MANUFACTURERS ERRORS AND OMISSIONS LIABILITY COVERAGE FORM

PROFESSIONAL LIABILITY

PL 00 03NY 03 12

THIS INSURANCE PROVIDES CLAIMS MADE COVERAGE. DEFENSE COSTS APPLY AGAINST THE LIMITS OF INSURANCE AND ARE SUBJECT TO THE DEDUCTIBLE.

PLEASE READ THIS COVERAGE CAREFULLY TO DETERMINE RIGHTS, DUTIES, COVERAGE, EXCLUSIONS AND COVERAGE RESTRICTIONS.

IF YOU HAVE COMPLETED AN APPLICATION FOR THIS INSURANCE, WE HAVE ISSUED THIS POLICY BASED UPON YOUR APPLICATION FOR THIS INSURANCE, WHICH IS ATTACHED TO AND BECOMES A PART OF THIS POLICY. That application is a representation of the accuracy of that information and we have relied upon it for the purpose of issuing this Policy.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations for this Coverage Part. The words “we,” “us” and “our” refer to the Company providing this insurance.

The word “insured” means any person or organization qualifying as such under SECTION II — WHO IS AN INSURED.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION VIII — DEFINITIONS.

SECTION I — COVERAGE

A. Manufacturers Errors and Omissions Liability — Insuring Agreement

1. We will pay those sums that the insured becomes legally obligated to pay as “damages” caused by a “wrongful act” but only as a result of a “claim” first made against the insured during this “policy period”, any subsequent renewal, or any applicable extended reporting period that takes place in the “coverage territory”. We will have the right and duty to defend, using counsel of our choice, any “suit” seeking “damages” in connection with such “claim”. We may, at our discretion, investigate and/or settle any “claim” or “suit.” Our right and duty to defend such “claims” or “suits” ends when we have exhausted the Limits of Insurance available, as provided in SECTION III — LIMITS OF INSURANCE. This insurance does not apply to “wrongful act(s)” which occurred before the Retroactive Date, if any, shown in the Declarations or which occur after the “policy period”. If no Retroactive Date is shown in the Declarations, this coverage part applies to “wrongful act(s)” occurring prior to the expiration of the policy, subject to all other terms and conditions of this coverage part. If a Retroactive Date is shown, it may not be changed during the term of the claims made relationship, and any extended reporting period.

2. This insurance applies to “damages” only if the loss arises out of “your product” provided to others or “your work” provided or performed for others.

3. A “claim” will be deemed to have been made at the earlier of the following times:
   a. When notice of such “claim” is received and recorded by you or by us, whichever comes first; or
   b. When the insured informs us of a circumstance or incident occurring during the policy period, but before a “claim” is made.

   The insured agrees to provide us with all information, assistance and cooperation which we reasonably request and agree that in the event of a “claim” the insured will do nothing that shall prejudice our position or our potential or actual rights of recovery.

B. Defense Provision

We shall:

1. Appoint an attorney and defend any “claim” against the insured alleging a “wrongful act(s)” to which this insurance applies, even if such “claim” is groundless, false or fraudulent and pay “defense costs” on behalf of the insured.
2. Pay “defense costs” on behalf of the insured for any “claim” against the insured alleging a “wrongful act(s)” to which this insurance applies, even if such “claim” is groundless, false or fraudulent.

3. We have the right, but not the duty to appeal any judgment entered against the Insured.

4. Each payment we make for “claims”, “suits”, or “defense costs” reduces the Amount of Insurance available, as provided in SECTION III — LIMITS OF INSURANCE. Our right and duty to defend such “claims” ends when we have exhausted the Limits of Insurance available, as provided in SECTION III — LIMITS OF INSURANCE. This applies to both “claims” pending at that time and any that may be made after the limits have been exhausted.

5. The first Named Insured shall have the option to:
   a. Select the defense attorney in consultation with us or consent to our choice of defense attorney, which consent shall not be unreasonably withheld;
   b. Participate in, and assist in the direction of, the defense of any “claim”;
   c. Consent to settlement, which consent shall not be unreasonably withheld.

6. You will not settle any “claim” without our prior written consent. We will not settle any “claim” or “suit” without the first Named Insured’s consent, which consent shall not be unreasonably withheld. If the first Named Insured refuses to consent to any settlement that is acceptable to the claimant and recommended by us, subject to the applicable Limit of Liability and Deductible set forth in the Declarations, we will not pay any “damages” which exceed the amount for which such “claim” or “suit” could have been settled, including “defense costs” incurred up to the date the insured refused to settle such “claim” or “suit”.

Additionally, all further “damages”, “defense costs” and supplementary payments, incurred by an insured after the date of such refusal of the consent to settle for such “claim” or “suit”, will be the responsibility of such insured.

In “claims” where the first Named Insured does not consent to a settlement recommended by us, we have the right to stop defending and paying “defense costs” upon tendering control of the defense to you.

C. Exclusions
This insurance does not apply to any “damages”, “claims” or “suits”:

1. Directly or indirectly arising out of any dishonest, fraudulent, criminal or malicious act or omission by any insured.

2. For willful violation of any federal, state, or local statute, ordinance, rule or regulation committed by or with the knowledge and consent of any insured.

3. Directly or indirectly arising out of false arrest, false imprisonment, wrongful entry or eviction, assault, or battery, malicious prosecution, libel, slander, defamation, invasion of privacy, or abuse of process or invasion of the right of privacy.

4. Directly or indirectly arising out of punitive or exemplary “damages” civil or administrative fines or penalties, any judgments or awards which are multiple of “damages” or any other fine or penalty.

5. Directly or indirectly arising out of the failure, refusal, or inability of the insured to enter into, renew, award by bid, or perform any contract or agreement.

6. For liability assumed in any contract or agreement. This exclusion does not apply to:
   a. “Damages” that the insured would have in the absence of the contract or agreement.
   b. Consequential financial loss resulting from a “wrongful act” committed by you or on your behalf.

This insurance does not apply to any “damages” or “defense costs” arising out of any “wrongful act” committed in whole or in part before such applicable contract or agreement was executed.

7. For any liability for “property damage” to “your work” if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

8. Seeking relief or redress in any form other than “compensatory damages”. Nor shall we have any obligation to indemnify the insured for any costs, fees including attorney’s fees, or expenses which the insured shall become obligated to pay as a result of an adverse judgment for injunctive or declaratory relief except that we will afford a defense to the insured for such “claims” or “suits,” where covered and non-covered “damages” are sought.
However, we will afford a defense to the insured for such “claims” or “suits”, if not otherwise excluded, where both “compensatory damages” and non-monetary “damages” are sought in the same “claim” or “suit”.

9. Directly or indirectly arising from “bodily injury”, mental anguish, emotional distress, “personal and advertising injury”, or “property damage”.

10. Directly or indirectly arising out of procurement of goods, services, including without limitation construction, architect or engineer contracts, or agreements.

11. Directly or indirectly arising out of:
   A “wrongful act(s)” to:
   a. A person arising out of any:
      (1) Refusal to employ that person;
      (2) Termination of that person’s employment; or
      (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
   b. The spouse, child, parent, brother or sister of that person as a consequence of “bodily injury” to that person at whom any of the employment-related practices described in Paragraphs (1), (2), or (3) above is directed.

This exclusion applies:
   a. Whether the injury-causing event described in Paragraphs (1), (2) or (3) above occurs before employment, during employment or after employment of that person;
   b. Whether the insured may be liable as an employer or in any other capacity; and
   c. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

12. For oral or written publication of material, if such material:
   a. Was published by or at the direction of the insured with knowledge of the material’s falsity; or
   b. Was first published before the Retroactive Date, if any, shown in the Declarations.

13. For the insured gaining any profit, advantage or remuneration to which the insured is not entitled.

14. For which the insured is entitled to indemnity or payment by reason of having given notice of any circumstances which might give rise to a “claim” or “damages” under any policy or policies the term of which has expired prior to the inception date of this policy.

15. Directly or indirectly arising out of any actual or alleged warranty, guarantee or promise, whether express or implied, or verbal or written.

16. Directly or indirectly arising out of any cost or expense incurred by any insured or others to repair, replace, upgrade, supplement, or otherwise improve “your product”, “your work”, or to perform or complete “your work”.

17. For damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:
   a. “Your product”;
   b. “Your work”; or
   c. “Impaired property”.

18. For:
   a. Obligations under the Employee Retirement Income Security Act of 1974 (ERISA), including subsequent amendments or any similar federal, state or local law or regulation; or
   b. Administration of any employee benefit plan or self-insurance fund.

19. For the failure or omission by the insured to purchase or maintain adequate insurance of any kind, including failure to effect or maintain adequate policy limits.

20. For any loss, cost, civil fine, penalty or expense incurred by any insured arising from any complaint or enforcement action brought by any federal, state or local governmental regulatory agency against the Named Insured or for which the Named Insured is liable.
21. Directly or indirectly arising out of any of the following:
   
a. The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
      
      (1) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
         
         (a) “Damages” if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building’s occupants or their guests;
         
         (b) “Damages” for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
         
         (c) “Damages” arising out of heat, smoke or fumes from a “hostile fire”;
         
      (2) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
         
      (3) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
         
         (a) Any insured; or
         
         (b) Any person or organization for whom you may be legally responsible; or
         
      (4) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the “pollutants” are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
         
         (a) “Damages” arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of “mobile equipment” or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the “damages” arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
         
         (b) “Damages” sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
         
         (c) “Damages” arising out of heat, smoke or fumes from a “hostile fire”.
         
      (5) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured’s behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”.

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b. Any loss, cost or expense arising out of any:
   (1) Request, demand, order or statutory or regulatory requirement that any insured 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"; or
   (2) “Claim” or “suit” 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”.
   
   However, this paragraph does not apply to liability for damages because of “damages” that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit” by or on behalf of a governmental authority.

22. Directly or indirectly arising out of, resulting from, caused or contributed to by electromagnetic radiation, provided that such “damages” result from or are contributed to by the hazardous properties of electromagnetic radiation. This includes any costs for actual or threatened abatement, mitigation, or removal.

23. Directly or indirectly arising out of, resulting from, caused or contributed by:
   (a) The use of, sale of, installation of, removal of, abatement of, distribution of, containment of, or exposure to asbestos, asbestos products, asbestos-containing material, asbestos fibers, or asbestos dust;
   (b) The actual or threatened abatement, mitigation, removal or disposal of asbestos, asbestos products, asbestos-containing material, asbestos fibers, or asbestos dust;
   (c) Any supervision instructions, recommendations, warnings or advice given or which should have been given in connection with parts 23(a) and 23(b) above; or
   (d) Any obligation of the insured to indemnify or contribute with any party in connection with Subparagraphs 23(a) through 23(c) above.

24. For liability directly or indirectly arising out of:
   (a) Request, demand, order or statutory or regulatory requirement that any insured 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”;
   (b) “Claim” or “suit” 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”.
   
   However, this paragraph does not apply to liability for damages because of “damages” that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit” by or on behalf of a governmental authority.

25. Directly or indirectly arising out of:
   a. Debt financing, including but not limited to bonds, notes, debentures and guarantees of debt;
   b. Fines, penalties and sanctions; or
   c. Investment activities by or under the direction of any insured, including the insured’s involvement in or vicarious liability for any ownership, management, investment, investment policy, oversight responsibility, or investment advice of any public or private investment fund, trust or pool, including the use of or failure to use derivative investment components.

26. For a publication or utterance in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the insured.

27. Directly or indirectly arising out of, based upon, or in connection with any alleged or actual violation of any person or entity’s privacy rights.

28. Directly or indirectly arising out of “over-redemption” of coupons, awards, or prizes from advertisements, promotions, games, sweepstakes, contests, and games of chance.

29. Directly or indirectly arising out of any federal, state or local government agency or professional or trade licensing organization.
30. Directly or indirectly arising out of any actual or alleged or threatened:
   a. Delay in delivery of; or
   b. Failure to deliver
   “your product” or “your work” or any part or phase of “your product” or “your work”, unless this is the result of your “wrongful act(s)”.  
31. Directly or indirectly arising out of any bankruptcy, insolvency or other financial impairment of any insured. 
32. Directly or indirectly arising out of:
   a. Disputes involving your fees, compensation, remuneration, consideration or charges, including overcharges;
   b. Collecting your fees from third parties;
   c. Any credit or voluntary payment made or given for any reason;
   d. The return of fees for compensation paid to you; or
   e. Your cost of correcting or re-performing or completing “your work” or “your product”.  
33. Directly or indirectly arising out of any actual or alleged violation of:
   a. The United States of America CAN-SPAM Act of 2003 or any law amendatory thereof;
   b. The United States of America Telephone Consumer Protection Act (TCPA) of 1991 or any law amendatory thereof; or
   c. Any other ordinance, regulation or statute relating to communicating, distribution, publication, sending or transmitting of content, information or material.  
34. Directly or indirectly arising out of any actual or alleged infringement or violation of any of the following rights or laws:
   a. Copyright;
   b. Patent;
   c. Trade dress;
   d. Trade name;
   e. Trade secret;
   f. Trademark; or
   g. Other intellectual property rights or laws.  
35. Directly or indirectly arising out of any actual or alleged violation of any unfair or deceptive trade practice, unfair competition, or other consumer protection law committed by or on behalf of an insured.  
36. Directly or indirectly arising out of any:
   a. Cost guarantee or probable cost estimate being exceeded; or
   b. Cost overrun.  
37. Brought by or on behalf of any current or former insured against any current or former insured. This exclusion does not apply to any “damages”, “claims” or “suits” brought by or on behalf of any person or organization that has been added as an additional insured before the date of the “wrongful act” by an endorsement under this policy.  
38. Directly or indirectly arising out of the rendering or failure to render any of the following “professional services”, advice or instruction whether or not a “claim” or “suit” is brought by any client or any other person or organization or whether or not such service, advice or instruction is ordinary to any insured’s profession.
   a. Accounting services;
   b. Actuarial service, or actuarial assumption;
   c. Architectural, engineering, inspection, appraisal, survey or audit services;
   d. Computer software developer;
   e. Healthcare, medical, surgical, dental, x-ray or nursing services, advice or instruction;
   f. Body modification or body piercing services;
   g. Optometry or optical or hearing aid services;
   h. Any service treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, including the use or exposure to any sun lamp, tanning booth or other similar appliance;
   i. Pharmacy services;
   j. Law enforcement services;
   k. Stockbroker or other financial services;
   l. Mortgage Banker or Mortgage Broker;
   m. Property developer;
   n. Builder, construction manager, or project manager of construction projects;
   o. Notary public;
   p. Credit bureau;
   q. Collection agent;
r. Lawyer or other legal services;
s. Property manager; or
t. Insurance agent/broker services.

SECTION II — WHO IS AN INSURED

Each of the following is an insured:

A. If you are designated in the Declarations for this Coverage Part as:
   1. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
   2. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
   3. A limited liability company, you are an insured. Your members are also insureds, but only with respect to their duties as your managers.
   4. An organization other than a partnership, joint venture or limited liability company, you are an insured.

Coverage does not apply to “damages” arising out of a “wrongful act(s)” that occurred before you acquired or formed the entity shown as a Named Insured in the Declarations.

B. Any person who is, was, or hereafter becomes a partner, “employee”, “executive officer” or director are insureds, but only with respect to the conduct of your business. Your stockholders are also insureds, but only with respect to their liability as stockholders and only with respect to the conduct of your business.

C. Any person, including volunteers, temporary employees or leased personnel, providing services for you at your request and operating under your direction and control for conduct while acting within the scope of their duties, for or on behalf of the Named Insured.

D. Any “subsidiary” as long as such “subsidiary” is not an insured under similar insurance.

E. The estates, heirs, legal representatives or assigns of deceased persons who were insureds pursuant to B. through D. above.

F. The legal representatives or assigns of the insureds pursuant to B. through D. above in the event of their incompetence, insolvency or bankruptcy.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III — LIMITS OF INSURANCE

A. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of Insureds, “claims” or “suits” or persons or organizations making “claims” or bringing “suits” for the sum of:
   1. “Damages” for all “claims” arising out of any actual or alleged “wrongful act(s)” covered by this insurance; and
   2. “Defense costs” for all “claims” or “suits” seeking “damages” to which this insurance applies payable under Paragraph A.1. above.

B. Subject to Paragraph A. above, the Amount of Insurance stated as the per “Claim” Limit of Insurance is the most we will pay in excess of the Deductible as further described in SECTION V — DEDUCTIBLE for the sum of:
   1. “Damages” for injury arising from “wrongful act(s)” to which this insurance applies arising out of one “claim” whether such “claim” is brought by one or more claimants; and

A “claim(s)” based on and arising out of the same or “interrelated” “wrongful act” shall be considered to be a single “claim”.

C. In addition to the payments for “damages” and “defense costs” in Paragraphs A. and B. above, we will also pay all interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment under the provisions of Paragraphs A. and B. above.

D. The Annual Aggregate Limit of Insurance is the most we will pay for all “claims” under this Coverage Form.

The limits of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the “policy period” shown in the Declarations, unless the “policy period” is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance. If an alternative notice or late conditional renewal notice results, under New York Insurance Law, in an extension of coverage beyond the expiration date of the policy such extension shall not create:

(i) New sublimits; or
(ii) A new annual aggregate limit.
However, in the event of such an extension, the sublimits provided or annual aggregate limit of the expiring policy shall be increased in proportion to the policy extension.

SECTION IV — SUPPLEMENTARY PAYMENTS

We will pay, subject to the deductible, with respect to any “claim” or “suit” we defend:

A. All expenses, other than “defense costs”, we incur.
B. The cost of bonds to release attachments and appeal bonds required in any “suit” we defend, but only for bond amounts within the applicable Limit of Insurance. We are not obligated to furnish these bonds.
C. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of a “claim” or “suit,” including actual loss of earnings up to $500 a day because of time off from work. Such expenses do not include salaries of the Named Insured.
D. All costs taxed against the insured in the “suit” except for any award of attorney’s fees.
E. “Pre-judgment interest” awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable Limit of Insurance, we will not pay any “pre-judgment interest” based on that period of time after the offer.
F. All interest on that part of the judgment we pay that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Insurance. However, post judgment interest is not subject to the deductible.

These payments will not reduce the Limits of Insurance.

SECTION V — DEDUCTIBLE

A. Our obligation under SECTION I of this policy to pay “damages” on behalf of the insured applies only to the amount of “damages” in excess of any deductible amount stated in the Declarations.
B. The deductible amount stated in the Declarations, if any, applies to all “damages” sustained by any person or organization as the result of each and every “claim”.
C. The deductible amount stated in the Declarations includes loss payments, adjustments, investigative, legal fees and costs, whether or not loss payment is involved.
D. The terms of this insurance, including those with respect to (1) our right and duty to defend any “suits” seeking “damages”, and (2) your duties in the event of potential or actual “claim” or “suit” apply irrespective of the application of the deductible amount.
E. We may pay any part or all of the deductible amount to effect settlement of any “claim” or “suit” and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

SECTION VI — CONDITIONS

A. Arbitration

We are entitled to exercise all of the insured’s rights in the choice of arbitrators and in the conduct of any arbitration proceeding, except when the proceeding is between us and the insured.

B. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured’s successor will not relieve us of our obligations under this policy.

C. Duties In The Event Of A “Claim”

1. You and any other insured must notify us as soon as practicable of any “claim” against you or any insured which may be subject to the insurance afforded herewith. Such notice shall include particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances of such “wrongful act”; and the name and address of potential claimant(s) and/or witness(es).
2. To the extent “suit” papers are served on you, such “suit” papers must be delivered to us immediately.
3. You and any other involved insured must:
   a. Authorize us to obtain records and other information;
   b. Cooperate with us in our investigation, settlement and/or defense;
   c. Assist us, upon our request, in the enforcement of any right against any person or organization, which may be liable to the insured because of injury or damage to which this insurance may also apply.
4. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our prior, written consent.
5. Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any licensed agent of ours in New York State, with particulars sufficient to identify the insured, shall be considered to be notice to us.

6. Failure of the insured, an injured party or any other claimant to give written notice to us within the time prescribed shall not invalidate the claim unless failure to give timely notice has prejudiced us. However, failure of the insured, an injured person or any other claimant to give written notice to us of a “claim” within the time prescribed shall not invalidate the “claim” if it can be proven that it was not reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible thereafter.

7. Subject to the foregoing, with respect to a claim arising out of death or personal injury of any person, if we disclaim liability or deny coverage based on the failure to provide timely notice, then the injured person or other claimant may maintain an action directly against us, in which the sole question is our disclaimer or denial based on the failure to provide timely notice, unless within 60 days following such disclaimer or denial, you or we:
   a. Initiate an action to declare the rights of the parties under this coverage; and
   b. Name the injured person or other claimant as a party to the action.

D. Awareness Provision

If an insured becomes aware during this “policy period”, any subsequent renewal, or any applicable extended reporting period of any facts or circumstances which may result in a “claim” being made against the insured by reason of a “wrongful act”, and if the insured sends to us during the “policy period”, any subsequent renewal, or any applicable extended reporting period written notice of such facts and circumstances, including the details of the “wrongful act” as well as the name of the person and/or entity who may make such claim, as well as when any such misconduct occurred, such potential “claim” will be treated as a “claim” first made against the insured during this “policy period”, any subsequent renewal, or any applicable extended reporting period, even if the “claim” is actually made against the insured after the expiration of this “policy period”, any subsequent renewal, or any applicable extended reporting period.

E. Legal Action Against Us

No person or organization has a right under this policy:

1. To join us as a party or otherwise bring us into a “suit” asking for “damages” from an insured; or
2. To sue us under this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a judgment against an insured; but we will not be liable for “damages” that are not payable under the terms of this policy or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant’s legal representative.

In case judgment against the insured or the insured's personal representative in an action brought to recover “damages” for injury sustained or loss or damage occasioned during the life of this coverage shall remain unsatisfied at the expiration of thirty days from the serving of notice of entry of judgment upon the attorney for the insured, or upon the insured, and upon us, then an action may, except during a stay or limited stay of execution against the insured on such judgment, be maintained against us under the terms of this coverage for the amount of such judgment not exceeding the amount of the applicable limit of insurance under this coverage form.

F. Other Insurance

1. The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other valid and collectible insurance. When this insurance is primary and the insured has other valid and collectible insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of our liability under this policy shall not be reduced by the existence of such other valid and collectible insurance.

When this insurance is excess, we will have no duty to defend any “claim” or “suit” that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured’s rights against all those other insurers.
When this insurance is excess over other valid and collectible insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

a. The total amount that all such other valid and collectible insurance would pay for the loss in the absence of this insurance; and

b. The total of all deductible and self-insured amounts under all such other valid and collectible insurance.

2. When both this insurance and other valid and collectible insurance apply to the loss on the same basis, whether primary, excess or contingent, we shall not be liable under this policy for a greater proportion of the loss than that stated in the applicable Method of Sharing provision below:

Method of Sharing

a. If all of the other valid and collectible insurance permits contribution by equal shares, we will follow this method also. Under this method each insurer contributes equal amounts until it has paid its applicable Limit of Insurance or none of the loss remains, whichever comes first.

b. If any of the other valid and collectible insurance does not permit contribution by equal shares, we will contribute by equal limits. Under this method, each insurer’s share is based on the ratio of its applicable Limit of Insurance to the total applicable Limits of Insurance of all insurers.

G. Premium Audit

1. We will compute all premiums for this insurance in accordance with our rules and rates. We may audit your books and records as they relate to this insurance at any time during the term of this policy and up to 180 days afterwards.

2. The premium audit may not be waived unless the total annual premium attributable to the auditable exposure is not reasonably expected to exceed $1,500.

3. We shall, as soon as practicable following such audit, refund or credit the insured’s account for any return premium due the insured, or bill and make a good faith effort to collect any additional premium due the company, as a result of the audit.

4. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

H. Representations

By accepting this policy, you agree that:

1. The Application for insurance completed in solicitation of this policy is made a part of this policy as though set forth, and incorporated, in full herein;

2. The statements in the Application for insurance are current, accurate and complete;

3. Those statements are representations. All such statements and representations shall be deemed to be material to this risk and are the basis of this policy and are to be considered as incorporated into this policy; and

4. We have issued this policy in reliance upon your representations.

I. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, our obligations apply severally to each insured against whom a “claim” is made.

J. Transfer of Rights of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring “suit” or transfer those rights to us and help us enforce them.

K. Sole Agent

The first Named Insured is authorized to act on behalf of all insureds as respects the giving or receiving of notice of cancellation or nonrenewal, receiving premium refunds, requesting any Supplemental Extended Reporting Period and agreeing to any changes in this Coverage.

L. Changes

This Coverage contains all agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this Coverage Part with our prior, written consent. This Coverage Part’s terms can be amended or waived only by endorsement issued by us and made a part of this Coverage.

M. Liberalization Clause

If we revise this Coverage Form, and it is approved by the insurance regulatory authority in the states listed in the Declarations, to provide more coverage without an associated additional premium charge, subject to our filed company rules, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.
N. Your Right to “Claim” Information
We will provide information regarding your “claims” only if we receive a written request from the first Named Insured or their authorized agent or broker. Upon receipt of such written request, we shall mail or deliver the following loss information for the period of time coverage has been provided by us within 10 days of such request:

(1) Information on closed claims, including date and description of occurrence, and amounts of any payments;

(2) Information on open claims, including date and description of occurrence, and amounts of any payments;

(3) Information on notice of any occurrences, including date and description of occurrence.

“Claim” amounts reserved are based upon our judgment. They are subject to changes and should not be regarded as ultimate settlement amounts. You may not disclose this information to any claimant or any claimant’s representative without our consent.

O. Transfer Of Duties When A Limit Of Insurance Is Used Up

a. If we conclude that, based on “wrongful acts,” “claims” or “suits” which have been reported to us and to which this insurance may apply, and “defense costs” paid, the per “claim” or aggregate Limit of Insurance is likely to be used up in the payment of judgments or settlements, we will notify the first Named Insured, in writing, to that effect.

b. When the per “claim” or aggregate limit of insurance described in Paragraph a. above has actually been used up in the payment of judgments or settlements or “defense costs”:

(1) We will notify the first Named Insured, in writing, as soon as practicable that:
   (a) Such limit has actually been used up; and
   (b) Our duty to defend “suits” seeking “damages” subject to that limit has also ended.

(2) We will initiate, and cooperate in, the transfer of control, to any appropriate insured, of the defense of all “claims” and “suits” seeking “damages” which are subject to the per “claim” or aggregate limit and which are reported to us before that limit is used up. All insureds must cooperate in the transfer of control of said “claims” and “suits”.

We agree to take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such “suits” until such transfer is completed, provided the appropriate insured(s) and their attorney(s) are cooperating in completing such transfer.

We will take no action whatsoever with respect to any “claims” or “suit” seeking “damages” that would have been subject to the per “claim” or aggregate limit had it not been used up, if the “claims” or “suit” is reported to us after that limit of insurance has been used up.

(3) The first Named Insured, and any other insured involved in a “suit” seeking “damages” subject to the per “claim” or aggregate limit, must arrange for the defense of such “suit” within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such “suit” must be made as soon as practicable.

c. The first Named Insured, and any other insured involved in a “suit” seeking “damages”, will reimburse us for “defense costs” we incur in taking those steps we deem appropriate in accordance with Paragraph b.(2) above.

The duty of the first Named Insured (and involved insured(s)) to reimburse us will begin on:

(1) The date on which the applicable limit of insurance is used up, if we sent notice in accordance with Paragraph a. above; or

(2) The date on which we sent notice in accordance with Paragraph b.(1) above, if we did not send notice in accordance with Paragraph a. above.

d. The exhaustion of any limit of insurance by the payments of judgments or settlements or “defense costs”, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the provisions of this Condition.

SECTION VII — EXTENDED REPORTING PERIODS

A. We will provide an Extended Reporting Period, as described below, if:

1. There is “termination of coverage”.

2. We renew or replace this policy with insurance that does not apply to “damages” on a claims made basis.
B. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts upon "termination of coverage" and lasts for:

1. Five years with respect to "claims" arising out of "wrongful act(s)" which had been properly reported to us before "termination of coverage" in accordance with Paragraph C. of Duties in the Event of a "claim" in SECTION VI — CONDITIONS; and

2. Sixty-days with respect to "claims" arising from "wrongful act(s)" not previously reported to us.

C. The Basic Extended Reporting Period does not reinstate or increase the Limit of Insurance.

D. No later than 30 days after "termination of coverage", we will advise you of the Basic Extended Reporting Period described in Paragraph B. of this Section. We will also advise you of the availability and importance of purchasing a Supplemental Extended Reporting Period, as described in Paragraph E. of this Section.

E. A Supplemental Extended Reporting period lasting between three to five years is available, but only by endorsement and for an additional charge. This additional period starts when the Basic Extended Reporting Period, as set forth in Paragraph B., ends.

F. You must give us a written request for the endorsement within:

1. 60 days after "termination of coverage"; or

2. 30 days after the date of mailing or delivery of the advice required in Paragraph D., whichever period is greater.

G. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due and any premium you owe us for coverage provided under this policy.

We will determine the additional premium in accordance with our rules and rates on file with the New York Insurance Department.

The premium for the Supplemental Extended Reporting Period shall be a percentage of the current term premium. This premium will be based on the number of years the Supplemental Extended Reporting Period applies in accordance with the following chart:

<table>
<thead>
<tr>
<th>Supplemental Extended Reporting Period (years)</th>
<th>% Of Current Term Premium For Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>150%</td>
</tr>
<tr>
<td>4</td>
<td>165%</td>
</tr>
<tr>
<td>5</td>
<td>175%</td>
</tr>
</tbody>
</table>

This Supplemental Extended Reporting Period endorsement shall set forth the terms, not inconsistent with this Section, applicable to the Supplemental Extended Reporting Period, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental Extended Reporting Period starts.

H. If upon "termination of coverage", insurance has been provided by us to you on a claims made basis without interruption for at least three years, the aggregate limit of liability for the Supplemental Extended Reporting Period shall be equal to 100% of the dollar amount shown for the aggregate limit in the Declarations.

I. If upon "termination of coverage", insurance has been provided by us to you on a claims made basis without interruption for less than three years, the aggregate limit of liability for the Supplemental Extended Reporting Period shall be equal to the greater of:

1. The amount of coverage remaining in the policy aggregate limit of liability shown in the Declarations; or

2. 50% of the policy aggregate limit of liability shown in the Declarations.

J. An insured who is either employed by or otherwise affiliated with you during the claims made relationship and any extended reporting period shall continue to be covered under this policy and any extended reporting period, even after the affiliation has ended, for such insured's covered acts or omissions during the period of affiliation.
K. Extended Reporting Period coverage shall be provided, upon “termination of coverage”, to any insured, if:
   1. You have been placed in liquidation or bankruptcy or if you permanently cease operations;
   2. You or your designated trustee do not purchase extended reporting period coverage;
   3. Such insured requests the extended reporting period coverage within 120 days of the “termination of coverage”; and
   4. Such insured pays the additional charge for the coverage.

L. Extended Reporting Periods do not extend the “policy period” or change the scope of coverage provided. They apply only to “claims” to which the following applies:
   1. The “claim” is first made during an Extended Reporting Period;
   2. The “wrongful act(s)” occurs before “termination of coverage”; and
   3. The offense out of which the “injury” arose did not commence before the Retroactive Date, if any.

“Claims” for such injury or damage which are first received and recorded during the Basic Extended Reporting Period (or during the Supplemental Extended Reporting Period, if it is in effect) will be deemed to have been made on the last day of the “policy period”.

Once in effect, Extended Reporting Periods may not be cancelled.

SECTION VIII — DEFINITIONS

A. “Advertisement” means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
   1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
   2. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

B. “Agreed Settlement” means a settlement or release of liability signed by us, the insured and the claimant or the claimant’s legal representative.

C. “Bodily Injury” means physical injury to the body, sickness or disease, or mental anguish sustained by a person as the result of physical injury to the body, including death resulting from any of these at any time.

D. “Claim” means an oral or written demand for money or services, in which the person(s) asserting the “claim” indicates an intention to hold the insured responsible for “damages” in connection with a “wrongful act”. A “claim” includes “suit.”

E. “Compensatory Damages” means:
   1. Monetary “damages” or “pre-judgment interest” awarded against the insured on that part of the judgment we pay; and
   2. “Agreed settlement”.

“Compensatory Damages” do not include:
   1. Civil, criminal, administrative or other fines or penalties;
   2. Equitable relief, injunctive relief, declarative relief or any other relief or recovery other than money;
   3. Judgments or awards because of acts deemed uninsurable by law;
   4. Punitive or exemplary “damages”;  
   5. Statutory attorney fees; or
   6. Nonmonetary “damages”.

F. “Coverage Territory” means:
   1. The United States of America (including its territories and possessions), Canada and Puerto Rico; or
   2. Except for any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America, anywhere in the world. The insured’s responsibility to pay “damages” must be determined in a “suit” on the merits (or any type of civil proceeding described under the definition of “claim”) in and under the substantive law of the United States of America (including its territories and possessions) or Puerto Rico.

If we are prevented by law, or otherwise, from defending the insured in a “suit” brought in a location described in Paragraph 2., above, the insured will conduct a defense of that “suit”. We will reimburse the insured for the reasonable and necessary expenses incurred for the defense of any such “suit” seeking damages to which this insurance applies, and that we would have paid had we been able to exercise our right and duty to defend.
G. “Damages” means
1. “Compensatory damages” or “pre-judgment interest” awarded against the insured on that part of the judgment we pay;
2. “Agreed settlement”; or
3. Statutory attorney fees.
“Damages” do not include:
1. Fees, compensation, remuneration, consideration or charges for your “professional services”;
2. Civil, criminal, administrative or other fines or penalties;
3. Equitable relief, injunctive relief, declarative relief or any other relief or recovery other than money;
4. Judgments or awards because of acts deemed uninsurable by law; or
5. Punitive or exemplary “damages”.

H. “Defense Costs” means:
Reasonable and necessary fees, costs and expenses incurred by us, or incurred by the insured with our prior, written consent (including premiums for any appeal bond, attachment bond, or similar bond but without any obligation to apply for or furnish any such bond) resulting from the investigation, adjustment, defense, and appeal of a “claim” against any Insured; provided, however, “defense costs” do not include salaries of employees or officers.

I. “Employee” means an individual whose labor or service is engaged by and directed by the Named Insured. This includes part-time, seasonal and temporary employees as well as any individual employed in a supervisory or managerial position. However, “employee” does not include an independent contractor or any “employees” of any independent contractor while acting within the scope of their employment, any “leased worker” or any “temporary worker”.

J. “Executive officer” means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar government document.

K. “Hostile fire” means one which becomes uncontrollable or breaks out from where it was intended to be.

L. “Impaired Property” means tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:
1. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or
2. You have failed to fulfill the terms of a contract or agreement;
   if such property can be restored to use by the repair, replacement, adjustment, or removal of “your product” or “your work” or your fulfilling the terms of the contract or agreement.

M. “Interrelated” means common or related facts, circumstances, situations, events, transactions or causes.

N. “Leased Worker” means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. “Leased worker” does not include a “temporary worker”.

O. “Over-redemption” means price discounts, prizes, awards or other valuable consideration given in excess of the total contracted or expected amount.

P. “Personal and Advertising Injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
4. Oral or written publication, in any manner, 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, in any manner, of material that violates a person’s right of privacy;
6. The use of another’s advertising idea in your “advertisement”; or
7. Infringing upon another’s copyright, trade dress or slogan in your “advertisement”.

Q. “Policy Period” means the period of time as shown on the Declaration page hereto.

R. “Pollutants” means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

S. “Pre-judgment Interest” means interest added to a settlement, verdict, award or judgment based on the amount of time prior to the settlement, verdict, award or judgment, whether or not made part of the settlement, verdict, award or judgment.
T. “Professional Services” means those services which were performed by the Insured, in the ordinary conduct of their business, for others for a fee, remuneration or other consideration or as otherwise defined by endorsement to this policy.

U. “Property Damage” means:

1. Physical Injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; and

2. Loss of use to tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “wrongful act”.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

V. “Subsidiary” means any entity identified in the application for this Policy in which at the time of the “wrongful act”, the Named Insured had an ownership interest of greater than 50%.

W. “Suit” means a civil proceeding seeking monetary “damages” or non-monetary relief or injunctive relief, an arbitration proceeding, or any other alternative dispute resolution proceeding by which “damages” are sought against an insured in connection with a “wrongful act”.

X. “Temporary Worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions.

Y. “Termination of Coverage” means whether made by the insurer or the insured at any time:

1. Cancellation or nonrenewal of a policy; or

2. Decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion or any other change in coverage less favorable to the insured.

Z. “Wrongful Act(s)” means any actual or alleged:

1. Error or unintentional omission, misstatements, misleading statements, neglect or breach of duty; or

2. Actions by you or an insured which arises out of the discharge of duties for you, individually or collectively which results in consequential financial loss by a person or organization because their property is less useful or cannot be used. “Wrongful act(s)” include all related “wrongful act(s)” and all series of continuous, repeated or related “wrongful act(s)”.

AA. “Your Product”:

1. Means:
   a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      (1) You;
      (2) Others trading under your name; or
      (3) A person or organization whose business or assets you have acquired; and
   b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

2. Does not include vending machines or other property rented to or located for the use of others but not sold.

BB. “Your Work” means:

1. Work or operations performed by you or on your behalf; and

2. Materials, parts or equipment furnished in connection with such work or operations.