

# **PROFESSIONAL LIABILITY ERRORS & OMISSIONS INSURANCE**

**(This Insurance Is Written On A Claims Made and Reported Basis)**

THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY, IN WRITING, DURING THE POLICY PERIOD (OR EXTENDED REPORTING PERIOD, IF APPLICABLE). THE LIMIT OF LIABILITY AVAILABLE TO PAY JUDGMENTS OR SETTLEMENTS SHALL BE REDUCED BY CLAIM EXPENSES.

PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the Insured to pay the Deductible herein, and in reliance upon all statements made and information in the Application, which is attached hereto and made a part of this Policy, and subject to all the terms and conditions of this Policy, the Company agrees with the Insured as follows:

## **I. INSURING AGREEMENT**

The Company shall pay on behalf of the Insured any Loss and Claim Expenses, in excess of the Deductible subject to the Policy's Limit of Liability, as the Insured shall become legally obligated to pay as a result of a Claim(s) made against the Insured for a Wrongful Act(s) arising from Professional Services as set forth by Endorsement to this Policy, provided always that: (1) the Claim is first made against the Insured and reported to the Company, in writing, during the Policy Period or Extended Reporting Period (if applicable); (2) the Insured has no knowledge of such Wrongful Act prior to the Inception Date of this Policy; and (3) such Wrongful Act takes place on or after the Retroactive Date set forth in the Declarations Page of this Policy and prior to the end of the Policy Period.

## **II. DEFENSE, INVESTIGATION & SETTLEMENT**

### **a) Defense**

The Company shall have the right and duty to defend any covered Claim(s) brought against an Insured alleging a Wrongful Act(s). The Company has the sole right to select and appoint legal counsel to represent the Insured as respects any covered Claim to which this Policy applies, except as set forth in Section VII. e) of this Policy. The Company's duty to defend any Claim(s) shall cease upon exhaustion of the applicable Limit of Liability.

The Company has no duty to defend any Claim(s) not covered by this Policy.

b) **Investigation and Settlement of Claim(s)**

- (1) The Insured shall not, except at its own expense, make any payment, admit any liability, assume any obligation or incur any expense without the written consent of the Company. The Company shall not be liable for any settlement or expense, assumed obligation or admission to which it has not given its prior written consent.
- (2) The Company shall have the right in its sole discretion to conduct any investigation it deems necessary and may, with the consent of the Insured, make any settlement of any Claim(s) it deems reasonable and necessary. If the Insured refuses to consent to any settlement recommended by the Company, then the Company's liability for such Claim shall not exceed the amount for which the Claim could have been so settled plus Claim Expenses incurred up to the date of such refusal and subject to the applicable Limit of Liability.

**III. DEFINITIONS**

Whenever used in this Policy, the terms or words below are defined as follows:

a) **Claim**

"Claim" shall mean a written demand received by an Insured, including the service of suit or institution of arbitration proceeding against an Insured, for compensation of monetary damages for a Wrongful Act allegedly or actually committed by an Insured.

A Claim will be deemed to have been first made against the Insured when any Insured first receives written notice of the Claim.

b) **Claim Expenses**

"Claim Expenses" shall mean: (1) reasonable and necessary fees charged by an attorney designated by the Company; and (2) all other fees, costs or expenses incurred in the investigation, adjustment, defense and appeal of a Claim if incurred by the Company, or an attorney designated by the Company, or by the Insured with the written consent of the Company. However, Claim Expenses shall not include salary charges of regular employees or officers of the Company nor salary or wages of the Insured, nor any fees, costs, or expenses incurred with respect to any criminal proceedings or actions against an Insured.

c) **Domestic Partner**

"Domestic Partner" shall have the meaning prescribed by applicable state or local law, or in the absence of such law, means one of two natural persons who form a couple living together in a committed, long standing relationship, provided that such persons:

- (1) have a common residence that they have shared for a period of two (2) years or more; and

- (2) are not blood relatives and are not married or in a domestic partnership with someone else; and
- (3) are mentally competent, at least 18 years of age and registered as domestic partners in a local registry, if one exists.

d) **Insured**

“Insured” or “Insureds” shall mean:

- (1) the Named Insured as designated in the Declarations Page of this Policy;
- (2) any past or present partner, executive officer, director or employee of the Named Insured while acting within the scope of their duties on behalf of the Named Insured;
- (3) the estate, the heirs, assigns or legal representatives (in the event of death or incompetency) of any individual Insured under this Policy;
- (4) any Subsidiary of the Named Insured but only with respect to Wrongful Acts which occur while it is a Subsidiary and is otherwise covered by this Policy; and
- (5) the lawful spouse or Domestic Partner of an Insured (as set forth in items 1-4 above) in any Claim(s) made against such spouse or Domestic Partner solely by reason of his/her status as a spouse or Domestic Partner of an Insured or ownership interest in marital property/assets that are sought as recovery for such Claim, but only if the Claim does not allege any Wrongful Act or omission by such spouse or Domestic Partner.

e) **Loss**

“Loss” shall mean a monetary judgment, award or settlement for damages including an award by a court of reasonable attorney’s fees and costs to a party making the Claim. Loss shall not include:

- (1) fines, penalties or taxes;
- (2) any matter uninsurable under the law pursuant to which this Policy will be construed;
- (3) the return of fees or charges for the services rendered or to be rendered;
- (4) pre-judgment and post-judgment interest; or
- (5) liquidated damages or the multiplied portion of any multiplied damage award.

f) **Named Insured**

“Named Insured” shall mean the individual, entity, partnership or corporation designated as such on the Declarations Page of this Policy.

g) **Policy Period**

“Policy Period” shall mean the period from the Inception Date of this Policy to its Expiration Date as set forth in the Declarations Page of this Policy or its earlier termination date, if any.

h) **Subsidiary**

“Subsidiary” shall mean any entity which, on the Inception Date of this Policy, the Named Insured owns more than fifty percent (50%) of the issued and outstanding voting stock, either directly or indirectly, through one of its

Subsidiaries and is named on the Application or is added by Endorsement to this Policy.

This Policy shall not cover any Claim against a Subsidiary or any partner, director, officer or employee of such Subsidiary for any Wrongful Act that occurs at a time when the Named Insured did not own more than fifty percent (50%) of the issued and outstanding voting stock of such Subsidiary, either directly or indirectly, through one of its Subsidiaries.

Further, this Policy shall not cover any Claim against a Subsidiary or any partner, director, officer or employee of such Subsidiary that alleges Wrongful Acts on the part of such Subsidiary that do not fall within the definition of Insured Professional Services as such is set forth by Endorsement to this Policy.

i) **Wrongful Act**

“Wrongful Act” shall mean any actual or alleged negligent act, error or omission or breach of duty committed or alleged to have been committed, or for failure to render, such Professional Services as are customarily rendered in the profession of the Insured as set forth by Endorsement to this Policy.

**IV. CLAIMS MADE EXTENSION CLAUSE**

If, during the Policy Period, the Insured first becomes aware of any specific and identifiable Wrongful Act and, during the Policy Period, gives written notice to the Company of:

- a) the specific Wrongful Act;
- b) the damage which has or may result from such Wrongful Act; and
- c) the circumstances by which the Insured first became aware of such Wrongful Act;

then, any Claim that is subsequently made against the Insured arising out of such Wrongful Act shall be deemed for the purposes of this Policy to have been made against the Insured during the Policy Period.

**V. EXCLUSIONS**

This Policy does not apply to any Claim, Claim Expense or Loss:

- a) for any dishonest, criminal, fraudulent, malicious or intentional Wrongful Act, error or omission or intentional or knowing violation of the law committed by or at the direction of the Insured; however, the Company shall provide a defense to Claims alleging any of the foregoing until there is a judgment, final adjudication, adverse admission or finding of fact against the Insured as to such conduct at which time the Insured shall reimburse the Company for all Claim Expenses incurred by the Company in connection with the defense of such Claim; further, the Company shall not cover any Claim if the Insured pleads *nolo contendere* or

no contest to a criminal or administrative proceeding against it arising out of the same, or essentially the same, material facts as such Claim;

- b) for liability arising out of the Insured's services and/or capacity as:
  - (1) an officer, director, partner, trustee, or employee of any business enterprise not named in the Declarations;
  - (2) a fiduciary under the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, or any regulation or order issued pursuant thereto, or with respect to any employee benefit plan of an Insured;
- c) made by any business enterprise which is operated, managed or owned, in whole or in part, by the Named Insured or the Named Insured's parent company or any affiliated, Subsidiary or associated company;
- d) arising out of infringement of patent, copyright or trademark;
- e) for bodily injury, sickness, disease or death of any person, or for emotional distress, mental anguish, or other similar injury or damage, or any injury to, or destruction of, any tangible property or loss of use thereof;
- f) arising out of false arrest, humiliation, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, or malicious prosecution, libel, slander or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy;
- g) based upon or arising out of any employment practices liability or any actual or alleged discrimination on any basis which is a violation of any local, state or federal law, regulation or ordinance;
- h) based upon or arising out of a violation or alleged violation of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any other local, state or federal law or regulation dealing with securities;
- i) arising out of the liability the Insured assumes under any oral or written contract or agreement, unless such liability would have attached to the Insured even in the absence of such agreement;
- j) based upon the Insured's failure to procure or maintain adequate insurance or bonds, or any Claim arising out of the Insured's failure to comply with any law, regulation or ordinance concerning Workers' Compensation, Unemployment Insurance, Social Security Benefits or Disability Benefits or any similar local, state or federal law, regulation or ordinance;
- k) based upon the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, or similar provisions of any local, state or federal law, regulation or ordinance or common law;

- l) for actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., and any amendments thereto, including any rules or regulations promulgated thereunder and any similar local, state or federal law, regulation or ordinance;
- m) based upon assertions, allegations, causes of action or demands whatsoever by or on behalf of an Insured or Insureds under this Policy against another Insured or Insureds hereunder;
- n) based upon or arising out of any person's actual or alleged performance, or failure to perform, professional services as an attorney;
- o) due to, based upon or arising out of, directly or indirectly, or resulting from, or in consequence of, or in any way involving seepage, pollution or contamination of any kind;
- p) for, based upon or arising out of any alleged unsolicited sending of information by fax, electronic mail (e-mail), SMS (Simple Messaging System) or via any other means where such is prohibited by local, state or federal law, regulation or ordinance;
- q) based upon or arising out of the notarized certification or acknowledgement of a signature without the physical appearance, at the time of such notarization, before the notary public of the person who is, or claims to be, the person signing;
- r) based upon or arising out of the misuse or unauthorized use or disclosure of confidential, proprietary or personally identifiable information, including medical or financial information, or the actual or alleged failure to inform customers of any security breach that may impact their personal information;
- s) arising out of disputes involving the Insured's fees, charges, commissions or any other compensation;
- t) based upon, arising from, or in consequence of any actual or alleged guarantee, promise or warranty, either express or implied, relating to the performance of the Insured's Professional Services as set forth by Endorsement to this Policy;
- u) based upon or arising out of services provided by any individual, entity, partnership or corporation not identified as a Named Insured in the Declarations Page or added by Endorsement to this Policy as a Named Insured or additional Insured for purposes of coverage;
- v) based upon, arising out of, or directly or indirectly related to, or in connection with, the actual or alleged violation of Section 113, Truncation of Credit Card and Debit Card Account Numbers, of the Fair and Accurate Credit Transactions Act ("FACTA"), as defined in 15 U.S.C. Section 1681, or any amendment thereto, or similar provisions of any local, state or federal law or common law.

## VI. WAIVER OF EXCLUSIONS AND CONDITIONS

Whenever coverage under any provision of this Policy would be excluded, suspended or lost:

- a) because of any exclusion relating to dishonest, criminal, fraudulent, malicious or intentional Wrongful Acts or omissions by an Insured and with respect to which any other Insured did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof; or
- b) because of non-compliance with any condition relating to giving notice to the Company with respect to which any other Insured shall be in default, solely because of the default or concealment of the default by any other Insured responsible for the loss or damage otherwise insured hereunder;

the Company agrees that such insurance as would otherwise be afforded under this Policy shall continue in effect with respect to each and every Insured who did not personally commit or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts or omissions described in any such exclusion or condition (the "Unaware Insured"); provided that if the condition be one with which such Unaware Insured can comply, after receiving knowledge thereof, the Unaware Insured shall comply with such condition promptly after obtaining knowledge of the failure of any other Insured or employee to comply therewith.

## VII. LIMIT OF LIABILITY

- a) **Deductible**  
The Deductible amount stated in the Declarations Page of this Policy shall be paid by the Insured and shall apply to each Claim and shall include Claim Expenses.
- b) **Multiple Claims/Interrelated Wrongful Acts**  
One or more Claims based upon or arising out of the same Wrongful Act or interrelated Wrongful Acts by one or more of the Insureds shall be considered a single Claim and shall be deemed to have been made when the first of such Claims is made. Further, any interrelated Wrongful Acts shall be deemed to have been committed when the first of any such Wrongful Acts were committed.
- c) **Limit of Liability**  
Subject to the foregoing, the Company's total liability for Loss, including Claim Expenses, resulting from all Claims first made against the Insured and reported to the Company, in writing, during the Policy Period shall not exceed the amount stated in the Declarations as the "Limit of Liability," regardless of the time when such payment is made. The inclusion of more than one Insured hereunder shall not operate to either increase the amount of the applicable Deductible nor the amount of the Company's Limit of Liability. The Limit of Liability shall be excess of the Deductible amount.

d) **Exhaustion of Limit of Liability**

The Company shall not be liable to pay any Loss or Claim Expenses, or continue the defense of any Claim, after the Limit of Liability has been exhausted.

e) **Allocation of Claim Expenses**

In the event that any portion of a Claim does not come within the coverage afforded by this Policy, the Company will use all reasonable efforts to agree with the Insured upon a fair and proper allocation of Claim Expenses based upon the ratio of the number of counts, causes of action or allegations for which coverage is afforded under this Policy as compared to the number of counts, causes of action or allegations which are not within the scope of coverage.

If there can be an agreement on the allocation of Claim Expenses, the Company will pay, on a current basis, Claim Expenses allocated to the number of counts, causes of action or allegations for which coverage is afforded under this Policy.

If there can be no agreement on an allocation of Claim Expenses, then:

- (1) the Company shall pay, on a current basis, Claim Expenses that it deems to be reasonably related to the coverage afforded under this Policy until a different allocation is negotiated or determined; and
- (2) the Company, if requested by the Insured, shall submit such dispute to mediation. All administrative costs associated with the mediation shall be shared equally between the parties. The amounts paid by the Insured in connection with the mediation will not be considered Loss or Claims Expenses under the terms of this Policy.

In such matters wherein this provision of the Policy is applicable, we shall have the right, but not duty, to defend the Claim at issue.

f) **Supplemental Payments**

The Company shall pay reasonable expenses incurred, including actual and provable loss of wages, if the Insured is required by the Company to attend proceedings or trial in the defense of a covered Claim. Such payments are subject to the following:

- (1) The maximum reimbursement for such expenses shall not exceed \$250 per day for each Insured who attends such proceedings at the Company's request;
- (2) The Company's maximum total liability for reimbursement shall not exceed \$5,000 per Claim regardless of the number of Insureds who attend such proceedings at the Company's request; and
- (3) Such payments shall be part of, and shall reduce, the available Limit of Liability.

The Deductible amount applicable to each Claim shall not apply to the Supplemental Payments made by the Company under this subsection.



## VIII. TERRITORY

The insurance afforded herein applies worldwide, provided that suit is brought or Claim is made within the United States, its territories and possessions or Canada.

## IX. CONDITIONS

### a) **Insured's Duties In the Event of Claim, Arbitration or Suit**

In the event of a Claim, the Insured shall, as a condition precedent to coverage under this Policy, provide the Company with:

- (1) Written notice of the Claim as soon as practicable. The notice must contain the following: the names of all individuals involved in the actual or alleged Wrongful Act; the identity of the claimant; complete details relative to the time, place and circumstances of the Wrongful Act complained of; the names of all Insureds involved and any available witnesses; and
- (2) Copies of every demand letter, notice, summons or other written communication provided to the Insured or the Insured's representative.

No Claim reported shall be provided coverage under this Policy unless written notice is given to the Company during the Policy Period, Automatic Extended Reporting Period (if applicable) or Optional Extended Reporting Period (if applicable).

### b) **Assistance and Cooperation of the Insured**

As a condition precedent to coverage under this Policy, the Insured shall cooperate with the Company and its representatives and upon the Company's request shall submit to examination and interrogation by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the general conduct of suits, as well as in the giving of a written statement or statements to the Company's representatives and meeting with such representatives for the purpose of investigation and/or defense, all without charge to the Company except as set forth in Section VII(f) of this Policy. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the Insured may have.

### c) **Subrogation**

In the event of any Claim or payment under this Policy, the Company shall be subrogated, to the extent of such payment, to all rights of recovery therefore, and the Insureds shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit in the name of the Insureds. The Insureds shall do nothing, after a Claim is made against them, to prejudice such rights. Any recovery shall first be paid to the Company to the extent of any Loss or Claim Expenses paid by the Company, with the balance paid to the Insured.

d) **Other Insurance**

This Policy shall be considered excess insurance over any other valid and collectable insurance available to the Insured whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limit of Liability provided in this Policy.

e) **Cancellation**

This Policy may be cancelled by the Named Insured by surrender thereof to the Company or by mailing written notice stating when thereafter such cancellation shall be effective. If cancelled by the Insured, the Company shall retain the customary short rate proportion of the earned premium. This Policy may also be cancelled, with or without the return by tender of the unearned premium, by or on behalf of the Company by delivering written notice to the Named Insured at the address set forth in the Declarations Page by mail, registered or unregistered, not less than thirty (30) days before (or ten (10) days in the event of non-payment of premium) the date that such cancellation shall be effective. If cancelled by the Company, the Company shall retain the *pro rata* portion of the earned premium. For the purpose of this paragraph, notice of cancellation given to the Named Insured by the Company, or given to the Company by the Named Insured, shall be deemed to be notice to, or on behalf of, all Insureds hereunder.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction hereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

f) **Minimum Earned Premium**

It is further understood and agreed that a minimum of 25% of this Policy's premium shall be deemed earned upon inception.

g) **Extension of Policy Period**

(1) **Automatic Extended Reporting Period**

If the Company or the Named Insured cancels or elects to not renew this Policy, the Insured shall have the right, following the effective day of such cancellation or non-renewal, to a period of sixty (60) days (herein referred to as the "Automatic Extended Reporting Period") in which to give written notice to the Company of Claims first made against the Insured during the Automatic Extended Reporting Period for any Wrongful Act occurring prior to the end of the Policy Period and otherwise covered by this Policy. This Automatic Extended Reporting Period shall not apply if there is other valid and collectable insurance for such Claim.

(2) **Optional Extended Reporting Period**

If the Company or the Named Insured cancels or elects to not renew this Policy, the Insured shall have the right, upon payment of an additional premium of up to the percentage of the full annual premium indicated on the Declarations Page of this Policy, to a period of up to one (1) year

following the effective date of such cancellation or non-renewal (herein referred to as the “Optional Extended Reporting Period”) in which to give written notice to the Company of Claims first made against the Insured during the Optional Extended Reporting Period for any Wrongful Act(s) occurring prior to the end of the Policy Period and otherwise covered by this Policy.

As used herein, “full annual premium” means the premium level in effect immediately prior to the end of the Policy Period.

The rights contained in this provision shall terminate, however, unless the Named Insured provides written notice of such election together with the additional premium to the Company within thirty (30) days of the effective date of cancellation or non-renewal. The additional premium for the Optional Extended Reporting Period shall be fully earned at the inception of the Optional Extended Reporting Period. The Optional Extended Reporting Period is not cancelable. This clause and the rights contained herein shall not apply to any cancellation resulting from non-payment of premium. The Company’s offer of renewal terms, conditions, limits of liability and/or premiums different from those of the expiring policy shall not constitute a refusal to renew.

The aggregate Limit of Liability for any Extended Reporting Period shall be part of, and not in addition to, the aggregate Limit of Liability for the Policy Period.

If the Named Insured exercises its rights to purchase an Optional Extended Reporting Period, the Automatic Extended Reporting Period shall be deemed void.

**h) Action Against the Company**

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured’s obligation to pay shall 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.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the Insured to determine the Insured’s liability, nor shall the Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured’s estate shall not relieve the Company of any of its obligations hereunder.

**i) Assignment**

No assignment of interest under this Policy shall bind the Company unless its prior written consent is endorsed hereon.

- j) **Changes**  
Notice to 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, nor estop the Company from asserting any rights under the terms of this Policy. The terms of this Policy shall not be waived or changed, except by Endorsement issued to form a part of this Policy, signed by an authorized representative of the Company.
- k) **Application**  
By acceptance of this Policy, the Insureds agree that the statements in the Application are personal representations, that they shall be deemed material and that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the Insureds and the Company or any of their agents relating to this insurance.
- l) **False or Fraudulent Claims**  
If any Insured commits fraud in proffering any Claim as regards amount or otherwise, this Policy shall become void as to such Insured from the date such fraudulent Claim is proffered.
- m) **Material Structural Changes**  
If, during the Policy Period, the Insured acquires or creates another entity or Subsidiary or the Insured becomes a member of a joint venture or partner in a partnership which is not designated in the Declarations Page of this Policy; or if the Insured merges or consolidates with another entity (any of which events is referred to as a "Transaction" in this condition); then, the Company shall have the option of providing coverage for such entity or Subsidiary.

No coverage shall be afforded under this Policy for any Claim in any way involving any entity or Subsidiary which is acquired, created, merged with or consolidated into, unless:

- (1) the Insured gives the Company notice of such Transaction as soon as possible, but in no event later than twenty-one (21) days after the effective date of the Transaction;
- (2) the Insured gives the Company information regarding the Transaction as it may reasonably require; and
- (3) the Company specifically agrees, by written Endorsement to this Policy, to provide coverage to such entity or Subsidiary and the Insured accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the Company, in its sole discretion, may impose. If the Company, at its sole discretion, elects to provide coverage with respect to such entity or Subsidiary, this Policy shall not apply to, and the Company shall not pay any Loss or Claim Expenses for any Claim based upon, arising out of, or directly or indirectly resulting from, or in any way involving any Wrongful Act by such entity or Subsidiary or any Insured thereof happening before: (a) the effective date of the Transaction; or (b) the effective date of coverage under this Policy for such entity or Subsidiary as set forth in an endorsement to be issued to extend coverage to such entity or Subsidiary, whichever is later.