

Architects, Engineers & Construction Managers Professional Liability

(This is a Claims Made and Reported Policy)

THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD. CLAIM EXPENSES REDUCE THE LIMIT OF LIABILITY PROVIDED. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the **Insured** to pay the Deductible herein and in reliance upon all statements made and information in the application, which is attached hereto and made a part of this Policy, and subject to all the terms and conditions of this Policy, the Company agrees with the **Insured** as follows:

I. COVERAGE

The Company shall pay on behalf of the **Insured** any **Loss** and **Claim Expenses**, in excess of the Deductible (subject to the Policy's Limit of Liability), as the **Insured** shall become legally obligated to pay as a result of a **Claim(s)** made against the **Insured** for a **Wrongful Act(s)** arising from **Professional Services**, provided always that: (1) the **Claim** is first made against the **Insured** and reported to the Company, in writing, during the **Policy Period** or Extension of Policy Period (if applicable); (2) the **Insured** has no knowledge of such **Wrongful Act** prior to the Inception Date of this Policy; and/or (3) such **Wrongful Act** took place on or after the Retroactive Date set forth in the Declarations Page of this Policy and prior to the end of the **Policy Period**.

II. DEFINITIONS

(A) Bodily Injury

"**Bodily Injury**" means physical injury to or sickness, disease or death of a person, including any mental anguish or emotional distress resulting therefrom.

(B) Claim

"**Claim**" shall mean a written demand made against an **Insured** for compensation of monetary damages, including the service of suit or institution of arbitration proceedings against the **Insured**.

(C) Claim Expenses

"Claim Expenses" shall mean (1) reasonable and necessary fees charged by an attorney designated by the Company and (2) all other fees, costs or expenses incurred in the investigation, adjustment, defense and appeal of a **Claim** if incurred by the Company or an attorney designated by the Company, or by the **Insureds** with the written consent of the Company. However, **"Claim Expenses"** do not include salary expenses or wages of the **Insureds**, nor any fees, costs, or expenses incurred with respect to any criminal proceedings or actions against an **Insured**.

(D) Insured

"Insured" or **"Insureds"** shall mean:

- 1) The **Named Insured** designated in Item 1 of the Declarations;
- 2) Any partner, officer, director or employee of the **Named Insured** while acting within the scope of their duties on behalf of the **Named Insured**;
- 3) Any former partner, officer, director or employee of the **Named Insured** while acting within the scope of their duties on behalf of the **Named Insured**;
- 4) The estate, heirs, assigns or legal representatives (in the event of death or incompetency) of any individual **Insured** under this Policy; and,
- 5) Any contract, temporary or leased personnel rendering **Professional Services**, but only while acting under the direct supervision and on behalf of the **Named Insured**.

(E) Loss

"Loss" shall mean a monetary judgment, award or settlement for damages including an award by a court of reasonable attorney's fees and costs to a claimant, but does not include:

- 1) Fines, penalties, taxes or any matter uninsurable under the Law pursuant to which this Policy will be construed;
- 2) The return of fees or charges for the services rendered or to be rendered;
- 3) Any damages which are a multiple of compensatory damages;

- 4) Discounts, coupons, prizes, awards or other incentives offered to the **Insured's** clients; or
- 5) Liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement.

(F) Named Insured

"Named Insured" shall mean the individual, entity, partnership or corporation designated as such on the Declarations Page of this Policy.

(G) Personal Injury

"Personal Injury" shall mean mental or emotional anguish or distress; false arrest, detention, or imprisonment; wrongful entry, wrongful eviction, or other invasions of privacy; assault or battery; harassment or humiliation in any form, including, but not limited to sexual harassment; malicious prosecution; libel, slander, or defamation of character.

(H) Policy Period

"Policy Period" shall mean the period from the Inception Date of this Policy to its Expiration Date as set forth in the Declarations Page of this Policy, or its earlier termination date, if any.

(I) Professional Services

"Professional Services" shall be those services rendered by the **Insured** as specifically set forth in an endorsement to this Policy.

(J) Property Damage

"Property Damage" means injury to, or destruction of, tangible property, including loss of use resulting there from.

(K) Unrelated

For the purposes of Item 3 of the Declarations Page and as used in an endorsement to this Policy, **"Unrelated"** shall mean any entity which the **Named Insured** has no ownership interest in, or management control over, or, in the case of a natural person, one who does not at the time of performance or failure to perform **Professional Services** have any ownership interest in, or management control over, the party bringing a **Claim**.

(L) Wrongful Act

"**Wrongful Act**" shall mean any actual or alleged breach of duty, neglect, error or omission committed or allegedly committed in the rendering, or failure to render, **Professional Services**.

III. NOTICE OF CIRCUMSTANCE

If during the **Policy Period**, the **Insured** first becomes aware of any specific and identifiable **Wrongful Act** and during the **Policy Period** gives written notice to the Company of:

- (A)** the specific **Wrongful Act** (including parties involved); and
- (B)** the damage which has or may result from such **Wrongful Act**; and
- (C)** the circumstances by which the **Insured** first became aware of such **Wrongful Act**;

then, any **Claim** that is subsequently made against the Insured arising out of such **Wrongful Act** shall be deemed for the purposes of this insurance to have been made against the Insured during the **Policy Period**.

IV. EXCLUSIONS

This Policy does not apply either directly or indirectly to any **Claim, Claim Expenses or Loss**:

- (A)** Based upon or arising out of any dishonest, criminal, fraudulent, malicious or intentional **Wrongful Acts**, errors or omissions committed by, or at the direction of, the **Insured**;
- (B)** For liability arising out of the **Insured's** services and/or capacity as:
 - 1) an officer, director, partner, shareholder, trustee, or employee of a business enterprise not specifically covered under this Policy, a charitable organization, or a pension, welfare, profit sharing, mutual or investment fund or trust; or
 - 2) a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto, or with respect to any employee benefit plan of an **Insured**;
- (C)** Based upon or arising out of the rendering or failure to render **Professional Services** by the **Insured** for any entity which:

- 1) wholly or partly owns, operates, controls, or manages the **Insured**; or
- 2) is, or was at any time during or subsequent to the performance or failure to perform **Professional Services**, operated, managed or controlled by the **Insured**, or for which the Insured was an officer or director, or in which the Insured has an ownership interest of 25% or more;

However, this exclusion shall not apply to any **Claim** arising from **Wrongful Acts** in the performance by the **Insured** of **Professional Services** as a participant in a Joint Venture, formed pursuant to a written agreement and whose purpose, in whole or in part, is the Insured's performance of such **Professional Services**;

- (D) Arising out of infringement of patent, copyright or trademark;
- (E) Based upon or arising out of actual or alleged discrimination in violation of any local, State or Federal civil rights law, regulation or ordinance;
- (F) Based upon or arising out of a violation or alleged violation of the Securities Act of 1933 as amended, or the Securities Exchange Act of 1934 as amended, or any state blue sky or securities law or similar State or Federal statute and any regulation or order issued pursuant to any of the foregoing statutes;
- (G) For the liability of others assumed by the **Insured** under any oral or written contract or agreement, unless such liability would have attached to the Insured even in the absence of such agreement;
- (H) Based upon the **Insured's** failure to procure or maintain adequate insurance or bonds, or any **Claim** arising out of the **Insured's** failure to comply with any law with respect to the **Insured's** employees concerning workers' compensation, unemployment insurance, social security or disability benefits or any similar law;
- (I) For actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;
- (J) Based upon assertions, allegations, causes of action, demands or **Claims** by or on behalf of any **Insured** under this Policy against another Insured hereunder;
- (K) Based upon the actual or alleged performance or the failure to perform legal services by any **Insured** or any person or entity retained or employed by an **Insured**;
- (L) Based upon or arising out of the design, fabrication or manufacture of any goods or products: 1) developed by the **Insured** for multiple sale or mass

distribution; or 2) which are sold or supplied by the **Insured** or by others under license from the **Insured**;

- (M) Based upon or arising out of the performance by the **Insured**, or the failure to perform, any construction or construction-related services of any type, kind or nature, including, but not limited to, any management, supervision, observation, or monitoring services on projects where the **Insured** is also performing any construction; for the purposes of this exclusion, the term "construction" shall mean assembling material, erection, excavation, fabrication, installation, demolition, or other similar or related work or services on any structure, facility, element, or component of whatever nature or size;
- (N) Based upon or arising out of **personal injury, bodily injury**, sickness, disease or death to any employee of the **Insured** arising out of and in the course of employment by the **Insured**;
- (O) Based upon or arising out of any obligation for which the **Insured** or any insurer may be liable under any Workers' Compensation, Unemployment Compensation, Employers Liability, or Disability Benefits law, or any similar law;
- (P) Based upon or arising out of the insolvency or bankruptcy of the **Insured** or of any other person, firm, or organization, unless such a **Claim** is based upon a **Wrongful Act** in the performance by the **Insured** of **Professional Services**;
- (Q) Based upon or arising out of the design, testing, manufacture, mining, use, sale, installation, distribution, containment, or removal of asbestos, asbestos products, asbestos fibers, or asbestos dust, but this exclusion shall not apply to the **Insured's** performance of **Professional Services** in the specification of a product, material, or equipment containing asbestos;
- (R) Based upon or arising out of the **Insured's** advising or requiring of, or failure to advise or require, or failure to maintain any form of insurance, suretyship, or bond, either with respect to the **Insured** or any other person or entity; and
- (S) Based upon or arising out of any warranties or guarantees made by any **Insured**.

V. SEVERABILITY OF EXCLUSIONS

The **Wrongful Act** of any **Insured** under this Policy shall not be imputed to any other **Insured** for purposes of determining the applicability of the exclusions within the Policy.

VI. LIMIT OF LIABILITY

(A) Deductible

The Deductible amount stated in the Declarations shall apply to Loss and

Claims Expenses. This amount shall be paid by the **Insured** and shall remain uninsured.

(B) Multiple Claims

One or more **Claims** based upon or arising out of the same **Wrongful Act** or interrelated **Wrongful Acts** by one or more of the **Insureds** shall be considered a single **Claim**.

(C) Limit of Liability

Subject to the foregoing, the Company's total liability for **Loss** including **Claim Expenses** resulting from all **Claims** first made against the **Insureds** during the **Policy Period** shall not exceed the amount stated in the Declarations as "Limit of Liability," regardless of the time when such payment is made. The inclusion of more than one **Insured** hereunder shall not operate to either increase the amount of the applicable Deductible nor the amount of the Company's Limit of Liability. The Limit of Liability shall be excess of the Deductible amount.

(D) Exhaustion of Limit of Liability

The Company will not be liable to pay any **Loss** or **Claim Expenses** or continue the defense of any **Claim**, after the Limit of Liability has been exhausted.

(E) Allocation of Claim Expenses

If any portion of a **Claim** made under this Policy does not come within the coverage provided by this Policy, the Company will use all reasonable efforts to agree, with the **Insured**, upon a fair and proper allocation of **Claim Expenses** attributable to the covered portion of the **Claim** and the uncovered portion.

If there can be no agreement on an allocation of **Claim Expenses**, the Company, if requested by the **Insured**, shall submit such dispute to mediation. All administrative costs associated with the mediation shall be shared equally between the parties. The amounts paid by you in connection with the mediation will not be considered **Loss** or **Claims Expenses** under the terms of this Policy.

In such matters wherein this provision of the Policy is applicable, we shall have the right, but not duty, to defend the **Claim** at issue.

(F) Supplemental Payments

The Company will pay the reasonable expenses incurred, including actual and provable loss of wages, if the **Insured** is required by the Company to attend proceedings or trial in the defense of a covered **Claim**. Such

payments are subject to the following:

- 1) The maximum reimbursement for such expenses shall not exceed \$250 per day for each **Insured** who attends such proceedings at the Company's request;
- 2) The Company's maximum total liability for reimbursement shall not exceed \$5,000 per **Claim** regardless of the number of **Insureds** who attend such proceedings at the Company's request; and
- 3) Such payments shall be part of and shall reduce the available Limit of Liability.

The Deductible amount applicable to each **Claim** shall not apply to the Supplemental Payments made by the Company under this subsection of the Policy.

(G) Disciplinary Proceedings

The Company will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$7,500 in the aggregate during the **Policy Period** (all payments under this provision shall reduce the Policy's Limit of Liability by the amount of such payments), incurred by the **Insured** with the prior written consent of the Insurer, in responding to a disciplinary proceeding brought directly against the **Insured** during the **Policy Period** provided that the disciplinary proceeding:

- 1) arises out of the rendering of or failure to render **Professional Services** as noted in the Declarations Page of this Policy; and
- 2) is reported to the Company during the **Policy Period**.

After the Company has paid \$7,500 under this provision, the Company shall not be obligated to pay any further legal fees and/or expenses in connection with any disciplinary proceeding.

In such matters wherein this provision of the Policy is applicable, we shall have the right, but not duty, to defend the disciplinary proceeding.

VII. TERRITORY

The insurance afforded applies worldwide, provided that suit is brought or **Claim** is made within the United States, its territories and possessions or Canada.

VIII. CONDITIONS

(A) Insured's Duties In the Event of Claim, Arbitration or Suit

- 1) In the event of any **Claim** made against the **Insured**, written notice containing particulars sufficient to identify the **Insured** and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the **Insured** to the individual named in Item 6 of the Declarations as soon as practicable.
- 2) If the institution of arbitration proceedings or suit is brought against the **Insured**, the **Insured** shall immediately forward to the individual named in Item 6 of the Declarations every demand, notice, summons or other process received by the **Insured** or his representative.

(B) Assistance and Cooperation of the Insured

The **Insured** shall cooperate with the Company and its representatives and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all without charge to the Company, except as set forth in Section VI (F) of this Policy. The **Insured** shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the **Insured** may have. The **Insured** shall not, except at his own cost, make any payment, admit any liability, settle any **Claims**, assume any obligation or incur any expense without the written consent of the Company

(C) Defense, Investigation and Settlement of Claim

- 1) With respect to the insurance afforded by this Policy, the Company shall have the right and duty to defend any covered **Claim** brought against the **Insured** alleging a **Wrongful Act**. The Company shall have the sole right to select and appoint legal counsel to represent the **Insured** as respects any covered **Claim**, except as set forth in Section VI (E). The Company shall have the right to make such investigation, negotiation and settlement of a covered **Claim** it deems expedient, subject to paragraph (2) below.
- 2) The Company shall not settle any **Claim** without the consent of the **Insured**. If, however, the **Insured** shall refuse to consent to any settlement recommended by the Company and shall elect to contest the **Claim** or continue any 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. Such amounts are subject to the provisions of Section VI, Limit of Liability.

(D) Audit

The Company may examine and audit the **Insured's** books and records at any time during the **Policy Period** and after the final termination of this Policy, as far as they relate to the subject matter of this Policy.

(E) Subrogation

In the event of any **Claim** or payment under this insurance, the Company shall be subrogated to the extent of such payment to all rights of recovery therefore, and the **Insureds** shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit in the name of the **Insureds**. The **Insureds** shall do nothing after **Claim** is made against them to prejudice such rights. Any recovery shall first be paid to the Company to the extent of any **Loss** or **Claim Expenses** paid by the Company, with the balance paid to the **Insured**. However, no subrogation shall be had against any **Insured** unless such **Insured** is excluded from coverage by reason of Exclusion IV (A).

(F) Other Insurance

This Policy shall be excess insurance over any other valid and collectable insurance available to the **Insured** whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limit of Liability provided in this Policy.

(G) Cancellation

This Policy may be cancelled by the **Named Insured** by surrender thereof to the Company or by mailing written notice stating when thereafter such cancellation shall be effective. If cancelled by the **Insured**, the Company shall retain the customary short rate proportion of the earned premium. This Policy may also be cancelled, with or without the return by tender of the unearned premium, by or on behalf of the Company by delivering to the **Named Insured** at the address set forth in the Declarations or by sending to the **Named Insured** by mail, registered or unregistered, at the address in the Declarations not less than thirty (30) days (or ten (10) days in the event of non-payment of premium) written notice stating when the cancellation shall be effective. If cancelled by the Company, the Company shall retain the pro rata portion of the earned premium. For the purpose of this Policy, notice of cancellation given to the **Named Insured** by the Company or given to the Company by the **Named Insured** pursuant to this paragraph shall be deemed to be notice on behalf of all **Insureds** hereunder.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction hereof, such period shall

be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(H) Extension of Policy Period

In the event of cancellation or non-renewal of this Policy in its entirety by the Company or the **Insured**, this Policy may be extended for the additional period as indicated in the Declarations Page of this Policy, for a premium based upon the percentage, as indicated in the Declarations Page, of the total premium, for **Claims** first made against the **Insured** during the said extension period provided:

- 1) The **Wrongful Act** giving rise to such **Claim** is committed or alleged to have been committed prior to the effective date of the cancellation or the original expiration date, whichever is applicable, and which would be otherwise **Insured** by this Policy; and
- 2) Written **notice** of the exercise of this option is given by the **Named Insured** in Item 1 of the Declarations to the Company within ten (10) days after the effective date of cancellation or non-renewal; and
- 3) Such additional period shall be deemed part of the expiring **Policy Period** and not an addition thereto; and
- 4) For purposes of such additional period, coverage shall be applicable only with respect to **Claims** first made against the **Insureds** during such additional period. The provisions of Section III of this Policy shall not be applicable to such additional period.

The quotation of a renewal premium higher than the expiring premium or a change in other terms or conditions shall not be deemed to be a cancellation or non-renewal by the Company.

(I) Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by

the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

(J) Assignment

No assignment of interest under this Policy shall bind the Company unless its prior written consent is endorsed hereon.

(K) Changes

Notice to 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, nor estop the Company from asserting any rights under the terms of this Policy. The terms of this Policy shall not be waived or changed, except by endorsement issued to form a part of this Policy, signed by an authorized representative of the Company.

(L) Application

By acceptance of this Policy, the **Insureds** agree that the statements in the application are personal representations, that they shall be deemed material and that this **Policy** is issued in reliance upon the truth of such representations and that this **Policy** embodies all agreements existing between the **Insureds** and the **Company** or any of their agents relating to this insurance.

(M) False or Fraudulent Claims

If any **Insured** shall commit fraud in proffering any **Claim** as regards amount or otherwise, this insurance shall become void as to such **Insured** from the date such fraudulent **Claim** is proffered.

(N) Domestic Partner Liability

The coverage as is afforded by this Policy shall extend to the domestic partner of an **Insured** in any covered **Claim** made against such domestic partner solely by reason of such domestic partner status or ownership interest in jointly owned property or assets that are sought as recovery for such **Claim**, but only if the **Claim** does not allege any **Wrongful Act** or omission by such domestic partner.

(O) Bankruptcy

Bankruptcy or insolvency of the **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this Policy.

IX. MERGERS AND ACQUISITIONS

(A) If, during the **Policy Period**, the **Named Insured** acquires a majority of the assets of another entity, creates another entity, or acquires any entity by merger into or consolidation with the **Named Insured**, such entity shall not be covered under this Policy unless the **Insureds**, prior to such acquisition or creation:

- 1) give written notice of such acquisition or creation to the Company;
- 2) pay any additional premium required by the Company; and
- 3) agree to any additional terms and conditions of this Policy as required by the Company.

(B) If, during the **Policy Period**, any of the following events occurs:

- 1) the acquisition of the **Named Insured**, or all of or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
- 2) the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate at least 50% of the partners, principals, or directors of the **Named Insured**;

then, coverage under this Policy will continue in full force and effect until the termination of this Policy, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this Policy will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.