

# NON-PROFIT ORGANIZATION LIABILITY INSURANCE

## STRATFORD INSURANCE COMPANY

KEENE, NEW HAMPSHIRE

(A stock company, herein called the Insurer)

### THIS IS A CLAIMS MADE POLICY PLEASE READ CAREFULLY

IN CONSIDERATION of the payment of the premium and in reliance upon the statements made to the Insurer, including the statements made in the Application Form attached hereto, and subject to the insuring agreements, exclusions, terms and conditions of this Policy, the Insurer, the Insured and the Company agree as follows:

#### INSURING AGREEMENTS

- A. The Insurer shall pay on behalf of the Insured all Loss arising from a claim first made against any Insured, individually or collectively, and reported to the Insurer during the Policy Period or any renewal thereof or the Discovery Period (if applicable) by reason of any Wrongful Act.
- B. The Insurer shall pay on behalf of the Company all Loss arising from a claim first made against any Insured, individually or collectively, and reported to the Insurer during the Policy Period or any renewal thereof or the Discovery Period (if applicable) by reason of any Wrongful Act but only when and to the extent the Company is required or permitted to indemnify an Insured for such Loss pursuant to law, statutory or common, or pursuant to the Charter or By-Laws of the Company.
- C. The Insurer shall pay on behalf of the Company all Loss arising from a claim first made against the Company and reported to the Insurer during the Policy Period or any renewal thereof or the Discovery Period (if applicable) by reason of any Wrongful Act.
- D. The Insurer shall have the right and duty to defend a claim against the Insured or the Company seeking damages on account of a Wrongful Act, even if any of the allegations of the claim are groundless, false or fraudulent, and may make such investigation and, with the consent of the Insured, settlement of any claim as it deems expedient. The Company and the Insureds shall have the right to consent to defense counsel, which consent shall not be unreasonably withheld; participate in, and assist in the direction of, the defense of any claim; and, consent to any settlement, which consent shall not be unreasonably withheld.

If the Company or the Insured refuses to consent to any settlement recommended by the Insurer and acceptable to the claimant, the Insurer's duty to defend shall then cease and the Company and the Insured shall thereafter at their own expense negotiate and defend the claim without the participation of the Insurer and the Insurer's liability shall not exceed the amount for which the claim could have been settled if the Company and the Insured had consented to the recommendation plus defense costs incurred by the Insurer, up to the date of such refusal of consent.

The Insurer shall not be obligated to pay any Loss or to defend any claim after the Limit of Liability has been exhausted by payment of Loss.

#### SECTION 1 DEFINITIONS

- A. "Company" shall mean the Company named in Item 1 of the Declarations and any Subsidiary.
- B. "Subsidiary" shall mean any non-profit organization of which the Company named in Item 1 of the Declarations owns at the inception of the Policy Period more than 50% of the voting stock or other similar evidence of ownership. "Subsidiary" also means any non-profit organization which becomes a Subsidiary during the Policy Period but only upon the condition that within ninety (90) days of its becoming a Subsidiary, the Company shall have provided the Insurer with full particulars of the new Subsidiary and agreed to any additional premium and/or amendment of the provisions of this Policy required by the Insurer relating to such new Subsidiary. Further, coverage as shall be afforded to the new Subsidiary is conditioned upon the Company paying when due any additional premium required by the Insurer relating to such new Subsidiary. A non-profit organization becomes a Subsidiary when the Company owns more than 50% of its issued and outstanding voting stock or other similar evidence of ownership.
- C. "Insured" shall mean any individual who was, now is, or shall be a director, officer, trustee, employee (whether salaried or not), volunteer, or member of any duly constituted committee of the Company. "Insured" shall also mean the estate, heirs of legal representatives of deceased persons who were Insureds at the time the Wrongful Acts upon which a claim is based were committed and the legal representatives of the Insureds in the event of their incompetency, insolvency or bankruptcy.
- D. "Policy Period" shall mean the period of time from the inception date shown in Item 2 of the Declarations to the earlier of the expiration date shown in Item 2 of the Declarations or the effective date of cancellation of this Policy.
- E. "Loss" shall mean money damages, judgments, settlements and Defense Costs; however, Loss shall not include fines or penalties imposed by law, punitive or exemplary damages, the multiplied portion of multiplied damages, taxes or any amount which may be uninsurable under the law pursuant to which this Policy shall be construed.

- F. "Wrongful Acts" shall mean any actual or alleged breach of duty, neglect, error, misstatement, misleading statement or omission:
1. by any Insured in the discharge of their duties solely in their capacity with the Company, or
  2. by the Company.
- G. "Defense Costs" shall mean fees, costs and expenses paid by the Insurer (including premiums for any appeal bond, attachment bond or similar bond in the amount up to the Limit of Liability as stated in Item 3 of the Declarations, but without obligation to apply for or furnish any such bond) resulting from the defense and appeal of any claim against the Insured, but excluding salaries of officers or employees of the Company.

## SECTION 2 EXCLUSIONS

The Insurer shall not be liable under this Policy to make any payment for Loss in connection with any claim made against the Insured or the Company:

- A. brought about or contributed to by the committing in fact of any fraudulent, criminal or dishonest act of any Insured or the Company;
- B. based upon or attributable to any Insured or the Company gaining in fact any profit or advantage to which they were not legally entitled or for the return by any Insured or by the Company of any remuneration paid in fact to any Insured or to the Company if payment of such remuneration shall be held to be in violation of law or for the return under a settlement agreement of any profit or remuneration paid to any Insured or the Company;

NOTE: IT IS AGREED THAT ANY FACT PERTAINING TO ANY INSURED SHALL NOT BE IMPUTED TO ANY OTHER INSURED FOR THE PURPOSE OF DETERMINING THE APPLICATION OF THE ABOVE EXCLUSIONS A OR B.

- C. which are brought by or on behalf of any Director, Officer or the Company, whether directly or derivatively, unless such claim is instigated and continued totally independent of, and without the assistance of or intervention of, any Director, Officer or the Company;
- D. alleging, arising out of, based upon or attributable to or in any way involving liability under any contract or agreement except liability which would have attached even in the absence of such contract or agreement;
- E. alleging, arising out of, based upon or attributable to or in any way involving any failure or omission on the part of the Insured or the Company to effect and maintain insurance;

- F. alleging, arising out of, based upon or attributable to or in any way involving any pending or prior litigation as of the inception date of this Policy, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior litigation;
- G. alleging, arising out of, based upon or attributable to or in any way involving the facts alleged in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this Policy is a renewal or replacement or which it may succeed in time;
- H. for libel or slander or the publication of material that violates a person's right of privacy;
- I. alleging, arising out of, based upon or attributable to or in any way involving bodily injury, sickness, disease, death or emotional distress of any person, or for damage to or destruction of any tangible or intangible property including loss of use thereof;
- J. alleging, arising out of, based upon or attributable to or in any way involving an actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 and amendments thereto or similar provisions of any federal, state or local statutory law or common law;
- K. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly 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, including, but not limited to, claims alleging damage to the Company or its shareholders.  
  
Pollutants include, but are not limited to, any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste.
- L. alleging, arising out of, based upon or attributable to any act or omission by any Insured in their capacity with any entity other than the Company;
- M. under Insuring Agreement A for which the Insured is indemnified or entitled to indemnification by the Company;
- N.
  1. based upon or arising out of claims, demands or actions seeking relief, or redress, in any form other than money damages;
  2. for Defense Costs relating to the defense of claims seeking relief or redress, in any form other than money damages;
  3. for fees or expenses awarded to any claimant in connection with claims, demands or actions seeking relief or redress in any form other than money damages;

- O. arising either directly or indirectly from anti-trust actions or proceedings including, but not limited to, subsequent related derivative or representative type actions.

### **SECTION 3 LIMIT OF LIABILITY AND RETENTION**

- A. The Limit of Liability stated in Item 3 of the Declarations, regardless of the time of payment by the Insurer, shall be the maximum liability of the Insurer for all Loss under Insuring Agreements A, B, and C combined (a) during the Policy Period, and (b) the Discovery Period. The Limit of Liability for the Discovery Period is part of, not in addition to, the Limit of Liability for the Policy Period.
- B. The Insurer shall be liable to pay 100% of the Loss in excess of the amount of the retentions stated in Item 4 of the Declarations, up to the Limit of Liability stated in Item 3 of the Declarations, it being warranted that the retentions stated in Item 4 of the Declarations shall be carried by the Insured and/or the Company at their own risk and uninsured.
- C. This Policy is only to pay Loss, excess of the retentions stated in Item 4 of the Declarations.
  - 1. As respects Insuring Agreement A, the retention amount stated in Item 4(a) of the Declarations shall apply separately to each Insured for each Loss, subject to the aggregate retention each Loss as stated in Item 4(b) of the Declarations. The retention stated in the Item 4(b) of the Declarations shall be prorated among the Insureds against whom claim is made.
  - 2. As respects Insuring Agreements B and C, the retention amount stated in Item 4(c) shall apply to each Loss.
  - 3. The Insurer may pay Defense Costs or Loss within the Retention stated in Item 4 of the Declarations and upon request, the Insured of the Company shall promptly reimburse the Insurer.
- D. Defense Costs are not payable in addition to the Limit of Liability. The Limit of Liability available to pay judgments or settlements shall be reduced by Defense Costs.
- E. Loss arising out of the same Wrongful Act or interrelated, repeated or continuous Wrongful Acts of one or more of the Insureds or the Company shall be considered a single Loss.

### **SECTION 4 DEFENSE COSTS**

Defense Costs are included in Loss and, as such, Defense Costs are subject to the Limit of Liability stated in Item 3 of the Declarations. The retentions stated in Item 4 of the Declarations are applicable to Defense Costs.

### **SECTION 5 LOSS PROVISIONS**

- A. The Insured or the Company shall, as a condition precedent to the obligations of the Insurer under this Policy, give to the Insurer notice in writing of any claim made against the Insured or the Company as soon as practicable and during the Policy Period or any renewal thereof or during the Discovery Period (if applicable).
- B. If during the Policy Period or any renewal thereof or during the Discovery Period (if applicable) the Insured or the Company shall become aware of any Wrongful Act which may subsequently give rise to a claim being made against the Insured or the Company, the Insured or the Company shall give written notice as soon as practicable during the Policy Period or any renewal thereof or during the Discovery Period (if applicable) of the Wrongful Act and the reasons for anticipating a claim, with full particulars as to dates and person involved. Any claim which is subsequently made against the Insured or the Company arising out of such Wrongful Act shall be treated as a claim made during the Policy Period.

Notice hereunder shall be given the Insurer, 400 Parson's Pond Drive, Franklin Lakes, New Jersey 07417-2600.

### **SECTION 6 COOPERATION CLAUSE**

- A. The Insured and the Company shall cooperate with the Insurer in respect to any claim against the Insured or the Company. The Insured and the Company shall provide the Insurer with such pleadings, reports, investigations and other information as the Insurer shall reasonably request.
- B. The Insured and the Company shall not admit any liability, agree to any settlement, stipulate to any judgment, or assign any rights under this Policy without the prior written consent of the Insurer.

### **SECTION 7 DISCOVERY PERIOD**

If the Insurer shall cancel or refuse to renew this Policy, the Insured and/or the Company shall have the right, upon payment of an additional premium of 35% of the one (1) year premium hereunder, for a period of ninety (90) days following the effective date of such cancellation or refusal to renew, to give written notice to the Insurer, pursuant to Section 5 of the Policy, but only in respect of any Wrongful Act committed before the effective date of such cancellation or non-renewal. This right of extension shall terminate, however, unless written notice is given and the additional premium is paid to the Insurer by the Insured or the Company within ten (10) days after the effective date of such cancellation or non-renewal. This paragraph and the rights contained herein shall not apply in the event of cancellation resulting from the non-payment of premium. The offer by the Insurer of renewal terms, conditions, limits of liability and/or premium different from those of the expiring Policy shall not constitute a refusal to renew.

## **SECTION 8 CANCELLATION**

This Policy may be cancelled by the Company at any time by written prior notice or by surrender of this Policy to the Insurer or its authorized agent. This Policy may also be cancelled by the Insurer by delivering to the Company or by mailing to the Company, by registered, certified or other first class mail, at the Company's address shown in this Policy, written notice stating when, not less than thirty (30) days thereafter (except for non-payment of premium when ten (10) days shall apply) the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice.

If this Policy shall be cancelled by the Company, the Insurer shall retain the customary short rate proportion of the premium hereon. If this Policy shall be cancelled by the Insurer, the Insurer shall retain the pro rata proportion of the premium hereon.

Payment or tender of any unearned premium by the Insured shall not be a condition precedent to the effectiveness of cancellation but such payment shall be made as soon as practicable.

If the period, as set forth in the Policy relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

IN WITNESS WHEREOF the INSURER has caused this Policy to be signed by its President and a Secretary and countersigned on the Declarations page by a duly authorized representative of the Insurer.

*Secretary*

*President*

## **SECTION 9 SUBROGATION**

In the event of any payment under this Policy, the Insurer shall be subrogated to the extent of such payment to all the Insured's and the Company's rights of recovery therefore, and the Insured and the Company shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents as may be necessary to enable the Insurer effectively to bring suit in the name of the Insured and the Company.

## **SECTION 10 OTHER INSURANCE**

The insurance provided by this Policy shall apply only as excess over any other valid and collectible insurance.

## **SECTION 11 NOTICE**

The Company agrees to act on behalf of all Insureds with respect to a notice of claim or cancellation, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the receipt and acceptance of endorsements to this Policy and the exercising of any rights under Section 7, Discovery Period.