

SELECT PROFESSIONAL

ERRORS AND OMISSIONS INSURANCE

THIS IS A CLAIMS MADE AND REPORTED POLICY. DEFENSE EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY.

A. DEFINITIONS

Whenever used in this policy, the term:

1. **Claim** means a written demand received by the **Insured** for money, services, equitable relief or a request to toll or waive any applicable statute of limitations; provided, however, **claim** does not include any investigation, proceeding or prosecution initiated by any governmental, administrative, regulatory or prosecutorial authority.
2. **Company** means the insurance company named in the Declarations.
3. **Damages** means a monetary judgment or monetary award which the **Insured** is legally obligated to pay, including: statutory damages; punitive, multiplied or exemplary damages, where insurable by law; or pre-judgment and post-judgment interest. **Damages** also means a monetary settlement to which the **Company** agrees on an **Insured's** behalf. However, **damages** does not include:
 - a. taxes, fines, penalties, forfeitures or court-imposed monetary sanctions;
 - b. the return, restitution, reduction, compromise or refund of commissions, fees, premiums, charges, gratuities or other compensation paid to an **Insured**;
 - c. the cost to correct, complete or re-perform any **professional services**;
 - d. the cost of compliance with any order for, grant of or agreement to provide non-monetary relief, including services or injunctive relief; or
 - e. any amounts uninsurable as a matter of law or public policy.
4. **Defense expenses** means:
 - a. reasonable and necessary fees charged and expenses incurred by attorneys designated by the **Company** to represent the **Insured**;
 - b. all other reasonable and necessary fees, costs and expenses incurred at the **Company's** request;
 - c. premiums on appeal bonds, attachment bonds or similar bonds however, the **Company** is not obligated to apply for or furnish such bonds.

Defense expenses do not include salaries, compensation or overhead paid or incurred by the **Company** or by the **Insured**.
5. **Disciplinary action** means an action brought against the **Insured** by any regulatory agency, disciplinary board, peer review committee or similar entity alleging misconduct in providing **professional services**. **Disciplinary action** does not include criminal investigations or charges.

6. **Insured** means:

- a. the **Named Insured**;
- b. any **subsidiary**;
- c. any past or present partner, principal, shareholder, officer, director, member, employee or independent contractor, leased employee of the **Named Insured** or a **subsidiary**, but only for **claims** arising from **professional services** rendered in the course and scope of their duties on behalf of the **Named Insured**;
- d. the representatives of the estate of a deceased **Insured** but only for **claims** arising from **professional services** rendered in the course and scope of their duties on behalf of the **Named Insured** or a **subsidiary**;
- e. the guardian, trustee or other fiduciary of a bankrupt **Insured** or an **Insured** who has been judicially declared incompetent, but only for **claims** arising from **professional services** rendered in the course and scope of their duties on behalf of the **Named Insured** or a **subsidiary**; and
- f. the lawful spouse of an **Insured** solely by reason of (a) such spousal status, domestic partner status or (b) such spouse's or domestic partner's ownership interest in property or assets that are sought as recovery for such **claim**. Any sums for which such spouse or domestic partner becomes legally obligated to pay on account of such **claim** shall be deemed **damages**.

7. **Named Insured** means the person or entity designated in the Declarations as **Named Insured**.

8. **Personal injury** means malicious prosecution, abuse of process, defamation, false imprisonment, wrongful eviction, libel, slander or violation of a person's right of privacy.

9. **Policy period** means the period from the effective date and time of this policy to the policy expiration date and time as set forth in the Declarations, unless the policy is terminated earlier, in which event the **policy period** shall end on the date, and time, of such earlier termination.

10. **Professional Services** means those services specified in Item 7. in the Declarations performed by an **Insured** for others for a fee or other remuneration inuring to the benefit of the **Named Insured**.

11. **Retroactive Date** shown in the Declarations is the first date which will be considered for coverage under this policy for any act or omission in the performance of **professional services**.

12. **Subsidiary** means any entity which the **Named Insured** maintains a majority interest. Any entity that becomes a **subsidiary** during the **policy period** and whose annual gross revenue exceeds 15% of the **Named Insured's** gross revenue listed in the application for this policy will be considered an **Insured** only after notice to the **Company** within sixty (60) days of such transaction and any adjustment to the premium or terms and conditions have been agreed by the **Named Insured** and endorsed by the **Company**.

B. WHAT IS COVERED

Subject to all terms and conditions of this policy, the **Company** will pay on the **Insured's** behalf **damages** and **defense expenses** arising out of a **claim** first made against the **Insured** during the **policy period**, and reported to the **Company** in writing during the **policy period**, by reason of an actual or alleged act or omission including **personal injury**, in the performance of **professional services**.

C. SUPPLEMENTARY PAYMENTS

1. Defense of Disciplinary Actions

The **Company** will pay up to \$25,000 per **policy period** for the defense of **disciplinary actions** brought against the **Insured** and reported to the **Company** during the **policy period**. The Deductible is not applicable and payments will not reduce the Limits of Liability.

2. Subpoena Expenses

The **Company** will pay up to \$7,500 per **policy period** for expenses incurred in assisting the **Insured** in responding to a subpoena which is received and reported in writing to the **Company** during the **policy period** and relates to **professional services**. The Deductible is not applicable and payments will not reduce the Limits of Liability.

3. Other Payments

The **Company** will reimburse the **Insured** for actual loss of earnings and reasonable expenses incurred for attendance at trial, court-ordered hearings, depositions, arbitration or mediation at the **Company's** request. The **Company** will pay actual expenses incurred but limited to \$500 per day, \$7,500 per **claim** and \$25,000 per **policy period**. The Deductible is not applicable and payments will not reduce the Limits of Liability.

D. DEFENSE AND SETTLEMENT

The **Company** will have the right and duty to defend all covered **claims** brought in the United States, its territories and possessions. While the **Company** may seek the **Insured's** input in selecting defense counsel, the **Company** retains the right to make that selection.

Subject to the **Company's** guidelines, the **Insured** and not the **Company** will have the duty to investigate and defend all **claims** brought outside of the United States of America, its territories and possessions. Payment by the **Company** of covered **defense expenses** with respect to any such **claims** shall be subject to compliance by the **Insured** and the **Insured's** selected defense counsel with the **Company's** reasonable guidelines.

The **Company's** obligation to defend and/or pay any **damages** or **defense expenses** will cease when the Limit of Liability has been exhausted.

The **Company** will not settle any **claim** without the **Insured's** consent. If, however, the **Insured** refuses to consent to any settlement recommended by the **Company** and acceptable to the claiming party, and the opportunity to effectuate that settlement is lost, then the **Company's** liability for that **claim** will not exceed the lesser of the lost settlement amount plus fifty percent (50%) of **damages** and **defense expenses** incurred by the **Insured** in excess of the lost settlement amount, or the remaining Limits of Liability.

E. LIMITS OF LIABILITY

1. For each **claim**, the limit shown in the Declarations as per **claim** is the maximum amount the **Company** is obligated to pay for the combined total of all covered **damages** and **defense expenses** arising out of each **claim** first made during the **policy period**.
2. Subject to the per **claim** limitation above, the limit shown in the Declarations as Aggregate is the maximum amount the **Company** is obligated to pay for the combined total of all **damages** and **defense expenses** arising out of any and all **claims** first made during the **policy period**.
3. Payment of **defense expenses** as well as **damages** reduce and may exhaust the Limits of Liability.

F. DEDUCTIBLE

The **Company's** obligation to pay **defense expenses** and **damages** for each **claim** is triggered when the **Insured** has paid **defense expenses** and/or **damages** in an amount equal to the Deductible shown in the Declarations.

If the **Insured** purchases an Aggregate Deductible option, the **Company's** obligation to pay **defense expenses** and **damages** is triggered when the **Insured** has paid the amount designated in the Declarations as Aggregate Deductible regardless of the number of **claims** made and covered by this policy.

G. EARLY CLAIM RESOLUTION INCENTIVE

If the **Company** resolves a **claim** as reflected in a settlement agreement, order, dismissal or judgment, within one (1) year following the date that the **claim** is reported in writing to the **Company**, the **Named Insured** will be reimbursed or credited up to 50% of the Deductible they have paid for that **claim**. The maximum reimbursement or credit is \$25,000 per **policy period**.

H. EXCLUSIONS

This insurance does not apply to any **claim**:

1. based on or arising out of acts or omissions that occurred or are alleged to have occurred prior to the effective date of this policy if, on or prior to such date, any **Insured** knew or had a reasonable basis to believe either that a professional duty had been breached or that a **claim** might be made;
2. based on or arising out of acts or omissions which occurred or are alleged to have occurred prior to the **retroactive date** of this policy;
3. based on or arising out of actual or alleged violation of:
 - a. the Employee Retirement Income Security Act of 1974;
 - b. the Securities Act of 1933;
 - c. the Securities Exchange Act of 1934;
 - d. any state Blue Sky or securities law;
 - e. the Crime Control Act of 1970 (also known as the Racketeer Influenced and Corrupt Practices Act or RICO);or any rules, regulations or amendments in relation to such acts, or any similar state, federal or foreign statutes or regulations, including any **claim** based upon common law principles of liability pertaining to the same subject matter as the above-mentioned acts, laws or regulations;
4. for actual or alleged bodily injury, physical harm, sickness or death of a ny person;
5. for the actual or alleged destruction, diminution in value or loss of use of tangible property;
6. based on or arising out of, or made by or against any business enterprise not named in the Declarations:
 - a. which any **Insured** controlled or in which any **Insured** maintained a pecuniary interest at the time of the act, or omission giving rise to the **claim**; or
 - b. which arises out of any **Insured's** acts or omissions in an **Insured's** capacity as an officer, director, partner or employee of such enterprise;

For the purposes of this Exclusion, a pecuniary interest will be deemed to exist in any enterprise in which the Insureds, individually or collectively, maintain fifteen percent (15%) or more of the equity, debt or other instruments of ownership or control in such enterprise.

7. by or on behalf of an **Insured** against another **Insured**;
8. based on or arising out of the actual or alleged gaining of any profit or advantage to which the **Insured** is not legally entitled;
9. based on or arising out of alleged criminal, intentionally wrongful, fraudulent or malicious acts or omissions. The **Company** will provide a defense for such **claims** through judgment or final adjudication.
10. based on or arising out of any discrimination, humiliation, harassment, or misconduct including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual preference. The **Company** will provide a defense of such **claims** through judgment or final adjudication.

Exclusions 9. and 10 will not apply to any **Insured** who: (a) did not participate or acquiesce in such act or omission; (b) had no knowledge of or reason to suspect such act or omission; and (c) immediately notified the **Company** in writing after obtaining knowledge of such act or omission.

11. based on or arising out of any actual or alleged anti-trust law violation or any agreement or conspiracy to restrain trade;
12. based on or arising out of or related to any actual or alleged misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right;
13. for the liability which the **Insured** assumed under any contract, agreement, promise, guarantee or warranty, whether written or oral, and whether express or implied, unless the **Insured** would have been legally liable in the absence of such contract, agreement, promise, guarantee or warranty;
14. based on or arising out of actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time. This includes any loss, cost or expense arising out of any requested, demanded, ordered or voluntary, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of a pollutant. Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acid, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

I. ADDITIONAL TERMS AND CONDITIONS

1. Reporting Requirements and Cooperation

a. If the **Insured** becomes aware of a **claim**, the **Insured** must:

- (1) advise the **Company** immediately in writing, giving the **Company** all details including the specific act or omission; the injury or damage which has or may result from such act or omission; the circumstances by which the **Insured** first became aware of the act or omission; and, the names, addresses and telephone numbers of all persons who may have knowledge or relevant information;
- (2) preserve all documents and other evidence relating to the **claim**;
- (3) send the **Company** documents relating to the **claim** when requested;

- (4) cooperate with the **Company** and defense counsel in the investigation, defense and settlement of a **claim** and enforcement of contribution or indemnification actions against others;
 - (5) attend hearings, depositions, and trials if requested; and
 - (6) not admit liability, make any offer of settlement or payments, incur any expense; or assume any obligation arising out of or in any way connected with a **claim** without the **Company's** prior written consent.
- b. If, during the **policy period**, the **Insured** becomes aware of an act or omission in the performance of **professional services** that reasonably may be expected to give rise to a **claim**, and if, during the **policy period**, the **Insured** reports to the **Company** in writing: (1) such specific act or omission and the identity of each person and entity responsible for such act or omission; (2) the date on which such act or omission took place; (3) the injury which has or may result from such act or omission and the identity of each person and entity subject to such injury; and (4) the circumstances by which the **Insured** first became aware of such act or omission; then, any **claim** subsequently made arising out of such specific act or omission shall be deemed to be a **claim** made during the **policy period**.

2. Claim Reporting Grace Period

If a **claim** is first made against any **Insured** during the **policy period**, the **Insured** may report it to the **Company** in writing up to and including sixty (60) days following the cancellation, non-renewal or natural expiration of this policy and the **Company** will consider it for coverage as if the **Insured** had reported it in writing to the **Company** within the **policy period**, provided the **Insured** is in compliance with all the terms and conditions of this policy, including payment of all premiums and Deductibles.

3. Multiple Claims

Two or more **claims** arising out of the same or related facts, circumstances, situations, transactions or events, or arising out of the same or related acts or omissions, will be considered a single **claim** first made on the earliest of the date that:

- a. the first such **claim** was made, regardless of whether such date is before or during the **policy period**;
or
- b. any of the acts or omissions alleged in such **claim(s)** was first reported under this or any prior policy of insurance, regardless of whether such policy was issued by the **Company**.

4. Other Insurance

Such insurance as is provided by this policy shall be excess of any other valid and collectible insurance, whether such insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically as excess and so evidenced by reference to this policy number.

5. Representations

The **Insured** understands and acknowledges that the decision to issue this policy was based upon the information provided in the application, including any supplements, attachments and replies to underwriter's inquiries. The **Insured** represents and warrants that all such information is true, accurate and complete.

6. Extended Claim Reporting Option

If the **Insured** or the **Company** cancels or does not renew this policy, the **Named Insured** shall have the option to purchase an Extended Claim Reporting Endorsement (ERP), extending the period of time during which **claims** may be reported but only with respect to **claims** arising out of **professional services** rendered prior to the end of the **policy period** and otherwise covered by this policy.

The **Named Insured** may purchase such ERP only if:

- a. prior to the end of the **policy period**, the **Named Insured** was in compliance with all the terms and conditions of this policy, including payment of all premiums and deductibles when due;
- b. the **Named Insured** agrees that the additional premium paid for the ERP is non-refundable;
- c. the **Named Insured** made no material misrepresentation in the application, any supplements, attachments or replies to underwriter's inquiries; and
- d. the **Named Insured** exercises this option and pays the additional premium within sixty (60) days following the end of the **policy period**.

The additional premium for an ERP shall be: (a) seventy-five percent (75%) of the annual premium for a one-year ERP; or (b) one hundred (100%) of the annual premium for a two-year ERP; or one hundred and fifty (150%) of the annual premium for a three-year ERP.

7. Cancellation/Nonrenewal

The **Named Insured** or the **Company** can cancel this policy by notifying the other in writing.

If the **Company** cancels or non-renews this policy, a written notice of cancellation or non-renewal will be sent to the **Named Insured** at the address shown in the Declarations. The notice will state the date on which the cancellation or non-renewal will become effective. The effective date of cancellation or non-renewal will be not less than sixty (60) days after notice is mailed to the **Named Insured** unless cancellation is for non-payment of premium in which case the effective date of cancellation will be not be less than ten (10) days after notice is mailed. The effective date of cancellation or non-renewal as stated therein will become the end of the **policy period** and return premium will be calculated on a pro rata basis.

If the **Named Insured** cancels, the return premium will be calculated at the industry standard short rate.

8. Non-Waiver

The **Company's** failure to enforce any terms, provisions or conditions, or the **Company's** failure to exercise any right or privilege, shall not operate or be construed as a waiver of any other terms, provisions, conditions, rights or privileges.

9. Named Insured as Sole Agent

The first **Named Insured** in Item 1. in the Declarations is the sole agent and will act on behalf of all of **Insureds**.

10. Changes in Control

If, during the **policy period**, any of the following events occur:

- a. the acquisition of any **Named Insured**, or all or substantially all of its assets, by another entity or the merger or consolidation of any **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity; or
- b. the appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to any **Named Insured**;

this policy will continue in full force and effect with respect to **Claims** arising out of **professional services** rendered before such event. **Claims** arising out of **professional services** rendered after such event will not be considered for coverage.

After either such event, this policy may not be canceled and the entire premium will be deemed fully earned.

11. Assignment

The **Insured's** interests under this policy may not be assigned without the **Company's** written consent.

12. Territory

This policy applies to **claims** arising from **professional services** rendered worldwide.

This policy shall not apply to any **claim** arising from **professional services** which are in violation of the laws of the United States, including, but not limited to, U.S. economic or trade sanctions or export control laws administered by the U. S. Treasury, State Department or Commerce Department.