



Chubb Group of Insurance Companies
 15 Mountain View Road, Warren, New Jersey 07059

**REPRESENTATIONS AND
 WARRANTIES INSURANCE
 POLICY**

Executive Risk Indemnity Inc.
 Home Office: 1013 Centre Road
 Wilmington, Delaware 19805-1297
 Mailing Address: 82 Hopmeadow Street
 Simsbury, Connecticut 06070-7683

DECLARATIONS
REPRESENTATIONS AND WARRANTIES INSURANCE POLICY
 Policy Number:

SELLER'S COVERAGE IS WRITTEN AS CLAIMS-MADE COVERAGE AND APPLIES ONLY TO CLAIMS FIRST MADE AND REPORTED DURING THE POLICY PERIOD. BUYER'S COVERAGE APPLIES TO LOSS FIRST DISCOVERED AND REPORTED DURING THE POLICY PERIOD, AND TO CLAIMS FIRST MADE AND REPORTED DURING THE POLICY PERIOD.

THE LIMIT OF LIABILITY WILL BE REDUCED AND MAY BE EXHAUSTED BY DEFENSE COSTS, AND DEFENSE COSTS WILL BE APPLIED AGAINST THE DEDUCTIBLE.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

ITEM 1. Named Insured:
ITEM 2. Principal Address of the Named Insured:
ITEM 3. Additional Insureds (if None, so indicate):
ITEM 4. The Named Insured is (check one only): <input type="checkbox"/> the Maker of the Insured Representations and Warranties (Insuring Agreement A is applicable) <input type="checkbox"/> the Addressee of the Insured Representations and Warranties (Insuring Agreement B is applicable)
ITEM 5. Policy Dates: (a) Inception Date: 12:01 a.m. on (b) Expiration Date: 12:01 a.m. on Local time at the address shown in ITEM 2.
ITEM 6. Limit of Liability: \$ _____ aggregate Limit of Liability for the entire Policy Period
ITEM 7. Deductible: \$ _____ aggregate Deductible for the entire Policy Period
ITEM 8. Agreement:
ITEM 9. Insured Representations and Warranties: The representations and warranties expressly made in the following provisions of the Agreement , and no other express or implied representations or warranties, are Insured Representations and Warranties for purposes of this policy:
ITEM 10. Endorsements Effective at Inception:

EXECUTIVE RISK INDEMNITY INC.	
By:	
Authorized Signature:	Date:



Words and phrases that appear in **bold** print have special meanings, and this contract provides a definition for each such word or phrase.

Throughout this contract the words "you" and "your" refer to the Named Insured identified in ITEM 1 of the Declarations and any Additional Insureds identified in ITEM 3 of the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance.

In consideration of payment of the premium and subject to the Declarations, limitations, conditions, provisions and other terms of this policy, Executive Risk Indemnity Inc. (the "Company"), the Named Insured identified in ITEM 1 of the Declarations, and any Additional Insureds identified in ITEM 3 of the Declarations agree as follows:

I.
INSURING
AGREEMENT A:
Seller's Coverage

If you are identified in ITEM 4 of the Declarations as the Maker of the **Insured Representations and Warranties**, we will pay on your behalf all **Loss** you incur that results from a **Claim** first made against you during the **Policy Period**. For the purpose of this Insuring Agreement A, a **Claim** is deemed first made against you on the earlier of (i) the date on which you receive a written demand for indemnification based on an alleged **Misstatement** in the **Insured Representations and Warranties**, or (ii) the date on which you receive notice of the filing of a complaint or similar document seeking to enforce against you an indemnity obligation under the **Agreement** based on an alleged **Misstatement** in the **Insured Representations and Warranties**.

Applicable Definitions

When used with respect to insurance under Insuring Agreement A:

- (A) **"Claim"** means a written demand that you provide indemnification under the **Agreement** based on an alleged **Misstatement** in the **Insured Representations and Warranties**, or a civil action or arbitration proceeding seeking to enforce against you an indemnity obligation under the **Agreement** based on an alleged **Misstatement** in the **Insured Representations and Warranties**.
- (B) **"Defense Costs"** means reasonable attorney fees and expenses that you incur in the defense or appeal of a **Claim**. **Defense Costs** does not include any wages, salaries, fees or expenses payable to you or your directors, officers or employees, nor does it include any overhead or benefit expenses that you incur in connection with the defense or appeal of a **Claim**.
- (C) **"Loss"** means **Defense Costs**, damages that you are ordered to pay by a court or an arbitrator as a result of a **Claim**, and amounts that you undertake to pay in settlement of a **Claim** (provided that such amounts are set forth in a settlement agreement negotiated and executed with our prior approval). **Loss** does not include:
 - 1) any amount that the **Agreement** does not obligate you to pay or that some other person, entity or organization has agreed, or is required, to pay on your behalf. However, if your liability for an amount that would otherwise constitute covered **Loss** has been transferred under a deductible or "basket" arrangement set forth in the **Agreement**, that amount (to the extent that it would have been a covered **Loss** but for such transfer of liability) will be counted toward satisfaction of the Deductible under this policy, provided that (i) the **Agreement** entitles you to receive prompt notice concerning any alleged liability that could reduce or deplete the "basket," (ii) you did in fact receive prompt notice concerning your alleged liability for the amount you seek to apply toward satisfaction of the Deductible under this policy, and (iii) when notified of your alleged liability for such amount you complied with all requirements in Sections VI.A and VI.B of this policy;

- 2) any amount that you are, were, or could have been required to repay or to forgo under a price adjustment provision in the **Agreement** (whether such adjustment provision is associated with a post-closing net worth calculation, with other balance sheet items, or with any other factors, and irrespective of how the price adjustment provision may be labeled or denominated);
- 3) any costs that you incur to comply with a judicial or arbitral order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
- 4) any amounts that you undertake or are ordered to pay based on matters that are not insurable under the law governing the construction of this policy; or
- 5) fines or penalties imposed by law, or the multiplied portion of any multiplied damage award. With respect to punitive or exemplary damages other than fines, penalties, and the multiplied portion of multiplied damage awards, such punitive or exemplary damages imposed against you in a **Claim** constitute **Loss** if they are insurable under the law applicable to this coverage. For the purpose of resolving any dispute between you and us concerning whether such punitive or exemplary damages are insurable, the law of the jurisdiction most favorable to insurability will apply, but only if that jurisdiction is one in which (i) the damages were awarded or imposed or (ii) you are incorporated or have your principal place of business or (iii) we are incorporated or have our principal place of business.

II.
INSURING
AGREEMENT B:
Buyer's Coverage

If you are identified in ITEM 4 of the Declarations as the Addressee of the **Insured Representations and Warranties**, and if you discover a **Misstatement** in the **Insured Representations and Warranties**, we will pay you the **Value Discrepancy** directly and specifically attributable to that **Misstatement**, provided that (i) you discovered the **Misstatement** only after consummating the transaction contemplated in the **Agreement**, (ii) you discovered the **Misstatement** during the **Policy Period**, (iii) you gave us written notice of your discovery of the **Misstatement** as soon as practicable, (iv) we received such written notice within thirty days after you first became aware of the **Misstatement**, and (v) we received such written notice during the **Policy Period**.

Applicable Definitions

When used with respect to insurance under Insuring Agreement B:

(A) **"Third Party Proceeding"** means a civil action or arbitration proceeding that is instituted against you (after the consummation of the transaction contemplated in the **Agreement**) by a non-party to the **Agreement**, where:

- (i) the commencement of the action or proceeding, or
- (ii) allegations made against you in the action or proceeding

cause you reasonably to conclude that a **Misstatement** exists in the **Insured Representations and Warranties**.

(B) **"Value Discrepancy"** means the difference between (i) what the consideration received by you under the **Agreement** would have been worth, as of the date on which the **Agreement** was fully executed, if the **Insured Representations and Warranties** pertaining to that consideration had been accurate, and (ii) what the consideration received by you under the **Agreement** was actually worth as of that date. If your conclusion that a **Misstatement** exists in the **Insured Representations and Warranties** is based on the commencement of a **Third Party Proceeding** (or on allegations made against you in such **Third Party Proceeding**), the **Value Discrepancy** attributable to any such **Misstatement** will be determined in accordance with Section VII.F of this policy. **Value Discrepancy** does not include:

- 1) any amount for which the **Agreement** does not require another person, entity or organization to indemnify or otherwise compensate you (except to the extent of the value, as of the date we make payment under this policy, of cash or readily marketable securities that were placed and that remain in an escrow account established under the **Agreement** to compensate you for **Misstatements** in the **Insured Representations and Warranties**); or
- 2) any amount that you (or any other party to the **Agreement**) are, were, or could have been required to repay or to forgo under a price adjustment provision in the **Agreement** (whether such adjustment provision is associated with a post-closing net worth calculation, with other balance sheet items, or with any other factors, and irrespective of how the price adjustment provision may be labeled or denominated).

III.
DEFINITIONS
APPLICABLE TO
BOTH INSURING
AGREEMENTS

When used with respect to insurance under this contract:

- (A) **"Agreement"** means the agreement identified in ITEM 8 of the Declarations.
- (B) **"Application"** means the written Application for this insurance and any materials submitted in connection with such Application. Such Application and all such materials shall be considered as incorporated in and constituting part of this policy as if physically attached.
- (C) **"Insured Representations and Warranties"** means the representations and warranties that are so designated in ITEM 9 of the Declarations.
- (D) **"Misstatement"** means a misstatement, error, or misleading statement. In determining whether there is a **Misstatement** in the **Insured Representations and Warranties**, the following principles shall apply: (i) if the representation or warranty in question recites that certain facts or circumstances are "materially" as represented, a **Misstatement** exists only if the relevant facts or circumstances were not materially as represented when the representation was made; (ii) if the representation or warranty in question recites that the maker does not know, or is not aware, of the existence of certain facts or circumstances, a **Misstatement** exists only if the maker did in fact have such knowledge or awareness when the representation was made; (iii) if the representation or warranty in question recites that certain facts or circumstances will not have or lead to a "material adverse effect," a **Misstatement** exists only if the relevant facts or circumstances have in fact had or led to such a material adverse effect; and (iv) the text of the **Insured Representations and Warranties**, including "materiality," "knowledge," and similar qualifiers, will control in determining whether a **Misstatement** exists for purposes of this policy, notwithstanding any provision of the **Agreement** that (as between or among the parties to the **Agreement**) might render the **Insured Representations and Warranties** actionable without regard to such materiality, knowledge or similar qualifiers.
- (E) **"Policy Period"** means the period from the Inception Date set forth in ITEM 5(a) of the Declarations to the earlier of (i) the Expiration Date set forth in ITEM 5(b) of the Declarations and (ii) the date on which this policy terminates pursuant to the "Policy Termination" provision in Section V.B of the policy.

- (F) **"Pollutants"** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or listed on a list of hazardous substances issued by, the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. Such substances shall include, without limitation, solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapor, soot, fumes, acids, alkalis, chemicals, nuclear or radioactive substances, or waste materials (including but not limited to materials which are intended to be or have been disposed of, recycled, reconditioned or reclaimed). **Pollutants** shall also mean any other air emission, odor, waste water, oil or oil products, infectious or medical waste, asbestos or asbestos products and any noise.

IV.

EXCLUSIONS APPLICABLE TO BOTH INSURING AGREEMENTS

We will not pay any **Loss** or **Value Discrepancy**:

Known Misstatements

- (A) based on, directly or indirectly arising out of, resulting from, or in consequence of any **Misstatement** in the **Insured Representations and Warranties** that was known to you either (i) as of the Inception Date set forth in ITEM 5(a) of the Declarations or (ii) as of the date on which the transaction contemplated in the **Agreement** was consummated. For the purpose of determining the applicability of this Exclusion (A):
- 1) If you are a natural person, no knowledge or information possessed by any other natural person will be imputed to you; and
 - 2) If you are not a natural person, the knowledge and information possessed by any individual who is or has been your chief financial officer, in-house general counsel, chief executive officer, President or Chairman will be imputed to you.

Bodily Injury, Property Damage, Etc.

- (B) for bodily injury, mental or emotional distress, sickness, disease or death of any person, defamation or invasion of privacy, or damage to or destruction of any tangible property (including loss of use thereof).

Pollution

- (C) based on, directly or indirectly arising out of, resulting from, or in consequence of (i) any actual, alleged or threatened discharge, release, escape, dispersal or disposal of **Pollutants** into or on real or personal property, water or the atmosphere, or (ii) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.

Fraud

- (D) based on, directly or indirectly arising out of, resulting from, or in consequence of any deliberately fraudulent act or omission or any willful violation of any statute or regulation committed alone or in collusion with others by you, by any of your partners, directors, trustees, officers, members, managers, or employees, by anyone performing acts coming within the scope of the usual duties of your employees, or by anyone authorized to act for you. However, this Exclusion (D) will not apply to any **Claim** for which coverage is sought under Insuring Agreement A unless it is established in fact that such **Claim** was brought about or contributed to by such deliberately fraudulent act or omission or willful violation of statute or regulation.

V.
CONDITIONS
APPLICABLE TO
BOTH INSURING
AGREEMENTS

- Territory* (A) This insurance applies anywhere in the world.
- Policy Termination* (B) We may cancel this policy only for failure to pay a premium when due. This policy is not renewable. This policy shall terminate at the earliest of the following times:
- 1) ten (10) days after your receipt of a written notice of cancellation from us for failure to pay a premium when due;
 - 2) at the Expiration Date set forth in ITEM 5(b) of the Declarations; or
 - 3) at such other time as you and we may agree upon in writing.
- The premium is fully earned as of the Inception Date set forth in ITEM 5(a) of the Declarations.
- Entire Agreement* (C) You agree that this policy, including any endorsements and the **Application**, constitutes the entire agreement between you and us (or any of our agents) relating to the insurance provided hereby.
- Representations and Statements; Severability* (D) We have issued this insurance specifically in reliance on the statements, representations and information in the **Application**, including your certification in the **Application** that all such statements, representations and information are true, accurate and complete. You acknowledge and agree that you made or provided such statements, representations and information in order to induce us to issue this policy and that all such statements, representations and information are material to our acceptance of this risk. The **Application** is hereby incorporated by reference and made a part of this policy.
- The **Application** will be construed as a separate application for coverage by the Named Insured and by each Additional Insured. In the event that any of the particulars and statements in the **Application** are untrue, this policy will be void with respect to the Named Insured, and this policy will also be void with respect to any Additional Insured who knew of such untruth or to whom such knowledge is imputed. For the purpose of applying this Section V.D, knowledge of all facts and information known to any person who signed the **Application** will be imputed to the Named Insured and to all Additional Insureds. Except as provided in the preceding sentence, for the purpose of applying this Section V.D, (i) knowledge of facts or information known to the Named Insured will not be imputed to any Additional Insured and (ii) knowledge of facts or information known to one Additional Insured will not be imputed to any other Additional Insured.
- Full Compliance* (E) We have no duty to provide coverage under this policy unless there has been full compliance with all of the terms and conditions of the policy. In addition, no person, entity or organization may commence legal action against us to recover under this policy unless, as a condition precedent to the commencement of such action, there has been full compliance with all of the terms and conditions of the policy.
- Bankruptcy* (F) Your bankruptcy or insolvency, or bankruptcy or insolvency of your estate, will neither relieve us of our obligations nor deprive us of our rights under this policy.

- Duty and Authority of Named Insured* (G) The Named Insured identified in ITEM 1 of the Declarations is considered the sole agent for all insured persons, entities and organizations under this policy, including the Additional Insureds identified in ITEM 3 of the Declarations, for giving and receiving notices (including notice of cancellation), payment of premiums, and negotiation of, agreement to and acceptance of endorsements. The Named Insured agrees to act on behalf of the Additional Insureds with respect to all such matters, and the Additional Insureds agree that the Named Insured is authorized to do so.
- Policy Changes; Assignment of Interest* (H) No change in, modification of, or assignment of interest under this policy shall be effective except when made by a written endorsement to the policy signed by an authorized representative of the Company.
- Subrogation* (I) If we make a payment under this policy we will be subrogated, to the extent of that payment, to any rights of recovery that you may have against others. You must execute all papers and do everything that may be necessary to secure and preserve such rights, including execution of any documents necessary to enable us to effectively pursue and enforce those rights and to bring suit in your name.
- Notice* (J) Notice to the Company under this policy shall be given in writing addressed to:
- Claims Vice President
Chubb Executive Risk
82 Hopmeadow Street
Simsbury, Connecticut 06070
- Such notice shall be effective on the date of receipt by the Company at such address.
- Headings* (K) The descriptions in the headings and sub-headings of this policy are solely for convenience, and form no part of the terms and conditions of coverage.

VI.
CONDITIONS
APPLICABLE TO
INSURING
AGREEMENT A

THE CONDITIONS IN THIS SECTION VI, IN ADDITION TO THOSE IN SECTION V, APPLY TO INSURING AGREEMENT A.

- Limit of Liability and Deductible* (A) Regardless of the number of persons, entities or organizations covered under this policy, the number of persons, entities or organizations making **Claims**, or the number of **Claims** made, the Limit of Liability set forth in ITEM 6 of the Declarations is the most we will pay, in the aggregate, for all **Loss** (including **Defense Costs**) under this policy.
- Our obligation to make payments under this policy is subject to the Deductible amount shown in ITEM 7 of the Declarations. The Deductible is only required to be satisfied once during the **Policy Period**. The Deductible is satisfied only by **Loss** that would otherwise be covered under the policy. If you intend for us to apply **Loss** from a **Claim** toward satisfaction of the Deductible, you are required to give us written notice of the existence of that **Claim** as soon as practicable after you first become aware of the **Claim**.
- Reporting and Notice* (B) As a condition precedent to exercising any right to coverage under this policy, when a **Claim** is made against you, you must notify us in writing as soon as practicable of the specifics of the **Claim**, the date on which you first became aware of the **Claim**, and the manner in which you first became aware of the **Claim**. Notice shall be sent to the address shown in Section V.J of this policy and shall be effective on the date of receipt by the Company at such address.

*Defense and Settlement;
Assistance and
Cooperation*

- (C) You will have the right and duty to defend **Claims** and to retain qualified counsel of your choosing to represent you in the defense or appeal of **Claims**, but you must not incur any **Defense Costs** in defending or appealing any **Claim** without first obtaining our written consent. In addition, unless you have first obtained our written consent you must not settle a **Claim**, assume any obligation in connection with a **Claim**, or admit any liability with respect to a **Claim**. We will not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which we have not given our prior written consent. Our consent to the foregoing matters will not be unreasonably withheld.

We have the right, and you must afford us the opportunity, to effectively associate with you in the investigation, defense, and settlement of any **Claim** that appears reasonably likely to result in **Loss** covered in whole or in part under this policy. Our right to effectively associate in the settlement process includes, but is not limited to, a right to participate in any settlement negotiations.

As a condition precedent to exercising any right to coverage under this policy, you must provide us with all information, assistance and cooperation that we reasonably request. If a **Claim** is made you must do nothing that could prejudice our position or our potential or actual rights of recovery against any other person, entity or organization.

We may make any investigation we deem necessary and we may, with your written consent, make any settlement of a **Claim** that we deem appropriate. If you withhold your consent to settlement of a **Claim**, our liability for all **Loss** on account of that **Claim** will not exceed the amount for which we could have settled the **Claim** plus the **Defense Costs** (if any) that had already accrued as of the date the settlement was proposed to you in writing.

Defense Costs are part of, and not in addition to, the Limit of Liability set forth in the Declarations. Therefore, the Limit of Liability is reduced by the amount of any **Defense Costs** that we pay.

*Claims Involving Both
Covered and Non-
Covered Matters*

- (D) If a **Claim** against you is based both on matters that are not covered under this policy and on matters that are covered, we will only pay **Loss** that arises from the covered matters.

*Loss Incurred by Certain
Co-Defendants*

- (E) If a **Claim** against you is a civil action or an arbitration proceeding, we will pay **Loss** resulting from that **Claim** incurred by your directors, officers and employees who are named along with you as co-defendants in such civil action or arbitration proceeding, but only if such director, officer or employee is named and maintained as a co-defendant in such civil action or arbitration proceeding based on his or her alleged responsibility for a **Misstatement** in the **Insured Representations and Warranties**. We will not pay any **Loss** under this Section VI.E that does not arise from an individual's responsibility or alleged responsibility for a **Misstatement** in the **Insured Representations and Warranties**.

Nothing in this Section VI.E shall cause any person to become a party to this insurance contract, and nothing in this Section VI.E shall cause any person who is not a party to this insurance contract to acquire any rights enforceable against us. Amounts payable under this Section VI.E are included within the Limit of Liability set forth in the Declarations, and any payments we make under this Section VI.E will reduce the Limit of Liability available to pay **Loss** incurred by you.

*Spouses of Insured
Persons*

- (F) If you are a natural person, and if your lawful spouse is named as a co-defendant along with you in a civil action or arbitration proceeding that is a **Claim** under this policy, we will pay **Loss** resulting from that **Claim** incurred by your spouse, but only if:

- 1) your spouse is named and maintained as a co-defendant in such civil action or arbitration proceeding solely by reason of his or her status as your spouse, and not by reason of any alleged responsibility of your spouse for a **Misstatement** in the **Insured Representations and Warranties**; and
- 2) you and your spouse are represented by the same counsel in connection with such **Claim**.

Nothing in this Section VI.F shall cause your spouse to become a party to this insurance contract or otherwise to acquire any rights enforceable against us. Amounts payable under this Section VI.F are included within the Limit of Liability set forth in the Declarations, and any payments we make under this Section VI.F will reduce the Limit of Liability available to pay **Loss** incurred by you.

Legal Action Against Us

- (G) No person, entity or organization has a right under this policy to join us as a party to a legal action seeking to determine your liability in connection with a **Claim**; nor do you or your legal representative have a right to implead us in any such action.

Dispute Resolution

- (H) Any coverage dispute or other controversy between you and us that arises in connection with, or that relates to, this policy will be resolved as follows:

The parties will first endeavor to resolve the dispute by non-binding mediation under such rules and procedures, and using such mediator, as the parties may agree. If the parties do not otherwise agree, the mediation will be administered by the American Arbitration Association under its commercial mediation rules.

If the parties cannot resolve the dispute by non-binding mediation, the dispute will be referred to a panel of three arbitrators for final and binding arbitration under the commercial arbitration rules of the American Arbitration Association. In any arbitration proceeding commenced under this Section VI.H, we will select one arbitrator, you will select one arbitrator, and the two arbitrators so selected will select the third arbitrator. You and we may agree in writing to utilize a different arbitral tribunal or to proceed under a different set of arbitration rules. In any event, however, the award issued by the arbitrator or arbitrators in a proceeding under this Section VI.H will be final and binding, will be enforceable in any court of competent jurisdiction, and will not be subject to judicial review.

Primary Coverage

- (I) If **Loss** covered under Insuring Agreement A is also covered under another insurance policy or policies, the coverage available under Insuring Agreement A is primary.

Loss Denominated in non-U.S. Currency

- (J) All amounts shown in the Declarations are expressed in United States dollars. If a damage award or settlement amount constituting **Loss** is denominated in a currency other than United States dollars, we will make payment of such **Loss** in United States dollars after converting from the currency of denomination at the exchange rate published in *The Wall Street Journal* on the date of entry of the judgment awarding the damages or the date on which the settlement agreement is fully executed.

VII.

CONDITIONS APPLICABLE TO INSURING AGREEMENT B

THE CONDITIONS IN THIS SECTION VII, IN ADDITION TO THOSE IN SECTION V, APPLY TO INSURING AGREEMENT B.

Limit of Liability and Deductible

- (A) Regardless of the number of persons, entities or organizations covered under this policy or the number of **Misstatements** that may exist among the **Insured Representations and Warranties**, the Limit of Liability set forth in ITEM 6 of the Declarations is the most we will pay, in the aggregate, as **Value Discrepancy** under this policy.

Our obligation to make payments under this policy is subject to the Deductible amount shown in ITEM 7 of the Declarations. The Deductible is only required to be satisfied once during the **Policy Period**. The Deductible is satisfied only by **Value Discrepancy** that would otherwise be covered under the policy. If you intend for us to apply **Value Discrepancy** toward satisfaction of the Deductible, you must notify us in writing as soon as practicable after you become aware of the **Misstatement** giving rise to such **Value Discrepancy**.

Notice of Misstatement

- (B) When you become aware of any **Misstatement** in the **Insured Representations and Warranties**, you must give us written notice as soon as practicable in order to preserve your right to seek coverage under Insuring Agreement B of this policy. We must receive such written notice within thirty days after you first become aware of the **Misstatement**, and we must receive such written notice during the **Policy Period**. This notice must summarize the factual basis for your conclusion that a **Misstatement** exists and must identify the particular **Insured Representations and Warranties** in which it appears. The notice must also report the date on which, and the manner in which, you first became aware of the **Misstatement**. Notice shall be sent to the address shown in Section V.J of this policy and shall be effective on the date of receipt by the Company at such address.

Detailed Statement by the Insured

- (C) Within thirty days after our receipt of the written notice described in Section VII.B, we must also receive from you (at the same address) a detailed statement, signed before a notary public, setting forth with particularity:
- 1) the basis for your conclusion that a **Misstatement** exists (including all facts and circumstances supporting that conclusion) and a description of that **Misstatement**; and
 - 2) your calculation of the **Value Discrepancy** directly and specifically attributable to the **Misstatement** you have identified.

Review by the Company

- (D) During the thirty-day period immediately following our receipt of the detailed statement described in Section VII.C, we will conduct such review and investigation as we deem necessary for the purpose of determining whether, and in what amount, coverage is available under this policy on account of the matters set forth in the statement. You must cooperate with and assist in our review by making available to us, upon request, relevant sources of information including documentary materials and access to individuals with knowledge of the matters described in the statement. The thirty-day review period may be extended if you and we agree in writing to extend it. At the end of the review period we will notify you in writing of our coverage determination or, alternatively, of our election to have your entitlement to coverage (and the amount of coverage to which you are entitled) determined through binding arbitration as described in Section VII.E.

Binding Arbitration

- (E) If we so elect, or if you disagree with a coverage determination we have made after the review described in Section VII.D, all unresolved issues concerning your entitlement to coverage under this policy and concerning the amount of coverage to which you are entitled will be referred to a panel of three arbitrators for final and binding arbitration under the commercial arbitration rules of the American Arbitration Association. In any arbitration proceeding commenced under this Section VII.E, you will select one arbitrator, we will select one arbitrator, and the two arbitrators so selected will select the third arbitrator. You and we may agree in writing to utilize a different arbitral tribunal or to proceed under a different set of arbitration rules. In any event, however, the award issued by the arbitrator or arbitrators in a proceeding under this Section VII.E will be final and binding, will be enforceable in any court of competent jurisdiction, and will not be subject to judicial review.

*Value Discrepancy
Associated with a Third
Party Proceeding*

- (F) If your conclusion that a **Misstatement** exists in the **Insured Representations and Warranties** is based on the commencement of a **Third Party Proceeding** (or on allegations made against you in such **Third Party Proceeding**), the provisions of Sections VII.C and VII.D shall not apply for the purpose of determining the **Value Discrepancy** attributable to any such **Misstatement**. Rather, the **Value Discrepancy** attributable to any such **Misstatement** shall be determined in accordance with the following terms and conditions:
- 1) Except as otherwise provided in Section VII.F(2), if you conduct the defense of the **Third Party Proceeding** at your own expense the **Value Discrepancy** shall be the sum of (i) reasonable attorney fees and expenses that you actually incur in such defense (not including any wages, salaries, fees or expenses payable to you or your directors, officers or employees, and not including any overhead or benefit expenses that you may incur), and (ii) monetary damages that you are ordered to pay (by a court or an arbitrator) in the **Third Party Proceeding** or that you agree to pay in settlement of the **Third Party Proceeding**.
 - 2) If the **Agreement** either (i) requires you to provide another party with an opportunity to defend the **Third Party Proceeding** wholly or partly at such other party's expense, (ii) entitles you to demand that another party defend the **Third Party Proceeding** wholly or partly at such other party's expense, or (iii) entitles you to demand that another party pay (or reimburse you for) all or any part of the attorney fees and/or other costs that you incur in defending the **Third Party Proceeding**, then:
 - (a) if you fail to preserve or enforce your rights under the **Agreement** or in any other way excuse the other party from providing you with a defense or with payment or reimbursement of your defense costs, the **Value Discrepancy** shall be zero;
 - (b) if the other party defends the **Third Party Proceeding** through its own counsel, the **Value Discrepancy** shall be the amount of monetary damages that you are ordered to pay (by a court or an arbitrator) in the **Third Party Proceeding** or that you agree to pay in settlement of the **Third Party Proceeding**;
 - (c) if the other party pays (or reimburses you for) some but not all of the attorney fees and other costs that you incur in defending the **Third Party Proceeding**, the **Value Discrepancy** shall be the sum of (i) reasonable attorney fees and expenses that you actually incur in defending the **Third Party Proceeding** (not including any wages, salaries, fees or expenses payable to you or your directors, officers or employees, and not including

any overhead or benefit expenses that you may incur) and that are neither paid nor reimbursed by the other party, and (ii) the amount of monetary damages that you are ordered to pay (by a court or an arbitrator) in the **Third Party Proceeding** or that you agree to pay in settlement of the **Third Party Proceeding**; and

- (d) if, notwithstanding your compliance with the applicable provisions of the **Agreement**, the other party does not defend you in the **Third Party Proceeding** and does not pay (or reimburse you for) any of the attorney fees and other costs you incur in defending the **Third Party Proceeding**, the **Value Discrepancy** shall be determined in accordance with Section VII.F(1).
- 3) In no event will **Value Discrepancy** calculated under this Section VII.F include that portion of attorney fees, expenses, damages or settlement amounts that does not arise from an actual or alleged **Misstatement** in the **Insured Representations and Warranties**, even if paid or incurred in a **Third Party Proceeding** that also involves an actual or alleged **Misstatement** in the **Insured Representations and Warranties**.
- 4) We have no duty to defend you in any **Third Party Proceeding**, but you must not incur any attorney fees or other expenses in defending any **Third Party Proceeding** without first obtaining our written consent. In addition, unless you have first obtained our written consent you must not settle any **Third Party Proceeding**, assume any obligation in connection with a **Third Party Proceeding**, or admit any liability with respect to a **Third Party Proceeding**. **Value Discrepancy** calculated under this Section VII.F will not include the amount of any settlement or of any attorney fees or other defense expenses to which we have not given our prior written consent, and will not include any amount arising from an assumed obligation or admission to which we have not given our prior written consent. Our consent to the foregoing matters will not be unreasonably withheld.
- 5) We have the right, and you must afford us the opportunity, to effectively associate in the investigation, defense, and settlement of any **Third Party Proceeding** that appears reasonably likely to result in **Value Discrepancy** covered in whole or in part under this policy. Our right to effectively associate in the settlement process includes, but is not limited to, a right to participate in any settlement negotiations.
- 6) As a condition precedent to exercising any right to coverage for **Value Discrepancy** to which this Section VII.F applies, you must provide us with all information, assistance and cooperation that we reasonably request. If a **Third Party Proceeding** is threatened or commenced you must do nothing that could prejudice our position or our potential or actual rights of recovery against any other person, entity or organization.
- 7) With respect to any **Third Party Proceeding** we may make any investigation we deem necessary and we may, with your written consent, make any settlement of the **Third Party Proceeding** that we deem appropriate. If you withhold your consent, the **Value Discrepancy** calculated under this Section VII.F will not exceed the amount for which we could have settled the **Third Party Proceeding** plus the attorney fees (if any) and expenses (if any) that had already accrued as of the date the settlement was proposed to you in writing.
- 8) **Value Discrepancy** determined under this Section VII.F does not include:

- (a) any costs that you incur to comply with a judicial or arbitral order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;
 - (b) any amounts that you undertake or are ordered to pay based on matters that are not insurable under the law governing the construction of this policy; or
 - (c) fines or penalties imposed by law, or the multiplied portion of any multiplied damage award. With respect to punitive or exemplary damages other than fines, penalties, and the multiplied portion of multiplied damage awards, such punitive or exemplary damages imposed against you in a **Third Party Proceeding** constitute **Value Discrepancy** if they are insurable under the law applicable to this coverage. For the purpose of resolving any dispute between you and us concerning whether such punitive or exemplary damages are insurable, the law of the jurisdiction most favorable to insurability will apply, but only if that jurisdiction is one in which (i) the damages were awarded or imposed or (ii) you are incorporated or have your principal place of business or (iii) we are incorporated or have our principal place of business.
- 9) **Value Discrepancy** includes reasonable attorney fees and other expenses that you incur in an appeal taken from a **Third Party Proceeding**, but only to the extent that such fees and expenses would have constituted **Value Discrepancy** under this Section VII.F if incurred in the defense of the original **Third Party Proceeding**.
- 10) Any dispute between you and us concerning your entitlement to coverage for **Value Discrepancy** to which this Section VII.F applies, or concerning the amount of such coverage to which you are entitled, will be referred to a panel of three arbitrators for final and binding arbitration as described in Section VII.E.
- 11) All **Value Discrepancy** described in this Section VII.F is part of, and not in addition to, the Limit of Liability set forth in the Declarations. Therefore, the Limit of Liability is reduced by all amounts that we pay as **Value Discrepancy** determined in accordance with this Section VII.F.

Maintenance of Due Diligence Records

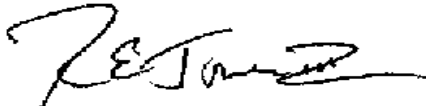
- (G) As a condition precedent to exercising any right to coverage under this policy you must maintain, at all times through and including final determination of any such right to coverage and of the extent thereof, all memoranda, reports, notes and other materials disclosed to you or received, prepared or generated by you in connection with the due diligence investigation associated with the transaction described in the **Agreement**.

Excess Coverage

- (H) If other insurance is available to you for any amount for which Insuring Agreement B of this policy provides coverage, the coverage provided under Insuring Agreement B is excess of (and will not contribute with) such other insurance, whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise.

In witness whereof, the Company has caused this policy to be executed on the Declarations Page.

Henry A Aubiel
Secretary


President