

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

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# PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

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**YOUR PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY IS WRITTEN ON A "CLAIMS-MADE" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST YOU WHILE THIS INSURANCE IS IN FORCE. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST YOU AFTER THE END OF THE POLICY TERM UNLESS, AND TO THE EXTENT, AN EXTENDED REPORTING PERIOD APPLIES.**

Throughout this Policy, the terms "we," "us" and "our" refer to the Stock Insurance Company, named on the Policy Declarations, providing this insurance. When used in the text of this Policy or endorsements hereto, 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 deductible 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 on the Declarations no officer, director, principal, partner or insurance manager knew or could reasonably have expected that a **claim** would be made.
- B. A **claim** arising out of a **wrongful act** or **pollution incident** must be first made during the **policy year** or any applicable **extended reporting period**. A **claim** is considered first made when **you** receive notice of the **claim** or as set forth in accordance with Section VI. CONDITIONS, Item C., **Your Rights and Duties in the Event of a Circumstance**.
- 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 will designate or, at our option, approve counsel to defend the **claim**. We are not obligated to defend any **claim** or pay any amounts after the applicable limit of our liability has been exhausted.
- D. We will not settle any **claim** without **your** informed consent.
- E. If a **claim** results in a punitive, exemplary or multiplied damage award, we will pay such award, up to the applicable Limit of Liability, to the fullest extent permitted by law.

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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 deductible 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 will 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.

### B. Defendants Reimbursement

We will pay up to \$300 a day, subject to a maximum amount of \$7,500 per **claim**, because of time off from work for attendance, at our request, at a trial, hearing or deposition involving a civil suit, **mediation** or arbitration proceeding against **you** that is covered by this Policy.

### 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** deductible 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.

## III. DEFINITIONS

- A. **Auto** means a land motor vehicle, trailer or semitrailer designed for travel on public roads including any attached machinery or equipment. But **auto** does not include **mobile equipment**.

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- B. **Bodily injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- C. **Circumstance** means an event reported 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 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 salaries of our employees or officials, or fees and expenses of independent adjusters.
- F. **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.
- G. **Hostile fire** means one that becomes uncontrollable or breaks out from where it was intended to be.
- H. **Mediation** means the use of non-binding intervention by a neutral third party.

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- I. **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
    - 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

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- c. air compressors, pumps and generators, including spraying, welding, building cleaning, geo-physical exploration, lighting and well servicing equipment.
  - J. **Named Insured** means the persons or entities listed in Item 1. on the Declarations.
  - K. **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. we, after receipt of such notice, 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 earlier of the acquisition date or formation date, no officer, director, principal, partner or insurance manager of the **Named Insured** or such **newly acquired subsidiary** knew or could reasonably have expected that a **claim** would be made.
- L. **Nuclear facility** means the site where a nuclear reactor is located or where nuclear waste or material is disposed.
  - M. **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.
  - N. **Policy year** means the period of one year following the effective date of the **policy term** or any subsequent one year anniversary thereof. A **policy year** may be extended or reduced by endorsement, but only as permitted by individual state law, or by termination of the Policy.

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- O. **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.
- P. **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.
- Q. **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.
- R. **Property damage** means the following:
1. physical injury to or destruction of tangible property including the resulting loss of use thereof;
  2. clean-up costs incurred by a third party or mandated by any governmental entity;
  3. loss of use of tangible property that has not been physically injured or destroyed;
  4. physical damage to soil, surface water, groundwater or plant or animal life.
- S. **Related claims** means all **claims** made against **you** and reported to us during any **policy year** arising out of:
1. a single **wrongful act** or related **wrongful acts**, or
  2. an activity resulting in a **pollution incident** or related activities resulting in **pollution incidents**.
- T. **Wrongful act** means an error, omission or other act that causes liability in the performance of **professional services** for others by **you** or 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;

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U. **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**; a retired partner, officer, director, member or employee of the **Named Insured** or **newly acquired subsidiary**, while acting within the scope of their duties as a consultant for the **Named Insured** or **newly acquired subsidiary**;
2. the heirs, executors, administrators, assigns and legal representatives of any individual or their estate as designated in paragraph 1. above in the event of such individual's death, incapacity, insolvency or bankruptcy, but only to the extent that such individual would have been provided coverage under this Policy.

While not within the definition of **you** or **your**, the spouses of those individuals identified in paragraphs 1. and 2. are insured under this Policy but only as respects their liability for **your wrongful acts**.

**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**;
- 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,

except that coverage otherwise available to **you** shall 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 1. does not apply except to the extent that **you** have agreed to pay consequential or liquidated damages;



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- 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. in which **you** are an officer or director; or
  - 4. which wholly or partly owns, operates or manages **you**;
- F. arising out of any obligation **you** have under any unemployment, workers' compensation, employers liability, unemployment compensation, disability benefits or other similar law;
- G. arising out of actual or alleged unlawful discrimination by **you** against **your** personnel or employment applicants;
- H. 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**;
- I. 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:
    - 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 6. a., b. and c. in the definition of **mobile equipment**; or

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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;
- J. brought by **you** or on **your** behalf against another of **you** covered by this Policy;
- K. arising out of nuclear reaction, radiation or contamination, under any circumstances and regardless of cause, within or originating from a **nuclear facility**.

### V. LIMITS OF LIABILITY/DEDUCTIBLE

#### 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 this **policy year**. This limit applies as excess over any deductible amount.
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**. This limit applies as excess over any deductible 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 in respect of **claims** first made or deemed made during any other **policy year**. If the limits of liability as specified 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. Deductible

**You** shall have the obligation to pay up to the deductible 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. Mediation Credit

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If we and **you** agree to use **mediation** and if we and **you** resolve any **claim** by **mediation**, we will reduce **your** deductible obligation for the **claim** by 50% or \$25,000, whichever is less.

D. Reimbursement

If we have paid any amounts in excess of the applicable limit of liability, or within the amount of **your** deductible, **you** shall be liable to us for all such amounts, and upon demand, shall pay such amounts to us.

E. More Than One Of **You**

Neither the applicable limit of liability nor **your** deductible shall be increased because more than one of **you** is included in a **claim**.

**VI. CONDITIONS**

A. **Your** Rights and Duties As The First **Named Insured** On The Policy Declarations

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

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

B. **Your** Duties If There Is A **Claim**

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

1. promptly notify us in writing. This notice must be sent to the attention of:

Director of Claims  
CNA PRO

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Two Wisconsin Circle  
Chevy Chase, Maryland 20815-7003

The notice must be given to us within a **policy year** or within 60 days after its expiration or termination;

2. specify the names and addresses of the persons making **claim** against **you** and provide us with information on the time, place and nature of the **claim**;
3. promptly forward to us all documents which **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; and
5. refuse, except solely at **your** own cost, to voluntarily, without our approval, make any payment, admit liability, assume any obligation or incur any expense.

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 written consent after **you** report a **circumstance** or a **claim** is made.

### C. **Your Rights And Duties In The Event Of A Circumstance**

If **you** report a **circumstance** for which there may be coverage under this Policy, and **you** give us written notice containing:

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

then any **claim** that may subsequently 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, without our approval, make any payment, admit liability, assume any obligation or incur any expense.

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### 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 **claim** is made to jeopardize them. We hereby waive subrogation rights against **your** client to the extent that **you** had, prior to a **claim** or **circumstance**, 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

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

### G. 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 the Commending Organizations, if any, and us.

### 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**, we and **you** agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should we and **you** be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding

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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

### 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 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.

### L. Cancellation/Non-Renewal

**Your** rights and ours are stated 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 that amount 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 did not fail to comply with Condition B, shall have the coverage otherwise provided by this Policy.

### N. Extended Reporting Period

#### 1. Automatic Extended Reporting Period

If this Policy is canceled or non-renewed by either us or by the first **Named Insured**, we will provide an automatic, non-cancelable **extended reporting period** starting at the termination of the **policy**

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**term** if the first **Named Insured** has not obtained similar coverage. This automatic **extended reporting period** will terminate after 60 days.

### 2. Optional **Extended Reporting Period**

If this Policy is canceled or non-renewed by either us or by the first **Named Insured**, then the first **Named Insured** shall have the right to purchase an optional **extended reporting period**. Such right must be exercised by the first **Named Insured** within 60 days of the termination of the **policy term** by providing:

- a. written notice to us; and
- b. with the written notice, the amount of additional premium described below.

The first sixty days of the optional **extended reporting period**, if purchased, run concurrently with the sixty days of the automatic **extended reporting period**.

### 3. Additional Premium

The additional premium for the optional **extended reporting period** shall be 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**; five (5) years at 250% of the **policy term** premium divided by the total number of **policy years** in the **policy term**.

### 4. **Extended Reporting Period** Limitations

No additional 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**.

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

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

O. 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.

IN WITNESS WHEREOF, we have 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 our duly authorized representative.

  
Chairman

  
Secretary

Specimen