

2019

PLF Claims Made
Excess Plan



Professional
Liability Fund

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INTRODUCTION

Effective 1.1.2019

This Professional Liability Fund (“PLF”) Excess Plan is excess coverage over the PLF Primary Plan and is also assessable. Although the coverage provided under both the Primary and Excess Plans is similar, not all terms, conditions, definitions, and exclusions are the same. Coverage under this Plan is more restrictive and differs in some respects. You should read both the Primary and Excess Plans, in their entirety, to understand your coverage.

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this Plan. Certain definitions and provisions of the PLF Primary Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A. For the purposes of illustrating the PLF’s intent as to certain provisions in this Plan, Appendix B contains related examples.

Plan Year means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Excess Plan and the applicable **Excess Limit of Coverage**, as set forth in the Declarations, and defined in Section VII, this Plan provides the following coverage:

SECTION I – COVERAGE AGREEMENT

A. Indemnity

The PLF will pay all sums in excess of the **Applicable Underlying Limit** and/or applicable Deductible that a **Covered Party** under this Plan, becomes **Legally Obligated** to pay because of **Claims First Made** against a **Covered Party** during the **Coverage Period**, arising from a **Covered Activity**, to which this Plan applies.

Applicable Underlying Limit means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the Claim for which coverage is sought.

Claim, Damages, and Legally Obligated have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

B. Defense

1. After the **Applicable Underlying Limit** has been exhausted and the applicable Deductible has been satisfied, the PLF will defend any **Suit** against a **Covered Party** seeking **Damages** to which this Plan applies until the **Excess Limit of Coverage** is exhausted. The PLF is not bound by any **Covered Party’s** agreement to resolve a dispute through arbitration or any other alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.
2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim**, and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based only on projected defense costs or potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review, or repair any **Claim** or matter that may create the potential for a **Claim**.

3. The PLF will pay all **Claims Expense** it incurs, and all such payments will reduce the **Excess Limit of Coverage**.
4. Notwithstanding Exclusions 2 and 4 of the PLF Primary Plan, incorporated in this Plan by reference, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process, and wrongful initiation of civil proceedings, provided such Claims arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

Suit and **Claims Expense** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

5. The PLF does not have a duty to defend any **Claim**, or the portion of any **Claim**, that is not a **Claim for Damages**, as defined in Section I A. In the event the PLF voluntarily agrees to defend any **Claim**, or any portion of a **Claim**, that does not seek Damages, it will be subject to the **Covered Party's** agreement that the **Covered Party** will cooperate with the PLF's attempt to settle or dismiss any alleged **Claim for Damages** that may also be alleged. Following any such dismissal or settlement the PLF will have the right to withdraw from the defense of any remaining claim.

C. Exhaustion of Limit

The PLF is not obligated to investigate, defend, pay, or settle any **Claim** after the applicable **Excess Limit of Coverage** has been exhausted.

D. Coverage Territory

This Plan applies only to **Suits** brought in the United States, its territories, or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

E. Basic Terms of Coverage

This Plan applies to **Claims for Damages** against a **Covered Party** arising from a **Covered Activity**, subject to all definitions, terms, restrictions, limitations, and exclusions applicable to this Plan, and the **Excess Limit of Coverage**, provided all the following terms and conditions of coverage are satisfied:

1. The **Claim** must be **First Made**, as determined by the rules set forth in Section IV, during the **Coverage Period**;
2. The **Covered Activity** on which the **Claim** is based must have been rendered on behalf of the **Firm**;
3. The **Covered Activity** on which the **Claim** is based must have occurred after the Retroactive Date listed in the Declarations, or listed in any endorsement to the Declarations;
4. The **Covered Activity** on which the **Claim** is based must have occurred:
 - a. During the **Coverage Period**; or
 - b. Before the **Coverage Period**, but only provided each of the following conditions are met:
 - (i) the **Firm** circulated its Application for Coverage among all attorneys listed in Section 10 of the Declarations as "Firm Attorneys," and those listed in Section 14 of the Declarations as current "Non Oregon Attorneys";
 - (ii) before the effective date of this Plan, no **Covered Party** had a basis to believe that the error, omission, negligent act, or breach of duty was a breach of the standard of care, or may result in a **Claim**; and

- (iii) there are no prior policy, policies, or agreements to indemnify that provide coverage for such liability or **Claim**, regardless of whether the available limits of any such policy, policies, or agreements to indemnify are subject to different limits, or otherwise differ from this Plan, and regardless of whether the limits of any such policy, policies, or agreements to indemnify are sufficient to pay any liability or **Claim**.

Subsection 4 b (ii) will not apply as to any **Covered Party** who, before the effective date of this Excess Plan, did not have a basis to believe the error, omission, negligent act, or breach of duty was a breach of the standard of care or may result in a **Claim**.

For the purposes of demonstrating the PLF's intent as to how this subsection 4 applies, illustrative examples are set forth in Appendix B of this Plan.

5. There must have been full and timely payment of all assessments relating to this Plan; and
6. There must have been compliance with the Duties of Covered Parties, as set forth in Section IX.

SECTION II – WHO IS A COVERED PARTY UNDER THIS EXCESS PLAN?

Only the following are **Covered Parties**:

A. The Firm

The **Firm** is a **Covered Party** under this Excess Plan but only with respect to liability arising out of the conduct of: an attorney(s) who is not an **Excluded Attorney** and qualifies as a **Covered Party** under Section II B; or a **Non Attorney** employee, subject to the terms and conditions of Section III.

Firm means any **Law Entity** designated in Section 1 or 11 of the Declarations.

Excluded Attorney means an attorney who is designated as such in the Declarations.

Law Entity and **Non Attorney** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

B. Individual Covered Parties

Only the following individuals, not otherwise listed in the Declarations as **Excluded Attorneys**, are **Covered Parties** under this Excess Plan as to any **Claim** to which this Plan applies, and only with respect to **Claims** arising from **Covered Activities** rendered on behalf of the **Firm**, as attorneys in **Private Practice**:

1. Attorneys who are specifically designated in the Declarations as “Firm Attorney,” “Former Attorney,” or “Non Oregon Attorney.”
2. A former partner, shareholder, member, or attorney employee of the **Firm** or any attorney formerly in an “of counsel” relationship to the **Firm** who ceased to be affiliated with the **Firm** more than five (5) years prior to the beginning of the **Coverage Period**, but only with respect to **Claims** arising out of a **Covered Activity** that took place while a PLF Primary Plan issued to that attorney was in effect.
3. An attorney who becomes affiliated with the **Firm** after the beginning of the **Coverage Period** and who has been issued a PLF Primary Plan is automatically a **Covered Party** – unless the attorney becomes affiliated with the **Firm** as a result of one of the changes required to be reported to the PLF and newly underwritten pursuant to Section IX D. In that event, the attorney is not covered under the Plan until and unless coverage for the affiliated attorney is underwritten and specifically accepted by the PLF. (See, Section IX D.)

4. In the event of the death, adjudicated incapacity, or bankruptcy of a **Covered Party**, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of the **Covered Party**, when acting in such capacity, is a **Covered Party**.

Private Practice has the meaning set forth in the PLF Primary Plan in effect during this **Plan Year**.

SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this Excess Plan, a **Covered Activity** is an error, omission, negligent act, or breach of duty: by a **Covered Party** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or by a **Non Attorney** employee, for whose conduct a **Covered Party** is legally liable, who assists in providing such services, provided:

1. The error, omission, negligent act, or breach of duty, by the **Covered Party**, on which the **Claim** is based, occurred after any applicable Retroactive Date, before such **Covered Party's** applicable Separation Date, specified in the Declarations, and satisfies the conditions of Section I E 4;
2. The error, omission, negligent act, or breach of duty by the **Covered Party**, on which the **Claim** is based, constituted rendering **Professional Legal Services** or **Special Capacity Services** on behalf of the **Firm**, as an attorney in **Private Practice**; and
3. Any error, omission, negligent act, or breach of duty by a **Non Attorney** employee must be directly related to a **Covered Party's** rendering of **Professional Legal Services** or **Special Capacity Services**, on behalf of the **Firm**, that meets the conditions of subsections 1 and 2 above.

Professional Legal Services and **Special Capacity Services** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

SECTION IV – WHEN IS A CLAIM FIRST MADE?

A. Date of Claim

For the purposes of this Excess Plan, subject to the exception set forth in Section IV B, regarding **Excess-Related Claims**, a **Claim** is **First Made** on the earliest of the following dates:

1. The date a lawsuit is first filed, or an arbitration or alternative dispute resolution proceeding is first initiated against a **Covered Party**;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party**;
3. The date any **Covered Party** receives notice of a **Claim**;
4. The date the PLF receives notice of a **Claim** against a **Covered Party**; or
5. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

B. Excess-Related Claims

When a **Claim** is **Excess-Related** to an earlier **Claim** or **Claims** against any **Covered Party** or **Parties** under this Excess Plan, the **Claim** is **First Made** on the date the earliest such **Excess-Related Claim** was **First Made**.

SECTION V – EXCESS-RELATED CLAIMS

A. Definition of Excess-Related Claims

For the purposes of this Excess Plan, two or more **Claims** are **Excess-Related** when the **Claims** are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus; and such **Claims** have been asserted, or are asserted, against **Covered Parties** under this Excess Plan.

General examples of **Excess-Related Claims** include, but are not limited to, the following:

1. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral;
2. Multiple **Claims** arising out of the same transaction, or occurrence, or series of transactions or occurrences;
3. **Claims** in which the claimants tie together different acts as part of an alleged overall scheme or operation;
4. **Claims** that arise from a method, pattern, or practice used or adopted by one or more **Covered Party** or **Law Entities** representing multiple clients in similar matters;
5. **Claims** in which successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses; or
6. **Claims** alleged as part of a class action or purported class action.

Related Claims, as defined in the PLF Primary Plan, against other attorneys or firms not **Covered Parties** under this Plan do not necessarily cause a **Claim** to which this Excess Plan applies to relate back to the same excess **Plan Year** applicable to **Related Claims** under the PLF Primary Plan. Prior knowledge of a **Covered Party** or **Parties** of the potential for a **Claim** before the inception date of this Plan, however, may cause a **Claim** not to be covered under this Plan under the terms of Section I E 4.

*For the purpose of demonstrating the PLF's intent as to what constitutes an **Excess-Related Claim**, illustrative examples are set forth in Appendix B of this Plan.*

B. What Happens When Claims Are Excess-Related?

When **Claims** are **Excess-Related**, they are all considered as having been **First Made** on the date the earliest such **Claim** is **First Made**. This causes all such **Claims** to share the same maximum **Excess Limit of Coverage** that was in effect when the earliest such **Claim** was **First Made**.

SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

All Exclusions in the PLF Primary Plan, in effect during this **Plan Year**, except Exclusion 6 (Business Interests) apply equally to the coverage under this Excess Plan. These exclusions are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION VII – EXCESS PLAN ADDITIONAL EXCLUSIONS

1. Business Interests. This Plan does not apply to any **Claim** by a business enterprise:
 - a. In which any **Covered Party** has an **Ownership Interest**; or in which any **Covered Party** is a general partner, managing member, or employee; or in which any **Covered Party** controls, operates or manages, either individually or a fiduciary capacity, any property that is owned, managed or maintained by the business enterprise; or
 - b. At the time of the alleged acts, errors or omissions on which the **Claim** is based: any **Covered Party** had an **Ownership Interest** in the business enterprise; any **Covered Party** was a general partner, managing member, or employee of the business enterprise; or any **Covered Party** controlled, operated, or managed, either individually or a fiduciary capacity, any property that was owned, managed, or maintained by the business enterprise.

Ownership Interest means that any **Covered Party**, those controlled by any **Covered Party**, the spouse, parent, stepparent, child, stepchild, sibling or any member of any **Covered Party's** household, or those with whom any **Covered Party** is regularly engaged in the practice of law collectively owns more than 10% of the business enterprise or owned more than 10% of the business enterprise at the time of the alleged acts, errors or omissions on which the **Claim** is based.
2. Excluded Attorney Exclusion. This Plan does not apply to any **Claim** against any **Covered Party**:
 - a. Arising from or relating to any act, error, or omission of any **Excluded Attorney** in any capacity or context, whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable; or
 - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any **Excluded Attorney**.
3. Excluded Firm Exclusion. This Plan does not apply to any **Claim** made against a **Covered Party**:
 - a. That arises from or is related to any act, error, or omission of: (i) an **Excluded Firm**, or (ii) a past or present partner, shareholder, associate, attorney, or employee (including any **Covered Party**) of an **Excluded Firm** while employed by, a partner or shareholder of, or in any way associated with an **Excluded Firm**, in any capacity or context, and whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable therefore; or
 - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of, or harm caused by, any **Excluded Firm** or any person described in subsection (a)(ii) above.

Excluded Firm means a firm designated as such in the Declarations.
4. Office Sharing Exclusion. This Plan does not apply to any **Claim** alleging the vicarious liability of any **Covered Party** under the doctrine of apparent partnership, partnership by estoppel, or any similar theory, for the acts, errors, or omissions of any attorney, professional corporation, or other entity not listed in the Declarations with whom the **Firm** or attorney **Covered Parties** shared office space or office facilities at the time of any of the alleged acts, errors, or omissions.

SECTION VIII – EXCESS LIMIT OF COVERAGE AND DEDUCTIBLE

A. Excess Limit of Coverage

1. Regardless of the number of **Covered Parties** under this Excess Plan, the number of persons or organizations who sustain damage, or the number of **Claims** made, the PLF's maximum aggregate **Excess Limit of Coverage** for indemnity and **Claims Expense** under this Plan will be limited to the amount shown as the **Excess Limit of Coverage** in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of **Claims** against more than one **Covered Party** does not increase the PLF's **Excess Limit of Coverage**.
2. All **Excess-Related Claims** are considered **First Made** during the **Plan Year** when the first such **Excess-Related Claim** was **First Made**. The single **Excess Limit of Coverage** in effect when the first such **Excess-Related Claim** was **First Made** will apply to all such **Claims**.

B. Deductible

1. The Deductible for **Covered Parties** under this Excess Plan who are not also covered under the PLF Primary Plan is either the maximum limit of liability for indemnity and **Claims Expense** under any insurance policy covering the **Claim** or, if there is no such policy or the insurer is either insolvent, bankrupt, or in liquidation, the amount listed in Section 5 of the Declarations.
2. The **Firm** is obligated to pay any Deductible not covered by insurance. The PLF's obligation to pay any indemnity or **Claims Expense** as a result of a **Claim** for which a Deductible applies is only in excess of the applicable amount of the Deductible. The Deductible applies separately to each **Claim**, except for **Excess-Related Claims**. The Deductible amount must be paid by the **Firm** as **Claims Expenses** are incurred or a payment of indemnity is made. At the PLF's option, it may pay such **Claims Expenses** or indemnity, and the **Firm** will be obligated to reimburse the PLF for the Deductible within ten (10) days after written demand from the PLF.

SECTION IX – DUTIES OF COVERED PARTIES

A. Timely Notice of Claims, Suits, or Circumstances

1. The **Firm** must, as a condition precedent to the right of protection afforded any **Covered Party** by this coverage, give the PLF, at the address shown in the Declarations, written notice of any **Claim** that is reasonably likely to involve any coverage under this Excess Plan.
2. In the event a **Suit** is brought against any **Covered Party** that is reasonably likely to involve any coverage under this Excess Plan, the **Firm** must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the **Covered Party** or the **Covered Party's** representatives.
3. If during the **Coverage Period**, any **Covered Party** becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Excess Plan, the **Firm** must give written notice to the PLF as soon as practicable during the **Coverage Period** of: the specific act, error, or omission; the injury or damage that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
4. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** that otherwise would require notice from the **Covered Party** under subsections 1 through 3 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

B. Other Duties of Cooperation

As a condition of coverage under this Excess Plan, every **Covered Party** must satisfy the duties of cooperation as set forth in Section VIII B through E of the PLF Primary Plan. These conditions are incorporated in this Plan by reference, and have the same force and effect as if fully set forth in this Plan.

C. Duty of Full Disclosure in Application

A copy of the Application the **Firm** submitted to the PLF in seeking coverage under this Excess Plan is attached to and shall be deemed a part of this Excess Plan. All statements and descriptions in the Application are deemed to be representations to the PLF upon which it has relied in agreeing to provide the **Firm** with coverage under this Excess Plan. Any misrepresentations, omissions, concealments of fact, or incorrect statements in the Application will negate coverage and prevent recovery under this Excess Plan if the misrepresentations, omissions, concealments of fact, or incorrect statements:

- (1) are contained in the Application;
- (2) are material and have been relied upon by the PLF; and
- (3) are either: (a) fraudulent; or (b) material either to the acceptance of the risk or to the hazard assumed by the PLF.

Without limiting the foregoing, any misrepresentation, omission, concealment of fact, or incorrect statement that causes the PLF to charge a lower premium than would otherwise have been charged is material to the acceptance of the risk or to the hazard assumed by the PLF.

D. Duty to Notify the PLF of Certain Changes in Risk

The **Firm** must notify the PLF if, after the start of the **Coverage Period**, any of the following events or circumstances occur: (1) the number of **Firm Attorneys** increases by more than 100 percent; (2) there is a firm merger or split; (3) an attorney joins or leaves a branch office of the **Firm** outside Oregon; (4) a new branch office is established outside Oregon; (5) the **Firm** or a current attorney with the **Firm** enters into an “of counsel” relationship with another firm or with an attorney who was not listed as a current attorney at the start of the **Coverage Period**; or (6) the **Firm** hires an attorney who is not eligible to participate in the PLF’s Primary Coverage Plan.

Upon the occurrence of any of the foregoing events or circumstances, the **Firm’s** coverage will again be subject to underwriting, and a prorated adjustment may be made to the **Firm’s** excess assessment.

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

The provisions of Section IX of the PLF Primary Plan, applicable to this **Plan Year**, are incorporated into this Plan by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XI – CANCELLATION AND TERMINATION

A. Cancellation by the Firm or the PLF

The **Firm** may cancel this Excess Plan, before the expiration of the **Coverage Period**, by mailing or delivering prior written notice to the PLF stating the date when the cancellation will become effective.

The PLF may cancel this Excess Plan, before the expiration of the **Coverage Period**, for any of the following reasons:

- (1) Failure by the **Firm** to pay an assessment when due;
- (2) Material misrepresentation by any **Covered Party**;
- (3) Substantial breaches of contractual duties, conditions, or warranties by any **Covered Party**; or
- (4) Revocation, suspension, or surrender of any **Covered Party's** license or right to practice law.

The PLF's cancellation of this Plan, for any of the foregoing reasons, is made by mailing or delivering written notice of cancellation to the **Firm**, stating the effective date of cancellation, to occur within no less than ten (10) days after the date notice of cancellation is mailed or delivered.

The last and final day of the **Coverage Period** will be the date preceding the effective date of cancellation stated in the cancellation notice sent by the **Firm** or the PLF. Coverage will expire at 11:59 p.m. on the date preceding the specified date of cancellation. If the PLF cancels this Plan, assessments shall be computed and refunded to the **Firm** pro rata. Assessment adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter. If the **Firm** cancels this Plan, the PLF will retain the assessment on a pro rata basis.

B. Termination

This Excess Plan terminates on the date and time shown as the end of the **Coverage Period** in the Declarations, unless canceled by the PLF or by the **Firm** in accordance with the provisions of this Plan before such date and time. There is no automatic renewal.

SECTION XII – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, the **Firm** agrees to pay its supplemental assessment to the PLF within thirty (30) days of request. The **Firm** further agrees that liability for such supplemental assessments shall be joint and several among the **Firm** and the partners, shareholders, and professional corporations listed as Firm Attorneys in the Declarations.

The PLF is authorized to make additional assessments for this **Plan Year** until all its liability for this **Plan Year** is terminated, whether or not any **Covered Party** maintains coverage under an Excess Plan issued by the PLF at the time assessments are imposed.

SECTION XIII – RELATION OF THE PLF'S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any **Covered Party** has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self-insurance, that also applies to any loss or **Claim** covered by this Excess Plan, the PLF will not be liable under this Excess Plan until the limits of the **Covered Party's** insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the **Excess Limit of Coverage** of this Excess Plan.

SECTION XIV – WAIVER AND ESTOPPEL

The provisions of Section XII of the PLF Primary Plan, applicable to this **Plan Year** are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XV – EXTENDED REPORTING COVERAGE

After twenty-four (24) months of continuous excess coverage with the PLF, upon termination or cancellation of this Excess Plan by either the **Firm** or the PLF, the **Firm** may be eligible to purchase an extended reporting endorsement. This endorsement extends the period within which a **Claim** may be **First Made** under this Excess Plan, but does not otherwise change the terms of this Plan. Eligibility to purchase an extended reporting endorsement, the amount of the additional assessment for such coverage and the period during which **Claims** may be **First Made** under the endorsement are determined by the PLF's underwriting department based on the **Firm's** claims experience and other underwriting factors.

SECTION XVI – ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment, without the express written consent of the PLF, voids any coverage under this Plan.

APPENDIX A – LIST AND INDEX OF DEFINED TERMS

1. **Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought. (Excess Plan, p. 1)
2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Primary Plan, p. 1)
3. **Claims Expense** has the meaning set forth in Section I B 3 of the Primary Plan. (Primary Plan, p. 2)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.” (Excess Plan, p. 1)
5. **Covered Activity** has the meaning set forth in Section III of this Plan. (Excess Plan, p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II of this Plan. (Excess Plan, pp. 3-4)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include:
 - a. Fines; penalties, statutorily enhanced damages, or enhanced prevailing fees;
 - b. Punitive or exemplary damages;
 - c. The return, forfeiture, disgorgement, restitution, reduction, or offset of any fees, costs, expenses or disbursements paid to, charged by, or owed to any **Covered Party** or to any **Law Entity** with which any **Covered Party** was associated at the time any such fees, costs, expenses or disbursements were paid, charged, or incurred, including but not limited to fees, costs, expenses or disbursements alleged to be excessive, not earned, unnecessary, ill-advised, or caused, in whole or in part, by any alleged negligent advice;
 - d. Rescission, injunctions, accountings, restitution, equitable relief;
 - e. Any personal profit or advantage to a **Covered Party**;
 - f. Any award of attorney fees, costs, or interest arising from any claim referenced in (a) through (d) above, or from any excluded claim. (Section I A, p. 1)
8. **Excess Limit of Coverage** has the meaning set forth in Section VIII of this Plan. (Excess Plan, p. 7)
9. **Excess-Related** has the meaning set forth in Section V of this Plan. (Excess Plan, pp. 5-6)
10. **Excluded Attorney** means an attorney who is designated as such in the Declarations. (Excess Plan, p. 3)
11. **Excluded Firm** means a firm designated as such in the Declarations. (Excess Plan, p. 7)
12. **Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations. (Excess Plan, p. 3)
13. **First Made** has the meaning set forth in Section IV of this Plan. (Excess Plan, p. 5)
14. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Primary Plan, p. 3)
15. **Legally Obligated** has the meaning set forth in Section I A of the Primary Plan. (Primary Plan, p. 1)
16. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Primary Plan, p. 4)
17. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. (Excess Plan, p. 1)
18. “PLF” means the Professional Liability Fund of the Oregon State Bar. (Excess Plan, p. 1)
19. **Private Practice** has the meaning set forth in Section II A of the Primary Plan. (Primary Plan, p. 3)
20. **Professional Legal Services** has the meaning set forth under Section III B of the Primary Plan. (Primary Plan, pp. 4 and 5)
21. **Special Capacity Relationship** has the meaning set forth in Section III C of the Primary Plan. (Primary Plan, p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C of the Primary Plan. (Primary Plan, p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding, but only if the PLF expressly consents to it. (Primary Plan, p. 1)

APPENDIX B – EXCESS PLAN ILLUSTRATIVE EXAMPLES

For the purpose of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the meaning of certain Excess Plan provisions, the PLF provides the following illustrative examples, not intended to be exhaustive regarding Section I E 4 and Section V – **Excess-Related Claims**:

1. Section I E 4:

- a. Law firm A maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year. Nevertheless, it does not report the matter to Carrier X in Year 1. Law firm A obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 PLF Excess Plan. This is true whether or not Carrier X provides coverage for the claim.
- b. Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a **Covered Party** (i.e., Attorney C) prior to the beginning of the **Coverage Period**, and because the firm did not circulate its application among the Firm Attorneys and Current Non-Oregon Attorneys before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.
- c. Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Section I E 4 will not be applied to deny coverage for the claim as to Attorneys A and B and the Firm. However, there will be no coverage for Attorney C because the claim falls outside the coverage grant under the terms of Section I E 4, and because Attorney C made a material misrepresentation to the PLF in the application.

2. Section V – Excess-Related Claims:

- a. Related Under the PLF Primary Plan vs. Excess-Related: Firm G, and one of its members, Attorney A, are sued by a claimant in 2014. The **Claim** is covered under Attorney A's 2014 PLF Primary Plan. Claimant amends the Complaint in 2015 and, for the first time, asserts the same **Claim** also against Firm H and one of its members, Attorney B, also covered under the PLF Primary Plan. Under the terms of the PLF Primary Plan, the firms and attorneys all share a single primary Limit of Coverage under the 2014 PLF Primary Plan. This is because the **Claims** are **Related**, for primary purposes, and the earliest **Related Claim** was made in 2014.

Firm H purchased PLF Excess Coverage in 2015 but was previously covered for excess liability in 2014 by Carrier X. Neither Firm H nor Attorney B were aware of the potential **Claim** in 2014, and therefore did not give notice of a potential **Claim** against Attorney B or Firm H to the PLF or Carrier X until 2015. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in 2014 and

Firm H did not purchase tail coverage from Carrier X. Under this scenario, any PLF excess coverage would be under the 2015 PLF Excess Plan because no **Claim** was made against the **Covered Parties** until 2015. (If, however, Firm G and Attorney B did have a basis to believe that the act, error, omission, or breach of duty to which the **Claim** relates was a breach of the standard of care or may result in a **Claim** before the PLF Excess Plan was issued, there would not be coverage for the **Claim** under the 2015 PLF Excess Plan. Also, if they had previously given notice to Carrier X or purchased applicable tail coverage, there would not be coverage under the PLF 2015 Excess Plan, because other insurance would apply.)

- b. Secondary or Dependent Liability – Firm A has Excess coverage with the PLF between 2013 and 2015. Attorney X, while an associate in the Firm A, commits malpractice in 2012 and then leaves to work with another firm in 2014. He is listed as a Former Attorney in the Declarations of the PLF Excess Plan. **Claims** are alleged only against Attorney A in 2014, and in 2015, a lawsuit is filed also alleging **Claims** against various attorneys who are partners in Firm A and the Firm itself based on vicarious liability for Attorney X’s malpractice. The **Claims** are **Excess-Related** and, therefore, were **First Made** in 2014.
- c. Same Transaction, Occurrence, or Series of Transactions or Occurrences – Attorney A, a partner in a **Firm** with PLF excess coverage between 2007 and the present, writes a tax opinion in 2008 for an investment offering. Attorneys B and C, with a different law firm, then assemble the offering circular in 2007. In 2010, Investors 1 and 2 bring **Claims** against all three attorneys relating to the offering. In 2011, Investor 3 also brings a **Claim** against all three attorneys. Under the PLF Primary Plan, **Claims** against all attorneys and firms, by all three investors, are **Related**, and all attorneys and firms share one Primary Limit of Coverage, applicable to all three claims. For the purpose of Attorney A’s PLF Excess Plan, however, the **Claims** against B and C are not **Excess-Related**. Therefore, the **Claims** against Attorney A are **First Made** in 2010, and Attorney A has a separate 2010 Excess Limit that applies to all three investor **Claims**.
- d. Actual Pattern or Practice – Attorneys A, B, and C, who are all members of a **Firm** covered under the PLF Excess Plan for the past twelve (12) years, represent a large number of asbestos clients over several years, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by various clients in 2014 for improper evaluation and by other clients making similar allegations in 2015. Plaintiffs do not allege a common scheme or plan, but because the **Firm** in fact operated a firm-wide formula for handling the cases, all claims are **Excess-Related, First Made** in 2014, and subject to the Limit of the 2014 Excess Plan.
- e. Successive or Collective Errors – Attorney C, an associate at a **Firm** covered under the PLF Excess Plan during all relevant periods, represents a group of clients at trial and commits certain errors. Attorney D, a partner at the **Firm**, undertakes the appeal but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice but misses the statute of limitations. Clients sue all three attorneys. Under the PLF Primary Plan, all three **Claims** are **Related** and share a single primary limit. Only the **Claims** against Attorneys C and D, however, are **Excess-Related**.
- f. Class Action or Purported Class Action – Attorneys A, B, and C, all at a **Firm** covered under the Excess Plan during the relevant periods, represent a large banking institution. They are sued by the bank’s customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All the class action **Claims** are **Excess-Related** and subject to the Excess Limit that was in place at the time the class action **Claim** was **First Made**.



Professional
Liability Fund

PHYSICAL ADDRESS

16037 SW Upper Boones Ferry Road, Suite 300
Tigard, OR 97224

MAILING ADDRESS

PO Box 231600 | Tigard, OR 97281-1600

p: 503.639.6911 | *excess@osbplf.org*

www.osbplf.org