

**INSURANCE AGENTS AND BROKERS  
PROFESSIONAL LIABILITY INSURANCE POLICY**

**BCS INSURANCE COMPANY  
2 Mid America Plaza, Suite 200  
Oakbrook Terrace, IL 60181**

**THIS IS A CLAIMS MADE POLICY - PLEASE READ CAREFULLY**

**THE INSURED ACKNOWLEDGES THAT THIS POLICY INCLUDES DEFENSE EXPENSES WITHIN LIMITS COVERAGE.**

This means the “each agent each Policy Period” limit of liability and “Aggregate limit of liability” can be reduced or exhausted by defense expenses and the deductible can be reduced or exhausted by defense expenses. The Company shall not be liable for legal defense costs or for the amount of any judgment or settlement after exhaustion of the liability limit.

**DECLARATIONS**

**Policy No. AEO-30205**

- Item 1. Named Insured:** Independent Agents of Empire HealthChoice Assurance, Inc. & Empire HealthChoice HMO, Inc.
- Item 2. Address** One Liberty Plaza  
New York, NY 10006
- Item 3. Policy Period:** From: July 1, 2017 To: July 1, 2018
- Item 4. Deductible:** \$1,000 each claim concerning Blue Cross Blue Shield covered products  
\$2,500 each claim concerning other than a Blue Cross Blue Shield product claim
- Item 5. Limit of Liability:**(See Premium Endorsement)
- Item 6. Premium:** (See Premium Endorsement)
- Item 7. Endorsement Form Numbers:**
  - 92.504 -1 Mutual Funds Representative Endorsement
  - 92.801 Premium Endorsement
  - 92.815-1 Agency Coverage Endorsement
  - 92.852-1 NY Defense Within Limits Signed Acknowledgement Endorsement
  - 92.Notice2NY Claims Made Policies Application Disclosure Notice
- Item 8. Retroactive Date:** July 1, 2012
- Item 9. Optional Supplemental Extended Reporting Period:** 50% of the current policy's premium, using rates in effect on the effective date of the policy.

**Item 10. Sponsoring Organization: NAPA**

**Notice:**

**“This insurance coverage contains claims-made coverage. Except as may be otherwise provided herein, the coverage provided by the Policy is limited to Claims that are first made against the Insured during the Policy period or Extended Reporting Period resulting from wrongful acts committed after the Policy retroactive date. Please read and review the insurance carefully and discuss the coverage with your agent.”**

  
SECRETARY

  
PRESIDENT

BCS Insurance Company, hereinafter called the Company, agrees to provide insurance coverage as provided in this Policy, in consideration for the payment of the premium and in reliance upon the statements in the Application and in the Declarations and subject to all of the terms of this Policy as follows:

## **SECTION I**

### **COVERAGE**

The Company shall pay on behalf of an Insured Loss and Defense Expenses resulting from any Claim first made against an Insured during the Policy Period or the automatic Extended Reporting Period or the optional Extended Reporting Period and resulting from a Wrongful Act committed after the Policy retroactive date in excess of the applicable deductible and within the limit of liability specified in the Declarations.

This Policy does not apply to any claim or claims made against the Insured based upon, arising out of or attributable to any act or omission or error committed or alleged to have been committed prior to this Policy's retroactive date as listed in the Declarations.

## **SECTION II**

### **DEFENSE AND SETTLEMENTS**

The Company, in the Insured's name and behalf, shall have the right and duty to investigate, defend, conduct settlement negotiations and enter into settlements for any Claim for which coverage is provided under the terms of this Policy, even if such Claim is groundless, false, fraudulent, or for an amount less than the Insured's deductible.

If a Claim includes both covered and uncovered allegations, this Policy will provide a defense for the entire claim.

In recognition of the fact that this Policy includes Defense within the Limit of Liability and therefore up to one hundred percent (100%) of the Limit of Liability may be used for Defense costs, the Insured is granted the right to choose a defense attorney of their choice or consent to the Company's choice of attorney, participate in any defense provided under this Policy and consent to settlement with the agreement that such consent will not be unreasonably withheld.

The Insured shall cooperate with the Company, and, upon the Company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in conducting litigation.

The Insured shall not admit liability for, nor make any voluntary settlement, nor incur any costs or expenses in connection with any Claim, except with the written consent of the Company.

## **SECTION III**

### **LIMIT OF LIABILITY AND DEDUCTIBLE**

The limit of liability of the Company for Loss and Defense Costs on account of a single Claim first made against an Insured while coverage is in force shall not exceed the "per Claim" amount specified in Item 5 of the Declarations, subject to an aggregate limit "each agent each Policy Period" in the amount specified in Item 5 of the Declarations. In no event shall the Company pay Loss and Defense Costs greater than the specified aggregate limit "each agent each Policy Period" on behalf of any Insured for Claims first made during a Policy Period. The Insured acknowledges that the "each agent each Policy Period" and "Aggregate limit of Liability" can be reduced or exhausted by defense expenses and the deductible can be reduced or exhausted by defense expenses. The Company shall not be liable for legal defense costs or for the amount of any judgment or settlement after exhaustion of the liability limit.

The inclusion of more than one Insured or the making of Claims by more than one person or organization shall not operate to increase the Company's Limit of Liability as stated herein. Two or more Claims against an Insured arising out of a single Wrongful Act, or multiple Wrongful Acts that share as a common nexus any fact, circumstance, situation, event or transaction, shall be treated as a single Claim. All such Claims, that arise after the Policy retroactive date, shall be considered first made during the Policy Period in which the earliest Claim arising out of such acts, errors, or omissions was first made. All such Claims shall be considered a single claim and shall be subject to the same limit of liability.

All Insureds under this policy share the Limits of Liability. In no event will the number of Insureds involved in a claim increase the Limits of Liability stated in Item 5 of the Declarations.

The limit of liability as stated in Item 5 of the Declarations shall apply in excess of the deductible as stated in Item 4 of the Declarations. The deductible shall apply to payment of Loss on each Claim instituted against the Insured.

Should the Company, for any reason, pay the entire amount of Loss without regard to the deductible, the Insured will reimburse the Company within 30 days of the Company's request.

When the Limit of Liability of this Policy is exhausted by the payment of judgments or settlements and liability continues to exist, the Company and Insured must come to written agreement within thirty (30) days on the process for the orderly transfer of defense duties. The procedures for this transfer are outlined below.

1. If we conclude that, based on a Claim or Claims which have been reported to us and to which this insurance may apply, a Limit of Liability is likely to be exhausted by payment of Defense Expenses, judgments or settlements, we will notify the Named Insured, in writing, to that effect.

2. When the Limit of Insurance has actually been exhausted by payment of Defense Expenses, judgments or settlements:
  - a. We will notify the Named Insured, in writing, as soon as practicable, that:
    - (1) Such a Limit of Liability has been exhausted; and
    - (2) Our duty to defend a Claim or Claims seeking damages subject to that Limit of Liability has also ended.
  - b. We will initiate, and cooperate in, the transfer of control, to any appropriate Insured, of all Claims seeking damages which are subject to that Limit of Liability and which are reported to us before that Limit of Liability is exhausted. That Insured must cooperate in the transfer of control of said Claims.

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such Claims until such transfer is completed, provided the appropriate Insured is cooperating in completing such transfer.

We will take no action whatsoever with respect to any Claim seeking damages that would have been subject to that Limit of Liability, had it not been exhausted, if the Claim is reported to us after that Limit of Liability has been exhausted.
  - c. The Named Insured, and any other Insured involved in a Claim seeking damages subject to that Limit of Liability, must arrange for the defense of such Claim within such time period as agreed to between the appropriate Insured and us. Absent any such agreement, arrangements for the defense of such Claim must be made as soon as practicable.
3. The Named Insured will reimburse us for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph **2.b.** above.

The duty of the Named Insured to reimburse us will begin on:

  - a. The date on which the applicable Limit of Liability is used up, if we sent notice in accordance with Paragraph **1.** above; or
  - b. The date on which we sent notice in accordance with Paragraph **2.a.** above, if we did not send notice in accordance with Paragraph **1.** above.
4. The exhaustion of any Limit of Liability by the payments of Defense Expenses, judgments or settlements, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

## **SECTION IV**

### **DEFINITIONS**

Whenever used in this Policy:

- a) "Claim" shall mean any written notice received by an Insured that any person or entity intends to hold such Insured responsible for a Wrongful Act involving Professional Services.

"Claim" does not include (1) criminal proceedings or investigations, (2) administrative proceedings or investigations against an Insured by or before any federal, state or local governmental regulatory or licensing agency or any national,

regional or local self regulatory association or commission.

b) "Client" shall mean an individual or business who is a member of the general public and uses the Professional Services of the Insured. Client shall not include a Named Insured, an employee of a Named Insured or any current or former owners, partners, shareholders or directors of an Insured.

c) "Defense Expenses" shall mean:

1. all reasonable and necessary fees charged by the attorney(s) designated by the Company, or designated by an Insured with the Company's written consent, in the defense of any Claim against an Insured.
2. all premiums on bonds to release attachments and appeal bonds, limited to that portion of such bond that does not exceed the limit of liability of this Policy, but without any obligation to apply for or furnish such bonds;
3. all costs taxed against the Insured in any suit and all expenses incurred by the Company;
4. Notwithstanding any other provisions herein, all interest accruing after the entry of judgment is payable in addition to the Policy limit of liability.

However:

- a. the interest due which is payable in addition to the Policy limit of liability will be paid only on that portion of the judgment which does not exceed the applicable limit of liability; and
  - b. such interest accrues only until the Company has tendered or paid the part of such judgment as does not exceed the Company's limit of liability thereon;
5. all reasonable expenses incurred by the Insured at the Company's request in assisting the Company in the investigation and defense of any Claim or suit, provided however that Defense Expenses shall not include salaries, wages, overhead or benefits expenses of an Insured or any employee of an Insured.
- d) "Extended Reporting Period" means (1) the 60 day period of time following the end of the Policy Period or earlier termination of the Policy during which an Insured may provide the Company with notice of Claims per Section IX of this Policy or (2) such additional time for reporting Claims for Wrongful Acts occurring prior to the end of the Policy Period as provided in a separate Named Insured Extended Reporting Period Endorsement to this Policy.
- e) "Insured" shall mean the following when the "Named Insured" listed in Item 1 of the Declarations is an individual agent ,:

1. the Named Insured;
2. any secretarial, clerical, administrative or customer service employee of the Named Insured while acting within the scope of their duties on behalf of and under the supervision of the Named Insured in connection with the Named Insured's performance of Professional Services. Such employee may be deemed an Insured under this subsection only if the employee is not involved in soliciting or negotiating insurance and devotes the employee's full time to clerical and administrative services, including the incidental taking of information from customers and receipt of premiums in the office of the Named Insured. Provided further that any such employee who is acting as an agent, sub-agent, broker or sub-broker or who receives any commissions or whose compensation varies by the volume of premiums taken and received shall not be deemed to be an Insured under this subsection;
3. the estate, heirs, executors, administrators, assignees or legal representatives of an Named Insured in the event of the Named Insured's death, incapacity or bankruptcy, but only to the extent that the Named Insured had coverage under this Policy;
4. the agency under which the Named Insured is doing business or is employed, but only for such agency's vicarious liability resulting solely from Wrongful Acts of the Named Insured otherwise covered under this Policy, and not due to any actual or alleged independent Wrongful Acts of the agency. Notwithstanding the foregoing, owners, partners, shareholders or directors of the agency are not Insureds under this policy.

However, when the "Named Insured" listed in Item 1 of the Declarations is an Insured Agency the definition of "Insured" is replaced with the following:

"Insured" shall mean:

- (1) the Named Insured;
- (2) any Employee of the Insured Agency, but solely while acting within the scope of his or her duties as such;
- (3) any owner, partner, executive, officer, director or stockholder of the Insured Agency, but solely while acting within the scope of his or her duties as such; and
- (4) in the event of the death, incapacity or bankruptcy of any Insured listed in (a)(1-3) above, the estate, heirs, executors, administrators, assignees or legal representatives of the Insured but only to the extent that such person or entity had coverage under this Agency Coverage Endorsement.

Employee means an individual whose labor or service is engaged by the Insured Agency and who is on the Insured Agency's regular payroll, with federal and/or state taxes withheld and required to be reported on a W-2 Form. The appearance of an individual's

name on a list or schedule of employees of the Insured Agency is not determinative of the individual's status as an Employee.

Notwithstanding the definition of Insured above, an Employee of the Insured Agency who has purchased individual coverage shall not be an Insured when the Named Insured listed on the Declarations is an Insured Agency for the period of time during which he or she has individual coverage.

Individual Coverage means agents errors or omissions coverage purchased from the Company by a licensed agent who is appointed to represent the Sponsoring Organization identified in Item 7 of the Declarations.

A policy issued to an Insured Agency as the Named Insured will not cover any claim seeking to hold an Insured Agency liable for the acts, errors or omissions of an Insured who has individual coverage for such acts, errors or omissions to the extent that the Agency is insured by such Individual Coverage.

- f) "Insured Agency" means the insurance agency entity named in Item 1 of the Declarations which has been appointed to represent the Sponsoring Organization named in Item 7 of the Declarations.
  
- g) "Loss" shall mean such amounts that the Insured is legally obligated to pay, including settlements or judgments, resulting from Claims up to the Policy limits. Loss shall not include:
  - 1. civil or criminal fines or penalties,
  - 2. punitive or exemplary damages,
  - 3. the portion of any multiplied damage award which exceeds the amount multiplied,
  - 4. return or withdrawal of commission, fees or other consideration paid to an Insured,
  - 5. costs and expenses resulting from compliance with any injunctive or non monetary relief or agreement to provide such relief;
  - 6. matters deemed uninsurable under applicable law.
  
- h) "Named Insured" means the individual agent or Insured Agency identified in Item 1 of the Declarations so long as that person remains a member in good standing of or Insured Agency holds a current valid appointment with the Sponsoring Organization identified in Item 10 of the Declarations and who has applied for and been accepted for coverage under this Policy with the Company or its designee.
  
- i) "Policy Period" shall mean the time between the effective date of this Policy and the expiration date, or earlier termination date, if any, as specified in Item 3 of the Declarations and shall begin and end at 12:01 a.m. Standard Time at the address of the Named Insured.



- j) "Professional Services" shall mean specialized services rendered to a Client as a licensed Life, Accident and Health Insurance Agent, a licensed Life, Accident and Health Insurance General Agent or a licensed Life, Accident and Health Insurance Broker. Professional Services shall not include: (1) the surrender, conversion or alteration of a Life, Accident or Health Insurance product in order to invest in anything other than a Life, Health or Accident Insurance product, or (2) any advice or recommendation to in any way convert, redeem or alter a Life, Accident or Health Insurance product in order to invest in anything other than a Life, Health or Accident Insurance product.
- k) "Wrongful Act" shall mean any actual or alleged negligent act, error or omission in the rendering of or failure to render Professional Services by an Insured to or for a Client, solely in his or her capacity as a licensed Life, Accident and Health Insurance Agent, a licensed Life, Accident and Health Insurance General Agent or a licensed Life, Accident and Health Insurance Broker.

## **SECTION V**

### **EXCLUSIONS**

The Company shall not pay Loss or Defense Expenses resulting from any Claim based upon, arising out of, directly or indirectly resulting from or in consequence of:

- a) any dishonest, fraudulent, criminal or malicious act, or assault or battery committed by or contributed to by the Insured or Insureds;
- b) bodily injury to, or sickness, disease or death of any person arising out of the Wrongful Act(s) of an Insured;
- c) injury to or destruction of any property, including the Loss of use thereof;
- d) any liability assumed by the Insured under contract, unless the Insured would have been legally liable in the absence of such contract;
- e) the financial inability to pay, insolvency, receivership, bankruptcy or liquidation of any insurance plan, any reinsurer, any IPA, HMO, PPO, DSP or any pool, syndicate, association or other combination formed for the purpose of providing health care, insurance or reinsurance;
- f) the insolvency, receivership, bankruptcy, liquidation or financial inability to pay of any company, entity or other investment vehicle in which any customer has invested;
- g) any transaction involving the actual or alleged violation of any statute or any rule or regulation of any federal, provincial or state securities regulatory agency, the Securities Act of 1933, the Securities Exchange Act, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisors Act of 1940, any similar state statute, any rule or regulation promulgated under any of the foregoing, or any amendment to any of the foregoing, or any provision of the

common law imposing liability in connection with the offer, sale or purchase of securities.

- h) any claim based upon a loss or alleged loss sustained from fluctuations in the market value of any mutual funds, securities, unregistered securities, promissory note programs, step up, step down and callable CDs, viaticals and life settlements, structured settlements, collateralized debt obligations, private equity, tax liens, tax deeds, day trading or other investment product;
- i) a loss or alleged loss sustained from fluctuations in the market value of any fixed or variable annuities, variable life insurance, mutual funds, securities, unregistered securities, promissory note programs, step up, step down and callable CDs, viaticals and life settlements, structured settlements, collateralized debt obligations, private equity, tax liens, tax deeds, day trading or other investment product;
- j) any loss arising out of the Named Insured making representations, promises or guarantees as to:
  - 1. interest rates, or
  - 2. fluctuations in interest rates, or
  - 3. future premium payments, or
  - 4. market value(s),
  - 5. the future value of, or
  - 6. the rate of return of

any mutual funds, securities, unregistered securities, promissory note programs, step up, step down and callable CDs, viaticals and life settlements, structured settlements, collateralized debt obligations, private equity, tax liens, tax deeds, day trading or other investment product;

- k) any actual or alleged price fixing, price discrimination, predatory pricing, restraint of trade, antitrust, monopolization, unfair trade, or unfair anti-competitive conduct, commissions, contingent commissions, taxes, dispute over fees, reimbursement or the failure to collect, pay or return premium, commingling of, or use of, clients' funds.
- l) services performed by the Insured as an actuary, accountant, attorney, tax advisor, investment advisor, investment counselor, financial planner, real estate agent or real estate broker or property and casualty agent or property and casualty broker;
- m) the actual or alleged wrongful termination, discipline, or employment discrimination against any employee or agent of the Insured, including but not limited to harassment in violation of any federal, state or local law, the failure to hire or employ an applicant, the failure to promote any employee of the Insured, any adverse or differential employment action on any basis prohibited by federal, state or local law or retaliation for any employee's exercise of any right pursuant to any law for the protection of employees;

- n) any liability arising out of any duties or activities assumed under contract by an Insured as a plan administrator or fiduciary under the Employee Retirement Income Security Act of 1974 (ERISA), the Pension Benefits Act or the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) including any amendments, regulations or enabling statutes pursuant thereto, or any other similar federal, state or provincial statute or regulation;
- o) any Claim made against the Insured based upon or arising out of any pension, profit sharing, health or welfare or other employee benefit plan or trust sponsored by the Insured as an employer;
- p) any Claim based solely on the Insured's status as a named fiduciary or under power of attorney;
- q) any proceedings against or fines or penalties levied against the Insured by a state or federal regulatory agency or self-regulatory body;
- r) any Claim made against the Insured arising out of the Insured's activities as the third party administrator of any plan whether Insured or self Insured and whether the Insured performs such activities for a fee or for no fee;
- s) any Claim arising out of or alleging the unauthorized use of trade secrets or confidential or proprietary information;
- t) any Claim brought against the Insured by a securities broker/dealer, a broker/dealer organization or any investment company;
- u) any Claim arising out of or in connection with a fraudulent or nonexistent entity;
- v) any Claim arising out of the referral of individuals or entities to individuals or entities selling or servicing or purporting to sell or service property and casualty insurance or securities products;
- w) any Loss arising out of or based upon:
  1. the quality of care rendered by or lack of care rendered by or the alleged malpractice of a participating provider of services its employees, physician or other practitioner, of any IPA, HMO, PPO, or DSP or other health care provider; or
  2. the failure of an IPA, HMO, PPO or DSP or other health care provider to pay the salaries or fees of any practitioner.
- x) any Wrongful Act or any fact, circumstance or situation which has been the subject of any notice given prior to the effective date of this Policy under any other insurance policy.
- y) the actual or alleged signing or verification of any insurance application or other

document on behalf of any Client.

- z) any Wrongful Act or any fact, circumstance or situation which has been the subject of any notice given prior to the beginning of continuous coverage with the Company.
  - aa) The actual or alleged signing or verification of any insurance application or other document on behalf of any client.
  - bb) Punitive or Exemplary damages.
  - cc) The actual or alleged knowledge of, direction of or participation in any act of sexual harassment or sexual misconduct.

## **SECTION VI**

### **POLICY PERIOD**

This Policy shall be in force during the Policy Period as stated in Item 3 of the Declarations, or earlier termination date, if any. Any renewal of this Policy by endorsement shall be deemed to be a new and separate Policy that shall be in force only for the Policy Period as stated in the renewal endorsement.

## **SECTION VII**

### **EXTENDED REPORTING PERIODS**

#### **AUTOMATIC EXTENDED REPORTING PERIOD**

- a. If this Policy is cancelled or not renewed by either the Company or the Named Insured, or if the Company changes the Policy and there is a decrease in limits, reduction in coverage, increased deductible or self-insured retention, a new exclusion or any other change in coverage less favorable to the Insured, an Insured who is insured under this policy as of the termination date of the Policy, or who was insured at any time during the policy period, will be provided with a 60 day automatic Extended Reporting Period effective at the termination of the Policy Period. This automatic Extended Reporting Period shall not extend the Policy Period but shall extend the time in which an Insured may give written notice of Claims first made against the Insured after the Policy retroactive date. Subject to the terms and conditions of the Policy.
- b. The Extended Reporting Period will apply only to Claims first made against those Insureds covered under the Policy as of the termination date of this Policy or at any time during the term of the Policy.

#### **OPTIONAL SUPPLEMENTAL EXTENDED REPORTING PERIOD**

An optional Extended Reporting Period will be made available to the Insured when any of the following occur.

1. Cancellation or Non-Renewal by the Company.
2. Cancellation or Nonrenewal by the Insured.

3. Decrease in limits
4. Reduction of Coverage.
5. Increased deductible or self insured retention.
6. New Exclusion.
7. Any other change in coverage less favorable to the Insured.

The offering of an Extended Reporting Period will include the minimum offering an Extended Reporting Period with a duration of three (3) years. The Insured will be notified in writing of the availability and importance of an Extended Reporting Period and the premium for the options offered by the Company within thirty (30) days of the Policy termination date.

The Limit of Liability that applies at the inception of the Supplemental Extended Reporting Period is equal to one hundred percent (100%) of the Limit of Liability that applied at the inception of the expiring Policy Period if the claims made relationship between the Company and the Insured is for a duration of three (3) years or more. However, if the Claims Made relationship between the Company and Insured has continued for less than three (3) continuous years at the time the Supplemental Extended Reporting Period is offered and accepted the Limit of Liability that applies at the inception of the Supplemental Extended Reporting Period is the greater of fifty percent (50%) of the Limit of Liability that applied at the inception of the expiring Policy Period or the remaining aggregate limit of the expiring Policy period.

After an offering of an Extended Reporting Period is made by the Company, the Insured will have the greater of the following in which to submit written acceptance of Extended Reporting Period Coverage:

1. Sixty (60) days from the effective date of Policy termination; or
2. Thirty (30) days from the date of mailing of the offering of Extended Reporting Period Coverage.

In the event the Named Insured's status as a member in good standing of or appointment with the Sponsoring Organization terminates during a period in which the Named Insured has paid the applicable premium, the policy will remain in effect for the remainder of the Policy Period as if the Named Insured's status as appointed or a member in good standing of the Sponsoring Organization had not ceased, regardless of whether Named Insured's status is restored except that coverage will not be provided for any Wrongful Acts of an Insured which occur in whole or in part during the period when the Named Insured was not appointed or not a member in good standing of the Sponsoring Organization.

#### **AUTOMATIC EXTENDED REPORTING PERIOD and OPTIONAL SUPPLEMENTAL EXTENDED REPORTING PERIOD**

During a claims made relationship and any Extended Reporting Period, a person employed or otherwise affiliated with the Insured and covered by the Insured's claims made Policy during such affiliation shall continue to be covered under such Policy and any Extended Reporting Period after such affiliation has ceased for such person's

covered acts or omissions during such affiliation.

A claims made Policy issued to a corporation, partnership or other entity, shall provide Extended Reporting Period coverage upon termination of coverage to any person covered under the policy if:

1. Such entity is placed in liquidation or bankruptcy or permanently ceases operations;
2. The insured entity or its designated trustee does not purchase Extended Reporting Period coverage; and
3. Such person requests Extended Reporting Period coverage within 120 days of the termination of coverage.

## **SECTION VIII**

### **NOTICE**

- a) If during the Policy Period any Claim is made against an Insured, the Insured shall give the Company written notice of such Claim within the Policy period or Extended Reporting Period. Notwithstanding this, late notice will not invalidate a claim made by the Insured, an injured person or any other claimant if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible thereafter.
- b) Failure to give any notice required by this Policy within the time prescribed shall not invalidate any claim made by the Insured, an injured person or any other claimant unless the failure to provide timely notice has prejudiced the Company, except as provided in paragraph a. above. However, a claim is required to be made during the Policy period, any renewal thereof or any Extended Reporting Period, except as provided is paragraph a. above.
- c) With respect to a claim arising out of death or personal injury of any person, if the Company disclaims liability or denies coverage based upon the failure to provide timely notice, then the injured person or other claimant may maintain such an action directly against the Company, in which the sole question is the Company's disclaimer or denial based on the failure to provide timely notice, unless within sixty days following such disclaimer or denial, the Insured or the Company:
  1. initiates an action to declare the rights of the parties under the Policy; and;
  2. names the injured person or other claimant as a party to the action.
- d) If during the Policy Period, the automatic Extended Policy Period or optional Extended Reporting Period, an Insured becomes aware of a specific Wrongful Act and gives the Company written notice as soon as practicable of the specific Wrongful Act, and any consequences which have or may result from the Wrongful Act, then any Claim not otherwise excluded by the terms of this Policy subsequently made arising out of such Wrongful Act shall be deemed to have been made at the time such written notice was given.

e) Notice given by or on behalf of the Insured, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of the Company in New York, with particulars sufficient to identify the Insured shall be deemed notice to the Company.

## **SECTION IX**

### **OTHER INSURANCE**

If the Insured has other insurance against the Loss covered by this Policy, this Policy shall be excess over any other valid and collectible insurance and shall then apply only in the amount by which the applicable limit of liability of this Policy exceeds the sum of the applicable limit of liability of all such other insurance. However, if the Insured has similar coverage with the Company or one of its affiliates, this and such other policies issued by the Company or its affiliate will contribute to the Claim in the same proportion as each Policy's limits bear to the total covered Claim.

## **SECTION X**

### **TERRITORY**

This Policy applies to any act, error or omission which takes place anywhere in the world, provided that the Claim is made and suit is brought against the Insured in the United States of America, its territories or possessions and the District of Columbia or Puerto Rico.

## **SECTION XI**

### **SUBROGATION**

In case of payment of Loss by the Company hereunder, the Company shall be subrogated to the amount of such payment to the Insured's right of recovery against any other person or organization for such Loss, and the Insured shall execute all papers required, and shall cooperate with the Company to secure such rights.

Any recovery (after expenses) shall be used to reduce the Loss, and so much of such recovery shall be paid to the Company as will reduce the Loss ultimately borne by the Company to what it would have been had the recovery preceded any payment of such Loss by the Company.

## **SECTION XII**

### **CHANGES**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or keep the Company from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed, except by endorsements issued to form a part of this Policy.

### **SECTION XIII**

#### **ASSIGNMENT**

No assignment of Interest under this Policy shall be valid, unless the written consent of the Company is endorsed hereon.

### **SECTION XIV**

#### **ACTION AGAINST COMPANY**

No action shall lie against the Company unless there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured or by written agreement of the Insured, the Claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. If a final judgment against the Insured is not satisfied by the Company within 30 days, action may be brought against the Company.

No person or organization shall have any right under this Policy to join the Company as a party to any action against the Insured to determine the Insured's liability, nor shall the Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

### **SECTION XV**

#### **CANCELLATION, NON-RENEWAL AND CONDITIONAL RENEWAL**

##### **CANCELLATION**

The Policy may be canceled by the Company by mailing written notice of cancellation to the First Named Insured at the Named Insured's last known address as recorded in the Policy and to the First Named Insured's authorized agent or broker. Such written notice shall state when, not less than sixty (60) days thereafter, or twenty (20) days in the case of nonpayment of premium, such cancellation shall be effective. The mailing of written notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the Policy Period. Delivery of such written notice of cancellation to the First Named Insured shall be equivalent to mailing.

When this Policy has been in effect for sixty (60) days or more, or on or after the effective date of renewal, the Company may cancel this Policy only for the following reasons:

1. Non-payment of premium;
2. Conviction of a crime arising out of acts increasing the hazard insured against;



3. Discovery of fraud or material misrepresentation in the obtaining of this Policy or in the presentation of a claim hereunder;
4. After the issuance of this Policy, or after the last renewal date, the discovery of an act or omission or a violation of any policy condition that substantially and materially increases the hazard insured against and which occurred subsequent to the inception of the current Policy period;
5. A material change in the nature or extent of the risk occurring after issuance or last annual renewal anniversary date of the Policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the Policy was issued or renewed;
6. A determination by the Superintendent that continuation of the present premium volume of the Company would jeopardize the Company's solvency or be hazardous to the interests of policyholders of the Company, its creditors or the public; or
7. A determination by the Superintendent that continuation of the Policy would violate or would place the Company in violation of any provision of NY statutes;
8. The Insured's license to practice his profession is suspended or revoked; or
9. When this Policy is excess, the cancellation of one or more of the underlying Policies providing primary or intermediary coverage where such cancellation is based on reasons allowed by New York law, and such Policies are not replaced without a lapse;

All notices of cancellation for policies in effect less than sixty (60) days or in effect sixty (60) days or more will include the reason(s) for the Company action. Also all notices of cancellation for non-payment of premium will include a statement that clearly informs the Insured of the amount due.

This Policy may be canceled by the Named Insured by mailing written notice stating when the cancellation shall be effective to the Company or its authorized representative.

If the Company cancels, the earned premium shall be the pro rated amount of the annual premium. If the Named Insured cancels, the premium will be cancelled short rate where allowable by law. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed to the Named Insured shall be sufficient tender of any refund or premium due to the Named Insured, provided that if at the time of cancellation the Aggregate Limit of Liability has been exhausted, the entire premium shall be considered earned.

## **CONDITIONAL RENEWAL**

If this Policy is renewed with any of the following alterations, written notice citing the specific Policy alteration will be provided to the First Named Insured at the address shown in the Policy and to the First Named Insured's authorized agent or broker at least sixty (60) days but not more than one hundred twenty (120) days prior to the expiration of the current Policy period. The notice will include the reason for the conditional renewal action.

1. A change in limits;
2. A change in type of coverage;

3. A reduction of coverage;
4. Increased deductibles or retention amounts;
5. Additional exclusions; or
6. A premium increased of more than ten percent (10%).

## **NON-RENEWAL**

If this Policy is non-renewed by the Plan or Company written notice citing the specific reason for the non-renewal will be mailed to the First Named Insured and to the First Named Insured's authorized agent or broker at least sixty (60) but not more than one hundred twenty (120) days prior to the expiration of the current policy period. The notice will include the reason for the non-renewal action.

If any of the cancellation, conditional renewal or non-renewal notices required in this section are mailed later than allowed by law, the aggregate limit of the expiring Policy is increased in proportion to the coverage extension that will be granted by the Company as a result of the late notice.

## **NONRENEWAL AND CONDITIONAL RENEWAL SECOND NOTICE**

Conditional and Nonrenewal notices will advise the Insured that a second notice will be mailed at a later date indicating the Company's intention to non-renew or renew with changed coverage or rates. This notice will advise the Insured that coverage will continue at the same coverage and rates as the expiring Policy until the later of the expiration date or sixty (60) days after the second notice is mailed or delivered. An alternative renewal notice shall also advise the Insured of the availability of loss information and upon written request of the first named insured, or their agent or broker the Company will mail or deliver the following loss information covering a period of years specified by the Superintendent by regulation or the period of time coverage has been provided by the Company, whichever is less, within ten (10) days of such written request.

1. Information on closed claims, including date and description of occurrence, and any payments;
2. Information on open claims, including date and description of occurrence, and amounts of any payments;
3. Information on notice of any occurrences, including date and description of occurrence.

## **SECTION XVI**

### **REPRESENTATIONS**

By acceptance of this Policy, all Insureds represent that the information and statements contained in the Named Insured's application(s) and any supplement or attachment thereto are true, accurate and complete. All such information and statements are material to the issuance of this Policy to the Named Insured and the extension of coverage under this Policy to the Named Insured is in reliance upon the truth of the information and statements in the Named Insured's application. The application and any supplements or attachments thereto shall be considered as incorporated into and a part

of this Policy, whether or not physically attached to the Policy or Certificate of Insurance.

**IN WITNESS WHEREOF**, the Company has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this Policy to be signed on the Declarations page by an authorized representative of the Company.

**BCS INSURANCE COMPANY**  
2 Mid America Plaza, Suite 200  
Oakbrook Terrace, Illinois 60181

**MUTUAL FUNDS REPRESENTATIVE ENDORSEMENT**

IT IS AGREED that for each insured agent named on the attached Mutual Funds roster and any subsequent rosters, and subject to all the terms of this policy not inconsistent herewith, the Company does hereby agree to pay on behalf of the insured agent such Loss as is sustained by the insured agent by reason of liability imposed by law for damages caused by an negligent act, error or omission of the insured agent arising out of the rendering of services as a registered representative in the sale and servicing of mutual funds through a NASD registered broker /dealer organization.

The following exclusions apply only to the coverage provided by this Endorsement and are in addition to the Exclusions otherwise set forth in the policy:

This policy does not apply to:

- A. Any act, error or omission if, at the time of such act, error or omission, the insured agent is engaged in the sale of mutual funds other than through a NASD Register broker/dealer organization;
- B. Any Claim for Loss sustained or alleged to have been sustained by any person, firm or organization that is not either a customer of the insured agent or a customer's appointed administrator, executor, receiver or trustee in bankruptcy;
- C. A willful violation of any statute or any rule or regulation of any federal, provincial or state securities regulatory agency;
- D. Any Claim brought against the insured agent by a broker/dealer organization or any investment company;
- E. Any Claim based upon a Loss or alleged Loss sustained from fluctuations in the market value of any mutual fund;
- F. Any Loss arising out of the insured agent making promises or guarantees as to the rate of return and/or future value of any mutual fund;
- G. Any Claim arising out of the insolvency, receivership, bankruptcy, liquidation or financial inability to pay of any company, entity or other investment vehicle in which any customer has invested.

Regardless of the number of Agents covered, the liability of the Company for Loss on account of all Claims arising out of the coverage provided by this endorsement during the policy period shall be the Limit of Liability stated in Item 5 of the Declarations.

All other terms and conditions of this policy shall remain unchanged. This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

**BCSINSURANCECOMPANY  
2 Mid America Plaza, Suite 200  
Oakbrook Terrace, Illinois 60181**

**PREMIUM ENDORSEMENT**

**IT IS AGREED** that, notwithstanding any provision in the policy to the contrary, each individual agent shall elect the limit of liability applicable to claims made against them from those limits set out as follows at the premium indicated.

**OPTION A)** Limit of Liability: \$1,000,000.00 each claim subject to an Annual Aggregate of

\$1,000,000.00 each Agent each policy period

Premium Per Agent \$ 410.00

**OPTION B)** Limit of Liability: \$1,000,000.00 each claim subject to an Annual Aggregate of

\$2,000,000.00 each Agent each policy period

Premium Per Agent \$ 535.00

All other terms and conditions of this policy shall remain unchanged.

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The information below is required only when this endorsement is issued subsequent to the preparation of the policy.)

Endorsement Effective

Policy No.

Endorsement No.

Named Insured



Policy referenced in Item VII above (except as amended by this Endorsement), the Company hereby agrees to extend coverage to the Insured Agency as follows:

Solely for purposes of the coverage provided by this Agency Coverage Endorsement, the following terms shall have the following meanings:

- (a) Insured means:
  - (1) the Insured Agency;
  - (2) any Employee of the Insured Agency, but solely while acting within the scope of his or her duties as such;
  - (3) any owner, partner, executive, officer, director or stockholder of the Insured Agency, but solely while acting within the scope of his or her duties as such; and
  - (4) in the event of the death, incapacity or bankruptcy of any Insured listed in (a)(1-3) above, the estate, heirs, executors, administrators, assignees or legal representatives of the Insured but only to the extent that such person or entity had coverage under this Agency Coverage Endorsement.
- (b) Insured Agency means the entity named in Item I of this Agency Coverage Endorsement which has been appointed to represent the Plan named in Item VI of this Agency Coverage Endorsement.
- (c) Employee means an individual whose labor or service is engaged by the Insured Agency and who is on the Insured Agency's regular payroll, with federal and/or state taxes withheld and required to be reported on a W-2 Form. The appearance of an individual's name on a list or schedule of employees of the Insured Agency is not determinative of the individual's status as an Employee.
- (d) Individual Coverage means agents errors or omissions coverage purchased from the Company by a licensed agent who is appointed to represent the Plan identified in Item VI of this Agency Coverage Endorsement.

Notwithstanding the definition of Insured above, an Employee of the Insured Agency who has purchased Individual Coverage shall not be an Insured under this Agency Coverage Endorsement for the period of time during which he or she has Individual Coverage.

This Agency Coverage Endorsement will not cover any claim seeking to hold an Insured Agency liable for the acts, errors or omissions of an Insured who has Individual Coverage for such acts, errors or omissions to the extent that the Agency is insured by such Individual Coverage.

For purposes of coverage under this Agency Coverage Endorsement, references in the Policy and other endorsements thereto to an "Insured" shall include an Insured Agency as defined herein.

**Section III, LIMIT OF LIABILITY AND DEDUCTIBLE**, is deleted and replaced with the following:

### **SECTION III**

**LIMIT OF LIABILITY AND DEDUCTIBLE** The "each claim" Limit of Liability stated in Item IV above is the maximum amount the Company will pay for all loss resulting from each claim for which this Agency Coverage Endorsement provides coverage, regardless of the number of claimants or Insureds involved in the claim. Two or more claims arising out of a single act, error, omission or a series of related acts, errors or omissions shall be: treated as a single claim; deemed made and reported on the dates the earliest such claim was made and reported; and subject to a single "each claim" Limit of Liability.

The "aggregate" Limit of Liability stated in Item IV above is the maximum amount the Company will pay for all loss resulting from all claims for which this Agency Coverage Endorsement provides coverage, regardless of the number of claims made or the number of claimants or Insureds involved in those claims.

All Insureds under this Agency Coverage Endorsement share the Limits of Liability. In no event will the number of Insureds involved in a claim increase the Limits of Liability stated in Item IV of this Agency Coverage Endorsement.

The Company's liability for payment of loss due to a claim shall apply only to that part of the loss which is in excess of the applicable Deductible amount stated in Item III of this Agency Coverage Endorsement. Should the Company in its discretion, elect to pay the entire loss without regard to the Deductible, the Insured Agency will reimburse the Company for the Deductible within 30 days of the date the Company requests such reimbursement.

All other terms and conditions of this policy shall remain unchanged.

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

**Endorsement Effective**

**Policy No.**

**Endorsement No.**



**NEW YORK DISCLOSURE FORM FOR APPLICANTS AND  
POLICYHOLDERS  
DEFENSE WITHIN LIMITS SIGNED ACKNOWLEDGEMENT**

This policy includes Defense within Limits Coverage.

This means the limit of liability of the Company for Loss and Defense Expenses on account of a single Claim first made against an Insured while coverage is in force, shall not exceed the “per Claim” amount specified in Item 5 of the Declarations, subject to an aggregate limit “each agent each Policy Period” in the amount specified in Item 5 of the Declarations. In no event shall the Company pay Loss and Defense Expenses greater than the specified aggregate limit “each agent each Policy Period” on behalf of any Insured for Claims first made during a Policy Period. By your signature on this form, **you acknowledge that the “each agent each Policy Period” limit of liability and “Aggregate limit of liability” can be reduced or exhausted by defense expenses and the deductible can be reduced or exhausted by defense expenses. The Company shall not be liable for legal defense expenses or for amount of any judgment or settlement after exhaustion of the liability limit.**

Questions regarding your claims made policy should be directed to:

BCS Insurance Company  
2 Mid America Plaza, Suite 200  
Oakbrook Terrace, IL 60181

**Defense within Limits Signed Acknowledgement**

By my signature below, I acknowledge that I have read this form and understand that this Policy is written on a Defense within Limits basis. The “each agent each Policy Period” limit of liability and “Aggregate limit of liability” can be reduced or exhausted by defense expenses and the deductible can be reduced or exhausted by defense expenses.

First Named Insured (Please Print) -----

First Named Insured (Signature) -----

Date (mm/dd/yyyy) -----

This form is attached to and becomes a part of the Policy.

## **NEW YORK DISCLOSURE NOTICE FOR APPLICANTS**

### **CLAIMS MADE POLICIES APPLICATION DISCLOSURE NOTICE**

The policy you purchased is written on a claims made basis. It does not provide coverage for occurrences or alleged wrongful acts that took place prior to the Policy retroactive date. Except for the Extended Reporting Period, the policy also does not provide coverage after the policy expiration date. The coverage provided by the Policy is limited to Claims that are first made against the Insured during the Policy period or Extended Reporting Period resulting from wrongful acts committed on or after the Policy retroactive date. Please read and review your Policy carefully and discuss the coverage with your agent.

Premiums for a claims made policy may be significantly lower than for an occurrence based policy during the first few years. The purchaser of a claims made policy should expect the premiums to increase significantly on an annual basis until maturity of the claims made relationship.

An automatic sixty (60) day extended reporting period will be granted when Cancellation or Nonrenewal takes place at the request of the Insured or any of the following Company actions occur:

1. Cancellation or Non-Renewal
2. Decrease in limits;
3. Reduction of Coverage;
4. Increased deductible or self insured retention;
5. New Exclusion;
6. Any other change in coverage less favorable to the Insured.

This automatic extended reporting period does not extend the Policy period but does extend the time in which the insured may report claims that were presented to the insured on or after the retroactive date of the Policy.

Also, upon any of the Company actions stated in 1 to 6 above, and upon Insured cancellation or non renewal, the Insured will be offered the opportunity to purchase a three (3) year extended reporting period. This offer will be presented to the insured in writing within thirty (30) days of the expiration of this Policy and will include a detailed explanation of how the rates for the extended reporting period were calculated, notice of how important it is to purchase extended reporting period coverage to avoid coverage gaps and the time frame within which the insured must notify the Company in writing of the decision to purchase extended reporting period coverage.

The Insured will have the greater of the following in which to submit written acceptance of Extended Reporting Period Coverage:

1. Sixty (60) days from the effective date of Policy termination; or
2. Thirty (30) days from the date of mailing of the offering of Extended Reporting Period Coverage.

Questions regarding your claims made policy should be directed to:

BCS Insurance Company

2 Mid America Plaza, Suite 200 Oakbrook Terrace, IL 60181

This notice is attached to and becomes a part of the Policy.