

## UNDERWATER INSTRUCTORS PROFESSIONAL LIABILITY INSURANCE

***NOTICE: THIS IS A CLAIMS MADE INSURANCE FORM. AS SET FORTH BELOW, COVERAGE UNDER THIS INSURANCE APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE PERIOD OF INSURANCE. NOTICE OF CLAIMS MUST BE GIVEN IMMEDIATELY. UPON TERMINATION OF THIS INSURANCE, THERE IS A MAXIMUM NINETY (90) DAY REPORTING PERIOD. PLEASE REVIEW THIS INSURANCE WORDING CAREFULLY.***

In consideration of the payment of the premium and in reliance upon the statements in the **Insured's/Certificate Holder's** applications and subject to the insuring agreements, declarations, coverages, definitions, conditions, limitations, warranties, exclusions, endorsements and any other written material contained in the Policy of which this wording forms a part of, the Company agrees with the **Insured** as follows:

### **INSURING AGREEMENTS**

#### **I. COVERAGE – CLAIMS MADE**

- A. Subject to the Limit of Liability for **Damages**, the Company agrees to pay on behalf of the **Insured** all sums which the **Insured** shall become legally obligated to pay as **Damages for Bodily Injury** and/or **Property Damages** for **Claims** arising from an **Event** caused by any negligent act, error or omission in the rendering of or failure to render **Professional Services** by an **Insured**.
- B. This insurance only applies to **Claims** first made against the **Insured** during the period of this insurance as shown on the Policy Declarations Page arising from **Events** occurring subsequent to the retroactive date as shown on the Policy Declarations Page. **Claims** arising from the same **Event** made against the **Insured** over more than one period of insurance shall be deemed to have been made against the **Insured** during the period of Insurance in which the first **Claim** is made. If during the period of insurance the **Insured** first becomes aware of and gives written notice to Company of an **Event** occurring subsequent to the retroactive date likely to give rise to a **Claim** hereunder, then any subsequent **Claim** made against the **Insured** arising from such **Event** shall be deemed to have been first made during the period of insurance in which the **Event** was first reported.
- C. If this insurance is not renewed or is canceled then, after termination of the last effective period of insurance, coverage will be provided for **Claims** arising from **Events** no more than ninety (90) days thereafter, provided that the **Event** occurred subsequent to the retroactive date and prior to termination of this insurance. After the ninety (90) day period. All coverage shall cease for any **Claim** arising from any **Event** which has not been previously reported as specified in this insurance. The ninety (90) day period shall not apply if this insurance is canceled due to non-payment of premium.

#### **II. DEFENSE, SETTLEMENT, SUPPLEMENTARY PAYMENTS**

- A. In addition to the applicable Limit of Liability for **Damages**, but in no event greater than the Limit of Liability stated on the Declaration page, the Company further agrees to defend any **Claim** against the **Insured** (providing said suit is brought within the **Territory**) alleging **Damages for Bodily Injury** and/or **Property Damage** which are covered and payable under the terms of this insurance, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Company shall have the right to make such investigation and settlement of a **Claim** as deemed expedient and in their sole discretion.  
The Company shall not be obligated to pay any **Claim** after the applicable limit of Liability for **Damages** has been exhausted by payment of judgments, awards of settlements, or any combination thereof hereunder.  
The Company shall not be obligated to defend any **Claim** after the applicable Limit of Liability for **Defense Expenses** has been exhausted.

- B. Territory  
**Territory** means worldwide.
- C. Defense Expenses  
**Defense Expenses** means:
  1. All expenses incurred by the Company in defending a **Claim**, all costs taxed against the **Insured** in any such suit and all interest on the entire amount of the judgment therein which accrues after the entry of the judgment (post-judgment interest) and before the Company have paid or tendered or deposited to court that part of the judgment which does not exceed the limit of Liability for **Damages** thereon.
  2. Premiums on appeal bonds required in any such defended suit provided the counsel retained by the Company has a reasonable belief in the success of an appeal and the **Insured** can qualify for an appeal for such amounts as shall exceed the Limit of Liability for **Damages**. The Company shall have no obligation to apply for or furnish an appeal bond.
  3. All reasonable expenses, other than loss of earnings, incurred by the **Insured** at the Company's request, and/or reasonable investigative fees and/or expenses directly incurred by the **Insured** with Company's prior agreement.

### III. LIMIT OF LIABILITY

- A. The Limit of Liability for **Damages** as specified on the Policy Declarations Page is the total limit applicable for any one **Event** regardless of the number of **Claims** made as a result of said **Event** or the number of **Insureds** against whom **Claims** have been made. The aggregate limit specified on the Policy Declarations Page is the maximum the Company will pay for **Damages** on **Claims** made during the annual period of the insurance regardless of the number of **Events** resulting in **Claims** made during the period of insurance.
- B. The Limit of Liability for **Defense Expenses** is equal to that of the total limit of liability applicable for any one **Event** regardless of the number of **Claims** made as a result of said **Event** or the number of **Insureds** against whom **Claims** have been made. The aggregate limit specified on the Policy Declarations Page is the maximum the Company will pay for **Defense Expenses** on **Claims** made during the annual period of the insurance regardless of the number of **Events** resulting in **Claims** made during the period of insurance. Defense Expenses do not reduce the limit of liability for **Damages**.

### ADDITIONAL DEFINITIONS

- I. **BODILY INJURY**  
**Bodily Injury** means **Bodily Injury**, mental anguish, sickness, disease, shock or disability sustained by a person, including death resulting from any of these at any time.
- II. **CLAIM**  
**Claim** means a written demand or verbal notice of demand for **Damages** received by and **Insured**
- III. **DAMAGES**  
**Damage** means a compensatory monetary judgment or award (including pre-judgment interest) or settlement entered into with the Company's prior written consent, and does not include:
  - A. Defense Expenses;
  - B. Punitive or exemplary damages, fines, judicial sanctions, penalties, or any damages which are a multiple of compensatory damages;
  - C. The return or restitution of fees, compensation, profits, charges, and/or expenses paid to the **Insured** for services rendered;
  - D. Judgments or awards deemed uninsurable by law.

#### IV. EVENT

**Event** means an accident which occurs while the claimant or claimant's decedent is in the water, entering the water, exiting the water, preparing to enter the water in connection with recreational underwater swimming instruction or supervision, including Scuba (self-contained underwater breathing apparatus) and snorkeling. It also means an accident occurring on land or in a classroom during the instruction or supervision.

#### V. INSURED

Each of the following in an **insured** under this insurance to the extent set forth below:

- A. The named insured shall be the organization stated in the declarations of the policy; and
- B. Anyone to whom a certificate of insurance had been issued under this policy;
- C. Any additional insured named by endorsement or certificate to this policy.  
It is hereby understood and agreed that this policy is extended to include the interest of additional insureds, solely, however, with respect to their interest in activities conducted by the named insured or certificate holder hereunder, but shall not operate to increase the limit of liability hereunder.
- D. The following are automatically an additional insured:
  - 1. Retail Dive Business, including owners or partners
  - 2. Educational Institutions, Certifying Agency, Dive Trade Organizations
  - 3. Governmental Agency or Municipality
  - 4. Swimming Pools or Water Facilities, including owners or partners
  - 5. Dive Boat Operators, including owners or partners
  - 6. Resort, Hotel, or Motel

This additional insured protection shall in all cases be limited in scope to apply only to the regular operations of the named insured or certificate holder arising out of his or her supervision of, instruction in, and orientation to sanctioned aquatic activities.

#### VI. PROFESSIONAL SERVICES

**Professional Services** means the instruction or supervision of recreational swimming, snorkeling, skin diving or scuba diving all being sanctioned aquatic activities provided by the **Insured** in his/her capacity as a certified swim instructor, skin diving leader, divemaster, dive control specialists (divecon), assistant instructor, scuba ranger, or sustaining/retired instructor

#### VII. PROPERTY DAMAGE

**Property Damage** means physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it.

## EXCLUSIONS

- A. For any **Claim** by an **Insured** against another **Insured**.
- B. For any **Claim** made by an employer against any **Insured** who is employed by or representing such employer
- C. For any obligation for which the **Insured** or any carrier as his/her insurer may be held liable under any worker's compensation law, unemployment compensation or disability benefits law, or under any similar or related law including but not limited to the Jones Act, the Longshoremen and Harbor Workers Act,
- D. For **Bodily Injury** to any employee of the **Insured** arising out of and in the course of his/her employment by the **Insured**, including any obligation to indemnify another in whole or in part, for such **Bodily Injury**. This exclusion does not apply to the practice of **Professional Services**.
- E. For liability assumed by the **Insured** under any contract or agreement
- F. For **Bodily Injury** and/or **Property Damage** arising out of the ownership, maintenance, operation, use, loading or unloading of any automobile, aircraft or watercraft. This exclusion does not apply to the ingress and/or egress from any watercraft while any diver is under the **Named Insured's** supervision or instruction.
- G. For **Property Damage** to:
  - 1. Property owned or occupied by or rented to the **Insured**;
  - 2. Property used by the **Insured**; or
  - 3. Property in the care, custody or control of the **Insured** or property over which the **Insured** is for any purpose exercising physical control. (This exclusion does not apply to swimming pools rented by, used by, or occupied by the **Named Insured**.)
- H. For any payment in the nature of fines, judicial sanctions, penalties, punitive and/or exemplary damages or multiples of compensatory damages.
- I. For any **Claim** reported to another insurance company prior to the inception of this insurance.
- J. For any **Claim** arising out of any intentional, willful or deliberate act committed by or at the instigation of the **Insured**.
- K. For any **Claim** arising out of invasion of privacy, libel, slander or defamation of character, false arrest, detention or imprisonment, assault or battery, or wrongful entry or eviction, including any allegation that the violation of any civil right caused or contributed to such **Claim**.
- L. For any **Claim** which is directly or indirectly attribute to any failure to comply with any applicable statute, regulation, ordinance, directive or order, provided that the failure to comply is an intentional, willful or deliberate act or omission of the **Insured**.
- M. For and **Claim** arising out of discrimination by the Insured, including, but not limited to, age, color, race, sex, sexual orientation, creed, national origin, marital status, mental or physical disability. However, this exclusion does not apply if instruction is denied for valid safety reasons. Valid safety reasons include, but are not limited to, concern over medical history of student, disability of student or determination that student lacks physical ability or mental aptitude to dive.
- N. For any **Claim** arising out of infringements of trademark, trade name, patent or copyright.
- O. For any **Claim** based on the insolvency or bankruptcy of any person, firm or organization.
- P. For any **Claim** arising out of the performance of a criminal act or caused by an Insured while under the influence of alcohol, intoxicants, narcotics or any mind-altering substances.

Q.

1. For any **Claim** relating to the actual, alleged or threatened discharge, dispersal, release or escape of Pollutants, however caused or whenever or wherever happening.
2. For any request, demand or liability to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize Pollutants, whether or not any of the foregoing are or should be performed by the **Insured** or by other.

Pollutants means any electromagnetic transmissions or fields, or any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste, including medical waste. Waste also includes materials to be recycled, reconditioned or reclaimed.

- R. For liability arising from acts other than those specifically approved and sanctioned by a national training agency for aquatic, organizational instruction, orientation or supervision.
- S. For liability arising out of the failure of any product, including Scuba and snorkeling equipment, whether owned or non-owned by an **Insured**
- T. For liability arising out of any commercial or industrial diving activities, including but not limited to welding, construction, salvage, repair, maintenance, inspection or fishing activities. This exclusion does not apply to public safety diving or scientific research activities.
- U. For any claim arising out of or resulting from sexual abuse or harassment of licentious, immoral or sexual behavior, whether or not such act is intended to lead to, or culminate in any sexual act, whether cause by, at the instigation of, at the direction of, or as a result of any act or omission by the Insureds, his/her employees, patrons or from any causes whatsoever.

### **CONDITIONS**

#### **A. Insured's Duties Arising out of a Claim or Event**

1. As a condition precedent to the protection afforded by this insurance, the **Insured** shall immediately give to the Company through the designated persons or entity shown on the Policy Declarations Page written notice of every **Incident Known** and **Claim** first made against the **Insured** during the period of this insurance, including, but not limited to, verbal demand, every written demand, notice, summons or other process received by the **Insured** or his/her representative.
2. The **Insured** must also notify Company through the designated persons or entity shown on the Policy Declarations Page as soon as practicable of an **Event** likely to give rise to a **Claim** hereunder or of the receipt from any person of an intention to hold the **Insured** responsible for any **Event**.
3. The **Insured** must notify the company of an incident known of body injury of property damage.

In any such case, the **Insured** shall, upon request, give the Company such information as the Company in their sole discretion may reasonable require.

#### **B. Assistance and Cooperation**

The Insured and **Additional Insureds** shall cooperate with the Company and, upon the Company's request, in any investigation process, assist in making settlements, in the conduct of suits, and in enforcing any rights of contribution or indemnity against any person or organization who may be liable to the **Insured** because of **Bodily Injury** or **Property Damage** with respect to which insurance is afforded hereunder and the **Insured** shall attend hearing and trials and assist in securing and giving evidence, and obtaining the attendance of witnesses.

#### **C. Voluntary Payments**

The **Insured** shall not voluntarily make any payment, make any admission of responsibility, assume any obligation or incur any expense other than for first aid to others at the time of the **Event**.

**D. Subrogation Clause**

Upon payment under this insurance, the Company shall be subrogated to all the **Insured's** rights of recovery against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights.

**E. Other Insurance**

If other valid and collectible insurance is available to the **Insured** covering a **Claim** also covered by this insurance, the insurance afforded by this insurance shall neither be in excess of, nor will contribute with, such other insurance. Notwithstanding an "other insurance" provision contained in any other valid and collectible insurance available to the **Insured**, the "other insurance" provision contained herein is controlling, and the Company shall not make any payments under this insurance if the claim is covered under the **Insured's** other insurance. Subject to the preceding, there will be no insurance afforded hereunder in excess of nor will it contribute with any other valid and collectible insurance which has been specifically contracted for the **Insured** or another under any policy in which the **Insured** is a Named or Additional Insured. Nothing herein shall be construed to make this insurance subject to the terms, definitions, conditions and limitations of the other insurances.

**Non Accumulation of Limits of Coverage**

This policy is one of several policies issued by us or other member insurers to you and/or your subsidiary companies to conform to various state or jurisdictional requirements. It is agreed that any claim or suit which could be covered under two or more of these policies will be covered under only the policy with the highest limit of coverage available, or if the limits are the same, under one of the policies.

**F. Legal Action Against the Company**

No person or organization has a right under this insurance:

1. To join the Company as a party or otherwise bring the Company into a suit for **Damages** from any **Insured**; or
2. To sue the Company on this insurance unless all of its terms have been fully complied with.

**G. False or Fraudulent Claims**

If the **Insured** shall give notice of any **Claim** or reports an **Event** likely to give rise to a **Claim** knowing the same to be false or fraudulent, this insurance shall become void and all rights hereunder shall be forfeited by the **Insured**.

**H. Inspection and Audit**

The Company shall be permitted but not obligated to inspect the Named **Insured's** property, operations or records at any time. Neither the Company's right to make inspections, nor the making thereof, nor any report thereon shall constitute an undertaking on behalf of or for the benefit of the Named **Insured** or others to determine or warrant that such property or operations are safe or healthful or are in compliance with any law, rule or regulation.

The Company may examine and audit the Named **Insured's** books and records at any time during the Policy period and extensions thereof and within three years after the final termination of this insurance, as far as they relate to the subject matter of this insurance.

**I. Changes**

Notice of any Agent of knowledge possessed by any Agent or by any other person shall not effect a waiver or a change in any part of this insurance or stop the Company from asserting any right under the terms of this insurance, nor shall the terms of this insurance be waived or changed, except by endorsement issued to form a part of this insurance signed by an authorized representative of the Company.

J. **Assignment**

No assignment of interest under this insurance shall be valid unless the written consent of the Company is endorsed hereon.

K. **Application**

By acceptance of this insurance, the **Named Insured** agrees that the statements in the application are his/her representations, that such representations are accurate and complete, that such representations are material to the risk undertaken by the Company in this insurance, and that this insurance is issued and continued in force in reliance upon the truth of such representations.

L. **Notice of Cancellation**

It is understood and agreed that any Policy may be canceled by the Company by mailing to the holder of such Policy at the address shown in that Policy written notice stating when [not less than forty-five (45) days thereafter] such cancellation shall be effective, except in the case of cancellation for non-payment of premium, for which written notice stating when [not less than ten (10) days thereafter] such cancellation shall be effective. The mailing of notice of aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of this insurance period. Delivery of such written notice either by the **Named Insured** or by the Company shall be equivalent to mailing. It is also understood and agreed that the premium applicable to individual Evidences of Insurance issued hereunder are considered fully earned at the inception of such Evidences.

### **WARRANTIES FOR TRAINING**

***The named organization, certificate holder or any additional insured warrants compliance with the following agreements:***

- 1) During open water instruction and or test, no insured as defined shall leave or permit any uncertified student to be unattended, an exception to this occurs for the navigation exercise on the second or subsequent training dives only after evaluating the required skills.
- 2) Advanced Training and/or Training dives shall be planned within accepted recreational diving limits. For the purpose of this warranty, recreational training dives are defined as dives;
  - Planned to 130'/40 meters or shallower
  - Planned without mandatory stage decompression (safety stops are acceptable)
  - Made using compressed air or oxygen enriched air (nitrox) only
- 3) The instructor shall require each student to complete a medical history form at the beginning of training. If the medical history form of the student indicates any condition contrary to safe participation in diving activities, the student shall be required to obtain medical approval by a licensed physician based on a medical examination prior to the open water portion of the course. The medical history forms of minors are to be signed by parent(s) and/or legal guardian(s).
- 4) "Written Release". It is hereby understood and agreed that before all diving trips which are for instructional and certification purposes, the student shall be required to execute a written release of liability/assumption of risk form. Written release is to be completed prior to any water training activities. This form will include an acknowledgment that they know that the dive site is remote and that a recompression chamber may not be readily available and they still wish to continue and assume the risk in the absence of a recompression chamber.
- 5) No scuba certification shall be given to anyone under the age of 10. No instructor shall provide instruction without first having secured a release of liability and medical history form signed by parent(s) and/or legal guardian(s)
- 6) In no event will medical approval be accepted wherein the physician signed the certificate is the student.
- 7) Records used for the purpose of recording the students' progress shall be maintained by the instructor and/or dive store.
- 8) Records of knowledge tests for the purpose of evaluating the student's understanding of the instructional material shall be maintained by the instructor and/or dive store.
- 9) All records relating to individual students shall be retained for a minimum of five (5) years by the instructor and/or dive store.

It is agreed that upon failure to conform to the foregoing warranties, this policy shall be considered null and void at the intentional breach of warranty and the Company agrees to remit the unearned premium upon demand.