

Miscellaneous Errors and Omissions Liability Insurance

NOTICE: THIS IS A CLAIMS MADE POLICY. THIS POLICY APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND ARE THE RESULT OF WRONGFUL ACTS COMMITTED ON OR SUBSEQUENT TO THE RETROACTIVE DATE SPECIFIED IN ITEM 6. OF THE DECLARATIONS AND BEFORE THE END OF THE POLICY PERIOD. PLEASE REVIEW THIS POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

ALL WORDS OR PHRASES THAT ARE IN BOLD FACE TYPE, OTHER THAN THE CAPTION TITLES, HAVE THE SPECIAL MEANING SET FORTH IN SECTION II, DEFINITIONS.

In consideration of the payment of the premium and in reliance upon the statements made in the Application, which is made a part hereof and deemed attached hereto, and subject to the Declarations and the limitations, conditions, provisions and other terms of the Policy, the Company named in the Declarations and the **Insureds** agree as follows:

I. Insuring Agreements

Errors and Omissions Coverage

A. The Company will pay on behalf of the **Insured** all sums in excess of the Deductible that the **Insured** shall become legally obligated to pay as **Damages** and **Claims Expenses** because of a **Claim** first made against the **Insured** during the **Policy Period** by reason of a **Wrongful Act** in the performance of or failure to perform **Professional Services** by the **Insured** or by any other person or entity for whom the **Insured** is legally liable. The **Wrongful Acts** must have been committed on or subsequent to the **Retroactive Date** specified in Item 6. of the Declarations and before the end of the **Policy Period**.

B. Defense and Claims Expenses

The Company shall have the right and duty to defend any covered **Claim** brought against the **Insured** even if the **Claim** is groundless, false or fraudulent. The **Insured** shall not admit or assume liability or settle or negotiate to settle any **Claim** or incur any **Claims Expenses** without the prior written consent of the Company and the Company shall have the right to appoint counsel and to make such investigation and defense of a **Claim** as it deems necessary.

The Company shall not settle any **Claim** without the written consent of the **Named Insured**. If the **Named Insured** refuses to consent to a settlement or a compromise recommended by the Company and acceptable to the Claimant, then the Company's Limit of Liability under this Policy with respect to such **Claim** shall be reduced to the amount of **Damages** for which the **Claim** could have been settled plus all **Claims Expenses** incurred up to the time the Company made its recommendation to the **Named Insured**, which amount shall not exceed the unexhausted Limit of Liability specified in Item 3. of the Declarations.

The Company shall not be obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle any **Claim** after the applicable Limit of Liability specified in Item 3. of the Declarations has been exhausted by payment of **Damages** and **Claims Expenses**, or any combination thereof, or after the Company has deposited the remaining available Limit of Liability into a court of competent jurisdiction. In such case, the Company shall have the right to withdraw from the further investigation, defense, payment or settlement of such **Claim** by tendering control of such **Claim** to the **Insured**.

Claims Expenses are part of and not in addition to the Company's Limit of Liability, and the payment by the Company of **Claims Expenses** reduces the applicable Limit of Liability.

If the **Insureds** attend hearings, depositions or trials at the request of the Company, the Company shall reimburse the **Insured's** actual loss of earnings and reasonable expenses due to such attendance up to \$250 per day subject to a maximum amount of \$5,000 for all **Claims** covered by this Policy. Such reimbursement payments by the Company to the **Insured** are not subject to the Deductible and shall not reduce the applicable Limit of Liability.

C. **Disciplinary Proceeding Coverage**

If an **Insured's Wrongful Act** results in the commencement during the **Policy Period** of a **Disciplinary Proceeding** against an **Insured**, the Company will reimburse the **Insured** for **Claims Expenses** incurred in responding to such **Disciplinary Proceeding**. The maximum payment by the Company pursuant to this extension of coverage shall be \$5,000 for each **Policy Period** regardless of the number of **Disciplinary Proceedings** or **Insureds**. Any payment by the Company pursuant to this extension of coverage shall not apply to the Deductible, but shall reduce and be subject to the Limit of Liability. The Company shall not pay **Damages** pursuant to this extension of coverage.

II. **Definitions**

- A. **Bodily Injury** means injury to the body, sickness, or disease, including death resulting from such injuries. **Bodily Injury** also means mental injury, mental anguish, mental tension, emotional distress, pain and suffering, or shock, whether or not resulting from injury to the body, sickness, disease or death of any person.
- B. **Claim** means a written demand for money, including any civil proceeding against the **Insured** for a **Wrongful Act**, in the performance of or failure to perform **Professional Services**. **Claim** shall not include any **Disciplinary Proceeding**.
- C. **Claims Expenses** means:
 - a. attorneys' fees, expert witness fees and other reasonable fees and costs incurred by the Company, or by the **Insured** with the Company's prior written consent, in the investigation and defense of covered **Claims**;
 - b. premiums for any appeal bond, attachment bond or similar bond, provided the Company shall have no obligation to apply for or furnish such bond; and
 - c. pre-judgment and post-judgment interest awarded in any **Claim**.

Claims Expenses shall not include wages, salaries, fees or costs of directors, officers or employees of the Company or the **Insured**.

- D. **Damages** means any compensatory amount which the **Insured** becomes legally obligated to pay on account of a covered **Claim**, including judgments, awards and settlements. All settlements must be negotiated and agreed upon with the prior written consent of the Company.

Damages shall not include:

- a. civil or criminal fines, penalties, or sanctions, whether pursuant to law, statute, regulation or court rule;
 - b. punitive and exemplary damages and the multiple portion of multiplied damages;
 - c. any matter, sum or award that is uninsurable under the law pursuant to which this Policy shall be construed; and
 - d. the cost to comply with any injunctive or other non-monetary or declaratory relief or any agreement to provide such relief.
- E. **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**.

- F. **Insured** means the **Named Insured** and:
- a. any past, present or future principal, partner, officer, director, stockholder, trustee or employee of the **Named Insured** but only with respect to **Professional Services** performed on behalf of the **Named Insured**;
 - b. independent contractors who are natural persons, but only with respect to **Professional Services** performed on behalf of the **Named Insured**; and
 - c. the estate, heirs, executors, administrators or legal representatives of any **Insured** described in subpart (a) or (b) above in the event of such **Insured's** death, incapacity, insolvency, or bankruptcy but only to the extent that such **Insured** would otherwise be provided coverage under this Policy.
- G. **Mediation** means a non-binding process in which a neutral panel or individual assists the parties in reaching their own settlement. To be considered **Mediation** under this Policy the process must be as set forth in the Commercial **Mediation** Rules of the American Arbitration Association or such other process as the Company may in its sole option approve.
- H. **Named Insured** means the entity or person specified in Item 1. of the Declarations.
- I. **Personal Injury** means injury arising out of one or more of the following offenses:
- a. false arrest, detention or imprisonment;
 - b. malicious prosecution;
 - c. libel, slander or other defamatory or disparaging material;
 - d. publication or an utterance in violation of an individual's right to privacy; and
 - e. wrongful entry or eviction, or other invasion of the right to private occupancy.
- J. **Policy Period** means the period of time between the effective date stated in Item 2. of the Declarations and the termination, expiration or cancellation date of this Policy, plus any Extended Reporting Period if elected.
- K. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including without limitation, smoke, vapor, soot, fumes, acids, alkalis, chemicals, and "waste". "Waste" includes materials to be recycled, reconditioned or re**Cl**aimed.
- L. **Professional Services** means only those services specified in Item 7. of the Declarations and performed for others for a fee by an **Insured** or by any person or entity for whom the **Insured** is legally liable.
- M. **Property Damage** means:
- a. physical injury to, or loss or destruction of, tangible property, including the loss of use thereof; and
 - b. loss of use of tangible property which has not been physically injured or destroyed.
- N. **Related Claims** mean all **Claims** arising out of a single **Wrongful Act** or a series of **Related Wrongful Acts** in the performance of or failure to perform **Professional Services**.
- O. **Related Wrongful Acts** mean all **Wrongful Acts** that are temporally, logically, or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.
- P. **Retroactive Date** means the date specified in Item 6. of the Declarations.
- Q. **Wrongful Act** means any actual or alleged act, error, omission, misstatement, misleading statement, **Personal Injury**, neglect or breach of duty by the **Insured** in their capacity as such or by any other person or entity for whom the **Insured** is legally liable.

III. Limits of Liability and Deductible

1. Limit of Liability - Each Claim

The Limit of Liability stated in Item 3. (A) of the Declarations is the Company's maximum liability for all **Damages** and **Claims Expenses** because of a single **Claim** or **Related Claims**.

Limit of Liability - Aggregate

The Limit of Liability stated in Item 3. (B) of the Declarations is the Company's maximum liability for all **Damages** and **Claims Expenses** because of all **Claims** for which this Policy applies regardless of the number of **Insureds**, **Claims** made or persons or entities making **Claims**.

The Company shall not be obligated to pay any **Damages** or **Claims Expenses** or to defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Damages** or **Claims Expenses**.

2. Deductible

The Deductible amount stated in Item 4. of the Declarations is applicable to each **Claim** and applies to both **Damages** and **Claims Expenses** combined. The Deductible shall be paid by the **Named Insured** and shall be uninsured and shall remain uninsured during the **Policy Period**. The Limits of Liability set forth in Item 3. of the Declarations are in addition to and in excess of the Deductible.

3. Multiple Claims

All **Related Claims** shall be deemed a single **Claim**, and such **Claim** shall be deemed to be first made on the date the earliest such **Related Claims** is first made against the **Insured**, regardless of whether such date is before or during the **Policy Period**.

IV. Exclusions

This policy does not apply to any **Claim** against the **Insured**:

- A. based on or arising out of any actual dishonest, fraudulent, criminal or malicious act or omission by an **Insured**, however, this exclusion shall not apply to **Claims Expenses** or the Company's duty to defend any such **Claim**;
- B. based on or arising out of any actual or alleged **Bodily Injury** or **Property Damage**;
- C. based on or arising out of any actual or alleged liability assumed by the **Insured** under any contract or agreement, unless such liability would have attached to the **Insured** even in the absence of such contract;
- D. based on or arising out of any actual or alleged breach of any contract, warranty, guarantee or promise unless such liability would have attached to the **Insured** even in the absence of such contract, warranty, guarantee or promise;
- E. based on or arising out of **Professional Services** performed for any entity if at the time the **Professional Services** were performed:
 - a. any **Insured** operated or managed such entity;
 - b. any **Insured** was a partner, director, officer or employee of such entity;
 - c. any **Insured** owned, directly or indirectly, 10% or more of any such entity that is a publicly held company, or 30% or more of any such entity that is a privately held company;
- F. by or on behalf of another **Insured**, in any capacity;

- G. based on or arising out of any actual or alleged:
 - a. illegal discrimination of any kind, or
 - b. humiliation, harassment, or misconduct arising out of or related to any such discrimination; however, this exclusion shall not apply to **Claims Expenses** or the Company's duty to defend any such **Claim**;
- H. based on or arising out of any actual or alleged violation of any anti-trust, restraint of trade or other law, rule or regulation which protects competition;
- I. based on or arising out of any actual or alleged violation of:
 - a. Employee Retirement Income Security Act of 1974;
 - b. Securities Act of 1933;
 - c. Securities Exchange Act of 1934;
 - d. State Securities Law;
 - e. any rules or regulations promulgated thereunder or any other similar federal, state or common law; or
 - f. any amendments thereof;
- J. based on or arising out of the gaining in fact of any profit or advantage to which the **Insured** is not legally entitled or any dispute involving fees, expenses or costs paid to or charged by the **Insured**;
- K. based on or arising out of a **Wrongful Act** actually or allegedly committed prior to the beginning of the **Policy Period**, if, on or before the earlier of the effective date of this Policy or the effective date of any Policy issued by the Company to which this Policy is a continuous renewal or replacement, the **Insured** knew or reasonably could have foreseen that the **Wrongful Act** did or could lead to a **Claim**;
- L. based on or arising out of a **Wrongful Act**, fact or circumstance which before the effective date of the Policy was reported to the **Company** or any other Insurer;
- M. based on or arising out of:
 - a. any actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **Pollutants** at any time; or
 - b. any request, demand or order 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 **Pollutants**; including without limitation any **Claim**, suit or proceeding by or on behalf of a governmental authority, a potentially responsible party or any other person or entity for **Damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **Pollutants**.

V. Conditions

A. Notice of Claims

The **Insured**, as a condition precedent to the obligations of the Company under this Policy, shall give written notice to the Company immediately, but in no event later than 60 days after the end of the **Policy Period** of any **Claim** made against the **Insured**.

The **Insured** shall immediately forward to the Company, at the address indicated in Item 8. of the Declarations, every demand, notice, summons, or other process or pleadings received by the **Insured** or its representatives.

B. Notice of Potential Claims

If, during the **Policy Period**, any **Insured** becomes aware of any **Wrongful Act** which may reasonably be expected to be the basis of a **Claim** against the **Insured**, and during the **Policy Period** gives written notice thereof to the Company with all available particulars, including but not limited to:

1. the specific **Wrongful Act**;
2. the dates and persons involved;
3. the identity of anticipated or possible **Claimants**;
4. the circumstances by which the **Insured** first became aware of the possible **Claim**, then any **Claim**, which is subsequently made against the **Insured** arising from such **Wrongful Act** and properly reported to the Company, shall be deemed to have been made at the time such written notice is given to the Company.

C. Assistance and Cooperation

The **Insured** shall cooperate with the Company, and provide to the Company all information and assistance which the Company reasonably requests including without limitation attending hearings, depositions and trials and assisting in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any **Claim** covered by this Policy. The **Insured** shall do nothing that may prejudice the Company's position.

D. Action Against the Company

No action shall be brought against the Company, unless, as a condition precedent thereto, the **Insured** shall have fully complied with all the terms of this Policy, and the amount of the **Insured's** obligation to pay shall have been fully determined either by judgment against the **Insured** after actual trial and appeal or by written agreement of the **Insured**, the **Claimant** and the Company.

E. Other Insurance

This Policy shall be excess over any other valid and collectible insurance, self-insurance or indemnification available to the **Insured**, whether such other insurance or indemnification is stated to be primary, contributory, excess, contingent, self-insured or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability of this Policy.

F. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or prevent the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed except by endorsement issued to form a part of this Policy and signed by an authorized representative of the Company.

G. **Mediation of Claims**

If a **Claim** is fully and finally resolved to the satisfaction of all parties, including the Company, through **Mediation**, the **Insureds'** Deductible obligation for such **Claim** shall be reduced by fifty (50) percent up to a maximum reduction of \$25,000. If **Claims Expenses** at the time of commencement of such **Mediation** do not exceed the Deductible, all **Claims Expenses** incurred in the **Mediation** shall be borne by the Company.

H. Territory

This Policy applies to **Wrongful Acts** taking place anywhere in the world provided that the **Claim** is made against the **Insured** within the United States of America, its territories or possessions.

I. Subrogation

In the event of any payment under this Policy, the Company shall be subrogated in the amount of such payment to the **Insured's** rights of recovery therefore against any person or entity. The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights.

J. Bankruptcy

Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the Company of any obligations hereunder.

K. Assignment

No assignment of interest of the **Insured** under this Policy shall be valid unless the written consent of the Company is endorsed hereon.

L. **Named Insured** sole agent

The entity or person first named in Item 1. of the Declarations shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any notices hereunder, any amendments to or cancellations of this Policy, for the completing of any Applications and the making of any statements, representations or warranties, for the payment of any premium and the receipt of any return premium that may become due under this Policy, and the exercising or declining to exercise any right under this Policy.

M. Cancellation/Non Renewal

This Policy may be cancelled by the **Named Insured** by surrender of this Policy to the Company or by giving written notice to the Company stating when thereafter such cancellation shall be effective. This Policy may also be cancelled or non renewed by the Company by sending written notice to the **Named Insured**, at the address last known to the Company, at least 60 days before such cancellation or non renewal is effective; however, if the Company cancels this Policy because the **Insured** has failed to pay amounts due under this Policy, this Policy may be cancelled by the Company by sending written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender, or the effective date and hour of cancellation stated in the notice, shall become the end of the **Policy Period** subject to any elected **Extended Reporting Period**.

If this Policy is cancelled by the **Named Insured**, the Company shall retain the customary short rate proportion of the premium hereon. If this Policy is cancelled by the Company, the Company shall retain the pro-rata proportion of the premium hereon.

Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

N. Application

By acceptance of this Policy the **Insured** agrees that:

1. all the information and statements provided to the Company by the **Insured** which are contained herein, attached to or incorporated in the Application for this Policy are true, accurate and complete and shall be deemed to constitute material representations made by the **Insured**;
2. this Policy is issued in reliance upon such **Insured's** representations;
3. this Policy, including all endorsements hereto, and the completed and signed Application and any and all supplementary information and statements provided by the **Insured** to the Company (all of which are deemed to be incorporated herein) embody all of the agreements existing between the **Insured** and the Company and shall constitute the entire contract between the **Insured** and the Company; and
4. if such representations are not true, accurate and complete, this Policy shall be null and void in its entirety and the Company shall have no liability hereunder.

VI. Extended Reporting Period

In case of cancellation or non renewal of this Policy, by either the **Named Insured** or the Company, for reason other than the **Named Insured's** non payment of amount due under this Policy or non compliance with the terms and conditions of this Policy, the **Named Insured** shall have the right to an Extended Reporting Period as follows:

a. Automatic Extended Reporting Period

Coverage as provided under this Policy shall automatically continue for a period of sixty (60) days following the effective date of such cancellation or non renewal, but only with respect to **Claims** for **Wrongful Acts** committed before the effective date of such cancellation or non renewal.

b. Optional Extended Reporting Period

The **Named Insured** shall have the right, upon payment of the additional premium set forth in Item 9(A) of the Declarations, to an extension of the coverage provided under this Policy for the period set forth in Item 9(B) of the Declarations following the effective date of such cancellation or non renewal, but only with respect to **Claims** for **Wrongful Acts** committed before the effective date of such cancellation or non renewal.

This right shall terminate, however, unless written notice of such election and payment of the additional premium is received by the Company not later than sixty (60) days after the effective date of cancellation or non-renewal. A change in policy terms, conditions, exclusions and/or premiums shall not be considered a non-renewal for purposes of triggering the rights to the Automatic or Optional Extended Reporting Period.

The first sixty (60) days of the Optional Extended Reporting Period, if it becomes effective, shall run concurrently with the Automatic Extended Reporting Period.

There is no separate or additional Limit of Liability for **Claims** first made during the Extended Reporting Period.

IN WITNESS WHEREOF, the Company has caused this Policy to be executed by its President and Secretary, but this Policy shall not be binding upon the Company unless completed by the attachment of the Declarations and signed by a duly Authorized Representative of the Company.