

# PROFESSIONAL PROTECTION ERRORS & OMISSIONS LIABILITY POLICY

## Table of Contents

COVERAGE AGREEMENTS.....	2
DEFENSE AND SETTLEMENT .....	3
LIMITS OF INSURANCE .....	3
DEDUCTIBLE .....	3
REPORTING OF CLAIMS.....	3
EXCLUSIONS .....	4
CONDITIONS.....	7
DEFINITIONS.....	10

## PROFESSIONAL PROTECTION ERRORS & OMISSIONS LIABILITY POLICY

**THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSURED AND REPORTED TO US IN ACCORDANCE WITH THE REPORTING REQUIREMENTS OF THIS POLICY. DEFENSE COSTS ARE INCLUDED WITHIN THE LIMITS OF LIABILITY UNLESS OTHERWISE STATED.**

Throughout this policy the words “you” and “your” refer to the “named insured” and any other person qualifying as an “insured” under this policy. The words “we”, “us” and “our” refer to the Company providing this insurance. Headings are provided solely for convenience and are not part of the terms and conditions of coverage.

In consideration of the payment of the premium and subject to the statements in the Declarations and in the application submitted to us for this policy together with any written materials attached thereto and submitted to us, the parties agree as follows:

### COVERAGE AGREEMENTS

#### PROFESSIONAL LIABILITY COVERAGE

We will pay “defense costs” and “damages” because of a “claim” alleging a “wrongful act,” subject to the limits of liability and in excess of the deductible applicable under this policy. This policy applies only if:

- The “claim” is first made against you and reported to us during the “policy period” or any applicable “extended reporting period.”
- The alleged “wrongful act” first occurs on or after the “retroactive date” and before the end of the “policy period;” and
- Prior to the inception of the “policy period,” no “insured” knew or had a basis to know of any “wrongful act” or other circumstances that could reasonably be expected to give rise to such “claim.”

#### COVERAGE EXTENSIONS

##### Disciplinary Proceeding Expense Coverage

We will retain counsel and pay on your behalf all reasonable and necessary costs, expenses and fees incurred to represent you in connection with the investigation or defense of a disciplinary proceeding brought by an entity or organization authorized to regulate your professional conduct, provided that such proceeding is initiated against you and reported to us during the “policy period” and arises from a covered “wrongful act” first occurring after the “retroactive date” and before the end of the “policy period.”

All covered costs, expenses and fees payable under this coverage extension are not subject to the deductible and will be paid in addition to the Aggregate Limit of Insurance, subject to the Disciplinary Proceeding Sub-Limit of Insurance stated on the Declarations, regardless of the number of “insureds”. No “damages” or other costs are covered under this policy.

### **Wage Loss/Claim Attendance Expense Coverage**

We will reimburse you for actual lost wages and reasonable and necessary costs and expenses incurred by you to attend any deposition, trial, hearing, or arbitration proceedings at our request in connection with the defense of a covered "claim" against you.

All such covered amounts payable under this coverage extension are not subject to the deductible and will be paid in addition to the Aggregate Limit of Insurance subject to the daily Wage Loss Sub-Limit of Insurance stated on the Declarations, regardless of the number of "insureds".

### **DEFENSE AND SETTLEMENT**

We have the right and duty to defend, investigate, and settle any "claim," even if the "claim" is groundless, false or fraudulent. We will retain counsel to represent you in connection with such "claim."

Our obligation to defend and to pay "defense costs" or "damages" in connection with any "claim" or other amounts under this policy ends once the applicable Limit of Insurance has been exhausted.

We may negotiate and settle any "claim" on your behalf; however, we will not commit to any settlement without the written consent of the "named insured." If the "named insured" refuses to consent to a settlement we recommend that is acceptable to the claimant, then, subject to the applicable Limits of Insurance, we will not be obligated to pay more than the amount for which such "claim" could have been settled in "damages" plus "defense costs" up to the date the "named insured" refused to settle.

We have the right but not the duty to appeal any judgment.

### **LIMITS OF INSURANCE**

The Aggregate Limit of Insurance stated on the Declarations is the most we will pay for all "damages" and "defense costs" under this policy regardless of the number of "claims" made or insureds involved.

Subject to the Aggregate Limit of Insurance, the Each Claim Limit of Insurance stated on the Declarations is the most we will pay for all "damages" and "defense costs" under the policy for one "claim" or all "related claims."

### **DEDUCTIBLE**

Our obligation under this policy to pay "damages" or "defense costs" with respect to each "claim" applies only to the amount of "damages" and "defense costs" in excess of the deductible amount stated on the Declarations.

You shall promptly reimburse us for any "damages" or "defense costs" paid by us within the deductible amount. Reimbursement of such amounts shall apply towards and reduce the corresponding deductible amount.

### **REPORTING OF CLAIMS**

#### **Notice of a Claim; Circumstance Reporting**

You must notify us as soon as practicable after you first become aware of a "claim." In addition, you must promptly send us copies of any demands, notices, summons or legal papers received in connection with the "claim," authorize us to obtain records and other information, cooperate with us in the investigation or settlement of or defense against the "claim," and assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of any "damages" to which this insurance may apply. To the

extent possible, notice should include: how, when and where the “wrongful act” took place and the names of any persons or entities involved in the facts underlying the “claim.”

You may report any circumstance or alleged “wrongful act” you become aware of during the “policy period” if you have a reasonable basis to believe the circumstance may become a “claim”. Your report should contain all known details as to dates, persons, and entities involved. If a “claim” is subsequently made against you that arises from or is based on the reported circumstance, then such “claim” will be deemed made during the “policy period” in which you reported the circumstance.

### **Extended Reporting Periods**

If the first “named insured” cancels or does not renew this policy, or if we non-renew or cancel this policy for reasons other than for non-payment of premium, the first “named insured” may purchase an Optional Extended Reporting Period. The options available for purchase are stated on the Declarations of this policy, along with the required additional premium.

To exercise this right, the first “named insured” must provide written notice to us within 60 days of the end of the “policy period” stating which Extended Reporting Period option is selected along with full payment of the additional premium required. The premium for the Extended Reporting Period is non-refundable, and the Extended Reporting Period is not cancellable.

If the first “named insured” does not elect to purchase an Optional Extended Reporting Period, an Automatic Extended Reporting Period of 60 days beginning the day after the end of the “policy period” will be provided at no additional premium.

The following conditions apply to any applicable Extended Reporting Period:

- The Extended Reporting Period does not increase or reinstate the Limits of Insurance, nor does it extend the “policy period” stated on the Declarations.
- An Extended Reporting Period applies only to “claims” first made during the Extended Reporting Period alleging “wrongful acts” first occurring on or after the “retroactive date” and before the end of the “policy period.”
- Extended Reporting Periods do not apply to provide coverage for “claims” that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the limit of insurance applicable to such “claims.”
- All “claims” under Extended Reporting Periods must be reported to us in accordance with the **Notice of Claims; Circumstance Reporting** provision herein and are deemed made on the last day of the “policy period.”

### **EXCLUSIONS**

This policy does not apply to any “claim”:

#### **Anti-Trust or Unfair Business Practices; False Advertising**

based upon or arising from any actual or alleged:

1. unfair competition or violation of any consumer protection or antitrust laws, including allegations of any antitrust violation, restraint of trade, or violation of the Sherman Anti-Trust Act, the Clayton Act, or Robinson-Patman Act, or any similar federal, state, local or foreign laws or statutes;



2. violation of the Organized Crime Control Act of 1970 (Racketeer Influenced and Corrupt Organizations Act, also known as "RICO");
3. false, deceptive or unfair business practices, including false advertising regarding the quality or scope of your services, or false or misleading statements by you regarding the quality or scope of the goods and services of others providing similar services to yours.

### **Bodily Injury and Property Damage**

for, based upon, or arising from any actual or alleged "bodily injury" or "property damage"; however, this exclusion does not apply to "bodily injury" in the form of mental illness, mental anguish, emotional distress, or shock that arises from an otherwise covered "claim" alleging "personal injury."

### **Conduct**

based upon or arising from any actual or alleged dishonest, fraudulent, criminal, malicious or intentional act committed by or at the direction of any "insured", including the knowing or reckless violation of any statute, regulation, or other law. This exclusion will not apply to a "claim" unless or until such conduct has been determined by judgment, final ruling, or admission in any judicial proceeding, administrative or alternative dispute resolution proceeding. Providing a defense until the conduct is adjudicated does not mean we waive any of our rights under this policy.

### **Confidential or Personal Information Disclosure and Electronic Data Exclusion**

based upon or arising from any actual or alleged unauthorized or improper access to, collection, use or disclosure of, or the failure to protect non-public, confidential, corporate or personal information in any form, including electronic data, whether committed by a third party or by an "insured" acting within or outside the scope of his or her duties.

### **Contractual Liability**

based upon or arising from any actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; however, this exclusion shall not apply to your liability that exists in the absence of such contract or agreement.

### **Conversion of Funds**

based upon or arising from any actual or alleged conversion, unauthorized transfer, commingling, misappropriation, or improper use of funds or other property, or the gaining of any personal profit or advantage to which an insured is not legally entitled.

### **Discrimination or Harassment**

based upon or arising from allegations of discrimination, harassment, or humiliation, including sexual discrimination, harassment, humiliation, abuse, or misconduct.

### **Employment Matters**

based upon or arising from any actual or alleged employment obligations, decisions, practices or policies as an employer.

### **ERISA, Workers' Compensation and Similar Laws**

based upon or arising out of any of the following:

- The Employee Retirement Income Security Act of 1974 (including amendments relating to the Consolidated Omnibus Budget Reconciliation Act of 1985), or any amendment or revision thereto;
- Any workers' compensation, disability benefits or unemployment compensation law; or
- Any other statute, regulation, or law similar to those stated above.

#### **Government Actions**

brought by or on behalf of any federal, state, local, or foreign government entity or authority, provided, however, that this exclusion does not apply to a "claim" by such entity in its capacity as a client of the "insured".

#### **Intellectual Property**

based upon or arising from any actual or alleged infringement of copyright, patent, slogan, title, trademark, trade secret, or any other intellectual property rights.

#### **Licensing or Other Professional Designations**

based upon or arising from any actual or alleged any services you provide without the required valid and active license, credentials, certification, or other form of authorization to the extent required by applicable state, federal or local law, rule or regulation. This exclusion also applies to any medical, healthcare, legal, architect, engineer, or accounting services, whether or not you are licensed to perform such services.

#### **Mechanical and Power Failures**

based upon or arising from any:

- electrical or mechanical failure of infrastructure not under your control, including but not limited to, any electrical power interruption, surge, brownout or blackout;
- failure of any satellite, telephone or data transmission or other telecommunication or network infrastructure not under your control; or
- lightning, wind, water, earthquake, volcanic eruption, tidal wave, landslide, or any other physical or natural event not under your control.

#### **Pollution**

based upon or arising from any discharge, dispersal, seepage, migration, release or escape of "pollutants" anywhere at any time, including any loss, cost or expense arising out of any request, demand, order or statutory or regulatory requirement that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants," or any loss, cost or expense arising out of any claim or "suit" by or on behalf of a governmental authority for damages concerning testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of "pollutants."

#### **Price or Outcome Guarantees**

based upon or arising out of any representations or guarantees made with respect to contract price or cost guaranty, return on investment, cost savings, profitability, or time of delivery that commit you to a standard of care higher than the applicable industry standard.

#### **Related Entities Claims**

brought or maintained by or on behalf of:

- any “insured”, or any associated entity of an “insured”; except, however, an “additional insured” will not be considered an “insured” if the entity makes a “claim” solely in its capacity as a client of the “named insured”.
- any person who, at the time of the “wrongful act” giving rise to the “claim”, is a family member;
- any entity operated or controlled by any “insured”, or any employee, partner or trustee of any “insured”; or
- any person or entity in which any “insured” has a direct or indirect financial interest or is advised or induced by the “insured” to invest in or lend money to any person, firm, company or entity referred to above or to the “insured”.

#### **Securities Law**

based upon or arising from the actual or alleged purchase, sale, offer or solicitation of an offer to purchase or sell securities, or the violation of any securities law, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or any state “Blue Sky Laws” or any similar federal, state, local or foreign law.

#### **Unauthorized Communications**

based upon or arising from the unauthorized or unlawful collection, recording, disclosure, dissemination, or communication by an “insured” of material or information to third parties in any form.

#### **War**

based upon or arising from strike or similar labor action, war, invasion, act of foreign enemy or warlike operation (whether declared or not), civil war, or mutiny.

### **CONDITIONS**

#### **Assignment**

Your rights and duties under this policy may not be transferred or assigned without our written consent. If you die or are legally declared bankrupt, your rights and duties will be transferred to your legal representative, but only while acting within the scope of duties as your legal representative.

#### **Assistance and Cooperation**

You must cooperate with us and provide us all information which we reasonably request, including, but not limited to, attending hearings, depositions, and trials and assistance in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and conducting the defense of any “claim” covered by this policy. You must do nothing that may prejudice our position.

No “insured” will, except at that “insured’s” own cost, voluntarily make a payment, settle any “claim,” assume any obligation, or incur any expense without our consent.

#### **Authorization; Changes to Policy**

All “insureds” agree that the “named insured” first listed on the Declarations is authorized to act on behalf of all “insureds” with respect to the giving and receiving of any notice provide for in this policy, including notices of cancellation and requests to purchase an Extended Reporting Period, the payment of premiums and the receipt of any return premiums that may become due, and the agreement to and acceptance of endorsements and other changes to the policy.

By acceptance of this policy, all “insureds” and the insurer agree that this policy and any written endorsements attached hereto constitute the entire agreement between the parties. This policy can be changed only by endorsement to this policy.

## **Cancellation and Nonrenewal**

### **1. Cancellation**

- a. The “named insured” may cancel this policy by sending us notice of cancellation at the address on the Declarations. Such notice must indicate the effective date of cancellation.
- b. We may cancel this policy for any reason allowable by state law. If we cancel, we will provide notice of cancellation to the “named insured” at the address stated on the Declarations. If we cancel because of non-payment of premium, we will notify the “named insured” at least ten days before the effective date of cancellation when the cancellation is to take effect. If we cancel for any other reason, we will notify the “named insured” at least 60 days before the effective date of cancellation when the cancellation is to take effect.
- c. We will send the “named insured” any applicable refund of premium at the “named insured’s” address on the Declarations as soon as practicable thereafter. We will retain a *pro rata* portion of the premium reflecting the period of coverage prior to the effective date of cancellation, minus any applicable minimum premium or short rate cancellation penalty stated on the Declarations. Cancellation will be effective even if no premium refund is available.

### **2. Nonrenewal**

The “named insured” may decide not to renew this policy by notifying us in writing any time before the policy renewal effective date. If we decide not to renew this policy, we will notify the “named insured” of our decision with 60 days prior notice, or a minimum of the state-required length of time for notice, whichever is greater. At policy expiration, the “named insured” may either purchase an Optional Extended Reporting Period, if applicable, or purchase a new policy.

If notice of non-renewal is mailed, proof of mailing will be sufficient proof of notice.

## **Coverage Territory and Currency**

This policy provides coverage for “claims” made in the United States based upon or arising out of “wrongful acts” occurring anywhere in the world.

All premiums, limits, retentions, loss and other amounts under this policy are payable in United States dollars. If any covered amounts are expressed in any other currency, payment of such amounts will be made at the prevailing rate of exchange on the date our obligation to pay such loss is established (as published in *The Wall Street Journal*).

## **Legal Actions Against Us**

No person or entity has a right under this policy to join us as a party or otherwise bring us into a suit seeking “damages” from you or to sue us under this policy unless all its terms have been fully complied with. A person or entity may sue us to recover on an agreed settlement or on a final judgment against you, but we will not be liable for “damages” that are not payable under this policy or that are in excess of the applicable Limits of Insurance of this policy.

## **Merger, Acquisition, and Other Changes in Ownership**

### **1. Merger with another company**

If during the policy period, another person or entity gains more than 50% financial control or management control over the “named insured,” then coverage will continue under this policy until it expires or is otherwise terminated, but only for those “wrongful acts” first occurring prior to the effective date of such transaction. The entire premium for this policy shall be deemed earned as of the date of such transaction.

## **2. Your subsidiaries; new acquisitions**

If the “named insured” first listed on the Declarations acquires a new “subsidiary” during the policy period, this policy will cover the “subsidiary” for the same “professional services” stated in the Declarations that are first performed by the “subsidiary” for a 90-day period beginning on the acquisition date at no additional premium. However, in order for coverage to continue to apply to the new “subsidiary,” the “named insured” must request that we add the “subsidiary” to the policy by endorsement, provide us with the information necessary to add the new entity and coverage for any additional or new services to be performed, and pay any additional required premium, before the 90-day period ends.

In all cases, coverage for all “subsidiaries” under this policy does not apply to activities performed prior to the date an entity becomes your “subsidiary” nor to activities performed after the date an entity is no longer considered your “subsidiary.”

### **Other Insurance**

All amounts payable under this policy will be specifically excess of, and will not contribute with, any other valid and collectible insurance. This policy will not be subject to the terms of any other insurance policy.

### **Representations**

By accepting this policy, you agree that the statements you provided in connection with the underwriting of this policy are representations made to us with the intention that we rely upon their accuracy and thoroughness, and you acknowledge that we have issued this policy in reliance upon your representations.

This policy can be cancelled in the case of fraud or misrepresentation or concealment of a material fact relating to your application or to a “claim.” We also reserve the ability to decline coverage for any “claim” involving any material facts that were misrepresented by you, whether at the time of notice of such “claim” or in your application to us for this insurance. Nothing in this provision affects any other remedies we may have available to us under applicable state law, including the right to seek rescission or avoidance of the policy.

### **Severability**

As respects the application for this policy and the application of policy provisions where the “insured’s” knowledge or conduct is relevant:

- the conduct or knowledge of a natural person “insured” will not be imputed to any other natural person “insured”;
- the conduct or knowledge of a natural person “insured” who is an owner, principal, or partner of an “insured” organization, or who is the person who signed the application for this insurance, will be imputed to the organization.

### **Subrogation and Transfer of Rights of Recovery**

If we make any payment under this policy, we shall be subrogated to all your rights against any person or entity, including the right to participate with you in the exercise of all your rights of recovery. You shall deliver instruments and papers to us and do whatever else is necessary to secure such rights.

## DEFINITIONS

"Additional insured" means any person or entity for whom the "named insured" is contracted in writing to provide "professional services," if and to the extent such contract requires the "named insured" to add the client as an "additional insured," but only for "claims" based upon or arising from the named insured's "wrongful acts" in the performance of the contracted "professional services," and provided that such contractual requirement was in force before the alleged "wrongful act" first occurred.

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. Bodily injury also means mental illness, mental anguish, emotional distress, or shock whether or not resulting from physical injury, sickness, or disease.

"Claim" means:

- a written demand against an "insured" for monetary or non-monetary (including injunctive) relief, including a request to toll any statute of limitations, or to engage in arbitration or mediation, which shall be deemed first made upon receipt by the "insured" of such demand; or
- a civil proceeding against an "insured" for monetary or non-monetary (including injunctive) relief which shall be deemed first made upon the service of a complaint or similar pleading upon the "insured".

"Damages" mean a monetary judgment, award or settlement, including punitive and exemplary damages that an "insured" becomes legally obligated to pay because of a "claim" (but only to the extent insurable by law). "Damages" includes pre-judgment and post-judgment interest awarded against you on that part of the judgment we pay. "Damages" does not include:

- taxes, fines or penalties;
- costs incurred to comply with any order for non-monetary relief (including injunctive relief) or with any agreement to provide such relief;
- costs incurred to correct, complete or re-perform any "professional services;"
- any amount which constitutes disgorgement, restitution, the return of fees, accounting of profits, commissions, charges or other compensation paid to an "insured;"
- claimant attorney fees, costs or expenses;
- liquidated damages in excess of the "insured's" liability; or
- any amount not insurable under applicable state law.

"Defense costs" means those reasonable and necessary fees, costs and expenses incurred by us or by the "insured" at our request in the defense or investigation of any "claim", including the costs of an appeal bond, attachment bond or similar bond (although we are not obligated to apply for or furnish such bond). "Defense costs" do not include any salaries, wages, overhead, benefits, benefit expenses or internal charges associated with any "insured", or any fees, costs or expenses incurred by an "insured" prior to the time that the "claim" is first made.

"Insured" means:

- the "named insured";
- any officer, director, trustee, or employee (including leased or temporary) of the "named insured";
- any principal of the "named insured" which is a partnership, limited liability partnership or limited liability company, when acting in their capacity as such;
- any "additional insured"; and

- any independent contractor of the “named insured”, but only while acting within the scope of their duties performed on behalf of “named insured”.

In the event of the death, disability, bankruptcy, or financial insolvency of a natural person “insured,” “insured” will also include such “insured’s” heirs, executors, administrators, trustees in bankruptcy, assignees or legal representatives, legal spouse or legal domestic partner if a “claim” is made against any of the foregoing persons or entities in their capacity as such.

“Named insured” means the person or organization listed as such in Item 1. of the Declarations and those “subsidiaries” listed by endorsement.

“Personal injury” means any of the following conduct:

- False arrest, detention or imprisonment;
- Malicious prosecution;
- The 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;
- Oral, written, or electronic publication of material that slanders or libels a person or entity or disparages a person's or entity's goods, products, or services, provided that the “claim” is made by a person or entity that claims to have been slandered or libeled, or whose goods, products, or services have allegedly been disparaged;
- Oral, written, or electronic publication of material that appropriates a person's likeness, unreasonably places a person in false light, or gives unreasonable publicity to a person's private life.

“Policy period” means the time period beginning on the inception date stated on the Declarations and ending on the earlier of the expiration date stated on the Declarations or the effective date of policy termination.

“Pollutants” means any solid, liquid, biological, gaseous, radiological or thermal contaminant or irritant, including, but not limited to, chemicals, acids, alkalis, soot, fumes, germs, spores, fungi, fibers, vapor, dust, mold, smoke, waste, and any nuclear materials. Waste includes materials to be recycled, reconditioned or reclaimed.

“Professional services” means those services as set forth in the Declarations, or as amended by endorsement to this policy, that are performed by or on behalf of the “named insured” for a fee or other compensation for a client. “Professional services” does not include the “insured’s” activities conducted in the ordinary course of business operations or solely for the purpose of promoting or advertising the “insured’s” own goods and services.

“Property damage” means damage to, loss of use of or destruction of any tangible property.

“Related claim” means any “claim” that is based upon or arises from the same “wrongful act” or “related wrongful act.” All “related claims” will be deemed a single “claim” first made and reported during the “policy period” in which the first such “related claim” was made and reported.

“Related wrongful act” means all “wrongful acts” logically or causally connected by any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes. All “related wrongful acts” will be deemed to be one “wrongful act” under this policy.

“Retroactive date” means the date shown as such in the Declarations.

“Subsidiary” means an entity in which the “named insured” first listed on the Declarations owns an interest representing more than 50% of the financial assets, or more than 50% of the power to manage or control such entity, including the power to elect, appoint, or designate a majority of the board of directors or equivalent executives for such entity.

“Wrongful act” means any negligent act, error, or omission, or “personal injury” in the performance or failure to perform “professional services.”

SAMPLE