

Arch Specialty Insurance Company
(herein after referred to as "The Company")

MISCELLANEOUS PROFESSIONAL LIABILITY POLICY

THIS POLICY PROVIDES CLAIMS MADE AND REPORTED COVERAGE CLAIMS MUST FIRST BE MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD UNLESS AN EXTENDED REPORTING PERIOD APPLIES. THE PAYMENT OF CLAIM EXPENSES REDUCES THE LIMIT OF INSURANCE. PLEASE READ THE ENTIRE POLICY CAREFULLY

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Words and phrases that appear in capital letters, other than the captioned titles, have special meaning set forth in SECTION II – DEFINITIONS.

In consideration of the payment of premium by the **INSURED** and in reliance upon the statements in the **INSURED'S** Application attached hereto and made a part hereof, the Company agrees with the **INSURED**, subject to all terms, exclusions, Limits of Liability and conditions of this Policy, as follows:

I. INSURING AGREEMENT - COVERAGE

The Company will pay on behalf of the **INSURED** all sums, in excess of the Deductible, noted in Item 6. of the Declarations, that the **INSURED** is legally obligated to pay as **DAMAGES** and **CLAIM EXPENSES** arising from each **CLAIM** first made against the **INSURED** during the **POLICY PERIOD** or the Extended Reporting Period if applicable, provided that:

- A. the **CLAIM** arises out of an actual or alleged **WRONGFUL ACT** with respect to **PROFESSIONAL SERVICES** rendered or that should have been rendered by the **INSURED** or any entity for whom the **INSURED** is legally responsible, including the **INSURED'S** interest in joint ventures;
- B. the **WRONGFUL ACT** took place during the **POLICY PERIOD** or on or after the **RETROACTIVE DATE** specified in the Declarations;
- C. the **INSURED** gives prompt notice of a **CLAIM**, but no later than 60 days after expiration or termination of this policy, in accordance with the Notice of Claims condition of this policy.

The Company has the right and the duty to defend any **CLAIM** against the **INSURED** seeking **DAMAGES** to which this insurance applies, even if such **CLAIM** is groundless, false or fraudulent. **CLAIM EXPENSES** reduce the applicable Limits of Liability identified in the Declarations as described in Policy Section III – Limits of Liability. The Company may investigate the **CLAIM** and, with written consent of the **INSURED**, shall settle or compromise any **CLAIM** as it deems expedient. If the **INSURED** shall refuse to consent to any settlement or compromise recommended by the **COMPANY** and acceptable to the claimant, and shall elect to contest the **CLAIM**, then the Company's liability shall not exceed the amount which the Company would have paid for **DAMAGES** and **CLAIM EXPENSES** at the time the **CLAIM** could have been settled or compromised.

The Company shall not be obligated to pay any **DAMAGES** and/or **CLAIM EXPENSES** or undertake to continue defense of any **CLAIM** after the Company's Limits of Liability have been tendered into court or exhausted by payment of **DAMAGES** and/or **CLAIM EXPENSES**.

The **INSURED** shall not, except at the **INSURED'S** own cost voluntarily make any payment, assume any obligation, incur any expenses, admit any liability or settle any **CLAIM** without the prior written consent of the Company.

II. DEFINITIONS

- A. BODILY INJURY means injury to the body, sickness, or disease sustained by a person including death resulting therefrom . BODILY INJURY also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.
- B. CLAIM means any written demand received by the INSURED for DAMAGES, including the service of suit or other process, alleging a WRONGFUL ACT by the INSURED.
- C. CLAIM EXPENSES means those sums other than DAMAGES which are incurred for:
1. reasonable and necessary attorney's fees, expert witness fees and other reasonable and necessary fees and costs incurred by the Company, or by the INSURED with the Company's prior written consent, in the investigation and defense of covered CLAIMS;
 2. premiums for any appeal bond, attachment bond or similar bond, provided the Company shall have no obligation to apply for or furnish such bond; and
 3. prejudgment and post judgment interest awarded in a CLAIM.

CLAIM EXPENSES do NOT include salaries of employees, directors or officers of the INSURED or the Company.

All CLAIM EXPENSES shall be included in the Limits of Liability and Deductible and shall not be considered as sums payable in addition thereto.

- D. DAMAGES means monetary judgment or award the INSURED is legally obligated to pay, or a settlement negotiated with the consent of the INSURED and the Company, but shall NOT include any of the following:
1. civil or criminal fines, penalties, trebled or other multiplied compensatory damages or punitive or exemplary damages;
 2. the return or restitution of fees, expenses or costs paid to the Insured;
 3. the cost to comply with any injunctive or other non-monetary or declaratory relief or any agreement to provide such relief; or
 4. any other damages deemed uninsurable by law.
- E. INSURED means the following:
1. the Named INSURED(s) designated in Item 1 of the Declarations;
 2. any current or former partner, executive officer or director of the Named INSURED solely while providing PROFESSIONAL SERVICES on behalf of the Named INSURED;
 3. any current or former employee(s) or independent contractor(s) of the Named INSURED, solely while providing PROFESSIONAL SERVICES on behalf of the Named INSURED; and
 4. the heirs, executors, administrators, assigns and legal representatives of each of the above INSURED(s) in the event of death, incapacity or bankruptcy.

- F. PERSONAL INJURY means any actual or alleged:
 - 1. false arrest, humiliation, detention or imprisonment;
 - 2. wrongful entry or eviction or other invasion of private occupancy;
 - 3. malicious prosecution, or
 - 4. libel, slander or other defamatory or disparaging material; or a publication or an utterance in violation of an individual's right of privacy.
- G. POLICY PERIOD means the period from 12:01 A.M. on the inception date of this policy to 12:01 A.M. on the policy expiration date as set forth in Item 3 of the Declarations, or its earlier termination, cancellation or non-renewal date, if any.
- H. POLLUTANTS means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- I. PROFESSIONAL SERVICES means those services described in Item 8 of the Declarations performed by the Named INSURED for others for a fee.
- J. PROPERTY DAMAGE means:
 - 1. physical injury to, loss or destruction of tangible property, including loss of use thereof; or
 - 2. loss of use of tangible property which has not been physically injured or destroyed.
- K. WRONGFUL ACT means any actual or alleged act, actual or alleged error, actual or alleged omission, neglect, or breach of duty unintentionally committed by any INSURED; or a person for whom the NAMED INSURED is legally liable, solely in the rendering of PROFESSIONAL SERVICES.

III. **POLICY TERRITORY**

The insurance afforded by this policy applies worldwide. Where suits are brought or CLAIMS are made outside of the United States of America and its territories and possessions, Puerto Rico, or Canada, the following additional provisions apply:

- A. The Company shall have the right but not the duty to investigate, defend or settle any such CLAIMS brought against an INSURED;
- B. If the Company elects not to investigate, defend or settle any such CLAIM, the INSURED shall, under the Company's supervision, arrange for such investigation and defense thereof as is reasonably necessary and subject to the Company's prior authorization, shall effect such settlement thereof as the Company and the INSURED deem expedient;
- C. The Company will reimburse the INSURED for the reasonable cost of such investigation and defense and the amount of any settlement or judgment in excess of the Deductible amount stated in the Declarations, all subject to and within the Limits of Liability stated in the Declarations; and
- D. Such reimbursement shall be made in United States currency at the rate of exchange prevailing on the date the judgment is rendered or the date that the amount of the settlement is agreed upon or the date expenditure is made.

IV. **EXCLUSIONS**

This Policy does not apply to any CLAIM based upon or arising out of:

- A. any dishonest, fraudulent or criminal act, error or omission committed by or at the direction of the INSURED, however, this exclusion shall not apply to CLAIM EXPENSES or the Company's duty to defend any such CLAIM;
- B. any CLAIM made by any INSURED against any other INSURED;
- C. PERSONAL INJURY or Discrimination on any basis;
- D. BODILY INJURY or PROPERTY DAMAGE;
- E. PROFESSIONAL SERVICES rendered:
 - 1. by any business enterprise not identified in the Declarations which either owns or has an ownership interest in any INSURED;
 - 2. by any business enterprise not identified in the Declarations in which any INSURED has a financial interest in, or in which any INSURED is an officer, director, partner, trustee or employee;
 - 3. by any INSURED for any business enterprise not identified in the Declarations which controls, operates or manages any INSURED; or
 - 4. by any Insured for any business enterprise not identified in the Declarations which any INSURED controls, operates or manages;
- F. any liability of others assumed by the INSURED under any contract or agreement, unless such liability would have attached to the INSURED by law even in the absence of such agreement;
- G. any activities by any INSURED or any INSURED'S capacity as an officer, director, partner, trustee or fiduciary;
- H. any actual or alleged violation of the Securities Act of 1933 as amended, the Securities Exchange Act of 1934 as amended or any state Blue Sky or securities law or similar state or federal statute, including any regulation or order issued pursuant to any of the foregoing statutes;
- I. the gaining in fact of any profit or advantage to which the INSURED is not legally entitled to;
- J. any actual or alleged infringement of any patent, copyright, trademark, service mark, trade secret, trade dress or trade name;
- K. any actual or alleged breach of any contract, warranty, guarantee or promise unless liability would have attached to the INSURED even in the absence of such contract, warranty, guarantee or promise;
- L. a WRONGFUL ACT actually or allegedly committed prior to the beginning of the POLICY PERIOD, if, on or before the earlier of the effective date of this Policy or the effective date of any Policy issued by the Company to which this Policy is a continuous renewal or replacement, the INSURED knew or reasonably could have foreseen that the WRONGFUL ACT did or could lead to a CLAIM;

- M. any injury or damage which would have not occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants, including but not limited to asbestos, at any time;
 - 1. any request, demand, or order that any Insured or others, test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
 - 2. any action brought by or on behalf of a governmental authority for Damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

V. **LIMIT OF LIABILITY**

A. **Each Claim Limit of Liability**

The liability of the Company for DAMAGES and CLAIMS EXPENSES for each CLAIM shall not exceed the amount stated in the Declarations for Each CLAIM. All CLAIM EXPENSES shall first be subtracted from the Limit of Liability, with the remainder being the amount available to pay DAMAGES.

B. **Aggregate Limit of Liability Each Policy Period**

The liability of the Company for all DAMAGES and CLAIM EXPENSES under this policy shall not exceed the amount stated in the Declarations as POLICY PERIOD Aggregate.

C. **Deductible**

As a condition precedent to the Company's liability under this Policy, the Deductible amount as stated in Item 6. of the Declarations shall be paid by the Insured and shall be applicable to each CLAIM and shall include all DAMAGES and CLAIM EXPENSES up to the Deductible amount for each CLAIM.

The Insured's total Deductible payments, in respect to each CLAIM shall not exceed the Deductible amount stated in Item 6. of the Declarations. The Company may from time to time advance payment for DAMAGES and CLAIM EXPENSES within the Deductible. Any amounts first paid by the Company within the Deductible shall, upon written demand by the Company, be paid by the Insured to the Company within thirty (30) days.

D. **Multiple Insureds, Claims and Claimants**

The Limits of Liability shown in the Declarations and described herein are the most the Company will pay, regardless of the number of INSUREDS, CLAIMS, or individuals or entities making CLAIMS. One or more CLAIMS arising out of a single WRONGFUL ACT or out of a series of related WRONGFUL ACTS shall be treated as a single CLAIM, and shall be subject to the Each CLAIM Limit of Liability and only one Deductible. All such CLAIMS, whenever made, shall be considered first made on the date on which the earliest CLAIM was first made.

E. **Mediation**

If the Company and the Insured agree to use mediation to resolve a claim brought against the insured and if such CLAIM is resolved thereby, the Deductible stated in the Declarations shall be reduced by 50% for such CLAIM subject to a maximum reduction of \$25,000.

VI. **EXTENDED REPORTING PERIOD**

A. **Automatic Extended CLAIMS Reporting Period**

If the Company or the INSURED terminate or non-renew this insurance for any reason, other than nonpayment of premium, the INSURED'S failure to comply with any term and condition, fraud or material misrepresentation, the INSURED shall be entitled to a period of sixty (60) days from the date of policy termination to report CLAIMS which are made against the INSURED prior to such termination date and that arise out of the INSURED'S providing or failure to have provided PROFESSIONAL SERVICES prior to such termination date. This Automatic Extended CLAIMS Reporting Period may not be canceled by the Company and does not require the payment of an additional premium. This Automatic Extended CLAIMS Reporting Period shall be included within the Optional Extended CLAIMS Reporting Period of such is purchased.

The fact that the period during which the CLAIMS can be made against the INSURED and reported to the Company is extended by virtue of the Automatic Extended CLAIMS Reporting Period shall not in any way increase the Limits of Liability of this policy.

B. **Optional Extended CLAIMS Reporting Period**

If the INSURED does not renew or replace this insurance, or if the Company cancels or refuses to renew this policy for reasons other than the nonpayment of premium or Deductible or noncompliance with the terms and conditions of this policy or fraud or material misrepresentations, upon the payment of an additional premium, the INSURED shall have the option to extend the period by which a CLAIM can be made against the INSURED and reported to the Company.

The additional premium to purchase the Optional Extended CLAIMS Reporting Period shall be determined by charging 100% of the annual expiring premium for twelve (12) months. The purchase of an Optional Extended CLAIMS Reporting Period shall be endorsed herein.

The INSURED'S right to purchase the Optional Extended CLAIMS Reporting Period must be exercised by notice in writing not later than thirty (30) days after the cancellation or termination date of this policy. Effective notice must include payment of additional premium. If such premium is not mailed to the Company within thirty (30) days then the INSURED shall not, at a later date, be entitled to purchase the Optional Extended CLAIMS Reporting Period.

At the commencement of any Optional Extended CLAIMS Reporting Period, the entire premium therefore shall be deemed earned, and in the event the INSURED terminates the Optional Extended CLAIMS Reporting Period before its term for any reason, the Company shall not be obligated to return to the INSURED any portion of the premium.

The fact that the period during which the CLAIMS can be made against the INSURED and reported to the Company is extended by virtue of the Optional Extended CLAIMS Reporting Period shall not in any way increase the Limits of Liability of this policy.

The Company's liability shall further be limited to cover only those CLAIMS or CLAIM EXPENSES which arise out of the INSURED'S providing or failure to have provided PROFESSIONAL SERVICES prior to the expiration date of the POLICY PERIOD or any earlier termination date, if applicable, and prior to the Optional Extended CLAIMS Reporting Period.

VII **CONDITIONS**

A. **Notice of Claims**

As a condition precedent to coverage, no obligation will arise on the part of the Company under this policy unless and until the Insured gives written notice of a Claim as soon as practicable, but in any event during the Policy Period, but in no event later than 60 days after the end of the Policy Period to the Company at the following address:

Arch Specialty Insurance Company
One Liberty Plaza, 53rd Floor
New York, NY 10006
Attention: Professional Liability Claims
Phone: 800-817-3252
Fax: 212-651-6499

Written notice must include any and all documents received by the INSURED or by the INSURED'S representatives at the time the CLAIM was first made against the Insured.

B. **Notice of Circumstance**

As a condition precedent to coverage, if during the POLICY PERIOD the INSURED first becomes aware of a circumstance from which a CLAIM is reasonably anticipated, and if the INSURED shall during the POLICY PERIOD give written notice to the Company of the following:

1. the identity of each INSURED who committed the WRONGFUL ACT;
2. a detailed description of the WRONGFUL ACT;
3. the DAMAGES which resulted or may result from the WRONGFUL ACT;
4. the circumstances by which the INSURED first became aware of the WRONGFUL ACT; and
5. the names of all potential claimants

then any CLAIM made thereafter made against the INSURED arising out of such WRONGFUL ACT shall be deemed for the purposes of this insurance to have been made on the date which the written notice was mailed to the Company.

C. **Assistance and Cooperation of the INSURED**

The INSURED shall, as a condition precedent to any coverage under this policy, fully assist and cooperate with the Company in the investigation, settlement and defense of all CLAIMS made against the INSURED. At the Company's request, the INSURED shall submit to examination by a representative of the Company under oath if required, meet with and give written statements to the Company, authorize and provide the Company all necessary records and other information, secure and give evidence, attend hearings and trials and obtain the location of and cooperation of witnesses.

D. **Subrogation**

In the event of any payment under this policy, the Company shall be subrogated to all the INSURED'S rights of recovery against any person or organization. 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 without first obtaining the written consent of the Company.

E. Acquisitions, Mergers and Material Changes

In the event that after the inception of this policy the INSURED:

1. acquires all or substantially all the assets of another entity, or
2. merges with another entity such that the INSURED is the surviving entity, or
3. creates or acquires a subsidiary, or
4. otherwise changes its business as described in the Application in a manner material to the risk underwritten by the Company,

then no coverage shall be afforded under this policy for the assets acquired by the INSURED; the WRONGFUL ACTS of the entity merged with, acquired by, or created by the Insured; and/or the changed business activities of the INSURED, unless and until:

- a. the INSURED provides written notice of the aforementioned event to the Company not more than thirty (30) days after the effective date thereof;
- c. the INSURED provides the Company with such information in connection therewith as the Company may deem necessary;
- d. the INSURED accepts any special terms, condition, exclusion, or additional premium charge required by the Company; and
- e. the Company at its sole discretion specifically agrees in writing to provide such coverage.

If the Company does agree to provide coverage for the newly purchased or created entity or subsidiary, and/or for the INSURED'S changed business activities, such coverage will only be for WRONGFUL ACTS first committed following the effective date of the aforementioned event.

For purposes of this Section, ENTITY shall mean any corporation, trust, partnership, or other form of organization not identified in the Declarations as a Named INSURED.

F. Application

By acceptance of this policy, the Named INSURED agrees that the statements in the application attached hereto and made part hereof, are true and correct representations, that each representation shall be deemed material, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between the Named INSURED and the Company or any of its representatives, in connection with this policy.

G. Other Insurance

This insurance shall be in excess of the amount of the applicable Deductible herein, and over any other valid and collectible insurance available to the Insured whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance specifically applies as excess insurance over the Limit of Liability provided herein.

H. Changes

Neither notice to nor knowledge possessed by any representative acting on behalf of the Company nor any conduct by any such representative shall be construed as a waiver or

estoppel against the Company for any reason. No right accruing to the Company nor any provision of this policy, shall be waived or changed in any manner other than by express endorsement incorporated into this policy.

I. Assignment

Assignment of any interest by the INSURED under this policy shall not bind the Company without its written consent.

J. Cancellation/Non Renewal

This policy may be canceled by the INSURED by surrender to the Company, or by mailing to the Company written notice requesting cancellation and stating when thereafter such cancellation shall take effect. If the policy is canceled by the INSURED, the Company shall retain the customary short rate proportion of the premium.

This policy may also be canceled or non-renewed by the Company by written notice mailed to the Named INSURED at the address shown in Item 1 of the Declarations. Said cancellation or non renewal shall take effect not less than thirty (30) days from the date the notice is mailed, unless the policy is canceled because the INSURED has failed to pay a premium or Deductible when due. In that event, such cancellation shall take effect not less than ten (10) days from the date the notice is mailed.

If the policy is canceled by the Company, the earned premium shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected or as soon as practicable thereafter, but the failure to pay any premium adjustment at, on or around the time of the effective date of cancellation shall not alter the effectiveness of cancellation.

K. Audit

The Company may examine and audit the INSURED'S books and records at any time during the POLICY PERIOD and within three years after the final termination of this policy, as far as they related to the subject matter of this policy.

L. Action Against the Company

No action shall lie against the Company unless there has been full compliance with all of the terms of this policy, and both the INSURED'S liability and the amount of the INSURED'S obligation to pay has been finally determined either by judgment against the INSURED after actual trial or by the agreement of the INSURED, the claimant and the Company, in writing.

Any person or organization, or the legal representative thereof, who has secured a judgment or written agreement as referenced in the preceding paragraph, shall thereafter be entitled to recover under this policy to the extent the Limits of Liability remain available for payment of DAMAGES and to the extent allowed by law.

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 any legal representatives thereof.

M. Bankruptcy or Insolvency

Bankruptcy or insolvency of the INSURED or the INSURED'S estate shall not relieve the Company of any of its obligations under this policy. In the event of the bankruptcy or insolvency of the INSURED, the Company shall have the right to assert any appropriate claim or demand in such proceedings for payment of any obligations of the Insured, including but not limited to, any amounts which the Company may advance on behalf of the INSURED within the Deductible.

N. Authorization

By acceptance of this policy, the first Named INSURED identified in Item 1 of the Declarations agrees to act on behalf of all INSUREDS with respect to giving notices to the Company and receiving communications relating to the policy or to Claims thereunder from the Company.

O. Conformity of Statutes

The terms of this policy which are in conflict with the statutes of the state wherein this policy is issued are hereby amended to conform to such statutes.

P. Governing Law

The terms of this policy are to be interpreted in accordance with the laws of the state wherein this policy is issued.

Q. Arbitration

Should the INSURED and the Company disagree as to the rights and obligations owed by the Company under the policy, including the effect on any applicable statutes or common law upon the contractual obligations otherwise owed, either party may request that the dispute be subjected to binding arbitration.

In the event the parties cannot mutually agree upon an arbitration forum and process, the American Arbitration Association shall be utilized, with each party selecting an arbitrator from the list of qualified arbitrators for insurance coverage disputes provided by that association. The two chosen arbitrators shall select a third arbitrator from the same list; if they cannot agree to a selection the American Arbitration Association shall make the selection for them. Each party shall bear the costs of its arbitrator, and shall equally share the costs of the third arbitrator and of the arbitration process.

In the event the INSURED prevails in the arbitration, and the Company promptly offers to the INSURED'S arbitration costs and reasonable attorneys fees incurred in connection therewith in addition to the disputed contract benefit, the INSURED shall have no right to sue the Company for breach of implied covenants or unreasonable withholding of contract benefits.

To the extent the Company prevails in the arbitration, the arbitrators may award the Company any CLAIM EXPENSES and/or DAMAGES incurred or paid under reservation of rights in excess of the Company's contract obligations as determined by the arbitrators.