

# INFORMATION TECHNOLOGY PROFESSIONAL LIABILITY INSURANCE POLICY

***THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMITS OF INSURANCE. PLEASE READ THE ENTIRE POLICY CAREFULLY.***

***TERMS IN QUOTATION MARKS HAVE SPECIAL MEANING. PLEASE REFER TO THE DEFINITIONS SECTION OF THIS POLICY (SECTION II).***

The words "you" and "your" in this Policy refer to the "Named Insured" shown in ITEM 1 of the DECLARATIONS and all other persons or organizations qualifying as "Insured(s)" under this Policy. The words "we", "us", and "our" refer to Indian Harbor Insurance Company.

## **SECTION I. COVERAGE**

### **1. INSURING AGREEMENT**

*In consideration of the payment of the premium and in reliance upon the statements in the DECLARATIONS and in the application and subject to all the provisions of this Policy, we agree with you as follows:*

- (A) We will pay on behalf of the "Insured" those sums in excess of the DEDUCTIBLE that the "Insured" becomes legally obligated to pay as "Damages" because of any "Wrongful Act" or "Infringement" and to which this insurance applies. We have the right and duty to defend the "Insured" against any "Claim" seeking those "Damages". However, we will have no duty to defend the "Insured" against any "Claim" to which this insurance does not apply.
- (B) Each payment we make for "Damages" or "Defense Expenses" reduces the available Limit of Insurance as described in SECTION IV. LIMITS OF INSURANCE AND DEDUCTIBLES.
- (C) We shall not be obligated to pay any "Damages" or to defend or continue to defend any "Claim" after the applicable Limit of Insurance has been exhausted by the payment of "Damages" or "Defense Expenses" or both.
- (D) We shall investigate each "Claim" and, with the written consent of the "Insured", shall settle any "Claim" as we deem appropriate. If the "Insured" shall refuse to consent to a settlement acceptable to the claimant in accordance with our recommendation, the "Insured" shall thereafter negotiate or defend such "Claim" at the "Insured(s)" own expense independently of us. When this happens, our liability for such "Claim" shall not exceed the amount for which such "Claim" could have been settled plus "Defense Expenses" incurred up to the date the "Insured" refused to consent to settle such "Claim."
- (E) This insurance applies to a "Wrongful Act" or "Infringement" only if:
  - (1) the "Wrongful Act" or "Infringement" takes place in the Coverage Territory as described in SECTION VI. CONDITIONS;
  - (2) the "Wrongful Act" or "Infringement" did not occur before the Retroactive Date stated in ITEM 3 of the DECLARATIONS or after the end of the Policy Period, provided that prior to the effective date of the Policy Period, the "Insured" had no knowledge of any circumstance(s) or incident(s) which, as of the inception date of this policy, the "Insured" reasonably should have foreseen might give rise to a "Claim"; and

(3) a "Claim" is first made against any "Insured" and reported to us in writing, in accordance with paragraph (F) below, during the Policy Period or any Extended Reporting Period we provide under SECTION V. EXTENDED REPORTING PROVISIONS.

(F) A "Claim" will be deemed to have been made when notice of such "Claim" is received by an "Insured" or by us, whichever comes first. A "Claim" is deemed reported to us on the date we receive it in writing.

(G) Two or more "Claim(s)" arising out of a single "Wrongful Act" or "Infringement" or "Related Claims" will be deemed to be a single "Claim" and to have been made at the time the first such "Claim" is made against any "Insured" and reported to us.

## 2. EXCLUSIONS

This Policy shall not apply to any "Claim" based on or arising out of:

(A) any criminal, fraudulent, dishonest, or discriminatory act or omission, or any malicious or intentional "Wrongful Act", error or omission committed by or at the direction of any "Insured"; however, this exclusion shall not apply to any "Insured" who did not commit, participate in or have knowledge of such conduct.

(B) any:

(1) delay in the performance of any contract or agreement;

(2) express or implied warranty or guarantee;

(3) cost guarantee or cost estimate; or

(4) disputes involving the "Insured(s)" fees or charges.

(C) any obligation assumed by the "Insured" for the acts, conduct or performance of another under a contract or agreement; unless such "Claim" is the direct result of liability that the "Insured" would have had in the absence of any contract or agreement.

(D) any "Year 2000 Technology Problem".

(E) obsolescence, gradual deterioration or wear and tear.

(F) any actual or alleged "Bodily Injury", "Property Damage", or "Personal Injury".

(G) any "Insured" under this policy against any other "Insured".

(H) any action brought by any entity not named in the DECLARATIONS which is or was owned or controlled by the "Insured", or which is or was affiliated with the "Insured" through common ownership.

(I) any notice which has been given under any prior or subsequent policy for any "Wrongful Act", "Infringement", "Claim" or "Related Claim".

(J) the actual or alleged violation of any federal, state or local statute, regulation, order or directive, including but not limited to, any securities, antitrust, restraint of trade, unfair or deceptive trade practice, employment, unfair competition or consumer protection law.

(K) any costs or expenses incurred by you or others to withdraw or recall your products or services or any part of such products or services from the marketplace or from use by any person or organization.

(L) any actual or alleged:

(1) refusal to employ;

(2) termination of employment; or

(3) coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, emotional distress, discrimination or other employment-related practices, policies, acts or omissions.

This exclusion applies whether the "Insured" may be held liable as an employer or in any other capacity and to any obligation to share "Damages" with or repay someone else who must pay "Damages" because of such injury.

(M) any actual or alleged failure to prevent unauthorized access to or use of any computer, software, network or electronic information system or the unauthorized introduction of a computer virus or similar program. However, this exclusion does not apply if such unauthorized access or introduction arises from your "Wrongful Act".

(N) any:

(1) actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of any smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials (including materials which are intended to be or have been recycled, reconditioned or reclaimed) or other irritants, pollutants or contaminants; or

(2) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing, or any action taken in contemplation or anticipation of any such regulation, order, direction or request.

(O) any form of nuclear radiation, fission or fusion reaction, radioactive contamination or any related incident, event or condition. This includes any costs for abatement, mitigation, removal or disposal of any radioactive material including items containing radioactivity.

(P) any actual or alleged unauthorized use or violation of any domestic or foreign patent or patent-related rights or misappropriation of any trade secret.

## **SECTION II. DEFINITIONS**

(A) "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purpose of this definition:

(1) notices that are published included material placed on the Internet or on similar electronic means of communications; and

(2) regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters are considered an advertisement.

- (B) "Bodily Injury" means bodily injury, sickness, or disease sustained by a person. This includes mental anguish, mental injury, shock, fright, or death resulting from bodily injury, sickness, or disease at any time.
- (C) "Claim" means any "Suit" or written demand by any person or entity seeking to hold the "Insured" responsible for "Damages" as a result of any "Wrongful Act" or "Infringement" actually or allegedly committed by the "Insured" or by any other person for whose "Wrongful Act" or "Infringement" the "Insured" is legally responsible.
- (D) "Damages" means monetary judgments, including punitive damages where insurable, which the "Insured" shall become legally obligated to pay to others or settlements negotiated with the approval of us; however, "Damages" shall not include:
- (1) fines, taxes, or penalties;
  - (2) fees, expenses or other charges of the "Insured"; or
  - (3) injunctive relief or any other non-monetary liability or damage.
- (E) "Defense Expenses" means payments allocated to a specific "Claim" for its investigation, settlement, or defense including:
- (1) attorney fees and all other defense and litigation related expenses;
  - (2) the cost of bonds to appeal a judgment or award in any "Claim" we defend;
  - (3) the cost of bonds to release attachments but only for bond amounts within the applicable limits of insurance available and excess of your deductible;
  - (4) costs taxed against the "Insured" in the "Claim";
  - (5) all reasonable expenses incurred by an "Insured", at our request, to assist in the investigation or defense of the "Claim", other than salaries and expenses of the "Insured(s)" "employee(s)";
  - (6) prejudgment interest awarded against the "Insured" on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer;
  - (7) all interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment that is within the applicable limits of insurance.
- "Defense Expenses" do not include salaries, overhead, benefit expenses or other fees, expenses or other charges of our "employee(s)" or your "employee(s)" other than that portion of our employed attorney's fees salaries and expenses allocated to a specific "Claim".
- (F) "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- (G) "Infringement" means any actual or alleged unauthorized use or violation by the "Insured" of any copyright, trademark, service mark, trade name or trade dress in the performance of your "Professional Services".

- (H) "Insured" means any person or organization qualifying as such under SECTION III. WHO IS AN "INSURED".
- (I) "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- (J) "Named Insured" means the person(s) or organization(s) identified in ITEM 1 of the DECLARATIONS. The first "Named Insured" is the "Named Insured" first listed in ITEM 1 of the DECLARATIONS.
- (K) "Personal Injury" means injury, including consequential "Bodily Injury", arising out of one or more of the following offenses:
- (1) false arrest, detention or imprisonment;
  - (2) malicious prosecution;
  - (3) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - (4) oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
  - (5) oral, written or electronic publication of material that violates a person's right of privacy.
- (L) "Professional Services" means one or more of the following:
- (1) the developing, designing, installing, modifying or servicing of computers, computer hardware, firmware and/or software, computerized networks or similar electronic information systems or Internet services for a fee;
  - (2) providing computer system or network related consulting, analysis, programming, training or support for a fee; or
  - (3) the sale, leasing, licensing, distribution, or installation of computers or computer hardware, firmware and software.
- However, the definition of "Professional Services" does not include:
- (a) the manufacturing of electronic or computer hardware, firmware or devices by you; or
  - (b) the "Advertisement" of your "Professional Services".
- (M) "Property Damage" means physical injury to tangible property, including any resulting loss of use of that property. Tangible property does not include computer information or data.
- (N) "Related Claims" means collectively all "Claims" involving the same "Wrongful Act(s)" or "Infringement(s)" which are logically or causally connected by reason of any fact, circumstance, situation, transaction, event or decision.
- (O) "Suit" means a civil proceeding in which "Damages" because of a "Wrongful Act" or "Infringement" to which this insurance applies are alleged. "Suit" includes:

- (1) An arbitration proceeding in which such "Damages" are sought and to which the "Insured" must submit or submits with our consent; or
  - (2) Any other alternative dispute resolution proceeding in which such "Damages" are claimed and to which the "Insured" submits with our consent.
- (P) "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- (Q) "Wrongful Act(s)" means any actual or alleged negligent act, error or omission committed solely in the performance of or failure to perform your "Professional Services".
- (R) "Year 2000 Technology Problem" means any possible, anticipated, actual or alleged failure or inability of any computer, microprocessor, computer or embedded chips, computer software and hardware, computer operating systems, computer applications, computer networks or other computerized or electronic equipment, devices, components, products or systems, regardless of whether or not they are owned, possessed, controlled or operated by any insured, to correctly or accurately read, recognize, interpret, apply, process, distinguish, accept, use, or calculate any date-related information or data contained in a two-digit date field, including but not limited to:
- (1) any date in the year 1999;
  - (2) any date on or after January 1, 2000; and
  - (3) the fact that the year 2000 is a leap year.
- "Year 2000 Technology Problem" shall also include any impact or effect on the "Insured('s)" computers, microprocessors, software, operating systems, or other computerized electronic equipment, product or system resulting from a failure of the type described above.

### **SECTION III. WHO IS AN "INSURED"**

The following are "Insured(s)":

- (A) The "Named Insured".
- (B) If the "Named Insured" is:
  - (1) an individual, your spouse is also an "Insured", but only with respect to the conduct of a business of which the "Named Insured" is the sole owner.
  - (2) a partnership or joint venture, its members, partners and their spouses are also "Insured(s)", but only with respect to the conduct of the "Named Insured('s)" business.
  - (3) a limited liability company, its members are also "Insured(s)", but only with respect to the conduct of the "Named Insured('s)" business. Your managers are "Insured(s)", but only with respect to their duties as your managers.
  - (4) an organization other than a partnership, joint venture or limited liability company, its executive officers and directors are also "Insured(s)" but only with respect to their duties as the "Named Insured('s)" officers or directors. The "Named Insured('s)" stockholders are also "Insured(s)", but only with respect to their liability as stockholders.
- (C) Each of the following is also an "Insured":

- (1) The "Named Insured(s)" "employee(s)", other than its executive officers, but only for acts within the scope of their employment by the "Named Insured".
  - (2) Your legal representative if the "Named Insured" dies, but only with respect to duties as such That representative will have all your rights and duties under this Coverage Part.
  - (3) Any independent contractor, for which the "Named Insured" has agreed in writing to provide insurance, but only with respect to any "Professional Services" performed on behalf of the "Named Insured".
- (D) Any organization that the "Named Insured" acquires or forms while this insurance is in effect, and over which the "Named Insured" maintains ownership or majority interest, will qualify as an "Insured" if there is no other similar insurance available to that organization. However, this provision applies only:
- (1) if the "Named Insured" advises us within sixty (60) days of the formation or acquisition and provides us with reasonable information as we deem necessary to evaluate any material changes in conditions which may affect insurance afforded by this policy;
  - (2) to any "Wrongful Act(s)" or "Infringement(s)" first committed on or after the date the "Named Insured" acquired or formed the organization; and
  - (3) if the "Named Insured" agrees to pay any additional premium in accordance with our rules and rates.

No person or organization is an "Insured" with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a "Named Insured" in the DECLARATIONS.

#### **SECTION IV. LIMITS OF INSURANCE AND DEDUCTIBLES**

- (A) Regardless of the number of "Claim(s)", the number of persons or entities included in SECTION III. WHO IS AN "INSURED" or the number of claimants who make a "Claim" against the "Insured":
- (1) The EACH "CLAIM" LIMIT stated in ITEM 4 of the DECLARATIONS shall be our maximum limit of liability for all "Damages" and "Defense Expenses" resulting from each "Claim" or "Related Claims" made against the "Insured", which amount shall be part of and not in addition to the amount stated in ITEM 4 of the DECLARATIONS as AGGREGATE LIMIT.
  - (2) The amount stated as AGGREGATE LIMIT in ITEM 4 of the DECLARATIONS shall be our maximum aggregate limit of liability for all "Damages" and "Defense Expenses" resulting from all "Claim(s)" and "Related Claims" under this Policy in excess of the DEDUCTIBLE.
  - (3) The DEDUCTIBLE stated in ITEM 5 of the DECLARATIONS shall apply separately to each "Claim" or "Related Claims" and shall also apply to either "Damages" or "Defense Expenses" or both.
- (B) "Defense Expenses" shall be part of and not in addition to the applicable Limits of Insurance, and payment of "Defense Expenses" by us shall reduce, and may exhaust, the applicable Limits of Insurance under this Policy.
- (C) Our obligations to pay "Damages" and to defend any "Claim" seeking "Damages" from the "Insured" or pay "Defense Expenses" shall only be in excess of the DEDUCTIBLE, which amount shall be borne by the "Insured" at the "Insured(s)" own expense. We shall have no obligation whatsoever, either to the "Insured" or to any other person or entity, to pay all or any portion of the DEDUCTIBLE amount on behalf

of the "Insured". We shall, however, at our sole discretion, have the right and option to do so, in which event the "Insured" will repay us any amounts so paid.

- (D) The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the DECLARATIONS, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **SECTION V. EXTENDED REPORTING PROVISIONS**

We will provide one or more Extended Reporting Periods, as described below:

- (A) Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for sixty days. The Basic Extended Reporting Period does not apply to any "Claim" that is covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such "Claim(s)".
- (B) A Supplemental Extended Reporting Period of one (1) year is available for an additional charge of one hundred percent (100%) of the premium set forth in ITEM 6 of the DECLARATIONS, but only by endorsement and if:
- (1) this policy is canceled or non-renewed, except for non-payment of premium; or
  - (2) we renew or replace this policy with insurance that:
    - (a) Has a Retroactive Date later than the date shown in ITEM 3 of the DECLARATIONS of this policy; or
    - (b) Does not apply to any "Wrongful Act(s)" or "Infringement(s)" on a claims made basis

The Supplemental Extended Reporting Period starts when the Basic Extended Reporting Period, set forth in paragraph (A) above, ends; and

You must give us a written request for the Supplemental Extended Reporting Period endorsement within sixty (60) days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

- (C) Neither the Basic Extended Reporting Period nor the Supplemental Extended Reporting Period (if purchased) extends the policy period or changes the scope of coverage provided or reinstates or increases the Limits of Insurance as described in SECTION IV. LIMITS OF INSURANCE AND DEDUCTIBLES.
- (D) Both the Basic Extended Reporting Period and the Supplemental Extended Reporting Period (if purchased) applies only to "Claim(s)" first made during the Extended Reporting Period(s) that arise out of any "Wrongful Act" or "Infringement" that takes place:
- (1) during the policy period; or
  - (2) before the inception date of this policy, but after the Retroactive Date, if any, shown in ITEM 3 of the DECLARATIONS, provided that on the inception date of this policy the "Insured" did not know, and could not have reasonably foreseen, that such "Wrongful Act" or "Infringement" could give rise to a "Claim".

- (E) Any "Claim" that is first made and reported to us during the Basic Extended Reporting Period or a Supplemental Extended Reporting Period (if purchased) will be deemed to have been made on the last day of the Policy Period.

Once in effect, neither the Basic Extended Reporting Period nor a Supplemental Extended Reporting Period (if purchased) may be canceled, except for non-payment of premiums.

## **SECTION VI. CONDITIONS**

### **(A) Coverage Territory**

This Policy applies to any "Wrongful Act" or "Infringement" committed anywhere in the world provided that the "Claim" is made or suit is brought within the United States of America, its territories or possessions, or Canada.

### **(B) Duties in the Event of a "Wrongful Act", "Infringement" or "Claim"**

- (1) As a condition precedent to any right to coverage afforded by this Policy, you must give written notice to us of any "Wrongful Act" or "Infringement" which may result in a "Claim" as soon as reasonably practicable.
- (2) Written notice must include:
  - (a) the nature, date and location of the specific "Wrongful Act" or "Infringement";
  - (b) the names and addresses of the affected "Insured(s)" and potential claimants and witnesses;
  - (c) the injury or consequences which have or might result therefrom; and
  - (d) the manner in which the "Insured" first became aware of the potential for a "Claim"; then any "Claim" subsequently made against the "Insured" arising out of such "Wrongful Act" or "Infringement" shall be deemed to have been made during the Policy Period or, if applicable, the Extended Reporting Period.
- (3) If a "Claim" is received by you or any other "Insured", you must:
  - (a) Immediately record the specifics of the "Claim" and the date received;
  - (b) Notify us as soon as reasonably practicable;
  - (c) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "Claim";
  - (d) Authorize us to obtain records and other information;
  - (e) Cooperate with us in the investigation, settlement or defense of the "Claim"; and
  - (f) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the "Insured" because of "Damages" to which this insurance applies.
- (4) No "Insured(s)" will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent.

### **(C) Service of Suit**

In the event of our alleged failure to perform our obligations or to pay any amount claimed to be due under this policy, we, at your request, will submit to the jurisdiction of a court of competent jurisdiction within the United States. However, nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court or to otherwise seek a transfer of a case to another court as permitted by the laws of the United States or any state in the United States. It

is further agreed that service of process in such suit may be made by you upon: [Counsel, Legal Department, Indian Harbor Insurance Company, Seaview House, 70 Seaview Avenue, Stamford, CT 06902-6040].

**(D) Arbitration**

Any dispute or controversy relating to alleged or actual obligations under this contract of insurance which cannot be resolved in the normal course of business with respect to the validity or interpretation of this insurance contract, or the performance of the respective obligations of the parties to this insurance contract, then, upon written demand of either party to the contract, the matter or matters upon which agreement cannot be reached shall first be submitted to non-binding arbitration in accordance with the commercial arbitration rules and procedures of the American Arbitration Association using an arbitrator selected by mutual agreement of the parties. It is agreed that no award for punitive damages may be made in any arbitration proceeding regardless of the rules of the arbitration program selected. The submission of any dispute to arbitration under this provision shall not prejudice the right of any party to file suit in any court of competent jurisdiction.

**(E) Other Insurance**

If other valid and collectible insurance is available to the "Insured" for "Damages" we cover under this Policy, our obligations under this Policy are limited as follows:

- (1) This insurance is excess over any other valid and collectible insurance, whether primary, excess, contingent or on any other basis, except such insurance as is specifically purchased to apply in excess of this policy's Limits of Insurance, and we will pay only our share of the amount of "Damages", if any, that exceeds the sum of:
  - (a) the total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) the total of all deductible and self-insured amounts under this or any other insurance.
- (2) We will have no duty under this policy to defend any "Claim" that any other insurer has a duty to defend. If no other insurer defends, we may undertake to do so, but we will be entitled to the "Insured(s)" rights against all other insurers.

**(F) Subrogation**

- (1) If the "Insured" has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. At our request, the "Insured" will bring any appropriate action or transfer those rights to us and help us enforce them, either in our name or in the name of the "Insured".
- (2) The "Insured" will do nothing that may prejudice our position or our potential or actual rights of recovery in the event of a "Claim".

**(G) Cancellation**

- (1) The first "Named Insured", shown in ITEM 1 of the DECLARATIONS, may cancel this Policy by surrendering this Policy or by mailing or delivering to us or any of our authorized agents notice stating when the future cancellation will take effect. Cancellation will become effective the date of delivery of the policy to us or upon such future date requested by the first "Named Insured".

- (2) We may cancel this Policy by delivering or mailing to the first "Named Insured" written notice of cancellation at least:
  - (a) Ten (10) days before the effective date of cancellation if we cancel because of non-payment of premium whether payable directly to us or payable to our agents or others under any installment payment plan, premium finance plan, extension of credit or other payment plan.
  - (b) Thirty (30) days before the effective date of cancellation if we cancel for any other reason.
- (3) If this policy is canceled, we will send the first "Named Insured" any premium refund due. If we cancel, the refund will be pro rata. If the first "Named Insured" cancels, the refund will be calculated in accordance with the customary short rate table and procedure.
- (4) If notice is mailed, proof of mailing will be sufficient proof of notice.

**(H) Representations and Warranties**

By accepting this policy, you agree, represent and warrant that:

- (1) The information shown in the DECLARATIONS is accurate and complete;
- (2) The information is based upon representations you made to us in your application(s) for this Policy and such application(s) will be deemed to be a part of this Policy as if it had been physically attached;
- (3) We have issued this Policy in reliance upon your representations; and
- (4) Except as otherwise provided in this Policy or by law, this Policy is void in any case of fraud or if you intentionally conceal or misrepresent any material facts concerning this Policy, in your application for this Policy or otherwise.

**(I) No Action Against Company**

No person or organization has a right under this Policy:

- (1) To join us as a party or otherwise bring us into a "Suit" asking for "Damages" from an "Insured"; or
- (2) To sue us under this Policy unless all of its terms and conditions have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an "Insured" obtained after an actual trial, but we will not be liable for "Damages" and or "Claims Expenses" that are not payable under the terms of this Policy or that are in excess of the applicable Limits of Insurance. An agreed settlement means a settlement and release of liability signed by us, the "Insured" and the claimant or the claimant's legal representative.

**(J) Bankruptcy of "Insured"**

Bankruptcy or insolvency of the "Insured" or of the "Insured('s)" estate shall not relieve us of our obligations.

**(K) Sole Agent**

The first "Named Insured" shown in ITEM 1 of the DECLARATIONS shall be the sole agent, and shall act on behalf of all "Insured(s)" with respect to all matters under this Policy, including but not limited to

giving and receiving notice of cancellation or non renewal, receiving refunds, requesting "Claim" and "Wrongful Act" or "Infringement" information, accepting or effecting any endorsements to this Policy, the payment of premium or the receipt of any return premiums, the request of or purchase of any Extended Reporting Period and agreeing to any changes in this Policy.

**(L) Separation of "Insured(s)"**

Except with respect to the Limits of Insurance and any rights or duties specifically assigned in this Policy to the first "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.

**(M) Changes**

This policy contains all the agreements between you and us concerning the insurance afforded. The first "Named Insured" shown in the DECLARATIONS is authorized to make changes in the terms of this policy upon our written consent. This Policy's terms can be amended or waived only by endorsement to this policy issued by us.

**(N) No Transfer or Assignment of "Insured('s)" Interest**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual "Named Insured".

**(O) Examination of your Books and Records**

We may examine and audit your books and records as they relate to this Policy at any time during the Policy period set forth in ITEM 2 of the DECLARATIONS and up to three years afterward.

In Witness Whereof, we have caused this Policy to be executed by its authorized officers, but this Policy shall not be valid unless countersigned on the DECLARATIONS page by our duly authorized representative.

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SECRETARY

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PRESIDENT