

MISCELLANEOUS PROFESSIONAL LIABILITY COVERAGE PART

I. INSURING AGREEMENT

The Insurer shall pay **Loss** on behalf of the **Insureds** resulting from a **Claim** first made against the **Insureds** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** in the performance of **Professional Services** by the **Insureds** or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible.

II. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

(A) “**Claim**” means any:

- (1) written demand for monetary damages or non-monetary relief commenced by the receipt of such demand; or
- (2) civil proceeding commenced by the service of a complaint or similar pleading.

“**Claim**” also means a written request to the **Insureds** to toll or waive a statute of limitations regarding a potential **Claim** as described above. Such **Claim** shall be commenced by the receipt of such request.

(B) “**Insured Person**” means any:

- (1) **Manager**; or
- (2) **Employee**.

(C) “**Insureds**” means any:

- (1) **Insured Entity**; or
- (2) **Insured Person**.

(D) “**Loss**” means the amount that the **Insureds** are legally obligated to pay as a result of a **Claim**, including, without limitation, **Defense Costs**, damages, settlements, judgments, and pre- and post-judgment interest.

Loss shall include punitive and exemplary damages where insurable by law. Regarding the insurability of such damages, the Insurer shall not contend for any reason, unless appropriate to do so as a matter of law or public policy, that such damages are uninsurable. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

Loss shall not include:

- (1) taxes, fines or penalties imposed by law, the multiplied portion of any multiplied damage award, or matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed; or

- (2) any non-monetary relief.
- (E) “**Professional Services**” means services described in the Schedule of Professional Services attached hereto that are performed by the **Insureds** for or on behalf of a customer or client of the **Insureds** for compensation.
- (F) “**Wrongful Act**” means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty.

III. EXCLUSIONS

The Insurer shall not pay **Loss** for any **Claim**:

- (A) based upon, arising from, or in any way related to bodily injury, sickness, disease, emotional distress, mental anguish, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof;
- (B) based upon, arising from, or in any way related to any prior or pending demand, suit or proceeding against any **Insureds** as of the applicable Prior or Pending Date in Item 5 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding;
- (C) based upon, arising from, or in any way related to any fact, circumstance or situation that, before the Inception Date in Item 3 of the Declarations, was the subject of any notice given under any other insurance policy;
- (D) based upon, arising from, or in any way related to any:
 - (1) discharge, dispersal, release, or escape of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release or escape; or
 - (2) direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste;
- (E) based upon, arising from, or in any way related to any violation of **ERISA** or any similar law;
- (F) based upon, arising from, or in any way related to a **Wrongful Act** occurring prior to the Retroactive Date in Item 5 of the Declarations or any **Interrelated Wrongful Acts** thereto;
- (G) for compensation or charges for **Professional Services**;
- (H) for liability under any contract or agreement, provided that this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement;
- (I) based upon, arising from or in any way related to any violation of the Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisers Act of 1940, any state “blue sky” securities law, or any similar law imposing liability in connection with the purchase or sale of, or the offer to purchase or sell, securities;
- (J) based upon, arising from, or in any way related to any infringement of any copyright, patent, trademark, trade name, trade dress, service mark, trade secrets, or other intellectual property;
- (K) by or on behalf of any **Insureds**;

- (L) based upon, arising from, or in any way related to the performance of or failure to perform **Professional Services** for any:
- (1) **Insureds**;
 - (2) entity owned or controlled by, or under common ownership or control with, any **Insureds**;
 - (3) natural person or entity that owns or controls any entity included within the definition of **Insureds**; or
 - (4) entity of which any **Insureds** are a director, officer, partner or principal shareholder;
- (M) based upon, arising from, or in any way related to any discrimination or sexual harassment;
- (N) based upon, arising from, or in any way related to the gaining, in fact, of any personal profit, remuneration or advantage to which the **Insureds** are not legally entitled; or
- (O) based upon, arising from, or in any way related to any deliberately fraudulent or criminal act or omission or any willful violation of law by the **Insureds** if a judgment or other final adjudication establishes such an act, omission or violation.

Regarding exclusions (N) and (O) above: (i) no **Wrongful Act** of any **Insured Person** shall be imputed to any other **Insured Person** and (ii) only a **Wrongful Act** committed by a past, present or future chairman of the board, chief executive officer, chief operating officer, or chief financial officer shall be imputed to an **Insured Entity**.

IV. SETTLEMENT OF CLAIMS

If the **Insureds** refuse, or fail to consent to, a settlement of a **Claim** recommended by the Insurer and acceptable to the claimant, then the Insurer's liability for such **Claim** shall be limited to the amount for which the **Claim** could have been settled and **Defense Costs** incurred up to the time of such refusal or failure.