CNA

CONTRACTORS ERRORS & OMISSIONS
AND POLLUTION INCIDENT POLICY

## DECLARATIONS

| AGENCY | BRANCH | PREFIX | POLICY NUMBER |
|---|---|---|---|
| | 969 | | |

INSURANCE IS PROVIDED BY
COLUMBIA CASUALTY COMPANY
CNA PLAZA, CHICAGO, IL 60685.
HEREIN CALLED WE, US OR OUR

## NOTICE

**YOUR POLICY IS WRITTEN ON A "CLAIMS-MADE AND REPORTED" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST YOU AND REPORTED TO US IN ACCORDANCE WITH SECTION VI. CONDITIONS, PARAGRAPH B, YOUR DUTIES IN THE EVENT OF A CLAIM.**

1. **NAMED INSURED**:

2. ADDRESS:

3. **POLICY PERIOD**: From: Effective Date To: Expiration date (at 12:01 a.m. Standard Time at **your** address shown above)

4. a. RETROACTIVE DATE:

   b. POLLUTION INCIDENT RETROACTIVE DATE:

5. SELF INSURED RETENTION AND CO-INSURANCE PERCENTAGE:

   a. Purchased Self Insured Retention

   b. Co-Insurance Percentage per **Claim**, applicable only to the first $1,000,000 in **damages**

6. LIMIT OF LIABILITY:

   a. Per **claim** limit of liability (including **claim expenses**)

   b. Aggregate limit of liability per **policy year** (including **claim expenses**)

7. BUSINESS CAPACITY AND REPORTED CONTRACTING REVENUES:

8. PREMIUM:

SPECIMEN



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## DECLARATIONS

9. INSTALLMENT PAYMENT PLAN:

10. **EXTENDED REPORTING PERIOD**:

One (1) year at 100% of the **policy period** premium
Three (3) years at 190% of the **policy period** premium
Five (5) years at 250% of the **policy period** premium

11. POLICY FORM AND ENDORSEMENTS ATTACHED AT INCEPTION OF THE POLICY:

Kathleen W. Curry

Authorized Representative

Countersignature (if required)

SPECIMEN



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**NOTICE**: PLEASE NOTE THE ADDRESS CHANGE TO ONE OF THE TWO ADDRESSES TO WHICH NOTICE OF A **CLAIM** MUST BE MAILED.

**POLICYHOLDER NOTICE**
**NOTICE OF CHANGE OF ADDRESS**

We agree with **you** that Section **VI. CONDITIONS**, paragraph B.1. is deleted in its entirety and replaced by the following:

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

   a.) Attn: Intake Manager
   CNA Specialty Claim
   P.O. Box 8317
   Chicago, IL 60680-8317
   fax: 866-773-7504
   email: CNAA&EnewLossNotice@cna.com

   b.) Attn: AE Claims
   Victor Insurance Managers LLC
   AE Professional Claims
   7700 Wisconsin Ave, Suite 400
   Bethesda MD 20814-6562
   fax: 301-951-5444
   email: DesignClaims.US@victorinsurance.com

All other provisions of this policy remain unchanged.



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# CONTRACTORS
# ERRORS & OMISSIONS AND POLLUTION INCIDENT POLICY

**YOUR POLICY IS WRITTEN ON A "CLAIMS-MADE AND REPORTED" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST YOU AND REPORTED TO US IN ACCORDANCE WITH SECTION VI. CONDITIONS, PARAGRAPH B, YOUR DUTIES IN THE EVENT OF A CLAIM.**

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

## I. COVERAGES

We will pay all amounts in excess of the self-insured retention and up to our limit of liability that **you** become legally obligated to pay as **damages** as a result of a **claim**:

**A. Errors & Omissions Liability**

alleging **wrongful acts** while **you** are acting in the business capacity described in the Declarations;

**B. Pollution Incident**

alleging **pollution incidents** arising out of **your** activities, or the activities of any person or entity for whom **you** are legally liable or arising out of liability that **you** assume from an **insured client,**

provided that:

1. such **claim** is first made against **you** during the **policy period** and is reported to us in writing in accordance with **Section VI. CONDITIONS;**
2. such **wrongful act** happened on or after the retroactive date set forth in the Declarations and before the end of the **policy period;**
3. such **pollution incident** first occurred on or after the **pollution incident** retroactive date set forth in the Declarations and before the end of the **policy period;**
4. on the effective date of the **coverage relationship**, none of **your executive officers,** and none of **your** employees authorized by **you** to give or receive notice of a **claim**, knew or should have known that any act, error or omission might reasonably be expected to result in such **claim**; and
5. none of **your executive officers** and none of **your** employees authorized by **you** to give or receive notice of a **claim** gave notice to a prior insurer of such **wrongful act** or of a **related wrongful act** or of a **related claim.**

We will also pay all **claim expenses**. All **claim expenses** are included within and erode the self-insured retention and limits of liability.

## II. DEFENSE

We have the right and duty to investigate and defend any covered **claim**. We will defend any covered **claim** even if any of the charges are groundless, false or fraudulent. We have the right to settle any **claim**. We will designate or, at our option, approve counsel to defend the claim. We are not obligated to defend any **claim** or pay any amounts after the applicable limit of liability has been exhausted.

If a **claim** is submitted to an arbitration proceeding or mediation, we shall be entitled to exercise all of **your** rights in the choice of arbitrators or mediators and in the conduct of an arbitration or mediation proceeding.

## III. DEFINITIONS

**Bodily injury** means physical injury to the body, sickness or disease sustained by any person, including death, mental injury, mental anguish, mental tension, emotional distress, pain or suffering or shock sustained by that person at any time which results as a consequence of the physical injury to the body, sickness, or disease.



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**Circumstance** means any act, error or omission from which it could reasonably be determined that a **claim** could be made and that **you** report to us in accordance with **Section VI. CONDITIONS**, paragraph **C. Your Rights and Duties in the Event of a Circumstance**.

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

Except as provided in **Section VI. CONDITIONS**, paragraph **C. Your Rights and Duties in the Event of a Circumstance**, a **claim** shall be deemed made:

**A.** in the case of a written demand for monetary damages or non-monetary relief, on the earlier of **your executive officer's** or our receipt of notice of such demand;

**B.** in the case of a civil proceeding in a court of law or equity or arbitration, on the date of service upon or other receipt by any of **you** of a complaint against **you** in such proceeding or arbitration.

**Claim expenses** mean:

**A.** fees charged by attorneys designated by us;

**B.** all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim if incurred by us including, but not limited to, premiums for any appeal bond, attachment bond or similar bond but without any obligation on our part to apply for or furnish any such bond;

**C.** all costs taxed against **you** in defense of a **claim**; and

**prejudgment interest** and all interest on the entire amount of any judgment that accrues after entry of the judgment and before we have paid that part of the judgment which does not exceed the applicable limit of liability. **Claim expenses** with respect to a **claim** will be paid first and payment will reduce the amount available to pay **damages. Claim expenses** do not include fees and expenses of independent adjusters or salaries of our officers or employees, other than fees and expenses charged by our employed attorneys who may be designated to represent **you**.

**Coverage relationship** means that period of time between the effective date of the first Contractor's Errors & Omissions and Pollution Incident insurance policy issued by us to the **First Named Insured** and the cancellation or nonrenewal of the last consecutive Contractor's Errors & Omissions and Pollution Incident insurance policy issued by us to the **First Named Insured**, where there has been no gap in coverage.

**Damages** mean judgments, awards and settlements **you** are legally obligated to pay (including **recall expense** and punitive or exemplary amounts or the multiplied portion of multiplied awards where insurable by law) because of a covered **claim**. All settlements must be made with our written consent.

**Damages** do not include:

**A.** fees, costs and expenses paid or incurred or charged by any of **you**, no matter whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise, and injuries that are a consequence of any of the foregoing;

**B.** civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to law, statute, regulation or court rule, including but not limited to awards under 18 U.S.C. §1961, et. seq., Federal Rules of Civil Procedure 11 or 28 U.S.C. §1927 and state statutes, regulations, rules or law so providing, and injuries that are a consequence of any of the foregoing;

**C.** injunctive or declaratory relief;

**D.** any amount:

1. for which **you** are absolved from payment by reason of any covenant, agreement or court order or where the right of action against **you** have been relinquished or waived; or
2. constituting liquidated damages;

**E.** with respect to any **recall expense**, any amounts incurred because of normal operations engaged in after the installation of **your work** or **your installed product** to render it fully functional or efficient and anticipated in **your** installation contract;



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**F.** attorney fees associated with any of the above.

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

**Executive Officer** means any director or officer of a corporation, principal of a joint venture, member of the board of managers of a limited liability company, partner of a partnership, managing member of a limited liability company or equivalent positions.

**Extended Reporting Period** means the time periods after the end of the **policy period**, as specified in Section **VI. CONDITIONS**, paragraph **O. Extended Reporting Period** for reporting **claims** to us that are made against **you** during such time periods and that arise out of:

**A.** a **wrongful act** that took place prior to the end of the **policy period** that is otherwise covered by this Policy; or

**B.** activities that took place prior to the end of the **policy period** that result in a **pollution incident** that is otherwise covered by this Policy.

**First Named Insured** means the person or entity first named as a **named insured** on the Declarations.

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

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

**Impaired property** means tangible property, other than **your installed product** or **your work**, that cannot be used or is less useful because:

**A.** it incorporates **your installed product** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or

**B.** **you** have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of **your installed product** or **your work** or by **your** fulfilling the terms of the contract or agreement.

**Insured client** means a contractor, property owner or other party for whom **you** perform activities, but only if there is in place an **insured client contract.**

**Insured client contract** means:

**A.** a written contract or agreement that is in effect between **you** and a client under which **you** assume the tort liability of the client to pay compensatory damages to a third party for a **pollution incident**, but only to the extent such **pollution incident** is caused by **your** activities or the activities of any person or entity for whom **you** are liable; and

**B.** such written contract or agreement is placed in effect prior to the **pollution incident**, incorporates an enforceable indemnity provision pertinent to the **pollution incident** or requires the client to be made an additional insured under the Policy that insures **you** against **pollution incidents**.

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.

**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 entities named as such on the Declarations.

**Newly acquired subsidiary** means any entity, newly formed or acquired during the **policy period** by an entity named on the Declarations as a **named insured**, in which such **named insured** has more than a 50% interest. However, no such newly acquired entity will be deemed a **newly acquired subsidiary** beyond 90 days or the end of **policy period,** whichever is sooner, after such **named insured** acquires or forms it. For coverage to continue beyond the first 90 days, the following conditions apply:



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**A.** within 90 days of such formation or acquisition, such **named insured** must provide us with full particulars of such **newly acquired subsidiary;**

**B.** after receipt of such notice, we must agree to endorse this Policy to insure such **newly acquired subsidiary**; and

**C.** the **named insured** must pay the additional premium, if any, and agree to any amendment of the provisions of this Policy by reason of such formation or acquisition.

Coverage exists for **claims** made against a **newly acquired subsidiary** only if, prior to the acquisition date or formation date:

**1.** none of the **executive officers** of the **named insured** or of the **newly acquired subsidiary**; and

**2.** none of the employees of the **named insured** or of the **newly acquired subsidiary** who are authorized to give or receive notice of a **claim**,

knew or should have known of any act, error, or omission that could reasonably be expected to become the basis of that **claim**.

**Nuclear facility** means the site where a nuclear reactor is located or where nuclear waste or material is treated, disposed or stored pending treatment or disposal.

**Personal and advertising injury** means injury, including consequential **bodily injury**, arising out of one or more of the following offenses:

**A.** false arrest, detention or imprisonment;

**B.** malicious prosecution;

**C.** the wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

**D.** oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

**E.** oral or written publication, in any manner, of material that violates a person's right of privacy;

**F.** infringement of title, slogan, logo, trademark, trade name, trade dress, service mark or service name; or

**G.** infringement of copyright or any plagiarism, piracy, misappropriation of ideas under implied contract or other misappropriation of property rights, ideas or information.

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

**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** does not mean heat, smoke, vapor, soot or fumes from a **hostile fire** or explosion.

**Pollution incident** means the actual or alleged:

**A.** discharge, dispersal, seepage, migration, release or escape of **pollutants** into or upon land, the atmosphere, or any watercourse or body of water; or

**B.** inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of **fungi** or **microbes**,

that results in **bodily injury** or **property damage** or any clean up costs incurred by a third party or mandated by any governmental entity.

However, a **pollution incident** cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by **you** or at **your** direction or with **your** prior knowledge.



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**Prejudgment interest** means interest that accrues prior to or after entry of a judgment, verdict or award. However, any interest that is awarded as a penalty against **you** does not constitute **prejudgment interest**.

**Property damage** means physical injury to tangible property.

**Recall expense** means cost or expense incurred by others for the recall, withdrawal, inspection, repair, replacement, adjustment, removal, or disposal of **your work**, **your installed product** or **impaired property** if such work, product, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**Related claims** mean all **claims** arising out of either or both a single:

**A.** **wrongful act** or arising out of **wrongful acts** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision; or

**B.** **pollution incident** or arising out of multiple **pollution incidents** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

**Related wrongful acts** mean all **wrongful acts** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

**Wrongful act** means a negligent act, error or omission:

**A.** by **you**, or on **your** behalf, in the performance of design services; provided, however, that **you** or the person acting on **your** behalf is duly licensed in accordance with the laws of the applicable jurisdiction to perform such services;

**B.** by **you** in the workmanship of **your work**; or

**C.** by **you** in the use of defective materials or products in **your work**

that results in:

1. **property damage** to
   a. **your work**; or
   b. **your installed product**; or
2. loss of use or recall of **your work** or **your installed product**;
3. loss of use, recall or diminution of value of **impaired property**; or
4. liability in the performance of design services.

However, a **wrongful act** cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by **you** or at **your** direction or with **your** prior knowledge.

**You** or **Your** means the **named insured**, a **newly acquired subsidiary** and:

**A.** any past or present partner, officer, director, member, stockholder or employee of the **named insured** or **newly acquired subsidiary** or leased personnel under the direct supervision of the **named insured** or **newly acquired subsidiary**, but only while acting within the scope of their duties for the **named insured** or **newly acquired subsidiary**; or

**B.** a retired partner, officer, director, member, stockholder or employee of the **named insured** or **newly acquired subsidiary**, but only while acting for or on behalf of, at the request of, and for the benefit of the **named insured** or **newly acquired subsidiary**.

**Your installed product** means any goods or products, other than real property, installed by **you**. **Your installed product** includes:

**A.** containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products;

**B.** warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your installed product**; and

**C.** the providing of or failure to provide warnings or instructions.



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**Your work**:

**A.** means

**1.** work or operations performed by **you**; and

**2.** materials, parts or equipment furnished in connection with such work or operations.

**B.** includes:

**1.** warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**;

**2.** the providing of or failure to provide warnings or instructions; and

**3.** services with respect to any Building Information Modeling (BIM) systems.

## IV. EXCLUSIONS

We will not defend or pay any **claim**:

### A. Bodily Injury

based on or arising out of actual or alleged **bodily injury** that arises out of **your work**, except that this exclusion does not apply to the extent any such **bodily injury** arises out of a **pollution incident** or projects where **you** exclusively provide design services;

This exclusion applies:

**1.** whether **you** may be liable as an employer or in any other capacity; and

**2.** to any obligation to share in or repay any amount someone else must pay because of any such injury;

### B. Contractual Liability

based on or arising out of the liability of others that any of **you** assume under any oral or written contract or agreement. However, this exclusion shall not apply to **your** liability that exists in the absence of such contract or agreement. This exclusion does not apply to liability assumed by any of **you** in an **insured client contract**;

### C. Insurance/Financing

based upon or arising out of any actual or alleged:

**1.** failure to effect or maintain any insurance, financing or bond;

**2.** failure to advise of the need for insurance, financing or bond; or

**3.** inadequate amount or type of insurance;

### D. Insured vs. Insured

by or on behalf of any of **you** under this Policy against any other of **you** hereunder;

### E. Job Safety

based on or arising out of any actual or alleged job site safety obligations, including but not limited to:

**1.** the failure to protect any property or persons;

**2.** the preparation or failure to prepare any safety precautions or procedures in connection with any project including, but not limited to, first aid stations, temporary utilities, fencing or signs, crane erection, scaffolding or barricades;

**3.** project clean up or demolition; or

**4.** supervision of the safety obligations of others;

### F. Nuclear

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



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**G. Owned Entity**

made against **you** by any entity:

1. that is operated, managed or controlled by any **named insured** or any **newly acquired subsidiary**;
2. in which any **named insured** or any **newly acquired subsidiary** has an ownership interest in excess of 49%; or
3. that wholly or partly owns, operates or manages any **named insured** or any **newly acquired subsidiary**;

**H. Owned, Leased or Rented Property**

based on or arising out of any actual or alleged:

1. damage to property that was at any time owned by or rented or leased by or to **you** or by any person or entity for whom **you** are legally liable; or
2. **pollution incident** at, onto or from any real or personal property that was at any time owned by or rented or leased by or to **you** or by any person or entity for whom **you** are legally liable;

However, paragraph **2.** of this exclusion shall not apply to temporary storage of equipment or material at any staging or storage area that is associated with **your** activities.

**I. Personal and Advertising Injury**

based on or arising out of actual or alleged **personal and advertising injury**;

**J. Products in your possession**

for **property damage** to, or loss of use of, goods, products or work that are still in **your** physical possession;

**K. Substitutions**

based on or arising out of any actual or alleged substitution of a material or product for one specified on blueprints, work orders, contracts, or engineering specifications unless there has been written authorization for such substitutions;

**L. Timely Completion of a Project/Costs Estimates/Bid Inaccuracies/Legal Work**

based on or arising out of any actual or alleged:

1. delay, including any failure to perform any services on time or complete any project on time;
2. cost estimate being exceeded;
3. bid inaccuracies; or
4. advising or failing to advise on any legal work or title check;

**M. Transportation**

based on or arising out of the 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 a **pollution incident** arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock or arising from waste or materials transported by **you** or on **your** behalf by an automobile, aircraft, watercraft or rolling stock during the course of activities;



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**N. Unlawful Discrimination**

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

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

**O. Workers' Compensation And Similar Laws**

arising out of any obligation of **yours** under a workers' compensation, employers liability, disability benefits or unemployment compensation law or any similar law.

## V. LIMITS OF LIABILITY/SELF-INSURED RETENTION/SUPPLEMENTARY BENEFIT

**A. Each claim**

Subject to paragraph **B.** below, the Each **Claim** Limit of Liability shown on the Declarations is the maximum we will pay for **damages** or **claim expenses**, in excess of the self-insured retention and subject to the co-insurance percentage, for each **claim**.

**B. In the Aggregate**

The aggregate Limit of Liability shown on the Declarations is the maximum we will pay for **damages** or **claim expenses**, in excess of the self-insured retention and subject to the co-insurance percentage, for all **claims** in the aggregate.

**C. Self-insured Retention**

**You** shall have the obligation to pay all **damages** and **claim expenses** up to the each **claim** self-insured retention amount shown on the Declarations and the "all **claims** in the aggregate" amount, if any, shown on the Declarations.

**D. Co-Insurance Percentage**

**You** shall pay a percentage of all **damages** excess of any applicable self-insured retention except to the extent the **claim** arises out of **pollution incident**. Such percentage shall be the percentage indicated on the Declarations as the co-insurance percentage and must not be insured by **you** and must be at **your** own risk.

**E. Payments by Us**

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

**F. Related Claims**

If **related claims**, otherwise covered under this Policy, are reported to us during the **coverage relationship**, all such **related claims** shall be considered a single **claim** first reported to us within the policy period in which the earliest of the **related claims** was reported to us.

**G. Multiple Insureds/claims/claimants**

The limits of liability shown in the Declarations and subject to the provisions of this Policy is the most we will pay as **damages** or **claim expenses** regardless of the number of **you**, **claims** made, circumstances reported or persons or entities making **claims**.

**H. Supplementary benefit**

Payments made under this paragraph will not be subject to the self-insured retention or co-insurance obligation and payments are in addition to the limits of liability. We will reimburse each of **you** up to $250.00 for each day or part of a day of **your** attendance, at our written request, at a trial, hearing, arbitration proceeding or mediation, involving a **claim** against **you**. However, in no event shall the amount payable hereunder exceed $10,000 per **claim** despite the number of days any of **you** are in attendance, or the number of trials, hearings or arbitration proceedings that any of **you** are required to attend.



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## VI. CONDITIONS

### A. Rights and Duties of the First Named Insured

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

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

### B. Your Duties in the Event of a Claim

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

1. promptly notify us in writing. This notice must be given to us within the **policy period** in which the **claim** is made or within 60 days after its expiration or termination. If the **claim** is made during any applicable **Extended Reporting Period**, then notice must be given to us within such **Extended Reporting Period**. Notice of a **claim** must be sent to the attention of either of the following:

| | |
|---|---|
| Intake Manager | Victor Insurance Managers LLC |
| CNA Speciality Claims | AE Professional Liability Claims |
| P.O. Box 8317 | 7700 Wisconsin Ave, Suite 400 |
| Chicago, IL 60680-8317 | Bethesda MD 20814-6562 |
| Email: CNAA&EnewLossNotice@cna.com<br>DesignClaims.US@victorinsurance.com | Email: |
| Fax: 866-773-7504 | Fax: AE Claims 301-951-5444 |

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

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

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

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



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then a **claim** that is subsequently 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** but only if such **claim** is made against **you** during the **coverage relationship**.

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

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

**D. Subrogation**

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

**E. Premium**

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

**F. Examination and Audit**

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

**G. Legal Action Against Us**

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

**H. Changes to Policy**

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

**I. Transfer of Interest**

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

**J. Other Insurance**

Where there is other insurance available to **you** that applies to a **claim** covered under this Policy, our obligation is as follows:

1. If there is other insurance that applies to the **claim**, this insurance shall be excess over such other valid and collectible insurance whether such insurance is stated to be primary, contributory, excess, contingent or otherwise. When there is such other insurance, **we** will pay only our share of the amount of any **damages** and **claim expenses**, if any, that exceed the sum of:
   a. the total amount that all such other insurance would pay for with respect to such **Claim** in the absence of this insurance; and



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**b.** the total of all deductible and self-insured amounts under all that other insurance.

This paragraph does not apply to any other insurance that was bought specifically to apply in excess of the limits of liability shown in the Declarations of this Policy.

We have no duty under this Policy to defend **you** against any **claim** if any other insurer has a duty to defend **you** against that **claim**. If no other insurer defends, **we** will undertake to do so, but we will be entitled to **your** rights against all those other insurers.

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

3. Payments by other insurance do not satisfy this Policy's self-insured retention.

**K. Cancellation/Non-Renewal**

1. This Policy may be cancelled by the **First Named Insured** by written notice to us stating at what future date cancellation is to be effective.

2. This Policy may be cancelled or non-renewed by us by written notice to the **First Named Insured** at the address last known to us. We will provide at least thirty (30) days notice before cancellation or non-renewal is to be effective. However, the **First Named Insured** will be given ten (10) days written notice if the reason for cancellation is non-payment of any amounts due hereunder, including non-payment of any deductible or coinsurance percentage. If notice is mailed, proof of mailing will be sufficient proof of notice.

3. If this Policy is cancelled by us, earned premium will be computed pro rata. If the **First Named Insured** cancels, only 90% of the unearned premium will be returned. We will make the premium adjustment with the **First Named Insured** at the time that cancellation is effective or as soon as practicable after that time.

4. The offering of terms and conditions different from the expiring terms and conditions shall not constitute a refusal to renew.

**L. Severability/Innocent Parties.**

Any of **you** who did not commit, participate in or have prior knowledge of dishonest, fraudulent, malicious, or criminal conduct, or who did not fail to comply with **VI. CONDITIONS**, paragraph **B. Your Duties in the Event of a Claim,** subparagraph **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, spouses, and any **Domestic Partner** of any natural person within the definition of **you**, but only for a **claim** arising solely out of their status as such. In the case of a spouse or **Domestic Partner**, coverage is also afforded under this Policy where such **claim** seeks damages from marital community property, jointly held property, or property transferred from any natural person designated in the definition of **you** to their spouse or **Domestic Partner**. No coverage is provided for any act, error, or omission of an estate, heir, legal representative, spouse or **Domestic Partner**. All terms and conditions of this Policy, including without limitation the self-insured retention and co-insurance obligation applicable to any **claim**, shall also apply to any **claim** made against such estates, heirs, legal representatives, spouses, and **domestic partners**.

**N. Representations**

By acceptance of this Policy **you** agree that:

1. all of the information and statements provided to us by **you** are true, accurate and complete and shall be deemed to constitute material representations made by all of **you**;

2. this Policy is issued in reliance upon such information and statements;

3. this Policy, endorsements thereto, together with the completed and signed application and any and all supplementary information and statements to us (all of which are deemed to be incorporated herein) embody all of the agreements existing between **you** and us and shall constitute the entire contract between **you** and us; and



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4. the misrepresentation of any material matter by any **of you** or **your** agent will render this Policy null and void and relieve us from all liability herein.

**O. Extended Reporting Period**

**1. Automatic extended reporting period**

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

**2. Optional extended reporting period**

If this Policy is canceled or non-renewed either by us or by the **First Named Insured**, then the **First Named Insured** shall have the right to purchase a non-cancelable **Extended Reporting Period** for the period of time specified on the Declarations. If **you** purchase such **extended reporting period**, the first sixty (60) days of such **Extended Reporting Period** runs concurrently with the sixty days of the automatic **Extended Reporting Period**.

**3. Elimination of Right to an extended reporting period**

**a.** There is no right to the optional **Extended Reporting Period** if we do not receive written notice of the **First Named Insured's** acceptance of our offer to provide such **Extended Reporting Period** and full payment of the premium for such period within 60 days after the end of the **policy period.**

**b.** There is no right to any **Extended Reporting Period** if we cancel or refuse to renew this Policy due to:

**i.** non-payment of amounts due to us; or

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

**iii.** any misrepresentation or omission in the application for this Policy.

**4. Additional Premium**

The additional premium for the optional **Extended Reporting Period** is set forth on the Declarations and shall be fully earned at inception.

**5. Extended reporting period Limitations**

No automatic or optional **Extended Reporting Period** shall apply to:

**a.** any **claim** made against **you** prior to the inception date of such **Extended Reporting Period;**

**b.** **claims** that are covered under any subsequent replacement insurance purchased by the **First Named Insured**, or that would be covered but for exhaustion of the limits of liability applicable to such **claims**.

**6. Automatic and Optional Extended Reporting Period's 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.

**P. Service of Suit**

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

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



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

**Q. Economic and Trade Sanctions**

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

**R. Bankruptcy**

Bankruptcy or insolvency of **you** or of **your** estate will not relieve us of our obligations under this Policy.

**S. Reimbursement**

If we, in the exercise of our discretion and without any obligation to do so, pay any amount within the self-insured retention, **you**, shall be liable to us for any and all such amounts and, upon demand, shall pay such amounts to us.

**T. Territory**

This Policy applies to an act or omission taking place anywhere in the world, provided that the **claim** is made and suit is brought against **you** within the United States of America, including its territories, possessions, Puerto Rico or Canada.

**U. Headings**

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

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

| CEO | Secretary |
| --- | --- |
| |  |



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## AMEND BODILY INJURY EXCLUSION ENDORSEMENT

It is understood and agreed that the Section of the Policy entitled **EXCLUSIONS**, the exclusion entitled **Bodily Injury**, is deleted in its entirety and replaced by the following:

**Bodily Injury**

based on or arising out of actual or alleged **bodily injury** that arises out of **your work**, except that this exclusion does not apply to the extent any such **bodily injury** arises out of a **pollution incident** or projects where design services are performed by **you** or on **your** behalf; provided, however, that **you** or the person acting on **your** behalf is duly licensed in accordance with the laws of the applicable jurisdiction to perform such services;

This exclusion applies:

1. whether **you** may be liable as an employer or in any other capacity; and

2. to any obligation to share in or repay any amount someone else must pay because of any such injury;

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

SPECIMEN

Countersigned by Authorized Representative



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## AMEND TIMELY COMPLETION EXCLUSION ENDORSEMENT

It is understood and agreed that the Section of the Policy entitled **EXCLUSIONS**, the exclusion entitled **Timely Completion of a Project/Costs Estimates/Bid Inaccuracies/Legal Work**, is deleted in its entirety and replaced by the following:

**Timely Completion of a Project/Costs Estimates/Bid Inaccuracies/Legal Work**

based on or arising out of any actual or alleged:

**1.** delay, including any failure to perform any services on time or complete any project on time;

**2.** cost estimate being exceeded;

**3.** bid inaccuracies; or

**4.** advising or failing to advise on any legal work or title check;

However, paragraphs **1.** and **2.** of this exclusion shall not apply if such **claim** resulted directly from a **wrongful act** or **pollution incident** covered under this Policy;

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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Countersigned by Authorized Representative



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## AMENDMENT OF INSURED CLIENT CONTRACT DEFINITION ENDORSEMENT

It is understood and agreed that the Section of the Policy entitled **DEFINITIONS**, the definition of **insured client contract**, is deleted in its entirety and replaced by the following:

**Insured client contract** means a written contract or agreement that is in effect between **you** and a client under which **you** assume the tort liability of the client or owner of the project to pay compensatory damages to a third party for a **pollution incident**, but only to the extent that such **pollution incident** is caused by **your** activities, or the activities of any person or entity for whom **you** are liable, and provided that such written contract or agreement is placed in effect prior to the **pollution incident** and:

1. incorporates an enforceable indemnity provision pertinent to the **pollution incident**; or

2. requires the client or the owner of the project to be made an additional insured under the Policy that insures **you** against **pollution incidents**.

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.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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Countersigned by Authorized Representative



Policy No: Unassigned
Endorsement No: 3
Effective Date: 02/15/2025

Insured Name: Cahill Controls, Inc.

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## SUBROGATION AMENDMENT ENDORSEMENT

It is understood and agreed that the Section of the Policy entitled **CONDITIONS**, the Condition entitled Subrogation, is deleted in its entirety and replaced by the following:

Subrogation

If any of **you** have rights to recover amounts from another, those rights are transferred to us to the extent of our payment. **You** must do everything necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. We hereby waive subrogation rights against any person or organization with whom the **Named Insured** has made a written agreement, prior to a **claim** or **circumstance**, to waive such rights, to the extent provided in such agreement.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

SPECIMEN

Countersigned by Authorized Representative



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## PROPERTY DAMAGE EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

CONTRACTORS ERRORS AND OMISSIONS AND POLLUTION INCIDENT POLICY

It is understood and agreed as follows:

The following is added to Section **IV. EXCLUSIONS**:

We will not defend or pay any **claim**:

**Property Damage**

Based on or arising out of actual or alleged **property damage** to or loss of use of:

1. Property other than:
   a. **Your work**;
   b. **Your installed product**; or
   c. **Impaired property**.
2. **Your work**, but only if the damaged work or the work out of which the damage arises was performed on **your** behalf by a subcontractor.

This exclusion applies to any obligation to share in or repay any amount someone else must pay because of any such **property damage** or loss of use.

This exclusion does not apply to the extent any such **property damage** or loss of use arises out of a **pollution incident** or projects where **you** exclusively provide design services.

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All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

Countersigned by Authorized Representative



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## ADDITIONAL INSURED WITH PRIMARY / NON-CONTRIBUTORY PROVISION ENDORSEMENT

It is understood and agreed that, solely with respect to coverage provided under the section entitled **COVERAGES** the subsection entitled **Pollution Incident**, the Policy is amended as follows:

The Section of the Policy entitled **DEFENSE** is amended by the addition of the following:

**Additional Insured with Primary/Non-Contributory Provision**

**A.** We also have the right and duty to defend a **claim** against any person or organization whom **you** are required to add as an additional insured under this Policy under a written contract or written agreement, provided such contract or agreement:

**1.** is currently in effect or becomes effective during the term of this policy;

**2.** was executed prior to the **bodily injury** or **property damage** for which such additional insured seeks coverage; and

**3.** expressly requires making the person or organization an additional insured for pollution coverage such as is provided by this policy.

**B.** The insurance provided to the additional insured is limited as follows:

**1.** The person or organization is an additional insured only with respect to liability for **bodily injury** or **property damage**:

**a.** caused entirely by **your** negligent acts or omissions or those of others working on **your** behalf; and

**b.** for which **you** would be covered under this policy, if the **claim** had been brought against **you**.

**2.** If defense of such a **claim** results in the additional insured's legal obligation to pay compensatory damages for **bodily injury** or **property damage** described in paragraph **2.a.** above, then subject to all of the terms and conditions of this policy, we will pay such damages in excess of the self-insured retention up to the applicable Limit of Liability.

**3.** This insurance is excess of all other insurance available to the additional insured, whether on a primary, excess, contingent or any other basis. But if required by written contract or agreement to be primary and non-contributory, this insurance will be primary and non-contributory relative to insurance on which the additional insured is a Named Insured.

**4.** Any coverage granted by this provision shall apply only to the extent permissible by law.

Countersigned by Authorized Representative



Policy No: Unassigned
Endorsement No: 6
Effective Date: 02/15/2025

Insured Name: Cahill Controls, Inc.

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All other terms and conditions of the policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the policy issued by the designated Insurers, takes effect on the Policy Effective date of said policy at the hour stated in said policy, unless another effective date (the Endorsement Effective Date) is shown below, and expires concurrently with said policy.

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Countersigned by Authorized Representative



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