



**Miscellaneous Professional  
Liability Policy  
Declarations**

Policy Number: \_\_\_\_\_

**IMPORTANT NOTICE**

THIS IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE **INSUREDS** DURING THE **POLICY PERIOD** OR EXTENDED REPORTING PERIOD, IF EXERCISED, AND REPORTED TO THE **COMPANY** PURSUANT TO SECTION VI.A.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED **DAMAGES** SHALL BE REDUCED BY AMOUNTS INCURRED FOR **CLAIMS EXPENSES**. FURTHER NOTE THAT AMOUNTS INCURRED FOR **DAMAGES** AND **CLAIMS EXPENSES** SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION II., DEFINITIONS.

Item 1. **Named Insured** and Principal Address:

Item 2. **Policy Period:** From: \_\_\_\_\_ To: \_\_\_\_\_  
12:01 a.m. local time at the address shown in Item 1.

Item 3. Limit of Liability (including **Claims Expenses**):

\$ \_\_\_\_\_ Each **Claim**

\$ \_\_\_\_\_ Aggregate Limit

\$ \_\_\_\_\_ **Disciplinary Proceeding Claims Expenses** Aggregate Limit (in addition to the Each **Claim** and Aggregate Limits set forth above)

Item 4. Retention:

\$ \_\_\_\_\_ Each **Claim**

Insured:  
Policy No.:

Item 5. Premium: \$ \_\_\_\_\_  
[Surcharges/Assessments \$ \_\_\_\_\_]  
[Total: \$ \_\_\_\_\_]

Item 6. **Retroactive Date** (if applicable):

Item 7. **Professional Services:**

Item 8. Notice to **Company:**

A. Notice of **Claim** or **Wrongful Act:**

B. All other notices:

Item 9. Optional **Extended Reporting Period:**

\$ \_\_\_\_\_ Additional Premium

\_\_\_\_\_ Additional Period

Item 10. **Forms/Endorsements/Applications Effective at Inception**

DATE: \_\_\_\_\_



Miscellaneous Professional  
Liability Policy

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Policy**, the **Insureds** and the **Company** agree as follows:

I. INSURING AGREEMENT AND DEFENSE

A. Insuring Agreement

The **Company** will pay on behalf of the **Insured** all sums in excess of the Retention that the **Insured** shall become legally obligated to pay as **Damages** and **Claims Expenses** because of a **Claim** first made against the **Insured** during the **Policy Period** or any applicable **Extended Reporting Period** and reported to the **Company** pursuant to Section VI.A. by reason of a **Wrongful Act** committed on or subsequent to the **Retroactive Date** and before the end of the **Policy Period**.

B. Defense

1. The **Company** shall have the right and duty to defend any covered **Claim** brought against the **Insured** even if the **Claim** is groundless, false or fraudulent. The **Insured** shall not admit or assume liability or settle or negotiate to settle any **Claim** or incur any **Claims Expenses** without the prior written consent of the **Company** and the **Company** shall have the right to appoint counsel and to make such investigation and defense of a **Claim** as it deems necessary.
2. If the **Insured** refuses to consent to a settlement acceptable to claimant/plaintiff and the **Company**, then the **Company's** maximum liability to pay **Damages** and **Claim Expenses** under this **Policy** with respect to such **Claim** shall be reduced to (i) the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred as of the date the potential settlement was proposed in writing by the **Company** to the **Insureds**, and (ii) seventy percent (70%) of all subsequent covered **Claims Expenses** in excess of such amount, which sum shall not exceed the unexhausted each **Claim** or Aggregate Limits of Liability specified in Item 3. of the Declarations. The remaining **Damages** and thirty percent (30%) of such **Claims Expenses** shall be borne by the **Insureds** uninsured and at their own risk. This paragraph shall not apply to a **Claim** in which the total incurred **Damages** and **Claims Expenses** do not exceed the Retention.
3. The **Company** shall not be obligated to commence or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3. of the Declarations has been exhausted, or after the Company has deposited the remaining available Limit of Liability with a court of competent jurisdiction. In such case, the **Company** shall withdraw from investigation, defense, payment or settlement of such **Claim** and shall tender control of such **Claim** to the **Insured**.
4. If the **Insureds** attend hearings, depositions or trials at the request of the **Company**, the **Company** shall reimburse the **Insureds** for actual loss of earnings and reasonable and necessary expenses due to such attendance, up to \$250 per day for each **Insured**, subject to a maximum of \$5,000 for all covered **Claims** against all **Insureds** under this **Policy**. Such reimbursement payments by the **Company** to the **Insured** are not subject to the Retention and shall not reduce the Limits of Liability.

II. DEFINITIONS

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Company** in connection with the **Company** underwriting this **Policy** or any policy of which this **Policy** is a direct or indirect renewal or replacement or which it succeeds in time. All such applications, attachments, information, and materials are deemed attached to and incorporated into this **Policy**.

- B. **Bodily Injury** means injury to the body, sickness, disease or death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.
- C. **Claim** means:
1. a written demand against any **Insured** for monetary damages or non-monetary relief;
  2. a civil proceeding against any **Insured** for monetary damages or injunctive or other non-monetary relief, commenced by the service of a complaint or similar pleading;
  3. an arbitration proceeding against any **Insured** for monetary damages or injunctive or other non-monetary relief;
  4. a civil, administrative or regulatory investigation against any **Insured** commenced by the filing of a notice of charges, investigative order or similar document; or
  5. a **Disciplinary Proceeding**;
- including any appeal therefrom.
- D. **Claims Expenses** means:
1. reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Company**, or by the **Insured** with the **Company's** prior written consent, in the investigation and defense of covered **Claims**; and
  2. premiums for any appeal bond, attachment bond or similar bond, provided the **Company** shall have no obligation to apply for or furnish such bond.
- Claims Expenses** shall not include wages, salaries, fees or costs of directors, officers or employees of the **Company** or the **Insured**.
- E. **Company** means Old Republic Insurance Company.
- F. **Damages** means any compensatory amount which the **Insured** becomes legally obligated to pay on account of a covered **Claim**, including judgments, any award of prejudgment and post-judgment interest on that part of any judgment paid under this **Policy**, awards and settlements. **Damages** shall not include:
1. any amount for which the **Insured** is not financially liable or legally obligated to pay;
  2. taxes, fines or penalties;
  3. matters uninsurable under the law pursuant to which this **Policy** is construed;
  4. disgorgement of profits, gains or restitution by an **Insured**;
  5. costs incurred by an **Insured** to correct any **Wrongful Act** or the consequences of any **Wrongful Act**;
  6. the cost to comply with any injunctive or other non-monetary or declaratory relief, including specific performance, or any agreement to provide such relief; or
  7. any amount relating to a **Disciplinary Proceeding**, other than **Claims Expenses**.
- Damages** includes punitive and exemplary damages and the multiple portion of any multiple damage award, to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.
- G. **Disciplinary Proceeding** means any proceeding by a regulatory or disciplinary official, board or agency to investigate charges of professional misconduct by an **Insured** in the performance of **Professional Services**.
- H. **Extended Reporting Period** means the period for the extension of coverage, if elected, described in Section IV, **Extended Reporting Period**.
- I. **Insured** means:
1. the **Named Insured**;
  2. any **Subsidiary**, but only with respect to **Wrongful Acts** which occur while it is a **Subsidiary**;
  3. any past or present principal, partner, officer, director, trustee or employee of the **Named Insured** or **Subsidiary** thereof (and if the **Named Insured** is a partnership, limited liability partnership or limited

- liability company, then any general or managing partner or principal thereof), but only with respect to **Professional Services** performed on behalf of the **Named Insured** or any **Subsidiary**;
4. the estate, heirs, executors, administrators or legal representatives of any **Insured** described in paragraph 3. above in the event of such **Insured's** death, incapacity, insolvency, or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this **Policy**; and
  5. independent contractors who are natural persons, but only with respect to **Professional Services** performed on behalf of the **Named Insured** or any **Subsidiary**.
- J. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.
- K. **Named Insured** means the entity or person specified in Item 1. of the Declarations.
- L. **Personal Injury Offense** means one or more of the following offenses:
1. false arrest, detention or imprisonment;
  2. malicious prosecution;
  3. defamation, including libel and slander, and disparagement;
  4. publication or an utterance in violation of an individual's right to privacy; and
  5. invasion of the right to private occupancy, including wrongful entry or eviction.
- M. **Policy** means collectively, the Declarations, the **Application**, this policy form and any endorsements.
- N. **Policy Period** means the period of time specified in Item 2. of the Declarations, subject to prior termination pursuant to Section VI.E., Termination and Nonrenewal.
- O. **Pollutants** means any substance exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by the United States Environmental Protection Agency or any federal, state, county or municipal or local counterpart thereof or any foreign equivalent. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste materials. **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products, silica, or noise.
- P. **Professional Services** means only those services specified in Item 7. of the Declarations performed for others, for a fee or other consideration, by an **Insured** or by any other person or entity for whom the **Insured** is legally liable.
- Q. **Property Damage** means:
1. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; and
  2. loss of use of tangible property which has not been physically injured, lost, damaged or destroyed.
- R. **Retroactive Date** means the date specified in Item 6. of the Declarations.
- S. **Subsidiary** means any entity, other than a joint venture, in which the **Named Insured**:
1. owns 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 if such entity is a corporation, the management committee members if such entity is a partnership, the members of the management board if such entity is a limited liability company; or
  2. has the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of the **Named Insured** or any **Subsidiary**, to elect, appoint or designate a majority of the board of directors if such entity is a corporation, the management committee members if such entity is a partnership, or the members of the management board if such entity is a limited liability company, on or before the inception date of the **Policy**, either directly or indirectly, in any combination.
- T. **Wrongful Act** means any actual or alleged act, error, omission, misstatement, misleading statement or **Personal Injury Offense** committed by the **Insured** or by any other person or entity for whom the **Insured** is legally liable in the performance of or failure to perform **Professional Services**.

U. **Wrongful Employment Practices** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, state, or local laws (whether common or statutory) concerning employment or discrimination in employment;
4. sexual harassment or other unlawful workplace harassment;
5. wrongful deprivation of a career opportunity or failure to employ or promote;
6. wrongful discipline of employees;
7. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
8. negligent evaluation of employees;
9. failure to adopt adequate workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, or invasion of privacy;
11. employment-related wrongful infliction of emotional distress; or
12. any actual or alleged discrimination, sexual harassment, or violation of a natural person's civil rights relating to such discrimination or sexual harassment, whether direct, indirect, intentional or unintentional.

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

### III. EXCLUSIONS

The **Company** shall not be liable for **Damages** or **Claims Expenses** on account of, and shall not be obligated to defend, any **Claim**:

- A. alleging, based upon, arising out of, or attributable to any dishonest, fraudulent, criminal or malicious act or omission, or any intentional or knowing violation of the law by an **Insured**, however, this exclusion shall not apply unless and until there is an adverse admission by or final non-appealable adjudication against any **Insured** as to such conduct, at which time such **Insured** shall reimburse the **Company** for all **Damages** and **Claims Expenses** paid or incurred on account of such **Claim**. This exclusion shall only apply to any **Insured** who had knowledge of or participated in the aforementioned conduct. For purposes of this exclusion only:
  1. the knowledge and conduct of a natural person **Insured** shall not be imputed to any other natural person **Insured**; and
  2. the knowledge and conduct of any **Named Insured's** and any **Subsidiary's** Chief Executive Officer, Chief Financial Officer, President, Chairman of the Board, General Counsel, and Risk Manager (or the functional equivalent of such positions) shall be imputed to both the **Named Insured** and such **Subsidiary**. The knowledge of any other **Insured**, other than the aforementioned individuals, shall not be imputed to any **Insured** entity;
- B. alleging, based upon, arising out of, or attributable to any **Bodily Injury** or **Property Damage**; however, this exclusion shall not apply to mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock associated with a **Personal Injury Offense**;
- C. alleging, based upon, arising out of, or attributable to any liability of others assumed by the **Insured** under any express, implied, actual or constructive contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement;
- D. alleging, based upon, arising out of, or attributable to **Professional Services** performed for any entity if at the time the **Professional Services** were performed:
  1. any **Insured**, or any other natural person or entity for whom or for which an **Insured** is legally responsible, was a partner, director, officer or employee of such entity; or
  2. any **Insured**, or any other natural person or entity for whom or for which an **Insured** is legally responsible, owned, directly or indirectly, ten percent (10%) or more of any such entity;
- E. brought or maintained by, on behalf of, or in the right of any **Insured**;
- F. alleging, based upon, arising out of or attributable to any **Wrongful Employment Practice**;

- G. alleging, based upon, arising out of or attributable to any price fixing, restraint of trade, monopolization or unfair trade practices, including without limitation any violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving antitrust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder, or any similar provision of any federal, state, or local statutory law or common law anywhere in the world;
- H. alleging, based upon, arising out or attributable to any violation of:
1. the Employee Retirement Income Security Act of 1974;
  2. the Securities Act of 1933, the Securities Exchange Act of 1934 or any other federal or state securities laws; or
  3. the Racketeering Influenced and Corrupt Organizations Act of 1970;
- and any rules or regulations promulgated thereunder, amendments thereof, or any similar federal, state or common law;
- I. alleging, based upon, arising out of, or attributable to the gaining in fact of any profit or advantage to which the **Insured** is not legally entitled. For purposes of this exclusion only:
1. the knowledge and conduct of a natural person **Insured** shall not be imputed to any other natural person **Insured**; and
  2. the knowledge and conduct of any **Named Insured's** and any **Subsidiary's** Chief Executive Officer, Chief Financial Officer, President, Chairman of the Board, General Counsel, and Risk Manager (or the functional equivalent of such positions) shall be imputed to both the **Named Insured** and such **Subsidiary**. The knowledge of any other **Insured**, other than the aforementioned individuals, shall not be imputed to any **Insured** entity;
- J. alleging, based upon, arising out of, or attributable to any **Wrongful Act** committed prior to the beginning of the **Policy Period**, if, on or before the earlier of the effective date of this **Policy** or the effective date of any **Policy** issued by the **Company** to which this **Policy** is a continuous renewal or replacement, the **Insured** knew or reasonably could have foreseen that such **Wrongful Act** could reasonably result in a **Claim**;
- K. alleging, based upon, arising out of, or attributable to:
1. any **Wrongful Act**, fact, circumstance or situation which has been the subject of any written notice given under any other policy of which this **Policy** is a renewal or replacement or which it succeeds in time; or
  2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** which has been the subject of such notice, would constitute **Interrelated Wrongful Acts**;
- L. alleging, based upon, arising out of, or attributable to:
1. the actual, alleged or threatened discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**; or
  2. any direction or request that any **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so;
- M. alleging, based upon, arising out of, or attributable to any validity, invalidity, infringement, violation or misappropriation of any patent, copyright, service mark, trademark, trade name, trade secret or any other intellectual property right;
- N. alleging, based upon, arising from or attributable to fees, commission, expense or costs paid to or charged by an Insured.

#### IV. EXTENDED REPORTING PERIOD

If the **Company** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), or if the **Named Insured** terminates or does not renew this **Policy**, the **Named Insured** shall have the right, upon

payment of the additional premium described below, to a continuation of the coverage granted by this **Policy** for at least one **Extended Reporting Period** as follows:

A. Automatic **Extended Reporting Period**

The **Named Insured** shall have continued coverage granted by this **Policy** for a period of sixty (60) days following the effective date of such termination or nonrenewal, but only for **Claims** first made during such sixty (60) days for **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This Automatic **Extended Reporting Period** shall immediately expire upon the purchase of replacement coverage by the **Named Insured**.

B. Optional **Extended Reporting Period**

1. The **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 9. of the Declarations, to an Optional **Extended Reporting Period**, for the period set forth in Item 9. of the Declarations following the effective date of such termination or nonrenewal, but only for **Claims** first made during such Optional **Extended Reporting Period** for **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal.
2. This right to an Optional **Extended Reporting Period** shall terminate, however, unless written notice of such election is given by the **Named Insured** to the **Company**, and the **Company** receives payment of the additional premium, within sixty (60) days following the effective date of termination or nonrenewal.
3. If the Optional **Extended Reporting Period** is elected, the Automatic **Extended Reporting Period** shall be void ab initio.

C. The Optional **Extended Reporting Period** is not cancelable and the entire premium for the Optional **Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.

D. The limit of liability for the Automatic and Optional **Extended Reporting Periods** shall be part of and not in addition to the Limit of Liability for the immediately preceding **Policy Period**, as set forth in Item 3. of the Declarations. The Automatic and Optional **Extended Reporting Periods** shall not increase or reinstate the Limit of Liability, which shall be the maximum liability of the **Company** for the **Policy Period** and the Automatic and Optional **Extended Reporting Period**, combined.

E. A change in **Policy** terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the Automatic or Optional **Extended Reporting Period**.

V. LIMITS OF LIABILITY AND RETENTION

A. Limits

1. All **Claims** arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds** shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**.
2. The Each **Claim** Limit stated in Item 3. of the Declarations shall be the **Company's** maximum aggregate liability for the sum of all **Damages** and **Claims Expenses** because of each covered **Claim**.
3. The Aggregate Limit stated in Item 3. of the Declarations shall be the maximum aggregate liability of the **Company** for all **Damages** and **Claims Expenses** because of all covered **Claims**, combined.
4. The **Disciplinary Proceeding Claims Expenses** Aggregate Limit stated in Item 3. of the Declarations shall be the maximum aggregate liability of the **Company** for **Claims Expenses** for all covered **Disciplinary Proceedings**. This limit is in addition to and is not part of the Aggregate Limit otherwise stated in Item 3. of the Declarations.
5. **Claims Expenses** shall be part of and not in addition to the Each **Claim** Limit and Aggregate Limit of Liability shown in Item 3. of the Declarations, and shall reduce such Limits of Liability.
6. If an applicable Limit of Liability is exhausted by payment of **Damages** or **Claims Expenses**, the obligations of the **Company** under this **Policy** with respect to any **Claim(s)** subject to such Limit of Liability shall be completely fulfilled and extinguished.



## B. Retention

1. The liability of the **Company** shall apply only to that part of **Damages** and **Claims Expenses** which is excess of the Retention amount shown in Item 4. of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk. However, the Retention shall not apply to **Claims Expenses** in a **Disciplinary Proceeding**.
2. A single Retention shall apply to **Damages** and **Claims Expenses** arising from all **Claims** constituting a single **Claim**.

## VI. CONDITIONS

### A. Notice:

1. The **Insured** shall, as a condition precedent to their rights under this **Policy**, give to the **Company** written notice of any **Claim** as soon as practicable, but in no event later than: (i) sixty (60) days after the end of the **Policy Period**, or (ii) with respect to **Claims** first made during any applicable Automatic or Optional **Extended Reporting Period**, the end of such Automatic or Optional **Extended Reporting Period**.
2. If, during the **Policy Period**, any **Insured** becomes aware of any specific **Wrongful Act** which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Company** during the **Policy Period**, the Automatic **Extended Reporting Period**, or, if elected, the Optional **Extended Reporting Period** of:
  - a. the identity of the potential claimants;
  - b. a description of the anticipated **Wrongful Act** allegations;
  - c. the identity of the **Insureds** allegedly involved;
  - d. the circumstances by which the **Insureds** first became aware of the **Wrongful Act**;
  - e. the consequences which have resulted or may result; and
  - f. the potential monetary damages;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Company**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

3. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, email, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1. of the Declarations. Notice to the **Company** of any **Claim** or **Wrongful Act** shall be given to the **Company** at the address set forth in Item 8.A of the Declarations. All other notices to the **Company** under this **Policy** shall be given to the **Company** at the address set forth in Item 8.B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee, or one day following the date such notice is sent, whichever is earlier.

### B. Assistance and Cooperation

The **Insured** shall cooperate with the **Company**, and provide to the **Company** all information and assistance which the **Company** reasonably requests including without limitation attending hearings, depositions and trials and assisting in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this **Policy**. The **Insured** shall immediately forward to the **Company** at the address indicated in Item 8.A of the Declarations every demand, notice, summons, or other process or pleadings received by the **Insured** or its representatives. The **Insured** shall do nothing that may prejudice the **Company's** position.

### C. Other Insurance

If any **Damages** or **Claims Expenses** covered under this **Policy** are covered under any other valid and collectible insurance, then this **Policy** shall cover such **Damages** or **Claims Expenses**, subject to its terms and conditions, only to the extent that the amount of such **Damages** or **Claims Expenses** are in excess of the amount of such other insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided by this **Policy**.

#### D. Representations

1. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and:
  - a. are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and
  - b. shall be deemed material to the acceptance of this risk or the hazard assumed by the **Company** under this **Policy**.

It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

2. In the event the **Application**, including materials submitted or required to be submitted therewith, contains any misrepresentation or omission made with the intent to deceive or which materially affects either the acceptance of the risk or hazard assumed by the **Company** under this **Policy**, this **Policy** shall be void ab initio as to any **Insured** who knew the facts misrepresented or the omissions, whether or not such person knew of the **Application** or this **Policy**.

For purposes of this subsection D, only the knowledge of the **Named Insured's** and any **Subsidiary's** Chief Executive Officer, Chief Financial Officer, President, Chairman of the Board, General Counsel, or Risk Manager (or the functional equivalent of such positions) shall be imputed to the **Named Insured** and such **Subsidiary**. The knowledge of an **Insured**, other than the aforementioned individuals, shall not be imputed to any other **Insured**.

#### E. Termination and Nonrenewal

1. This **Policy** shall terminate at the earliest of the following times:
  - a. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Company**;
  - b. ten (10) days after receipt by the **Named Insured** of a written notice of termination from the **Company** for failure to pay a premium when due, unless the premium is paid within such ten (10) day period;
  - c. upon expiration of the **Policy Period** as set forth in Item 2. of the Declarations; or
  - d. at such other time as may be agreed upon by the **Company** and the **Named Insured**.

The **Company** may not terminate this Policy prior to expiration except for non-payment of premium in accordance with paragraph 1.b. above or pursuant to paragraph 1.d. above.

2. If the **Policy** is terminated by the **Named Insured**, the **Company** shall refund the unearned premium computed at the customary short rate. If the **Policy** is terminated by the **Company**, the **Company** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Company** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.
3. The **Insurer** is under no obligation to renew this **Policy** upon its expiration. If the **Insurer** decides to non-renew this **Policy**, the **Insurer** will mail to the **Named Insured** written notice stating such intent at least seventy-five (75) days before the expiration date set forth in Item 2. of the Declarations.

#### F. Territory and Valuation

1. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place anywhere in the world, provided that the **Claim** is made within the jurisdiction, and subject to the substantive laws of the United States of America, or their territories or possessions.
2. All premiums, limits, retentions, **Damages** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America.

#### G. Subrogation

In the event of any payment under this **Policy**, the **Company** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Company** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.

#### H. Action Against the **Company** and Bankruptcy

No action shall lie against the **Company**, unless as a condition precedent thereto, there shall have been full compliance with all the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join the **Company** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Company** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Company** of its obligations nor deprive the **Company** of its rights or defenses under this **Policy**.

#### I. Authorization

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of all **Insureds** with respect to the giving of notice of **Claim**, the giving or receiving of notice of termination or nonrenewal, the payment of premiums, the receiving of any premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, consenting to any settlement, exercising the right to the **Extended Reporting Period**, and the giving or receiving of any other notice provided for in this **Policy**, and all **Insureds** agree that the **Named Insured** shall so act on their behalf.

#### J. Alteration, Assignment and Headings

1. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this **Policy** nor prevent the **Company** from asserting any right under the terms of this **Policy**.
2. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Company**.
3. The titles and headings to the various parts, sections, subsections and endorsements of the **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

#### K. Spouses

The spouses and legally recognized domestic partners of **Insureds** shall be considered **Insureds** under this **Policy**, but coverage is afforded only for a **Claim** arising solely out of their status as a spouse or domestic partner where the **Claim** seeks damages from marital community property, jointly held property or property transferred from a natural person insured to such spouse or legally recognized domestic partner. No coverage is provided for any **Wrongful Act** actually or allegedly committed by such spouse or legally recognized domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention applicable to **Damages** and **Claims Expenses** incurred by **Insureds** shown in Item 4. of the Declarations shall also apply to **Damages** and **Claims Expenses** incurred by such spouses and legally recognized domestic partners.

### VII. MATERIAL CHANGES IN CONDITIONS

#### A. Acquisition or Creation of Another Organization

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

1. acquires voting securities in another organization or creates another organization, which as a result of such acquisition or creation becomes a **Subsidiary**; or
2. acquires any organization by merger into or consolidation with the **Named Insured**;

then, subject to the terms and conditions of this **Policy**, such organization and its **Insureds** shall be covered under this **Policy** but only with respect to **Claims** for **Wrongful Acts** taking place after such acquisition or creation, unless the **Company** agrees to provide coverage by endorsement for **Wrongful Acts** taking place prior to such acquisition or creation.

If the total revenue of such acquired organization, as reflected in the then most recent consolidated financial statements of the organization, exceeds ten percent (10%) of the total revenue of the **Named Insured** and the **Subsidiaries** as reflected in the then most recent consolidated financial statements of the **Named Insured**, the **Named Insured**, as a condition precedent to coverage with respect to such **Insureds**, shall, no later than sixty (60) days after the effective date of such acquisition or creation:

- a. give written notice of such acquisition or creation to the **Company**;
- b. pay any additional premium required by the **Company**; and
- c. agree to any additional terms and conditions of this **Policy** as required by the **Company**.

#### B. Acquisition of the **Named Insured**

If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by any person, entity or affiliated group of persons or entities, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least fifty percent (50%) of (i) the directors of the **Named Insured** if a Corporation; (ii) the management committee members of the **Named Insured** if a partnership; (iii) the management board of the **Named Insured** if a limited liability company;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.

#### C. Termination of a **Subsidiary**

If before or during the **Policy Period** an organization ceases to be a **Subsidiary**, coverage with respect to the **Subsidiary** and its **Insureds** shall continue until termination of this **Policy**. Such coverage continuation shall apply only with respect to **Claims** for **Wrongful Acts** taking place prior to the date such organization ceased to be a **Subsidiary**.