

MISCELLANEOUS PROFESSIONAL LIABILITY

**THIS IS A CLAIMS-MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.
PLEASE READ ALL TERMS CAREFULLY.**

I. INSURING AGREEMENTS

- A.** The Company will pay on behalf of the **Insured, Loss** for any **Claim** first made during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period for a **Wrongful Act**.
- B.** The Company will reimburse the **Insured** for **Disciplinary Proceeding Expenses** incurred in responding to a **Disciplinary Proceeding** commenced during the **Policy Period**, or if exercised, during the Extended Reporting Period or Run-Off Extended Reporting Period. The maximum amount available for **Disciplinary Proceeding Expenses** will be \$25,000 for each **Policy Period**, regardless of the number of **Disciplinary Proceedings**, and any payment made hereunder will not be subject to a Retention and will not reduce any applicable limit of liability.

II. DEFINITIONS

Wherever appearing in this **Liability Coverage**, the following words and phrases appearing in bold type have the meanings set forth in this section **II. DEFINITIONS**:

- A. Claim** means:
 1. a written demand for monetary damages or non-monetary relief;
 2. a civil proceeding commenced by service of a complaint or similar pleading;
 3. a formal administrative or regulatory proceeding, other than a **Disciplinary Proceeding**, commenced by filing of a notice of charges, formal investigative order, service of summons, or similar document;
 4. an arbitration, mediation, or other alternative dispute resolution proceeding if the **Insured** is obligated to participate in such proceeding or if the **Insured** agrees to participate in such proceeding, with the Company's written consent, such consent not to be unreasonably withheld; or
 5. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding, against an **Insured** for a **Wrongful Act**.

A **Claim** is deemed to be made on the earliest date that any **Executive Officer** first receives written notice of such **Claim**. However, if any **Insured Person** who is not an **Executive Officer** first receives written notice of a **Claim** during the **Policy Period**, but no **Executive Officer** receives written notice of such **Claim** until after the **Policy Period** has expired, then such **Claim** will be deemed to have been made on the date such **Insured Person** first received written notice of the **Claim**.
- B. 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**.
- C. Disciplinary Proceeding Expenses** means reasonable and necessary fees, costs, and expenses incurred by any **Insured** to investigate, defend, or appeal any **Disciplinary Proceeding**, provided that **Disciplinary Proceeding Expenses** do not include:
 1. fines, penalties, or sanctions assessed against any **Insured**; or
 2. expenses, salaries, wages, benefits, or overhead of, or paid to, any **Insured**.

- D. Employee** means a natural person whose labor or service is engaged by and directed by the **Insured Organization** and:
1. who is on the payroll of the **Insured Organization**, including:
 - a. any in-house general counsel of the **Insured Organization**; and
 - b. any other full-time, part-time, temporary, and seasonal workers; or
 2. whose services have been leased to the **Insured Organization**.
- Independent contractors are not **Employees**. The status of an individual as an **Employee** will be determined as of the date of the **Wrongful Act**.
- E. Executive Officer** means a member of the board of directors, officer, natural person partner, principal, risk manager, or **LLC Manager**, in-house general counsel of the **Insured Organization** or a functional equivalent thereof.
- F. Insured** means the **Insured Persons** and the **Insured Organization**.
- G. Insured Organization** means the **Named Insured**, any **Subsidiary**, and any such entity as debtor in possession, as such term is used in Chapter 11 of the United States of America Bankruptcy Code, as amended, or the equivalent of a debtor in possession under any applicable foreign law.
- H. Insured Person** means any natural person who was, is, or becomes a member of the board of directors, officer, **Employee**, partner, or **LLC Manager** of the **Insured Organization** for **Wrongful Acts** committed in the discharge of his or her duties as such.
- In the event of the death, incapacity, or bankruptcy of an **Insured Person**, any **Claim** against the estate, heirs, legal representatives, or assigns of such **Insured Person** for a **Wrongful Act** of such **Insured Person** will be deemed to be a **Claim** against such **Insured Person**.
- I. Loss** means **Defense Expenses** and money which an **Insured** is legally obligated to pay as a result of a **Claim**, including settlements, judgments, compensatory damages, punitive or exemplary damages if insurable under the applicable law most favorable to the insurability of punitive or exemplary damages, prejudgment and postjudgment interest, and legal fees and expenses awarded pursuant to a court order or judgment. **Loss** does not include:
1. civil or criminal fines, sanctions, liquidated damages, payroll or other taxes, penalties, the multiplied portion of any multiplied damage award, any return, withdrawal, restitution or reduction of professional fees, profits, or other charges, or damages or types of relief deemed uninsurable under applicable law;
 2. amounts that constitute the cost of complying with any order for, grant of, or agreement to provide, injunctive or non-monetary relief; or
 3. any amount allocated to non-covered loss pursuant to section **III. CONDITIONS. P. ALLOCATION** of the Liability Coverage Terms and Conditions.
- J. Personal Injury** means:
1. false arrest, detention, or imprisonment, or malicious prosecution;
 2. the publication or utterance of libel, slander, or other defamatory or disparaging material;
 3. invasion, infringement, or interference with the rights of privacy;
 4. wrongful entry or eviction; or
 5. invasion of the right of private occupancy.
- K. Professional Services** means only those services performed for others set forth in ITEM 5 of the Declarations.
- L. Subsidiary** means:
1. any corporation, partnership, limited liability company, or other entity organized under the laws of any jurisdiction in which, on or before the Inception Date set forth in ITEM 2 in the Declarations, the **Named Insured** owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to elect, appoint, or exercise a majority control over such

- entity's board of directors, board of trustees, board of managers, natural-person general partners, or functional equivalent; and
2. subject to the provisions set forth in section **III. CONDITIONS L. ACQUISITIONS** of the Liability Coverage Terms and Conditions, any entity that the **Insured Organization** acquires or forms during the **Policy Period** in which the **Named Insured** owns, directly or indirectly, more than 50% of the outstanding securities or voting rights representing the right to elect, appoint, or exercise a majority control over such entity's board of directors, board of trustees, board of managers, natural-person general partners or functional equivalent.

M. Wrongful Act means any actual or alleged act, error, omission, misstatement, misleading statement, or breach of duty or neglect by or on behalf of, or any matter asserted against, an **Insured** in the rendering of or failure to render **Professional Services**.

All **Related Wrongful Acts** are a single **Wrongful Act** for purposes of this **Liability Coverage**, and all **Related Wrongful Acts** will be deemed to have occurred at the time the first of such **Related Wrongful Acts** occurred whether prior to or during the **Policy Period**.

III. EXCLUSIONS

A. EXCLUSIONS APPLICABLE TO ALL LOSS

1. The Company will not be liable for **Loss** for any **Claim** for any damage to, destruction of, loss of, or loss of use of, any tangible property including damage to, destruction of, loss of, or loss of use of, tangible property that results from inadequate or insufficient protection from soil or ground water movement, soil subsidence, mold, toxic mold, spores, mildew, fungus, or wet or dry rot.
2. The Company will not be liable for **Loss** for any **Claim** for any bodily injury, sickness, disease, death, loss of consortium, emotional distress, mental anguish, humiliation, or loss of reputation of any person.
3. The Company will not be liable for **Loss** for any **Claim**:
 - a. based upon or arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of any **Pollutant**;
 - b. based upon or arising out of any request, demand, order, or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, any **Pollutant**; or
 - c. brought by or on behalf of any governmental authority because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of, any **Pollutant**.
4. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any fact, circumstance, situation, event or **Wrongful Act** underlying or alleged in any prior or pending civil, criminal, administrative, or regulatory proceeding against any **Insured** as of the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**.
5. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any **Wrongful Act** occurring prior to any applicable Retroactive Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**.
6. The Company will not be liable for **Loss** for any **Claim** for any fact, circumstance, situation, or event that is or reasonably would be regarded as the basis for a claim about which any **Executive Officer** had knowledge prior to the applicable Continuity Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**.
7. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any fact, circumstance, situation, event or **Wrongful Act** which, before the Inception Date set forth in ITEM 2 of the Declarations, was the subject of any notice of claim or potential claim given by or on behalf of any **Insured** under any policy of insurance of which this **Liability Coverage** is a direct renewal or replacement or which it succeeds in time.
8. The Company will not be liable for **Loss** for any **Claim** for any violation of responsibilities, duties, or obligations under any law concerning Social Security, unemployment insurance, workers' compensation, disability insurance, or any similar or related federal, state, or local law or

regulation, or for any violation of the Worker Adjustment and Retraining Notification Act (WARN), Occupational Safety and Health Act (OSHA), Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the National Labor Relations Act (NLRA), Fair Labor Standards Act (FLSA), or amendments thereto or regulations promulgated thereunder, or any similar or related federal, state or local law or regulation.

9. The Company will not be liable for **Loss** for any **Claim** for any violation of responsibilities, duties or obligations under the Employee Retirement Income Security Act of 1974 (ERISA), including amendments thereto and regulations promulgated thereunder, or any similar or related federal, state, or local law or regulation; or for an **Insured's** failure or refusal to establish, contribute to, pay for, insure, maintain, provide benefits pursuant to, or enroll or maintain the enrollment of an **Employee** or dependent in, any employee benefit plan, fund, or program, including contracts or agreements which are not subject to the provisions of ERISA.
10. The Company will not be liable for **Loss** for any **Claim** by or on behalf of any spouse or person qualifying as a domestic partner under the provisions of any applicable federal, state, or local law, of any **Insured**.
11. The Company will not be liable for **Loss** for any **Claim** by or on behalf of, or in the name or right of, any **Insured** or any entity that at the time the **Wrongful Act** is committed, or the date the **Claim** is made,:
 - a. is owned, operated, or controlled by any **Insured**;
 - b. owns, operates, or controls any **Insured**; or
 - c. any **Insured** is a member of the board of directors, officer, member of the board of managers, partner or principal stockholder.
12. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any **Wrongful Act** by a **Subsidiary** or any related **Insured Person** occurring at any time during which such entity was not a **Subsidiary**.
13. The Company will not be liable for **Loss** for any **Claim** for:
 - a. plagiarism; or
 - b. misappropriation, infringement, or violation of copyright, patent, trademark, service mark, trade name, trade secret or any other intellectual property rights.
14. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of the liability of others assumed by an **Insured** under any contract or agreement, whether oral or written, except to the extent that the **Insured** would have been liable in the absence of such contract or agreement.
15. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any **Personal Injury**.
16. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any discrimination, humiliation, harassment, or misconduct by an **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.
17. The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any commingling of, or failure to segregate, funds or assets by any **Insured**.

B. EXCLUSIONS APPLICABLE TO LOSS, OTHER THAN DEFENSE EXPENSES

1. The Company will not be liable for **Loss**, other than **Defense Expenses**, for any **Claim** based upon or arising out of any **Insured**:
 - a. committing any criminal, dishonest, or fraudulent act;
 - b. committing any willful violation of any statute, rule, or law; or
 - c. gaining any profit, remuneration, or advantage to which such **Insured** was not legally entitled,

provided that this exclusion will not apply unless a final adjudication establishes that such **Insured** committed such criminal, dishonest, or fraudulent act, or willful violation of statute, rule, or law, or gained such profit, remuneration, or advantage to which such **Insured** was not legally entitled.

IV. SEVERABILITY OF EXCLUSIONS

No conduct of any **Insured Person** will be imputed to any other **Insured Person** to determine the application of any of the Exclusions set forth in section III. **EXCLUSIONS**.

V. CONDITIONS

A. RETENTION

This section V. **CONDITIONS A. RETENTION** supplements and does not replace section III. **CONDITIONS B. RETENTION** of the Liability Coverage Terms and Conditions.

If any **Claim** alleges that an **Insured** committed any criminal, dishonest or fraudulent act or omission or any willful violation of any statute, rule, or law, or gained any profit, remuneration, or advantage to which such **Insured** was not legally entitled, then no retention will apply to **Defense Expenses** resulting from such **Claim**, and the Company will reimburse the **Insured Organization** for any **Defense Expenses** paid by the **Insured Organization** in connection with any such **Claim**, if:

1. with respect to such **Claim**, there is a final adjudication of no liability obtained prior to or during trial, in favor of all **Insureds**, by reason of a motion to dismiss or a motion for summary judgment or any similar motion or process, after exhaustion of all appeals, or a final judgment of no liability obtained after trial, in favor of all **Insureds**, after exhaustion of all appeals; or
2. such **Claim** is dismissed or there is a stipulation to dismiss such **Claim** with prejudice and without the payment of any monetary consideration by the **Insureds**.

In no event will a settlement of a **Claim** be considered a final adjudication of no liability for purposes of this subsection. As a condition of any reimbursement of **Defense Expenses** as set forth above, the Company may require a written undertaking on terms and conditions satisfactory to the Company guaranteeing the repayment of such amounts in the event that such **Claim** is reinstated after payment by the Company.

B. SETTLEMENT

The Company may, with the written consent of the **Insured**, make such settlement or compromise of any **Claim** as the Company deems expedient. In the event that the Company recommends an offer of settlement (a "Settlement Offer") of any **Claim** which is acceptable to the claimant(s), and if the **Insured** refuses to consent to such Settlement Offer, the **Insured** will be solely responsible for 30% of all **Defense Expenses** incurred or paid by the **Insured** after the date the **Insured** refused to consent to the Settlement Offer, and the **Insured** will also be responsible for 30% of all **Loss**, other than **Defense Expenses**, in excess of the Settlement Offer, provided that the Company's liability under this **Liability Coverage** for such **Claim** will not exceed the applicable limit of liability.

C. LIMIT OF LIABILITY

This section V. **CONDITIONS C. LIMIT OF LIABILITY** supplements and does not replace section III. **CONDITIONS C. LIMITS OF LIABILITY** of the Liability Coverage Terms and Conditions.

The Company's maximum limit of liability for **Loss**, including **Defense Expenses**, for each **Claim** will not exceed the applicable limit of liability for each **Claim** set forth in ITEM 5 of the Declarations for this **Liability Coverage**, regardless of when payment is made and regardless of when an **Insured's** legal obligation with regard thereto arises or is established.

D. OTHER INSURANCE

This **Liability Coverage** applies as excess insurance over, and will not contribute with any other valid and collectible insurance available to the **Insured**, including any insurance under which there is a duty to defend, unless such insurance is written specifically excess of this **Liability Coverage** by reference in such other policy to the Policy Number of this **Liability Policy**. This **Liability Coverage** will not be subject to the terms of any other insurance.