



PrivateEdge PlusSM

Miscellaneous Professional Liability Insurance ("MPL COVERAGE SECTION")

Notice: Pursuant to Clause 1 of the General Terms and Conditions, the General Terms and Conditions are incorporated by reference into, made a part of and are expressly applicable to this MPL Coverage Section, unless otherwise explicitly stated to the contrary in either the General Terms and Conditions or in this MPL Coverage Section.

In consideration of the payment of the premium, and in reliance upon the statements made to the **Insurer** by **Application**, which forms a part of this policy, the **Insurer** agrees as follows:

1. INSURING AGREEMENTS

With respect to the Errors and Omissions Insuring Agreement and the Defense & Settlement Provisions of this Clause 1., solely with respect to **Claims** first made during the **Policy Period** or the **Discovery Period** (if applicable) and reported to the **Insurer** pursuant to the terms of this policy, and subject to the other terms, conditions and limitations of this policy, this **MPL Coverage Section** affords the following coverage:

ERRORS AND OMISSIONS

The **Insurer** shall pay on the **Insured's** behalf those amounts, in excess of the Retention, the **Insured** is legally obligated to pay as **Loss** resulting from a **Claim** for the **Insured's Wrongful Act(s)**, but only if such **Wrongful Act** first occurs on or after the **Retroactive Date** and prior to the end of the **Policy Period**.

DEFENSE & SETTLEMENT PROVISIONS

- (a) The **Insurer** has the right and duty to defend a **Suit** brought against an **Insured** even if the **Suit** is groundless, false or fraudulent, but only if a **Wrongful Act** alleged in the **Suit** first occurs on or after the **Retroactive Date** and prior to the end of the **Policy Period**;
- (b) The **Insurer** has the right to investigate any **Claim**.
- (c) The **Insurer** will pay **Defense Costs** in excess of the applicable Retention incurred in connection with (a) and (b) above;
- (d) The **Insurer** has the right, with the written consent of the **Insured**, which consent shall not be unreasonably withheld, to settle any **Claim** if the **Insurer** believes that it is proper;
- (e) The **Insured** may settle any **Claim** on behalf of all **Insureds** to which this insurance applies and

which are subject to one Retention amount where the total incurred **Loss** does not exceed the Retention amount;

- (f) The **Insurer's** duty to defend ends if the **Insured** refuses to consent to a settlement the **Insurer** recommends and the claimant will accept. The **Insured** must then defend the **Claim** at the **Insured's** own expense. As a consequence of the **Insured's** refusal, the **Insurer's** liability shall not exceed the amount for which the **Insurer** could have settled such **Claim** had the **Insured** consented, plus **Defense Costs** incurred prior to the date of such refusal. This Clause shall not apply to any settlement where the total incurred **Loss** does not exceed the applicable Retention amount;
- (g) The **Insurer's** duty to defend as outlined in this Clause ends after the **Policy Aggregate Limit of Liability** or any applicable **Separate Limit of Liability** or **Shared Limit of Liability** has been exhausted by payment of **Loss** or **Defense Costs**;

2. DEFINITIONS

- (a) "**Bodily Injury**" means physical injury, sickness or disease, and, if arising out of the foregoing, mental anguish, mental injury, shock, humiliation or death at any time.
- (b) "**Claim**" means:
 - (i) a written demand for money, services, non-monetary relief or injunctive relief; or
 - (ii) a **Suit**.
- (c) "**Defense Costs**" means all reasonable and necessary fees charged by an attorney appointed by the **Insurer** in connection with any **Suit** brought against the **Insured** alleging a **Wrongful Act**, as well as all other reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond arising out of a covered judgment, but without any obligation to apply for or furnish any such bond) incurred in the defense or investigation of a **Claim** by the **Insurer** or by the **Insured** with the **Insurer's** written consent, but excluding the compensation of any **Individual Insured**. **Defense Costs** shall not include any fees, costs or expenses incurred prior to the time that a **Claim** is first made against an **Insured**.
- (d) "**Insured**" means:
 - (i) the **Company**;
 - (ii) any past, present or future officer, director, trustee or employee of the **Company** (and in the event the **Company** is a partnership, limited liability partnership or limited liability company, then any general or managing partner or principal thereof); and
 - (iii) any entity which the **Named Entity** is required by contract to add as an **Insured** under this **MPL Coverage Section**, but only for the **Wrongful Acts** of the **Named Entity**.
- (e) "**Loss**" means damages, judgments, settlements, pre-judgment and post-judgment interest and **Defense Costs**; however, **Loss** shall not include: (i) civil or criminal fines or penalties imposed by

law; (ii) the costs and expenses of complying with any injunctive or other form of equitable relief; (iii) taxes; (iv) any amounts for which the **Insureds** are not financially liable or which are without legal recourse to the **Insureds**; or (v) matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

Loss shall specifically include, subject to the other terms, conditions and exclusions of this **MPL Coverage Section**, including, but not limited to, exclusion 3(a) of this **MPL Coverage Section**, punitive, exemplary and multiple damages. The enforceability of this paragraph shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiple damages.

- (f) **"Over-Redemption"** means price discounts, prizes, awards or other valuable consideration given in excess of the total contracted or expected amount.
- (g) **"Pollutants"** means, but is not limited to, any solid, liquid, gaseous, biological, radiological or thermal irritant or contaminant, including smoke, vapor, dust, fibers, mold, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and **Waste**. **"Waste"** includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.
- (h) **"Professional Services"** means those services described and set forth in the section of Item 3 of the Declarations applicable to this **MPL Coverage Section**.
- (i) **"Property Damage"** means damage to, loss of use of or destruction of any tangible property.
- (j) **"Retroactive Date"** means the date set forth in Item 3 of the Declarations.
- (k) **"Suit"** means a civil proceeding for monetary, non-monetary or injunctive relief, which is commenced by service of a complaint or similar pleading. **Suit** includes a binding arbitration proceeding in which **Loss** is alleged and to which the **Insured** must submit or do submit with the **Insurer's** consent.
- (l) **"Wrongful Act"** means any actual or alleged negligent act, error or omission, misstatement or misleading statement committed in the **Insured's** performance of **Professional Services** for others.

3. EXCLUSIONS

The **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against an **Insured**:

- (a) arising out of, based upon or attributable to a dishonest, fraudulent, criminal or malicious act, error or omission, or any intentional or knowing violation of the law, or gaining of any profit or advantage to which the **Insured** is not legally entitled; provided, however, the **Insurer** will defend **Suits** alleging any of the foregoing conduct until there is a judgment, final adjudication, adverse admission or finding of fact against the **Insured** as to such conduct, at which time the **Insured** shall reimburse the **Insurer** for **Defense Costs**; provided further, however, the **Insurer** shall not cover any **Claim** if the **Insured** pleads *nolo contendere* or no contest to a criminal proceeding against the **Insured** arising out of the same, or essentially the same, material facts as such **Claim**;

- (b) alleging, arising out of, based upon or attributable to (i) any actual or threatened discharge, dispersal, release or escape of **Pollutants**; or (ii) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**
- (c) alleging, arising out of, based upon or attributable to **Bodily Injury** or **Property Damage**;
- (d) alleging, arising out of, based upon or attributable to:
 - (i) any purchase, sale, or offer or solicitation of an offer to purchase or sell securities;
 - (ii) any violation of any securities law, including the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, or any regulation promulgated under the foregoing statutes, or any federal, state or local laws similar to the foregoing statutes (including "Blue Sky" laws), whether such law is statutory, regulatory or common law; or
 - (iii) any violation of the Organized Crime Control Act of 1970 (commonly known as Racketeer Influenced And Corrupt Organizations Act, or "RICO"), as amended, or any regulation promulgated thereunder or any federal, state or local law similar to the foregoing, whether such law is statutory, regulatory or common law;
- (e) alleging, arising out of, based upon or attributable to any breach of fiduciary duty, responsibility, or obligation in connection with any employee benefit or pension plan, including violations of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, or similar statutory or common law of the United States of America or any state or jurisdiction therein;
- (f) alleging, arising out of, based upon or attributable to any the employment of any individual or any employment practice, including, but not limited to, wrongful dismissal, discharge or termination, discrimination, harassment, retaliation or other employment-related claim;
- (g) alleging, arising out of, based upon or attributable to the facts alleged, or to the same or **Related Wrongful Act(s)** alleged or contained in any claim which has been reported, or in any circumstances of which notice has been given, under any policy of which this **MPL Coverage Section** is a renewal or replacement or which it may succeed in time;
- (h) alleging, arising out of, based upon or attributable to, as of the **Continuity Date**, any pending or prior: (i) litigation; or (ii) administrative or regulatory proceeding or investigation of which an **Insured** had notice, or alleging any **Wrongful Act** which is the same or **Related Wrongful Act(s)** to that alleged in such pending or prior litigation or administrative or regulatory proceeding or investigation;
- (i) alleging, arising out of, based upon or attributable to any misappropriation of trade secret or infringement of patent, copyright, trademark, trade dress or any other intellectual property right;
- (j) alleging, arising out of, based upon or attributable to false advertising, misrepresentation in advertising, antitrust, unfair competition, restraint of trade, unfair or deceptive business practices, including, but not limited to, violations of any local, state or federal consumer protection laws;

- (k) brought by or on behalf of any federal, state or local government agency or professional or trade licensing organizations; provided, however, this exclusion shall not apply where the **Claim** is alleging a **Wrongful Act** in the **Insured's** rendering **Professional Services** to such entity;
- (l) alleging, arising out of, based upon or attributable to liability the **Insured** assumes under any contract or agreement, including, but not limited to, any contract price, cost guarantee or cost estimate being exceeded; provided, however, this exclusion does not apply to liability which would have attached in the absence of such contract or agreement;
- (m) brought by or on behalf of:
 - (i) any **Insured**, except as described in subparagraph 2(d)(iii) of the Definition of **Insured**;
 - (ii) any business entity that is owned, managed or operated, directly or indirectly, in whole or in part, by an **Insured**;
 - (iii) any parent company, **Subsidiary**, successor or assignee of the **Insured**, or anyone affiliated with the **Insured** or such business entity through common **Management Control**; or
 - (iv) any independent contractor supplying material or services to the **Insured**, but, as regards such independent contractor, only with respect to **Claims** involving disputes over the ownership or exercise of rights in material or services supplied;
- (n) alleging, arising out of, based upon or attributable to disputes involving:
 - (i) the **Insured's** fees or charges, including over-charges, or cost over-runs;
 - (ii) collecting the **Insured's** fees from third parties;
 - (iii) the return of fees or other compensation paid to the **Insured**; or
 - (iv) the **Insured's** cost of correcting or re-performing or completing any **Professional Services**;
- (o) alleging, arising out of, based upon or attributable to **Over-Redemption** of coupons, awards, or prizes from advertisements, promotions, games, sweepstakes, contests, and games of chance;
- (p) alleging, arising out of, based upon or attributable to any **Wrongful Act** which occurred prior to the **Retroactive Date** or any **Related Wrongful Act** thereto, regardless of when such **Related Wrongful Act** is committed;
- (q) alleging, arising out of, based upon or attributable to:
 - (i) false arrest, detention or imprisonment;
 - (ii) libel, slander or defamation of character; or
 - (iii) wrongful entry or eviction, or invasion of any right of privacy; or

(r) alleging, arising out of, based upon or attributable to the **Insured's** advising, requiring, obtaining or failing to advise, require or obtain any bond, suretyship or other form of insurance.

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4. RETENTION CLAUSE

The following provisions shall apply in addition to the provisions of Clause 5. RETENTION of the General Terms and Conditions:

The **Insured** shall be responsible for the applicable Retention amount set forth in Item 3 of the Declarations for this **MPL Coverage Section** for each **Claim** and the **Insured** may not insure it. All **Claims** arising from a **Wrongful Act** or series of continuous repeated or **Related Wrongful Acts**, shall be subject to one Retention. In the **Insurer's** sole discretion, the **Insurer** may pay all or part of the Retention to settle a **Claim**, in which case the **Insured** agrees to repay the **Insurer** promptly after the **Insurer** notifies the **Insured** of the settlement.

If the **Insured** shall, at the **Insurer's** written request, submit a **Claim** to alternative dispute resolution in accordance with the rules of the American Arbitration Association or the Defense Research Institute, and such **Claim** is settled through this process, the Retention obligation shall be deemed to be fifty percent (50%) of the Retention stated in Item 3 of the Declarations.

5. ASSISTANCE AND COOPERATION

As a condition precedent to coverage under this **MPL Coverage Section** the **Insured(s)** agrees to:

- (a) send the **Insurer** copies of all demands, suit papers, other legal documents and invoices for **Defense Costs** received by such **Insured**, as soon as practicable;
- (b) immediately record the specifics of any **Claim** and the date such **Insured** first received such **Claim**;
- (c) upon the **Insurer's** request, furnish to the **Insurer** any and all documentation within the possession of the **Insured**;
- (d) give to the **Insurer**, and to any counsel the **Insurer** selects to represent an **Insured** in connection with a **Claim**, full cooperation and such information as the **Insurer** or the counsel may require;
- (e) cooperate with and help the **Insurer**:
 - (i) in making settlements, subject to paragraph (g) of this Clause 5. and the Defense & Settlement Provisions of Clause 1. of this **MPL Coverage Section**;
 - (ii) in enforcing any legal rights the **Insured** may have against anyone who may be liable to the **Insured**;
 - (iii) by attending depositions, hearings and trials; and
 - (iv) by securing and giving evidence, and obtaining the attendance of witnesses;
- (f) take such actions which, in the **Insured's** judgment, are deemed necessary and practicable to prevent or limit **Loss** arising from any **Wrongful Act**; and

(g) not admit any liability, assume any financial obligation or pay out any money without the **Insurer's** prior written consent. If the **Insured** does, it shall be at the **Insured's** own expense. In addition, the **Insured** shall not take any action, or fail to take any required action, without the **Insurer's** written consent, which prejudices the **Insurer's** rights under this **MPL Coverage Section**.

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