

Scottsdale Indemnity Company

A Stock Insurance Company, herein called the **Company**

INSURANCE AGENTS AND BROKERS PROFESSIONAL LIABILITY POLICY

THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR DISCOVERY PERIOD. UNLESS COVERAGE IS PURCHASED FOR PAYMENT OF DEFENSE COSTS IN ADDITION TO THE APPLICABLE LIMITS OF LIABILITY, THE APPLICABLE LIMITS OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY PAYMENT OF DEFENSE COSTS. DEFENSE COSTS SHALL BE SUBJECT TO THE RETENTION. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium and in reliance upon the statements in the **Application**, which is made a part hereof, and subject to the Declarations, terms and conditions of this Policy, the **Company** and the **Insured** agree as follows:

I. INSURING AGREEMENT

A. Insurance Agents and Brokers Professional Liability

The **Company** will pay on behalf of the **Insured** any **Damages** as a result of a **Claim** first made against the **Insured** during the **Policy Period** or DISCOVERY PERIOD, if applicable, for a **Wrongful Act** of the **Insured** or any other person for whom the **Insured** is legally liable, but only if:

1. such **Wrongful Act** is first committed on or after the RETROACTIVE DATE stated in **Item 5.** of the Declarations and before the end of the **Policy Period**; and
2. prior to the inception date of the first policy in a series of uninterrupted policies issued to the **Named Insured** by the **Company** of which this Policy is a direct or indirect renewal or replacement, no **Insured** had a reasonable basis to believe that such **Wrongful Act** had been committed or that a **Claim** would be made against any **Insured** alleging such **Wrongful Act**.

B. Defense Costs

The **Company** has the right and duty to defend any **Claim** to which this insurance applies other than a **Disciplinary Proceeding**, even if the allegations of the **Claim** are groundless, false or fraudulent. The **Insured** shall not admit or assume any liability, make any settlement offer or enter into any settlement agreement, stipulate to any judgment, or incur any **Defense Costs** without the prior written consent of the **Company**, such consent not to be unreasonably withheld. The **Company** will have the right to make investigations and conduct negotiations and, with the consent of the **Insured**, enter into such settlement of any **Claim** as the **Company** deems appropriate. If the **Insured** refuses to consent to any settlement recommended by the **Company**, then the **Company's** liability for the **Claim** will not exceed the amount for which the **Claim** could have been settled, plus **Defense Costs** incurred up to the date of the **Insured's** refusal.

If **Item 2.c.** of the Declarations is marked "No," then the **Company** will pay **Defense Costs** in addition to the **Limits of Liability**; provided, however, the **Company** will not be obligated to pay any **Damages** or **Defense Costs** resulting from, or to defend, any **Claim** after the applicable **Limit of Liability** has been exhausted by payment of **Damages**.

If **Item 2.c.** of the Declarations is marked "Yes" or is not checked, then the **Company** will pay **Defense Costs** as part of, and not in addition to, the **Limits of Liability**. The **Company** will not be obligated to pay any **Damages** or **Defense Costs** resulting from, or to defend, any **Claim** after the applicable **Limit of Liability** has been exhausted by payment of **Damages** and **Defense Costs**.

C. Additional Covered Expenses

Subject to the aggregate limit of liability, the **Company** shall:

1. reimburse the **Insured** for up to two hundred fifty dollars (\$250) per day for each **Insured** for all reasonable expenses such **Insured** incurs at the **Company's** request to attend a hearing, trial or mediation in the course

of defending a **Claim** under this Policy, including actual loss of earnings because of time off work, up to five thousand dollars (\$5,000) in the aggregate for all **Insureds** in all **Claims**;

2. pay up to five thousand dollars (\$5,000) for all reasonable and necessary legal fees and expenses incurred by an attorney retained by the **Company** to respond to a subpoena the **Insured** receives during the **Policy Period** for documents or testimony arising from a **Wrongful Act** first committed on or after the RETROACTIVE DATE stated in **Item 5.** of the Declarations and before the end of the **Policy Period**, on the condition that:
 - a. the **Insured** timely seeks the **Company's** assistance in responding to the subpoena and provides the **Company** with a copy of the subpoena;
 - b. the subpoena arises out of a lawsuit to which the **Insured** is not a party and the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit; and
 - c. the notice the **Insured** gives the **Company** of such subpoena shall be deemed notification of a circumstance under Section **V.C.** and any such legal fees and expenses incurred by the **Company** in responding to such subpoena shall be part of, and not in addition to, the applicable **Limits of Liability**; and
3. reimburse the **Insured** for up to twenty-five thousand dollars (\$25,000) for all reasonable and necessary legal fees and expenses the **Insured** incurs in responding to or defending a **Disciplinary Proceeding** first made during the **Policy Period** or DISCOVERY PERIOD, if applicable, against an **Insured**; provided such **Disciplinary Proceeding** is for a **Wrongful Act** first committed on or after the RETROACTIVE DATE stated in **Item 5.** of the Declarations and before the end of the **Policy Period** and the **Insured** incurs such legal fees and expenses with the **Company's** prior consent, such consent not to be unreasonably withheld.

No **Retention** will apply to fees and expenses in **1.** through **3.** above.

II. DEFINITIONS

- A. **Application** means each and every signed application, any attachments to such applications, other materials submitted therewith or incorporated therein and any other documents submitted in connection with the underwriting of this Policy or the underwriting of any other insurance agents professional liability policy issued by the **Company**, or any of its affiliates, of which this Policy is a renewal, replacement or successor in time.
- B. **Claim** means:
 1. a written demand for damages or a civil proceeding seeking monetary relief commenced by service of a complaint or similar pleading; or
 2. a **Disciplinary Proceeding**, but only with respect to the coverage afforded under **INSURING AGREEMENT I.C.3.**
- C. **Damages** means damages, judgments (including pre/post-judgment interest on a covered judgment) and settlements negotiated with the **Company's** consent; provided, however, **Damages** shall not include:
 1. **Defense Costs**;
 2. criminal or civil fines or penalties imposed by law;
 3. the multiplied portion of any multiplied damages award;
 4. the return, refund, disgorgement, waiver or forgiveness of any fees, commissions or charges; or
 5. any matter deemed uninsurable under the law pursuant to which this Policy shall be construed.

Damages shall include punitive or exemplary damages, unless uninsurable under the applicable law most favoring coverage for such damages.
- D. **Defense Costs** means reasonable and necessary fees, costs and expenses incurred by the **Company** or with its approval (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense or appeal of a

Claim against the **Insured**, but shall not include salaries, wages, overhead or benefit expenses associated with employees of the **Company** or the **Named Insured**.

- E. Disciplinary Proceeding** means any proceeding by a regulatory or disciplinary official, board or agency to investigate allegations of professional misconduct in the **Insured's** performance of or failure to perform **Professional Services**.
- F. Insured** means:
1. the **Named Insured**;
 2. any past, present or future partner, director, officer, member or employee of the **Named Insured**, solely while acting within the scope of his or her duties as such;
 3. the estate, heir, or legal representative of any natural person described in **(1)** or **(2)** above, in the event of his or her death, incompetence, insolvency or bankruptcy;
 4. the lawful spouse or domestic partner (whether such status is derived by reason of statutory law, common law or otherwise of any applicable jurisdiction in the world) of any natural person described in **(1)** or **(2)** above, but solely with respect to a **Claim** arising out of his or her status as the spouse or domestic partner of any person described in **(1)** or **(2)** above for a **Wrongful Act** of such person; provided, however, **Insured** shall not include a lawful spouse or domestic partner with respect to a **Claim** against that person for his or her own **Wrongful Acts**; or
 5. at the **Named Insured's** sole option, any independent contractor, but only with respect to **Professional Services** which were rendered or should have been rendered on the **Named Insured's** behalf.
- G. Interrelated Wrongful Acts** means **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.
- H. Named Insured** means the individual, partnership, corporation or other entity first designated in **Item 1.** of the Declarations (herein called the **First Named Insured**) and any other individual, partnership, corporation or other entity identified in **Item 1.** of the Declarations or by endorsement to this Policy.
- I. Personal Injury** means false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, libel, slander or other defamatory or disparaging material, or publication or utterance in violation of an individual's right of privacy, or malicious prosecution.
- J. Policy Period** means the period from the effective date to the expiration date of this Policy as set forth in **Item 3.** of the Declarations, or any earlier cancellation date.
- K. Professional Services** means insurance services performed for others for a fee or a commission, including via electronic means or method, as a property, casualty, surety, life, accident, health or other insurance agent, insurance broker, insurance consultant, general agent, managing general agent, managing general underwriter, program administrator, surplus lines broker or wholesale broker, including any of the following services: notary, premium financing, claims handling or adjusting, risk management or loss control services.
- L. Wrongful Act** means any actual or alleged negligent act, error or omission, including a **Personal Injury**, committed solely in the performance or failure to perform **Professional Services**.

III. EXCLUSIONS

- A.** The Policy will not apply to any **Claim** based on, directly or indirectly arising out of or resulting from:
1. any actual or alleged criminal, fraudulent, dishonest or discriminatory act or omission; provided, however, this exclusion will not apply to:
 - a. **Defense Costs** unless and until a jury, court, arbitrator or other final adjudication establishes the act or omission was criminal, fraudulent, dishonest or discriminatory or such **Insured** admits to such act or omission; or

- b. any natural person **Insured** who did not actually commit or have prior or contemporaneous knowledge of or participate in a cover-up of such criminal, fraudulent, dishonest or discriminatory act or omission;
 2. any act or omission committed with knowledge of its wrongful nature or with intent to cause damage or any actual or alleged infringement of copyright, patent, trademark or service mark;
 3. any **Wrongful Act**, matter, fact, circumstance, situation, transaction or event which has been the subject of notice under any prior policy of which this Policy is a renewal or replacement or to which it may succeed in time, or any other **Wrongful Act** which, together with a **Wrongful Act** that has been the subject of such notice, constitute **Interrelated Wrongful Acts**;
 4. any actual or alleged bodily injury to or sickness, disease or death of any person, or damage to or destruction of any property, including the loss of use thereof; provided, however, this exclusion will not apply to a **Claim** resulting from an **Insured's** actual or alleged failure to effect or maintain any insurance or bond, in whole or in part, or on any particular terms or with any particular limits;
 5. any actual or alleged placement of or failure to place any reinsurance, any actual or alleged sale or failure to sell any securities other than mutual funds, variable annuities or variable life insurance, any actual or alleged performance of or failure to perform any actuarial services, or any actual or alleged commingling of or failure to collect or safeguard any money; or
 6. any actual or alleged guarantee of any future premium payment, any investment result or return, any interest rate or yield or any tax consequence in connection with any life insurance product, annuity, mutual fund or security.
- B. The Policy will not apply to any **Claim** brought by or on behalf of any **Insured** or any person or entity owned or controlled by any **Insured**, or which owns or controls any **Insured** or which is affiliated with any **Insured** through any common ownership or control.

IV. LIMITS OF LIABILITY AND RETENTION

- A. Subject to Section IV.C. below, the **Limit of Liability** stated in **Item 2.a.** of the Declarations is the limit of the **Company's** liability for all **Damages** as a result of each **Claim** first made during the **Policy Period** and the DISCOVERY PERIOD, if applicable, which Limit shall be part of and not in addition to the **Limit of Liability** stated in **Item 2.b.** of the Declarations.
- B. Subject to Section IV.C. below, the **Limit of Liability** stated in **Item 2.b.** of the Declarations is the aggregate limit of the **Company's** liability for all **Damages** as a result of all **Claims** first made during the **Policy Period** and the DISCOVERY PERIOD, if applicable, and all Additional Covered Expenses under **INSURING AGREEMENT I.C.** If the **Limits of Liability** set forth in **Item 2.b.** of the Declarations is exhausted by payments by the **Company**, the premium for this Policy will be deemed fully earned.
- C. If **Item 2.c.** of the Declarations is marked "No," then the **Company** will pay **Defense Costs** in addition to the **Limits of Liability**. If **Item 2.c.** of the Declarations is marked "Yes" or is not checked, then the **Company's** payment of **Defense Costs** shall reduce, and may exhaust, the applicable **Limits of Liability**.
- D. The **Retention** stated in **Item 4.** of the Declarations shall apply to **Damages** and **Defense Costs** and shall be borne by the **Insured** uninsured. The **Company** will have no obligation to pay all or any part of the **Retention** on the **Insured's** behalf, but the **Company**, at its sole discretion, will have the right and option to do so, in which event the **Insured** will repay the **Company** any amounts so paid.
- E. All **Claims** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts** will be treated as a single **Claim** made when the earliest such **Claim** was first made, or when the earliest such **Claim** is treated as having been made in accordance with Section V.C., whichever is earlier. A single **Retention** and each **Claim Limit of Liability** shall apply to all **Claims** based upon or arising out of the same **Wrongful Act** or **Interrelated Wrongful Acts**.

V. NOTICES

- A. All notices to the **Company** shall be given in writing and sent by mail, prepaid express courier or by facsimile, to the applicable address listed in **Item 8.** of the Declarations.
- B. As a condition precedent to the obligations of the **Company** under this Policy, the **Insured** shall give written notice to the **Company** of a **Claim** made against an **Insured** as soon as practicable after the **Insured** first becomes aware of the **Claim**.
- C. If during the **Policy Period** or the DISCOVERY PERIOD (if applicable) the **Insured** first becomes aware of any circumstance which may reasonably be expected to give rise to a **Claim** being made against an **Insured** and gives written notice to the **Company** of the circumstance, the anticipated **Wrongful Act** allegations and the reason for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, then a **Claim** subsequently made against such **Insured** arising out of such **Wrongful Act** and reported to the **Company** shall be considered made at the time the **Insured** gave such notice of circumstance to the **Company**.

VI. TERRITORY

This Policy applies to **Wrongful Acts** committed anywhere in the world. If judgment is rendered or settlement is made denominated in a currency other than United States of America dollars, payment under this policy shall be made in United States dollars at the rate of exchange prevailing on the date the final judgment is rendered or the amount of the settlement is agreed upon.

VII. DISCOVERY PERIOD

- A. Except as provided in **B.** below, if either the **Company** or the **Named Insured** shall cancel or refuse to renew this Policy, the **Named Insured** shall have the right to purchase, as set forth below, an additional period immediately following the effective date of such cancellation or non-renewal (herein referred to as the DISCOVERY PERIOD) in which to give to the **Company** written notice of any **Claim** first made against the **Insured** during the DISCOVERY PERIOD or any circumstance under Section **V.C.** during the DISCOVERY PERIOD, but only if such notice of circumstance or **Claim** is for a **Wrongful Act** otherwise covered by this Policy that occurs prior to the effective date of such cancellation or non-renewal. The **Named Insured** may purchase a DISCOVERY PERIOD:
 - (1) of twelve (12) months for an additional premium of seventy-five percent (75%) of the total policy premium;
 - (2) of twenty-four (24) months for an additional premium of one hundred five percent (105%) of the total policy premium; or
 - (3) of thirty-six (36) months for an additional premium of one hundred thirty-five percent (135%) of the total policy premium.

The rights contained in this paragraph shall terminate, however, unless written notice of such election together with the additional premium due is received by the **Company** within thirty (30) days of the effective date of cancellation or non-renewal.

- B. The additional premium for the DISCOVERY PERIOD shall be fully earned at the inception of the DISCOVERY PERIOD. The DISCOVERY PERIOD is not cancelable. This Section and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium, or as a result of a renewal quotation with different terms and conditions.
- C. The purchase of the DISCOVERY PERIOD shall not increase or reinstate any **Limit of Liability**.

VIII. CANCELLATION AND NON-RENEWAL

- A. The **Named Insured** may cancel this Policy by mailing to the **Company** written notice stating when thereafter the cancellation shall be effective.
- B. The **Company** may cancel this Policy solely for non-payment of premium by mailing to the **Named Insured** at the address shown in **Item 1.** of the Declarations and to its agent of record written notice stating when, not less than twenty (20) days thereafter, such cancellation shall be effective. The notice shall state the precise reason for the cancellation. Proof of mailing will be sufficient proof of notice.

- C. If the **Named Insured** or the **Company** cancels this Policy, earned premium shall be the pro rata amount of the annual premium; provided, however, if at the time of cancellation the aggregate **Limit of Liability** has been exhausted, the entire premium shall be considered earned. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. Mailing of the **Company's** check shall be sufficient tender of any refund of premium due to the **Named Insured**.
- D. If the **Company** chooses to non-renew this Policy, the **Company** will deliver or mail to the **Named Insured** and to its agent of record written notice stating such at least sixty (60) days before the expiration of the **Policy Period**. Proof of mailing is sufficient proof of notice. The notice of non-renewal shall state the reason for such non-renewal.

IX. SUBROGATION

If the **Company** pays any **Damages** and/or **Defense Costs**, the **Company** shall be subrogated to the **Insured's** right of recovery against any other person or organization for such **Damages** and/or **Defense Costs**, and the **Insured** shall execute all papers required, and shall do everything that may be necessary to secure and preserve such rights, including the execution of such documents necessary to enable the **Company** effectively to bring suit in the name of the **Insured**. Any recovery (after expenses) shall be used to reduce **Damages** and/or **Defense Costs**, and so much of such recovery shall be paid to the **Company** as will reduce the **Damages** and/or **Defense Costs** ultimately borne by the **Company** to what such payments would have been had the recovery preceded any payment of such **Damages** and/or **Defense Costs** by the **Company**.

X. OTHER INSURANCE

The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance, unless such other insurance is written only as specific excess insurance over the applicable **Limit of Liability** provided by this Policy.

XI. NOTICE AND AUTHORITY

It is agreed that the **First Named Insured** shall act on behalf of all **Insureds** with respect to giving notice of **Claim**, giving and receiving notice of cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of any endorsements issued to form a part of this Policy and the exercising or declining to exercise any right to a DISCOVERY PERIOD.

XII. ACTION AGAINST COMPANY

No action shall lie against the **Company** unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the **Company**.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of any insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the **Company** as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the **Company** be impleaded by the **Insured** or his legal representative. Bankruptcy or insolvency of the **Insured** or the **Insured's** estate shall not relieve the **Company** of any of its obligations hereunder.

XIII. REPRESENTATIONS

By accepting this Policy the **Insureds** agree that the statements in the **Application** are their agreements and representations and that this Policy is issued in reliance upon the truth of such agreements and representations, which are deemed material to the acceptance of the risk or the hazard assumed by the **Company** under the Policy.

XIV. ASSIGNMENT

No assignment of interest under this Policy shall be valid unless endorsed in writing by the **Company**.

XV. ENTIRE AGREEMENT

This Policy, together with the Declarations, **Application** and Endorsements, embodies all agreements existing between the **Insured** and the **Company** or any of its agents relating to this insurance.

XVI. CAPTIONS

The headings or captions used in this Policy are for reference only and do not affect the meaning of this Policy.