

TECHNOLOGY PROFESSIONAL LIABILITY COVERAGE FORM

The Technology Professional Liability and Businessowners Coverage Forms together with the Policy Declarations, and endorsements, if any, complete this Policy. The enclosed Policy Declarations designates the issuing company.

Unless the context requires a different meaning, the terms "Policy" or "policy" mean the applicable Coverage Form. The words "we," "us," "our" and **Company** all refer to the insurer identified in the Policy Declarations. Various provisions in each Coverage Form restrict coverage. Read the entire Coverage Form carefully to determine rights, duties and what is and is not covered.

Coverage shall be determined in accordance with terms, conditions, provisions and endorsements of the Coverage Form(s) applicable to the **Claim, Loss, injury or damage**. Except as otherwise provided herein, the terms, conditions and provisions of a Coverage Form, and any endorsements thereto, shall apply only to that Coverage Form and no other.

In consideration of the payment of the premium and reliance upon all statements made and information furnished to the **Company**, including the statements made in the **Application** (and all attachments and materials submitted therewith) and subject to all the provisions of this Coverage Form, the **Company** agrees as follows:

I. INSURING AGREEMENT

- A.** The **Company** will pay on behalf of the **Insured** any **Loss** excess of the Deductible not exceeding the Limit of Liability shown on the Policy Declarations to which this coverage applies that the **Insured** shall become legally obligated to pay because of a **Claim(s)** first made against the **Insured** during the **Policy Period**, or if applicable, during any Extended Reporting Period, for **Wrongful Acts** of an **Insured**.
- B.** The **Company** has the right and duty to defend any **Claim** to which this insurance applies, even if the allegations of the **Claim** are groundless, false or fraudulent.

II. FULL PRIOR ACTS COVERAGE PROVISION

Coverage shall apply to any **Claim** made against the **Insured** for **Wrongful Acts** arising solely out of the MTK (02-09)

Insured's duties on behalf of the **Named Insured** committed prior to the expiration date of this Policy or the effective date of cancellation or nonrenewal of this Policy, provided that the **Claim** is first made during the **Policy Period**, or Extended Reporting Period, if applicable.

However, coverage shall not apply to any **Claim** based upon or arising out of any **Wrongful Act** or circumstance likely to give rise to a **Claim** of which the person or persons signing the **Application** had knowledge or otherwise had a reasonable basis to anticipate might result in a **Claim**, prior to the earlier of:

- A.** the inception of this Policy; or
- B.** the inception of the first Policy providing substantially the same coverage as this Coverage Form which the **Company** has issued to the **Named Insured** provided that the **Company** has written continuous coverage for the **Named Insured** from such date to the inception date of this Coverage Form.

III. DEFINITIONS

The following defined words have a special meaning and are highlighted throughout this Coverage Form by bold print.

- A. Application** means:
1. an Application(s), and any material submitted for this Policy, and
 2. an Application(s), including any material submitted for all previous Policies issued by the **Company** providing continuous professional liability coverage until the inception date of this Policy.

The content of (1) and (2) above is incorporated by reference in this Policy as if physically attached hereto.

- B. Claim(s)** means a demand for money as compensation for a **Wrongful Act** including any judicial or administrative proceeding initiated against any **Insured** seeking to hold such **Insured** responsible for a **Wrongful Act**, including any appeal therefrom.

A **Claim** shall be considered first made when an **Insured** or its legal representative or agent first receive notice of a **Claim**.

- C. Claim Expense** means reasonable and necessary legal fees and expenses incurred by the **Company** or by any attorney designated by the **Company** to defend any **Insured** resulting from the investigation, adjustment, defense and appeal of a **Claim**. **Claim Expense** includes other fee, costs, cost of attachment or similar bonds (without any obligation on the part of the **Company** to apply for or furnish such bonds), but does not include salaries, wages, overhead or benefits expenses of any **Insured**.
- D. Company** means the insurer identified in the Policy Declarations.
- E. Computer Technology Services** means information technology services performed by any **Insured** for others for a fee, including but not limited to computer consulting, systems analysis, installation, programming, data processing, system integration, software development and design, disaster recovery, record retrieval, management and repair or maintenance of computer products, networks or systems and education and training services related to the above.
- F. Insured** means:
1. an individual designated in the Policy Declarations and the individual's spouse, but only with respect to the conduct of a business of which the individual is the sole owner.
 2. a partnership or joint venture designated in the Policy Declarations and the partnership's or joint venture's members, partners and their spouses, but only with respect to the conduct of the partnership's or joint venture's business.
 3. a limited liability company designated in the Policy Declarations and the limited liability company's members, but only with respect to the conduct of the limited liability's business and the limited liability company's managers, but only with respect to their duties as the limited liability company's managers.
 4. an organization other than a partnership, joint venture or limited liability company and the organization's executive officers and directors but only with respect to their duties as the organization's officers or directors. The organization's stockholders, but only with respect to their liability as stockholders.
 5. the heirs, legal representatives or assigns in the event of the aforementioned individual's, partner's or member's death, incapacity or bankruptcy.
 6. any former or retired partner(s), member(s) or individual(s) employed by the **Named Insured**, but only for those Professional Services rendered on behalf of the **Named Insured** prior to the date of separation or retirement from the **Named Insured**.
- 7. the Named Insured's** volunteer workers only while performing duties related to the conduct of the **Named Insured's** business, and the **Named Insured's** employees, other than either the **Named Insured's** executive officers (if an organization other than a partnership, joint venture or limited liability company) or the **Named Insured's** manager (if a limited liability company), but only for acts within the scope of their employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business.
- G. Internet** means the worldwide public network of computers as it currently exists or may be manifested in the future, including the internet, intranet, extranet or virtual private network.
- H. Internet Services** means services performed on the **Internet** by an **Insured** for others for a fee including constructing or maintaining a website, consulting on the function and use of **Internet** technology, and the integration of electronic information and business processes within a website.
- I. Loss** means damages and settlements but does not include punitive or exemplary damages, fines, penalties, taxes, the multiplied portion of any multiple damage award, and other monetary sanctions that are uninsurable by operation of law nor the return or dispute over, in whole or in part, of any fees charged or collected by the **Insured**.
- J. Malicious Code** means an unauthorized, corrupting or harmful piece of code, including, but not limited to computer viruses, worms and Trojan horses.
- K. Named Insured** means the individual, partnership, corporation, Limited Liability Company or other entity named in Item I. of the Policy Declarations.
- L. Personal Injury** means a **Claim** alleging wrongful entry, wrongful eviction, wrongful detention, false arrest, false imprisonment, libel, slander or defamation, advertising injury or violation of any right of privacy.
- M. Policy Period** means the period from the effective date of this Policy set forth in the Policy Declarations to the expiration date, or the effective date of cancellation or non-renewal date, if any.

- N. **Professional Services** means services rendered by an **Insured** for others for a fee solely in the conduct of **Computer Technology Services** and/or **Internet Services**.
- O. **Wrongful Act** means any actual or alleged error, omission, neglect or breach of duty, **Personal Injury**, unintentional introduction of a **Malicious Code** or unintentional failure to prevent unauthorized access to or use of any electronic system or program of a third party;
 1. by the **Named Insured** or
 2. by the **Named Insured's** partner(s), member(s) or individual(s) employed by the **Named Insured** arising solely from their duties conducted on behalf of the **Named Insured**.
 3. asserted against any **Named Insured** partner, member or individual hired by the **Named Insured** because of an actual or alleged error, omission, neglect or breach of duty, **Personal Injury**, unintentional introduction of a malicious code or unintentional failure to prevent unauthorized access to or use of any electronic system or program of a third party by the **Named Insured**.
- D. any actual or alleged bodily injury, sickness, humiliation, mental anguish, emotional distress, assault, battery, disease, death or loss of consortium of any person or damage to or destruction of any tangible property, including any resulting loss of use; or
- E. any non-monetary relief; or
- F. failure to effect or maintain any insurance or bond; or
- G. any pension, profit sharing, welfare benefit or other employee benefit program established in whole or in part for the benefit of any **Named Insured** partner or individual hired by the **Named Insured**, or based upon, arising out of or in any way involving the Employee Retirement Income Security Act of 1974 (or any amendments thereof or regulations promulgated there under) or similar provisions of any federal, state or local statutory law or common law; or
- H. violation of any securities, anti-trust, restraint of trade, unfair trade practices, consumer protection, or other similar law; or
- I. actual or alleged liability of any **Insured** under any express contract or agreement unless the **Insured** would have been legally liable in the absence of such contract or agreement; or
- J. any prior or pending litigation, administrative or regulatory proceeding, **Claim**, demand, arbitration, decree, or judgment of which any **Insured** had written notice before the effective date of this Policy; or any fact, circumstance, event, situation or **Wrongful Act** which before the effective date of this Policy was the subject of any notice under any other similar Policy of insurance to any **Insured**; or any future **Claims** or litigation based upon the pending or prior litigation or derived from the same or essentially the same facts, actual or alleged;

IV. EXCLUSIONS

The **Company** shall not be liable to make payment for **Loss** or **Claim Expense** (except where otherwise provided) in connection with any **Claim** made against any **Insured** arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

- A. conduct of an **Insured** or at an **Insured's** direction that is criminal, fraudulent, dishonest, or with the intent to cause a **Loss** provided that this exclusion will not apply to **Claims Expense** incurred until such conduct is established to be criminal, fraudulent or dishonest by final judgment or adjudication at trial, at which time the **Company** shall not be liable for payment of any further **Claims Expense**; or
- B. any **Insured** gaining any profit, remuneration or advantage to which any **Insured** was not legally entitled provided however this exclusion shall not apply to **Claims Expense** incurred until a final judgment or adjudication at trial is rendered against any **Insured** as to this conduct at which time the **Company** shall not be liable for payment of any further **Claims Expense**; or
- C. any **Claim** by or on behalf of any person or entity within the definition of **Insured** against any other person or entity included within the definition of **Insured**; or
- K. any actual or alleged: refusal to employ; termination of employment; employment related coercion, demotion, evaluation, reassignment, discipline, workplace conditions, false imprisonment, defamation, harassment,

provided that, if this Policy is a renewal of a Policy or Policies previously issued by the **Company** and if the professional liability coverage provided by the **Company** was continuous from the effective date of the first such other Policy to the effective date of this Policy, the effective date of this Policy will mean the effective date of the first Policy under which the **Company** first provided continuous professional liability coverage to an **Insured**; or

humiliation, or discrimination of employment; other employment-related practices, policies, acts or omissions; or sexual harassment by any **Insured** against any person(s) or entity; or negligence involving any of the foregoing;

it being understood that this exclusion **K.** applies whether any **Insured** may be held liable as an employer or in any other capacity and to any obligation to contribute with or indemnify another with respect to such **Claim**; or

- L. the actual, alleged or threatened discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, lead, liquids or gases, noise, waste materials, or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, whether or not such actual, alleged or threatened discharge, dispersal, release or escape is sudden, accidental or gradual in nature, or any cost or expense arising out of any request, demand or order that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any pollutants; or
- M. performance of or failure to perform **Professional Services** for:
 - 1. any **Insured**, or
 - 2. any entity owned or controlled by any person or entity included within the definition of **Insured**, or
 - 3. any person or entity which owns or controls any entity included within the definition of **Insured**, or
 - 4. any entity which is under common ownership or control with any entity included within the definition of **Insured**, or
 - 5. any entity of which any person included within the definition of **Insured** is a director, officer, partner, member, or more than a three percent (3%) shareholder; or
- N. infringement of any patent, copyright, trademark, trade name or trade dress, or wrongful appropriation, use or disclosure of trade secrets or confidential or proprietary information; or
- O. product provided by any **Insured** which prior to its installation, testing and final acceptance, fails to perform the function or serve the purpose intended; or
- P. cost guarantee or estimates of probable costs or cost estimates being exceeded; or
- Q. fee dispute or suit for fees initiated by any **Insured** against any past or current client of the **Insured**; or

- R. rendering or failure to render investment or insurance counseling or advice; purchase or selling or failure to purchase or sell an investment or insurance of any kind; or any **Insured's** advice, promises or guarantees as to the future value of any investments or interest rate or rate of return; or
- S. malfunction or defect of any hardware, equipment or component, sale of hardware or non-customized commercially available computer software products.

No **Wrongful Act** of any partner or individual hired by the **Named Insured** or any fact pertaining to any **Insured** shall be imputed to any other partner or individual hired by the **Named Insured** for purposes of determining the applicability of Exclusions **A.** and **B.**

V. DEFENSE AND SETTLEMENT

- A. If a **Claim** is made against an **Insured** for **Loss** that is both covered and uncovered by this Coverage Form, the **Company** will pay one hundred percent (100%) of **Claims Expense** for the **Claim** until such time that the Limits of Liability of this Coverage Form are exhausted by payment of a covered **Loss** or the **Claim** for the covered **Loss** is resolved by settlement, verdict or summary judgment.
- B. The **Company** as it deems expedient, has the right to investigate, adjust, defend, appeal and with the consent of the **Named Insured**, negotiate the settlement of any **Claim**, whether within or above the Deductible. If the **Named Insured** refuses to consent to settlement recommended by the **Company**, the **Company's** obligation to the **Insured** for **Claims Expense** and **Loss** attributable to such **Claim(s)** shall be limited to:
 - 1. the amount of the covered **Loss** in excess of the Deductible which the **Company** would have paid in settlement at the time an **Insured** first refused to settle;
 - 2. plus covered **Claims Expense** incurred up to the date an **Insured** first refused to settle;
 - 3. plus fifty percent (50%) of covered **Loss** and **Claims Expense** in excess of the first settlement amount recommended by the **Company** to which an **Insured** did not consent.

It is understood that payment of **1.**, **2.** and **3.** above is the limit of the **Company's** liability under this Coverage Form on any **Claim** in which any **Insured** fails or refuses to consent to the **Company's** settlement recommendation, subject at all times to the Limits of Liability and deductible provisions of the applicable coverage section. The remaining fifty percent (50%) of **Loss** and

Claims Expense in excess of the amount referenced in **1.** and **2.** above shall be the obligation of the **Insured**.

- C.** The **Insured(s)** agree to cooperate with the **Company** on all **Claims**, and provide such assistance and information as the **Company** may reasonably request. Upon the **Company's** request, the **Insureds** shall submit to examination and interrogation by a representative of the **Company**, under oath if required, and shall attend hearings, depositions, trials and shall assist in the conduct of suits, including but not limited to effecting settlement, securing and giving evidence, obtaining the attendance of witnesses, giving written statements to the **Company's** representatives and meeting with such representatives for the purpose of investigation and/or defense, all of the above without charge to the **Company**.

The **Insured(s)** further agree(s) not to take any action which may increase the **Insured's** or the **Company's** exposure for **Claims Expense** or **Loss**.

- D.** The **Insured(s)** shall execute all papers required and shall do everything that may be necessary to secure and preserve any rights of indemnity, contribution or apportionment which the **Insured-** or the **Company** may have, including the execution of such documents as are necessary to enable the **Company** to bring suit in an **Insured's** name, and shall provide all other assistance and cooperation which the **Company** may reasonably require.
- E.** The **Insureds** shall not demand or agree to arbitration of any **Claim** without the written consent of the **Company**. The **Insureds** shall not, except at personal cost, make any offer or payment, admit any liability, settle any **Claims**, assume any obligation, or incur any expense without the **Company's** written consent.

VI. LIMITS OF LIABILITY AND DEDUCTIBLE

Regardless of the number of **Insureds** under this Coverage Form, **Claims** made or brought on account of **Wrongful Acts** or otherwise, the **Company's** liability is limited as follows:

- A.** The Limit of Liability specified in the Policy Declarations as "in the aggregate" shall be the maximum liability for **Loss** from all **Claims**.
- B.** The Limit of Liability specified in the Policy Declarations as the Limit for Each **Claim** shall be the maximum liability for **Loss** for each **Claim**.

- C.** **Claim Expense** shall be included in the Limit of Liability as shown in the Policy Declarations.
- D.** Subject to the Limits of Liability provisions stated in **A.**, **B.**, and **C.**, above, the **Company** shall be liable to pay only **Claim Expense** and **Loss** in excess of the deductible specified in the Policy Declarations hereof as respects each and every **Claim** to which this Coverage Form applies.
- E.** The **Company** shall have no obligation to pay any part or all of the deductible specified in the Policy Declarations for any **Claim** on behalf of any **Insured**. If the **Company**, at its sole discretion, elects to pay any part or all of the deductible, the **Insured(s)** agree(s) to repay such amounts to the **Company** upon demand.
- F.** The Limit of Liability for the Extended Reporting Period, if applicable, shall be part of and not in addition to the Limit of Liability specified in the Policy Declarations.
- G.** **Claims** based upon or arising out of the same **Wrongful Act**, interrelated **Wrongful Acts**, or a series of similar or related **Wrongful Acts** shall be considered a single **Claim** and shall be considered first made during the **Policy Period** or Extended Reporting Period, if applicable, in which the earliest **Claim** arising out of such **Wrongful Act(s)** was first made and all **Loss** from such **Claims** shall be subject to the one Limit of Liability that applies to such earliest **Claim**.
- H.** The Limit of Liability for this Coverage Form shall apply separately to each consecutive annual period starting with the beginning of the **Policy Period** shown in the Policy Declarations. If this Coverage Form is issued for a period of more than twelve (12) months but less than twenty four (24) months or if the **Policy Period** is extended after issuance, the Extended Reporting Period will be deemed part of the last **Policy Period** for the purposes of determining the Limit of Liability.

VII. EXTENDED REPORTING PERIOD

- A.** If this Coverage Form expires, is cancelled or non-renewed for reasons other than non-payment of premium, the **Named Insured** shall have the right to purchase an Extended Reporting Period to report any **Claim(s)** or circumstance which could be expected to give rise to a **Claim** being first made against the **Insured** during the twelve (12) months, or twenty four (24) months or thirty six (36) months after the effective date of such expiration, cancellation or non-renewal (depending upon the Extended Reporting Period purchased). An Extended Reporting Period shall only apply to a **Wrongful**

Act committed before the date of such expiration, cancellation or non-renewal. For the purpose of this clause, any change in premium terms or terms on renewal shall not constitute a refusal to renew.

- B.** The additional premium for the Extended Reporting Period shall be 65% of the annual premium set forth in the Policy Declarations for the twelve (12) month period; 125% of the annual premium set forth in the Policy Declarations for the twenty-four (24) month period; and 195% of the annual premium set forth in the Policy Declarations for the thirty-six (36) month period. The Extended Reporting Period begins on the expiration date or the effective date of cancellation or non renewal of the Policy. The **Named Insured** must notify the **Company** in writing and must pay the additional premium due no later than 60 days after the effective date of such expiration, cancellation or non-renewal.
- C.** All premium paid with respect to the Extended Reporting Period shall be deemed fully earned as of the first day of the Extended Reporting Period.
- D.** The Limits of Liability available during the Extended Reporting Period shall not exceed the balance of the Limits of Liability available on the expiration date or effective date of the cancellation or non renewal of the Policy.
- E.** Coverage for **Claim(s)** or circumstances which ultimately lead to a **Claim(s)** first received and reported during the Extended Reporting Period shall be excess over any other valid and collectible insurance providing coverage for such **Claim(s)**.

VIII. NOTICE/CLAIM AND CIRCUMSTANCE REPORTING PROVISIONS

Notice of a **Claim** or circumstance which could be expected to give rise to a **Claim** being made against any **Insured** shall be given in writing to the **Company**. If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

- A.** As a condition precedent to coverage under this Coverage Form, the **Insured** shall give to the **Company** written notice of a **Claim** or circumstance which could be expected to give rise to a **Claim** being made against the **Insured** as soon as practicable but:
 - 1. if the Policy expires, is cancelled or is non-renewed and if no Extended Reporting Period is purchased, no later than sixty (60) days after the expiration date or effective date of such cancellation or non-renewal; or

- 2. if an Extended Reporting Period is purchased, no later than the last day of the Extended Reporting Period.

- B.** If notice of a **Claim** or circumstance which could be expected to give rise to a **Claim** being made against an **Insured** has been given to the **Company** pursuant to Item VIII. clause A. above, then any **Claim** which is subsequently made against the **Insured** and reported to the **Company** alleging, arising out of, based upon or attributable to the facts alleged in the **Claim** or circumstance which could be expected to give rise to a **Claim** being made against an **Insured** of which such notice was given, or alleging any **Wrongful Act** which is the same as or related to any **Wrongful Act** alleged in the **Claim** or circumstance which could be expected to give rise to a **Claim** being made against an **Insured** of which notice was given, shall be considered made at the time such notice was given.

IX. CANCELLATION OR NONRENEWAL

- A.** This Policy may be canceled by the **Named Insured** by either surrender of the Policy thereof to the **Company** at its address stated on the Policy Declarations or by mailing to the **Company** written notice requesting cancellation and in either case stating when thereafter such cancellation shall be effective. If canceled by the **Named Insured**, the **Company** shall retain the customary short rate proportion of the premium.
- B.** The **Company** may cancel this policy by mailing or delivering to the **Named Insured** written notice of cancellation at least:
 - 1. five (5) days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy:
 - (a) the building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:
 - (1) seasonal unoccupancy; or
 - (2) buildings in the course of construction, renovation or addition. Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.
 - (b) after damage by a covered cause of loss, permanent repairs to the building:
 - (1) have not started, and
 - (2) have not been contracted for, within 30 days of initial payment of loss.
 - (c) the building has:
 - (1) an outstanding order to vacate;
 - (2) an outstanding demolition order; or
 - (3) Been declared unsafe by governmental authority.

(d) fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.

(e) failure to:

(1) furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or

(2) pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.

2. ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium.

C. In the event the **Company** refuses to renew this Policy, the **Company** shall mail to the **Named Insured**, not less than sixty (60) days prior to the end of the **Policy Period**, written notice of nonrenewal. Such notice shall be binding on all **Insureds**.

D. The **Company** shall mail notice of Cancellation or Nonrenewal by certificate of mailing stating the effective date of Cancellation or Nonrenewal and the specific reason(s) for Cancellation or Nonrenewal, which shall become the end of the **Policy Period**. Mailing of such notice shall be sufficient notice of Cancellation or Nonrenewal.

E. If the Policy is canceled by the **Company**, earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected, or as soon as practicable thereafter.

X. REPRESENTATIONS AND SEVERABILITY

A. The **Insured** represents that the particulars and statements contained in the **Application(s)** are true and agree that:

1. those particulars and statements are the basis of this Policy and are to be considered as incorporated into and constituting a part of the Policy;

2. those particulars and statements are material to the acceptance of the risk assumed by the **Company**; and

3. the Policy is issued in reliance upon the truth of such representations.

B. Except for material facts or circumstances known to the person or persons signing the **Application**, no statement in the **Application** of knowledge or

information possessed by an **Insured** shall be imputed to any other **Insured** for the purpose of determining the availability of coverage under this Policy.

XI. SUBROGATION

In the event of any payment under this Coverage Form, the **Company** shall be subrogated to any **Insured's** right of recovery therefore against any person or entity and an **Insured** shall execute and deliver such instruments and papers and do whatever else is necessary to secure such rights. The **Insured(s)** shall not do anything to prejudice such rights.

XII. CHANGES

Notice to any agent or knowledge by any agent shall not effect a waiver or change in any part of this Policy or stop the **Company** from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except by an endorsement, in writing, issued to and forming a part of this Policy.

XIII. AUTHORIZATION CLAUSE AND NOTICES

By acceptance of this Policy, the **Insured** agrees that the **Named Insured** shall act on behalf of the **Insured** with respect to the giving and receiving of any return premiums that may become due under this Policy. Notice to the **Named Insured** shall be deemed to be notice to the **Insured**. The **Named Insured** shall be the agent of the **Insured** to effect changes in the Policy or purchase an Extended Reporting Period.

XIV. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual **Named Insured**. If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

XV. OTHER INSURANCE

This Policy is excess over any other applicable insurance whether such insurance is primary, excess, contributory, contingent, or otherwise and whether such insurance is collectible or not; unless such other insurance is written to be specifically excess over the insurance provided by this Policy.

XVI. TERMS OF POLICY CONFORMED TO STATUTE

Terms of this Coverage Form which are in conflict with the statutes of the State wherein this Policy is issued are hereby amended to conform to such statutes.

XVII. CHANGES IN EXPOSURE

A. If after the Inception Date of this Policy:

1. the **Named Insured** merges into or consolidates with another entity such that the **Named Insured** is not the surviving entity; or
2. another entity, person or group of entities and/or persons acting in concert acquires more than fifty percent (50%) of the assets of the **Named Insured**; or
3. the **Named Insured** sells all or substantially all of its assets,

with such events being referred to as a "Transaction,"

this Coverage Form shall continue in full force and effect until the expiration date of the policy, or the effective date of cancellation or non-renewal if applicable with respect to **Wrongful Acts** occurring before the Transaction, but there shall be no coverage under this Coverage Form for actual or alleged **Wrongful Acts** occurring on and after the Transaction. The **Named Insured** shall give the **Company** written notice of the Transaction as soon as practicable, but not later than thirty (30) days after the effective date of the Transaction. The entire premium for this Coverage Form shall be deemed earned regardless of any Transaction(s) during the **Policy Period**. In the event of a Transaction, the **Named Insured** shall have the right to an offer of coverage by the **Company** for an Extended Reporting Period to report **Wrongful Acts** occurring prior to the effective date of the transaction.

B. If after the Inception Date of this Policy, the **Named Insured** merges or consolidates with another entity such that the **Named Insured** is

the surviving entity or acquires another entity or substantially all of the assets of another entity, no coverage shall be afforded under this Policy for any **Claim** involving the assets acquired or the entity which is merged or consolidated with or acquired unless the following conditions are met:

1. the **Insured** provides written notice of such merger, consolidation, creation, or acquisition to the **Company** within 30 days after the effective date of such merger, consolidation, creation or acquisition; and
2. the **Insured** provides the **Company** with such information in connection therewith as the **Company** may deem necessary; and
3. the **Insured** accepts any special terms, conditions, exclusions or additional premium charge as may be required; and
4. the **Company**, at its sole discretion, agrees to provide such coverage.

XVIII. ACTION AGAINST THE COMPANY

- A. No action shall lie against the **Company** unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and until the amount of an **Insured's** obligation to pay shall have been finally determined either by judgment against an **Insured** after actual trial or by written agreement of an **Insured**, the Claimant or the Claimant's legal representative, and the **Company**.
- B. Any person or the legal representatives thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Coverage Form to the extent of the insurance afforded by this Coverage Form. No person or entity shall have any right under this Coverage Form to join the **Company** as a party to any action against an **Insured** to determine an **Insured's** liability, nor shall the **Company** be impleaded by an **Insured** or their legal representatives. Bankruptcy or insolvency of an **Insured** or their successors in interest shall not relieve the **Company** of its obligations hereunder.