

Professional Liability Insurance Policy for Technical Consultants

This is a "Claims-Made and Reported" policy. Please read carefully.

Provisions

In consideration of the payment of premium, in reliance upon the statements made to the Insurer in the application, a copy of which is attached hereto and made a part hereof, and subject to the Declarations, terms, definitions, conditions, limitations and amendments as hereinafter provided, the Insurer agrees as follows:

I. Insuring Agreement

To pay on behalf of the **Assureds** any **loss** which the **Assureds** shall become legally obligated to pay for **Claims** first made against the **Assureds** and reported in writing to the Insurer during the **policy period** or the discovery period, if purchased, by reason of any **wrongful act** solely while in the performance of professional services stated in the Declarations which are rendered by or on behalf of the **Assureds**, PROVIDED ALWAYS THAT such **wrongful act** occurs on or after the retroactive date in the Declarations.

2. the heirs, executors, administrators, assignees and legal representatives of each person above in the event of his/her death, incapacity or bankruptcy.

(B) The term "**Claim**" shall mean any written demand for money, including the service of suit or institution of arbitration proceedings.

(C) The term "**defense expenses**" shall mean all necessary and reasonable (1) fees charged by an attorney(s) designated by the Insurer and (2) other expenses resulting from the investigation, adjustment, defense, and appeal of a **Claim**, if incurred by the **Assureds** with the Insurer's consent. However, "**defense expenses**" shall not include salaries of regular employees or officials of the **Assureds** or any supervisory counsel retained by the Insurer, or **loss** of earnings incurred by the **Assureds**.

II. Definitions

The following terms shall have the meaning set forth below when used throughout this policy:

(A) The term "**Assureds**" shall mean:

1. the "Parent Company" in Item 1 of the Declarations, including any partner, officer, director or employee thereof solely while acting within the scope of their duties;

(D) The term "**loss**" shall mean the amount in excess of the **retention** that the **Assureds** are obligated to pay solely by reason of any **Claim** insurable hereunder in respect of their legal liability and, subject to all other terms,

conditions, definitions, exclusions and limitations of this policy, shall include damages, judgments, settlements, reasonable and necessary **defense expenses** incurred in the defense of any action or suit and any appeal therefrom; provided always that the term "**loss**" shall not include fines or penalties imposed by law, taxes, punitive or exemplary damages or the two-thirds portion of any treble damages or that portion of any multiplied damages which exceeds the amount multiplied, and matters which are uninsurable under the law pursuant to which this policy shall be construed.

(E) The term "**policy period**" shall mean the period in Item 2 of the Declarations from the effective date of this policy to the expiration date or cancellation date, if any, of this policy.

(F) The term "**retention**" shall mean the applicable amount stated in Item 7 of the Declarations which shall apply separately in respect of each **Claim** insurable hereunder and shall be borne uninsured by the **Assureds** prior to any payment for **loss** by the Insurer.

(G) The term "**wrongful act**" shall mean any actual or alleged breach of duty, error, misstatement, misleading statement or omission done or attempted by the **Assureds** while in the performance of professional services stated in the Declarations.

III. Exclusions

This Policy does not apply to any **Claim** based upon or arising out of, directly or indirectly:

(a) any intentional, fraudulent, dishonest, or criminal acts by or at the direction of the **Assureds**;

(b) bodily injury, sickness, disease or death of any person, or mental or emotional stress, distress, anguish, mental tension, pain or suffering;

(c) injury to or destruction of any tangible property including the **loss** of use thereof;

(d) false arrest, detention or imprisonment, libel, slander, defamation of character, invasion of the right of privacy, wrongful eviction, assault or battery;

(e) unfair or illegal discrimination;

(f) any business enterprise or other entity in which any Assured is a director, partner, officer, principal stockholder or employee or which is controlled, operated, or managed by the **Assureds**, either individually or in a fiduciary capacity, including the ownership, maintenance or use of any property in connection therewith, or to any **Claim** made against any Assured solely because the Assured is a partner, officer, director, stockholder or employee of any firm or corporation not named in the Declarations;

(g) an Assured against another Assured, including but not limited to a **Claim** by reason of or in connection with the actual or alleged termination or discharge of an Assured from his/her position of employment;

(h) any litigation, proceeding, administrative act or hearing brought prior to or pending as of the policy retroactive date as well as any future litigation, proceeding, administrative act or hearing based upon any such pending or prior litigation, proceeding, administrative act or hearing or derived from the essential facts or circumstances underlying or alleged in any such pending or prior litigation, proceeding, administrative act or hearing;

(i) any failure or omission on the part of the **Assureds** to effect or maintain insurance or bonds, including adequate coverage and limits or any self-insurance or self-insured **retention** program;

(j) the Employee Retirement Income Security Act of 1974, Public Law 93 406, commonly referred to as the Pension Reform Act of 1974, and amendments thereto, or similar provisions of any federal, state or local statutory law or common law;

(k) non-pecuniary or injunctive relief;

(l) the **Assureds** gaining in fact any personal profit or advantage to which such **Assureds** were not legally entitled or for the return by the **Assureds** of any remuneration if payment of such remuneration shall be held by a court to have been illegal;

(m) the bankruptcy, liquidation or insolvency of the Parent Company.

IV. Limit of Liability (inclusive of defense expenses).

1. Limit of Liability - Each **Claim**: the liability of the Insurer for each **Claim** first made and reported in writing to the Insurer during the **policy period** (including the discovery period, if purchased), shall not exceed the amount stated in Item 3(a) of the Declarations, and shall include **defense expenses**.

2. Limit of Liability - Aggregate: subject to Limit of Liability - Each **Claim**, the liability of the Insurer shall not exceed the amount stated in Item 3(b) of the Declarations as a result of all **Claims** first made and reported in writing to the Insurer during the **policy period** (including the discovery period, if purchased) and shall include **defense expenses**.

3. All **Claims** arising from the same **wrongful act** or interrelated, repeated or continuous **wrongful acts** of one or more **Assureds** shall constitute a single **Claim** and shall be deemed to be a **Claim** first made and reported to the Insurer in the **policy period** or discovery period, if applicable, in which the first such **wrongful act** is reported to the Insurer in accordance with Clause VI (A), and shall be subject to a single **retention** and a single per claim limit of liability.

V. Defense expenses (included in the limit of liability)

With respect to such insurance as is afforded by this policy and subject to the limits of liability and obligation of the **Assureds** to pay the **retention**:

(a) The Insurer shall defend any **Claim** insurable hereunder and pay **defense expenses** arising out of such **Claim**.

The **Assureds** shall not admit liability for or settle any **Claim** or incur any related cost or expense without the approval of the Insurer. The Insurer shall have the right to make such investigation and conduct negotiations and enter into such settlement or compromise of any **Claim** as the Insurer deems expedient.

(b) The Insurer shall not be obligated to pay any **loss** or to defend or continue to defend any **Claim** after the applicable limit of the Insurer's liability has been exhausted by the payment of **loss**.

VI. General Conditions

(A) Notice Provisions

(i) The date of **loss** from any **Claim** within the meaning of this policy shall be the date on which the **Assureds** shall give written notice of **Claim** to the Insurer as hereinafter provided.

(ii) If during the **policy period** or discovery period, if applicable, the **Assureds** receive written notice of **Claim** from a specified third party that it intends to hold the **Assureds** legally responsible for the results of a specified **wrongful act**, the **Assureds**, as a condition precedent to the right to be defended or reimbursed under this policy, must give written notice by certified mail thereof to Lloyds' of London c/o Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, 150 East 42nd Street, New York, NY 10017; Attention: Thomas Wilson

Jr., as soon as possible but in no event later than thirty days or the expiration date of this policy, whichever is sooner, after receiving such written notice.

(iii) If during the **policy period** or discovery period, if applicable, the **Assureds** shall become aware of any circumstances which may reasonably be expected to give rise to a **Claim** being made against the **Assureds** by a specified third party for the results of a specified **wrongful act**, the **Assureds**, as a condition precedent to the right to be defended or reimbursed under this policy must give written notice thereof to the Insurer of the circumstances and the specific reasons for anticipating such **Claim(s)** with full particulars as to dates and persons involved as soon as possible but in no event later than the expiration date of this

policy, to Lloyds' of London c/o Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, 150 East 42nd Street, New York, NY 10017; Attention: Thomas Wilson Jr., by certified mail. Any **Claim** subsequently arising from such circumstances shall be considered to have been reported during the **policy period** or discovery period if applicable.

(iv) The **Assureds** shall give the Insurer such information and cooperation as it may reasonably require.

(B) Cancellation

- (i) This policy may be cancelled by the **Assureds** by mailing or delivering prior written notice to the Insurer or by surrender of this policy to the Insurer.

If this policy is cancelled by the **Assureds**, the Insurer shall retain the customary short rate proportion of the premium hereon.

- (ii) This policy may also be cancelled by or on behalf of the Insurer by delivering to the Parent Company or by mailing to the Parent Company by registered, certified or other first class mail, at the Parent Company's address stated in Item 1 of the Declarations, written notice

stating when not less than thirty days after the date of such notice the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice.

If this policy is cancelled by or on behalf of the Insurer, the Insurer shall retain the pro-rata proportion of the premium hereon.

The Insurer may cancel this policy on ten days notice for nonpayment of premium due.

(C) Conformity to Statute

Any terms of this policy which are in conflict with the terms of any applicable laws construing this policy are hereby amended to conform to such laws.

(D) Subrogation

In the event of any payment of **loss** under this policy, the Insurer shall be subrogated to the extent of such payment to all rights of recovery therefore, and the **Assureds** shall execute and deliver all papers and instruments required and shall do everything that may be necessary to secure such rights including the execution of any documents necessary to enable the Insurer effectively to bring suit in the name of the **Assureds**.

(E) Settlement and Assignment

The **Assureds** shall not admit liability voluntarily, make any payment, agree to any settlement or confess or otherwise

consent to any judgment with respect to any **Claim** insurable hereunder without the written consent of the Insurer. This policy and any and all rights hereunder is not assignable without the written consent of the Insurer.

(F) Parent Company Authorization

Except as respects the giving of notice to apply for the discovery period, by acceptance of this policy, the Parent Company agrees to act on behalf of the **Assureds** with respect to the payment or return of premium, the receipt and acceptance of any endorsements, the cancellation of the policy, the negotiation of renewal, and the giving or receipt of any notice provided for by the terms and conditions of this policy.

(G) Policy Changes

This policy shall not be amended nor shall its terms be waived except by endorsement issued by the Insurer to form a part of this policy and signed by an authorized representative of the Insurer. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or change in any part of this policy or estop the Insurer from asserting any right under the terms of the policy.

(H) Reporting Requirements

The Parent Company agrees to notify the Insurer in writing within forty five days thereafter of any:

- (a) change in the name or address of the Parent Company; or
- (b) mergers or acquisitions.

The Insurer shall have the right upon receipt of said notice regarding any mergers or acquisitions to charge additional premium to the **Assureds** in consideration of such change or to cancel the policy.

(I) Policy Renewal

Renewal of the policy is subject to the following preconditions:

- (i) The Parent Company must submit at least thirty days prior to the expiration date of this policy a properly executed renewal application and all other information as the Insurer may reasonably require.

- (ii) Notwithstanding the preconditions set forth in (i) above, the Insurer is not obligated to renew this policy or to offer a quotation for the renewal of this policy.

VII. Discovery Period

If the Insurer cancels this policy or refuses to offer a quotation for the renewal of this policy (such refusal hereinafter referred to as "nonrenewal"), the **Assureds** shall, upon payment of an additional premium of fifty percent of the total policy premium, have the right to an extension of the insurance provided by this policy in respect of any **Claim** first made against the **Assureds** and reported in writing to the Insurer during the period of six months after the effective date of such cancellation or non-renewal, but only in respect of any **wrongful act** before the effective date of such cancellation or non-renewal and otherwise insurable under this policy

This right of discovery shall terminate if the **Assureds** do not provide written notice requesting such extension (together with the payment of the additional premium due) which is received by the Insurer within ten days after the effective date of cancellation or non-renewal.

This right of discovery shall not apply in the event of (i) cancellation of the policy by the Insurer resulting from the nonpayment of any premium due under this policy, or (ii) the failure of the **Assureds** to meet the requirements of Clause VI (I). Policy Renewal.

The offer by the Insurer of renewal terms, conditions, limits of liability or

premiums different from those of the expiring policy shall not constitute nonrenewal of the policy by the Insurer.

VIII. Arbitration

1. Conditions: Any controversy arising out of or relating to this policy shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association (herein "AAA") then in effect. The **Assureds** and the Insurer, before entering into arbitration, shall each appoint an arbitrator. Each arbitrator shall be a present or former insurance industry executive. Within thirty days after one party notifies the other of its demand for arbitration and names its arbitrator, the other party shall name its arbitrator. Within thirty days of the naming of the second arbitrator, the two arbitrators will select a third arbitrator to be chairman of the panel. Should the two arbitrators not be able to agree on a choice of the third, then the AAA shall make the appointment of a person who is neutral to the parties in controversy. None of the arbitrators shall be current or former officers, principals, directors, stockholders, partners, or employees of the Parent Company or Insurer. The three arbitrators shall comprise the arbitration panel for the purpose of this policy.

2. Judgment: Each party to this policy shall submit its case with supporting documents to the arbitration panel within thirty days after appointment of the third arbitrator. However, the panel may extend this period for a reasonable time. Unless extended by the consent of the parties to this arbitration, the majority of the three arbitrators shall issue a written decision resolving the controversy

before them within thirty days of the time both parties are required to submit their case and related documentation. The arbitrators' written decision shall state the facts reviewed, conclusion reached, and the reasons for their conclusions. Said decision shall be final and binding upon both parties in any court of competent jurisdiction.

3. Fees And Expenses: Each party shall pay the fees and expenses of its arbitrator, unless otherwise agreed by the parties. The remaining costs of the arbitration shall be shared equally by both parties. Arbitration shall take place in New York, New York, unless otherwise agreed to by both parties.