



In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Section, the Company and the Insureds agree as follows:

I. INSURING CLAUSE

Miscellaneous Professional Liability Coverage

The **Company** shall pay **Loss** on behalf of the **Insureds** resulting from any **Professional Services Claim** first made against such **Insureds** during the **Policy Period**, or any Extended Reporting Period, for **Wrongful Acts** committed, on or after the Retroactive Date as set forth in Item 11 of the Declarations, by the **Insureds** or by any person for whose **Wrongful Acts** the **Insureds** are legally responsible.

II. DEFINITIONS

For purposes of this Coverage Section:

- (A) **Claim** means **Professional Services Claim**.
- (B) **Defense Costs** means that part of **Loss** consisting of reasonable costs, charges, fees (including but not limited to attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries or fees of the directors, officers or employees of the **Insured Organization**) incurred in defending any **Claim** and the premium for appeal, attachment or similar bonds.
- (C) **Employee** means any natural person whose labor or service is engaged by and directed by the **Insured Organization**, including part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any independent contractor.
- (D) **Executive** means any natural person specified below:
- (1) duly elected or appointed directors, officers, members of the Board of Managers or management committee members of any **Insured Organization** incorporated in the United States of America;
 - (2) in-house general counsel of any **Insured Organization** incorporated in the United States of America; or
 - (3) equivalent positions of (1) or (2) above in any **Insured Organization** chartered in any other jurisdiction anywhere in the world.
- (E) **Insured** means the **Insured Organization** and any **Insured Person**.
- (F) **Insured Person** means any past, present or future **Executive** or **Employee** of the **Insured Organization**.
- (G) **Loss** means the total amount which any **Insured** becomes legally obligated to pay as a result of any **Claim** made against any **Insured** for **Wrongful Acts**, including, but not limited to, damages (including punitive or exemplary damages, to the extent such damages are insurable under the law of any jurisdiction which has a substantial relationship to the



Insureds, the **Company**, this Policy or the **Claim** and which is most favorable to the insurability of such damages), judgments, settlements, pre-judgment and post-judgment interest and **Defense Costs**. **Loss** does not include:

- (1) any amount for which an **Insured Organization** or an **Insured Person** is absolved from payment by reason of any covenant, agreement (other than indemnification of an **Insured Person** by the **Insured Organization**) or court order;
 - (2) matters uninsurable under the law pursuant to which this Policy is construed;
 - (3) taxes, fines or penalties imposed by law, or the multiple portion of any multiplied damage award; or
 - (4) any amount allocated to uncovered loss pursuant to Section X Allocation of the General Terms and Conditions Section.
- (H) **Pollutants** means any substance located anywhere in the world exhibiting any hazardous characteristics as defined by, or identified on a list of hazardous substances issued by, the United States Environmental Protection Agency or any 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 or waste materials. **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.
- (I) **Pollution** means the actual, alleged or threatened discharge, release, escape or disposal of **Pollutants** into or on real or personal property, water or the atmosphere or any direction or request that the **Insured** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so.
- (J) **Professional Services** means only services which are performed for others for a fee and which are listed in Item 12 of the Declarations.
- (K) **Professional Services Claim** means:
- (1) any of the following:
 - (a) a written demand for monetary damages or non-monetary relief; or
 - (b) a civil proceeding commenced by the service of a complaint or a similar pleading;against an **Insured** for a **Wrongful Act**, including any appeal therefrom; or
 - (2) a written request received by an **Insured** to toll or waive a statute of limitations, relating to a potential **Professional Services Claim** as described in paragraph (1) above.
- (L) **Securities Laws** means the Securities Act of 1933, Securities Exchange Act of 1934, Investment Act of 1940, any state "blue sky" securities law, or any other federal, state or local securities law or any amendments thereto or any rules or regulations promulgated thereunder or any other provision of statutory or common law used to impose liability in connection with the offer to sell or purchase, or the sale or purchase of securities.



- (M) **Wrongful Act** means any actual or alleged act, error or omission committed, attempted, or allegedly committed or attempted by an **Insured Organization**, or by any **Insured Person** in his or her capacity as such, by or on behalf of the **Insured Organization**, solely in the performance of or failure to perform **Professional Services**.

III. EXCLUSIONS

- (A) No coverage will be available under this Coverage Section for any **Claim** against an **Insured**:
- (1) based upon, arising from, or in consequence of any circumstance, if written notice of such circumstance has been given under any policy of which this Coverage Section is a direct or indirect renewal or replacement and if such prior policy affords coverage (or would afford such coverage except for the exhaustion of its limits of liability) for such **Claim**, in whole or in part, as a result of such notice;
 - (2) based upon, arising from, or in consequence of a written demand, suit, or other proceeding pending, or order, decree or judgment entered for or against any **Insured** on or prior to the Pending or Prior Litigation Date as set forth in Item 10 of the Declarations, or the same or any substantially similar fact, circumstance or situation underlying or alleged therein;
 - (3) based upon, arising from, or in consequence of **Pollution**, including but not limited to any **Claim** for financial loss to any **Insured Organization** or its security holders or creditors or customers;
 - (4) based upon, arising from, or in consequence of bodily injury, mental anguish, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property, including the loss of use thereof whether or not it is damaged or destroyed;
 - (5) for an actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974, or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;
 - (6) based upon, arising from, or in consequence of the performance of or failure to perform **Professional Services** for:
 - (a) any **Insured**;
 - (b) any entity which is owned or controlled by, or is under common ownership or control with, any **Insured**;
 - (c) any natural person or entity which owns or controls any entity included within the definition of **Insured**; or
 - (d) any entity of which any **Insured** is a director, officer, partner or principal shareholder;



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- (7) based upon, arising from, or in consequence of any actual or alleged violation of the **Securities Laws**;
 - (8) for any actual or alleged liability of an **Insured** under any written or oral contract or agreement, provided that this Exclusion (A)(8) shall not apply to the extent that an **Insured** would have been liable in the absence of the contract or agreement;
 - (9) based upon, arising from, or in consequence of any actual or alleged infringement of copyright, patent, service mark, trademark, trade name, or misappropriation of ideas or trade secrets;
 - (10) based upon, arising from, or in consequence of any willful violation of any federal, state or local law or statute pertaining to discrimination, if a final and non-appealable judgment or adjudication adverse to the **Insured** establishes such a willful violation;
 - (11) brought or maintained by or on behalf of any **Insured**;
 - (12) for disputes solely involving the **Insured's** fees or charges or over charges or cost over-runs;
 - (13) based upon, arising from, or in consequence of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such **Insured**, if a final and non-appealable judgment or adjudication adverse to such **Insured** establishes such a deliberately fraudulent act or omission or willful violation; or
 - (14) based upon, arising from, or in consequence of such **Insured** having gained in fact any profit, remuneration or financial advantage to which such **Insured** was not legally entitled.
- (B) No coverage will be available under this Coverage Section for **Loss**, other than **Defense Costs**, which constitutes costs of compliance with any order for, grant of or agreement to provide non-monetary relief.
- (C) **Severability of Exclusions**
- With respect to the Exclusions (A)(13) and (A)(14) in this Coverage Section:
- (1) no fact pertaining to or knowledge possessed by any **Insured Person** shall be imputed to any other **Insured Person** to determine if coverage is available; and
 - (2) only facts pertaining to and knowledge possessed by any past, present or future Chief Financial Officer, President, Chief Executive Officer or Chairperson of any **Insured Organization** shall be imputed to any **Insured Organization** to determine if coverage is available.
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IV. OTHER INSURANCE

If any **Loss** under this Coverage Section is insured under any other valid and collectible insurance policy(ies), prior or current, then this Coverage Section shall cover such **Loss**, subject to its limitations, conditions, provisions and other terms, only to the extent that the amount of such **Loss** is in excess of the amount of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this Coverage Section.

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