

ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY

NOTICE

*THIS POLICY PROVIDES CLAIMS MADE AND REPORTED COVERAGE. THE POLICY APPLIES ONLY TO CLAIMS MADE UPON THE INSURED AND REPORTED IN WRITING TO THE COMPANY DURING THE SAME POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE.*

THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGEMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIM EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR CLAIM EXPENSES SHALL BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT.

*VARIOUS PROVISIONS THROUGHOUT THIS POLICY RESTRICT OR EXCLUDE COVERAGE. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE THE INSURED'S RIGHTS AND DUTIES, AND WHAT IS AND IS NOT COVERED.*

*DEFINED TERMS APPEAR IN BOLD-FACED TYPE. PLEASE REFER TO SECTION III. TO EXAMINE THE APPLICABLE DEFINITIONS.*

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

I. **INSURING AGREEMENTS**

**COVERAGES: (CLAIMS-MADE AND REPORTED)**

The **Company** will pay on behalf of the **Insured** those sums in excess of the deductible shown in Item 4 of the Declarations that the **Insured** shall become legally obligated to pay as **Damages** because of **Claims** for a **Breach of Professional Duty** in the performance of **Professional Services** rendered to others by the **Insured** or any entity for whom the **Insured** is legally liable.

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

1. The **Breach of Professional Duty** forming the basis of any **Claim** must arise out of **Professional Services** that take place subsequent to the Retroactive Date shown in Item 7 of the Declarations and prior to the end of the **Policy Period**.
2. Prior to the Effective Date of this policy, no officer, director, principal, partner, insurance manager or risk manager of the **Insured** had knowledge of any **Breach of Professional Duty** or circumstance likely to give rise to a **Claim** under this policy. If

such officer, director, principal, partner, project manager, insurance manager or risk manager of the **Insured** knew, prior to the effective date of this policy, of the **Breach of Professional Duty** or a circumstance likely to give rise to a **Claim** under this policy, then any continuation, change or resumption of such **Breach of professional Duty** or circumstance during or after this **Policy Period** will be deemed to have been known prior to this **Policy Period**.

3. **Claim** must first be made against the **Insured** during the **Policy Period**.
4. The **Insured** must report the **Claim** to the **Company**, in writing, during the **Policy Period** or within the sixty (60) day period immediately following the end of the **Policy Period**.

## B. TERRITORY

The insurance afforded by this policy applies only to **Claims** arising out of a **Breach of Professional Duty** in the performance of **Professional Services** that take place in and result in a **Claim** brought within:

1. the United States of America, its territories or possessions or Puerto Rico; and
2. elsewhere in the world, excluding those countries, jurisdictions and/or territories against which the government of the United States of America (including any department or subdivision thereof) administers and/or enforces economic and/or trade sanctions.

## C. DEFENSE PROVISIONS

1. When any **Claim** against the **Insured** for which coverage is provided under this policy is made or brought within the United States of America, its territories or possessions, or Puerto Rico, the **Company** has the right to investigate such **Claim**, and the duty to defend such **Claim** with defense counsel selected with the **Company's** approval, even if such **Claim** is groundless, false or fraudulent. The **Company's** obligation to defend or to continue to defend any **Claim** as provided in this Subsection 1. shall end when the applicable limit of the **Company's** liability has been exhausted by payment of **Claim Expenses** or **Damages** or both.
2. When any **Claim** against the **Insured** for which coverage is provided under this policy is made or brought outside the areas described in Subsection 1. above, the **Company** shall not be obligated to assume charge of the investigation, defense or settlement of such **Claim** but the **Company** shall have the right and shall be given the opportunity to associate with the **Insured** in the investigation and defense of such **Claim**. The **Insured** shall, under the **Company's** supervision, make or cause to be made such investigation and defense as is reasonable under the circumstances. Subject to prior written authorization by the **Company**, the **Insured** may also effect settlement. The **Company** shall reimburse the **Insured** for **Damages** and the reasonable and necessary costs of investigating and defending any such **Claim** such as (1) fees charged by any attorney selected by the **Insured** to defend the **Claim**, and (2) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a decision regarding the **Claim** as authorized by the **Company**. For purposes of computing the amount of the limits of liability and deductible amount under this policy, such reasonable costs shall be construed as **Claim Expenses**. The **Company's**

obligations under this Subsection 2. shall end when the applicable limit of liability has been exhausted by the payment of **Claim Expenses** or **Damages** or both.

#### D. SETTLEMENT PROVISIONS

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 the **Company's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus **Claim Expenses** incurred up to the date of such refusal subject to the applicable limit of liability under this policy.

#### E. CLAIM EXPENSES

**Claim Expenses** shall be paid by the **Company**, and such payments reduce the available limit of liability. The **Insured** must first pay any applicable deductible amounts as set forth in Item 4 of the Declarations.

## II. EXCLUSIONS

This policy does not provide coverage and the **Company** will not pay **Claim Expenses** or **Damages** for any **Claim** based upon or arising out of:

- A. any dishonest, fraudulent, criminal or malicious conduct or **Breach of Professional Duty** or conduct of a knowingly wrongful nature committed intentionally or at the direction of an **Insured**; however, the **Company** shall defend a **Claim** against an **Insured** who did not commit, participate in, or have knowledge of the dishonest, malicious, or criminal acts or omissions, except the **Company** shall not defend any criminal prosecution under any circumstances;
- B. any **Claim** made by any **Insured** against any other **Insured**;
- C. the actual or alleged: (1) **Wrongful Termination** ; (2) **Discrimination** ; or (3) **Sexual Harassment** of any past or present employee of the **Insured**;
- D. any **Insured's** involvement as a partner, officer, director, stockholder, employer or employee of any business enterprise not named in the Declarations;
- E. any **Insured's** involvement in or **Professional Services** rendered to or on behalf of any organization or subsidiary or affiliate thereof, not named in the Declarations: (1) that wholly or partly owns, or to any extent controls, operates or manages an **Insured**, or (2) in which an **Insured** has a greater than twenty five percent (25%) ownership, or (3) that is controlled, operated or managed by an **Insured**;
- F. the design or manufacture of any products developed by any **Insured** for multiple sale or mass distribution, including but not limited to computer programs or software; however, this exclusion shall not apply to software created or modified specifically for a client for whom the **Insured** is rendering **Professional Services**;
- G. any express warranty or guarantee, unless liability would have attached to the **Insured** in the absence of an express warranty or guarantee and such liability arises out of a **Breach of Professional Duty** by the **Insured** in the performance of **Professional Services**;

- H. the cost to repair or replace any faulty: workmanship, assembly, construction, erection, fabrication, installation or remediation, if such work is performed in whole or in part by:
1. the **Insured**; or
  2. any subcontractor of an **Insured**; or
  3. any enterprise and/or subsidiary of any enterprise that any **Insured** controls, manages, operates or holds ownership in or by any enterprise that controls, manages, operates or holds ownership in an **Insured**;
- I. the liability of others assumed by any **Insured** under any contract or agreement unless such liability arises as a result of a **Breach of Professional Duty** by the **Insured** in performance of **Professional Services** and would have existed absent such contract;
- J. **Bodily Injury** sustained by any employee of any **Insured** while engaged in employment by any **Insured**, or (1) any **Claim** by any person on account of such injury whose right to assert the **Claim** arises by reason of any blood, marital or other relationship with the employee, or (2) any **Claim** by any person or entity seeking contribution or indemnity because of such injury except that this exclusion does not apply to liability arising under a written contract executed prior to the injury;
- K. any obligation of any **Insured** under any worker's compensation, disability benefits or unemployment compensation law or any similar laws;
- L. nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a **Nuclear Facility**;
- M.
1. war, including undeclared or civil war; or
  2. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  3. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- This exclusion does not apply to a certified act of terrorism defined by Section 102. Definitions, of the Terrorism Risk Act of 2002 and any revisions or amendments thereto.
- N. Services as an **Agency Construction Manager** with respect to any project for which any **Insured** holds any contract to perform any construction, erection, assembly, fabrication, installation or remediation either by itself or through any subcontractor at any tier. This exclusion shall not apply to the provision of other **Professional Services** by the **Insured** or any entity for which the **Insured** is legally liable.

### III. DEFINITIONS

- A. **Agency Construction Manager** means a person or organization that provides professional consulting services to a project owner for a fee to assist in the oversight of a project and the progress of the design and construction process.
- B. **Bodily Injury** means physical bodily injury, sickness or disease sustained by a person, including death at any time resulting from any of these.
- C. **Breach of Professional Duty** means negligence, defined as the failure to meet the professional standard of care legally required or reasonably expected under the

circumstances in the performance or non-performance of **Professional Services** rendered to others by the **Insured** which results in **Damages** for which the **Insured** is legally liable.

- D. **Claim** means any written demand received by an **Insured** seeking **Damages** and alleging liability or responsibility on the part of the **Insured** or persons for whose conduct the **Insured** is legally liable.
- E. **Claim Expenses** means:
1. fees charged by any attorneys designated and approved by the **Company** for services in connection with the investigation or defense of **Claims**;
  2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if authorized by the **Company**.
  3. **Claim Expenses** shall not include the salaries of any employee of the **Company** or of the **Insured**.
- F. **Company** means the **Company** issuing the policy.
- G. **Damages** means any amount which an **Insured** is legally obligated to pay for any **Claim** to which this insurance applies and shall include: judgments and settlements, interest on judgements, and punitive, exemplary or multiple **Damages**, provided always that **Damages** shall not include the return or withdrawal of professional fees, sanctions, fines or penalties imposed by law. **Damages** shall not include matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed. **Damages** also shall not include **Liquidated Damages** except for liability the **Insured** would have had in the absence of such **Liquidated Damages**.
- H. **Discrimination** means termination of an employment relationship or a demotion or a failure or refusal to hire or promote any individual because of race, color, religion, age, sex, disability, pregnancy, national origin or sexual orientation.
- I. **Insured** means:
1. the **Named Insured** designated in Item 1 of the Declarations;
  2. any person who is or was a partner, officer, director, stockholder or employee of the **Named Insured** but only while acting within the scope of his/her duties as such;
  3. the heirs, executors, administrators, and legal representatives of each **Insured** as defined in 1. and 2. above, in the event of death, incapacity or bankruptcy of such **Insured**, but only as respects liability arising out of **Professional Services** rendered by or on behalf of the **Named Insured** prior to such **Insured's** death, incapacity or bankruptcy;
  4. a former partner, officer, director or employee of the **Named Insured** while rendering **Professional Services** on behalf of the **Named Insured**;
  5. contract or leased personnel rendering **Professional Services** under the supervision of and on behalf of the **Named Insured**;

6. joint ventures in which the **Named Insured** is named as a co-venturer, but only as respects the **Insured's** legal liability arising out of the **Insured's** participation in such joint venture;
  7. any **Predecessor in Interest**.
- J. **Liquidated Damages** means an amount stipulated in advance in a contract to be the amount or measure of damages to be recovered by a party to that contract if the other party breaches the agreement or fails to perform or perform adequately its obligations under the contract
- K. **Mediation** means non-binding intervention by a qualified professional mediator.
- L. **Named Insured** means the person or entity designated as such in Item 1 of the Declarations.
- M. **Nuclear facility** means the site at which a nuclear reactor is located or where nuclear waste or material is disposed of or stored.
- N. **Policy Period** means the period from the effective date of this policy to the expiration date or earlier termination date, if any, of this policy.
- O. **Predecessor in Interest** means any prior entity whose assets, partners, principals or shareholders have been acquired by the **Insured** and whose name has been listed in the application attached hereto, and for whose insurance the **Insured** is responsible by written agreement.
- P. **Professional Services** means those services that the **Insured** is legally qualified to perform for others in their capacity as an architect, engineer, land surveyor, landscape architect, **Agency Construction Manager**, or as specifically defined by endorsement to this policy. **Professional Services** shall not include facilities operations and maintenance operations or activities
- Q. **Sexual Harassment** means unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature that
1. are made a condition of employment or
  2. are used as a basis for employment decisions or
  3. create a work environment that interferes with performance.
- R. **Subsidiary** means any entity, in which more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors in such entity is owned or controlled, directly or indirectly, in any combination, by the **Named Insured**.
- S. **Wrongful Termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an express or implied agreement to continue employment.

#### IV. LIMITS OF LIABILITY AND SELF INSURED RETENTION

##### A. LIMIT OF LIABILITY - EACH CLAIM

Subject to **B. Limit of Liability - Aggregate**, below, the liability of the **Company** for each covered **Claim** shall not exceed the amount stated in Item 3 of the Declarations for Each **Claim**. This limit is the maximum amount of **Damages** or **Claim Expenses** or both that the **Company** will pay for each covered **Claim**. The limit of liability shall apply in excess of the deductible.

##### B. LIMIT OF LIABILITY - AGGREGATE

Subject to **A. Limit of Liability - Each Claim**, above, the liability of the **Company** shall in no event exceed the amount stated in Item 3 of the Declarations as the Policy Aggregate as a result of all covered **Claims**. This limit is the maximum amount of **Damages** or **Claim Expenses** or both that the **Company** will pay under this policy for all covered **Claims** including those reported as provided for in **SECTION V., CONDITION C., EXTENDED REPORTING PERIOD**, if applicable.

Once the applicable limits of liability have been exhausted, the **Company** will not defend or pay **Damages** or **Claim Expenses** for any **Claim**.

##### C. MULTIPLE INSUREDS

The number of **Insureds** covered by this policy shall not operate to increase the limits of liability as specified above.

##### D. MULTIPLE CLAIMS

Two or more covered **Claims** arising out of a single **Breach of Professional Duty** or any series of related **Breaches of Professional Duty** will be considered a single **Claim** and shall be deemed to be made at the time the first of such **Claims** is made. This policy shall only apply if the first or earliest **Claim** arising from such **Breach of Professional Duty** or series of related **Breaches of Professional Duty** is made during the **Policy Period** or **Extended Reporting Period**, if applicable. These provisions apply regardless of the number of **Insureds** involved in such a **Claim**, the number of **Claims** made, or the number of people or organizations that make the **Claims**.

The number of **Claims** made or the number of people or organizations that make **Claims** shall not operate to increase the Limits of Liability as specified in Subsections A and B above.

##### E. DEDUCTIBLE - EACH CLAIM

The deductible amount stated in the Declarations applies to each **Claim** and shall be paid by the **Insured**. The deductible shall be applied to the payment of **Damages** or **Claim Expenses** or both.

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

Until a **Claim** is made, the deductible does not apply to **Claim Expenses** incurred by the **Company** or at the **Company's** specific request as respects possible **Claims** reported under SECTION V. **CONDITIONS B. REPORTING OF POTENTIAL CLAIMS.**

**F. REIMBURSEMENT:**

The **Company** will reimburse the **Insured**, upon written request, for loss of earnings by the **Insured** as a result of being required to attend, at the **Company's** request, a **Mediation**, arbitration, deposition, or trial related to a covered **Claim**, subject to the following:

1. No reimbursement will apply to the first three (3) days attendance of the **Insured** required for each **Claim**;
2. Loss of earnings reimbursement will not be considered as payment of a **Claim** or **Claim Expenses** and will be in addition to the limits of liability. Reimbursement is not subject to the deductible.
3. Loss of earnings reimbursement shall not exceed \$400 per day per loss of earnings **Claim**, subject to a maximum annual aggregate reimbursement of \$7,500 for all loss of earnings **Claims**.

**G. MEDIATION**

If the **Insured** and the **Company** jointly agree to utilize **Mediation** as a means to try to resolve a **Claim** made against the **Insured**, and if such **Claim** is resolved through the use of **Mediation**, then the **Insured's** deductible obligation shall be reduced by 50% subject to a maximum reduction of \$20,000. The **Company** shall reimburse the **Insured** for any applicable deductible payment made in excess of such amount prior to the **Mediation** as soon as practicable after the conclusion of the **Mediation**.

**V. CONDITIONS**

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

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

1. If a **Claim** to which this policy applies is made against the **Insured**, give written notice, as soon as practicable, containing the information detailed in **CONDITION B.**, below to:

American International Companies®  
100 Summer Street  
Boston, Massachusetts 02110-2103  
Attn: Claims Department

Written notice shall include every demand, notice, summons or other process received by the **Insured** or the **Insured's** representatives.

2. The **Insured** must cooperate with the **Company** and, upon the **Company's** request, submit to examination and interrogation by a representative of the **Company**, under oath if required, and shall attend hearings and depositions and shall assist the **Company** in the investigation, settlement and defense of **Claims** or suits as well as



the giving of a written statement or statements to the **Company's** representatives all without charge to the **Company**.

3. If the **Insured** has the right to either accept or reject arbitration of any **Claim**, exercise such right only with the written consent of the **Company**.
4. Not make any payment, admit any liability, settle any **Claims** or assume any obligations without the prior written consent of the **Company**.
5. Do whatever is necessary to secure and affect any rights of indemnity, contribution or apportionment that the **Insured** may have.
6. Other than what is required by law, refrain from discussing the facts and circumstances of any **Claim** with anyone other than legal counsel representing the **Insured** or representatives of the **Company**.

#### **B. REPORTING OF A POTENTIAL CLAIM**

If the **Insured** first becomes aware during the **Policy Period** of an actual or alleged **Breach of Professional Duty** or circumstance arising out of **Professional Services** which is reasonably likely to result in a **Claim**, the **Insured** must give written notice to the **Company** containing the information listed below. If such written notice is received by the **Company** prior to the end of the **Policy Period**, any **Claims** subsequently made against the **Insured** arising out of such conduct shall be deemed for the purpose of this policy to have been made on the last day of the **Policy Period**. The **Insured** shall cooperate fully with the **Company**, and any investigation conducted by the **Company** or its authorized representatives, and shall be subject to the terms set forth in **SECTION V., CONDITIONS, A. INSURED'S DUTIES WHEN THERE IS A CLAIM** above as applicable to a **Claim**.

It is a condition precedent to the coverage afforded by this policy that the written notice shall contain the following information:

1. The actual or alleged **Breach of Professional Duty** or circumstance which is the subject of a potential **Claim**;
2. A description of the **Professional Services** rendered by the **Insured** which may result in the **Claim**;
3. The date(s) of such conduct which may result in the **Claim**; and
4. A description of the injury or damage that has or may result in a **Claim**.
5. The identities and address of any potential claimant(s);
6. The anticipated location(s) of any such potential **Claim**;
7. The circumstances by which the **Insured** first became aware of the potential **Claim**.

If all of the above information is not so provided or is, in the reasonable judgement of the **Company**, deemed inadequate, the **Company** shall inform the **Insured** that any **Claim** made

after the **Policy Period** relating to the written notice will not be deemed to have been made during the **Policy Period**.

### C. **EXTENDED REPORTING PERIOD**

If this policy is canceled or non-renewed by the **Company** or the **Named Insured** for reasons other than non-payment of premiums or non-compliance with the terms and conditions of this policy, the **Named Insured**, shall have the option to purchase an Extended Reporting Period by advising the **Company** in writing, as provided below, of its election to do so, accompanied by the payment of the additional premium specified in Item 6 of the Declarations. The Extended Reporting Period will apply only to **Claims** first made against the **Insured** during the number of months specified in Item 6 of the Declarations following immediately upon the effective date of such cancellation or non-renewal, but only by reason of a **Breach of Professional Duty** arising out of **Professional Services** which happens subsequent to the retroactive date and prior to the effective date of such cancellation or non-renewal, and which is otherwise covered by this policy. This Extended Reporting Period, if purchased, must be endorsed hereto.

If however, this policy is immediately succeeded by similar claims-made insurance coverage issued by any insurer for which the retroactive date is the same as or earlier than that shown in Item 7 of the Declarations, the succeeding insurance shall be deemed to be a renewal hereof and the **Named Insured** shall have no right to an Extended Reporting Period.

The quotation of a different premium or deductible amount or limit of liability or differing terms and conditions for renewal does not constitute a refusal to renew for the purpose of this provision.

As a condition precedent to the **Named Insured's** right to purchase the Extended Reporting Period, the **Named Insured** must have satisfied all conditions of this policy and must have paid all premiums deductible amounts due.

The **Named Insured's** right to purchase the Extended Reporting Period must be exercised by notice, in writing, not later than sixty (60) days after the cancellation or expiration date of this policy and must include payment of the entire premium for the Extended Reporting Period as specified in Item 6 of the Declarations. If such notice and payment are not so given to the **Company**, the **Named Insured** shall not be able to purchase an Extended Reporting Period subsequently.

The Extended Reporting Period shall be non-cancelable. Accordingly, at the commencement of any Extended Reporting Period, the entire premium shall be considered earned.

The purchase of the Extended Reporting Period provision shall not reinstate the Policy Aggregate Limit or increase the Limits of Liability set forth in Item 3 of the Declarations.

### D. **SUBROGATION**

In the event of any payment under this policy, the **Company** shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing after an incident reasonably likely to give rise to a **Claim** to prejudice such rights. The **Company** agrees to waive this right of

subrogation against the client of the **Insured** to the extent that the **Insured** had, prior to a **Claim**, a written agreement to waive such rights.

#### **E. HOW OTHER INSURANCE APPLIES**

Where other insurance is available to the **Insured** for **Damages** covered under the terms and conditions of this policy, the **Company's** obligation to the **Insured** shall be as follows:

1. This policy shall apply as excess insurance over any other valid insurance, whether collectible or not, be it primary, excess or contributing. This excess insurance shall in no way be increased or expanded as a result of the receivership, insolvency, or inability to pay of any insurer with respect to both the duty to indemnify and the duty to defend. This also applies to the **Insured** while acting as a self-insured for any coverage.
2. Where, in accordance with paragraph 1, above, this policy is excess insurance, the **Company** will pay:
  - a. only its share of the amount of **Damages** and **Claim Expenses**, if any, that exceed the total amount of all such valid insurance, whether collectible or not; and
  - b. only for such **Damages** and **Claim Expenses** as are covered by the terms and conditions of this policy; and
  - c. will not pay for any **Damages** or **Claim Expenses** which are excluded or subject to any other limitation in such other insurance.

The **Insured** shall promptly, upon request of the **Company**, provide the **Company** with copies of all policies potentially applicable, whether collectible or not, against the liability covered by this policy.

#### **F. CHANGES MADE TO THIS POLICY**

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 stop the **Company** from asserting any right under the terms of this policy. The terms and conditions of this policy cannot be waived or changed except by specific written endorsement issued by the **Company** and made part of this policy.

#### **G. ASSIGNMENT OF THE INSURED'S INTEREST**

The interest of the **Insured** under this policy is not assignable to any other person or organization without the prior written consent of the **Company**.

#### **H. CANCELLATION:**

The **Named Insured** may cancel this policy by returning the policy to the **Company** or its authorized representatives. The **Named Insured** can also cancel this policy by written notice to the **Company** stating at what future date cancellation is to be effective. If the **Named Insured** cancels, earned premium shall be computed using the customary short rate table.

The **Company** can cancel this policy by written notice to the **Named Insured**, at the address last known to the **Company**. The **Company** will provide written notice at least thirty (30) days before cancellation is to be effective.

However, the **Named Insured** will only be entitled to ten (10) day's notice if the **Company** cancels because the **Insured** has failed to pay a premium when due.

If the **Company** cancels, earned premium will be computed pro-rata, unless the **Company** cancels for nonpayment of premium as described above, in which case earned premium will be computed using the customary short rate table.

The mailing of any notice of cancellation shall be sufficient proof of notice.

The effective date of cancellation terminates the **Policy Period**. The return of unearned premium is not a condition of cancellation. The **Company** will return all unearned premium due the **Named Insured** in due course.

**I. SOLE AGENT**

The **Named Insured** shall act on behalf of all other **Insureds**, if any, for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this policy, and giving and receiving notice of cancellation or non-renewal.

**J. BANKRUPTCY**

The bankruptcy, receivership or insolvency of an **Insured** or the **Insured's** estate or of any insurer shall not relieve the **Company** of any of its obligations under this policy. However, such bankruptcy, receivership or insolvency shall in no way increase the **Company's** liability under this policy nor will this insurance apply to liability directly or indirectly due to bankruptcy, insolvency, receivership, or subsequent liquidation.

**K. APPLICATION**

The statements in the application are the **Insured's** representations and are deemed material. This policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the application, incorporated herein by reference, shall become part of this policy. This policy embodies all agreements existing between the **Insured** and the **Company** or any of its representatives relating to this policy.

**L. PREMIUM and AUDIT**

- a. All premiums for this policy will be computed in accordance with the **Company's** rules and rates.
- b. If the premium for this policy is a flat premium, it is not subject to adjustment, except that additional premium may be required for any additional exposures and/or **Insureds** or as provided for in **SECTION V., CANCELLATION**.

The premium shown as the **Premium** in Item 5. A. of the Declarations is a deposit premium only. If the policy is subject to audit adjustment, the actual exposure base will be used to compute the earned premium. If the earned premium is greater than the Total Premium, the **Named Insured** will pay the difference to the **Company**, due and payable upon notice.

- c. The **Named Insured** must keep records of the information needed by the **Company** for premium computation, and send copies to the **Company** as requested. The **Named Insured** is responsible for the payment of all premiums and will be the payee for any return premiums from the **Company**.
- d. The **Company** may examine and audit the **Insured's** books and records at any time during the **Policy Period** and within three (3) years after the end of the **Policy Period**, as far as they relate to this policy.

**M. ACTION AGAINST THE COMPANY:**

No person or organization has a right under this policy to sue the **Company** or to join the **Company** as a party or otherwise bring the **Company** into a suit seeking **Damages** against an **Insured**, unless:

1. all the terms and conditions of this policy have been fully complied with; and
2. the amount of such **Damages** have been fixed or rendered certain;
  - a. by final judgment against the **Insured** after trial of the issues; or
  - b. the time to appeal such judgment has expired without an appeal being taken; or
  - c. if appeal is taken, after the appeal has been determined; or
  - d. by an agreed settlement in accordance with the terms and conditions of this policy. An agreed settlement means a settlement and release of liability executed by the claimant or the claimant's legal representative, and the **Insured**, with the written consent of the **Company**.

**N. FALSE OR FRAUDULENT CLAIMS:**

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

**O. ACQUISITIONS, MERGERS AND MATERIAL CHANGES:**

In the event that the **Named Insured** (i) acquires any other entity or acquires substantially all the assets of another entity, or (ii) merges with another entity such that the **Named Insured** is the surviving entity, or (iii) creates or acquires a **Subsidiary** or (iv) in the sole judgment of the **Company** materially changes its business as described in the Application after the effective date of this policy, no coverage shall be afforded under this policy for assets acquired, or the entity merged with, or the **Subsidiary** or such changed business activities, unless and until:

1. The **Named Insured** provides written notice of such transaction or event or change to the **Company** not more than sixty (60) days after the effective date of such transaction, or event or change, and

2. The **Named Insured** promptly provides the **Company** with such information in connection therewith as the **Company** may deem necessary, and
3. The **Named Insured** accepts any special terms, conditions, exclusions, or additional premium charge required by the **Company**, and
4. The **Company** at its sole discretion specifically agrees in writing to provide such coverage.

If the **Company** agrees to provide coverage, it will not include any **Breach of Professional Duty** committed or allegedly committed, with respect to any entity, assets, **Subsidiary**, or changed business activities referred to in subparagraph 1 above, prior to the effective date of such acquisition, merger, creation, or change, or any **Breach of Professional Duty** or interrelated **Breaches of Professional Duty** committed or allegedly committed prior to the effective date of such acquisition, merger, creation, or change.

If (i) the **Named Insured** merges into or consolidates with another entity, or (ii) another entity or person or group of entities and/or persons in concert acquire securities or voting rights which result in ownership or voting control by the other entity or person(s) of more than 50% of the outstanding securities representing the present right to vote for election of directors of the **Named Insured**, coverage under this policy shall continue until termination of this policy, but only with respect to **Claims** for **Breach of Professional Duty** committed, attempted, or allegedly committed by the **Insureds** prior to such merger, consolidation or acquisition. The **Named Insured** shall give written notice of such merger, consolidation or acquisition as soon as practicable, together with such information as the **Company** may require.

For purposes of this Condition, an entity shall mean any corporation, business trust, partnership, or other form of organization, including a **Named Insured**.

#### **P. CHOICE OF LAW AND FORUM**

In the event that the **Insured** and the **Company** dispute the validity or formation of this policy or the meaning, interpretation or operation of any term, condition, definition or provision of this policy resulting in litigation, arbitration or other form of dispute resolution, the **Insured** and the **Company** agree that the law of the State of New York shall apply and that all litigation, arbitration or other form of dispute resolution shall take place in the State of New York.

#### **Q. ARBITRATION**

In the event of a disagreement as to the interpretation of this policy, it is mutually agreed that such dispute shall be submitted to binding arbitration before a panel of three (3) arbitrators, consisting of two (2) party-nominated (non-impartial) arbitrators and a third (impartial) arbitrator (hereinafter "umpire") as the sole and exclusive remedy.

The party desiring arbitration of a dispute shall notify in writing the other party, said notice including the name, address and occupation of the arbitrator nominated by the demanding party. The other party shall, within 30 days following receipt of the demand, notify in writing the demanding party of the name, address and occupation of the arbitrator nominated by it. The two (2) arbitrators so selected shall, within 30 days of the appointment of the second arbitrator, select an umpire. If the arbitrators are unable to

agree upon an umpire, each arbitrator shall submit to the other arbitrator a list of three (3) proposed individuals, from which list such arbitrator shall choose one (1) individual. The names of the two (2) individuals so chosen shall be subject to a draw, whereby the individual drawn shall serve as umpire.

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

The arbitration proceeding shall take place in or in the vicinity of Boston, Massachusetts. The procedural rules applicable to this arbitration, shall, except as provided otherwise herein, be in accordance with the Commercial Rules of the American Arbitration Association.

**IN WITNESS WHEREOF**, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of its duly authorized representatives.

Secretary

President