



FOLLOWING FORM EXCESS FIDUCIARY AND EMPLOYEE BENEFIT INDEMNITY POLICY

Policy No: Sample-06FL

THIS IS A FOLLOWING FORM EXCESS FIDUCIARY LIABILITY "CLAIMS-FIRST-MADE" POLICY. PLEASE READ THE ENTIRE POLICY AND THE UNDERLYING POLICY FOLLOWED DESIGNATED IN ITEM 7 OF THE DECLARATIONS CAREFULLY.

This Insurance Agreement (the "Policy") is made by and between the Member Insured and Energy Insurance Mutual Limited, a Barbadian mutual company with limited liability (the "Company").

The coverage afforded under this Policy is governed by the provisions in the Underlying Policies attached hereto except where the terms, covenants, exclusions, conditions and definitions contained herein are more specific. If any provision in the Underlying Policies conflicts with or contradicts the provisions, the terms, covenants, exclusions, conditions and definitions contained herein, the Underlying Policies should read without reference to such provision and terms, covenants, exclusions, conditions and definitions this policy shall control. In consideration of the mutual terms, covenants and conditions contained herein and in the Underlying Policies set forth in Item 7 of the Declarations and in reliance on the representations and warranties set forth herein, in the the Underlying Policies and in the Application for Membership and Applications for Insurance, the parties hereto do hereby agree as follows:

I. Indemnity Agreement

The Company agrees, subject to the provisions hereof, to provide the Insureds with coverage during the Policy Period set forth in Item 2 of the Declarations in excess of the Attachment Point set forth in Item 4 of the Declarations and subject to the Limit of Liability set forth in Item 3 of the Declarations. Such coverage shall apply in conformance with the warranties, terms, conditions, definitions and exclusions (except as regards those matters expressly set forth herein) contained in the form of the Underlying Policy Followed as submitted to the Company and attached hereto. Unless otherwise agreed to in writing by the Company, coverage hereunder shall not be affected by (a) any difference between the form of the Underlying Policy Followed attached hereto and the Underlying Policy Followed actually in effect, or (b) any modification of the Underlying Policy Followed, by endorsement or otherwise, subsequent to its submission to the Company.

This policy does not apply to any liability which arises from any Wrongful Act done or attempted by the Insured prior to the Retroactive Date stated in Item 6 of the Declarations or after expiration of the Policy Period.

II. Limit of Liability

- (A) Subject to all the provisions hereof and in the Underlying Policy Followed the Company shall be liable for Losses resulting from a Wrongful Act:
- (1) which are incurred by the Insured Persons pursuant to Article I. hereof, but only to the extent that such Losses exceed the Attachment Point stated in Item 4 of the Declarations, or
 - (2) which are incurred by the Insured Companies pursuant to Article I. hereof, but only to the extent that such Losses exceed the Attachment Point stated in Item 4 of the Declarations,

and then only up to the Limit of Liability stated in Item 3 of the Declarations, subject to the Annual Aggregate for all Wrongful Acts stated in Item 3 of the Declarations.

Notwithstanding any of the terms of this policy which might be construed otherwise, this policy shall drop down in and only in the event of reduction or exhaustion of the aggregate limits of liability of underlying policies due to loss covered by this Policy and shall not drop down for any other reason including, but not limited to, uncollectability (in whole or in part) of any underlying policy. The risk of uncollectability of such underlying insurance (in whole or in part) whether because of financial impairment or insolvency of an underlying insurer or for any other reason is expressly retained by the Insured and the Insured Companies and is not in any way or under any circumstances insured or assumed by the Company.

Nothing contained herein shall operate to increase the Company's Limit of Liability as stated in Item 3 of the Declarations.

- (B) In the event that there are multiple Claims which arise out of the same Wrongful Act, even if such multiple Claims are made against different insureds, all such multiple Claims shall be deemed to be a single Claim arising out of a single Wrongful Act and shall be deemed to have been reported at the time that the first of such multiple Claims was deemed to have been made.

III. Underlying Limit Drop Down

If any Underlying Policy Limit is subject to a Sublimit:

- (A) coverage hereunder shall not drop down excess of such Sublimit, however
- (B) the Underlying Policy Limit shall be recognized hereunder as depleted to the extent of any payment of covered loss subject to such Sublimit.

IV. Conditions

(A) Non-Duplication of Limit of Liability

In order to avoid the duplication of the Company's Limit of Liability applying to any one Wrongful Act:

- (1) in the event the Company provides indemnity or defense costs, charges and expenses under this Policy for a Claim, the Insured shall have no right to additional indemnity or defense costs, charges or expenses for such Claim under any other policy issued by the Company to the Insured, and only this Policy shall apply to such Claim regardless of the number of other policies that otherwise could apply to such Claim; and
- (2) in the event the Company shall provide indemnity or defense costs, charges and expenses for a Claim under any other policy issued by the Company to the Insured, the Insured shall have no right to additional indemnity or defense costs, charges and expenses for such Claim under this Policy.

(B) Cooperation and Settlements

In the event of a Wrongful Act which may involve this Policy, the Member Insured may, without prejudice as to liability, proceed immediately with settlements which in their aggregate do not exceed the Attachment Point. The Member Insured shall advise the representatives of the Company of any such settlements made.

The Company shall not be called upon to assume charge of the settlement or defense of any Claim, suit or proceeding, but the Company shall have the right and shall be given the opportunity to associate with the Insured or the underlying insurer, or both, in the defense and control of any Claim, suit or proceeding relative to a Wrongful Act where the claim, suit or proceeding involves or may involve the Company. At all times, the Insured and the Company shall cooperate in the defense of such Claim, suit or proceeding.

(C) Appeals

In the event that the Insured elects not to appeal a judgment in excess of the Attachment Point, the Company may elect to conduct such appeal in the name of the Insured, but at its cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Company exceed the Limit of Liability as stated in Item 3 of the Declarations, plus the expense of such appeal.

(D) Warranty

The Member Insured warrants and agrees as follows:

- (1) it has no knowledge at Policy Inception of any fact or circumstance not disclosed to the Company in the Application for this Policy which is likely to give rise to a claim hereunder; and
- (2) that based upon reasonable inquiry and to the best of its knowledge and belief:
 - (a) all information provided to the Company in the application is true and correct; and
 - (b) no material information has been withheld.

(E) Discovery Period

- (1) The Company will provide a Discovery Period at the written request of the Member Insured which shall commence upon the expiration of the Policy Period if this Policy is not renewed pursuant to subsection (F)(1) of Article IV. hereof, or is cancelled pursuant to subsections (F)(2) or (F)(3) of Article IV. hereof.

The additional premium will vary according to the length of the Discovery Period selected. A twelve (12) month Discovery Period is available for 100% of the annual premium. Any additional Discovery Period is available for an amount to be determined by the Company.

The right to this Discovery Period shall lapse unless written notice of such election, together with the payment of the additional premium due is received by the Company within thirty (30) days following the effective date of cancellation, termination or nonrenewal.

The Discovery Period, if applicable, shall extend coverage as is afforded by this Policy to apply to any Claim first made against the Insured during the Discovery Period selected following immediately upon expiration of the Policy, but only with respect to a Wrongful Act which takes place subsequent to the Retroactive Date and prior to the expiration of the Policy Period. A Claim first made during the Discovery Period will be deemed to have been made on the last day of the Policy Period. The Discovery Period will not reinstate or increase the Limit of Liability or extend the Policy Period.

- (2) In the event of renewal terms and conditions that differ from those in effect during the Policy Period the Member Insured shall have the right upon payment of an additional premium, to be determined by the Company, but which shall not exceed 100% of the annual premium, to a Discovery Period which shall commence upon the expiration of the Policy Period and end exactly twelve (12) months thereafter. The Discovery Period shall apply only with respect to a Claim resulting from or a Notice of Circumstances relating to a Wrongful Act for which coverage is so restricted or excluded. The right to this Discovery Period shall lapse unless written notice of such election, together with the payment of the additional premium due is received by the Company within thirty (30) days following the effective date of the renewal.

The Discovery Period, if applicable, shall extend coverage as is afforded by this Policy to apply to any Claim first made against the Insured during the twelve (12) month period following immediately upon expiration of the Policy, but only with respect to a Wrongful Act which takes place subsequent to the Retroactive Date and prior to the expiration of the Policy Period. A Claim first made during the Discovery Period will be deemed to have been made on the last day of the Policy Period. The Discovery Period will not reinstate or increase the Limit of Liability or extend the Policy Period.

(F) Cancellation

- (1) Either party may elect not to renew this Policy, provided that the Member Insured shall have been a Member Insured of the Company for at least two years prior to such non-renewal. The Company, but not the Member Insured, shall be required to provide prior written notice of its election not to renew. Such notice shall be given to the Member Insured not less than sixty days prior to such non-renewal.
- (2) Notwithstanding subsection (1) above, the Member Insured may elect to cancel this Policy by mailing written notice to the Company stating when cancellation is to be effective.
- (3) This Policy may be cancelled by the Company upon ninety days prior written notice to the Insured in the event that the Insured breaches any provision of this Policy, violates any provision of the Company's Certificate of Incorporation or by-laws, or fails to meet the underwriting standards established by the Company. The insurance under this Policy shall end on the effective date and hour of cancellation stated in the notice.
- (4) In the event of cancellation for non-payment of premium, such cancellation shall become effective ten (10) days after notice was mailed.

(G) Governing Law and Interpretation

In view of the diverse locations of the parties purchasing insurance from the Company and the desirability of unified regulation, the parties agree that the Policy shall be construed and enforced in accordance with and governed by the internal law of the State of New York, except insofar as such law may prohibit payment in respect of punitive damages hereunder.

(H) Dispute Resolution

The Company and the Member Insured mutually acknowledge that the form, terms, and conditions of the Policy have been formulated by representatives of the participating members in order to provide insurance coverage which is vital to all participants. It was desired to have the Company serve as a financially stable and reliable entity, responsive to the coverage needs of its participants, and providing coverage fairly and equitably as to each insured, but taking equally into account fairness and equity as to all insureds as a group.

While every effort has been made to define with clarity and precision the scope of coverage, the Company and the Member Insured mutually acknowledge that situations may arise where the availability of coverage for a Claim under the Policy is disputed.

In light of the foregoing, the Company and the Member Insured agree that:

- (1) the following principles shall govern the interpretation of the Policy:
 - (a) Even-handedness and fairness to both parties;
 - (b) The intentions of the parties, including any extrinsic evidence of intent;
 - (c) The practice of the parties in interpreting and applying the Policy;
 - (d) The cooperative rather than adversarial relationship between the parties;
 - (e) No recourse to rules of construction which apply specifically to the interpretation of policy language in contracts of insurance but not to contractual language in general; and
 - (f) The maintenance of the Company's solvency in light of its limited resources.

- (2) (a) In the event of any dispute between the Insured and the Company as to any matters arising out of or relating to any provision of this Policy, the parties shall attempt to resolve the dispute by use of a mini-trial. The disputing party shall give the other party written notice of its intent to proceed with a mini-trial. This notice shall include a summary of the dispute and may include the evidence and arguments underlying the dispute.
- (b) The mini-trial shall be conducted not more than 120 days after the disputing party's transmission of notice of the dispute and shall last not more than three (3) business days. The mini-trial shall proceed before a panel composed of a senior executive officer from each party with authority to settle the dispute and one neutral advisor, unless both parties agree to proceed without a neutral advisor. In the event a neutral advisor is required, he shall be selected in accordance with paragraph (c) below. The parties may also have present at the mini-trial their counsel, technical experts (in-house or retained) and fact witnesses. The mini-trial shall be conducted in the City of New York.
- (c) In the event a neutral advisor is required, the parties shall exchange names of potential advisors and select from this pool a mutually acceptable candidate. If the parties cannot agree on the selection of a neutral advisor, the president of the Center for Public Resources or his designee shall select a neutral advisor from the Judicial Panel of the Center for Public Resources.
- (d) The neutral advisor is not to mediate or effect a compromise of the dispute. The neutral advisor is to issue a nonbinding opinion to the parties on any issue or issues requested by either party. Either party may also request a nonbinding opinion addressing the merits of any claim and assessing which party is likely to prevail on such claim, so that the parties can determine whether and on what basis the dispute may be resolved without resort to arbitration. The neutral advisor's opinion shall be issued thirty (30) days after the conclusion of the mini-trial if an opinion has been requested and the parties are unable to resolve the dispute after the conclusion of the mini-trial.
- (e) The parties shall promptly agree on the ground rules which will govern the conduct of the parties before, during and after the mini-trial. These ground rules shall include: (i) a schedule for the exchange of documents and short narrative statements summarizing each party's respective position on the dispute; (ii) if the parties mutually agree that discovery is necessary to prepare for the mini-trial, an expedited schedule for such discovery; and (iii) the format of the mini-trial. The parties shall seek the advice and assistance of the neutral advisor, if one has been appointed, in order to resolve any disagreement which may arise regarding the ground rules of the mini-trial.
- (f) If the parties are unable to agree on the ground rules of the mini-trial, either party may make a demand in writing for arbitration upon the other party.
- (g) The senior executive officers who are on the mini-trial panel shall meet immediately after the conclusion of the mini-trial to attempt to resolve the dispute. If they do not resolve the dispute within thirty (30) days of the conclusion of the mini-trial, the neutral advisor, if one has been appointed, will submit to the parties, if so requested, the nonbinding opinion referred to in paragraph (d) above. Within ten (10) days after the receipt of such opinion, the senior executive officers shall meet at least one more time to attempt to resolve the dispute.
- (h) If the parties, in good faith, are unable to resolve the dispute after the meeting(s) of the parties' senior executive officers required in paragraph (g) above, either party may make a demand in writing for arbitration upon the other party. The party submitting the demand for arbitration may not make the demand until ten (10) days after the last meeting of the senior executive officers.
- (i) The fees and expenses of the neutral advisor and the mini-trial shall be apportioned equally to each party. However, in the event the dispute is not settled and instead proceeds to arbitration, these costs shall be assessed against the party who loses in arbitration or, in the event neither party is deemed wholly responsible for the claim or

controversy, the costs shall be apportioned between the parties in relation to their responsibility.

- (3) Any claim or controversy between the Insured and the Company not settled in accordance with Section (2) above, shall be submitted to arbitration in New York City by three arbitrators at the request of either the Insured or the Company. The Insured shall appoint one arbitrator and the Company another; the two so appointed shall select a third. If the two arbitrators fail to agree on a third arbitrator for a period of sixty calendar days from the date of their first attempt to select the third arbitrator, then on request of the Insured or the Company such third arbitrator shall be selected by the then President of the Association of the Bar of the City of New York. The Insured and the Company may by express agreement determine the arbitral procedures to be followed; in the event the parties do not agree, New York law, as provided above, shall govern all such matters of arbitral procedure.
- (4) To the extent that any claim or controversy between the Insured and the Company hereunder is not subject to arbitration for any reason whatsoever, the United States District Court for the Southern District of New York shall have exclusive jurisdiction thereof. For such purpose the Insured agrees to accept, without objection to form or manner, service of process by registered mail directed to:

Sample Member Name

Sample Member Address

For such purpose the Company agrees to accept without objection to form or manner, service of process by registered mail directed to: Energy Insurance Mutual Limited, 3000 Bayport Drive, Suite 550, Tampa, FL 33607-8412. The foregoing consents to service of process are not intended to nor shall they be construed to extend to any claim, controversy, cause of action, or other matter other than as stated in this paragraph.

(I) Notice of Claim

As a condition precedent to any rights under this Policy, the Insured Persons and/or the Insured shall give a written Notice of Claim to the Company of any Claim which appears likely to exceed \$1,000,000. Such Notice of Claim shall be given as soon as practicable.

The Insured shall, upon request, forward to the Company every demand, notice, summons, or other process or true copies thereof, received by the Insured or the Insured's representative, together with a summary of factual data with respect to such Claim, suit, or other proceeding and any other information relating to the Claim.

(J) Membership

As a prerequisite for becoming a Member of the Company, an Application for Membership and Application(s) for Insurance must be submitted by the Member Insured and accepted by the Company. Such Applications are hereby incorporated into and made a part of this Policy.

The Member Insured becomes a Member of the Company as part of obtaining insurance from the Company and as such is entitled to the privileges and benefits and by entering into this Policy agrees to be subject to, and to be bound by, the obligations and duties of Membership. These are more fully set forth in the Company's Certificate of Incorporation and any amendments thereto and in the by-laws and any amendments thereto which are hereby incorporated into and made a part of this Policy. In no event shall any amendment to the Company's Certificate of Incorporation or the by-laws increase the amount of premium payable hereunder.

The Member Insured is required to complete and submit a Renewal Application prior to the Issuance of any policy by the Company subsequent to the Member Insured's initial policy with the Company. All such Renewal Applications are hereby incorporated into and made a part of this Policy.

V. Definitions

- (A) The term "Insured" shall mean those directors, officers and other individuals insured by the Underlying Policy Followed, and will have definitions attributed in the underlying policy.
- (B) The term "Insured Companies" shall mean the entity named in Item 1 of the Declarations and any subsidiaries in line of Corporate descent thereof insured by the Underlying Policy Followed.
- (C) The term "Losses" shall have the same meaning in this policy as is attributed to it and comparable terms such as Ultimate Net Loss in the Underlying Policy Followed.
- (D) The terms "Member Insured", "Policy Period", "Limit of Liability", "Attachment Point", "Premium", "Retroactive Date", "Underlying Policy Followed", "Insured Persons Retention", "Corporate Reimbursement Retention", shall have the meaning attributed to them on the Declarations Page.
- (E) The term "Annual Aggregate" shall mean the limit of liability within the period of one year immediately following the inception of this policy, or, any anniversary, or, if the time between inception or any anniversary and the termination of this policy, is less than one year, the lesser period.
- (F) The term "Discovery Period" shall mean the period of time set forth in Article IV. Conditions (E) of this policy.
- (G) The term "Wrongful Act" shall have the meaning attributed to it in the Underlying Policy Followed.
- (H) The term "Claim" shall mean:
 - (1) Any demand, suit or proceeding against any Insured Persons during the Policy Period or during the Discovery Period, if any, which seeks actual monetary damages or other relief and which may result in any Insured Persons becoming legally obligated to pay Ultimate Net Loss by reason of any Wrongful Act actually or allegedly caused, committed, or attempted subsequent to the Retroactive Date and prior to the end of the Policy Period by the Insured Persons while acting in their capacity, as such; or
 - (2) Written notice to the Company during the Policy Period or during the Discovery Period, if any, by the Insured Persons, and/or the Insured Companies, adequately describing circumstances, of which they are aware involving an identifiable Wrongful Act actually or allegedly caused, committed, or attempted subsequent to the Retroactive Date and prior to the end of the Policy Period by the Insured Persons while acting in their capacity as such, which circumstances are likely to give rise to a demand, suit, or other proceeding being made against such Insured Persons.

A Claim shall be deemed to be first made against Insured Persons at the earlier of the time at which a demand, suit, or proceeding is first made against the Insured Persons as set forth in subsection (1) of this definition or the time at which a written notice is given to the Company as set forth in subsection (2) of this Definition. Multiple demands or suits arising out of the Wrongful Act or interrelated acts shall be deemed to be a single "Claim".



- (I) The term "Sublimit" shall mean any underlying policy limit of liability which:
 - (1) applies only to a portion of the coverage granted under such underlying policy, and
 - (2) reduces and is part of the otherwise applicable limits of liability of such underlying policy as set forth in Item 4 of the Declarations.
- (J) The term "Application(s) for Insurance" shall mean the EIM Application for Membership and any underlying carrier's application for Fiduciary Liability.

IN WITNESS WHEREOF, the Insured and the Company have caused this Policy to be executed and attested on their behalf.

Tampa, Florida

ENERGY INSURANCE MUTUAL LIMITED

Date: _____

Attest: _____

By: _____

Tampa, Florida

MEMBER INSURED

Date: _____

Attest: _____

By: _____
for Sample Member Name