



**THIS ENDORSEMENT CHANGES THE POLICY.  
PLEASE READ IT CAREFULLY.**

## **MISCELLANEOUS PROFESSIONAL LIABILITY ENDORSEMENT – NEW YORK**

**1. THIS ENDORSEMENT IS WRITTEN ON A CLAIMS-MADE BASIS.**

**THE COVERAGE AFFORDED BY THIS ENDORSEMENT IS LIMITED TO ONLY THOSE CLAIMS ACTUALLY MADE WHILE THE ENDORSEMENT REMAINS IN EFFECT. ALL COVERAGE UNDER THIS ENDORSEMENT CEASES UPON TERMINATION OF THE POLICY OR THIS ENDORSEMENT, EXCEPT COVERAGE FOR CLAIMS REPORTED DURING THE AUTOMATIC EXTENDED REPORTING PERIOD OR DURING ONE OF THE OPTIONAL EXTENDED REPORTING PERIODS, IF PURCHASED. THIS ENDORSEMENT DOES NOT PROVIDE COVERAGE FOR CLAIMS ARISING OUT OF INCIDENTS, OCCURRENCES OR ALLEGED WRONGFUL ACTS WHICH TOOK PLACE PRIOR TO THE RETROACTIVE DATE STATED IN THE SCHEDULE BELOW.**

**2. THIS ENDORSEMENT IS WRITTEN ON A DEFENSE WITHIN LIMITS BASIS.**

**THIS MEANS THAT PAYMENT OF AMOUNTS INCURRED FOR DEFENSE COSTS ARE PART OF AND SUBJECT TO THE LIMIT OF LIABILITY SET FORTH IN THE SCHEDULE; PROVIDED, HOWEVER, THAT DEFENSE COSTS SHALL NOT REDUCE THE LIMIT OF LIABILITY APPLICABLE TO THIS ENDORSEMENT BY MORE THAN FIFTY PERCENT (50%) OF THE LIMIT OF LIABILITY SET FORTH IN THE SCHEDULE; PROVIDED FURTHER THAT THE DEDUCTIBLE AMOUNT APPLICABLE TO THIS ENDORSEMENT SHALL NOT BE APPLIED TO DEFENSE COSTS TO A GREATER EXTENT THAN FIFTY PERCENT (50%) OF THE DEDUCTIBLE STATED IN THE SCHEDULE. "OUR" DUTY TO DEFEND ENDS AFTER THE APPLICABLE LIMIT OF LIABILITY SET FORTH IN THE SCHEDULE HAS BEEN EXHAUSTED BY PAYMENT OF DEFENSE COSTS (SUBJECT TO THE TERMS AND CONDITIONS STATED ABOVE) OR DAMAGES.**



## MISCELLANEOUS PROFESSIONAL LIABILITY ENDORSEMENT – NEW YORK

### SCHEDULE\*

<b>Item 1. Professional Services:</b>	
<b>Item 2. Miscellaneous Professional Liability Limits of Liability (inclusive of “claim expenses”):</b>	<b>Aggregate: \$</b>
<b>Item 3. Deductible:</b>	<b>Each “wrongful act”: \$</b>
<b>Item 4. Effective Date: Expiration Date:</b>	
<b>Item 5. Retroactive Date:</b>	
<b>Item 6. Premium (applicable to this endorsement only):</b>	
<b>Item 7. Purchased Optional Extended Reporting Period</b>	<b>Effective Time: 12:01 A.M. on</b>  <b>Extended Reported Period Additional Premium: \$</b>
*Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Throughout this Coverage Endorsement (hereinafter referred to as “endorsement”), the words “you” and “your” refer to the “named insured(s) shown in the Supplemental Declarations and any other person(s) or organization(s) qualifying as a “named insured” under this endorsement. The words “we”, “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under Section C. Who Is An Insured.

Other words and phrases that appear in “quotations” have special meaning. Refer to Section G. Professional Liability Definitions.

The terms and conditions of the Cancellation Clause of the Common Policy Conditions and any amendment to such terms incorporated by endorsement are hereby incorporated herein and shall apply to coverage as is afforded by this endorsement, unless specifically stated otherwise in an endorsement(s) attached hereto.



**THIS ENDORSEMENT CHANGES THE POLICY.  
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In consideration of the premium charged as stated in Item 6. of the Schedule above, in reliance upon the statements in the application(s) attached hereto and made a part hereof, and subject to the Limits of Liability set forth in Item 2. of the Schedule above and the terms and conditions contained herein, "we" agree as follows:

**A. Insuring Agreement**

(1) "We" shall pay on "your" behalf those amounts, in excess of the deductible, "you" are legally obligated to pay as "damages" resulting from a "claim" first made against "you" during the "policy period" or Extended Reporting Period (if applicable) for "your" "wrongful act" in rendering or failing to render "professional services" for others, but only if such "wrongful act" first occurs on or after the "retroactive date" and prior to the end of the "policy period".

(2) Notwithstanding the paragraph (a)(1) above, in the event a "claim" is made against, sent to, delivered to, or received by "you" prior to the effective date of coverage afforded under this endorsement, notice of which is received by "us" while this endorsement is in effect, coverage under this endorsement shall apply (subject to the other terms and conditions of this endorsement) only as follows:

(a) if at the time the "claim" was made against, sent to, delivered to, or received by "you" there was in existence a valid and collectible insurance policy providing substantially similar professional liability coverage as is provided by this endorsement issued to "you" by "us" of which this endorsement is a renewal (hereinafter referred to as the "Former Policy"), then coverage under this endorsement shall be in an amount no greater than the amount of coverage which would have been provided for such "claim" under the Former Policy had notice of such "claim" been reported to "us" during the policy pe-

riod of such "Former Policy". The application of this sub-paragraph (a) may result in (but is not limited to): (i) a reduction of the Limit of Liability provided under this endorsement available for such "claim" to the available Limit of Liability of such Former Policy; (ii) an increase in the Deductible amount under this endorsement to the Deductible amount provided in such Former Policy; or (iii) a reduction or elimination of coverage under this endorsement to the extent exclusions or other terms and conditions of such Former Policy provide restrictions on coverage, in part or in whole, greater than those in this endorsement; and

(b) if at the time the "claim" was filed against, sent or delivered to, or received by "you", a "Former Policy" was not in existence, no coverage shall be afforded under this endorsement for such "claim".

**a. Defense**

(1) "We" have the right and duty to defend a "suit" brought against "you" alleging a "wrongful act" even if the "suit" is groundless, false or fraudulent. "We" have the right, with "your" written consent, which consent shall not be unreasonably withheld, to settle any "suit" if "we" believe that it is proper.

"We" have the right to investigate any "claim" and, with your written consent, which consent shall not be unreasonably withheld, the right to settle any "claim" if "we" believe that it is proper.

"Your" refusal to consent to a settlement may impact "our" obligations under this endorsement as stated in Sub-paragraph 2 of Paragraph **D. Professional Liability Limits of Insurance and Deductible**.

(2) "Claim expense(s)" are part of and subject to "our" Limit of Liability set forth in **Item 2.** of the

**SCHEDULE** above; provided, however, that “claim expenses” shall not reduce the Limit of Liability applicable to this endorsement by more than fifty percent (50%) of the Limit of Liability set forth in **Item 2.** of the **SCHEDULE** above; provided further that the Deductible amount applicable to this endorsement shall not be applied to “claim expenses” to a greater extent than fifty percent (50%) of the Deductible stated in **Item 3.** of the **SCHEDULE** above. “Our” duty to defend ends after the applicable Limit of Liability set forth in **Item 2.** of the **SCHEDULE** above has been exhausted by payment of “claim expenses” (subject to the terms and conditions stated above) or “damages”.

- (3) “You” may settle any “claim” or “suit” on behalf of all “insureds” to which this insurance applies and which are subject to one deductible, where the total incurred “loss” does not exceed the deductible.

## **B. Exclusions**

Solely with respect to the professional liability coverage provided by this endorsement, “we” shall not cover any “claim(s)”:

### **a. Intentional, Criminal, Fraudulent or Malicious Acts**

arising out of a dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage to which “you” are not legally entitled; however, “we” will defend “suits” alleging any of the foregoing conduct until there is a judgment, final adjudication, adverse admission or finding of fact against “you” as to such conduct; “we” shall not cover any “claim” if “you” plead *nolo contendere* or no contest to a criminal proceeding against “you” arising out of the same, or essentially the same, material facts as such “claim”;

### **b. Pollution**

arising out of the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of “pollutants”, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize “pollutants”, or in any way respond to or assess the effects of “pollutants”;

### **c. Bodily Injury or Property Damage**

arising out of “bodily injury” or “property damage”;

### **d. Securities Violations or Racketeering**

arising out of:

- (1) any purchase, sale, or offer or solicitation of an offer to purchase or sell securities;
- (2) any violation of any securities law, including the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any regulation promulgated under the foregoing statutes, or any federal, state or local laws similar to the foregoing statutes (including “Blue Sky” laws), whether such law is statutory, regulatory or common law; or
- (3) any violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act, or “RICO”), as amended, or any regulation promulgated thereunder or any federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;

### **e. Employee Benefit Plans**

arising out of any breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, or similar statutory or common law of the United States of America or any state or jurisdiction therein;

### **f. Employment Related Practices**

arising out of any employment practices liability or any discrimination on any basis, including, but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, gender, sexual orientation or pregnancy;

### **g. Previously Reported Claims**

arising out of the same “wrongful act” or series of continuous, repeated or related “wrongful acts”,

alleging the same or similar facts, alleged or contained in any "claim" which has been reported, or any "wrongful act" of which notice has been given, under any miscellaneous professional liability endorsement to a policy of which this endorsement to a policy was a renewal, replacement or succeeds in time;

#### **h. Intellectual Property Rights**

arising out of any misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right;

#### **i. False Advertising**

arising out of false advertising, misrepresentation in advertising, antitrust, unfair competition, restraint of trade, unfair or deceptive business practices, including but not limited to, violations of any local, state or federal consumer protection laws;

#### **j. Government Organizations**

against "you" that are brought by or on behalf of any federal, state or local government agency or professional or trade licensing organizations; however, this exclusion shall not apply where the "claim" is alleging a "wrongful act" in "your" rendering "professional services" to such entity;

#### **k. Contractual Liability**

arising out of liability "you" assume under any contract or agreement, including but not limited to, any contract price, cost guarantee or cost estimate being exceeded; however, this exclusion does not apply to liability "you" would have in the absence of such contract or agreement;

#### **l. Cross Suits**

against "you" that is brought by or on behalf of:

- (1) any "insured" except as described in the definition of "you, your or insured" in Subparagraph 19 of Paragraph **G. Professional Liability Definitions**;
- (2) any business entity that is owned, managed or operated, directly or indirectly, in whole or in part, by "you";
- (3) any parent company, "subsidiary", successor or assignee of "yours", or anyone affiliated

with "you" or such business entity through common majority ownership or control; or

- (4) any independent contractor supplying material or services to "you", but, as regards such independent contractor, only with respect to "claims" involving disputes over the ownership or exercise of rights in material or services supplied;

#### **m. Prior Knowledge or Known Claims**

arising out of any "wrongful act" committed prior to the "first inception date" if, as of the "first inception date", "you" knew or could have reasonably foreseen that such "wrongful act" did or would result in a "claim" against "you";

#### **n. Prior or Pending Litigation**

first made against "you" prior to, or pending as of, the "first inception date", or relating to the essential facts, circumstances or situation underlying such "claim";

#### **o. Fee Disputes**

arising out of disputes involving:

- (1) "your" fees or charges, including overcharges, or cost over-runs;
- (2) collecting "your" fees from third parties;
- (3) the return of fees or other compensation paid to "you"; or
- (4) "your" cost of correcting or re-performing or completing any "professional services";

#### **p. Known Wrongful Acts**

arising out of any "wrongful act" committed with the knowledge that it was a "wrongful act";

#### **q. Over Redemption**

arising out of "over-redemption" of coupons, awards, or prizes from advertisements, promotions, games, sweepstakes, contests, and games of chance;

#### **r. Prior Acts**



arising out of any “wrongful act” which occurred prior to the “retroactive date”;

**s. Failure to Maintain Insurance**

arising out of “your” advising, requiring, obtaining or failing to advise, require or obtain any bond, suretyship or other form of insurance;

**t. Investment Advice**

arising out of or resulting, directly or indirectly, from:

- (1) the exercise of any authority or discretionary control by an insured with respect to any client’s funds or accounts;
- (2) an insured providing investment advice, or selecting an investment manager, investment advisory or custodial firm;
- (3) an insured advising as to, warranting, promising or guaranteeing a future value of any investment or property, or any rate of return or interest;
- (4) any failure of any investment to perform as expected or desired; or
- (5) any actual or alleged commingling, misappropriation or improper use of funds or monies.

**u. Privacy**

alleging, arising out of, based upon, or in connection with any alleged or actual violation of any person or entity’s privacy rights;

**v. Professional Services**

arising out of the rendering of or failure to render any of the following “professional services”, advice or instruction whether or not a claim or suit is brought by any client or any other person or organization or such service, advice or instruction is ordinary to any insured’s profession:

- (1) Accounting service;
- (2) Actuarial service, or actuarial assumption;
- (3) Architectural, engineering;
- (4) Healthcare or medical services;
- (5) Legal services;
- (6) Pharmacy services;
- (7) Law Enforcement services
- (8) Mortgage Banker or Mortgage Broker;
- (9) Property developer;
- (10) Builder or construction manager; or

(11) Insurance Agent/Broker services.

**w. Your Product**

arising out of any actual or alleged damages, loss, cost or expense arising out of or in any way related to any actual, alleged or threatened security breach of, or unauthorized access to or unauthorized use of:

- (1) “your” product;
- (2) any property containing or incorporating “your” product;
- (3) any property on which your service is or was performed; or
- (4) any information and network technology product

by any person or organization, including any insured.

**The following exclusions will be applied solely based on the Description of Professional Services as shown in Item 1. of the Schedule above.**

“We” shall not cover any “claim”:

**x. If you are a Notary**

arising out of or resulting, directly or indirectly, from any insured notarizing, certifying or acknowledging any signature not signed before such insured at the time of such notarization, certification or acknowledgment;

**y. If you are a Credit Bureau**

arising out of, based upon or in connection with the performance of prescreening services for credit grantors as described in the Code of Federal Regulations, 16 CFR Section 600-5;

**z. If you are a Collection Agent**

- (1) arising out of or in connection with any debt owned by or purchased by you;

- (2) arising out of or in connection with any collection agency services performed by you without a bond or license where you knew or could have reasonably foreseen that such alleged collection agency services without a bond or license was contrary to the applicable federal, state or local law, regulation or statute;
  - (3) arising out of any obligation pursuant to any unemployment compensation, unemployment insurance, worker's compensation, disability benefits, retirement benefits, social security benefits or similar laws;
  - (4) arising out of the actual or alleged collection of fees or other remuneration owed to you by a client or customer;
  - (5) alleging, arising out of, based upon or in connection with:
    - a. your insolvency or financial impairment; or
    - b. any action, ruling or intervention of any federal, state or local governmental agency or office arising out of an actual or alleged insolvency or financial impairment of you.
  - (6) alleging, arising out of, based upon or in connection with:
    - a. any title or property search;
    - b. any repossession by you or on your behalf; provided, however, this exclusion shall not apply to execution through judicial means or by a judicial officer; or
    - c. any levy, judicial sale or purchase of real property for a profit;
  - (7) alleging, arising out of, based upon or in connection with:
    - a. any local, state or federal penal statute or ordinance;
    - b. any state or federal administrative action seeking endorsement of any regulation, statute or law;
  - c. any order or ruling of any court or administrative or regulatory agency including, but not limited to consent orders, stays or discharges in bankruptcy, judgment and injunctions; or
  - d. any federal or state law or regulation governing the extension of credit or lending activities; provided, however, this exclusion shall not apply to civil liability from any actual or alleged collection;
  - (8) alleging, arising out of, based upon or in connection with:
    - a. any access to or use of any data or computer systems for purposes other than permissible purposes stated in Section 604(a) of the Fair Credit Reporting Act; or
    - b. any unauthorized access or tampering by a non-insured, at the time of the unauthorized access or tampering, with any data or computer systems used by "you" or for "your" benefit;
  - (9) arising out of or in connection with the performance of or failure to perform services as an attorney or accountant;
- aa. If you are a Claim Adjuster**
- arising out of any intentional or reckless breach of claim authority or claim handling procedures by any claims adjuster.
- bb. If you are a Real Estate Agent or Broker**
- (1) arising out of or connected with the formulation, promotion, syndication, offer, sale or management of any limited partnership, general partnership, real estate investment trust or other security, including any interest therein;
  - (2) alleging, arising out of, based upon, attributable to or in connection with any insured notarizing, certifying or acknowledging any signature not signed before such insured at the time of such notarization, certification or acknowledgment; or

- (3) arising out of or connected with any transaction in which you or any affiliate of yours has a direct or indirect beneficial ownership interest as a buyer, owner or seller of real property; provided, however, this exclusion does not apply to real property to which you have taken legal title solely for immediate resale and have entered into a written contract to sell not later than ninety (90) days after taking legal title.

### **C. Who Is An Insured**

Solely with respect to the professional liability coverage provided by this endorsement:

If you are listed as the named insured on the Declarations page, you are an insured.

- a. If the named insured on the Declarations page is a partnership, any past or present general or managing partner, principal, or employee thereof is an insured, but only with respect to their duties as such and only with respect to “wrongful acts” otherwise covered under the insurance provided by this endorsement.
- b. If the named insured on the Declarations page is a limited liability company, any past or present managing member, principal, or employee thereof is an insured, but only with respect to their duties as such and only with respect to “wrongful acts” otherwise covered under the insurance provided by this endorsement.
- c. If the named insured on the Declarations page is a corporation, any past or present officer, director, trustee, or employee thereof is an insured, but only with respect to their duties as such and only with respect to “wrongful acts” otherwise covered under the insurance provided by this endorsement.
- d. If you are a “subsidiary” of the named insured, you are an insured, but only with respect to your duties as such and only with respect to “wrongful acts” committed while you were a “subsidiary” and otherwise covered by this endorsement.
- e. If the named insured is required by contract to add you as an insured under the insurance provided by this endorsement, you are

an insured, but only for “wrongful acts” of the named insured.

- f. If you are an “insured,” your spouse is an insured under the insurance provided by this endorsement, but only for wrongful acts of such “insured”.

### **D. Professional Liability Limits of Insurance**

Solely with respect to the professional liability coverage provided by this endorsement, the following Limits of Liability apply:

1. The Limits of Liability set forth in Item 2. of the Schedule above are the most “we” shall pay for “loss” regardless of the number of persons or entities covered by this endorsement or claimants or “claims” brought. “Our” total liability for all “loss” arising from all “claims” made against “you” and reported to “us” during the “policy period” or any applicable Extended Reporting Period shall not exceed the Limit of Liability set forth in Item 2. of the Schedule above. The aggregate Limit of Liability for any Extended Reporting Period shall be part of and not in addition to the aggregate Limit of Liability set forth in Item 2. of the Schedule above for the “policy period”.
2. “Our” duty to defend ends if “you” refuse to consent to a settlement “we” recommend and the claimant will accept. “You” must then defend the “claim” at “your” own expense. As a consequence of “your” refusal, “our” liability shall not exceed the amount for which “we” could have settled such “claim” had “you” consented, plus “claim expenses” incurred prior to the date of such refusal. This clause shall not apply to any settlement where the total incurred for “damages” and “claim expenses” does not exceed the deductible.

### **E. Professional Liability Deductible**

“You” shall be responsible for the deductible amount set forth in Item 3. of the Schedule above. The deductible applies to each “wrongful act”, and “you” may not insure it. All “claims” arising from a “wrongful act” or series of continuous, repeated, or related “wrongful acts” shall be subject to one deductible. In “our” sole discretion, “we” may pay all or part of the deductible to settle a “claim”, in which case “you” agree





to repay "us" promptly after "we" notify "you" of the settlement.

#### **F. Professional Liability General Conditions And Other Provisions Affecting Coverage**

Solely with respect to the professional liability coverage provided by this endorsement, the following conditions apply:

##### **1. What You Must Do in the Event of a Claim**

Before coverage will apply under this endorsement, "you" must notify "us" in writing of any "claim" against "you" as soon as practicable but in all events not later than: (i) the end of the "policy period" or Extended Reporting Period (if applicable); or (ii) within thirty (30) days after the end of the "policy period", as long as such "claim" was first made against the "insured" within the final thirty (30) days of the "policy period" and reported to us no later than thirty (30) days after the date such "claim" was first made against the "insured."

"You" must also immediately record the specifics of the "claim" and the date "you" received it and send copies of all demands, suit papers, or other legal documents "you" receive, as soon as possible to "us".

##### **2. Notice to Agent**

Notice given by or on behalf of the "insured", or written notice by or on behalf of the injured party or any other claimant, to any licensed agent of "ours" in the State of New York, with particulars to identify the "insured" shall be deemed notice to "us".

##### **3. Failure to Give Notice Within Prescribed Time**

Failure to give notice to "us" as soon as practicable, as required under endorsement, shall not invalidate any "claim" made by "you", an injured person or any other claimant, unless the failure to provide such timely notice has prejudiced "us". However, no claim made by "you", an injured person or any other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

#### **4. Your Assistance and Cooperation**

a. "You" agree to cooperate with and help "us":

- (1) in making settlements, subject to subparagraph 3 herein;
- (2) in enforcing any legal rights "you" or we may have against anyone who may be liable to "you";
- (3) by attending depositions, hearings and trials; and
- (4) by securing and giving evidence, and obtaining the attendance of witnesses.

b. "You" shall take such actions which, in "your" judgment, are deemed necessary and practicable to prevent or limit "loss" arising from "your" "wrongful acts".

c. "You" shall not admit any liability, assume any financial obligation or pay out any money without "our" prior written consent. If "you" do, it shall be at "your" own expense. In addition, "you" shall not take any action, or fail to take any required action, without our written consent, which prejudices "our" rights under this endorsement.

#### **5. Where Coverage Applies**

This endorsement applies to "wrongful acts" committed anywhere in the world, provided that any "claim" must be brought against "you" in the United States of America, its territories or possessions or Canada.

#### **6. Special Rights and Duties of Named Insured**

"You" agree that when there is more than one person or organization covered under this endorsement, the first Named Insured shall act on behalf of all of "you" as to:

- a. acceptance of any changes to this endorsement; and
- b. acceptance or refusal of any applicable Extended Reporting Period.

#### **7. Extended Reporting Coverage – Regulation 121 (Claims-Made Policies)**



Solely with respect to the professional liability coverage provided by this endorsement, the following Extended Reporting Provisions apply:

#### a. Additional Definitions

Solely with respect to these Extended Reporting Period provisions, the following definitions shall apply:

(1) "Termination of coverage" means:

(a) Cancellation or non-renewal of the policy or this endorsement by "us" or "you"; or

(b) Decrease in the Limit of Liability, reduction of coverage, increased deductible or self insured retention, new exclusion, or any other change in coverage provided by this endorsement less favorable to "you". Extended Reporting Period Coverage shall be offered for these reasons at "your" request and shall only apply in regard to that coverage terminated. This subparagraph (1)(b) shall apply only if paragraph n. of this Extended Reporting Period provision does not apply.

(2) "Public entity" means a Public Entity as defined in section 107(a)(51) of the New York Insurance Law.

Upon "termination of coverage" afforded by the policy or this endorsement, and only to the extent coverage is terminated, "you" shall have the right to an Automatic Extended Reporting Period or an Optional Extended Reporting Period as described in paragraph c. and paragraph d. of this Extended Reporting Period provision.

#### b. Advice Regarding Extended Reporting Periods

With regard to "termination of coverage" by reason of a.(1)(a) and a.(1)(b) above, "we" shall advise "you", in writing, of the Automatic Extended Reporting Period and the availability of, the premium for and the importance of purchasing the Optional Extended Reporting Period (the "Advice"). The Advice shall be sent to the "named insured" no earlier than the date of notification of "termination of coverage" nor later than thirty (30) days after the effective date of "termination of coverage". If cancellation of the policy or this endorsement is due to non-payment of premium or fraud on the part of the "insured", "we" will not be required to provide a premium quotation for the

Optional Extended Reporting Period unless requested by "you".

#### c. Automatic Extended Reporting Period

"You" shall be provided with, for no additional premium, a period of sixty (60) days (ninety (90) days if "you" are a Public Entity) following the effective date of "termination of coverage" (herein referred to as the Automatic Extended Reporting Period) in which to give written notice to "us" of "claims" first made against "you" during said sixty (60) (or ninety (90)) day period for any "wrongful act" occurring prior to such "termination of coverage" and otherwise covered by the policy and this endorsement. The Automatic Extended Reporting Period shall be void *ab initio* if the Optional Extended Reporting Period becomes effective. For the purposes of determining the length of the Optional Extended Reporting Period, the Automatic Extended Reporting Period shall be included.

#### d. Optional Extended Reporting Period

"You" shall have the right, upon payment of the required additional premium plus any premium for the policy which is owed and not yet paid, to a period of three (3) years following the effective date of "termination of coverage" solely with respect to the coverage terminated (herein referred to as the Optional Extended Reporting Period) in which to give written notice to "us" of "claims" first made against "you" during said three (3) year period for any "wrongful act" occurring prior to such "termination of coverage" and otherwise covered by the policy and this endorsement. Any return premium due "you" shall be credited toward the premium for the Optional Extended Reporting Period if elected.

#### e. Purchased Optional Extended Reporting Period

Pursuant to "your" rights set forth in Paragraph F.7.d. above, the following provision applies only if **Item 7.** of the **SCHEDULE** above is completed:

(1) Solely with respect to the professional liability coverage provided by this endorsement, within the three (3) year period following the Effective Time (hereinafter referred to as the "Extended

Reporting Period”), “you” may report to “us” by written notice any “claim” first made against “you” during the Extended Reporting Period for any “wrongful act(s)” occurring prior to the Effective Time and otherwise covered by this endorsement.

**(2)** The entire premium charged for the Optional Extended Reporting Period coverage under this paragraph **F.7.d.** shall be fully earned as of the Effective Time.

**(3)** The aggregate Limit of Liability for the Optional Extended Reporting Period coverage under this paragraph **F.7.d.** shall be part of, and not in addition to, the aggregate Limit of Liability for the “policy period” stated in **Item 2.** of the **SCHEDULE** above.

**(4)** Notwithstanding any other provision of the policy or this endorsement, the Optional Extended Reporting Period coverage under this paragraph **F.7.d.** shall not provide any coverage for any “wrongful act(s)” occurring after the Effective Time.

**f. Notice of Written Acceptance**

“You” shall submit written acceptance of the Optional Extended Reporting Period (along with the payment of premium as described paragraph **d.** of this section **7.**, above) by the later of:

- (1)** Sixty (60) days after the effective date of “termination of coverage”; or
- (2)** Thirty (30) days after “we” have mailed or delivered the Advice as described in section **7.**, paragraph **b.**, above (if “we” are obligated to give such written Advice).

**g. Premium Charge for the Optional Extended Reporting Period**

**(1)** The additional premium for the Optional Extended Reporting Period shall be based upon the rates in effect on the date this endorsement was issued or last renewed. The premium for the Optional Extended Reporting Period shall be commensurate with the coverage provided. Upon Termination of Cover-

age on a date other than the policy’s anniversary date, the cost of the Optional Extended Reporting Period shall be appropriately reduced.

**(2)** The additional premium for the Optional Extended Reporting Period shall be priced in accordance with the specifications of the New York Regulation 121 Policyholder Disclosure attached to this endorsement.

**h. Cancellation for Non-Payment of Premium or Fraud – Policies in Effect Less Than One (1) Year**

If coverage is terminated because of non-payment of premium or fraud, and at the effective date of such “termination of coverage”, “we” have provided this insurance to “you” on a claims-made basis without interruption for less than one (1) year, “you” shall have no right to elect and purchase the Optional Extended Reporting Period. For purposes of this paragraph, the Automatic Extended Reporting Period shall not be considered as time when “we” were providing claims-made coverage.

**i. Coverage for Insureds with Prior Affiliation**

During the policy and any extended reporting period, a person covered by “your” policy during such affiliation shall continue to be covered under the endorsement and any extended reporting period after such affiliation has ceased for such persons covered “wrongful acts” during such affiliation.

**j. Corporations, Partnerships and Other Entities**

If this endorsement is issued to a corporation, partnership or other entity, this endorsement shall provide extended reporting period coverage upon “termination of coverage” to any person covered under this “endorsement”, as respects only himself or herself, if:

- (1)** such entity has been placed in liquidation or bankruptcy or permanently ceases operations;
- (2)** the entity or designated trustee does not purchase the Optional Extended Reporting Period; and
- (3)** such person requests the Optional Extended Reporting Period within one hundred

twenty (120) days of “termination of coverage”.

“We” shall have no obligation to provide the Advice described in section 7., paragraph b., above, to any such person. “We” may charge the person for whom extended reporting period coverage is provided a premium commensurate with such coverage. If such person does not pay the required additional premium when due, then the Optional Extended Reporting Period for such person shall be void *ab initio*.

#### **k. Fully Earned and Non-Cancellable**

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 cancellable except for non-payment of premium.

#### **l. Limits of Liability for the Extended Reporting Periods**

(1) Upon “termination of coverage”, the Limit of Liability for the Automatic Extended Reporting Period shall be at least equal to the amount of coverage remaining under the endorsement’s aggregate Limit of Liability as set forth in **Item 2.** of the **SCHEDULE** above. This paragraph shall apply for the Optional Extended Reporting Period only if paragraph n. of this Extended Reporting Period provision applies.

(2) If as of the effective date of “termination of coverage”, insurance coverage has been provided by “us” to “you” on a claims-made basis without interruption for at least three (3) years, the aggregate Limit of Liability for the Optional Extended Reporting Period shall be equal to one hundred percent (100%) of the endorsement’s aggregate Limit of Liability in effect immediately prior to “termination of coverage”.

(3) If as of the effective date of “termination of coverage”, insurance coverage has been provided by “us” to “you” on a claims-made basis without interruption for less than three (3) years, the aggregate Limit of Liability for the Optional Extended Reporting Period shall be equal to the greater of:

(a) the amount of coverage remaining in the endorsement’s aggregate Limit of Liability in effect immediately prior to “termination of coverage”; or

(b) fifty percent (50%) of the endorsement’s aggregate Limit of Liability in effect immediately prior to “termination of coverage”.

(4) Where “termination of coverage” is due only to a decrease in the endorsement’s aggregate Limit of Liability, the aggregate Limit of Liability for the Optional Extended Reporting Period, if elected, shall be no greater than the amount of such decrease. In such instance, the aggregate Limit of Liability provided for the Optional Extended Reporting Period shall replace, and shall not be in addition to, the Limit of Liability provided for the Automatic Extended Reporting Period.

#### **m. Retroactive Date/Continuity Date Advancement**

This endorsement’s “retroactive date” may not be changed during the term of the claims-made relationship and any extended reporting period.

#### **n. Exceptions to this Extended Reporting Period Provision**

If this endorsement contains:

(1) a Limit of Liability of \$5,000,000 or higher; or

(2) a deductible or retention of at least \$100,000; or

(3) if the “named insured” is a “Large Commercial Insured”, defined as a commercial risk insured that:

(a) has a net worth of at least \$7,500,000, as determined by an independent certified public accountant, as of the “insured’s” fiscal year end immediately preceding this endorsement’s effective date;

(b) has gross assets exceeding \$25,000,000 and a net worth of at least \$3,000,000, as determined by an independent certified public accountant, as of the “insured’s” fiscal year end immediately preceding this endorsement’s effective date;

(c) is a for-profit business entity that generates annual gross revenues exceeding \$25,000,000, and has a net worth of at least \$1,500,000, as

determined by an independent certified public accountant, as of the “insured’s” fiscal year end immediately preceding this endorsement’s effective date;

**(d)** is a for-profit business entity that has gross assets exceeding \$25,000,000 and generates annual gross revenues exceeding \$25,000,000, as determined by an independent certified public accountant, as of the “insured’s” fiscal year end immediately preceding this endorsement’s effective date; or

**(e)** is a not-for-profit organization or public entity with an annual budget exceeding \$25,000,000 for each of its three (3) fiscal years immediately preceding this endorsement’s effective date;

then the following sections of this Extended Reporting Periods provision shall not apply:

**(1)** subparagraph **a.(1)(b)** (Additional Definitions, “termination of coverage” for decrease in the Limit of Liability, reduction of coverage, increased Deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the Insured);

**(2)** subparagraph **b.** (Advice Regarding Extended Reporting Periods);

**(3)** subparagraph **f.(2)** (Notice of Written Acceptance (within 30 days of the mailing of the Advice));

**(4)** subparagraphs **I.(2), I.(3)** and **I.(4)** (Limits of Liability for the Extended Reporting Periods); and

**(5)** subparagraph **j.** (Corporations, Partnerships and Other Entities);

Additionally, subparagraph **d.** (Optional Extended Reporting Period) shall be amended to afford to the Insured the right to a one (1) year period. All references to a “three (3) year period” are thereby deleted.

## 8. Insolvency/Bankruptcy of the Insured

The insolvency or bankruptcy of the “named insured” shall not relieve “us” of “our” obligations under this endorsement as long as all coverage

requirements are met by the “named insured,” its trustee or receiver in bankruptcy. Should a judgment be rendered against an insolvent or bankrupt “insured,” “we” shall be liable for the amount of such judgment not to exceed the applicable Limit of Liability under this endorsement.

## 9. Transfer of Duties When a Limit of Insurance is Exhausted

**a.** If “we” conclude that, based on “wrongful acts,” personal injury offenses, occurrences, “claims” or “suits” which have been reported to “us” and to which this insurance may apply, the Limit of Liability stated in **Item 2.** of the **SCHEDULE** above is likely to be exhausted by the payment of judgments or settlements, we will notify “you”, in writing, to that effect.

**b.** When the Limit of Liability stated in **Item 2.** of the **SCHEDULE** above has actually been exhausted by the payment of judgments or settlements:

**(1)** “We” will notify the “named insured” in writing, as soon as practicable, that:

**(a)** such limit has actually been exhausted; and

**(b)** “our” duty to defend “claims” or “suits” seeking “damages” has also ended.

**(2)** “We” will initiate, and cooperate in, the transfer of control to any appropriate “insured” all “claims” and “suits” seeking “damages” which are subject to the Miscellaneous Professional Liability Limit of Liability and which are reported to “us” before the Miscellaneous Professional Liability Limit of Liability is exhausted. That “insured” must cooperate with “us” in facilitating the transfer of control of said “claims” and “suits”.

“We” agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such “claims” or “suits” until such transfer is completed, provided the appropriate “insured” is cooperating with “us” in the completion of such transfer.

“We” will take no action whatsoever with respect to any “claim” or “suit” seeking “damages” that would have been subject

to the Miscellaneous Professional Liability Limit of Liability had it not been exhausted if the "claim" or "suit" is reported to "us" after the Miscellaneous Professional Liability Limit of Liability has been exhausted.

**(3)** The "named insured", and any other "insured" involved in a "claim" or "suit" seeking "damages" subject to the Miscellaneous Professional Liability Limit of Liability, must arrange for the defense of such "claim" or "suit" within such time period as agreed to between the appropriate "insured" and "us". Absent such agreement, arrangements for the defense of such "claim" or "suit" must be made as soon as practicable.

**c.** The "named insured" will reimburse "us" for expenses "we" incur in taking those steps we deem appropriate in accordance with paragraph **b.(2)**, above.

The duty of the "named insured" to reimburse "us" will begin on:

**(1)** the date on which the Miscellaneous Professional Liability Limit of Liability of insurance is exhausted, provided "we" have sent notice in accordance with paragraph **a.** of this section **9.**, above; or

**(2)** the date on which "we" send notice in accordance with paragraph **b.(2)** of this section **9.**, above, if "we" did not send notice in accordance with paragraph **a.** of this section **9.**, above.

**d.** The exhaustion of the Miscellaneous Professional Liability Limit of Liability by the payments of judgments or settlements, and the resulting termination of "our" duty to defend, will not be affected by "our" failure to comply with any of the provisions of this section **9.**

## 10. Notice of Circumstance

If during the "policy period" or the Extended Reporting Period, if applicable, "you" become aware of any facts or circumstances that may reasonably be expected to give rise to a "claim" against "you" for a "wrongful act" that occurs on or after the "retroactive date" and prior to the end of the "policy period", and provided "you" give written notice to "us" during the "policy period" or the Extended Re-

porting Period, if applicable, of the circumstances and the reasons for anticipating such a "claim", with full particulars as to the "wrongful act(s)", dates, persons and entities involved, then any "claim" that is subsequently made against "you" arising out of such "wrongful act" or the same "wrongful act" or series of continuous, repeated or related "wrongful acts", shall, for the purposes of this endorsement, be treated as a "claim" made against "you" and reported to "us" during the "policy period".

## 11. Change in Control of "Named Insured"

If during the "policy period":

- a.** the "named insured" merges into or consolidates with another entity such that the "named insured" is not the surviving entity; or
- b.** another entity, person, or group of entities and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by other entity(ies) or person(s) of more than fifty percent (50%) of the outstanding securities representing the rights to vote for the election of the "named insured's" directors;

(either of the above events hereinafter referred to as the "Transaction") then coverage under this endorsement shall continue until the later of the termination of the "policy period" or such other date to which "we" may agree, but only with respect to "wrongful acts" which occurred prior to the Transaction and are otherwise covered by this endorsement. No coverage shall be provided after the Transaction unless the "named insured" notifies "us" of the Transaction in writing within thirty (30) days of the Transaction.

## 12. Section and Paragraph Titles

The titling of sections and paragraphs within this endorsement is for convenience only and shall not be interpreted as a term or condition of this endorsement.

## 13. Declarations and Schedule

By accepting this endorsement, "you" agree that the statements in the application, Declarations, and Schedule above are true, and they are "your" agreements and representations. This endorse-



ment is issued in reliance upon the truth of those representations.

#### **14. Assignment**

The interest of any “insured” is not assignable. “You” cannot assign or transfer “your” interest in this professional liability coverage provided by this endorsement without “our” written consent.

#### **15. Other Insurance**

Such professional liability insurance as is provided by this endorsement shall be excess of any other valid and collectible insurance available to “you”.

#### **16. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured’s estate will not relieve us of our obligations under this endorsement.

#### **17. Legal Action Against Us**

No person or organization has a right under this endorsement:

- a. To join us as a party or otherwise bring us into a “suit” asking for damages from an insured; or
- b. To sue us on this endorsement unless all of its terms 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; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable Limit 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.

#### **18. Transfer Of Your Rights And Duties Under This Policy**

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

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

#### **19. Representations**

Any and all relevant provisions of this Coverage Endorsement may be voidable by “us” in any case of fraud, intentional concealment, or misrepresentation of material fact by any “insured”.

#### **G. Professional Liability Definitions**

Solely with respect to the professional liability coverage provided by this endorsement, the following definitions apply:

1. “Bodily injury” means physical injury, sickness or disease, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or death at any time.
2. “Claim” means a demand for money or services, including a “suit”, arising from “your wrongful act”.
3. “Claim expenses” means all reasonable and necessary fees charged by an attorney with “our” consent and incurred in connection with any “suit” brought against “you” alleging a “wrongful act”, as well as all other reasonable and necessary fees, costs and expenses incurred in the defense or investigation of a “claim” by “us” or by “you” with “our” written consent. “Claim expenses” shall also include premiums for appeal bonds, or bonds to release property used to secure a legal obligation, if required in a “claim”; however, “we” shall have no obligation to appeal or to obtain these bonds. “Claim expenses” does not include salary charges or expenses of “you” or “your” employees.
3. “Damages” means any amount that “you” shall be legally required to pay because of judgments, arbitration awards or the like rendered against “you”, or for settlements negotiated by “us” with “your” written consent; provided that “damages” shall not include any amounts for which “you” are not

financially liable or for which there is no legal recourse against “you”, the costs and expenses of complying with any injunctive or other form of equitable relief, punitive or exemplary damages, the multiplied portion of multiplied damages, fines, penalties, taxes, non-pecuniary relief or matters that may be deemed uninsurable under the law. “Damages” shall include pre-judgment interest.

5. “First Inception Date” means the inception date of the first Miscellaneous Professional Liability endorsement issued by “us” to the “named insured” and continually renewed by “us” until the inception date of this current endorsement.
6. “Loss” means the total sum of “damages” and “claim expenses”.
7. “Named insured” means the individual, entity, partnership, or corporation designated as such in Declarations.
8. “Over-redemption” means price discounts, prizes, awards or other valuable consideration given in excess of the total contracted or expected amount.
9. “Personal Injury Peril” means:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. 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; or
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services.
10. “MPL Coverage Period” means the period commencing on the effective date shown in the Schedule above. This period ends on the earlier of the expiration date shown thereon or the effective date of cancellation of this Coverage Endorsement. If “you” become an “insured” under this Coverage Endorsement after the effective date thereof, the “policy period” begins on the date “you” became an “insured”.
11. “Pollutants” mean any solid, liquid, gaseous or thermal irritant or contaminant, including

smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

12. “Professional services” means those services as described and set forth in Item 1. of the Schedule above.
13. “Property damage” means (i) physical injury to, loss or destruction of, tangible property including the resulting loss of use thereof; or (ii) loss of use of tangible property which has not been physically injured or destroyed.
14. “Retroactive date” means the date set forth in Item 5. of the Schedule above.
15. “Subsidiary” shall mean any corporation of which the “named insured” owns on the inception date of the “policy period” more than fifty percent (50%) of the issued and outstanding voting stock either directly or indirectly through a “subsidiary”.

“Subsidiary” shall also mean any corporation which becomes a “subsidiary” during the “policy period” provided that such corporation does not represent more than a ten percent (10%) increase in the total assets and/or gross revenue of the “named insured” as of the date of the acquisition. Where such corporation represents an increase in the total assets and/or gross revenue of the “named insured” of more than ten percent (10%), such corporation shall be deemed a “subsidiary” under the policy, but only upon the condition that within ninety (90) days of its becoming a “subsidiary”, “you” shall have provided “us” with full particulars of the new “subsidiary” and agreed to any additional premium and/or amendment of the provisions of this endorsement required by “us” relating to such new “subsidiary”, subject to the review and acceptance by “us” of full and complete underwriting information. Further, coverage as shall be afforded to the new “subsidiary” is conditioned upon the “named insured” paying when due any additional premium required by “us” relating to such new “subsidiary”. A corporation becomes a “subsidiary” when the “named insured” owns more than fifty percent (50%) of the issued and outstanding voting stock either directly or indirectly through one or more of its “subsidiaries”, and ceases to be a “subsidiary” at such time when the “named insured” ceases to own more than fifty percent





(50%) of the issued and outstanding voting stock.

This endorsement does not provide coverage for any "claim" against a "subsidiary" or any partner, director, officer or employee thereof for any "wrongful act" that occurred when the "named insured" did not own more than fifty percent (50%) of the issued and outstanding voting stock of such "subsidiary", either directly or indirectly through one or more of its "subsidiaries".

16. "Suit" means a civil proceeding for monetary relief, which is commenced by service of a complaint or similar pleading. "Suit" includes a binding arbitration proceeding in which "damages" are alleged and to which "you" must submit or do submit with "our" consent.
17. "We", "us" or "our" means the insurer issuing this endorsement.
18. "Coverage territory" means The United States of America (including its territories and possessions), Puerto Rico and Canada.
19. "Wrongful act" means any actual or alleged negligent act, error or omission, misstatement or misleading statement, including any of the foregoing that results in a "personal injury peril," but only to the extent committed in "your" performance of "professional services".,

Solely if you are a Collection Agent, as defined by Item 1. of the Schedule to this endorsement, "wrongful act" also means any actual or alleged violation of the federal Fair Debt Collections Practices Act (FDCPA) or any similar statutory or common law of the United States of America or any state or jurisdiction therein.

ALL OTHER TERMS, CONDITIONS AND EXCLUSIONS SHALL REMAIN UNCHANGED.