



Miscellaneous Professional Liability Insurance Policy

THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES, SETTLEMENTS OR JUDGEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. PLEASE READ THE ENTIRE POLICY CAREFULLY.

PART I INTRODUCTION

The words **We**, **Us** and **Our** refer to the Insurer named on the Declarations Page.

The words **You** and **Your** refer individually and collectively to;

- A. The **Named Insured** as defined in Part III;
- B. The **Named Insured's** stockholders for their liability as stockholders;
- C. The **Named Insured's** partners, officers, directors and employees, but only for **Wrongful Acts** within the scope of their duties in such capacity for the **Named Insured**;
- D. Former partners, officers, directors and employees of the **Named Insured**, but only for **Wrongful Acts** both:
 1. Within the scope of their duties in such capacity for the **Named Insured**; and
 2. Made while they were the **Named Insured's** partner, officer, director or employee; and
- E. In the event of death, incompetency, insolvency or bankruptcy of any of **You**, **Your** legal representative but only for **Wrongful Acts** within the scope of their duties for the **Named Insured**.

Other words or phrases that are bold-faced have special meaning. Refer to Part III.

PART II INSURING AGREEMENTS AND EXCLUSIONS

A. What We Insure

We will pay on **Your** behalf those sums in excess of the Retention and up to the applicable **Limit of Liability** stated in Item 3. of the Declarations Page that **You** become legally obligated to pay as **Damages** or **Defense Costs** because of **Claims** as a result of a **Wrongful Act** in performing **Insured Services** for others. **We** will have the right and duty to appoint an attorney and defend any **Claim** to

which this insurance applies, even if the allegations are groundless, false or fraudulent. But:

1. **We** may, at **Our** discretion, investigate and settle any **Claim**, and
2. **Our** right and duty to defend and pay on **Your** behalf ends when **We** have used up the applicable **Limit of Liability** In payment of **Damages** or **Defense Costs**.

B. What We Do Not Insure — Exclusions

1. **We** are not obligated to pay **Damages** or **Defense Costs** or defend **Claims** for, based on, or arising directly or indirectly out of, or alleging:
 - a. **Bodily Injury** or **Property Damage**;
 - b. Infringement of:
 - (1) Copyright;
 - (2) Trademark, trade dress, trade name, service mark, service name, title or slogan; or
 - (3) Patent;
 - c. Unfair competition, restraint of trade or any other violation of antitrust laws;
 - d. Discrimination of any kind, including but not limited to, race, creed, religion, age, handicap, sex, marital status or financial condition;
 - e. Refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or any other employment-related practices, policies, acts or omissions;
 - f. Gain, profit or advantage to which any of **You** are not legally entitled;
 - g. Assumption of liability by any of **You** under any contract or agreement. This exclusion does not apply to liability **You** would have incurred in the absence of such contract or agreement;
 - h. Acts by any of **You** related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provisions of the Employee Retirement Income Security Act of 1974, or any amendment, regulation, ruling or order issued pursuant to the Act or any similar provisions of any federal, state or local law;
 - i. Violation of:
 - (1) The Security Act of 1933 as amended;
 - (2) The Securities Exchange Act of 1934 as amended;

- (3) Any state blue sky or securities law;
 - (4) Any similar state or federal law; or
 - (5) Any order, ruling or regulation issued pursuant to the above laws;
- j. Insolvency or bankruptcy of:
- (1) Any of **You**; or
 - (2) Any enterprise in which any of **You** own an interest;
- k. The actual or threatened discharge, dispersal or release of any Pollutant; or the creation of an injurious condition Involving any Pollutant; or the existence of any Pollutant on any property; or the cleanup, removal, testing, monitoring, containment, treatment, detoxification or neutralization of any Pollutant. This exclusion is effective whether or not the pollution was sudden, accidental, gradual, intended, expected or preventable or whether or not any of **You** caused or contributed to the pollution;

“Pollutant” means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to:

- (1) Smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, mold or asbestos;
- (2) Hazardous, toxic or radioactive matter or nuclear radiation;
- (3) Waste, which includes material to be recycled, reconditioned or reclaimed; or
- (4) Any other pollutant as defined by applicable federal, state or local statutes, regulations, rulings or ordinances.

2. We are not obligated to pay **Damages** or **Defense Costs** or defend **Claims** made by:

- a. Any enterprise:
- (1) In which any of **You**, individually or collectively, own an Interest greater than 10% of the total ownership;
 - (2) In which any of **You** is a partner; or
 - (3) Which is a parent, affiliate or subsidiary company of any of **You**;
- b. Any enterprise directly or indirectly controlled, operated or managed by an enterprise described in Part II.B.2.a. above;

- c. Any of **You**; or
 - d. Any present, former or prospective employees, officers or directors of any of **You** when the **Claim** is in any way related to the present, former or prospective employment relations between the Claimant and any of **You**.
3. **We** are not obligated to pay **Damages** or **Defense Costs** or defend **Claims** for;
- a. The breach of express warranties, guarantees or contracts; or
 - b. An act or omission that is in fact dishonest, fraudulent, criminal, malicious or was intentionally committed while knowing it was wrongful.

This Exclusion 3.b. does not apply to **Defense Costs** **We** incur prior to establishment that an act or omission was in fact dishonest, fraudulent, or intentionally malicious or intentionally committed while knowing it was wrongful. However, upon that establishment **We** will have the right to seek recovery of the **Defense Costs** Incurred from the party (ies) found to have committed the acts or omissions described above.

C. Where and When We Insure

1. **Where We Insure**

The territory of this insurance is universal. If **Damages** or **Defense Costs** are paid in a currency other than United States of America dollars, then the payment under this Policy will be considered to have been made in United States of America dollars at the conversion rate which was used for the payment.

2. **When We Insure**

a. **Claims First Made**

This Insurance applies when a written **Claim** is first made against any of **You** during the **Policy Period**. To be covered, the **Claim** must also arise from a **Wrongful Act** committed during the **Policy Period**. A **Claim** for a **Wrongful Act** committed prior to the **Policy Period** may also be covered if it meets the conditions described in Part II.C.2.b below.

We will consider a **Claim** to be first made against **You** when a written **Claim** is first received by any of **You**.

This insurance also applies to **Claims** under the following conditions:

b. **Prior Wrongful Acts**

We will cover a written **Claim** first made against any of **You** arising from a **Wrongful Act** committed between the **Retroactive Date** and the Effective Date of this Policy, but only if all of the following conditions are met:

- (1) The written **Claim** is first made against any of **You** during the **Policy Period**. **We** will consider a **Claim** to be first made against **You** when a written **Claim** is received by **You**;
- (2) None of **You** knew, prior to the Effective Date of the first of one or more miscellaneous errors and omissions policies issued to **You** by **Us** or **Our** affiliates which together provided continuous coverage until the Effective Date of this Policy, of a circumstance that could reasonably be expected to lead to the **Claim**; and
- (3) There is no other valid and collectible errors and omissions insurance for the **Claim**.

c. **Reported Wrongful Acts**

We will cover a written **Claim** first made against any of **You** after the end of the **Policy Period**, but only if all of the following conditions are met:

- (1) The **Wrongful Act** is committed between the **Retroactive Date** and the end of the **Policy Period**;
- (2) **We** receive written notice from **You** during the **Policy Period** of the **Wrongful Act**. The notice must include all of the following information:
 - (a) The names of those persons or organizations involved in the **Wrongful Act**;
 - (b) The specific person or organization likely to make the **Claim**;
 - (c) A description of the time, place and nature of the **Wrongful Act**; and
 - (d) A description of the potential **Damages**;
- (3) None of **You** knew, prior to the Effective Date of the first of one or more miscellaneous errors and omissions policies issued to **You** by **Us** or **Our** affiliates which together provided continuous coverage until the Effective Date of this Policy, of a circumstance that could reasonably be expected to lead to the **Claim**; and

- (4) There are no other valid and collectible errors and omissions insurance for the **Claim**.

d. Extended Reporting Period

In case of cancellation or non-renewal of this Policy by **Us**, for reasons other than the **Named Insured's** non-payment of premium or Deductible or non-compliance with the terms and conditions of this Policy, **You** shall have the right to an Extended Reporting Period as follows:

(1) Automatic Extended Reporting Period

If this Policy has been in force for at least six (6) months, or if it has been in force for fewer than six (6) months and **We** consent, **You** shall have the right to a period of sixty (60) days following the effective date of such cancellation or non-renewal (referred to as the Automatic Extended Reporting Period), in which to give **Us** notice of **Claims** first made against **You** during said sixty (60) days period for any **Wrongful Act** committed prior to the effective date of such cancellation or non-renewal and otherwise covered by this Policy.

(2) Optional Extended Reporting Period

If this Policy has been in force for at least six (6) months, or if it has been in force for fewer than six (6) months and **We** consent, **You** shall have the right upon payment of an additional premium to have issued an endorsement providing an Extended Reporting Period covering **Claims** first made and reported to **Us** during the Extended Reporting Period for **Wrongful Acts** committed prior to the effective date of such cancellation or non-renewal and otherwise covered by this Policy. The additional premium for the Extended Reporting Period shall be 65% of the annual premium set forth in the Declarations for the twelve (12) month Policy Period. **You** must notify **Us** in writing of its intent to purchase an Extended Reporting Period and must pay the additional premium set forth above no later than 60 days after the effective date of such cancellation or non-renewal.

The duration of the Optional Extended Reporting Period shall be twelve (12) from the effective date of cancellation or non-renewal of the Policy.

All premiums paid with respect to the Optional Extended Reporting Period shall be deemed fully earned as of the first day of the Extended Reporting Period. For the purpose of this clause, any change in the premium terms or terms on renewal shall not constitute a refusal to renew.

- (3) The **Limit of Liability** in respect to **Claims** made during any Extended Reporting Period will be part of, and not in addition to the **Limit of Liability** for all **Claims** made during the **Policy Period**.

e. Multiple Claims

All **Claims** arising from the same **Wrongful Act** will be deemed to have been made on the earlier of the following times:

- (1) The date the first of those **Claims** is made against any of **You**; or
- (2) The first date **We** receive **Your** written notice of the **Wrongful Act**.

The provisions of the Policy in effect on that date will apply.

D. Limit of Liability, Total Limit of Liability, Retention and Reimbursement Limit of Liability

1. Limit of Liability

a. Each **Wrongful Act**

The Each **Wrongful Act Limit of Liability** stated in Item 3 of the Declarations Page is the most **We** will pay for **Damages** and **Defense Costs** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period arising from one **Wrongful Act**, no matter how many:

- (1) Of **You** this Policy covers;
- (2) **Claims** are made; or
- (3) Persons or organizations make **Claims**.

2. Total Limit of Liability

The Total **Limit of Liability** stated in Item 3 of the Declarations Page is the most **We** will pay for **Damages** and **Defense Costs** combined for the total of all **Claims** made during the **Policy Period** and any Extended Reporting Period, no matter how many:

- a. Of **You** this Policy covers;
- b. **Claims** are made;
- c. Persons or organizations make **Claims**; or
- d. **Wrongful Acts** are committed.

3. Retention

A separate Retention applies to each **Wrongful Act**. The Retention applies to **Damages** and **Defense Costs** combined, and **Our** obligation to pay **Damages** and **Defense Costs** applies only to the amount of **Damages** and **Defense Costs** in excess of the Retention. The **Limit of Liability** will not be reduced by the application of the Retention. The amount of **Your** Retention is stated In Item 4. of the Declarations Page.

4. **Reimbursement**

If, at **Our** option, **We** have paid any amounts for **Damages** or **Defense Costs** in excess of the applicable **Limit of Liability** or if **We** have paid part or all of any Retention, the **Named Insured** shall be liable to reimburse such amounts to **Us** upon demand.

PART III. DEFINITIONS USED IN THIS POLICY

A. ***Application or Renewal Application*** means all the following:

1. The **Named Insured's** signed Miscellaneous Professional Liability Insurance Policy Application; and Supplemental Applications
2. The **Named Insured's** signed Miscellaneous Professional Liability Insurance Renewal Application, if this is a renewal of a Policy issued by **Us**; and
3. All attachments to the **Application or Renewal Application** and any other information furnished to **Us** for the purpose of applying for the insurance. All such attachments and information will be kept on file by **Us** and deemed attached to and a part of the Policy as if physically attached to it.

B. ***Bodily Injury*** means physical injury, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily Injury** also means disability, emotional distress, mental anguish, mental injury, shock or fright resulting in or from **Bodily Injury**.

C. ***Claim*** means a written demand or assertion of a legal right seeking **Damages** made against any of **You**.

D. ***Damages*** means money judgment, award or settlement, except those for which insurance is prohibited by law. **Damages** does not include criminal or civil fines or penalties or **Your** taxes; punitive or exemplary damages, the multiplied portion of any multiplied damage award; or fees, deposits, commissions or charges for goods or services.

E. ***Defense Costs*** means expenses incurred by **Us** in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**.

Defense Costs include:

1. Expenses **We** incur, other than salary or adjustment expenses of **Our**

regular employees or officials or fees and expenses of Independent Adjusters;

2. Reasonable and necessary attorneys fees;
3. Costs taxed against **You** in any suit defended by **Us** and to which this insurance applies;
4. Prejudgment interest and the interest on the full amount of any judgment that accrues after entry of the judgment and before **We** have paid, offered to pay or deposited in court the part of the judgment that is within the applicable **Limit of Liability**;
5. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the applicable **Limit of Liability**. **We** do not have to furnish these bonds; and
6. Reasonable expenses incurred by **You** at **Our** request other than:
 - a. Loss of earnings; and
 - b. Salaries or other compensation paid to any of **You**.

F. **Insured Services** means those services stated in Item 8 of the Declarations Page.

G. **Named Insured** means:

1. The person or entity listed in Item 1 of the Declarations Page; and
2. Any entity which is created or acquired during the **Policy Period** and which after the creation or acquisition is wholly-owned by another **Named Insured**. This provision applies only:
 - a. To **Insured Services** performed on or after the date of creation or acquisition of the new **Named Insured**;
 - b. If **You** advise **Us** within 30 days of the creation or acquisition and provide reasonable information for **Us** to evaluate for material changes in conditions which may affect insurance afforded by the Policy; and
 - c. If **You** agree to pay any additional premium **We** believe is reasonable and necessary as a result of the material changes.

The First **Named Insured** is the **Named Insured** first listed on the Declarations Page.

H. **Policy Period** means the period of time stated in Item 2 of the Declarations Page, or any shorter period resulting from Policy cancellation.

- I. **Property Damage** means:
1. Physical injury to tangible property, including all resulting loss of use of that property; or
 2. Loss of use of tangible property that is not physically injured.
- J. **Retroactive Date** means the date, if any, stated In Item 7 of the Declarations Page.
- K. **Wrongful Act** means the following conduct or alleged conduct by **You** or any person or organization for whom **You** are legally liable in the performing of **Insured Services**:
1. A negligent act, error or omission;
 2. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 3. Oral or written publication of material that violates a person's right to privacy;
 4. False arrest, detention or imprisonment;
 5. Wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies; or
 6. Malicious prosecution.
- All **Wrongful Acts** that:
1. Take place between the **Retroactive Date** and the end of the **Policy Period** of the last Policy **We** issue to **You**, and
 2. Are logically or causally connected by common facts, circumstances, situations, transactions, events and/or decisions
- will be treated under this Policy as one **Wrongful Act**.

PART IV. GENERAL CONDITIONS —These conditions apply to the entire Policy.

A. **Special Rights and Duties of the First Named Insured**

The First **Named Insured** is responsible for the payment of all premiums and Retentions. The First **Named Insured** has exclusive authority to act on behalf of all of **You** with respect to matters relating to this Policy, including:

1. Giving and receiving notice of cancellation and nonrenewal;
2. Receiving refunds;
3. Agreeing to any changes to this Policy; and

4. Purchasing an Extended Reporting Period.

B. What to Do if You Have a Claim or Suit

1. If there is a **Claim** or a circumstance likely to result in a **Claim**, **You** must do the following:

a. Notify **Us** in writing as soon as practicable but no later than 15 days after the expiration of this Policy; this notice must:

(1) Be sent to **Us** at:

Darwin Professional Underwriters, Inc.
PO Box 767668
Roswell, GA 30076

and

(2) Contain details that identify **You**, the Claimant and also reasonably obtainable information concerning the time, place and other details of the **Wrongful Act** and **Claim**;

b. Immediately send **Us**, at the address specified in 1.a. (1) above, copies of all demands, notices, summonses or legal papers received in connection with the **Claim**;

c. Authorize **Us** to obtain records and other information;

d. Cooperate with and assist **Us** in the investigation, settlement and defense of the **Claim**; and

e. Assist **Us**, upon **Our** request, in enforcing any rights of contribution or indemnity against another who may be liable to any of **You**.

2. None of **You** will, except at **Your** own cost, voluntarily make a payment, admit liability, assume any obligation or incur any expense without **Our** prior written consent.

C. Legal Action Against Us

No person or organization has a right under this insurance:

1. To join **Us** as a party or otherwise bring **Us** into a suit asking for **Damages** from any of **You**; or

2. To sue **Us** on this insurance unless all of the Policy's provisions have been fully complied with.

D. Bankruptcy

The bankruptcy or insolvency of **You** or **Your** estate will not relieve **Us** of **Our** obligation under this insurance. However, this insurance will not apply to liability directly or indirectly due to such bankruptcy, insolvency, receivership or subsequent liquidation.

E. Other Insurance

If other valid and collectible insurance is available to any of **You** for any **Claim** **We** cover, this insurance is excess over such other insurance, except when the other insurance is purchased by the **Named Insured** specifically to apply in excess of this insurance and no other insurance exists.

F. Transfer of Rights of Recovery Against Others to Us

You and **We** may have rights to recover all or part of any payment **You** or **We** make under this insurance. If so, those rights are transferred to **Us**.

You must do nothing to impair such rights. At **Our** request, **You** will bring suit or transfer those rights to **Us** and help **Us** enforce them. Any recoveries shall be applied as follows:

1. First, to **Us** up to the amount of **Our** payment for **Damages** and **Defense Costs**;
2. Then, to the First **Named Insured** as recovery of Retention amounts paid as **Damages** and **Defense Costs**.

G. Change in Control; Mergers and Acquisitions

If, during the **Policy Period**, any of the following events occur:

1. 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;
2. The appointment of a receiver, conservator, trustee, liquidator or rehabilitator, or any similar official, for or with respect to any **Named Insured**;

Coverage under this Policy will continue in full force and effect with respect to **Claims** for **Wrongful Acts** committed before such event, but coverage will cease with respect to **Claims** for **Wrongful Acts** committed after such event. After any such event, this Policy may not be canceled by the **Named Insured** and the entire premium for this Policy will be deemed fully earned.

H. Transfer of Your Rights and Duties Under the Policy

Your rights and duties under this Policy may not be transferred without **Our** written consent.

I. Cancellation; No Obligation to Renew

1. **You** may cancel or non-renew this Policy by mailing or delivering to **Us** advance written notice of cancellation.
2. **We** may cancel this Policy for nonpayment of premium by mailing or delivering to **You** written notice of cancellation or non-renewal at least 10 days before the effective date of the cancellation.
3. **We** will mail or deliver its notice to **Your** last known mailing address. Notice of cancellation will state the effective date of the cancellation. The **Policy Period** will end on that date. If this Policy is cancelled, **We** will send **You** any premium refund due. Earned premium will be computed in accordance with the customary short rate table and procedure. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. **We** will not be obligated or required to renew this Policy. Any offer of renewal on terms involving a change of retention, premium, **limit of liability**, or other terms and conditions shall not constitute, nor be construed as, a refusal by **Us** to renew this Policy.

J. Representations

By accepting this Policy, **You** agree:

1. The statements in the **Application or Renewal Application** for this insurance furnished to **Us** are accurate and complete;
2. Those statements furnished to **Us** are representations the **Named Insured** made to **Us** on behalf of all of **You**;
3. Those representations are a material inducement to **Us** to issue this Policy;
4. **We** have issued this Policy in reliance upon those representations; and
5. If this Policy is a renewal of a Policy issued by **Us**, **Your** representations include the representations made in **Your** original signed Miscellaneous Professional Liability Insurance Policy Application, but only as of the Effective Date of the original Policy issued by **Us**. The representations **You** make on **Your** Miscellaneous Professional Liability Insurance Renewal Application(s) apply as of the Effective Date of **Your** renewal Policy(ies).

IN WITNESS WHEREOF, the Insurer has caused this Policy to be executed and attested, but this Policy will not be valid unless countersigned by a duly authorized representative of the Insurer, to the extent required by applicable law.