

**I. INSURING AGREEMENT**

The Insurer shall pay on behalf of the **Named Company**, any **Subsidiary** or any **Insured Persons** all **Loss** resulting from any **Claim** first made against **Named Company Insureds** during the **Policy Period** or the Extended Reporting Period, if applicable, for a **Wrongful Act** by such **Named Company Insured** or by someone for whom the **Named Company Insured** is legally responsible provided that such **Wrongful Act** was committed on or subsequent to the **Retroactive Date**.

**II. DEFINITIONS**

1. **Claim** means a written demand received by a **Named Company Insured** for monetary damages or non-monetary relief arising out of a **Wrongful Act**, including **Personal Injury**, in the performance of **Professional Services**. A written demand shall include, but is not limited to:
  - a. a civil adjudicatory proceeding or arbitration;
  - b. a formal administrative or regulatory adjudicatory proceeding; or
  - c. a formal civil, administrative or regulatory investigation;against a **Named Company Insured**, including any appeal therefrom.
2. **Insured Persons** means:
  - a. any person who, during the **Policy Period**, is a partner, officer, director or employee of the **Named Company** or **Subsidiary** but only for **Professional Services** performed on behalf of the **Named Company** or **Subsidiary**;
  - b. any former partner, officer, director, or employee of the **Named Company** but only for **professional services** performed on behalf of the **Named Company** or **Subsidiary** at the time of such affiliation.
3. **Loss** means damages, settlements, judgments (including any award of pre-judgment and post-judgment interest) and **Defense Costs** for which a **Named Company Insured** is legally obligated to pay on account of a covered **Claim**. **Loss** shall not include:
  - a. the return or restitution of fees, expenses or costs for **Professional Services** performed or to be performed by a **Named Company Insured**;
  - b. criminal or civil fines or penalties imposed by law;
  - c. taxes;
  - d. matters which are uninsurable under the law pursuant to which this Policy shall be construed.

**Loss** shall include punitive, exemplary or multiple damages if insurable, to the fullest extent permitted by any applicable law. Where the **Named Company Insureds** reasonably determine that punitive, exemplary or multiple damages are insurable under any applicable law, the Insurer shall not challenge that determination of insurability.
4. **Personal injury** means injury arising out of one or more of the following offenses committed in the rendering or failure to render **Professional Services**:
  - a. false arrest, detention or imprisonment;
  - b. malicious prosecution;
  - c. libel or slander or other defamatory or disparaging materials;
  - d. publication or an utterance in violation of an individual's right to privacy;

- e. wrongful entry or eviction, or other invasion of the right to private occupancy.
- 5. **Professional services** means those services specified in the attached “Professional Services Endorsement” performed by a **Named Company Insured** for others for a fee.
- 6. **Retroactive Date** means the date specified as such in the Declarations, on or after which a **Wrongful Act** must have been committed for coverage under this Coverage Part to apply.
- 7. **Wrongful Act** means any actual or alleged error, misstatement, misleading statement, act, omission, neglect or breach of duty committed or attempted by a **Named Company Insured** in its performance of **Professional Services**.

### III. EXCLUSIONS

#### 1. Exclusions Applicable to all Loss

The Insurer shall not be liable to pay any **loss** under this Coverage Part in connection with any **Claim** made against a **Named Company Insured**:

- a. for any actual or alleged 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;
- b. based upon, directly or indirectly arising out of, or in any way involving:
  - (1) any **Wrongful Act** or any matter, fact, circumstance, situation, transaction, or event which has been the subject of any notice given under any prior policy, in whole or in part; or
  - (2) any other **Wrongful Act** whenever occurring, which, together with a **Wrongful Act** described in (1) above, would constitute **Interrelated Wrongful Acts**;
- c. based upon, directly or indirectly arising out of, in any way involving or constituting any civil, criminal, administrative or regulatory proceeding, investigation or arbitration against any of the **Named Company Insureds**:
  - (1) pending prior to or on the Prior or Pending Date set forth in the Coverage Schedule of the Declarations; or
  - (2) which has been the subject of any notice given under any prior policy, regardless whether such prior policy affords coverage for such proceeding, investigation, or arbitration;or any fact, circumstance, situation, transaction underlying or alleged in such proceeding, investigation or arbitration;
- d. for any of:
  - (1) a **Named Company Insured’s** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
  - (2) liability of others assumed by the **Named Company Insured** under any oral or written contract or agreement,

except that coverage otherwise available to a **Named Company Insured** shall apply to such **Named Company Insured’s** liability that exists in the absence of such contract or agreement;

- e. for any **Professional Services** performed for any entity, not named in the Declarations, if at the time of the act or omission giving rise to such **Claim**:
- (1) any **Named Company Insured** controlled, owned, operated or managed such entity; or
  - (2) any **Named Company Insured** was an owner, partner, director, officer or employee of such entity;

For the purpose of this exclusion, a 10% or more owner of the voting stock of a publicly held corporation or a 50% or more owner of the voting stock of a privately held corporation shall be deemed to own such entity;

- f. by or on behalf of any of the other **Named Company Insureds**, in any capacity except and to the extent that such **Claim** is in the form of a crossclaim, third-party claim or otherwise for contribution or indemnity which is part of and results directly from a **Claim** which is not otherwise excluded under this Coverage Part;
- g. for any actual or alleged violation of **ERISA or any Similar Act** in connection with any employee pension benefit plan, employee welfare benefit plan or excess benefit plan as defined in 29 U.S.C. 1002, or “employee stock ownership plan” as defined in 26 U.S.C. 4975;
- h. based upon, arising out of, relating to, directly or indirectly resulting from or in consequence of, or in any way involving any of the following:
- (1) The filing of any registration statement under the Securities Acts of 1933, or the Securities Exchange Act of 1934, any State Blue Sky Law, or any other state or local securities law; or
  - (2) The Securities Act of 1933, the Securities and Exchange Act of 1934, rules or regulations of the Securities Exchange Commission under either or both acts, similar securities laws or regulations of state, or any laws of any state relating to any transaction arising out of, involving, or relating to the public offering of securities.
- i. based upon, directly or indirectly arising out of, or in any way involving: any nuclear reaction, radiation, or contamination, or any actual, alleged or threatened discharge, release, escape, or disposal of, or exposure to, **Pollutants**; any request, direction or order that any of the **Named Company Insureds** test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effect of **Pollutants** or nuclear reaction, radiation or contamination, or any voluntary decision to do so; or any actual or alleged property damage, bodily injury, sickness, disease or death of any person, or financial loss to **Named Company Insureds** resulting from any of the aforementioned matters;
- j. for any actual or alleged discrimination, humiliation, harassment or misconduct that includes but shall not be limited to **Claims** based on an individual’s race, creed, color, age, sex, national origin, religion, handicap, marital status or sexual preference;
- k. based upon, directly or indirectly arising out of, or in any way involving:
- (1) charges of price fixing, restraint of trade, monopolization or unfair trade; or
  - (2) any actual or alleged violation of:
    - (a) the Federal Trade Commission Act, the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-

- trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade; or
- (b) any rules or regulations promulgated under or in connection with the above statutes; or
  - (c) any similar provision of any state, federal or local statutory law or common law.
2. Exclusions Applicable to a Portion of **Loss**
- a. The Insurer shall not be liable to pay any **Loss** under this Coverage Part, other than **Defense Costs**, in connection with any **Claim** made against a **Named Company Insured** based upon, directly or indirectly arising out of, or in any way involving the commingling, misappropriation or improper use of funds, or arising out of the gaining of any personal profit or advantage to which the **Named Company Insured** is not legally entitled;
  - b. The Insurer shall not be liable to pay any **Loss** under this Coverage Part in connection with any **Claim** made against a **Named Company Insured**, for any actual or alleged dishonest, fraudulent, criminal or malicious act or omission, or intentional wrongdoing by a **Named Company Insured**.

The Insurer shall provide the **Named Company Insured** with a defense of such **Claims** unless or until the dishonest, fraudulent, criminal or malicious act or intentional wrongdoing has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of the Insurer's rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against the **Named Company Insured**.

For the purpose of determining the applicability of any exclusion set forth in subsection 2., the actual act or omission of any **Named Company Insured** shall not be imputed to any other **Named Company Insured**.