PROFESSIONAL LIABILITY – US DIRECT
ERRORS AND OMISSIONS INSURANCE
The Hiscox Professional Liability – US Direct policy is designed to offer coverage for the risks entities face in performing their Professional Services. We urge You to read this Policy carefully so You understand the insurance that You have purchased, and the full extent of Your and Our rights and duties under this Policy. Please note that all words and phrases that appear in bold-type (except headings) have special meaning and are defined in the Definitions section of this Policy. Coverage for all Claims is subject to the entire terms and conditions of the policy.

Coverage for Claims Made Against You

You have purchased insurance that provides coverage for Claims made against You. We will pay Damages on Your behalf for any Claim that falls within the Insuring Agreement and within all of the terms and conditions outlined in the policy. Covered Claims are for Your Wrongful Acts in providing or failing to provide Professional Services. To determine who is an Insured please refer to the Definitions and Spousal and Domestic Partner section of the policy. Additionally, for coverage to apply, You must comply with all Your obligations as outlined in the Notice of Claims, Notice of Potential Claims, and the rest of the policy. The most We will pay is outlined in the Limits of Liability Section and items We will not pay are outlined in the Exclusions section. You are responsible for payments as outlined in the Deductible section.
In consideration of the premium charged and in reliance on the statements made and information provided to Us, including but not limited to the statements made and information provided in and with the Application, which is made a part of this Policy, as well as subject to the Limits of Liability, the Deductible and all of the terms, conditions, limitations and exclusions of this Policy, We and You agree as follows:

I. INSURING AGREEMENT, DEFENSE AND SETTLEMENT

A. INSURING AGREEMENT

We shall pay on Your behalf Damages and Claim Expenses in excess of the Deductible resulting from any covered Claim that is first made against You during the Policy Period and reported to Us pursuant to the terms of the Policy for Wrongful Acts committed on or after the Retroactive Date.

We shall also pay on Your behalf all Supplemental Payments in connection with any covered Claim that is first made against You during the Policy Period and reported to Us pursuant to the terms of the Policy for Wrongful Acts committed on or after the Retroactive Date. No Deductible shall apply to Supplemental Payments.

B. DEFENSE

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

2. We shall have the right to appoint defense counsel upon being notified of such Claim.

3. Notwithstanding paragraph 2., We shall have no obligation to pay Claim Expenses until You have satisfied the applicable Deductible.

4. Our duty to defend shall terminate upon the exhaustion of the Limit of Liability as set forth in Item 3. of the Declarations.

C. SETTLEMENT

1. We shall have the right to solicit and negotiate settlement of any Claim.

2. We shall not, however, enter into a settlement without Your prior consent, which consent shall not be unreasonably withheld.

3. If You shall refuse to consent to any settlement recommended by Us, Our liability for such Claim shall not exceed the amount for which such Claim could have been settled plus Claim Expenses incurred up to the date of such refusal.
II. NOTICE OF CLAIMS AND NOTICE OF POTENTIAL CLAIMS

A. NOTICE OF CLAIMS

1. As a condition precedent to any coverage under this Policy, You shall give written notice to Us of any Claim as soon as practicable, but in all events no later than:

   a. the end of the Policy Period (or any purchased Optional Extended Reporting Period); or
   b. 60 days after the end of the Policy Period (or any purchased Optional Extended Reporting Period) so long as such Claim is made within the last 60 days of such Policy Period (or any purchased Optional Extended Reporting Period).

2. Such notice shall be sent to Us at the address set forth in Item 5. of the Declarations.

3. Such notice shall include any and all documents related to such Claim, including every demand, notice, summons or other applicable information received by You or by Your representative.

B. NOTICE OF POTENTIAL CLAIMS

If You first become aware during the Policy Period of any Wrongful Act that might be reasonably likely give rise to a covered Claim, You may give written notice to Us of such potential Claim during the Policy Period. Such notice must include to the fullest extent possible:

1. the identity of the potential claimant;
2. the identity of the person(s) who allegedly committed the Wrongful Act;
3. the date of the alleged Wrongful Act;
4. specific details of the alleged Wrongful Act; and
5. any written notice from the potential claimant describing the Wrongful Act.

If such notice is accepted as a “potential Claim,” then any actual Claim that is subsequently made shall be deemed to have been first made on the date such “potential Claim” was first reported to Us.

Provided, however, You may not report “potential Claims” during any purchased Optional Extended Reporting Period.

C. OPTIONAL EXTENDED REPORTING PERIOD

1. If We or the Named Insured cancel or non-renew this Policy (as described by Endorsement hereto), then the Named Insured shall have the right to purchase for an additional premium an Optional Extended Reporting Period. Provided,
however, the right to purchase an Optional Extended Reporting Period shall not apply if:

a. this Policy is canceled by Us for nonpayment of premium (as described by Endorsement hereto); or
b. the total premium for this Policy has not been fully paid.

2. The Optional Extended Reporting Period will apply only to Claims that:

a. are first made against You and reported to Us during such Optional Extended Reporting Period; and
b. are for Wrongful Acts committed on or after the Retroactive Date but prior to the effective date of cancellation or non-renewal (as described by Endorsement hereto).

3. The additional premium for such Optional Extended Reporting Period shall not exceed 200% of the annualized expiring premium for an Optional Extended Reporting Period of 3 years.

The additional premium for such Optional Extended Reporting Period shall be fully earned at the inception of such Optional Extended Reporting Period.

4. Notice of election and full payment of the additional premium for the Optional Extended Reporting Period must be received within 30 days after the effective date of cancellation or non-renewal (as described by Endorsement hereto). In the event the additional premium is not received within the 30 days, any right to purchase the Optional Extended Reporting Period shall lapse and no further Optional Extended Reporting Period shall be offered.

The Limits of Liability applicable during any purchased Optional Extended Reporting Period shall be the remaining available Limits of Liability under this canceled or non-renewed Policy (as described by Endorsement hereto). There shall be no separate or additional Limit of Liability available for any purchased Optional Extended Reporting Period and the purchase of any Optional Extended Reporting Period shall in no way increase the Limit of Liability set forth in Item 3. of the Declarations.

III. EXCLUSIONS

This Policy does not apply to and We shall have no obligation to pay any Damages, Claim Expenses or Supplemental Payments for any Claim:

A. based upon or arising out of any actual or alleged fraud, dishonesty, criminal conduct, or any knowingly wrongful, malicious, or intentional acts or omissions; provided, however, that:

1. We will pay Claim Expenses until there is a final adjudication establishing such conduct, at which time You shall reimburse Us for such Claim Expenses; and
2. this exclusion shall not apply to otherwise covered intentional acts or omissions resulting in a Personal Injury.
B. based upon or arising out of any actual or alleged gaining of any profit or advantage to which You were not legally entitled.

C. based upon or arising out of any actual or alleged wrongful termination, retaliation or discrimination against or harassment of any past, present, future or potential Employee, including but not limited to any violations of federal, state or local statutory or common law.

D. based upon or arising out of any actual or alleged Wrongful Act that:
   1. was committed prior to the Retroactive Date;
   2. has been the subject of any notice given under any other policy of which this Policy is a renewal or replacement; or
   3. You had knowledge of prior to the Policy Period and had a reasonable basis to believe that such Wrongful Act could give rise to a Claim; provided, however, that if this Policy is a renewal or replacement of a previous policy issued by Us providing materially identical coverage, the Policy Period referred to in this paragraph will be deemed to refer to the inception date of the first such policy issued by Us.

E. brought by or on behalf of any federal, state or local government agency or professional or trade licensing organization; provided, however, this exclusion shall not apply to claims brought in their capacity as a client receiving Your Professional Services.

F. brought by or on behalf of one Insured against another Insured.

G. brought by or on behalf of any person or entity maintaining Effective Control of You.

H. based upon or arising out of any actual or alleged violation of the following laws, including any similar provisions of any federal, state or local statutory or common law:
   1. the Securities Act of 1933 (as amended);
   2. the Securities Exchange Act of 1934 (as amended);
   3. any state blue sky or securities laws (as amended);
   4. the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. (as amended);
   5. the Employee Retirement Income Security Act of 1974 (as amended);
   including any rules or regulations promulgated thereunder.

I. based upon or arising out of any actual or alleged obligation under any Workers’ Compensation, Unemployment Compensation, Employers Liability or Disability Benefit Law, including any similar provisions of any federal, state or local statutory or common law.

J. based upon or arising out of any actual or alleged liability of others that You assume under any contract or agreement unless such liability would have attached in the absence of such contract or agreement.
K. based upon or arising out of any actual or alleged Bodily Injury or Property Damage.

L. 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.

M. based upon or arising out of any actual or alleged infringement of any copyright, trademark, trade dress, trade name, service mark, service name, title, slogan or patent or theft of trade secret.

N. based upon or arising out of any actual or alleged false or deceptive advertising of Your goods or services or misrepresentation in advertising of Your goods or services, including but not limited to any wrongful description of prices of Your goods or services or the quality or performance of Your goods or services.

O. based upon or arising out of any actual or alleged breach of contract or breach of any implied or express warranty or guarantee; provided, however, this Exclusion shall not apply to:

1. any obligation you have to perform your Professional Services with reasonable skill or care; or
2. any liability You would have had in absence of such contract, warranty or guarantee.

P. based upon or arising out of any actual or alleged violation of any federal, state or local statutes, ordinances or regulations regarding or relating to unsolicited telemarketing, solicitations, emails, faxes or any other communications of any type or nature, including but not limited to any “anti-spam” and “do-not-call” statutes, ordinances, or regulations.

Q. based upon or arising out of any actual or alleged failure to procure or maintain adequate insurance or bonds.

R. based upon or arising out of any actual or alleged failure to protect any non-public, personally identifiable information in Your care, custody or control.

S. based upon or arising out of any actual or alleged actuarial services, medical or nursing services, insurance agent/broker services, legal services or services as an architect or engineer.

IV. LIMITS OF LIABILITY, DEDUCTIBLE AND RELATED CLAIMS

A. LIMIT OF LIABILITY
Regardless of the number of Claims made during the Policy Period (or applicable Extended Reporting Period), the maximum that We shall be liable to pay for all covered Damages, Claim Expenses and Supplemental Payments shall be as follows:

1. The amount set forth in Item 3.A. of the Declarations as “Each Claim” shall be the maximum amount for each covered Claim.

2. The amount set forth in Item 3.B. of the Declarations as “Aggregate for all Claims” is the maximum amount for all Claims combined.

3. Notwithstanding 1. and 2. above, Our liability for Supplemental Payments shall not exceed $250 per day for each Insured up to $5,000 per Claim, which amounts shall reduce the amounts described in 1. and 2. above.

B. DEDUCTIBLE

1. We shall not be responsible for payment of Damages or Claim Expenses until the Deductible amount has been satisfied.

2. We may at Our discretion advance payment of Damages or Claim Expenses within the Deductible amount on Your behalf, but You shall reimburse Us for any such amounts as soon as We request such reimbursement.

3. No Deductible amount shall apply to Supplemental Payments.

C. RELATED CLAIMS

For purposes of the applicable Deductible and Limit of Liability, all Claims based upon or arising out of continuous, repeated, related or interrelated Wrongful Acts shall be considered a single Claim first made against You in the Policy Period the first such Claim was made.

V. OTHER MATTERS AFFECTING COVERAGE

A. ESTATES, HEIRS, LEGAL REPRESENTATIVES, SPOUSES & DOMESTIC PARTNERS

This Policy shall apply to Claims brought against:

1. the heirs, executors, administrators, trustees in bankruptcy, assignees and legal representatives of any Insured in the event of such Insured’s death or disability; or

2. the legal spouse or legal domestic partner of any Insured;

but only:

1. for the Wrongful Acts of such Insured; or
2. in connection with their ownership interest in property which the claimant seeks as recovery for actual or alleged Wrongful Acts of such Insured.

B. INSURED DUTY TO COOPERATE

You shall have the duty to cooperate with Us in the defense, investigation and settlement of any Claim, including but not limited to:

1. upon request, submit to examination and interrogation under oath by Our representative;
2. attend hearings, depositions and trials as requested by Us;
3. assist in securing and giving evidence and obtaining the attendance of witnesses;
4. provide written statements to Our representative and meet with such representative for the purpose of investigation and/or defense; and
5. provide all documents We may reasonably require.

C. INSURED OBLIGATION NOT TO INCUR EXPENSE OR ADMIT LIABILITY

You shall not, except at Your own cost, make any payment, incur any expense, admit any liability, settle any Claim or assume any obligation without Our prior consent.

D. ACTION AGAINST THE INSURER

No action shall be taken against Us unless:

1. You have complied fully with all the terms and conditions of this Policy; and
2. the amount of Your obligation to pay shall have been finally determined either by judgment against You after actual trial, or by written agreement between You, Us and the claimant.

No person or organization shall have any right under this Policy to join Us as a party to any Claim against You nor shall We be impleaded by You or Your legal representatives in any such Claim.

E. OTHER INSURANCE

This Policy shall be excess insurance over any other valid and collectable insurance available to You, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as a specific excess insurance over the Limit of Liability provided in this Policy.

F. SUBROGATION

1. In the event of any payment by Us under this Policy, We shall be subrogated to all of Your rights of recovery to such payment.
2. You shall do everything that may be necessary to secure and preserve such subrogation rights, including but not limited to the execution of any documents necessary to allow Us to bring suit in Your name.
3. **You** shall do nothing to prejudice such subrogation rights without first obtaining **Our** written consent.

4. Any recovery shall first be paid to **Us** up to the amount of any **Damages**, **Claim Expenses** or **Supplemental Payments** that **We** have paid. Any remaining amounts shall be paid to **You**.

5. Notwithstanding the above, no subrogation shall be had against any **Insured**.

**G. ALTERATION AND ASSIGNMENT**

No change in, modification of or assignment of interest under this Policy shall be effective unless made by written endorsement to this Policy signed by **Our** authorized representative.

**H. REPRESENTATIONS**

As a condition precedent of **Our** obligations under this Policy, **You** represent that:

1. the statements and representations made by **You** in the **Application** are true and are the basis of the Policy and are to be considered as incorporated into and constituting a part of this Policy;

2. the statements and representations made by **You** in the **Application** shall be deemed material to the acceptance of the risk assumed by **Us** under the Policy;

3. this Policy is issued in reliance upon the truth of the statements and representations made by **You** in the **Application**; and

4. in the event the **Application** contains misrepresentations which materially affect the acceptance of the risk assumed by **Us** under this Policy, this Policy shall be **void ab initio**.

**I. BANKRUPTCY OR INSOLVENCY**

**Your** bankruptcy or insolvency shall not relieve **Us** of any of **Our** obligations under this Policy.

**J. TERRITORY**

This Policy shall apply to **Wrongful Acts** committed anywhere in the world, provided that any action, arbitration, or other proceeding for, in relation to, or arising from the **Claim** is brought within the United States, its territories or possessions, or Canada.

**K. FALSE OR FRAUDULENT CLAIMS**

If any **Insured** shall commit fraud in proffering any **Claim** or regarding the amount or otherwise, this Insurance shall become void as to such **Insured** from the date such fraudulent claim is proffered.

**L. NAMED INSURED RESPONSIBILITIES**
It shall be the responsibility of the Named Insured to act on behalf of all other Insureds with respect to the following:

1. giving and receiving notice of cancellation and/or non-renewal (as described by Endorsement hereto);
2. payment of premium
3. receipt of return premiums;
4. acceptance of changes to this Policy; and
5. payment of Deductibles.

M. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit Your books and records as they related to this Policy at any time during the Policy Period (or any purchased Optional Extended Reporting Period) or up to three years after the end of the Policy Period (or any purchased Optional Extended Reporting Period).

N. TITLES

Titles of sections of and endorsements to this Policy are inserted solely for convenience of reference and shall not be deemed to limit, expand or otherwise affect the provisions to which they relate.

VI. DEFINITIONS

A. Application means the signed application for the Policy, whether submitted on-line, over the phone or on paper, including any attachments and other materials or statements submitted in conjunction therewith. If this Policy is a renewal or replacement of a previous policy or policies issued by Us, Application shall also include all signed applications and other materials that were submitted therewith and attached thereto.

B. Bodily Injury means physical injury to or sickness, disease or death of a person, or mental injury, mental anguish, emotional distress, pain or suffering, or shock sustained by a person.

C. Claim means any written demand for Damages or for non-monetary relief.

D. Claim Expenses means the following that are incurring by Us or by You 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 and appeal of a Claim; and
2. premiums on appeal bonds, attachment bonds or similar bond. Provided, however, We shall have no obligation to apply for or furnish any such bonds.

Claim Expenses shall not mean and We shall not be obligated to pay:

1. salaries, wages or expenses other than Supplemental Payments; or
2. the defense of any criminal investigation, criminal grand jury proceeding, or criminal action.

E. **Damages** means a monetary judgment or monetary award that **You** are legally obligated to pay (including pre- or post-judgment interest) or a monetary settlement negotiated by **Us** with **Your** consent.

**Damages** shall not mean and **We** shall not be obligated to pay:

1. fines, penalties, taxes, sanctions levied against **You**;
2. any punitive or exemplary damages or that portion of any multiplied damages award which exceeds the damage award so multiplied, provided, however, that, if such damages are otherwise insurable under applicable law and regulation, **We** will pay an award of punitive or exemplary damages in excess of the Deductible and up to a maximum sum of $250,000. This limit shall be a part of and not in addition to the Limit of Liability set forth in Items 3. of the Declarations;
3. the return, reduction or restitution of **Your** fees, commissions, profits, or charges for goods provided or services rendered, including any over-charges or cost over-runs;
4. liquidated damages; or
5. **Your** cost of complying with injunctive relief.

F. **Effective Control** means:

1. ownership of more than 50% of the issued and outstanding voting securities; or
2. having the right pursuant to written contract, by-laws, charter, operating agreement or similar documents to elect, appoint or designate a majority of the board of directors, management committee members of a partnership or the members of the management board of a limited liability company (or equivalent management structure).

G. **Employee** means any past, present or future:

1. employee (including any part-time, seasonal or temporary employee or any volunteer);
2. partner, director, officer, member or board member (or equivalent position);
3. independent contractor; or
4. leased worker;

of an **Organization**, but only in their performance of **Professional Services** on behalf of or at the direction of such **Organization**.

H. **Insured** means **You** or **Your**.

I. **Named Insured** means the individual, corporation, partnership, limited liability company, limited partnership, or other entity set forth in Item 1 of the Declarations.

J. **Optional Extended Reporting Period** means any applicable **Optional Extended Reporting Period** contemplated by the **OPTIONAL EXTENDED REPORTING PERIOD** Clause.
K. **Organization** means the **Named Insured** and any **Subsidiary**.

L. **Personal Injury** means injury, other than **Bodily Injury**, arising out of one of 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, defamation or disparagement of goods, products or services; or
   5. oral or written publication of material in connection with **Your** advertising that violates a person’s right of privacy.

M. **Policy Period** means the period of time set forth in Item 6. of the Declarations.

N. **Pollutants** means 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.

O. **Professional Services** means only those services specified in Endorsement to this Policy as performed by or on behalf of an **Organization** for others for a fee or other compensation.

P. **Property Damage** means physical loss of or physical damage to or destruction of any tangible property, including the loss of use thereof. For purposes of this definition, “tangible property” shall not include electronic data.

Q. **Retroactive Date** means the date set forth in Item 7. of the Declarations.

R. **Subsidiary** means:

   1. any entity of which the **Named Insured** has **Effective Control** (“**Controlled Entity**”) on or before the **Policy Period**, either directly or indirectly through one or more **Controlled Entities**;

   2. any entity of which the **Named Insured** forms or acquires **Effective Control** during the **Policy Period**, either directly or indirectly through one or more **Controlled Entities**, but only for the first 90 days after such formation or acquisition (or until the end of the **Policy Period**, whichever is earlier). Provided, however, with respect to a **Subsidiary** described in paragraph 2. of this definition, **We** shall only cover **Claims** alleging **Wrongful Acts** committed while the **Named Insured** had **Effective Control** of such **Subsidiary**, either directly or indirectly through one or more **Controlled Entities**.

An entity ceases to be a **Subsidiary** once the **Named Insured** no longer has **Effective Control** of such entity, either directly or indirectly through one or more **Controlled Entities**, and this Policy will not respond to **Claims** made against such entity thereafter.
S. **Supplemental Payments** means the reasonable expenses incurred by **You**, including loss of wages, if **You** are required by **Us** to attend arbitration proceedings or trial in the defense of a covered **Claim**.

T. **We**, **Us**, **Our** or **Insurer** means the insurance company set forth in the Declarations.

U. **Wrongful Act** means any actual or alleged breach of duty, negligent act, error, omission or **Personal Injury** committed by **You** in the performance of **Your Professional Services**.

V. **You** or **Your** means any:

   1. **Organization**;
   2. **Employee**;
   3. joint venture in which an **Organization** participates pursuant to written agreement, but only for:

      a. **Wrongful Acts** committed by such **Organization**; and
      b. the percentage of otherwise covered **Damages** and **Claims Expenses** in proportion to such **Organization's** participation in the joint venture.