

**ARCH ESSENTIAL MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE
POLICYSM**

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ARCH ESSENTIAL MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE POLICYSM

In consideration of the payment of the premium and in reliance upon the **Application**, the **Insurer** specified in the Declarations (the “**Insurer**”) and the **Insureds** agree as follows:

1. INSURING AGREEMENTS

A. PROFESSIONAL LIABILITY

The **Insurer** shall pay **Loss**, in excess of the Retention, on behalf of any **Insured** resulting from a **Claim** first made against such **Insured** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** committed on or subsequent to the **Retroactive Date**.

B. DATA INCIDENT RESPONSE EXPENSES

The **Insurer** shall pay **Data Incident Response Expenses**, in excess of the Retention, on behalf of an **Insured** resulting from a **Network Security Breach** or **Privacy Violation** occurring during the **Policy Period**, provided that **Data Incident Response Expenses** will not exceed the applicable Sub-limit of Liability stated in Item 7 of the Declarations per **Policy Period**.

C. NON-PARTY INVESTIGATION EXPENSES

The **Insurer** shall reimburse an **Insured** for **Non-Party Investigation Expenses** arising out of **Professional Services**, in excess of the Retention, resulting from an investigation that first commenced during the **Policy Period**, provided that **Non-Party Investigation Expenses** will not exceed the applicable Sub-limit of Liability stated in Item 7 of the Declarations per **Policy Period**.

2. SPOUSAL, DOMESTIC PARTNER, ESTATE AND LEGAL REPRESENTATIVE COVERAGE

Coverage shall apply to a **Claim**, otherwise covered under this Policy, made against the lawful spouse or **Domestic Partner** of an **Insured**, or if an **Insured** dies, becomes incapacitated, or files for bankruptcy, such **Insured’s** estate, heirs, assigns, or legal representatives, provided that:

A. such **Claim** arises solely out of:

- a. such person’s status as a spouse, **Domestic Partner**, trustee, heir, assignee or legal representative of such **Insured**; or
- b. such person’s ownership of property sought as recovery for a **Wrongful Act**;

B. the **Insured** is named in such **Claim** along with such persons or entities; and

C. no coverage shall apply to any **Claim** for a **Wrongful Act** of such persons or entities.

3. DEFINITIONS

The following terms shall have the meanings specified below:

- A. “**Application**” means any application, including any information or materials provided for any insurance policy in an uninterrupted series of policies issued by the **Insurer** or any insurance company controlling, controlled by or under common control with the **Insurer**, of which this Policy is a direct or indirect renewal or replacement.

B. “Bodily Injury” means physical injury to the body, sickness or disease sustained by a person including death resulting there from. **“Bodily Injury”** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting in or from physical injury to the body, sickness, disease or death of any person.

C. “Claim” means any:

1. written demand for monetary damages or non-monetary relief commenced by the receipt by any **Insured** of such demand;
2. civil proceeding against any **Insured** for monetary or non-monetary relief commenced by the receipt by, or the service upon, any **Insured** of a complaint or similar pleading;
3. administrative or regulatory proceeding commenced by the receipt by, or service upon, any **Insured** of a notice of charges or similar document;
4. civil, administrative, or regulatory investigation of an **Insured** commenced upon such **Insured’s** receipt of a formal order of investigation, or once such **Insured** is identified by name by an investigating authority as a person or entity against whom a proceeding described in 2 or 3 above may be commenced;
5. written request to an **Insured** to toll or waive a period or statute of limitations regarding a potential **Claim** as described in 1 – 3 above commenced by the receipt by such **Insured** of such request;
6. **Network Security Breach** or **Privacy Violation**, but only with respect to Insuring Agreement B. Data Incident Response Expenses; or
7. civil, administrative or regulatory investigation of any person or entity other than an **Insured** brought by a disciplinary or regulatory official, board or agency, commenced by the filing of or the service upon any **Insured**, of a subpoena, summons, investigative demand or formal investigative order or similar document, but only with respect to Insuring Agreement C. Non-Party Investigation Expenses.

All **Claims** arising out of the same **Wrongful Act** or any **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** first made on the earliest date that:

1. any of such **Claims** was commenced, even if such date is before the **Policy Period**;
2. notice of such **Wrongful Act** or any **Interrelated Wrongful Act** was given to the **Insurer** pursuant to Section 9.B; or
3. notice of any fact, circumstance, or situation including such **Wrongful Act** or any **Interrelated Wrongful Act** was given under any prior policy of which this Policy is a renewal or replacement.

No coverage is provided for any **Claim** made, or deemed first made, before the **Policy Period**.

D. “Claim Manager” means any natural person:

1. chief executive officer;
2. chief operating officer;

3. chief financial officer;
4. general counsel;
5. chief compliance officer; or
6. risk manager,

of an **Insured Organization**.

E. “Computer System” means any computer hardware, software or firmware, and components thereof including data stored thereon, that is owned or leased by an **Insured Organization** and is under the direct operational control of an **Insured Organization**.

F. “Data Incident Response Expenses” means reasonable and necessary fees and expenses incurred by an **Insured**, with the **Insurer’s** prior written consent, for:

1. legal services by an attorney selected from the **Insurer’s** panel of lawyers regarding any **Network Security Breach** or **Privacy Violation** to:
 - a. provide counsel on the obligations of any applicable Privacy Law; and
 - b. draft notices required by any applicable **Privacy Law**;
2. computer forensic investigatory services by a third party information security professional selected from the **Insurer’s** panel to determine the cause of the **Network Security Breach** and identities of those who may have been victims from any **Privacy Violation**;
3. notifying individuals who may have been victims of any **Privacy Violation**;
4. public relations firm, crisis management firm or law firm services to mitigate reputational damage resulting from any Network Security **Breach** or **Privacy Violation**; and
5. credit monitoring services, but only if the disclosure of **Private Information** from any **Network Security Breach** or **Privacy Violation** could result in the opening of a personal financial account.

Data Incident Response Expenses shall exclude any: (i) compensation or overhead of any **Insured**; (ii) payments made as compensation for any injury or damages resulting from any **Network Security Breach** or **Privacy Violation**; or (iii) **Loss**.

G. “Defense Costs” means reasonable and necessary fees and expenses incurred in the defense or appeal of a **Claim**. **Defense Costs** shall include the premium for any appeal, attachment or similar bond, provided that the **Insurer** shall have no obligation to furnish such bond. **Defense Costs** exclude any compensation, benefit, expenses or overhead of, or paid to, any **Insured**.

H. “Domestic Partner” means any natural person who enters into a civil union or qualifies as a domestic partner under any federal, state or local law or under the provisions of any formal program established by the **Named Insured**.

I. “Insured” means:

1. the **Insured Organization**;
 2. any current or former principal, partner, executive officer, director, employee or any independent contractor under contract with and indemnified by the **Insured Organization** but only with respect to the performance of **Professional Services** on behalf of the **Insured Organization**.
- J. “**Insured Organization**” means:
1. the **Named Insured**; or
 2. any **Subsidiary**.
- K. “**Interrelated Wrongful Acts**” means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- L. “**Loss**” means **Defense Costs**, damages, settlements, judgments, pre- and post-judgment interest, and punitive, exemplary or multiple damages to the extent such damages are insurable under applicable law. Notwithstanding 5. below, the insurability of **Loss** shall be governed by the laws of any applicable jurisdiction that does not prohibit coverage for such **Loss**.
- Loss**, other than **Defense Costs**, excludes any:
1. taxes, fines or penalties imposed by law;
 2. amount for which the **Insureds** are not liable or for which the claimants are without legal recourse to the **Insureds**;
 3. non-monetary or injunctive relief;
 4. fees, deposits, commissions or charges;
 5. matters that are uninsurable pursuant to applicable law;
 6. **Data Incident Response Expenses**; or
 7. **Non-Party Investigation Expenses**.
- M. “**Malicious Code**” means any virus, Trojan, worm or other similar malicious software program, code or script designed to infect, harm, harm data on, or steal data from, a **Computer System**.
- N. “**Named Insured**” means the organization specified in Item 1 of the Declarations.
- O. “**Network Security Breach**” means any:
1. unauthorized access to, or unauthorized use of, a **Computer System**; or
 2. transmission of **Malicious Code** into or from a **Computer System**.
- P. “**Non-Party Investigation Expenses**” reasonable and necessary legal fees and expenses incurred (excluding any compensation, benefit, expenses or overhead of, or paid to an **Insured**), with the **Insurer’s** consent, for responding to any formal civil, administrative or

regulatory investigation, brought by a disciplinary or regulatory official, board or agency, commenced by the filing of or the service upon any **Insured**, of a subpoena, summons, investigative demand or formal investigative order or similar document to investigate any person or entity other than an **Insured**.

Q. “Private Information” means any individual's name in combination with any of the following:

1. social security number;
2. drivers license number or any other state identification number;
3. medical or healthcare data, including protected health information;
4. non-public personal information as defined in any **Privacy Law**; or
5. confidential or proprietary business information of a third-party that is protected under a written non-disclosure agreement between such third-party and an **Insured**.

R. “Personal Injury” means any actual or alleged:

1. false arrest, detention, imprisonment or malicious prosecution;
2. wrongful entry or eviction;
3. invasion of the right of privacy or
4. libel, slander or other defamatory or disparaging material; or a publication or an utterance in violation of an individual's right of privacy.

S. “Policy Period” means the period specified in Item 3 of the Declarations, subject to any cancellation prior to the scheduled expiration date.

T. “Pollutants” means any solid, liquid, gaseous, biological, radiological or thermal contaminant or irritant including without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold, fungi, odors, noise, lead, oil or oil products, radiation, asbestos or asbestos containing products, waste or any electric, magnetic or electromagnetic field of any frequency. **Pollutants** also includes, without limitation, materials to be recycled, reconditioned or reclaimed.

U. “Privacy Law” means those parts of the following statutes or regulations regulating the use and protection of non-public personal information (as defined in such statutes or regulation):

1. Health Insurance Portability and Accountability Act of 1996 (HIPAA);
2. Gramm-Leach Bliley Act of 1999 (GLBA);
3. consumer protection and unfair and deceptive trade practice laws enforced by state Attorneys General or the Federal Trade Commission, including but not limited to Section 5(a) of the Federal Trade Commission Act, 15. U.S.C § 45 (a), as amended;
4. security breach notification laws that require notice to individuals of the actual or potential theft of their non-public personal information, including but not limited to the California Security Breach Notification Act of 2003 (CA SB1386); or

5. other state, federal or foreign privacy laws requiring reasonable SECURITY for non-public personal information, or a privacy policy limiting the sale, disclosure or sharing of non-public personal information or providing individuals with the right to access or correct non-public personal information.
- V. **“Privacy Violation”** means any:
1. theft or unauthorized copying of **Private Information** while in the care, custody or control of an **Insured**; or
 2. violation of a **Privacy Law** by an **Insured**.
- W. **“Professional Services”** means only those services performed by the Insured for others for a fee and described by endorsement (if applicable).
- X. **“Property Damage”** means:
1. physical injury to, loss or destruction of, tangible property, including loss of use thereof; or
 2. loss of use of tangible property which has not been physically injured, lost, damaged or destroyed.
- Y. **“Retroactive Date”** means the date set forth in Item 4. of the Declarations.
- Z. **“Subsidiary”** means any entity engaged in the performance of **Professional Services**:
1. identified in the **Application** for this Policy; and
 2. in which the **Named Insured** has an ownership interest of greater than 50% of the assets of such entity prior to the inception date of this Policy or any entity which becomes a **Subsidiary** pursuant to the provisions of Section 13 of this Policy.
- AA. **“Wrongful Act”** means any actual or alleged act, error or omission, misstatement, misleading statement, breach of duty or neglect or **Personal Injury** committed by any Insured; or by any other person for whom the **Insured Organization** is legally responsible, solely in the performance of or failure to perform **Professional Services**.

4. **COVERAGE TERRITORY**

The insurance afforded by this Policy applies worldwide. Where suits are brought or **Claims** are made outside of the United States of America and its territories and possessions, Puerto Rico, or Canada, the following additional provisions apply:

- A. The **Insurer** shall have the right but not the duty to investigate, defend or settle any such **Claims** brought against an **Insured**;
- B. If the **Insurer** elects not to investigate, defend or settle any such **Claim**, the **Insured** shall, under the **Insurer’s** supervision, arrange for such investigation and defense thereof as is reasonably necessary and subject to the **Insurer’s** prior authorization, shall effect such settlement thereof as the **Insurer** and the **Insured** deem expedient;
- C. The **Insurer** will reimburse the **Insured** for the reasonable cost of such investigation and defense and the amount of any settlement or judgment in excess of the Retention amount

stated in the Declarations, all subject to and within the Limits of Liability stated in the Declarations; and

- D. Such reimbursement shall be made in United States currency at the rate of exchange prevailing on the date the judgment is rendered or the date that the amount of the settlement is agreed upon or the date expenditure is made.

5. EXTENDED REPORTING PERIOD

A. Automatic Extended Claims Reporting Period

1. If the **Insurer** or the **Named Insured** terminates or non-renews this Policy for any reason, other than nonpayment of premium, the **Named Insured's** failure to comply with any term and condition, fraud or material misrepresentation, the **Named Insured** shall be entitled to a period of sixty (60) days from the date of policy termination to report **Claims** which are made against the **Insured** prior to such termination date and that arise out of a **Wrongful Act** occurring prior to such termination date.
2. This Automatic Extended Claims Reporting Period may not be canceled by the **Insurer** and does not require the payment of an additional premium. This Automatic Extended Claims Reporting Period shall be included within the Optional Extended Claims Reporting Period if such is purchased.
3. The fact that the period during which the **Claims** can be made against the **Insured** and reported to the **Insurer** is extended by virtue of the Automatic Extended Claims Reporting Period shall not in any way increase the Limits of Liability of this Policy.

B. Optional Extended Claims Reporting Period

1. If this Policy is cancelled or non-renewed, for any reason other than non-payment of premium, and the **Named Insured** does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the **Named Insured** shall have the right, upon payment of the additional premium stated in Item 9 of the Declarations, to elect a continuation of coverage afforded by this Policy for the Additional Period stated in Item 9 of the Declarations (the "Optional Extended Reporting Period"). If elected, the Optional Extended Reporting Period shall commence upon the effective date of such cancellation or nonrenewal. Such continuation of coverage shall apply only to a **Claim**, otherwise covered by this Policy, first made against the **Insureds** during the Optional Extended Reporting Period for a **Wrongful Act** occurring prior to the end of the **Policy Period**.
2. The rights contained in this Section shall terminate unless a written notice of election together with the additional premium due stated in Item 9 of the Declarations is received by the **Insurer** within 30 days after the effective date of cancellation or nonrenewal.
3. The additional premium for the Optional Extended Reporting Period shall be fully earned at the inception of the Optional Extended Reporting Period. The Optional Extended Reporting Period is not cancelable.
4. There is no separate Limit of Liability for the Optional Extended Reporting Period.

6. EXCLUSIONS

The **Insurer** shall not pay **Loss, Data Incident Response Expenses or Non-Party Investigation Expenses**:

- A. of an **Insured** for, based upon, arising from, or in any way related to the gaining of any personal profit, remuneration or advantage to which such **Insured** was not legally entitled, if established by any final non-appealable adjudication adverse to such **Insured**; provided this exclusion will not apply to **Defense Costs**;
- B. of an **Insured** for, based upon, arising from, or in any way related to any deliberately fraudulent or criminal act or omission or any willful violation of law by such **Insured** if established by any final non-appealable adjudication adverse to such **Insured**; provided this exclusion will not apply to **Defense Costs**;
- C. in connection with any **Claim** for, based upon, arising from, or in any way related to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any Policy of which this Policy is a renewal or replacement;
- D. in connection with any **Claim** for, based upon, arising from, or in any way related to any **Wrongful Act** or **Interrelated Wrongful Act** committed thereafter that any **Insured** had knowledge of prior to the first policy issued to the **Named Insured** and continuously renewed by the **Insurer** and had a reasonable basis to believe that such **Wrongful Act** or **Interrelated Wrongful Act** committed thereafter could give rise to a **Claim**;
- E. in connection with any **Claim** alleging, based upon, arising out of, or resulting from, directly or indirectly, any demand, suit or proceeding pending, or order, decree or judgment made or initiated against the **Insured** on or prior to the Prior or Pending Litigation Date specified in Item 5 of the Declarations or which has a common nexus, fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes underlying or alleged therein;
- F. for any **Bodily Injury** or **Property Damage**, provided that this exclusion shall not apply to any mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, resulting in or from **Personal Injury**;
- G. in connection with any **Claim** by or on behalf of any **Insured** against any other **Insured**;
- H. for any actual or alleged violation of: (i) the Securities Act of 1933; (ii) the Securities Exchange Act of 1934; (iii) the Investment Company Act of 1940; (iv) the Investment Advisors Act; (v) any foreign, federal, state or local blue sky or securities laws; (vi) the Racketeer Influenced and Corrupt Organizations Act; (vii) any workers' compensation, unemployment, social security, disability or pension benefits laws; (viii) the Employee Retirement Income Security Act of 1974 (except Section 510 thereof); (ix) the National Labor Relations Act; (x) the Worker Adjustment and Retraining Notification Act; (xi) the Consolidated Omnibus Budget Reconciliation Act of 1985; (xii) the Occupational Safety and Health Act, or (xiii) any similar laws or any order, ruling or regulation issued pursuant to those laws mentioned in (i) through (xii) above;
- I. in connection with any **Claim** for, based upon, arising from, or in any way related to any liability of others assumed by the **Insured** under any contract, warranty, guarantee, cost estimate or promise or the **Insureds** breach of any contract, warranty, guarantee, cost estimate or promise. This exclusion does not apply; however, to the extent liability would attach to the **Insured** in the absence of such contract(s), warranty(ies), guarantee(ies), cost estimate(s) or promise(s);

- J. in connection with any **Claim** for, based upon, arising from, or in any way related to any **Insured's** service at any time as a director, officer, trustee, regent, governor, independent contractor or equivalent executive, or as an employee, of any entity other than an **Insured Organization** even if such service is with the knowledge and consent, or at the request, of an **Insured Organization**;
- K. in connection with any **Claim** for, based upon, arising from, or in any way related to any actual or alleged misappropriation, theft, plagiarism, infringement or violation of any patent, copyright, trademark, trade secret, trade dress, trade name, service mark, service name, title or slogan;
- L. in connection with any **Claim** for, based upon, arising from, or in any way related to any actual, alleged or threatened discharge, dispersal, seepage, migration, release, emission escape or transportation of **Pollutants**, including, without limitation any direction, request or order to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**;
- M. for any actual or alleged failure to effect or maintain any insurance or bond;
- N. in connection with any **Claim** for, based upon, arising from, or in any way related to any unsolicited electronic faxes, emails, telephone calls or unsolicited communications, including without limitation, **Claims** arising out of unsolicited electronic messages, chat room postings, bulletin board postings, newsgroup postings, "pop-up" or "pop-under" Internet advertising or fax-blasting, direct mailing or telemarketing, or **Claims** involving actual or alleged violations of: (i) the Telephone Consumer Protection Act (TCPA); (ii) the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act of 2003); (iii) the Drivers Privacy Protection Act, (iv) the Fair Credit Reporting Act (FCRA), (v) the Fair and Accurate Credit Transaction Act (FACTA of 2003); or (vi) any other foreign, federal, state or local statute, regulation or ordinance that addresses, limits or prohibits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information;
- O. in connection with any **Claim** for, based upon, arising from, or in any way related to any actual or alleged wrongful employment practice, including, without limitation, any discrimination, harassment, hostile work environment, wrongful dismissal, discharge or termination, retaliation, wrongful disciplinary action, deprivation of career opportunity, failure to employ or promote, inadequate work place, policies or procedures, the Fair Labor Standard Act or negligent evaluation of employees;
- P. in connection with any **Claim** for, based upon, arising from, or in any way related to any actual or alleged discrimination, humiliation or harassment in any form or manner, including, but not limited to, race, creed, color, religion, ethnic background, national origin, age, handicap, disability, gender, sex, sexual orientation or preference, pregnancy, marital status, retaliation, or any other protected class under any federal, state, local or other law;
- Q. in connection with any **Claim** for, based upon, arising from, or in any way related to any actual or alleged conversion, commingling, availability or misuse of funds or any form of money or any guarantee of a specified rate of return or interest;
- R. in connection with any **Claim** for, based upon, arising from or in any way related to any actual or alleged false advertising or misrepresentation in advertising of the **Professional Services** performed by an **Insured**;
- S. in connection with any **Claim** for, based upon, arising from or in any way related to any actual or alleged unauthorized or illegal collection or intentional sharing of **Private**

Information, including but not limited to the collection of **Private Information** using cookies, spyware, or other malicious code, or the failure to provide adequate notice that **Private Information** is being collected or shared;

- T. of an **Insured** for, based upon, arising from, or in any way related to a **Network Security Breach** or **Privacy Violation**, however this exclusion will not apply to **Data Incident Response Expenses**.

7. LIMIT OF LIABILITY & RETENTION

- A. Subject to subparagraph B. below, the Each Claim Limit of Liability specified in Item 6.A. of the Declarations shall be the maximum amount for each **Claim**. The **Data Incident Response Expenses** and **Non-Party Investigation Expenses** Sub-limits of Liability shall be part of, and not in addition to, the Each Claim Limit of Liability.
- B. The Aggregate Limit of Liability specified in Item 6.B of the Declarations is the maximum aggregate amount that the **Insurer** shall pay for all **Loss, Data Incident Response Expenses** or **Non-Party Investigation Expenses** under this Policy regardless of the number of **Claims** made. If the Limit of Liability is exhausted, the premium for this Policy shall be fully earned.
- C. **Defense Costs** shall be part of, and not in addition to, each applicable Limit of Liability. Payment of **Defense Costs** by the **Insurer** shall reduce each applicable Limit of Liability.
- D. The **Insurer** shall pay covered **Loss, Data Incident Response Expenses** or **Non-Party Investigation Expenses** arising from each **Claim** covered under this Policy only to the extent that such **Loss** is in excess of the applicable Retention specified in Item 6.C of the Declarations. The Retention shall be paid by the **Insured** and shall be applicable to each **Claim** and shall include all **Loss, Data Incident Response Expenses** and **Non-Party Investigation Expenses** up to the Retention amount for each **Claim**. The **Insurer** may at its sole discretion advance the payment of **Loss** within the Retention. Any **Loss, Data Incident Response Expenses** and **Non-Party Investigation Expenses** paid by the **Insurer** pursuant to a duty to defend or otherwise that is within any applicable Retention shall be reimbursed by any **Insured** upon the **Insurer's** written request within 30 days
- E. The **Insurer** shall pay covered **Loss, Data Incident Response Expenses** or **Non-Party Investigation Expenses** only to the extent such **Loss, Data Incident Response Expenses** or **Non-Party Investigation Expenses** exceed the applicable Retention. The Retention shall be borne by the **Insureds** uninsured at the **Insureds'** own risk.

8. DEFENSE & SETTLEMENT OF CLAIMS

- A. The **Insurer** shall have the right and duty to defend each **Claim** for which the **Insurer** receives notice, even if such **Claim** is groundless, false or fraudulent. The **Insurer** may make any investigation it deems appropriate.
- B. The **Insurer's** duty to defend any **Claim** shall end upon exhaustion of any applicable Limit of Liability. If the Limit of Liability is exhausted, the premium for this Policy shall be fully earned.
- C. The **Insureds** shall not admit nor assume any liability, make any settlement offer, enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Insurer**, such consent not to be unreasonably withheld. The **Insurer** shall not be liable for any admission, assumption, offer, settlement, stipulation, or **Defense Costs** to which it has not consented.

- D. The **Insurer** may, with the written consent of the **Insureds**, settle any **Claim** for a monetary amount that the **Insurer** deems reasonable. If the **Insured** refuses to consent to any settlement of a **Claim** recommended by the **Insurer** and acceptable to a claimant, and elects to contest the **Claim**, then the **Insurer** shall not pay **Loss** for such **Claim** in excess of:
1. the amount of the proposed settlement plus **Defense Costs** incurred prior to such refusal; and
 2. 50% of **Loss** incurred for such **Claim** in excess of the amount specified in 1. above.
- E. The **Insureds** shall give to the **Insurer** all information and cooperation as the **Insurer** may reasonably request. Upon the **Insurer's** request, the **Insureds** shall attend hearings, trials, and any other such proceedings shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim**.
- F. **Mediation**

If the Company and the Insured agree to use mediation to resolve a claim brought against the insured and if such **Claim** is resolved thereby, the Retention stated in the Declarations shall be reduced by 50% for such **Claim** subject to a maximum reduction of \$25,000.

9. CLAIM AND POTENTIAL CLAIM NOTICES

- A. As a condition precedent to coverage, any **Claim Manager** shall give the Insurer written notice of any **Claim** as soon as practicable after any **Claim Manager** becomes aware of such **Claim**, but no later than: (i) 60 days after the end of the **Policy Period**; or (ii) the end of the Extended Reporting Period, if applicable. Notwithstanding the foregoing, if the **Insurer** provides written notice that this Policy is being canceled for nonpayment of premium, then written notice of any **Claim** shall be given to the **Insurer** prior to the effective date of cancellation.
- B. If any **Claim Manager** becomes aware of a **Wrongful Act** during the **Policy Period** that may reasonably be expected to give rise to a **Claim** against an **Insured** for which coverage may be available, and if written notice of such **Wrongful Act** is given to the **Insurer** during the **Policy Period** specifying the (i) reasons for anticipating such a **Claim**, (ii) nature and date of the **Wrongful Act**, (iii) identity of the **Insureds** involved, (iv) injuries or damages sustained, (v) names of potential claimants and (vi) manner in which the **Insureds** first became aware of the **Wrongful Act**, then any **Claim** subsequently arising from such **Wrongful Act** shall be deemed to be a **Claim** first made at the time that the Insurer receives such notice.

10. ALLOCATION

If the **Insureds** incur **Loss**, **Data Incident Response Expenses** or **Non-Party Investigation Expenses** that is only partially covered by this Policy because a **Claim** includes both covered and uncovered matters or is made against both covered and uncovered parties, then the **Insurer** and the **Insureds** shall use their best efforts to allocate such **Loss**, **Data Incident Response Expenses** or **Non-Party Investigation Expenses** based upon: (i) the relative legal and financial exposures of any covered and uncovered parties or covered and uncovered matters; and (ii) if a settlement occurs, the relative benefit of the parties from settlement of such covered and uncovered portions of such **Claim**.

11. SUBROGATION

The **Insurer** shall be subrogated to all of the **Insureds'** rights of recovery regarding any payment of **Loss, Data Incident Response Expenses** or **Non-Party Investigation Expenses** under this Policy. The **Insureds** shall do everything necessary to secure and preserve such rights, including, without limitation, the execution of any documents necessary to enable the **Insurer** to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing to prejudice the **Insurer's** position or any rights of recovery. The **Insurer** shall not subrogate against any **Insured**.

12. OTHER INSURANCE

Coverage under this Policy shall apply only in excess of the applicable Retention herein, and over any other valid and collectible insurance regardless of whether such other insurance is stated to be primary, excess, contributory, contingent or otherwise, unless such other insurance is written specifically excess over the Limits of Liability of this Policy by reference in such other insurance to this Policy's Policy Number.

13. CHANGES IN CONTROL

A. Takeover of Named Insured

If, during the **Policy Period**:

1. any person or entity or group of persons and/or entities acting in concert acquires securities or voting rights resulting in ownership by such person(s) and/or entity(ies) of more than 50% of the outstanding securities representing the present right to vote for the election of directors or equivalent positions of the **Named Insured**; or
2. the **Named Insured** merges into or consolidates with another organization such that the **Named Insured** is not the surviving organization,

then coverage shall continue under this Policy, but only for **Wrongful Acts** occurring before such transaction. No coverage shall be available for any **Wrongful Act** occurring after such transaction. Upon such transaction, the entire premium for this Policy shall be deemed fully earned. The **Named Insured** shall give the **Insurer** written notice of such transaction as soon as practicable, but not later than 90 days after the effective date of such transaction.

B. Acquisition or Creation of a Subsidiary

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

1. acquires or creates a **Subsidiary**; or
2. merges with another organization such that the **Named Insured** is the surviving entity,

then such newly created, acquired or merged organization and its **Insureds** shall be covered for any **Wrongful Act** occurring after such acquisition, merger or creation. No coverage shall be available for any **Wrongful Act** of any new **Insureds** occurring before such transaction or for any **Interrelated Wrongful Acts** thereto.

If the current annual gross revenues of any newly acquired or merged organization exceeds 15% of the current annual gross revenues of the **Named Insured** as reflected in the most recent **Application** submitted with the **Insured**, then the **Named Insured** shall give the **Insurer** written notice of the acquisition or merger as soon as practicable but not later than 90 days after the effective date of such transaction. Subject to the expiration of the **Policy Period**, any continuation of coverage for such newly acquired or merged entity and its **Insureds** beyond 90 days after the transaction shall be subject to any additional terms and

conditions, including additional premium, required by the **Insurer**. The **Insureds** shall furnish all information regarding such transaction as the **Insurer** shall request.

C. Loss of Subsidiary Status

If, during or prior to the **Policy Period**, any entity ceases to be a **Subsidiary**, then coverage for such entity and its **Insureds** shall continue until termination of this Policy but only for any **Wrongful Act** occurring prior to the date such entity ceased to be a **Subsidiary**.

14. APPLICATION

A. The **Insureds** represent and agree that the statements and information contained the **Application** are true, accurate and complete; that each representation is deemed material to the acceptance of the risk assumed by the **Insurer** and that this Policy is issued in reliance upon the truth and accuracy of such representations contained within the **Application**. This Policy embodies all of the agreements existing between the **Insureds** and the **Insurer** and any of its representatives.

B. If the **Application** contains misrepresentations or omissions made with intent to deceive or that materially affect the acceptance of the risk or the hazard assumed by the **Insurer**, this Policy shall be void ab initio.

C. For the purpose of determining coverage:

1. the **Application** shall be construed as a separate application for coverage by each natural person **Insured**;
2. knowledge possessed by any natural person **Insured** shall not be imputed to any other natural person **Insured**; and
3. only knowledge possessed by the **Insured Organization's** chief executive officer, chief financial officer, or general counsel shall be imputed to an **Insured Organization**.

15. SUITS AGAINST THE INSURER AND DISPUTE RESOLUTION

A. No suit or other proceeding shall be commenced by any **Insureds** against the **Insurer** unless there shall have been full compliance with all the terms and conditions of this Policy.

B. No person or organization shall have any right under this Policy to join the **Insurer** as a party to any **Claim** against the **Insureds** nor shall the **Insurer** be impleaded by the **Insureds** in any such **Claim**.

C. In the event that a dispute arises in connection with rights and obligations owed under this Policy, the **Insured(s)** and the **Insurer** shall participate in a non-binding mediation in which the parties shall attempt in good faith to resolve such dispute. Either the **Insured(s)** or the **Insurer** shall have the right to commence a judicial proceeding, or if the parties agree, submit the dispute to a binding arbitration, in order to resolve such dispute. However, no judicial proceeding or arbitration shall be commenced prior to the termination of the mediation and until at least 90 days has passed from the termination of the mediation. The costs and expenses of any mediation, or any arbitration, shall be split equally by the parties.

16. NAMED INSURED'S AUTHORITY

The **Named Insured** shall act on behalf of all **Insureds** regarding all matters under this Policy, including, without limitation, cancellation, election of the Extended Reporting Period, transmission and receipt of notices, reporting of **Claims**, acceptance of endorsements, payment of premiums, and receipt of return premiums.

17. CANCELLATION

- A. The **Insurer** may cancel this Policy for non-payment of premium by sending not less than 10 days notice to the **Named Insured**. This Policy may not otherwise be cancelled by the **Insurer**.
- B. Except as otherwise provided, the **Named Insured** may cancel this Policy by sending written notice of cancellation to the **Insurer**. Such notice shall be effective upon receipt by the **Insurer** unless a later cancellation date is specified therein.
- C. If the **Insurer** cancels this Policy, unearned premium shall be calculated on a pro rata basis. If the **Named Insured** cancels this Policy, unearned premium shall be calculated at the **Insurer's** customary short rates. Payment of any unearned premium shall not be a condition precedent to the effectiveness of such cancellation. The **Insurer** shall refund any unearned premium as soon as practicable.

18. BANKRUPTCY

Bankruptcy or insolvency of any **Insured** shall not relieve the **Insurer** of any of its obligations under this Policy, nor deprive the **Insurer** of any of its rights and defenses under this Policy.

In the event of the bankruptcy or insolvency of any **Insured**, the **Insurer** shall advance **Loss** within the Retention, but shall have the right to assert any appropriate claim or demand in such proceeding for payment of any obligations of any **Insured**, including, without limitation, any amounts which the **Insurer** advances on behalf of any **Insured** within the Retention.

19. NOTICES

- A. Notices to the **Insured** shall be sent to the **Named Insured** at the address specified in Item 2. of the Declarations.
- B. Notices to the **Insurer** shall be sent to the applicable e-mail, facsimile, or other address specified in Item 10 of the Declarations, include the policy number of this Policy, and become effective upon receipt.

20. ALTERATION, ASSIGNMENT & TITLES

- A. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this Policy nor prevent the **Insurer** from asserting any right under the terms of this Policy.
- B. Assignment of any interest under this Policy shall not bind the **Insurer** unless such assignment is acknowledged by a written endorsement issued by the **Insurer**.
- C. The titles of the sections of, and endorsements to, this Policy are for reference only. Such titles shall not be part of the terms and conditions of coverage.

21. REFERENCES TO LAWS

- A. Any statute, act, or code mentioned in this Policy shall be deemed to include all amendments of, and rules and regulations promulgated under, such statute, act, or code.
- B. Any statute, act, or code mentioned in this Policy that is followed by the phrase “or any similar law” shall be deemed to include all similar laws of all jurisdictions throughout the world, including, without limitation, any common law.

22. ENTIRE AGREEMENT

This Policy, including the Declarations, written endorsements, and the **Application** shall constitute the entire agreement between the **Insurer** and the **Insureds** or any of its agents regarding the insurance provided hereunder.

23. POLICY CHANGES

This Policy shall not be changed in any manner except by a written endorsement issued by the **Insurer**.