

## PROFESSIONAL LIABILITY COVERAGE PART - CLAIMS MADE

**THIS POLICY PROVIDES COVERAGE FOR THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER DURING THE COVERAGE RELATIONSHIP OR ANY APPLICABLE EXTENDED REPORTING PERIOD AND IN ACCORDANCE WITH THE SECTION ENTITLED NOTICE OF CLAIMS AND POTENTIAL CLAIMS OF THE COMMON CONDITIONS.,.**

**COVERAGE**

The Insurer will pay all amounts up to the Insurer's Limit of Insurance which the **Insured** becomes legally obligated to pay as **damages** as a result of a **claim** arising out of an act, error or omission in the rendering of **professional services** provided that:

- A.** such **claim** is first made against the **Insured** during the **policy period**, or during the **extended reporting period**, if applicable, and is reported to the Insurer in accordance with the section entitled **NOTICE OF CLAIMS AND POTENTIAL CLAIMS** of the **COMMON TERMS AND CONDITIONS**;
- B.** such act, error or omission happened on or after the retroactive date shown in the Declarations; and
- C.** prior to the effective date of the **coverage relationship**:
  - 1.** no **authorized insured** knew or should have known of a **claim** or a **potential claim**; or
  - 2.** no **Insured** had given notice to a prior insurer of any **related claim**.

The Insurer will pay all **defense costs** in connection with a covered **claim**. Such **defense costs** are in addition to the limits of insurance.

**DEFENSE****A. Duty to Defend**

The Insurer has the right and duty to defend in the **Insured's** name and on the **Insured's** behalf any covered **claim** even if any of the allegations of such **claim** are groundless, false or fraudulent. The Insurer shall have the right to appoint counsel and to make such investigation, defense and settlement of a **claim** as is deemed necessary by the Insurer. If a **claim** is subject to an **arbitration proceeding** or mediation, the Insurer shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of an **arbitration proceeding** or mediation proceeding involving such **claim**.

**B. Exhaustion of Limits**

The Insurer is not obligated to investigate, defend, pay or settle, or continue to investigate, defend, pay or settle a **claim** after the applicable limit of the Insurer's liability has been exhausted by payment of **damages**. In such case, the Insurer shall have the right to withdraw from the further investigation, defense, payment or settlement of such **claim** by tendering control of said investigation, defense or settlement of the **claim** to the **Insured**.

**EXCLUSIONS**

The **coverage part** does not apply to:

**A. Contractual Liability**

any **claim** based on or arising out of:

- 1.** the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
- 2.** the liability of others assumed by an **Insured** under any oral or written contract or agreement, except that coverage otherwise available to an **Insured** shall apply to such **Insured's** liability that exists in the absence of such contract or agreement.

**B. Criminal Acts or Conduct**



any **claim** based on or arising out of any actual or alleged criminal act or omission committed by or at the direction of any **Insured** except that this exclusion does not apply to the extent liability is imposed upon the **Insured** for acts or omissions of another committed without the knowledge or consent of the **Insured**. The Insurer shall provide the **Insured** with a defense of such **claim** unless or until the criminal act or omission upon which the **claim** is based has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive the Insurer's rights under this policy. In addition, any agreement of the Insurer to provide such defense does not apply to a **Medicare/Medicaid Claim** or to any **claim** under workers compensation or other similar law, whether or not any such **claim** is premised on allegations of criminal acts or conduct.

There is no coverage under this policy for, and the Insurer will not defend any criminal complaint or proceeding regardless of the allegations made against any **Insured**.

### C. Discrimination

any **claim** based on or arising out of any actual or alleged discrimination, humiliation or harassment, that includes but shall not be limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation. The Insurer shall provide the **Insured** with a defense of such **claim** unless or until such act or omission has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive the Insurer's rights under this policy.

### D. Dishonest Acts/Capacity Claims/Wrongful Employment Practices and Pollution

Solely with respect to **administrative services**, any **claim** based upon or arising out of:

1. any actual or alleged dishonest, fraudulent, or malicious act or omission, commingling, misappropriation or misuse of funds, or intentional wrongdoing, including the intentional misappropriation of intellectual property, by an **Insured** if a final judgment, ruling or other finding of fact in any proceeding establishes that such act, omission, commingling, misappropriation, misuse or intentional wrongdoing was committed;
2. its capacity as, or solely by reason of its status as an **executive officer** of an **Insured Entity**; or
3. any wrongful employment practice other than any **claim** based upon or arising out of services as a member of a **formal review board**;
4. **pollutants**.

### E. Employee claims

any **claim** based on or arising out of:

1. any actual or alleged **bodily injury** to the **Insured Entity's employees** during the course of their employment by the **Insured Entity**; or
2. any actual or alleged injury to the spouse, **domestic partner**, child, parent, brother or sister of that **employee** as a consequence of paragraph 1. above.

This exclusion applies:

- a. whether the **Insured Entity** may be liable as an employer or in any other capacity; and
- b. to any obligation to share **damages** with or repay someone else who must pay **damages** because of the injury.

### F. Medicare or Medicaid

any **Medicare/Medicaid Claim**.

### G. Property Damage

any **claim** based on or arising out of actual or alleged **property damage**.

### H. Workers Compensation and Similar Laws

any **claim** based on or arising out of any actual or alleged obligation of any **Insured** under workers' compensation, disability benefits or unemployment compensation law or any similar law.

## LIMITS OF INSURANCE

**A. Limit of Insurance – Each Claim**

Subject to paragraph **B.** below, the Insurer's limit of insurance for **damages** for each covered **claim** shall not exceed the amount stated in the Declarations as "Professional Liability - Each **Claim**".

**B. Limit of Insurance - all claims in the Aggregate**

The Insurer's Limit of Insurance for **damages** for all covered **claims** shall not exceed the amount stated in the Declarations as "Professional Liability – all **claims** in the Aggregate".

**C. Related Claims**

All **related claims**, whenever made, shall be considered a single **claim** first made during the **policy period** in which the earliest **claim** was first made.

**D. Multiple Insureds, claims, and claimants**

The Limits of Insurance shown in the Declarations and subject to the provisions of this policy, is the most the Insurer will pay as **damages** regardless of the number of **Insureds, claims** made and reported or persons or entities making **claims**.

The Limits of Insurance of this **coverage part** apply 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 Limits of Insurance.

**SUBPOENA ASSISTANCE**

If during the **policy period**, an **Insured** receives a subpoena for documents or testimony arising out of **professional services** (which services were rendered by an **Insured** on or after the retroactive date), and the **Insured** would like the Insurer's assistance in responding to the subpoena, the **Insured** may provide the Insurer with a copy of the subpoena. In such case, the Insurer will retain an attorney to provide advice regarding the production of documents, prepare the **Insured** for sworn testimony, and represent the **Insured** at deposition, court hearing or proceeding provided that:

**A.** the subpoena arises out of a lawsuit to which the **Insured** is not a party; and

**B.** the **Insured** has not been engaged for compensation to provide advice or testimony in connection with the subject proceeding, nor has the **Insured** provided such advice or testimony in the past.

Any notice the **Insured** gives the Insurer of such subpoena shall be deemed notification of a **potential claim** under the section entitled **NOTICE OF CLAIMS AND POTENTIAL CLAIMS** of the **COMMON TERMS AND CONDITIONS**. Any costs incurred by the Insurer pursuant to the terms of this paragraph shall be in addition to the Limits of Insurance.