

*This Form Provides Claims-Made Coverage.
Please Read The Entire Form Completely.*

ENVIRONMENTAL CONSULTANTS PROFESSIONAL LIABILITY COVERAGE FORM – CLAIMS MADE BASIS

Throughout this document, the word “Insured” means any person or entity qualified as such under **Part I. E. Covered Persons and Entities**. The word “Company” refers to the Company providing the insurance shown on the Declarations.

Other words and phrases that appear in **bold** have special meaning. Refer to **Part III. Definitions**.

Part I. Insuring Agreements

A. Covered Services

The Company will pay on behalf of the Insured as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if such **Claim** is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description in the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than thirty (30) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in the covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** shown in the Declarations.

B. Defense & Settlement

The Company will have the right and duty to defend any **Claim** against an Insured seeking **Damages** to which this policy applies, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Company’s right and duty to defend any **Claim** shall end when the Company’s Limit of Liability has been exhausted by payment of **Damages** and/or **Claim Expenses**, or has been tendered to the Insured, or to a court of competent jurisdiction.

The Company shall not settle any **Claim** without the Insured’s written consent. If, however, the Insured refuses to consent to any settlement recommended by the Company and elects to contest the **Claim**, or continue any legal proceedings in connection with such **Claim**, then the Company’s maximum liability shall be limited to the amount for which the **Claim** could have settled, including the total amount of **Claims Expenses** incurred up to the date of the Insured’s refusal. Such amounts are subject to the provisions of **Part I. C. Limits of Insurance**.

Except as expressly provided under **Part IV. J. Mitigation**, the Insured shall not admit any liability for or settle any **Claim** or incur any costs, charges or expenses without the written consent of the Company.

C. Limits of Insurance

Regardless of the number of persons or entities insured, or included in **Part I. E. Covered Persons and Entities**, the number of claimants or **Claims** made against the Insured, the number of persons or entities making claims, or the number of **Pollution Conditions** which arise:

1. The maximum liability of the Company for **Damages** and **Claim Expenses** resulting from each **Claim** first made against the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, under the Environmental Consultants Professional Liability Coverage shall not exceed the amount shown in the Declarations as Professional Liability: Each Claim;
2. The maximum liability of the Company for all **Damages** and **Claim Expenses** as a result of all **Claims** first made against the Insured during the **Policy Period** and the Extended Reporting Period,

if purchased, under the Environmental Consultants Professional Liability Coverage shall not exceed the amount shown in the Declarations as Professional Liability: Aggregate Limit.

3. The maximum liability of the Company for all **Damages** and **Claim Expenses** resulting from all covered **Claims** first made against the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, under all coverages afforded by this policy, shall not exceed the amount shown in the Declarations as CGL, Professional Liability and Contractors Pollution Liability: Policy Aggregate Limit.

The Company shall not be obligated to pay any **Claim** for **Damages** or defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of judgments, settlements, **Claim Expenses** or any combination thereof. **Claim Expenses** are part of and not in addition to the applicable Limits of Liability. Payment of **Claim Expenses** by the Company reduces the applicable Limits of Liability.

The inclusion of more than one Insured, or the making of **Claims** by more than one person or organization, does not increase the Company's Limit of Liability. In the event two or more **Claims** arise out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions, all such **Claims** will be treated as a single **Claim**. Whenever made, all such **Claims** shall be considered first made and reported to the Company during the **Policy Period** in which the earliest **Claim** arising out of such negligent act, error or omission was first made and reported to the Company, and all such **Claims** shall be subject to the same Limit of Liability.

D. Deductible Provisions

The deductible amount as shown in the Declarations shall be paid by the Insured in legal tender and shall be satisfied by no other source. The deductible applies to each **Claim** and will include **Damages** and **Claim Expenses**, whether or not a loss payment is made. If the deductible amount is initially paid by the Company, the Named Insured as shown on the Declarations shall reimburse the amount paid by the Company within thirty (30) days, upon written request of the Company.

E. Covered Persons and Entities

1. Named Insured as shown in the Declarations, and if the Named Insured is an individual, his or her spouse, but only as respects professional services rendered by or on behalf of the Named Insured;
2. Any present or former principal, partner, officer, director, employee of the Named Insured, but only as respects professional services rendered by or on behalf of the Named Insured;
3. Heirs, Executors, Administrators, and in the event of an Insured's death, incapacity or bankruptcy, legal representatives of any Insured, but only as respects but only as respects professional services rendered prior to such Insured's death, incapacity or bankruptcy.

F. Covered Territory

This policy applies to covered **Claims** arising out of a negligent act, error, or omission committed by the Insured anywhere in the world, provided that either the **Claim** or suit is first filed and maintained continuously in the United States of America, its territories or possessions, Puerto Rico or Canada.

G. Supplementary Coverages

It is agreed that any and all payments made for the following is included within, and shall not be in addition to, the Policy Limits as stated in this Policy and the Declarations:

1. Automatic Coverage for Newly Formed or Acquired Entities

The coverage provided under this Policy shall apply on behalf of any entity which is newly formed or newly acquired by the Named Insured subsequent to the inception date of the **Policy Period**. Coverage shall be provided only to those newly formed or newly acquired entities for which, as of the date of formation or acquisition, the Named Insured directly owns fifty percent (50%) or more of the outstanding stock or other equity or ownership interest.

It is agreed that the coverage provided under this Policy shall only be available for those **Claims** that arise from professional services rendered subsequent to the date of formation or acquisition. The Named Insured agrees to advise the Company of any newly formed or acquired entity within ninety (90) days of the date of formation or acquisition.

The coverage afforded under this section for any newly formed or newly acquired entity shall last only for ninety (90) days. At the expiration of the ninety (90) day period, coverage shall be available for the newly formed or newly acquired entity only by endorsement to the Policy and in consideration of premium charged.

2. Emergency Mitigation Cost Coverage

The Company will reimburse the Insured for all reasonably and necessary costs incurred by the Insured in fulfilling the Insured's duties as described in **Part IV. J. Mitigation**, subject to the following limitations:

- a. The only costs that will be reimbursed by the Company are those costs that are incurred by the Insured in efforts to abate, stop, or reduce otherwise covered **Damages** emanating from a **Pollution Condition** caused directly or indirectly by any Insured.
- b. The only costs that will be reimbursed by the Company are those costs that are incurred by the Insured on or after the date that the Insured first becomes aware of the **Pollution Condition** until the date that the Insured first has a reasonable opportunity to report the incident, circumstances, or **Claim** to the Company and in no event later than 72 hours.
- c. Nothing in this provision shall in any way alter, modify, or change the duty of the Insured to give notice of **Claims** to the Company pursuant to **Part IV. A. Notice of Claim**.

3. Coverage for Fines or Penalties

The Company will reimburse the Insured for the amount of any fine or penalty which is levied against and paid by the Insured during the **Policy Period**, whether levied by the Environmental Protection Agency, any state or local environmental regulatory agency, or any other governmental official or regulatory agency, but solely where such fine or penalty arises out of a Covered Service as described in **Part I. A. Covered Services** of this policy. The maximum amount the Company will pay for reimbursement for all fines or penalties combined which are levied and paid during the **Policy Period** will be \$50,000, regardless of the number of fines or penalties levied or paid, or the amount of any fine, and regardless of any other fact or circumstance. Reimbursement shall not be available whenever the applicable law provides that a particular fine or penalty is uninsurable. It is agreed that solely for purposes of coverage provided in this Item **G. 3, Damages** shall include civil fines and penalties.

H. Extended Reporting Period

If the policy is not renewed for any reason, or is cancelled for any reason other than for nonpayment of premium or deductible (whether cancelled by the Company or by the Named Insured), the Named Insured as shown in the Declarations, has the right to purchase, within thirty (30) days of policy termination, an extension of the coverage granted by this policy. This reporting period extension shall remain in force for a period of either twelve (12), twenty-four (24) or thirty-six (36) months after the policy terminates, but only for **Claims** resulting from negligent acts, errors or omissions committed before the effective date of the cancellation or nonrenewal, and otherwise covered by this policy. Increased premiums or deductibles or modifications of coverage terms or conditions upon renewal do not constitute cancellation or nonrenewal.

The premium for this Extended Reporting Period will not exceed one hundred percent (100%) for twelve months, one hundred fifty percent (150%) for twenty-four months or one hundred seventy-five percent (175%) for thirty-six months of the full annual premium set forth in the Declarations and any attached endorsements, and must be elected and paid within thirty (30) days after the effective date of the policy's termination. Such additional premium is deemed fully earned immediately upon the inception of the Extended Reporting Period.

The Extended Reporting Period is added by endorsement and, once endorsed, cannot be cancelled. The Extended Reporting Period does not reinstate or increase the Limits of Liability. The Company's limits of Liability during the Extended Reporting Period are part of, and not in addition to, the Company's Limits of Liability stated in the Declarations.

Part II. Exclusions

This Policy does not apply to any **Claim or Claim Expenses** based upon or arising out of:

- A. Personal Injury or Advertising Injury.**
- B.** Obligations of any Insured under a workers compensation, disability benefits or unemployment compensation law, or any similar law.
- C. Bodily Injury or Personal Injury** to any of the following:
 - 1. Officers, directors, partners or employees of the Insured arising out of and in the course of employment by the insured;
 - 2. The spouse, child, parent, sibling of **C. (1)** above.
- D.** The insolvency or bankruptcy of an Insured or of any other person, firm or organization.
- E.** Intentional, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint or notice of violation, notice letter, executive order, or instruction of a governmental agency or body.
- F.** Dishonest, fraudulent, criminal or intentional acts, errors, or omissions committed by or at the direction of the Insured.
- G.** Any business enterprise not named in the Declarations which is owned, controlled, operated or managed by any Insured.
- H.** A **Claim** by one Insured under this policy against another Insured under this policy.
- I.** Breach of express or implied warranty or guarantee.
- J.** Failure to perform work for a specified fee.
- K.** The ownership, rental, leasing, maintenance, use, (including operation, loading and unloading) or repair of any real or personal property, including **Damage** to property owned, occupied or used by or rented or leased to an Insured.
- L. Pollution Condition** resulting from ownership, maintenance, use (including operation, loading and unloading), or entrustment to others of any aircraft, automobile, motor vehicle, mobile vehicle, mobile vehicle or equipment, watercraft, or other conveyance. This exclusion shall not apply to the use of vehicles reasonably related to the Insured's professional services, but only while the Insured is operating such vehicle within the boundaries of where it is performing professional services.
- M.** Liability arising from the Insured's operation and activities as waste treatment, storage, or disposal facility owner or operator, waste or hazardous substance manufacturer or generator.
- N.** Any **Claim** for any **Property Damage** to any real or personal property that is or was owned in whole or in part, or was rented, occupied or in the care, custody or control of any **Insured** at any time.
- O.**
 - 1. Refusal to employ;
 - 2. Termination of employment;
 - 3. Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions;
 - 4. Consequential **Bodily Injury** or **Personal Injury** as a result of **O. (1)** through **(3)** above.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share **Damages** with or to repay someone else who must pay **Damages** because of the injury.

It is further agreed that no coverage shall apply under this policy to any **Claim** brought by or against any spouse, child, parent, brother or sister of the Insured or any other person. The Company shall not have a duty to defend any **Claim**, suit, arbitration or any other form of a trial court proceeding.

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- P. Any alleged act, error, omission, or circumstance likely to give rise to a **Claim** that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to, any prior **Claim** or possible **Claim** referenced in the Insured's application.
 - Q. Cost overruns or cost estimates being exceeded.
 - R. Infringement of copyright, patent, trademark, trade name, trade dress, service mark, title or slogan.
 - S. Actual, alleged or threatened existence, growth, spread, proliferation, discharge, dispersal, seepage, release, cross contamination or escape of any form of fungus, including mold, or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

Part III. Definitions

- A. **Advertising Liability** means injury arising out of one or more of the following offenses:
 - 1. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - 2. Oral or written publication of material that violates a person's right of privacy;
 - 3. Misappropriation of advertising ideas or style of doing business.
- B. **Bodily Injury** means physical or mental harm, sickness or disease sustained by a person, including death resulting from any of these at any time.
- C. **Claim** means a written or verbal demand received by the Insured for money or services, including service of suit or institution of arbitration proceeding against the Insured.
- D. **Claim Expenses** means expenses incurred by the Company or the Insured with the Company's consent in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the Company or the Insured with the Company's consent, and includes:
 - 1. Attorney fees;
 - 2. Costs taxed against the Insured in any **Claim** defended by the Company;
 - 3. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Liability;
 - 4. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the available applicable policy limits, and only if said **Claims** are covered by the policy.
 - 5. Reasonable expenses incurred by the Insured at the Company request other than:
 - a. Loss of earnings;
 - b. Salaries or other compensation paid to the Insured or any employee of the Insured.
- E. **Damages** means monetary judgment, award or settlement except those for which insurance is prohibited by law. **Damages** does not include punitive or exemplary **Damages**, fines, penalties, sanctions, taxes, awards or **Damages** that are multiples of any covered **Damages**, disputes over fees, deposits, commissions or charges for goods or services.
- F. **Personal Injury** means injury other than **Bodily Injury** arising out of one or more of the following offenses:
 - 1. False arrest, detention or imprisonment;
 - 2. Malicious prosecution or abuse of process;
 - 3. Wrongful entry or eviction or other invasion or violation of the right of private occupancy;
 - 4. Oral or written publication of material that slanders or libels a person or organization, or disparages a person's or organization's goods, products or services;
 - 5. Oral or written publication of material that violates a person's right of privacy.

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- G. Policy Period** means the period of time stated in the Declarations or any shorter period resulting from Policy cancellation or amendment to the policy.
- H. Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, whether live or inanimate, including but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, asbestos, asbestos compounds or materials containing asbestos, radon, waste or any like substances. Waste includes materials to be recycled, reconditioned or reclaimed.
- I. Pollution Condition** means the discharge, dispersal, release or escape of **Pollutants** into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, which results in **Bodily Injury** or **Property Damage**.
- J. Property Damage** means:
1. Physical injury to or destruction of tangible property including the resulting loss of use thereof;
 2. Costs to evaluate, investigate, clean up, remediate or monitor any **Pollution Condition** on a site where the Insured or any consultant or contractor working on behalf of the Insured is performing, or has performed, professional services; and
 3. Loss of use of tangible property that has not been physically injured or destroyed; provided that such loss of use is caused by a **Pollution Condition** arising out of the performance of professional services by or on behalf of the Insured.
- K. Related Pollution Conditions** are those **Pollution Conditions** that are continuous, related, repeated, or result from similar series of discharges, dispersals, releases, or escapes of **Pollutants** in whole or in part at or from a particular site on which the Insured is performing or has performed professional services. **Related Pollution Conditions** are those **Pollution Conditions** that arise out of, are based on, relate to or are in consequence of, the same facts, circumstances or events.
- Related Pollution Conditions** constitute one single **Pollution Condition** and will be deemed to have occurred when the first such **Related Pollution Condition** commenced.
- L. Retroactive Date** means the date stated in the Declarations under Professional Liability Retroactive Date, on or after which any alleged or actual negligent act, error or omission must have first taken place in order to be considered for coverage under this policy.

Part IV. General Conditions

A. Notice of Claim

The Insured must notify the Company as soon as practicable of an incident, occurrence or **Pollution Condition** that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or **Pollution Conditions** has been acknowledged as adequate by the Company in writing, subsequent **Claims** derived from such incidents, occurrences or **Pollution Conditions** will be deemed as first made at the time the incident, occurrence or **Pollution Condition** giving rise to such **Claim** was first provided.

As a condition precedent to coverage, the Insured also must, during the **Policy Period**, but in no event later than thirty (30) days after the **Policy Period**, send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information.

B. Prohibition of Voluntary Payments and Settlements Provision

With respect to any **Claim** covered under this Policy, except at the Insured's own cost, the Insured will not make any payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of resolution of any dispute, waive any rights or incur **Claim Expenses** without prior written Company approval.

C. Cooperation

The Insured will cooperate with the Company in the conduct of a **Claim** and, upon the Company's request, submit to examination and interrogation by Company representatives under oath if required, and attend hearings and trials, and assist in affecting settlements, securing and giving evidence, and obtaining the attendance of witnesses.

D. Notice of Cancellation and Nonrenewal

The Named Insured may cancel this policy by mailing or delivering to the Company advance written notice of cancellation.

For other than nonpayment of premium or deductible, the Company will give the Named Insured sixty (60) days written notice prior to cancellation or nonrenewal of this policy by mailing or delivering the notice to the first Named Insured's last known mailing address. If the Company cancels the policy due to the Named Insured's failure to pay a premium when due, this policy may be canceled by the Company giving not less than 10 days written notice of cancellation.

The cancellation notice will state the effective date of the cancellation and the policy will terminate on that date. If canceled by the Company, the earned premium shall be computed pro-rata. If canceled by the Insured, the earned premium shall be computed short rate.

E. Premium and Audit

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the **Policy Period** and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy. The first Named Insured listed in the Declarations must keep records of information the Company will need for premium computation and, upon request, send the Company copies of the information.

F. Authorization

The first Named Insured listed in the Declarations agrees to act as the Named Insured with respect to the giving and receiving of all notices, the exercising of Extended Reporting Periods option, the cancellation of the policy, the payment of premiums and deductibles, and the receiving of any return premiums that may become due.

G. Change

This policy contains all of the agreements concerning the insurance provided. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with the Company's consent. The policy terms may be amended or waived only by endorsement issued by the Company and made a part of this policy.

H. Subrogation

In the event of any **Claim** under this policy, the Company will be subrogated to all Insured's rights of recovery against any person or organization, and the Insured will execute and deliver instruments and papers, and do whatever else is necessary to secure such rights. The Insured will do nothing after the loss to prejudice such rights.

I. Other Insurance

This policy will be excess over, and will not contribute with, any other existing insurance, unless such other insurance is specifically written to be excess of this policy.

If it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Company will not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under the policy for such Damages bears to the total applicable Limit of Liability of all valid insurance, whether or not collectible, against such **Claims**.

J. Mitigation

The Insured shall make all reasonable efforts to abate, stop, or reduce the **Damages** emanating from any **Pollution Condition** which poses a substantial risk to the environment or human health and which results directly or indirectly from professional services performed by or on behalf of the **Insured**. It is agreed that these efforts shall commence immediately upon discovery or notice of the **Pollution Condition** by any Insured. These efforts must include mitigating, alleviating or otherwise limiting the **Damages** which could result from the **Pollution Condition**. Such efforts must be undertaken even in the absence of a **Claim**.

K. Actions Against the Insurer

No action will be taken against the Company unless, as a condition precedent, the Insured is in full compliance with all of the terms of this policy and, until the amount of the Insured's obligations to pay shall have been finally determined either by judgment against the Insured, after actual trial or by written agreement of the Insured, the claimant and the Company.

L. Non-Transferability

The Insured's rights and duties under this policy may not be transferred without the written consent of the Company.

M. Bankruptcy

Bankruptcy or insolvency or receivership of the Insured or of the Insured's estate does not relieve the Company of its obligations under this policy; however, this provision does not apply if this policy is cancelled by the Company due to nonpayment of premium or deductible.

N. False or Fraudulent Claims

If an Insured makes any **Claim** that is false or fraudulent, this insurance shall become void and entitlement to coverage for all **Claims** hereunder shall be forfeited with regard to such Insured.

O. Application

The Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any of its agents, relating to this insurance. The signed application, and any attachments thereto, submitted in connection with this Policy are incorporated herein and constitute a part of this Policy.