

## MISCELLANEOUS PROFESSIONAL LIABILITY COVERAGE PART

### I. INSURING AGREEMENT

The Insurer will pay on behalf of the **Insureds** all sums in excess of the applicable Retention that the **Insureds** shall become legally obligated to pay as **Loss** resulting from **Claims** first made against the **Insureds** during the **Policy Period**, or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insureds**, or an **Entity** for whom an **Insured Entity** is legally responsible, provided, however, as conditions precedent to coverage hereunder:

- (A) as of the inception date no **Manager** was aware of any **Wrongful Act**, fact, circumstance or situation that he or she knew, or could reasonably have foreseen, might result in a **Claim** under this **Liability Coverage Part**,
- (B) such **Wrongful Act** was committed on or after the **Retroactive Date** and before the end of the **Policy Period**.

### II. COVERAGE EXTENSIONS

Unless otherwise specified, subject to all of its terms and conditions applicable to **Claims** for **Wrongful Acts**, this **Liability Coverage Part** affords the following extensions of coverage:

#### (A) DISCIPLINARY PROCEEDING EXTENSION

If a **Disciplinary Proceeding** is commenced against the **Insureds** during the **Policy Period**, the Insurer will reimburse the **Insureds** solely for **Defense Costs** incurred in responding to such **Disciplinary Proceeding**. The foregoing notwithstanding, the maximum payment made by the Insurer pursuant to this Extension II(A) shall be \$10,000 for each **Policy Period** regardless of the number of **Disciplinary Proceedings**. Any payment made by the Insurer under this Extension II(A) shall not be subject to a Retention and shall not reduce the applicable Limit of Liability.

#### (B) PERSONAL INJURY EXTENSION

If a covered **Claim** against an **Insured** also includes a claim arising out of **Personal Injury** committed in the performance of **Professional Services**, this **Liability Coverage Part** covers **Loss** the **Insured** becomes legally obligated to pay as a result of such **Personal Injury**.

#### (C) JOINT VENTURE PARTICIPATION EXTENSION

This **Liability Coverage Part** covers **Loss** an **Insured** becomes legally obligated to pay as a result of **Claims** arising out of the **Insured's** legal liability for its participation in a joint venture with any **Entity**. The extension of coverage afforded by this Extension applies only to the **Insured's Wrongful Acts** and does not afford coverage to the joint venture itself or any other **Entity** that is part of the joint venture.

### III. DEFINITIONS

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

- (A) **Bodily Injury** means bodily injury, sickness or disease sustained by a person, including the death of any person, resulting at any time. **Bodily Injury** includes mental anguish and emotional distress.

- (B) **Claim(s)** means receipt by the **Insured** of a written demand naming the **Insured** seeking **Professional Services**, civil **Equitable Relief**, or **Loss**, other than **Defense Costs**, brought or submitted by or on behalf of an **Entity**. A **Claim** also means a written request to toll or waive a statute of limitations relating to a potential **Claim** described in Section VIII. (B) of the Common Terms and Conditions.
- (C) **Disciplinary Proceeding** means any proceeding by a regulatory or disciplinary official, board or agency to investigate charges of professional misconduct in the performance of **Professional Services**.
- (D) **Entity** means any individual, partnership, corporation or limited liability company other than those that qualify as **Insureds** under this Policy.
- (E) **Equitable Relief** means a remedy not involving the payment of money damages.
- (F) **Insured(s)** includes the **Insured Entities** and/or **Insured Persons** solely in the performance of **Professional Services** while acting under the direct supervision, and exclusively on behalf of, an **Insured Entity**.
- (G) **Insured Person(s)** means any natural person who is or was a(n):
- (1) **Manager**, and
  - (2) employee, temporary or leased personnel, or retired personnel of the **Insured Entities**.
- (H) **Loss** means the compensatory monetary amount that the **Insured(s)** are legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including **Defense Costs**, judgments, including of any pre- or post-judgment interest, awards, or settlements.
- However, **Loss** does not include:
- (1) the return, withdrawal, restitution or reduction of professional fees, profits or other charges;
  - (2) fines, sanctions, taxes, penalties;
  - (3) costs or expenses incurred by the **Insured** to comply with a demand for **Equitable Relief** even if such compliance is compelled as a result of a judgment, award or settlement;
  - (4) cost of corrections, re-performing work or completing any **Professional Service**;
  - (5) liquidated damages;
  - (6) any other matters or awards uninsurable pursuant to any applicable law, provided, however, that with respect to punitive, exemplary, multiple damages, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage such damages.
- (I) **Personal Injury** means false arrest, detention or imprisonment, or malicious prosecution; the publication or utterance of a libel or slander or other defamatory or disparaging material; invasion, infringement or interference with rights of privacy or publicity; wrongful entry or eviction; and/or invasion of the right of private occupancy.
- (J) **Professional Services** means those services set forth in the Schedule of Professional Services attached by endorsement hereto requiring special learning or intellectual skill, performed by the **Insured**, in the ordinary conduct of its profession, for others for a fee, remuneration or other consideration, or as otherwise defined by endorsement hereto.

(K) **Retroactive Date** means the date specified in Item 5 of the Declarations.

(L) **Subsidiary** means any entity that:

- (1) performs **Professional Services** during any time in which the **Named Insured** owns or controls, through one or more of its subsidiaries, greater than fifty percent (50%) of such entity or the right to elect or appoint more than fifty percent (50%) of such entity's directors or trustees; and
- (2) exists or existed as of the inception of this **Policy Period** and during the **Policy Period**.

This policy does not cover any **Claim** against a **Subsidiary** or any **Insured Person** thereof for any **Wrongful Act** that occurred when the **Named Insured** did not own or control, through one or more of its subsidiaries, greater than fifty percent (50%) of such entity or the right to elect or appoint more than fifty percent (50%) of such entity's director or trustees.

(M) **Wrongful Act** means any actual or alleged negligent act, error or omission in the rendering of or failure to render **Professional Services**.

#### IV. EXCLUSIONS

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

(A) in connection with any **Claim** by or on behalf of or with the assistance of any:

- (1) former or present **Insured**, or
- (2) **Entity** that at the time of the **Wrongful Act** or the time of the **Claim** or during the pendency of the **Claim** is or was:
  - (a) to any extent owned or controlled by any **Insured**;
  - (b) affiliated with any **Insured** through any common ownership or control; or
  - (c) acting with any **Insured** as a director, officer, partner, or principal security holder;

(B) in connection with any **Claim** by or on behalf of an employee, former employee or job applicant of the **Insured**;

(C) in connection with any **Claim** based upon, arising from or in any way related to any **Wrongful Act**, fact or circumstance which before the effective date of the Policy was reported to the Insurer or any other insurer;

(D) in connection with any **Claim** based upon, arising from, or in a 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;

(E) based upon, arising from or in any way related to **Bodily Injury**, provided, however, that this exclusion shall not apply to actual or alleged mental anguish or emotional distress arising directly from a **Personal Injury** afforded coverage pursuant to Section II. (B);

(F) based upon, arising from or in any way related to injury to or destruction of any tangible property including loss of use or value thereof whether or not it is damaged or destroyed;

- (G) based upon, arising from or in any way related to the liability of others assumed by the **Insured** under any contract or agreement unless such liability would have attached to the **Insured** even in the absence of such an agreement;
- (H) based upon, arising from or in any way related to any actual or alleged infringement of copyright, patent, service mark, trademark, or trade name, or misappropriation of ideas or trade secrets or any other intellectual property right;
- (I) in connection with any **Claim** based upon, arising from or in any way related to any actual, alleged or threatened discharge, dispersal, release or escape of **Pollutants** or any governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**;
- (J) based upon, arising from or in any way related to any actual or alleged violation of:
- (1) Securities Act of 1933;
  - (2) Securities Exchange Act of 1934;
  - (3) **ERISA**;
  - (4) Crime Control Act of 1970 (commonly known as "Racketeer Influenced and Corrupt Organizations Act" or "RICO");
- or any similar law;
- (K) based upon, arising from or in any way related to actual or alleged price fixing, restraint of trade, monopolization, unfair or deceptive trade practices or any actual or alleged violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act or any similar law regulating anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, including but not limited to violations of any local, state or federal consumer protection laws;
- (L) based upon, arising from or in any way related to any actual or alleged unsolicited sending of information by fax, electronic mail (e-mail), or via any other means, where prohibited by law;
- (M) based upon, arising from or in any way related to any actual or alleged discrimination, humiliation, harassment, or misconduct by the **Insured** because of race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, marital status, or any other class protected under federal, state, local or other law;
- (N) of an **Insured**, based upon, arising from or in any way related to the gaining in fact of any personal profit or advantage to which the **Insured** is not legally entitled;
- (O) of an **Insured**, based upon, arising from or in any way related to any dishonest, malicious or fraudulent act or omission, any willful violation of law by an **Insured**, or any **Wrongful Act** committed with the knowledge that it was a **Wrongful Act**, if an admission, judgment or other final adjudication adverse to the **Insured**, in the same or separate proceeding, establishes such an act, omission or willful violation;

Regarding exclusions (N) and (O): The **Wrongful Act** of an **Insured Person** shall not be imputed to any other **Insured Person**; and (ii) only **Wrongful Acts** of a past or present chief executive officer, chief financial officer, or general counsel of **Named Entity** shall be imputed to all **Insured Entities**.

## V. CONDITIONS

**(A) TERRITORY, DEFENSE, CONSENT AND SETTLEMENT**

Under no circumstance shall the Defense Outside the Limit of Liability option of the Declarations apply to this **Liability Coverage Part**.

For all covered **Claims** brought in the United States of America, its territories and possessions, Puerto Rico or Canada, the Insurer has the right and duty to defend. The Insurer has the sole right to appoint counsel and may investigate any **Claim** as we deem appropriate. The Insurer's duty to defend any **Claim** shall cease upon exhaustion of any applicable Limit of Liability.

For all covered **Claims** brought outside the United States of America, its territories and possessions, Puerto Rico or Canada, the Insurer has the right but not the duty to defend, appoint counsel and investigate. If the Insurer chooses not to defend, appoint counsel and investigate such a **Claim**, the **Named Entity**, under the Insurer's supervision, will arrange for investigation and defense of the **Claim** as reasonably appropriate. Subject to the Limits of Liability and Retention, we will reimburse the **Named Entity** for paying **Loss** for covered **Claims**.

The **Insureds** shall cooperate with the Insurer. Upon the Insurer's request, the **Insured** shall submit to examination and interrogation by a representative of the Insurer, under oath if required, and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The **Insureds** shall also assist in the giving of a written statement or statements to the Insurer's representatives and meeting with such representatives for the purpose of investigation and/or defense, and shall provide the Insurer with any available information and documentation relevant to any matter under investigation by the Insurer, without charge to the Insurer. The **Insureds** shall take such action as may be necessary to secure and effect any rights of indemnity, contribution or apportionment that the **Insureds** and/or the Insurer may have.

The **Insureds** must take all reasonable action within its ability to prevent or mitigate any **Claim** that would be covered under this Policy. The Insurer has the right to make such investigation and conduct negotiations and, with the written consent of an **Insured**, effect settlement of any **Claim** for a monetary amount as the Insurer deems reasonable.

If any **Insured** refuses to consent to a settlement or compromise recommended by the Insurer and elects to contest or continue to contest the **Claim**, the Insurer's liability shall not exceed the amount for which the Insurer would have been liable for **Loss** if the **Claim** had been so settled when and as so recommended, and the Insurer shall have the right to withdraw from the further defense of the **Claim** by tendering control of the defense thereof to the **Insured**. The operation of this paragraph shall be subject to the Limit of Liability and Retention provisions of this Policy.

**(B) LIMITS OF LIABILITY SUPPLEMENT**

This section shall supplement, and not replace, Common Terms and Conditions Section IV Limit of Liability.

The Insurer's maximum liability for all **Loss** and/or **Defense Costs** resulting from each **Claim** shall be the Per Claim Limit of Liability set forth in Item 5 of the Declarations.

If any Limit of Liability is exhausted, the premium for this Policy shall be deemed fully earned.

**(C) CHANGES IN EXPOSURE SUPPLEMENT**

This section shall supplement, and not replace, Common Terms and Conditions Section XIV Changes in Exposure.

In addition to the asset percentage size limit for automatic coverage of any newly merged, created, or acquired entity specified in Common Terms and Conditions Section XIV. Changes in Exposure (A), if the newly merged, created, or acquired entity exceeds 10% of total revenues of all **Insured Entities**, as reflected in their most recent consolidated audited financial statements prior to such merger, creation, or acquisition, the **Insureds** shall give the Insurer full details of the transaction in writing as soon as practicable and the Insurer shall be entitled to impose such additional terms, conditions, and premium as the Insurer, in its absolute discretion, chooses. There shall be no coverage for any newly merged or acquired entity or any of its subsidiaries, managers, directors, officers, or employees unless the **Insureds** comply with the terms of this provision.

**(D) ALLOCATION**

For all covered **Claims** brought in the United States of America, its territories and possessions, Puerto Rico or Canada, where **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Policy and also loss that is not covered by this Policy because such **Claim** includes both covered and uncovered matters or covered and uncovered parties, then coverage shall apply as follows:

- (1)** 100% of **Defense Costs** shall be allocated to covered **Loss**; and
- (2)** **Loss** other than **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based upon the relative legal exposure of all parties to such matters.

For all covered **Claims** brought outside the United States of America, its territories and possessions, Puerto Rico or Canada, where **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this **Liability Coverage Part** and also loss that is not covered by **Liability Coverage Part** because such **Claim** includes both covered and uncovered matters or covered and uncovered parties, then coverage for such amount shall be allocated between covered **Loss** and non-covered loss based upon the relative legal exposure of the parties to such matters.