

ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY

NOTICE

THIS POLICY PROVIDES CLAIMS MADE AND REPORTED COVERAGE, HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT, AND MAY BE DIFFERENT FROM OTHER POLICIES THE NAMED INSURED MAY HAVE PURCHASED. THE POLICY REQUIRES THAT A CLAIM BE MADE UPON THE INSURED AND REPORTED IN WRITING TO THE COMPANY DURING THE SAME POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY.

PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE THE INSURED'S RIGHTS AND DUTIES, AND WHAT IS AND IS NOT COVERED. VARIOUS PROVISIONS THROUGHOUT THIS POLICY RESTRICT OR EXCLUDE COVERAGE.

DEFINED TERMS APPEAR IN BOLD-FACED TYPE. PLEASE REFER TO SECTION III. TO EXAMINE THE APPLICABLE DEFINITIONS.

In consideration of the payment of the premium and Self-Insured Retention by the Named Insured and in reliance upon the statements in the **Insured's** Application incorporated herein by reference, the Company agrees with the **Insured** subject to all of the terms, exclusions and conditions of this policy, as follows:

I. INSURING AGREEMENTS

A. COVERAGE: CLAIMS-MADE CLAUSE:

The Company will pay on behalf of the **Insured** all sums in excess of the Self-Insured Retention that the **Insured** shall become legally obligated to pay as **damages** because of **claims** for a **Breach of Professional Duty** in the rendering or failure to render **professional services** to others:

- (a) by the **Insured**; or
- (b) for which the **Insured** is legally liable as a result of the performance of others.

For this coverage to apply, all of the following conditions must be satisfied:

1. The **Breach of Professional Duty** forming the basis of the **claim** must arise from **professional services** that take place subsequent to the Retroactive Date stated in the Declarations.
2. Prior to the Effective Date of this policy stated in the Declarations, no officer, director, principal, partner, insurance manager or risk manager of the **Insured** had knowledge of such actual or alleged **Breach of Professional Duty** or circumstance likely to give rise to a **claim**.
3. **Claim** must first be made against the **Insured** during the **policy period**.
4. The **Insured** must report the **claim** to the Company, in writing, as provided in Section V - A.1 of this policy during the **policy period** or

within the sixty (60) day period next succeeding the expiration of the **policy period**.

B. TERRITORY:

The insurance afforded by this policy applies to a **Breach of Professional Duty** arising out 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:

With respect to any **claim** made against the **Insured** for which coverage is provided under this policy and payable hereunder in excess of the Self-Insured Retention, or for which coverage is provided under this policy and payable by the **Insured** under its Self-Insured Retention:

- 1) The Company shall not be called upon to assume charge of the investigation, defense or settlement of any **claim** made against the **Insured**, but the Company, at its option shall have the right and shall be given the opportunity to associate, at its own expense, with the **Insured** in the investigation, defense or control of such **claim** which would involve or appear reasonably likely to involve the Company, in which event the **Insured** and the Company shall cooperate in the defense or settlement of such **claim**.
- 2) In the absence of such election by the Company, the **Insured** shall arrange for and assume the investigation, defense and settlement of such **claim** provided that the **Insured** shall take no action or agree to any settlement which alone or together with **claim expenses** will exceed the Self-Insured Retention without the prior written consent of the Company.

D. SETTLEMENT PROVISIONS:

The Company 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 Company and elects to contest such **claim** or continue legal proceedings in connection with such **claim**, then the Company's liability for the **claim** shall not exceed the amount for which the **claim** could have been so settled plus **claim expenses** incurred up to the date of such refusal subject to the applicable limit of liability under this policy.

E. CLAIM EXPENSES:

Claim expenses in excess of the Self-Insured Retention shall be paid by the Company, and such payments reduce the available limit of liability. The **Insured** must first pay any applicable Self-Insured Retention amounts as set forth in Item 4 of the Declarations.

II. EXCLUSIONS

This policy does not provide coverage and the Company will not pay **claim expenses** or **damages** for:

- A. any **claim** arising from any dishonest, fraudulent, or criminal conduct committed intentionally by or at the direction of any **Insured**; however, this exclusion shall not apply to the Named Insured or to any **Insured** who did not commit, participate in or have knowledge of such conduct;
- B. any **claim** made by any **Insured** against any other **Insured**;
- C. any **claim** based upon or arising out of **Wrongful Termination** of any employee of the **Insured**; **Discrimination** involving any employee of the **Insured**; or **Sexual Harassment** of any employee of the **Insured**;
- D. any **claim** made against an **Insured** based upon or arising out of any **Insured's** involvement as a partner, officer, director, stockholder, employer or employee of any business enterprise not named in the Declarations;
- E. any **claim** made by or on behalf of any business enterprise that wholly or partly owns the **Insured** or which to any extent controls, operates or manages an **Insured**, or that is wholly owned or in which an **Insured** has a greater than 25% ownership, or which is controlled, operated or managed by an **Insured**;
- F. any **claim** based upon or arising out of the design or manufacture of any goods or products developed by the **Insured** for multiple sale or mass distribution, including but not limited to, computer programs and software;
- G. any **claim** based upon or arising out of express warranties or guarantees unless such liability would have attached to the **Insured** in the absence of an express warranty or guaranty and such liability arises out of a **Breach of Professional Duty** by the **Insured** in the performance of **professional services**;
- H. any **claim** based upon or arising out of the cost to repair or replace any faulty workmanship, assembly, construction, erection, fabrication, installation or remediation if such work is performed in whole or in part by:
 - 1. the **Insured**; or
 - 2. 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**;
- I. to any **claim** based upon or arising out of liability of others assumed by any **Insured** under any contract or agreement unless such liability arises as a result of a **Breach of Professional Duty** by the **Insured** in the performance of **professional services**;
- J. punitive or exemplary **damages**, fines or penalties; except, this exclusion does not apply to punitive or exemplary **damages** arising solely out of a **claim** for libel or slander and such payment by the Company is not held to be against public policy;

- K. any **claim** for **bodily injury** or **personal injury** sustained by any employee of any **Insured** while engaged in employment by any **Insured**, or by any person whose right to assert a **claim** against the **Insured** arises by reason of any employment, blood, marital or other relationship with the employee;
- L. any obligation for which an **Insured** or any other party must pay under any unemployment, Workers' Compensation, disability benefits, or other similar laws;
- M. any **claim** based upon or arising out of nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a **nuclear facility**.

III. DEFINITIONS

- A. **Bodily Injury** means bodily injury, sickness, disease, mental anguish or emotional distress sustained by a person, including death resulting therefrom.
- B. **Breach of Professional Duty** means an error, omission or other act that causes liability in the performance or nonperformance of **professional services** to others by the **Insured** or for which the **Insured** is legally liable as a result of the performance of others.
- C. **Claim** means any demand against the **Insured** for money or services, including but not limited to, the service of suit or institution of arbitration proceedings.
- D. **Claim Expenses** means:
 - 1. fees charged by any lawyer designated by the Company;
 - 2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim** if authorized by the Company. **Claim Expenses** shall not include the salaries of any employee of the Company.
- E. **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, provided always that **damages** shall not include the return or withdrawal of professional fees, sanctions, fines or penalties imposed by law or other matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- F. **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.
- G. **Insured** means:
 - 1. the Named Insured listed 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 rendering **professional services** on behalf of the Named Insured;
 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 but only as respects liability arising out of **professional services** rendered 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** 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.
- H. **Nuclear Facility** means the site at which a nuclear reactor is located or where nuclear waste or material is disposed of or stored.
- I. **Personal Injury** means injury, other than **bodily injury**, arising out of one or more of the following offenses;
1. false arrest, detention or imprisonment;
 2. malicious prosecution;
 3. wrongful entry into, or eviction of a person from a room, dwelling, or premises that the person occupies;
 4. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 5. oral or written publication of material that violates a person's right of privacy.
- J. **Policy Period** means the period from the effective date of this policy to the expiration date or earlier termination date, if any, of this policy.
- K. **Professional Services** means:
- a. architectural, engineering, land surveying, landscape architectural, or construction management services; or
 - b. other services as specifically defined by endorsement to this policy, that the **Insured** or anyone for whom the **Insured** is legally liable performs for others for a fee.
- L. **Property Damage** means:
1. physical injury to or destruction of tangible property, including all resulting loss of use of that property, or
 2. clean-up costs; or

3. loss of use of tangible property that has not been physically injured or destroyed.

M. **Sexual Harassment** means unwelcome sexual advances and/or requests for sexual favors and/or other verbal or physical conduct of a sexual nature that (1) are made a condition of employment and/or (2) are used as a basis for employment decisions and/or (3) create a work environment that interferes with performance.

N. **Wrongful Termination** means termination of an employment relationship in a manner which is against the law and wrongful or in breach of an implied agreement to continue employment.

IV. LIMITS OF LIABILITY AND SELF-INSURED RETENTION

A. LIMIT OF LIABILITY-EACH **CLAIM**:

Subject to the Limit of Liability-Aggregate, the liability of the Company for each covered **claim** shall not exceed the amount stated in the Declarations for **Each Claim**. This limit is the maximum amount of **claim expenses** or **damages** or both that the Company will pay on each covered **claim**. The limit of liability shall apply in excess of the Self-Insured Retention.

B. LIMIT OF LIABILITY-**AGGREGATE**:

The liability of the Company shall in no event exceed the amount stated in the Declarations as aggregate as a result of all covered **claims**. This limit is the total amount of **claim expenses** or **damages** or both that the Company will pay under this policy for all covered **claims** including those reported as provided for in Condition C., Extended Reporting Period below.

Once the Limits of Liability have been exhausted, the Company 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**. This policy shall only apply if the first or earliest **claim** arising from such **Breach of Professional Duty** is made during the **policy period**. These provisions apply regardless of the number of **Insureds** involved in such 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 above.

E. Self-Insured Retention - EACH **CLAIM**:

The Company's obligation, under the coverages provided by this policy to pay **damages** or **claim expenses** or both on behalf of the **Insured**, applies only to the payment of **damages** or **claim expenses** in excess of the Self-Insured Retention stated in Item 4 of the Declarations, and subject to the Limits of Liability stated in Item 3 of the Declarations. The Self-Insured Retention shall be applied to the payment of **damages** or **claim expenses** or both. The terms of the policy including those with respect to the Company's rights and duties with respect to the defense of **claims** apply in excess of the Self-Insured Retention.

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**, the **Insured** must give written notice, as soon as practicable, and as otherwise required by this policy, to:

Lexington Insurance Company
200 State Street
Boston, Massachusetts 02109
Attn: Claim Department

2. The **Insured** must cooperate with the Company. The Company may require that the **Insured** submit to examination under oath, if required, produce and make available all records, documents and other materials which the Company deems relevant to the **claim**. With respect to any **claim** as described in subparagraph 1) of Section C., Defense Provisions, of this policy:
 - (a) the **Insured** must also, at the Company's request, attend hearings, depositions and trials;
 - (b) in the course of investigation or defense, provide the Company with written statements as requested by the Company or the **Insured's** attendance at meetings with the Company; and
 - (c) the **Insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses, all without charge to the Company.
3. If the **Insured** has the right to either accept or reject arbitration of any **claim**, the **Insured** shall exercise such right only with the written consent of the Company.
4. Except and to the extent otherwise provided in subparagraph 2) of Section C., Defense Provisions, of this policy, the **Insured** must not make any payment, admit any liability, settle any **claims** or assume any obligations without the prior written consent of the Company.

5. The **Insured** must do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the **Insured** may have.
- 6 The **Insured** shall refrain from discussing the facts and circumstances of any **claim** with anyone other than legal counsel or representatives of the Company.

B. REPORTING OF A POSSIBLE **CLAIM**:

This policy will provide coverage for a specific incident, circumstance or situation ("possible **Claim**"), other than a **claim** that the **Insured** first becomes aware of during the **policy period** of this policy, and which possible **claim** reasonably may lead to or form the basis of a **claim** for which this policy would otherwise provide coverage. The **Insured** must give written notice to the Company of any such possible **claim** as soon as practicable but not later than the end of the **policy period**.

The written report of a possible **claim** must include all available information about the possible **claim**.

This report must include:

1. the potential claimant's name and address;
2. a description of the **professional services** provided or that should have been provided;
3. an explanation of the type of **claim** that is anticipated.

Any **claim** that may subsequently be made against the **Insured** arising out of such possible **claim** shall be considered a **claim** first made against the **Insured** during the **policy period** of this policy and shall be subject to all terms and conditions of this policy.

The **Insured** shall comply with all subparagraphs in Condition V.A., **Insured's Duties When There Is A Claim**.

C. EXTENDED REPORTING PERIOD:

If this policy shall be canceled or nonrenewed by the Company or the Named Insured for reasons other than the Named Insured's non-payment of premiums or non-compliance with the terms and conditions of this policy, then the Named Insured upon payment of an additional premium specified in Item 5 of the Declarations shall have the option to extend such insurance as is afforded by this policy. This extension will apply only to **claims** first made against the **Insured** during the specified number of months in Item 7 of the Declarations following immediately upon the effective date of such cancellation or expiration, but only by reason of a **Breach of Professional Duty** arising out of **professional services** which happen subsequent to the Retroactive Date and prior to the effective date of such cancellation or expiration, which is otherwise covered by this insurance. This extension of coverage for **claims**

made subsequent to expiration of the **policy period**, if purchased, must be endorsed hereto and shall hereinafter be referred to as the Extended Reporting Period.

If however, this insurance is immediately succeeded by similar claims--made insurance coverage for which the Retroactive Date is the same as or earlier than that shown in Item 8 of the Declarations, the succeeding insurance shall be deemed to be a renewal hereof and, in consequence, the Named Insured shall have no right to an Extended Reporting Period.

The quotation of a different premium and/or Self-Insured Retention amount and/or limit of liability for renewal does not constitute a cancellation or refusal to renew for the purpose of this option.

As a condition precedent to the Named Insured's right to purchase the Extended Reporting Period, the Named Insured must have satisfied all conditions of this policy and must have tendered all premiums due.

The Named Insured's right to purchase the Extended Reporting Period must be exercised by notice in writing not later than sixty (60) days after the cancellation or expiration date of this policy and must include tender of the entire premium for the Extended Reporting Period. If such notice and tender are not so given to the Company, the Named Insured shall not at a later date be able to exercise such option.

At the commencement of any Extended Reporting Period, the entire premium therefor shall be considered earned, and in the event the Named Insured terminates the Extended Reporting Period before its term, for any reason, the Company shall not be liable to return to the Named Insured any portion of the premium paid for the Extended Reporting Period.

The fact that the insurance afforded by this policy may be extended by virtue of the Extended Reporting Period provision shall not in any way reinstate the aggregate limit or otherwise increase the limits of liability set forth in the Declarations.

D. TRANSFER OF RIGHTS OF RECOVERY:

If there is a payment made by the Company, the Company shall be subrogated to all the **Insured's** rights of recovery against any person or organization as respects any payment made by the Company for **damages** or **claim expenses**. The **Insured** shall cooperate with the Company and do whatever is necessary to secure these rights. The **Insured** shall do nothing after a **claim** to waive or prejudice such rights. The Company agrees to waive this right of subrogation against the client of the **Insured** to the extent that the **Insured** had, prior to **claim**, a written agreement to waive such rights.

E. HOW OTHER INSURANCE APPLIES:

This insurance shall be excess of other valid insurance, whether collectable or not, available to the **Insured** unless such other insurance is written as specific excess over the limits provided by this policy.

F. CHANGES MADE TO THIS POLICY:

The terms and conditions of this policy cannot be waived or changed except by specific written endorsement issued by the Company and made part of this policy.

G. ASSIGNMENT OF THE **INSURED'S** INTEREST:

The interest of the **Insured** under this policy is not assignable to any other person or organization.

H. CANCELLATION:

This policy may be canceled by the Named Insured by returning the policy to the Company or its authorized representatives. The Named Insured can also cancel this policy by written notice to the Company 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.

This policy can be canceled by the Company by written notice to the Named Insured, at the address last known to the Company. The Company will provide written notice at least thirty (30) days before cancellation is to be effective.

There is an exception to the length of the notice that must be provided to the Named Insured. The Named Insured will only be entitled to at least ten (10) days notice if the Company cancels because the **Insured** has failed to pay a premium when due.

If the Company cancels, earned premium will be computed pro-rata, except that if the Company cancels for the reason specified in 1. or 2. above, earned premium will be computed in the same manner provided above when the Named Insured cancels.

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. Unearned premium will be returned by the Company as soon as practicable.

I. BANKRUPTCY:

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Company of any of its obligations under this policy.

J. APPLICATION:

The statements in the Application are the **Insured's** representations and are deemed material. This policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the Application shall be attached to and become part of this policy.

K. AUDIT:

The Company may examine and audit the **Insured's** books and records at any time during the **policy period** and within three (3) years after the final termination of this policy, as far as they relate to this policy.

L. ACTION AGAINST THE COMPANY:

No action shall be maintained against the Company by the **Insured** to recover for any loss under this policy unless, as a condition precedent thereto:

1. the **Insured** has fully complied with all the terms and conditions of this policy; and
2. the amount of such loss has been fixed or rendered certain;
 - a. by final judgment against the **Insured** after trial of the issues; or
 - b. the time to appeal such judgment has expired without an appeal being taken; or
 - c. if appeal is taken, after the appeal has been determined; or
 - d. the **claim** is settled in accordance with the terms and conditions of this policy.

In no event shall any action brought by anyone be maintained against the Company unless such action is brought within twenty-four (24) months from the time the right to bring action first becomes available.

M. FALSE OR FRAUDULENT **CLAIMS**:

If the **Insured** refers any **claim** knowing such **claim** to be false or fraudulent, this policy shall become void and all insurance coverage hereunder shall be forfeited.

N. SERVICE OF SUIT

In the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, 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 Company'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, Lexington Insurance Company, 200 State Street, Boston, Massachusetts, 02109 or his or her representative, and that in any suit instituted against the Company upon this policy, the Company 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 therefor, the Company 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.

O. ARBITRATION

Notwithstanding the Service of Suit Condition above, in the event of a disagreement as to the interpretation of this policy, it is mutually agreed that such dispute shall be submitted to binding arbitration before a panel of three (3) Arbitrators, consisting of two (2) party-nominated (non-impartial) Arbitrators and a third (impartial) arbitrator (hereinafter "umpire") as the sole and exclusive remedy.

The party desiring arbitration of a dispute shall notify the other party, said notice including the name, address and occupation of the Arbitrator nominated by the demanding party. The other party shall within 30 days following receipt of the demand, notify in writing the demanding party of the name, address and occupation of the Arbitrator nominated by it. The two (2) Arbitrators so selected shall, within 30 days of the appointment of the second Arbitrator, select an umpire. If the Arbitrators are unable to agree upon an umpire, each Arbitrator shall submit to the other Arbitrator a list of three (3) proposed individuals, from which list each Arbitrator shall choose one (1) individual. The names of the two (2) individuals so chosen shall be subject to a draw, whereby the individual drawn shall serve as umpire.

The parties shall submit their cases to the panel by written and oral evidence at a hearing, time and place selected by the umpire. Said hearings shall be held within thirty (30) days of the selection of the umpire. The panel shall be relieved of all judicial formality, shall not be obligated to adhere to the strict rules of law or of evidence, shall seek to enforce the intent of the parties hereto and may refer to, but are not limited to, relevant legal principles. The decision of at least two (2) of the three(3) panel members shall be binding and final and not subject to appeal except for grounds of fraud or gross misconduct by the Arbitrators. The award will be issued within 30 days of the close of the hearings. Each party shall bear the expenses of its designated Arbitrator and shall jointly share with the other the expense of the umpire and of the arbitration proceeding.

The arbitration proceeding shall take place in or in the vicinity of Boston, Massachusetts. The procedural rules applicable to this arbitration, shall, except as provided otherwise herein, be in accordance with the Commercial Rules of the American Arbitration Association.

IN WITNESS WHEREOF, the Company 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.

