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## PROFESSIONAL SERVICES LIABILITY INSURANCE POLICY

**THIS POLICY PROVIDES CLAIMS MADE COVERAGE. THE POLICY, SUBJECT TO ITS PROVISIONS, APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED, AND REPORTED TO THE COMPANY AS SOON AS PRACTICABLE BUT IN NO EVENT LATER THAN 60 DAYS AFTER THE END OF THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED. DEFENSE COSTS SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND SHALL BE SUBJECT TO THE RETENTION.**

In consideration of the payment of the premium, reliance by the Company upon the statements made to the Company in the application attached hereto and made a part hereof, and subject to the terms, conditions, definitions, exclusions and limitations hereinafter provided, the Company agrees with the **INSURED** as follows:

### **I. INSURING AGREEMENT**

The Company will pay on behalf of the **INSURED LOSS** in excess of the Retention stated in Item 5 of the Declarations which the **INSURED** shall become legally obligated to pay as a result of any **CLAIM** first made against the **INSURED** during the **POLICY PERIOD** for a **WRONGFUL ACT** that occurred on or after the Retroactive Date stated in Item 7 of the Declarations.

### **II. DEFENSE AND SETTLEMENT**

Subject to Article V.B., the Company shall have the right and duty to defend any **CLAIM** against the **INSURED** to which this insurance applies, even if any of the allegations of the **CLAIM** are groundless, false or fraudulent.

The Company shall have the right to negotiate the settlement of any **CLAIM**, whether within or above the Retention, but the Company shall not commit the **INSURED** to any settlement without the **INSURED'S** consent, such consent not to be unreasonably withheld. The **INSURED** shall not admit liability for or settle any **CLAIM** or incur any **DEFENSE COSTS** without the written consent of the **COMPANY**, such consent not to be unreasonably withheld. If the **INSURED** refuses to consent to any settlement recommended by the Company and agreed to by the claimant, and elects to contest any **CLAIM** or continue any legal proceedings in connection with such **CLAIM**, then, subject to the Limit of Liability of the Policy, the Company's liability for the **CLAIM** shall be limited to the amount in excess of the Retention which the Company would have contributed to the settlement had the **INSURED** consented to such settlement plus the **DEFENSE COSTS** incurred up to the date of such refusal.

### **III. DEFINITIONS**

A. **"INSURED"** means the individual, partnership, corporation or other entity named in Item 1 of the Declarations and shall include all persons who were, are or shall become:

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1. directors, officers, partners or employees of the **INSURED** while acting within the scope of their duties as such; and
  2. the executors, heirs, legal representatives or assigns of each **INSURED** otherwise **INSURED** herein in the event of his or her death, incompetency, insolvency or bankruptcy.
- B. “**WRONGFUL ACT**” means any actual or alleged negligent act, negligent error or negligent omission committed by the **INSURED** solely in the performance of or failure to perform Professional Services for others as stated in Item 2 of the Declarations.
- C. “**LOSS**” means money damages, settlements and **DEFENSE COSTS**.

**LOSS** shall not include:

1. punitive or exemplary damages or the multiplied portion of a multiplied damages award;
  2. criminal or civil fines or penalties imposed by law;
  3. taxes;
  4. matters that may be deemed uninsurable under the law pursuant to which this Policy shall be construed;
  5. money damages or settlements in connection with any **CLAIM** based upon or directly or indirectly arising out of or resulting from any actual or alleged deficiency or defects of title that were not of public record at the time the title insurance policy was issued.
- D. “**POLICY PERIOD**” means the period from the inception date of this Policy to the expiration date stated in Item 3 of the Declarations, or to any earlier cancellation date of this Policy.
- E. “**DEFENSE COSTS**” means reasonable and necessary legal fees and expenses incurred with the approval of the Company in connection with the investigation, adjustment, settlement, defense or appeal of a **CLAIM** made against an **INSURED** for a **WRONGFUL ACT**, and shall include the cost of attachment or similar bonds. Payment of **DEFENSE COSTS** by the Company shall reduce, and may exhaust, the Limit of Liability under this Policy.

“**DEFENSE COSTS**” shall not include salaries, wages, fees, overhead, overtime or benefit expenses incurred by or associated with the **INSUREDS**.

- F. “**CLAIM**” means a written demand for money damages received by an **INSURED**, including service of suit and the institution of administrative or arbitration proceedings.

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- G. “**INTERRELATED WRONGFUL ACTS**” means **WRONGFUL ACTS** that have as a common nexus any fact, circumstance, situation, event or transaction or series of facts, circumstances, situations, events or transactions.
- H. “**MONEYLAUNDERING**” means:
1. the concealment, or disguise, or conversion, or transfer, or removal of **CRIMINAL PROPERTY** (including concealing or disguising its nature, source, location, disposition, movement or ownership or any rights relating thereto); or
  2. the entering into or becoming in any way concerned in an arrangement which is known or suspected to facilitate (by whatever means) the acquisition, retention, use or control of **CRIMINAL PROPERTY** by or on behalf of another person; or
  3. the acquisition, use or possession of **CRIMINAL PROPERTY**; or
  4. any act which constitutes an attempt, conspiracy or incitement to commit any act or acts mentioned in the foregoing paragraphs (1.), (2.) or (3.); or
  5. any act which constitutes aiding, abetting, counselling or procuring the commission of any act or acts mentioned in the foregoing paragraphs (1.), (2.) or (3.).
- I. “**CRIMINAL PROPERTY**” means property which constitutes a benefit obtained from or as a result of or in connection with **CRIMINAL CONDUCT** or represents such a benefit (in whole or part and whether directly or indirectly) which the **INSURED** (or any person or entity acting on their behalf) knows or suspects or reasonably should have known or suspected that it constitutes or represents such a benefit.
- J. “**CRIMINAL CONDUCT**” means conduct which constitutes (or would constitute) an offense in any part of the world.
- K. “**ACT OF TERRORISM**” means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s) committed for political, religious, ideological, or similar purposes, including the intention to influence any government and/or to put the public, or any section of the public in fear.

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## IV. EXCLUSIONS

This policy does not apply to **LOSS** in connection with any **CLAIM**:

- A. based upon or directly or indirectly arising out of or resulting from an **INSURED** gaining in fact any personal profit or advantage to which the **INSURED** is not legally entitled;
- B. that results in a judgment or final adjudication that any **INSURED** has committed any criminal, dishonest, intentionally malicious, or fraudulent act, error or omission.

However, any **WRONGFUL ACT** pertaining to any of the **INSUREDS** shall not be imputed to any other person for the purposes of determining the applicability of Exclusions A. and B.

- C. based upon or directly or indirectly arising out of or resulting from any actual or alleged bodily injury, sickness, disease or death, including but not limited to loss of consortium or services, or any actual or alleged damage to or loss of or destruction of any tangible property, including loss of use thereof;
- D. brought by or on behalf of one **INSURED** under this Policy against another **INSURED** under this Policy, except where:
  - 1. such **CLAIM** arises out of the performance of or failure to perform Professional Services as stated in Item 2 of the Declarations for the claimant **INSURED** as a client; or
  - 2. such **CLAIM** is in the form of a cross claim, third-party claim or otherwise for contribution or indemnity and is part of and results directly from a **CLAIM** which is not otherwise excluded by the terms of this Policy;
- E. based upon or directly or indirectly arising out of or resulting from any actual or alleged activities of an **INSURED** in a fiduciary capacity with respect to any employee benefit or pension plan, or based upon the Employee Retirement Income Security Act of 1974, any and all amendments thereto, any rule, regulation, or order issued pursuant thereto, or any similar provisions of any other federal, state or local statutory law or common law;
- F. based upon or directly or indirectly arising out of or resulting from:
  - 1. any actual or alleged seepage, pollution or contamination of any kind, including but not limited to the storage, transportation, treatment, discharge, dispersal, release, emission or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic materials, chemicals, radon, liquids or gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the

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atmosphere or any watercourse or body of water, or otherwise,  
or

2. any regulation, order, direction or request that the **INSURED** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any of the foregoing;
- G. based upon or directly or indirectly arising out of or resulting from any actual or alleged (1) false arrest, malicious prosecution, abuse of process, false detention or false imprisonment; (2) assault and battery; (3) libel, slander or defamation of character; (4) wrongful entry or eviction; or (5) invasion of any right of privacy; provided, however, that this exclusion shall not apply with respect to any actual or alleged slander of title;
- H. based upon or directly or indirectly arising out of or resulting from any actual or alleged failure or omission on the part of any **INSURED** to procure or adequately maintain insurance, suretyship, or bonds;
- I. based upon or directly or indirectly arising out of or resulting from any actual or alleged use, exposure, presence, existence, detection, removal, elimination or avoidance of asbestos, or any actual or alleged asbestos-related injury or damages;
- J. seeking relief or redress in any form other than money damages, including but not limited to **CLAIM(S)** for injunctive relief in any form whatsoever and including disciplinary proceedings;
- K. for breach of any contract or agreement or for the return of fees or charges for professional services performed by any **INSURED**, or based upon or directly or indirectly arising out of or resulting from the breach of an express warranty or guarantee;
- L. based upon or directly or indirectly arising out of or resulting from any actual or alleged infringement of copyright, title, slogan, patent, trademark, trade dress, service mark or service name;
- M. based upon or directly or indirectly arising out of or resulting from any actual or alleged: (1) unfair competition, (2) interference with contract or (3) violation of anti-trust laws;
- N. based upon or directly or indirectly arising out of or resulting from any actual or alleged:
  1. **WRONGFUL ACT** or matter, fact, circumstance, situation, event or transaction that has been the subject of any claim made prior to the inception of this Policy or of any notice given during any prior policy;

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2. **WRONGFUL ACT** which, together with a **WRONGFUL ACT** that has been the subject of any claim or notice identified in O.1. above, would constitute **INTERRELATED WRONGFUL ACTS**; or
  3. Matter, fact, circumstance, situation, event or transaction known to an **INSURED** prior to the Coverage Date set forth in Item 8 of the Declarations if such matter, fact, circumstance, situation, event or transaction would cause a reasonable person to believe that a **CLAIM** for a **WRONGFUL ACT** may be made;
- O. based upon or directly or indirectly arising out of or resulting from any violation of any civil rights laws, including but not limited to discrimination by the **INSURED** on the basis of age, color, race, creed, sex, size, national orientation or marital status;
- P. based upon or directly or indirectly arising out of or resulting from any actual or alleged assumption by the **INSURED** under any contract or agreement of the liability of others, unless such liability would have attached to the **INSURED** in the absence of such contract or agreement;
- Q. based upon or directly or indirectly arising out of or resulting from any actual or alleged
1. electronic or software failure, or
  2. failure, breakdown or malfunction of any machine or system of machines;
- R. based upon or directly or indirectly arising out of or resulting from any actual or alleged **MONEYLAUNDERING** or any actual or alleged act which is in breach of and/or constitutes an offense under any **MONEYLAUNDERING** legislation (or any provisions and/or rules or regulations made by any regulatory body or authority thereunder);
- S. based upon or directly or indirectly arising out of or resulting from any actual or alleged advertising or solicitation activities of an **INSURED**;
- T. based upon or directly or indirectly arising out of or resulting from any of the following, regardless of any other cause or event contributing concurrently or otherwise to the **LOSS**:
1. war, invasion, acts of foreign enemies, hostilities, or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to uprising, military or usurped power; or

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2. any **ACT OF TERRORISM**;

This exclusion applies to all **LOSS** based upon, directly or indirectly arising out of or resulting from any action taken in controlling, preventing, suppressing or in any way relating to 1. or 2. above.

- U. brought by or on behalf of any governmental authority, quasi-governmental authority or other regulatory authority or agency, except when acting in the capacity of a customer or client of the **INSURED** or on behalf of a customer or client of the **INSURED** and when such **CLAIM** arises from Professional Services, as stated in Item 2 of the Declarations, rendered or that should have been rendered to such authority or customer or client;
- V. based upon or directly or indirectly arising out of or resulting from, either in whole or in part, the formation, growth, presence, release, dispersal, containment, removal, testing for, or detection or monitoring of any molds, fungi, spores, or other similar growth of organic matter, including but not limited to aspergillus, penicillium, or any strain or type of Stachybotris, commonly or collectively referred to as the "Black Mold";
- W. based upon or directly or indirectly arising out of or resulting from any actual or alleged notarized certification or notarized acknowledgment of:
  - 1. a signature without the physical appearance before such notary public at the time of said notarization of the person who is or claims to be the person signing said instrument, or
  - 2. a forged or unauthorized signature;
- X. based upon or directly or indirectly arising out of or resulting from an actual or alleged:
  - 1. payment made by any **INSURED** in connection with building construction without prior receipt of an architect's certificate or inspection report when such certificate or inspection report is required as a condition of payment;
  - 2. payment made by any **INSURED** for work or materials supplied by subcontractors without prior receipt of written lien releases from subcontractors involved; or
  - 3. faulty workmanship, defective materials or breaches of contract on the part of contractors or subcontractors;

## V. **LIMIT OF LIABILITY AND RETENTION**

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## A. LIMIT OF LIABILITY

The Limit of Liability stated in Item 4 of the Declarations shall be the maximum aggregate Limit of Liability of the Company for all **LOSS** under the Policy, including **DEFENSE COSTS**, regardless of the number of **CLAIMS** made against the **INSUREDS** or the time when **LOSS** payments are made by the Company.

## B. EXHAUSTION OF LIMIT

The Company shall not be obligated to pay any **LOSS**, including **DEFENSE COSTS**, or defend any **CLAIM** after the available Limit of Liability has been exhausted by payment of money damages, settlements or **DEFENSE COSTS**.

## C. MULTIPLE INSUREDS, CLAIMS OR CLAIMANTS

The inclusion herein of more than one **INSURED** or the making of **CLAIM(S)** by more than one person or organization shall not operate to increase the Company's Limit of Liability. **CLAIM(S)** arising out of a single **WRONGFUL ACT**, or **INTERRELATED WRONGFUL ACTS**, shall be treated as a single **CLAIM**, and such single **CLAIM** shall be considered first made:

1. when the earliest **CLAIM** within such single **CLAIM** was first made, or
2. when notice was first given under any policy of insurance of any **WRONGFUL ACT** or any matter, fact, circumstance, situation, event or transaction that underlies any **CLAIM** within such single **CLAIM**,

and all such **CLAIM(S)** shall be subject to the same Limit of Liability.

## D. RETENTION

Subject to the Limit of Liability, the Company shall only be liable for **LOSS** in excess of the Retention stated in Item 5 of the Declarations. This Retention shall apply to each **CLAIM** made against the **INSUREDS**. The Retention shall be borne by the **INSURED** as its own uninsured risk and shall be fully paid by the **INSURED** before the Company shall incur any liability to pay any **LOSS**. The Retention applies to the **DEFENSE COSTS**, whether or not any other **LOSS** is paid.

## VI. NOTICE AND LOSS PROVISIONS

- A. As a condition precedent to the availability of the rights provided under this Policy, the **INSURED** shall give written notice to the Company of any **CLAIM** made against the **INSURED** as soon as

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practicable, but in no event later than sixty (60) days after the date such **CLAIM** is first made.

- B. If during the **POLICY PERIOD** or the Extended Reporting Period, if applicable, the **INSURED** shall first become aware of a specific **WRONGFUL ACT**, and during such period gives written notice to the Company as soon as practicable of:
1. the specific **WRONGFUL ACT** and the identities of the potential claimants;
  2. the injury or damage which has or may result from such specific **WRONGFUL ACT**; and
  3. the circumstances by which the **INSURED** first became aware of the specific **WRONGFUL ACT**

then any **CLAIM** which is subsequently made against the **INSURED** arising out of such **WRONGFUL ACT** shall, for the purposes of this Policy, be deemed to have been made when such written notice was first given.

- C. The notifications provided for above shall be made to the party set forth in Item 9 of the Declarations.

## VII. GENERAL CONDITIONS

### A. APPLICATION

By acceptance of this Policy, all **INSUREDS** agree as follows:

1. The particulars and statements contained in the application, a copy of which is attached hereto, and any materials submitted therewith (which are on file with the Company and are deemed attached hereto, as if physically attached hereto) are true and are the basis of this Policy and are to be considered as incorporated into and constituting a part of this Policy;
2. the statements in the application and in any materials submitted therewith are the **INSUREDS'** representations and shall be deemed material to the acceptance of the risk or the hazard assumed by the Company under this Policy and this Policy is issued in reliance upon the truth of such representations;
3. in the event the application, including materials submitted therewith, contains any misrepresentation made with the actual intent to deceive or contains any misrepresentation that materially affects either the acceptance of the risk or the hazard assumed by the Company under this Policy, this Policy shall be void in its entirety and of no effect whatsoever; and

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4. this Policy shall be deemed to be a single or unitary contract and not a severable contract of insurance or a series of individual contracts of insurance with each of the **INSUREDS**.

## **B. EXTENDED REPORTING PERIOD**

If the **INSURED** cancels or does not renew this Policy, or if the Company cancels this Policy other than for non-payment of premium or does not renew this Policy, the **INSURED** shall have the right, upon payment of an additional premium of 100% of the total policy premium hereunder, to an extension of the insurance provided by this Policy with respect to any **CLAIM** made against the **INSURED** during the period of twelve (12) months after the effective date of such cancellation or non-renewal, but only with respect to any **WRONGFUL ACT** committed before the effective date of such cancellation or non-renewal and otherwise insured under this Policy.

The right to such an extension shall terminate unless written notice is received by the Company from the **INSURED** within thirty (30) days after the effective date of such cancellation or non-renewal with full payment of premium for the Extended Reporting Period, as well as payment of any premium and/or Retention amounts due to the Company. If such written notice and payment are not received by the Company as aforesaid, the **INSURED** shall not have the right to such an extension.

An increase in premium, a change in the Limits of Liability, or a change in the terms and conditions of the Policy shall not constitute a nonrenewal of this Policy. Once purchased, an Extended Reporting Period may not be cancelled by either the **INSUREDS** or the Company; however, the Extended Reporting Period shall automatically terminate if the **INSUREDS** purchase other insurance that provides substantially the same coverage as this Policy or would so provide except for the exhaustion of its limits of liability. If the Extended Reporting Period is automatically terminated as set forth above, all of the premium shall be fully earned at the time of payment.

The Limit of Liability provided during the Extended Reporting Period shall be part of, and not in addition to, the Limit of Liability provided during the **POLICY PERIOD**, as stated in Item 4 of the Declarations. All other terms and conditions of this Policy shall apply to any **CLAIM** made during the Extended Reporting Period.

## **C. CANCELLATION**

This Policy may be cancelled by the **INSURED** by mailing or delivering prior written notice thereof to the Company or by surrender of this Policy to the Company at its address stated in the Declarations. This Policy may also be cancelled by or on behalf of the Company by mailing to the **INSURED** by registered, certified, or other first class mail, at the **INSURED'S** address stated in Item 1 of the Declarations, written notice stating when, not less than sixty (60) days thereafter, the cancellation shall be effective. However, the

