

Miscellaneous Professional Liability (Occurrence)

Various provisions in this Form restrict coverage. Read the entire Form carefully to determine rights, duties and what is and is not covered.

The word "Insured" means any person qualifying as such under **Section II Who Is An Insured**.

Other words and phrases that appear in quotation marks have special meaning as defined in **Section V Definitions**.

Section I Coverage

1. Insuring Agreement

- a. The Insurer will pay those sums that the Insured becomes legally obligated to pay as compensatory damages because of "injury" arising out of the rendering of, or failure to render, during the "policy period", professional services in the practice of the profession described in the "Declaration Page(s)". No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments. The "injury" must take place in the "coverage territory". The Insurer will have the right and duty to defend any "action" seeking those compensatory damages but:
 - (1) The amount the Insurer will pay for compensatory damages is limited as described in **Section III Limits Of Insurance**;
 - (2) The Insurer may investigate and settle any "claim" or "action" at the Insurer's discretion; and
 - (3) The Insurer's right and duty to defend end when the Insurer has used up the applicable Limits of Insurance in the payment of judgements or settlements under **Section III Limits Of Insurance**.
- b. Compensatory damages because of "injury" include compensatory damages claimed by any person or organization for care, loss of services or death resulting at any time from the "injury".

2. Exclusions

This insurance does not apply to:

- a. Liability of the Insured as a proprietor, superintendent or executive officer of any hospital, sanatorium, clinic with bed and board facilities, or laboratory,
- b. liability of any insured acting in their professional capacity as a physician
- c. (1) "injury" caused by the Named Insured or, with the knowledge of the Named Insured, by any of his/her employees, in the commission of any criminal act, in the violation of any law or ordinance, or while under the influence of hypnotics, narcotics or intoxicants;
- (2) "injury" arising out of or on account of, resulting from or relating to any actual or threatened "abuse".

The Insurer shall not have any duty to defend any "action" or "claim" arising out of, or on account of, any "claim" for "injury" arising out of any "abuse".

- d. "injury" for which the Insured is obligated to pay compensatory damages by reason of the assumption of liability in a contract or agreement, including an employment contract. This exclusion does not apply to liability for compensatory damages that the Insured would have in the absence of the contract or agreement.
- e. (1) "injury" arising out of the ownership, use or operation by or on behalf of any Insured of:
 - (a) Any "automobile";
 - (b) Any motorized snow vehicle or its trailers;
 - (c) Any vehicle while being used in any speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; or
 - (d) Any vehicle, which if it were to be insured would be required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract.

- (2) “injury” with respect to which any motor vehicle liability policy is in effect or would be in effect but for its termination upon exhaustion of its limit of liability or is required by law to be in effect.
- f. (1) “injury” which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any Insured or others test for, monitor, cleanup, remove, contain, treat, detoxify, decontaminate, stabilize, remediate or neutralize, or in any way respond to, or assess the effects of pollutants; or
 - (b) “claim” or “action” by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant including smoke, odour, vapour, soot, fumes, acid, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

- g. Nuclear Energy Liability
 - (1) Liability imposed by or arising under any nuclear liability act, law or statute, or any law amendatory thereof;
 - (2) “injury” with respect to which an Insured under this Form is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other insurer or group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability;
 - (3) “injury” resulting directly or indirectly from the nuclear energy hazard arising from:
 - (a) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an Insured;
 - (b) the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility;
 - (c) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be useable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an Insured.

As used in this Form:

- (1) The term “nuclear energy hazard” means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- (2) The term “radioactive material” means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances which may be designated by any nuclear liability act, law or statute, or any law amendatory thereof as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
- (3) The term “nuclear facility” means:
 - (a) apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
 - (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilising spent fuel, or (iii) handling, processing or packaging waste;

- (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if any at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

- (4) The term “fissionable substance” means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.

- h. “injury” due to war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military power.
- i. liability for:
 - (1) erasure, destruction, corruption, misappropriation, misinterpretation of “data”; or
 - (2) erroneously creating, amending, entering, deleting or using “data”; and any loss of use arising therefrom.
- j. liability arising out of the distribution or display of “data”, by means of an Internet Website, the Internet, an intranet, extranet, or similar device or system designed or intended for electronic communication of “data”.
- k. liability arising directly or indirectly, in whole or in part, out of “terrorism” or out of any activity or decision of a government agency or other entity to prevent, respond to or terminate “terrorism”. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the “injury”.
- l. (1) “injury” or any other cost, loss or expense incurred by others, arising directly or indirectly, from the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, presence of, spread of, reproduction, discharge or other growth of any “fungi” or “spores” however caused, including any costs or expenses incurred to prevent, respond to, test for, monitor, abate, mitigate, remove, cleanup, contain, remediate, treat, detoxify, neutralize, assess or otherwise deal with or dispose of “fungi” or “spores”;
 - (2) any supervision, instructions, recommendation, warnings, or advice given or which should have been given in connection with the testing for, assessment, monitoring, removal, abatement, mitigation, treatment, detoxification or neutralization of; “fungi” or “spores”;
 - (3) any obligation, whether imposed under statute or common law, to share damages with, to pay or repay someone else who must pay damages because of the “injury”, damage or activity referred to in (1) or (2) above.

This exclusion applies regardless of the cause of the loss or damage, other causes of the “injury”, damage, expense or costs, or whether other causes acted concurrently or in any sequence to produce the injury, damage, expenses or costs.
- m. any actual or alleged liability whatsoever for any “claim” or “claims” in respect of loss or losses, damage, cost or expense directly or indirectly caused by, resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity. This exclusion applies regardless of any other contributing or aggravating cause or event that contributes concurrently or in any sequence to the loss, damage, cost or expense.

Supplementary Payments

The Insurer will pay, with respect to any "claim" or "action" the Insurer defends:

- a. All expenses the Insurer incurs.
- b. The cost of bonds to release attachments, but only for bond amounts within the applicable Limits of Insurance. The Insurer does not have to furnish these bonds.
- c. All reasonable expenses incurred by the Insured at the Insurer's request to assist the Insurer in the investigation or defence of the "claim" or "action", including actual loss of earnings up to \$100. a day because of time off from work.
- d. All costs taxed against the insured in the "action" and any interest accruing after entry of judgement upon that part of the judgement which is within the applicable Limits of Insurance.

These payments will not reduce the Limits of Insurance

Section II Who Is An Insured

1. If the Named Insured is designated in the "Declaration Page(s)" as:
 - a. An individual, the Named Insured and the Named Insured's spouse are Insureds, but only with respect to the conduct of a business of which the Named Insured is the sole owner.
 - b. A partnership or joint venture, the Named Insured is an Insured. The Named Insured's members, the Named Insured's partners, and their spouses are also Insureds, but only with respect to the conduct of the Named Insured's business.
 - c. An organization other than a partnership or joint venture, the Named Insured is an Insured. The Named Insured's executive officers and directors are Insureds, but only with respect to their duties in the conduct of the Named Insured's business. The Named Insured's stockholders are also Insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an Insured:
 - a. The Named Insured's employees, other than the Named Insured's executive officers, or physicians, but only for acts within the scope of their employment by the Named Insured;
 - b. The Named Insured's legal representative if the Named Insured dies, but only with respect to their duties as such. That representative will have all the Named Insured's rights and duties under this Form.
3. Any organization the Named Insured newly acquires or forms, other than a partnership or joint venture, and over which the Named Insured maintains ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th. day after the Named Insured acquires or forms the organization or the end of the "policy period", whichever is earlier; and
 - b. Coverage does not apply to "injury" that occurred before the Named Insured acquired or formed the organization.

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 "Declaration Page(s)".

Section III Limits Of Insurance

1. The Limits of Insurance shown on the "Declaration Page(s)" and the rules below fix the most the Insurer will pay regardless of the number of:
 - a. Insureds
 - b. Claims made or "actions" brought, or
 - c. Persons or organizations making claims or bringing "actions".
2. The Each Claim Limit is the most the Insurer will pay for the sum of compensatory damages under **Section III Limits of Insurance** because of each "claim" or "action" covered.

3. Subject to 2. above, the Aggregate Limit is the most the Insurer will pay for the sum of compensatory damages under this Form.

The Limits of Insurance applicable to this form 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 on the “Declaration Page(s)” 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.

Section IV Professional Liability Conditions

1. Bankruptcy

Bankruptcy or insolvency of the Insured or of the Insured's estate will not relieve the Insurer of its obligation under this policy.

2. Canadian Currency Clause

All Limits of Insurance, premiums and other amounts as expressed in this Form are in Canadian currency.

3. Termination

- a. This policy may be terminated:

- (1) By the Insurer giving to the first Named Insured:

- (i) 30 days written notice of termination by registered mail;

- (ii) 5 days written notice of termination personally delivered;

- (iii) 15 days written notice of termination by registered mail when cancelling for non-payment of premium;

- (2) By the first Named Insured at any time on request.

- b. Where this policy is terminated by the Insurer:

- (1) The Insurer shall refund the excess of premium actually paid by the first Named Insured over the pro rata premium for the expired time, but, in no event shall the pro rata premium for the expired time be deemed to be less than any minimum retained premium specified; and

- (2) The refund shall accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund shall be made as soon as practicable.

- c. Where the policy is terminated by the first Named Insured:

- (1) And where the premium is developed on other than an estimated basis, the Insurer will refund the excess of the paid premium above the short rate premium for the time the policy has been in force calculated in accordance with the short rate premium table in use by the Insurer, and except in Quebec, subject to the retention of the minimum premium, if any, provided by the policy, or

- (2) Where the premium is developed by an estimated basis, the Insurer will refund the excess of the paid premium above the premium earned, when determined, and except in Quebec, subject to the retention of the minimum premium, if any, provided by the policy.

- d. The refund may be made by money, postal or express company money order or cheque payable at par.

- e. The fifteen days mentioned in clause a. (1) (iii) of this condition commences to run on the day following the receipt of the registered letter at the post office to which it is addressed.

- f. The Insurer will mail or deliver the notice to the first Named Insured's last mailing address known to the Insurer.

In Quebec the following conditions apply:

Termination takes effect either 15 or 30 days after receipt of the notice at the last known address of the first Named Insured, depending upon the reason for cancellation.

- (i) The Insurer will mail or deliver the notice to the first Named Insured's last mailing address known to the Insurer.
- (ii) The "policy period" will end on the date cancellation takes effect.
- (iii) If this policy is cancelled, the Insurer will send the first Named Insured any premium refund due. If the Insurer cancels, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if the Insurer has not made or offered a refund.

4. Changes

This policy contains all the agreements between the Named Insured and the Insurer concerning the insurance afforded. The first Named Insured shown on the "Declaration Page(s)" is authorised to make changes in the terms of this Form with the Insurer's consent. This Form's terms can be amended or waived only by endorsement or amendment issued by the Insurer and made a part of this Form.

5. Duties in the Event of "Injury", "Claim" or "Action"

- a. The Named Insured must see to it that the Insurer is notified promptly of an "injury" which may result in a "claim". Notice should include:
 - (1) How, when and where the "injury" took place; and
 - (2) The names and addresses of any injured persons and of witnesses.
- b. If a "claim" is made or "action" is brought against any Insured, the Named Insured must see to it that the Insurer receives prompt written notice of the "claim" or "action".
- c. The Named Insured and any other involved Insured must:
 - (1) Immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "action";
 - (2) Authorize the Insurer to obtain records and other information;
 - (3) Cooperate with the Insurer in the investigation, settlement or defence of the "claim" or "action"; and
 - (4) Assist the Insurer, upon the Insurer's request, in the enforcement of any right against any person or organization which may be liable to the Insured because of "injury" to which this insurance may also apply.
- d. No Insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without the Insurer's consent.

6. Examination of the Named Insured's Books and Records

The Insurer may examine and audit the Named Insured's books and records as they relate to this Form at any time during the "policy period" and up to three years afterward.

7. Inspections and Surveys

The Insurer has the right but is not obligated to:

- a. Make inspections and surveys at any time;
- b. Give the Named Insured reports on the conditions the Insurer finds; and
- c. Recommend any changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. The Insurer does not make safety inspections. The Insurer does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And the Insurer does not warrant that conditions:

- (i) Are safe or healthful; or
- (ii) Comply with laws, regulations, codes or standards.

This condition applies not only to the Insurer, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

8. Legal Action Against the Insurer

No person or organization has a right under this Form:

- a. To join the Insurer as a party or otherwise bring the Insurer into an “action” asking for compensatory damages from an Insured; or
- b. To sue the Insurer on this policy unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgement against an Insured obtained after an actual trial; but the Insurer will not be liable for compensatory damages that are not payable under the terms of this Form or that are in excess of the applicable Limits of Insurance. An agreed settlement means a settlement and release of liability signed by the Insurer, the Insured and the claimant or the claimant’s legal representative. Every “action” or proceeding against the Insurer shall be commenced within one year next after the date of such judgement or agreed settlement and not afterwards. If this Form is governed by the law of Quebec every “action” or proceeding against the Insurer shall be commenced within three years from the time the right of action arises.

9. Other Insurance

If other valid and collectible insurance is available to the Insured for a loss the Insurer covers under this Form, the Insurer’s obligations are limited as follows:

- a. As this insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis, except such insurance as is specifically purchased to apply in excess of this Form’s Limits of Insurance, the Insurer will pay only the Insurer’s share of the amount of the loss, if any, that exceeds the sum of:
 - (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
 - (2) The total of all deductible and self-insured amounts under this or any other insurance.
- b. The Insurer will have no duty under this Form to defend any “claim” or “action” that any other Insurer has a duty to defend. If no other Insurer defends, the Insurer may undertake to do so, but the Insurer will be entitled to the Insured’s rights against all other Insurers.

10. Premium Audit

- a. The Insurer will compute all premiums for this Form in accordance with the Insurer’s rules and rates.
- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period the Insurer will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, the Insurer will return the excess to the first Named Insured subject to the retention of the minimum premium shown on the “Declaration Page(s)” of the policy.
- c. The first Named Insured must keep records of the information the Insurer needs for premium computation, and send the Insurer copies at such times as the Insurer may request.

11. Premiums

The first Named Insured shown in the “Declaration Page(s)”:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums the Insurer pays.

12. Representations

By accepting this policy, the Named Insured agrees:

- a. The statements on the “Declaration Page(s)” are accurate and complete;
- b. Those statements are based upon representations the Named Insured made to the Insurer in the application(s) for this policy and such application will be deemed to be part of this policy as if it had been physically attached; and
- c. The Insurer has issued this policy in reliance upon the Named Insured’s representations.

13. Separation of Insureds, Cross Liability

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

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each Insured against whom “claim” is made or “action” is brought.

14. Transfer of Rights of Recovery Against Others to the Insurer

If the Insured has rights to recover all or part of any payment the Insurer has made under this policy, those rights are transferred to the Insurer. The Insured must do nothing after loss to impair them. At the Insurer's request, the Insured will bring "action" or transfer those rights to the Insurer and help the Insurer enforce them.

15. Transfer of the Named Insured's Rights and Duties Under this Form

The Named Insured's rights and duties under this Form may not be transferred without the Insurer's written consent except in the case of death of an individual Named Insured.

16. Limitation of Coverage Under Any Other Insurance

Except as stated in this Professional Liability Extension Form this policy does not apply to "injury" arising out of the rendering of, or failure to render, professional services in the practice of the business described on the Policy "Declaration Page(s)".

Section V Definitions

1. **"abuse"** means mental abuse, physical abuse, sexual abuse, sexual harassment and assault and battery.
2. **"action"** means a civil proceeding in which compensatory damages because of "injury" to which this insurance applies are alleged. "Action" includes an arbitration proceeding alleging such damages to which the Named Insured must submit or submit with the Insurer's consent.
3. **"automobile"** means any self-propelled land motor vehicle, trailer or semi-trailer (including machinery, apparatus, or equipment attached thereto) which is principally designed and is being used for transportation of persons or property on public roads.
4. **"claim"** means any demand upon the Insured for "damages" or services alleging liability of the Insured as the result of any "injury".
5. **"coverage territory"** means Canada. Further, the Insured's responsibility to pay compensatory damages must be determined in an "action" on the merits in Canada or the United States of America (including its territories and possessions), or in a settlement the Insurer agrees to in writing.
6. **"data"** means representations of information or concepts in any form.
7. **"Declaration Page(s)"** means the Declaration Page(s) applicable to this Form.
8. **"fungi"** includes, but is not limited to, any form or type of mould, yeast, mushroom, mildew, wet or dry rot, or bacteria whether or not allergenic, pathogenic or toxigenic, and any substance, vapour or gas produced by, emitted from or arising out of any "fungi" or "spores" or resultant mycotoxins, allergens, or pathogens.
9. **"injury"** means bodily injury, sickness, or disease sustained by a natural person. This includes death, shock, fright, mental anguish, mental injury, or disability which result from any of these at any time.
10. **"policy period"** means the period shown in the "Declaration Page(s)".
11. **"spores"** includes, but is not limited to, any reproductive particle or microscopic fragment produced by, emitted from or arising out of any "fungi"
12. **"terrorism"** means an ideologically motivated unlawful act or acts, including but not limited to the use of violence or force or threat of violence or force, committed by or on behalf of any group(s), organization(s) or government(s) for the purpose of influencing any government and/or instilling fear in the public or a section of the public.