



## PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

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### **NOTICE:**

THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK STATE INSURANCE DEPARTMENT. HOWEVER, SUCH FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.

THIS IS A "DEFENSE WITHIN LIMITS" POLICY. UNDER THIS POLICY, ALL **CLAIM EXPENSES** ARE INCLUDED WITHIN BOTH THE APPLICABLE LIMIT OF LIABILITY AND SELF INSURED RETENTION. THIS COULD RESULT IN THE LIMIT OF LIABILITY BECOMING COMPLETELY EXHAUSTED BY THE PAYMENT OF **CLAIM EXPENSES**, IN WHICH CASE, NO FURTHER COVERAGE IS PROVIDED BY THIS POLICY. PLEASE DISCUSS WITH **YOUR** AGENT OR BROKER.

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**PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY  
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<p><b>YOUR PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE 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.</b></p>
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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 AGREEMENTS**

A. 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:

1. a **wrongful act**, or
2. a **pollution incident** arising out of **your** activities or the activities of any person or entity for whom **you** are liable,

that results in a **claim** anywhere in the world, provided that 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 that **claim**.

B. A **claim** must be first made against **you** during a **policy year** 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**.

C. 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 are not obligated to defend any **claim** or pay any amounts after the applicable Limit of Liability has been exhausted.

D. The first **Named Insured** shall have the option to:

1. select the defense attorney or consent to our choice of defense attorney, which consent shall not be unreasonably withheld;
2. participate in and assist in the direction of the defense of any **claim**; and
3. consent to any settlement, which consent shall not be unreasonably withheld.

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## 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 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.**

### B. Defendant Reimbursement

If we request **your** presence at a trial, hearing, deposition, mediation, or arbitration, we will pay up to \$300 a day per person, subject to a maximum amount of \$7,500 per **claim**.

### C. ADA, FHA, and OSHA

We will reimburse **you** for legal fees and expenses up to \$25,000 per **policy year** 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 year**;
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 year** in which the action was commenced. We will not be responsible for any fines or penalties.

This Section II, SUPPLEMENTARY PAYMENTS, does not apply to indemnification of any penalties or other similar monetary amounts that you may become obligated for as the result of such proceedings. Nor does it apply to **claims** of entitlement to non-employment related benefits, provided either directly or indirectly, from any government, governmental agency or political subdivision pursuant to any entitlement program.

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**III. DEFINITIONS**

A. **Auto** means:

1. a land motor vehicle, trailer, or semi-trailer designed for travel on public roads, including any attached machinery or equipment; or
2. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, **auto** does not include **mobile equipment**.

B. **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.

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

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

E. **Claim expenses** means:

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

**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.

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- F. **Claims made relationship** means the period of time beginning with the effective date of the first **claims** made policy issued by us to **you** and ending with the date of termination, cancellation or expiration of the last consecutive **claims** made policy issue by us to **you**, where there has been no gap in coverage. **Claims made relationship** does not include any applicable **extended reporting periods**.
- G. **Domestic partner** means any person qualifying as such under any federal, state, or local laws or under **your** employee benefit plans.
- H. **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:
1. a **wrongful act** that took place prior to the end of the **policy term** that is otherwise covered by this Policy; or
  2. 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.
- I. **Hostile fire** means one that becomes uncontrollable or breaks out from where it was intended to be.
- J. **Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:
1. bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
  2. vehicles maintained for use solely on or next to premises **you** own or rent;
  3. vehicles that travel on crawler treads;
  4. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - a. power cranes, shovels, loaders, diggers or drills, or
    - b. road construction or resurfacing equipment such as graders, scrapers, or rollers;
  5. vehicles not described in 1., 2., 3., and 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - a. air compressors, pumps and generators, including spraying, welding, building cleaning, geo-physical exploration, lighting and well servicing equipment, or

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- b. cherry pickers and similar devices used to raise or lower workers;
6. vehicles not described in 1., 2., 3., or 4. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:

- a. equipment designed primarily for:
  - i. snow removal,
  - ii. road maintenance, but not construction or resurfacing, or
  - iii. street cleaning;
- b. cherry pickers and similar devices mounted on an **auto** or truck chassis and used to raise or lower workers; and
- c. air compressors, pumps, and generators, including spraying, welding, building cleaning, geo-physical exploration, lighting and well servicing equipment.

However, **mobile equipment** does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

- K. **Named Insured** means the persons or entities listed in Item 1. on the Declarations.
- L. **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:
  - 1. within 90 days of such formation or acquisition, the **Named Insured** must provide us with full particulars of such **newly acquired subsidiary**;
  - 2. after receipt of such notice, we must agree to endorse this Policy to insure such **newly acquired subsidiary**; and

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3. 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 of any act, error, omission, or event that could reasonably be expected to become the basis of that **claim**.

- M. **Nuclear facility** means the site where a nuclear reactor is located or where nuclear waste or material is disposed.
- N. **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**. If the length of the **policy term** is the same as the **policy year**, the terms **policy term** and **policy year** are used interchangeably herein.
- O. **Policy year** means the period of one year following the effective date of the **policy term** or any subsequent one-year anniversary thereof. As permitted by individual state law, a **policy year** may be extended or reduced by endorsement or by termination of the Policy.
- P. **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.
- Q. **Pollution incident** means the actual or alleged discharge, dispersal, seepage, migration, release, or escape of **pollutants** into or upon land, the atmosphere, or any watercourse or body of water, which results in **bodily injury** or **property damage** and did not arise from dishonest, fraudulent, malicious, or criminal conduct committed by **you** or at **your** direction or with **your** prior knowledge.
- R. **Professional services** means those services that **you** perform for others on behalf of a **Named Insured** in **your** practice as an architect, engineer, land surveyor, landscape architect, construction manager, scientist, or technical consultant.
- S. **Property damage** means the following:
  1. physical injury to, damage to, or destruction of tangible property, electronic data, soil, surface water, groundwater, plants, or animals, including the resulting loss of use thereof;

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2. clean-up costs incurred by a third party or mandated by any governmental entity; or
  3. loss of use of tangible property that has not been physically injured or destroyed.
- T. **Related claims** means all **claims** made against **you** and reported to us during any **policy year** arising out of:
1. a single **wrongful act**;
  2. multiple **wrongful acts** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision;
  3. an activity resulting in a single **pollution incident**; or
  4. activities resulting in multiple **pollution incidents** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision.
- U. **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.
- V. **You** or **your** means the **Named Insured**, a **newly acquired subsidiary** and:
1. 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**;
  2. 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 the **Named Insured** or **newly acquired subsidiary**.

### IV. EXCLUSIONS

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

- A. 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**;

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B. arising out of:

1. **your** alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. 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 B.1. does not apply except to the extent that **you** have agreed to pay consequential or liquidated damages;

- C. 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;
- D. arising out of the sale or distribution of goods or products 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** for that client;
- E. made against **you** by any entity:
  1. which is operated, managed, or controlled by **you**;
  2. in which **you** have an ownership interest in excess of 49%;
  3. which wholly or partly owns, operates, or manages **you**;
- F. arising out of actual or alleged unlawful discrimination by **you** against **your** personnel or employment applicants or any obligation **you** have under any employment, workers' compensation, employers' liability, unemployment compensation, disability benefits, or other similar law;
- G. arising out of a **pollution incident** at, onto, or from property or facilities which are or were at any time owned or rented by **you** or by any person or entity in joint venture with **you**;
- H. for a **pollution incident** arising out of the ownership, maintenance, use, operation, loading, or unloading of any **auto**, aircraft, watercraft, or rolling stock. This exclusion does not apply to:
  1. **mobile equipment**;
  2. a watercraft **you** do not own that is:

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- a. less than 26 feet long; and
  - b. not being used to carry persons or property for a charge;
3. the operation of any of the equipment listed in Section III. DEFINITIONS, Items I.6.a., b., and c. in the definition of **mobile equipment**; or
  4. a condition in or on an **auto** not owned or operated by **you**, and that condition was created by the loading or unloading of that **auto** by **you** or by any person or entity for whom **you** are legally liable;
- I. brought by **you** or on **your** behalf against another of **you** covered by this Policy;
  - J. arising out of nuclear reaction, radiation, or contamination, under any circumstances and regardless of cause, within or originating from a **nuclear facility**;
  - K. arising out of:
    1. 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
    2. 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 K.1. above.

### V. LIMITS OF LIABILITY/SELF INSURED RETENTION

#### A. Limits of Liability

1. The Limit of Liability shown under Item 6.a. on the Declarations is the maximum we will pay for any **claim** first made against **you** and reported to us during the **policy year**.
2. The aggregate Limit of Liability shown under Item 6.b. on the Declarations is the maximum we will pay for all **claims** first made against **you** and reported to us during the **policy year**.

All Limits of Liability apply as excess over any Self Insured Retention amount. The **policy year** 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 during any other **policy year**. If the Limits of Liability as specified

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

3. All **related claims** shall be considered a single **claim** first made and reported to us within the **policy year** in which the earliest of the **related claims** was first made and reported to us.
4. **Claim expenses** are subject to and included within the applicable Limit of Liability.

### B. Self Insured Retention

**You** shall have the obligation to pay up to the Self Insured Retention amount shown in Item 5.c. on the Declarations resulting from a **claim**, including but not limited to **claim expenses**, and, at a maximum, the amount shown, if any, in Item 5.d. on the Declarations, for all **claims** first made during the **policy year**.

### C. 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.

### D. 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**.

### E. Risk Mitigation Credit

We will reduce **your** Self Insured Retention obligation for a **claim** by 50%, up to \$25,000, if, within 60 days of the date of our request, **you** provide us with a copy of the written agreement that was executed by **you** and **your** client prior to **your** performance of the agreed-to **professional services** giving rise to the **claim** and **you** demonstrate, to our reasonable satisfaction, the existence of any three (3) of the following six (6) conditions:

1. **Your** written agreement with **your** client specified payment terms, including a schedule of when payments were to be paid to **you**, which **you** consistently followed and enforced, or documented **your** attempt to do so.
2. Prior to the performance of the agreed-to **professional services** giving rise to the **claim**, **you** executed a separate written agreement with and obtained certificates of insurance evidencing both Professional Liability and General Liability from each architect, engineer, landscape architect, land surveyor, contractor, or construction manager **you** engaged or who engaged **you**.

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3. **You** engaged with **your** client in a structured, contemporaneously documented, pre-project planning process that produced a project definition document or package that substantially addressed the following project parameters (only "a" through "c" are required to satisfy this condition for study- and report-only contracts):
    - a. project objectives (e.g., business, economic, aesthetic, other);
    - b. project constraints (e.g., budget, schedule, regulatory, other);
    - c. the bases for the design/investigation (e.g., site data/requirements, utilities data/requirements, facility programming/requirements, equipment/technology requirements, alternatives to be considered);
    - d. project execution approach (e.g., staging, procurement strategy, delivery method, other); and
    - e. project monitoring and control procedures (e.g., quality, cost, schedule, other).
  4. Prior to delivery to **your** client of the instruments or deliverables of **your professional services**, a documented, independent peer review was completed, internally or externally, by a qualified professional to assess the likelihood that such instruments or deliverables would satisfy **your** client's objectives and would be in conformance with good professional practice.
  5. **You** engaged with representatives of the project owner, entities responsible for construction, and any other project stakeholders **you** deemed appropriate in a structured, contemporaneously documented constructability review process that provided for the timely integration of construction input into project planning, design, and field operations.
  6. **You** maintained a contemporaneously documented construction phase submittal log indicating the as-planned and actual dates **you** received and responded to every submittal and the action taken.
- F. Limitation on Our Duty to Defend

If we conclude that the Limit of Liability applicable to a **claim** may become exhausted prior to the conclusion of any **claim**, we will notify **you**, in writing, to that effect.

When the Limit of Liability applicable to a **claim** has actually been exhausted prior to the conclusion of the **claim**, we will notify **you**, in writing, as soon as practicable, that such Limit of Liability has been exhausted and that our duty to defend such **claim**, and any other affected **claim**, has ended.

We will initiate, and cooperate in, the transfer of control to **you**, of any **claims** which were subject to that Limit of Liability and which were

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reported to us prior to the exhaustion of such Limit of Liability. **You** must cooperate in the transfer of control of such **claims**.

We agree to take the necessary steps as we deem appropriate to avoid a default in, or continue the defense of, such **claims** until such transfer has been completed, provided that **you** are cooperating in completing such transfer.

**You** must reimburse us for expenses we incur in taking those steps we deem appropriate to avoid a default in, or continuing the defense of, any **claim**.

We will not take any action with respect to any **claim** that would have been subject to such Limit of Liability, had it not been exhausted, if the **claim** is reported to us after that Limit of Liability has been exhausted.

The exhaustion of any Limit of Liability by payment of any **claim**, and the resulting end of our duty to defend, will not be affected by our failure to comply with any of the terms and conditions of this provision.

### 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. the payee of any amounts paid under Section VI. CONDITIONS, Item G. Participating Provision; and
4. 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.

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

In the event of a **claim**, notice given by or on **your** behalf, or written notice by or on behalf of the injured person(s) or any other claimant to any of our licensed agents in the State, with particulars sufficient to identify **you**, shall be deemed notice to us.

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

1. promptly notify us or our licensed agent in writing. This written notice must be given to us or our licensed agent within the **policy year** 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 year** this Policy was in effect. If the **claim** is made during any applicable **extended reporting period**, then written notice must be given to us or our licensed agent within such **extended reporting period**. Written notice of a **claim** must be sent to the attention of either of the following:
  - a. AE Professional Liability Claims  
CNA  
Two Wisconsin Circle  
Suite 900  
Chevy Chase, Maryland 20815
  - b. Victor O. Schinnerer & Company, Inc.  
AE Professional Liability Claims  
Two Wisconsin Circle  
Chevy Chase, Maryland 20815;
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 amount when due.

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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.

The failure to give any written notice required by this Policy within the time prescribed herein shall not invalidate coverage hereunder for any **claim** made if it can be shown that it was not reasonably possible to give such notice within the prescribed time and if notice was given as soon as was reasonably possible.

### 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 or our licensed agent 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**.

**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**.

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### 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 within one hundred and eighty (180) days after expiration of this Policy. But the audit may be waived if the total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1500. We shall, as soon as practicable following such audit, refund or credit **your** account for any return premium due **you**, or bill and make a good faith effort to collect any additional premium due us, as a result of such audit.

If **you** fail to cooperate with us in our attempt to conduct such audit, including **your** failure to return any questionnaires or self-audit worksheets, we shall have the right to non-renew **your** Policy upon completion of the current **policy term**, in accordance with the provisions of Section 3426 of the New York Insurance Law, due to our inability to establish **your** proper premium.

### G. Participating Provision

The first **Named Insured** may be entitled to participate in our profits. The profit sharing amount will be calculated in accordance with an Experience Adjustment Plan developed by us, in consultation with any organizations that we recognize as commending our program.

### H. 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.

## PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

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### I. Changes to Policy

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

### J. 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.

### K. Other Insurance

If there is other valid and collectible insurance, including but not limited to project specific insurance, that applies to a **claim** covered by this Policy, the other valid and collectible insurance must pay first, and this Policy is excess over the other valid and collectible insurance. This Policy applies to the amount of the **claim** that exceeds the available Limit of Liability and any deductibles or retention amounts of the other valid and collectible insurance.

### L. Cancellation/Non-Renewal

**Your** rights and ours are stated below and in the attached State Provisions endorsement.

We will make the premium adjustment at the time that cancellation is effective, or as soon as practicable after that time. Premium return will be computed pro rata if we cancel or if **you** cancel at the end of a **policy year**. But if **you** cancel at any other time, only 90% of the prorated premium will be returned.

### M. 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.

### N. 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

## PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

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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**.

### O. **Extended Reporting Period**

#### 1. Automatic **Extended Reporting Period**

Upon **termination of coverage** of this Policy, if 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**

Upon **termination of coverage** of this Policy:

- a. the first **Named Insured** shall have the right to purchase a non-cancelable optional **extended reporting period**. Such optional **extended reporting period** coverage shall apply only in regard to the coverage terminated, and shall be made available on the same terms and conditions as those specified in this Policy.
- b. we will advise **you** in writing of availability of, the premium for, and the importance of purchasing the optional **extended reporting period** coverage. This advice will be sent within thirty (30) days after **termination of coverage**. We are not required to provide such advice if the termination of coverage is due to non-payment of premium or Self Insured Retention due to us for coverage during the **claims made relationship** or fraud.
- c. any return premium due the first **Named Insured** shall be credited toward the premium for the optional **extended reporting period** coverage, if the first **Named Insured** elects such coverage; or
- d. where money is due to us from unpaid premium or Self Insured Retentions due to us for coverage during the **claims made relationship**, any monies received by us as payment for the **extended reporting period** coverage, shall be first applied to satisfy such unpaid premium or Self Insured Retention.
- e. 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**.

**PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY  
INSURANCE POLICY**

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

There is no right to an optional **extended reporting period** if:

- a. 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 optional **extended reporting period** within the greater of:
  - (i.) sixty (60) days from the effective date of termination of coverage;  
or
  - (ii) thirty (30) days from the date of mailing or delivery of any notice required by the terms of VI.O.2.b.
- b. if the **claims made relationship** has been less than one year and the Policy has been terminated for fraud or non-payment of premium or Self Insured Retentions due to us for coverage during the **claims made relationship**.

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 divided by the total number of **policy years** in the **policy term**; three (3) years at 190% of the **policy term** premium divided by the total number of **policy years** in the **policy term**; and five (5) years at 250% of the **policy term** premium divided by the total number of **policy years** in the **policy term**.

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**.

## PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

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6. Automatic and Optional **Extended Reporting Periods** Limits of Liability
  - a. Our liability for all **claims** reported during the automatic **extended reporting period** shall be part of and not in addition to the Limits of Liability for the final **policy year**.
  - b. If the **claims made relationship** has continued for more than three (3) years, our liability for all **claims** reported during the optional **extended reporting period** shall be reinstated to the Limits of Liability for the final **policy year**.
  - c. If the **claims made relationship** has continued for less than three (3) years, our liability for all **claims** reported during the optional **extended reporting period** shall be equal to the greater of:
    - i. the amount of coverage remaining in the final **policy year's** Limit of Liability; or
    - ii. Fifty (50) percent of the final **policy year's** Limits of Liability.
7. If the first **Named Insured** has been placed in receivership, liquidation or bankruptcy or permanently ceases operations, then anyone qualifying as an insured under the definition of **you** has the right to **extended reporting period** coverage issued in the name of the first **Named Insured** for the benefit of all who qualify as **you**. The request for such **extended reporting period** coverage must be made within one hundred twenty (120) days of the **termination of coverage**.
8. **Termination of coverage** means, whether made by us or by **you** at any time: (1) cancellation or non-renewal of a policy; or (2) decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to **you** during the **policy term**.

### 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 year**, 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

**PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY  
INSURANCE POLICY**

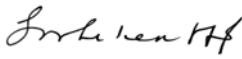
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The descriptions in the headings of this Policy are solely for convenience and form no part of the terms and conditions of coverage.

S. Bankruptcy/Insolvency

The insolvency or bankruptcy of the first **Named Insured**, or the insolvency of their estate, shall not release us from the payment of damages for injury sustained or loss occasioned during the life of and with the coverage of this policy.

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