

NEW HAMPSHIRE INSURANCE COMPANY  
Administrative Offices: 175 Water Street, New York, NY 10038  
(hereinafter called the "Company")

## ACCOUNTANTS PROFESSIONAL LIABILITY POLICY (DEDUCTIBLE VERSION)

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST YOU AND REPORTED IN WRITING TO US DURING THE POLICY PERIOD, OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER

LOSS AMOUNTS INCLUDE DEFENSE COSTS. DEFENSE COSTS ARE INCLUDED WITHIN AND REDUCE THE LIMITS OF LIABILITY OF THIS POLICY.

In consideration of the payment of the premium by the **Named Insured** and in reliance upon the statements in the **Insured's** Application incorporated herein by reference, the Company agrees with the **Insured** subject to all terms, exclusions and conditions of the is policy as follows:

### I. INSURING AGREEMENTS

#### A. COVERAGE:

The Company will pay on behalf of the **Insured** those sums that the **Insured** shall become legally obligated to pay as **Loss Amounts** resulting from a **Claim** that is first made against the **Insured** and reported to the Company during the **Policy Period** or the **Extended Reporting Period**, if applicable, as a result of a **Wrongful Act** by the **Insured**.

For this coverage to apply, all the following conditions must be satisfied:

1. prior to the inception date of the first Accountants Professional Liability Policy issued by the Company to the **Insured** and continuously renewed and maintained in effect thereafter to the inception date of this **Policy Period**, no partner, principal, officer or owner of the **Insured Firm** or any person authorized to receive notice of a **Claim** had knowledge of a **Wrongful Act, Interrelated Wrongful Act**, or fact or circumstance likely to give rise to a **Claim**; and
2. the **Insured** did not give notice to a **Prior Company** of any **Wrongful Act, Interrelated Wrongful Act** or **Claim**; and
3. the **Wrongful Act** or **Interrelated Wrongful Act** forming the basis of the **Claim** occurred prior to the end of the **Policy Period**, and subsequent to the Retroactive Date shown in the Declarations; and
4. the **Claim** must be first made against the **Insured** and reported to the Company during the **Policy Period**, and

5. the **Insured** must report the **Claim** to the Company, in writing, as soon as practicable, but in no event later than the end of the **Policy Period** or the end of any **Extended Reporting Period**, if applicable.

B. TERRITORY:

This policy applies to **Wrongful Acts** that take place anywhere in the world provided, however, that the **Claim** is made or brought against the **Insured** within the United States of America, its territories and possessions, Puerto Rico or Canada.

C. DEFENSE PROVISIONS:

1. When any **Claim** against the **Insured** for which coverage is provided under this policy is made or brought within the United States of America, its territories or possessions, Puerto Rico or Canada, the Company has the right to investigate such **Claim**, and the duty to defend such **Claim** with defense counsel of the Company's choice, even if such **Claim** is groundless, false or fraudulent. The Company's obligation to defend or to continue to defend any **Claim** as provided in this Subparagraph 1. shall no longer exist after the applicable limit of the Company's liability has been exhausted by the payment of **Loss Amounts**.
2. When any **Claim** against the **Insured** for which coverage is provided under this policy is made or brought outside the areas described in Subparagraph C.1. above, the Company shall not be obligated to assume charge of the investigation, defense or settlement of any such **Claim**, but the Company shall have the right and shall be given the opportunity to associate with the **Insured** in the investigation and defense of any such **Claim**. The **Insured** shall, under the Company's supervision, make or cause to be made such investigation and defense as is reasonably necessary. Subject to prior written authorization by the Company, the **Insured** may also effect settlement. The Company shall reimburse the **Insured** for damages and the reasonable and necessary **Defense Costs** in excess of the applicable Deductible.

D. SETTLEMENT PROVISIONS:

The Company will not settle or compromise any **Claim** without the written consent of the **Insured**. If, however, the **Insured** refuses to consent to a settlement or compromise recommended by the Company and elects to contest such **Claim** or continue legal proceedings in connection with such **Claim**, then the Company's liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus **Defense Costs** incurred up to the date of such refusal subject to the applicable limit of liability under this policy.

E. DEFENSE COSTS:

**Loss Amounts** include **Defense Costs** and as such, **Defense Costs** are included within and reduce the applicable Limits of Liability of this policy.

F. ADDITIONAL COVERAGES

The Limits of Liability provided by Subparagraphs 1-5 of Paragraph F. ADDITIONAL COVERAGES below are addition to and shall not reduce the Limits of Liability in Item 4. of the Declarations. No deductible shall apply to these Additional Coverages.

1. REGULATORY INQUIRY

The **Company** will pay legal fees, legal costs and court costs on behalf of the Insured in response to the following types of investigations:

- a. a state licensing board;
- b. a self-regulatory body;
- c. a public oversight board; or
- d. a governmental agency with authority to regulate **Professional Services**.

The most the **Company** will pay for such legal fees and costs is \$50,000 per **Policy Period** regardless of the number investigations or number of **Insureds** subject to such investigations.

2. SUBPOENA EXPENSES:

The Company will pay on behalf of the **Insured** for legal fees incurred in responding to a subpoena for documents or testimony first received by the **Insured** during the **Policy Period**, or an Extended Reporting Period, if applicable, arising solely from the **Insured** rendering **Professional Services** which have not resulted in a **Claim**. The Company will, at the **Insureds** request and upon receipt of a copy of the subpoena, retain an attorney to advise the **Insured** regarding document production and represent the **Insured** during preparation and giving of testimony.

The most the Company will pay for such legal fees is \$50,000 per **Policy Period**, regardless of the number of subpoenas received by the **Insured**. Should a **Claim** be made or brought against the **Insured** arising out of the same subject matter as the subpoena, the coverage provided under this Subpoena Expenses Additional Coverage shall no longer apply and coverage shall instead be provided under Paragraph A. COVERAGE of Section I. **INSURING AGREEMENTS**.

Any notice provided by the **Insured** to the Company of such subpoena shall be deemed notification of a **Potential Claim** pursuant to Paragraph B. in Section V.

3. LOSS OF EARNINGS EXPENSE REIMBURSEMENT:

The Company will reimburse the **Insured** for actual loss of earnings and reasonable expenses incurred at the Company's request for attendance at trial or court-ordered hearing, arbitration or mediation.

The Company's obligation to reimburse the **Insured** under this Loss of Earnings Expense Reimbursement Additional Coverage is limited to \$750 per day, \$10,000 per **Claim**, and \$50,000 in the aggregate per **Policy Period**.

4. SUPPLEMENTAL DEFENSE COST LIMIT

- a. In the event the Aggregate Limit of Liability shown in Item 4.A. of the Declarations is exhausted by payment of **Loss Amounts** and there remain unresolved or outstanding **Claims** covered under this policy, the Company will reimburse the **Insured** up to 10% of the Aggregate Limit of Liability shown in Item 4.A. of the Declarations, subject to a maximum amount of \$250,000 for **Defense Costs** incurred by the **Insured** and approved by the **Company** in the defense of such unresolved or outstanding **Claims**.

- b. In order for this Supplemental Defense Cost Limit Additional Coverage to apply, the unresolved or outstanding **Claim** must be first made against the **Insured** and reported to the Company during the **Policy Period** or the **Extended Reporting Period**, if applicable, **and** prior to the date that the Aggregate Limit of Liability shown in Item 4.A. of the Declarations was exhausted by the payment of **Loss Amounts**. There shall be no reimbursement of **Defense Costs** for **Claims** or **Potential Claims** made against the Insured after the Aggregate Limit of Liability shown in Item 4.A. of the Declarations was exhausted by the payment of **Loss Amounts**.
- c. Under this Supplemental Defense Cost Limit Additional Coverage, the Company will have the right, but not the duty, to participate in the defense and the investigation of any **Claim** to which this insurance applies.

## 5. NONPROFIT DIRECTORS AND OFFICERS

The Company will pay on behalf of the **Insured** up to \$15,000 per **Claim**, and up to \$30,000 per **Policy Period** for **Loss Amounts** arising out of the **Insured's** activities as a Director or Officer of a **Nonprofit Organization**; provided, however, that such activities have been previously disclosed to the Company in the application or some other written form accepted by the Company.

The coverage provided under this Nonprofit Directors and Officers Additional Coverage shall be excess of all valid and collectable Directors and Officers Liability Insurance whether provided on a primary, excess, contingent or any other basis which has been issued to such **Nonprofit Organization**.

## II. EXCLUSIONS

The Company shall not be liable to pay **Loss Amounts** in connection with any **Claim** made against an **Insured**:

- A. when it has been established by final adjudication against an **Insured** that the **Insured** committed any dishonest, fraudulent or criminal act or omission, provided however, this exclusion shall not apply to any **Insureds** who are not adjudicated to have acted dishonestly, fraudulently, or criminally. Criminal proceedings or investigations are not covered under this policy regardless of cause or the allegations made against an **Insured**;
- B. by or on behalf of any other **Insured**;
- C. for damage to, destruction of, or loss of use of tangible property; provided, however, this exclusion does not apply to client records or data for which the **Insured** is legally responsible;
- D. for any **Bodily Injury**;
- E. based on or arising out of liability assumed under any contract or agreement unless the **Insured** would have been liable in the absence of such contract or agreement;
- F. based on or arising out of a **Wrongful Act** by any **Insured** in their capacity as a **Benefit Plan Fiduciary**, regardless of whether the **Claim** is brought against the **Insured** under the Employee Retirement Income Security Act of 1974, its amendments or any other similar state or local law.
- G. based on or arising out of a **Wrongful Act** by any **Insured** in their capacity as:

1. an owner, officer, director, general partner, manager or other similarly titled position of any entity, other than the **Insured Firm**; or if the **Insured** has more than a 10% financial interest in any such entity;

However, this exclusion does not apply to **Wrongful Acts** arising out of the **Insured's** activities as a Director or Officer of a **Nonprofit Organization** covered under Subparagraph F.5. of Section **I. INSURING AGREEMENTS**.

2. a broker or dealer in securities, as those terms are defined in Sections 3(a)(4) and 3(a)(5), respectively, of the Securities Exchange Act of 1934, or any amendments thereto;
3. a public official;
4. a trustee of a pension, welfare, profit-sharing, mutual or investment fund or trust; provided, however, this exclusion shall not apply to an **Insured** while acting as a trustee for a trust established by an individual or a family for their sole benefit, or as a trustee for a charitable remainder trust as defined under Internal Revenue Code Section 664, or amendment thereto, or as a court-appointed bankruptcy trustee or receiver; or
5. A guardian of an individual or a conservator of an individual or entity;

H. based upon or arising out of **Wrongful Termination, Workplace Torts** and/or **Sexual Harassment**;

I. based upon or arising out of **Discrimination**;

However, the Company will provide a defense when an **Insured** receives a demand for money or services that arises solely from an **Insured's** alleged refusal to provide **Professional Services** due to **Discrimination** provided that:

1. the alleged refusal occurred prior to the end of the **Policy Period**; and
2. the alleged refusal did not arise out of any **Insured's** intentional disregard or willful failure to comply with federal or state laws governing discriminatory practices.

The defense is subject to the Deductible and Limits of Liability stated in the Declarations;

J. based upon or arising out of the gaining of any profit or advantage to which an **Insured** was not legally entitled, including misappropriation, commingling or defalcation of funds or property; provided however, this exclusion shall not apply to any **Insureds** who are not adjudicated to have gained any such profit or advantage. Criminal proceedings or investigations are not covered under this policy regardless of cause or the allegations made against an **Insured**;

K. Based upon or arising out of activities performed by an **Insured** in connection with a trust or estate when an **Insured**, or the **Insureds** spouse, is a beneficiary or distributee of the trust or estate.

L. based upon or arising out of the manufacture, mining, use, sale, installation, removal, distribution of, or exposure to asbestos, materials or products containing asbestos, or asbestos fibers or dust, or any obligation of any **Insured** to indemnify any party for **Loss Amounts** arising out of such liability;

- M. 1. Any liability arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** anywhere at any time;
1. Any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that the **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **Pollutants**; or
2. Any loss, cost or expense arising out of any **Claim** or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of **Pollutants**.
- N. based upon or arising out of nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a **Nuclear Facility**; or
- O. based upon or arising out of any fee, commission or other charge for any **Professional Services** performed or required to be performed by the **Insured**, or that portion of any settlement or award representing an amount equal to such fee, commission or other compensation; provided, however, that this exclusion shall not apply to covered **Defense Costs** incurred in connection with a **Claim** alleging a **Wrongful Act**.

### III. DEFINITIONS

- A. **Advertising Injury** means injury that arises in the course of advertising **Professional Services** by an **Insured** by reason of:
1. oral or written publication of material that slanders or libels an individual or entity or disparages its goods, products or services;
  2. use of another's advertising ideas or style of doing business; or
  3. infringement of copyright, title or slogan.
- B. **Affiliated Firm** means any person or entity with which the **Insured Firm** has entered into a professional relationship and/or agreement to perform **Professional Services** at the direction or on behalf of the **Insured Firm**.
- C. **Benefit Plan Fiduciary** means any **Insured** while exercising any discretionary authority or discretionary control:
1. respecting management of an employee benefit plan; or
  2. respecting disposition of the assets of an employee benefit plan, including but not limited to purchasing or selling investments on behalf of such a plan; or;
  3. in the administration of an employee benefit plan.
- D. **Bodily Injury** means bodily injury, sickness or disease sustained by any person and death resulting from any of the foregoing at any time and includes emotional distress or mental anguish sustained by any person, whether or not resulting any of the foregoing; and all injuries that are a consequence of the foregoing. However, **Bodily Injury** does not include emotional distress or mental anguish resulting from a **Personal Injury**.

- E. **Claim** means:
1. a civil or administrative adjudicatory proceeding or an arbitration proceeding, including any appeal therefrom; or
  2. a written demand received by an **Insured** for monetary damages naming an **Insured** and alleging a **Wrongful Act**.
- F. **Defense Costs** means the reasonable and necessary legal fees and expenses incurred to defend the **Insureds** against any **Claim** and costs of appeal, attachment or similar bonds; but the Company shall have no obligation to procure or furnish any bond.
- G. **Discrimination** means a **Wrongful Act** based upon or arising out of discrimination with respect to race, color, religion, age, sex, disability, physical or mental condition, marital status, pregnancy, natural origin, sexual orientation or other protected category or characteristic established pursuant to any applicable United States federal, state, or local law, regulation or ordinance.
- H. **Insured** means:
1. the **Insured Firm**;
    - a. If the **Insured Firm** is a partnership or joint venture, then the **Insured Firm's** members, and partners are also **Insureds**, but only with respect to the performance of **Professional Services**.
    - b. If the **Insured Firm** is a limited liability company, the **Insured Firm's** members are also **Insureds**, but only with respect to the performance of **Professional Services**.
    - c. If the **Insured Firm** is not a partnership, joint venture or limited liability company, then the **Insured Firm's** officers and directors are **Insureds**, but only with respect to their duties as the **Insured Firm's** officers or directors. The **Insured Firm's** stockholders are **Insureds**, but only with respect to their liability as stockholders.
    - d. The **Insured Firm's** employees are **Insureds**, but only for acts within the scope of their employment by the **Insured Firm** and while performing **Professional Services**.
  2. the estate, heirs, executors, administrators, and legal representatives of any person described in subparagraph 2. above, in the event of such person's death, incapacity, insolvency, or bankruptcy, but only as respects liability arising out of **Professional Services** rendered prior to such person's death, incapacity, insolvency, or bankruptcy.
  3. a contract accountant who has a written contract or written agreement with the **Insured Firm** which requires such accountant to perform **Professional Services** which are:
    - a. for the **Insured Firm's** direct benefit; and
    - b. within the scope of services customary or usual to the **Insured Firm's** operations

However, such accountant is only an **Insured** while acting within the scope of his/her written agreement with the **Insured Firm**.

4. the lawful spouse of any **Insured** but only to the extent that the spouse may be legally liable for **Loss Amounts** resulting from a covered **Claim** against such **Insured**. The policy does not provide coverage for a **Claim** made against the spouse of any **Insured** for any **Wrongful Act** of the spouse, unless the spouse is otherwise an **Insured** under Subparagraphs 2., 3. or 4. above.
5. An **Affiliated Firm**, but only as respects **Professional Services** performed on behalf of and at the direction of the **Insured Firm**.

I. **Insured Firm** means the **Named Insured**, any **Predecessor Firm**, or any **Newly Acquired Entity**.

J. **Interrelated Wrongful Acts** means all **Wrongful Acts** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

K. **Loss Amounts** means monetary damages, judgments (including any award of prejudgment and post-judgment interest), awards, settlements, and **Defense Costs**. **Loss Amounts** shall not include:

1. civil or criminal fines, penalties, sanctions or forfeitures imposed on any **Insured** by law, statute or court rule. However, **Loss Amounts** includes fines and penalties assessed against clients of the **Insured** by the Internal Revenue Service or any state or municipal taxing authority;
2. matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
3. amounts for which an **Insured** admits liability, but is not obligated to pay such amounts;
4. amounts that are without legal recourse to any **Insured**; or
5. Amounts paid to or due the **Insureds** for **Professional Services** rendered or expenses incurred on behalf of a client, or the value of any such **Professional Services** or expenses.

L. **Named Insured** means the entity shown in Item 1. of the Declarations.

M. **Newly Acquired Entity** means any sole proprietorship or entity that the **Named Insured** acquires, merges with, or purchases the assets of during the **Policy Period**, provided that, all of the following conditions have been met:

1. more than 50% of the partners, principals, officers or owners of such sole proprietorship or entity have joined the **Named Insured**, and
2. the revenues produced by such partners, principals, officers or owners have been assigned to or otherwise obtained by the **Named Insured**, and
3. prior to the effective date of the acquisition, merger or asset purchase, the subject sole proprietorship or entity was engaged in the business of providing **Professional Services**, and



4. the **Named Insured** is the surviving entity, and
  5. such sole proprietorship or entity had gross annual revenues of less than \$5,000,000 as reflected in its most recent consolidated financial statements prior to the effective date of the acquisition, merger or asset purchase, and
  6. the revenues assigned to or otherwise obtained by the **Named Insured** as a result of the acquisition, merger or asset purchase do not exceed 25% of the gross annual revenues of the **Named Insured** as reflected in its most recent consolidated financial statements prior to the effective date of the acquisition, merger or asset purchase, and
  7. within sixty (60) days of the effective date of said transaction, the **Named Insured** submits written notice of the acquisition, merger or asset purchase to the Company, in the form of a completed questionnaire so designated by the Company.
- N. **Nonprofit Organization** means an entity which qualifies as a nonprofit organization under section 501(c)(3), (c)(4), (c)(6) or (c)(7) of the Internal Revenue Code of 1986, including amendments thereto. As used herein, **Nonprofit Organization** shall not include the **Named Insured** or any client of the **Named Insured**.
- O. **Nuclear Facility** means the site at which a nuclear reactor is located or where nuclear waste or material is disposed of or stored.
- P. **Personal Injury** means libel, slander, disparagement, false arrest, wrongful detention, false imprisonment, wrongful entry or eviction or other invasion of the right of private occupancy, malicious prosecution or violation of an individual's or entity's right of privacy. **Personal Injury** also includes emotional distress or mental anguish resulting from any of the above.
- Q. **Policy Period** means the period of time starting with the effective date of this policy shown in Item 2. of the Declarations ending on the expiration date or earlier termination date, if any, of this policy.
- R. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and **Waste**. **Waste** includes materials to be recycled, reconditioned or reclaimed.
- S. **Potential Claim** means any act, error, omission, fact or circumstance in the rendering of **Professional Services** that an **Insured** knew or should reasonably have known could form the basis of a subsequent **Claim** against any **Insured**.
- T. **Predecessor Firm** means a sole proprietorship, partnership, professional corporation or other organization properly established under state law and operated for the purpose of rendering **Professional Services** that, prior to the inception of the **Policy Period**, underwent a change in name or organizational structure and from which more than 50% of the partners, principals, officers or owners have joined the **Named Insured**, provided that:
1. the revenues produced by such partners, principals, officers or owners have been assigned to or otherwise obtained by the **Named Insured**, and
  2. the **Named Insured** is the surviving entity.

Notwithstanding the definition of **Predecessor Firm** as set forth herein, any firm who qualified as a **Predecessor Firm** under an accountants professional liability insurance policy previously

issued by the Company, is deemed to be a **Predecessor Firm** within the definition of this Policy.

U. **Prior Company** means a Company, including us and any subsidiary or affiliate of ours, who has issued prior accountants professional liability or errors and omissions insurance policies.

V. **Professional Services** means advice given or services performed for others by or on behalf of an **Insured** or an **Affiliated Firm** for a fee, provided that the fee or a portion of the fee always inures to the benefit of the **Insured Firm**.

**Professional Services** also means advice given or services performed by any **Insured** in connection with:

1. any institute of accountants, any professional standards board or similar professional body pertaining to the practice of public accountancy; or
2. Pro bono services rendered by the **Insured** without compensation and approved by a partner, officer or director of the **Named Insured**;

whether or not on behalf of the **Insured Firm**.

W. **Sexual Harassment** means any actual or alleged unwelcome sexual advances and/or requests for sexual favor and/or other verbal or physical conduct of a sexual nature that (1) are made a condition of employment; and/or (2) are used as a basis for employment decisions; and/or (3) create a work environment that interferes with performance or creates an intimidating, hostile, or offensive work environment.

X. **Wrongful Act** means any actual or alleged act, error or omission, breach of duty, or **Personal Injury** arising out of:

1. the rendering of or failure to render **Professional Services** for others; or
2. **Advertising Injury**.

Y. **Wrongful Termination** means termination of an employment relationship in a manner that actually or allegedly is against the law and wrongful or in breach of an implied agreement to continue employment. **Wrongful Termination** shall not include **Loss Amounts** determined to be owing under an express obligation to make payments in the event of the termination of employment.

Z. **Workplace Torts** means retaliation, bullying, defamation, infliction of emotional distress, invasion of privacy, libel, slander, breach of employment contract, negligent evaluation, wrongful reassignment, wrongful discipline, wrongful reference, failure to grant tenure, negligent hiring, employment related misrepresentation, wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion or wrongful failure to pay or underpayment of wages, fees or commissions.

#### IV. LIMITS OF LIABILITY AND DEDUCTIBLE

A. AGGREGATE LIMIT OF LIABILITY:

Regardless of the number of **Insureds**, **Claims** made or suits brought, or persons or organizations making **Claims** or bringing suits, the most the Company will pay for all covered **Claims** under this policy is the Aggregate Limit of Liability shown in Item 4.A. of the

Declarations. This Aggregate Limit of Liability is the total for all **Loss Amounts** that the Company will pay under this policy for all covered **Claims** first made against the **Insured** and reported to the Company during the **Policy Period**

Once the Aggregate Limit of Liability has been exhausted by the payment of **Loss Amounts**, the Company shall have no further obligations with respect to **Claims** first made against the **Insured** during the **Policy Period**.

B. EACH CLAIM LIMIT OF LIABILITY

Subject to the Aggregate Limit of Liability shown in Paragraph A. above, the most the Company will pay for all **Loss Amounts** arising out of a single covered **Claim** shall be the Each Claim Limit of Liability as shown in Item 4.B. of the Declarations. This Each Claim Limit of Liability shall apply in excess of the Deductible. This Each Claim Limit of Liability is the maximum amount of **Loss Amounts** that the Company will pay for each covered **Claim** first made against the **Insured** and reported to the Company during the **Policy Period**. Once the Each Claim Limit of Liability has been exhausted by the payment of **Loss Amounts**, the Company shall have no further obligations with respect to such **Claim**.

C. DEFENSE COSTS:

**Loss Amounts** include **Defense Costs** and as such, **Defense Costs** are included within and reduce the applicable Limits of Liability.

D. MULTIPLE CLAIMS:

All **Claims** arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** and shall be deemed to have been made at the time the first of such **Claims** is made against the **Insured**. These provisions apply regardless of the number of **Insureds** involved in such a **Claim**, the number of **Claims** made, or the number of people or organizations that make the **Claims**.

E. DEDUCTIBLE:

1. The **Named Insured** shall be responsible for the Deductible amount shown in Item 5. of the Declarations. **Defense Costs** are included in the Deductible. The Deductible applies to each **Claim**. All **Claims** arising out the same **Wrongful Act** or **Interrelated Wrongful Acts** shall be deemed to be a single **Claim** and shall be subject to one Deductible.

The Company may advance payment of part or all of the Deductible amount and, upon notification of such payment made, the **Named Insured** must promptly reimburse the Company for the Deductible amounts advanced by the Company.

2. The Deductible will be reduced if either of the following conditions apply:
  - a. In the event a **Claim** is fully and finally resolved to the satisfaction of all parties, including the Company, as a result of mediation or Alternative Dispute Resolution, without resorting to litigation, the Company will waive your deductible obligation for such **Claim** up to a maximum amount of \$25,000; or
  - b. If a **Claim** arises from an assignment in which the **Insured** used an engagement letter that was signed within one year prior to the start of such **Professional**

**Services**, the **Insured's** deductible obligation for such claim shall be reduced by fifty percent (50%) up to a maximum of \$25,000 in the aggregate for the **Policy Period**. This does not apply to audit or other attest services.

**V. CONDITIONS - CLAIMS**

**A. INSURED'S DUTIES WHEN THERE IS A CLAIM:**

As a condition precedent to the right of coverage under this policy, the **Insured** must do the following:

1. If a **Claim** to which this policy applies is made against the **Insured**, the **Insured** must give written notice, as soon as practicable, and as otherwise required by this policy.

However, such **Insured**, other than a partner, principal, officer, or owner of the **Insured Firm**, shall not be in violation of this condition due to the failure of another **Insured** to give notice of such **Claim**. Such **Insured** shall comply with this condition promptly after obtaining knowledge of the failure of any other **Insured** to comply with this condition.

2. Cooperate with the Company and upon the Company's request submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and shall assist in effecting settlement, obtaining the attendance of witnesses in the conduct of suits, as well as the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, and all without charge to the Company.
3. The **Insured** must do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the **Insured** may have.
4. The **Insured** shall refrain from discussing the facts and circumstances of any **Claim** with anyone other than legal counsel or representatives of the Company.

**B. REPORTING OF POTENTIAL CLAIM**

If during the **Policy Period** an **Insured** first becomes aware of a **Potential Claim** and prior to the expiration of the **Policy Period** the Company receives written notice from the **Insured** of the following specific information:

1. the names of the potential claimants,
2. a description of the **Potential Claim**,
3. the consequences which have resulted or may result from such **Potential Claim**,
4. the nature of the alleged or potential damages arising from such **Potential Claim**, and
5. the circumstances by which the **Insureds** first became aware of the **Potential Claim**,

then any **Claim** otherwise covered under this Policy subsequently made arising out of such **Potential Claim** shall be deemed to have been made at the time such written notice was received by the Company.

**C. EXTENDED REPORTING PERIOD:**

As used herein, **Extended Reporting Period** means the period of time beginning with the end of the **Policy Period** for reporting **Claims** to the Company that are first made against the **Insured** during such applicable **Extended Reporting Period**, by reason of a **Wrongful Act** which occurred prior to the end of the **Policy Period**, and subsequent to the Retroactive Date shown in the Declarations. There is no coverage for **Potential Claims** reported during an **Extended Reporting Period**.

1. Automatic Extended Reporting Period

If the **Named Insured** cancels or chooses not to renew this Policy or if the Company decides to cancel or non-renew this Policy, the Company shall provide to the **Named Insured** an automatic non-cancelable **Extended Reporting Period** starting at the termination of the **Policy Period**, if the **Named Insured** has not obtained another policy of accountants professional liability insurance. This automatic **Extended Reporting Period** will terminate either after sixty (60) days or at 12:01 A.M. on the date another policy of professional liability insurance applicable to the **Named Insured** takes effect, whichever occurs first.

The Limits of Liability for the Automatic Extended Reporting Period shall be part of and not in addition to the Limits of Liability applicable to the **Policy Period**.

2. Optional Extended Reporting Period

If the **Named Insured** cancels or chooses not to renew this Policy or if, for any reason other than nonpayment of premium or fraud, the Company decides to cancel or non-renew this Policy, then the **Named Insured** shall have the right to purchase an **Optional Extended Reporting Period**. Such right must be exercised by the **Named Insured** within sixty (60) days after the end of the **Policy Period** by providing written notice to the Company together with the additional premium as shown in Item 6. of the Declaration corresponding to the applicable **Optional Extended Reporting Period**. The **Named Insured's** right to elect the **Optional Extended Reporting Period** shall terminate sixty (60) days after the end of the **Policy Period**.

If the **Optional Extended Reporting Period** is purchased, the entire premium therefore shall be deemed fully earned at its commencement without any obligation by the Company to return any portion thereof.

3. Retiree Extended Reporting Period

If, during the **Policy Period**, an **Insured** permanently retires from the practice of public accounting for reasons other than suspension or revocation of a professional license or death or disability, and cancels or chooses not to renew this Policy, the Company will provide an unlimited **Extended Reporting Period** at no charge provided that:

- a. the **Named Insured** has been continuously insured for Accountants Professional Liability Insurance with the Company for more than six (6) consecutive years, and
- b. The **Insured** is at least fifty-five (55) years of age at the time of retirement.

4. Death and Disability Extended Reporting Period

If an **Insured** dies or becomes permanently disabled during the **Policy Period** the Company will provide a death and or disability **Extended Reporting Period** at no charge. Permanently disabled means so disabled as to be completely prevented from rendering **Professional Services** and such disability has existed for at least ninety (90) days and is expected to be continuous, total and permanent.

The Death and Disability Extended Reporting Period will start on the date the **Insured** dies or becomes permanently disabled and will end when:

- a. the executor or administrator of the **Insured's** estate has been discharged; or
- b. the total and permanent disability ends.

The **Insured** or the **Insured's** representative must provide written notice to the Company within sixty (60) days after the date of death or permanent disability together with:

- a. copy of death certificate; or
- b. written proof of permanent and total disability certified by the **Insured's** attending physician.

The Each Claim Limit of Liability for the Optional, Retiree and Death and Disability **Extended Reporting Periods** shall be equal to 100% of the Each Claim Limit of Liability applicable to the **Policy Period**. The Aggregate Limit of Liability for the Optional, Retiree and Death and Disability **Extended Reporting Periods** shall be equal to 100% of the Aggregate Limit of Liability applicable to the **Policy Period**. The Limits of Liability for such **Extended Reporting Periods** are in addition to and are not part of the Limits of Liability for the **Policy Period**.

D. TRANSFER OF RIGHTS OF RECOVERY:

If there is a payment made by the Company, the Company shall be subrogated to all the **Insured's** rights of recovery against any person or organization as respects any payment made by the Company for **Loss Amounts**. The **Insured** shall cooperate with the Company and do whatever is necessary to secure these rights. The **Insured** shall do nothing after a **Claim** to waive or prejudice such rights. The Company agrees to waive this right of subrogation against the client of the **Insured** to the extent that the **Insured** had, prior to **Claim**, a written agreement to waive such rights.

VI. OTHER CONDITIONS

A. ACQUISITIONS, MERGERS, AND MATERIAL CHANGES:

1. AUTOMATIC COVERAGE

If after the effective date of this Policy, the **Named Insured** acquires, merges with, or purchases the assets of another sole proprietorship or entity, and as a result such sole proprietorship or entity qualifies as a **Newly Acquired Entity** under this Policy, then coverage shall be provided under this Policy, subject to its terms, conditions, limitations and exclusions, for any **Claim** made against the **Insureds** arising from the **Professional Services** of such sole proprietorship or entity.

Additionally, the sole proprietorship's or entity's partners (including an incorporated partner and the shareholders thereof), principals, officers, owners, shareholders and

employees who have joined the **Named Insured** shall be deemed to be within the definition of **Insured** from the effective date of the acquisition, merger, or asset purchase, provided that, within sixty (60) days of the effective date of said transaction, the **Named Insured** submits written notice of the acquisition, merger or asset purchase to the Company, in the form of a completed questionnaire so designated by the Company.

## 2. OPTIONAL COVERAGE

If after the effective date of this Policy, the **Named Insured** acquires, merges with, or purchases the assets of another sole proprietorship or entity that does not qualify as a **Newly Acquired Entity** under this Policy, the **Named Insured** shall have the right to purchase additional coverage under the Policy for such sole proprietorship or entity and its partners (including an incorporated partner and the shareholders thereof), principals, officers, owners and employees who have joined the **Named Insured**, provided all of the following conditions have been met:

- a. the **Named Insured** is the surviving entity,
- b. prior to the effective date of the acquisition, merger or asset purchase, the subject sole proprietorship or entity was engaged in the business of providing **Professional Services**,
- c. more than 50% of the gross annual revenues of the subject sole proprietorship or entity as reflected in its most recent consolidated financial statements prior to the effective date of the acquisition, merger or asset purchase were derived from professional fees for providing **Professional Services**, and
- d. within sixty (60) days after the effective date of said acquisition, merger or asset purchase, the **Named Insured** submits, in writing, to the Company notice of the transaction in the form of a completed questionnaire so designated by the Company and a request for coverage under this Policy for the sole proprietorship or entity that is the subject of the transaction.

Upon receipt of the required information listed in VI.A.2.d., above, the Company agrees to provide the **Named Insured** with the coverage terms and conditions, including the additional premium, available under the Policy for the sole proprietorship or entity that is the subject of the transaction and its partners (including an incorporated partner and the shareholders thereof), principals, officers, owners and employees who have joined the **Named Insured**. The Company reserves the right to modify the terms, conditions, and exclusions of the Policy with respect to coverage offered for these parties.

## 3. LIMITATION OF COVERAGE

This Policy shall not apply to any **Claim** involving a sole proprietorship or entity that was the subject of an acquisition, merger or asset purchase by the **Named Insured**, if, prior to the date of said transaction:

- a. Notice had been given to a **Prior Company** on any other policy of professional liability insurance in effect prior to the date of said transaction of such **Claim** or a **Potential Claim** upon which such **Claim** is based, or directly or indirectly arises out of; or

- b. Any partner, principal, officer, owner or employee of the sole proprietorship or entity that was the subject of such transaction or any entity containing such practice knew of a **Wrongful Act** or **Interrelated Wrongful Act** which they should have reasonably expected could result in a **Claim** at some time in the future.

B. HOW OTHER INSURANCE APPLIES:

This insurance shall be excess over other valid insurance, whether collectable or not, and whether provided on a primary, excess, contingent or any other basis unless such other insurance is written as specific excess over this Policy.

C. LIBERALIZATION

If during the **Policy Period** the Company adopts revised provisions for this policy form in order to afford, without additional premium, broader insurance to the types of professionals covered by this Policy, such provisions will apply to this Policy effective when the provision has been approved by the appropriate regulatory authority and such revision shall apply only to **Claim** first made, or **Potential Claim** of which the **Insured** first became aware, after the date of such approval.

D. CHANGES MADE TO THIS POLICY:

The terms and conditions of this Policy cannot be waived or changed except by written endorsement issued by the Company and made part of the Policy.

E. ASSIGNMENT OF THE INSURED'S INTEREST:

The interest of the **Insured** under this Policy is not assignable to any other person or organization.

F. CANCELLATION:

1. The **Named Insured** may cancel this Policy by mailing or delivering to us advance written notice of cancellation.
2. The Company may cancel this Policy by mailing or delivering to the **Named Insured** written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. The Company will mail or deliver the Company's notice to the **Named Insured's** mailing address as shown in Item 1. of the Declarations.
4. Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date.
5. If this Policy is canceled, the Company will send the **Named Insured** any premium refund due. If the Company cancels, the refund will be pro rata. If the **Named Insured** cancels, earned premium will be calculated in accordance with the customary short-rate



table and procedure. The cancellation will be effective even if we have not made or offered a refund.

6. If notice is mailed, proof of mailing will be sufficient proof of notice.

G. **BANKRUPTCY:**

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Company of any of its obligations under this Policy.

H. **APPLICATION:**

It is represented by the **Insureds** and it is agreed by and among the **Insureds** and the Company as follows:

1. the particulars and statements contained in the Application and any materials submitted or required, (all of which shall be maintained by the Company) are true and are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy;
2. the statements in the Application and in any materials submitted or required are the **Insureds'** representations and this Policy is issued in reliance upon the truth of such representations; and
3. in the event the Application, including materials submitted or required, contains any misrepresentation:
  - a. made with the intent to deceive, or
  - b. that materially affects either the acceptance of the risk or the hazard assumed by the Company under the Policy; then this Policy shall be void and of no effect whatsoever.

I. **ACTION AGAINST THE COMPANY:**

No action shall be maintained against the Company by the **Insured** to recover for any loss under this Policy unless, as a condition precedent thereto:

1. the **Insured** has fully complied with all the terms and conditions of this Policy; and
2. the amount of such loss has been fixed or rendered certain;
  - a. by final judgment against the **Insured** after trial of the issues; or
  - b. the time to appeal such judgment has expired without an appeal being taken; or
  - c. if appeal is taken, after the appeal has been determined; or
  - d. the **Claim** is settled in accordance with the terms and conditions of this Policy.

In no event shall any action brought by anyone be maintained against the Company unless such action is brought within twenty-four (24) months from the time the right to bring action first becomes available.

J. **FALSE OR FRAUDULENT CLAIMS:**

If the **Insured** refers any **Claim** knowing such **Claim** to be false or fraudulent, this Policy shall become void and all insurance coverage hereunder shall be forfeited.

#### K. ARBITRATION

In the event of a disagreement as to the interpretation of this Policy (except with regard to whether this Policy is void or voidable), it is mutually agreed that such dispute shall be submitted to binding arbitration before a panel of three (3) Arbitrators consisting of two (2) party-nominated (non-impartial) Arbitrators and a third (impartial) Arbitrator (hereinafter "umpire") as the sole and exclusive remedy.

The party desiring arbitration of a dispute shall notify the other party, said notice including the name, address and occupation of the Arbitrator nominated by the demanding party. The other party shall, within 30 days following receipt of the demand, notify in writing the demanding party of the name, address and occupation of the Arbitrator nominated by it. The two (2) arbitrators so selected shall, within 30 days of the appointment of the second Arbitrator, select an umpire. If the Arbitrators are unable to agree upon an umpire, the selection of the umpire shall be submitted to the Judicial Arbitration and Mediation Services (hereinafter, "JAMS"). The umpire shall be selected in accordance with Rule 15 (as may be amended from time to time) of the JAMS Comprehensive Arbitration Rules and Procedures for the selection of a sole arbitrator.

The parties shall submit their cases to the panel by written and oral evidence at a hearing time and place selected by the umpire. Said hearings shall be held within 30 days of the selection of the umpire. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two (2) of the three (3) panel members shall be binding and final and not subject to appeal except for grounds of fraud and gross misconduct by the Arbitrators. The award will be issued within 30 days of the close of the hearings. Each party shall bear expenses of its designated Arbitrator and shall jointly and equally share with the other the expense of the umpire and the arbitration.

The arbitration proceeding shall take place in the vicinity of the first **Named Insured's** mailing address as shown in the Declarations or such other place as may be mutually agreed by the first **Named Insured** and the Company. The procedural rules applicable to this arbitration shall, except as provided otherwise herein, be in accordance with the JAMS Comprehensive Arbitration Rules and Procedures.

#### L. EXAMINATION OF YOUR BOOKS AND RECORDS

The Company may examine and audit the **Insured Firm's** books and records as they relate to this Policy at any time during this **Policy Period** and up to three years afterward.

#### M. SEPARATION OF INSUREDS

Except with respect to the Limits of Liability and any rights or duties specifically assigned in this Policy to the **Named Insured**, this insurance applies:

1. As if each **Named Insured** were the only **Named Insured**; and
2. Separately to each **Insured** against whom a **Claim** is made or suit is brought.

#### N. SPECIAL RIGHTS AND DUTIES OF THE NAMED INSURED

The **Named Insured** is the appointed and irrevocable agent for all **Insureds**, including:

1. Giving and receiving notice of cancellation;
2. Payment of premiums and receipt of return premiums;
3. Acceptance of any endorsements to this Policy;
4. Purchasing or deciding not to purchase the Optional Extended Reporting Period, if applicable; and
5. Making representation in accordance with the Applications condition.

O. WHEN WE DO NOT RENEW

If the Company decides not to renew this Policy, we will mail or deliver to the **Named Insured** written notice of the nonrenewal not less than 30 days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

P. MULTIPLE POLICIES

Two or more insurance policies may be issued by the Company or any company that controls, is controlled by, or is under common control with the Company. These policies may provide coverage for:

1. **Claims** arising from the same **Wrongful Act**; or
2. Persons or organizations covered in those policies that are jointly and severally liable.

In such a case, the Company shall not be liable under this Policy for an amount greater than the proportion of the loss that this Policy's applicable Limit of Liability bears to the total applicable Limits of Liability under all such policies.

In addition, the total amount payable under all such policies is the highest, single applicable Limit of Liability among all such policies.