

PROFESSIONAL LIABILITY COVERAGE FORM CLAIMS-MADE COVERAGE

Throughout this document, the word "Insured" means any person or entity qualified as such under Part I. D. "**Covered Persons and Entities.**"

Other words and phrases that appear in **bold** have special meaning. Refer to Part III. **Definitions.**

PART I. Insuring Agreements

A. Covered Services

The Company will pay, on behalf of the Insured, **Damages** and associated **Claim Expenses** arising out of a negligent act, error, or omission resulting in **Claim** for financial loss, **property damage**, **Advertising Liability**, or **Personal Injury**, even if such **Claim** is groundless, false or fraudulent, provided that:

1. The negligent act, error, or omission took place in the rendering of or failure to render **Professional Services**; and,
2. The negligent act, error, or omission took place in the **Covered Territory**; and,
3. The negligent act, error, or omission took place after the Retroactive Date shown in the Declarations; and,
4. The **Claim** is first made against the Insured and reported to the Company during the Policy Period.

B. Defense and Settlement

The Company has the right and duty to defend, subject to the provisions in this Policy and the Limits of Liability, any **Claim** to which coverage under this Policy applies.

The Company has the right to select defense counsel; provided however, if applicable law allows the Insured to control the selection of counsel because a potential conflict of interest between the Insured and the Company, the Company will provide a list of attorneys or law firms from which the Insured may designate counsel, and the Insured agrees to direct such defense counsel to cooperate with the Company.

The reasonable fees and costs incurred by counsel, including those fees and costs generated by cooperation with the Company, as set forth above, shall be included in **Claim Expenses.**

The Company will not settle any **Claim** without the consent of the Named Insured. If, however, the Named Insured shall refuse to consent to any settlement recommended by the Company and shall elect to contest the **Claim** or continue any proceedings in connection with such **Claim**, then the Company shall not be obligated to pay **Claim Expenses** incurred subsequent to such refusal. Withholding of consent or refusal shall be deemed a refusal. Furthermore, the Company's liability for such **Claim** shall not exceed the amount for which the **Claim** could have been so settled and **Claim Expenses** incurred up to the date of such refusal. Such amounts are subject to the Limits of Liability, of this Policy.

C. Policy Limits

Regardless of the number of persons or entities Insured or included in Part I. D. **Covered Persons or Entities**, or the number of claimants or **Claims** made against the Insured:

1. The maximum liability of the Company for **Damages** and **Claim Expenses** resulting from each **Claim** made against the Insured during the Policy Period and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations for each **Claim**;
2. The maximum liability of the Company for all **Damages** and **Claim Expenses** as a result of all **Claims** first made against the Insured during the Policy Period and the **Extended Reporting Period**, if purchased, shall not exceed the amount shown in the Declarations in the aggregate.

The Company shall not be obligated to pay any **Claim** for **Damages** or defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of judgments, settlements, **Claim Expenses** or any combination thereof.

Claim Expenses are a part of and not in addition to the applicable Limits of Liability. Payment of **Claim Expenses** by the Company reduces the applicable Limits of Liability.

The inclusion of more than one Insured, or the making of **Claims** by more than one person or organization, does not increase the Company's Limit of Liability. In the event two or more **Claims** arise out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions, all such **Claims** shall be treated as a single **Claim**. Whenever made, all such **Claims** shall be considered first made and reported to the Company during the **Policy Period** in which the earliest **Claim** arising out of such negligent act, error or omission was first made and reported to the Company, and all such **Claims** shall be subject to the same Limit of Liability.

Limits of Liability apply above the retention amount stated in the Declarations.

D. Retention Provisions

The retention amount stated in the Declarations shall be paid by the Insured. The retention amount applies to each **Claim**, and it includes **Damages**, and/or **Claim Expenses**, whether or not a loss payment is made. If the Company initially pays the retention amount, the Named Insured shall reimburse the amount paid within thirty (30) days. Failure of the Insured to remit amounts due in connection with settlements, judgments and loss adjustment expenses under this Policy, or any Policy of which this Policy is a renewal, shall be deemed to be equivalent to non-payment of premium, and may be used as a reason for cancellation. The Insured agrees to pay fees and expenses incurred in efforts to recover from the Insured any unreimbursed amounts.

E. Covered Persons and Entities

1. Named Insured as stated in the Declarations;
2. Any present or former principal, partner, officer, director, or employee of the

Named Insured, but only as respects Professional Services rendered on behalf of the Named Insured;

3. Heirs, executors, administrators, and in the event of an Insured's death, incapacity or bankruptcy, legal representatives of any Insured, but only with respect to Professional Services rendered prior to such Insured's death, incapacity or bankruptcy.
4. Subsidiaries:
 - a. For-profit entities of which the Named Insured has **Management Control**.
 - b. New for-profit entities:

If during the Policy Period, the Named Insured acquires or creates a for-profit entity of which the Named Insured has **Management Control**, such entity shall be considered an Insured under this Policy from the date of the acquisition or creation, but only for acts, errors, or omissions committed after the date of acquisition or creation.

If the assets or revenues of the new for-profit entity is greater than 10% of the assets or revenues, respectively, of the Named Insured prior to the acquisition or creation of the new for-profit entity, coverage beyond 90 days of the date of said acquisition or creation will only apply if the following is completed within the 90-day period: a) Written notice of such acquisition or creation is provided to the Company; b) the Named Insured provides the Company with information that it may require; c) the Insured accepts any special terms, conditions, exclusions, or additional premium charges as may be required by the Company; and d) the Insurers, at their sole discretion, agree to provide such coverage.

F. Covered Territory

This Policy applies to covered **Claims** arising out of negligent acts, errors, or omissions, **Advertising Liability** or **Personal Injury** committed by, and **Claims** made against the Insured anywhere in the world, provided that such **Claims** are first made within the United States of America, its territories or possessions, Puerto Rico or Canada.

G. Extended Reporting Period

1. Optional

If the Policy is not renewed for any reason, or is canceled for any reason other than for non-payment of premium (whether cancelled by the Company or by the Insured), the Insured is entitled to an automatic sixty-day (60) extended reporting period, but only for **Claims** resulting from negligent acts, errors or omissions, **Advertising Liability** or **Personal Injury** committed before the termination date of the Policy and otherwise covered by this Policy.

Alternatively, the Insured has the right to purchase an extension of the coverage granted by this Policy for a period of twelve (12) months after the Policy terminates, but only for **Claims** resulting from negligent acts, errors or omissions, **Advertising Liability** or

Personal Injury committed before the termination date of the Policy and otherwise covered by this Policy. Increased premiums, and/or retention, or changes in, or modifications of coverage terms or conditions upon renewal do not constitute cancellation or non-renewal.

The premium for this **Extended Reporting Period** be priced between 100% and 150% of the full annual premium set forth in the Declarations and attached endorsements, and must be elected and paid within thirty (30) days after the effective date of the Policy's termination. Such additional premium is deemed fully earned immediately upon the inception of the **Extended Reporting Period**.

The **Extended Reporting Period** will be added by endorsement, and once endorsed, cannot be cancelled. The **Extended Reporting Period** does not reinstate or increase the Limits of Liability. The Company's Limits of Liability during the **Extended Reporting Period** are a part of, and not in addition to, the Company's Limits of Liability stated in the Declarations.

2. Automatic

If the **Named Insured** has not obtained another policy of professional liability insurance *and* either the **Named Insured** or the Company chooses not to renew this Policy, the Company shall provide to the **Named Insured** an automatic, non-cancelable **Extended Reporting Period** starting at the termination of the **Policy Period**. This automatic **Extended Reporting Period** will terminate either a) after sixty (60) days, or b) at 12:01 A.M. on the date another policy of professional liability insurance applicable to the **Named Insured** takes effect, or c) after any automatic extended reporting period required by state law, whichever time period is shortest.

PART II. Exclusions

This Policy does not apply to any **Claim** or **Claim Expenses**:

- A. Based upon or arising out of any intentional, willful, criminal, fraudulent, malicious, or dishonest act or omission by an Insured; except where the **Claim** also includes allegations of a negligent act, error or omission in the performance of your Professional Services; however, this Policy will not pay any **Damages** or further **Claim Expenses** in the event of an adjudication or admission by an insured that the act or omission was intentional, willful, criminal, fraudulent, malicious, or dishonest.
- B. Based upon or arising out of infringement of copyright, patent, trademark, trade name, service mark, trade dress, title or slogan. However, this exclusion does not apply to infringement of copyright, trademark, trade name, service mark, trade dress, title or slogan, arising from **Advertising Liability**.
- C. Based upon or arising out of any business entity not named in the Declarations or an Endorsement to this Policy which is owned, controlled, operated or managed by any Insured.
- D. Based upon or arising out of a **Claim** by one Insured under this Policy against another Insured under this Policy.

- E. Based upon or arising out of liability of any type assumed by an Insured under a contract or agreement, including breach of an express or implied warranty or guarantee. This exclusion does not apply to liability that an Insured would have in the absence of the contract or agreement.
- F. Based upon or arising out of false advertising or misrepresentation in advertising, or unfair competition based thereon, but only with respect to intentionally false, misleading, deceptive, fraudulent or misrepresenting statements in advertising the Insured's own product or service.
- G. Brought by any regulatory authority or administrative actions by a federal, state or local governmental entity, including but not limited to: any actions, decisions, orders or proceedings by any federal, state or local governmental agency.
- H. Based upon or arising out of the insolvency or bankruptcy of an Insured.
- I. Based upon or arising out of the failure to find, identify, report, remediate, prescribe a solution to, or otherwise based upon or arising out of any of the following:
 - (1.) mold, fungi, bacteria, viruses, mildew, mycotoxins, spores, biogenic aerosol, or any byproducts thereof;
 - (2.) silica, asbestos, asbestos compounds or materials containing asbestos;
 - (3.) lead, lead-based, or lead-containing substances; or
 - (4.) radon.
- J. Based upon or arising out of **bodily Injury** to any person, resulting from any cause. This includes **bodily injury** directly or indirectly arising out of supervision, training, hiring, disciplining, or termination of one or more employees or failure to train, supervise, discipline, or terminate one or more employees.
- K. Based upon or arising out of **Property Damage** arising out of **Products**.
- L. Based upon or arising out of advice regarding or failure to advise, provide, require, obtain or maintain any form of insurance, suretyship, or bond.
- M. Based upon or arising out of estimates or opinions of real estate value.
- N. Based upon or arising out of geological surveys, soil compaction surveys, surveys of subsurface condition, or ground testing, or earth movement such as earthquake, landslide, or earth sinking, rising or shifting for any reason.
- O. Based upon or arising out of the actual, alleged, or threatened existence or **Release of Pollutants** at any time. This includes the failure to detect, report, test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or any way respond to, or assess the existence, non-existence or effects of **Pollutants**, or any request, demand, or order for any of the above, or **Claims** by or on behalf of a governmental authority or others, for **Damages** because of testing for, identifying, detecting, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, communicating information about, in any way responding to, or assessing the existence, non-existence or effects of **Pollutants**, including the failure to perform any of these activities. This also includes the inhalation of, ingestion of, or exposure to **Pollutants**.

- P.** Based upon or arising out of synthetic stucco and external insulation and finish systems (EIFS), or any part thereof, or any substantially similar system or any part thereof, including the failure of and the improper installation of the foregoing, and the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system.
- Q.** Based upon or arising out of underground storage tanks.
- R.** Based upon or arising out of the return, restitution, disgorgement, forfeiture or rescission of any personal profit, remuneration or financial advantage, or monies to which an Insured was not entitled.
- S.** Based upon or arising out of or alleging or resulting, directly or indirectly, from:
- 1). facts alleged, or the same acts or series of continuous, repeated, or related acts alleged or contained in any **Claim** which has been reported, or in any circumstances of which notice has been given, under any policy which this Policy is a renewal of or replacement of or succeeds in time;
 - 2) any act, circumstance, or event committed, omitted, or occurring prior to the Policy Period if, on or before the **First Inception Date**, the Named Insured knew or could have reasonably foreseen that such act, circumstance, or event could give rise to a **Claim** against a Named Insured; or,
 - 3) as of the **First Inception Date**, any pending or prior: (i) **Claim**, demand, suit, arbitration, mediation, or litigation, or (ii) administrative, bankruptcy, regulatory proceeding, or investigation, of which an Insured had notice, or alleging or derived from the same or essentially the same facts as alleged in such pending or prior **Claim**, demand, suit, arbitration, mediation, litigation, or administrative bankruptcy, or regulatory proceeding or investigation.

Notwithstanding any other Exclusion, this Policy does not apply to any Claim or Claim Expenses based upon or arising out of any **Claim** covered by a Comprehensive General Liability policy, Commercial General Liability, Package Policy, Manuscript Policy or policy forms of a similar nature, whether or not such coverage is in effect. As a condition precedent to any defense or coverage obligation hereunder, the Company may REQUIRE PROOF of lack of coverage, such as a copy of a written declination of coverage from the carrier of such policy.

PART III. Definitions

- A. Advertising Liability** means injury arising out of one or more of the following offenses, in relationship to the Insured's own promotional activities:
1. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 2. Oral or written publication of material that violates a person's right of privacy or publicity;

3. Infringement, during the course of promotional activities, of copyright, trademark, trade name, service mark, trade dress, title or slogan.
- B. Bodily Injury** means physical or mental harm, mental anguish, emotional distress, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes all effects of sexual acts, including rape, sexual molestation, non-consensual sex, or sexual assault.
- C. Claim** means a written or verbal demand for money or services received by the Insured, including service of suit and including declaratory judgment actions, or the demand for arbitration proceedings against the Insured.
- D. Claim Expenses** means expenses incurred by the Company or the Insured with the Company's consent, in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the Company or the Insured with the Company's consent, and include:
1. Attorney fees;
 2. Costs assessed against the Insured in any **Claim** defended by the Company;
 3. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay or deposited in court, that part of the judgment within the applicable Limit of Liability;
 4. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the available applicable Policy limit, and only if said **Claim** is covered by the Policy;
 5. Reasonable expenses incurred by the Insured at the Company request other than:
 - a. Loss of earnings;
 - b. Salaries or other compensation paid to the Insured or any employee of the Insured.
- E. Damages** means monetary judgment, award or settlement, except those for which insurance is prohibited by law. **Damages** does not include punitive or exemplary **Damages**, fines, penalties, sanctions, taxes, awards or **Damages** that are multiples of any covered fees, deposits, commissions or charges for goods or services. **Damages** does not include any amounts that represent, or are substantially equivalent to, the return, restitution, disgorgement, forfeiture or rescission of any personal profit, remuneration or financial advantage, or monies to which an Insured was not entitled.
- F. First Inception Date** means the inception date of the first errors and omissions, professional, media or other liability policy that (i) provides or provided the same or essentially the same coverage as this Policy and (ii) was issued by Gotham Insurance Company, New York General and Marine Insurance Company, or any member of the NYMAGIC, Inc., group of companies, to the Named Insured and continually renewed through to the Policy Period of this policy.

- G. Management Control** means either having the right or power to select a majority of the board of directors of a corporation, the management committee members of a joint venture or partnership, or the members of a management board of a limited liability company, due to either: a) owning interests representing more than 50% of the voting, appointment, or designation power for the entity, or b) having the right, pursuant to a written contract, to elect, appoint, or designate these persons.
- H. Personal Injury** means injury, other than **Bodily Injury** or **Advertising Liability**, arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
 2. Malicious prosecution;
 3. Wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 4. Libel, slander, defamation of character, or violations of a person's right of privacy, unless arising out of promotional activities.
- I. Policy Period** means the period of time stated in the Declarations, or any shorter period resulting from Policy cancellation or amendment to the Policy.
- J. Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, **silica, asbestos, asbestos compounds or materials containing asbestos**, waste or any like substances. In addition to **Pollutants** to be disposed of, waste also includes materials to be recycled, reconditioned, or reclaimed. The term "pollutants" shall include products which have **Released** from tanks, drums, pipelines, hoses or any other conveyance or container and, as a consequence, pose a threat to health or the environment.
- K. Products** means any tangible goods or products, other than real property, manufactured, sold, handled, distributed, installed, or disposed of by an Insured or anyone on behalf of the Insured. This includes containers (other than vehicles), materials, parts, or equipment furnished in connection with such goods or products.
- L. Professional Services** means those items listed as Professional Services in the Declarations.
- M. Property Damage** means physical injury to or destruction of tangible property, including all resulting loss of use of that property, or loss of use of tangible property that is not physically injured. Electronic data is not considered tangible property.
- N. Release** means discharge, dispersal, seepage, migration, release or escape of **pollutants**.
- O. Retroactive Date** means the date stated in the Declarations on or after which any

alleged or actual negligent act, error or omission, **Advertising Liability**, or **Personal Injury** must have taken place in order to be considered for coverage under this Policy.

PART IV. Conditions

A. Notice of Claim

1. The Insured must notify the Company promptly of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. The Insured must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information.

The Insured shall include within any such notice, the following information, with specificity:

- A. a description of the alleged act, error, omission, and;
- B. the date(s) it was committed, and;
- C. a summary of the facts, and;
- D. the alleged or potential **Damages** that may result from the act, error, omission, and;
- E. the names of any claimants, and;
- F. the names of any other Insured(s) involved, and;
- G. the names of any employees who committed or allegedly committed the act, error, omission, and;
- H. the date and circumstances by which the Insured(s) first became aware of such loss.

2. A **Claim** shall be considered to be reported to the Company when notice is first given to the Company through the Named Insured in the Declarations of the **Claim** or of an act, error or omission which could reasonably be expected to give rise to a **Claim**.

3. All **Claims** arising out of the same, continuing or related Professional Services shall be considered a single **Claim** and deemed to have been made at the time the first of the related **Claims** is reported to the Company and shall be subject to one Limit of Liability.

B. Prohibition of Voluntary Payments and Settlements by Insured

With respect to any **Claim** covered under this Policy, the Insured shall not, except at the Insured's own expense, make any payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of dispute resolution, waive any rights

or incur any expenses without prior written approval by the Company.

C. Cooperation Clause

The Insured shall cooperate with the Company in the conduct of the investigation and defense of a **Claim**, and upon the Company's request, submit to examination and interrogation by the Company representatives, under oath if required, and attend hearings, depositions, and trials, and assist in affecting settlements, securing and giving evidence, and in obtaining the attendance of witnesses. The Insured agrees to promptly tender the defense of any Claim to any other insurer which also has available insurance for a Claim covered under this Policy.

D. Notice of Cancellations and Non-renewal

The Named Insured may cancel this Policy by mailing or delivering to the Company advance written notice of cancellation.

For other than non-payment of premium, the Company will give the Named Insured sixty (60) days written notice prior to cancellation or non-renewal of this Policy by mailing or delivering the notice to the first Named Insured's last known mailing address. If the Company cancels the Policy due to the Named Insured's failure to pay a premium when due, this Policy may be canceled by the Company giving not less than 10 days written notice of cancellation.

The cancellation notice will state the effective date of the cancellation, and the Policy will terminate on that date. If canceled by the Company, the earned premium shall be computed pro-rata. If canceled by the Insured, the earned premium shall be computed short rate.

E. Premium and Audit

Premiums for this coverage are computed in accordance with the Company's rules and rates, based upon the Rate per estimated Gross Receipts listed in the Declarations. Any premium shown is a deposit premium only; at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the **Policy Period** and within three years after the final termination of the Policy, as far as they relate to the subject matter of this Policy.

The first Named Insured listed in the Declarations must keep records of information the Company will need for premium computation, and must send the Company copies of the information upon request.

F. Authorization

The first Named Insured listed in the Declarations agrees to act as the Named Insured with respect to the giving and receiving of all notices, exercising of the **Extended Reporting Period** option, canceling of the Policy, paying of all premiums and retentions, and the receiving of any return premiums that may become due.

G. Change

This Policy contains all of the agreements concerning the insurance provided. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this Policy with the Company's consent. The Policy terms can be amended or waived only by endorsement issued by the Company, and made a part of this Policy.

H. Subrogation

In the event of any **Claim** under this Policy, the Company shall be subrogated to all Insured's rights of recovery against any person or organization, and the Insured shall execute and deliver instruments and papers, and do whatever else is necessary to secure such rights. The Insured shall do nothing after the loss to prejudice such rights. The Insured shall not waive the companies right of recovery in advance of any claim.

I. Other Insurance Clause, Excess Clause, and Pro Rata Clause

This Policy is excess over, and will not contribute with, any other existing insurance, unless such other insurance is specifically written to be excess of this Policy.

If it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Company will not be liable under this Policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under the Policy for such **Damages** bears to the total applicable Limit of Liability of all other insurance or self insurance, whether or not collectible against such **Claim**.

J. Actions against the Insurer

No action will be taken against the Company unless, as a condition precedent, the Insured is in full compliance with all of the terms of this Policy, and until the amount of the Insured's obligations to pay have been finally determined, either by judgment against the Insured after actual trial, or by written agreement of the Insured, the claimant, and the Company.

K. Non-transferability

The Insured's rights and duties under this Policy may not be transferred without the written consent of the Company.

L. Coverage in bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate does not relieve the Company of its obligations under this Policy.

M. Material Representations

Statements made on the application, attachments, or other material representations made by the Insured, Insured's broker, and/or wholesale broker are accepted as true and material in the decision to underwrite the services described in the Declarations as

PROFESSIONAL SERVICES. Any fact materially represented, if not true, may void this coverage.

Notice to New York State Policyholders:

During the first several years of the claims-made relationship, claims-made rates are comparatively lower than occurrence rates, and the insured can expect substantial annual premium increases, independent of overall rate level increases, until the claims-made relationship reaches maturity.