

FIREMARK INTELLECTUAL PROPERTY LAWYERS PROFESSIONAL LIABILITY INSURANCE POLICY

THIS IS A CLAIMS MADE AND REPORTED POLICY – PLEASE REVIEW THE POLICY CAREFULLY

Various provisions of this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties, and what is not covered. Throughout this Policy, the words “**we**”, “**us**”, and “**our**” refer to the **Company** providing this insurance. Words and phrases that appear in **bold** are defined in Section IV. DEFINITIONS.

In consideration of the payment of premium and in reliance upon the statements in the **application** attached hereto and made a part hereof, and subject to all of the terms, conditions, exclusions, and limits of liability of this Policy, **we** agree with the **Named Insured** as stated in the Declarations as follows:

I. INSURING AGREEMENT

A. Coverage – Professional Liability

We will pay on **your** behalf, **loss** arising from a **claim** first made against **you** during the **policy period** and reported in writing to **us** during the **policy period**, or if applicable, an **extended reporting period**, pursuant to the terms of this policy for any actual or alleged **covered act** whenever or wherever such **covered act** has been committed by:

1. **you** in rendering or failing to render **professional services** for others; or
2. any other person or law firm in rendering or failing to render **professional services** for others on **your** behalf for whose **covered acts you** are legally responsible;

provided that:

- a. **you** report the **claim** in writing to **us** as soon as practicable, but in no event later than sixty (60) days after expiration or termination of this policy as permitted by CONDITIONS VI.C. of this policy, or during an optional **extended reporting period**, if applicable;
- b. the **covered act** was committed on or after the **retroactive date** and before the end of the **policy period**; and
- c. the **claim** does not result from events that **you** knew or should have known, prior to the inception date of this policy, would reasonably result in a demand against **you**, unless such demand became known to **you** after the issuance of **your** first attorneys’ professional liability insurance policy by **us** that has been continuously renewed by **us**.

B. Defense and Settlement

We have the right and duty to defend, subject to and as part of the Limits of Liability, any **claim** made against **you** during the **policy period** and reported in writing to **us** during the **policy period** or, if applicable, the **extended reporting period** pursuant to the terms of this policy for any actual or alleged **covered act** for which coverage is afforded under this policy, even if any of the allegations of the **claim** are groundless, false, or fraudulent.

We have the right to make any investigation **we** deem necessary with respect to any **claim** or notice of a **covered act** under this policy. **We** have the right to make, with **your** written consent or the consent of **your designee**, any settlement of a **claim** under this policy.

In all events, **we** will not be obligated to settle any **claim**, pay any **loss**, or undertake or continue defense of any **claim** after the applicable limit of liability has been exhausted by settlement of any **claim** or payment of any **loss**. In each such case, **we** will have the right to withdraw from the further defense of the **claim** by tendering control of the defense to **you**.

You will not, except at **your** own cost, admit or assume liability, settle any **claim**, or incur any costs in connection with a **claim** without **our** written consent.

We shall not settle any **claim** without **your** consent; such consent shall not be unreasonably withheld. However, if **you** refuse to consent to any settlement recommend by **us** and acceptable to the claimant, then, subject to the Limits of Liability set forth in Item 3. of the Declarations, **our** liability for **loss** and **defense costs** relating to that **claim** shall not exceed:

1. the amount for which the **claim** could have been settled plus all **defense costs** incurred up to the date **we** made **our** recommendation (the "Settlement Amount"); plus
2. fifty percent (50%) of any **loss**, in excess of the "Settlement Amount" incurred in connection with such **claim**.

The remaining fifty percent (50%) of any **loss** in excess of the "Settlement Amount" will be **your** responsibility and will be uninsured.

If **you** refuse to settle as described above, once the total **loss** equals the amount calculated as set forth above, **we** shall have the right to withdraw from the further investigation and defense of the **claim** by tendering control of such investigation or defense to **you**, and **you** agree as a condition of the issuance of this policy, to accept such tender and proceed solely at **your** own cost and expense.

If **you** have not paid premiums or deductibles which are due, **we** have the right, but not the obligation, to settle any **claim** without **your** consent.

C. Coverage Extensions

1. **Disciplinary Proceedings**

Subject to an additional aggregate Limit of Liability of \$50,000, **we** will pay on **your** behalf **defense costs you** incur responding to a **disciplinary proceeding** first commenced against **you** and reported to **us** in writing during the **policy period**, or an **extended reporting period**, if applicable, as a result of a **covered act** committed by **you** on or after the **retroactive date**.

The Limit of Liability applicable to this Section I.C.1. is the maximum amount payable for the **policy period**, regardless of the number of **disciplinary proceedings** first commenced during the **policy period** or the number of **you** subject to **disciplinary proceedings** and is in addition to the aggregate Limit of Liability as set forth in Item 3.b. of the Declarations. No deductible shall apply to this coverage extension I.C.1.

2. Subpoena Expenses

Subject to an additional aggregate Limit of Liability of \$25,000, **we** will pay on **your** behalf **defense costs you** incur responding to a subpoena for documents or testimony, which is not otherwise related to a **claim** or incident that might give rise to a **claim** previously reported under or pursuant to any insurance coverage in effect prior to this policy, first received by **you** during the **policy period**, or an **extended reporting period**, if applicable, resulting solely from **your** rendering or failure to render **professional services** performed by **you** on or after the **retroactive date** and which has not resulted in a **claim** against **you**. **We** will, at **your** request, and upon receipt of a copy of the subpoena, retain an attorney of our choosing, to advise **you** regarding the document production and represent **you** during the preparation and giving of testimony.

Any notification **you** give to **us** of such subpoena shall be deemed to be notification of a **covered act** that may give rise to a **claim** pursuant to CONDITIONS VI.C.

Defense costs paid pursuant to this coverage extension I.C.2. are in addition to the aggregate Limit of Liability as set forth in Item 3.b. of the Declarations. No deductible shall apply to this coverage extension I.C.2.

3. Expense Reimbursement

Subject to a limit of \$750 each day, \$10,000 per **Claim** and an aggregate Limit of Liability of \$50,000 for the **policy period**, **we** will reimburse each of **you** for actual loss of earnings and reasonable costs incurred when **you** attend a hearing, trial, or arbitration proceeding at **our** request in the course of defending an otherwise covered **claim**.

Expense reimbursement paid pursuant to this coverage extension I.C.3. is in addition to the aggregate Limit of Liability as set forth in Item 3.b. of the Declarations. No deductible shall apply to this coverage extension I.C.3.

4. **Client Notification and Credit Monitoring Costs Coverage**

Subject to an additional aggregate Limit of Liability of \$25,000, **we** will reimburse **you** for **client notification and credit monitoring costs** to mitigate the potential of legal liability **claims** arising from a **privacy breach** which takes place during the **policy period** and results in the loss or theft of **confidential client information**.

Coverage provided by this coverage extension I.C.4. shall be excess and follow-form of all valid and collectible cyber liability coverage provided to **you** under any other policy.

Client notification and credit monitoring costs paid pursuant to this coverage extension are in addition to the aggregate Limit of Liability as set forth in Item 3.b. of the Declarations. No deductible shall apply to this coverage extension I.C.4.

5. **Discrimination Complaint Regulatory Coverage**

Subject to an additional aggregate Limit of Liability of \$25,000, **we** will reimburse **you** for attorney fees and other reasonable costs or fees paid to third parties approved by **us** as a result of a **discrimination complaint** first made against **you** during the **policy period**, or an **extended reporting period**, if applicable, and reported to **us** in accordance with Section VI.C. In no event shall the amount payable under this coverage extension I.C.5. exceed \$25,000 regardless of the number of **discrimination complaints** or the number of **you** subject to any **discrimination complaints**.

Coverage provided by this coverage extension I.C.5. shall be excess and follow-form of all valid and collectible Employment Practices Liability Insurance which has been issued to **you** under any other policy.

Amounts paid pursuant to this coverage extension I.C.5. are in addition to the aggregate Limit of Liability as set forth in Item 3.b. of the Declarations. No deductible shall apply to this coverage extension.

6. Supplemental **Claims Expenses Coverage**

Subject to the deductible as set forth in Item 4. of the Declarations, in the event the aggregate Limit of Liability as stated in Item 3.b. of the Declarations is exhausted by payment of **loss** under this policy and there remain any unresolved or outstanding otherwise covered **claims**, **we** will reimburse **you** for an amount equal to ten percent (10%) of the each claim Limit of Liability stated in Item 3.a. of the Declarations, up to a maximum amount of \$100,000 in the aggregate per **policy period** for **defense costs** incurred by **you** in handling the defense of such unresolved or outstanding covered **claims**.

7. Not for Profit Directorships Coverage

Subject to additional Limits of Liability of \$15,000 per **claim**, and an aggregate Limit of Liability of \$30,000, and the deductible set forth in Item 4. of the Declarations, **we** will reimburse **you** for legal liability arising out of **your** activities as a Director or Officer of a **not-for-profit organization**, provided that such activities have been previously disclosed to **us** in the **application** for coverage or in some other written form accepted by **us**.

Coverage provided by this coverage extension I.C.7. is limited to **claims** first made against **you** during the **policy period**, or an **extended reporting period**, if applicable, and reported to **us** in accordance with Section VI.C.

Coverage provided by this coverage extension I.C.7. shall be excess and follow-form of all valid and collectible Directors and Officers Liability Insurance which has been issued to such **not-for-profit organization** and any indemnification provided by such **not-for-profit organization**.

8. Reputation Protection Coverage

Subject to additional Limits of Liability of \$10,000 per **claim** and an aggregate Limit of Liability of \$30,000, **we** will reimburse **you** for reasonable fees, costs, and expenses incurred by **you**

for consulting services provided by a public relations firm approved by **us** to **you** in response to a **reputation event** which occurs and is reported to **us** during the **policy period**.

Amounts paid pursuant to this coverage extension I.C.8. are in addition to the aggregate Limit of Liability as set forth in Item 3.b. of the Declarations. No deductible shall apply to this coverage extension I.C.8.

9. **Network Security Event Defense Costs and Privacy Breach Defense Costs**

We will provide **network security event defense costs** and **privacy breach defense costs** for **claims** brought against **you** during the **policy period** arising out of the performance of **professional services**. The most **we** will pay under this provision I.C.9. is \$25,000 in the aggregate per **policy period** for all **network security defense costs** and **privacy breach defense costs** combined. There will be no deductible applicable to payments made under this provision I.C.9. and any such payments are in addition to the Limits of Liability.

II. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limits of Liability

The Limits of Liability stated in the Declarations as each **claim** and aggregate are described below:

1. EACH CLAIM

The Limit of Liability designated in Item 3.a. of the Declarations as each **claim** is the maximum limit of **our** liability for **loss** arising from each **claim** first made against **you** during the **policy period** and reported in writing to **us** during the **policy period** or any applicable **extended reporting period**.

2. AGGREGATE

The Limit of Liability designated in Item 3.b. of the Declarations as aggregate is the maximum limit of **our** liability for all **loss** arising from all **claims** first made against **you** during the **policy period** and reported in writing to **us** during the **policy period** or any applicable **extended reporting period**.

Our limits of liability for any applicable **extended reporting period** are part of and not in addition to the Limits of Liability stated in Item 3. of the Declarations.

A single set of limits of liability will apply to **loss** arising from all **claims** alleging a **covered act** or **interrelated covered acts**.

B. Deductible

This policy will pay only that part of the **loss** which exceeds the deductible amount(s) stated in Item 4. of the Declarations, such deductible amount(s) to be borne by **you** and which deductible amount(s) will remain uninsured.

The Deductible amount stated in the Declarations as each **claim** and aggregate are described below:

1. EACH CLAIM

The each **claim** deductible amount stated in Item 4.a. of the Declarations is the amount for which **you** are responsible with respect to **loss** arising from each **claim**.

2. AGGREGATE

The aggregate deductible amount stated in Item 4.b. of the Declarations is the amount for which **you** are responsible with respect to **loss** arising from all **claims** in the aggregate under this policy.

A single deductible amount will apply to **loss** arising from all **claims** alleging the same **covered act** or **interrelated covered acts**.

Our obligation to pay **loss**, including **defense costs**, in connection with any **claim** will only be in excess of the deductible, the amount of which must be borne by **you** at **your** own expense. **We** will have no obligation whatsoever to pay all or any portion of the deductible on **your** behalf. **We** will, however, at **our** sole discretion, have the right and option to do so, in which event **you** will repay **us** any amounts so paid.

III. CLAIM MITIGATION

Subject to the conditions described in this Section III. **CLAIM** MITIGATION, **your** deductible obligation may be subject to one of the following:

- A. In the event a **claim** is fully and finally resolved to the satisfaction of all parties, including **us**, as a result of **alternative dispute resolution** in a form acceptable to **us**, without resorting to litigation, **we** will waive **your** deductible obligation for such **claim**;
- B. If within one year of being reported, or being deemed to have been made, in accordance with Section VI.C. of this policy, a **claim** is fully and finally resolved to the satisfaction of all parties, including **us**, and all **loss** arising from such **claim** have been paid, **your** deductible obligation for such **claim** shall be reduced by twenty-five percent (25%) up to a maximum reduction of \$25,000;
- C. If a **claim** arises from an assignment in which **you** used an engagement letter containing a limitation of liability clause and mediation clauses in a form that complies with the laws or rules in the applicable jurisdiction that was signed prior to the **covered act** being committed, **your** deductible obligation for such **claim** shall be reduced by fifty percent (50%) up to a maximum reduction of \$10,000 each **claim**, and \$25,000 in the aggregate for the **policy period**;
- D. If **we** recommend a settlement within the applicable Limit of Liability which is acceptable to the claimant, and **you** or **your designee** consent to such settlement within forty-five (45) days of **our** recommendation or within the time permitted by the claimant to accept the claimant's demand, whichever is less, **your** deductible obligation for such **claim** shall be reduced by twenty-five percent (25%) up to a maximum reduction of \$25,000. **We** will reimburse **you** for the difference

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between the deductible amount previously paid in connection with the **claim** and the amount of the reduced deductible.

If, however, **you** or **your designee** does not consent to the settlement of the **claim** within the time frame described above, the deductible will remain at the amount set forth in Item 4. of the Declarations, even if consent is given to a subsequent settlement of such **claim**.

Your deductible obligation for a **claim** may only be reduced pursuant to one of Subsections III.A., III.B., III.C., or III.D. above. If more than one of Subsections III.A., III.B., III.C., or III.D. apply to a single **claim**, then **your** deductible obligation for such **claim** shall be reduced pursuant to the Subsection which is most beneficial to **you**.

The maximum amount of the reduction of **your** deductible obligation in respect to Subsections III.A., III.B., III.C., and/or III.D. above shall be \$50,000 in the aggregate per **policy period**.

IV. DEFINITIONS

Whenever used in this policy:

- A. Alternative Dispute Resolution** means the use of arbitration or non-binding mediation in a form approved by **us** in which a neutral panel or individual assists the parties in reaching their own settlement.
- B. Application** means all applications, supplements, written statements, and other materials furnished to **us**, by **you** or through **your** agent, to procure lawyers' professional liability insurance and which are part of this policy as if physically attached.
- C. Claim** means:
1. a written or verbal demand for money or services;
 2. a written or verbal demand to toll or waive a statute of limitations;
 3. a judicial civil proceeding;
 4. a **disciplinary proceeding**, including but not limited to, a demand, grievance, or allegation involving a **covered act** made against **you** to any professional association or society charged with the responsibility to oversee professional disciplinary matters, whether or not such demand, grievance, or allegation is initiated at or results in a formal civil proceeding in state or federal court, but in all events only to the extent of the coverage afforded by Insuring Agreement I.C.1.; or
 5. any other regulatory, administrative, or arbitrate proceeding.
- D. Client Notification and Credit Monitoring Costs** means credit monitoring and notification expenses approved by **us** in writing to mitigate potential legal liability for **claims** arising from a **privacy breach** which results in the loss or theft of **confidential client information**.
- E. Confidential Client Information** means information that has been provided to the **Named Insured** by another or created by the **Named Insured** for another where such information is subject to the

terms of a confidentiality agreement or equivalent obligating the **Named Insured** to protect such information on behalf of another.

- F. **Controlling Interest** means the right, directly or indirectly, to (a) vote thirty percent (30%) or more of the issued and outstanding voting stock in an incorporated entity; (b) elect thirty percent (30%) or more of the directors of an incorporated entity; (c) receive thirty percent (30%) or more of the profits of an unincorporated entity; or (d) have the position of general partner of a limited partnership, managing general partner of a general partnership, or comparable position in any other business enterprise.
- G. **Covered Act** means an act, error, or omission, including breach of contract or duty, breach of **fiduciary** duty, or **personal injury** arising from **professional services** performed by any of **you**.
- H. **Cybertoxin** means an unauthorized hazardous or destructive computer code, which includes but is not limited to a computer virus, malware, adware and spyware, Trojan horses, nematodes, time or logic bombs, or worms.
- I. **Defense Costs** means:
1. reasonable and necessary fees and costs incurred by **us** or incurred by **you** with **our** written consent (including premiums for any appeal bond, attachment bond, or similar bond, but without any obligation to apply for or furnish any such bond) resulting from the investigation, adjustment, defense, or appeal of a **claim** against any of **you**; provided, however, that **defense costs** will not include compensation of any of **you** or any of **our** employees or officers; and
 2. all costs taxed against **you** in a **claim** defended by **us** and interest which accrues after the entry of a judgment and before **we** have tendered our deposited in court or otherwise such judgment amount covered by the terms of this policy and for which **you** are legal liable.
- J. **Denial of Service Attack** means an action that directs excessive data traffic to a computer or computer network in order to overwhelm its resources and capacity in an attempt to prevent appropriate access by authorized users; however, this does not include a reduction in resources and capacity caused by a mistake in the original specification of the computer or computer network capacity requirements.
- K. **Designee** means: (a) the individual **you** have identified as contact person in the **application**; (b) **your** managing or executive partner; or (c) **your** management committee, executive committee, or **your** general counsel.
- L. **Disciplinary Proceeding** means a proceeding before a state or local bar association, peer review committee, or governmental regulatory agency.
- M. **Discrimination Complaint** means any complaint filed with a government body or commission alleging a violation of any common or statutory federal, state, or local law prohibiting any kind of

employment-related discrimination against **you** by any individual who is or was **your** employee, applicant for employment, partner, associate, Of Counsel or volunteer of the **named insured**.

- N. **Extended Reporting Period** means the period of time after the end of the **policy period** for reporting **claims** arising out of **covered acts** occurring during the **policy period**.

Terms and conditions relating to the purchase of an **extended reporting period** endorsement are set forth in Section VI.I.

- O. **Fiduciary**, except in Exclusion D., means **you** in **your** capacity as an administrator, committee of an incompetent, conservator, escrow agent, executor, guardian, receiver, or trustee, including appointed by a court of law, but only while rendering or failing to render **professional services**.

- P. **Interrelated Covered Act(s)** means **covered acts** which are the same, related, or continuous; or **covered acts** which arise from the same, related, or common nexus of facts. **Claims** can allege **interrelated covered acts** regardless of whether such **claims** involve the same or different claimants, numbers of **you**, or legal causes of action.

- Q. **Loss** means damages, judgements, settlements, and **defense costs** which **you** are legally obligated to pay; provided, however, that **loss** does not include fines, penalties, sanctions, taxes, or exemplary damages, the multiple portion of multiplied damages, reimbursement, disgorgement, reduction, set-off, or return of fees, costs, or expenses, any amount for which **you** are not financially liable or for which is without legal recourse to **you**, or matters which may be deemed uninsurable under the law pursuant to which this policy is construed.

- R. **Named Insured** means the individual, partnership, or firm engaged in the practice of law under the name stated in Item 1. of the Declarations and its **predecessor firm**, if any.

- S. **Network Security Event** means:

1. introduction of a computer virus or **cybertoxin** into, or enabling a **denial of service attack** on, a client's computer, computer system, or network;
2. enabling unauthorized access by a third party into a client's computer, computer system, or network; or
3. unauthorized access by **you** into a client's computer, computer system, or network.

But in all cases only if arising from **professional services** performed by any **Named Insured**.

- T. **Not-for-Profit Organization** means an entity which qualifies as a nonprofit organization under Section 501(c)(3), (c)(4), (c)(6), or (c)(7) of the Internal Revenue Code of 1986, including amendments thereto. As used herein, **not-for-profit organization** shall not include the **Named Insured** or any client of the **Named Insured**.

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- U. **Personal Injury** means allegations of libel, slander, or other defamatory or disparaging material or publication; utterance in violation of an individual's right of privacy; false arrest, detention, or imprisonment; wrongful entry, eviction, or other invasion of the right of private occupancy; or malicious prosecution.
- V. **Policy Period** means the period of time between the inception date shown in Item 2. of the Declarations and the effective date of cancellation or expiration of this policy, but specifically excludes any **extended reporting period**.
- W. **Predecessor Firm** means the lawyer(s) or law firm(s) identified in the **application** as a **predecessor firm** and to whose financial assets and liabilities the **Named Insured** is the majority successor in interest (fifty percent (50%) or more of the former lawyer(s)'s or law firm(s)'s assets and liabilities).
- X. **Principal Insured** means a member of the board of managers, director, executive officer, natural person, partner, owner of a sole proprietorship, principal, risk manager, or in-house general counsel of the **Named Insured**.
- Y. **Privacy Breach** means:
1. loss of theft of client information transmitted via electronic media or contained on any portable computer or media device used for **professional services**;
 2. **personal injury** arising from **you** use of electronic media, including the publishing of an internet website or **your** membership(s) of any social networking website;
 3. misdirection of electronic mail or other electronic media; or
 4. solely with respect to **client notification and credit monitoring costs**, loss or theft of **confidential client information**.
- But in all cases, only if arising from **professional services** performed by any **Named Insured**.
- Z. **Professional Services** means legal and/or consulting services performed by **you** for others provided that the remuneration for such services or advice, or a portion thereof, inures to **your** benefit:
1. as a lawyer, notary public, arbitrator, mediator, **fiduciary**, speaker, or author of legal treatises;
 2. as a lawyer in connection with any bar association, including its governing board or any of its committees;
 3. in **your** publication or presentation of research papers or similar materials;
 4. as a lawyer providing pro bono representation; or
 5. provided by **your** employee in connection with assisting a lawyer to perform the activities described in IV.Y.1., IV.Y.2, IV.Y.3, or IV.Y.4 above for others on behalf of **you**.
- AA. **Property Damage** means injury to tangible property, including all resulting loss of use of that property or loss of use of tangible property that is not physically injured.

BB. **Reputation Event** means any:

1. **covered act**;
2. death, departure, or debilitating illness of a **principal insured**;
3. potential dissolution of the **Named Insured**;
4. incident of workplace violence; or
5. other event,

that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

CC. **Retroactive Date** means the date specified in Item 5. of the Declarations.

DD. **We, Our, or Us** means the insurance company whose name appears on the Declarations of this policy.

EE. **You or Your** means the **Named Insured** and any person who was, is, or becomes any of the following, but in all cases only while acting on **your** behalf:

1. a partner, principal, director, member, officer, shareholder, employed lawyer, or patent agent of **you**;
2. a patent agent for whom **your** are legally liable;
3. **your** employee or leased or temporary employee of **you**;
4. an incorporated partner, including the shareholders thereof;
5. any other person who is a lawyer or law firm that is: (a) designated as "counsel" or "of counsel" to or (b) engaged as an independent contractor or on a per diem basis by **you**;
6. the estate, heirs, executors, administrators, assigns, and legal representatives of any person or law firm that previously qualified as **you** in the event of **your** death, incapacity, insolvency, or bankruptcy, but only to the extent that **you** would otherwise be provided coverage under this policy; and
7. the lawful spouse of any of **you** solely by reason of:
 - a. spousal status; or
 - b. a spouse's ownership interest in property or assets that are sought as recovery. This definition IV.EE. shall not apply to the extent a **claim** alleges any wrongful act by such spouse.

In all events, coverage as afforded with respect to a **claim** made against **you** will only apply to **covered acts** committed or allegedly committed by **you** on or after the date **you** joined the **Named Insured** and prior to the time **you** ceased to be a partner, principal, director, officer, shareholder, or employee of the **Named Insured**.

V. EXCLUSIONS

This policy excludes coverage for any **loss** in connection with a **claim**:

- A. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving a criminal, fraudulent, malicious, or deliberate act or misrepresentation, or intentional or knowing violation of law or dishonest **covered act** on the part of any of **you**, or the gaining of any profit or advantage to which **you** were not legally entitled. This exclusion will not apply to **defense costs** incurred in defending any such **claims** until it is determined by any trial verdict, court ruling, regulatory ruling, or legal admission, whether appealed or not, that **you** did commit such a dishonest, fraudulent, criminal, or malicious act or omission, or deliberate misrepresentation, or intentional or knowing violation of law. This exclusion does not apply to any of **you** who did not intentionally participate in committing such act or had no knowledge or reason to believe such an act, omission, or violation of law was being committed, and who made proper disclosure after obtaining personal knowledge of such conduct;
- B. brought by or on behalf of **you**, in any capacity, against any other of **you** unless such **claim** arises solely out of **professional services** performed in an attorney-client relationship;
- C. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving activities performed by **you** in connection with a trust or estate if **you** are a beneficiary or distributee of the trust or estate;
- D. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving activities performed by **you** as a fiduciary under the Employee Retirement Income Security Act of 1974, its amendments, or any regulations or orders promulgated pursuant thereto unless **you** are a **fiduciary** solely due to **professional services** rendered to clients;
- E. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving a **covered act** committed by **you** in connection with any business enterprise which is not the **Named Insured** if, at the time of such **covered act** any of **you**, had a **controlling interest** in such business enterprise. This exclusion applies whether or not a lawyer-client relationship existed;
- F. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the activities performed by **you** as a public official or as an employee of a governmental body, subdivision, or agency thereof, unless **you** are employed solely to render **professional services** and the remuneration for the **professional services** is paid to **you**;
- G. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving bodily injury, sickness, disease, death, mental anguish, emotional distress, or humiliation to any person. However, this exclusion does not apply to mental anguish, emotional distress, or humiliation solely caused by **personal injury**;

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- H. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving **property damage** including destruction or loss of use of tangible property. However, this exclusion does not apply to client records which are in **your** care, custody, or control, or over which **you** are exercising physical control for any reason;
- I. except as provided in Section I.C.5. **Discrimination Complaint** Regulatory Coverage, alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any of **your** past or present directors, officers, partners, members or employees alleging discrimination by **you** on the basis of age, color, race, sex, sexual orientation, creed, national origin, or marital status;
- J. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any liability assumed by **you** under any contract or agreement whereby **you** have agreed to participate in the payment of a **loss**, including lawyer's fees, court costs, and costs payable under a title insurance policy;
- K. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving notarized certification or acknowledgment of a signature without the physical appearance before such notary public;
- L. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving:
 - 1. any pending or prior **claim**, demand, suit, arbitration, mediation, litigation, or administrative, bankruptcy, or regulatory proceeding, investigation, or inquiry filed or pending on or before the **retroactive date** or the inception date of the first policy issued to **you** by **us** and any consecutive renewals; or
 - 2. any fact, circumstance, situation, transaction, cause or event underlying or alleged in such **claim**, demand, suit, arbitration, mediation, litigation, or administrative, bankruptcy, or regulatory proceeding, investigation, or inquiry; or
- M. alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving any **covered acts** that have been the subject of any notice given prior to the inception date of this policy under or pursuant to any insurance coverage in effect prior to this policy as to any **claim** or any potential **claim** or circumstance that may or could give rise to a **claim** against the **Named Insured**.

VI. CONDITIONS

A. Territory

This policy applies to **covered acts** occurring worldwide and suits brought in the United States, its territories and possessions and Canada.

B. Multiple Insureds, **Claims**, and Claimants

All **claims** alleging a **covered act** or **interrelated covered acts**, regardless of: (1) the number of **claims**; (2) the number of **you** insured; or (3) the number of claimants, are considered to be one **claim**. All such **claims** are considered first made at the time the first **claim** alleging such **covered act** or **interrelated covered acts** was first made. **Interrelated covered acts** are deemed to have occurred at the time the first **interrelated covered act** occurred.

C. Notice of **Claim** and **Claim** Reporting Procedures

1. If during the **policy period**, or if applicable, an **extended reporting period**, either:

- a. a **claim** is made against any of **you**; or
- b. **you** (if an individual); any partner, principal, director, officer, or shareholder; any member of **your** management or executive committee; or any person of the **Named Insured** with management responsibility for evaluating or dealing with actual or potential **claims** against **you** knows or should reasonably foresee that a **covered act** committed by **you** could be the basis of a **claim**;

then, as a condition precedent to **your** right to coverage under this policy with respect to such **claim** or **covered act**, **you** or **your designee** will give **us** written notice of such **claim** or **covered act** as soon as practicable during the **policy period** or within sixty (60) days after the end of the **policy period**.

2. Such notice shall contain particulars as to the time, place, and circumstances of the events complained of, and the names and, if known, addresses of all claimants and of any available witnesses.
3. The notice to **us** in compliance with this Section VI.C. shall be deemed a **claim** first made against **you** and reported to **us** during the **policy period** or **extended reporting period**, if applicable. Any **claim** that may subsequently be made against **you** arising out of such act or omission, or **covered act**, shall be deemed for the purposes of this insurance to have been made against **you** on the date **we** received the notice complying with this Section VI.C.

D. Cooperation and Assistance

You will give **us** and any defense counsel assigned by **us** full cooperation and such information as **we** and defense counsel reasonably request; including upon **our** request, assisting in making settlements in the conduct of **claims**, attending hearings, trials, arbitrations, and mediations, and assisting in securing and giving evidence and obtaining the attendance of witnesses.

Your obligations under this Section VI.D. will survive the termination or expiration of this policy.

E. Innocent Insured – Waiver of Exclusion and Breach of Condition

Whenever coverage under any provision of this policy would be excluded, suspended or lost because of noncompliance with the terms or conditions relating to the giving of notice to **us** of any **claim** with respect to which any other of **you** shall be in default solely because of the default or concealment of such default by one or more of **you** responsible for the **loss** otherwise covered hereunder, **we** agree that such insurance as would otherwise be afforded under this policy shall apply with respect to those of **you** who did not personally commit or personally participate in committing one or more acts, errors or omissions described in such exclusion or condition; provided that if the condition be one with which **you** can comply, after receiving knowledge thereof, those of **you** entitled to the benefit of this condition shall comply with such condition promptly after obtaining knowledge of such noncompliance

F. **Alternative Dispute Resolution** with Respect to a **Claim** Made Against **You**

In the event a **claim** made against **you** can, by agreement between **us** and the claimant, be referred to mediation or arbitration, then **we** will have the right to have the **claim** so referred. **We** will give **you** written notice of the intention to refer such **claim** to arbitration or mediation, and **we** will be entitled to exercise any of **your** rights with respect to mediation or arbitration including, without limitation, choice of arbitrator(s) or mediator(s) as the case may be and choice of venue.

G. Subrogation

In the event of any payment under this policy, **we** will be subrogated to all of **your** rights of recovery against any person or entity, and **you** will execute and deliver such instruments and paper and do whatever else is necessary to secure such rights. **You** shall do nothing to prejudice such rights.

Your obligations under this Section VI.G. shall survive the termination or expiration of this policy.

Any amounts so recovered shall first be applied toward reimbursement of any payments made by **you** pursuant to **your** deductible and any remaining balance shall be **ours**.

H. Notice of Cancellation

This policy may be canceled by **you** by surrender of this policy to **us** or any of **our** authorized agents or by mailing to **us** written notice stating when thereafter the cancellation will be effective.

If **you** do not owe **us** any premium or other monies, this policy may only be canceled by **us** for material misrepresentation; however, **we** may elect not to renew the policy by mailing to **you** at the address shown in Item 1. of the Declarations written notice stating when, no less than sixty (60) days prior to expiration. If **you** owe **us** any monies, this policy may be canceled by **us** by mailing a written notice of cancellation to **you** at the address shown in Item 1. of the Declarations

stating when, not less than twenty (20) days thereafter, such cancellation will be effective.

The mailing of notice as stated above will be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice will become the end of the **policy period**. Delivery by hand or overnight courier (where permitted) of such notice either by **you** or by **us** will be equivalent to mailing.

If **you** cancel the policy, returned premium will be computed in accordance with customary short rate table and procedure. If **we** cancel the policy, earned premium will be computed pro rata.

Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective. Payment or tender of unearned premium is not a condition precedent of cancellation, but such payment will be made as soon as practicable.

I. **Extended Reporting Period Options**

1. **Automatic Extended Reporting Period**

Without any additional premium being required **you** shall have sixty (60) days after the effective date of cancellation or, in the event of nonrenewal, after the date upon which the **policy period** ends, to report any **claim** first made against **you** during this sixty (60) day period. This automatic **extended reporting period** shall terminate, and **you** shall not be entitled to any such automatic **extended reporting period**, in the event that this insurance is replaced with the same or similar insurance issued by **us** or any other professional liability insurer, whether or not the terms, limits or deductibles are identical to those provided under this policy. This automatic **extended reporting period** option shall not be available if this policy is canceled effective as of policy inception for non-payment of premium.

2. **Optional Extended Reporting Period**

In the event of cancellation or nonrenewal of this policy by either **you** or **us**, **you** have the right, upon payment to **us** or any of **our** authorized agents of an appropriate additional premium within sixty (60) days of such termination, to have issued an endorsement providing an **extended reporting period**. Coverage for **claims** reported during the **extended reporting period** applies only to **claims** (a) for **covered acts** which occurred prior to the cancellation, termination, or nonrenewal date of this policy and (b) which are otherwise covered under this policy.

The appropriate additional premium and corresponding **extended reporting period** are a percent of the last annual premium charged as follows:

- a. One hundred twenty-five percent (125%) for a twelve (12) month **extended reporting period**;

- b. One hundred seventy-five percent (175%) for a twenty-four (24) month **extended reporting period**;
- c. Two hundred twenty-five percent (225%) for a thirty-six (36) month **extended reporting period**; and
- d. Two hundred seventy-five percent (275%) for an unlimited **extended reporting period**.

We will issue an optional **extended reporting period** endorsement only if:

1. **you** request it within sixty (60) days of the end of the cancellation, termination, or nonrenewal date of this policy; and
 2. **you** promptly pay when due the additional premium for the **extended reporting period** endorsement, but no later than sixty (60) days after the cancellation, termination, or nonrenewal date of this policy.
3. **Non-Practicing Extended Reporting Period**

If, during the **policy period**, any of **you**, other than the **Named Insured**, retire or otherwise permanently cease the professional practice of law for reasons not related to suspension or revocation of **your** license to practice law, or death or disability as described in Section VI.I.4. below, then **we** will provide such of **you** with a non-practicing **extended reporting period** as set forth below:

- a. The non-practicing **extended reporting period** will start on the latter of:
 1. the date **you** cease the professional practice of law; or
 2. the expiration of the **policy period** or any renewal or successive renewal of this policy, or any automatic or optional **extended reporting period**.
- b. The non-practicing **extended reporting period** will end on the earliest date one of the following occurs:
 1. **you** resume the professional practice of law; however, **you** may purchase, at **our** option, a policy from **us** to reinstate full prior acts coverage;
 2. any insurance is issued which replaces, in whole or in part, the coverage afforded by the non-practicing **extended reporting period**;
 3. the Limits of Liability have been exhausted; or
 4. such of **you** covered by the non-practicing **extended reporting period** dies.

- c. No additional premium shall be charged for the non-practicing **extended reporting period** if the **Named Insured** has been continuously insured by **us** or via **Firemark™** under a lawyers' professional liability policy for at least three consecutive years prior to the retirement or permanent cessation of the professional practice of law for which the request for the non-practicing **extended reporting period** is made.
 - d. **We** will issue a non-practicing **extended reporting period** endorsement only if:
 1. **you** request the endorsement no more than sixty (60) days after the date **you** cease the professional practice of law, or sixty (60) days after the end of the **policy period**, whichever is earlier. Such request must include written notification of **your** cessation of the professional practice of law; and
 2. **you** promptly pay when due the additional premium for the endorsement.
 - e. In no event will the non-practicing **extended reporting period** described in this Section VI.I.3. apply to any lawyer, law firm, partnership, professional corporation, professional association, limited liability corporation, limited liability partnership, or any other person or entity, that acts or acted as Of Counsel, or as a non-employee independent contractor attorney, a per diem attorney, or in a substantially similar role, to the **Named Insured**.
4. Death or Disablement **Extended Reporting Period**
- a. If, during the **policy period**, any of **you** die or become totally and permanently disabled, **we** will extend a death or disablement **extended reporting period** at no charge applicable to those of **you** who have died or become totally and permanent disabled. Totally and permanently disabled means that **you** have become so disabled as to be completely prevented from rendering **professional services**, and such disability:
 1. has existed for not less than ninety (90) consecutive days; and
 2. is expected to be continuous, total, and permanent.
 - b. The death or disablement **extended reporting period** will start on the date **you** die or become totally and permanently disabled, and will end when one of the following occurs:
 1. the executor or administrator of **your** estate has been discharged;
 2. the total and permanent disability ends, whether or not **you** resume practice;
 3. any insurance is issued which replaces, in whole or in part, the coverage afforded by the death or disablement **extended reporting period**; or
 4. the Limits of Liability have been exhausted.
 - c. **We** will issue a death or disablement **extended reporting period** endorsement only if **you** or **your** representative request it no more than ninety (90) days after the date of **your**

death or total permanent disability, or ninety (90) days after the end of the **policy period**, whichever is later. Such request must include:

1. a copy of the certified death certificate; or
 2. written proof, certified by **your** attending physician, of total permanent disability including the date it occurred.
5. The following provisions are applicable to all **extended reporting periods**:
- a. The **extended reporting periods** do not change the scope of coverage provided;
 - b. The **extended reporting periods** only apply to **claims** resulting from **covered acts** committed before the end of the **policy period** and on or after the **retroactive date**, if any, shown in the Declarations;
 - c. The **extended reporting periods** do not reinstate or increase the limits of liability;
 - d. The **extended reporting periods** are not renewable; and
 - e. The right to any **extended reporting period** option contained in this Section VI.I. is not available to any of **you** if, at the time such **extended reporting period** option is requested:
 1. any amount due under this policy is unpaid including, but not limited to, premiums or deductibles;
 2. any of **you** are non-compliant with any of the terms and conditions of this policy;
 3. any misrepresentation or omission has been made by **you** in the **application** for this policy; or
 4. any insured seeking to exercise the right to an **extended reporting period** has their license to practice law revoked, suspended, or surrendered.
 - f. Coverage provided pursuant to this Section VI.I. cannot be canceled or terminated.
 - g. The additional premium for any **extended reporting period** is fully earned at the inception of the **extended reporting period**.

J. Change in **Named Insured** Membership

If during the **policy period** the total number of lawyers of the **Named Insured** increases or decreases more than ten (10) lawyers or twenty-five percent (25%), whichever is less, **you** must notify **us** in writing within thirty (30) days at which time **we** will have the right to adjust the premium and/or impose additional coverage terms at **our** discretion.

K. Other Insurance

If there is other valid and collectible insurance applicable to a **claim** covered by this policy, this policy shall be excess insurance over and above the applicable limits of liability of all such other insurance unless such other insurance is written only as specific excess insurance over the limits of liability provided in this policy.

If it is determined that both this insurance and any other insurance apply to any **claim** covered by this policy on the same basis, **we** shall not be liable under this policy for a greater portion of the **loss** and **defense costs** than the applicable limits of liability under this policy for such **loss** and **defense costs** bears to the total applicable limits of liability of all valid insurance, whether or not collectible against such **claims**.

L. Liberalization

If **we** adopt any revision that would broaden the coverage under the policy applicable to the **Firemark™** program in **your** state without additional premium within forty-five (45) days prior to or during the **policy period**, the broadened coverage will immediately apply to this policy.

M. Assignment

The interests of any of **you** under this policy are not assignable without **our** written consent. However, if **you** are an individual and die or are adjudged incompetent, this policy will cover **your** legal representative with respect to liability previously incurred and covered by this policy.

N. Authorization and Notice to Agent

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or stop **us** from asserting any right under the terms, conditions, exclusions, or limitations of this policy; nor will the terms, conditions, exclusions, or limitations of this policy be waived or changed, except by endorsement issued to form a part of this policy and signed by **our** duly authorized agent.

The **Named Insured** will be the sole agent of all of **you** under this policy for the purposes of:

1. completing any **applications** and making any representations;
2. paying any premium or receiving any return premium that may become due under this policy;
3. effecting or accepting notices of cancellation, nonrenewal, conditional renewal, premium increase, or change in policy terms; and
4. exercising or declining to exercise any right under this policy, including exercising or declining the **extended reporting period** options set forth in section **VI.I.**

O. Headings

The descriptions in the headings and subheadings of this policy are solely for convenience and form no part of the terms, conditions, exclusions, and limitations of this policy.

P. Integration of Contract

All the provisions of this policy are intended to be read together as one integrated document. No applicable provision, nor any part thereof, is intended to be separable from the balance of the applicable policy provisions. The meaning of each applicable provision of this policy is created by what is written in such provision and by what is written in the balance of the applicable policy provisions.

Q. Entire Agreement

By acceptance of this policy, **you** agree that the statements in the **application** are **your** statements and representations, that this policy is issued in reliance upon the truth of such representations, and that this policy embodies all agreements existing between **you** and **us** or any of **our** agents relating to this insurance.

SPECIMEN