

THE HARTFORD HOME INSPECTOR'S PROFESSIONAL LIABILITY POLICY

NOTICE - THIS IS A CLAIMS MADE AND REPORTED POLICY.

PLEASE READ IT CAREFULLY.

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

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

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

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

SECTION I: SCOPE OF COVERAGE

A. COVERAGE AGREEMENT

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

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

B. DEFINITIONS

Whenever used in the policy:

1. **Bodily injury** means bodily injury, sickness or disease sustained by a person, including the death of any person, resulting at any time. **Bodily injury** includes mental anguish and emotional distress.
2. **Claim** means an allegation of a **wrongful act** or **personal injury** in conjunction with:

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

Damages does not include:

- a. Any fines, sanctions or penalties, or punitive or exemplary damages; or
 - b. Restitution, reduction, or set off of any fees, other consideration, and/or expenses paid to or charged by an **insured** for **professional home inspection services**; or
 - c. Any damages which are a multiple of compensatory **damages** awarded against an **insured**; or
 - d. Matters deemed uninsurable by law; or
 - e. Equitable, injunctive or other non-monetary relief.
5. **Insured** means:
- a. The **named insured** or any **predecessor firms**;

- b. Any person who was, is now or hereafter becomes a principal, officer, director, employee, principal shareholder or member of yours, but only for **professional home inspection services** performed on your behalf; and
 - c. The estate, heirs, executors, administrators, and legal representatives of any **insured** in the event of the **insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that the **insured** would otherwise be provided coverage under this policy.
6. **Interrelated Claims** means all **claims** that include, in whole or in part, allegations of **wrongful Acts** or **personal Injury**, facts or circumstances that have a causal or logical connection. **Wrongful Acts** or **personal injury**, facts or circumstances shall be deemed to have a causal connection if one or more of the **wrongful acts** or **personal injury**, facts or circumstances alleged in one or more of such **claims** give rise (directly or indirectly) to the **wrongful Acts** or **personal Injury**, facts or circumstances alleged in the other of such **claims**. **Wrongful Acts** or **personal injury**, facts or circumstances shall be deemed to have a logical connection if there is a goal, motive or methodology that is both common and central to the matters alleged in such **claims**.
7. **Named Insured** means the individual or entity stated in the Declarations, including **predecessor firms**.
8. **Personal Injury** means injury, other than **bodily injury**, arising out of one or more of the following acts, errors or omissions committed in the performance or failure to perform **professional home inspection services**:
- a. False arrest, detention or imprisonment; or
 - b. Abuse of process or malicious prosecution; or
 - c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor; or
 - d. The publication or utterance of a libel or slander or other defamatory or disparaging material or publication or utterance in violation of an individual's right of privacy.
9. **Policy Period** means the period from the inception date of this policy to the policy expiration date as stated in the Declarations or the date of cancellation, whichever is earliest.
10. **Pollutant** means any solid, liquid, gaseous or thermal irritant, nuisance or contaminant, including, without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, odors, noise, lead, oil or oil product, radiation, asbestos or asbestos-containing product, waste and any electric, magnetic or electromagnetic field of any frequency. Waste includes, without limitation, material to be recycled, reconditioned or reclaimed. **Pollutants** also means any substance located anywhere in the world identified on a list of hazardous substances issued by any federal agency (including, nonexclusively, the Environmental Protection Agency) or any state, county, municipality or locality or counterpart thereof, or any foreign equivalent thereof.
11. **Predecessor firm** means any entity disclosed as such to us whose financial assets and liabilities the **named insured** is the majority successor in interest; provided such entity is listed in the Predecessor Firm Endorsement attached to this policy.
12. **Professional home inspection services** means the non-invasive visual examination of the **readily accessible** installed systems and components of a dwelling, as identified and agreed to in writing by the client and home inspector prior to the inspection process, performed for a fee and the written home inspection report generated.

Professional home inspection services do not include:

- a. Any architectural or engineering inspections or services or opinions pertaining to the adequacy of any structural system or component; or
- b. Inspections performed for the purpose of ascertaining compliance with any laws, codes or regulations; or the failure to inspect for, discover or disclose any noncompliance with such laws, codes or regulations.

13. **Property Damage** means

- a. Physical injury to tangible property, including all resulting loss of use of that property; or
- b. Loss of use of tangible property that is not physically injured.

14. **Readily accessible** means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action that, in the opinion of the home inspector, would result in bodily injury or personal injury.

15. **Retroactive date** means the date specified in the Declarations, or in any endorsement attached to this policy, on or after which the **wrongful act**, or **personal injury** must have occurred in order for any coverage to be available under this policy.

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

C. DEFENSE AND SETTLEMENT

1. Subject to all terms and conditions of the policy, we shall have the right and duty to defend in an **insured's** name and on an **insured's** behalf a **claim** covered by this policy even if any of the allegations of the **claim** are groundless, false or fraudulent. We shall have the right to appoint counsel and to make such investigation and defense of a **claim** as is deemed necessary by us. If a **claim** is subject to arbitration or mediation, we are entitled to exercise all of the **insured's** rights, including the choice of arbitrators or mediators, in the arbitration or mediation proceeding.

2. We shall not settle a **claim** without an **insured's** consent, which consent will not be unreasonably withheld. If, however, an **insured** refuses to consent to a settlement recommended by us and acceptable to the claimant and elects to pursue the defense of the **claim** or continue proceedings in connection with the **claim**, then our liability for **damages** and **claim expenses** relating to that **claim** will not exceed the total amount for **damages** and **claim expenses** which we would have paid up to the date of our settlement recommendation minus any applicable retention.

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

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

D. LIMITS OF LIABILITY AND RETENTION

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

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

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

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

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

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

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

4. **Retention**

- a. Our obligation to pay **damages** and **claims expenses** under this policy applies only to the amount of **damages** and **claims expenses** which are in excess of the deductible amount stated in the Declarations and only after such retention has been paid. The retention shall be borne by you at your own risk; it shall not be insured.
- b. The retention amount applies to all **damages** and **claims expenses** incurred as the result of each **claim**.
- c. The terms of this policy, including those with respect to our right and duty to defend suits and your duties in the event of a **claim**, suit or circumstances which may give rise to a **claim**, apply irrespective of the application of the retention.
- d. We may pay, at our sole discretion, any part or all of the retention amount in the investigation or settlement of any **claim**. Upon notification of the action we have taken, you shall reimburse us for that part of the retention amount we have paid. If we make a payment under the retention and you do not reimburse us within sixty (60) days, we will be entitled to recover reasonable attorney's fees incurred in collecting the amount we have paid.
- e. The limits of liability will not be reduced by the amount of any **damages** and/or **claims expenses** within the retention amount unless (but only to the extent) that such **damages** and/or **claim expenses** have been paid by us, at our sole discretion, and not reimbursed by you.
- f. We will reduce the retention amount stated in the Declarations by up to fifty percent (50%) if you agree with a request we make, and agree with the terms and conditions we specify, to submit a **claim** made against you to binding arbitration or mediation. While the right to submit a **claim** to binding arbitration or mediation shall be ours solely, no **claim** shall be submitted to arbitration

without your prior written consent. In the case of mediation, the maximum dollar amount by which the retention will be reduced under this provision is \$25,000.

E. TERRITORY

This policy applies to any **wrongful act** or **personal injury** in the rendering of or failure to render **professional home inspection services** in the United States of America (including its territories or possessions), Puerto Rico or Canada.

F. EXTENDED REPORTING PERIODS

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

a. Extended Reporting Period

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

- i. 100% of the policy's annual premium for one year;
- ii. 165% of the policy's annual premium for three years;
- iii. 200% of the policy's annual premium for five years;
- iv. 250% of the policy's annual premium for an unlimited period.

b. Retiree extended reporting period for a sole proprietor

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

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

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

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

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

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

2. **Extended Reporting Period Coverage**

The limit of liability available for any extended reporting period is part of, and not in addition to, the limits of liability as shown in the Declarations. The retention shown on the Declarations will apply separately to each **claim** reported under any extended reporting period. The retention will be waived in the event of the **insured's** death or if the **insured** becomes totally and permanently disabled.

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

SECTION II: EXCLUSIONS

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

- A. Made against an **insured** arising, in whole or in part, out of any actual dishonest, fraudulent, criminal or malicious act, or omission, committed by, at the direction of, or with the knowledge of such **insured**. This exclusion does not apply, however, to an **insured** who, in fact, did not personally commit, direct, participate in committing or have knowledge of such **wrongful acts** when they occurred;
- B. Arising out of **bodily injury** or **property damage** except that this exclusion does not apply to **claims** of mental injury, mental anguish, mental tension, or emotional distress caused by **personal injury**;
- C. Made, directly or indirectly, by or on behalf of an **insured**;
- D. Arising out of or based upon the actual or alleged discrimination, humiliation, harassment or misconduct by an **insured** because of race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, marital status or any other class protected under federal, state, local or other law;

However, to the extent that a **claim** arises out of or is based upon an **insured's** refusal to provide **professional home inspection services** due to discrimination because of race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, marital status or any other class protected under federal, state, local or other law; we will reimburse the **insured** for **claims expenses** incurred in the defense of the **claim** up to a maximum of \$50,000 per **policy period**, provided;

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

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

- E.** Arising, in whole or in part, out of a **wrongful act, personal injury** or other circumstances with respect to which the **insured** has given notice under any other professional liability insurance policy the term of which incepted prior to the inception date of this policy;
- F.** Arising out of or based upon feasibility studies, future market valuations or any promise, guaranty, representation or warranty, either expressed or implied, made by an **insured**, pertaining to the future values of real property or investments;
- G.** Arising out of or based upon any alleged unsolicited fax, electronic mail or any other means where prohibited by law;
- H.** Arising out of or based upon the rendering of **professional home inspection services** for property developed, constructed, owned or to be purchased by any **insured** or by any entity in which any **insured** has a financial interest, or by any entity coming under the same financial control as an **insured**.
- I.** Arising out of the interests, operations or activities of any **insured** as a(an) real estate agent, broker, salesperson, personal assistant, independent contractor, consultant, counselor, appraiser, leasing agent, property manager; mortgage banker or broker; business broker; short-term escrow agent; auctioneer of real property; insurance agent or broker; lawyer; asset manager; title agent or abstractor; general contractor; construction contractor, appraiser, manager or project manager; property developer; surveyor; loss control or safety inspector; or risk manager;
- J.** Arising out of liability assumed by an **insured** under an indemnity, hold harmless or liquidated damages provision or similar provisions or agreements, but this exclusion does not apply to liability an **insured** would have in the absence of such agreements;
- K.** Arising out of the misappropriation of advertising ideas or style of doing business or infringement or violation of copyright, patent, trademark or any other intellectual property rights or laws;
- L.** Arising out of the failure to maintain any required license or right to perform **professional home inspection services**;
- M.** Arising out of the actual or alleged violation of any state or federal antitrust, restraint of trade, unfair or deceptive business practices, unfair competition or other consumer protection laws;
- N.** Arising out of the failure to discover, disclose, report, advise or exterminate the existence termites or other organisms;
- O.** Arising out of or based upon any allegation that **damages** were suffered as a result of:
 - 1. The presence of, suspected presence of or exposure to:
 - a. Fungi, including but not limited to mold, mildew and yeast; or
 - b. Bacteria or viruses; or
 - c. Dust, spores, odors, particulates or byproducts, including but not limited to mycotoxins and endotoxins, resulting from any of the organisms listed in i., ii. or iii. above, from any source whatsoever; or
 - 2. The failure to discover or disclose the existence of any of the organisms listed in a. above, from any source whatsoever; or
 - 3. Any loss, cost or expense arising out of the testing for, monitoring of, cleaning up of, removal of, containment of, treatment of, detoxification of, neutralization of, remediation of, disposal of or any

other response to or assessment of the effects of any of the items in a. above, from any source whatsoever.

P. Arising out of or based upon:

1. Any actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**; or
2. Any directive, request or voluntary decision that any **insured** monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**; or
3. Any inspection, evaluation or testing of, or failure to inspect, evaluate or test for **pollutants**; or
4. Any governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**; or
5. The failure to discover, disclose, report or advise of the existence or amount of **pollutants**.

Q. Arising out of or based upon any inspection, evaluation or testing of or failure to inspect, evaluate or test:

1. Any recreational facility; including but not limited to; spas, saunas, steam baths, swimming pools, exercise, athletic, playground or other similar equipment and associated accessories; or
2. Any appliance, alarms, intercoms, speaker systems, radio controlled devices, security systems or lawn irrigation systems; or
3. Any waste disposal system or water for purity or quality or quantity; or
4. Any underground items, including but not limited to, underground storage tanks or other underground indications of their presence, whether abandoned or active; or
5. Any commercial or industrial building. This exclusion shall not apply to claims arising out of the rendering of professional home inspection services of any commercial or industrial building provided the property's tenancy is apartment, condominium/cooperative, retail (except restaurant) or office and the inspected building is less than 100,000 square feet.

R. Arising out of or based upon the actual or alleged determination of or recommendation for any method, materials or costs of corrections;

S. Arising out of or based upon **professional home inspection services** performed for or on behalf of any home warranty company or for the purposes of obtaining a home warranty policy or contract;

T. Arising out of or based upon any actual or alleged warranty or guarantee as to the structural strength, adequacy, effectiveness, efficiency or life expectancy of any system or component.

SECTION III: CONDITIONS – CLAIMS

A. AWARENESS OF CIRCUMSTANCES

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

1. The nature and dates of the specific act, error, omission, **personal injury** or other fact, circumstance or situation giving rise to the potential of a **claim**, including, without limitation, the identity of each **insured** who participated and/or had supervisory responsibility for the matter and the reasons why it seems foreseeable that the matter may give rise to a **claim**; and

2. The identity of each potential claimant and the alleged injury or damage which has resulted or may result from such act, error, omission, **personal injury** or other fact, circumstance or situation and the steps, if any, undertaken or proposed to be undertaken to mitigate **damages**; and
3. The conditions under which the **insured** first became aware of such act, error, omission, **personal injury** or other fact, circumstance or situation.

This policy shall then apply to any **claim** that is subsequently made against the **insured** and arises out of a **wrongful act** or **personal injury** reported as a notice of circumstances in accordance with these **Awareness of Circumstances Provisions**. Notwithstanding that such **claim** is not made during the **policy period**, the remaining limits of liability and the terms and conditions of coverage hereunder shall be considered in determining coverage for such **claim**.

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

B. NOTICE OF CLAIM

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

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

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

- a. You and any other involved **insured** must see to it that we are notified immediately, but in no event later than sixty (60) calendar days after the expiration date of the **policy period** or within any applicable extended reporting period of any **claim** made against you. To the extent possible, written notice should include:

- i. The specific **wrongful act** or **personal injury** including the date the **claim** was made and or received; and
- ii. The **damages** that may reasonably result.

- b. You and any other involved **insured** must:

- i. Immediately send us copies of any demands, tolling agreements, complaints, notices, summonses or similar documents received in connection with the **claim**; and
- ii. Authorize us to obtain records and other information; and
- iii. Provide us with such information and cooperation as we may reasonably require in the investigation, evaluation, settlement or defense of the **claim** or suit; assist in making statements, in the conduct of suits or similar legal proceedings, attend hearings, depositions, and trials, assist on securing and giving evidence and obtaining the attendance of witnesses; and
- iv. Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to an **insured** because of **damages** to which this insurance may also apply.

- c. No **insured** will, except at their own cost, voluntarily make a payment, assume any obligation, assume or admit liability, settle or offer to settle any **claim** or incur any expense without our prior written consent.

C. PROTECTION FOR INNOCENT INSUREDS

Whenever insurance coverage under this policy would be void, excluded, suspended or lost because of noncompliance with **Section III: CONDITIONS-CLAIMS**, we agree that such insurance as afforded under this policy shall nonetheless apply with respect to each and every **insured** who neither knew nor reasonably should have known that an **insured** had a duty to report the matter but failed to satisfy such duty; provided, however, this protection shall not be available if an owner or member of management of the **named insured** became aware of the matter but failed to timely report it.

D. FALSE OR FRAUDULENT CLAIMS

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

E. SUBROGATION

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

F. NO ACTION AGAINST COMPANY

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

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

G. ALLOCATION

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

SECTION IV: GENERAL CONDITIONS

A. CANCELLATION

1. You may cancel this policy by returning it to us. You may also cancel this policy by written notice to us stating at what future date cancellation is to be effective.
2. We may cancel or non-renew this policy by mailing written notice to you at the address last known to us. We will provide written notice at least sixty (60) days before cancellation is to be effective. If we cancel this policy because you have failed to pay a premium when due or the applicable retention when due or have failed, after demand, to pay us such amounts as we have paid for **damages** or for **claims expenses** in excess of the applicable Each **Claim** or Aggregate Limit of Liability, then this

policy may be canceled by us by mailing to you written notice stating when, not less than ten (10) days thereafter, such cancellation shall be effective. The time of surrender of this policy or the effective date and hour of cancellation stated in the notice shall become the end of the current **policy period**. Delivery (where permitted by law) of such written notice either by you or by us shall be the equivalent of mailing.

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

B. ASSIGNMENT

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

C. AUTHORIZATION OF NAMED INSURED

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

D. CHANGES

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

E. CHANGES IN EXPOSURE

1. Mergers and Acquisitions

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

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

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

If the number of professionals increases by more than five professionals as the result of such merger or acquisition, the **named insureds** shall give us full details of the transaction in writing as soon as practicable but no later than thirty (30) days after the date of the merger or acquisition and we shall be entitled to impose such additional terms, conditions, and premium as we, in our absolute discretion, choose. There shall be no coverage under the **policy** for any newly merged or acquired entity unless the **insureds** comply with the terms of this provision.

2. Takeover of named insured

If, during the **policy period** the **named insured** merges into or consolidates with another entity such that the **named insured** is not the surviving entity then coverage shall continue under the policy, but only for a **wrongful act** or **personal injury** occurring before such transaction. No coverage shall be

available for any **wrongful act** or **personal injury** occurring after such transaction. Upon such transaction, this policy shall not be cancelled and the entire premium for this policy shall be deemed fully earned.

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

F. BANKRUPTCY

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

G. APPLICATION

By accepting this policy, you agree:

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

H. ARBITRATION

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

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

I. OTHER INSURANCE

With respect to any **claim** reported under this policy, if there is available any other valid and collectible insurance, then this Policy shall apply only in excess of the amount of any retentions, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy or policies to this Policy's Policy Number.