

# Miscellaneous Professional Liability Insurance Policy

## CLAIMS MADE NOTICE FOR POLICY

**NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE COMPANY IN ACCORDANCE WITH SECTION V. A. OF THIS POLICY.**

**PLEASE READ POLICY CAREFULLY.**

In consideration of the payment of the premium, in reliance on all statements in the **Application** and all other information provided to the **Company**, and subject to all provisions of this **Policy**, the **Company** and **Insureds** agree as follows:

### I. Insuring Agreement

#### A. Professional, Cyber, and Media and Personal Injury Liability Insurance Coverage

The **Company** agrees to pay on behalf of the **Insured** all sums in excess of the Deductible, up to the Limit of Liability, that the **Insured** shall become legally obligated to pay as **Damages** and **Claim Expenses** arising from a **Claim** that is both first made against the **Insured** and reported in writing to the **Company** in accordance with section V. A. of this **Policy**, provided that:

1. the **Claim** arises out of a **Wrongful Act**; and
2. no **Insured** gave notice to a **Prior Insurer** of such **Claim** or a **Related Claim** or any such **Wrongful Act** or **Related Wrongful Act**; and
3. prior to the date an **Insured** first becomes an **Insured** under this **Policy**, or became an **Insured** under the first policy issued to the **Named Insured** by the **Company** (or its subsidiary or affiliated insurers), and such insurance coverage has been continuously maintained with the **Company** (or its subsidiary or affiliated insurers) until the effective date of this **Policy**, whichever is earlier, no **Insured** had a basis to believe that any **Wrongful Act**, or **Related Wrongful Act**, might reasonably be expected to be the basis of a **Claim**; and
4. such **Wrongful Act** happened on or after the **Retroactive Date** and before the end of the **Policy Period**.

#### B. Defense

The **Company** shall have the right and duty to defend, in the **Insured's** name and on the **Insured's** behalf, a **Claim** seeking **Damages** covered by this **Policy** even if any of the allegations of the **Claim** are groundless, false or fraudulent. The **Company** shall have the right to appoint counsel and to make such investigation and defense of a **Claim** as is deemed necessary by the **Company**. If a **Claim** shall be subject to arbitration or mediation, the **Company** shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of an arbitration or mediation proceeding.

#### C. Settlement

The **Company** may investigate and solicit settlement offers for any **Claim** but shall not settle any **Claim** without the **Named Insured's** written consent. If the **Named Insured** refuses to consent to any settlement recommended by the **Company**, which is acceptable to the claimant, and elects to contest the **Claim**, or continue any legal, administrative, or arbitration proceedings in connection with such **Claim**, then the **Company's** liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled (the Proposed Settlement Amount), including **Claim Expenses** incurred up to the date of such refusal plus 50% of any **Claim Expenses** and **Damages** exceeding the Proposed Settlement Amount. It is a condition of this insurance that the remaining 50% of such **Claim Expenses** and **Damages** shall be borne by the **Insured** at its own risk. Such amounts are subject to the provisions of section II. of this **Policy**.

#### D. Exhaustion of Limit

The **Company** is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **Claim** after the applicable limit of the **Company's** liability has been exhausted by payment of **Damages** and / or **Claim Expenses** 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 investigation, defense or settlement of the **Claim** to the **Insured**.

#### E. Allocation

If a **Claim** made against an **Insured** contains both covered and uncovered matters, then the **Named Insured** and the **Company** will allocate any amount incurred with respect to such **Claim** as follows: (1) 100% of **Claim Expenses** incurred will be covered; and (2) **Damages** will be allocated on the basis of the relative legal and financial exposures of the parties to covered and uncovered matters pursuant to the terms of this **Policy**.

If a **Claim** made against an **Insured** contains both covered and uncovered parties, then the **Named Insured** and the **Company** will allocate any amounts incurred on behalf of any uncovered parties with respect to such **Claim** on the basis of the relative legal and financial exposures of the parties of such covered and uncovered parties pursuant to the terms of this **Policy**.

The **Company** shall not be liable under this **Policy** for the portion of such amount allocated to non-covered **Damages** and / or **Claim Expenses**. In the event that the parties cannot reach a mutually agreeable allocation, the **Company** will advance that portion which the **Company** and the **Insured** agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this **Policy** and applicable law.

## II. Limits of Liability and Deductible

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### A. Limits of Liability

1. The Limit of Liability stated in Item 3. A. of the Declarations is the **Company's** Limit of Liability for all **Damages** and **Claim Expenses** arising out of each **Claim** first made against the **Insured** and reported to the **Company** in accordance with section V. A. of this **Policy**.
2. The Limit of Liability stated in Item 3. B. of the Declarations is the **Company's** maximum aggregate Limit of Liability for all **Damages** and **Claim Expenses** arising out of all **Claims** first made against the **Insured** and reported to the **Company** in accordance with section V. A. of this **Policy**, regardless of the number of **Insureds**, **Claims** made, or persons or entities bringing such **Claims**.
3. **Claim Expenses** shall be part of and not in addition to the Limit of Liability and payment of **Claim Expenses** by the **Company** will reduce, and may exhaust, the Limit of Liability stated in Item 3. of the Declarations.

### B. Deductible

1. The Deductible amount stated in Item 4. of the Declarations shall apply to each and every **Claim** first made and reported to the **Company** in accordance with section V. A. of this **Policy**. Upon the **Company's** written request, the **Insured** must pay the Deductible before the **Company** is obligated to make any payment under the each **Claim** limit. The **Company** will determine the reasonableness of **Claim Expenses** that qualify to satisfy the Deductible.
2. The Limits of Liability set forth in the Declarations are in addition to and in excess of the Deductible, and the **Company** shall only be liable for the amount of **Damages** and / or **Claim Expenses** arising from a **Claim** which is in excess of the Deductible amount stated in Item 4. of the Declarations.

### C. When a Claim is Made and Multiple Insureds, Claims and Claimants

A **Claim** shall be considered first made when it is received by any **Insured**. All **Claims** arising out of the same **Wrongful Act** or **Related Wrongful Acts** shall be considered a single **Claim** and shall be deemed to be first made on the date on which the earliest **Claim** arising out of such **Wrongful Act** is made, regardless of whether such date is before or during the **Policy Period**.

Subject to the provisions of this **Policy**, the Limit of Liability stated in Item 3. of the Declarations is the maximum amount the **Company** will pay as **Damages** and **Claim Expenses** regardless of the number of **Insureds**, **Claims** made or persons or entities making **Claims**. If **Related Claims** are subsequently made against the **Insured** and reported to the **Company** in accordance with section V. A. of this **Policy**, all such **Related Claims**, whenever made, shall be considered a single **Claim** first made and reported to the **Company** within the **Policy Period** in which the earliest of the **Related Claims** was first made and reported to the **Company**.

### D. Supplemental Payments

Payments made pursuant to this section II. D. of the **Policy** are not subject to the Deductible and shall be in addition to the Limit of Liability stated in Item 3. of the Declarations. The obligation of the **Company** to make payments under this section ends when the applicable sub-limit stated below is exhausted.

1. Loss of Earnings – Attendance at Trial

If during the **Policy Period** the **Company** requests the attendance of an **Insured** at a trial, hearing, arbitration proceeding or mediation in connection with a **Claim** against such **Insured**, then, upon written request of the **Named Insured**, the **Company** will reimburse the **Insured** up to the amount stated in Item 8. A. of the Declarations for actual loss of earnings and reasonable costs incurred by the **Insured** for each day or part of a day the **Insured** attends. In no event shall the amount payable hereunder exceed the amount stated in Item 8. A. of the Declarations per **Policy Period** regardless of the number of **Insureds** or number of **Claims**.

## 2. Disciplinary Proceedings

The **Company** will reimburse the **Insured** for attorney fees and other reasonable costs, expenses or fees, as determined by the **Company**, incurred by the **Insured** resulting from any **Disciplinary Proceeding** incurred as the result of a notice of such **Disciplinary Proceeding** both first received by the **Insured** and reported in writing to the **Company** during the **Policy Period** arising out of a **Wrongful Act** committed on or after the **Retroactive Date** and prior to the expiration of the **Policy Period**. In no event shall the amount payable hereunder exceed the amount stated in Item 8. B. of the Declarations per **Policy Period** regardless of the number of **Insureds** or number of such **Disciplinary Proceedings**. Further, the **Company** shall not be obligated to defend any **Disciplinary Proceeding** or pay any fine, penalty or award resulting from any **Disciplinary Proceeding**.

## 3. Subpoena Assistance

If during the **Policy Period** the **Insured** receives a subpoena for documents or testimony arising out of **Professional Services** rendered by the **Insured** and the **Insured** would like the assistance of the **Company** in responding to the subpoena, the **Insured** may provide the **Company** with a copy of the subpoena and the **Company** will retain an attorney to provide advice regarding the production of documents, to prepare the **Insured** for sworn testimony, and to represent the **Insured** at the **Insured's** depositions, provided that the subpoena arises out of a lawsuit to which the **Insured** is not a party and the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the **Insured** provided such advice or testimony in the past. The **Company** will pay such attorney's legal fees excluding any disbursements. In no event shall the amount payable hereunder exceed the amount stated in Item 8. C. of the Declarations per **Policy Period** regardless of the number of **Insureds** or number of subpoenas. Any written notice the **Insured** gives the **Company** of such subpoena shall be deemed notification of a potential **Claim** under section V. A. of this **Policy**.

## 4. Cyber Security Breach Response

If during the **Policy Period**, the **Named Insured** provides written notification to the **Company** of a **Cyber Security Breach** that occurred during the **Policy Period**, the **Company** will engage a qualified firm on behalf of the **Named Insured** to investigate the breach, notify any parties affected by the breach, perform credit monitoring services for the individual personal data or corporate data of clients of the **Named Insured** lost because of the breach, and restore or recreate (if possible) any lost **Content** of clients of the **Named Insured** caused by the breach. In no event shall the amount payable hereunder exceed the amount stated in Item 8. D. of the Declarations per **Policy Period** regardless of the number of **Insureds** or number of breaches.

### III. Definitions

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Whenever printed in boldface type, and whether in the singular or plural form in this **Policy**, the following terms shall have the meanings indicated below.

- A. Advertising** means any material promoting the products, services or business of the **Insured Organization**.
- B. Application** means all signed applications, including any attachments, and all other materials and information provided by or on behalf of the **Insured** to the **Company** for the purpose of underwriting or issuing this **Policy**, or any policy of insurance of which this **Policy** is a renewal or replacement.
- C. Bodily Injury** means physical injury, disease, sickness or death of any person, including any mental anguish, mental injury, emotional distress, pain and suffering or shock resulting therefrom.
- D. Claim** means a written demand for money or services received by the **Insured** and arising out of any **Wrongful Act**, including the service of suit, the institution of any alternative dispute resolution proceeding or any written request to toll or waive the statute of limitations. **Claim** shall not include criminal proceedings or **Disciplinary Proceedings**, regardless of the allegations made against any **Insured**.
- E. Claim Expenses** means:
  - 1. reasonable and necessary fees charged by attorneys designated by the **Company**, or designated by the **Insured** with the **Company's** written consent, to defend a **Claim**; and
  - 2. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim** if incurred by the **Company**, or by the **Insured** with the written consent of the **Company**, including but not limited to, premiums for any appeal bond, attachment bond or similar bond, but without any obligation of the **Company** to apply for or furnish any such bond.

**Claim Expense** with respect to a covered **Claim** will be paid first and such payment will reduce the amount available to pay **Damages**. **Claim Expenses** do not include salary charges, wages or expenses of employees or officers of the **Company** or any **Insured**.
- F. Company** means the entity issuing this **Policy** as listed on the Declarations Page.
- G. Content** means data, digital code, images, drawings, scents, sounds, tastes, texts or textures.

- H. Cyber Security Breach** means the **Insured's** computer network security activities which result in:
1. the failure to prevent the introduction or transmission of a computer virus or any other malicious code, but only if such computer virus or malicious code affects the data, software, firmware, systems or networks of the **Insured's** clients; or
  2. the failure to provide the **Insured's** clients with access to the **Insured's** website or computer or communications network when the clients have authorized use of the **Insured's** website or computer or communications network; or
  3. failure to prevent unauthorized access to, or use of, data, software, firmware, systems or networks containing private or confidential information of the **Insured's** client; or
  4. the destruction, deletion or corruption of the electronic data of the **Insured's** clients; or
  5. failure to prevent the theft, unauthorized or illegal disclosure or loss of the following information of the **Insured's** clients:
    - a. an individual, natural person's private **Content**, or
    - b. commercial confidential information that resides in or on the **Insured's** hardware devices or data systems.
- I. Cyber Wrongful Act** means any actual or alleged act, error or omission committed by any **Insured** or by any person whose act, error or omission the **Insured** is legally responsible, arising solely from the performance of, or failure to perform, the **Insured's Professional Services**, and that:
1. such **Professional Services** are specifically related to **Information Technology Services**; or
  2. results in the failure of **Information Technology Products** to perform or serve the intended purpose; or
  3. results in a **Cyber Security Breach**.
- J. Damages** means judgments (including pre-judgment or post-judgment interest), awards and settlements, provided all settlements are negotiated with the assistance and approval of the **Company**. **Damages** do not include:
1. fees, costs and expenses paid or incurred or charged by any **Insured** or the return or reimbursement of fees, costs or expenses paid to the **Insured**; no matter whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing;
  2. civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to law, statute, regulation or court rule;
  3. injunctive or declaratory relief and costs to comply with injunctive relief;
  4. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement or court order;
  5. salaries, wages, overhead or benefit expenses associated with any **Insured** or any person whose act, error or omission the **Insured** is legally responsible; or
  6. punitive or exemplary damages and the multiple portions thereof.
- K. Disciplinary Proceeding** means any disciplinary matter including but not limited to any proceeding by an administrative, disciplinary, governmental or regulatory agency, board, body or official to investigate charges of professional misconduct in the performance of, or failure to perform, **Professional Services**; provided, however, **Disciplinary Proceeding** shall not include a criminal proceeding.
- L. Executive Officer** means any Principal, President, Chief Executive Officer, Managing Partner, Managing Member, Chief Financial Officer, Chief Operating Officer, Chief Compliance Officer, In-House General Counsel or Risk Manager (or the functional equivalent of such positions) of the first **Named Insured**.
- M. Extended Reporting Period** means the period of time after the end of the **Policy Period** for reporting a **Claim** that is first made against the **Insured** and arises from a **Wrongful Act** that fully occurred prior to the end of the **Policy Period**, and which is otherwise covered by this **Policy**.
- N. Information Technology Products** means a computer or telecommunication hardware or software product or other electronic product that is created, developed or manufactured by the **Insured** for others including software updates, service packs and other maintenance releases for such products.
- O. Information Technology Services** means:
1. consulting on, design of, development of, analysis of, integration of, interface of, modification of and programming of software, hardware, networks, telecommunication systems and electronic or digital devices performed by the **Insured** for the **Insured's** clients; or
  2. installation of, training in the use of, support of, servicing of, maintenance of, and repair of the **Insured's Information Technology Products**; or
  3. marketing of, selling of, licensing of and distribution of the **Insured's Information Technology Products**; or
  4. storage of, warehousing of, mining of and processing of data by the **Insured** for the **Insured's** clients; or



5. managing, operating, administering and hosting the **Insured's Information Technology Products** for the **Insured's** clients; or
  6. activities performed on the **Insured's** website(s);
- provided, however, **Information Technology Services** shall not mean **Information Technology Products**.

**P. Insured** means the **Insured Organization** and any **Insured Persons**.

**Q. Insured Organization** means any **Named Insured** and any **Subsidiary**.

**R. Insured Person** means:

1. any past or present natural person in their capacity as partner, principal, officer, director, shareholder, manager, member, or employee of the **Insured Organization**, but only for **Professional Services** performed on behalf of the **Insured Organization**;
2. the estate, heirs, executors, administrators, assigns, and legal representatives of an **Insured Person** in the event of such **Insured Person's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured Person** would have been provided coverage under this **Policy**; or
3. the spouse or domestic partner of an **Insured Person**; provided, however, coverage is only afforded to such spouse or domestic partner for a **Claim** arising solely out of their status as such and where such **Claim** seeks damages from marital community property, jointly held property or property transferred from an **Insured Person** to the spouse or domestic partner. No coverage is provided for any **Wrongful Act** of an estate, heir, legal representative, assign, spouse or domestic partner.

**S. Named Insured** means any entity or individual designated in Item 1. of the Declarations.

**T. Media Activities** means **Media Communications** and / or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Insured's** business.

**U. Media and Personal Injury Wrongful Act** means any actual or alleged act, error or omission committed by any **Insured** or by any person whose act, error or omission the **Insured** is legally responsible, arising solely from the performance of, or failure to perform, the **Insured's Professional Services, Media Activities or Information Technology Services** that result in:

1. infringement of copyright, piracy, plagiarism or misappropriation or unauthorized use of ideas under contract; or
2. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark; or
3. negligence regarding the **Content** of any **Media Communication** including harm caused through any reliance or failure to rely upon such **Content**; or
4. defamation, libel, slander, product disparagement, trade libel, or other tort related to disparagement or harm to the reputation or character of any person or organization; or
5. invasion or interference with the right to privacy or of publicity; or
6. misappropriation of any name or likeness for commercial advantage; or
7. false arrest, detention or imprisonment or malicious prosecution; or
8. invasion of or interference with any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping.

**V. Media Communications** means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Insured**.

**W. Media Material** means information in the form of words, sounds, numbers, images or graphics in electronic, print or broadcast form, including **Advertising**, but does not mean computer software or **Content**.

**X. Policy** means, collectively, the Declarations, the **Application**, this policy form and all written endorsements issued to form part of this policy form.

**Y. Policy Period** means the period of time from the inception date shown in Item 2. of the Declarations to the earlier of the expiration date shown in Item 2. of the Declarations or the effective date of cancellation of this **Policy**.

**Z. Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, asbestos and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**AA. Prior Insurer** means an insurer, including the **Company** and any subsidiary or affiliate of the **Company**, who has issued a professional liability insurance policy that is applicable to a **Claim**, such policy having an inception date prior to the **Policy Period**.

**BB. Professional Services** means only those services specified in Item 7. of the Declarations that are performed by the **Insured** for others, including such services that are performed electronically using the Internet or a network of two or more computers.

**CC. Professional Services Wrongful Act** means any actual or alleged act, error or omission committed by any **Insured** or by any person whose act, error or omission the **Insured** is legally responsible, arising solely from the performance of, or failure to perform, the **Insured's Professional Services**.

**DD. Property Damage** means physical damage to or destruction of tangible property and / or loss of use of thereof.

**EE. Related Claims** means all **Claims** arising out of a single **Wrongful Act**, or arising out of **Related Wrongful Acts** in the performance of **Professional Services**.

**FF. Related Entity** means any entity other than the **Insured Organization**:

1. in which any **Insured** is a trustee, principal, managing partner, managing member, director, officer or employee at the time the **Wrongful Act** is committed; or
2. in which any **Insured** or members of the immediate family of any **Insured** directly or indirectly owns or controls more than 10% of the issued and outstanding shares, units or other portions of the capital of such entity at the time the **Wrongful Act** is committed, but only if such entity's outstanding shares, units or other portions of capital are publicly traded; or
3. in which any **Insured** or members of the immediate family of any **Insured** directly or indirectly owns or controls more than 50% of the issued and outstanding shares, units or other portions of the capital of such entity at the time the **Wrongful Act** is committed, but only if such entity's outstanding shares, units or other portions of capital are privately traded; or
4. which owns, manages or controls any **Insured** at the time the **Wrongful Act** is committed.

**GG. Related Wrongful Acts** means all **Wrongful Acts** that are temporally, logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

**HH. Retroactive Date** means the date set forth in Item 5. of the Declarations.

**II. Subsidiary** means:

1. an entity in which the **Named Insured** owns more than a 50% interest, either directly or indirectly through one or more of its **Subsidiaries**, on or before the inception date of the **Policy** and such **Subsidiary** was not otherwise specifically excluded by endorsement to this **Policy**; or
2. an entity that an **Insured** forms or acquires during the **Policy Period**, subject to the terms of section V. Q. of this **Policy**.

In all events, coverage as is afforded with respect to a **Claim** made against a **Subsidiary** shall only apply for **Wrongful Acts** committed or allegedly committed while the entity meets the criteria set forth in sub-paragraphs 1 or 2 above. An entity ceases to be a **Subsidiary** when the **Named Insured** ceases to own more than 50% of the issued and outstanding voting interest either directly or indirectly through one or more of its **Subsidiaries**.

**JJ. Wrongful Act** means any **Professional Services Wrongful Act**, **Cyber Wrongful Act** or **Media and Personal Injury Wrongful Act**.

## IV. Exclusions

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This **Policy** does not apply to any **Claim Expenses** or **Damages** in connection with any **Claim**:

**A.** based on or arising out of:

1. any dishonest, fraudulent or criminal act by or on behalf of an **Insured**; provided, however, if a **Claim** made against an **Insured** contains both matters covered by this **Policy** and matters excluded by this Exclusion IV. A. 1., the **Company** shall pay **Claim Expenses** for such **Claim** unless or until there is an adverse admission by or final adjudication against any **Insured** as to such conduct; or
2. the gaining by the **Insured** of any personal profit, gain or financial advantage to which the **Insured** is not legally entitled; or
3. any act committed with knowledge of its wrongful nature or with the intent to cause damage.

Exclusion IV. A. shall only apply to any **Insured** who had knowledge of or participated in such conduct. For purposes of this exclusion, the knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** and only the knowledge of an **Executive Officer** shall be imputed to the **Insured Organization**.

- B. based on, or arising out of, or in any way involving any actual or alleged:
  - 1. **Property Damage**; or
  - 2. **Bodily Injury**; provided, however, sub-paragraph 2. of this exclusion does not apply to any **Claim** seeking **Damages** for: mental injury, mental anguish, mental tension, emotional distress, pain or suffering or shock sustained by any person; and arising out of a **Wrongful Act**.
- C. based on, or arising out of, or in any way involving an **Insured's** alleged liability under any oral or written contract or agreement, unless such liability would have attached to any **Insured** in the absence of such agreement.
- D. brought by or on behalf of an **Insured** or any **Related Entity**; provided, however, this exclusion shall not apply in their capacity as a client.
- E. based on, or arising out of, or in any way involving the actual or alleged purchase, sale or offer or solicitation of any offer to purchase or sell securities, including but not limited to, any actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, any state "Blue Sky" securities law, any similar state statutes, rules, regulations or common law regulating securities similar to the foregoing; including amendments thereto, and any similar federal, state, local or common law, including any rules and regulations promulgated thereunder.
- F. based on, or arising out of, or in any way involving any actual or alleged obligations for which any **Insured** may be liable under any workers' compensation, unemployment compensation, disability or pension benefits law, or any similar federal, state, local or common law, including but not limited to any actual or alleged violations of the Employee Retirement Income Security Act of 1974, including amendments thereto.
- G. based on or arising out of any actual or alleged: (1) patent infringement, (2) unfair competition based upon any actual or alleged patent infringement, or (3) misappropriation of trade secrets.
- H. seeking the return or reimbursement of fees, costs or expenses paid to the **Insured**.
- I. based on, or arising out of, or in any way involving any actual or alleged employment related act, error or omission.
- J. based on, or arising out of, or in any way involving any actual or alleged discrimination on any basis as defined by federal, state or local statute, regulation, law or ordinance.
- K. based on, or arising out of, or in any way involving the **Insured's** insolvency, receivership, bankruptcy, liquidation or the financial ability to pay.
- L. based on, or arising out of, or in any way involving the **Insured's** actual or alleged unauthorized use of confidential, privileged or non-public material or information for any purpose whatsoever.
- M. based on, or arising out of, or in any way involving any actual or alleged infringement of patent, copyright, trademark or trade dress, or infringement of any other intellectual property right held by a third party.
- N. based on, or arising out of, or in any way involving the failure to effect or maintain any insurance or bond.
- O. based on, or arising out of, or in any way involving the actual or alleged conversion, misappropriation or improper commingling of client funds by an **Insured**.
- P. based on, or arising out of, or in any way involving, whether suddenly or over a long period of time:
  - 1. the actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **Pollutants**; or
  - 2. any actual or alleged injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of **Pollutants**.
- Q. based on, arising out of, or in any way involving any actual, alleged or threatened exposure to nuclear source material, nuclear by-product materials, nuclear waste activities, nuclear incident, or extraordinary nuclear occurrence, as defined in the Atomic Energy Act of 1954 or as amended.

Solely with respect to coverage provided by this **Policy** for any **Cyber Wrongful Act** or **Media and Personal Injury Wrongful Act**, this **Policy** also does not apply to any **Claim Expenses** or **Damages** in connection with any **Claim**:

- R. based on or arising out of: (1) inaccurate, inadequate or incomplete description of the price of goods, products or services, (2) cost guarantees, cost representations or contract price estimates of a probable costs or cost estimates actually or allegedly being exceeded, (3) the failure of goods, products or services to conform with any represented quality or performance contained in any **Advertising**, or (4) any actual or alleged gambling, contest, lottery, promotional game or other game of chance.
- S. based on or arising out of any actual or alleged obligation to make licensing fee or royalty payments, including but not limited to the amount of timeliness of such payments.

- T. based on or arising out of any costs or expenses incurred or to be incurred by the **Company** or others for: (1) the reprinting, recall, removal or disposal of any **Media Material** including any media or products containing such **Media Material**, or (2) the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of **Information Technology Products** including any products or other property of others that incorporate **Information Technology Products**, work product resulting from or incorporating the result of **Information Technology Products**, or any products or other property on which **Information Technology Services** are performed; provided, however, this Exclusion IV. T. shall not apply to **Claims** for the resulting loss of use for the **Media Material** or **Information Technology Products**, or loss of use of the work product resulting from such **Information Technology Services**.
- U. based on or arising out of any actual or alleged: (a) antitrust violation, (b) restraint of trade, (c) violation of the Sherman Antitrust Act, Clayton Act or Robinson-Patman Act, as amended, or any similar law or legislation of any state, province or other jurisdiction, (d) false, deceptive or unfair trade practices, (e) violation of consumer protection laws, or (f) false or deceptive or misleading **Advertising**.
- V. based on or arising out of: (1) any spike in, surge of, decrease in, disruption of, fluctuation in or failure of any infrastructure service or utility provided by a third party including power, water, gas, communications or connectivity, (2) fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, or other natural catastrophe not caused by human interference, or (3) the existence, emission or discharge or any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability or condition of use of any property.
- W. based on or arising out of any action brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission or any similar government entity, in such capacity entity's regulatory or official capacity.
- X. based on or arising out of the delay in delivery or performance or failure to perform at or within an agreed upon period of time.

## V. Policy Conditions

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### A. Notice of Claim or Potential Claim

#### 1. Notifying the **Company** of a **Claim**

As a condition precedent to the obligations of the **Company** under this **Policy**, an **Insured** shall give the **Company** written notice of a **Claim** first made against the **Insureds** during the **Policy Period**, as soon as practicable, but in no event later than 60 days after the expiration of the **Policy Period**.

#### 2. Notifying the **Company** of a Potential **Claim**

If during the **Policy Period** the **Insured** becomes aware of any **Wrongful Act** that may reasonably be expected to be the basis of a **Claim** against any **Insured** and during the **Policy Period** gives written notice to the **Company** of such **Wrongful Act** and the reasons for anticipating a **Claim** with full particulars, including but not limited to:

- a. the specific **Wrongful Act**;
- b. the dates and persons involved;
- c. the identity of anticipated or possible claimants; and
- d. the circumstances by which the **Insured** first became aware of the possible **Claim**;

then any such **Claim** that arises out of such reported **Wrongful Act** and that is subsequently made against the **Insured** and reported to the **Company** shall be deemed to have been made at the time such written notice was given to the **Company**; provided, however, this section V. A. 2. shall not apply to the coverage provided for **Cyber Security Breach** Response in section II. D. 4. of this **Policy**.

### B. Reimbursement of the **Company**

Subject to the **Insured's** right to consent to settlement as set forth in section I. C. of this **Policy**, if the **Company**, in the exercise of its discretion and without any obligation to do so, pays any amount within the amount of the Deductible then such amounts shall, upon written demand by the **Company**, be paid by the **Named Insured** within 30 days. If the **Named Insured** fails to pay the Deductible, then all the **Insureds** shall be jointly and severally obligated to pay the Deductible. Any funds advanced by the **Company**, at its option, shall serve to reduce the Limit of Liability. If the **Company** brings suit to collect the Deductible, then the **Insureds** responsible to pay the Deductible also shall pay the legal fees, costs and expenses incurred by the **Company** to collect the Deductible.

### C. Territory

This **Policy** applies to any **Wrongful Act** taking place anywhere in the world provided that the **Claim** is made and suit is brought against the **Insured** within the United States of America, including its territories, possessions, Puerto Rico or Canada.



## **D. Other Insurance**

If there is other valid and collectible insurance that applies to a **Claim** covered by this **Policy**, the other insurance shall be primary and this **Policy** shall be excess over the other insurance, unless the other insurance is written specifically excess of this **Policy**. This **Policy** will then apply to the amount of the **Claim** that exceeds the available limits of liability and any deductible or retention amounts of the other insurance.

## **E. Assistance and Cooperation of the Insured**

The **Insured** shall cooperate with the **Company** and, upon the **Company's** request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving of evidence, obtaining the attendance of witnesses, and the conduct of suits and proceedings in connection with a **Claim**. The **Insured** shall assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to any **Insured** in connection with a **Claim**. The **Insured** shall not, except at its own cost, voluntarily make any payment, assume or admit any liability or obligation, settle any **Claim** or incur any expense without the written consent of the **Company**.

## **F. Legal Action Against the Company**

No individual or entity has a right under this **Policy** to join the **Company** as a party to any action seeking **Damages** from any **Insured**. No action may be brought against the **Company** unless the **Insured** has fully complied with all the terms of this **Policy**.

## **G. Bankruptcy or Insolvency**

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the **Company** of any of its obligations under this **Policy** nor deprive the **Company** of its rights or defenses under this **Policy**.

## **H. Subrogation**

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

## **I. Changes**

Notice to any of the **Company's** agents, or knowledge possessed by any such agent or any other person, shall not act as a waiver or change in any part of this **Policy**. It also will not prevent the **Company** from asserting any rights under the provisions of this **Policy**. None of the provisions of this **Policy** will be waived, changed or modified except by written endorsement, issued to form a part of this **Policy**.

## **J. Assignment**

No assignment of interest of the **Insured** under this **Policy** shall be valid without the written consent of the **Company**.

## **K. Cancellation**

1. The **Named Insured** may cancel this **Policy** by written notice to the **Company** stating at what future date cancellation is to be effective.
2. The **Company** may cancel this **Policy** by written notice to the **Named Insured** at the address last known to the **Company**. If the **Company** cancels this **Policy** for nonpayment of premium or Deductible, the **Company** will provide the **Named Insured** written notice stating when, not less than 10 days thereafter, such cancellation shall be effective. If the **Company** cancels this **Policy** for any other reasons, the **Company** will provide the **Named Insured** written notice stating when, not less than 60 days thereafter, such cancellation shall be effective. The effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**.
3. If the **Company** cancels this **Policy**, the earned premium shall be computed pro rata. If the **Named Insured** cancels this **Policy**, the **Company** shall retain the greater of the customary short rate proportion of the premium or 25% of the premium stated in Item 6. of the Declarations. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

## **L. Nonrenewal**

The **Company** may non-renew this **Policy** by written notice (including by electronic written notice) to the **Named Insured** at the address last known to the **Company**. The **Company** will provide written notice at least 60 days before non-renewal is to be effective; provided, however, the **Company** shall not be required to provide such notice if the **Named Insured** notifies the **Company** in writing of its intent not to renew this **Policy**. The offering of terms and conditions different from the expiring terms and conditions shall not constitute a refusal to renew.

## M. Entire Contract

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

1. all of the information and statements provided to the **Company** by the **Insured** are true, accurate and complete and shall be deemed to constitute material representations made by all of the **Insureds**; and
2. this **Policy** is issued in reliance upon the **Insured's** representations; and
3. this **Policy**, together with the **Application**, embodies 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. any material misrepresentation or fraud made by the **Insured** or with the **Insured's** knowledge in applying for this **Policy** or in pursuing a **Claim** under this **Policy**, shall be deemed grounds for denial of coverage or cancellation of this **Policy**.

For purposes of this section V. M., the knowledge of any **Insured Person** shall not be imputed to any other **Insured Person** and only the knowledge of an **Executive Officer** shall be imputed to the **Insured Organization**.

## N. First Named Insured as Sole Agent

The first **Named Insured** set forth in Item 1. of the Declarations shall be the sole agent and will act on behalf of all **Insureds** for: (1) payment or return payment of premium; (2) payment of any Deductible; (2) receipt and acceptance of any endorsements, notices or provisions of this **Policy**; (3) providing or receiving notice of cancellation or nonrenewal; and (4) exercising or declining to exercise any right under this **Policy**, including any **Extended Reporting Period**.

## O. Notices

Any notices required to be given by an **Insured** shall be submitted in writing to the **Company** at the address stated in the Declarations or in writing to the authorized representative of the **Company**. If mailed, the date of mailing of such notice shall be deemed to be the date such notice was given and proof of mailing shall be sufficient proof of notice.

## P. Trade and Economic Sanctions

This **Policy** does not provide coverage for **Insureds**, transactions or that part of **Damages** or **Claim Expenses** that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions including such sanctions administered by the U.S. Treasury Office of Foreign Assets Control.

## Q. Changes to the Named Insured

If during the **Policy Period** the **Named Insured**:

1. forms or acquires a **Subsidiary** then there shall be no coverage under this **Policy** for the newly formed or acquired **Subsidiary** unless: (a) the **Named Insured** provides the **Company** written notice within 30 days of such formation or acquisition; and (b) the **Company**, in its sole discretion, agrees in writing to insure such newly formed or acquired entity; and (c) the **Named Insured** pays any additional premium charged by the **Company** and has agreed to any coverage amendment required by the **Company**; or
2. merges with an entity such that the **Named Insured** remains an ongoing entity then there shall be no coverage under this **Policy** for the newly merged entity unless: (a) the **Named Insured** provides the **Company** written notice within 30 days of such merger; and (b) the **Company**, in its sole discretion, agrees in writing to insure such newly merged entity; and (c) the **Named Insured** pays any additional premium charged by the **Company** and has agreed to any coverage amendment required by the **Company**.

## R. Policy Headings

The descriptions in the headings of this **Policy** are solely for convenience, and form no part of the terms and conditions of coverage.

## VI. Extended Reporting Periods

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### A. Dissolution

1. If the **Named Insured** ceases to continue as an ongoing entity or its assets are sold (as used herein "Dissolution"), then this **Policy** shall continue in full force and effect until the expiration date stated in Item 2. of the Declarations as to any **Wrongful Act** fully occurring prior to the effective date of the Dissolution. There shall be no coverage afforded by any provision of this **Policy** for any **Wrongful Acts** occurring after the effective date of the Dissolution.
2. At the expiration of the **Policy Period**, the **Insured** may purchase an optional **Extended Reporting Period** pursuant to section VI. C. of this **Policy**.

## **B. Automatic Extended Reporting Period**

1. If this **Policy** is canceled or non-renewed by either the **Company** or by the **Named Insured**, the **Company** will provide to the **Named Insured** an automatic, non-cancelable 60 day **Extended Reporting Period** starting at the termination of the **Policy Period** only if there is no other policy or policies that would otherwise provide insurance for such **Wrongful Act**, error or omission. This automatic **Extended Reporting Period** will terminate after 60 days.
2. The **Company's** liability for all **Claims** reported during the automatic **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability for the **Policy Period** as set forth in the Declarations and section **II.** of this **Policy**.

## **C. Optional Extended Reporting Period**

1. If the **Named Insured** or the **Company** cancels or non-renews this **Policy**, then the **Named Insured** shall have the right, upon payment of the appropriate percentage of the "full annual premium", as provided in section **VI. C.** subparagraph 2. of this **Policy**, to an extension of the coverage granted by this **Policy** with respect to any **Claim** first made and reported in writing to the **Company** during the appropriate period of months after the date upon which the **Policy Period** ends, but only with respect to a **Wrongful Act** that occurred prior to the end of the **Policy Period** and is otherwise covered by this **Policy**. Such appropriate period of months shall be referred to as the optional **Extended Reporting Period**. As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **Policy Period**. Such right must be exercised by the **Named Insured** within 60 days of the termination of the **Policy Period** by providing: (a) written notice to the **Company**; and (b) with the written notice, the amount of additional premium described below.
2. The percentage of the "full annual premium" and period of months for the optional **Extended Reporting Period** is:
  - a. 12 months optional **Extended Reporting Period** for 100 percent of the "full annual premium" of this **Policy**, or
  - b. 24 months optional **Extended Reporting Period** for 175 percent of the "full annual premium" of this **Policy**, or
  - c. 36 months optional **Extended Reporting Period** for 200 percent of the "full annual premium" of this **Policy**.
3. The premium for the optional **Extended Reporting Period** is due on its effective date. This optional **Extended Reporting Period** is non-cancelable and the entire premium shall be deemed fully earned at its commencement without any obligation by the **Company** to return any portion thereof.
4. The **Company's** liability for all **Claims** reported during the optional **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability for the **Policy Period** as set forth in the Declarations and section **II.** of this **Policy**.

## **D. Elimination of Right to any Extended Reporting Period**

There is no right to any **Extended Reporting Period**:

1. if the **Company** cancels or refuses to renew this **Policy** for: (1) non-payment of premiums or deductibles that are past due; (2) non-compliance by an **Insured** with any of the terms and conditions of this **Policy**; (3) any material misrepresentation or omission in the **Application** for this **Policy**; or (4) any fraud by an **Insured**; or
2. if during the **Policy Period** such **Insured's** license, right to practice or right to conduct business is revoked, suspended or surrendered at the request of any regulatory authority.

## **E. Extended Reporting Period is Not a New Policy**

It is understood and agreed that any applicable **Extended Reporting Period** shall not be construed to be a new policy of insurance and any **Claim** submitted during such period shall otherwise be governed by this **Policy**.