

South Dakota Policy Form

The Professional Liability Policy for Design Professionals

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Your professional 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. 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 a **wrongful act** anywhere in the world, provided that on the **inception date** on the Declarations any officer, director, principal, partner or insurance manager did not know and could not reasonably have expected that a **claim** would be made.

B. A **claim** arising out of a **wrongful act** must first be made during the **policy term** or any applicable **extended reporting period**. A **claim** is considered first made when **you** receive notice of the **claim** or **you** report a **circumstance** in accordance with Section V. Conditions, Item C.

C. We have the right and duty to designate counsel 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 suit or pay any **claim** amounts or **claim expenses** after the applicable limit of our liability has been exhausted by such payments.

D. We will not settle any **claim** without **your** informed consent. If we recommend a settlement to **you**, that is acceptable to the claimant, and **you** elect to contest the **claim** or continue any legal proceedings in connection with the **claim**, our obligation to defend ceases and liability is limited to the total amount for which the **claim** could have been settled plus the amount of **claim expenses** incurred up to the time we made the recommendation for settlement.

II. Definitions

When used in this policy, or endorsements hereto, the following terms displayed in "**bold face type**" will only have the meaning as stated herein.

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

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

Claim Expenses means:

1. fees charged by an attorney designated or approved by us to represent **you**; and
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.

Claim Expenses do not include salaries of our employees or officials, or fees and expenses of independent adjusters.

Effective Date means the date on which protection under this policy begins. The **effective date** is shown on the Declarations page as the beginning of the **policy term**.

Entity means any individual, partnership, corporation or other form of association recognized as such by law.

Extended Reporting Period extends the time within which a **claim**, resulting from a **wrongful act** that happened prior to the final policy expiration date, may be made and reported

Inception Date means the date of the first policy issued to **you** and continuously renewed by us.

Insured means any of **you** under this policy.

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

Nuclear Facility means the site at which a nuclear reactor is located or where nuclear waste or material is disposed of or stored.

Personal Injury means:

1. bodily injury, sickness, disease, death, mental anguish and emotional distress;
2. false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of privacy;
3. malicious prosecution;
4. humiliation;
5. slander, libel, or other disparaging comments or materials in violation of an individual's right of privacy.

Policy Term means the period of time between the **effective date** and the date of termination, expiration or cancellation. **Policy term** does not include any **extended reporting period**.

Professional Services means those services that **you** are legally qualified to perform for others in **your** practice as an architect, engineer, land surveyor, landscape architect, construction manager, or as specifically defined by endorsement to this policy.

Single Claim means one or more **claims** arising out of a single **wrongful act**, or out of related **wrongful acts**.

Wrongful Act means a negligent act, error or omission in the performance of **professional services** for others by **you** or any **entity**, including joint ventures, for whom **you** are legally liable.

You or **Your** means:

1. an **entity** listed in Item 1. on the Declarations;
2. any past or present partner, officer, director, stockholder or employee while acting within the scope of their duties for an **entity** listed in Item 1 of the Declarations, or leased personnel under **your** direct supervision;
3. a retired partner, officer, director or employee while acting within the scope of their duties as a consultant for an **entity** listed in Item 1. on the Declarations; or

III. Exclusions

We will not defend or pay under this policy for **claim** or **claim expenses** arising out of:

- A. any dishonest, fraudulent, or criminal conduct committed intentionally by **you** or at **your** direction;
- B. fines, penalties or liquidated damages imposed on any **insured**, or the failure or refusal of a client to pay all or any part of monies due **you**;
- C. punitive or exemplary amounts assessed against any **insured**, unless such amounts arise solely out of a **claim** for libel or slander and payment by us is not held to be against public policy. This exclusion will not apply in any jurisdiction where the regulatory authority governing this type of insurance prohibits such exclusion;
- D. liability of others **you** have assumed under a contract or agreement unless the liability is caused by **your wrongful act**;
- E. the cost to repair or replace faulty workmanship in any construction, erection, fabrication, installation, assembly, manufacture or remediation performed by **you** including any materials, parts or equipment furnished in connection therewith;
- F. express warranties or guarantees;
- G. the design or manufacture of any goods or products which are sold or supplied by **you** or by others under license from **you**;
- H. a **claim** made against **you** by any **entity** in which **you** are an officer or director which
 1. is operated, managed or controlled by **you** or in which **you** have an ownership interest in excess of 15%; or;
 2. wholly or partly owns, operates or manages **you**;

I. **personal injury** sustained by any employee of **yours** arising out of employment by **you**; or any obligation for which **you** must pay under any unemployment, workers' compensation, disability benefits or other similar laws

J. actual or alleged discrimination because of race, religion, color, sex, national origin, age or disability against:

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

K. any **claim** brought by **you** or on **your** behalf against another of **you** covered by this policy;

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

M. **professional services** for which **you** are insured, under any professional liability policy issued for a specific project or projects. This exclusion applies even if **claim** or **claim expenses** are not covered in whole or in part by that policy for any reason, including but not limited to:

1. an exclusion;
2. a reduction or exhaustion of the limits of liability under such policy.

IV. 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 **single claim** first made or **circumstance** reported during this **policy term**. 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 or **circumstances** reported during the **policy term**. This limit applies as excess over any deductible amount
3. All **claims** constituting a **single claim**, whenever made, shall be considered first made during the **policy term** in which the earliest **claim** or reported **circumstance** was made and all such **claims** or reported **circumstances** shall be subject to the limit of liability and deductible of the **policy term** in which the earliest **claim** was made or **circumstance** reported.
4. **Claim expenses** are subject to and included within the applicable limit of liability.

B. Deductible

1. **You** shall have the obligation to pay up to the applicable deductible amount shown on the Declarations for **claim** and/or **claim expenses** combined resulting from a **single claim**.
2. Until a **claim** is made the deductible does not apply to **claim expenses** when **you** report a **circumstance**. Any **claim expenses** must be approved by us before being incurred.
3. If we and **you** agree to use **mediation** and if we and **you** resolve any **claim** by **mediation**, **your** deductible obligation will be reduced by 50% subject to a maximum reduction of \$15,000. Deductible payments made prior to the application of the above credit will be reimbursed within 30 days of the resolution of the **claim**.

C. Reimbursement

If we have paid any amounts for **claim** or **claim expenses** 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.

D. More Than One Of **You**

The inclusion of more than one of **you** covered under this policy shall not increase either the applicable Limit of Liability or **your** deductible.

E. Defendants Reimbursement

In addition to our limit of liability, we will also pay **your** actual loss of earnings up to \$250 a day, subject to a maximum amount of \$5,000 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** otherwise covered by this policy. These supplementary payments are not subject to the deductible.

V. Conditions

A. **Your** Duties As The First Named **Entity** On The Policy Declarations

When there is more than one **entity** named in Item 1. on the Declarations, the first named **entity**, on behalf of all others, will be:

1. authorized to make changes in the terms of this policy with our written consent;
2. the payee of any premiums we refund;
3. 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 at such times as we may request;
 - c. notifying us that **you** want to cancel this policy.

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 or faxed to the attention of:

Director of Claims
CNA Insurance
7700 Wisconsin Ave., Suite 400
Bethesda, Maryland 20814

The notice must be given to us promptly and within the **policy term** 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 making of settlement, the conduct of suits or other proceedings, enforcing any right of contribution or indemnity against another who may be liable to **you**. **You** shall attend hearings and trials, assist in securing evidence and obtaining the attendance of witnesses;
5. refuse, except solely at **your** own cost, to voluntarily make without our approval any payment, admit liability or assume any obligation or incur any expense.

If **you** have the right under any **professional services** contract to either reject or demand arbitration or other alternative dispute resolution process of any **claim**, **you** shall only do so with our written consent.

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

If **you** become aware of a **circumstance** for which coverage is provided hereunder, and if **you**, during the **policy term**, give us written notice containing:

1. what happened and the **professional services you** provided; and
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 refuse, except solely at **your** own cost, to voluntarily make without our approval any payment, admit liability or assume any obligation or incur any expense.

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 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 which 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. Reserve Premium/Participating Provision

If a reserve premium is charged for this policy, it will be returned to **you** or **your** principal successor firm, except for that portion used to pay **claims, claim expenses**, or earned but uncollected premiums as pursuant to application of the Experience Adjustment Plan between the commencing organizations 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, and the amount of **your** obligation to pay has been decided.
2. Such amount can be decided by final judgment against **you** after actual trial, or by written agreement between **you**, us and the claimant. **You** agree to bring any such action in two years, or during any applicable statute of limitations for the bringing of such action, whichever is longer.
3. Any **entity**, or its legal representative, is entitled to recover under this policy after it has secured such judgment or written agreement. Recovery is limited to the extent of the insurance afforded by this policy. No **entity** has any right under this policy to include us in any action against **you** to determine **your** liability, nor will we be brought into such an action by **you** or **your** representative.
4. If **you** or **your** estate become bankrupt or insolvent, it does not change any of our obligations under this policy.

I. Changes

Notice to any of our agents or knowledge possessed by any such agent or any other person shall not act as a waiver or change in any part of this policy. It also will not prevent us from asserting any rights under the provisions of this policy. None of the provisions of this policy will be waived, changed or modified except by written endorsement issued to form a part of this policy.

J. Transfer of Interest

You must first obtain our written consent to transfer or assign this policy. Should **you** die, the policy will continue for the remaining part of the **policy term**, first, for the benefit of **your** legal representative while acting within the scope of such duties; and second, for the benefit of anyone having proper temporary custody of your property until a legal representative is appointed.

K. Other Insurance

If **you** have other insurance that applies to any **claim** covered by this policy, the other insurance must pay first. This policy applies to the amount of the **claim** that exceeds the available limit of liability of the other insurance.

L. Cancellation/Non-Renewal

We will make the premium adjustment with **you** 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, but if **you** cancel, only 90% of that amount will be returned to **you**. This provision is subject to any state regulations.

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

M. Severability of Interests

The term **you** is used severally and not collectively.

N. Innocent Principals

If coverage under this policy would not apply because of Exclusion A. or because of non-compliance with Condition B., such Exclusion or Condition will not apply to each of **you** who did not commit, participate in, or have knowledge of any of the acts described provided **you** comply with all policy provisions.

O. Extended Reporting Period

If this policy is terminated for any reason, other than non-payment of premium or failure to pay any deductible when due, **you** may purchase an **extended reporting period**.

To exercise this right, **you** must write to us within 60 days of the termination requesting such extension, and pay the premium to us promptly when due.

The period of time allowed by the policy for the reporting of **claims** first made against **you** and immediately reported in writing to us will then be extended for a period of one year, or as otherwise required by the regulatory guidelines governing this type of insurance in **your** state. The limit of liability applicable for the **extended reporting period** shall be the limit of liability remaining under the terminated policy, or as otherwise required by the regulatory guidelines governing this type of insurance in **your** state.

The premium for such extension will be developed in accordance with the rules, rates and rating plans then in effect for us;

Such extension for the reporting of **claims** shall not apply to any pending **claim** or proceedings; any paid claim; any **professional services** rendered after the **effective date** of this extension; or **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**.

This policy shall not be valid unless countersigned on the Declarations by a duly authorized representative of this Company.

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