

PROFESSIONAL LIABILITY INSURANCE POLICY

This is a claims made and reported Policy. Coverage afforded under this Insurance is limited to **Claims** that are first made against the **Insured** during the **Policy Period** and reported in writing to Underwriters at the earliest opportunity during the **Policy Period** and as otherwise limited by this Policy.

The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by the payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Deductible.

Please review this Policy carefully with your insurance agent, broker or representative.

INSURING AGREEMENTS

In consideration of the payment of the premium, the **Insured** undertaking to promptly pay the Deductible as described in Item 4 of the Declarations, and in reliance upon the statements and representations in the Application and any supplemental materials which are incorporated and made a part of this Policy, and subject to all the terms and conditions of this Policy, Underwriters agree with the **Insured** as follows:

I. COVERAGE - PROFESSIONAL LIABILITY

1. To pay on behalf of the **Insured** those sums which the **Insured** shall become legally obligated to pay as **Damages** by reason of a **Claim** first made against the **Insured** during the **Policy Period** and reported in writing to Underwriters during the **Policy Period** resulting from
 - (a) any negligent act, error or omission in rendering or failing to render **Professional Services** by the **Insured** or by a party for whom the **Insured** is legally responsible, or
 - (b) a **Wrongful Act**,which was committed after the **Retroactive Date**.
2. Provided that no coverage will be available for **Claims** arising out of an act, error or omission in rendering or failing to render **Professional Services** or any **Wrongful Act**, committed or alleged to have been committed prior to the inception date of this Policy:
 - (a) if on or before the inception date any Officer, Director, Partner or Manager of the **Insured** knew or could have reasonably foreseen that such act, error or omission or **Wrongful Act** might be expected to be the basis of a **Claim**; or
 - (b) in respect of which any **Insured** has given notice of a circumstance which might lead to a **Claim** to the insurer of any other policy in force prior to the inception date of this Policy.

II. DEFENSE AND SETTLEMENT

- (a) Underwriters shall have the right and duty to defend, subject to the Limit of Liability, a **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- (b) It is agreed that the Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Deductible.
- (c) Underwriters shall have the right to make any investigation they deem necessary with respect to coverage, including, without limitation, any investigation with respect to the Application, statements made in the Application and any supplemental materials submitted therewith. The **Insured** shall submit for examination by a representative of Underwriters, under oath if requested, in connection with all matters relating to this Policy.

- (d) If the **First Named Insured** shall refuse to consent to any settlement or compromise recommended by Underwriters and acceptable to the claimant and elects to contest the **Claim**, Underwriters' liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled including the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less and 50% of any **Damages** and **Claims Expenses** in excess of the settlement amount incurred in connection with such **Claim**. The remaining 50% of the **Damages** and **Claims Expenses** in excess of the settlement amount will be carried by the **Insured** at its own risk and will be uninsured.
- (e) It is further provided that Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses** or to undertake or continue the defense of any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages** or **Claims Expenses**, or after deposit of any remaining Policy Limit in a court of competent jurisdiction and that upon such payment, Underwriters shall have the right to withdraw from the further defense thereof by tendering the control of said defense to the **First Named Insured**.

III. LIMIT OF LIABILITY

- (a) The Limit of Liability stated in Item 3(a) of the Declarations for "each **Claim**" is the limit of Underwriters' Liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- (b) The Limit of Liability stated in Item 3(b) of the Declarations as "aggregate" is Underwriters' combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** and circumstances which might lead to **Claims**, which are covered under the terms and conditions of this Policy. Neither the inclusion of more than one **Insured** in a **Claim** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- (c) The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Limit of Liability of Underwriters for the **Policy Period**.
- (d) Multiple **Claims** arising from the same negligent act, error or omission or any interrelated or continuing negligent acts, errors or omissions shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants. All such **Claims** shall be deemed to have been made at the time of the first such **Claim** and, if covered under this Policy, be subject to the "each claim" Limits of Liability stated in Item 3(a) and the "aggregate" Limit of Liability stated in Item 3(b) of the Declarations.

IV. DEDUCTIBLE

- 1. The Deductible amount stated in Item 4 of the Declarations shall apply separately to each and every **Claim** and shall apply to **Damages** and **Claims Expenses**. Subject to the Limit of Liability stated in Item 3 of the Declarations, the obligation of Underwriters to pay on behalf of the **Insured** for **Damages** and **Claims Expenses** shall only be in excess of the Deductible amount, and only after the **Insured** has fully paid the Deductible. The **Named Insured** shall make direct payments within the Deductible to appropriate other parties designated by Underwriters.
- 2. If a **Claim** is fully and finally resolved to the satisfaction of all parties, including Underwriters, as a direct result of the use of alternative dispute resolution, the **Insured's** Deductible obligation for such **Claim** shall be reduced by fifty percent (50%) up to a maximum reduction of \$25,000. Alternative dispute resolution shall mean a formal process through a neutral third party that results in a resolution of the **Claim** prior to the institution of formal litigation or arbitration.

V. SUPPLEMENTARY COVERAGES

- 1. If, during the **Policy Period**, a **Disciplinary Proceeding** is made against an **Insured** by reason of a **Wrongful Act** fully occurring on or after the **Retroactive Date** and such **Disciplinary Proceeding** is reported to Underwriters as soon as practicable during the **Policy Period** or within 30 days thereafter, Underwriters shall indemnify the **Insured** for reasonable fees, costs and expenses, paid to third parties other than an **Insured**, in responding to such **Disciplinary**

Proceeding. The amount payable by Underwriters pursuant to this paragraph (1) shall not exceed a maximum aggregate amount of \$10,000 per **Policy Period**. No Deductible will apply to amounts Underwriters pay under this extension of coverage and such amounts will be in addition to and not part of the **Limits of Liability**. Underwriters shall not be obligated to pay any award, penalty, sanction, cost or order of restitution resulting from any **Disciplinary Proceeding**.

2. If, during the **Policy Period**, the **Insured** receives a subpoena for documents or testimony related to **Professional Services** performed on or after the **Retroactive Date** and reported to Underwriters as soon as practicable during the **Policy Period** or within 30 days thereafter and to the extent coverage is not otherwise available under this Policy, Underwriters will pay on behalf of the **Insured** reasonable fees, costs and expenses incurred with Underwriter's prior written consent in connection with the **Insured's** document production or representation in giving sworn testimony. The amount payable by Underwriters pursuant to this paragraph (2) shall not exceed \$5,000 per subpoena and \$10,000 in the aggregate for each **Policy Period**. No DEDUCTIBLE will apply to amounts Underwriters pay under this extension of coverage and such amounts will be in addition to and not part of the **Limits of Liability**.

VI. TERRITORY

The Insurance afforded herein applies worldwide.

VII. EXCLUSIONS

The coverage under this Policy does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

1. Arising out of or resulting from any fraudulent, criminal, malicious or dishonest acts, errors or omissions of any **Insured**. This exclusion does not apply to **Claims Expenses** incurred in defending any such **Claim** where a final non-appealable adjudication in the underlying proceeding shall establish no fraudulent, criminal, malicious or dishonest conduct;
2. By or on behalf of one or more **Insureds** under this Policy against any other **Insured** or **Insureds** under this Policy;
3. Based upon, arising out of, or in any way related to, directly or indirectly, any **Bodily Injury** or **Property Damage**;
4. Arising out of or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to make payments or pay benefits due to the insolvency, liquidation or bankruptcy of any individual or entity;
5. Made by any business enterprise that is operated or controlled by any **Insured** or in which any **Insured** has greater than a 15% ownership interest, or wholly or partly owns, operates, controls or manages any **Insured**;
6. Arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, partnership, corporation, or business other than that of the **Named Insured** or a **Subsidiary**;
7. Arising out of the liability assumed by the **Insured** under any provision in a contract or agreement, either oral or written, including any

(a) breach of express warranty, guarantee, or service level agreement, or

(b) delay of delivery, failure to deliver, or non-acceptance of products or services

except and to the extent the **Insured** would have been liable in the absence of such provision in a contract or agreement;

8. For or arising out of actual or alleged:

(a) infringement or misappropriation of any intellectual property right, including but not limited to infringement of patent, copyright, title, trademark, service mark, design, trade dress, or misappropriation of trade secret; or

- (b) plagiarism, piracy or misappropriation of ideas under implied or actual contract, or misappropriation of any name or likeness for commercial advantage;
9. For or arising out of the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state blue sky or securities law, the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced and Corrupt Organizations Act or RICO) or any similar federal, state or local law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws as amended whether such law is statutory, regulatory or common law;
 10. Arising out of or resulting from any employer-employee relations, policies, practices, acts, or omissions, any actual or alleged refusal to employ any person, or misconduct with respect to employees;
 11. Alleging, in whole or in part, any act of **Sexual Misconduct or Molestation** by any **Insured**.
 12. Arising out of or resulting from actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
 13. Arising out of or resulting from any acts, errors or omissions of any **Insured** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act;
 14. Arising out of any actual or alleged act, error or omission or breach of duty by any director or officer in the discharge of their duty as a director or officer, if the **Claim** is brought by any Regulatory Body, the **Named Insured**, a **Subsidiary** or any directors, officers, bondholders, stockholders or employees of the **Named Insured** or a **Subsidiary**, in their capacity as such;
 15. For or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising except this exclusion shall not apply to any **Claim** arising from **Personal Injury**;
 16. For or arising out of any actual or alleged design or manufacture of any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured**;
 17. Directly or indirectly arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property;
 18. Directly or indirectly arising out of, based upon or resulting from:
 - (a) the presence or actual, alleged, or threatened discharge, seepage, formation, growth, presence, release, dispersal, migration, escape, generation, transportation, storage, or disposal of **Pollutants** at any time, including any request, demand or order that the **Insured** or others test for, investigate, monitor, clean up, remove, treat, remediate, assess, or respond to the effects of **Pollutants**.
 - (b) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of **Pollutants**.

Underwriters will have no duty or obligation to defend any **Insured** with respect to any **Claim** or governmental or regulatory order, requirement, directive, mandate or decree which, either in whole or in part, directly or indirectly, is for, based upon, relates to, or arises out of the actual, potential, alleged or threatened discharge, seepage, formation, growth, presence, release, dispersal, migration, escape, generation, transportation, storage, or disposal of any **Pollutants**.

19. Either in whole or in part, directly or indirectly caused by, resulting from or in connection with or in consequence of any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) any act of terrorism.

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also excludes **Damages** or **Claims Expenses** directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

If Underwriters allege that by reason of this exclusion, any **Damages** or **Claims Expenses** are not covered by this Policy, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this Exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

VIII. DEFINITIONS

As used throughout this Policy, the following definitions shall apply:

- 1. **Bodily Injury** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- 2. **Claim** means a demand received by any **Insured** for money or services, including the service of suit or institution of arbitration proceedings. **Claim** shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).
- 3. **Claims Expenses** means:
 - (a) reasonable and necessary fees charged by an attorney designated by Underwriters; and
 - (b) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, or circumstance which might lead to a **Claim**, if incurred by Underwriters, or by the **Insured** with the written consent of Underwriters;

Underwriters will reimburse the **Insured** for up to \$500 per day per **Insured**, subject to a maximum of \$15,000 per **Claim** and \$30,000 for all **Claims** covered under the policy, if the Underwriters require an **Insured's** attendance at a trial, hearing, or arbitration or mediation proceeding. Other than the reimbursement provided in this paragraph, **Claims Expenses** do not include any salary, overhead or other charges by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** or circumstance that might lead to a **Claim** notified under this Policy.

- 4. **Damages** mean a monetary judgment, award or settlement including pre- and post-judgment interest. The term **Damages** shall not include:
 - (a) future royalties or future profits, restitution, disgorgement of profits by an **Insured**, or the costs of complying with orders granting injunctive or equitable relief;
 - (b) return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
 - (c) any **Damages** which are a multiple of compensatory **Damages**, or fines, sanctions or penalties;

- (d) punitive or exemplary **Damages**; except where insurable by the applicable law which most favors coverage for such punitive or exemplary damages;
 - (e) any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.
5. **Disciplinary Proceeding** means any proceeding by a regulatory or disciplinary official or agency against any **Insured** to investigate actual or alleged professional misconduct in rendering or failing to render **Professional Services** which may result in the revocation or suspension of a license necessary for the provision of **Professional Services**.
6. **Extended Reporting Period** means the period of time after the end of the **Policy Period** for reporting **Claims**, as provided in Section IX Conditions, subsection 2 of this Policy.
7. **First Named Insured** means the first person or entity designated as **Named Insured** in Item 1 of the Declarations
8. **Insured** as used throughout this Policy, whether expressed in singular or plural, shall mean the **Named Insured(s)** as stated in the Declarations and any **Subsidiary** of the **Named Insured(s)** and shall include:
- (a) a director, officer or employee of the **Named Insured** and any **Subsidiary** including full time, part time, and seasonal employees as well as interns and volunteers but only while acting in that capacity solely on behalf of the **Named Insured** and any **Subsidiary**;
 - (b) a principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only while acting in that capacity solely on behalf of the **Named Insured**;
 - (c) any person who previously qualified as an **Insured** under (a) or (b) above prior to the termination of the required relationship with the **Named Insured** and any **Subsidiaries**, but only while acting in that capacity solely on behalf of the **Named Insured** or any **Subsidiary**;
 - (d) the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** under (a), (b) or (c) above in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** under (a), (b) or (c) above would otherwise be provided coverage under this Policy;
 - (e) an individual acting as an independent contractor while acting solely on behalf of the **Named Insured** or any **Subsidiary**, but only for a **Claim** also made against the **Named Insured** or any **Subsidiary**;
 - (f) a lawful spouse or domestic partner of any **Insured** solely by reason of such spousal status or domestic partnership or such spouse or domestic partner's ownership interest in property or assets that are sought as recovery for a covered **Claim**.
9. **Personal Injury** means:
- (a) defamation, libel, slander, product disparagement, trade libel, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any organization;
 - (b) invasion or interference with the right to privacy or of publicity;
 - (c) false arrest, detention or imprisonment or malicious prosecution;
 - (d) infringement of any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping.

10. **Policy Period** means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Policy and specifically excludes any **Extended Reporting Period**.
11. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapor, soot, fumes, odors, acids, alkalis, chemicals and waste (includes materials to be recycled, reconditioned or reclaimed), fungi, molds, spores or mycotoxins, asbestos;
12. **Professional Services** means those professional services provided within the scope of the services listed in Item 7 of the Declarations or agreed to by endorsement to this policy.
13. **Property Damage** means injury to or destruction of any tangible property, including the loss of use thereof.
14. **Retroactive Date** is the date in Item 6 of the Declarations. No act, error or omission that takes place or is alleged to have taken place prior to that date is covered under this Policy. Any act, error or omission, or related series of acts, errors or omissions that are committed, where such act, or the first such related act, error or omission takes place, or is alleged to have taken place prior to that date will not be covered under this Policy.
15. **Sexual Misconduct or Molestation** means any actual or alleged abuse, molestation, mistreatment, or maltreatment of a sexual nature, including, but not limited to, any sexual involvement, sexual conduct, or sexual contact, regardless of any consent.
16. **Subsidiary or Subsidiaries** means any corporate entity:
 - (a) where more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Insured** directly or indirectly OR
 - (b) Having the right, pursuant to written contract or the by-laws, charter, operating agreement or similar documents of an **Insured**, to elect, appoint or designate a majority of: the board of directors of a corporation, the management committee of a joint venture or partnership, or the management board of a limited liability company.
17. **Wrongful Act** means any negligent act, error or omission, negligent misstatement or negligent misleading statement or **Personal Injury**, committed by an **Insured** in the rendering or failure to render **Professional Services** for others.

IX. CONDITIONS

1. NOTICE OF **CLAIM**, OR CIRCUMSTANCE THAT MIGHT LEAD TO A **CLAIM**
 - (a) If any **Claim** is made against the **Insured**, the **Insured** shall during the Policy Period immediately forward to Underwriters through persons named in Item 10 of the Declarations every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative.
 - (b) If the **Insured** first becomes aware of any circumstance that could reasonably be the basis for a **Claim** it must give written notice to Underwriters through persons named in Item 10 of the Declarations as soon as practicable during the **Policy Period** of:
 - (i) the specific details of the negligent act, error or omission in the provision of **Professional Services** that could reasonably be the basis for a **Claim**.
 - (ii) the injury or damage which may result or has resulted from the circumstance; and
 - (iii) the facts by which the **Insured** first became aware of the negligent act, error or omission.Any subsequent **Claim** arising out of such circumstance will be deemed to have been made at the time written notice complying with the above requirements was first given to Underwriters.
 - (c) A **Claim** shall be considered to be reported to Underwriters when notice is first given to Underwriters through persons named in Item 10 of the Declarations of the **Claim** or of a

negligent act, error or omission, which could reasonably be expected to give rise to a **Claim**, if provided in compliance with Section (b) above.

- (d) In the event of non-renewal of this Policy by Underwriters, the **Insured** shall have sixty (60) days from the expiration date of the **Policy Period** to notify Underwriters of **Claims** first made against the **Insured** during the **Policy Period**.
- (e) If any **Insured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

2. **PURCHASE OF EXTENDED REPORTING PERIOD**

- (a) In the event of cancellation or non-renewal of this Policy by Underwriters or the **First Named Insured**, the **First Named Insured** shall have the right to have the Policy endorsed to include an **Extended Reporting Period**. The right of the **First Named Insured** to purchase the **Extended Reporting Period** is conditioned as follows:
 - (i) Notice of the intent to purchase the **Extended Reporting Period** must be received by Underwriters through the entity named in Item 9 of the Declarations within 30 days of the non-renewal or cancellation.
 - (ii) The payment of the additional premium for the **Extended Reporting Period** must be received by Underwriters through the entity named in Item 9 of the Declarations within 30 days of non-renewal or cancellation.
 - (iii) The quotation by Underwriters of a different Premium, Deductible or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by Underwriters.
 - (iv) The right to the **Extended Reporting Period** shall not be available to the **First Named Insured** where cancellation or non-renewal by Underwriters is due to non-payment of premium or failure of an **Insured** to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible.
- (b) If Underwriter's cancel or non-renew this policy, the term of **Extended Reporting Period** and premium charged shall be:
 - (i) An additional 12 months for an additional premium of 100% of the premium set forth in Item 5 of the Declarations.
 - (ii) An additional 24 months for an additional premium of 150% of the premium set forth in Item 5 of the Declarations.
 - (iii) An additional 36 months for an additional premium of 175% of the premium set forth in Item 5 of the Declarations.
- (c) If the **First Named Insured** cancels or non-renews this policy, the term of **Extended Reporting Period** and premium charged shall be:
 - (i) An additional 12 months for an additional premium of 125% of the premium set forth in Item 5 of the Declarations.
 - (ii) An additional 24 months for an additional premium of 175% of the premium set forth in Item 5 of the Declarations.
 - (iii) An additional 36 months for an additional premium of 200% of the premium set forth in Item 5 of the Declarations.
- (d) In the event that the **First Named Insured** shall have purchased the **Extended Reporting Period**, coverage shall be extended to:

- (i) **Claims** first made against any **Insured** during the **Policy Period** or **Extended Reporting Period** and reported to Underwriters during the **Policy Period** or **Extended Reporting Period**; or
- (ii) circumstances the **Insured** first becomes aware of during the **Policy Period** or **Extended Reporting Period** and reported to Underwriters during the **Policy Period** or **Extended Reporting Period**.

Provided that such **Claims** or circumstances arise out of a negligent act, error or omission committed or alleged to have been committed on or after the **Retroactive Date** and before the end of the **Policy Period**, or any **Wrongful Act** committed after the **Retroactive Date** and before the end of the **Policy Period**.

- (e) The Limit of Liability for the **Extended Reporting Period** shall be part of, and not in addition to, the Limit of Liability of Underwriters for the **Policy Period**.
- (f) At the commencement of the **Extended Reporting Period** the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **Extended Reporting Period** for any reason prior to its natural expiration, Underwriters will not be liable to return any premium paid for the **Extended Reporting Period**.

3. WARRANTY BY THE **INSURED**

By acceptance of this Policy, all **Insureds** agree that the statements contained in the Application, any Application for Insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, that they shall be deemed material to the risk assumed by Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Insured** or its agent in the Application, any Application for Insurance of which this Policy is a renewal, or any supplemental materials submitted therewith, will render the Policy null and void and relieve Underwriters from all liability under the Policy.

The Application and any Application for Insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are deemed incorporated into and made a part of this Policy.

4. ASSISTANCE AND COOPERATION OF THE **INSURED**

The **Insured** shall cooperate with Underwriters in all investigations, including investigations regarding the Application for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by Underwriters.

Upon Underwriters' request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of negligent acts, errors or omissions with respect to which insurance is afforded under this Policy, and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgement or award or dispose of any **Claim** without the prior consent of Underwriters.

Expenses incurred by the **Insured** in assisting and cooperating with Underwriters, as described above, do not constitute **Claims Expenses** under the Policy except for any reimbursement specifically set forth in the definition of **Claims Expenses**.

5. NO ACTION AGAINST UNDERWRITERS

No action shall lie against Underwriters or their representatives unless, as a condition precedent thereto:

- (a) there shall have been full compliance with all terms of this Policy; and
- (b) the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement of the **Insured**, the claimant and Underwriters.

Nothing contained in this Policy shall give any person or organization any right to join Underwriters as a defendant or co-defendant or other party in any action against the **Insured** to determine the **Insured's** liability.

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve Underwriters of their obligations hereunder.

6. OTHER INSURANCE

This Policy shall apply in excess of any other valid and collectible insurance available to any **Insured**, including any deductible or deductible portion thereof unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy. In the event such other insurance has any obligation to defend an **Insured**, Claims Expenses under this policy shall be excess to, and shall not contribute with, such other insurance.

7. FIRST NAMED INSURED AS AGENT

The **First Named Insured** specified in Item 1 of the Declarations shall be considered the agent of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this Policy and shall be responsible for the payment to Underwriters of all premiums and for payment of the Deductible.

8. PREMIUM

The premium for this Policy shall be the amount specified in Item 5 of the Declarations.

9. SUBROGATION

In the event of any payment under this Policy, Underwriters shall be subrogated to all of the **Insured's** rights of recovery 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 to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by Underwriters, and third to the Deductible. Any additional amounts recovered shall be paid to the **First Named Insured**.

10. ENTIRE AGREEMENT

By acceptance of the Policy, all **Insureds** agree that this Policy embodies all agreements between them and Underwriters relating 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 Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, signed by Underwriters.

11. ASSIGNMENT

No assignment or transfer of any **Insured's** rights under this Policy shall bind Underwriters.

12. MERGERS AND ACQUISITIONS

- (a) If during the **Policy Period**, the **Insured** or any **Subsidiary**:

- (i) purchases another entity or **Subsidiary** in an amount greater than twenty-five percent (25%) of the assets of all **Named Insureds**, as set forth in the most recent financial statements; or
- (ii) acquires another entity or acquires or creates a **Subsidiary** whose annual revenues are more than twenty-five percent (25%) of the total annual revenues of all **Named Insureds**, as set forth in the most recent application for insurance;

then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any negligent act, error or omission, whether committed either before or after such acquisition or creation unless the **Insured** gives Underwriters written notice prior to the acquisition or creation, or in any event no later than 60 days after the effective date of such or acquisition or creation. The **Insured** must obtain the written consent of Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to such additional premium and amended terms as determined by Underwriters.

- (b) No coverage shall be provided under this Policy for any **Claim** that arises out of any negligent act, error or omission committed or alleged to have been committed at any time when any entity or **Subsidiary** was not owned and controlled by the **Insured**, without the prior written consent of Underwriters and agreement of the **Named Insured** to such additional premium and amended terms as required by Underwriters.
- (c) If during the **Policy Period** the **Insured** consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless Underwriters have issued an endorsement extending coverage under this Policy, and the **Insured** has agreed to any additional premium and terms of coverage required by Underwriters.
- (d) All notices and premium payments made under this section shall be directed to Underwriters through the entity named in Item 9 of the Declarations.

13. CANCELLATION

(a) Cancellation by the **First Named Insured**.

- (i) This Policy may be cancelled by, or on behalf of the **First Named Insured** by surrender thereof to Underwriters or by mailing to Underwriters through the entity named in Item 9 of the Declarations written notice stating when thereafter the cancellation shall be effective.
- (ii) If the **First Named Insured** cancels this Policy, earned premium shall be computed in accordance with the attached short rate table and procedure.
- (iii) If a **Claim** or circumstance is reported under this Policy, then all premium shall be earned and in the event of cancellation by, or on behalf, of the **First Named Insured** there shall be no return of premium.

(b) Cancellation by Underwriters

- (i) Underwriters may cancel this Policy by mailing to the **First Named Insured** at the address shown in the Declarations written notice stating when not less than 60 days thereafter such cancellation shall be effective.
- (ii) If Underwriters cancel this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by Underwriters by mailing a written notice of cancellation to the **First Named Insured** at the address shown in the Declarations stating when not less than 10 days thereafter such cancellation shall be effective.

(iii) If Underwriters cancel this Policy, earned premium shall be computed pro rata.

(c) Notices.

The mailing of notice as set forth in above shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall

become the end of the **Policy Period**. Delivery of such written notice either by the **First Named Insured** or by Underwriters shall be equivalent to mailing.

14. SINGULAR FORM OF A WORD

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

15. TITLES OF PARAGRAPHS

The titles of paragraphs, sections, provisions or endorsements of or to this Policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy.

16. SERVICE OF SUIT

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due under this Policy, Underwriters hereon, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. This Condition does not constitute and should not be understood to constitute an agreement by Underwriters that an action is properly maintained in a specific forum, nor may it be construed as a waiver of Underwriters' rights to commence an action in a court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any State of the United States, all of which rights Underwriters expressly reserve. It is further agreed that service of process in such suit may be made upon the Underwriters' representatives specified for that purpose in Item 8 of the Declarations.

The Underwriters' representatives are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **Insured** to give written undertaking to the **Insured** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted. Further, pursuant to any statute of any state, territory or district of the United States which makes provision thereof, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceedings instituted by or on behalf of the **Insured** or any legal representative of the **Insured** arising out of this contract of Insurance, and hereby designate the Underwriters' representatives as the persons to whom the said officer is authorized to mail such process or a true copy thereof.

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD) (U.S.A.)

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This Policy* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an **Insured** under the Policy is also an **Insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an **Insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which 1. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or 2. the **Insured** is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
 - (a) the nuclear material 1. is at any nuclear facility owned by, or operated by or on behalf of, an **Insured** or 2. has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **Insured**; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material 1. containing by-product material and 2. resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for 1. separating the isotopes of uranium or plutonium, 2. processing or utilizing spent fuel, or 3. handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the **Insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

* NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

17/3/60 NMA1256

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-LIABILITY-DIRECT (U.S.A.)

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause-Liability-Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

13/2/64
NMA1477

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

08/94
LSW1001 (Insurance)

LINES CLAUSE

This Insurance, being signed for 100% of 100% insures only that proportion of any loss, whether total or partial, including but not limited to that proportion of associated expenses, if any, to the extent and in the manner provided in this Insurance.

The percentages signed in the Table are percentages of 100% of the amount(s) of Insurance stated herein.

NMA2419

SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws

LMA3100 09 15 10