

## DESIGN PROFESSIONAL LIABILITY POLICY

### THIS POLICY PROVIDES CLAIMS MADE AND REPORTED COVERAGE.

**CLAIMS MUST FIRST BE MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD UNLESS AN EXTENDED REPORTING PERIOD APPLIES. THE PAYMENT OF CLAIM EXPENSES REDUCES THE LIMITS OF INSURANCE.**

#### PLEASE READ THE ENTIRE POLICY CAREFULLY

Various provisions in this Policy restrict coverage. Read the entire policy carefully to determine YOUR rights, duties and what is and is not covered. Throughout this Policy the words YOU and YOUR refer to the NAMED INSURED shown in the Declarations and any other INSURED under this Policy. The words WE, US, and OUR refer to the Company providing this insurance. The word INSURED(S) means any person(s) or organization(s) qualifying as such under SECTION II.

**Words and phrases that appear in capital letters have special meanings and are defined in SECTION II - DEFINITIONS.**

In consideration of the premium charged, the undertaking of the NAMED INSURED to pay the Deductible, and in reliance upon the statements in the application, and subject to the Limits of Liability of this insurance as set forth in the Declarations, and the Exclusions, Conditions and other terms of this Policy, WE agree with YOU as follows:

#### I. INSURING AGREEMENT - COVERAGE

WE will pay on behalf of the INSURED all sums in excess of the Deductible noted in Item 6. of the Declarations that YOU are legally obligated to pay as DAMAGES because of CLAIMS first made against YOU during the POLICY PERIOD and reported to US in writing during the POLICY PERIOD, or the Extended CLAIMS Reporting Period if applicable, provided that:

- A. the CLAIM arises out of an actual or alleged WRONGFUL ACT with respect to PROFESSIONAL SERVICES rendered or that should have been rendered by YOU or any entity for whom YOU are legally responsible, including YOUR interest in joint ventures;
- B. the WRONGFUL ACT took place during the POLICY PERIOD or on or after the RETROACTIVE DATE specified in the Declarations;
- C. prior to the effective date of the first policy issued to YOU and continuously renewed by US, no principal, partner, director or officer of YOURS had knowledge of any circumstance that could reasonably be expected to result in a CLAIM;
- D. YOU give prompt notice of a CLAIM, but not later than 60 days after expiration or termination of this Policy, in accordance with the Notice of Claims conditions of this Policy.

WE have the right and duty to defend, with counsel of OUR choice, any CLAIM seeking DAMAGES to which this insurance applies. CLAIM EXPENSES reduce the applicable Limits of Liability identified in the Declarations and as described in Policy Section VI. – Limits of Liability. OUR duty to defend CLAIMS or pay any DAMAGES or CLAIM EXPENSES to which this insurance applies shall end when the applicable Limit of Liability has been exhausted by the payment of CLAIM EXPENSES or DAMAGES or both.

## II. DEFINITIONS

A. CLAIM or CLAIMS means any written demand(s) received by YOU seeking DAMAGES or PROFESSIONAL SERVICES and alleging liability or responsibility on YOUR part.

B. CLAIM EXPENSES means:

1. fees charged by an attorney designated by US, or by YOU with OUR written consent, and
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense of a CLAIM, and the premiums for appeal, attachment or similar bonds; and
3. interest on the full amount of any judgment that accrues after entry of the judgment and before WE have paid, offered to pay, or deposited in court the amount available for the judgment under this Policy;
4. allowable expenses of \$400 per day but no more than \$5,000 in total for the compensation to YOUR principals, directors, officers or employees for personally attending any legal proceeding at OUR request. These allowable expenses shall not be applied towards reducing the applicable Deductible amount and are in addition to the Limits of Liability.

CLAIM EXPENSES do not include:

1. salaries or expenses of OUR regular employees or fees and expenses of independent adjusters retained by US;
2. salaries or expenses YOU incur resulting from YOUR cooperation in the investigation and settlement of any CLAIM as required under Section VIII. CLAIMS PROVISIONS.

C. DAMAGES means the monetary amounts for which YOU may be held legally liable, including sums paid as judgments, awards, or settlements, but does not include:

1. the restitution, return, withdrawal or reduction of fees, profits or charges for services rendered or offered or any other consideration or expenses paid to YOU or by YOU for services or products; or
2. judgments or awards deemed uninsurable by law.

D. INSURED means:

1. the NAMED INSURED;
2. YOUR current or former principals, partners, executive officers, directors, stockholders or trustees while acting on YOUR behalf and within the scope of their duties as such;
3. YOUR current or former employees including leased personnel under YOUR supervision, but only for acts within the scope of their employment or lease agreement;
4. YOUR heirs, executors, administrators, assigns and legal representatives in the event of death, incapacity or bankruptcy, but solely with respect to the liability insured herein;
5. a retired principal, partner, officer, director or employee while acting within their duties as a consultant for YOU.

E. MEDIATION means formal non-binding intervention by a neutral third party.

- F. NAMED INSURED means the person or entity designated in Item 1. of the Declarations;
- G. NUCLEAR FACILITY means a site where a nuclear reactor is or was located or where nuclear or radioactive waste or nuclear or radioactive material is or was disposed of or stored.
- H. POLICY PERIOD means the period set forth in the Declarations, or any shorter period resulting from a termination of this Policy.
- I. PROFESSIONAL SERVICES means those services that YOU are legally qualified to perform for others in YOUR capacity as an architect, engineer, designer, planner, land surveyor, or construction manager.
- J. RETROACTIVE DATE means the date on or after which any alleged or actual WRONGFUL ACT must have taken place in order to be considered for coverage under this Policy, as stated in the Declarations. If none is shown, the RETROACTIVE DATE will be the effective date of the first policy issued by US to YOU.
- K. WRONGFUL ACT means any negligent act, error or omission committed by YOU in the performance of YOUR PROFESSIONAL SERVICES.

### III. POLICY TERRITORY

The insurance afforded by this Policy applies worldwide. Where suits are brought or CLAIMS are made outside of the United States of America and its territories and possessions, Puerto Rico, or Canada, the following additional provisions apply:

- A. WE shall have the right but not the duty to investigate, defend or settle any such CLAIMS brought against an INSURED;
- B. If WE elect not to investigate, defend or settle any such CLAIM, the INSURED shall, under OUR supervision, arrange for such investigation and defense thereof as is reasonably necessary and subject to OUR prior authorization, shall effect such settlement thereof as WE and an INSURED deem expedient;
- C. WE will reimburse the INSURED for the reasonable cost of such investigation and defense and the amount of any settlement or judgment in excess of the Deductible amount stated in the Declarations, all subject to and within the Limits of Liability stated in the Declarations; and
- D. Such reimbursement shall be made in United States currency at the rate of exchange prevailing on the date the judgment is rendered or the date that the amount of the settlement is agreed upon or the date expenditure is made.

### IV. EXCLUSIONS

This Policy does not apply to any DAMAGES, CLAIM or CLAIM EXPENSES based upon or arising out of:

- A. any dishonest, fraudulent, criminal, intentional or malicious WRONGFUL ACT, or those of a knowingly wrongful nature or the willful violation of any statute, regulation, ordinance, or administrative complaint, notice or instruction of any governmental body or agency, committed by YOU or at YOUR direction, except that this exclusion will not apply to an INSURED who did not commit, participate in, or have knowledge of any of the acts described;
- B. a CLAIM made by any INSURED against any other INSURED;

- C. a CLAIM by any individual or business enterprise or its subrogees or assignees; (1) that wholly or partially owns, operates or manages YOU; or (2) in which YOU have an ownership interest in excess of 25 percent; or (3) that is controlled, operated or managed by YOU;
- D. actual or alleged wrongful termination or discrimination on any basis by YOU against any past or present employee, officer, or applicant for employment;
- E. any obligation for which YOU or any carrier as YOUR Insurer may be liable under any workers' compensation, unemployment compensation, employers liability, disability benefits law or under any similar law;
- F. conduct by an individual, corporation, or partnership of which YOU are a partner, director, officer, member or employee, that is not designated in the Declarations or Policy as a NAMED INSURED;
- G. the advising, requiring, obtaining or maintaining of any form of insurance, suretyship or bond, or the failure to do so;
- H. any express warranty or guarantee, except that this exclusion shall not apply to a CLAIM where legal liability exists in the absence of such warranty or guarantee and arises from YOUR WRONGFUL ACT or the WRONGFUL ACT of YOUR subconsultants in the rendering of or failure to render PROFESSIONAL SERVICES;
- I. liability assumed by YOU under any oral or written contract or agreement, including but not limited to hold harmless and indemnity agreements, agreements to defend others, and liquidated damages clauses, except that this exclusion shall not apply to a CLAIM where legal liability exists in the absence of such contract or agreement and arises from YOUR WRONGFUL ACT or the WRONGFUL ACT of YOUR subconsultants in the rendering of or failure to render PROFESSIONAL SERVICES;
- J. fines or penalties assessed against YOU;
- K. any project that is or has been insured under a project specific insurance policy whether or not such policy remains in force, except that this exclusion shall not apply where excess coverage has been specifically endorsed onto this Policy for such project and YOUR liability is found to be in excess of the limits of liability available under the project specific policy;
- L. the design or manufacture of any goods or products that are sold or supplied by YOU, or by others under license from YOU;
- M. nuclear reaction, radiation, or contamination, under any circumstances and regardless of cause, within or originating from a NUCLEAR FACILITY;
- N. the cost to repair or replace faulty construction workmanship YOU perform on any construction, erection, fabrication, installation, assembly or manufacturing process, including materials, parts or equipment furnished in connection therewith.

## **V. EXTENDED REPORTING PERIOD**

### **A. Automatic Extended CLAIMS Reporting Period**

If WE or YOU terminate or non-renew this insurance for any reason, other than nonpayment of premium, YOUR failure to comply with any term and condition, fraud or material misrepresentation, YOU shall be entitled to a period of sixty (60) days from the date of Policy termination to report CLAIMS which are made against YOU prior to such termination date and

that arise out of YOUR providing or failure to have provided PROFESSIONAL SERVICES prior to such termination date. This Automatic Extended CLAIMS Reporting Period may not be canceled by US and does not require the payment of an additional premium. This Automatic Extended CLAIMS Reporting Period shall be included within the Optional Extended CLAIMS Reporting Period if such is purchased.

#### B. Optional Extended CLAIMS Reporting Period

If YOU do not renew this Policy, or YOU do not purchase other insurance that covers professional liability, or if WE cancel or refuse to renew this Policy for reasons other than (1) nonpayment of premium or Deductible; (2) noncompliance with the terms and conditions of this Policy; or (3) fraud or material misrepresentation, WE may at our sole discretion grant YOU the option to extend the period by which a CLAIM can be made against YOU and reported to US.

At the commencement of any Optional Extended CLAIMS Reporting Period, the entire premium therefore shall be deemed earned, and in the event YOU terminate the Optional Extended CLAIMS Reporting Period before its term for any reason, WE shall not be obligated to return to YOU any portion of the premium.

The fact that the period during which CLAIMS can be made against YOU and reported to US is extended by virtue of the Optional Extended CLAIMS Reporting Period shall not in any way increase the Limits of Liability of this Policy.

OUR liability shall further be limited to cover only those CLAIMS or CLAIM EXPENSES which arise out of a WRONGFUL ACT with respect to PROFESSIONAL SERVICES rendered or that should have been rendered by YOU or any entity for whom YOU are legally responsible prior to the expiration date of the POLICY PERIOD or any earlier termination date, if applicable, and prior to the inception of the Optional Extended CLAIMS Reporting Period.

### VI. LIMITS OF LIABILITY

CLAIM EXPENSES ARE INCLUDED WITHIN AND WILL REDUCE THE LIMITS OF LIABILITY.

#### A. Each CLAIM Limit of Liability

OUR liability for DAMAGES and CLAIM EXPENSES for each CLAIM shall not exceed the amount stated in Item 5. of the Declarations as the Each CLAIM Limit of Liability.

#### B. Aggregate Limit of Liability Each POLICY PERIOD

OUR liability as a result of all CLAIMS for DAMAGES and CLAIM EXPENSES shall not exceed the amount stated in Item 5. of the Declarations as Aggregate Limit of Liability Each POLICY PERIOD and the Optional Extended CLAIMS Reporting Period, if purchased.

#### C. Deductible

As a condition precedent to OUR liability under this Policy, the Deductible amount as stated in Item 6. of the Declarations shall be paid by YOU and shall be applicable to each CLAIM and shall include all DAMAGES and CLAIM EXPENSES up to the Deductible amount for each CLAIM.

YOUR total Deductible payments, in respect to each CLAIM shall not exceed the Deductible amount stated in Item 6. of the Declarations. WE may from time to time advance payments for DAMAGES and CLAIM EXPENSES within the Deductible. Any amounts first paid by US within the Deductible shall, upon written demand by US, be paid by YOU to US within thirty (30) days.

D. Multiple Insureds, CLAIMS and Claimants

The Limits of Liability shown in the Declarations and described herein are the most WE will pay, regardless of the number of INSUREDS, CLAIMS, or individuals or entities making CLAIMS. One or more CLAIMS arising out of a single WRONGFUL ACT or out of a series of related WRONGFUL ACTS shall be treated as a single CLAIM, and shall be subject to the Each CLAIM Limit of Liability and only one Deductible. All such CLAIMS, whenever made, shall be considered first made on the date on which the earliest CLAIM was first made.

**VII. NOTICE OF CIRCUMSTANCE**

A. Notice of Circumstance

If during the POLICY PERIOD YOU become aware of a circumstance from which a CLAIM is reasonably anticipated, and if during the POLICY PERIOD YOU give notice to US of:

1. the WRONGFUL ACT;
2. the DAMAGES which have or may result from such WRONGFUL ACT; and
3. how and when YOU first became aware of such WRONGFUL ACT;

then any CLAIM, for which coverage is provided by this Policy, that may be made against YOU arising out of such WRONGFUL ACT shall be deemed for the purposes of this insurance to have been made on the date on which the notice was given to US. WE may elect to investigate any circumstance that is reported to US. Any costs associated with the investigation of a circumstance prior to a CLAIM being made will not be considered CLAIM EXPENSES. These costs shall not be applied towards reducing the applicable Deductible and are in addition to the Limits of Liability and shall be borne by US.

**VIII. CLAIM PROVISIONS**

A. Notice of CLAIM

In the event of a CLAIM, YOU shall provide to US prompt written notice containing particulars sufficient to identify YOU or any INSURED involved and reasonably obtainable information with respect to time, place and circumstances, and the names and addresses of any injured parties and of available witnesses. YOU further agree to send US copies of all demands or legal documents as soon as possible. Written notice must be provided to US no later than 60 days after the expiration or termination of the Policy. YOUR knowledge of CLAIM shall be deemed to have occurred when a principal, partner, director, or executive officer first learned of the CLAIM.

All CLAIMS are to be reported to:

**Arch Insurance Company  
Design Professional Liability Claims Dept.  
One Liberty Plaza, 53<sup>rd</sup> floor  
New York, New York 10006  
Tel: (800) 817-3252 Fax: (646) 746-8248**

- B. No costs, charges or related CLAIM EXPENSES shall be incurred without OUR written consent which shall not be unreasonably withheld. WE shall have the right and the duty to designate legal counsel for the investigation, defense or settlement of a CLAIM. WE will not settle or compromise any CLAIM without YOUR consent. YOU shall do nothing to prejudice OUR rights under this Policy nor shall YOU admit liability or settle any CLAIM without OUR written consent. If YOU



refuse to consent to any settlement or compromise recommended by US involving any part of OUR limits of liability and acceptable to the claimant, and YOU elect to contest the CLAIM, suit or proceeding, then OUR liability shall not exceed the amount which WE would have paid for DAMAGES and CLAIM EXPENSES at the time the CLAIM or suit or proceeding could have been settled or compromised.

- C. YOU shall assist and cooperate with US in the investigation, settlement and defense of all CLAIMS made against YOU and upon OUR request shall authorize the release of records and other information, secure and give evidence, attend hearings and trials and obtain the location of and cooperation of witnesses. Any expenses YOU incur resulting from such cooperation are not

considered CLAIMS EXPENSES, and are thus not recoverable under this Policy or chargeable against YOUR Deductible.

- D. In the event that YOU are entitled by law to select independent counsel to defend YOU at the Company's expense and YOU elect to select such counsel, the attorney's fees and all other litigation expenses WE must pay to that counsel are limited to the rates WE actually pay to counsel WE retain in the ordinary course of business in the defense of similar CLAIMS in the community where the CLAIM arose or is being defended.

Additionally, WE may exercise the right to require that such counsel have certain minimum qualifications with respect to their legal competency including experience in defending CLAIMS similar to the one pending against YOU and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, YOU agree to require YOUR counsel to, in a timely manner, provide US with information regarding the CLAIM and to respond to OUR request for information regarding the CLAIM.

YOU may at anytime, by YOUR signed consent, freely and fully waive YOUR right to select independent counsel.

## **IX. CONDITIONS**

- A. Action Against US

No action shall lie against US unless, as a condition precedent thereto, there shall have been full compliance with all of the terms and conditions of this Policy, and both YOUR liability and the amount of YOUR obligations to pay has been finally determined either by judgment against YOU after an actual trial or by YOUR written agreement with the claimant or the claimant's legal representative with OUR approval.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join US as a party to any action against YOU to determine YOUR liability, nor shall WE be impleaded by YOU or YOUR legal representative.

- B. Assignment

Assignment of interest under this Policy shall not bind US without OUR express written consent.

- C. Audit And Inspection

Solely for OUR benefit, WE may audit or inspect YOUR books, records and operations at any time during the POLICY PERIOD or within three years after the termination of this Policy, as far as they relate to the subject matter of this Policy.

D. Bankruptcy or Insolvency

YOUR bankruptcy or insolvency shall not relieve US of OUR obligations under this Policy.

E. Cancellation and Nonrenewal

1. Cancellation by YOU

- a. This Policy may be canceled by YOU by surrender thereof to US or any of OUR authorized representatives or by mailing to US written notice stating when thereafter such cancellation shall be effective.
- b. If this Policy is canceled by YOU, WE shall retain the customary short rate proportion of the premium.

2. Cancellation by US

- a. If this Policy has been in effect less than sixty (60) days and is not a renewal of a policy issued by US, WE may cancel this Policy for any reason.
- b. If this Policy has been in effect for sixty (60) days or more or is a renewal of a policy issued by US, this Policy may not be canceled except for one or more of the following reasons:
  - (1) Nonpayment of premium or Deductible when due;
  - (2) Fraud or material misrepresentation affecting the Policy;
  - (3) Violation of any of the terms or conditions of the Policy;
  - (4) Loss of reinsurance; or
  - (5) Material change in the risk.
- c. Written notice of cancellation shall be mailed or delivered by US to YOU at least:
  - (1) Fifteen (15) days prior to the effective date of cancellation, if this Policy is canceled for nonpayment of premium; or
  - (2) Sixty (60) days prior to the effective date of cancellation, if this Policy is canceled for any other reason.
- d. Delivery shall be considered to be equivalent to mailing. Proof of mailing shall be considered to be proof of notice.
- e. If this Policy is canceled by US, the earned premium shall be computed pro rata.

3. Nonrenewal

If WE elect not to renew this Policy WE will mail a written notice at least sixty (60) days prior to expiration, unless the reason for nonrenewal is nonpayment of premium or YOUR deductible obligations or if YOU failed to comply with any other term or condition. Proof of mailing shall be considered to be proof of notice.



#### F. Changes

The terms and conditions of this Policy may only be altered by an endorsement issued by US.

#### G. Choice of Law and Jurisdiction

If a dispute arises over the meaning, interpretation or operation of any term, condition, definition or provision of this Policy, YOU and WE agree that the law of the State of New York shall apply.

In the event that YOU and WE agree to resolve the dispute by arbitration, the Commercial Arbitration rules of the American Arbitration Association shall apply.

#### H. Other Insurance

1. The insurance afforded by this Policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and YOU have other insurance which is stated to be applicable to the loss on an excess basis, the amount of OUR liability under this Policy shall not be reduced by the existence of such insurance.
2. When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess, or contingent, WE shall not be liable under this Policy for a greater proportion of the loss than that stated in the Declarations or the following contribution provision; whichever is lower:
  - a. Contribution by Equal Shares - If all of such other valid and collectible insurance provides for contribution by equal shares, WE will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.
  - c. Contribution by Limits - If any of the other insurance does not permit contribution by equal shares, WE will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### I. Representations

By acceptance of this Policy, YOU agree that the statements in the application and its attachments are YOUR agreements and representations, that this Policy is issued in reliance upon the truth of such representations, and that this Policy, its Declarations and endorsements embody all agreements existing between YOU and US relating to this insurance.

#### J. Sole Agent

The first NAMED INSURED shall act on behalf of all INSUREDS for all purposes, including but not limited to the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, complying with all applicable CLAIMS provision, giving and receiving notice of cancellation or nonrenewal, reimbursement to US of any Deductible advanced and the exercise of the rights provided in the Extended CLAIMS Reporting Period or Paragraph I. below.

#### K. Subrogation

In the event of any payment under this Policy, WE shall be subrogated to all YOUR rights of recovery against any person or organization and YOU shall execute and deliver instruments and

papers and do whatever else is necessary to secure such rights. YOU shall do nothing to prejudice such rights.

WE shall not exercise any such right against any persons, firms or corporations included in the definition of an INSURED or against YOUR clients if prior to the CLAIM, a waiver of subrogation was so required and accepted under a specific contractual undertaking by YOU.

All recoveries obtained through subrogation shall be applied equally towards YOUR Deductible and OUR costs with any remaining balance payable to US.

SPECIMEN