

TECHNOLOGY PROFESSIONAL LIABILITY COVERAGE

CLAIMS – MADE FORM THIS FORM PROVIDES CLAIMS-MADE COVERAGE.

PLEASE READ THE ENTIRE FORM CAREFULLY.

Various provisions in this policy restrict coverage. Read the entire policy to determine rights, duties and what is and is not covered. Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization, qualifying as a Named Insured under this policy. The words “we”, “us” and “our” refer to the company providing this insurance.

The word “insured” means any person or organization qualifying as such under WHO IS AN INSURED (Section VI).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (Section VIII).

We agree with you, in consideration of the payment of the premium and in reliance upon the statements in the application, a signed copy of which is attached hereto and made a part hereof, and subject to the limits of liability, exclusions, conditions and other terms of this policy as follows:

SECTION I. – COVERAGES

Where this coverage part is issued with the Commercial General Liability Coverage Form, it is referred to as Coverage D.

1. INSURING AGREEMENT

We will pay those sums that you become legally obligated to pay as “damages” because of a “professional liability incident” in the conduct of your business in the policy territory, as described in the Declarations to which this insurance applies. We have the right and duty to defend any “suit” seeking those “damages” and we may at our discretion investigate and settle any “claim” or “suit” that may result. But only for such “professional liability incident(s)” for which **CLAIMS ARE FIRST MADE AGAINST YOU AND REPORTED TO US DURING THE POLICY PERIOD** provided this insurance applies:

- a. subsequent to the Retroactive Date set forth in the Declarations, and
- b. prior to the expiration date set forth in the Declarations.

And further provided that

- a. you have no knowledge of any “claim” or “suit” or any “professional liability incident” which might reasonably be expected to result in a “claim” or “suit” as of the date of signing the application for this insurance; and
- b. there are no other certificates or policies pursuant to which you are afforded coverage for such “claim”, “suit” or “professional liability incident(s)”.

2. DEFENSE, SETTLEMENT AND SUPPLEMENTARY PAYMENTS

As respects such insurance as is afforded by the terms of this policy we shall:

- a. defend in your name and on your behalf any “suit” against you alleging “damages” from any “professional liability incident”, even if such “suit” is groundless, false or fraudulent, and we shall have the right to make such investigation and settlement of any “claim” or “suit” as may be deemed expedient by us;
- b. pay all premiums on bonds to release attachments for any amount not in excess of the limits of liability of this policy, all premiums on appeal bonds required in any such defended “suit”, but without any obligation to apply for or furnish such bonds, all costs taxed against you in any “suit”, all expenses incurred by us, all interest accruing after entry of judgment until we have paid, tendered or deposited in court such part of such judgment as does not exceed the limit of liability thereon;
- c. reimburse you for all reasonable expenses, other than loss of earnings, incurred at our request, except amounts paid in settlement of any legal liability insured under SECTION I. COVERAGES, which liability shall be governed by the limits of liability stated in the Declarations.

Our right and duty to defend end when we have used up the applicable limits of liability in payment of judgments, settlements or defense fees and costs or other expenses under SECTION I. COVERAGES or any combination thereof.

SECTION II. – EXCLUSIONS

This insurance does not apply:

1. to any “claim” for any obligation or liability assumed by you under any contract or any oral or written agreement unless liability would have attached in the absence of such a contract or agreement. However, this exclusion does not apply to the liability of others which you assumed under a written contract provided such liability arises out of a “professional liability incident” due to your negligence.
2. to any “claim” arising out of “bodily injury” or “property damage”.
3. to any “claim” arising out of any dishonest, fraudulent, criminal, or malicious act, error or omission, or those of a knowingly wrongful nature or the willful violation of any statute, regulation, ordinance or administrative complaint, notice of instruction of any governmental body or agency, committed by you or at your direction, except, that this exclusion will not apply to an insured who did not commit, participate in, or have knowledge of any of the acts committed.
4. to any “claim” due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.
5. to any “claim” based upon an express or implied warranty or guarantee.
6. to any “claim” arising out of discrimination by any insured of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy.
7. to any “claim” arising out of the presence, discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, oil or other petroleum substances or derivatives, waste materials or other irritants, contaminants, pollutants or any substances including asbestos which are or may be injurious to public health or the environment (herein called hazardous substances) into or upon land, the atmosphere or any water course or body of water.

It is further agreed that this policy does not apply to any liability including expenses for:

- a. the costs of clean up or removal of hazardous substances; or
- b. the cost of such actions as may be necessary to monitor, assess and evaluate the presence, discharge, dispersal, escape, release, or threat of same, of hazardous substances; or
- c. the cost of disposal of hazardous substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize, or

mitigate damage to the public health or welfare or to the environment, which may otherwise result; or

- d. any loss, cost or expense arising out of any governmental direction or request that the Named Insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.
8. to any “claim” arising out of punitive or exemplary damages, fines, penalties, sanctions, taxes or any awards or damages which are multiples of any covered damages assessed against an insured.
9. to any “claim” arising out of violation of the Securities Act of 1933, the Securities Exchange Act of 1934 and State Blue Sky or Securities Law, any similar state or federal law or any amendment to the above laws or any violations of any order, ruling or regulation issued pursuant to the above laws.
10. to any “claim” arising out of a violation of the responsibilities and obligations or duties imposed upon fiduciaries of the Employee Retirement Income Security Act of 1974 (ERISA) or amendments thereto or similar statutory or common law of the United States of America or any state or jurisdiction therein.
11. to any “claim” arising out of antitrust, restraint of trade, or unfair or deceptive trade practices.
12. to any “claim” arising out of infringement of patent.
13. to any “claim” made or “suit” brought by one insured against another insured.
14. to any “claim” made or suit brought which is excluded under the terms of this coverage, the Company shall not have the obligation to defend, adjust, investigate or pay any cost for investigation, defense, attorney fees or adjustment arising out of such claims.

SECTION III. - EXTENDED DISCOVERY PERIOD

1. If the policy is canceled or not renewed by us for reasons other than your non-payment of premium or deductible amount, or non-compliance with the terms and conditions of this policy, then any “claim” arising from a “professional liability incident” subsequent to the Retroactive Date and prior to the expiration or cancellation date may be reported to us during the Extended Discovery Period stated in the Declarations. The quotation of a different premium, deductible amount, terms and/or conditions or limits of liability for renewal does not constitute a cancellation or refusal to renew.
2. If the policy is canceled or not renewed by you an automatic thirty (30) day Extended Discovery Period shall apply to “claim(s)” first made during that 30 days, provided no other insurance applies. This basic Extended Discovery Period does not apply to “claim(s)” that are covered under any subsequent in-

insurance you purchase, or that would have been covered but for the exhaustion of the amount of insurance applicable to such "claim(s)". If during that period you request an endorsement in writing and pay an additional premium not to exceed the greater of 100% of the professional liability premium included in the premium as stated in the Declarations or the professional liability Earned Premium for the policy period, the Extended Discovery Period shall apply to CLAIMS FIRST MADE AGAINST YOU during the twelve (12) months following immediately after the effective date of such cancellation or non-renewal, but only by reason of any actual or alleged "professional liability incident(s)" subsequent to the Retroactive Date and prior to the expiration or cancellation date.

The endorsements shall set forth the terms, not inconsistent with this Section, applicable to the Extended Discovery Period, including a provision to the effect that the insurance afforded for claims first received during such period is excess over any other valid and collectible insurance available under policies in force after the Extended Discovery Period starts.

3. The Extended Discovery Period in (2.) above will not go into effect unless the additional premium is paid when due. Once in effect the Extended Discovery Period may not be canceled and the premium charged is fully earned.
4. The Extended Discovery Period does not extend the policy or change the scope of coverage provided. The Extended Discovery Period does not reinstate or increase the limits of liability provided by this policy.

SECTION IV. - LIMITS OF LIABILITY

1. The professional liability limits of liability shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. "Claim(s)" made or "suit(s)" brought; or
 - c. Persons or organizations making "claim(s)" or bringing "suit(s)".
2. The professional liability aggregate limit is the most we will pay for the sum of all:
 - a. all "damages" as described under Section 1 Coverages paragraph 1 Insuring Agreement, and
 - b. payments under Section 1 Coverages paragraph 2 Defense, Settlement and Supplementary Payments.
3. Subject to the professional liability aggregate limit, the each "claim" limit is the most we will pay for all "damages" because of all covered acts as described in the Declarations arising out of any one "professional liability incident".

4. All related "professional liability incident(s)" arising out of the providing of or failure to provide professional services to any one person shall be considered one "professional liability incident". The inclusion herein of more than one insured or the making of "claim(s)" by more than one person or organization shall not operate to increase our limits of liability. Two or more "claim(s)" arising out of a "professional liability incident(s)" shall be treated as a single "claim". All such "claim(s)", whenever made, shall be considered first made and reported to us during the policy period in which the earliest "claim" arising out of such "professional liability incident(s)" was first made and reported to us and all such "claim(s)" shall be subject to the same limits of liability.

The professional liability aggregate limit of this policy applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the professional liability aggregate limit.

SECTION V. - DEDUCTIBLE

It is agreed our obligation to pay "damages" or expenses on your behalf applies in excess of the deductible amount stated in the Declarations. The deductible shall be subtracted from the total amount resulting from each "claim", and we shall be liable only for the difference between such deductible amount and the limits of liability otherwise applicable to each "claim". We may pay any part or all of the deductible amount to effect settlement of any "claim(s)" or "suit(s)", and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount we have paid.

In the event that you do not promptly reimburse us for the deductible amount demanded, then any cost incurred by us in collection of the deductible amount shall be added to and applied in addition to the applicable deductible amount without limitation to such costs. These costs shall include but not be limited to collection agency fees, attorney's fees and interest.

If we and you agree to use "mediation" to resolve a "claim(s)" or "suit(s)" brought against you and if such "claim(s)" or "suit(s)" is resolved thereby, any deductible stated in the Declarations shall be reduced by fifty percent (50.0%) for such "claim" or "suit" subject to a maximum reduction of \$20,000. Deductible payments made by you prior to the mediation will be reimbursed within thirty (30) days of resolution of the "claim(s)" or "suit(s)" as stated herein.

SECTION VI. - WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only as respects the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only as respects the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Your "employees", other than your "executive officers", but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

If an insured dies or is adjudged incompetent, this insurance will terminate for that insured. But the insured's legal representative will be an insured for any "professional liability incident" previously committed and covered by this policy.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

Firm changes: Any change among the partners of the Named Insured, even though it results in change in the name or business style of the Named Insured shall not affect the insurance hereunder, but such change shall be reported to us, in writing, within 30 days.

SECTION VII. - POLICY TERRITORY

Policy Territory means:

1. the United States of America (including its territories and possessions), Puerto Rico and Canada;
2. international waters or air space provided the "damages" does not occur in the course of travel or transportation to or from any place not included in 1. above; or
3. anywhere in the world with respect to "damages" because of "professional liability incident(s)" provided the original "suit" for such "damages" is brought within the territory as described in 1. above.

SECTION VIII. - DEFINITIONS

1. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Claim", as used in this coverage part, means:
 - a. an oral or written demand received by the insured for money or services; or
 - b. an oral or written notice received by the insured alleging a breach of duty by the insured; or
 - c. a service of suit, or notice received of the initiation of arbitration or other proceedings against the insured.
3. "Damages" as used in this coverage part means a monetary judgment, award or settlement. However, "damages" does not include:
 - a. judgments or awards arising from acts deemed uninsurable by law;
 - b. the return of fees or other compensation paid to the insured;
 - c. the cost of correcting or re-performing services.
4. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
6. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
7. "Media material" means written, spoken, visual, digital, musical or any other form of expression presented in software applications or any other electrical medium, when performed or provided by you.
8. "Mediation" means a non-binding intervention by a neutral third party.
9. "Professional liability incident" means, to the extent indicated as covered in the Declarations, those acts, errors, or omissions shown in items a through d below in the rendering of professional services which were rendered or should have been rendered by you or by any person or organization for whose acts you are legally liable.
 - a. Error and Omissions Liability, defined as:
 - 1) a negligent act, error or omission in the performance of or failure to perform the insured's professional services as described in the Declarations;
 - b. Intellectual Property, defined as:
 - 1) infringement of copyright, title, slogan, trademark, trade name, trade dress, service

- mark or service name resulting from your "media material";
- 2) libel, slander, emotional distress or defamation resulting from your "media material";
- 3) making known to any person or organization your "media material" that disparages the products, work or completed work of others;
- 4) making known to any person or organization your "media material" that violates a person's right to privacy or publicity;
- 5) unauthorized use in your "media material" or any advertising material, slogan or title of others in the advertising of others products, work or completed work;
- 6) plagiarism or unauthorized use of literary or artistic titles, formats, characters, performances or other similar material in your "media material".

c. Virus, defined as:

any program or code that causes damage to a computer or computer system or network, if the transmission of the harmful component of the program or code occurred without the authorization of the person or entities who own or are responsible for the computer, computer system or network receiving the program or code.

The term "virus" also means the creating, installing or failing to prevent a "virus".

d. Unauthorized Access, defined as:

failure to prevent a third party's access to a computer, computer system, or computer network, without authorization or exceeding authorization; however, this does not include unauthorized access by any insured.

To the extent any of the items of 9.a., b., c., and/or d. above are not identified as covered in the Declarations, no coverage is provided for that item under this insurance.

10. "Property damage" means:

- a. physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom; or
- b. loss of use of tangible property which has not been physically injured or destroyed.

11. "Suit" means a civil proceeding in which "damages" because of a "professional liability incident" to which this insurance applies are alleged. "Suit" includes:

- a. an arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or

- b. any other alternative dispute resolution proceeding in which such "damages" are claimed and to which you submit with our consent.

12. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short term workload conditions.

SECTION IX. - CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Policy.

2. Duties In The Event of a "Professional Liability Incident", "Claim" Or "Suit"

- a. You must see to it that we are notified as soon as practicable of a "professional liability incident", which may result in a "claim". To the extent possible, notice should include:

- 1) specific circumstances surrounding the "professional liability incident";
- 2) the names and addresses of any injured persons and witnesses; and
- 3) the nature and location of any injury or damage arising out of the "professional liability incident".

Notice of a "professional liability incident" or circumstance is not notice of a "claim".

- b. If a "claim" is received by any insured, you must:

- 1) immediately record the specifics of the "claim" and the date received; and
- 2) notify us as soon as practicable.

- c. You and any other involved insured must:

- 1) immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
- 2) authorize us to obtain records and other information;
- 3) cooperate with us in the investigation, settlement or defense of the "claim" or "suit"; and
- 4) assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or

incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this coverage part:

- a. to join us as a party or otherwise bring us into a "suit" asking for "damages" from an insured; or
- b. to sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limits of liability. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

a. If other valid and collectible insurance is available to you for a loss we cover under this Coverage Part, our obligations are limited as follows:

- 1) This Coverage Part is excess over any other insurance, whether primary, excess, contingent or on any other basis, except such insurance as is specifically purchased to apply in excess of this Coverage Part.
- 2) This Coverage Part shall not apply to professional services rendered, or which should have been rendered, prior to the effective date hereof for which other insurance exists to provide you any coverage for "claim(s)" or "suit(s)" resulting therefrom.
- 3) This Coverage Part shall not apply to "claim(s)" or "suit(s)" first made within twelve (12) months after the date of cancellation by us arising from professional services rendered, or which should have been rendered during the policy period prior to the date of cancellation, when there is other available insurance for such "claim(s)" or "suit(s)".
- 4) If collectible insurance under any other policy or policies of ours is available to you, covering a claim also covered hereunder, our total limits of liability shall in no event exceed the greater or greatest limits of liability applicable to such "claim(s)" under this or any other such policy or policies.

b. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also.

Under this approach each insurer contributes equal amounts until it has paid its applicable limits of liability or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limits of liability to the total applicable limits of liability of all insurers.

5. Representations

By accepting this policy, you represent:

- a. the statements in the Declarations and the Application are accurate and complete;
- b. those statements are based upon representations you made to us; and
- c. we have issued this policy in reliance upon your representations.

6. Separation of Insureds

Except with respect to the limits of liability, and any rights or duties specifically assigned in this policy to the first named insured, this insurance applies:

- a. as if each named insured were the only named insured; and
- b. separately to each insured against who "claim" is made or "suit" is brought.

7. Transfer of Rights of Recovery Against Others To Us

If the insured has right to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

8. Cancellation

- a. The first named insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first named insured written notice of cancellation at least:
 - 1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - 2) 30 days before effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first named insured's last mailing address known to us.

- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is canceled, we will send the first named insured any premium refund due. If we cancel, the refund will be the lesser of the pro rata of the actual earned premium or Minimum Premium. If the first named insured cancels, the refund may be less than pro rata. In no event shall we retain less than 25% of the Premium shown in the Declarations. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

9. Changes

This policy contains all agreements between you and us concerning the insurance afforded. The first named insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

10. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

11. Inspections and Surveys and Premium Audit

We have the right but are not obligated to:

- a. make inspections and surveys at any time;
- b. give you reports on the conditions we find; and
- c. recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not undertake to perform the duty of any person or organization to provide for the health and safety of workers or the public. And we do not warrant those conditions:

- a. are safe or healthful; or
- b. comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization, which makes insurance inspections, surveys, reports or recommendations.

This coverage part is not binding upon us, unless completed by a signed application and a Declarations Page which is signed by our authorized representative.

