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Consultants Professional 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** alleging a negligent act, error, or omission in **your consulting services** performed on or after the **retroactive date**, including but not limited to:

1. breach of any duty of care;
2. negligent misstatement or negligent misrepresentation; or
3. **personal and advertising injury**,

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:

Bodily injury/property damage sublimit

A. **We** will pay **damages** and **claim expenses** up to the limit stated in the Declarations for any **claim** against **you** for **bodily injury** and/or **property damage**, provided the **claim** is first made against **you** during the **policy period**, it directly results from **your consulting services** performed on or after the **retroactive date**, and it is reported to **us** in accordance with Section V. Your obligations.

You must pay the **retention** stated in the Declarations in connection with any payment **we** make under this subsection A, and any payments **we** make will be a part of, and not in addition to, the **coverage part limit**.

Defense of licensing proceedings

B. **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 in the investigation, defense, or appeal of any state, federal, or other licensing board inquiry or proceeding concerning **your** eligibility or license to engage in **your consulting services**, provided **you** first receive notice of such inquiry or proceeding during the **policy period**, it relates to **your consulting services** 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 B, and such amounts will be in addition to, and not part of, the **coverage part limit**.

Subpoena assistance

C. **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 the performance of **your consulting services**, provided **you** first receive notice of such subpoena during the **policy period**, it relates to **your consulting services** 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 C, and such amounts will be in addition to, and not part of, the **coverage part limit**.

Supplemental payments

D. **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 D, 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**, **subsidiary**, **employee**, **independent contractor**, **joint venture**, or **additional insured**, 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.

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Subsidiary means any entity of which the **named insured** has majority ownership before or during the **policy period**.

Employee means any past, present, or future:

1. person employed by the **named insured** or **subsidiary** as a permanent, part-time, seasonal, leased, or temporary employee, or any volunteer; or
2. partner, director, officer, or board member (or equivalent position) of the **named insured** or **subsidiary**,

but only while in the course of their performance of **consulting services** on behalf of or at the direction of such **named insured** or **subsidiary**.

Independent contractor means any person or entity contracted by the **named insured** or **subsidiary** to perform the same **consulting services** as the **named insured** or **subsidiary**, but only while in the course of their performance of **consulting services** on behalf of or at the direction of the **named insured** or **subsidiary**.

Joint venture means a business enterprise in which the **named insured** or **subsidiary** participates pursuant to a written agreement, but only for:

1. **consulting services** performed by the **named insured** or **subsidiary**; and
2. the same percentage of covered **damages** and **claim expenses** as the percentage of the **named insured's** or **subsidiary's** participation in the joint venture.

Additional insured means any person or organization **you** have agreed in a written contract or agreement to add as an additional insured to a policy providing the type of coverage afforded by this Coverage Part, provided the contract or agreement:

1. is currently in effect or becomes effective during the **policy period**; and
2. was executed before the **consulting services** out of which the **claim** arises were performed.

Coverage is available for **additional insureds** solely for their liability arising out of **your** negligence or of those acting on **your** behalf and not for any liability arising out of the sole negligence of the **additional 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**.

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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** or other covered matter, 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;
   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 to an insured

2. based upon or arising out of any actual or alleged physical injury, sickness, disease, death, humiliation, mental injury, mental anguish, emotional distress, suffering, or shock sustained by an **insured** or any employee of an **insured**.

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 consulting 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.

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Employment related liability	6.	based upon or arising out of any actual or alleged: a. obligation under any workers' compensation, unemployment compensation, employers' 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, committed by **you** as an employer or prospective employer.
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 professional services	8.	based upon or arising out of any actual or alleged performance of or failure to perform services as an architect, engineer, accountant, lawyer, insurance agent/broker, registered investment advisor, and/or security broker/dealer; however, this exclusion will not apply to **claims** brought against an **insured** who is an architect, engineer, accountant, lawyer, insurance agent/broker, registered investment advisor, and/or security broker/dealer if the **claim** arises out of the performance of **your consulting services**.
Excluded statutory violations	9.	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	10.	based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.
Improper billing	11.	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; however, this exclusion will not apply to a **claim** resulting from **your** performance of billing services for others if such services are a part of **your consulting services**.
Insured vs. insured	12.	brought by or on behalf of one **insured** or **affiliate** against another **insured** or **affiliate**; however, this exclusion will not apply to a **claim** by an **additional insured** against another **insured** based upon or arising out of any other **insured's** performance of **consulting services** for the **additional insured**.
Intellectual property	13.	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,

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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

14. 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 that:

    a. **we** will pay **claim expenses** until there is a final adjudication establishing such conduct; and

    b. this **exclusion** will not apply to otherwise covered intentional acts or omissions resulting in **personal and advertising injury**.

    This exclusion will apply to the **named insured** or **subsidiary** 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 **subsidiary**; or

    b. employee of the **named insured** or **subsidiary** if any partner, director, officer, member of the board (or equivalent position) of the **named insured** or **subsidiary** 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

15. based upon or arising out of any goods or products manufactured, sold, handled, or distributed by **you**.

Medical malpractice

16. based upon or arising out of any actual or alleged medical malpractice or breach of any duties owed as a healthcare provider, including but not limited to the rendering of or failure to render medical services, treatment, diagnosis, or advice.

Misappropriation of funds

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

Mold

18. 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

19. 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

20. 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 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.

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Privacy	21.	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.
Sexual misconduct	22.	based upon or arising out of any actual, alleged, or threatened abuse, molestation, harassment, mistreatment, or maltreatment of a sexual nature, including the 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.
Subsidiary outside control of named insured	23.	a. based upon or arising out of **consulting services** performed by or on behalf of a past or present **subsidiary** while the **named insured** does not have majority ownership or management control of it; or b. made against a **subsidiary** or anyone acting on its behalf while the **named insured** does not have majority ownership or management control of it.
Third party discrimination	24.	based upon or arising out of any actual or alleged harassment of or unlawful discrimination against, including but not limited to adverse or disparate impact, a person or entity other than an **insured** or an employee of an **insured**.
Unsolicited telemarketing	25.	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. **Affiliate** does not include a **subsidiary**.

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.

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.

Consulting services means only those services identified as Covered Professional Services under the Consultants Professional Liability Coverage Part section of the Declarations.

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
2. a monetary settlement negotiated by **us** with **your** consent.

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

Personal and advertising injury means injury, other than **bodily injury** or **property damage**, arising out of one or more of the following offenses:

1. false arrest, detention, or imprisonment;
2. malicious prosecution;
3. wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of premises;
4. slander, libel, or defamation, or disparagement of goods, products, or services, whether in connection with **your consulting services** or **your** advertising of it; or
5. oral or written publication of material, whether in connection with **your consulting services** or **your** advertising of it, that violates a person's right of privacy.

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.

Property damage means 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 Consultants Professional Liability Coverage Part section of the Declarations.

You, **your**, or **insured** means a **named insured**, **subsidiary**, **employee**, **independent contractor**, **joint venture**, or **additional insured**, as defined in Section III. Who is an insured.

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