Sexual Abuse and Misconduct Liability Coverage Part

I. What is covered

We will pay up to the coverage part limit for damages and claim expenses in excess of the retention for covered claims against you for or alleging sexual abuse and misconduct arising out of your professional services or business operations performed on or after the retroactive date, provided the claim is first made against you during the policy period and is reported to us in accordance with Section V. Your obligations.

II. Coverage enhancements

We will also make the following payments:

Subpoena assistance

A. We will pay up to the limit stated in the Declarations for the reasonable and necessary fees, costs, and expenses incurred with our prior consent to respond to a subpoena arising from sexual abuse and misconduct, provided you first receive notice of such subpoena during the policy period, it relates to your professional services or business operations performed on or after the retroactive date, and it is reported to us in accordance with Section V. Your obligations.

No retention will apply to amounts we pay under this subsection A, and such amounts will be in addition to, and not part of, the coverage part limit.

Supplemental payments

B. We will pay reasonable expenses, including loss of wages and a $250 travel per diem, incurred by you if we require you to attend depositions, arbitration proceedings, or trials in connection with the defense of a covered claim, but we will not pay more than an aggregate of $10,000 per claim for such expenses, regardless of the number of insureds.

No retention will apply to amounts we pay under this subsection B, and such amounts will be in addition to, and not part of, the coverage part limit.

III. Who is an insured

For purposes of this Coverage Part, you, your, or insured means a named insured, employee, volunteer, or independent contractor, as defined below:

Named insured

means the individual, corporation, partnership, limited liability company, limited partnership, or other entity identified in Item 1 of the Declarations.

Employee

means any past, present, or future:

1. person employed by the named insured as a permanent, part-time, seasonal, leased, or temporary employee; or
2. partner, director, officer, or board member (or equivalent position) of the named insured, but only while in the course of their performance of professional services or other duties related to the conduct of the named insured's business on behalf of or at the direction of the named insured.

Volunteer

means a person who is not an employee, and who donates his or her work and is not paid a fee, salary, or other compensation by you or anyone else for their work, but only while in the course of their performance of professional services or other duties related to the conduct of the named insured's business on behalf of or at the direction of the named insured.

Independent contractor

means any person or entity contracted by the named insured to perform professional services or other duties related to the conduct of the named insured's business, but only while in the course of their performance of professional services or other duties related to the conduct of the named insured's business on behalf of or at the direction of the named insured.
### IV. Defense and settlement of claims

**Defense**

We have the right and duty to defend any covered claim, even if such claim is groundless, false, or fraudulent.

We have the right to select and appoint counsel to defend you against a covered claim. You may request in writing that we appoint defense counsel of your own choice, but whether to grant or deny such a request will be at our sole discretion.

**Settlement**

We have the right to solicit and negotiate settlement of any claim but will not enter into a settlement without your consent, which you agree not to withhold unreasonably. If you withhold consent to a settlement recommended by us and acceptable to the party who made the claim, the most we will pay for that claim is the sum of:

1. the amount of our recommended settlement;
2. claim expenses incurred up to the date of our recommendation;
3. 50% of all claim expenses incurred after our recommendation; and
4. 50% of all damages in excess of the settlement amount recommended by us.

### V. Your obligations

**Notifying us of claims and coverage enhancements**

You must give written notice to us of any claim, or any other matter covered under Section II. Coverage enhancements, as soon as possible, but in any event, no later than 60 days after the end of the policy period.

All such notifications must be in writing and include a copy of the claim, and must be submitted to us via the designated email address or mailing address identified in Item 6 of the Declarations.

**Notifying us of potential claims**

You have the option of notifying us of potential claims that may lead to a covered claim against you.

In order to do so, you must give written notice to us as soon as possible and within the policy period, and the notice must, to the greatest extent possible, identify the details of the potential claim, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief, and any additional information about the potential claim we may reasonably request.

The benefit to you of notifying us of a potential claim is that if an actual claim arises from the same circumstances as the properly notified potential claim, then we will treat that claim as if it had first been made against you on the date you properly notified us of it as a potential claim, even if that claim is first made against you after the policy period has expired.

All potential claim notifications must be in writing and submitted to us via the designated email address or mailing address identified in Item 6 of the Declarations.

**Retention**

Our obligation to pay damages and claim expenses under this Coverage Part is in excess of the retention, which you must pay in connection with each covered claim.

### VI. Exclusions – What is not covered

We will have no obligation to pay any sums under this Coverage Part, including any damages or claim expenses, for any claim:

**Antitrust/deceptive trade practices**

1. based upon or arising out of any actual or alleged:
   a. false, deceptive, or unfair trade practices;
Sexual Abuse and Misconduct Liability Coverage Part

b. unfair competition, impairment of competition, restraint of trade, or antitrust violations;

c. violation of the Sherman Anti-Trust Act, the Clayton Act, the Robinson-Patman Act, all including as may be amended, or any similar federal, state, or local statutes, rules, or regulations in or outside the U.S.; or

d. deceptive or misleading advertising.

Bodily injury/property damage 2. based upon or arising out of any actual or alleged bodily injury or property damage.

Breach of contract 3. based upon or arising out of any actual or alleged breach of any contract or agreement, or any liability of others that you assume under any contract or agreement; however, this exclusion will not apply to any liability you would have in the absence of the contract or agreement.

Breach of warranty/guarantee 4. based upon or arising out of any actual or alleged breach of express warranties or guarantees, except any warranty or guarantee to perform your professional services consistent with applicable industry standards or with reasonable skill or care. This exclusion will not apply to any liability you would have in the absence of the warranties or guarantees.

Criminal proceedings 5. brought in the form of a criminal proceeding, including but not limited to a criminal investigation, grand jury proceeding, or criminal action.

Employment related liability 6. based upon or arising out of any actual or alleged:

a. obligation under any workers’ compensation, unemployment compensation, employer’s liability, fair labor standards, labor relations, wage and hour, or disability benefit law, including any similar provisions of any federal, state, or local statutory or common law;

b. liability or breach of any duty or obligation owed by you as an employer or prospective employer; or

c. harassment, wrongful termination, retaliation, or discrimination, including but not limited to adverse or disparate impact.

Excluded costs and damages 7. to the extent it seeks or includes:

a. fines, penalties, taxes, or sanctions against you;

b. overhead costs, general business expenses, salaries, or wages incurred by you;

c. the return, reduction, or restitution of fees, commissions, profits, or charges for goods provided or services rendered;

d. liquidated or multiple damages;

e. restitution, disgorgement of profits, any advantage to which you were not legally entitled, or unjust enrichment; or

f. the cost of complying with injunctive relief.

Excluded statutory violations 8. based upon or arising out of any actual or alleged violation of the following laws:

a. the Securities Act of 1933;

b. the Securities Exchange Act of 1934;

c. any state blue sky or securities laws;

d. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq.; or

e. the Employee Retirement Income Security Act of 1974,

all including as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law and any rules or regulations promulgated under such laws.
Failure to maintain insurance or bonds 9. based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.

Improper billing 10. based upon or arising out of any actual or alleged inaccurate, improper, or fraudulent billings or invoices, including but not limited to a qui tam action or any action under the False Claims Act, as may be amended, or any similar provisions of any foreign, federal, state, or local statutory or common law.

Insured vs. insured 11. brought by or on behalf of one insured or affiliate against another insured or affiliate.

Intellectual property 12. based upon or arising out of any actual or alleged infringement, use, or disclosure of any intellectual property, including but not limited to copyright, trademark, trade dress, patent, service mark, service name, title, or slogan, or any publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of trade secret.

Intentional acts 13. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions, except we will pay claim expenses until there is a final adjudication establishing such conduct.

This exclusion will apply to the named insured only if the conduct was committed or allegedly committed by any:

a. partner, director, officer, or member of the board (or equivalent position) of the named insured; or

b. employee of the named insured if any partner, director, officer, member of the board (or equivalent position) of the named insured knew or had reason to know of such conduct by the employee.

This exclusion will apply separately to each insured and will not apply to any insured who did not commit, participate in, acquiesce to, or ratify such conduct committed by another insured.

Manufacture of goods/products 14. based upon or arising out of any goods or products manufactured, sold, handled, or distributed by you, including any product liability, product defect, or product recall.

Misappropriation of funds 15. based upon or arising out of the actual or alleged theft, misappropriation, commingling, or conversion of any funds, monies, assets, or property.

Mold 16. based upon or arising out of any actual, alleged, or threatened existence, growth, release, escape of, exposure to, inhalation of, or contact with mold, spores, or fungi.

Pollution/environmental 17. based upon or arising out of any actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants, including any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants.

Prior acts/notice/knowledge 18. based upon or arising out of any actual or alleged breach of duty or negligent act, error, or omission that:

a. was committed prior to the retroactive date;

b. was the subject of any notice given under any other policy of which this policy is a renewal or replacement;

c. was the subject of, or is related to, any prior or pending litigation, claim, written demand, arbitration, administrative or regulatory proceeding or investigation, or licensing proceeding that was filed or commenced against you and of which you had notice prior to the policy period; or

d. you had knowledge of prior to the policy period, and there was a reasonable basis to believe that the act, error, or omission could result in a claim.

However, if this policy is a renewal or replacement of a previous policy we issued that provided materially identical coverage, and is part of an unbroken chain of successive
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policies issued by us, the policy period referred to in paragraphs c and d, above, will be the policy period of the first such policy we issued.

Privacy 19. based upon or arising out of any actual or alleged:
   a. unauthorized acquisition, access, use, or disclosure of, improper collection or retention of, or failure to protect any non-public personally identifiable information or confidential corporate information that is in your care, custody, or control; or
   b. violation of any privacy law or consumer data protection law protecting against the use, collection, or disclosure of any information about a person or any confidential corporate information.

Professional services 20. based upon or arising out of any insured’s actual or alleged performance of or failure to perform professional services customarily provided by an architect, engineer, surveyor, physician, surgeon, dentist, or other healthcare provider, accountant, insurance agent/broker, investment advisor, securities broker/dealer, or attorney, or any other services identified as Covered Professional Services in the Declarations.

Sexual abuse and misconduct by individual insured 21. against any individual insured who personally commits, participates in, or assists in any act of sexual abuse and misconduct. However, we will defend such individual insured until the individual insured:
   a. is adjudicated to have committed, participated in, or assisted in an act of sexual abuse and misconduct; or
   b. admits in any context to having committed, participated in, or assisted in an act of sexual abuse and misconduct.

For purposes of this exclusion, sexual abuse and misconduct refers only to conduct described in part 1 of the definition of this term.

Unsolicited telemarketing 22. based upon or arising out of any actual or alleged violation of any federal, state, local, or foreign statutes, ordinances, or regulations relating to unsolicited telemarketing, solicitations, emails, faxes, text messages, or any other communications of any type or nature, including but not limited to the Telephone Consumer Protection Act, CAN-SPAM Act, or any “anti-spam” or “do-not-call” statutes, ordinances, or regulations.

VII. Definitions

The following definitions apply to this Coverage Part. Additional definitions are contained in Section III. Who is an insured, and in the General Terms and Conditions, Section VI. Definitions applicable to all Coverage Parts.

Affiliate means any person or entity related to any insured through common ownership, control, or management.

Bodily injury means physical injury, sickness, disease, or death sustained by a person, and any resulting humiliation, mental injury, mental anguish, emotional distress, suffering, or shock. Bodily injury does not include any injury caused by sexual abuse and misconduct.

Claim means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

Claim expenses means the following sums incurred in excess of the retention and with our prior written consent:
   1. all reasonable and necessary fees, costs, and expenses (including the fees of attorneys and experts) incurred in the investigation, defense, or appeal of a claim; and
   2. premiums on appeal bonds, attachment bonds, or similar bond, but we will have no obligation to apply for or furnish any such bonds.

Damages means the following amounts incurred in excess of the retention:
   1. a monetary judgment or monetary award that you are legally obligated to pay (including pre- or post-judgment interest and awards of claimant’s attorney fees); or
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2. a monetary settlement negotiated by us with your consent.

Damages includes punitive damages to the full extent they are insurable under the law of any applicable jurisdiction that most favors coverage.

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

Potential claim means any acts, errors, or omissions of an insured or other circumstances reasonably likely to lead to a claim covered under this policy.

Professional services means only those services identified as Covered Professional Services under the Sexual Abuse and Misconduct Liability Coverage Part section of the Declarations.

Property damage means physical loss of or physical damage to or destruction of any tangible property, including the resulting loss of use of that property.

Retention means the amount stated as such under the Sexual Abuse and Misconduct Liability Coverage Part section of the Declarations.

Sexual abuse and misconduct means any:

1. actual, alleged, or threatened abuse, molestation, harassment, mistreatment, or maltreatment of a sexual or physical nature, directed toward third parties, including but not limited to any sexual involvement, sexual conduct, or sexual contact, regardless of whether there was consent; or

2. negligent employment, investigation, supervision, training, or retention of a person who commits such conduct, or the failure to report such conduct to the proper authorities.

You, your, or insured means a named insured, employee, volunteer, or independent contractor, as defined in Section III. Who is an insured.