

**PROFESSIONAL LIABILITY INSURANCE
FOR SPECIFIED PROFESSIONALS**

This is a Claims Made and Reported Policy. Please Read It Carefully.

In consideration of the undertaking of the **Named Insured** to pay, when due, the premium and the **self-insured retention** as described herein and as stated in the Declarations, and in reliance upon the statements in the application, which is made a part of this policy and subject to the Limits of Liability as shown in the Declarations, and subject to all of the terms of this insurance, the Company agrees with the **Named Insured** as follows:

I. COVERAGE

A. Professional Liability and Claims Made and Reported Clause: The Company shall pay on behalf of the **Insured** those sums in excess of the **self-insured retention** and up to the Limits of Liability stated in the Declarations which the **Insured** shall become legally obligated to pay as **damages** as a result of **CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR THE OPTIONAL EXTENDED REPORTING PERIOD, IF PURCHASED,** caused by any **Wrongful act** for which the **Insured** is legally responsible and arising out of the rendering or failure to render **professional services PROVIDED ALWAYS THAT such wrongful act** happens:

1. during the **policy period**; or
2. prior to the **policy period** but not before the **retroactive date** provided that prior to the effective date of the first Professional Liability Insurance policy issued by the Company to the **Named Insured** and continuously renewed and maintained in effect to the inception of this **policy period**:

- a. the **Insured** did not give notice to any prior insurer of any such **wrongful act** or of a **claim** arising therefrom; and
 - b. the **Insured** had no reasonable basis to believe that a **wrongful act** had taken place and that a **Claim** arising therefrom would be made against the **Insured**; and
 - c. there is no prior policy which provides insurance for such **wrongful act** or **claim**, unless the available Limits of Liability of such prior policy are insufficient to pay **damages** on account of such **wrongful act** or **claim**, in which event this policy will apply only as excess over any such Limits of Liability.
- B. Consent to Settle, Defense:** As part of and subject to the Limits of Liability, the Company shall have the right and duty to defend, any **claim** against the **Insured**, to which this insurance applies, even if any of the allegations of the **claim** are groundless, false, or fraudulent. However, the Company shall have no duty to defend any **claim**, and may withdraw from the defense of any **claim**, after the applicable Limits of Liability have been exhausted by judgments, settlements or **claim expenses**. The Company shall have the right to make any Investigation it deems necessary and, with the written consent of the **Insured**, make any settlement of a **claim** covered by the this policy. If the **Insured** shall refuse to consent to a settlement or compromise recommended by the Company, whether within or in excess of the **self-insured retention** and acceptable to the Claimant and shall elect to contest, or

continue to contest the **claim** then the Company's liability under this policy shall not exceed the amount for which the Company would have been liable for **damages** or **claim expenses** if the **claim** had been so settled or compromised. The Company shall have no liability for **damages** and **claim expenses** incurred thereafter and shall have the right to withdraw from the further investigation or defense thereof by tendering control of such investigation or defense to the **Insured**, and The **Insured** agrees to accept such tender.

II. DEFINITIONS

Whenever used in this policy:

A. "**Bodily Injury**" means physical injury, sickness, disease or death of any person, and includes emotional distress or mental anguish whether or not accompanied by physical injury, sickness or disease.

B. "**Claim**" means a demand received by the **Insured** for money **damages** and alleging a **wrongful act**, including the service of suit or institution of arbitration, mediation or other formal alternative dispute resolution proceeding. **Claim** does not include a demand for equitable, non-pecuniary or injunctive relief, or for legal fees or expenses in connection therewith.

C. "**Claim Expenses**" means:

1. fees charged by any lawyer designated by the Company; or by the **Insured** with the written consent of the Company;
2. all other fees, costs and expenses resulting from the investigation, and defense of a **claim**, if incurred by the Company or by the **Insured** with the written consent of the Company.

Claim Expenses does not include salary charges of regular employees or officials of the company or any supervisory counsel retained by the company. The determination of the Company as to the reasonableness of the **claim expenses** shall be conclusive on the **Insured**.

D. "**Damages**" means monetary judgments or settlements, but does not include fines or statutory penalties, sanctions, whether imposed by law or otherwise, punitive or exemplary **damages**, the multiplied portion of multiplied **damages**, amounts for which the **Insured** is not financially liable or for which there is no legal recourse to the **Insured**, or relief which may be deemed uninsurable under the applicable law.

E. "**Insured**" whenever used in this policy, means:

1. the **Named Insured** as described in the Declarations;
2. any partner, officer, director, or employee of the **Named Insured**, but only while providing **professional services** on behalf of the **Named Insured**;
3. any former employee of the **Named Insured**, but only for **professional services** provided while an employee of the **Named Insured**; and
4. the estate, heirs, executors, administrators, assigns and legal representatives of each **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy.

F. "**Named Insured**" means the entity or person(s) described in the Declarations.

G. "**Personal Injury**" means false arrest, detention or imprisonment, libel, slander, defamation, Invasion of the right of privacy, wrongful entry or eviction, assault or battery, unfair or illegal discrimination, including but not limited to any **claim** based upon or arising out of the Claimant's sex, race, color, ethnicity, nationality, immigration status, employment status, religious affiliation, sexual orientation, physical or mental infirmity, or age.

H. "**Policy Period**" means the period from the inception date of this policy to the policy expiration date as set forth in the Declarations or its earlier termination date, if any.

- I. **"Property Damage"** means injury to or destruction of any tangible property or loss of use resulting therefrom.
- J. **"Professional Services"** means those services described in the Declarations which are provided by the **Insured** to a third party for a monetary fee.
- K. **"Retroactive Date"** means the date specified in the Declarations.
- L. **"Self-Insured Retention"** means the amount stated in the Declarations, which shall apply separately in respect of each **claim** insurable hereunder and shall be paid by the **Insured** prior to any payment by the Company. **Claim expenses** are included in the **self-insured retention**
- M. **"Wrongful Act"** means any actual or alleged negligent breach of duty, error, misstatement, misleading statement or omission committed solely in the conduct of the **Insured's professional services**.

III. EXCLUSIONS

This policy does not apply:

- A. to any **claim** based upon or arising out of any actual or alleged dishonest, fraudulent, criminal, malicious, intentional or willful **wrongful acts** committed by any **Insured**;
- B. to any **claim** for: (1) **bodily injury**; (2) **property damage**; or (3) **personal injury**;
- C. to any **claim** brought against any **Insured** based upon or arising out of **professional services** rendered by the **Insured** to any third-party organization:
 1. if the **claim** arises solely because the **Insured** is an employee, officer, director, trustee or partner of the third-party organization, or if the **Insured** controls, operates or manages the third-party organization, either individually or in a fiduciary capacity; or
 2. if the **Insured** and/or members of the immediate family of the **Insured** own(s) or control(s) 10% or more of the issued and

- outstanding shares, units or other portions of the capital of the third-party organization;
- D. to any **claim** by, on behalf of, or in the right of any **Insured**, including any **claim** by the Trustee in Bankruptcy, Receiver, Liquidator or other successor to any **Insured**, against another **Insured**;
- E. to any **claim** based upon or arising out of any litigation, proceeding, administrative action or hearing brought prior to or pending as of the effective date of the first Professional Liability Insurance Policy issued by the Company to the **Insured** and continuously renewed and maintained in effect to the inception date of this **policy period** as well as any future litigation, proceeding, administrative action or hearing based upon any such pending or prior litigation, proceeding, administrative action or hearing or derived from the essential facts or circumstances underlying or alleged in any such pending or prior litigation, proceeding, administrative action or hearing;
- F. to any **claim** based upon or arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any watercourse or body of water, including an aquifer or groundwater;
- G. to any **claim** based upon or arising out of the Employee Retirement Income Security Act of 1974, and amendments thereto, or similar provisions of any federal, state or local statute or common law;
- H. to any **claim** based upon or arising out of (1) the **Insured** gaining in fact any personal profit, or advantage to which such **Insured** was not legally entitled or (2) any dispute(s) as to the fees, charges or commissions of the **Insured** for **professional services** rendered or required to be rendered;
- I. to any **claim** based upon or arising out of any obligation of the **Insured** under any worker's compensation, disability benefits or unemployment compensation law or any similar Law, including but not limited to, any injury to: (1) an employee of the **Insured** arising out of and in the course of employment by the **Insured**, or any **claim**

by (2) the spouse, child, parent or sibling of that employee as a consequence of the injury to (1) above. This exclusion applies whether the **Insured** may be liable as an employer or in any other capacity and to any obligation to share **damages** with, indemnify or repay a party that pays or is liable to pay **damages** because of the injury;

- J.** to any **claim** based upon or arising out of the bankruptcy, liquidation or insolvency of the **Insured**;
- K.** to any **claim** based upon or arising out of performing, supervising or managing the removal, containment or abatement services of any pollutant or environmentally hazardous material;
- L.** to any **claim** based upon or arising out of liability assumed by the **Insured** in a contract or agreement, but this exclusion shall not apply to liability of the **Insured** which would exist in the absence of such contract or agreement;
- M.** to any **claim** arising out of the alleged breach of any express or implied warranty or guarantee;
- N.** to any **claim** based upon or arising out of:
 - 1.** refusal to employ any person or organization;
 - 2.** termination of employment of any person or organization; or
 - 3.** employment-related practices, acts or omissions, including, without limitation, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, or humiliation;
- O.** to any **claim** based upon or arising out of estimates of probable cost or cost estimates being exceeded.

IV. TERRITORY

This insurance applies to **wrongful acts** committed by an **Insured** anywhere in the world, provided the **claim** is brought within the United States of America, its territories and possessions, Puerto Rico or Canada.

V. LIMITS OF LIABILITY

- A.** The liability of the Company for all **claim expenses** and **damages** for each **claim** **FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR THE OPTIONAL EXTENDED REPORTING PERIOD, IF PURCHASED**, shall not exceed the amount stated in the Declarations for each **claim**.
- B.** The total liability of the Company for all **claim expenses** and **damages** for all **claims** **FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR THE OPTIONAL EXTENDED REPORTING PERIOD, IF PURCHASED**, shall not exceed the amount stated in the Declarations as aggregate.
- C.** The Limits of Liability for **claims** **FIRST MADE AND REPORTED DURING THE OPTIONAL EXTENDED REPORTING PERIOD** shall be part of, and not in addition to the Limits of Liability as stated in the Declarations and as stated above. If any **Insured** has purchased or does purchase other insurance covering **claims** first made during the **OPTIONAL EXTENDED REPORTING PERIOD**, the coverage provided under this policy for such **claims** shall apply in excess of such insurance.
- D. Self-Insured Retention:** The retention amount stated in the Declarations shall be paid by the **Insureds** and shall be applicable to all **claim expenses** and **damages** for each and every **wrongful act claim**. A single retention shall apply to **claims** arising from the same or related **wrongful act(s)**. The retention amount shall be paid by the **Insureds** as a condition precedent to payment of any **claim expenses** or **damages** by the Company hereunder. Such amount shall be paid by the **Insureds** within thirty (30) days of written demand therefor by the Company.
- E. Multiple Insureds, Claims and Claimants:** The inclusion herein of more than one **Insured** shall not operate to increase the Company's Limits of Liability. **Claims** Alleging, based upon, arising out of or

attributable to the same or related **wrongful act(s)** shall be treated as a single **claim** regardless of whether made against one or more than one **Insured**. All such **claims**, whenever made, shall be considered first made during the **policy period** or Optional Extended Reporting Period, if purchased, in which the earliest **claim** arising out of such **wrongful act(s)** was first made, and all such **claims** shall be subject to the Limits of Liability and retention set forth in such policy.

VI. CLAIMS

- A. Notice of Claims:** As a condition precedent to coverage under this policy, the **Insured** shall provide written notice of any **claim** made against any **Insured** as soon as practicable, but in no event later than the earlier of: 1) thirty (30) days following receipt of written notice of the **claim**, and 2) the expiration date of this policy or the Optional Extended Reporting Period, if elected hereunder.

In the event suit is brought against any **Insured**, the **Insured** shall immediately forward to the Company every demand, notice, summons, complaint or other process or any threat of an intention to hold the **Insured** responsible for any **wrongful act** received directly by the **Insured** or by the **Insured's** representatives. Written notice of any **claim** against any **Insured**, as well as of each demand on or suit against the **Insured**, shall be delivered to the Company addressed as follows:

Tamarack American
205 East 42nd Street
Sixteenth Floor
New York, New York 10017
Attention: Claims Division

- B. Discovery Clause:** If during the **policy period** any **Insured** first becomes aware or has reasonable grounds to suspect that an **Insured** has committed or may have committed a specific **wrongful act** for which coverage is otherwise provided hereunder, and provided the **Insured** during the **policy period** gives notice to the Company of:

1. the specific **wrongful act**;

2. the injury or damage which has resulted or may result from such **wrongful act**; and
3. the circumstances by which the **Insured** first became aware of or suspected such **wrongful act**,

then any **claim** that may subsequently be made against any **Insured** arising out of such **wrongful act** shall be deemed for the purposes of this insurance to have been made during the **policy period**.

- C. Assistance and Cooperation of the Insured:** The **Insureds** shall cooperate with the Company and upon the Company's request shall (1) provide to the Company copies of documents and such other things held by or available to the **Insureds** which relate to any **claim** or to the **wrongful act**, transactions or other events which shall have given rise to such **claim**, (2) submit to examination and interrogation by a representative of the Company, under oath if required, (3) attend hearings, depositions and trials, (4) assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and other proceedings, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense and, (5) render written status reports regarding each **claim** no less frequently than every three months and otherwise as may be necessary in order to keep the Company currently informed as to fees, costs and expenses being incurred in connection with such **claim** and as to all material developments or anticipated developments in connection with such **claim**, including but not limited to such subjects as settlement, potentially dispositive motions as to the **claim** in its entirety or any aspect thereof and the deposition of any **Insured**, all without charge to the Company.

The **Insured** shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which any **Insured** may have. The **Insured** shall exercise the right to either reject or

demand the arbitration of any **claim** made against the **Insured** in accordance with the written instructions of the Company. The **Insured** shall not, except at the **Insured's** own cost, make any payment, admit any liability, settle any **claims**, or assume any obligation, provided, however, the **Insured** shall have the right to make any settlement of any **claim** covered by the terms of this policy subject to the condition that the aggregate amount of such settlement and of the **claim expenses** incurred in connection with such **claim** shall not exceed the **self-insured retention** amount stated in the Declarations.

- D. False or Fraudulent Claims:** If any **Insured** shall knowingly submit a false **claim** or commit fraud in proffering any **claim** under this policy, as regards amount or Otherwise as to any material fact, the insurance provided under this policy shall become void as to such **Insured** from the date such false or fraudulent **claim** is proffered, without regard to whether the Company has actually relied upon or been damaged by such **claim**.

VII. OPTIONAL EXTENDED REPORTING PERIOD

- A.** If the Company shall cancel or refuse to renew this policy, then the **Named Insured**, upon payment of an additional premium as set forth herein, shall have the option to extend this insurance afforded by this policy, subject otherwise to its terms, Limits of Liability, exclusions and conditions, to apply to **claims** first made against the **Insured** during the 12, 24 or 36 months as purchased immediately following the effective date of such nonrenewal or cancellation, for any **wrongful act** committed before such effective date and after the **retroactive date**, and otherwise covered by this insurance. The extension shall be endorsed hereto, if purchased, and shall be referred to as the "Optional Extended Reporting Period." The premium for the Optional Extended Reporting Period, if elected, shall be 12 months - 100%, 24 months - 150%, or 36 months - 200%, of the full annual premium for this policy, plus any Additional premium owed by the Company for this policy.

- B.** The **Named Insured's** option to elect the Optional Extended Reporting Period must be exercised by notice in writing to the Company not later than thirty (30) days after the effective date of the nonrenewal or cancellation of this policy. If the premium for the Optional Extended Reporting Period is not paid within thirty (30) days of the effective date of the nonrenewal or cancellation of this policy, the option to elect the Optional Reported Period shall be void.
- C.** At the commencement of the Optional Extended Reporting Period, the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the Optional Extended Reporting Period for any reason, the Company shall not be liable to return to the **Named Insured** any portion of the premium for the Optional Extended Reporting Period.
- D.** As a condition precedent to the **Named Insured's** option to elect the Optional Extended Reporting Period, any and all premiums and **self-insured retentions** that are due must have been paid and the **Named Insured** must have complied with all other terms and conditions of this policy. If such conditions precedent are not satisfied or if the notice required under this Section VII, B. is not timely given to the Company, the **Named Insured** shall not at a later date be able to exercise such option.
- E.** If the cancellation or nonrenewal of this policy is due to the nonpayment of premium or fraud on the part of an **Insured**, or if any **Insured's** license, right to practice its profession or conduct its business is revoked, suspended by or surrendered at the request of any regulating authority, no Optional Extended Reporting Period shall be available.
- F.** The fact that the period during which **claims** must first be made against the **Insured** and reported to the Company under this policy is extended by virtue of the Optional Extended Reporting Period shall not in any way increase the Limits of Liability of this policy.

- G.** The offer by the Company of terms, conditions or premium different from that of the expiring policy shall not constitute nonrenewal for the purpose of this Section VII.

VIII. CONDITIONS

- A. Subrogation:** In the event of any payment under this policy, the Company shall be subrogated to all the **Insured's** rights of recovery therefor against any person or organization. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights and the **Insured** shall do nothing to prejudice such rights.

Any amount recovered upon the exercise of such rights of subrogation shall be applied as follows: first, to the repayment of expenses incurred toward subrogation; second, to **damages** and/or **claim expenses** paid by the **Insured** in excess of the Limits of Liability hereunder; third, to **damages** and/or **claim expenses** paid by the Company; fourth, to **damages** and **claim expenses** paid by the **Insured** in excess of the **self-insured retention**; and last, to repayment of the **self-insured retention**.

- B. Action Against the Company:** No action shall lie against the Company unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this policy, nor until the amount of the obligation of the **Insured** to pay shall have been fully and finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company. In the event any person or organization or the legal representative thereof has secured a judgment against an **Insured** and such judgment remains unsatisfied after the expiration of thirty (30) days from the service of notice of entry of the judgment upon the attorney for the **Insured**, or upon the **Insured**, and upon the Company, then an action may, except during a stay or limited stay of execution against the **Insured** on such judgment, be maintained against the Company under this policy for the amount of such judgment to the extent of the insurance afforded by this policy.

Nothing contained in this policy shall give any person or organization the right to join the Company as a party in any action against any **Insured** determine the **Insured's** liability. Bankruptcy or insolvency of any **Insured** or of the **Insured's** estate shall not relieve the Company of any of its obligations hereunder.

- C. Application:** By acceptance of this policy, the **Insured** agrees that the statements in the application (which is made a part of this policy) are personal representations, that they shall be deemed material and that this policy is issued in reliance upon such representations and that this policy embodies all agreements existing between the **Insured** and the Company, or any of its agents, relating to this insurance.
- D. Other Insurance:** This insurance shall be in excess of the amount of the applicable **Self-Insured Retention** of this policy and any other valid insurance available to the **Insured** whether such insurance is collectible or uncollectible only because the Limits of Liability thereof shall have been exhausted, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limits of Liability provided in this policy.
- E. Changes:** Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Company shall not affect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy, nor shall the terms of this policy be waived or changed, except by written endorsement issued to form a part of this policy.
- F. Assignment:** Assignment of interest under this policy shall not bind the Company unless its consent is endorsed in writing hereon.
- G. Cancellation:** This policy may be canceled by the **Named Insured** by mailing or delivering prior written notice to the Company or by surrender of this policy to the Company. If this policy is canceled by the **Named Insured**, the Company shall

retain the customary short rate proportion of the premium hereon. This policy may also be canceled by or on behalf of the Company by delivering to the **Named Insured** or by mailing to the **Named Insured** by registered, certified or other first class mail, at the address of the **Named Insured** as stated in the Declarations, written notice stating when not less than thirty (30) days after the date of such notice the cancellation shall be effective. The proof of mailing of such notice as aforesaid shall be sufficient proof of notice. If this policy is canceled by or on behalf of the Company, the Company shall retain the pro-rata proportion of the premium hereon. The Company may cancel this policy on ten (10) days notice for nonpayment of premium due.

- H. Conformity to Statute:** Any terms of this policy which are in conflict with the terms of any applicable laws construing this policy are hereby amended to conform to such laws.
- I. Named Insured Authorization:** By acceptance of this policy, the **Named Insured** as stated in the Declarations agrees to act on behalf of all **Insureds** with respect to the payment or return of premium, the receipt and acceptance of any endorsements, the cancellation of the policy, the negotiation of renewal, and the giving and receiving of any notice provided for by the terms and conditions of this policy.
- J. Reporting requirements:** The **Named Insured** agrees to notify the Company in writing within forty-five (45) days thereafter of any change in the name or address of the **Named Insured** as stated in the Declarations and of any mergers or acquisitions involving the **Named Insured**. There shall be no coverage under the policy for such merged or acquired entity or organization unless, after receipt of such notice, (1) the Company agrees in writing to extend coverage therefor, and (2), the **Named Insured** pays any additional premium the Company may charge for such extension of coverage.

IX. ARBITRATION

- A. Conditions:** Any dispute or controversy arising out of or relating to this policy shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association (herein "AAA") then in effect. The **Insured** and the Company, before entering into arbitration, shall each appoint an arbitrator. Each arbitrator shall be a present or former insurance industry executive. Within thirty (30) days after one party notifies the other of its demand for arbitration detailing the issue(s) to be arbitrated and names its arbitrator, the other party shall name its arbitrator. Within thirty (30) days of the naming of the second arbitrator, the two arbitrators will select a third arbitrator to be chairman of the panel. Should the two arbitrators not be able to agree on a choice of the third, then the AAA shall make the appointment of a person who is neutral to the parties in controversy. None of the arbitrators shall be current or former officers, principals, directors, stockholders, partners, or employees of the **Insured** or Company. The three arbitrators shall comprise the arbitration panel for the purpose of this policy.
- B. Judgment:** Each party to this policy shall submit its case with supporting documents to the arbitration panel within thirty (30) days after appointment of the third arbitrator. However, the panel may extend this period for a reasonable time. Unless extended by the consent of the parties to this arbitration, the majority of the three arbitrators shall issue a written decision resolving the controversy before them within thirty (30) days of the time both parties are required to submit their case and related documentation. The arbitrators' written award shall state the facts reviewed, conclusion reached, and the reasons for their conclusions. Said award shall be final and binding upon both parties and judgement on the award may be entered by any court of competent jurisdiction.

C. Fees and Expenses: Each party shall pay the fees and expenses of its arbitrator, unless otherwise agreed by the parties. The remaining costs of the arbitration shall be

shared equally by both parties. Arbitration shall take place in New York, New York, unless otherwise agreed to by both parties.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the Company.


Secretary


President