

**HEALTHCARE FACILITIES  
PROFESSIONAL LIABILITY COVERAGE FORM – CLAIMS MADE**

**YOUR PROFESSIONAL LIABILITY INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS AND PROVIDES COVERAGE FOR THOSE CLAIMS THAT ARE FIRST MADE AGAINST YOU OR CIRCUMSTANCES THAT OCCUR DURING THE POLICY PERIOD AND THAT ARE REPORTED TO US WHILE THIS INSURANCE IS IN FORCE. NO COVERAGE EXISTS FOR CLAIMS MADE AGAINST YOU OR CIRCUMSTANCES OCCURRING DURING THE POLICY PERIOD WHICH YOU FIRST REPORT TO US AFTER THE END OF THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, AN “EXTENDED REPORTING PERIOD” APPLIES.**

This Coverage Form provides coverage for professional liability “claims” or “circumstances”.

## **Section I – COVERAGES**

### **1. Insuring Agreement**

We will pay all amounts up to our limit of insurance which the Insured becomes legally obligated to pay as “damages” as a result of a “claim” or “circumstance” arising from 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 such “circumstance” first occurs during the “policy period”; and
- b. such “claim” or such “circumstance” is reported to us in writing during the “policy period” in accordance with Section IV; and
- c. such act, error or omission happened on or after the retroactive date; and
- d. on the effective date of this Policy, no Insured knew or should have known that an act, error or omission, or “related act, error or omission” might reasonably result in a “claim”; and
- e. the Insured did not give notice to a prior insurer of such act, error or omission or “related act, error or omission”; and
- f. the Insured did not give notice to a prior insurer of a “related claim”.

### **2. Defense**

We have the right and duty to investigate and settle any “claim” or “circumstance” arising from the rendering of “professional services” and to defend any “claim”. We will defend any “claim” even if any of the charges are groundless, false or fraudulent.

If a “claim” is submitted to an “arbitration proceeding” or mediation, we 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 or mediation proceeding.

Our payment of the limit of insurance ends our duty to defend, investigate or settle a “claim” or “circumstance”. In such case, we shall have the right to withdraw from the further investigation, defense, investigation or settlement.

### **3. Supplementary Payments**

Payments made under this Section are in addition to the limits of insurance set forth in Section III.

- a. With respect to covered “claims”,
  - i. we will pay fees charged by an attorney we designate . We will pay premiums for appeal bonds or to release property that is being used to secure a legal obligation. We shall pay premium for bonds valued up to the limits of insurance;
  - ii. we will pay “prejudgment interest and “postjudgment interest” that is awarded in connection with a judgment made against the Insured, on that portion of the judgment that is within the applicable limits of insurance. If we make an offer to pay the applicable limit of insurance, we will not pay any “prejudgment interest and “postjudgment interest” based on that period of time after the offer;
- b. We will pay all reasonable expenses incurred by the Insured at our request to assist us in the investigation, settlement or defense of a “claim” or “circumstance”.
- c. If during the “**policy period**”, an Insured receives a subpoena for documents or testimony arising out of “professional services” rendered by an Insured after the retroactive date, and the Insured would

like our assistance in responding to the subpoena, the Insured may provide us with a copy of the subpoena and we will retain an attorney to provide advice regarding the production of documents, to prepare the Insured for sworn testimony, and to represent the Insured at such deposition, provided that:

- i. the subpoena arises out of a lawsuit to which the Insured is not a party; and
- ii. the Insured has not been engaged to provide advice or testimony in connection with the lawsuit, nor has the Insured provided such advice or testimony in the past.

Any notice the Insured gives us of such subpoena shall be deemed notification of a "circumstance" under Section IV of this Policy.

#### 4. Exclusions

We will not defend or pay any "claim" or "circumstance" nor pay any Supplementary Payments based on or arising out of:

- a "property damage";
- b any law or regulation imposing criminal penalties or liability arising out of the violation by others, with the Insured's consent, of any law or regulation imposing criminal penalties;
- c discrimination, humiliation or harassment, that includes but shall not be limited to "claims" or "circumstances" based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference. We shall provide the Insured with a defense of such "claims" unless or until it has been determined by any final, non-appealable adjudication that the Insured has engaged in such conduct. Such defense will not waive any of our rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against the Insured;
- d any obligation of the insured under workers' compensation, disability benefits or unemployment compensation law or any similar law;
- e injury to any of your employees during the course of their employment by you or to injury to the spouse, child, parent, brother or sister of such employees arising out of such injury. This exclusion applies whether you may be liable as an employer or in any other capacity;
- f the following:

- i. the Insured's alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
  - ii. 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;
- g. medicare or medicaid fraud or abuse.

#### Section II - WHO IS AN INSURED

You are an Insured. In addition, the persons described below are Insureds:

1. any individual who is or becomes your partner, officer, director, member or "employee" during the "policy period" shown in the Declarations but only for "professional services" performed on your behalf.
2. any individual previously affiliated with you as a partner, officer, director, member or "employee", but only for "professional services" performed on your behalf at the time of such affiliation.

However, no partner, officer, director, member or "employee" "is an insured under paragraphs 1 and 2 above if such individual is an intern, resident, physician, surgeon, dentist, nurse anesthetist, nurse midwife, podiatrist, chiropractor or physicians' assistant.

3. any individual who is or becomes your "administrator" during the "policy period" shown in the Declarations but only for "administrative services" performed on your behalf.
4. any individual previously affiliated with you as an "administrator", but only for "administrative services" performed on your behalf at the time of such affiliation.
5. any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest. Such organization will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier
  - b. There is no coverage for any act, error or omission that occurred before you acquired or formed the organization;

No person or organization is an insured with respect to the conduct of any current or past

partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

6. the estate, heirs, executors, administrator's, assigns and legal representatives of an Insured in the event of such Insured's death, incapacity, insolvency or bankruptcy, but only to the extent that such Insured would have been provided coverage under this Policy.

### Section III - LIMITS OF INSURANCE

"Each Claim" means both the "claim" and any "circumstance" giving rise to such "claim".

1. Limit of insurance – "each claim"

Subject to paragraph 2 below, our limit of insurance for "damages" for "each claim" shall not exceed the amount stated in the Declarations for "Professional Liability -each claim".

2. Limit of insurance - all "claims" and "circumstances" in the aggregate

Our limit of insurance for "damages" for all "claims" and "circumstances" shall not exceed the amount stated in the Declarations as the "Professional liability – all "claims" in the aggregate".

3. If "related claims", otherwise covered under this Policy, are reported to us during the "policy period" or any renewal policy period, all such "related claims", whenever reported to us, shall be considered a single "claim" first reported to us within the policy period in which the earliest of the "related claims" was reported to us. For purposes of the application of the "Each Claim" and Aggregate Limit of Insurance, such single "claim" includes all "circumstances" giving rise to the "claim".
4. Supplementary Payments, as set forth in Section I, paragraph 3, are in addition to the limit of insurance.
5. Multiple Insureds, "claims", "circumstances" and claimants

The limits of insurance shown in the Declarations and subject to the provisions of this Policy is the most the Company will pay as "damages" regardless of the number of Insureds, "claims", made, "circumstances" reported or persons or entities making "claims".

### Section IV – NOTICE OF "CLAIMS" AND "CIRCUMSTANCES"

1. The Insured must give us written notice as soon as reasonably possible during the "policy period" of any "claim" first made against the Insured during the "policy period"

or any "circumstance" that first occurs during the "policy period";

2. A "claim" will be deemed first made at the earliest of the following times:
  - a. when you first receive a "written or oral demand" or,
  - b. when you are first served with a "suit", or "arbitration proceeding";
3. A "circumstance" will be deemed reported to us only when you have reported in detail:
  - a. the specific act, error or omission; and
  - b. the dates and persons involved; and
  - c. the identity of anticipated or possible claimants; and
  - d. the consequences which have resulted or may result from such act, error or omission; and
  - e. the nature of the potential monetary amounts or non-monetary relief which may be sought in consequence of such specific act, error or omission.

### Section V - ADDITIONAL DEFINITIONS

1. "Administrative services" means planning, organizing, directing and controlling your business operations. "Administrative services" include services as a member of a "formal review board".
2. "Administrator" means any "executive officer", administrator, partner, superintendent, director, member, trustee, stockholder, medical director, any department head (including the head of the medical staff), any "formal review board" member or any staff member but solely to the extent that he or she is performing "administrative services" on your behalf.
3. "Arbitration proceeding" means a formal arbitration proceeding or administrative hearing arising out of an act, error or omission in the rendering of "professional services" to which an Insured is required to submit by statute or court rule or to which an Insured has submitted with our consent.
4. "Circumstance" means an act, error or omission from which an Insured reasonably expects that a "claim" could be made and which the Insured has reported to us in accordance with Section IV.
5. "Claim" means "suit", a "written or oral demand", or an "arbitration proceeding".
6. "Damages" mean judgments, awards and settlements an Insured is legally obligated to pay because of a covered "claim" or "circumstance", provided any settlement is

made with our prior written consent.

“Damages” do not include:

- a. the return or restitution of fees, expenses or costs;
  - b. civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to law, statute, regulation or court rule;
  - c. the multiplied portion of multiplied awards;
  - d. injunctive or declaratory relief;
  - e. any amount that is not insurable under any applicable law; or
  - f. plaintiff’s attorneys fees associated with any of the above.
7. “Employee” means a person whose work is engaged and directed by you, including students and volunteers, and “leased workers”, but solely to the extent that he or she is performing “professional services” on your behalf. An employee does not include “temporary employees”. An independent contractor is not an “employee”.
  8. “Executive officer” means a person holding any of the officer positions, or their functional equivalent, created by your charter, constitution, by-laws or any other similar governing document.
  9. “Formal review board” means your official boards or committee formed for the purpose of:
    - a. evaluating the qualifications or performance of your professional staff; or
    - b. evaluating, maintaining and ensuring the quality of “professional services” being provided at your healthcare facility.
  10. “Healthcare services” means services performed by an Insured to care for or assist your patients. “Healthcare services” include the furnishing of food, beverages, medications or appliances in connection with such services, and the postmortem handling of human bodies;
  11. “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”.
  12. “Prejudgment interest and postjudgment interest” means interest that accrues prior to or after entry of a judgment, verdict or award. However, any interest which is awarded as a penalty against an Insured does not constitute “prejudgment interest and postjudgment interest”.
  13. “Professional services” means the rendering to others of:
    - a. “healthcare services”; or
    - b. “administrative services”.
  14. “Property damage” means physical injury to:
    - a. tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
    - b. loss of use of tangible property that is not physically injured.
  15. “Related acts, errors or omissions” mean all acts, errors or omissions in the rendering of “professional services” that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.
  16. “Related claims” mean all “claims” or “circumstances” arising out of a single act, error or omission or arising out of “related acts, errors or omissions” in the rendering of “professional services”.
  17. “Suit” means a civil action which requests money because of an act, error or omission in the rendering of “professional services”.
  18. “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.
  19. “Written or oral demand” means a written or oral demand for money or services, which is not a “suit”, received by the Insured, arising out of an act, error or omission in the rendering of “professional services”.