



In consideration of payment of the premium and subject to the Declarations, General Terms and Conditions, and the limitations, conditions, provisions and other terms of this Coverage Part, the Company and the Insureds agree as follows:

I. INSURING CLAUSE

Miscellaneous Professional Liability Coverage

The Company shall pay, on behalf of an **Insured**, **Loss** on account of a **Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, for a **Wrongful Act** on or after the Retroactive Date set forth in Item 4 of the MPL Declarations, by the **Insured** or by any entity or natural person for whose **Wrongful Acts** the **Insured** is legally liable.

II. DEFINITIONS

For purposes of this Coverage Part:

Application means:

- (A) any portion of an application given to the Company for this Policy, including any attachments, written information and materials provided to the Company by or on behalf of an **Insured** for the purposes of the Company's underwriting of this Coverage Part; and
- (B) any warranty provided to the Company within the past three years in connection with any coverage part or policy of which this Coverage Part is a renewal or replacement.

Claim means any:

- (A) written demand first received by an **Insured** for monetary or non-monetary relief, including injunctive relief;
- (B) civil proceeding commenced by the service of a complaint or a similar pleading; or
- (C) arbitration or mediation proceeding commenced by receipt of a demand for arbitration, demand for mediation or similar document,

against an **Insured** for a **Wrongful Act**, including any appeal therefrom; or

- (D) written request first received by an **Insured** to toll or waive statute of limitation relating to a potential **Claim** described in Subsections (A) through (C) above.

Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of **Insured Persons**) incurred in investigating, defending, opposing or appealing any **Claim** and the premium for appeal, attachment or similar bonds.

Employee means any natural person whose labor or service is, was or will be engaged and directed by an **Organization** including a part-time, seasonal, leased or temporary employee, intern or volunteer. **Employee** shall not include any independent contractor.

Environmental Agents means any:

- (A) bacteria;
- (B) mildew, mold, or other fungi;
- (C) other microorganisms;
- (D) mycotoxins, spores, or other by-products of Subsections (A), (B) or (C) above;



- (E) viruses or other pathogens (whether or not a microorganism); or
- (F) colony or group of any of the foregoing.

ERISA means the Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985, and the Health Insurance Portability and Accountability Act of 1996), the English Pension Scheme Act 1993 or the English Pensions Act 1995; all as amended; any similar statutory or common law anywhere in the world; or any rule or regulation promulgated under any such Act or law.

Executive means any natural person who is, was or will be:

- (A) a duly elected or appointed director, officer, member of the Advisory Board or in-house general counsel of any **Organization** incorporated in the United States of America;
- (B) a duly elected or appointed: (1) manager or member of the Board of Managers or equivalent position; (2) member of the Advisory Board; or (3) in-house general counsel, of any **Organization** formed as a limited liability company in the United States of America; or
- (C) a holder of an equivalent position to those described in Subsections (A) or (B) above in any **Organization** incorporated, formed or organized anywhere in the world.

First Inception Date means the inception date of the first Miscellaneous Professional Liability policy or coverage part issued by the Company and continually renewed by the Company until the inception date of this current Policy.

Insured means any **Organization** and any **Insured Person**.

Insured Person means any **Executive** or **Employee** of an **Organization** acting in his or her capacity as such.

Liquidated Damages means a sum of money stipulated by the parties to a contract as the amount of damages to be recovered for a breach of such contract.

Loss means the amount which an **Insured** becomes legally obligated to pay as a result of any **Claim**, including:

- (A) compensatory damages;
- (B) punitive, exemplary, or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages;
- (C) judgments, including pre-judgment and post-judgment interest;
- (D) settlements; and
- (E) **Defense Costs**,

provided that **Loss** does not include any portion of such amount that constitutes any:

- (1) cost of compliance with any order for, grant of or agreement to provide non-monetary relief, including injunctive relief;
- (2) amount uninsurable under the law pursuant to which this Coverage Part is construed;
- (3) tax, fine or penalty imposed by law; except as provided in Subsection (B) above with respect to punitive, exemplary or multiplied damages;
- (4) amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding or demand subsequently gives rise to a **Claim**;
- (5) **Liquidated Damages**;
- (6) return of fees or other compensation paid to an **Insured**;



- (7) cost of correcting, re-performing or completing any **Professional Services**; or
- (8) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**.

Personal Injury means:

- (A) libel, slander, product disparagement, trade libel or other form of defamation;
- (B) invasion or infringement of the right of privacy or publicity, including false light, public disclosure of private facts, intrusion and commercial appropriation of name, persona or likeness;
- (C) false arrest, detention or imprisonment; or
- (D) wrongful entry or eviction, or other invasion of the right of private occupancy.

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

Professional Services means services which are performed for others for a fee and set forth in Item 5 of the MPL Declarations, including any such services that are performed electronically utilizing the Internet or a network of two or more computers.

Securities Laws means the Securities Act of 1933, Securities Exchange Act of 1934, Investment Advisors Act of 1940, the Investment Company Act of 1940, any state "blue sky" securities law, or any other federal, state or local securities law or any amendments thereto or any rules or regulations promulgated thereunder or any other provision of statutory or common law used to impose liability in connection with the offer to sell or purchase, or the sale or purchase of securities.

Wrongful Act means any actual or alleged error, misstatement, misleading statement, act, omission, neglect, breach of duty or **Personal Injury** committed, attempted, or allegedly committed or attempted solely in the performance of or failure to perform **Professional Services** by an **Insured** or by a person or entity for whose acts the **Insured** is legally liable.

III. EXCLUSIONS

The Company shall not be liable for **Loss** on account of any **Claim**:

- (A) Prior Notice
based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2(A), Policy Period, of the GTC Declarations, was the subject of any notice accepted under any policy of which this Coverage Part is a direct or indirect renewal or replacement;
- (B) Pending or Prior Proceedings
based upon, arising from or in consequence of any written demand, suit or other proceeding pending against, or order, decree or judgment entered for or against any **Insured**, on or prior to the inception date set forth in Item 2(A), Policy Period, of the GTC Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
- (C) Bodily Injury/ Property Damage
for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed, provided that this Exclusion (C) shall not apply to **Loss** for any mental anguish, humiliation or emotional distress resulting from **Personal Injury**;



- (D) Pollution
based upon, arising from or in consequence of any:
- (1) discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;
 - (2) treatment, removal or disposal of any **Pollutants**; or
 - (3) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**,
- including any **Claim** for financial loss to an **Organization**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in Paragraphs (1), (2) or (3) of this Exclusion (D);
- (E) ERISA
for any violation of the responsibilities, obligations or duties imposed by **ERISA**;
- (F) Contract
for any liability of an **Insured** under any oral or written contract or agreement, provided that this Exclusion (F) shall not apply to **Loss** to the extent that an **Insured** would have been liable in the absence of such contract or agreement;
- (G) Prior Knowledge
based upon, arising from or in consequence of any **Wrongful Act** first committed before the **First Inception Date**, if, on or before such date, any **Insured** knew or could have reasonably foreseen that such **Wrongful Act** did or could result in a **Claim** against any **Insured**, provided that this Exclusion (G) shall only apply if coverage is afforded for **Wrongful Acts** first committed before the **First Inception Date**, as such coverage is determined by the Retroactive Date set forth in Item 4 of the MPL Declarations;
- (H) Environmental Agents
based upon, arising from or in consequence of any:
- (1) **Environmental Agents**;
 - (2) request, demand, order or regulatory or statutory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of any **Environmental Agents**; or
 - (3) action or proceeding by or on behalf of a governmental authority or others for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of any **Environmental Agents**;
- (I) Insured v. Insured
brought or maintained by or on behalf of any **Insured**;
- (J) Professional Services for Insureds and Affiliates
based upon, arising from or in consequence of the performance of or failure to perform **Professional Services** for:
- (1) any **Insured**;
 - (2) any entity which is owned or controlled by, or is under common ownership or control with, any **Insured**;
 - (3) any natural person or entity which owns or controls any entity included within the definition of **Insured**; or
 - (4) any entity of which any **Insured** is a director, officer, partner or principal shareholder;
- (K) Securities
based upon, arising from or in consequence of any violation of **Securities Laws**;



- (L) Discrimination
based upon, arising from or in consequence of any willful violation of any federal, state or local law or statute pertaining to discrimination, if a final and non-appealable adjudication in any underlying proceeding or action establishes such a willful violation;
- (M) Antitrust
based upon, arising from or in consequence of price fixing, restraint of trade, monopolization, unfair trade practices or any violation of the Federal Trade Commission Act, the Sherman Anti-Trust Act, the Clayton Act, or any other federal statutory provision involving anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade activities, and any amendments thereto or any rules or regulations promulgated thereunder or in connection with such statutes; or any similar provision of any federal, state, or local statutory law or common law anywhere in the world;
- (N) Intellectual Property
based upon, arising from or in consequence of any infringement of copyright, patent, trademark, trade name, trade dress or service mark; any misappropriation of ideas, trade secrets or other intellectual property rights; any false patent marking; or any violation of a federal, state, local or foreign intellectual property law, or a rule or regulation promulgated under such intellectual property law;
- (O) Unsolicited Communications
based upon, arising from or in consequence of any violation of:
- (1) the United States of America CAN-SPAM Act of 2003 or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world;
 - (2) the United States of America Telephone Consumer Protection Act (TCPA) of 1991 or any amendments thereto or any rules or regulations promulgated thereunder, or any similar provisions of any federal, state, or local statutory law or common law anywhere in the world; or
 - (3) any other law, ordinance, regulation or statute used to impose liability in connection with any unsolicited communication, distribution, publication, sending or transmission via telephone, telephone facsimile machine, computer or other telephonic or electronic devices;
- (P) Governmental, Regulatory or Administrative Entity
brought or maintained by or on behalf of any governmental or quasi-governmental entity, regulatory or administrative agency or authority, provided that this Exclusion (P) shall not apply to **Loss** if such entity, agency or authority brings the **Claim** solely in its capacity as the client or customer of any **Insured** for **Professional Services**;
- (Q) Fees, Charges or Cost Over-runs
solely involving any **Insured's** fees, charges or cost over-runs;
- (R) Guaranty of Costs or Cost Savings
based upon, arising from or in consequence of any guaranty, promise or warranty, either express or implied, whether oral or written, with respect to costs or cost savings;
- (S) Guaranty of Value
based upon, arising from or in consequence of any guaranty, promise or warranty, either express or implied, whether oral or written, with respect to the future value of any real, personal or intellectual property;
- (T) Investment Performance and Commingling
based upon, arising from or in consequence of any **Insured's** advice about, promise or guarantee of the future performance or value of investments, or rate of return or interest; or any **Loss** resulting from fluctuation in the value of any investment; or any failure of investments to perform as expected or desired; or any improper use or commingling of any funds or monies;



- (U) Unauthorized Network Access
based upon, arising from or in consequence of any unauthorized or exceeded authorized access to, use of or alteration of, any computer program, software, computer, computer system or any input, output, processing, storage and communication devices that can be connected thereto; or
- (V) Conduct
based upon, arising from or in consequence of:
- (1) any deliberately fraudulent act or omission, or any willful violation of any statute or regulation, by an **Insured**, if a final, non-appealable adjudication in any underlying proceeding or action (other than a declaratory proceeding brought by or against the Company) establishes such an act or omission or violation; or
 - (2) an **Insured** having gained any profit, remuneration or other advantage to which such **Insured** was not legally entitled, if a final, non-appealable adjudication in any underlying proceeding or action establishes the gaining of such profit, remuneration or advantage,
- provided that:
- (a) no conduct pertaining to any **Insured Person** shall be imputed to any other **Insured Person**; and
 - (b) any conduct pertaining to any past, present, or future chief financial officer, chief executive officer, chief operating officer or in-house general counsel, (or any equivalent position to any of the foregoing) of an **Organization** shall be imputed to such **Organization** and its **Subsidiaries**.

IV. REPORTING

- (A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after the chief executive officer, chief financial officer, in-house general counsel, or any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**, but in no event later than:
- (1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or
 - (2) the expiration of the Extended Reporting Period, if applicable,
- provided that if the Company sends written notice to the **Parent Organization**, stating that this Coverage Part is being terminated for nonpayment of premium, an **Insured** shall give to the Company written notice of such **Claim** prior to the effective date of such termination.
- (B) If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of circumstances which could give rise to a **Claim** and gives written notice of such circumstances to the Company, then any **Claim** subsequently arising from such circumstances shall be deemed made against the **Insured** during the **Policy Year** in which such circumstances were first reported to the Company, provided any such subsequent **Claim** is reported to the Company as soon as practicable, but in no event later than ninety (90) days after the chief executive officer, chief financial officer, in-house general counsel or any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing) of an **Organization** becomes aware of such **Claim**.
- (C) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company such information, assistance and cooperation as the Company may reasonably require and shall include in any notice under Subsections (A) or (B) above a description of the **Claim** or circumstances, the nature of the alleged **Wrongful Act**, the nature of the alleged or potential damage, the names of the actual or potential claimants, and the manner in which such **Insured** first became aware of the **Claim**, circumstances or alleged **Wrongful Act**.



V. RETENTION

- (A) The Company's liability under this Coverage Part shall apply only to that part of each **Loss** which is excess of the applicable Retention set forth in Item 3 of the MPL Declarations, and such Retention shall be borne by the **Insureds** uninsured and at their own risk. In the event that any **Insured** is unwilling or unable to bear the Retention it shall be the obligation of the **Parent Organization** to bear such Retention uninsured and at its own risk.
- (B) If different parts of a single **Claim** are subject to different Retentions in different Coverage Parts, the applicable Retentions will be applied separately to each part of such **Claim**, but the sum of such Retentions shall not exceed the largest applicable Retention.
- (C) **Claims** shall be subject to the Retention applicable to the **Policy Year** during which such **Claims** are made or deemed to have been made.

VI. DEFENSE AND SETTLEMENT

- (A) The Company shall have the right and duty to defend any **Claim** covered by this Coverage Part. Coverage shall apply even if any of the allegations are groundless, false or fraudulent. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.
- (B) The Company may make any investigation it deems necessary and may, with the consent of the **Insureds**, make any settlement of any **Claim** it deems appropriate.
- (C) No **Insured** shall settle any **Claim**, incur any **Defense Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim** without the Company's written consent, which shall not be unreasonably withheld. The Company shall not be liable for any settlement, **Defense Costs**, assumed obligation or admission to which it has not consented.
- (D) The Company shall have no obligation to pay **Loss**, including **Defense Costs**, or to defend or continue to defend any **Claim** after the Company's Maximum Aggregate Limit of Liability set forth in Item 2 of the MPL Declarations or the Combined Maximum Aggregate Limit of Liability set forth in Item 3 of the GTC Declarations, if applicable, has been exhausted by the payment of **Loss** and the applicable premium shall be deemed fully earned.
- (E) The **Insureds** agree to provide the Company with all information, assistance and cooperation which the Company reasonably requests and agrees to do nothing that may prejudice the Company's position or its potential or actual rights of recovery.
- (F) The Company shall not seek repayment from an **Insured Person** of any **Defense Costs** paid by the Company that are deemed uninsured pursuant to Exclusion III(V), Conduct, unless the applicable determination standard (whether a final, non-appealable adjudication or other determination standard) set forth in such Exclusion has been met.

VII. ALLOCATION

If the **Insureds** who are afforded coverage for a **Claim** incur an amount consisting of both **Loss** that is covered by this Coverage Part and also loss that is not covered by this Coverage Part because such **Claim** includes both covered and uncovered matters, then coverage shall apply as follows:

- (A) **Defense Costs**: one hundred percent (100%) of **Defense Costs** incurred by such **Insured** on account of such **Claim** shall be considered covered **Loss**, provided that the foregoing shall not apply with respect to any **Insured** for whom coverage is excluded pursuant to Subsection IX(C), Representations and Severability. Such **Defense Costs** shall be allocated between covered **Loss** and non-covered loss based on the relative legal exposures of the parties to such matters; and
- (B) loss other than **Defense Costs**: all remaining loss incurred by such **Insured** from such **Claim** shall be allocated between covered **Loss** and uncovered loss based upon the relative legal exposures of the parties to such matters.



VIII. OTHER INSURANCE

If any **Loss** under this Coverage Part is insured under any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this Coverage Part), this Coverage Part shall be excess of and shall not contribute with such other insurance, regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

IX. REPRESENTATIONS AND SEVERABILITY

- (A) In granting coverage to the **Insureds** under this Coverage Part, the Company has relied upon the declarations and statements in the **Application** for this Coverage Part. Such declarations and statements are the basis of the coverage under this Coverage Part and shall be considered as incorporated in and constituting part of this Coverage Part.
- (B) The **Application** for coverage shall be construed as a separate **Application** for coverage by each **Insured Person**. With respect to the declarations and statements in such **Application**, no knowledge possessed by an **Insured Person** shall be imputed to any other **Insured Person**.
- (C) However, in the event that such **Application** contains any misrepresentations made with the actual intent to deceive or contains misrepresentations which materially affect either the acceptance of the risk or the hazard assumed by the Company under this Coverage Part, then no coverage shall be afforded for any **Claim** based upon, arising from or in consequence of any such misrepresentations with respect to:
- (1) any **Insured Person** who knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations); or
 - (2) any **Organization** if any past or present chief executive officer, chief financial officer or in-house general counsel (or any equivalent position to any of the foregoing) of the **Parent Organization** knew of such misrepresentations (whether or not such individual knew such **Application** contained such misrepresentations).
- (D) The Company shall not be entitled under any circumstances to void or rescind this Coverage Part with respect to any **Insured**.
-