



AMERICAN INTERNATIONAL COMPANIES®

NOTICE: THIS IS A CLAIMS MADE FORM. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, THE COVERAGE OF THIS POLICY IS LIMITED GENERALLY TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED IN WRITING TO THE COMPANY WHILE THE POLICY IS IN FORCE. PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THE COVERAGE THEREUNDER WITH YOUR INSURANCE AGENT OR BROKER.

THIRD PARTY ADMINISTRATORS PROFESSIONAL LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, and in reliance upon the statements in the application and Declarations attached hereto and made a part hereof, and subject to the limits of liability stated in Item 3 of the Declarations and the terms and conditions contained herein, American International Specialty Lines Insurance Company agrees as follows:

I. INSURING AGREEMENTS

A. PROFESSIONAL LIABILITY

To pay on behalf of the **Insured** all sums the **Insured** shall become legally obligated to pay as damages resulting from any **claim** or **claims** first made against the **Insured** and reported in writing to the Company during the **policy period** or during the extended reporting period (if applicable) for any **wrongful act** of the **Insured** or of any other person for whose actions the **Insured** is legally responsible, but only if such **wrongful act** occurs on or after the **retroactive date** and before the end of the **policy period** and solely in the performance of **professional services** for others for compensation.

B. DEFENSE EXPENSES

With respect to any **wrongful act** for which insurance is afforded by this policy, the Company shall, as part of and subject to the applicable limit of liability, have the right and duty to defend any **claim** against the **Insured** alleging such **wrongful act** and seeking damages which are payable under the terms of this policy, even if any of the allegations of the **claim** are groundless, false or fraudulent. The Company may make such investigation and, with the written consent of the **Insured**, such settlement of any **claim** as it deems expedient. If the **Insured** refuses to consent to any settlement recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter at his own expense negotiate or defend such **claim** independently of the Company and the Company's liability shall not exceed the amount for which the **claim** could have been settled if such recommendation was consented to plus **defense expense** incurred up to the date of such refusal to consent.

The Company will pay, as part of and subject to the applicable limit of liability:

1. all expenses incurred by the Company in any **claim** defended by the Company, all costs taxed against the **Insured** in any such **claim** and all interest on the entire amount of any judgment against the **Insured** which does not exceed the Company's limit of liability and which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability thereon;
2. premiums on appeal bonds, and bonds to release attachments, in penal amounts which do not exceed the Company's limit of liability and are required in any **claim** defended by the Company, but without any obligation to appeal or to apply for or furnish such bonds;

3. reasonable expenses, other than loss of earnings, incurred by the **Insured** at the Company's request.

The Company shall not be obligated to pay any judgments or settlements or to undertake or continue the defense of any **claim** after the applicable limit of the Company's liability has been exhausted by payment of judgments, settlements or **defense expense**.

II. DEFINITIONS

- A. **Bodily injury** means physical injury, sickness or disease sustained by any person, including mental anguish, emotional distress or death resulting therefrom at any time.
- B. **Claim** means (1) any adjudicatory proceeding commenced against the **Insured** seeking money damages in which the **Insured** may be subjected to a binding adjudication of liability for such damages, or (2) receipt by the **Insured** of a written threat from an attorney at law to commence such an adjudicatory proceeding.
- C. **Committee person(s)** means any individual(s) formally authorized by an **Insured** to conduct **utilization review**, and including any alternate serving in place of such individual in his absence.
- D. **Contingent medical malpractice** means a **Wrongful Act** in referring a covered person of a client company to a health care provider or in restricting, denying or terminating medical or hospitalization benefits to a covered person of a client company.
- E. **Credentialing** means the verification of a health care provider's credentials.
- F. **Defense expense** means the items set forth in Insuring Agreement B., paragraphs 1 to 3.
- G. **Insured** means the **Named Insured** and any present or former employee, partner, officer, director or stockholder thereof solely while acting in his or her capacity as such. **Insured** includes the medical director or **committee person** appointed by the **Named Insured** to conduct **utilization review**, solely while acting in his or her capacity as such in the conduct of **utilization review**.
- H. **Named Insured** means the person or organization designated in Item 1 of the Declarations.
- I. **Peer review** means the assessment of the quality of services rendered by any person or organization acting as a health care provider.
- J. **Policy period** means the period commencing on the effective date shown in Item 2 of the Declarations and ending on the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this policy.
- K. **Professional services** means only the specific services designated in the Schedule of Professional Services annexed to this policy as Endorsement #1 and made a part hereof.
- L. **Retroactive date** means the date specified as such in Item 6 of the Declarations.
- M. **Subsidiary** means a corporation of which the **Named Insured** owns more than 50% of the voting stock.
- N. **Utilization review** means the review of the necessity, appropriateness, cost, type or utilization of health care services and **credentialing** of health care service providers.
- O. **Wrongful act** means any actual or alleged negligent act, error or omission.

III. EXCLUSIONS

This policy does not apply to any **claim**:

- A. arising out of any criminal, dishonest, malicious or fraudulent act or error or omission; or arising out of the **Insured's** gaining in fact any profit or advantage to which it is not legally entitled;
- B. arising out of a **wrongful act** committed with knowledge that it was a **wrongful act**;
- C. for:
 - (1) **bodily injury**, except if resulting from **contingent medical malpractice**; or,
 - (2) mental anguish or emotional distress sustained by any person unless caused by physical injury or physical sickness or physical disease or death resulting from **contingent medical malpractice**; or
 - (3) damage to or destruction of any tangible property, including loss of use thereof;
- D. arising out of defamation or violation of a right of privacy, except as such **claim** arises out of the unauthorized disclosure of medical information;
- E. arising out of unlawful discrimination on any basis, including but not limited to race, creed, religion, ethnic background, age, handicap, sex or sexual orientation except if such **claim** arises from **contingent medical malpractice**;
- F. for fines, penalties, punitive or exemplary or the multiplied portion of multiplied damages, non-pecuniary relief, or any matter which may be deemed uninsurable under the law pursuant to which this policy is construed;
- G. arising out of the failure to effect or maintain any insurance or bond;
- H.
 - 1) arising out of any dispute involving the **Insured's** fees, charges or commissions for any **professional service** rendered or required to be rendered by the **Insured**;
 - 2) arising out of the failure to meet any express warranty or guarantee of performance relating to the quality of **professional services** to be provided by the **Insured**;
 - 3) arising out of liability assumed by the **Insured** under any oral or written contract or agreement except where such liability would otherwise exist apart from such contract or agreement and which is otherwise covered by this policy;
- I. arising out of the breach of fiduciary duty, responsibility or obligation of the **Insured** in connection with any "employee pension benefit plan" and/or "employee welfare benefit plan" as those terms are defined in the Employee Retirement Income Security Act of 1974 (more commonly referred to as "ERISA") and its amendments, or any regulation or order issued pursuant thereto, or any similar provisions of any state or federal statutory law or common law; however, this exclusion shall apply to such plans only if they are established solely for the benefit of employees of:
 - 1) the **Named Insured** and/or
 - 2) any employer affiliated with the Named Insured through common majority ownership or control, and their beneficiaries;
- J. brought by or on behalf of any governmental, quasi-governmental or self-regulatory entity, whether directly or indirectly, and whether brought in its capacity as receiver, conservator, liquidator, security holder or assignee of the **Insured**, its security holders, its depositors or its creditors or in any other capacity and whether brought in its own name or in the name

of any other entity; however, this exclusion shall not apply to any **claim** by any such entity to enforce its rights as a client or customer of the **Insured**;

- K. arising out of the insolvency, receivership, bankruptcy, liquidation or financial inability to pay of the **Insured**, or any insurer, self-insurer, trust, insurance plan or other vehicle or instrumentality which provides services;
- L. (1) brought by one **Insured** against another **Insured**, or
(2) brought by or on behalf of any **Insured** or any business enterprise which is owned, managed or operated, directly or indirectly, in whole or in part by any **Insured**, or brought by or on behalf of:
 - (a) any parent, **subsidiary**, successor or assign of any **Insured** or such business enterprise, or
 - (b) anyone affiliated with any **Insured** or such business enterprise through common majority ownership or control,against any **Insured**;
- M. for premium, return premiums, commissions, brokerage fees or tax monies, or arising out of any commingling, deposit or investment of funds, or failure of any investment(s) to perform as expected or desired;
- N. arising out of any actuarial act, error, omission or assumption;
- O. arising out of **peer review**;
- P. arising out of any obligation for which the **Insured** or any carrier as its insurer may be held liable under any workers compensation, unemployment compensation or disability benefits law or under any similar law;
- Q. arising out of unauthorized access to or malfunction of the **Insured's** electronic data processing system;
- R. arising out of any obligation assumed by the **Insured** as an insurer, self-insurer or reinsurer;
- S. brought by subrogation, assignment or otherwise, by or on behalf of or in the right of any other insurer providing hospital or surgical or medical or similar or related first party benefits coverage to any client of the **Insured**, to recoup all or a portion of any amounts paid by such insurer;
- T. arising out of a **wrongful act** which any **Insured**, prior to the effective date of this **policy period**, knew or could reasonably foresee would give rise to a **claim**;
- U. arising out of the same or related **wrongful act** alleged in any **claim**, or in any notice of circumstances which might give rise to a **claim**, which has been reported under any policy of which this is a renewal or replacement or which it succeeds in time;
- V. arising out of:
 - (1) the actual, alleged or threatened discharge, dispersal, release or escape of pollutants; or

(2) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants;

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes but is not limited to medical waste, and materials to be recycled, reconditioned or reclaimed.

IV. LIMITS OF LIABILITY

- A. Regardless of the number of **Insureds, claims**, or claimants, the limit of liability stated in Item 3 of the Declarations as applicable to "each **wrongful act** or series of continuous, repeated or interrelated **wrongful acts**" is the total liability of the Company for all amounts payable hereunder in satisfaction of judgments, settlements and **defense expense** arising out of the same **wrongful act** or series of continuous, repeated or interrelated **wrongful acts**. If additional **claims** are subsequently made which arise out of the same **wrongful act** or series of continuous, repeated or interrelated **wrongful acts** as a **claim** already made and reported to the Company, all such **claims** whenever reported shall be considered first made within the **policy period** or the extended reporting period (if applicable) in which the earliest **claim** arising out of such **wrongful act** or series of continuous, repeated or interrelated **wrongful acts** was first made and reported to the Company and all such **claims** shall be subject to one such limit of liability.
- B. Regardless of the number of **Insureds, claims** or claimants, the total liability of the Company for all amounts payable hereunder in satisfaction of judgments, settlements and **defense expense** shall not exceed the limit of liability stated in Item 3 of the Declarations as "aggregate". The aggregate limit of liability for the extended reporting period shall be part of, and not in addition to, the aggregate limit of liability for the **policy period**.
- C. **Defense expense** paid by the Company, as well as amounts paid by the Company in satisfaction of judgments and settlements, are subject to the applicable limit of liability.
- D. If two or more policies of professional liability insurance issued by the Company or any other member company of American International Group, Inc. covering any **Insured(s)**, as defined in this policy, apply to any **claim** or **claims** in connection with the same, continuous repeated or interrelated **wrongful act(s)** for which the **Insured(s)** is (are) jointly or severally liable, the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability under this policy bears to the total of the applicable limits of liability under all such applicable policies; however, the total amount payable under all such policies shall not exceed the highest applicable limit of liability under any one policy.

V. DEDUCTIBLE

The Company shall only be liable for those amounts payable hereunder in satisfaction of judgments, settlements and **defense expense** which are in excess of the deductible stated in Item 4 of the Declarations. The deductible shall apply to each **claim** and shall be borne by the **Insured** and remain uninsured. For purposes of the deductible, **claims** arising out of the same **wrongful act** or out of a series of continuous, repeated or interrelated **wrongful acts** shall be considered as arising out of one **wrongful act**, and only one deductible amount shall apply thereto.

VI. EXTENDED REPORTING PERIOD

- A. If the Company cancels this policy for any reason other than non-payment of premium or refuses to renew it, or if the **Insured** cancels or refuses to renew this policy, the **Insured** shall have the right to an extended reporting period in which to give written notice to the Company of **claims** first made against the **Insured** during such extended reporting period for any **wrongful act** occurring on or after the **retroactive date** and before the end of the **policy period** and otherwise covered by this policy.

- B. (1) If the **Named Insured** has not purchased any other insurance to replace this insurance and which applies to a **claim** otherwise covered hereunder, the extended reporting period shall be sixty (60) days from the effective date of cancellation or nonrenewal. The Company may not cancel this Extended Reporting Period and no premium is payable for it; or
- (2) If the **Named Insured** makes a written request to the Company and pays the additional premium for an Extended Reporting Period Endorsement within thirty (30) days after the end of the **policy period**, the extended reporting period will be twelve (12) months from the effective date of cancellation or nonrenewal. The additional premium shall be 75% of the whole annual premium for this policy, and shall be fully earned upon the effective date of the Endorsement. The Extended Reporting Period Endorsement may not be canceled.

VII. CONDITIONS

1. POLICY TERRITORY

This policy applies to **wrongful acts** occurring in the United States of America, its territories or possessions or Canada, but only if **claim** is made and brought in the United States of America, its territories or possessions, or Canada.

2. NOTICE OF CLAIM

The **Insured** shall, as a condition precedent to the availability of the rights provided under this policy, give written notice to the Company or any of its authorized agents as soon as practicable during the **policy period**, or during the extended reporting period (if applicable), of any **claim** made against the **Insured**.

If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

3. SPECIAL REPORTING CLAUSE

If during the **policy period** or during the extended reporting period (if applicable) the **Insured** shall become aware of circumstances which may reasonably be expected to give rise to a **claim** against the **Insured** for a **wrongful act** which took place on or after the **retroactive date** and prior to the end of the **policy period**, and the **Insured** gives written notice to the Company during the **policy period** or the extended reporting period (if applicable) of the nature and specifics of the possible **wrongful act**, any **claim** which is subsequently made against the **Insured** arising out of such **wrongful act** shall be considered as a **claim** made during the **policy period** or during the extended reporting period (if applicable) in effect when such written notice was given to the Company.

If mailed, the date of mailing of such notice shall constitute the date that such notice was given and proof of mailing shall be sufficient proof of notice.

4. METHOD OF NOTICE

Notice of **claim** or circumstances which may reasonably be expected to give rise to a **claim** hereunder shall be given in writing to Michael Mitrovic, Esq., Attorney at Law, P.O. Box 2603, Jersey City, N.J. 07303.

5. ASSISTANCE AND COOPERATION OF THE INSURED

The **Insured** shall cooperate with the Company and, upon the Company's request, assist in making settlements, in the conduct of suits or proceedings, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured**. The **Insured** shall attend hearings, trials and depositions and shall assist in securing and giving evidence and obtaining the attendance of witnesses. The **Insured** shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

6. OTHER INSURANCE

Such insurance as is provided by this policy shall apply only as excess over any other valid and collectible insurance.

7. ACTION AGAINST COMPANY

No action shall lie against the Company unless as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. No person or organization shall have any right under this policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability nor shall the Company be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Company of any obligation hereunder.

8. SUBROGATION

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

9. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

10. CANCELLATION

This policy may be canceled by the **Named Insured** by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the Company by mailing to the **Named Insured** at the address shown in this policy written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. However, if the Company cancels this policy because the **Named Insured** has failed to pay a premium when due, this policy may be canceled by the Company by mailing a written notice of cancellation to the **Named Insured** at the address shown in this policy stating when, not less than 10 days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. If the period of limitation for the giving of such notice by the Company is longer under controlling law, then the number of days of notice stated above is deemed to be amended to comply with the minimum requirements of such law.

The time of the surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **policy period**. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. If the **Named Insured** cancels, earned premium shall be computed in accordance with the customary short rate table and procedure; however, a minimum of 25% of the annual premium stated in the Declarations shall be deemed fully earned on the inception date of this policy. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

11. SOLE AGENT

The **Named Insured** first named in Item 1 of the Declarations shall act on behalf of all the **Insureds** with respect to giving and receiving notice of cancellation, payment of premiums and the receipt of any return premiums that may become due under this policy, the acceptance of any endorsement issued to form a part of this policy, and exercising or declining to exercise any right to an extended reporting period.

12. DECLARATIONS AND APPLICATION

By acceptance of this policy the **Named Insured** agrees that the statements in the Declarations and the application are its representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between itself and the Company, or any of its agents, relating to this insurance.

13. ASSIGNMENT

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon; however, subject otherwise to the terms hereof, this policy shall cover the estate, heirs or legal representatives of the **Insured** in the event of the **Insured's** death, bankruptcy, insolvency or being adjudged incompetent.

14. CHOICE OF LAW AND FORUM

In the event that the **Insured** and the Company dispute the validity, formation of this Policy or the meaning, interpretation or operation of any term, condition, definition or provision of this Policy resulting in litigation, arbitration or other form of dispute resolution, the **Insured** and the Company agree that the law of the State of New York shall apply and that all litigation, arbitration or other form of dispute resolution shall take place in the State of New York.

Arbitration:

- (1) Any disputes or differences which the **Insured** and the Company agree to resolve through arbitration shall be submitted to the decision of two arbitrators, one to be chosen by each party, and in the event of the arbitrators failing to agree, to the decision of any umpire to be chosen by the arbitrators. The arbitrators and umpire shall be disinterested, active or retired executive officials of or casualty insurance or reinsurance companies or Underwriters at Lloyd's of London. If either of the parties fails to appoint an arbitrator within one month after being requested by the other party in writing to do so, or if the arbitrators fail to appoint an umpire within one month of a request in writing by either of them to do so, such arbitrator or umpire, as the case may be, shall at the request of either party be appointed by a Justice of the Supreme Court of the State of New York.

- (2) The arbitration proceeding shall take place in New York, New York. The Applicant shall submit its case within one month after the appointment of the court of arbitration, and the respondent shall submit its reply within one month after the receipt of the claim. The arbitrators and the umpire are relieved from all judicial formality and may abstain from following the strict rules of law. They shall settle any dispute under the Policy according to an equitable rather than a strictly legal interpretation of its terms.
- (3) Their written decision shall be provided to both parties and shall be final and not subject to appeal.
- (4) Each party shall bear the expenses of his arbitrator and shall jointly and equally share with the other expenses of the umpire and of the arbitration.

This article shall survive the termination of the Policy.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and a Secretary and signed on the Declarations page by a duly authorized representative of the Company.

SECRETARY

PRESIDENT

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