

## MISCELLANEOUS PROFESSIONAL LIABILITY POLICY

In consideration of the premium charged, and in reliance upon the statements in the application(s) attached hereto and made a part hereof, and subject to the Limits of Liability set forth in the Declarations and the terms and conditions contained herein, **we** agree as follows:

### I. INSURING AGREEMENTS

#### A. ERRORS AND OMISSIONS

**We** shall pay on **your** behalf those amounts, in excess of the retention, **you** are legally obligated to pay as **damages** resulting from a **claim** first made against **you** and reported to **us** during the **policy period** or Extended Reporting Period (if applicable) for **your wrongful act** in rendering or failing to render **professional services** for others, but only if such **wrongful act** first occurs on or after the **retroactive date** and prior to the end of the **policy period**.

#### B. DEFENSE

1. **We** have the right and duty to defend a **suit** brought against **you** alleging a **wrongful act** even if the **suit** is groundless, false or fraudulent. **We** have the right, with **your** written consent, which consent shall not be unreasonably withheld, to settle any **suit** if **we** believe that it is proper.

**We** have the right to investigate any **claim** and, with **your** written consent, which consent shall not be unreasonably withheld, the right to settle any **claim** if **we** believe that it is proper.

**Your** refusal to consent to a settlement may impact **our** obligations under this policy as stated in Section IV. D.

2. **Claim expense(s)** are part of and subject to **our** Limit of Liability. **Our** duty to defend ends after the applicable Limit of Liability has been exhausted by payment of **claim expenses** or **damages**.

3. **You** may settle any **claim(s)** or **suit(s)** on behalf of all **insureds** to which this insurance applies and which are subject to one retention, where the total incurred **loss** does not exceed the retention.

### II. DEFINITIONS

A. **Bodily injury** means physical injury, sickness or disease, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or death at any time.

B. **Claim** means a demand for money or services, including a **suit**, arising from **your wrongful act**.

- C. Claim expenses** means all reasonable and necessary fees charged by an attorney appointed by **us** in connection with any **suit** brought against **you** alleging a **wrongful act**, as well as all other reasonable and necessary fees, costs and expenses incurred in the defense or investigation of a **claim** by **us** or by **you** with **our** written consent. **Claim expenses** shall also include premiums for appeal bonds, or bonds to release property used to secure a legal obligation, if required in a **claim**; however, **we** shall have no obligation to appeal or to obtain these bonds. **Claim expenses** does not include salary charges or expenses of **you** or **your** employees.
- D. Damages** means any amount that **you** shall be legally required to pay because of judgments, arbitration awards or the like rendered against **you**, or for settlements negotiated by **us** with **your** written consent; provided that **damages** shall not include any amounts for which **you** are not financially liable or for which there is no legal recourse against **you**, the costs and expenses of complying with any injunctive or other form of equitable relief, or matters that may be deemed uninsurable under the law. **Damages** shall include:
1. punitive, exemplary and multiple damages (where insurable by law);
  2. pre-judgment interest; and
  3. post judgment interest that accrues after entry of judgment and before **we** have paid, offered to pay or deposited in court that part of judgment within the applicable Limit of Liability.
- E. First Inception Date** means the inception date of the first Miscellaneous Professional Liability policy issued by **us** or any other Chartis Inc. ("Chartis") company to the **named insured** and continually renewed by **us** or any other Chartis company until the inception date of this current policy.
- F. Loss** means the total sum of **damages** and **claim expenses**.
- Loss** shall not mean and this policy shall not cover:
1. fines, penalties, or taxes;
  2. non-pecuniary relief; or
  3. matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- G. Named insured** means the individual, entity, partnership, or corporation designated as such in Item 1 of the Declarations.
- H. Over-redemption** means price discounts, prizes, awards or other valuable consideration given in excess of the total contracted or expected amount.
- I. Policy period** means the period commencing on the effective date set forth in Item 2 of the Declarations and ending on the earlier of either the expiration date set forth in Item 2 of the Declarations or the effective date of cancellation of this policy. If **you** become an **insured** under this policy after the effective date, the **policy period** begins on the date **you** became an **insured**.

- J. **Pollutants** include, but are not limited to, any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed.
- K. **Professional services** means those services as described and set forth in Item 6 of the Declarations.
- L. **Property damage** means (1) physical injury to, loss or destruction of, tangible property including the resulting loss of use thereof; or (2) loss of use of tangible property which has not been physically injured or destroyed.
- M. **Retroactive date** means the date set forth in Item 7 of the Declarations.
- N. **Subsidiary** shall mean any corporation of which the **named insured** owns on the inception date of the **policy period** more than fifty percent (50%) of the issued and outstanding voting stock either directly or indirectly through a **subsidiary**.

**Subsidiary** shall also mean any corporation which becomes a **subsidiary** during the **policy period** provided that such corporation does not represent more than a ten percent (10%) increase in the total assets and/or gross revenue of the **named insured** as of the date of the acquisition. Where such corporation represents an increase in the total assets and/or gross revenue of the **named insured** of more than ten percent (10%), such corporation shall be deemed a **subsidiary** under the policy, but only upon the condition that within ninety (90) days of its becoming a **subsidiary**, you shall have provided us with full particulars of the new **subsidiary** and agreed to any additional premium and/or amendment of the provisions of this policy required by us relating to such new **subsidiary**, subject to the review and acceptance by us of full and complete underwriting information. Further, coverage as shall be afforded to the new **subsidiary** is conditioned upon the **named insured** paying when due any additional premium required by us relating to such new **subsidiary**. A corporation becomes a **subsidiary** when the **named insured** owns more than fifty percent (50%) of the issued and outstanding voting stock either directly or indirectly through one or more of its **subsidiaries**, and ceases to be a **subsidiary** at such time when the **named insured** ceases to own more than fifty percent (50%) of the issued and outstanding voting stock.

This policy does not cover any **claim** against a **subsidiary** or any partner, director, officer or employee thereof for any **wrongful act** that occurred when the **named insured** did not own more than fifty percent (50%) of the issued and outstanding voting stock of such **subsidiary**, either directly or indirectly through one or more of its **subsidiaries**.

- O. **Suit** means a civil proceeding for monetary, non-monetary or injunctive relief, which is commenced by service of a complaint or similar pleading. **Suit** includes a binding arbitration proceeding in which **damages** are alleged and to which you must submit or do submit with our consent.
- P. **We, us or our** means the insurer issuing this policy.

**Q. Wrongful act** means any actual or alleged negligent act, error or omission, misstatement or misleading statement committed solely in **your** performance of **professional services**.

**R. You, your or insured** means:

1. the **named insured**;
2. any **subsidiary** of the **named insured**, but only with respect to **wrongful acts** which occur while it is a **subsidiary** and is otherwise covered by this policy;
3. any past, present or future officer, director, trustee or employee of the **named insured** or **subsidiary** thereof (and in the event the **named insured** is a partnership, limited liability partnership or limited liability company, then any general or managing partner or principal thereof), but only while acting within the scope of their duties as such; and
4. any entity whom the **named insured** is required by contract to add as an **insured** under this policy, but only for the **wrongful acts** of the **named insured**.

### III. EXCLUSIONS - CLAIMS NOT COVERED

We shall not cover **claims**:

- A. arising out of a dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage to which **you** are not legally entitled; however, **we** will defend **suits** alleging any of the foregoing conduct until there is a judgment, final adjudication, adverse admission or finding of fact against **you** as to such conduct at which time **you** shall reimburse **us** for **claim expenses**; **we** shall not cover any **claim** if **you** plead *nolo contendere* or no contest to a criminal proceeding against **you** arising out of the same, or essentially the same, material facts as such **claim**;
- B. arising out of the presence of or the actual, alleged or threatened discharge, dispersal, release or escape of **pollutants**, or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **pollutants**, or in any way respond to or assess the effects of **pollutants**;
- C. arising out of **bodily injury** or **property damage**;
- D. arising out of:
  1. any purchase, sale, or offer or solicitation of an offer to purchase or sell securities;
  2. any violation of any securities law, including the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any regulation promulgated under the foregoing statutes, or any federal, state or local laws similar to the foregoing statutes (including "Blue Sky" laws), whether such law is statutory, regulatory or common law; or
  3. any violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act, or "RICO"), as amended, or any regulation promulgated thereunder or any federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;

- E. arising out of any breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, or similar statutory or common law of the United States of America or any state or jurisdiction therein;
- F. arising out of any employment practices liability or any discrimination on any basis, including, but not limited to: race, creed, color, religion, ethnic background, national origin, age, handicap, disability, gender, sexual orientation or pregnancy;
- G. arising out of the same **wrongful act** or series of continuous, repeated or related **wrongful acts**, alleging the same or similar facts, alleged or contained in any **claim** which has been reported, or any **wrongful act** of which notice has been given, under any policy of which this policy is a renewal, replacement or succeeds in time;
- H. arising out of any misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right;
- I. arising out of false advertising, misrepresentation in advertising, antitrust, unfair competition, restraint of trade, unfair or deceptive business practices, including but not limited to, violations of any local, state or federal consumer protection laws;
- J. against **you** that are brought by or on behalf of any federal, state or local government agency or professional or trade licensing organizations; however, this exclusion shall not apply where the **claim** is alleging a **wrongful act** in **your** rendering **professional services** to such entity;
- K. arising out of liability **you** assume under any contract or agreement, including but not limited to, any contract price, cost guarantee or cost estimate being exceeded; however, this exclusion does not apply to liability **you** would have in the absence of such contract or agreement;
- L. against **you** that is brought by or on behalf of:
  - 1. any **insured** except as described in clause 4. of the definition of "**you, your or insured**" in Section II. DEFINITIONS;
  - 2. any business entity that is owned, managed or operated, directly or indirectly, in whole or in part, by **you**;
  - 3. any parent company, **subsidiary**, successor or assignee of **yours**, or anyone affiliated with **you** or such business entity through common majority ownership or control; or
  - 4. any independent contractor supplying material or services to **you**, but, as regards such independent contractor, only with respect to **claims** involving disputes over the ownership or exercise of rights in material or services supplied;
- M. arising out of any **wrongful act** committed prior to the **first inception date** if, as of the **first inception date**, **you** knew or could have reasonably foreseen that such **wrongful act** did or would result in a **claim** against **you**;
- N. first made against **you** prior to, or pending as of, the **first inception date**, or relating to the essential facts, circumstances or situation underlying such **claim**;

- O. arising out of disputes involving:
  - 1. **your** fees or charges, including over-charges, or cost over-runs;
  - 2. collecting **your** fees from third parties;
  - 3. the return of fees or other compensation paid to **you**; or
  - 4. **your** cost of correcting or re-performing or completing any **professional services**;
- P. arising out of any **wrongful act** committed with the knowledge that it was a **wrongful act**;
- Q. arising out of **over-redemption** of coupons, awards, or prizes from advertisements, promotions, games, sweepstakes, contests, and games of chance;
- R. arising out of any **wrongful act** which occurred prior to the **retroactive date**;
- S. arising out of:
  - 1. false arrest, detention or imprisonment;
  - 2. libel, slander or defamation of character; or
  - 3. wrongful entry or eviction, or invasion of any right of privacy; or
- T. arising out of **your** advising, requiring, obtaining or failing to advise, require or obtain any bond, suretyship or other form of insurance.

#### IV. LIMITS OF LIABILITY

- A. The Limits of Liability set forth in the Declarations of this policy are the most **we** shall pay for **loss** regardless of the number of persons or entities covered by this policy or claimants or **claims** brought.
- B. **Our** total liability for all **loss** arising from any and all **claims** made against **you** and reported to **us** during the **policy period** or any applicable Extended Reporting Period, alleging any **wrongful act** or series of continuous, repeated or related **wrongful acts** shall not exceed the Limit of Liability set forth in the Declarations as applicable to "each **wrongful act**".
- C. **Our** total liability for all **loss** arising from all **claims** made against **you** and reported to **us** during the **policy period** or any applicable Extended Reporting Period shall not exceed the Limit of Liability set forth in the Declarations as "aggregate." The aggregate Limit of Liability for any Extended Reporting Period shall be part of and not in addition to the aggregate Limit of Liability for the **policy period**.
- D. **Our** duty to defend ends if **you** refuse to consent to a settlement **we** recommend and the claimant will accept. **You** must then defend the **claim** at **your** own expense. As a consequence of **your** refusal, **our** liability shall not exceed the amount for which **we** could have settled such **claim** had **you** consented, plus **claim expenses** incurred prior to the date of such refusal. This clause shall not apply to any settlement where the total incurred for **damages** and **claim expenses** does not exceed the retention.
- E. **Multiple Professional Liability Policies**

1. Two or more policies may be issued by **us** or other Chartis Inc. ("Chartis") company to **you**. These policies may provide coverage for:
  - a. **claims** arising from the same **wrongful act** or series of continuous, repeated, or related **wrongful acts**; or
  - b. **claims** for which persons or organizations covered in those policies are jointly and severally liable.
2. In such case, **we** shall not be liable under this policy for an amount greater than the proportion of the **loss** that this policy's applicable limit of liability bears to the total applicable limit of liability under all such policies.
3. In addition, the total amount payable under all such policies combined shall not be greater than the highest applicable limit of liability among all such policies.

## V. RETENTION

**You** shall be responsible for the retention amount set forth in Item 4 of the Declarations. The retention applies to each **wrongful act**, and **you** may not insure it. All **claims** arising from a **wrongful act** or series of continuous, repeated, or related **wrongful acts** shall be subject to one retention. In **our** sole discretion, **we** may pay all or part of the retention to settle a **claim**, in which case **you** agree to repay **us** promptly after **we** notify **you** of the settlement.

If **you** shall, at **our** written request, submit a **claim** to alternative dispute resolution in accordance with the rules of the American Arbitration Association or the Defense Research Institute, and such **claim** is settled through this process, the retention obligation shall be deemed to be fifty percent (50%) of the retention stated in Item 4 of the Declarations.

## VI. OTHER PROVISIONS AFFECTING COVERAGE

### A. What You Must Do in the Event of a Claim

Before coverage will apply, **you** must notify **us** in writing of any **claim** against **you** as soon as practicable during the **policy period** or Extended Reporting Period (if applicable). **You** must also:

1. immediately record the specifics of the **claim** and the date **you** received it; and
2. send copies of all demands, suit papers, or other legal documents **you** receive, as soon as possible to **us** in c/o Chartis, Financial Lines Claims, P.O. Box 25947, Shawnee Mission, KS 66225.

## **B. Your Assistance and Cooperation**

1. **You** agree to cooperate with and help **us**:
  - a. in making settlements, subject to sub-paragraph 3 herein;
  - b. in enforcing any legal rights **you** or **we** may have against anyone who may be liable to **you**;
  - c. by attending depositions, hearings and trials; and
  - d. by securing and giving evidence, and obtaining the attendance of witnesses.
2. **You** shall take such actions which, in **your** judgment, are deemed necessary and practicable to prevent or limit **loss** arising from **your wrongful acts**.
3. **You** shall not admit any liability, assume any financial obligation or pay out any money without **our** prior written consent. If **you** do, it shall be at **your** own expense. In addition, **you** shall not take any action, or fail to take any required action, without **our** written consent, which prejudices **our** rights under this policy.

## **C. Where Coverage Applies**

This policy applies to **wrongful acts** committed anywhere in the world, provided that any **claim** must be brought against **you** in the United States of America, its territories or possessions or Canada.

## **D. Other Insurance**

Such insurance as is provided by this policy shall be excess of any other valid and collectible insurance available to **you**.

## **E. Subrogation**

**You** may be able to recover all or part of a loss from someone other than **us**. **You** therefore must do all that is possible after a loss to preserve any such right of recovery. If **we** make a payment under this policy, that right of recovery shall belong to **us**. **You** shall do whatever is necessary, including signing documents, to help **us** obtain that recovery.

## **F. Policy Changes**

This policy contains all the agreements between **you** and **us** concerning this insurance. This policy can only be changed by a written endorsement **we** issue and make a part of this policy.

## **G. Assignment**

**You** cannot assign or transfer **your** interest in this policy. If **you** die or are declared legally incompetent, **your** rights and duties will be transferred to **your** legal representative; but only while acting within the scope of his or her duties as such, and only with respect to **your wrongful acts** which took place prior to **your** death or incompetence.

## H. Special Rights and Duties of Named Insured

**You** agree that when there is more than one person or organization covered under this policy, the **named insured** first named in Item 1 of the Declarations shall act on behalf of all of **you** as to:

1. giving and receiving notice of cancellation;
2. payment of premiums and receipt of return premiums;
3. acceptance of any changes to this policy; and
4. acceptance or refusal of any applicable Extended Reporting Period.

## I. Cancellation

This policy may be canceled by the **named insured** by surrender of this policy to **us** or by giving written notice to **us** stating when thereafter such cancellation shall be effective. This policy may also be canceled by **us** by mailing to the **named insured** by registered, certified, or other first class mail sent to the **named insured's** address set forth in Item 1 of the Declarations, or by delivering to the **named insured**, written notice, stating when, not less than thirty (30) days thereafter, or ten (10) days thereafter in the event of nonpayment of premium, the cancellation shall be effective. The mailing of such notice, as aforesaid, shall be sufficient proof of notice. This policy shall be deemed canceled at the date and hour specified in such notice. If this policy shall be canceled by the **named insured**, **we** shall retain the customary short rate proportion of the premium herein. If this policy shall be canceled by **us**, **we** shall retain the pro rata proportion of the premium herein. Payment or tender of the unearned premium by **us** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable. If the period of limitation relating to the giving of notice for cancellation by **us**, as set forth above, is also set forth in any controlling law, the period set forth above shall be deemed to be amended so as to be equal to the minimum period of limitation set forth in such controlling law if it is a longer period.

## J. Extended Reporting Provisions

### 1. Automatic Extended Reporting Period

If **we** or the **named insured** shall cancel or elect not to renew this policy, **you** shall have the right following the effective date of such cancellation or nonrenewal to a period of sixty (60) days (herein referred to as the "Automatic Extended Reporting Period") in which to give written notice to **us** of **claims** first made against **you** during the Automatic Extended Reporting Period for any **wrongful act** occurring prior to the end of the **policy period** and otherwise covered by this policy.

The Automatic Extended Reporting Period shall not apply to **claims** that are covered under any subsequent insurance **you** purchase or which is purchased for **your** benefit, or that would be covered by such subsequent insurance but for (1) the exhaustion of the amount of insurance applicable to such **claims**, or (2) any applicable retention or deductible.

## 2. Optional Extended Reporting Period

If **we** or the **named insured** shall cancel or elect not to renew this policy, **you** shall have the right, upon payment of an additional premium of up to 100% of the full annual premium, to a period of up to one (1) year following the effective date of such cancellation or nonrenewal (herein referred to as the "Optional Extended Reporting Period") in which to give written notice to **us** of **claims** first made against **you** during the Optional Extended Reporting Period for any **wrongful act** occurring prior to the end of the **policy period** and otherwise covered by this policy.

As used herein, "full annual premium" means the premium level in effect immediately prior to the end of the **policy period**.

The rights contained in this clause shall terminate, however, unless the **named insured** provides written notice of such election together with the additional premium due to **us** within thirty (30) days of the effective date of cancellation or non-renewal. The additional premium for the Optional Extended Reporting Period shall be fully earned at the inception of the Optional Extended Reporting Period. The Optional Extended Reporting Period is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium. **Our** offer of renewal terms, conditions, limits of liability and/or premiums different from those of the expiring policy shall not constitute a refusal to renew.

The aggregate Limit of Liability for any Extended Reporting Period shall be part of and not in addition to the aggregate Limit of Liability for the **policy period**.

If the **named insured** exercises its right to purchase an Optional Extended Reporting Period, the Automatic Extended Reporting Period shall be deemed void *ab initio*.

### K. Notice of Circumstance

If during the **policy period** or the Extended Reporting Period, if applicable, **you** become aware of any facts or circumstances that may reasonably be expected to give rise to a **claim** against **you** for a **wrongful act** that occurs on or after the **retroactive date** and prior to the end of the **policy period**, and provided **you** give written notice to **us** during the **policy period** or the Extended Reporting Period, if applicable, of the circumstances and the reasons for anticipating such a **claim**, with full particulars as to the **wrongful act(s)**, dates, persons and entities involved, then any **claim** that is subsequently made against **you** arising out of such **wrongful act** or the same **wrongful act** or series of continuous, repeated or related **wrongful acts**, shall, for the purposes of this policy, be treated as a **claim** made against **you** and reported to **us** during the **policy period**.

### L. Organizational Changes

If during the **policy period**:

1. the **named insured** merges into or consolidates with another entity such that the **named insured** is not the surviving entity; or
2. another entity, person, or group of entities and/or persons acting in concert acquires securities or voting rights which result in ownership or voting control by other entity(ies) or person(s) of more than fifty percent (50%) of the outstanding

securities representing the rights to vote for the election of the **named insured's** directors;

(either of the above events hereinafter referred to as the "Transaction") then coverage shall continue until the later of the termination of the **policy period** or such other date to which **we** may agree, but only with respect to **wrongful acts** which occurred prior to the Transaction and are otherwise covered by this policy. No coverage shall be provided after the Transaction unless the **named insured** notifies us of the Transaction in writing within thirty (30) days of the Transaction.

**M. Section Titles**

The titling of sections and paragraphs within this policy is for convenience only and shall not be interpreted as a term or condition of this policy.

**N. Declarations**

By accepting this policy, **you** agree that the statements in the application and Declarations are true, and they are **your** agreements and representations. This policy is issued in reliance upon the truth of those representations.

**O. Bankruptcy**

**You** or **your** estate's bankruptcy or insolvency does not relieve **us** of **our** obligations under this policy.

**P. Alternative Dispute Resolution**

Any controversy arising out of or relating to this policy or its breach shall first be submitted to alternative dispute resolution ("ADR") in accordance with the rules of the American Arbitration Association or the Defense Research Institute. The ADR may be held in New York, New York unless otherwise agreed to by both parties. Each party shall jointly and equally bear with the other party the expense of the alternative dispute resolution. Either **we** or **you** may elect the type of ADR, either non-binding mediation or binding arbitration. However, **you** shall have the right to reject **our** choice of the type of ADR process at any time prior to its commencement, in which case **your** choice of the type of ADR process shall control.

**Q. Action Against Us**

No one may bring an action against **us** unless there has been full compliance with all the terms of this policy and the amount of the **insured's** obligation to pay has been finally determined either by judgment against the **insured** after actual trial, or by written agreement of the **insured**, the claimant and **us**.

Any person or organization or legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. **We** may not be impleaded by the **insured** or its legal representative in any legal action brought against the **insured** by any person or organization.