



CONTRACTORS PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY POLICY

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YOUR PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY POLICY IS WRITTEN ON A "CLAIMS-MADE AND REPORTED" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST YOU AND REPORTED TO US IN ACCORDANCE WITH SECTION VI. CONDITIONS, ITEM B, YOUR DUTIES IF THERE IS A CLAIM.

Throughout this Policy, the terms "we," "us" and "our" refer to the Stock Insurance Company, named on the Policy Declarations, when used in the text of this Policy the words displayed in "**bold face type**" will only have the meaning as set forth in Section III., DEFINITIONS. We agree with **you** as follows:

I. COVERAGE

We will pay all amounts in excess of the **self-insured retention** up to the Limit of Liability that **you** become legally obligated to pay as a result of:

A. INSURING AGREEMENTS

1. **Professional Liability**

a **wrongful act** that results in a **claim** anywhere in the world;

2. **Pollution Incident Liability**

a **pollution incident** arising out of **your** activities, or the activities of any person or entity for whom **you** are legally liable or liability that **you** assume from an **insured client** for a **pollution incident** that results in a **claim** anywhere in the world;

provided that:

- a. on the Knowledge Date set forth in Item 4. on the Declarations none of **your** officers, directors, principals, partners, or insurance managers knew of any act, error, omission, or event that could reasonably be expected to become the basis of such **claim**; and
- b. such **claim** is first made against **you** during the **policy term** and reported to us in accordance with Section VI. CONDITIONS, Item B. **Your** Duties if there is a **Claim**. Except as set forth in Section VI. CONDITIONS, Item C., **Your** Rights and Duties In the Event of a **Circumstance**, a **claim** is considered first made on the earlier of **your** or our receipt of notice of the **claim**.

B. SUPPLEMENTAL INSURING AGREEMENT- RECTIFICATION EXPENSE

We will reimburse the **Named Insured** for **rectification expense** in excess of any **self-insured retention** and up to the applicable **design defect circumstance** limit of liability, provided that:

1. **you** report the **design defect circumstance** as soon as practicable within the **policy term** and in accordance with Section VI. CONDITIONS, paragraph C. **Your** Rights And Duties in the Event of a **Circumstance**; and
2. **you** demonstrate to our satisfaction that there is a **design defect** which is reasonably likely to give rise to a **claim** covered under this Policy; and
3. **you** provide us with details of the action being contemplated by **you** to minimize any potential liability arising out of such **design defect circumstance** and the amount of **rectification expense** that is contemplated in connection with such action;
 - a. as soon as practicable during the **policy term** or within 60 days of the expiration of the **policy term**; and



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- b. prior to incurring any **rectification expense**, except in the event of an **emergency response**;
and
4. prior to incurring any **rectification expense**, we consent in writing to such **rectification expense** (such consent not to be unreasonably withheld); and
5. in the event a **claim** is made arising out of a **design defect circumstance**, then we may, at our sole discretion, cease paying further **rectification expense** associated with such **design defect circumstance**; and
6. such **design defect circumstance** does not arise out of the same or similar **design defect circumstances** for which reimbursement expenses have been requested or paid.

Such **rectification expense** will be reimbursed within 90 days of **your** submission of a proof of loss of such **rectification expense**.

In the event that we and **Named Insured** do not agree that **your** proposed **rectification expense** is reasonable, then **you** and we agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Named Insured** and we be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

C. DEFENSE & SETTLEMENT

1. We have the right and duty to defend any **claim** against **you** seeking amounts that are payable under the terms of this Policy, even if any of the allegations of the **claim** are groundless, false or fraudulent. We will designate or, at our option, approve counsel to defend the **claim**. We are not obligated to defend any **claim** or pay any amounts after the applicable Limit of Liability has been exhausted.
2. We will not settle any **claim** without the informed consent of the first **Named Insured**. If we recommend a settlement to **you** that is acceptable to the claimant, and **you** elect to contest the **claim** or continue any legal proceedings in connection with the **claim**, our obligation to defend shall cease and our liability shall be limited to the total amount for which the **claim** could have been settled, plus the amount of **claim expenses** incurred up to the time we made the recommendation for settlement.
3. If a **claim** results in a punitive, exemplary, or multiplied damage award, we will pay such award, up to the applicable Limit of Liability, to the fullest extent permitted by law.

II. SUPPLEMENTARY PAYMENTS

Except as noted in subparagraph C. below, payments made under this section are our costs, are not subject to the **self-insured retention** and are in addition to the Limit of Liability shown on the Declarations.

A. Free Pre-claims Assistance

Until the date a **claim** is made, we may pay for all costs or expenses, other than **rectification expense**, we incur, at our sole discretion, as a result of investigating a **circumstance** that **you** report in accordance with Section VI. CONDITIONS, Item C. **Your** Rights and Duties in the Event of a **Circumstance**.



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B. Defendants Reimbursement

If we request **your** presence at a trial, hearing, deposition, mediation or arbitration, we will pay up to \$500 a day per person, subject to a maximum amount of \$10,000 per **claim**.

C. ADA, FHA, and OSHA

We will reimburse **you** for legal fees and expenses up to \$25,000 per **policy term** in responding to regulatory or administrative actions brought directly against **you** by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA), or the Occupational Safety and Health Act (OSHA), provided that the regulatory or administrative actions:

1. are first commenced during the **policy term**;
2. arise out of the performance of **professional services**; and
3. are reported to us prior to any legal fees or expenses being incurred.

After we have paid \$25,000 under this provision, any additional amounts we agree to pay will be treated as **claim expenses** and will be subject to **your self-insured retention** and be included in the Limit of Liability for the **policy term** in which the action was commenced. We will not be responsible for any fines or penalties.

III. DEFINITIONS

The following defined words shall have the same meaning throughout this Policy, whether expressed in the singular or the plural, wherever appearing in bold print in this Policy:

Bodily Injury means bodily injury, sickness, disease, mental anguish or emotional distress, sustained by a person, including death resulting from any of these at any time.

Circumstance means an event, reported to us during the **policy term**, from which **you** reasonably expect that a **claim** could be made.

Claim means a demand for money or services, naming **you** and alleging a **wrongful act** or **pollution incident**.

Claim Expenses means:

- A. fees charged by an attorney designated or approved by us to represent **you**;
- B. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **claim**, if incurred by:
 1. the designated attorney,
 2. us, or
 3. **you** with our prior written consent; and
- C. premiums for bonds posted in connection with an appeal. However, we are not obligated to apply for or furnish any such bonds.

However, **claim expenses** do not include fees and expenses of independent adjusters or salaries of our officials or employees, other than fees and expenses charged by our employed attorneys who may be designated to represent **you** with **your** prior consent.

Construction Manager means any of **you**, or any others for whom **you** are liable, who render **construction management services**.



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Construction Management Services means services rendered as professional manager of the quality, cost, time and scope of construction provided such services are specifically defined in a written contract or agreement between **you** and **your** client. **Construction management services** do not include construction means, methods, techniques, sequences or procedures or the actual construction of any building or other edifice.

Design Defect means a **wrongful act**, but does not include any actual or alleged negligence in the review of shop drawings and submittals, issuance of change orders, observation of construction or review of any contractors' requests for payment.

Design Defect Circumstance means a **circumstance** arising out of a **design defect** for which **you** have requested reimbursement of a **rectification expense** from us.

Domestic Partner means any person qualifying as such under any federal, state or local laws or under **your** employee benefit plans.

Emergency Response means an action taken by **you** to rectify a **design defect** that prevents imminent **bodily injury** and/or material physical injury to or destruction of tangible property due to that **design defect**, which is otherwise insured under this Policy.

Extended Reporting Period means the period of time after the end of the **policy term**, for reporting **claims** to us that are made against **you** during the applicable **extended reporting period** arising out of:

- A. a **wrongful act** that took place prior to the end of the **policy term** that is otherwise covered by this Policy; or
- B. activities that took place prior to the end of the **policy term** that result in a **pollution incident** that is otherwise covered by this Policy.

Fungi means any form of fungus including but not limited to yeast, mold, mildew, rust, smut or mushroom, and including any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of **fungi**.

Hostile Fire means one that becomes uncontrollable or breaks out from where it was intended to be.

Insured Client means a client for whom the **named insured**, or others for whom the **named insured** is legally liable, performs activities, but only if there is in place an **insured client contract**.

Insured Client Contract means:

- A. a written contract or agreement is in effect between the **named insured** and the client under which the **named insured** assumes the tort liability of the client to pay compensatory damages to a third party for a **pollution incident** that results from **your** activities or the activities of any person or entity for whom **you** are liable; and
- B. such written contract or agreement is placed in effect prior to the **pollution incident** and requires the client to be named as an additional insured under the **Named Insured's** contractors' **pollution incident** Policy.

For purposes of this definition only, "tort liability" means liability for a civil or private wrong imposed by law in the absence of any contract or agreement.

Mediation means the use of non-binding intervention by a neutral third party.

Microbe means any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease. **Microbe** includes any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of current or past presence of **microbes**. But **microbe** does not mean **microbes** that were transmitted directly from person to person.



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Named Insured means the persons or entities listed in Item 1. on the Declarations.

Newly Acquired Subsidiary means any entity, newly formed or acquired by a **Named Insured** during the **policy term**, in which such **Named Insured** has more than a 50% legal or beneficial interest. However, no such entity will be deemed a **newly acquired subsidiary** beyond 90 days after the **Named Insured** acquires or forms it. For coverage to continue beyond the first 90 days, the following conditions apply:

- A. within 90 days of such formation or acquisition, the **Named Insured** must provide us with full particulars of such **newly acquired subsidiary**;
- B. after receipt of such notice, we must agree to endorse this Policy to insure such **newly acquired subsidiary**; and
- C. the **Named Insured** must pay the additional premium, if any, and agree to any amendment of the provisions of this Policy by reason of such formation or acquisition.

Coverage exists for **claims** made against a **newly acquired subsidiary** only if, prior to the acquisition date or formation date, none of **your** officers, directors, principals, partners or insurance managers of the **Named Insured** or such **newly acquired subsidiary** knew or could reasonably be expected to become the basis of that **claim**.

Nuclear Facility means the site where a nuclear reactor is located or where nuclear waste or material is finally disposed.

Policy Term means the period of time from the effective date and time of this Policy to the date and time of termination, as shown in Item 3. on the Declarations, or its earlier cancellation date. **Policy term** does not include any **extended reporting period**.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. **Pollutants** does not mean heat, smoke, vapor, soot or fumes from a **hostile fire** or explosion.

Pollution Incident means the actual or alleged:

- A. Discharge, dispersal, seepage, migration, release or escape of **pollutants** into or upon land, the atmosphere, or any watercourse or body of water; or
- B. Inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of **fungi** or **microbes**;

that results in **bodily injury** or **property damage**. However, a **pollution incident** cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by **you** or at **your** direction or with **your** prior knowledge.

Professional Services means:

- A. services that **you**, or others for whom **you** are liable, are qualified to perform for others on behalf of a **Named Insured**, in the capacity of an architect, engineer, interior designer, landscape architect, land surveyor, LEED consultant, **construction manager**, or
- B. management of **your** sub-consultants in their capacity as architects, engineers, interior designers, landscape architects, land surveyors, LEED consultants, or **construction managers**.

Property Damage means the following:

- A. physical injury to, damage to, or destruction of tangible property, soil, surface water, groundwater, plants or animals including the resulting loss of use thereof;



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- B. clean up costs incurred by a third party or mandated by any governmental entity; or
- C. loss of use of tangible property that has not been physically injured or destroyed.

Rectification Expense means reasonable and necessary fees, costs and expenses incurred by the **Named Insured** for rectification of a **design defect** caused by **professional services** in any part of the construction works or engineering works for any project upon which **you** are responsible for both design and construction.

Related Claims means all **claims** made against **you** and reported to us during any **policy term** arising out of:

- A. a single **wrongful act** or related **wrongful acts** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision;
- B. a single **design defect** or related **design defects** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision; or
- C. an activity or related activities that result in a single **pollution incident**.

Self-Insured Retention means the amount stated on the Declarations that **you** are obligated to pay for every **claim** and for every **design defect circumstance** made during the **policy term**. This amount must be paid prior to any payment being made by us under the terms and conditions of this Policy of insurance.

Temporary Works means formwork, structures or mechanical plant designed and constructed for use as construction aids for a specific project.

Wrongful Act means an error, omission or other act that causes liability in the performance of **professional services** for others by **you** or by any person or entity, including joint ventures, for whom **you** are liable. A **wrongful act** cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by **you** or at **your** direction or with **your** prior knowledge.

You or **Your** means the **Named Insured**, a **newly acquired subsidiary** and:

- A. any past or present partner, officer, director, member, stockholder or employee of the **Named Insured** or **newly acquired subsidiary** or leased personnel under the direct supervision of the **Named Insured** or **newly acquired subsidiary**, but only while acting within the scope of their duties for the **Named Insured** or **newly acquired subsidiary**;
- B. a retired partner, officer, director, member, stockholder or employee of the **Named Insured** or **newly acquired subsidiary**, but only for **professional services** or activities performed for or on behalf of, at the request of, and for the benefit of **Named Insured** or **newly acquired subsidiary**.

IV. EXCLUSIONS

We will not defend or pay under this Policy for any **claim**:

Bodily Injury

arising out of

- A. any **bodily injury** to **you**, or to any person employed by any person or entity, including joint ventures, for whom **you** are liable; or
- B. any obligation **you** must pay an injured party under any unemployment, workers' compensation, disability benefits or other similar law.



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This exclusion applies:

1. whether **you** may be liable as an employer or in any other capacity; and
2. to any obligation to share in or repay any amount someone else must pay because of the injury;

Claims by Insureds

brought by **you** or on **your** behalf against another of **you** covered by this Policy;

Contractual Liability

arising out of:

- A. **your** alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
- B. the liability of others **you** assume under any oral or written contract or agreement;

however, this exclusion shall not apply to **your** liability that exists in the absence of such contract or agreement. In a foreign jurisdiction where **your** liability to a client is predicated only on contractual liability, subparagraph A. does not apply except to the extent that **you** have agreed to pay consequential or liquidated damages. This exclusion does not apply to liability assumed by **you** in an **insured client contract**;

Faulty Workmanship

arising out of the cost to repair or replace faulty workmanship **you** perform on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, or equipment furnished in connection therewith; however, this exclusion does not apply to the extent such **claim** arises from a **pollution incident**;

Insurance/Financing

arising out of **your** acts or omissions related to any form of insurance, suretyship, bonding, financing, or monies for any projects;

Job Safety

arising out of job site safety, including:

- A. the failure to protect any property or persons;
- B. the preparation or failure to prepare any safety precautions or procedures in connection with any project including, but not limited to, first aid stations, temporary utilities, fencing or signs, crane erection, scaffolding and barricades;
- C. project clean up or demolition; or
- D. supervision of the safety obligations of others;

Liquidated Damages

for liquidated damages in excess of **your** liability caused by a **wrongful act** or a **pollution incident**; for fines and penalties imposed on **you**; or for the failure or refusal of a client to pay money due **you**; or for return of fees paid to **you**;

Nuclear

arising out of nuclear reaction, radiation or contamination, within or originating from a **nuclear facility** under any circumstances and regardless of cause;



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Owned Entity

made against **you** by any entity:

- A. that is operated, managed or controlled by **you**;
- B. in which **you** have an ownership interest in excess of 49%; or
- C. that wholly or partly owns, operates or manages **you**;

Owned, Leased or Rented Property

arising out of:

- A. the ownership, rental or leasing of any real or personal property including damage to property at any time owned by or rented or leased by or to **you** or by any person or entity for whom **you** are legally liable; or
- B. a **pollution incident** at, onto or from any real or personal property owned, leased or rented by **you** or by any person or entity for whom **you** are legally liable; however, this exclusion shall not apply to temporary storage of equipment or material at any staging or storage area that is associated with **your** activities;

Prior Notice

arising out of:

- A. any **wrongful act, pollution incident** or any matter, fact, situation, transaction, or event, for which notice was given by **you** under any professional liability or pollution insurance coverage prior to the effective date of this Policy; or
- B. any other **wrongful act** or **pollution incident** whenever occurring, which is logically or causally connected by any common fact, situation, transaction, or event to the **wrongful act** or **pollution incident** specified in A. above;

Sale or Distribution of Goods

arising out of the design or manufacture of any goods or products which are sold or supplied by **you** or by others under license from **you**; this exclusion does not apply to software created or modified specifically for a client in connection with **your professional services**, or **your** manufactured or fabricated products installed during the course of **your** operations;

Temporary Works

arising out of the failure of any **temporary works**;

Timely Completion of a Project/Costs Estimates/Bid Inaccuracies

arising out of:

- A. the actual or alleged failure to perform any **professional services** on time, complete any project on time or any other delay;
- B. any cost estimate being exceeded; or
- C. any bid inaccuracies.

This exclusion does not apply if such **claim** is a direct result of;

1. a **wrongful act** in the preparation of drawings and specifications; or
2. the performance of **construction management services** by **you** or by any entity for whom **you** are legally liable, provided that such services are defined in a written contract with **your**



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client and provided that any construction, remediation, erection, fabrication, installation, assembly, manufacture, or supplying of equipment or materials incorporated therein, is not wholly or partly performed by:

- a. **you** or a subsidiary of **yours**;
- b. any entity under common ownership, management or control with **you**;
- c. any entity acting as **your** subcontractor; or
- d. any entity that owns **you**.

Transportation

arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock. However this exclusion shall not apply to a **pollution incident** arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock or arising from waste or materials transported by or on behalf of the **Named Insured** by an automobile, aircraft, watercraft or rolling stock during the course of activities;

Unlawful Discrimination

arising out of actual or alleged unlawful discrimination by **you** against:

- A. a past or present employee, officer, or employment applicant of **yours**; or
- B. any party in the awarding of or failure to award any contract.

V. LIMITS OF LIABILITY/SELF-INSURED RETENTION

A. Limits of Liability

1. Subject to paragraph 2. below, the Limit of Liability shown on the Declarations is the maximum we will pay for each **claim** first made against **you** and reported to us during this **policy term**. This limit applies as excess over any **self-insured retention** amount.
2. The aggregate Limit of Liability shown on the Declarations is the maximum we will pay for all **claims** first made against **you** and reported to us during the **policy term**. This limit applies as excess over any **self-insured retention** amount.
3. Subject to Paragraph 4. below, the per **design defect circumstance** Limit of Liability shown on the Declarations is the maximum we will pay as reimbursement expense for each **design defect circumstance** reported by **you** in accordance with Section I.B. This limit applies as excess over any **self-insured retention** amount. This limit is a sublimit of liability, which further reduces and in no way increases the applicable per **claim** limit and aggregate limits shown on the Declarations.
4. The aggregate **design defect circumstance** Limit of Liability shown on the Declarations is the maximum we will pay as reimbursement expense for all **design defect circumstances** reported by **you** in accordance with Section I.B. This limit applies as excess over any **self-insured retention** amount. This limit is a sublimit of liability, which further reduces and in no way increases the applicable aggregate limit and aggregate limits shown on the Declarations.
5. The **policy term** Limits of Liability as set forth above may not be aggregated or transferred, in whole or in part, so as to provide any additional coverage with respect to **claims** first made or deemed made or with respect to any **design defect circumstance** reported by **you** in accordance with Section I.B. If the Limits of Liability



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as specified above for any **policy term** are exhausted, our obligation for that **policy term** shall be deemed completely fulfilled and extinguished.

6. The Limits of Liability shown in the Declarations and subject to the provisions of this Policy, is the amount we will pay for all **claims, design defect circumstances per Policy term** regardless of the number of **Insureds, claims, or design defect circumstances** or persons or entities making **claims**. If **related claims** are subsequently made against the **Insured** and reported to us, all such **related claims**, whenever made, shall be considered a single **claim** first made and reported to us during the **policy term** in which the earliest of the **related claims or circumstances** was first made and reported to us.

7. **Claim expenses** are subject to and included within the applicable Limit of Liability.

B. **Self-Insured Retention**

Your obligation to pay up to the **self-insured retention** amount shown in the Declarations, including but not limited to **claim expenses**, shall apply to all Insuring Agreements under Section I.

C. **Mediation Credit**

If we and **you** agree to use **mediation** and if we and **you** resolve any **claim** by **mediation** we will reduce **your self-insured retention** obligation for the **claim** by 50% or \$25,000, whichever is less. **Self-insured retention** payments made prior to the application of the above credit will be reimbursed within thirty (30) days of the resolution of the **claim**.

D. **Reimbursement To Us**

If we have paid any amounts in excess of the applicable Limit of Liability, or within the amount of **your self-insured retention**, **you** shall be liable to us for all such amounts, and upon demand, shall pay such amounts to us.

E. **More Than One Of You**

Neither the applicable Limit of Liability nor **your self-insured retention** shall be increased because more than one of **you** is included in a **claim**.

VI. **CONDITIONS**

A. **Your Rights and Duties as the First Named Insured** on the Policy Declarations

The first **Named Insured**, on behalf of all of **you**, will be:

1. authorized to make changes in the terms of this Policy with our written consent;
2. authorized to receive any amounts we refund;
3. responsible for:
 - a. the payment of all premiums and **self-insured retention** obligations due us;
 - b. keeping records of the information we need for premium computation, and sending us copies as we may request; and
 - c. notifying us of any cancellation or non-renewal.

B. **Your Duties if there is a Claim**



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If there is a **claim**, **you** must do the following:

1. promptly notify us in writing. This notice must be given to us within the **policy term** in which the **claim** is made or within 60 days after its expiration or termination. All **claims** reported during any **extended reporting period** shall be considered as having been made during the last **policy term** this Policy was in effect. If the **claim** is made during any applicable **extended reporting period**, then notice must be given to us within such **extended reporting period**. Notice of a **claim** must be sent to the attention of either of the following

Attn: Intake Manager
CNA Specialty Claims
40 Wall Street, 7th Floor New York, NY 10005
Fax: 866-773-7504
Email: CNA&EnewLossNotice@cna.com

Victor O. Schinnerer & Company, Inc.
AE Professional Liability Claims
Two Wisconsin Circle
Chevy Chase, Maryland 20815
Fax: Attn: AE Claims
301-951-5444
Email: aeclaims@schinnerer.com

2. specify the names and addresses of the persons making a **claim** against **you** and provide us with information on the time, place and nature of the **claim**;
3. immediately forward to us all documents that **you** receive in connection with the **claim**;
4. fully cooperate with us or our designee in the defense of a **claim**, including but not limited to assisting us in the conduct of suits or other proceedings, settlement negotiations, and the enforcement of any right of contribution or indemnity against another who may be liable to **you**. **You** shall attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses;
5. refuse, except solely at **your** own cost, to voluntarily make any payment, admit liability, assume any obligation or incur any expense without our prior written approval; and
6. pay the **self-insured retention** when due.

After **you** report a **circumstance** or a **claim** is made and **you** have the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, **you** shall only do so with our prior written consent.

C. **Your Rights and Duties in the Event of a Circumstance**

If **you** report a **circumstance** for which there may be coverage under this Policy and **you** give us written notice containing as much detail as **you** can reasonably provide regarding:

1. what happened and the **professional services** or activities **you** performed;
2. the nature of any possible injury or damages; and
3. how and when **you** first became aware of such **circumstance**;

then any **claim** or **related claims** that subsequently may be made against **you** arising out of such **circumstance** shall be deemed to have been made on the date we received written notice of the **circumstance**.



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You will cooperate with us in addressing the **circumstance**, and refuse, except solely at **your** own cost, to voluntarily make any payment, admit liability, assume any obligation or incur any expense without our prior written approval.

D. Subrogation

If any of **you** have rights to recover amounts from another, those rights are transferred to us to the extent of our payment. **You** must do everything necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. We hereby waive subrogation rights against **your** client to the extent that **you** had a written agreement to waive such rights prior to a **claim** or **circumstance**.

E. Premium

All premium charges under this Policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current **policy term**.

F. Examination and Audit

You agree to allow us to examine and audit **your** financial books and records that relate to this insurance. We may do this at any time during the **policy term** or any extensions, and up to three years after the end of the **policy term**.

G. Legal Action Limitation

1. **You** agree not to bring any legal action against us concerning this Policy unless **you** have fully complied with all the provisions of this Policy.
2. If, after the final adjudication or settlement of a **claim**, there is any dispute concerning tort allegations against us regarding the handling or settlement of any **claim**, **you** and we agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should **you** and we be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

H. Changes to Policy

None of the provisions of this Policy will be waived, changed, or modified except by written endorsement to this Policy.

I. Transfer of Interest

For a transfer of interest or an assignment of this Policy to be effective, the first **Named Insured** must obtain our written consent.

J. Other Insurance

1. Except as set forth in paragraph 2 below, where there is other insurance available to **you** that applies to a **claim** covered under this Policy, our obligation is as follows:
 - a. This insurance shall apply as excess over any other applicable insurance be it primary or excess.
 - b. Any professional liability **claim** that is wholly or partially, covered by this Policy and also wholly or partially covered or defended by **your** commercial general, umbrella and excess liability program shall first be defended and paid by such other insurance. This Policy shall be specifically excess of such insurance and shall not defend or contribute any amounts until such time as such other



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insurance is not available due to the exhaustion of its limits of insurance by payment of claims. **You** shall do all that we require to cooperate with the company in enforcement of this provision. Failure to do so shall be considered material non-compliance with terms of this insurance and will act as a reason for termination of this insurance in its entirety.

- c. Where this insurance is excess over any other valid and collectible insurance, we will pay only our share of loss that exceeds the total amount that all other insurance would pay for loss in the absence of this insurance.
- d. Payments by other insurance do not satisfy this Policy's **self-insured retention**.

2. For liability assumed by **you** in an **insured client contract**, this insurance is primary

K. Cancellation/Non-Renewal

- 1. This Policy may be cancelled by **you** by written notice to us stating at what future date cancellation is to be effective.
- 2. This Policy may be cancelled or non-renewed by us by written notice to the first of **you** named on this Policy declaration at the address last known to us. We will provide at least sixty (60) days notice before cancellation or non-renewal is to be effective. However, **you** will be given ten (10) days if we cancel because **you** have failed to pay premium when due, or if **you** have failed to pay amounts in excess of our limit of liability or within the **self-insured retention**.
- 3. If this Policy is cancelled by us, earned premium will be computed pro rata. If **you** cancel only 90% of the unearned premium will be returned to **you**. We will make the premium adjustment with **you** at the time that cancellation is effective or as soon as practicable after that time.
- 4. The offering of terms and conditions different from the expiring terms and conditions shall not constitute a refusal to renew.

L. Severability/ Innocent Parties

Any of **you** who did not commit, participate in or have prior knowledge of dishonest, fraudulent, malicious, or criminal conduct, or who did not fail to comply with Section VI. Condition B.1., shall have the coverage otherwise provided by this Policy.

M. Estates, Legal Representatives, and Spouses

Coverage is afforded under this Policy to the estates, heirs, legal representatives, assigns, spouses, and any **domestic partner** of any natural person within the definition of **you** or **your**, but only for a **claim** arising solely out of their status as such. In the case of a spouse or **domestic partner**, coverage is also afforded under this Policy where such **claim** seeks damages from marital community property, jointly held property, or property transferred from any natural person designated in the definition of **you** or **your** to their spouse or **domestic partner**. No coverage is provided for any act, error, or omission of an estate, heir, legal representative, assign, spouse or **domestic partner**. All terms and conditions of this Policy, including, without limitation, the **self-insured-retention** applicable to any **claim**, shall also apply to any **claim** made against such estates, heirs, legal representatives, assigns, spouses, and **domestic partners**.

N. Extended Reporting Period

- 1. Automatic **Extended Reporting Period**



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If this Policy is canceled or non-renewed either by us or by the first **Named Insured** and the first **Named Insured** has not obtained similar coverage, we will provide an automatic, non-cancelable **extended reporting period** starting at the termination of the **policy term**. This automatic **extended reporting period** will terminate after 60 days.

2. Optional **Extended Reporting Period**

If this Policy is canceled or non-renewed either by us or by the first **Named Insured**, then the first **Named Insured** shall have the right to purchase a non-cancelable optional **extended reporting period**.

If purchased, the first sixty (60) days of the optional **extended reporting period** run concurrently with the sixty days of the automatic **extended reporting period**.

3. Elimination of Right to an **Extended Reporting Period**

a. There is no right to an optional **extended reporting period** if we do not receive written notice of the **Named Insured's** election to purchase the optional **extended reporting period** and full payment of the premium for such period within 60 days after the end of the **policy term**.

b. There is no right to any **extended reporting period** if we cancel or refuse to renew this Policy due to:

i. Non-payment of amounts due to us;

ii. Non-compliance by **you** with any of the terms and conditions of the Policy; or

iii. Any misrepresentation or omission in the application for this Policy.

4. Additional Premium

The additional premium for the optional **extended reporting period** shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the **policy term** and shall be for one (1) year at 100% of the **policy term** premium; three (3) years at 190% of the **policy term** premium; five (5) years at 250% of the **policy term** premium.

5. **Extended Reporting Period** Limitations

No automatic or optional **extended reporting period** shall apply to:

a. any **claim** or proceedings pending at the inception date of such **extended reporting period**;

b. any paid **claim**; or

c. **claims** that are covered under any subsequent insurance purchased by **you**, or that would be covered but for exhaustion of the Limits of Liability applicable to such **claims**.

6. Automatic and Optional **Extended Reporting Periods** Limits of Liability

Our liability for all **claims** reported during any automatic and optional **extended reporting periods** shall be part of and not in addition to the Limits of Liability for the final **policy term**.

O. Service of Suit



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In the event of our failure to pay any amount claimed to be due hereunder, we, at **your** request, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such court.

It is agreed that service of process in such suit may be made upon our General Counsel, CNA Insurance Companies, 333 South Wabash, Chicago, IL 60604 and that in any suit instituted against such person upon this Policy, we will abide by the final decision of such court or of any appellate court in the event of an appeal.

The General Counsel is authorized and directed to accept service of process on our behalf in any such suit and, upon **your** request, to give a written undertaking to **you** that he will enter a general appearance upon us in the event such suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision thereof, provided **you** shall first notify us of **your** intention to sue, we hereby designate the superintendent, commissioner or director of insurance, or other officer as designated in such statute, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of **you** or any beneficiary hereunder arising out of this Policy, and hereby designate the above-named as the person to whom the said officer is authorized and directed to accept service of process on our behalf in any such suit.

P. Liberalization

If we adopt any revision to this form during the **policy term** that would broaden coverage without additional premium, the broadened coverage will apply to this Policy at the inception date of the next **policy term**, but it will not apply to **claims** that were first made against **you** prior to the effective date of such revision.

Q. Economic and Trade Sanctions

This Policy does not provide coverage for **you**, any transactions, or any part of a **claim** if uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

R. Headings

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

IN WITNESS WHEREOF, we have caused this Policy to be signed by our Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon us unless signed by our duly authorized representative.

Chairman

Secretary

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