



ACE American Insurance Company
 Illinois Union Insurance Company
[LIST ONLY THE COMPANY THAT APPLIES]

ACE Advantage[®] Professional Liability Policy For Design Professionals Declarations

This Policy is issued by the stock insurance company listed above.

THIS POLICY IS A CLAIMS MADE AND REPORTED POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF APPLICABLE. PLEASE READ THIS POLICY CAREFULLY.

THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED LOSS SHALL BE REDUCED BY AMOUNTS INCURRED FOR DEFENSE COSTS. FURTHER NOTE THAT AMOUNTS INCURRED FOR DEFENSE COSTS AND LOSS SHALL ALSO BE APPLIED AGAINST THE RETENTION AMOUNT.

TERMS THAT APPEAR IN BOLD FACE TYPE HAVE SPECIAL MEANING. PLEASE REFER TO SECTION III, DEFINITIONS.

Policy No.	
Item 1. Named Insured	Principal Address:
Item 2. Policy Period:	From 12:01 a.m. To 12:01 a.m. (Local time at the address shown in Item 1)
Item 3. Limit of Liability (including Defense Costs)	
<u>Each Claim</u>	<u>Aggregate</u>
\$	\$
Item 4. Retention: \$	

<p>Item 5. Notice to Insurer:</p> <p>A. Notice of Claim or Wrongful Act:</p> <p style="padding-left: 40px;">[Company] [Address] [Address] [Fax Number]</p> <p>B. All other notices:</p> <p style="padding-left: 40px;">Chief Underwriting Officer [Company] [Address] [Address]</p>	
Item 6. Policy Premium:	\$
Item 7. Prior or Pending Proceeding Date:	
<p>Item 8. Optional Extended Reporting Period:</p> <p style="padding-left: 40px;">1 Year: 100% of the Policy Premium set forth in Item 6</p> <p style="padding-left: 40px;">2 Years: 160% of the Policy Premium set forth in Item 6</p> <p style="padding-left: 40px;">3 Years: 190% of the Policy Premium set forth in Item 6</p>	
Item 9. Retroactive Date :	

IN WITNESS WHEREOF, the **Insurer** has caused this **Policy** to be countersigned by a duly authorized representative of the **Insurer**.

DATE: _____
Authorized Representative



ACE Advantage[®] Professional Liability Policy For Design Professionals

In consideration of the payment of the premium, in reliance upon the **Application**, and subject to the Declarations and the terms and conditions of this **Policy**, the **Insureds**, and the **Insurer** agree as follows:

I. INSURING AGREEMENT

The **Insurer** shall pay the **Loss** of the **Insured** for which the **Insured** becomes legally obligated to pay by reason of a **Claim** first made against the **Insured** and reported to the **Insurer** during the **Policy Period** or, if elected, the applicable **Extended Reporting Period**, for any **Wrongful Acts** taking place on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

II. SUPPLEMENTAL PAYMENTS

A. Free pre-**Claim** Assistance: If, during the **Policy Period**, the **Insured** reports a specific **Wrongful Act** in accordance with Section X.B, Notice, the **Insurer** may, at its sole option, investigate such **Wrongful Acts** as it deems appropriate. Until such time that a **Claim** arising from such specific **Wrongful Acts** has been made, any payment made by the **Insurer** for such investigation shall be at the **Insurer's** expense. Such payment, if any, shall not erode the Limit of Liability set forth in Item 3 of the Declarations.

B. A.D.A., F.F.H.A., and O.S.H.A. Penalty: Notwithstanding definition J and exclusion A to the contrary, this Policy will cover up to \$5,000 in fines, sanctions or penalties levied against the **Named Insured** pursuant to the American with Disabilities Act of 1990, the Federal Fair Housing Act or the Occupational Safety and Health Act. This supplemental payment is subject to the internal laws of the applicable jurisdiction regarding the insurability of such fines, sanctions and penalties. The maximum limit of the **Insurer's** liability for this supplemental payment shall be \$15,000 for each **Claim**.

C. Reimbursement of Expenses: If the **Insured** is requested by the **Insurer** to attend hearings, depositions and trials relative to the defense of a **Claim**, the **Insurer** shall reimburse the **Named Insured's** actual loss of earnings and reasonable expense due to such attendance up to \$300 per day, subject to a maximum aggregate amount of \$5,000 for each **Claim**.

Payment made by the **Insurer** under this section shall not apply to the Retention and shall not reduce the Limits of Liability.

III. DEFINITIONS

When used in this **Policy**:

A. **Application** means all applications, including any attachments thereto, and all other information and materials submitted by or on behalf of the **Insureds** to the **Insurer** in connection with the **Insurer** underwriting this **Policy** or any policy of which this **Policy** is a direct or indirect renewal or replacement. **Application** also includes any information appearing on the Named Insured's website, or public documents filed by the **Named Insured** with any federal, state, local or foreign regulatory body, prior to inception of this **Policy**. All such applications, attachments, information, materials and documents are deemed attached to and incorporated into this **Policy**.

B. **Bodily Injury** means injury to the body, sickness, or disease, and death. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock resulting from injury to the body, sickness, disease or death of any person.

- C. **Claim** means:
1. a written demand against any **Insured** for monetary damages or non-monetary or injunctive relief; or
 2. a civil proceeding against any **Insured** seeking monetary damages or non-monetary or injunctive relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom.
- D. **Defense Costs** means reasonable and necessary attorneys' fees, expert witness fees and other fees and costs incurred by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent, in defending **Claims** and the premium for appeal, attachment or similar bonds arising out of covered judgments, but with no obligation to furnish such bonds. The determination by the **Insurer** of the reasonableness and necessary nature of any **Defense Costs** shall be conclusive upon the **Insureds**. **Defense Costs** do not include:
1. wages, salaries or fees of the directors, officers, trustees, managers, members of the board of managers or equivalent executives of limited liability corporations, or employees, or
 2. office expenses
- of any **Insured**, except as provided in IIC, Reimbursement of Expenses.
- E. **Entity** means any sole proprietorship, partnership, corporation or other form of organization recognized as such by law, but does not include any joint venture.
- F. **Extended Reporting Period** means the period for the extension of coverage, if elected, described in Section VII, **Extended Reporting Period**.
- G. **Insured** means:
1. any **Insured Person**;
 2. the **Named Insured**;
 3. any **Named Insured** with regard to its participation in a joint venture, but solely for the **Named Insured's** liability for the **Named Insured's** performance of **Professional Services** under the respective joint venture; and
 4. any entity that was the **Legal Predecessor** of the **Named Insured**.
- H. **Insured Person** means any person who was, now is or shall become:
1. a duly elected or appointed partner, principal, director, officer, member or employee of the **Named Insured**, but only while acting on behalf of the **Named Insured**;
 2. a duly elected manager, member of the board of managers or equivalent executive of the **Named Insured** if it is a limited liability company, but only while acting on behalf of the **Named Insured**;
 3. temporary, or leased personnel of the **Named Insured**, but only while acting under the direct supervision and on behalf of the **Named Insured**;
 4. any retired or former partner, principal, director, officer, member, or employee (including former temporary or leased personnel) of the **Named Insured**, but only while acting on behalf of the **Named Insured**, and solely with respect to **Wrongful Acts** committed while serving in their capacity as a current partner, principal, director, officer, member, employee, temporary, or leased personnel of the **Named Insured**.
- I. **Insurer** means the insurance company providing this insurance.
- J. **Interrelated Wrongful Acts** means all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

- K. **Legal Predecessor** means any prior entity whose partners, principals, or assets have been acquired by the **Named Insured** provided:
1. such entity is listed in the **Application**; and
 2. the **Named Insured** has agreed in writing to purchase liability insurance for such entity.
- L. **Loss** means compensatory monetary damages or judgments, any award of pre-judgment and post-judgment interest, compensatory monetary settlements negotiated with the consent of the **Named Insured** and **Defense Costs**, which the **Insured** becomes legally obligated to pay on account of any **Claim** first made against any **Insured** during the **Policy Period** or, if elected, the **Extended Reporting Period**, for **Wrongful Acts** to which this **Policy** applies. **Loss** does not include:
1. any amount for which the **Insured** is not financially liable or legally obligated to pay;
 2. taxes, fines or penalties sought or awarded against an **Insured**;
 3. the multiple portion of any multiplied damage award;
 4. matters uninsurable under the laws pursuant to which this **Policy** is construed; or
 5. the return, withdrawal or reduction of professional fees, profits or other charges.
- Loss** includes punitive and exemplary damages to the extent such damages are insurable under the internal laws of the applicable jurisdiction that most favors coverage for such damages.
- M. **Named Insured** means the organization first named in Item 1 of the Declarations.
- N. **Nuclear Facility** means the site at which a nuclear reactor is located or where nuclear waste or material is disposed of or stored.
- O. **Personal Injury** means injury arising out of one or more of the following offenses:
1. false arrest, detention or imprisonment;
 2. malicious prosecution;
 3. libel, slander or other defamatory or disparaging material;
 4. publication or an utterance in violation of an individual's right to privacy; and
 5. wrongful entry or eviction, or other invasion of the right to private occupancy.
- P. **Policy** means, collectively, the Declarations, the **Application**, this policy form and any endorsements.
- Q. **Policy Period** means the period of time specified in Item 2 of the Declarations, subject to prior termination pursuant to Section XVI, Termination of the **Policy**.
- R. **Pollution Incident** means the discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials, on, in, into, or upon land and structures thereupon, the atmosphere, surface water, or groundwater, caused by activities of an **Insured** in his or her capacity as such, or by any other person for whom the **Insured**, is legally liable, and which results in **Bodily Injury** or **Property Damage**.
- S. **Professional Services** means those services that the **Insured** is legally qualified to perform for others in the **Insured's** capacity as an architect, engineer, land surveyor, landscape architect, construction manager, interior designer, land planner, space planner, expert witness, or technical consultant with respect to the foregoing listed services, or as otherwise defined by endorsement to this **Policy**.
- T. **Property Damage** means:
1. physical injury to, or loss or destruction of, tangible property, including loss of use thereof;
 2. loss of use of tangible property which has not been physically injured, lost, damaged or destroyed; and

3. clean-up costs resulting from a **Pollution Incident** incurred by a governmental entity or by a third party and which have been mandated by any governmental entity in the removal or remediation of soil, surface water, groundwater or other contamination.

U. **Retroactive Date** means the date specified in Item 9 of the Declarations.

V. **Wrongful Act** means:

1. any error, misstatement, misleading statement, act, omission, neglect, **Personal Injury** or breach of duty actually, or allegedly committed or attempted by any **Insured** in his or her capacity as such, or by any other person for whom the **Insured** is legally liable, in the rendering of or failure to render **Professional Services**, or
2. a **Pollution Incident**.

W. **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation;
3. violation of any federal, state or local laws (common or statutory) concerning discrimination in employment, or violation of an employee's civil rights;
4. sexual harassment or unlawful workplace harassment;
5. wrongful deprivation of a career opportunity, wrongful demotion, or failure to employ or promote;
6. wrongful discipline of employees;
7. retaliation against employees for the exercise of any legally protected right or for engaging in any legally protected activity;
8. negligent hiring, retention, training, supervision or evaluation of employees;
9. failure to adopt or enforce adequate or consistent workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation, invasion of privacy, or the giving of negative or defamatory statements in connection with an employee reference;
11. employment-related wrongful infliction of emotional distress; or
12. failure to grant tenure;

The foregoing definitions shall apply equally to the singular and plural forms of the respective words.

IV. EXCLUSIONS

The **Insurer** shall not be liable for **Loss** on account of any **Claim**:

A. Discrimination, Humiliation, Harassment, Misconduct

alleging, based upon, arising out of, or attributable to any actual or alleged discrimination, humiliation, harassment, or misconduct by any **Insured**. However, this exclusion shall not apply to **Claims** for failure to award any contract for **Professional Services**, or the **Insured's** advice to award or not award a contract for **Professional Services**.

B. Goods or Products

alleging, based upon, arising out of, or attributable to the design or manufacture of goods or products sold, supplied or distributed by the **Insured**, or others under license from the **Insured**. However, this exclusion shall not apply to computer software sold or supplied by the **Insured** in its provision of **Professional Services**.

C. Warranty or Guarantee

alleging, based upon, arising out of, or attributable the **Insured's** warranty or guaranty. However, this exclusion shall not apply to the **Insured's** warranty or guaranty that the **Insured's Professional Services** conform with generally accepted architectural or engineering standards.

D. Related **Entity**

brought or maintained by, on behalf of, or in the right of any **Entity**, its subrogees or assignees that:

1. wholly or partly owns, operates, manages or controls the **Insured**; or
2. the **Insured** operates, manages or controls, or
3. the **Insured** has an ownership greater than 49%.

E. Fraud

alleging, based upon, arising out of, or attributable to any fraudulent or criminal act, error or omission, or any intentional or knowing violation of the law; however, this exclusion shall not apply unless and until there is a final judgment against an **Insured** as to such conduct. When there is a final judgment, the **Insureds** shall reimburse the **Insurer** for any **Defense Costs** advanced.

F. **Insured vs. Insured**

brought or maintained by, on behalf of, or in the right of any **Insured** or any bankruptcy or insolvency trustee, receiver, examiner, liquidator or similar official for any **Insured**, in any respect and whether or not collusive. However, this exclusion shall not apply to any **Claim** brought or maintained by any **Insured Person** in the form of a cross-claim or a third-party claim for contribution or indemnity which is part of, and results directly from, a **Claim** that is covered by this **Policy**.

G. Property

alleging, based upon, arising out of, or attributable the **Insured's** ownership, rental, leasing, operation, maintenance, use or repair of any real or personal property, including **Property Damage** to property owned, occupied, rented or leased by or to the **Insured**.

H. Mobile Vehicles

alleging, based upon, arising out of, or attributable the ownership, maintenance, operation, use, loading, or unloading, by on behalf of or at the direction of the **Insured**, of watercraft, automobiles, motor vehicles, aircraft or mobile vehicles of any kind.

I. **Wrongful Employment Practice**

alleging, based upon, arising out of, or attributable to a **Wrongful Employment Practice**.

J. Workers' Compensation

alleging, based upon, arising out of, or attributable to **Bodily Injury**, mental anguish, emotional distress, sickness, disease or death of any employee of the **Insured** arising out of and in the course of their employment; or any obligation for which the **Insured** or any insurer as the **Insured's** insurer may be liable under any workers' compensation, unemployment compensation, employer's liability, disability benefits or any similar law.

K. Construction Workmanship

alleging, based upon, arising out of, or attributable to the cost to repair or replace faulty construction workmanship in any construction, erection, fabrication, installation, assembly, manufacture or remediation performed by the **Insured**, including the cost of any materials, parts or equipment furnished in connection therewith.

L. Liability Assumed Under Contract

based on or arising out of any actual or alleged liability of others assumed by the **Insured** under any contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract or agreement.

M. Prior or Pending Proceeding

alleging, based upon, arising out of, or attributable to:

1. any prior or pending litigation or administrative or regulatory proceeding filed on or before the prior or pending proceeding date shown in Item 7 of the Declarations, or the same or substantially the same **Wrongful Act**, fact, circumstance or situation underlying or alleged therein; or
2. any other **Wrongful Act** whenever occurring which, together with a **Wrongful Act** underlying or alleged in such prior or pending proceeding, would constitute **Interrelated Wrongful Acts**.

N. **Nuclear Facility**

alleging, based upon, arising out of, or attributable to a nuclear reaction, radiation, or contamination within or originating from a **Nuclear Facility**, under any circumstances and regardless of cause;

O. Prior Knowledge

alleging, based upon, arising out of, or attributable to any **Wrongful Act** committed prior to the beginning of the **Policy Period**, if, on or before the earlier of the effective date of this **Policy** or the effective date of any **Policy** issued by the **Insurer** to which this **Policy** is a continuous renewal or replacement, the **Insured** knew or reasonably could have foreseen that such **Wrongful Act** would result in a **Claim**;

V. **INNOCENT INSUREDS**

The Fraud exclusion (Section IV, Exclusions, subsection E) shall not apply to any **Insured Person** who did not commit, participate in, or have prior knowledge of fraudulent or criminal acts, errors, or omissions, or any intentional or knowing violation of the law to which such exclusion would otherwise apply.

VI. **ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES**

The estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners of **Insured Persons** shall be considered **Insureds** under this **Policy**; but coverage is afforded to such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners only for a **Claim** arising solely out of their status as such and, in the case of a spouse or legally recognized domestic partner, where the **Claim** seeks damages from marital community property, jointly held property or property transferred from the **Insured Person** to the spouse or legally recognized domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or legally recognized domestic partner. All of the terms and conditions of this **Policy** including, without limitation, the Retention, shall also apply to **Loss** incurred by such estates, heirs, legal representatives, assigns, spouses and legally recognized domestic partners.

VII. **EXTENDED REPORTING PERIODS**

If the **Insurer** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), or if the **Named Insured** terminates or does not renew this **Policy** and does not obtain replacement coverage as of the effective date of such cancellation or non-renewal, the **Named Insured** shall have the right, upon payment of the additional premium described below, to a continuation of the coverage granted by this **Policy** for at least one **Extended Reporting Period** as follows:

A. Automatic **Extended Reporting Period**

The **Named Insured** shall have continued coverage granted by this **Policy** for a period of 60 days following the effective date of such termination or nonrenewal, but only for **Claims** first made during such 60 days and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal. This Automatic **Extended Reporting Period** shall immediately expire upon the purchase of replacement coverage by the **Named Insured**.

B. **Optional Extended Reporting Period**

If the **Insurer** terminates or does not renew this **Policy** (other than for failure to pay a premium when due), the **Named Insured** shall have the right, upon payment of the additional premium described in Item 8 of the Declarations, to a continuation of the coverage granted by this **Policy** for an **Optional Extended Reporting Period** with a term of one year following the effective date of such termination or nonrenewal for an additional premium paid of 100% of the immediately preceding annual premium, two years following the effective date of such termination or nonrenewal for an additional premium paid of 160% of the immediately preceding annual premium, or three years following the effective date of such termination or nonrenewal for an additional premium paid of 190% of the immediately preceding annual premium, but only with respect to **Claims** first made during the **Optional Extended Reporting Period** and arising from **Wrongful Acts** taking place prior to the effective date of such termination or nonrenewal.

This right to continue coverage shall lapse unless written notice of such election is given by the **Named Insured** to the **Insurer**, and the **Insurer** receives payment of the additional premium, within 60 days following the effective date of termination or nonrenewal.

The first 60 days of the **Optional Extended Reporting Period**, if it becomes effective, shall run concurrently with the **Automatic Extended Reporting Period**.

- C. The **Insurer** shall give the **Named Insured** notice of the premium due for the **Optional Extended Reporting Period** as soon as practicable following the date the **Named Insured** gives such notice of such election and such premium shall be paid by the **Named Insured** to the **Insurer** within 10 days following the date of such notice by the **Insurer** of the premium due. The **Optional Extended Reporting Period** is not cancelable and the entire premium for the **Optional Extended Reporting Period** shall be deemed fully earned and non-refundable upon payment.
- D. The **Automatic and Optional Extended Reporting Periods**, if the latter is elected, shall be part of and not in addition to the **Limit of Liability** for the immediately preceding **Policy Period**. The automatic provision or purchase, respectively, of the **Automatic or Optional Extended Reporting Period** shall not increase or reinstate the **Limit of Liability**, which shall be the maximum liability of the **Insurer** for the **Policy Period** and **Extended Reporting Periods**, combined.
- E. A change in **Policy** terms, conditions, exclusions and/or premiums shall not be considered a nonrenewal for purposes of triggering the rights to the **Automatic or Optional Extended Reporting Periods**.

VIII. **LIMITS OF LIABILITY**

- A. All **Claims** against one or more than one **Insured**, and arising out of the same **Wrongful Act** and all **Interrelated Wrongful Acts** of the **Insureds**, shall be deemed to be one **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period**. All **Loss** resulting from a single **Claim** shall be deemed a single **Loss**.
- B. The Each **Claim** **Limit of Liability** stated in Item 3 of the Declarations is the **Insurer's** maximum liability for the sum of all **Loss** because of each **Claim**, including each **Claim** alleging **Interrelated Wrongful Acts** first made and reported during the **Policy Period**.
- C. The **Aggregate Limit** stated in Item 3 of the Declarations shall be the maximum aggregate liability of the **Insurer** for all **Loss** resulting from all **Claims** first made during the **Policy Period**.
- D. **Defense Costs** shall be part of and not in addition to the **Aggregate Limit of Liability** shown in Item 3 of the Declarations, and **Defense Costs** shall reduce such **Limit of Liability**. If the **Limit of Liability** is exhausted by payment of **Loss**, or if the applicable limit of the **Named Insured's** liability has been deposited with or is subject to control of a court of competent jurisdiction, the obligations of the **Insurer** under this **Policy** shall be completely fulfilled and extinguished. The **Insurer** is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

IX. RETENTIONS

- A. Except as otherwise provided in this section, the liability of the **Insurer** shall apply only to that part of **Loss** which is excess of the applicable Retention amount shown in Item 4 of the Declarations. Such Retention shall be borne uninsured by the **Insureds** and at their own risk.
- B. A single Retention amount shall apply to **Loss** arising from all **Claims** alleging **Interrelated Wrongful Acts**.

X. NOTICE

- A. The **Insureds** shall, as a condition precedent to their rights under this **Policy**, give to the **Insurer** written notice of any **Claim** made against the **Insureds** as soon as practicable, but in no event later than the termination of the **Policy Period** or, if elected, the **Extended Reporting Period**.
- B. If, during the **Policy Period**, the **Insureds** first become aware of facts or circumstances which may reasonably give rise to a future **Claim** covered under this **Policy**, and if the **Insureds** give written notice to the **Insurer** during the **Policy Period** of:
 - 1. the identity of the potential claimants;
 - 2. a description of the anticipated **Wrongful Act** allegations;
 - 3. the identity of the **Insureds** allegedly involved;
 - 4. the circumstances by which the **Insureds** first became aware of the facts or circumstances;
 - 5. the consequences which have resulted or may result; and
 - 6. the nature of the potential monetary damages and non-monetary relief;

then any **Claim** which arises out of such **Wrongful Act** shall be deemed to have been first made at the time such written notice was received by the **Insurer**. No coverage is provided for fees, expenses and other costs incurred prior to the time such **Wrongful Act** results in a **Claim**.

- C. All notices under any provision of this **Policy** shall be in writing and given by prepaid express courier, certified mail or facsimile transmission properly addressed to the appropriate party. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in Item 1 of the Declarations. Notice to the **Insurer** of any **Claim** or **Wrongful Act** shall be given to the **Insurer** at the address shown in Item 5A of the Declarations. All other notices to the **Insurer** under this **Policy** shall be given to the **Insurer** at the address shown in Item 5B of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier.
- D. No notice that may be given during the **Policy Period** under Section X, Notice, at subsection B may be given during the **Extended Reporting Period**, if elected.

XI. DEFENSE AND SETTLEMENT

- A. It shall be the right and duty of the **Insurer** to defend any **Claim**, even if such **Claim** is groundless, false, or fraudulent. Defense counsel shall be designated by the **Insurer**, or designated by the **Insured** subject to the **Insurer's** defense counsel guidelines and written consent.
- B. As a condition precedent to their rights under this **Policy**, the **Insureds** agree not to settle or offer to settle any **Claim**, incur any **Defense Costs**, otherwise assume any contractual obligation, or admit any liability with respect to any **Claim** without the prior written consent of the **Insurer**. However, the **Insureds** must take all reasonable action, within its ability, to prevent or mitigate any **Claim** which would be covered under this **Policy**.
- C. The **Insurer** shall have the right to make such investigation and conduct negotiations and, with the written consent of the **Insured**, make any settlement of any **Claim** as the **Insurer** deems reasonable.

- D. The **Insureds** agree to provide the **Insurer** with all information, assistance and cooperation which the **Insurer** reasonably requests and agree that, in the event of a **Claim**, the **Insureds** will do nothing that shall prejudice the position of the **Insurer** or its potential or actual rights of recovery.
- E. If the **Insured** refuses to consent to a settlement or compromise recommended by the **Insurer** and elects to contest or continue to contest a **Claim**, the **Insurer's** liability shall not exceed the amount for which the **Insured** would have been liable for **Loss** if the **Claim** had been so settled when and as recommended, and the **Insurer** shall have the right to withdraw from the further defense of the **Claim** by tendering control of the defense thereof to the **Named Insured**. The operation of this subsection shall be subject to the Limits of Liability and Retention provisions of this **Policy**.

XII. CLAIMS MEDIATION

If a **Claim** is fully and finally resolved to the satisfaction of all parties, including the **Insurer**, as a result of mediation, the **Insured's** Retention for such **Claim** shall be reduced by 50% up to a maximum reduction of \$25,000. Mediation means a non-binding process in which a neutral panel or individual assists the parties in reaching their own settlement. To be considered mediation under this **Policy**, the process must be of a kind set forth in the Commercial Mediation Rules of the American Arbitration Association. The **Insurer**, at its sole option, may recognize any other mediation process or forum presented by the **Insureds** for approval.

XIII. OTHER INSURANCE

If any **Loss** covered under this **Policy** is covered under any other valid insurance, then this **Policy** shall cover the **Loss**, subject to its terms and conditions, only to the extent that the amount of the **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided by this **Policy**.

XIV. MATERIAL CHANGES IN CONDITIONS

A. Acquisition or Creation of Another Organization

If, during the **Policy Period**, the **Named Insured** acquires or creates another entity in which the **Named Insured** has an ownership interest of greater than 50%, such entity shall be considered an **Insured** under this **Policy**, but only for **Wrongful Acts** committed after the date of such acquisition or creation. As a condition precedent to coverage for such newly acquired or created entity:

1. the **Named Insured** shall give written notice of such acquisition or creation to the **Insurer** no later than ninety (90) days after the effective date of such acquisition or creation, together with such information that the **Insurer** may reasonably require, and
2. no partner, principal, officer, director, or insurance manager of the **Named Insured** or of the acquired or created entity, prior to such acquisition or creation, had knowledge or information of any **Wrongful Acts** which could reasonably be expected to give rise to a **Claim**, suit or action (including any investigation) under this **Policy**.

Coverage otherwise afforded under this paragraph for such acquired or created organization shall terminate 90 days after the effective date of such acquisition or creation, or until the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** agrees to and pays any additional premium required by the **Insurer**, and agrees to any additional terms and conditions of this **Policy** as required by the **Insurer**.

B. Acquisition of the **Named Insured**

If, during the **Policy Period**, any of the following events occurs:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or

2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate more than 50% of the partners, principals, or directors of the **Named Insured**;

then coverage under this **Policy** will continue in full force and effect until termination of this **Policy**, but only with respect to **Claims** for **Wrongful Acts** taking place before such event. Coverage under this **Policy** will cease as of the effective date of such event with respect to **Claims** for **Wrongful Acts** taking place after such event.

XV. **INSURED'S REPRESENTATIONS**

- A. The **Insureds** represent and acknowledge that the statements and information contained in the **Application** are true and accurate and:

1. are the basis of this **Policy** and are to be considered as incorporated into and constituting a part of this **Policy**; and
2. shall be deemed material to the acceptance of this risk or the hazard assumed by the **Insurer** under this **Policy**.

It is understood and agreed that this **Policy** is issued in reliance upon the truth and accuracy of such representations.

- B. The **Insureds** represent and acknowledge that no partner, principal, officer, director or insurance manager of the **Insured** knew or could have reasonably expected that any **Wrongful Act** prior to the **Retroactive Date**, specified in the Declarations, might give rise to a **Claim**.

XVI. **TERMINATION OF THE POLICY**

- A. This **Policy** shall terminate at the earliest of the following times:

1. the effective date of termination specified in a prior written notice by the **Named Insured** to the **Insurer**;
2. 60 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer**;
3. 10 days after receipt by the **Named Insured** of a written notice of termination from the **Insurer** for failure to pay a premium when due, unless the premium is paid within such 10 day period;
4. upon expiration of the **Policy Period** as shown in Item 2 of the Declarations; or
5. at such other time as may be agreed upon by the **Insurer** and the **Named Insured**.

- B. If this **Policy** is terminated by the **Named Insured**, the **Insurer** shall refund the unearned premium computed at the short rate. If this **Policy** is terminated by the **Insurer**, the **Insurer** shall refund the unearned premium computed *pro rata*. Payment or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of such termination, but such payment shall be made as soon as practicable.

XVII. **TERRITORY AND VALUATION**

- A. All premiums, limits, retentions, **Loss** and other amounts under this **Policy** are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **Loss** under this **Policy** is stated in a currency other than United States of America dollars, payment under this **Policy** shall be made in United States dollars at the applicable rate of exchange as published in *The Wall Street Journal* as of the date the final judgment is reached, the amount of the settlement is agreed upon or the other element of **Loss** is due, respectively or if not published on such date, the next date of publication of *The Wall Street Journal*.
- B. Coverage under this **Policy** shall extend to **Wrongful Acts** taking place anywhere in the world, where legally permissible, but only for **Claims** brought and maintained solely and entirely in and subject to the jurisdiction and substantive and procedural laws of Canada, or the United States of America, its territories and possessions.

XVIII. SUBROGATION

- A. In the event of any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of such payment to all the rights of recovery of the **Insureds**. The **Insureds** shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Insurer** effectively to bring suit or otherwise pursue subrogation rights in the name of the **Insureds**.
- B. The **Insurer** waives its subrogation rights against a client of the **Insured** to the extent that the **Insured** had, prior to a **Claim** or a **Wrongful Act** reasonably expected to give rise to a **Claim**, entered into a written agreement to waive such rights.
- C. Any amounts recovered shall first be applied toward reimbursement of any payments made by the **Insureds** in satisfaction of the Retention, and any remain balance shall be that of the **Insurer**.

XIX. AUDIT

The **Insurer** may examine and audit the **Insured's** books and records at any time during the **Policy Period** and within three years after termination of this **Policy**, to the extent such books and records relate to the subject matter of this **Policy**.

XX. ENTIRE CONTRACT

By acceptance of this **Policy**, the **Insured** agrees that this **Policy** embodies all agreements existing between the **Insured** and the **Insurer**.

XXI. ACTION AGAINST THE **INSURER** AND BANKRUPTCY

No action shall lie against the **Insurer** unless the **Insured** has fully complied with all the terms of this **Policy**. No person or organization shall have any right under this **Policy** to join the **Insurer** as a party to any action against any **Insured** to determine the liability of the **Insured** nor shall the **Insurer** be impleaded by any **Insured** or its legal representatives. Bankruptcy or insolvency of any **Insured** or of the estate of any **Insured** shall not relieve the **Insurer** of its obligations nor deprive the **Insurer** of its rights or defenses under this **Policy**.

XXII. AUTHORIZATION CLAUSE

By acceptance of this **Policy**, the **Named Insured** agrees to act on behalf of the Optional **Extended Reporting Period**, the payment of premiums and the receiving of any return premiums that may become due under this **Policy**, the agreement to and acceptance of endorsements, and the giving or receiving of any other notice provided for in this **Policy**, and the **Insureds** agree that the **Named Insured** shall so act on their behalf.

XXIII. ALTERATION, ASSIGNMENT AND HEADINGS

- A. No change in, modification of, or assignment of interest under this **Policy** shall be effective except when made by a written endorsement to this **Policy** which is signed by an authorized representative of the **Insurer**.
- B. The titles and headings to the various parts, sections, subsections and endorsements of this **Policy** are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions of such parts, sections, subsections or endorsements.

XXIV. INTERPRETATION

The terms and conditions of this **Policy** shall be interpreted and construed in an evenhanded fashion as between the parties. If the language of this **Policy** is deemed to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms and conditions of this **Policy**, without regard to authorship of the language, without any presumption or arbitrary interpretation or construction in favor of either the **Insureds** or the **Insurer** and without reference to the reasonable expectations of either the **Insureds** or the **Insurer**.