MISCELLANEOUS PROFESSIONAL LIABILITY
INSURANCE COVERAGE FORM

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

I. INSURING AGREEMENT
The Insurer shall pay on behalf of the Insured Loss resulting from a Claim first made against the Insured during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act.

II. DEFINITIONS

(A) “Application” means:

(1) the application attached to and forming part of this Policy; and
(2) any materials submitted therewith,

which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.

(B) “Claim” means:

(1) any civil proceeding in a court of law or equity, or arbitration;
(2) any criminal proceeding which is commenced by the return of an indictment;
(3) any written notice received by an Insured that any person or entity intends to hold any Insured responsible for a Wrongful Act; or
(4) a formal administrative regulatory proceeding or formal investigation of an Insured which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying in writing such Insured as a person or entity against whom a proceeding as described in (B)(1) or (2) above may be commenced.

(C) “Defense Expenses” means reasonable legal fees and expenses incurred in the defense of any Claim including the premium for an appeal bond, attachment bond or similar bond but will not include applying for or furnishing such bond. Defense Expenses will not include the Insured’s overhead expenses or any salaries, wages, fees, or benefits of any Insured.

(D) “Insured” means:

(1) any natural person who was, is or shall become a director, officer, employee, partner or member of the Board of Managers of the Insured Entity, but only while such person was, is or shall be acting within the scope of his or her duties as such;
(2) the lawful spouse of any natural person set forth in the above provisions of this definition, but only to the extent the spouse is a party to any Claim solely in their capacity as a spouse of such persons and only for the purposes of any Claim seeking damages recoverable from marital community property, property jointly held by any such person and spouse, or property transferred from any such person to the spouse; and
(3) the Insured Entity.

In the event of the death, incapacity or bankruptcy of a natural person identified in (D)(1) or (2) above, any Claim against the estate, heirs, legal representatives or assigns of such individual for a Wrongful Act of such individual will be deemed to be a Claim against such individual.

(E) “Insured Entity” means the entity named in ITEM 1 of the Declarations.

(F) “Interrelated Wrongful Acts” means Wrongful Acts which are based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or series of related facts, circumstances, situations, transactions or events.

(G) “Loss” means damages, judgments, settlements or other amounts (including punitive or exemplary damages, where insurable by law) and Defense Expenses in excess of the Retention that the Insured is legally obligated to pay. Loss will not include:

   (1) the multiplied portion of any damage award;

   (2) fines, penalties or taxes imposed by law; or

   (3) matters which are uninsurable under the law pursuant to which this Policy is construed.

(H) “Policy Period” means the period from the Inception Date to the Expiration Date set forth in ITEM 2 of the Declarations or to any earlier cancellation date.

(I) “Professional Services” means only those services performed for others for a fee and which are listed in ITEM 6 of the Declarations.

(J) “Wrongful Act” means any actual or alleged act, error, omission committed solely in the performance of, or failure to perform Professional Services.

III. EXCLUSIONS

(A) The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against an Insured brought about or contributed to in fact by any:

   (1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or

   (2) profit or remuneration gained by any Insured to which such Insured is not legally entitled;

provided, that each Insured agrees that, if by a final adjudication in the underlying action or in a separate action or proceeding that the Insurer has no liability to an Insured for Loss as a result of a Claim by reason of this EXCLUSION (A), such Insured will repay the Insurer upon demand all Defense Expenses paid on behalf of such Insured in connection with such Claim.

(B) The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against an Insured based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

   (1) any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;

   (2) any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain,
treat, detoxify or neutralize pollutants, contaminants or waste of any kind including but not limited to nuclear material or nuclear waste;

(3) any fact, circumstance, situation, transaction, event or Wrongful Act underlying or alleged in any prior and/or pending litigation, arbitration or administrative or regulatory proceeding or arbitration which was brought prior to the Pending and Prior Proceeding Date set forth in ITEM 7 of the Declarations;

(4) any fact, circumstance, situation, transaction, event or Wrongful Act which, before the Inception Date of this Policy, was the subject of any notice given under any prior insurance policy; or

(5) the performance of or failure to perform Professional Services for:

(a) the Insured; or

(b) any entity owned or controlled by any person or entity included within the definition of Insured; or

(c) any entity which is under common ownership or control with any entity included within the definition of Insured; or

(d) any person or entity which owns or controls any entity included within the definition of Insured; or

(e) any entity of which any person included within the definition of Insured is a director, officer, partner, principal shareholder or member of the Board of Managers.

(C) The Insurer shall not be liable to make any payment for Loss in connection with any Claim made against an Insured:

(1) by, on behalf of any person or entity included within the definition of Insured against any other person or entity included within the definition of Insured; or

(2) for non-pecuniary relief.

IV. LIMIT OF LIABILITY, INDEMNIFICATION AND RETENTIONS

(A) The Insurer shall pay the amount of Loss in excess of the applicable Retention set forth in ITEM 4 of the Declarations up to the Limit of Liability set forth in ITEM 3 of the Declarations.

(B) The amount set forth in ITEM 3 of the Declarations shall be the maximum aggregate Limit of Liability of the Insurer under this Policy. Payment of Loss, including Defense Expenses, by the Insurer shall reduce the Limit of Liability.

V. DEFENSE, SETTLEMENT AND ALLOCATION OF LOSS

(A) It shall be the duty of the Insured and not the duty of the Insurer to defend any Claim under this Policy.

(B) No Insured may incur any Defense Expenses or admit liability for, make any settlement offer with respect to, or settle any Claim without the Insurer’s consent, such consent not to be unreasonably withheld.

(C) Upon the written request of the Insured, the Insurer will advance Defense Expenses on a current basis in excess of the applicable Retention, if any, before the disposition of the Claim for which this policy provides coverage. As a condition of the advancement of Defense Expenses, the Insurer may require a written undertaking, in a form satisfactory to the Insurer, which will guarantee the repayment of any Loss including Defense Expenses paid to or on behalf of the Insured if it is finally determined that the Loss incurred is not covered under this Policy.

(D) If both Loss covered by this Policy and Loss not covered by this Policy are incurred, either because a Claim made against the Insured contains both covered and uncovered matters, or because a Claim is made against
both the Insured and persons or entities not insured under this Policy, the Insured and the Insurer will use their best efforts to determine a fair and appropriate allocation of Loss between that portion of Loss that is covered under this Policy and that portion of Loss that is not covered under this Policy. Additionally, the Insured and the Insurer agree that in determining a fair and appropriate allocation of Loss, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the Claim by, the Insured and others.

(E) In the event that an agreement cannot be reached between the Insurer and the Insured as to an allocation of Loss, as described in (D) above, then the Insurer shall advance that portion of Loss which the Insured and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

VI. GENERAL CONDITIONS

(A) NOTICE

(1) As a condition precedent to any right to payment under this Policy with respect to any Claim, the Insured shall give written notice to the Insurer of any Claim as soon as practicable after it is first made.

(2) If, during the Policy Period, the Insured first becomes aware of a specific Wrongful Act and if, during the Policy Period, the Insured:

(a) provides the Insurer with written notice of the specific Wrongful Act, the consequences which have resulted or may result therefrom (including but not limited to actual or potential damages), the identities of the potential claimants, the circumstances by which the Insured first became aware of such Wrongful Act; and

(b) requests coverage under this Policy for any subsequently resulting Claim for such Wrongful Act;

then any Claim subsequently made arising out of such Wrongful Act will be treated as if it had been first made during the Policy Period.

(3) All notices under GENERAL CONDITIONS (A)(1) and (2) must be sent by certified mail or the equivalent to the address set forth in ITEM 8 of the Declarations; Attention: Claim Department.

(B) INTERRELATED CLAIMS

All Claims arising from Interrelated Wrongful Acts shall be deemed to constitute a single Claim and shall be deemed to have been made at the earliest of the time at which the earliest such Claim is made or deemed to have been made pursuant to GENERAL CONDITIONS (A)(1) above or GENERAL CONDITIONS (A)(2), if applicable.

(C) OTHER INSURANCE

All Loss payable under this Policy will be specifically excess of and will not contribute with any other insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

(D) CANCELLATION AND RENEWAL OF COVERAGE

(1) Except for the nonpayment of premium, as set forth in (D)(2) below, the Insured has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.
(2) The Insurer may only cancel this Policy for nonpayment of premium. The Insurer will provide not less than ten (10) days written notice stating the reason for cancellation and when the Policy will be canceled. Notice of cancellation will be sent to the Insured and the agent of record for the Insured, if applicable.

(3) The Insurer is under no obligation to renew this Policy upon its expiration. If the Insurer chooses to non-renew this Policy, the Insurer will deliver or mail to the Insured written notice stating such at least sixty (60) days before the Expiration Date set forth in ITEM 2 of the Declarations.

(E) OPTIONAL EXTENSION PERIOD

(1) If either the Insured or the Insurer does not renew this Policy, the Insured shall have the right, upon payment of an additional premium set forth in ITEM 5 of the Declarations, to an extension of the coverage provided by this Policy with respect only to any Claim first made during the period of time set forth in ITEM 5 of the Declarations after the Policy Expiration Date, but only with respect to a Wrongful Act occurring prior to the Policy Expiration Date.

(2) As a condition precedent to the right to purchase the Optional Extension Period the total premium for this Policy must have been paid in full. The right of the Insured to purchase the Optional Extension Period will be immediately terminated if the Insurer does not receive written notice by the Insured advising it wishes to purchase the Optional Extension Period together with full payment of the premium for the Optional Extension Period within thirty (30) days after the Policy Expiration Date.

(3) If the Insured elects to purchase the Optional Extension Period as set forth in (E)(1) and (2) above, the entire premium for the Optional Extension Period will be deemed to be fully earned at the Inception Date for the Optional Extension Period.

(4) The purchase of the Optional Extension Period will not in any way increase the Limit Of Liability set forth in ITEM 3 of the Declarations, and the Limit of Liability with respect to Claims made during the Optional Extension Period shall be part of and not in addition to the Limit of Liability for all Claims made during the Policy Period.

(F) ASSISTANCE, COOPERATION AND SUBROGATION

(1) The Insured agrees to provide the Insurer with all information, assistance and cooperation that the Insurer may reasonably request, and further agree that they will do nothing which in any way increases the Insurer’s exposure under this Policy or in any way prejudices the Insurer’s potential or actual rights of recovery.

2) In the event of any payment under this Policy, the Insurer shall be subrogated to all of the potential or actual rights of recovery of the Insured. The Insured shall execute all papers required and will do everything necessary to secure such rights including but not limited to the execution of such documents as are necessary to enable the Insurer to effectively bring suit in their name, and will provide all other assistance and cooperation which the Insurer may reasonably require.

(G) EXHAUSTION

If the Insurer’s Limit of Liability as set forth in ITEM 3 of the Declarations is exhausted by the payment of Loss, the premium as set forth in ITEM 9 of the Declarations will be fully earned, all obligations of the Insurer under this Policy will be completely fulfilled and exhausted, and the Insurer will have no further obligations of any kind whatsoever under this Policy.

(H) REPRESENTATION CLAUSE

The Insured represents that the statements and particulars contained in the Application as well as any prior application submitted to the Insurer are true, accurate and complete, and agree that this Policy is issued in reliance on the truth of that representation, and that such particulars and statements, which are deemed to be incorporated into and constitute a part of this Policy, are material to the risk assumed and form the basis of this Policy. No knowledge or information possessed by any Insured will be imputed to any other Insured except
for material facts or information known to the person(s) who signed the Application. In the event that any of the particulars or statements in the Application are untrue, this Policy will be void with respect to any Insured who knew of such untruth or to whom such knowledge is imputed.

(I) ACTION AGAINST THE INSURER, ASSIGNMENT, AND CHANGES TO THE POLICY

(1) No action may be taken against the Insurer unless, as a condition precedent thereto:

   (a) there has been full compliance with all of the terms and conditions of this Policy; and

   (b) the amount of the obligation of the Insured has been finally determined either by judgment against the Insured after actual trial, or by written agreement of the Insured, the claimant and the Insurer.

(2) Nothing contained herein shall give any person or entity any right to join the Insurer as a party to any Claim against the Insurer to determine their liability, nor may the Insured implead the Insurer in any Claim.

(3) Assignment of interest under this Policy shall not bind the Insurer unless its consent is endorsed hereon.

(4) Notice to any agent or knowledge possessed by any agent or other person acting on behalf of the Insurer will not cause a waiver or change in any part of this Policy or prevent the Insurer from asserting any right under the terms, conditions and limitations of this Policy. The terms, conditions and limitations may only be waived or changed by written endorsement.

(J) AUTHORIZATION AND NOTICES

It is understood and agreed that the person or entity stated in ITEM 1 of the Declarations will act with respect to:

(1) the payment of the premiums;

(2) the receiving of any return premiums that may become due under this Policy;

(3) the giving of all notices to the Insurer as provided herein; and

(4) the receiving of all notices from the Insurer.

(K) ENTIRE AGREEMENT

The Insured agrees that the Declarations, Policy, including the endorsements, attachments and the Application shall constitute the entire agreement between the Insurer or any of its agents and the Insured relating to this insurance.