

PROFESSIONAL LIABILITY INSURANCE POLICY

In consideration of the payment of the premium, and in reliance upon the Application which shall be the basis of this Policy and deemed to be incorporated herein, and subject to all the terms, conditions, limitations and any endorsements to this Policy, the Insurers and the **Insured** agree as follows:

I. INSURING AGREEMENT

The Insurers will pay on behalf of the **Insured** all sums in excess of the Deductible amount stated in the Declarations which the **Insured** shall become legally obligated to pay as **Loss** and **Claims Expenses** resulting from **Claims** first made against the **Insured** during the **Policy Period** as a result of a **Wrongful Act** by the **Insured** or any person or entity for whom the **Insured** is legally liable, provided that such **Wrongful Act** was committed on or after the **Retroactive Date** and before the end of the **Policy Period**.

As a condition precedent to coverage under this Policy, the **Insured** shall report such **Claim** in writing to the Insurers, as soon as practicable, but in no event later than 60 days after expiration or termination of this Policy, or during the **Extended Reporting Period**, if applicable, and that prior to the inception date of this **Policy Period** no **Insured** knew or could have reasonably foreseen that any **Wrongful Act** might give rise to a **Claim**.

II. DEFINITIONS

1. "Affiliated Entity" means

- a) any entity owned or controlled by any **Insured**, or
- b) any person or entity which owns or controls any **Insured**, or
- c) any entity which is under common ownership or control with any **Insured**, or
- d) any entity of which any **Insured** is a director, officer, partner or principal shareholder;

2. "Claim" means any civil action, suit, proceeding, or written demand received by any **Insured** seeking to hold the **Insured** responsible for **Loss** as a result of an alleged **Wrongful Act** committed by any **Insured**.

3. "Claims Expenses" means reasonable and necessary fees, costs and expenses incurred by the Insurers, or by the **Insured** with the prior written consent of the Insurers, subject to the limitations set forth in Section IV.2(b) - Consent and Settlement, consisting of fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, including the fees, costs and expenses associated with mediation and arbitration, and also including the cost of appeal bonds; however, the Insurers shall not be obligated to apply for or furnish appeal bonds.

Claims Expenses do not include salary charges, wages or expenses of partners, principals, officers, directors, members or employees of the **Insured**;

4. "Extended Reporting Period" means the applicable period of time after the end of the **Policy Period** for reporting **Claims** arising out of **Wrongful Acts** committed or alleged to have been committed prior to the end of the **Policy Period** and on or subsequent to the **Retroactive Date**, and otherwise covered by the Policy.

5. "Insured" means:

- a) the Named Insured or any **Subsidiary**;

-
- b) the estate, heirs, executors, administrators, and legal representatives of an **Insured**, in the event of such **Insured's** death, disability, incapacity, insolvency, or bankruptcy, but only to the extent such **Insured** would have otherwise been provided coverage under this Policy;
 - c) any person who is, was, or hereafter becomes a partner, principal, officer, director, member, or employee of an **Insured** but only while acting on behalf of such **Insured**;
 - d) any temporary or leased personnel, but only while acting under the direct supervision and on behalf of an **Insured**.

6. "**Loss**" means a compensatory monetary amount for which the Insured may be held legally liable, including judgments (inclusive of any pre- or post-judgment interest), awards, or settlements negotiated with the prior approval of the Insurers, but shall not include:

- a) any disgorgement, return, withdrawal, restitution or reduction of any sums which are or were in the possession or control of any **Insured**, or any amounts credited to any **Insured's** account;
- b) fines, sanctions, taxes, penalties or awards deemed uninsurable pursuant to any applicable law;
- c) punitive, exemplary, treble damages or any other damages resulting from the multiplication of compensatory damages;
- d) equitable relief, or fees, costs or expenses incurred by the **Insured** to comply with any such equitable relief.

7. "**Policy Period**" means the period set forth in Item 2 of the Declarations or any shorter period that may occur as a result of a cancellation of this Policy, or other termination date, and specifically includes any **Extended Reporting Period**.

8. "**Professional Services**" means those services set forth in Item 7 of the Declarations.

9. "**Retroactive Date**" means the date specified in Item 6 of the Declarations. This Policy shall apply only to **Claims** resulting from **Wrongful Acts** committed on or after that date.

10. "**Subsidiary**" means any entity, other than a joint venture, in which the Named Insured has an ownership interest of greater than 50%, provided that such entity:

- (a) was so owned at the inception date of the Policy;
- (b) becomes so owned after the inception date of this Policy and its revenues do not exceed 25% of the Named Insured's revenues at the time it becomes so owned;
- (c) becomes so owned after the inception date of this Policy and its revenues exceed 25% of the Named Insured's revenues at the time it becomes so owned, provided the conditions set forth in Section V.3 - Acquisitions/Creations are satisfied.

If during the **Policy Period** the Named Insured ceases to have an ownership interest of greater than 50% in such entity, coverage under this Policy for such entity shall apply only to its **Wrongful Acts** taking place prior to the date the Named Insured ceased having an ownership interest of greater than 50%.

11. "**Wrongful Act**" means any actual or alleged act, error or omission, or series of continuous, repeated, related or interrelated acts, errors or omissions, alleged to have been committed by the **Insured**, solely while performing **Professional Services** for others for a fee.

III. EXCLUSIONS

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

1. based upon, arising out of directly or indirectly, or in any way involving intentional wrongdoing, fraud, dishonesty, criminal or malicious acts by the **Insured**, if a judgment or other final adjudication adverse to the **Insured** establishes such an act, omission or willful violation; however, this Exclusion shall not apply to any **Insured** that did not commit, participate in, or have knowledge of any such conduct;
2. based upon, arising out of, directly or indirectly, or in any way involving, the performance of, or failure to perform, **Professional Services** for:
 - a) the **Insured**, or
 - b) any **Affiliated Entity**;
3. based upon, arising out of, directly or indirectly, or in any way involving, bodily injury, sickness, disease, emotional distress, mental anguish, outrage, humiliation or death;
4. based upon, arising out of, directly or indirectly, or in any way involving, injury to or destruction of any tangible property including loss of use thereof;
5. based upon, arising out of, directly or indirectly, or in any way involving, false arrest, detention or imprisonment, or malicious prosecution; the publication or utterance of a libel or slander or other defamatory or disparaging material; invasion, infringement or interference with rights of privacy or publicity; wrongful entry or eviction; invasion of the right of private occupancy; infringement of copyright; plagiarism, piracy or misappropriation of ideas; or infringement of title, slogan, trademark, trade name, trade dress, service mark or service name;
6. based upon, arising out of, directly or indirectly, or in any way involving, alleged discrimination, humiliation, harassment, or misconduct by the **Insured** because of race, creed, color, age, gender, sex, sexual preference or orientation, national origin, religion, disability, handicap, marital status, or any other class protected under federal, state, local or other law;
7. by an employee, former employee, or job applicant, of the **Insured**;
8. based upon, arising out of, directly or indirectly, or in any way involving, the gaining in fact of any personal profit or advantage to which the **Insured** is not legally entitled, or out of any disputes involving the Insured's fees or charges;
9. based upon, arising out of, directly or indirectly, or in any way involving, the liability of others assumed by the **Insured** under any contract or agreement, written or oral, unless such liability would have attached to the **Insured** even in the absence of such an agreement;
10. based upon, arising out of, directly or indirectly, or in any way involving, the discharge, dispersal, release or escape of pollution or contamination of any kind or any governmental or regulatory directive or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollution or contamination of any kind;
11. based upon, arising out of, directly or indirectly, or in any way involving, violations of the Employee Retirement Income Security Act of 1974, as amended, or any rules or regulations promulgated thereunder, or similar provisions of any federal, state or local statutory law or common law.

IV. IV. CLAIMS

1. Notice of Claims and Potential Claims

In the event of a **Claim**, the **Insured** shall as a condition precedent to the coverage afforded by this Policy:

- a) Immediately forward to the Insurers every demand, notice, summons and/or pleading received by the **Insured**;
- b) Give written notice, as soon as practicable, containing particulars sufficient to identify the **Insured** and claimant, and complete information regarding the facts and circumstances surrounding the involved matter.

If the **Insured** becomes aware of a **Wrongful Act** that may reasonably be expected to give rise to a **Claim**, and if the **Insured** reports such **Wrongful Act** to the Insurers during the **Policy Period** in writing, then any **Claim** subsequently arising from such **Wrongful Act** duly reported in accordance with this paragraph shall be deemed under this Policy to be a **Claim** made during the **Policy Period** in which such written notice is received by the Insurers. Such written notice to the Insurers shall include a complete and comprehensive statement of the facts and circumstances surrounding the **Wrongful Act** .

All notices under this Policy shall be given in writing as described in Item 8 of the Declarations, and with reference to the Policy Number indicated in the Declarations. Notice shall not become effective until the date of receipt by the Insurers.

2. Defense, Consent and Settlement

a) **Defense**

The Insurers have the sole right to appoint defense counsel and the right and duty to defend any **Claim** made against the **Insured**.

b) **Consent and Settlement**

As a condition precedent to coverage under this Policy, the **Insured** shall not admit liability for or settle any **Claim** or incur any **Claims Expenses**, without the prior written consent of the Insurers. However, the **Insured** must take all reasonable action within its ability to prevent or mitigate any **Claim** which would be covered under this Policy. The Insurers have the right to make such investigation and conduct negotiations and, with the written consent of the **Insured**, effect settlement of any **Claim** as the Insurers deem reasonable.

If the **Insured** refuses to consent to a settlement or compromise recommended by the Insurers and elects to contest or continue to contest the **Claim**, the Insurers' liability shall not exceed the amount for which the Insurers would have been liable for **Loss** and **Claims Expenses** if the **Claim** had been so settled when and as so recommended, and the Insurers shall have the right to withdraw from the further defense of the **Claim** by tendering control of the defense thereof to the **Insured**.

The Insurers shall not be obligated to pay any **Loss** or **Claims Expenses**, or to undertake or continue the defense of any **Claim**, after the applicable limit of the Insurers' liability has been exhausted by payment of **Loss** and **Claims Expenses** or after deposit of the applicable limit of the Insurers' liability with or subject to control of a court of competent jurisdiction.

3. Cooperation and Subrogation

The **Insured** shall provide the Insurers with such cooperation, assistance and information as the Insurers may request, all without charge to the Insurers.

In the event of any payment under this Policy, the Insurers shall be subrogated to all of the **Insured's** rights of recovery, and the **Insured** shall preserve and secure, and not prejudice, such rights.

4. Territory

This Policy applies to **Wrongful Acts** committed by the **Insured** anywhere in the world; provided, however, that any **Claim** made as a result of such **Wrongful Acts** must be brought and held against the **Insured** in the United States of America, its territories or possessions.

V. GENERAL CONDITIONS

1. Limits of Liability/Deductible

The Insurers' maximum liability for all **Loss** and **Claims Expenses** resulting from each **Claim** shall be the Limit of Liability for each **Claim** set forth in Item 3(A) of the Declarations. The Insurers' maximum aggregate liability for all **Loss** and **Claims Expenses** resulting from all **Claims** covered by this Policy shall be the aggregate Limit of Liability for all **Claims** set forth in Item 3(B) of the Declarations.

All **Claims** arising out of the same **Wrongful Act** shall be considered first made within the **Policy Period** in which the earliest of such **Claims** was first made and all such **Claims** shall be subject to one such Limit of Liability as set forth in Item 3(A) of the Declarations. For purposes of the Limits of Liability, continuous, repeated, related or interrelated **Wrongful Acts** shall be considered as one **Wrongful Act**.

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

The Insurers shall only be liable for **Loss** and **Claims Expenses** which are in excess of the Deductible stated in Item 4 of the Declarations. This Deductible shall apply separately to each **Claim** and shall be borne by the **Insured** and remain uninsured. For purposes of the Deductible, **Claims** arising out of one **Wrongful Act** or out of continuous, repeated, related, or interrelated **Wrongful Acts** shall be considered as arising out of one **Wrongful Act**, and only one Deductible amount shall apply thereto. The Deductible shall not reduce or increase the Limits of Liability.

Claims made against more than one **Insured** arising out of one **Wrongful Act** under this Policy shall not operate to increase the Limits of Liability.

2. Extended Reporting Period

If the Named Insured or Insurers shall cancel or fail to renew this Policy, the Named Insured shall have the right to purchase an **Extended Reporting Period** to apply to **Claims** first made against the **Insured** and reported to the Insurers during the **Extended Reporting Period** for a period of one year for an additional premium of 75% of the total annual premium, but only with respect to **Claims** arising out of **Wrongful Acts** committed before the date of such cancellation or non-renewal. This **Extended Reporting Period** is subject to all other terms, conditions, limitations of and any endorsements to this Policy.

As a condition precedent to the Named Insured's right to purchase the **Extended Reporting Period**, the full premium for this Policy and **Policy Period** must have been paid.

The Named Insured's right to purchase the **Extended Reporting Period** must be exercised by notice in writing not later than 30 days following the non-renewal or cancellation date of this Policy, and must include payment of premium for the applicable **Extended Reporting Period**. If such notice is not so given to the Insurers, the Named Insured shall not, at a later date, be able to exercise such right. At the commencement of any **Extended Reporting Period**, the entire premium thereafter shall be deemed earned.

3. **Acquisitions/Creations**

If during the **Policy Period** the Named Insured acquires or creates an entity pursuant to Section II.10(c) - **Subsidiary**, such entity shall be considered an **Insured** under this Policy for a period of 90 days from the date of the acquisition or creation, but only for **Wrongful Acts** committed after the date of acquisition or creation. Coverage beyond 90 days will apply if:

- a) Written notice of such acquisition or creation is provided to the Insurers;
- b) the Named Insured provides the Insurers with information that they may require;
- c) the **Insured** accepts any special terms, conditions, exclusions, or additional premium charges as may be required by the Insurers; and
- d) the Insurers, at their sole discretion, agree to provide such coverage.

4. **Other Insurance**

If any **Claim** or **Wrongful Act** noticed to the Insurers under this Policy is insured by another valid policy or policies, then this Policy shall apply only in excess of the amount of any deductibles, retentions and limits of liability under such other policy or policies, whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to the Policy Number indicated on this Policy's Declarations.

5. **Reimbursement of Insurers**

If the Insurers have paid any **Loss** and/or **Claims Expenses** in excess of the applicable Limit of Liability or within the amount of the applicable Deductible, the **Insured** shall be liable to the Insurers for any and all such amounts and, upon demand, shall pay such amounts to the Insurers promptly.

6. **Alteration and Assignment**

No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement signed by an authorized representative of the Insurers.

7. **Entire Contract**

By acceptance of this Policy the **Insured** agrees that the statements in the Declarations and Application are its agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Insurers.

8. Notice Of Cancellation

This Policy may be cancelled by the Named Insured by giving written notice to the Insurers stating when thereafter such cancellation shall be effective. This Policy may be cancelled by the Insurers only for non-payment of premium, by mailing to the Named Insured at the Named Insured's address shown in Item 1 of the Declarations, written notice stating when, not less than 10 days thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Policy shall terminate at the date and hour specified in such notice.

9. Named Insured Sole Agent

The Named Insured shall be the sole agent of all **Insureds** hereunder for the purpose of effecting or accepting any amendments to or cancellation of this Policy, for the purpose of receiving such notices as may be required by law and/or any provision(s) of this Policy, for the completing of any Application and the making of any representations, for the payment of any premium and the receipt of any return premium that may become due under this Policy, for the payment of any Deductible obligations that may become due under this Policy, and the exercising or declining to exercise any right under this Policy, including declining or exercising any **Extended Reporting Period**.