



## INFORMATION TECHNOLOGY PROFESSIONAL LIABILITY POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY WITH "CLAIMS EXPENSES" INCLUDED WITHIN THE LIMITS OF LIABILITY. PLEASE READ THE ENTIRE POLICY CAREFULLY. THE COVERAGE OF THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE "CLAIMS" FIRST MADE AGAINST THE "INSURED" AND REPORTED IN WRITING TO THE COMPANY DURING THE "POLICY PERIOD" OR ANY APPLICABLE EXTENDED REPORTING PERIOD.

**Various provisions in this policy restrict coverage. Please read the entire policy carefully.**

Words and phrases that appear with "quotation marks" have special meaning. Refer to SECTION V DEFINITIONS.

Throughout this policy the words "you" and "your" refer to the "Named Insured" as identified in Item 1 of the Declarations and any other person or entity qualifying as an "Insured" under SECTION V DEFINITIONS of this policy. The words "we", "us", "our" and "Company" refer to the Insurance Company providing this insurance as indicated on the Declarations.

In consideration of payment of the premium and in reliance upon the statements made in the application and its attachments and any materials submitted therewith, all of which are made a part hereof, and subject to the Declarations and the Limitations, Conditions, Provisions and other terms of this policy (including any endorsement hereto), we agree with you as follows:

### I. INSURING AGREEMENTS

#### A. Coverage

We will pay on your behalf all sums in excess of the Self Insured Retention and within the applicable Limit of Liability, which you become legally obligated to pay as "Damages" for any "Claim" to which this policy applies.

This policy only applies if :

1. the "Claim" arises from your "Wrongful Act" while providing "Information Technology Services" by an "Insured" to others for a fee; and
2. the "Wrongful Act" first takes place on or after the "Retroactive Date" but before the expiration of the policy; and
3. the "Claim" is reported to us in writing during the "Policy Period" or any applicable Extended Reporting Period;

This policy does not apply to any "Claim" if prior to the inception date of this policy, or the first policy issued by us if this policy is a renewal policy, whichever is earlier, any "Insured" had knowledge of facts or circumstances which could result in a "Claim" covered under this policy, or could have reasonably foreseen that such "Claim" would be made during the "Policy Period".

#### B. Defense and Settlement

We shall have the right and duty to defend "Claims" against an "Insured", even if the allegations in the "Claim" are groundless, false, or fraudulent. Our right and duty to defend includes, without limitation, the right and duty to select defense counsel. Our duty to defend any "Claim" or to pay "Damages" and "Claim Expenses" for such "Claim" ends when the Limit of Liability applicable to such "Claim" or to the "Policy Period" in which such "Claim" is first made has been exhausted.

1. You agree not to settle any "Claim", incur any "Claim Expenses" or otherwise assume any obligation or admit any liability with respect to any "Claim" without our written consent; provided such consent to settle any "Claim" shall not be required if the total "Damages" and "Claim Expenses" incurred on account of such "Claim" is equal to or less than the applicable Self Insured Retention amount set forth in Item 6 of the Declarations. We shall not be liable for any settlement, "Claim Expenses", assumed obligation, or admission to which we have not consented.
2. You agree to provide us with all information, assistance, and cooperation which we reasonably request and agree that in the event of a "Claim" you will do nothing that shall prejudice our position or our potential or actual rights of recovery. We may make any investigation we deem necessary. Any attorney designated as defense counsel to represent any "Insured" pursuant to this policy shall comply with our established guidelines and shall cooperate with us or our monitoring counsel.
3. If you refuse to consent to any settlement or compromise recommended by us and acceptable to the claimant, and elect to contest the "Claim", then our liability shall not exceed the amount which we would have paid for "Damages" and "Claim Expenses" at the time the "Claim" could have been settled or compromised.

Both you and we shall not unreasonably withhold any consent referenced in this Subsection I.B.

"Claim Expenses" are part of and not in addition to the Limits of Liability set forth in Item 5 of the Declarations, and the payment by us of "Claim Expenses" reduces the Limits of Liability. We shall not be obligated to pay any "Damages" or "Claim Expenses" or undertake to continue defense of any "Claim" after our Limits of Liability has been tendered

into court or exhausted by payment of "Damages" or "Claim Expenses".

## II. LIMIT OF LIABILITY

### A. Limit of Liability - Each "Claim"

Our liability for "Damages" and "Claim Expenses" for each "Claim" shall not exceed the amount stated in Item 5 of the Declarations for Each "Claim". All "Claim Expenses" shall first be subtracted from the Each "Claim" Limit of Liability, with the remainder being the amount available to pay "Damages" for that "Claim".

### B. Limit of Liability - Each "Policy Period" Aggregate

Subject to Subsection A. above, our liability for all "Damages" and "Claim Expenses" under this policy shall not exceed the amount stated in Item 5 of the Declarations as Limit of Liability Aggregate - Each "Policy Period."

### C. Self Insured Retention

Our obligation to pay "Damages" and "Claim Expenses" in connection with any "Claim" shall only be in excess of the Self Insured Retention amount stated in Item 6 of the Declarations.

The Self Insured Retention shall be paid by you. The Self Insured Retention shall be applicable to each "Claim" and shall include "Damages" and "Claim Expenses".

We will have no obligation whatsoever, either to you or to any other person or entity, to pay any portion of the Self Insured Retention amount on your behalf. Any amounts within the Self Insured Retention paid by us shall be repaid by you within thirty (30) days of our payment.

### D. Multiple "Insureds", "Claims" and Claimants

Two or more "Claims" arising out of or related to a single "Wrongful Act", or a series of related "Wrongful Acts", shall be treated as a single "Claim" subject to the Each "Claim" Limit of Liability and a

single Self Insured Retention. All such "Claims", whenever made, shall be considered to have first been made on the date on which the earliest "Claim" was first made against you.

The inclusion of more than one "Insured" in any single "Claim", or the making of multiple "Claims" by one or more claimants, shall not increase our Limit of Liability.

### III. EXTENDED REPORTING PERIOD

You shall have the right to an automatic, non-cancelable Extended Reporting Period of 30 days starting at the termination of the "Policy Period" only if the "Named Insured" has purchased no other insurance to replace this Policy.

If either we or you cancel or non-renew this policy, the "Named Insured" may, subject to all the terms set forth in this section, purchase an Extended Reporting Period as defined in Item 8 of the Declarations Page. Coverage during any Extended Reporting Period shall apply to "CLAIMS" FIRST MADE AGAINST YOU AND REPORTED TO US IN WRITING DURING THE EXTENDED REPORTING PERIOD, provided that the "Wrongful Act" giving rise to the "Claim" occurred prior to the commencement of the Extended Reporting Period and after the "Retroactive Date", subject to all of the terms and conditions of the policy except those specifically modified in this Section:

- A. For purposes of this section, cancellation shall mean a notice sent by us to the "Named Insured" pursuant to Section VII G. Non-renewal shall mean a notice sent by us to the "Named Insured" declining to renew this policy for reasons specified in the notice.
- B. The Extended Reporting Period will be effective on termination of the "Policy Period" and will be in accordance with an Extended Reporting Period endorsement. The Extended Reporting Period, as defined in Item 8 of the Declarations, shall be effective only upon the payment of an additional premium calculated at the percentage shown in Item 8 of the Declarations. At the commencement of such Extended Reporting Period, the entire premium

therefor shall be deemed fully earned and non-refundable.

- C. The "Named Insured's" option to purchase the Extended Reporting Period, as defined in Item 8 of the Declarations, must be exercised by written notice postmarked no later than thirty (30) days after the date of cancellation or non-renewal of this policy.

The written notice must include payment made payable to us, for the full, additional premium for the Extended Reporting Period. All written notices and accompanying premium payments must be sent to the attention of our Specified Professions Professional Liability Underwriting Department at the address stated in Section VII A 2.

- D. The "Named Insured" shall have no right to elect or purchase any Extended Reporting Period unless:
  - 1. you have satisfied all conditions of the policy; and
  - 2. all premiums due and owing for the policy, and for any policy previously issued by us to the "Named Insured", and all Self Insured Retentions for any "Claim" reported under such policies, have been fully paid; and
  - 3. we have canceled or non-renewed for reasons other than the "Named Insured's" nonpayment of a premium or Self Insured Retention or non-compliance with the terms and conditions of this policy.
- E. If this policy is extended by the Extended Reporting Period, such extension shall not in any way reinstate the Each "Claim" or Aggregate - Each "Policy Period" Limit of Liability set forth in Item 5 of the Declarations. The Aggregate - Each "Policy Period" Limit of Liability shall be our maximum liability under this policy for the "Policy Period" and Extended Reporting Period, combined.

### IV. NOTICE OF CIRCUMSTANCE

If during the "Policy Period" you first become aware that any "Insured" has committed a specific "Wrongful Act" for which coverage may be sought, and if during the "Policy Period" you give written notice to us of the following:

- A. the identity of each "Insured" who committed the "Wrongful Act";
- B. a detailed description of the "Wrongful Act";
- C. the "Damages" which resulted, or may result, from the "Wrongful Act";
- D. the circumstances by which you became aware of the "Wrongful Act"; and
- E. the names of all potential claimants,

then any "Claim" thereafter made against you arising out of such "Wrongful Act" shall be deemed for the purposes of this insurance to have been made on the date on which the written notice was received by us.

## V. DEFINITIONS

- A. "Bodily Injury" means injury to the body, sickness, or disease sustained by a person, including death resulting from such injuries, mental injury, mental anguish, mental tension, and emotional distress.
- B. "Claim" means any written demand received by you for "Damages", including but not limited to, the service of suit, a civil proceeding commenced by the service of a complaint or similar pleading, or an arbitration or other alternative dispute resolution proceeding alleging a "Wrongful Act" by any "Insured".
- C. "Claim Expenses" means those sums other than "Damages" which are incurred for:
  - 1. reasonable and necessary fees and expenses charged by counsel designated by us;
  - 2. reasonable and necessary fees and expenses charged by counsel

designated by the "Named Insured", with our written consent;

- 3. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a "Claim", including the cost of appeal bonds, however we shall not be obligated to apply for or furnish appeal bonds on your behalf.

"Claim Expenses" does not include salaries of regular employees or officials of the "Insured" or the Company.

Note that the Limits of Liability and any Self Insured Retention are reduced or exhausted by "Claim Expenses".

- D. "Damages" means a monetary judgment or award you are legally obligated to pay, or a settlement negotiated with your and our consent, but does not include "Claim Expenses" or any of the following:

- 1. fines, taxes, penalties, treble or other multiple compensatory "Damages", or punitive or exemplary "Damages";
- 2. the return, restitution, or offset of fees, expenses or costs paid you; or
- 3. any other "Damages" deemed uninsurable by law.

- E. "Information Technology Services" means:

- 1. system design, consulting, analysis, development, modification, programming, integration, outsourcing or training services relating to computer software or hardware; or
- 2. marketing, selling, servicing, distributing, installing and maintaining computer hardware or software; or
- 3. data entry, modification, verification, maintenance, storage, retrieval or preparation of data output.

- F. "Insured" means the following:
1. the "Named Insured" designated in Item 1 of the Declarations; or
  2. any current partner, officer, director or employee of the "Named Insured"; or
  3. any former partner, officer, director or employee of the "Named Insured", but only for providing "Information Technology Services" on behalf of the "Named Insured" to others for a fee; or
  4. any independent contractor, for which the "Named Insured" has agreed in writing to provide insurance for "Information Technology Services"; or
  5. any heirs, executors, administrators, assigns and legal representatives of a natural person "Insured" in the event of death, incapacity, insolvency or bankruptcy, but only to the extent that such "Insured" would otherwise be provided coverage under this policy.
- G. "Named Insured" means the person(s) or entity(ies) identified in Item 1 of the Declarations.
- H. "Personal Injury" means any actual or alleged:
1. malicious prosecution, false arrest, humiliation, detention or imprisonment; or
  2. defamation or other tort related to disparagement to the character, reputation or feelings of any person or organization, including libel, slander, product disparagement, trade libel, negligent infliction of emotional duress or outrage or outrageous conduct; or
  3. form of personal rights invasion, infringement or interference with rights of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name or likeness; or
  4. wrongful entry, eviction or other invasion of rights of occupancy.
- I. "Policy Period" means the period from the inception date of this policy to the expiration date as set forth in Item 3 of the Declarations, or its earlier termination, cancellation, or non-renewal date, if any.
- J. "Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- K. "Property Damage" means:
1. physical injury to, loss or destruction of tangible property, including loss of use thereof; or
  2. loss of use of tangible property which has not been physically injured or destroyed.
- L. "Retroactive Date" means the date specified in Item 4 of the Declarations.
- M. "Wrongful Act" means any actual or alleged act, error, omission, neglect, misstatement or misleading statement or breach of duty by any "Insured" while rendering "Information Technology Services".

## VI. EXCLUSIONS

This policy does not apply to any "Claim" based upon or arising out of:

- A. any dishonest, fraudulent or criminal act, error or omission or any act, error or omission of a knowingly wrongful nature committed by or at the direction of the "Insured", however, if such allegations are subsequently disproven by a final determination favorable to the "Insured", then the Company shall reimburse the "Insured" for all reasonable "Claims Expenses" which would have been covered under this policy.
- B. any actual or alleged infringement of any patent, trade secret, title, slogan, trademark, trade name, trade dress,

- service mark, service name, plagiarism, piracy or misappropriation of ideas under implied contract.
- C. any failure to prevent unauthorized access to or use of an electronic system or software product or the unauthorized introduction of a computer virus or similar program, unless such unauthorized access or introduction arises from your "Wrongful Act."
  - D. any mechanical or electrical failure, including any electrical power interruption, surge, spike, brownout or blackout or defect in computer hardware, unless such mechanical or electrical failure arises from your "Wrongful Act."
  - E. any express warranty or guaranty of service or quality.
  - F. any failure to meet any cost guarantee or cost estimate.
  - G. any "Bodily Injury", "Personal Injury" or "Property Damage".
  - H. any "Wrongful Act" if such "Claim" is made by any "Insured" against any other "Insured".
  - I. any discrimination, harassment, wrongful termination or employment retaliation, on any basis.
  - J. any "Information Technology Services" rendered:
    - 1. by any business enterprise which is not identified in Item 1 of the Declarations and which either owns or has an ownership interest in any "Insured"; or
    - 2. by any business enterprise which is not identified in Item 1 of the Declarations and in which you have a financial interest, or in which you are an officer, director, partner, trustee or employee; or
    - 3. by you for any business enterprise which is not identified in Item 1 of the Declarations and which controls, operates, or manages any "Insured"; or
  - 4. by you for any business enterprise which is not identified in Item 1 of the Declarations and which any "Insured" controls, operates or manages.
  - L. any liability of others assumed by you under any contract or agreement, unless such liability would have attached to the "Named Insured" by law even in the absence of such agreement.
  - M. any of your activities while acting in the capacity of an officer, director, partner, trustee, fiduciary or employee of:
    - 1. a charitable organization; or
    - 2. a pension, welfare, profit sharing, mutual or investment fund or trust which is subject to the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto; or any similar state, local or municipal law, regulation, or ordinance.
  - N. any actual or alleged violation of the Securities Act of 1933 as amended, the Securities Exchange Act of 1934 as amended, or any state Blue Sky or securities law or similar state or federal statute, including any regulation or order issued pursuant to any of the foregoing statutes.
  - O. any actual or alleged violation of the responsibilities, obligations, or duties imposed by:
    - 1. any law governing workers' compensation, unemployment insurance, social security, disability benefits, or similar law.
    - 2. the Employee Retirement Income Security Act of 1974 and any amendments thereof.
  - P. any anti-competitive restraint of trade practice, or the violation of any state or federal antitrust consumer protection laws.
  - Q. any profit or benefit received or obtained by you to which you were not legally entitled.

## VII. CONDITIONS

- R. 1. any injury or damage caused in whole or in part by the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "Pollutants" at any time.
2. any request, demand, or order that you or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "Pollutants".
3. any action brought by or on behalf of a governmental authority for "Damages" because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "Pollutants".
- S. any electromagnetic field, electromagnetic radiation or electromagnetism, which terms are defined as follows:
1. electromagnetic field means any field of force that is made up of associated electric and magnetic components;
2. electromagnetic radiation means any succession of electromagnetic waves;
3. electromagnetism means magnetism that is developed by a current of electricity.
- T. without limiting the application of Exclusions R and S hereto, this policy does not apply to any "Claims" arising from:
1. the manufacturing, mining, use, sale, installation, removal, distribution of, or exposure to asbestos, materials or products containing asbestos or asbestos, fibers or dust; or
2. your obligation to indemnify any party because of "Damages" arising out of such liability as described in subparagraph 1, above.

### A. Service of Suit:

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due under this Policy, the Company, at the request of the "Named Insured", will submit to the jurisdiction of any court of competent jurisdiction within the United States, unless the "Named Insured" and the Company agree to arbitrate the matter. Nothing in this CONDITION (A) shall constitute 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 General Counsel, Zurich-American Insurance Group, Zurich Towers, 1400 American Lane, Schaumburg, IL 60196-1056, and that in any suit instituted against the Company upon this contract, 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 state, or his 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 "Named Insured" or any beneficiary hereunder arising out of this contract of insurance, and hereby designates General Counsel, Zurich-American Insurance Group as the party to whom the said officer is authorized to mail such process or a true copy thereof.

### B. Duties In The Event Of "Claim" Or Suit

#### 1. Notice of "Claim"

We will have no obligation under this policy unless and until you give written notice of a "Claim" as soon as practicable, during the "Policy Period" or during any applicable Extended Reporting Period, to us at the following address:

Zurich U.S.- New York Specialties  
Claims  
P.O. Box 307010  
Jamaica, N. Y. 11430-7010

Written notice must include any and all documents received by you or your representatives at the time the "Claim" was first made against you.

2. Your Assistance and Cooperation

You shall, as a condition precedent to any coverage under this policy, fully assist and cooperate with us in the investigation, settlement and defense of all "Claims" made against you. At our request, you shall:

- a. submit to examination by our representative, under oath if required,
- b. meet with and give written statements to us,
- c. authorize and provide us with all necessary records and other information,
- d. secure and give evidence, attend hearings and trials and obtain the location of and cooperation of witnesses.

C. Policy Territory

The insurance afforded by this policy applies worldwide, for suits brought or "Claims" made within the United States of America and its territories and possessions or Canada. Where suits are brought or "Claims" are made outside the United States and its territories and possessions and Canada, the following applies:

1. We shall have the right but not the duty to investigate, defend

or settle any such "Claim" brought against you.

2. If we elect not to investigate, defend or settle any such "Claim", you shall, under our supervision, arrange for such investigation and defense thereof as are reasonably necessary and, subject to our prior authorization, shall effect such settlement thereof as we and you deem expedient.
3. We will reimburse you for the reasonable cost of such investigation and defense and the amount of any settlement or judgment in excess of the Self Insured Retention amount stated in Item 6 of the Declarations, all subject to and within the Limits of Liability stated in Item 5 of the Declarations.
4. Such reimbursement shall be made in United States currency at the rate of exchange prevailing on the date the judgment is rendered or the date that the amount of the settlement is agreed upon or the date expenditure is made.

D. Subrogation

In the event of any payment under this policy, we shall be subrogated to all your rights of recovery against any person or organization. You shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. You shall do nothing to prejudice such rights without first obtaining our written consent.

E. False or Fraudulent "Claim"

If you commit any false or fraudulent act in connection with any "Claim" otherwise covered under this policy, any coverage afforded for such "Claim" shall be rendered null and void as to you from the date of such false or fraudulent act.

F. Acquisitions, Mergers, and Material Changes

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

In the event that after the inception of this policy the "Named Insured":

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

then no coverage shall be afforded under this policy for the assets acquired by the "Named Insured" for the "Wrongful Acts" of the entity merged with, acquired by, or created by the "Named Insured"; or the changed business activities of the "Named Insured", unless and until:

5. the "Named Insured" provides written notice of the aforementioned event to us not more than thirty (30) days after the effective date of such event; and
6. the "Named Insured" provides us with such information in connection therewith as we may deem necessary; and
7. the "Named Insured" accepts any special terms, conditions, or exclusions, and pays any additional premium charge required by us; and
8. we, at our sole discretion specifically agree by endorsement to this policy to provide such coverage.

If we agree to provide coverage pursuant to this Section VII B, such coverage will be only for "Wrongful Acts" first committed following the effective date of the aforementioned event.

G. Application

By acceptance of this policy, the "Named Insured" agrees:

1. that the statements in the Application, including any materials attached thereto, are true and correct representations, and
2. that each such representation shall be deemed material and that this policy is issued in reliance upon the truth of such representations, and
3. that this policy embodies all agreements existing between the "Insureds" and the Company or any representatives thereof, in connection with this policy.
4. that if the person(s) signing the application knew of the falsity of any particular fact or statement, then such knowledge shall be imputed to all "Insureds".

H. Other Insurance

This insurance shall be in excess of the amount of the applicable Self Insured Retention herein, and over any other valid insurance available to you whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, whether collectable or not, unless such other insurance specifically applies as excess insurance over the Limit of Liability provided herein.

I. Changes

Neither notice to, nor knowledge possessed by any representative acting on behalf of us, nor any conduct by any such representative shall be construed as a waiver or estoppel against us for any reason. No right accruing to us, nor any provision of this policy, shall be waived or changed in any manner

other than by express endorsement incorporated into this policy.

J. Assignment

Assignment of any interest by you under this policy shall not bind us without our written consent.

K. Cancellations

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

This policy may be canceled by written notice from us to the "Named Insured" at the address shown in Item 1 of the Declarations by certified mail. Said cancellation shall take effect not less than thirty (30) days from the date the notice is mailed, unless the policy is canceled because the "Named Insured" has failed to pay a premium or Self Insured Retention when due. In that event, such cancellation shall take effect not less than ten (10) days from the date the notice is mailed.

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

L. Audit

We may examine and audit your books and records at any time during the "Policy Period" and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

M. Action Against Us

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

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

No person or organization shall have any right under this policy to join us as a party to any action against you to determine your liability, nor shall we be impleaded by you or any legal representatives thereof.

N. Bankruptcy or Insolvency

Your bankruptcy or insolvency or that of your estate shall not relieve us of any of our obligations under this policy. In the event of your bankruptcy or insolvency, we shall have the right to assert any appropriate "Claim" or demand in such proceedings for payment of any of your obligations, including but not limited to, any amounts which we may advance on your behalf within the Self Insured Retention.

O. Authorization

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

P. Conformity to Statutes

The terms of this policy which are in conflict with the statutes of the state

wherein this policy is issued are hereby amended to conform to such statutes.

Expenses" and "Damages" incurred or paid under reservation of rights in excess of the Company's contract obligations as determined by the arbitrators.

**Q. Governing Law**

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

**R. Arbitration**

Should the "Insureds" and the Company disagree as to the existence or validity of this policy in whole or in part or the rights and obligations owed by the Company under the policy, including the effect of any applicable statutes or common law upon the contractual obligations otherwise owed, either party may request that the dispute be subjected to binding arbitration.

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

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

To the extent the Company prevails in the arbitration, the arbitrators may award the Company any "Claims