



Starr Surplus Lines Insurance Company

Starr Surplus Lines Insurance Company

Chicago, Illinois 1-646-227-6300

Administrative Office: 399 Park Avenue, 8th floor, New York, NY 10022

ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY COVERAGE FORM

Named Insured: [ABC Company]
Policy Number: [12345]
Effective Date: [MM/DD/YYYY at 12:01 A.M.]

This Coverage Form is a legal contract between the Named Insured and Starr Surplus Lines Insurance Company (herein referenced as "the **Insurer**"). The **Insurer** agrees to provide insurance to the **Named Insured**, in exchange for the payment of the required premium. Coverage is subject to the terms and conditions described in this Coverage form.

This Coverage Form and the coverage provided by it become effective at 12:01 A.M. at the address of the **Named Insured** on the Effective Date shown above. It continues in effect in accordance with the provisions set forth in this Coverage Form.

This Coverage Form is governed by the laws of the state where it was delivered.

Signed for the Company as of the Effective Date above:

Charles H. Dangelo, President

Honora M. Keane, General Counsel



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NOTICE

THIS POLICY PROVIDES COVERAGE ON A **CLAIMS MADE AND REPORTED** BASIS, THE POLICY RESPONDS ONLY TO **CLAIMS** MADE UPON THE **INSURED** AND REPORTED IN WRITING TO THE **INSURER** DURING THE SAME POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE.

THE LIMITS OF LIABILITY AVAILABLE TO PAY JUDGEMENTS OR SETTLEMENTS SHALL BE REDUCED BY AMOUNTS INCURRED FOR **CLAIM** EXPENSES. FURTHER NOTE THAT **AMOUNTS INCURRED FOR CLAIM EXPENSES SHALL BE** APPLIED AGAINST THE DEDUCTIBLE AMOUNT.

VARIOUS PROVISIONS THROUGHOUT THIS POLICY RESTRICT OR EXCLUDE COVERAGE. PLEASE REVIEW THE ENTIRE POLICY CAREFULLY WITH YOUR INSURANCE BROKER TO DETERMINE THE **INSURED'S** RIGHTS AND DUTIES, AND WHAT IS AND IS NOT COVERED.

DEFINED TERMS APPEAR IN BOLD-FACED TYPE. PLEASE REFER TO SECTION II. DEFINITIONS

In consideration of the payment of the premium by the **Named Insured** and in reliance upon the statements in the **Insured's** application which is deemed part of this policy, the **Insurer** agrees with the **Insured** subject to all of the terms and conditions of this policy, as follows:

I. INSURING AGREEMENTS

A. COVERAGES: (CLAIMS-MADE AND REPORTED)

The **Insurer** will pay on behalf of the **Insured** all sums in excess of the deductible shown in Item 4 of the Declarations that the **Insured** shall become legally obligated to pay as **Damages** resulting from any **Claim** first made against the **Insured** and reported in writing to the **Insurer** during the **Policy Period** for any **Breach of Professional Duty** by the **Insured** or any other person for whose action the **Insured** is legally responsible, but only if such **Breach of Professional Duty** occurs on or after the **Retroactive Date** shown in item 8 of the Declarations and before the end of the **Policy Period** and solely in the performance of **Professional Services**.

B. TERRITORY

The insurance afforded by this policy applies only to **Claims** arising out of a **Breach of Professional Duty** in the performance of Professional Services that take place in and result in a **Claim** brought within:

1. the United States of America, its territories or possessions or Puerto Rico; and
2. elsewhere in the world.

C. DEFENSE PROVISIONS

1. When any **Claim** against the **Insured** is made or brought within the United States of America, its territories or possessions, or Puerto Rico, the **Insurer** has the right to investigate such **Claim**, and the duty to defend such **Claim** with defense counsel selected with the **Insurer's** approval, even if such **Claim** is groundless, false or fraudulent. The **Insurer's** obligation to defend or to continue to defend any **Claim** as provided in this subsection 1. shall end when the applicable limit of the **Insurer's** liability has been exhausted by payment of **Claim Expenses** or **Damages** or both.
2. When any **Claim** against the **Insured** for which coverage is provided under this policy is made or brought outside the areas described in subsection 1. above, the **Insurer** shall not be obligated to assume charge of the investigation, defense or settlement of such **Claim** but the **Insurer** shall have the right and shall be given the opportunity to associate with the **Insured** in the investigation and defense of such **Claim**. The **Insured**, under the **Insurer's** supervision, make or cause to be made such investigation and defense as is reasonable under the circumstances. Subject to prior written authorization by the **Insurer**, the **Insured** may also effect settlement. The **Insurer** shall reimburse the **Insured** for **Damages** and the reasonable and necessary costs of instigating and defending any such **Claim** such as (1) fees charged by any attorney selected by



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the **Insured** with the prior approval of the **Insurer** to defend the **Claim**, and (2) all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a decision regarding the **Claim** as authorized by the **Insurer**. For purposes of computing the amount of the limits of liability and deductible amount under this policy, such reasonable costs shall be construed as **Claim Expenses**. The **Insurer's** obligations under this subsection 2. Shall end when the applicable limit of liability has been exhausted by the payment of **Claim Expenses** or **Damages** or both.

D. SETTLEMENT PROVISIONS

The **Insurer** will not settle or compromise any **Claim** without the consent of the **Insured**. If, however, the **Insured** refuses to consent to a settlement or compromise recommended by the **Insurer** and acceptable to the claimant and elects to contest such **Claim** or continue legal proceedings in connection with such **Claim**, then the **Insurer'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 subject to the applicable limit of liability under this policy.

E. CLAIM EXPENSES

Claim Expenses shall be paid by the **Insurer**, and such payments reduce the available limit of liability. The **Insured** must first pay any applicable deductible amounts as shown forth in Item 4 of the Declarations. **Claim Expenses** shall also be applied to the deductible.

II. DEFINITIONS

- A. **Agency Construction Manager** means a person or organization that provides professional consulting services to a project owner for a fee to assist in the oversight of a project and the progress of the design and construction process.
- B. **Bodily Injury** means physical injury to or sickness, disease or death of a person, including any mental anguish or emotional distress resulting there from.
- C. **Breach of Professional Duty** means negligence, defined as the failure to meet the professional standard of care legally required or reasonably expected under the circumstances in the performance or non-performance of **Professional Services** rendered to others by the **Insured** which results in **Damages** for which the **Insured** is legally liable.
- D. **Claim** means any written demand received by an **Insured** seeking **Damages** and alleging liability or responsibility on the part of the **Insured** or persons for whose conduct the **Insured** is legally liable.
- E. **Claim Expenses** means reasonable and necessary:
 - 1. fees charged by any attorneys designated and approved by the **Insurer** for services in connection with the investigation or defense of **Claims**;
 - 2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if incurred by the **Insurer** or by the **Insured** with the prior written consent of the **Insurer**.

Claim Expenses do not include the salaries of any employee of the **Insurer** or of the **Insured**.

- F. **Damages** means any amount which an **Insured** is legally obligated to pay for any **Claim** to which this insurance applies and shall include: judgments and settlements, interest on judgments, and punitive, exemplary or multiple **Damages**, provided always that **Damages**



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shall not include: 1) the return or withdrawal of professional fees, 2) fee dispute of any kind, 3) taxes, 4) sanctions, fines or penalties imposed by law, 4) matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed, and 5) **Liquidated Damages** except for liability the **Insured** would have had in the absence of such **Liquidated Damages**.

- G. Discrimination** means termination of an employment relationship or a demotion or a failure or refusal to hire or promote any individual because of race, color, religion, age, sex, disability, pregnancy, national origin or sexual orientation.
- H. Executive** means any employee, officer, director, principal, partner, insurance manager or risk manager of the **Insured**.
- I. Insured** means:
1. the **Named Insured** designated in Item 1 of the Declarations;
 2. any person who is or was a partner, officer, director, stockholder or employee of the **Named Insured** but only while acting within the scope of his/her duties as such;
 3. the heirs, executors, administrators, and legal representatives of each **Insured** as defined in 1. and 2. above, in the event of death, incapacity or bankruptcy of such **Insured**, but only as respects liability arising out of **Professional Services** rendered by or on behalf of the **Named Insured** prior to such **Insured's** death, incapacity or bankruptcy;
 4. a former partner, officer, director or employee of the **Named Insured** while rendering **Professional Services** on behalf of the **Named Insured**;
 5. contract or leased personnel rendering **Professional Services** under the supervision of and on behalf of the **Named Insured**;
 6. joint ventures in which the **Named Insured** is named as a co-venturer, but only as respects the **Insured's** legal liability arising out of the **Insured's** participation in such joint venture;
 7. any **Predecessor in Interest**.
- J. Insurer** means the Starr Surplus Lines Insurance Company.
- K. Liquidated Damages** means an amount stipulated in advance in a contract to be the amount or measure of **Damages** to be recovered by a party to that contract if the other party breaches the agreement or fails to perform or perform adequately its obligations under the contract.
- L. Mediation** means non-binding process by which a qualified professional mediator mutually agreed upon by the parties with the intention to reconcile them to resolve a **Claim**. The term **Mediation** shall not include or mean any other dispute resolution by litigation or arbitration.
- M. Named Insured** means the person or entity designated as such in Item 1 of the Declarations.
- N. Nuclear Facility** means the site at which a nuclear reactor is located or where nuclear waste or material is disposed of, processed or stored.
- O. Policy Period** means the period from the effective date of this policy to the expiration date as shown in item 2 of the Declarations or earlier cancellation date, if any, of this policy.
- P. Predecessor in Interest** means any prior entity whose assets, partners, principals or shareholders have been acquired by the **Insured** and whose name has been listed in the application attached hereto, and for whose insurance the **Insured** is responsible by written agreement.
- Q. Professional Services** means those services that the **Insured** is legally qualified to perform for others in their capacity as an architect, engineer, landscape architect, land



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surveyor, **Agency Construction Manager**, or as specifically defined by endorsement to this policy. **Professional Services** shall not include facilities operations and maintenance operations or activities.

- R. **Sexual Harassment** means unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature that are: made as a condition of employment, or used as a basis for employment decisions, or creates a work environment that interferes with performance.
- S. **Subsidiary** means any entity, in which more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors in such entity is owned or controlled, directly or indirectly, in any combination, by the **Named Insured**.
- T. **Wrongful Termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an express or implied agreement to continue employment.

III. EXCLUSIONS

This policy does not provide coverage and the **Insurer** will not pay **Damages or Claim Expenses** for any **Claim** based upon or arising out of:

- A. any criminal, dishonest, fraudulent or malicious conduct or **Breach of Professional Duty** or conduct of a knowingly wrongful nature committed intentionally or at the direction of an **Insured**; however, the **Insurer** shall defend a **Claim** against an **Insured** who did not commit, participate in, or have knowledge of the dishonest, malicious, or criminal acts or omissions, except the **Insurer** shall not defend any criminal prosecution under any circumstances;
- B. any **Claim** made by or on behalf of any **Insured** against any other **Insured**;
- C. the actual or alleged: (1) **Wrongful Termination**; 2) **Discrimination**; or (3) **Sexual Harassment** of any kind against any past or present employee of the **Insured** regardless of whether related to employment;
- D. any **Insured's** involvement as a partner, officer, director, stockholder, employer or employee of any business enterprise not named in the Declarations;
- E. any **Insured's** involvement in or **Professional Services** rendered to or on behalf of any organization or subsidiary or affiliate thereof, not named in the Declarations: (1) that wholly or partly owns, or to any extent controls, operates or manages an **Insured**, or (2) in which an **Insured** has a greater than 20% ownership, or (3) that is controlled, operated or managed by an **Insured**;
- F. the design or manufacture of any products developed by any **Insured** for multiple sale or mass distribution, including but not limited to computer programs or software; however, this exclusion shall not apply to software created or modified specifically for a client for whom the **Insured** is rendering **Professional Services**;
- G. any express or implied warranty or guarantee unless liability would have attached to the **Insured** in the absence of an express warranty or guarantee and such liability arises out of a **Breach of Professional Duty** by the **Insured** in the performance of **Professional Services**;
- H. any **Breach of Professional Duty** or circumstance which an **Executive** of the **Insured** had actual or constructive knowledge prior to the effective date of this policy;
Any continuation, change or resumption of such **Breach of Professional Duty** or circumstance during or after this **Policy Period** will be deemed to have been known prior to this **Policy Period**;
- I. any cost to replace or repair any faulty: workmanship, construction, assembly, erection, fabrication, installation or remediation if such work is performed in whole or in part by:
 - 1. the **Insured**; or
 - 2. any subcontractor of an **Insured**; or
 - 3. any enterprise and/or any subsidiary of any enterprise that any **Insured** controls, manages, operates or holds ownership in or by any enterprise that controls, manages operates or holds ownership in an **Insured**;



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- J. the liability of others assumed by any **Insured** under any contract or agreement either oral or written including any hold harmless or indemnity agreements except to the extent such liability arises as a result of a **Breach of Professional Duty** by the **Insured** in performance of **Professional Services** and would have existed absent such contract;
- K. **Bodily Injury** sustained by any employee of any **Insured** while engaged in employment by any **Insured**, or (1) any **Claim** by any person on account of such injury whose right to assert the **Claim** arises by reason of any blood, marital or other relationship with the employee, or (2) any **Claim** by any person or entity seeking contribution or indemnity because of such injury except that this exclusion does not apply to liability arising under a written contract executed prior to the injury;
- L. any obligation of any **Insured** pursuant to any worker's compensation, disability benefits, unemployment compensation, retirement benefits, social security benefits or law or any similar laws;
- M. nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a **Nuclear Facility**;
- N. war, including undeclared or civil war; warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- O. services as an **Agency Construction Manager** with respect to any project for which any **Insured** holds any contract to perform any construction, erection, assembly, fabrication, installation or remediation either by itself or through any subcontractor at any tier. This exclusion shall not apply to the provision of other **Professional Services** by the **Insured** or any entity for which the **Insured** is legally liable;
- P. any matter where such coverage would not be in compliance with any United States of America economic or trade sanctions, laws or regulations, including but not limited to the U.S. Treasury Department's Office of Foreign Assets Control, or any similar foreign, federal, state or statutory law or common law.

IV. LIMITS OF LIABILITY AND DEDUCTIBLE

A. LIMIT OF LIABILITY-EACH CLAIM

Subject to B. the Limit of Liability-Aggregate, below, the liability of the **Insurer** for each covered **Claim** shall not exceed the amount stated in Item 3 of the Declarations for Each **Claim**. This limit is the maximum amount for all **Damages** or **Claim Expenses** or both that the **Insurer** will pay for each covered **Claim**. The Limit of Liability shall apply in excess of the deductible.

B. LIMIT OF LIABILITY - AGGREGATE

Subject to A. Limit of Liability - Each **Claim**, above, the liability of the **Insurer** shall in no event exceed the amount stated in Item 3 of the Declarations as the Policy Aggregate as a result of all covered **Claims**. This limit is the maximum amount for all **Damages** or **Claim Expenses** or both that the **Insurer** will pay under this policy for all covered **Claims** including those reported as provided for in SECTION V. CONDITION C. Extended Reporting Period, if applicable.

Once the applicable Limits of Liability have been exhausted, the **Insurer** will not defend or pay **Damages** or **Claim Expenses** for any **Claim**.

C. MULTIPLE INSUREDS

The number of **Insureds** covered by this policy shall not operate to increase the Limits of Liability as specified above.

D. MULTIPLE CLAIMS

Two or more covered **Claims** arising out of a single **Breach of Professional Duty** or any series of related **Breaches of Professional Duty** will be considered a single **Claim** and shall be deemed to be made at the time the first of such **Claims** is made. This policy shall only apply if the first or earliest **Claim** arising from such **Breach of Professional Duty** or series of related **Breaches of Professional Duty** is made during the **Policy Period** or Extended Reporting Period, if applicable. These provisions apply regardless of the number of **Insureds** involved in such



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a **Claim**, the number of **Claims** made, or the number of people or organizations that make the **Claims**.

The number of **Claims** made or the number of people or organizations that make **Claims** shall not operate to increase the Limits of Liability as specified in subsections A and B above.

E. DEDUCTIBLE - EACH CLAIM

The deductible amount stated in the Declarations applies to each **Claim** and shall be paid by the **Insured**. The deductible shall be applied to the payment of **Damages** or **Claim Expenses** or both.

The **Insurer** may advance payment for part or all of the deductible amount and, upon notification of such payment made, the **Insured** must promptly reimburse the **Insurer** for the deductible amounts advanced by the **Insurer**.

Until a **Claim** is made, the deductible does not apply to **Claim** Expenses incurred by the **Insurer** or at the **Insurer's** specific request as respects possible **Claims** reported under SECTION V. CONDITIONS B. REPORTING OF POTENTIAL **CLAIMS**.

F. REIMBURSEMENT

The **Insurer** will reimburse the **Insured**, upon written request, for loss of earnings by the **Insured** as a result of being required to attend, at the **Insurer's** request, a mediation, arbitration, deposition, or trial related to a covered **Claim**, subject to the following:

1. No reimbursement will apply to the first three (3) days attendance of the **Insured** required for each **Claim**;
2. Loss of earnings reimbursement will not be considered as payment of a **Claim** or **Claim Expenses** and will be in addition to the Limits of Liability. Reimbursement is not subject to the deductible.
3. Loss of earnings reimbursement shall not exceed \$500 per day per loss of earnings **Claim**, subject to a maximum annual aggregate reimbursement of \$10,000 for all loss of earnings **Claims**.

G. MEDIATION

If the **Insured** consents to **Mediation** at the time the **Insurer** first recommends **Mediation** as a means to try to resolve a **Claim** made against the **Insured**, and if such **Claim** is resolved through the use of **Mediation**, then the **Insured's** deductible obligation shall be reduced by 50% subject to a maximum reduction of \$20,000. The **Insurer** shall reimburse the **Insured** for any applicable deductible payment made in excess of such amount prior to the **Mediation** as soon as practicable after the conclusion of the **Mediation**.

V. CONDITIONS

A. INSURED'S DUTIES WHEN THERE IS A CLAIM

As a condition precedent to the right of coverage under this policy, the **Insured** must do the following:

1. If a **Claim** to which this policy applies is made against the **Insured**, give written notice, as soon as practicable, containing the information detailed in CONDITION B., below, to:

Starr Adjustment Services, Inc.
3353 Peachtree Road, NE, Suite 1000
Atlanta, GA 30326
Claims Fax: (404) 946-1497
Claims Phone: (404) 946-1400
FNOLStarrSurplusLines@cvstarr.com

Written notice shall include every demand, notice, summons Or other process received by the **Insured** or the **Insured's** representatives.



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2. The **Insured** must cooperate with the **Insurer** in all matters relating to this policy, including but not limited to, attending hearings and trials, securing and giving evidence, obtaining the attendance of witnesses, assisting in effecting settlements and in conducting litigation, arbitration or other proceedings.
3. If the **Insured** has the right to either accept or reject arbitration of any **Claim**, exercise such right only with the written consent of the **Insurer**.
4. The **Insured** shall not admit or assume any liability, incur any **Claims Expense**, enter into any settlement agreement or stipulate to any judgment without the prior written consent of the **Insurer**. Any **Damages** incurred by the **Insured** and/or any settlements or judgments agreed to by the **Insured** without such consent shall not be covered by this policy.
5. Do whatever is necessary to secure and affect any rights of indemnity, contribution or apportionment that the **Insured** may have.
6. Other than what is required by law, refrain from discussing the facts and circumstances of any **Claim** with anyone other than legal counsel representing the **Insured** or representatives of the **Insurer**.

B. REPORTING OF A POTENTIAL CLAIM

If the **Insured** first becomes aware during the **Policy Period** of an actual or alleged **Breach of Professional Duty** or circumstance arising out of **Professional Services** which is reasonably likely to result in a **Claim**, the **Insured** must give written notice to the **Insurer** containing the information listed below. If such written notice is received by the **Insurer** prior to the end of the **Policy Period**, any **Claims** subsequently made against the **Insured** arising out of such conduct shall be deemed for the purpose of this policy to have been made on the last day of the **Policy Period**. The **Insured** shall cooperate fully with the **Insurer**, and any investigation conducted by the **Insurer** or its authorized representatives, and shall be subject to the terms set forth in SECTION V. CONDITIONS A. **INSURED'S DUTIES WHEN THERE IS A CLAIM** above as applicable to a **Claim**.

It is a condition precedent to the coverage afforded by this policy that the written notice shall contain the following information:

1. The actual or alleged **Breach of Professional Duty** or circumstance which is the subject of a potential **Claim**;
2. A description of the **Professional Services** rendered by the **Insured** which may result in the **Claim**;
3. The date(s) of such conduct which may result in the **Claim**; and
4. A description of the injury or damage that has or may result in a **Claim**.
5. The identities and address of any potential Claimant(s);
6. The anticipated location(s) of any such potential **Claim**;
7. The circumstances by which the **Insured** first became aware of the potential **Claim**.

If all of the above information is not provided or is, in the reasonable judgment of the **Insurer**, deemed inadequate, the **Insurer** shall inform the **Insured** that **Claim** made after the **Policy Period** relating to the written notice will not be deemed to have been made during the **Policy Period**,

C. EXTENDED REPORTING PERIOD

If the **Insured** does not renew or replace this insurance, or if the **Insurer** 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 misrepresentation, 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 **Insurer**.

The **Insured's** right to purchase the Optional Extended 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 indicate the total Optional Extended Reporting Period desired AND MUST INCLUDE PAYMENT OF PREMIUM FOR SUCH PERIOD. If such notice and the premium are not mailed to us within thirty (30) days, then the shall not at a later date be entitled to purchase an Optional Extended Reporting Period



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The premium for the Optional Extended Reporting Period shall be determined by charging (1) 100% of the annual premium for twelve (12) months, (2) 135% for twenty-four (24) months, or (3) 180% for thirty-six (36) months. The purchase of an Optional Extended Reporting Period shall be endorsed herein. The fact that the period during which **Claims** can be made against the **Insured** and reported to the **Insurer** is extended by virtue of the Optional Extended Reporting Period shall not in any way increase the Limits of Liability as shown in Item 3 of the Declarations of this policy. At the commencement of any Optional Extended Reporting Period, the entire premium therefore shall be deemed fully earned, and in the event the **Insured** terminates the Optional Extended Reporting Period before its term for any reason, we shall not be obligated to return to you any portion of the premium.

The **Insurer's** liability shall further be limited to cover only those **Claims** or **Claim Expenses** which arise out of the **Insured** providing or failing to provide **Professional Services** prior to the expiration date of the **Policy Period** or any earlier termination date, if applicable, and prior to the Optional Extended Reporting Period. Bringing of suits by more than one person or organization does not increase the **Insured's** Limit of Liability. Two or more **Claims** arising out of a single negligent act, error or omission or a series of related negligent acts, errors or omissions shall be treated as a single **Claim**, and shall be subject to one 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.

D. SUBROGATION

In addition to any right of subrogation existing at law, in equity or otherwise, and in the event of any payment by the **Insurer** under this policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured (s)'** rights of recovery. The **Insured (s)** shall execute all papers required (including those documents necessary for the **Insurer** to bring suit or other form of proceeding in their name) and do everything that may be necessary to pursue and secure such rights. Notwithstanding, the **Insurer** agrees to waive the right of **Subrogation** against the client of the **Insured** to the extent that the **Insured** had prior to a **Claim**, a written agreement to waive such rights.

E. HOW OTHER INSURANCE APPLIES

Where other insurance is available to the **Insured** for **Damages** covered under the terms and conditions of this policy, the **Insurer's** obligation to the **Insured** shall be as follows:

1. This policy shall apply as excess insurance over any other valid insurance, whether collectible or not, be it primary, excess or contributing. This excess insurance shall in no way be increased or expanded as a result of the receivership, insolvency, or inability to pay of any **Insurer** with respect to both the duty to indemnify and the duty to defend. This also applies to the **Insured** while acting as a self-Insured for any coverage.
2. Where, in accordance with paragraph 1, above, this policy is excess insurance, the **Insurer** will:
 - a. pay only its share of the amount of **Damages** and **Claims** Expenses, if any, that exceed the total amount of all such valid insurance, whether collectible or not; and
 - b. pay only for such **Damages** and **Claims** Expenses as are covered by the terms and conditions of this policy.

The **Insured** shall promptly, upon request of the **Insurer**, provide the **Insurer** with copies of all policies potentially applicable, whether collectible or not, against the liability covered by this policy.

F. ASSIGNMENT AND CHANGES TO THE POLICY

This policy and any and all rights hereunder are not assignable without the prior written consent of the **Insurer**.

Notice to any agent or knowledge possessed by any agent or person will not result in a waiver or change in any part of this policy or prevent the **Insurer** from asserting any right under the terms and conditions of this policy. The terms and conditions of this policy may only be waived or changed by written endorsement signed by the **Insurer** or its authorized agent.



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G. CANCELLATION

The **Named Insured** may cancel this policy by returning the policy to the **Insurer** or its authorized representatives. The **Named Insured** can also cancel this policy by written notice to the **Insurer** stating at what future date cancellation is to be effective. If the **Named Insured** cancels, earned premium shall be computed using the customary short rate table, subject to the Minimum Earned Premium at Inception shown in Item 5. C. of the Declarations, whichever is greater.

The **Insurer** may cancel this policy by written notice to the **Named Insured**, at the address first known to the **Insurer**. The **Insurer** will provide written notice at least thirty (30) days before cancellation is to be effective.

However the **Named Insured** will only be entitled to ten (10) day's notice in the **Insurer** cancels because:

1. the **Insured** has failed to pay a premium when due; or
2. the **Insured** has failed to pay applicable deductible amounts due.

If the **Insurer** cancels, earned premium will be computed pro-rata, unless the **Insurer** cancels for the reason specified in subsections 1. or 2., above, in which case earned premium will be computed using the customary short rate table, subject to the Minimum Earned Premium at Inception shown in Item 5. C. of the Declarations, whichever is greater.

The mailing of any notice of cancellation shall be sufficient proof of notice.

The effective date of cancellation terminates the **Policy Period**. Return of unearned premium is not a condition of cancellation. The **Insurer** will return unearned premium subject to the Minimum Earned Premium at Inception shown in Item 5. C. of the Declarations in due course.

H. SOLE AGENT

The **Named Insured** shall act on behalf of all other **Insureds**, if any, for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this policy, and giving and receiving notice of cancellation or non-renewal.

I. BANKRUPTCY

The bankruptcy, receivership or insolvency of an **Insured** or the **Insured's** estate or of any **Insurer** shall not relieve the **Insurer** of any of its obligations under this policy. However, such bankruptcy, receivership or insolvency shall in no way increase the **Insurer's** liability under this policy nor will this insurance apply to liability directly or indirectly due to bankruptcy, insolvency, receivership, or subsequent liquidation.

J. APPLICATION

In granting cover to the **Insured**, the **Insurer** has relied upon material statements and particulars in the Application including any attachments for this policy together with its attachments and other information supplied. These statements, attachments and information are the basis of the coverage afforded under this policy and are incorporated into and constitute a part of this policy

K. PREMIUM AND AUDIT

- a. All premiums for this policy will be computed in accordance with the **Insurer's** rules and rates.
- b. If the premium for this policy is a flat premium, it is not subject to adjustment, except that additional premium may be required for any additional exposures and/or **Insureds** or as provided for in SECTION V. H. CANCELLATION.

The premium shown as the Total Advance Premium in Item 5. A. of the Declarations is a deposit premium only. If the policy is subject to audit adjustment, the actual exposure base will be used to compute the earned premium. If the earned premium is greater than the Total Advance Premium, the **Named Insured** shall pay the difference to the **Insurer**, due and payable upon notice.



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- c. The **Named Insured** must keep records of the information needed by the **Insurer** for premium computation, and send copies to the **Insurer** as requested. The **Named Insured** is responsible for the payment of all premiums and will be the payee for any return premiums from the **Insurer**.
- d. The **Insurer** may examine and audit the **Insured's** books and records at any time during the **Policy Period** and within three (3) years after the end of the **Policy Period**, as far as they relate to this policy.

L. ACTION AGAINST THE COMPANY

No action may be taken against the **Insurer** unless, as a condition precedent thereto, there shall have been full compliance with all material terms of this policy and the amount of the **Insured's** obligation has been fully determined either by judgment against the **Insured** after actual trial, or by written agreement of the **Insured**, the claimant(s) and the **Insurer**.

No person or entity shall have any right under this policy to join the **Insurer** as a party to any action against any **Insured** to determine such **Insured's** liability nor shall such **Insured** or legal representatives of such **Insured** implead the **Insurer**.

M. CONCEALMENT, MISREPRESENTATION, NON-DISCLOSURE AND FRAUD

Without prejudice to the **Insurers'** other rights, howsoever arising, this policy is null and void in case of concealment, misrepresentation or non-disclosure by any **Insured**, whether or not fraudulent, of a material fact concerning this policy or the procurement thereof, or if the **Insured** reports any **Claim** knowing such **Claim** to be false or fraudulent.

N. ACQUISITIONS, MERGERS AND MATERIAL CHANGES

In the event that the **Named Insured** (i) acquires any other entity or acquires substantially all the assets of another entity, or (ii) merges with another entity such that the **Named Insured** is the surviving entity, or (iii) creates or acquires a **Subsidiary** or (iv) in the sole judgment of the **Insurer** materially changes its business as described in the Application after the effective date of this policy, no coverage shall be afforded under this policy for assets acquired, or the entity merged with, or the **Subsidiary** or such changed business activities, unless and until:

1. The **Named Insured** provides written notice of such transaction or event or change to the **Insurer** not more than sixty (60) days after the effective date of such transaction, or event or change, and
2. The **Named Insured** promptly provides the **Insurer** with such information in connection therewith as the **Insurer** may deem necessary, and
3. The **Named Insured** accepts any special terms, conditions, exclusions, or additional premium charge required by the **Insurer**, and
4. The **Insurer** at its sole discretion specifically agrees in writing to provide such coverage.

If the **Insurer** agrees to provide coverage, it will not include any **Breach of Professional Duty** committed or allegedly committed, with respect to any entity, assets, **Subsidiary**, or changed business activities referred to in subsection 1 above, prior to the effective date of such acquisition, merger, creation, or change, or any **Breach of Professional Duty** or interrelated **Breaches of Professional Duty** committed or allegedly committed prior to the effective date of such acquisition, merger, creation, or change.

If (i) the **Named Insured** merges into or consolidates with another entity, or (ii) another entity or person or group of entities and/or persons in concert acquire securities or voting rights which result in ownership or voting control by the other entity or person(s) of more than 50% of the outstanding securities representing the present right to vote for election of directors of the **Named Insured**, coverage under this policy shall continue until termination of this policy, but only with respect to **Claims** for **Breach of Professional Duty** committed, attempted, or allegedly committed by the **Insureds** prior to such merger, consolidation or acquisition. The **Named Insured** shall give written notice of such merger, consolidation or acquisition as soon as practicable, together with such information as the **Insurer** may require.

For purposes of this Condition, an entity shall mean any corporation, business trust, partnership, or other form of organization, including a **Named Insured**.



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O. SERVICE OF SUIT

In the event of failure of the **Insurer** to pay any amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Condition constitutes or should be understood to constitute a waiver of the **Insurer's** rights 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 in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, 399 Park Avenue, 8th floor, New York, NY 10022 or his or her representative, and that in any suit instituted against the **Insurer** upon this policy, the **Insurer** will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the **Insurer** hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this policy of insurance and hereby designates the above named Counsel as the person to whom the said officer is authorized to send such process or a true copy thereof.

P. ARBITRATION

In the event of any disputes or differences which may arise under or in connection with this policy, whether arising before or after the termination of this policy, including any determination of the amount of **Damages**, the **Insurer** and **Insured** agree to participate in a non-binding **Mediation** process to resolve such disputes or differences. Either party shall have the right to commence a judicial proceeding or, if the parties agree, a binding arbitration proceeding to resolve such disputes or differences. However, such judicial or arbitration proceeding shall not be commenced until at least ninety (90) days after the date the non-binding mediation shall be deemed concluded or terminated.

Any binding arbitration proceeding commenced pursuant to this Condition P. shall be submitted to the American Arbitration Association under or in accordance with its then-prevailing Commercial Arbitration Rules, in which the arbitration panel shall be composed of three disinterested individuals. In either Mediation or arbitration, the mediator(s) or arbitrator(s) shall have knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute. Each party shall share equally the expenses of the non-binding **Mediation** or non-binding arbitration.

Q. CHOICE OF LAW AND FORUM

The construction, validity and performance of this policy will be governed by the laws of the State of New York. It is expressly agreed that all claims and disputes between the Insured and the Insurer will be litigated in the Supreme Court of the State of New York in and for the County of New York or in the U.S. District Court for the Southern District of New York.

R. HEADINGS

Headings are inserted solely for the convenience of reference and will not limit, expand, or otherwise affect the provisions to which they related. Words and expressions in the singular include plural and vice versa. Words **bolded** have special meaning and are defined. Words that are specifically not defined in this policy have the meaning normally attributed to them.

S. ENTIRE AGREEMENT

By acceptance of this policy, all **Insureds** agree that this policy embodies all agreements between them and the **Insurer** relating to this policy.

IN WITNESS WHEREOF, the **Insurer** has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of its duly authorized representatives.