



ARCHITECTS & ENGINEERS PROFESSIONAL LIABILITY INSURANCE POLICY

THIS IS A CLAIMS-MADE AND REPORTED POLICY. SUBJECT TO ITS TERMS AND CONDITIONS, THIS POLICY APPLIES ONLY TO CLAIMS BOTH FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD AND IN ACCORDANCE WITH THIS POLICY'S REPORTING PROVISIONS.

CLAIM EXPENSES ARE PART OF AND NOT IN ADDITION TO THE LIMITS OF LIABILITY. PLEASE READ THIS POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company, including the **Application**, and subject to all the terms and conditions of this Policy (including all endorsements hereto), the Company and the **Insured** agree as follows:

I. INSURING AGREEMENT

The Company shall pay on behalf of the **Insured** all sums in excess of the applicable Retention that the **Insured** shall become legally obligated to pay as **Damages** and **Claim Expenses** as a result of any covered **Claim** that is both first made against the **Insured** during the **Policy Period** and first reported to the Company, in writing, during the **Policy Period** or any applicable **Extended Reporting Period** pursuant to the terms of the Policy; provided that:

- A. the **Claim** arises out of a **Wrongful Act**;
- B. such **Wrongful Act** was committed or allegedly committed on or after the applicable **Retroactive Date(s)**; and
- C. prior to the Effective Date of the Policy, no **Named Insured**, or partner, principal, director, officer, trustee or governor of any **Named Insured**, knew or reasonably could have foreseen that such **Wrongful Act** might result in a **Claim**.

II. SUPPLEMENTARY PAYMENTS

All payments made by the Company under Section II. **SUPPLEMENTARY PAYMENTS** will be in addition to the applicable Limits of Liability and no Retention shall apply.

A. Pre-Claims Assistance

- (1) At the sole discretion of the Company, the Company will pay reasonable legal fees, costs and expenses incurred by the Company to monitor or investigate any **Circumstance** reported to the Company in accordance with **GENERAL CONDITION C.(2)** of this Policy.
- (2) If a **Circumstance** becomes a covered **Claim**, any legal fees, costs or expenses incurred thereafter, whether by the Company or by the **Insured**, will be subject to the Retention and will reduce, and may exhaust, the applicable Limits of Liability.

B. Court Attendance Expenses

- (1) The Company will reimburse the **Insured** for actual loss or earnings, including lost wages or salary, and other reasonable expenses that are incurred by the **Insured**, due to time off from work, as a result of such **Insured's** attendance, pursuant to the Company's written request, at a trial, hearing, deposition,

mediation, non-binding arbitration or alternative dispute resolution proceeding held in connection with a covered **Claim**; and

- (2) the Company's maximum liability for all such expenses and loss of earnings shall not exceed: (1) one thousand and two hundred dollars (\$1,200) per **Insured** per day; and (2) six thousand dollars (\$6,000) for all such expenses and actual loss of earnings incurred in connection with all **Claims** first commenced against the **Insured** during the **Policy Period**.

C. Disciplinary Proceeding Expenses

- (1) The Company will reimburse the **Insured** for reasonable and necessary legal fees, costs and expenses incurred by the **Insured** during the **Policy Period** and reported to the Company in accordance with **GENERAL CONDITION C.(3)** of this Policy; and
- (2) the Company's maximum liability for all such legal fees, costs and expenses shall not exceed ten thousand dollars (\$10,000) for any such investigation, hearing or action, and twenty-five thousand dollars (\$25,000) for all such investigations, hearings or actions first commenced against the **Insured** during the **Policy Period**.

D. ADA, FHA and OSHA Expenses

- (1) The Company will reimburse the **Insured** for reasonable legal fees, costs and expenses incurred by the **Insured**, with the Company's prior written consent, in connection with an administrative or regulatory proceeding brought directly against such **Insured** by a government agency under the Americans with Disabilities Act (ADA), the Federal Fair Housing Act (FHA), the Occupational Safety and Health Act (OSHA), or any similar federal, state or local statutory law or common law, as a result of such **Insured's** rendering of, or failure to render, **Professional Services**; and
- (2) the Company's maximum liability for all such legal fees, costs and expenses shall not exceed ten thousand dollars (\$10,000) for any such proceeding, and twenty-five thousand dollars (\$25,000) for all such proceedings first commenced against the **Insured** during the **Policy Period**.

E. Crisis Management Event Expenses

- (1) The Company will reimburse the **Insured** for **Crisis Management Event Expenses** incurred by the **Insured** with the Company's prior written consent, in connection with a **Crisis Management Event**; and
- (2) the Company's maximum liability for all such legal fees, costs and expenses shall not exceed ten thousand dollars (\$10,000) for any such **Crisis Management Event** and thirty thousand dollars (\$30,000) for all **Crisis Management Events** first commenced against the **Insured** during the **Policy Period**.

III. DEFINITIONS

- A. "Application"** means the Company's own or a competing carrier's underwriting application attached to and forming part of this policy, including all supporting materials submitted with such application, which the Company relied upon to evaluate the insurability of the **Insured**.
- B. "Bodily Injury"** means physical injury, sickness or disease sustained by a person, including death resulting from any of these at any time; mental anguish; mental injury; or emotional distress.
- C. "Circumstance"** means any **Wrongful Act** that the **Insured** reasonably believes may subsequently give rise to a **Claim**.
- D. "Claim"** means a written demand for money or services made against the **Insured**. **Claim** does not mean any investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding described in **SUPPLEMENTARY PAYMENTS C.** or **D.** of this Policy.
- E. "Claim Expenses"** means reasonable and necessary legal fees, costs and expenses incurred in the investigation, adjustment, defense or appeal of a **Claim**. **Claim Expenses** includes the cost of any bond or

appeal bond required in any defended suit; provided that the Company shall not be obligated to apply for or furnish any such bond. **Claim Expenses** do not include:

- (1) remuneration, salaries, wages, fees, expenses, overhead or benefit expenses of any **Insured**;
- (2) any fees, costs or expenses incurred prior to the time that a **Claim** is reported to the Company; or
- (3) any fees, costs or expenses incurred in connection with any investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding described in **SUPPLEMENTARY PAYMENTS C. or D.** of this Policy.

F. "Construction Activities" means any construction services performed by the **Insured** or by any person or entity for whom the **Named Insured** is legally liable, including, but not limited to, any construction, erection, fabrication, installation, assembly, manufacture, demolition, dismantling, drilling, correction of faulty workmanship, excavation, dredging, remediation or supplying any materials, parts or equipment.

G. "Crisis Management Event" means any negative report the **Insured** in the mainstream media which, in the good faith opinion of the **Insured**, did cause or is reasonably likely to cause a material and adverse effect on the **Insured's** reputation; provided that such negative report is as a result of the **Insured's** rendering of or failure to render **Professional Services**.

H. "Crisis Management Event Expense" means reasonable fees, costs and expenses incurred by the **Insured**, with the Company's prior written consent, for public relations services provided by a public relations firm in response to a **Crisis Management Event**.

I. "Damages" means any monetary settlement or judgment, pre-judgment interest, post-judgment interest, punitive or exemplary damages, but only if insurable under the applicable law most favorable to the insurability thereof. **Damages** does not include:

- (1) fines, penalties, sanctions, taxes, liquidated damages or the multiple portion of any multiplied damage award;
- (2) any costs associated with the re-design, change, addition to, or modification of any building or property, unless any such cost is authorized by the Company in writing prior to payment by the **Insured**;
- (3) any non-monetary or equitable relief or redress awarded against the **Insured**, including without limitation, the cost of complying with any injunctive, declaratory or administrative relief;
- (4) restitution, return or disgorgement of fees, profits, charges for products or services rendered, or any other funds allegedly wrongfully held or obtained;
- (5) matters which are uninsurable under applicable law; or
- (6) **Claims Expenses**.

J. "Insured" means:

- (1) the **Named Insured**;
- (2) any current or former employee of the **Named Insured**, but only while such person is rendering **Professional Services** on behalf of the **Named Insured** within the capacity and scope of his or her duties as such;
- (3) any partner, principal, director, officer, trustee or governor of the **Named Insured**, but only while such person is rendering **Professional Services** on behalf of the **Named Insured** within the capacity and scope of his or her duties as such;
- (4) any retired or former partner, principal, director, officer, trustee or governor of the **Named Insured**, but only while such person was rendering **Professional Services** on behalf of the **Named Insured** within the capacity and scope of his or her duties as such;
- (5) any **Named Insured** while participating in a joint venture or partnership, but solely with respect to the **Named Insured's** legal liability arising out of the **Named Insured's** rendering of **Professional Services** on behalf of or in the name of such joint venture or partnership;

- (6) any **Leased Worker** or **Temporary Worker**, but only while such person is rendering **Professional Services** on behalf of the **Named Insured** within the capacity and scope of his or her duties as such; and
- (7) solely with respect to and limited to the coverage afforded under Section **I. INSURING AGREEMENT** of this Policy, the lawful spouses of a natural person **Insured** and, in the event of the death, incapacity or bankruptcy of a natural person **Insured**, the estate, heirs, and legal representatives or assigns of such natural person **Insured**.
- K. "Leased Worker"** means any person who is leased to the **Named Insured** by a third party pursuant to a written contract and who performs services in the course of the **Named Insured's** business under such **Named Insured's** supervision.
- L. "Mediation"** means the voluntary and non-binding process by which a qualified professional mediator mutually agreed upon by the parties intercedes between the parties with the intention of resolving a **Claim**.
- M. "Named Insured"** means the entity designated as such in ITEM 1. of the Declarations
- N. "Personal Injury"** means injury, other than **Bodily Injury**, arising out of one or more of the following offenses:
- (1) false arrest, detention or imprisonment
 - (2) malicious prosecution;
 - (3) the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies;
 - (4) oral or written publication of material that slanders or libels a person or an organization or disparages a person's or an organization's goods, products or services; or
 - (5) oral or written publication of material that violates a person's right of privacy.
- O. "Policy Period"** means the period from the Effective Date of this Policy stated in ITEM 2.(a) of the Declarations to the Expiration Date stated in ITEM 2.(b) of the Declarations or to any earlier cancellation date of this Policy.
- P. "Pollutants"** means smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste, waste materials of any kind (including but not limited to materials which are intended to be or have been recycled, reconditioned or reclaimed, nuclear material and nuclear waste) or other irritants, pollutants or contaminants.
- Q. "Pollution Condition"** means the actual release, discharge, dispersal, seepage, migration or escape of **Pollutants** into or upon land, the atmosphere or any watercourse or body of water.
- R. "Professional Services"** means only those services that the **Insured** is legally qualified to perform in the capacity of an architect, architect planner, construction manager, construction materials tester, engineer, environmental consultant, interior designer, landscape architect, project manager, surveyor, urban planner, expert witness in connection with any of the foregoing capacities, or as otherwise provided by written endorsement to this Policy; provided that such **Professional Services** are either performed for others for a fee or performed for others on a pro-bono basis with the prior knowledge and written consent of the **Named Insured**. **Professional Services** do not include **Construction Activities** other than;
- (1) **Construction Activities** necessary to, and performed in connection with, those services described above and which directly result in or directly cause a **Pollution Condition**; or
 - (2) drilling, excavation, or other sampling or testing procedures necessary to, and performed in connection with, those professional services described above.

Professional Services further includes:

- (1) those services described in the paragraph above performed in connection with a **Sustainable Design Project**, provided that such **Sustainable Design Project** conforms to a common standard of care and measurement established by the applicable "Sustainable Design" governing body or agency; and
 - (2) the design, programming, development, management, maintenance, transfer or use of data, databases, internet services, websites or computer software (including 3-D or 4-D software or programs) in connection with the **Insured's** rendering of those services described in the paragraph above to a client of the **Insured**, including any such computer software that is designed or modified for and sold or supplied to such client.
- S. "**Property Damage**" means physical injury to tangible property, including all resulting loss of use of that property.
- T. "**Related Claims**" means all **Claims** based upon, arising out of, directly or indirectly resulting from, in consequence of, in any way involving, or in any way having a common nexus of the same or related facts, circumstances, situations, transactions or events, or the same or related series of facts, circumstances, situations, transactions or events.
- U. "**Retroactive Date**" means the date stated in ITEM 3. of the Declarations.
- V. "**Sustainable Design Project**" means a residential, commercial or governmental project being designed or built using "Sustainable Design" criteria.
- W. "**Temporary Worker**" means any person who is engaged by the **Named Insured** to substitute for a permanent employee on leave, or to meet the **Named Insured's** seasonal or short-term workload conditions.
- X. "**Wrongful Act**" means any actual or alleged act, error or omission, or series of acts, errors or omissions, committed by:
- (1) the **Insured**; or
 - (2) any person or entity for whom the **Named Insured** is legally liable,
- in the rendering of, or failure to render **Professional Services**.

IV. EXCLUSIONS

This Policy does not apply to, and no coverage will be available under this Policy for, any **Claim, Damages or Claim Expenses**:

- A. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged **Bodily Injury, Property Damage or Personal Injury**; provided that this Exclusion shall not apply to the extent that, such **Bodily Injury, Property Damage or Personal Injury** results directly from the **Insured's** rendering of, or failure to render, **Professional Services**;
- B. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged liability assumed by the **Insured** under any written or oral contract or agreement. This Exclusion shall not apply to the extent that the **Insured** would have been legally liable in the absence of such contract or agreement;
- C. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged any express or implied warranty or guarantee; provided, however, this Exclusion shall not apply to any guarantee that the **Insured's Professional Services** comply with the generally accepted professional standard applicable to the **Insured's Professional Services**;
- D. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any employment practices, including, but not limited to, any actual or alleged failure or refusal to employ, wrongful termination, discrimination or harassment of any kind, breach of an employment contract,

negligent evaluation, demotion, failure or refusal to promote, retaliation or failure to pay wages or any benefits;

- E. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged violation of the responsibilities, duties or obligations imposed under the Employee Retirement Income Security Act of 1974, as amended, or any regulations promulgated thereunder, or any similar provisions of any federal, state or local statutory law or common law;
- F. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
 - (1) the gaining of any profit, remuneration or advantage by the **Insured** to which such **Insured** was not legally entitled; or
 - (2) the committing of any deliberately fraudulent or dishonest act or omission or any willful violation of any statute, rule or law by the **Insured**;

provided, that:

- (a) this Exclusion shall not apply unless the gaining by such **Insured** of such profit, remuneration or advantage to which such **Insured** is not legally entitled, or the deliberately fraudulent or dishonest act or omission or willful violation of statute, rule or law, has been established by a final adjudication of the **Claim**, or final adjudication in any judicial or administrative proceeding; and
 - (b) no such act of one **Insured** will be imputed to any other **Insured** who was not aware of and did not participate in such act;
- G. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged obligation of the **Insured** pursuant to any workers' compensation, unemployment compensation, employer liability, disability benefits or similar law;
 - H. by or for the benefit of, or in the name or right of:
 - (1) one current or former **Insured** against another current or former **Insured**;
 - (2) any entity in which the **Insured** currently owns or controls, or formerly owned or controlled, a cumulative ownership interest of fifty percent (50%) or more;
 - (3) any entity which currently owns, operates or manages any **Named Insured**, whether in whole or in part, or any entity which formerly owned, operated or managed any **Named Insured**, whether in whole or in part;
 - (4) any entity in which any natural person **Insured** is or was a partner, principal, director, officer, trustee or governor; or
 - (5) any entity which is or was operated, managed, or controlled by the **Insured**;
 - I. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual, alleged or threatened exposure to nuclear source material, nuclear by-product materials, nuclear waste activities, nuclear reaction, radiation or radioactive contamination, however caused; or
 - J. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property, including, but not limited to, automobiles, aircraft, watercraft and other kinds of conveyances.
 - K. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving, any design, manufacture, production, sale, supply or distribution of any good or product for multiple sale or mass distribution including computer programs and software. This Exclusion shall not apply to goods or products for an individual client of the **Insured** in connection with the **Insured's** rendering of **Professional Services** for that individual client.

- L. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving a **Wrongful Act** committed or allegedly committed prior to the applicable **Retroactive Date(s)**.
- M. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Pollutants**; unless a **Claim** arises from a **Wrongful Act** directly resulting from **Construction Activities** necessary to, and performed in connection with, **Professional Services**, and such **Wrongful Act** directly causes a **Pollution Condition**.
- N. based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any actual or alleged infringement, violation or misappropriation of any patent or other intellectual property right, or any misappropriation of ideas or trade secrets; provided, however, this Exclusion shall not apply any otherwise covered **Claim** alleging an infringement of any copyright, service mark or trademark.

V. GENERAL CONDITIONS

A. LIMITS OF LIABILITY AND RETENTION

- (1) The amount stated in:
 - (a) ITEM 4.(a) of the Declarations shall be the maximum Limit of Liability of the Company for all **Damages** and all **Claim Expenses** from each **Claim** for which this Policy provides coverage; and
 - (b) ITEM 4.(b) of the Declarations shall be the maximum Limit of Liability of the Company for all **Damages** and all **Claim Expenses** from all **Claims** for which this Policy provides coverage
- (2) Each Limit of Liability described in paragraph (1) above shall apply regardless of the time of payment by the Company, the number of persons or entities included within the definition of **Insured** or the number of claimants who make **Claims** against the **Insureds**.
- (3) **Claim Expenses** are part of and not in addition to the Company's Limits of Liability, and payment of **Claim Expenses** by the Company will reduce, and may exhaust, such Limits of Liability.
- (4) The **Insured** shall be responsible for payment in full of the applicable Retentions stated in ITEM 5. of the Declarations, and the Company's obligation to pay **Damages** or **Claim Expenses** under this Policy shall be excess of such Retention.
 - (a) If any **Insured** is unable or unwilling to pay the full amount of the applicable Retentions stated in ITEM 5. of the Declarations, the **Named Insured** shall be responsible for payment in full of such Retentions on behalf of such **Insured**. The Company shall have no obligation whatsoever either to the **Insured** or to any other person or entity, to pay all or any portion of the Retentions on behalf of the **Insured**.
 - (i) The Company shall, however, at its sole discretion have the right and option to do so, in which event the **Insured** will repay the Company any amounts paid, and the amounts paid will be credited against and will reduce the Company's Limits of Liability unless and until they are repaid in full to the Company.
 - (ii) If the Company and the **Insured** agree to use **Mediation** as a dispute resolution approach with respect to a **Claim** and the Company and the **Insured** consent to a full and final settlement of such **Claim** during such **Mediation** (as evidenced by a full and final settlement agreement with respect to such **Claim**); the **Insured's** obligation to pay the Each **Claim** Retention stated in ITEM 5.(a) of the Declarations for such **Claim** will be reduced by fifty percent (50%), subject to a maximum reduction of \$25,000 of the Each **Claim** Retention for such **Claim**.

B. RELATED CLAIMS

All **Related Claims**, whenever made, shall be deemed to be a single **Claim**, regardless of:

- (1) the number of **Related Claims**;
- (2) the number or identity of claimants;

- (3) the number or identity of **Insureds** involved or against whom **Related Claims** have been or could have been made;
- (4) whether the **Related Claims** are asserted in a class action or otherwise; and
- (5) the number and timing of the **Related Claims**, even if the **Related Claims** comprising such single **Claim** were made in more than one **Policy Period**.

All **Related Claims** will be treated as a single **Claim** made when the earliest of such **Related Claims** was first made, or when the earliest of such **Related Claims** is treated as having been made in accordance with **GENERAL CONDITION C.(2)** of this Policy, whichever is earlier.

C. REPORTING OF CLAIMS AND CIRCUMSTANCES

- (1) If, during the **Policy Period** or any applicable Extended Reporting Period, any **Claim** is first made against the **Insured**, the **Insured** must, as a condition precedent to any right to coverage under this Policy, give the Company written notice of such **Claim** as soon as practicable thereafter and in no event later than:

- (a) sixty (60) days after the Expiration Date or earlier cancellation of this policy; or
- (b) the expiration of any Extended Reporting Period.

Timely and sufficient notice by one **Insured** of a **Claim** shall be deemed timely and sufficient notice for all **Insureds** involved in the **Claim**. Such notice shall give full particulars of the **Claim** including, but not limited to: a description of the **Claim** and **Wrongful Act**; the identity of all potential claimants and any **Insureds** involved; a description of the injury or damages that resulted from such **Wrongful Act**; information on the time, place and nature of the **Wrongful Act**; and the manner in which an **Insured** first became aware of such **Wrongful Act**.

- (2) If, during the **Policy Period**, the **Insured** first becomes aware of a **Circumstance**, and the **Insured**:
 - (a) gives the Company written notice of such **Circumstance** with full particulars as soon as practicable thereafter but in any event before the Expiration Date or earlier cancellation of this Policy; and
 - (b) requests coverage under this Policy for any **Claim** subsequently arising from such **Circumstance**;

then any **Claim** not otherwise excluded from this Policy subsequently made against the **Insured** arising out of such **Circumstance** and for which written notice is given to the Company as soon as practicable thereafter shall be treated as if it had been first made and reported to the Company during the **Policy Period**. Full particulars shall include, but are not limited to: a description of the **Circumstance**; the identity of all potential claimants and any **Insureds** involved; information on the time, place and nature of the **Circumstance**; the manner in which the **Insured** first became aware of such **Circumstance**; and the reasons the **Insured** believes the **Circumstance** is likely to result in a **Claim**.

- (3) If, during the **Policy Period**, any investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding described in **SUPPLEMENTARY PAYMENTS C. or D.** of this Policy is first commenced against the **Insured**, the **Insured** must, as a condition precedent to any right to coverage under this Policy, give the Company written notice of such investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding as soon as practicable thereafter and in no event later than forty-five (45) days after such investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding is first commenced. Such notice shall give full particulars of such investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding including, but not limited to: a description of such investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding and the alleged misconduct; the identity of the licensing, practice, regulatory board or government agency and any **Insureds** involved; information on the time and place the alleged misconduct occurred; and the manner in which the **Insured** first became aware of such investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding.

D. DEFENSE AND SETTLEMENT

The Company has the right and duty to defend any covered **Claim**, even if the allegations of such **Claim** are groundless, false or fraudulent. The **Insured** may propose to the Company counsel to represent the **Insured** in connection with a covered **Claim**; provided, that the Company at its sole discretion, shall have the right to select counsel to represent the **Insured** in connection with any such **Claim**. The Company, in its sole discretion, may elect to appeal any judgment in connection with a covered **Claim**, but the Company has no duty to appeal any such judgment. No **Insured** shall, except at its own cost, incur any expense, make any payment, admit liability for, assume any obligation, or settle any **Claim** without the Company's written consent. With respect to any **Claim**, the Company will have the right to make investigations, direct the defense, and conduct negotiations and, with the consent of the Insureds, enter into such settlement of any **Claim** as the Company deems appropriate, provided that the Company will not settle or compromise any **Claim** without the consent of the **Insured**. If, however, the **Insured** refuses to consent to a settlement or compromise recommended by the Company and elects to contest such **Claim** or continue legal proceedings in connection with such **Claim**, then, subject to **GENERAL CONDITION A.**, the Company's liability for the **Claim** shall not exceed:

- (1) the amount of covered **Damages** for which the **Claim** could have been settled;
- (2) **Claim Expenses** incurred as of the date such settlement or compromise was proposed; and
- (3) 50% of covered **Claim Expenses** in excess of such amount proposed.

It shall be a condition of this insurance that the remaining 50% of such covered **Claim Expenses** and any **Damages** in excess of the amount for which the **Claim** could have been settled shall be uninsured and carried by the **Insured(s)** at their own risk.

The Company will have no obligation to pay **Damages** or **Claim Expenses**, or to defend or continue to defend any **Claim**, after the Company's applicable Limits of Liability have been exhausted by the payment of **Damages** and/or **Claim Expenses**.

E. TERRITORY

Subject to **GENERAL CONDITION U.**, this Policy applies to **Wrongful Acts** taking place anywhere in the world, if a **Claim** is made against the **Insured** outside the United States of America or its territories or possessions, the following shall apply:

- (1) The Company will have the right but not the duty to defend, investigate or settle such **Claim**;
- (2) The **Insured** may initiate the defense of the **Claim** in accordance with the following conditions:
 - (a) The Company shall retain the right to assume and control the investigation, adjustment or defense of the **Claim**; and
 - (b) In the event that the Company does not exercise its right to defend, investigate or settle such **Claim**, or is prevented from doing so because the Company is not licensed or permitted by law in the applicable jurisdiction, subject to the applicable Retention and Limits of Liability and all other terms and conditions of this Policy, the Company will reimburse the **Insured** for any reasonable and necessary **Claim Expenses** that the Company would have paid had the Company exercised its right to defend, investigate or settle such **Claim** and that are actually incurred by the **Insured** for the investigation, defense or settlement of such **Claim**. The Company will not reimburse any **Claim Expenses** or **Damages** incurred and/or paid by any **Insured** without our prior written consent.

If any amounts for **Claim Expenses** or **Damages** are sustained or incurred in currency other than United States dollars, the amounts will be converted into United States dollars according to the prevailing rate of exchange on the date the amounts are sustained or incurred.

F. ASSISTANCE AND COOPERATION

In the event of a **Claim**, the **Insured** shall provide the Company with all information, assistance and cooperation that the Company reasonably requests. At the Company's request, the **Insured** shall assist in: investigating, defending and settling **Claims**; enforcing any right of contribution or indemnity against another

who may be liable to any **Insured**; the conduct of actions, suits, appeals or other proceedings, including, but not limited to, attending trials, hearings and depositions; securing and giving evidence; and obtaining the attendance of witnesses.

G. SUBROGATION

In the event of any payment hereunder, the Company shall be subrogated to the extent of any payment to all of the rights of recovery of the **Insured**. The **Insured** shall execute all papers and do everything necessary to secure such rights, including the execution of any documents necessary to enable the Company to effectively bring suit in its name. The **Insured** shall do nothing that may prejudice the Company's position or potential or actual rights of recovery.

The Company agrees to waive any right of subrogation under this policy against clients of the **Insured** as respects to **Claim(s)** arising from **Professional Services** under the client's contract requiring waiver of subrogation, but only to the extent required by written contract.

H. CHANGES IN RISK

(1) If, during the **Policy Period**, the **Named Insured** acquires or creates another entity, other than a joint venture or partnership, in which the **Named Insured** holds directly or indirectly a 50% or greater beneficial or legal interest, or if the **Named Insured** merges or consolidates with another entity such that the **Named Insured** is the surviving entity (any such acquired, created, merged or consolidated entity an "Acquired Entity"), then for a period of sixty (60) days after the effective date of the transaction, such Acquired Entity shall be included within the term "**Named Insured**" but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of such transaction. Upon the expiration of the sixty (60) day period, there will be no coverage available under this Policy for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the Acquired Entity or its **Insureds** unless within such sixty (60) day period:

- (a) the **Named Insured** gives the Company such information regarding such transaction as the Company requests; and
- (b) the Company has specifically agreed by written endorsement to this Policy to provide coverage with respect to such Acquired Entity and its **Insureds**, and the **Named Insured** accepts any terms, conditions, exclusions or limitations, including payment of additional premium, as the Company, in its sole discretion, imposes in connection with the transaction.

(2) If, during the **Policy Period**, any of the following events occur:

- (a) the **Named Insured** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **Named Insured** is not the surviving entity; or
- (b) a third-party receiver, conservator, trustee, liquidator, rehabilitator or any similar official is appointed for or with respect to the **Named Insured**;

coverage under this Policy shall continue in full force and effect until the Expiration Date or any earlier cancellation date, but this Policy shall only apply to **Wrongful Acts** committed or allegedly committed before the effective date of such event. There will be no coverage available under this Policy for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** committed or allegedly committed on or after the effective date of such event. It is further understood and agreed that if such an event occurs during the **Policy Period**, then no coverage will be available for any investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding described in **SUPPLEMENTARY PAYMENTS C. or D.** of this Policy that is first commenced against an **Insured** on or after the effective date of such event.

(3) If, during the **Policy Period**, any of the following events occur:

- (a) any **Named Insured**, is dissolved, sold, acquired by, merged into, or consolidated with another entity such that such **Named Insured** is not the surviving entity; or

- (b) a third-party receiver, conservator, trustee, liquidator, rehabilitator or any similar official is appointed for or with respect to any **Named Insured**;

coverage under this Policy shall continue in full force and effect with respect to such **Named Insured** and its **Insureds** until the Expiration Date or any earlier cancellation date, but this Policy shall only apply to **Wrongful Acts** committed or allegedly committed by such **Named Insured** or its **Insureds** before the effective date of such event. There will be no coverage available under this Policy for any **Claim** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** committed or allegedly committed on or after the effective date of such event. It is further understood and agreed that if any **Named Insured** is involved in an event described in this paragraph (3) during the **Policy Period**, then no coverage will be available for any investigation, disciplinary hearing, administrative action or administrative or regulatory proceeding described in **SUPPLEMENTARY PAYMENTS C. or D.** of this Policy that is first commenced against such **Named Insured** or its **Insureds** on or after the effective date of such event.

I. OTHER INSURANCE

This Policy shall be specifically excess of and will not contribute with any other valid and collectible insurance available to the **Insured** or any person or entity for whom the **Named Insured** is legally liable, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is specifically written as excess insurance over the limits of liability provided in this Policy.

J. EXTENDED REPORTING PERIODS

If this Policy is canceled for any reason other than fraud, misrepresentation or non-payment of premium or is not renewed by the Company or the **Named Insured**, an additional period of time during which **Claims** may be reported (an "Extended Reporting Period") shall be made available as described in this **GENERAL CONDITION J.**, but any such Extended Reporting Period shall apply only to **Claims** or **Wrongful Acts** committed or allegedly committed on or after the **Retroactive Date** and before the effective date of such cancellation or non-renewal (the "Termination Date") or the effective date of any event described in **GENERAL CONDITION H.(3) or H.(4)** of this Policy (as applicable), whichever is earlier. No Extended Reporting Period shall in any way increase the Company's Limits of Liability stated in ITEM 4. of the Declarations, and the Company's Limit of Liability for all **Claims** made during any Extended Reporting Period shall be part of, and not in addition to, the Company's maximum aggregate Limit of Liability stated in ITEM 4.(b) of the Declarations. The Extended Reporting Period will apply as follows:

- (1) An Extended Reporting Period of sixty (60) days, beginning as of the Termination Date, will apply automatically and requires no additional premium; provided, that such Extended Reporting Period will remain in effect only as long as: (a) no other policy of insurance is in effect that would apply to any **Claim** made during such Extended Reporting Period; and (b) no Optional Extended Reporting Period has been purchased as set forth in subsection J.(2) below.
- (2) The **Named Insured** may purchase an Optional Extended Reporting Period for one of the periods of time stated in ITEM 7. of the Declarations by notifying the Company in writing of its intention to do so no later than sixty (60) days after the Termination Date. The additional premium for this Optional Extended Reporting Period shall be equal to the applicable amount stated in ITEM 7. of the Declarations and must be paid no later than sixty (60) days after the Termination Date. Such additional premium shall be deemed fully earned upon the Effective Date of such Optional Extended Reporting Period.

If no election to purchase an Optional Extended Reporting Period is made as described in **GENERAL CONDITION J.(2)** above, or if the additional premium for any such Optional Extended Reporting Period is not paid within sixty (60) days after the Termination Date, there will be no right to purchase an Optional Extended Reporting Period at any later time.

K. CANCELLATION/NONRENEWAL

- (1) The Company may cancel this Policy by mailing written notice to the **Named Insured** stating when, not less than sixty (60) days thereafter, such cancellation shall be effective; except that, in the event of

cancellation for non-payment of premium, the Company may make the cancellation effective upon written notice of only ten (10) days. Notwithstanding the foregoing, if the Company receives no premium whatsoever by the premium due date and no premium whatsoever is received by the last day of such ten (10) day notice period, the Company may cancel this Policy as of the Effective Date set forth in ITEM 2.(a) of the Declarations. If the Company cancels this Policy, other than for non-payment of premium, earned premium will be computed pro rata.

- (2) Except as set forth in **GENERAL CONDITION N.**, the **Named Insured** may cancel this Policy by mailing the Company written notice stating when, not later than the Expiration Date of this Policy, such cancellation will be effective. In such event, the earned premium will be computed in accordance with the customary short rate table and procedure.

Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- (3) The Company will not be required to renew this Policy upon its expiration. If the Company elects not to renew this Policy, the Company will mail to the **Named Insured** written notice of nonrenewal at least sixty (60) days prior to the Expiration Date of this Policy. Any offer of renewal on terms involving a change of retention, premium, limit of liability, or other terms and conditions shall not constitute, nor be construed as, a failure or refusal by the Company to renew this Policy.

L. REPRESENTATIONS; INCORPORATION OF APPLICATION

The **Insureds** represent that the particulars and statements contained in the **Application** submitted for this Policy are true, accurate and complete and agree that:

- (1) this Policy is issued and continued in force by the Company in reliance upon the truth of such representations;
- (2) those particulars and statements are the basis of this Policy; and
- (3) the **Application** and those particulars and statements are incorporated in and form a part of this Policy.

No knowledge or information possessed by any natural person **Insured** shall be imputed to any other natural person **Insured**, except for material facts or information known to the person or persons who signed the **Application**. The knowledge or information possessed by any current, former or future partner, principal, director, officer trustee or governor of the **Named Insured** shall be imputed to the **Named Insured**. In the event of any material untruth, misrepresentation or omission in connection with any of the particulars or statements in the **Application**, this Policy shall be void with respect to any Insured who knew of such untruth, misrepresentation or omission or to whom such knowledge is imputed.

M. NO ACTION AGAINST COMPANY

- (1) No action shall be taken against the Company by any **Insured** unless, as conditions precedent thereto, the **Insured** has fully complied with all of the terms of this Policy and the amount of the **Insured's** obligation to pay has been finally determined either by judgment against the **Insured** after adjudicatory proceedings or by written agreement of the **Insured**, the claimant and the Company
- (2) No individual or entity shall have any right under this Policy to join the Company as a party to any **Claim** to determine the liability of any **Insured**; nor shall the Company be impleaded by the **Insured** or his/her/its legal representative in any such **Claim**.

N. EXHAUSTION

If the Company's maximum aggregate Limit of Liability, as stated in ITEM 4.(b) of the Declarations, is exhausted by the payment of **Damages** and/or **Claim Expenses**, the premium will be fully earned, all obligations of the Company under this Policy, including but not limited to any obligations of the Company under Section II. **SUPPLEMENTARY PAYMENTS** of this Policy, will be completely fulfilled and exhausted and the Company will have no further obligations of any kind or nature whatsoever under this Policy.

O. AUTHORIZATION AND NOTICES

The **Named Insured** will act on behalf of all **Insureds** with respect to: the giving and receiving of any notices under this Policy; the payment of premiums to, and the receiving of return premiums from, the Company; the receiving and acceptance of any endorsements issued to form a part of this Policy; and the exercising or declining to exercise any Extended Reporting Period.

P. NOTICE

- (1) Notice sent to the **Insured** shall be sent to the **Named Insured** at the address stated in ITEM 1. of the Declarations.
- (2) Notice to the Company shall be sent to the address designated in ITEM 9. of the Declarations.

Q. CHANGES

Notice to or knowledge possessed by any agent or other person acting on behalf of the Company shall not affect a waiver or change in any part of this Policy or prevent or estop the Company from asserting any right(s) under this Policy. This Policy can only be altered, waived, or changed by written endorsement issued to form a part of this Policy.

R. INSOLVENCY

The Company will not be relieved of any of its obligations under this Policy by the bankruptcy or insolvency of any **Insured** or his/ her/its estate.

S. ASSIGNMENT

No assignment of interest under this Policy shall bind the Company without the Company's written consent issued as a written endorsement to form a part of this Policy.

T. ENTIRE AGREEMENT

The **Insureds** agree that this Policy, including the **Application**, Declarations and any endorsements, constitutes the entire agreement between them and the Company or any of its agents relating to this Insurance.

U. ECONOMIC AND TRADE SANCTIONS OR VIOLATIONS OF LAW

Any **Claims** or transactions uninsurable under the laws or regulations of the United States of America concerning trade or economic sanctions, embargo, export control laws, or where coverage is otherwise prohibited by the United States Office of Foreign Assets Control, are not covered under this Policy.

V. HEADINGS

The descriptions in the headings and sub-headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

In witness whereof, the Company has caused this Policy to be executed by its authorized representative.