

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROFESSIONAL LIABILITY – FITNESS TRAINERS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION 1 – COVERAGE, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY is extended to provide Professional Liability Coverage, subject to the following:

1. INSURING AGREEMENT

- a. We will pay those sums that the insured becomes legally obligated to pay as “damages” because of:
 - (1) an error or omission as respects physical training;
 - (2) an error or omission as respects fitness counseling; or
 - (3) an error or omission as respects nutritional counseling;

to which this insurance applies. We will have the right and duty to defend any "suit" seeking these “damages”. We may at our discretion investigate and settle any claim or "suit". But:

- (a) The amount we will pay for “damages” is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- (b) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **COVERAGE A** or **B** or medical expenses under **COVERAGE C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**.

- b. This insurance applies only if:
 - (1) The error or omission takes place in the "coverage territory"; and
 - (2) The error or omission occurs during the policy period.

2. EXCLUSIONS

- a. The exclusions included in the **COMMERCIAL GENERAL LIABILITY COVERAGE FORM, COVERAGE A**, or made part of that form by endorsement, will also apply to the

Professional Liability Coverage. In those exclusions, the terms "bodily injury" or "property damage" are replaced by the term "damages" with respect to the coverage provided by this endorsement.

b. In addition, Professional Liability Coverage does not apply to "damages" arising out of:

- (1) the rendering or failure to render any ear piercing, acupuncture, electrolysis/hair removal, chiropody, hearing aid, optical or optometrical service or treatment or the rendering or failure to render professional services in connection with the making of a blood donation.
- (2) the rendering or failure to render professional services by any physician, surgeon, dentist, psychiatrist, anesthesiologist, nurse anesthetist, nurse midwife, x-ray therapist, radiologist, chiropodist, chiropractor, optometrist, veterinarian, real estate or investment manager, lawyer, engineer, architect or accountant or any consultant, including but not limited to, computer, systems, management, financial or business consultants.
- (3) the performance of medical diagnostic or testing services which involve, or serve as a prerequisite to, examination of bodily fluids or tissues.
- (4) the assumption of liability in a contract or agreement. This exclusion does not apply to liability for "damages" that the insured would have in the absence of the contract or agreement.
- (5) the performance, by any insured, of a criminal or fraudulent act.
- (6) the prescription, utilization, furnishing or dispensing of drugs, or medical, dental, or nursing supplies or appliances.
- (7) an error or omission as respects physical therapy by a licensed physical therapist;
- (8) discrimination or alleged discrimination on account of, but not limited to, race, disability, religion, sex, age or national origin.
- (9) any demotion, dismissal, failure to promote or any other employment related practice.
- (10) any obligation for which the insured may be held liable under the employment Retirement Income Security Act of 1974 (as amended) or any similar federal or state law.

B. With respect to the coverage described in this endorsement, **SECTION II - WHO IS AN INSURED** is replaced as follows:

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your

business.

- c. An organization other than a partnership or joint venture, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

- a. Your “employees” but only for acts within their status as “employees” for the Named Insured.

However, none of these “employees” is an insured for:

- (1) “damages” arising out of providing or failing to provide professional health care services as a physician or dentist, or as a person responsible for the supervision of any of the above named professionals;
- (2) “damages” to you or any of your “employees”;
- (3) damage or destruction of property owned, occupied by, rented to or loaned to you or any of your “employees”;
- (4) “damages” arising out of providing or failing to provide professional services or advice as an attorney, accountant, architect, engineer, or as a person responsible for the supervision of any of the above named professionals.

- b. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will be deemed to be a Named Insured if there is no other similar insurance available to that organization. However:

- (1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (2) Professional Liability Coverage does not apply to an error or omission that occurred before you 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 Declarations.

C. The Professional Liability Coverage is included as part of **COVERAGE A in **SECTION III - LIMITS OF INSURANCE**. A separate limit of insurance is not provided for Professional Liability Coverage.**

In addition, it is agreed that:

- a. All Professional Liability Coverage claims will be combined with all other claims subject to the General Aggregate Limit and the combination will be subject to the General Aggregate Limit.

- b. With respect to the Professional Liability Coverage, an error or omission for which this insurance applies shall be considered an “occurrence” and is subject to the Each Occurrence Limit.
- c. Interrelated errors or omissions or a series of similar or related errors or omissions shall be:
 - (1) Considered a single “occurrence”; and
 - (2) Considered to have occurred only during the policy period or during any prior or subsequent policy period in which the earliest of the interrelated errors or omissions, or the earliest of a series of similar or related errors or omissions occurred. All resulting claims shall be assigned to only one policy (whether issued by this or any another insurer) and if that is this policy, only one Occurrence Limit shall apply.

D. The Professional Liability Coverage is subject to SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS.

In addition, it is agreed that:

- a. Under **SECTION IV** paragraph 2., **Duties In The Event of Occurrence, Offense, Claim Or Suit**, an error or omission which may result in a Professional Liability Coverage claim will be subject to the same requirements as an “occurrence.”
- b. Under **SECTION IV** paragraph 4., **Other Insurance**, subsection b., **Excess Insurance**, the following is added to the first paragraph:
 - (4) If the coverage is provided under this policy by the Professional Liability – Fitness Trainers endorsement.

E. The Professional Liability Coverage is subject to SECTION V - DEFINITIONS.

In addition, it is agreed that:

- 1. The following definition is added:

"Damages" shall mean money an insured is legally obligated to pay as damages or settlement. But, “damages” shall not include:

- a. criminal or civil fines or penalties imposed by law; or
- b. taxes; or
- c. matters deemed uninsurable under the law to which this Policy shall be construed.

- 2. With respect to the Professional Liability Coverage, the definition of “suit” is amended as follows:

“Suit” means a civil proceeding in which “damages” to which this insurance applies are alleged. “Suit” includes:

- a. An arbitration proceeding in which such “damages” are claimed and to which you must submit or do submit with our consent; or

- b. Any other alternative dispute resolution proceeding in which such “damages” are claimed and to which you submit with our consent.