



PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

THIS 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 AN INSURED AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE SECTION OF THE POLICY ENTITLED CONDITIONS, THE CONDITION ENTITLED THE INSURED'S DUTIES IF THERE IS A CLAIM.

Insurer means the Stock Insurance Company named on the Policy Declarations. Other key words and phrases, whether expressed in the singular or plural, that have special meaning are displayed in bold face type. See the DEFINITIONS section of the Policy.

The Insurer and the Insured agree as follows:

I. COVERAGE

A. INSURING AGREEMENTS

1. Professional Liability

The Insurer will pay all amounts in excess of the deductible up to the limit of liability that the Insured becomes legally obligated to pay because of a claim as a result of a wrongful act in the performance of professional services, provided that:

- a. on the knowledge date, none of the Insured's directors, officers, principals, partners, or insurance managers knew of any wrongful act that could reasonably be expected to become the basis of such claim; and
- b. such claim is first made against the Insured during the policy year and reported to the Insurer in accordance with section VI, CONDITIONS, paragraph B., The Insured's Duties if There is a Claim. Except as set forth in the section VI, CONDITIONS, paragraph C., The Insured's Rights and Duties In the Event of a Circumstance, a claim is considered first made on the earlier of the Insured's receipt of the claim or the Insurer's receipt of notice of the claim.

2. Pollution Incident Liability

The Insurer will pay all amounts in excess of the deductible up to the limit of liability that the Insured becomes legally obligated to pay because of a claim as a result of a pollution incident arising out of:

- a. the Insured's activities or the activities of any person or entity for whom the Insured is liable;
- b. a covered location; or
- c. a non-owned disposal site,  
provided that:
  - i. on the knowledge date, none of the Insured's directors, officers, principals, partners, or insurance managers knew of any act, error or omission that could reasonably be expected to become the basis of such claim; and
  - ii. such claim is first made against the Insured during the policy year and reported to the Insurer in accordance with section VI, CONDITIONS, paragraph B., The Insured's Duties if There is a Claim. Except as set forth in the section VI, CONDITIONS, paragraph C., The Insured's Rights and Duties In the Event of a Circumstance, a claim is considered first made on the earlier of the Insured's receipt of the claim or the Insurer's receipt of notice of the claim.

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The Insurer will also pay claim expenses in connection with such covered claim. Claim expenses are included within and reduce the limits of liability.

### B. SUPPLEMENTAL INSURING AGREEMENT - RECTIFICATION EXPENSE

The Insurer will reimburse the Named Insured for rectification expense in excess of the deductible and up to the applicable design defect circumstance limit of liability, provided that:

1. the Insured reports the design defect circumstance as soon as practicable during the policy year and in accordance with the Section of the Policy entitled CONDITIONS, the condition entitled The Insured's Rights and Duties in the Event of a Circumstance;
2. the Insured demonstrates to the Insurer's satisfaction that there is a design defect which is reasonably likely to give rise to a claim covered under this Policy;
3. the Insured provides the Insurer with details of the action being contemplated by the Insured 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 as soon as practicable during the policy year or within sixty (60) days of the expiration of the policy year;
4. prior to incurring any rectification expense, the Insurer consents in writing to such rectification expense; provided that such consent is not required if the Insured can establish that an emergency response was necessary;
5. in the event a claim is made arising out of a design defect circumstance, then the Insurer may, at its 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 ninety (90) days of the Insured's submission of a proof of loss of such rectification expense which was consented to by the Insurer.

In the event that the Insurer and the Named Insured do not agree that the Insured's proposed rectification expense is reasonable, then the Insured and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the Named Insured and the Insurer 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 Construction Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

### C. DEFENSE AND SETTLEMENT

1. The Insurer has the right and duty to defend any claim against the Insured 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. The Insurer will designate or, at its option, approve counsel to defend the claim. The Insurer is not obligated to defend any claim or pay any amounts after the applicable limit of liability has been exhausted.
2. The Insurer will not settle any claim without the informed consent of the first Named Insured.
3. If a claim results in a punitive, exemplary, or multiplied damage award, the Insurer will pay such award, up to the applicable limit of liability, to the fullest extent permitted by law. The enforceability of the foregoing shall be governed by such applicable law in the jurisdiction which most favors coverage for punitive, exemplary and multiplied damages; provided that such jurisdiction has a substantial relationship to the Insured or the claim.

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## II. SUPPLEMENTARY PAYMENTS

Except as noted in subparagraph D. below, payments made under this section are the Insurer's costs, are not subject to the deductible, and are in addition to the limits of liability shown on the Declarations.

### A. Crisis Event Expenses

The Insurer will reimburse the Named Insured up to 50% of crisis event expenses up to a maximum of \$15,000 per crisis event, subject to a maximum reimbursement by the Insurer of \$50,000 per policy year for all crisis events, for crisis event expenses incurred as a result of a crisis event that occurs during the policy term.

### B. Pre-claims Assistance

Until the date a claim is made, the Insurer may pay for all costs or expenses it incurs, at the Insurer's sole discretion, as a result of investigating a circumstance that the Insured reports in accordance with the Section of the Policy entitled CONDITIONS, the condition entitled The Insured's Rights and Duties in the Event of a Circumstance.

### C. Defendant Reimbursement

If the Insurer requests the Insured's presence at a trial, hearing, deposition, mediation or arbitration, the Insurer will pay up to \$500 a day per person, subject to a maximum amount of \$15,000 per claim.

### D. ADA, FHA, and OSHA

The Insurer will reimburse the Insured for legal fees and expenses up to \$35,000 per policy year in responding to regulatory or administrative actions brought directly against the Insured 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 the Insurer prior to any legal fees or expenses being incurred.

After the Insurer has paid \$35,000 under this provision, any additional amounts the Insurer agrees to pay will be treated as claim expenses and will be subject to the Insured's deductible and be included in the limits of liability for the policy year in which the action was commenced. The Insurer will not be responsible for any fines or penalties.

### E. Disciplinary Proceedings

The Insurer will reimburse the Insured up to \$25,000 in the aggregate per policy year, regardless of the number of disciplinary proceedings, for attorney fees and other reasonable costs, expenses or fees incurred by the Insured with the Insurer's prior written consent in responding to a disciplinary proceeding commenced against the Insured during the policy year, provided that such disciplinary proceeding is reported to the Insurer during such policy year.

### F. Dodd-Frank Fees and Expenses

The Insurer will reimburse the Insured for legal fees and expenses up to \$50,000 per policy year in responding to regulatory or administrative actions brought directly against the Insured by a government agency under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), provided that the regulatory or administrative actions:

1. are first commenced during the policy year;
2. arise out of the performance of professional services;



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3. do not arise out of services performed by the Insured as a "municipal advisor" as defined in Dodd-Frank; and
4. are reported to the Insurer prior to any legal fees or expenses being incurred.

The Insurer will not be responsible for any fines or penalties.

### III. DEFINITIONS

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 the Insurer during the policy term from which the Insured reasonably expects that a claim could be made.

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

Claim expenses mean:

1. fees charged by an attorney designated or approved by the Insurer to represent the Insured;
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. the Insurer, or
  - c. the Insured, with the Insurer's prior written consent; and
3. premiums for bonds posted in connection with an appeal. However, the Insurer is not obligated to apply for or furnish any such bonds.

Claim expenses do not include fees and expenses of independent adjusters or salaries of the Insurer's officials or employees, other than fees and expenses charged by the Insurer's employed attorneys who may be designated to represent the Insured with the Insured's prior consent.

Covered location means a location that is scheduled onto this Policy as a covered location by endorsement issued by the Insurer. Covered location also includes the address shown on the Declarations. Covered location does not include a location that has been sold, given away or abandoned by the Named Insured or that has been condemned, or a rented location where the lease has expired without renewal or has been terminated.

Crisis event means any:

1. wrongful act or pollution incident;
2. death, departure, or debilitating illness of a partner, officer, director or member of the Named Insured;
3. potential dissolution of the Named Insured for any reason other than bankruptcy; or
4. violent act, kidnapping, sexual assault, criminal firearm use or workplace accident resulting in negative local or national media coverage of the Named Insured,

that the Named Insured reasonably believes will have a material adverse effect upon the Named Insured's reputation.

Crisis event expenses mean reasonable fees, costs and expenses incurred by the Named Insured for consulting services provided by a public relations firm to the Named Insured in response to a crisis event, but only for up to sixty (60) days following a crisis event.

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.

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Design defect circumstance means a circumstance arising out of a design defect for which the Insured has requested reimbursement of a rectification expense from the Insurer.

Disciplinary proceeding means any pending matter, including an initial inquiry, before a state or federal licensing board or a peer review committee to investigate charges alleging a violation of any rule of professional conduct in the performance of professional services.

Domestic partner means any person qualifying as such under any federal, state or local laws or under the Insured's employee benefit plans.

Emergency response means an action taken by the Insured 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 the Insurer that are first made against the Insured 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.

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 fungus.

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

Insured means the Named Insured, a newly acquired subsidiary and:

1. any person who is or becomes a partner, officer, director, member, stockholder or employee of the Named Insured or newly acquired subsidiary during the policy term, but only while acting within the scope of their duties for the Named Insured or newly acquired subsidiary;
2. any person who is or becomes a leased or contracted personnel under the direct control and supervision of the Named Insured or newly acquired subsidiary during the policy term, but only while acting within the scope of their duties for the Named Insured or newly acquired subsidiary;
3. 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; and
4. solely with respect to Insuring Agreement A.2., Pollution Incident Liability, any client or project owner for whom the Named Insured performs activities, provided that:
  - a. a written contract or agreement is in effect between the Named Insured and a client or project owner under which the Named Insured assumes the tort liability of the client or project owner to pay compensatory damages to a third party for a pollution incident;
  - b. such pollution incident is caused by the Named Insured's activities, or the activities of any person or entity for whom the Named Insured is liable; and
  - c. such written contract or agreement is executed prior to the pollution incident, and:
    - i. incorporates an enforceable indemnity provision pertinent to the pollution incident; or
    - ii. requires such client or project owner to be made an additional insured under the Policy that insures the Named Insured against pollution incidents.

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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.

Insured does not include the estates, heirs, legal representatives, assigns, spouses, and any domestic partner of any natural person within the definition of Insured. However, coverage is afforded to such persons or entities under this Policy as provided in the Section of the Policy entitled CONDITIONS, the condition entitled Estates, Legal Representatives, and Spouses.

Knowledge date means the date set forth on the Declarations as the Knowledge Date.

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.

Named Insured means the persons or entities identified on the Declarations as the Named Insured.

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 ninety (90) days after the Named Insured acquires or forms it. For coverage to continue beyond the first ninety (90) days, the following conditions apply:

1. within ninety (90) days of such formation or acquisition, the Named Insured must provide the Insurer with full particulars of such newly acquired subsidiary;
2. after receipt of such notice, the Insurer must agree to endorse this Policy to insure such newly acquired subsidiary; and
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 the Insured's, directors, officers, 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.

Non-owned disposal site means a location not owned, operated, leased or rented by the Insured that is used by the Named Insured for the treatment, storage or disposal of wastes or materials that are generated by activities performed by or on behalf of the Named Insured, provided that:

1. such location is permitted or licensed by the applicable authority to accept such wastes or materials as of the date such wastes or materials are treated, stored or disposed of at the location; and
2. such location is not listed on a proposed or final Federal National Priorities List or any equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of such wastes or materials at such location.

Nuclear facility means the site where a nuclear reactor is located or where nuclear waste or material is 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 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.

Policy year means the period of one year following the effective date of the policy term or any subsequent one-year anniversary thereof if the policy term is more than one year. As permitted by individual state law, a policy year may be extended or reduced by endorsement or by termination of the Policy.

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Pollutants mean 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 do not mean heat, smoke, vapor, soot, or fumes from a hostile fire or explosion.

Pollution incident means the actual or alleged:

1. discharge, dispersal, seepage, migration, release or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water; or
2. inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of fungi or microbes,

which results in bodily injury or property damage. However, a pollution incident cannot arise from any dishonest, fraudulent, criminal, malicious act or omission, or an intentional wrongdoing committed by the Insured or at the Insured's direction or with the Insured's prior knowledge.

Professional services mean those services that the Insured, or any person or entity, including joint ventures, for whom the Insured is liable, performs for others on behalf of a Named Insured in the Insured's practice as an architect, engineer, interior designer, land surveyor, LEED® green building program consultant, landscape architect, construction manager, scientist, or technical consultant.

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;
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.

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 the Insured is responsible for design. Rectification expense does not include: overhead, mark-up, profit or any fee, charge, cost, or expense incurred by any Insured for materials supplied or services performed by any Insured.

Related claims mean all claims made against the Insured and arising out of:

1. a single wrongful act or related wrongful acts that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision;
2. 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
3. an activity or related activities that result in a single pollution incident or multiple pollution incidents that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision.

Technology based services mean professional services that utilize electronic information technology, including custom software development, modification or integration; provided, however, that such technology based services are provided solely to a specific client of the Named Insured.

Totally and permanently disabled means that the Insured is so disabled as to be wholly prevented from rendering professional services, provided that such disability:

1. has existed continuously for not less than six (6) months; and
2. is reasonably expected to be continuous and permanent.

Wrongful act means an act, error or omission that causes liability in the performance of professional services for others by the Insured or by any person or entity, including joint ventures, for which the Insured is liable.

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#### IV. EXCLUSIONS

The Insurer will not defend or pay under this Policy for any claim:

A. Claims by Insureds

brought by the Insured or on the Insured's behalf against another Insured covered by this Policy;

B. Contractual Liability

arising out of:

1. the Insured's actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. any actual or alleged liability of others that the Insured assumes under any oral or written contract or agreement.

However, this exclusion shall not apply to the Insured's liability that exists in the absence of such contract or agreement.

In a foreign jurisdiction where the Insured's liability to a client is predicated only on contractual liability, subparagraph 1. of this exclusion does not apply except to the extent that the Insured has agreed to pay consequential or liquidated damages;

C. Faulty Workmanship

arising out of any actual or alleged cost to repair or replace faulty workmanship the Insured performs on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, or equipment furnished in connection therewith except that this exclusion does not apply to drilling, excavation, or other sampling or testing procedures or the supplying of furnishings as part of interior design services, necessary to perform professional services;

D. Liquidated Damages/Fines and Penalties/Money Due/Return of Fees

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

E. Nuclear

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

F. Owned Entity

made against the Insured by any entity:

1. which is operated, managed, or controlled by the Insured;
2. in which the Insured has an ownership interest in excess of 49%; or
3. which wholly or partly owns, operates, or manages the Insured;

G. Owned, Leased or Rented Property

arising out of any actual or alleged:

1. 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 the Insured or by any person or entity for whom the Insured is legally liable; or





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2. pollution incident at, onto or from any real or personal property owned, leased or rented by the Insured or by any person or entity for whom the Insured is legally liable; however, this exclusion shall not apply to:
  - a. temporary storage of equipment or material at any staging or storage area that is associated with the Insured's activities; or
  - b. pollution incidents at, onto or from a covered location of a Named Insured;

### H. Prior Notice

arising out of any actual or alleged:

1. wrongful act, pollution incident or any matter, fact, situation, transaction, or event, for which notice was given by the Insured under any professional liability or pollution insurance coverage prior to the effective date of this Policy; or
2. 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 paragraph 1. of this exclusion;

### I. Sale or Distribution of Goods

arising out of any actual or alleged sale or distribution of goods or products by the Insured, or by others under license from the Insured. This exclusion does not apply to furniture, furnishings or equipment created or modified specifically for a client in connection with the Insured's professional services for that client or to software created or modified specifically for a client in connection with technology based services for that client;

### J. Transportation

arising out of any actual or alleged ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock. However this exclusion shall not apply to:

1. 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 wastes or materials transported by or on behalf of the Named Insured:
  - a. by an automobile, aircraft, watercraft or rolling stock during the course of activities; or
  - b. to a non-owned disposal site;
2. amounts the Insured becomes legally obligated to pay as a result of a wrongful act for which this Policy otherwise provides coverage, even if the professional services were performed using or operating an automobile, aircraft, watercraft or rolling stock;

### K. Unlawful Discrimination

arising out of any actual or alleged unlawful discrimination by the Insured against the Insured's personnel or employment applicants or any obligation the Insured has under any employment, workers' compensation, employers' liability, unemployment compensation, disability benefits, or other similar law;

### L. Intentional Acts

arising out of any actual or alleged dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing by an Insured except that the Insurer shall provide the Insured with a defense of such claim unless or until the dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of the Insurer's rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against any Insured.

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V. LIMITS OF LIABILITY/DEDUCTIBLE

A. Limits of Liability

1. Subject to paragraph 2. below, the limit of liability shown on the Declarations as the each claim Limit of Liability is the maximum the Insurer will pay for each claim first made against the Insured and reported to the Insurer during the policy year.
2. The limit of liability shown on the Declarations as the Aggregate Limit of Liability per policy year is the maximum the Insurer will pay for all claims first made against the Insured and reported to the Insurer during the policy year.
3. Subject to paragraph 4. below, the each design defect circumstance Limit of Liability shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for each design defect circumstance reported by the Insured in accordance with the Section of the Policy entitled COVERAGE, the subsection entitled SUPPLEMENTAL INSURING AGREEMENT - RECTIFICATION EXPENSE. This limit is a sublimit of liability, which further reduces and in no way increases the applicable each claim and aggregate limits shown on the Declarations.
4. The aggregate design defect circumstance Limit of Liability per policy year shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for all design defect circumstances reported by the Insured in accordance with the Section of the Policy entitled COVERAGE, the subsection entitled SUPPLEMENTAL INSURING AGREEMENT - RECTIFICATION EXPENSE. This limit is a sublimit of liability, which further reduces and in no way increases the applicable aggregate limit shown on the Declarations.
5. All limits of liability set forth above apply on a policy year basis and are excess over any deductible amount. The policy year limits of liability 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 any design defect circumstance reported by the Insured, during any other policy year. If the limits of liability as specified above for any policy year are exhausted, the Insurer's obligation for that policy year shall be deemed completely fulfilled and extinguished.
6. All related claims, whenever made, shall be considered a single claim first made and reported to the Insurer on the date on which the earliest of the related claims was first made and reported to the Insurer.
7. Claim expenses are subject to and included within the applicable limit of liability.

B. Deductible

The Insured's obligation to pay up to the per claim Deductible amount shown on the Declarations and the aggregate Deductible per policy year shown on the Declarations, if any, including but not limited to claim expenses, shall apply to all Insuring Agreements and Supplemental Insuring Agreements under the Section of the Policy entitled COVERAGE.

C. Reimbursement to the Insurer

If the Insurer has paid any amounts in excess of the applicable limit of liability, or within the amount of the Insured's deductible, the Insured shall be liable to the Insurer for all such amounts, and, upon demand, shall pay such amounts to the Insurer.

D. More Than One Insured

Neither the applicable limit of liability nor the Insured's deductible shall be increased because more than one Insured is included in a claim.

E. Risk Mitigation Incentives



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The Insured may be eligible for a Risk Mitigation Credit or an Early Resolution Credit for each claim. In no way shall this section be construed to afford more than one such Risk Mitigation Incentive per claim.

### 1. Risk Mitigation Credit

The Insurer will reduce the Insured's deductible obligation for a claim by 50%, up to \$25,000, if, within sixty (60) days of the date of the Insurer's request, the Insured provides the Insurer with a copy of the written agreement that was executed by the Insured and the Insured's client prior to the Insured's performance of the agreed-to professional services giving rise to such claim and the Insured demonstrates, to the Insurer's reasonable satisfaction, the existence of any three (3) of the following six (6) conditions:

- a. The Insured's written agreement with the Insured's client specified payment terms, including a schedule of when payments were to be paid to the Insured, which the Insured consistently followed and enforced, or documented the Insured's attempt to do so.
- b. Prior to the performance of the agreed-to professional services giving rise to the claim, the Insured executed a separate written agreement and obtained certificates of insurance evidencing both Professional Liability and General Liability insurance with each architect, engineer, landscape architect, land surveyor, contractor, or construction manager the Insured engaged or who engaged the Insured.
- c. The Insured engaged with the Insured's 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 "i" through "iii" are required to satisfy this condition for study-contracts and report-only contracts):
  - i. project objectives (e.g., business, economic, aesthetic, other);
  - ii. project constraints (e.g., budget, schedule, regulatory, other);
  - iii. the bases for the design/investigation (e.g., site data/requirements, utilities data/requirements, facility programming/requirements, equipment/technology requirements, alternatives to be considered);
  - iv. project execution approach (e.g., staging, procurement strategy, delivery method, other); and
  - v. project monitoring and control procedures (e.g., quality, cost, schedule, other).
- d. Prior to delivery to the Insured's client of the instruments or deliverables of the Insured's 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 the Insured's client's objectives and would be in conformance with good professional practice.
- e. The Insured engaged with representatives of the project owner, entities responsible for construction, and any other project stakeholders the Insured 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.
- f. The Insured maintained a contemporaneously documented construction phase submittal log indicating the as-planned and actual dates the Insured received and responded to every submittal and the action taken.

### 2. Early Resolution Credit

If negotiation or mediation of a claim results in a resolution of such claim within one hundred and eighty (180) days of the time it was reported to the Insurer in accordance with the Section of the Policy entitled CONDITIONS, the condition entitled The Insured's Duties if There is a Claim, and such

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resolution includes an indemnity payment by the Insurer, the deductible applicable to such claim will be reduced by 50%, up to \$10,000.

### VI. CONDITIONS

#### A. The Insured's Rights and Duties as the First Named Insured on the Policy Declarations

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

1. authorized to make changes in the terms of this Policy with the Insurer's written consent;
2. authorized to receive any amounts the Insurer refunds; and
3. responsible for:
  - a. the payment of all premiums and deductible obligations due the Insurer;
  - b. keeping records of the information the Insurer needs for premium computation, and sending the Insurer copies as it may request; and
  - c. notifying the Insurer of any cancellation or non-renewal.

#### B. The Insured's Duties if There is a Claim

If there is a claim, the Insured must do the following:

1. promptly notify the Insurer in writing. This notice must be given to the Insurer within the policy year in which the claim is made or within sixty (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 notice must be given to the Insurer within such extended reporting period. Notice of a claim must be sent to the attention of either of the following:
  - a. CNA - Claim Reporting  
P.O. Box 8317  
Chicago, IL 60680-8317  
fax: 866-773-7504  
email: [SpecialtyProNewLoss@cna.com](mailto:SpecialtyProNewLoss@cna.com)
  - b. Attn: AE Claims  
Victor Insurance Managers Inc.  
AE Professional Liability Claims  
7700 Wisconsin Avenue, Suite 400  
Bethesda, Maryland 20814  
fax: 301-951-5444  
[designclaims.us@victorinsurance.com](mailto:designclaims.us@victorinsurance.com)
2. specify the names and addresses of the persons making a claim against the Insured and provide the Insurer with information on the time, place and nature of the claim;
3. immediately forward to the Insurer all documents that the Insured receives in connection with the claim;
4. fully cooperate with the Insurer or the Insurer's designee in the defense of a claim, including but not limited to assisting the Insurer 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 the Insured. The Insured shall attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses;
5. refuse, except solely at the Insured's own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense, without the Insurer's prior written approval; and

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6. pay the deductible amount when due.

After the Insured reports a circumstance or a claim is made and the Insured has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the Insured shall only do so with the Insurer's prior written consent.

### C. The Insured's Rights and Duties in the Event of a Circumstance

If the Insured reports a circumstance for which there may be coverage under this Policy, and the Insured gives the Insurer written notice containing as much detail as the Insured can reasonably provide regarding:

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

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

The Insured will cooperate with the Insurer in addressing the circumstance, and refuse, except solely at the Insured's own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense without the Insurer's prior written approval.

### D. Subrogation

If any Insured has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of the Insurer's payment. The Insured must do everything necessary to secure these rights and must do nothing after a claim is made to jeopardize them. The Insurer hereby waives subrogation rights against any person or organization to the extent that the Named Insured has, prior to a wrongful act or circumstance, entered into a written agreement to waive such rights.

### 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

The Insured agrees to allow the Insurer to examine and audit the Insured's financial books and records that relate to this insurance. The Insurer 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. The Insured agrees not to bring any legal action against the Insurer concerning this Policy unless the Insured has 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 the Insurer regarding the handling or settlement of any claim, the Insured and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the Insured and the Insurer 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.

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### I. Transfer of Interest

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

### J. Other Insurance

If there is other collectible insurance, including but not limited to project specific insurance, that applies to a claim covered by this Policy, the other insurance must pay first, and this Policy is excess over the other 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 insurance. Provided, however, that for liability assumed by the Named Insured pursuant to the definition of Insured, subparagraph 4., this insurance is primary and non-contributory.

### K. Cancellation/Non-Renewal

The Insured's and the Insurer's rights are stated below and in the attached State Provisions endorsement.

The Insurer 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 the Insurer cancels or if the Insured cancels at the end of a policy year. But if the Insured cancels at any other time, only 90% of the prorated premium will be returned.

### L. Severability/Innocent Parties

Any Insured who did not commit, participate in, or have prior knowledge of any dishonest, fraudulent, criminal, malicious act or omission, or an intentional wrongdoing, or who did not fail to comply with the Section of the Policy entitled CONDITIONS, the condition entitled The Insured's Duties if There is a Claim, paragraph 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 Insured, 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 Insured 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 deductible 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 Periods

#### 1. Automatic extended reporting period

If this Policy is canceled or non-renewed either by the Insurer or by the first Named Insured and the first Named Insured has not obtained similar coverage, the Insurer 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 sixty (60) days.

#### 2. Optional extended reporting period

a. If this Policy is canceled or non-renewed either by the Insurer 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 (60) days of the automatic extended reporting period.



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- b. 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.
  - c. The first Named Insured must provide the Insurer with written notice of its election to purchase the optional extended reporting period and pay the full payment for such period within sixty (60) days after the end of the policy term.
3. Death or disability extended reporting period
- a. If an Insured dies or becomes totally and permanently disabled during the policy term, then, upon the latter of the expiration of: the policy term; any renewal or successive renewal of this Policy; or any automatic or optional extended reporting period, such Insured shall be provided with a death or disability extended reporting period, as provided below.
    - i. In the event of death, such Insured's estate, heirs, executors or administrators must, within sixty (60) days of the expiration of the policy term, provide the Insurer with written proof of the date of death. This extended reporting period is provided to such Insured's estate, heirs, executors and administrators.
    - ii. If such Insured becomes totally and permanently disabled, such Insured or such Insured's legal guardian must, within sixty (60) days of the expiration of the policy term, provide the Insurer with written proof that such Insured is totally and permanently disabled, including the date the disability commenced, certified by such Insured's physician. The Insurer retains the right to contest the certification made by such Insured's physician, and it is a condition precedent to this coverage that such Insured agrees to submit to medical examinations by any physician designated by the Insurer at the Insurer's expense. This extended reporting period is provided until such Insured shall no longer be totally or permanently disabled or until such Insured's death, in which case subparagraph i. hereof shall apply.
  - b. No additional premium will be charged for any death or disability extended reporting period.
4. Non-practicing extended reporting period
- a. If, during the policy term, an Insured retires from, or otherwise voluntarily ceases, permanently and totally, such Insured's practice as an architect, engineer or any other profession specifically listed in the definition of professional services, and has been continuously insured by the Insurer for at least ten (10) consecutive years, then such Insured shall have the right to purchase a non-practicing extended reporting period commencing upon the latter of the expiration of: the policy term; any renewal or successive renewal of this Policy; or any automatic or optional extended reporting period.
  - b. The additional premium for the non-practicing 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 ten (10) years at 250% of the policy term premium divided by the total number of policy years in the policy term.
  - c. The Insured must provide the Insurer with written notice of such Insured's election to purchase the non-practicing extended reporting period and pay the full premium for such period within sixty (60) days after such Insured's date of retirement or sixty (60) days after the end of the policy term, whichever is earlier.

As used herein, the Insured's "practice as an architect, engineer or any other profession specifically listed in the definition of professional services" means such Insured's practice of any such profession for a fee, whether as a sole practitioner or as a partner, officer, director, member, stockholder or

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employee. The Insured's "practice as an architect, engineer or any other profession specifically listed in the definition of professional services" does not include any pro bono services performed by the Insured.

### 5. Extended reporting periods limits of liability

#### a. Automatic and optional extended reporting periods limits of liability

The Insurer's liability for all claims reported during any automatic and optional extended reporting periods shall be part of and not in addition to the remaining limits of liability for the final policy year.

#### b. Separate death or disability and non-practicing extended reporting period limits of liability

##### i. Limit of Liability - each claim

Subject to paragraph ii. below, the Insurer's limit of liability for each claim first made against the Insured, and reported to the Insurer during the death or disability extended reporting period or non-practicing extended reporting period, shall not exceed the amount shown on the Declarations as the each claim death or disability and non-practicing extended reporting period Limit of Liability.

##### ii. Limit of Liability - in the aggregate

The Insurer's limit of liability for all claims first made against the Insured, and reported to the Insurer during the death or disability extended reporting period or non-practicing extended reporting period, shall not exceed the amount shown on the Declarations as the aggregate death or disability and non-practicing extended reporting period Limit of Liability.

### 6. Elimination of right to an extended reporting period

There is no right to any extended reporting period if the Insurer cancels or refuses to renew this Policy due to:

- a. non-payment of amounts due the Insurer;
- b. non-compliance by the Insured with any of the terms and conditions of this Policy; or
- c. any misrepresentation or omission in the application for this Policy.

### 7. Extended reporting period limitations

No 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 the Insured, or that would be covered but for exhaustion of the limits of liability applicable to such claims.

### 8. Extended reporting period not a new policy

It is understood and agreed that the extended reporting period shall not be construed to be a new policy and any claim submitted during such period shall otherwise be governed by this Policy.

### O. Liberalization

If, during the policy term, the Insurer files with the appropriate regulator, general revisions to the terms and conditions of this Policy that are intended to apply to all Insureds and provide broadened coverage without an additional or increased premium charge, then such broadened coverage will apply immediately to this Policy as of the date the filed revision is effective in the state shown in the mailing address of the

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Declarations (hereinafter "effective date"). However, this provision will not apply to claims that were first made against the Insured prior to the effective date of such revision.

P. Economic and Trade Sanctions

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

Q. Territory

The coverage afforded by this Policy applies worldwide.

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, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless signed by its duly authorized representative.

Chairman

Secretary

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