

# Professional Liability Policy – Claims Made

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The insurance company shown in the Declarations (hereinafter "the Company") in consideration of the payment of the premium and the undertaking of the *named insured* to pay the Deductible described hereunder, in reliance upon all representations and warranties contained in the application attached hereto and made a part of this policy, including any addendum or addenda thereto, and subject to all provisions of this policy subsequently set forth, agrees with the *named insured* as follows:

## I. INSURING AGREEMENTS

### A. COVERAGE AND DEFENSE

The Company shall pay on behalf of the *insured* those *damages* in excess of the Deductible that the *insured* becomes legally obligated to pay to others, but only:

1. If such *damages* result from a *wrongful act* committed by any *insured* in performing or failing to perform *professional services* anywhere in the world; and
2. If the *insured* committed the *wrongful act* on or after the retroactive date specified in the Declarations and prior to the end of this *policy period*; and
3. If *claim* for such *damages* is first made against the *insured* during this *policy period*, or any applicable extended reporting period; and
4. If such *claim* is reported in writing directly to the Company and such reporting is received by the Company as soon as practicable, but not later than sixty (60) days immediately subsequent to the end of this *policy period*; and
5. If on the effective date of this policy, no *insured* had knowledge of any circumstances which could reasonably be expected to give rise to a *claim*.

The Company will pay all *claims expenses* in excess of the Deductible for all *claims* covered under the terms of this policy.

The Company shall have both the right and duty to provide for the defense of the *insured* with respect to a *claim* made against any *insured* in the United States of America, its territories or possessions, or Canada, falling under the purview of all of the foregoing requirements. The Company shall also have the exclusive right to investigate such *claim*, to designate and appoint all legal counsel to defend the *insured* and to otherwise control the defense thereof.

If a *claim* is made against any *insured* such as is described in the immediate foregoing, other than in the United States of America, its territories or possessions, or Canada, the Company shall have the right, but not the duty, to provide for the defense of such *claim*. If the Company elects not to provide for the defense of such *claim*, the *named insured*, under the supervision of the Company, shall have the duty to make or cause to be made such investigation and defense as are necessary and, subject to prior authorization by the Company, effectuate settlement. In such eventuality, the Company shall indemnify the *named insured* for *claims expenses* incurred and *damages* and supplementary payments paid in excess of the Deductible.

The Company shall have the exclusive right hereunder to negotiate and effectuate the settlement of all *claims*, as it deems expedient, whether under or in excess of the Deductible, but it shall not commit the *named insured* to any settlement without the *named insured's* consent. If, however, the *named insured* refuses to consent to a settlement recommended by the Company and elects to contest such *claim* or continue legal proceedings in connection therewith, the Company's liability shall be limited to the sum of the amount for which the *claim* could have been settled and all *claims expenses* incurred up to the time of such refusal, which is in excess of the Deductible.

The Company's duty to provide for the defense of any *insured*, to pay *damages* on behalf of any *insured*, or to make any payment pursuant to Section I.B., Supplementary Coverages and Payments, shall immediately terminate:

1. If the Limits of Insurance of this policy become exhausted by payment of *damages* or *claims expenses*; or
2. If the *named insured* fails to fulfil its Deductible obligation as imposed by Section IV. Deductible; or
3. If the application attached hereto and made a part of this policy, including any addendum or addenda thereto, contains any material misrepresentation of fact.

**B. SUPPLEMENTARY COVERAGES AND PAYMENTS**

With respect to such insurance as is afforded by this policy, the Company shall pay, in addition to the applicable limit of liability, all of the following:

1. All premiums on bonds to release attachments and appeal bonds, limited to that portion of such bond that does not exceed the limit of liability of this policy but without any obligation of any kind upon the Company to apply for, secure, or furnish any such bonds.
2. Pre-judgment interest and post judgment interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay, or deposited in court the part of the judgment that is covered and within the applicable Per Claim or Aggregate Limit of Liability. However, the maximum amount of pre-judgment or post judgment interest the Company will pay under this policy will be the portion of pre-judgment or post judgment interest accrued on *damages* covered by this policy.
3. All reasonable expenses incurred by any *insured* at the Company's request in assisting the Company in the investigation and defense of any *claim*, other than loss of earnings, salaries or other compensation paid to the *named insured's* officers or employees, except as provided in Paragraph 5, below.
4. All costs assessed against any *insured* in any suit covered under this policy.
5. Defendant's reimbursement - The Company will pay an amount of \$500 to each *insured* for each day or part of a day that any *insured* attends as a witness at any trial, deposition, or interrogatory at which the Company has requested any *insured's* attendance, or when such attendance is required by the court. This payment shall only apply to appearances involving *claims* against an *insured*. The maximum amount payable for all such appearances made during the *policy period* shall not exceed \$5,000 as a total aggregate, regardless of how many appearances are actually made during the *policy period*, or how many different *insureds* make appearances, and regardless of any other fact, circumstance, or situation.
6. Coverage for fines or penalties - The Company will reimburse the *named insured* for the amount of any fine or penalty which is levied against any *insured*, and is paid by the *insured* during the *policy period*, by the Environmental Protection Agency, any state or local environmental regulatory agency, or any other governmental official or regulatory agency, or any court. The maximum total amount the Company will pay for reimbursement for all fines or penalties combined which are levied and paid

during the *policy period* will be \$50,000, regardless of the actual number of fines or penalties levied or paid, or the actual amount of any fine, and regardless of any other fact or circumstance. Reimbursement shall not be available whenever the applicable law provides that a particular fine or penalty is uninsurable as a matter of law.

For Supplementary Coverages numbers 7., 8., 9., and 10. below, it is agreed that any and all payments made for any of these shall be included within, and shall not be in addition to, the applicable limit of liability.

7. Automatic coverage for newly formed or acquired entities - The coverage provided under this policy shall apply on behalf of any entity which is newly formed or newly acquired by the *named insured* subsequent to the inception date of the *policy period*. Coverage shall be provided only to those newly formed or newly acquired entities for which, as of the date of formation or acquisition, the *named insured* directly owns fifty percent (50%) or more of the outstanding stock or other equity or ownership interest.

It is agreed that there shall only be coverage for those *claims* that arise from *wrongful acts* which were committed subsequent to the date of formation or acquisition. The *named insured* agrees to advise the Company of any newly formed or acquired entity within ninety (90) days of the date of formation or acquisition. The *named insured* agrees to accept any coverage terms or reasonable additional premium which the Company may require, relative to the newly formed or acquired entity.

8. Coverage for indemnification of clients - Whenever any written contract or written job specifications provide that the *named insured* shall indemnify the client for, or hold the client harmless or free from, any *damages* or *claims expense* which are due to the *wrongful act* of any *insured*, the Company will pay on behalf of the *named insured* those *damages* or *claims expense* that must be paid to indemnify the client.
9. Vicarious liability coverage - The coverage provided under this policy shall apply on behalf of all *insureds* for *wrongful acts* committed by any entity or individual for whom any *insured* is legally liable, as long as the *wrongful act* was committed on or after the retroactive date shown on the Policy Declarations Page or on an endorsement to the policy.
10. Response costs coverage - In accordance with, and in support of, the duties of the *named insured* to mitigate *damages*, as described in Section VI., Conditions, Paragraph G., Mitigation, the Company will reimburse the

*named insured* for all costs expended by the *named insured* in fulfilling the *named insured's* duties of mitigation, subject to the following limitations:

- a. The only costs that will be reimbursed by the Company are those costs that are expended by the *named insured* in efforts to abate, stop, prevent, or reduce the *damages* emanating from a *pollution condition* caused directly or indirectly by any *wrongful act* committed by any *insured*.
- b. The only costs that will be reimbursed by the Company are those costs that are expended by the *named insured* on or after the date that the *named insured* first becomes aware of the *pollution condition* until that date that the *named insured* first has a reasonable opportunity to report the incident, circumstances, or *claim* to the Company.
- c. Nothing in this provision shall in any way alter, modify, or change the duty of the *named insured* to give notice of *claims* to the Company pursuant to Section VI., Conditions, Paragraph A., Notice of *Claim*.

## II. DEFINITIONS

Words and phrases in italics in this Policy have the following special meaning.

### Claim

The term *claim* means an oral or written notice to the *named insured* from any party intending to hold any *insured* responsible for *damages* arising out of a *wrongful act* committed by any *insured* in performing or failing to perform *professional services*.

### Claims Expenses

The term *claims expenses* shall mean all costs, charges and expenses resulting from the adjustment, appraisal, investigation, defense, settlement, arbitration or appeal of any *claim* covered by the terms and conditions of this policy if such costs, charges and expenses are incurred by the Company, an attorney designated by the Company, or by any *insured* with the written consent of the Company; except that it shall not include the costs of investigating or administering any *claim* by employees of the Company or loss of earnings incurred by any *insured* in investigating, defending, settling, arbitrating or appealing any *claim* at the Company's direction, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 5., Defendant's Reimbursement.

### Damages

The term *damages* shall mean a judgment, award or settlement monetarily compensating a claimant for a *claim* covered by the terms and conditions of this policy, and shall include *damages* based upon emotional distress. *Damages* also includes any loss due to diminution in value or loss of use of land, property, or buildings. *Damages* does not include any of the following:

1. Any administrative, civil or criminal fines, sanctions, taxes, or penalties, whether pursuant to law or statute, except to the extent coverage for reimbursement for fines or penalties is provided under Section I.B., Supplementary Coverages and Payments, Paragraph 6., Coverage for fines or penalties;
2. Restitution, reduction, disgorgement, set off, return, or payment of any form of any consulting fees or payments, or any other costs, expenses or charges;
3. Any loss of income or revenue to any *insured*, regardless of the cause or reason for the loss of income or revenue, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 5., Defendant's reimbursement;
4. Any form of non-monetary judgments or relief, including, but not limited to, specific performance or any injunctive relief of any kind;
5. Any amount of any civil judgment which is, or represents, any multiple of any kind of damage award, including, but not limited to, the two-thirds portion of any award of treble *damages*.

Insured

The term *insured* means:

1. The *named insured*; and
2. A director or officer of the *named insured*, but only while acting in their respective capacity as such; and
3. An employee of the *named insured*, but only with respect to *professional services* performed or failed to have been performed on behalf of the *named insured* in the employee's capacity as such; and
4. A former director, officer or employee of the *named insured*, but only with respect to *professional services* performed or failed to have been performed on behalf of the *named insured* prior to the termination of that respective capacity; and
5. The current spouse of any current owner, director or officer of the *named insured*; and
6. The heirs, executors, administrators, and legal representatives of each *insured* in the event of death, incapacity or bankruptcy, but solely with respect to the liability of each *insured* as otherwise covered by this policy; and

7. A limited liability company, if the *named insured* or any other *insured* exists as such, along with all past and present members of any such limited liability company, but only with respect to *professional services* performed or failed to have been performed on behalf of the *named insured*.

No person or organization is an *insured* with respect to the conduct of any current or past partnership or joint venture that is not shown as a *named insured* in the Declarations.

Named Insured	The term <i>named insured</i> shall mean the proprietor, partners or organization specified in the Declarations.
Policy Period	The term <i>policy period</i> means the period set forth in the Declarations, or any shorter period arising as a result of cancellation.
Policy Year	The term <i>policy year</i> means the separate annual year period whenever the <i>policy period</i> set forth in the Declarations is for either a two or three year time period.
Pollution Condition	The term <i>pollution condition</i> means the discharge, dispersal, release or escape of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids or gases, <i>waste</i> materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury or property damage.
Professional Services	The term <i>professional services</i> shall mean the services specified by endorsement to this policy, but only if the services were performed by or on behalf of the <i>named insured</i> for clients for a fee.
Waste	The term <i>waste</i> means any discarded materials of any kind, including those materials to be recycled, reconditioned, reclaimed, or disposed of.
Wrongful Act	<p>The term <i>wrongful act</i> means any of the following that any <i>insured</i> actually or allegedly commits, but only in the performance of <i>professional services</i> rendered by or on behalf of the <i>named insured</i>:</p> <ol style="list-style-type: none"><li>1. An act, error, omission or failure to perform;</li><li>2. Breach of contract in failing to provide or perform agreed upon <i>professional services</i>;</li><li>3. A conflict of interest in representing clients with adverse interests; or</li><li>4. The unauthorized practice of law.</li></ol>

Additionally, in order to be defined to be a *wrongful act* under this definition, the particular *wrongful act* must have been committed on or after the retroactive date specified either in the Policy Declarations or in an endorsement to this policy, but prior to the end of the *policy period*. If no retroactive date is specified, that means that all *wrongful acts* committed prior to the end of the *policy period* are included within this definition.

### III. LIMITS OF INSURANCE

#### A. MAXIMUM LIMITS OF LIABILITY

The Company's maximum limit of liability hereunder shall not exceed the separate limits for *damages* and *claims expenses* specified in the Declarations, irrespective of any of the following:

1. The number of *claims* made; or
2. The number of persons or organizations making *claims*; or
3. The number of persons covered hereunder; or
4. The number of *wrongful acts* actually or allegedly committed; or
5. The types of *damages* awarded.

#### B. SEPARATE AND SPECIFIC LIMITS OF LIABILITY

As specified in the Declarations:

1. The “*Damages Limit for Each Claim*” amount shown in the Declarations is the maximum amount the Company will pay under all Coverage Parts combined that form a part of this policy for *damages* that arise out of any one *claim*;
2. The “*General Aggregate Limit for Damages (Other than Products-Completed Operations)*” amount shown in the Declarations is the maximum amount the Company will pay under all Coverage Parts combined that form a part of this policy, for all *damages* arising from covered *claims* (other than those included in the products-completed operations hazard);
3. The “*Claims Expense Limit for Each Claim*” amount shown in the Declarations is the maximum amount the Company will pay for all *claims expenses* that arise out of any one *claim* that is covered under either or both of the Contractors Pollution Liability and/or the Professional Liability Coverage Parts;

4. The “*Claims Expense Aggregate Limit*” amount shown in the Declarations is the maximum amount the Company will pay for all *claims expenses* that arise from covered *claims* that are covered under either or both of the Contractors Pollution Liability and/or the Professional Liability Coverage Parts.

The Limits of Insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the *policy period* shown in the Declarations, unless the *policy period* is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

If this policy and any other policy providing coverage by the Company or any affiliate company apply to the same *wrongful act* or series of related *wrongful acts*, the aggregate maximum Limit of Liability payable under all of the policies combined shall be limited to the amount of the highest applicable Limit of Liability payable under any one of the policies. Related *wrongful acts* are those *wrongful acts* that arise out of, are based on, relate to or are in consequence of, the same facts, circumstances or situations.

The Limits of Insurance shown in the Declarations shall apply in excess of the Self Insured Retention amount shown in the Declarations.

#### IV. DEDUCTIBLE

As respects each *claim* first made against any *insured*, the *named insured* shall be responsible for payment for that amount of *damages* or *claims expenses* indicated in the Declarations as the Deductible amount. The Company shall not be responsible to make any payments for either *damages*, *claims expenses*, or any coverage or payment provided pursuant to Section I.B., Supplementary Coverages and Payments, unless and until the full amount of the Deductible has been paid by the *named insured*.

Should the Company, for any reason, pay any amount of *damages*, *claims expenses* or supplementary payments without regard to the Deductible amount, the *named insured* will reimburse the Company within 30 days of the Company’s request for such reimbursement, for that part of the Deductible Amount which has been paid.

## V. EXCLUSIONS

The Company shall have no obligation whatsoever under this policy to make any payment of any kind for either *damages*, *claims expense*, or any coverage or payment provided pursuant to Section I.B., Supplementary Coverages and Payments, or to arrange for, provide, or pay, for any defense, for:

- A. Any *claim* of any kind or nature made by any past or present *insured* against any other past or present *insured*; or
- B. Any *claim* for wrongful termination, discrimination or any unfair employment practices; or
- C. Any *claim* made by or on behalf of any business enterprise not shown on the Declarations:
  - 1. Which is, was, or will be owned in whole or in part by any past or present *insured*; or
  - 2. Which owned in whole or in part at any time the *named insured*; or
- D. Any *claim* arising from any advice rendered or which allegedly should have been rendered with respect to any bond, suretyship or insurance requirement; or
- E. Any *claim* arising from any *insured's* intentional, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint or notice of violation, notice letter, executive order, or instruction of any governmental agency or body; or
- F. Any *claim* arising from an illegal, dishonest, fraudulent, criminal, or malicious act actually or allegedly committed by any *insured*; or
- G. Any *claim* which arises from, or is related to, any collision or accident involving an automobile, truck, boat, watercraft, airplane, helicopter, or other aircraft or vehicle of any kind or type; or
- H. Any *claim* in any way related to any dispute or any other kind of issue or right involving any copyright, patent, or trademark; or
- I. Any *claim* arising from any of the following relative to any contract any *insured* has entered into with a client:
  - 1. Any assumption of the client's sole negligence or legal liability by the *insured*; or

2. Any failure by any *insured* to perform or provide a good or service by a date stipulated in a contract with any client; or
  3. Any liquidated or stipulated *damages* under a contract with a client of any *insured*, unless the same type of *damages* would attach without the existence of the contract; or
- J. Any obligation of any *insured* under workers compensation, disability benefits, unemployment compensation, employee benefits, pension sharring, ERISA law or any similar law; or

## VI. CONDITIONS

### A. NOTICE OF CLAIM

In the event of a *claim*, or any *insured's* knowledge of circumstances which could reasonably be expected to give rise to a *claim* the *named insured* shall have the duty to provide written notice to the Company as soon as practicable, but not later than sixty (60) days immediately subsequent to the end of this *policy period*.

This written notice shall be given whether or not the *named insured* believes that the *claim*, or incident giving rise to the *insured's* knowledge, will result in a demand that falls under, or in excess of, the Deductible.

Written notice shall be given to the insurance company shown in the Declarations, in care of:

Senior Vice President - Claims  
Endurance American Specialty Insurance Company  
C/O Endurance Specialty Insurance Marketing Corp.  
725 South Figueroa Street, Suite 2100  
Los Angeles, California 90017

Telephone (213) 270-7017

Fax (213) 270-7800

E-Mail addressed to: [Eclaims@enhinsurance.com](mailto:Eclaims@enhinsurance.com)

Such written notice must contain complete details, including, but not limited to, the exact date the *claim* was made, location, circumstances giving rise to such *claim*, the name of all claimants and a full description of the nature and scope of the allegations. These duties of the *insured* hereunder shall be non-delegable.

**B. COOPERATION AND ASSISTANCE OF THE *INSURED***

Each *insured* shall have the duty to fully cooperate with and assist the Company, with respect to the investigation, defense, settlement, arbitration or appeal of any *claim*. No *insured* shall be indemnified hereunder for loss of earnings incurred in such cooperation or assistance, except as provided in Section I.B., Supplementary Coverages and Payments, Paragraph 5., Defendant's Reimbursement, nor shall such loss of earnings apply towards the satisfaction of the Deductible.

**C. ACTIONS PREJUDICIAL TO THE COMPANY**

In the event of a *claim*, no *insured* shall undertake any of the following actions, without the Company's prior, written consent:

1. Engage counsel to provide legal representation; or
2. Assume any obligation, other than the reasonable efforts required to satisfy the duty to mitigate *damages* as provided in Section VI., Conditions, Paragraph G., Mitigation; or
3. Forgive, reduce in amount or otherwise compromise any compensation owed or allegedly owed to the *named insured*; or
4. Admit, or in any manner acknowledge liability; or
5. Effectuate or attempt to effectuate settlement, including, but not limited to, entering into a consent decree involving the assignment of any *insured's* interest under this policy.

Any of the foregoing actions by any *insured* shall be deemed to materially prejudice the Company's rights.

**D. SUBROGATION**

If the Company pays an amount hereunder as *damages*, *claims expense*, or as any payment under Section I.B., Supplementary Coverages and Payments, or any combination thereof, the Company shall be subrogated to all of each *insured's* rights of recovery against any person, firm or organization. All *insureds* shall execute and deliver instruments and papers and do whatever else is necessary to

secure such rights. No *insured* shall waive or prejudice any such rights either prior to or subsequent to any *claim*.

**E. ACCEPTANCE**

By acceptance of this policy, the *named insured* hereby confirms that all provisions hereof, including all endorsements and the application attached hereto and made a part of this policy, embody all agreements existing between the *named insured* and the Company and supersede any prior agreements, whether expressed or implied.

**F. MITIGATION**

The *named insured* shall make all reasonable efforts to abate, stop, prevent, or reduce the *damages* emanating from any *pollution condition* resulting directly or indirectly from any *wrongful act* committed by any *insured*. It is agreed that these efforts shall commence immediately upon discovery or notice of the *pollution condition* by any *insured*. These efforts must include mitigating, alleviating or otherwise limiting the *damages* which could result from the *pollution condition*. Such efforts must be undertaken even in the absence of a *claim*.

**G. NO ACTION AGAINST COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, each *insured* has fully complied with all the provisions of the policy, or until the amount of the *named insured's* obligation to pay has been finally determined either by written agreement of the *named insured*, the claimant and the Company or by final judgment against the *named insured* after the actual trial of the issues and the period of time to appeal has elapsed without an appeal having been taken or, if an appeal has been taken, then until after such appeal has been determined.

**H. AUDIT**

The Company shall have the right to examine or audit all financial records of the *named insured*, for the purpose of ascertaining the accuracy of the income or revenue stated in the application.

**I. NONRENEWAL**

The Company may non-renew this policy by mailing or delivering to the *named insured* at the address stated on the Declarations Page written notice of nonrenewal at least thirty (30) days before the expiration date of this policy. The offer of renewal policy terms, conditions, or premium amounts different than those in effect prior to renewal does not constitute non-renewal.

**J. APPLICATION IS INCORPORATED INTO, AND IS PART OF POLICY**

The *named insured* acknowledges and agrees that:

1. The warranties and representations contained in the Application for this Policy are true, correct and complete; and
2. The Company issued this Policy in specific reliance upon the warranties and representations contained in the Application; and
3. The Application is incorporated into, and is part of, this Policy.

**K. OTHER INSURANCE**

If any part of either *damages* or *claims expenses* is insured under this Policy and any other current, prior or subsequent Policy, this policy shall provide coverage for such *damages* or *claims expenses* on a pro rata basis with such other Policy according to the applicable Limits of Liability of this Policy and such other Policy.

**L. SEPARATION OF INSUREDS**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first *Named Insured*, this insurance applies:

1. As if each *Named Insured* were the only *Named Insured*; and
2. Separately to each *insured* against whom claim is made or *suit* is brought.