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**This Declaration Page is attached to and forms part of certificate provisions (Form SLC-3).**

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Previous No. «f1» Authority Ref. No. Certificate No. «f2»

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**MISCELLANEOUS ERRORS AND OMISSIONS INSURANCE**

**THIS CERTIFICATE IS WRITTEN ON A CLAIMS-MADE BASIS. IT COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE UNDERWRITERS NO LATER THAN SIXTY (60) DAYS AFTER THE CLAIM IS FIRST MADE.**

- Item A. **Named Insured:** «f3» «f4»  
**Principal Address:** «f5»  
«f6», «f7» «f8»
- Item B. **Policy Period:** «f9» to «f10»  
both days at 12:01 a.m. standard time at the Principal Address stated in Item A.
- Item C. **Insured Services:** «f40»
- Item D. **Limit and Deductible:**  
a) Limit of Liability: \$ «f11» per **Claim** and «f12» in the aggregate  
b) Deductible: \$ «f13» per **Claim**
- Item E. **Retroactive Date:** «f14»
- Item F. **Premium:** «f41»
- Item G. **Endorsements:** Nuclear Incident Exclusion Clause (E1847B-0605)  
War and Civil War Exclusion Clause (E1847C-0108)  
Terrorism Exclusion Endorsement (E1847D-0108)
- Item H. **Notification under the Certificate shall be given to:**  
NAS Insurance Services, LLC  
16501 Ventura Blvd., Suite 200  
Encino, CA 91436  
(818) 382-2030
- Item I. Policy form **P1847E-0914** and Application form and Warranty Statement dated «f17» are hereby attached and made a part of this Policy. **Wherever in any of the forms, clauses or conditions of this insurance the word "Policy" appears, this shall be deemed to be "Certificate".**
- Insurance is effected with certain UNDERWRITERS AT LLOYD'S, LONDON (100%)**
- Item J. **Service of Suit:**  
FLWA Service Corp.  
c/o Foley & Lardner LLP  
555 California Street, Suite 1700  
San Francisco, CA 94104-1520

**Dated** «f16»

**NAS INSURANCE SERVICES, LLC**

By: \_\_\_\_\_ **S P E C I M E N**  
Correspondent

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*This Policy Provides Claims Made and Reported Coverage.  
Please Read the Entire Policy Carefully.*

## **MISCELLANEOUS ERRORS AND OMISSIONS**

### **CLAIMS MADE INSURANCE POLICY**

Words and phrases that appear in **bold** have special meaning.  
Refer to **Part I.B. Insured**, and **Part III. Definitions**.

#### ***Part I. Coverages***

##### **A. INSURING AGREEMENT**

In consideration of payment of the premium, and in reliance upon the **Application**, the Underwriters agree to pay on behalf of any **Insured** all sums, in excess of the Deductible and within the Limit of Liability, that such **Insured** becomes legally obligated to pay as **Damages** and related **Claim Expenses** resulting from **Claims** first made against the **Insured** during the **Policy Period** or during the Extended Reporting Period, if purchased, and reported to the Underwriters in accordance with the Claim Reporting Provisions, alleging a **Wrongful Act** in the performance of or failure to perform **Insured Services**, provided that:

1. the entirety of such **Wrongful Act** happens on or after the **Retroactive Date** stated in Item E. of the Declarations; and
2. prior to the effective date of this Policy, the **Insured** did not know of such **Wrongful Act** or any fact, circumstance, situation or incident that reasonably could be expected to give rise to a **Claim** under this Policy.

##### **B. INSURED**

**Insured(s)** means those persons and entities for which this Policy provides coverage, subject to all terms, conditions and exclusions herein, and includes:

1. Each and every **Named Insured** as stated in Item A. of the Declarations or by endorsement, and if the **Named Insured** is an individual, his or her spouse or domestic partner, but solely in connection with **Insured Services** rendered, or which should have been rendered, by or on behalf of such **Named Insured**;
2. Current partners, directors, officers, or employees of any **Named Insured**, but solely in connection with **Insured Services** rendered, or which should have been rendered, by or on behalf of such **Named Insured**;
3. Former partners, directors, officers, or employees of any **Named Insured**, but solely in connection with **Insured Services** rendered, or which should have been

rendered, by or on behalf of such **Named Insured** while such person was a partner, director, officer, or employee of the **Named Insured**;

4. The estate, heirs, executors, administrators and legal representatives of any **Insured**, in the event of the **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent such **Insured** otherwise would have been entitled to coverage under this Policy; and
5. Any client for whom the **Named Insured** is required by written contract to procure such coverage as is provided by this Policy, but only for **Wrongful Acts** arising solely and directly out of the rendering of, or failure to render, **Insured Services** by the **Named Insured** or by any party described in paragraphs 2 or 3 above, and provided that the written contract is executed prior to the date any **Wrongful Act** occurs.

### C. DEFENSE AND SETTLEMENT

1. The Underwriters have the right and duty to defend an **Insured** in respect of any **Claim** made against an **Insured** for which coverage under this Policy applies, even if the allegations of the **Claim** are groundless, false or fraudulent. The Underwriters have the right to appoint defense counsel and to investigate any **Claim** as they deem necessary. The Underwriters shall not be obligated to investigate or defend any **Claim** after the Underwriters' Limit of Liability has been exhausted by payment of **Damages** or **Claim Expenses**.
2. As a condition precedent to coverage, the **Insureds** shall not settle any **Claim** without the Underwriters' prior written consent, even if the amount of such settlement is within the **Insured's** Deductible. The **Insureds** shall not admit any liability for any **Claim**, nor incur or agree to pay any costs, charges or expenses, or **Claim Expenses**, without the prior written consent of the Underwriters.
3. The Underwriters shall not settle any **Claim** without the **Insureds'** consent. If, however, an **Insured** refuses to consent to any settlement recommended by the Underwriters or their representatives and elects to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, then the Underwriters' liability for such **Claim** shall not exceed the amount for which the Underwriters could have settled the **Claim** plus **Claim Expenses** incurred as of the date the **Insured** withheld consent to such settlement. The Underwriters' obligation to pay shall in all events be subject to the provisions of **Part II. Limit of Liability and Deductible**.

### D. COVERED TERRITORY

The coverage afforded by this Policy applies to **Wrongful Acts** committed anywhere in the world, except countries where the United States of America has declared or imposed sanctions or trade embargoes, provided that a **Claim** is first made within the United States of America, its territories or possessions, or Canada.

## **E. EXTENDED REPORTING PERIOD**

1. If this Policy is cancelled or non-renewed by the **First Named Insured**, or if we refuse to renew this Policy for reasons other than non-payment of premium or non-compliance with the terms and conditions of this Policy, then the **First Named Insured** shall have the right to purchase, within thirty (30) days of policy termination, an Extended Reporting Period. If purchased, the Extended Reporting Period will extend the coverage provided by this Policy for a period of up to one (1) year immediately following the termination of the Policy, but only for a **Claim** first made during the Extended Reporting Period for a **Wrongful Act** committed or allegedly committed on or after the **Retroactive Date** and before the effective date of such cancellation or non-renewal, provided that such **Claim** is otherwise covered by this Policy.
2. Changes in policy terms and conditions, or the quotation of a different premium, deductible or limits of liability for renewal does not constitute cancellation or refusal to renew for purposes of this Clause.
3. The additional premium for this coverage extension will be 100% of the full annual policy premium, as measured by the level of premium in effect immediately prior to the end of the **Policy Period**, including any additional premium for endorsements. Such premium will be fully earned immediately upon inception of the Extended Reporting Period.
4. Payment of the additional premium, in full, shall be a condition precedent to this coverage extension, and once the premium is paid and this Policy is endorsed, the Extended Reporting Period cannot be cancelled, and the premium paid is deemed fully earned. The right to purchase the Extended Reporting Period shall terminate unless written notice, together with full payment of the premium for the Extended Reporting Period, is received by the Underwriters within thirty (30) days after the effective date of cancellation or, in the event of a refusal to renew, within thirty (30) days after the Policy expiration date. If such notice and premium payment is not so given to the Underwriters, all of the **Insureds'** rights to this coverage extension shall terminate.
5. The aggregate Limit of Liability for any Extended Reporting Period will be part of, and not in addition to, the Underwriters' Limit of Liability for the **Policy Period**, as stated in Item D. of the Declarations.

## **Part II. Limit of Liability and Deductible**

### **A. LIMIT OF LIABILITY**

The Underwriters' Limit of Liability, as stated in Item D. of the Declarations, is the maximum amount that the Underwriters will pay under this Policy, and is limited as follows:

1. The Each **Claim** Limit is the most the Underwriters will pay for **Damages** and

**Claim Expenses**, combined, resulting from each **Claim** first made against an **Insured** during the **Policy Period** and the Extended Reporting Period, if purchased;

2. The Aggregate Limit is the most the Underwriters will pay for all **Damages** and all **Claim Expenses**, combined, resulting from all **Claims** first made against all **Insureds** during the **Policy Period** and the Extended Reporting Period, if purchased.
3. The Underwriters' Limit of Liability will not increase regardless of (a) the number of persons or entities that may be insured or included in **Part I. B. INSURED**, (b) the number of persons or entities that may make **Claims**, or (c) the number of **Claims** that may be made against the **Insureds**. In the event two or more **Claims** arise out of a single **Wrongful Act**, or related **Wrongful Acts**, all such **Claims** will be treated as a single **Claim**, subject to the Limit of Liability stated in Item D. of the Declarations, and such **Claim** will be deemed first made when the earliest **Claim** arising out of such **Wrongful Act** or related **Wrongful Acts** was first made. **Wrongful Acts** will be deemed related if they are logically or causally connected by reason of any common fact, circumstance, situation, transaction, event or decision.
4. The Underwriters will have no liability to pay any **Damages** or to defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claim Expenses**, or any combination thereof. **Claim Expenses** are a part of, and not in addition to, the applicable Limit of Liability, and payment of **Claim Expenses** by the Underwriters will reduce the remaining and available Limit of Liability.

## **B. DEDUCTIBLE PROVISIONS**

The deductible amount shown in Item D. of the Declarations will apply to each **Claim** and will be paid by the **Insured**. In the event two or more **Claims** arise out of a single **Wrongful Act**, or related **Wrongful Acts**, all such **Claims** will be treated as a single **Claim**, and only one Deductible will apply. The Deductible applies to **Damages** and **Claim Expenses**, whether or not **Damages** are paid. The **Insured** shall promptly reimburse the Underwriters for advancing any amounts that the Underwriters have paid within the **Insured's** Deductible.

## **Part III. Definitions**

- A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted to the Underwriters by or on behalf of any **Insured** in connection with the underwriting of this Policy or any policy of which this Policy is a direct or indirect renewal or replacement. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this Policy.

- B. **Bodily Injury** means physical injury, sickness, disease, pain or death, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or emotional distress sustained by a person at any time.
- C. **Claim** means a written or verbal demand for monetary or non-monetary relief received by the **Insured**, including the service of suit or the institution of arbitration proceedings against the **Insured**.
- D. **Claim Expenses** mean expenses incurred by or at the direction of the Underwriters, and expenses incurred by an **Insured** with the Underwriters' prior written consent, in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, and includes:
1. Reasonable and necessary attorney fees and costs;
  2. The premium for an appeal bond or a bond to release property that may be attached, but only for premium amounts within the available Limit of Liability, and only if the **Claim** is otherwise covered by this Policy, it being further understood that the Underwriters have no obligation to prosecute any appeal or obtain any bond;
- Claim Expenses** do not include any (a) loss of earnings, (b) salaries or other compensation, or (c) expenses of any **Insured** or any employee of any **Insured**.
- E. **Damages** mean a monetary judgment or arbitration award, except those for which insurance is prohibited by law; any settlement to which the Underwriters have consented; and interest on any judgment that accrues after entry of the judgment, but before the Underwriters have paid, offered to pay or deposited into court that part of the judgment within the applicable Limit of Liability. **Damages** shall not include (1) punitive, exemplary or multiple damages, or fines, penalties, sanctions or taxes; or (2) fees, deposits, commissions, or charges for goods or services. **Damages** also shall not include any amounts for which the **Insured** is not financially liable or for which there is no legal recourse against the **Insured**; nor shall **Damages** include the cost or expense of complying with any non-monetary, injunctive or equitable relief.
- F. **First Named Insured** means the first natural person or entity named in Item A. of the Declarations as a **Named Insured**.
- G. **Insured Services** mean the services provided by a **Named Insured** to third parties for a fee or other consideration, as described in Item C. of the Declarations, for which coverage under this Policy is provided.
- H. **Named Insured** means each and every natural person or entity named in Item A. of the Declarations as a **Named Insured**.

- I. **Policy Period** means the period of time stated in Item B. of the Declarations, or any shorter period resulting from policy cancellation of or amendment to this Policy.
- J. **Pollutants** mean any solid, liquid, gaseous or thermal irritant, contaminant or toxin including, but not limited to, smoke, vapor, soot, fumes, dust, fibers, mold, spores, fungi, germs, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, asbestos, asbestos compounds or materials containing asbestos, radon, waste or any like substances.
- K. **Property Damage** means injury to tangible property, including all resulting loss of use of that property, and loss of use of tangible property that is not physically injured.
- L. **Retroactive Date** means the date stated in Item E. of the Declarations, on or after which any alleged or actual **Wrongful Act** must have taken place in order to be considered for coverage under this Policy.
- M. **Takeover** means:
- a) Any person, entity, or affiliated group of persons or entities obtains more than 50% of the **Named Insured's** equity or assets; or
  - b) Any person, entity, or affiliated group of persons or entities obtains the right to elect or appoint more than 50% of the **Named Insured's** directors, officers or trustees, or member managers, as applicable; or
  - c) The **Named Insured** is dissolved, sold, acquired by, merged into, or consolidated with another entity such that the **Named Insured** is not the surviving entity; or
  - d) The **Named Insured** ceases to do business for any reason.
- N. **Wrongful Act** means:
1. Any negligent act, error or omission by an **Insured** in the performance of or failure to perform **Insured Services**; and
  2. Injury other than **Bodily Injury**, arising out of any of the following:
    - a. False arrest, detention or imprisonment;
    - b. Malicious prosecution;
    - c. Wrongful entry or eviction, or invasion or violation of the right of private occupancy;

- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person or organization's goods, products or services;
- e. Oral or written publication of material that violates a person's right of privacy;
- f. Misappropriation of advertising ideas or style of doing business;

Provided always that N.2. shall not provide coverage for any **Claim** alleging a **Wrongful Act** for which there is other valid and collectible insurance purchased by the **Insured**, including but not limited to general liability insurance, that provides for a duty to defend such **Claim**. This Policy provides coverage for such **Claim** only in the absence of other insurance.

#### **Part IV. Exclusions**

The Underwriters shall not be obligated to pay **Damages** or **Claim Expenses**, nor shall the Underwriters have a duty to defend **Claims** for, based upon, arising out of, or in any way involving any of the following:

- A. Actual or alleged **Bodily Injury** or **Property Damage**;
- B. Actual or alleged infringement, in any form, of patent, copyright, trademark, trade dress, trade name, service mark, service name, title, slogan or other intellectual property right;
- C. Any dishonest, fraudulent, criminal, malicious, or intentional act or omission, or any knowing or intentional violation of law, committed by or at the direction of an **Insured**, if established in any adverse finding, judgment, adjudication or admission by an **Insured** in any judicial or administrative proceeding;
- D. The gaining in fact of any personal profit or advantage to which an **Insured** is not legally entitled, as determined by a judgment or other final adjudication;
- E. Any business, joint venture or enterprise not named in the Declarations which is owned, controlled, operated or managed, in whole or in part, by any **Insured**; nor will this Policy respond to any **Claim** involving any **Insured** acting as a principal, director, officer, trustee or employee of any organization, cause or purpose other than the **Named Insured**;
- F. Any person or entity that is an **Insured** under this Policy bringing suit, or having suit brought against, another **Insured** under this Policy. However, this exclusion shall not apply to an otherwise covered **Claim** made by a client qualifying as an **Insured** under **Part I. Coverages**, section **B. INSURED**, paragraph 5;



- G. Actual or alleged violation of any of the following laws, as they may exist or be amended:
1. Securities Act of 1933;
  2. Securities Exchange Act of 1934;
  3. Investment Advisors Act of 1940;
  4. Trust Indenture Act of 1993;
  5. Any state Blue Sky or securities laws;
  6. Any similar state or federal laws;
  7. Racketeer Influenced and Corrupt Organizations Act; and
  8. All orders, rulings, laws or regulations issued in connection with or attaching to the above;
- H. Actual or alleged violation of any provisions of the Employee Retirement Income Security Act of 1974, or any amendment, regulation, ruling or order issued pursuant thereto; or any acts related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts;
- I. Actual or alleged misappropriation of trade secrets, or proprietary or confidential information;
- J. Any **Wrongful Act** or any fact, circumstance, situation, transaction or event which is or has been the subject of any notice given prior to the **Policy Period** under any other similar insurance policy; or any other **Wrongful Act**, whenever occurring which, together with a **Wrongful Act** which is or has been the subject of such prior notice, would constitute related **Wrongful Acts**;
- K. Actual or alleged performance of or failure to perform **Insured Services** for or on behalf of:
1. Any **Insured**,
  2. Any entity owned, controlled, operated or managed by any person or entity that is or would be an **Insured**,
  3. Any person or entity that owns, controls, operates or manages any entity that is or would be an **Insured**,
  4. Any entity which is under common ownership, control, operation or management of any entity that is or would be an **Insured**, or
  5. Any entity for which any person that is or would be an **Insured**, acts as a director, officer, partner or principal shareholder.
- L. Actual or alleged obligation of, or liability assumed by, an **Insured** under any contract or oral or written agreement, unless such liability would have attached in the absence of such a contract or agreement;
- M. Actual or alleged breach of an express or implied warranty or guarantee;

- N. Any disputes involving:
1. an **Insured's** fees or charges, including overcharges, overruns or inaccurate, inadequate, or incomplete description of the price of goods, products or services;
  2. the collection of an **Insured's** fees from third parties;
  3. the return of fees or other compensation paid to an **Insured**; or
  4. the **Insured's** cost of correcting, re-performing or completing any **Insured Services**.
- O. Actual or alleged unfair competition, restraint of trade, or any violation of antitrust laws, including false advertising or misrepresentation in advertising based thereon, or regarding intentionally false, misleading, deceptive or fraudulent trade practices, or misrepresentations in advertising an **Insured's** products and services;
- P. Regulatory or administrative investigations, actions, proceedings or orders brought by any federal, state or local governmental body, agency or entity, or by any professional or trade licensing organization;
- Q. Actual or alleged liability of any person or entity under any worker's compensation, unemployment compensation, employer's liability, social security, disability benefits, or any similar law;
- R. Actual, alleged or threatened formation, discharge, dispersal, seepage, release or escape of any **Pollutants**; the presence of **Pollutants**; and any direction, order or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **Pollutants**, or in any way respond to or assess the effects of **Pollutants**;
- S. Any actual or alleged employment practices or employment-related practices or liability or any discrimination on any basis, including but not limited to any refusal to employ or promote, termination of employment, wrongful discharge, coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, breach of contract, retaliation, negligent hiring or supervision, wage and hour claims, discrimination of any kind, or other employment-related practices, procedures, policies, acts or omissions;
- T. Actual or alleged performance of or failure to perform services that can only be legally performed by a licensed architect (except landscape architect), engineer, accountant, attorney, or medical professional;
- U. Actual or alleged commingling, conversion, misappropriation or defalcation of funds or other property by the **Insured**, or the failure to pay, collect, disburse or safeguard monies held by the **Insured**;

- V. Actual or alleged harassment, discrimination, or misconduct based upon race, religion, color, sex, national origin, age, disability or any other protected characteristic;
- W. Services performed while the **Insured** is not licensed/registered, where required, in accordance with local, state or federal law, ordinance or regulation;
- X. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any **Wrongful Act** actually or allegedly occurring prior to the **Retroactive Date**; or any other **Wrongful Act** actually or allegedly occurring on or subsequent to the **Retroactive Date** which, together with any **Wrongful Act** actually or allegedly occurring prior to the **Retroactive Date**, would constitute related **Wrongful Acts**.

## **Part V. Conditions**

### **A. CLAIM AND POTENTIAL CLAIM REPORTING PROVISIONS**

1. In the event a **Claim** is made against any **Insured**, notice of such **Claim** shall be provided to the Underwriters, through the persons named in Item H. of the Declarations, no later than sixty (60) days after the **Claim** is first made as a condition precedent to coverage.
2. If, during the **Policy Period**, the **Insured** first becomes aware of any facts or circumstances which may subsequently give rise to a **Claim** against the **Insured** by reason of any error or omission for which coverage would be afforded hereunder, and if the **Insured** gives written notice to the Underwriters, through persons named in Item H. of the Declarations, during the **Policy Period** of such facts or circumstances, any subsequent **Claim** made against the **Insured** which is the subject of the written notice shall be deemed for the purposes of this insurance to have been made at the time written notice was first given to the Underwriters.
3. The **Insureds** shall authorize the Underwriters to obtain records and other information, and must cooperate with and assist the Underwriters with the investigation, defense and settlement of the **Claim**. Upon the Underwriters' request, the **Insureds** will submit to examination and interview by the Underwriters' representatives, under oath if required, and attend hearings and trials, and assist in affecting settlements, securing and giving evidence and in obtaining the attendance of witnesses.
4. The **Insureds** must not make any payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of dispute resolution, waive any rights or incur any expenses, without prior written approval by the Underwriters.

## B. CANCELLATION

1. By acceptance of this Policy, the **Insureds** hereby confer the exclusive power and authority to cancel this Policy on their behalf to the **First Named Insured**. The **First Named Insured** may cancel this Policy by surrender thereof to the Underwriters, and by mailing to the Underwriters advance, written notice stating when thereafter cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. If this Policy is cancelled by the **First Named Insured**, the earned premium will be computed on a short rate basis subject to a minimum earned of twenty-five percent (25%) of the total annual premium. Notwithstanding the foregoing, in the event that a **Claim** or potential **Claim** is reported under this Policy, no return premium will be provided. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation.
3. The Underwriters may cancel this Policy for non-payment of premium by mailing to the **First Named Insured** written notice stating when, not less than ten (10) days thereafter, such cancellation shall be irrevocable. If payment is not received within the ten (10) day period, then this Policy will be cancelled ab initio meaning coverage is null and void as of the inception date of this Policy. The mailing of such notice shall be sufficient notice. Delivery of such written notice by the Underwriters by facsimile, email or private courier shall be equivalent to mailing. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder.
4. If the Underwriters cancel this Policy other than as set forth in paragraph 3. of this section, the Underwriters will give the **First Named Insured** thirty (30) days' written notice prior to cancellation. The cancellation notice will state the effective date of the cancellation, and this Policy will terminate on that date. If the foregoing notice period is in conflict with any governing law or regulation, then such period shall be amended to afford the minimum notice period permitted thereunder. If the Underwriters cancel this Policy under this paragraph 4., the earned premium will be computed pro-rata.

## C. AUTHORIZATION

The **First Named Insured** listed in Item A. of the Declarations shall act for all **Insureds** with respect to the giving and receiving of all notices, the exercising of the Extended Reporting Period option, canceling of this Policy, paying of all premiums and Deductibles, and the receiving of any return premiums that may become due.

## D. SUBROGATION

In the event of a **Claim** under this Policy, the Underwriters shall be subrogated to the rights of recovery of each and every **Insured** against any person or organization, and the **Insureds** will execute and deliver instruments and papers, and do whatever else is necessary, to secure such rights, including the execution of all documents to enable the Underwriters to effectively bring suit in the name of an **Insured**. The **Insureds** shall do nothing to prejudice such rights.

## E. OTHER INSURANCE

This Policy will be excess over, and will not contribute or share with, any other existing insurance, unless such other insurance is specifically written to be excess of this Policy. Except as provided in Part III.M.2., if it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Underwriters will not be liable under this Policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under this Policy bears to the total applicable Limit of Liability of all other insurance or self insurance, whether or not collectible, applicable to such **Claims**.

## F. ACTION AGAINST THE UNDERWRITERS

No action will be taken against the Underwriters unless, as a condition precedent, the **Insureds** are in full compliance with all of the terms and conditions of this Policy, nor until the amount of an **Insured's** obligations to pay have been finally determined, either by judgment against such **Insured** after actual trial, or by written agreement of the Underwriters.

## G. COVERAGE FOR CREATED, ACQUIRED OR SOLD ENTITIES

1. If, during the **Policy Period**, a **Named Insured** acquires or creates another entity or operation, then for a period of sixty (60) days after the effective date of the transaction, the newly formed entity or operation shall be included within the definition of **Insured**, but only with respect to **Wrongful Acts** committed or allegedly committed after the effective date of the transaction. Written notice of such transaction shall be given to us within sixty (60) days of the transaction, together with such information as we may require. In the event that the revenues of the new entity or operation exceed ten percent (10%) of the annual revenues of the **Named Insured** prior to the creation, merger or acquisition, as reflected in the most recent **Application**, there may be an additional premium charged, which must be paid in order for coverage for the new entity to continue beyond the initial sixty (60) day period.
2. If, during the **Policy Period**, the **Named Insured** sells any entity or operation, that entity or operation shall be an **Insured**, but only with respect to **Wrongful Acts** committed or allegedly committed before the effective date of such transaction. Written notice shall be given to us within sixty (60) days of the sale. There will be no return premium.

## H. RUN-OFF COVERAGE IN THE EVENT OF TAKEOVER

1. In the event of a **Takeover** of the **Named Insured** during the **Policy Period**, this Policy will continue until its natural expiration date, but only with respect to any **Wrongful Acts** committed or allegedly committed before the effective date of the **Takeover**. The **Named Insured** must give the Underwriters notice of a **Takeover** as soon as practicable, but in no event later than thirty (30) days from the effective date of the **Takeover**. The Policy may not be cancelled after the effective date of the **Takeover**, and the premium will be deemed fully earned on such date.
2. In the event of a **Takeover** of the **Named Insured**, **Part I, E. EXTENDED REPORTING PERIOD**, is not available.
3. In the event of a **Takeover** of the **Named Insured**:
  - a) The **Named Insured** shall have the right and option, upon payment of an additional premium, less any pro rata unearned premium, to a one (1) year extension of the coverage granted by this Policy with respect to any **Claim** first made after the expiration of the Policy, but only with respect to any **Wrongful Act(s)** committed or allegedly committed on or after the **Retroactive Date** and before the effective date of the **Takeover**.
  - b) The right to purchase this extension of coverage shall terminate unless written notice of the request to purchase the one (1) year extension of coverage, together with full payment of the premium for the one (1) year extension of coverage, as set forth in a) above, is received by the Underwriters within thirty (30) days after the expiration date of the Policy as shown in Item B. of the Declarations. If such notice and premium payment are not given to the Underwriters, there shall be no right to purchase this extension of coverage.
  - c) The aggregate Limit of Liability for the extension of coverage, if purchased, will be part of, and not in addition to, the Underwriters' Limit of Liability for the **Policy Period**, as stated in Item D. of the Declarations.

## I. ARBITRATION

Notwithstanding any other provision of this Policy, any dispute between the **Insureds** and the Underwriters arising in connection with or relating to this Policy shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association ("AAA") then in effect, except that the arbitration panel shall consist of one arbitrator selected by the **Insureds**, one arbitrator selected by the Underwriters, and a third independent arbitrator selected by the first two arbitrators. The **Insureds** and the Underwriters shall share equally in the cost of arbitration.

## **J. ASSIGNMENT**

The **Insureds'** rights and duties under this Policy may not be transferred without the written consent of the Underwriters.

## **K. CHANGES**

This Policy reflects all of the agreements and understandings between the **Insureds** and the Underwriters concerning the insurance provided. The **First Named Insured**, as shown in Item A. of the Declarations, is hereby authorized by all **Insureds** to act on their behalf with respect to effecting or accepting any amendments to or cancellation of this Policy. No changes to the Policy may be made or effected without the Underwriters' written consent, and all agreed changes must be by affixed to this Policy by written endorsement issued by the Underwriters.

## **L. APPLICATION**

By acceptance of this Policy, the **Insureds** agree that all statements in the **Application** are representations that are material to the risks assumed and insured, and material to the Underwriters' decision to issue this Policy on the terms and conditions reflected herein. It also is agreed that this Policy is issued in reliance upon the truth of all such representations and that this Policy is a single unitary contract, and not a severable contract of insurance or series of individual contracts of insurance with each of the persons or entities insured hereunder.

## **M. SERVICE OF SUIT**

It is agreed that in the event of the failure of the Underwriters to pay any amount claimed to be due hereunder, the Underwriters, at the request of any person or entity insured hereunder, will submit to the jurisdiction of any court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be deemed to constitute a waiver of the Underwriters' right to commence an action in any 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, territory, or district in the United States. It is further agreed that service of process in such suit may be made upon the Underwriters' representatives at the address indicated in Item J. of the Declarations and that in such suit instituted against any one of them upon this Policy, the Underwriters will abide by the final decision of such court or of any appellate court in the event of an appeal.

The above-named party is authorized and directed to accept service on behalf of the Underwriters in any such suit upon the request of any person or entity to enter a general appearance on behalf of the Underwriters in the event such a suit shall be instituted.

Further, pursuant to the applicable statute of any state, territory or district of the United States, the Underwriters shall designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute or any successor in office, as the Underwriters' true and lawful attorney, upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of any person

or entity insured hereunder or any beneficiary hereunder arising out of this Policy, and hereby designate the representative set forth in Item J. of the Declarations as the party to whom such officer is authorized to mail such process.

**NAS Insurance Services, LLC**

By:       S P E C I M E N        
**On behalf of the Underwriters  
providing this insurance.**

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FORM P1847E-0914

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*This Endorsement changes the Policy. Please read it carefully.*

## **U.S.A.**

### **NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT – E1847B-0605**

*For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and 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 or 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;

**All other terms and conditions of the Policy remain unchanged.**

- (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 byproduct material; **"source material"**, **"special nuclear material"**, and **"byproduct 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 byproduct 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 coverage 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**

N.M.A. 1256

SPECIMEN

This endorsement is to take effect on «f9».

Policy No.: «f2»

Name: «f3» «f4»

Policy Effective Date: «f9»

Expiration: «f10»

Endorsement No.: 1

**All other terms and conditions of the Policy remain unchanged.**

*This Endorsement changes the Policy. Please read it carefully.*

## **WAR AND CIVIL WAR EXCLUSION CLAUSE – E1847C-0108**

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Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

1/1/38  
NMA464

SPECIMEN

This endorsement is to take effect on «f9».

Policy No.: «f2»

Name: «f3» «f4»

Policy Effective Date: «f9»

Expiration: «f10»

Endorsement No.: 2

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**All other terms and conditions of the Policy remain unchanged.**

*This Endorsement changes the Policy. Please read it carefully.*

## **TERRORISM EXCLUSION ENDORSEMENT – E1847D-0108**

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Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement 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 endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

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

08/10/01  
NMA2920

This endorsement is to take effect on «f9».

Policy No.: «f2»

Name: «f3» «f4»

Policy Effective Date: «f9» Expiration: «f10»

Endorsement No.: 3

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**All other terms and conditions of the Policy remain unchanged.**