetary, non-monetary or injunctive relief which is commenced by service of a complaint or similar pleading. **“Suit”** shall also include a binding arbitration proceeding in which **damages** are alleged and to which an **insured** must submit or does submit with **our** prior written consent.
- (hh) **“Technology product”** means any computer hardware, firmware, software, or any related electronic product, equipment or device, specifically designed or intended for use in connection with **your technology service**, that is created, manufactured, developed, distributed, licensed, leased or sold:
- (1) by **you**; or
 - (2) for **you** by others acting under **your** trade name, to others for compensation.
- (ii) **“Technology service”** means solely the computer or electronic information technology services listed below that are performed for others for compensation (1) by **you**; or (2) for **you** by others acting under **your** trade name:
- (1) systems analysis,
 - (2) software or systems programming,
 - (3) data processing,
 - (4) integration, management, repair, maintenance, analysis and design of computer products, networks and systems;
 - (5) website design,
 - (6) training in the use of any **technology product**,
 - (7) consulting with regard to the technology services set forth in (1) through (6) above.
- (jj) **“Trade secret”** means information (including any idea) that has been reduced to a written or electronic form, including a formula, compilation, pattern, program, device, method, process, or technique which:
- (1) derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage

from its disclosure or use; (2) is the subject of reasonable efforts to maintain its secrecy; and (3) is used, capable of being used, or intended to be used in commerce.

- (kk) **"Transaction"** means a transaction defined as such in Paragraph 9(a) of this policy.
- (ll) **"Unauthorized access"** means the gaining of access to a **computer system** by an unauthorized person or persons.
- (mm) **"Unauthorized use"** means the use of a **computer system** by an unauthorized person or persons or an authorized person or persons in an unauthorized manner.
- (nn) **"We," "us," "insurer" and "our"** mean the insurer named in Item 5 of the Declarations.
- (oo) **"Wrongful act"** means any actual or alleged negligent act, error, omission, breach of duty, misstatement or misleading statement committed or omitted on or after the **retroactive date** in the performance of **your professional services**, including any of the foregoing that results in a **computer attack** to others.
- (pp) **"You" or "your"** mean each and every (1) **organization** and (2) **employee** of an **organization**.
- (qq) **"Your computer system"** means a **computer system** under the ownership, operation or control of an **organization**.

3. EXCLUSIONS

This policy does not cover any **claim**:

- (a) arising out of or resulting, directly or indirectly, from any dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage to which an **insured** is not legally entitled; however, **we** will defend **suits** alleging any of the foregoing conduct until there is a judgment against, final adjudication against, adverse finding of fact against, or adverse admission, at which time **you** shall reimburse **us** for **claim expenses**; provided, however, **we** will not defend such **suits** if they allege any of the foregoing conduct which has been the subject of a criminal proceeding in which an **insured** has been found guilty, or pleaded *nolo contendere* or no contest;
- (b) alleging, arising out of or resulting, directly or indirectly, from any:
 - (1) purchase, sale, offer of or solicitation of an offer to purchase or sell securities, or violation of any securities law, including provisions of the Securities Act of 1933, or the Securities Exchange Act of 1934, as amended;
 - (2) violation of the Organized Crime Control Act of 1970 (commonly known as "Racketeer Influenced And Corrupt Organizations Act" or "RICO"), as amended;
 - (3) breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 as amended;
 - (4) antitrust violations, restraint of trade, or unfair competition, or violations of the Sherman Act, the Clayton Act or the Robinson-Patman Act, as amended;
 - (5) regulation promulgated under the foregoing laws; or
 - (6) any federal, state, local or foreign laws (a) similar to the foregoing laws (including "Blue Sky" laws) or (b) regulating the same or similar conduct or services, whether such law is statutory, regulatory or common law;
- (c) alleging, arising out of or resulting, directly or indirectly, from any employment practices or any discrimination against any person or entity on any basis, including but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, sex, sexual orientation or pregnancy;
- (d) alleging, arising out of or resulting, directly or indirectly, from any (1) presence of **pollutants**, (2) the actual or threatened discharge, dispersal, release or escape of **pollutants**, or (3) direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants, or in any way respond to or assess the effects of **pollutants**;
- (e) alleging, arising out of or resulting, directly or indirectly, from any infringement of any patent, copyright, trademark, trade dress, trade name, service mark or other intellectual property;
- (f) alleging, arising out of or resulting, directly or indirectly, from any misappropriation of **trade secret**;

- (g) alleging, arising out of or resulting, directly or indirectly, from an actual or threatened **computer attack to your computer system**;
- (h) alleging, arising out of or resulting, directly or indirectly, from any:
 - (1) false arrest, detention or imprisonment;
 - (2) libel, slander or defamation of character;
 - (3) wrongful entry or eviction;
 - (4) malicious prosecution; or
 - (5) invasion of any right of privacy;
- (i) alleging, arising out of or resulting, directly or indirectly, from any (1) false or deceptive advertising or misrepresentation in advertising of **your** products or services, or (2) unfair competition based on such advertising, including, but not limited to, advertising related violations of any local, state or federal consumer protection or privacy laws;
- (j) against **you** that is brought by or on behalf of:
 - (1) the Federal Trade Commission, the Department of Health and Human Services, the Office of Civil Rights, the Federal Communications Commission or any other federal, state or local government agency, or foreign government agency; or
 - (2) the American Society of Composers, Authors and Publishers, the Society of European Stage Authors and Composers, Broadcast Music, Inc., or any other licensing or rights organizations in such entity's regulatory, quasi-regulatory or official capacity, functions or duties;

provided, however, this exclusion shall not apply to any **claim** for otherwise covered **wrongful acts** in **your** performance of **professional services** for any of the foregoing government agencies or licensing or rights organizations;

- (k) alleging, arising out of or resulting, directly or indirectly, from any **bodily injury** or **property damage**;
- (l) alleging, arising out of or resulting, directly or indirectly, from any **insured** (1) advising, requiring, obtaining, or (2) failing to advise, require, obtain, effect or maintain any bond, suretyship or other insurance;
- (m) alleging, arising out of or resulting, directly or indirectly, from facts alleged, or to the same **wrongful acts**, or series of continuous, repeated or related **wrongful acts** alleged or contained in any **claim** which has been reported, or in any circumstances of which notice has been given, under any policy of which this policy is a renewal or replacement or which it may succeed in time;
- (n) alleging, arising out of or resulting, directly or indirectly, from any **wrongful act**, circumstance or event committed, omitted or occurring prior to the **first inception date** if on or before the **first inception date**, **you** knew or could have reasonably foreseen that such **wrongful act**, circumstance or event could give rise to a **claim** against an **insured** or **loss**;
- (o) alleging, arising out of or resulting, directly or indirectly, from, as of the **first inception date**, any pending or prior: (1) **claim**, demand, **suit**, arbitration, mediation or litigation, or (2) administrative, bankruptcy or regulatory proceeding or investigation, of which **you** had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior **claim**, demand, **suit**, arbitration, mediation or litigation or administrative, bankruptcy or regulatory proceeding or investigation;
- (p) made against an **insured** alleging, arising out of or resulting, directly or indirectly, from (1) any **wrongful act** or (2) **liability from others** based upon, relating to or in connection with any act, error or omission, occurring, committed or omitted prior to the **retroactive date**;
- (q) alleging, arising out of or resulting, directly or indirectly, from any liability or obligation under any contract or agreement or out of any breach of contract; however, this exclusion does not apply to any:
 - (1) liability or obligation an **insured** would have in the absence of such contract or agreement; or
 - (2) liability or obligation under a contract for **professional services** from a **wrongful act**;
- (r) alleging, arising out of or resulting, directly or indirectly, from any guarantee or express warranty; inaccurate, inadequate, or incomplete description of the price of goods, products or services; or any failure of goods, products or services to conform with an advertised quality or performance; or liquidated

damages; or any failure to provide goods or products, or perform services within a specified time period, by a deadline or according to specified milestones; or the collection of or seeking the return of fees or royalties or other compensation paid to an **insured**; or **your** cost of providing, correcting or re-performing or completing any **professional services**; or any **insured's** fees, cost or profit guarantees, cost representations, contract price, or estimates of probable costs or cost estimates being exceeded;

- (s) alleging, arising out of or resulting, directly or indirectly, from any violation of any **insured's privacy policy** or any failure of any **insured** to maintain a **privacy policy**;
- (t) alleging, arising out of or resulting, directly or indirectly, from any satellite failure;
- (u) against an **insured** that is brought, directly or indirectly, by or on behalf of:
 - (1) any of **you**;
 - (2) any business entity that is controlled, managed or operated, directly or indirectly, in whole or in part, by **you**;
 - (3) any parent company, subsidiary, director, officer, partner, trustee, successor or assignee of **yours**, or any person or entity affiliated with **you** or such business entity through common majority ownership or control; or
 - (4) any independent contractor of an **insured** or any **leased worker**; however, this exclusion shall not apply to **claims** arising out of **your professional services** provided to such independent contractor;
- (v) alleging, arising out of or resulting, directly or indirectly, from:
 - (1) fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;
 - (2) strikes or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations (whether declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power, or any action taken to hinder or defend against these actions; or
 - (3) electrical or mechanical failures, including any electrical power interruption, surge, brownout or blackout; provided, however, this Subparagraph 3v(3) shall not apply to electrical or mechanical failures, other than satellite failures, where such failure was the result of **your wrongful act**;
- (w) arising out of a **wrongful act** committed with the knowledge that it was a **wrongful act**;
- (x) alleging or arising out of **over-redemption**; or
- (y) alleging, arising out of or resulting, directly or indirectly, from the transfer of funds, monies or securities to or from any natural person or entity.

4. LIMIT OF LIABILITY (FOR ALL LOSS-INCLUDING CLAIM EXPENSES)

- (1) The aggregate **policy limit of liability** set forth in the Declarations is the most **we** will pay as **loss** under this policy, in the aggregate, for all coverages combined, regardless of the number of persons, occurrences, **claims** or entities covered by this policy, or claimants or **claims** brought against any **insured**.
- (2) The **policy limit of liability** for any **extended reporting period** shall be part of and not in addition to the **policy limit of liability** for the **policy period**.
- (3) Further, each and every **claim** made subsequent to the **policy period** or an applicable **extended reporting period**, that pursuant to Paragraph 6(b) is considered made during the **policy period** or an **extended reporting period**, shall also be subject to the same **policy limit of liability** afforded to **claims** first made and reported during the **policy period**.
- (4) **Damages, claim expenses** and **loss** are all part of and subject to the **policy limit of liability**.

5. RETENTION

For each **claim**, the **insurer** shall only be liable for the amount of **loss** arising from such **claim** that exceeds the Retention amount applicable to such **claim**. Such Retention amounts must be borne by the **insureds** and remain uninsured with regard to all **loss**. A single Retention amount shall apply to **loss** arising from all **claims** alleging the same **wrongful acts**, or series of continuous, repeated or related **wrongful acts**.

6. NOTICE AND AUTHORITY

- (a) *Generally*: Notice in connection with this policy shall be given in writing to **us** (i) in the case of **claims**, as provided in Paragraph 6(b), and (ii) in all other cases, at 175 Water Street, New York, New York 10038 c/o Chartis Claims, Inc., the Financial Lines Division. The **named insured** shall act on behalf of each and every **insured** with respect to the giving and receiving of any notice under this policy, including, but not limited to, notice of a **claim** and notice of cancellation. If mailed, the date of mailing shall constitute the date that such notice or information was given and proof of mailing shall be sufficient proof of notice.
- (b) *Claims*:
- (1) With respect to **claims** or circumstances, notice and all other information and documentation required to be provided under this policy should be directed to **us** at the address indicated in Subparagraph 6(a) above. To be effective, such notice must reference this policy.
 - (2) For any and all coverage under this policy:
 - (a) before coverage will apply, an **insured** must notify **us** in writing of a **claim** made against an **insured** as soon as practicable, but in all events no later than the end of the **policy period** or any applicable **extended reporting period**;
 - (b) if an **insured** has notified **us** in writing of a **claim** pursuant to Subparagraph 6(b)(2)(a) above, then any **claim** which is subsequently made against an **insured** and reported to the **insurer** alleging, arising out of, based upon or attributable to the facts alleged in the **claim** for which such notice has been given, or alleging any **wrongful act** which is the same as or related to any **wrongful act** alleged in the **claim** of which such notice has been given, shall be considered related to the first **claim** and made at the time such notice was given; and
 - (c) if during the **policy period** or during an applicable **extended reporting period** an **insured** shall become aware of any circumstances which may reasonably be expected to give rise to a **claim** being made against an **insured** for a **wrongful act** that occurs prior to the end of the **policy period**, and, during the **policy period** or any applicable **extended reporting period**, an **insured** gives written notice to **us** of (i) such circumstances, (ii) the **wrongful acts** allegations anticipated and (iii) the reasons for anticipating such a **claim**, with full particulars as to dates, persons and entities involved, then any **claim** that is subsequently made against an **insured** arising out of such **wrongful act** or the same **wrongful act** or series of continuous, repeated or related **wrongful acts**, shall be treated as a **claim** made against such **insured** and reported to **us** at the time such notice of such circumstances was given.

7. WHAT YOU MUST DO IN THE EVENT OF A CLAIM

- (a) In addition to providing notice as required in this policy, with respect to all coverages under this policy, each and every **insured** must also:
- (1) send **us** copies of all demands, suit papers, other legal documents and invoices for **claim expenses** received by such **insured**, as soon as practicable;
 - (2) immediately record the specifics of any **claim** and the date such **insured** first received such **claim**;
 - (3) take prompt and reasonable steps to minimize the **loss** and take reasonable steps to prevent further **loss**;
 - (4) at **our** request, report such **loss** to the Federal Bureau of Investigation, a computer emergency response team, information sharing and analysis center or any other central reporting or investigative organization which **we** may designate;
 - (5) upon **our** request, furnish to **us** any and all documentation within such **insured's** possession; and
 - (6) give **us** and any counsel **we** select to represent an **insured** in connection with a **suit** or to investigate any **claim**, full cooperation and such information as **we** or such counsel may reasonably require, including, but not limited to, assisting **us** or such counsel in:
 - (a) any investigation of a **claim**, **loss** or other matter relating to the coverage afforded under this policy (including submission to an examination by **us** or **our** designee, under oath if required by **us**);
 - (b) making settlements;

- (c) enforcing any legal rights **you** or **we** may have against any person or entity who may be liable to **you**;
- (d) attending depositions, hearings and trials;
- (e) securing and giving evidence, and obtaining the attendance of witnesses; and
- (f) any inspection or survey conducted by **us**.

(b) No **insured** shall admit any liability, assume any financial obligation or pay any money in connection with any **claim** without **our** prior written consent. If any **insured** does, it will be at such **insured's** own expense. The foregoing sentences of this Paragraph 7(b) shall not apply to a settlement pursuant to Coverage B(4) of this policy so long as such **insured** provides **us** written notice of such settlement as soon as practicable, but in no case later than thirty (30) days after such settlement is reached in principle.

(c) In all events, no **insured** shall take any action, or fail to take any required action, without **our** written consent, which prejudices **our** rights under this policy.

8. EXTENDED REPORTING PERIOD

The following provisions are applicable solely to claims made and reported coverages of this policy:

(a) *Automatic Extended Reporting Period:* If the **named insured** or the **insurer** shall refuse to renew this policy, the **named insured** shall have the right following the effective date of such nonrenewal to a period of sixty (60) days (the "**automatic extended reporting period**") in which to give written notice to **us** of **claims** first made against an **insured** during the **automatic extended reporting period** for any **wrongful act** committed prior to the end of the **policy period** and otherwise covered by this policy. The **automatic extended reporting period** shall not apply where an **extended reporting period** has been purchased or to **claims** that are covered under any subsequent insurance **you** purchase or that is purchased for **your** benefit, or that would be covered, but for the exhaustion of the amount of insurance applicable to such **claims** or that is within any applicable Retention amount.

(b) *Optional Extended Reporting Period:* Except as indicated below, if the **named insured** shall cancel or **we** or the **named insured** refuse to renew this policy, the **named insured** shall have the right to a period of up to three years following the effective date of such cancellation or nonrenewal (an "**extended reporting period**"), upon payment of an additional premium amount of up to two hundred percent (200%) of the **full annual premium**, in which to give to **us** written notice pursuant to Subparagraph 6(b)(2)(a) of the policy of **claims** (1) first made against an **insured** during said **extended reporting period** and (2) solely with respect to a **wrongful act** committed prior to the end of the **policy period** and otherwise covered by this policy. If the **named insured** exercises its right to purchase an **extended reporting period**, that period incepts at the end of the **policy period** and there shall be no **automatic extended reporting period**.

As used herein, "**full annual premium**" means the premium level in effect immediately prior to the end of the **policy period**.

(c) *Transaction Triggered Extended Reporting Period:* In the event of a **transaction** (as defined in Paragraph 9(a)), the **named insured** shall have the right to request an offer from **us** of an **extended reporting period** (solely with respect to pre-**transaction wrongful acts**). Upon **our** receipt of such a request, **we** shall offer such **extended reporting period** pursuant to such terms, conditions, exclusions and additional premium as **we** may decide. In the event of a **transaction**, the right to an **extended reporting period** shall not otherwise exist except as provided in this paragraph.

(d) *Common Extended Reporting Period Terms:* An **extended reporting period** is not cancelable and the additional premium charged shall be fully earned at inception. This Clause 8 shall not apply to any cancellation resulting from non-payment of premium. The rights contained in this Clause 8 shall terminate unless written notice of election of an **extended reporting period** together with any additional premium due is received by **us** no later than thirty (30) days subsequent to the effective date of the cancellation, nonrenewal or **transaction**.

9. ORGANIZATIONAL CHANGES

(a) *Transactions:* If during the **policy period**:

- (1) the **named insured** shall consolidate with, merge into, or sell all or substantially all of its assets to any other person or entity or group of persons or entities acting in concert; or

(2) any person or entity or group of persons or entities acting in concert shall acquire **management control** of the **named insured**;

(any of such events being a “**transaction**”), then this policy shall continue in full force and effect as to **wrongful acts** occurring prior to the effective time of the **transaction**, but there shall be no coverage afforded by any provision of this policy for any actual or alleged **wrongful act** after the effective time of the **transaction**, unless (i) within thirty (30) days of such **transaction** we have been provided with full particulars of the **transaction**, the related entities and any other information requested by **us**, and (ii) the **named insured** or its successor, has agreed to any additional premium and amendments to this policy required by **us**.

Coverage for post-**transaction wrongful acts** is conditioned upon the **named insured** or its successor paying when due any additional premium required by **us**. This policy may not be canceled after the effective time of a **transaction** and the entire premium for this policy shall be deemed earned as of such time.

(b) **Subsidiary Additions:**

Subsidiary also includes any for-profit entity of which the **named insured** first attains **management control** during the **policy period**, whether directly or indirectly through one or more other **subsidiaries**, but such entity shall be a “**subsidiary**” only if the **named insured** provides **us** with full particulars of the new **subsidiary** within thirty (30) days of attaining **management control**, and then only if the **named insured** agrees to any additional premium and amendments to this policy required by **us** relating to such **subsidiary**. Further, coverage as shall be afforded to any **subsidiary** and any **employee** thereof is conditioned upon the **named insured** paying when due any additional premium required by **us** relating to such **subsidiary**.

Coverage as is afforded under this policy with respect to a **claim** made against any **subsidiary** shall only apply for **wrongful acts** committed or allegedly committed (1) after the effective time the **named insured** obtained **management control** of such **subsidiary**, and (2) prior to the effective time that the **named insured** no longer has **management control** over such **subsidiary**.

(c) **Other Organizational Changes:**

In all events, coverage as is afforded under this policy with respect to a **claim** made against any **subsidiary** and/or any **employee** of an **organization** shall only apply for **wrongful acts** committed or allegedly committed (1) in the case of a **subsidiary**, (i) after the effective time the **named insured** obtained **management control** of such **subsidiary**, and (ii) prior to the effective time that the **named insured** no longer has **management control** over such **subsidiary**, (2) in the case of an **employee** of an **organization**, solely while such **employee** is employed by the **named insured** or a **subsidiary** over which the **named insured** has **management control**, or (3) in the case of an **employee** of an **additional insured**, solely while employed by such **additional insured**.

10. **WHERE COVERAGE APPLIES**

We cover **claims** made or **suits** filed in the United States of America, its territories and possessions, Puerto Rico and Canada for **wrongful acts** that occur anywhere in the world.

11. **ACTIONS AGAINST US**

- (a) No one can sue **us**, or commence alternative dispute resolution as provided by Clause 16 of this policy, to recover under this policy unless there has been full compliance by **you** with all the terms of this policy.
- (b) A person or organization may sue **us** to recover up to the **policy limits of liability** under this policy, whichever would be exhausted first, only after liability of all **insureds** has been decided by:
 - (1) an arbitration award as a result of arbitration commenced in accordance with Clause 16 of this policy;
 - (2) a trial or appeal, after which a final judgment has been entered; or
 - (3) a written agreement signed by **you, us** and the party making the **claim**.
- (c) Any person, organization or legal representative thereof who has secured such award, judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. **We** may not be impleaded by any natural person **insured**, his or her spouse, any other **insured** or any legal representative of the foregoing.

12. SUBROGATION

You may be able to recover all or part of a **claim** or a **loss** from someone other than **us**. **You** therefore must do all that is possible after a **claim** or **loss** to preserve any such right of recovery. If **we** make a payment under this policy, that right of recovery will belong to **us**. **You** will do whatever is necessary, including signing documents, to help **us** obtain that recovery.

13. OTHER INSURANCE

Except as otherwise stated to the contrary elsewhere in the policy, such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance available to any **insured** unless such other insurance is written only as specific excess insurance over the **policy limit of liability** provided by this policy.

14. CANCELLATION

- (a) *By **Named Insured***: This policy may be canceled by the **named insured** at any time only by mailing written prior notice to **us** or by surrender of this policy to **our** authorized agent or **us**.
- (b) *By **Us***: This policy may be canceled by **our** delivering to the **named insured** by registered, certified, other first class mail or other reasonable delivery method, at the address of the **named insured** set forth in the Declarations, written notice stating when, not less than sixty (60) days thereafter (ten (10) days in the event of cancellation for non-payment of premium), the cancellation shall be effective. Proof of mailing or delivery of such notice as aforesaid shall be sufficient proof of notice and this policy shall be deemed canceled as to all **insureds** at the date and hour specified in such notice.
- (c) *Return of Premium*: **We** shall have the right to the premium amount for the portion of the **policy period** during which the policy was in effect. If this policy shall be canceled by the **named insured**, **we** shall retain the customary short rate proportion of the premium herein.

15. ASSIGNMENT

This policy and any and all rights hereunder are not assignable without **our** prior written consent.

16. ALTERNATIVE DISPUTE RESOLUTION PROCESS

It is hereby understood and agreed that all disputes or differences which may arise under or in connection with this policy, whether arising before or after termination of this policy, including any determination of the amount of **loss**, shall be submitted to the alternative dispute resolution ("**ADR**") process set forth in this clause.

Either **you** or **we** may elect the type of **ADR** process discussed below; provided, however, that **you** shall have the right to reject **our** choice of the type of **ADR** process at any time prior to its commencement, in which case **your** choice of **ADR** process shall control.

There shall be two choices of **ADR** process: (1) non-binding mediation administered by any mediation facility to which **we** and **you** mutually agree, in which all implicated **insureds** and **we** shall try in good faith to settle the dispute by mediation under or in accordance with the then-prevailing commercial mediation rules; or (2) arbitration submitted to an arbitration panel of three (3) arbitrators. The **insureds** shall select one (1) arbitrator, **we** shall select one (1) arbitrator and said arbitrators shall mutually agree upon the selection of the third arbitrator. In either mediation or arbitration, the mediator or arbitrators shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

The dispute or differences considered by the mediator or arbitrators shall be governed by the internal laws of the State of New York; provided, however, that New York law shall not apply to:

- (a) procurement, issuance or delivery of this policy, including cancellation or nonrenewal provisions of this policy (if any) or any other New York State regulations or requirements regarding policies issued pursuant to New York State Insurance Law; or
- (b) to the determination of the availability of punitive damages, unless New York law otherwise applies.

In the event of arbitration, the decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators' award shall not include attorneys fees or other costs. In the event of mediation, either party shall have the right to commence a judicial proceeding; provided, however, that no such judicial proceeding shall be commenced until at least one hundred and twenty (120) days after the date the mediation shall be deemed concluded or terminated. In all events, each party shall share equally the expenses of the **ADR** process.

Either choice of **ADR** process may be commenced in New York, New York; Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; or in the state indicated in Item 1(a) of the Declarations as the mailing address for the **named insured**. The **named insured** shall act on behalf of each and every **insured** in connection with any **ADR** process under this clause.

17. **BANKRUPTCY**

Bankruptcy or insolvency of any **insured** shall not relieve the **insurer** of any of its obligations hereunder.

18. **SPOUSAL AND LEGAL REPRESENTATIVE EXTENSION**

If a **claim** against a natural person **insured** includes a **claim** against: (a) the lawful spouse of such **insured**; or (b) a property interest of such spouse, and such **claim** arises from any actual or alleged **wrongful act** of such **insured**, this policy shall cover **loss** arising from the **claim** made against that spouse or the property of that spouse to the extent that such **loss** does not arise from a **claim** for any actual or alleged act, error or omission of such spouse. This policy shall cover **loss** arising from a **claim** made against the estates, heirs, or legal representatives of any deceased natural person **insured**, and the legal representatives of any natural person **insured**, in the event of incompetency, insolvency or bankruptcy, who was an **insured** at the time the **wrongful acts** upon which such **claim** is based were committed.

19. **APPLICATION**

All the statements and representations in the **application** are deemed to be material to the risk assumed by the **insurer**, form the basis of this policy and are incorporated into and have become a part of this policy.

20. **POLICY CHANGES**

This policy contains all the agreements between **you** and **us** concerning this insurance. This policy can only be changed by a written endorsement **we** issue and make a part of this policy.

21. **SPECIAL RIGHTS AND DUTIES OF NAMED INSURED**

You agree that when there is more than one natural person or entity covered under this policy, the **named insured** first listed in Item 1 of the Declarations shall act on behalf of all **insureds** as to:

- (a) giving and receiving notice, including, but not limited to, notice of **claims** and cancellation;
- (b) the exercising or declining of any right to an **extended reporting period**;
- (c) the resolution of any dispute in connection with coverage afforded or purportedly afforded by this policy;
- (d) payment of premiums and receipt of return premiums, if any; and
- (e) acceptance of any endorsements or other changes to this policy.

22. **HEADINGS**

The descriptions in the headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.