



ADDENDUM TO THE APPLICATION AND DECLARATIONS  
POLICYHOLDER NOTICE – NEW YORK FREE TRADE ZONE

THIS POLICY IS WRITTEN ON A CLAIMS-MADE BASIS. THIS POLICY PROVIDES NO COVERAGE FOR CLAIMS ARISING OUT OF INCIDENTS, SITUATIONS OR ACTS OR OMISSIONS WHICH TOOK PLACE BEFORE THE PRIOR ACTS DATE, IF ANY, STATED ON THE DECLARATIONS.

THIS POLICY COVERS ONLY CLAIMS ACTUALLY MADE AGAINST AN INSURED UNDER THE POLICY WHILE THE POLICY REMAINS IN EFFECT AND ALL COVERAGE UNDER THE POLICY CEASES UPON THE TERMINATION OF THE POLICY, EXCEPT FOR THE AUTOMATIC EXTENDED REPORTING PERIOD COVERAGE, UNLESS THE INSURED PURCHASES OPTIONAL EXTENDED REPORTING PERIOD COVERAGE. UPON EXPIRATION OF THE AUTOMATIC EXTENDED REPORTING PERIOD OR, IF PURCHASED, THE OPTIONAL EXTENDED REPORTING PERIOD, POTENTIAL COVERAGE GAPS MAY ARISE.

DURING THE FIRST SEVERAL YEARS OF THE CLAIMS-MADE RELATIONSHIP, CLAIMS-MADE RATES ARE COMPARATIVELY LOWER THAN OCCURRENCE RATES. THE INSURED CAN EXPECT SUBSTANTIAL ANNUAL PREMIUM INCREASES, INDEPENDENT OF OVERALL RATE LEVEL INCREASES, UNTIL THE CLAIMS-MADE RELATIONSHIP REACHES MATURITY.

UPON TERMINATION OF COVERAGE FOR ANY REASON, A 60-DAY AUTOMATIC EXTENDED REPORTING PERIOD WILL BE GRANTED AT NO ADDITIONAL CHARGE. THE NAMED INSURED WILL BE ABLE TO PURCHASE AN OPTIONAL EXTENDED REPORTING PERIOD, UNLESS DURING THE FIRST YEAR OF COVERAGE, THIS POLICY IS TERMINATED FOR NON-PAYMENT OF PREMIUM OR FRAUD. WITHIN 30 DAYS AFTER TERMINATION OF COVERAGE, THE INSURER WILL GIVE WRITTEN NOTIFICATION TO THE NAMED INSURED THAT THE AUTOMATIC EXTENDED REPORTING PERIOD APPLIES, WHICH NOTICE WILL STATE THE IMPORTANCE OF PURCHASING AN OPTIONAL EXTENDED REPORTING PERIOD AND THE PREMIUM FOR SUCH ADDITIONAL COVERAGE. NO SUCH NOTICE WILL BE SENT IF THIS POLICY HAS BEEN IN EFFECT FOR ONE YEAR OR MORE AND HAS BEEN TERMINATED FOR NONPAYMENT OF PREMIUM OR FRAUD UNLESS REQUESTED BY THE INSURED.

THE NAMED INSURED SHALL HAVE THE GREATER OF 60 DAYS FROM THE EFFECTIVE DATE OF TERMINATION OF COVERAGE OR 30 DAYS FROM THE DATE OF MAILING OR DELIVERY OF THE NOTICE MENTIONED ABOVE TO SUBMIT WRITTEN ACCEPTANCE OF THE OPTIONAL EXTENDED REPORTING PERIOD.

THIS POLICY PROVIDES FOR A 60-DAY AUTOMATIC EXTENDED REPORTING PERIOD. IN ADDITION, THE OPTIONAL EXTENDED REPORTING PERIOD SHALL BE ONE YEAR, THREE YEARS OR FIVE YEARS.

IN THE EVENT THAT THE POLICY IS TERMINATED ON THE NEXT ANNIVERSARY DATE, THE ADDITIONAL PREMIUM FOR THE OPTIONAL EXTENDED REPORTING PERIOD SHALL BE BASED UPON THE RATES OF SUCH COVERAGE IN EFFECT ON THE DATE THIS POLICY WAS ISSUED AND SHALL BE FOR ONE (1) YEAR AT 100% OF SUCH PREMIUM, DIVIDED BY THE NUMBER OF POLICY YEARS; THREE (3) YEARS AT 190% OF SUCH PREMIUM, DIVIDED BY THE NUMBER OF POLICY YEARS; OR FIVE (5) YEARS AT 250% OF SUCH PREMIUM, DIVIDED BY THE NUMBER OF POLICY YEARS.



NEW YORK FREE TRADE ZONE DISCLOSURE NOTICE

If the risk is classified as a Class 1 or Class 2, the following Notice applies:

**NOTICE: THESE POLICY FORMS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK INSURANCE LAW AND REGULATIONS. HOWEVER, THE FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.**

If the risk is classified as a Class 3, the following Notice applies:

**NOTICE: THESE POLICY FORMS ARE NOT SUBJECT TO THE APPROVAL REQUIREMENTS AND THE APPLICABLE RATES ARE EXEMPT FROM THE FILING REQUIREMENTS OF THE NEW YORK INSURANCE LAW AND REGULATIONS. HOWEVER, THE FORMS AND RATES MUST MEET THE MINIMUM STANDARDS OF THE NEW YORK INSURANCE LAW AND REGULATIONS.**

Class Code : 2

Class 2 Classification Code : 2-13000



Professional Liability and Pollution Incident Liability Insurance  
Policy Declaration

POLICY DECLARATIONS

NOTICE: THIS PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY IS WRITTEN ON A "CLAIMS-MADE AND REPORTED" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST AN INSURED AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE SECTION OF THE POLICY ENTITLED CONDITIONS, THE CONDITION ENTITLED THE INSURED'S DUTIES IF THERE IS A CLAIM.

POLICY INFORMATION

**Prefix:** AEH  
**Policy Number:** 591888058  
**Insurance is Provided by:**  
Continental Casualty Company  
151 North Franklin Street, Chicago, IL 60606

PRODUCER INFORMATION

**Agency:** 056124  
**Branch:** 970

NAMED INSURED AND ADDRESS

<b>Named Insured:</b> Rodriguez + Gambino Architectural Building Envelope Consultants D.P.C. Rodriguez, Gambino & LaPorta Architectural Building Envelope Consultants, D.P.C.	<b>Address:</b> 1298 Richmond Road  Staten Island, NY 10304
---	--

POLICY TERM

04/21/2024 to 04/21/2025 at 12:01 a.m. Standard Time  
at the **Named Insured's** address shown above.

KNOWLEDGE DATE

04/21/2015

DEDUCTIBLE:

\$5,000	Purchased Deductible
\$1,250	Deductible Credit
\$3,750	Per <b>claim</b> Deductible (including <b>claim expenses</b> )
N/A	Aggregate Deductible per <b>policy year</b> (including <b>claim expenses</b> )

LIMITS OF LIABILITY:

\$1,000,000	Each <b>claim</b> Limit of Liability (including <b>claim expenses</b> )
\$2,000,000	Aggregate Limit of Liability per <b>policy year</b> (including <b>claim expenses</b> )
\$1,000,000	Each <b>design defect circumstance</b> Limit of Liability
\$2,000,000	Aggregate <b>design defect circumstance</b> Limit of Liability per <b>policy year</b>
\$1,000,000	Each <b>claim</b> death or disability and non-practicing <b>extended reporting period</b> Limit of Liability (including <b>claim expenses</b> )
\$2,000,000	Aggregate death or disability and non-practicing <b>extended reporting period</b> Limit of Liability (including <b>claim expenses</b> )

INCEPTION DATE:

04/21/2015 is the date of the first policy issued to the **Named Insured** and continuously renewed by the Insurer.

**TOTAL BILLINGS OR TOTAL CONTRACT VALUES**

\$1,518,000 is the ☒ Total Billings or the ☐ Total Contract Values

**PREMIUM**

Premium \$36,580.00

**INSTALLMENT PREMIUM PAYMENT****Installment Premium Payment**

\$14,632.00	Due	05/15/2024
\$10,974.00	Due	08/15/2024
\$10,974.00	Due	11/15/2024

**POLICY FORM AND ENDORSEMENTS ATTACHED AT EFFECTIVE DATE:**

CNA79035XX (11/2022)	Professional Liability and Pollution Incident Liability Insurance Policy Declaration
CNA79107XX (09/2014)	Deductible Endorsement BIII - Deductible Not Applicable to Claim Expenses
CNA100901NYFTZ (03/2021)	Amendatory Endorsement - New York Free Trade Zone
GSL2233XX (10/2005)	Notice Endorsement-Cancellation or Non-Renewal
CNA79112XX (09/2014)	Notice Endorsement - Cancellation or Non-Renewal
CNA79034XX (11/2022)	Professional Liability and Pollution Incident Liability Insurance Policy

By:

*Bathleen W. Curry*  
Authorized Representative

By:

\_\_\_\_\_  
Countersignature (if required)



PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

**THIS PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY IS WRITTEN ON A "CLAIMS-MADE AND REPORTED" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST AN INSURED AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE SECTION OF THE POLICY ENTITLED CONDITIONS, THE CONDITION ENTITLED THE INSURED'S DUTIES IF THERE IS A CLAIM.**

Insurer means the Stock Insurance Company named on the Policy Declarations. Other key words and phrases, whether expressed in the singular or plural, that have special meaning are displayed in bold face type. See the **DEFINITIONS** section of the Policy.

The Insurer and the **Insured** agree as follows:

**I. COVERAGE**

**A. INSURING AGREEMENTS**

**1. Professional Liability**

The Insurer will pay all amounts in excess of the deductible up to the limit of liability that the **Insured** becomes legally obligated to pay because of a **claim** as a result of a **wrongful act** in the performance of **professional services**, provided that:

- a. on the **knowledge date**, none of the **Insured's** directors, officers, principals, partners, or insurance managers knew of any **wrongful act** that could reasonably be expected to become the basis of such **claim**; and
- b. such **claim** is first made against the **Insured** during the **policy year** and reported to the Insurer in accordance with section **VI, CONDITIONS**, paragraph **B.**, The **Insured's** Duties if There is a **Claim**. Except as set forth in the section **VI, CONDITIONS**, paragraph **C.**, The **Insured's** Rights and Duties In the Event of a **Circumstance**, a **claim** is considered first made on the earlier of the **Insured's** receipt of the **claim** or the Insurer's receipt of notice of the **claim**.

**2. Pollution Incident Liability**

The Insurer will pay all amounts in excess of the deductible up to the limit of liability that the **Insured** becomes legally obligated to pay because of a **claim** as a result of a **pollution incident** arising out of:

- a. the **Insured's** activities or the activities of any person or entity for whom the **Insured** is liable;
- b. a **covered location**; or
- c. a **non-owned disposal site**,

provided that:

- i. on the **knowledge date**, none of the **Insured's** directors, officers, principals, partners, or insurance managers knew of any act, error or omission that could reasonably be expected to become the basis of such **claim**; and
- ii. such **claim** is first made against the **Insured** during the **policy year** and reported to the Insurer in accordance with section **VI, CONDITIONS**, paragraph **B.**, The **Insured's** Duties if There is a **Claim**. Except as set forth in the section **VI, CONDITIONS**, paragraph **C.**, The **Insured's** Rights and Duties In the Event of a **Circumstance**, a **claim** is considered first made on the earlier of the



**Insured's** receipt of the **claim** or the Insurer's receipt of notice of the **claim**.

The Insurer will also pay **claim expenses** in connection with such covered **claim**. **Claim expenses** are included within and reduce the limits of liability.

#### **B. SUPPLEMENTAL INSURING AGREEMENT – RECTIFICATION EXPENSE**

The Insurer will reimburse the **Named Insured** for **rectification expense** in excess of the deductible and up to the applicable **design defect circumstance** limit of liability, provided that:

1. the **Insured** reports the **design defect circumstance** as soon as practicable during the **policy year** and in accordance with the Section of the Policy entitled **CONDITIONS**, the condition entitled The **Insured's** Rights and Duties in the Event of a **Circumstance**;
2. the **Insured** demonstrates to the Insurer's satisfaction that there is a **design defect** which is reasonably likely to give rise to a **claim** covered under this Policy;
3. the **Insured** provides the Insurer with details of the action being contemplated by the **Insured** to minimize any potential liability arising out of such **design defect circumstance** and the amount of **rectification expense** that is contemplated in connection with such action as soon as practicable during the **policy year** or within sixty (60) days of the expiration of the **policy year**;
4. prior to incurring any **rectification expense**, the Insurer consents in writing to such **rectification expense**; provided that such consent is not required if the **Insured** can establish that an **emergency response** was necessary;
5. in the event a **claim** is made arising out of a **design defect circumstance**, then the Insurer may, at its sole discretion, cease paying further **rectification expense** associated with such **design defect circumstance**; and
6. such **design defect circumstance** does not arise out of the same or similar **design defect circumstances** for which reimbursement expenses have been requested or paid.

Such **rectification expense** will be reimbursed within ninety (90) days of the **Insured's** submission of a proof of loss of such **rectification expense** which was consented to by the **Insurer**.

In the event that the Insurer and the **Named Insured** do not agree that the **Insured's** proposed **rectification expense** is reasonable, then the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Named Insured** and the Insurer 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 Construction Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

#### **C. DEFENSE AND SETTLEMENT**

1. The Insurer has the right and duty to defend any **claim** against the **Insured** seeking amounts that are payable under the terms of this Policy, even if any of the allegations of the **claim** are groundless, false or fraudulent. The Insurer will designate or, at its option, approve counsel to defend the **claim**. The Insurer is not obligated to defend any **claim** or pay any amounts after the applicable limit of liability has been exhausted.
2. The Insurer will not settle any **claim** without the informed consent of the first **Named Insured**.
3. If a **claim** results in a punitive, exemplary, or multiplied damage award, the Insurer will pay such award, up to the applicable limit of liability, to the fullest extent permitted by law. The enforceability of the foregoing shall be governed by such applicable law in the jurisdiction which most favors coverage for punitive, exemplary and multiplied damages; provided that such jurisdiction has a substantial relationship to the **Insured** or the **claim**.





## II. SUPPLEMENTARY PAYMENTS

Except as noted in subparagraph **D.** below, payments made under this section are the Insurer's costs, are not subject to the deductible, and are in addition to the limits of liability shown on the Declarations.

### A. Crisis Event Expenses

The Insurer will reimburse the **Named Insured** up to 50% of **crisis event expenses** up to a maximum of \$15,000 per **crisis event**, subject to a maximum reimbursement by the Insurer of \$50,000 per **policy year** for all **crisis events**, for **crisis event expenses** incurred as a result of a **crisis event** that occurs during the **policy term**.

### B. Pre-claims Assistance

Until the date a **claim** is made, the Insurer may pay for all costs or expenses it incurs, at the Insurer's sole discretion, as a result of investigating a **circumstance** that the **Insured** reports in accordance with the Section of the Policy entitled **CONDITIONS**, the condition entitled The **Insured's** Rights and Duties in the Event of a **Circumstance**.

### C. Defendant Reimbursement

If the Insurer requests the **Insured's** presence at a trial, hearing, deposition, mediation or arbitration, the Insurer will pay up to \$500 a day per person, subject to a maximum amount of \$15,000 per **claim**.

### D. ADA, FHA, and OSHA

The Insurer will reimburse the **Insured** for legal fees and expenses up to \$35,000 per **policy year** in responding to regulatory or administrative actions brought directly against the **Insured** by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA), or the Occupational Safety and Health Act (OSHA), provided that the regulatory or administrative actions:

1. are first commenced during the **policy year**;
2. arise out of the performance of **professional services**; and
3. are reported to the Insurer prior to any legal fees or expenses being incurred.

After the Insurer has paid \$35,000 under this provision, any additional amounts the Insurer agrees to pay will be treated as **claim expenses** and will be subject to the **Insured's** deductible and be included in the limits of liability for the **policy year** in which the action was commenced. The Insurer will not be responsible for any fines or penalties.

### E. Disciplinary Proceedings

The Insurer will reimburse the **Insured** up to \$25,000 in the aggregate per **policy year**, regardless of the number of **disciplinary proceedings**, for attorney fees and other reasonable costs, expenses or fees incurred by the **Insured** with the Insurer's prior written consent in responding to a **disciplinary proceeding** commenced against the **Insured** during the **policy year**, provided that such **disciplinary proceeding** is reported to the Insurer during such **policy year**.

### F. Dodd-Frank Fees and Expenses

The Insurer will reimburse the **Insured** for legal fees and expenses up to \$50,000 per **policy year** in responding to regulatory or administrative actions brought directly against the **Insured** by a government agency under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), provided that the regulatory or administrative actions:

1. are first commenced during the **policy year**;
2. arise out of the performance of **professional services**;
3. do not arise out of services performed by the **Insured** as a "municipal advisor" as defined in



Dodd-Frank; and

4. are reported to the Insurer prior to any legal fees or expenses being incurred.

The Insurer will not be responsible for any fines or penalties.

### III. DEFINITIONS

**Bodily injury** means bodily injury, sickness, disease, mental anguish, or emotional distress sustained by a person, including death resulting from any of these at any time.

**Circumstance** means an event reported to the Insurer during the **policy term** from which the **Insured** reasonably expects that a **claim** could be made.

**Claim** means a demand for money or services, naming the **Insured** and alleging a **wrongful act** or **pollution incident**.

**Claim expenses** mean:

1. fees charged by an attorney designated or approved by the Insurer to represent the **Insured**;
2. all other fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a **claim**, if incurred by:
  - a. the designated attorney,
  - b. the Insurer, or
  - c. the **Insured**, with the Insurer's prior written consent; and
3. premiums for bonds posted in connection with an appeal. However, the Insurer is not obligated to apply for or furnish any such bonds.

**Claim expenses** do not include fees and expenses of independent adjusters or salaries of the Insurer's officials or employees, other than fees and expenses charged by the Insurer's employed attorneys who may be designated to represent the **Insured** with the **Insured's** prior consent.

**Covered location** means a location that is scheduled onto this Policy as a **covered location** by endorsement issued by the Insurer. **Covered location** also includes the address shown on the Declarations. **Covered location** does not include a location that has been sold, given away or abandoned by the **Named Insured** or that has been condemned, or a rented location where the lease has expired without renewal or has been terminated.

**Crisis event** means any:

1. **wrongful act** or **pollution incident**;
2. death, departure, or debilitating illness of a partner, officer, director or member of the **Named Insured**;
3. potential dissolution of the **Named Insured** for any reason other than bankruptcy; or
4. violent act, kidnapping, sexual assault, criminal firearm use or workplace accident resulting in negative local or national media coverage of the **Named Insured**,

that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

**Crisis event expenses** mean reasonable fees, costs and expenses incurred by the **Named Insured** for consulting services provided by a public relations firm to the **Named Insured** in response to a **crisis event**, but only for up to sixty (60) days following a **crisis event**.

**Design defect** means a **wrongful act**, but does not include any actual or alleged negligence in the review of shop drawings and submittals, issuance of change orders, observation of construction or review of any contractors' requests for payment.





**Design defect circumstance** means a **circumstance** arising out of a **design defect** for which the **Insured** has requested reimbursement of a **rectification expense** from the Insurer.

**Disciplinary proceeding** means any pending matter, including an initial inquiry, before a state or federal licensing board or a peer review committee to investigate charges alleging a violation of any rule of professional conduct in the performance of **professional services**.

**Domestic partner** means any person qualifying as such under any federal, state or local laws or under the **Insured's** employee benefit plans.

**Emergency response** means an action taken by the **Insured** to rectify a **design defect** that prevents imminent **bodily injury** and/or material physical injury to, or destruction of, tangible property due to that **design defect**, which is otherwise insured under this Policy.

**Extended reporting period** means the period of time after the end of the **policy term** for reporting **claims** to the Insurer that are first made against the **Insured** during the applicable **extended reporting period** arising out of:

1. a **wrongful act** that took place prior to the end of the **policy term** that is otherwise covered by this Policy; or
2. activities that took place prior to the end of the **policy term** that result in a **pollution incident** that is otherwise covered by this Policy.

**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 fungus.

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

**Insured** means the **Named Insured**, a **newly acquired subsidiary** and:

1. any current partner, officer, director, member, stockholder or employee of the **Named Insured** or **newly acquired subsidiary** during the **policy term**, but only while acting within the scope of their duties for the **Named Insured** or **newly acquired subsidiary**;
2. any current **leased or contracted personnel**, but only while acting within the scope of their duties for the **Named Insured** or **newly acquired subsidiary**;
3. any retired or past partner, officer, director, member, stockholder or employee or **leased or contracted personnel** of the **Named Insured** or **newly acquired subsidiary**, but only for **professional services** or activities performed for or on behalf of, at the request of, and for the benefit of the **Named Insured** or **newly acquired subsidiary**; and
4. solely with respect to Insuring Agreement A.2., Pollution Incident Liability, any client or project owner for whom the **Named Insured** performs activities, provided that:
  - a. a written contract or agreement is in effect between the **Named Insured** and a client or project owner under which the **Named Insured** assumes the tort liability of the client or project owner to pay compensatory damages to a third party for a **pollution incident**;
  - b. such **pollution incident** is caused by the **Named Insured's** activities, or the activities of any person or entity for whom the **Named Insured** is liable; and
  - c. such written contract or agreement is executed prior to the **pollution incident**, and:
    - i. incorporates an enforceable indemnity provision pertinent to the **pollution incident**; or
    - ii. requires such client or project owner to be made an additional insured under the Policy that insures the **Named Insured** 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.

**Insured** does not include the estates, heirs, legal representatives, assigns, spouses, and any **domestic partner** of any natural person within the definition of **Insured**. However, coverage is afforded to such persons or entities under this Policy as provided in the Section of the Policy entitled **CONDITIONS**, the condition entitled Estates, Legal Representatives, and Spouses.

**Knowledge date** means the date set forth on the Declarations as the Knowledge Date.

**Leased or contracted personnel** means any natural person who is working under the direct control and supervision of the **Named Insured** or **newly acquired subsidiary** as a substitute for a permanent employee on leave, or to meet seasonal or short-term workload conditions. **Leased or contracted personnel** does not include a subconsultant or subcontractor.

**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 persons or entities identified on the Declarations as the Named Insured.

**Newly acquired subsidiary** means any entity, newly formed or acquired by a **Named Insured** during the **policy term**, in which such **Named Insured** has more than a 50% legal or beneficial interest. However, no such entity will be deemed a **newly acquired subsidiary** beyond ninety (90) days after the **Named Insured** acquires or forms it. For coverage to continue beyond the first ninety (90) days, the following conditions apply:

1. within ninety (90) days of such formation or acquisition, the **Named Insured** must provide the Insurer with full particulars of such **newly acquired subsidiary**;
2. after receipt of such notice, the Insurer must agree to endorse this Policy to insure such **newly acquired subsidiary**; and
3. the **Named Insured** must pay the additional premium, if any, and agree to any amendment of the provisions of this Policy by reason of such formation or acquisition.

Coverage exists for **claims** made against a **newly acquired subsidiary** only if, prior to the acquisition date or formation date, none of the **Insured's**, directors, officers, principals, partners, or insurance managers of the **Named Insured** or such **newly acquired subsidiary** knew of any act, error, omission, or event that could reasonably be expected to become the basis of that **claim**.

**Non-owned disposal site** means a location not owned, operated, leased or rented by the **Insured** that is used by the **Named Insured** for the treatment, storage or disposal of wastes or materials that are generated by activities performed by or on behalf of the **Named Insured**, provided that:

1. such location is permitted or licensed by the applicable authority to accept such wastes or materials as of the date such wastes or materials are treated, stored or disposed of at the location; and
2. such location is not listed on a proposed or final Federal National Priorities List or any equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of such wastes or materials at such location.

**Nuclear facility** means the site where a nuclear reactor is located or where nuclear waste or material is disposed.

**Policy term** means the period of time from the effective date and time of this Policy to the date and time of termination as shown on the Declarations, or its earlier cancellation date. **Policy term** does not include any **extended reporting period**. If the length of the **policy term** is the same as the **policy year**, the terms **policy term** and **policy year** are used interchangeably herein.



**Policy year** means the period of one year following the effective date of the **policy term** or any subsequent one-year anniversary thereof if the **policy term** is more than one year. As permitted by individual state law, a **policy year** may be extended or reduced by endorsement or by termination of the Policy.

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

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

1. discharge, dispersal, seepage, migration, release or escape of **pollutants** into or upon land, the atmosphere, or any watercourse or body of water; or
2. inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of **fungi** or **microbes**,

which results in **bodily injury** or **property damage**. However, a **pollution incident** cannot arise from any dishonest, fraudulent, criminal, malicious act or omission, or an intentional wrongdoing committed by the **Insured** or at the **Insured's** direction or with the **Insured's** prior knowledge.

**Professional services** mean those services that the **Insured**, or any person or entity, including joint ventures, for whom the **Insured** is liable, performs for others on behalf of a **Named Insured** in the **Insured's** practice as an architect, engineer, interior designer, land surveyor, LEED® green building program consultant, landscape architect, construction manager, scientist, or technical consultant.

**Property damage** means the following:

1. physical injury to, damage to, or destruction of tangible property, electronic data, soil, surface water, groundwater, plants, or animals, including the resulting loss of use thereof;
2. clean-up costs incurred by a third party or mandated by any governmental entity; or
3. loss of use of tangible property that has not been physically injured or destroyed.

**Rectification expense** means reasonable and necessary fees, costs and expenses incurred by the **Named Insured** for rectification of a **design defect** caused by **professional services** in any part of the construction works or engineering works for any project upon which the **Insured** is responsible for design. **Rectification expense** does not include: overhead, mark-up, profit or any fee, charge, cost, or expense incurred by any **Insured** for materials supplied or services performed by any **Insured**.

**Related claims** mean all **claims** made against the **Insured** and arising out of:

1. a single **wrongful act** or related **wrongful acts** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision;
2. a single **design defect** or related **design defects** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision; or
3. an activity or related activities that result in a single **pollution incident** or multiple **pollution incidents** that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision.

**Technology based services** mean **professional services** that utilize electronic information technology, including custom software development, modification or integration; provided, however, that such **technology based services** are provided solely to a specific client of the **Named Insured**.

**Totally and permanently disabled** means that the **Insured** is so disabled as to be wholly prevented from rendering **professional services**, provided that such disability:

1. has existed continuously for not less than six (6) months; and
2. is reasonably expected to be continuous and permanent.



**Wrongful act** means an act, error or omission that causes liability in the performance of **professional services** for others by the **Insured** or by any person or entity, including joint ventures, for which the **Insured** is liable.

#### IV. EXCLUSIONS

The Insurer will not defend or pay under this Policy for any **claim**:

##### A. Claims by Insureds

brought by the **Insured** or on the **Insured's** behalf against another **Insured** covered by this Policy;

However, this exclusion shall not apply to **claims** brought by a client or project owner who qualifies as an **Insured** under paragraph 4. of the definition of **Insured**.

##### B. Contractual Liability

arising out of:

1. the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. any actual or alleged liability of others that the **Insured** assumes under any oral or written contract or agreement.

However, this exclusion shall not apply to:

- a. the **Insured's** liability that exists in the absence of such contract or agreement; or
- b. the **Insured's** liability assumed in a written contract or agreement as set forth in subparagraphs a., b. and c. of paragraph 4. of the definition of **Insured**.

In a foreign jurisdiction where the **Insured's** liability to a client is predicated only on contractual liability, subparagraph 1. of this exclusion does not apply except to the extent that the **Insured** has agreed to pay consequential or liquidated damages;

##### C. Faulty Workmanship

arising out of any actual or alleged cost to repair or replace faulty workmanship the **Insured** performs on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, or equipment furnished in connection therewith except that this exclusion does not apply to drilling, excavation, or other sampling or testing procedures or the supplying of furnishings as part of interior design services, necessary to perform **professional services**;

##### D. Liquidated Damages/Fines and Penalties/Money Due/Return of Fees

for liquidated damages in excess of the **Insured's** liability caused by a **wrongful act** or a **pollution incident**; for fines and penalties imposed on the **Insured**; or for the failure or refusal of a client to pay money due the **Insured**; or for return of fees paid to the **Insured**;

##### E. Nuclear

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

##### F. Owned Entity

made against the **Insured** by any entity:

1. which is operated, managed, or controlled by the **Insured**;
2. in which the **Insured** has an ownership interest in excess of 49%; or
3. which wholly or partly owns, operates, or manages the **Insured**;



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

arising out of any actual or alleged:

1. ownership, rental or leasing of any real or personal property including damage to property at any time owned by or rented or leased by or to the **Insured** or by any person or entity for whom the **Insured** is legally liable; or
2. **pollution incident** at, onto or from any real or personal property owned, leased or rented by the **Insured** or by any person or entity for whom the **Insured** is legally liable; however, this exclusion shall not apply to:
  - a. temporary storage of equipment or material at any staging or storage area that is associated with the **Insured's** activities; or
  - b. **pollution incidents** at, onto or from a **covered location** of a **Named Insured**;

**H. Prior Notice**

arising out of any actual or alleged:

1. **wrongful act, pollution incident** or any matter, fact, situation, transaction, or event, for which notice was given by the **Insured** under any professional liability or pollution insurance coverage prior to the effective date of this Policy; or
2. other **wrongful act** or **pollution incident** whenever occurring, which is logically or causally connected by any common fact, situation, transaction, or event to the **wrongful act** or **pollution incident** specified in paragraph 1. of this exclusion;

**I. Sale or Distribution of Goods**

arising out of any actual or alleged sale or distribution of goods or products by the **Insured**, or by others under license from the **Insured**. This exclusion does not apply to furniture, furnishings or equipment created or modified specifically for a client in connection with the **Insured's professional services** for that client or to software created or modified specifically for a client in connection with **technology based services** for that client;

**J. Transportation**

arising out of any 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:

1. 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 wastes or materials transported by or on behalf of the **Named Insured**:
  - a. by an automobile, aircraft, watercraft or rolling stock during the course of activities; or
  - b. to a **non-owned disposal site**;
2. amounts the **Insured** becomes legally obligated to pay as a result of a **wrongful act** for which this Policy otherwise provides coverage, even if the **professional services** were performed using or operating an automobile, aircraft, watercraft or rolling stock;

**K. Unlawful Discrimination**

arising out of any actual or alleged unlawful discrimination by the **Insured** against the **Insured's** personnel or employment applicants or any obligation the **Insured** has under any employment, workers' compensation, employers' liability, unemployment compensation, disability benefits, or other similar law;





**L. Intentional Acts**

arising out of any actual or alleged dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing by an **Insured** except that the Insurer shall provide the **Insured** with a defense of such **claim** unless or until the dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of the Insurer's rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**.

**V. LIMITS OF LIABILITY/DEDUCTIBLE**

**A. Limits of Liability**

1. Subject to paragraph **2.** below, the limit of liability shown on the Declarations as the each **claim** Limit of Liability is the maximum the Insurer will pay for each **claim** first made against the **Insured** and reported to the Insurer during the **policy year**.
2. The limit of liability shown on the Declarations as the Aggregate Limit of Liability per **policy year** is the maximum the Insurer will pay for all **claims** first made against the **Insured** and reported to the Insurer during the **policy year**.
3. Subject to paragraph **4.** below, the each **design defect circumstance** Limit of Liability shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for each **design defect circumstance** reported by the **Insured** in accordance with the Section of the Policy entitled **COVERAGE**, the subsection entitled SUPPLEMENTAL INSURING AGREEMENT – RECTIFICATION EXPENSE. This limit is a sublimit of liability, which further reduces and in no way increases the applicable each **claim** and aggregate limits shown on the Declarations.
4. The aggregate **design defect circumstance** Limit of Liability per **policy year** shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for all **design defect circumstances** reported by the **Insured** in accordance with the Section of the Policy entitled **COVERAGE**, the subsection entitled SUPPLEMENTAL INSURING AGREEMENT – RECTIFICATION EXPENSE. This limit is a sublimit of liability, which further reduces and in no way increases the applicable aggregate limit shown on the Declarations.
5. All limits of liability set forth above apply on a **policy year** basis and are excess over any deductible amount. The **policy year** limits of liability may not be aggregated or transferred, in whole or in part, so as to provide any additional coverage with respect to **claims** first made or deemed made, or any **design defect circumstance** reported by the **Insured**, during any other **policy year**. If the limits of liability as specified above for any **policy year** are exhausted, the Insurer's obligation for that **policy year** shall be deemed completely fulfilled and extinguished.
6. All **related claims**, whenever made, shall be considered a single **claim** first made and reported to the Insurer on the dates on which the earliest of the **related claims** was first made and reported to the Insurer.
7. **Claim expenses** are subject to and included within the applicable limit of liability.

**B. Deductible**

The **Insured's** obligation to pay up to the per **claim** Deductible amount shown on the Declarations and the aggregate Deductible per **policy year** shown on the Declarations, if any, including but not limited to **claim expenses**, shall apply to all Insuring Agreements and Supplemental Insuring Agreements under the Section of the Policy entitled **COVERAGE**.

**C. Reimbursement to the Insurer**

If the Insurer has paid any amounts in excess of the applicable limit of liability, or within the amount of





the **Insured's** deductible, the **Insured** shall be liable to the Insurer for all such amounts, and, upon demand, shall pay such amounts to the Insurer.

**D. More Than One Insured**

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

**E. Risk Mitigation Incentives**

The **Insured** may be eligible for a Risk Mitigation Credit or an Early Resolution Credit for each **claim**. In no way shall this section be construed to afford more than one such Risk Mitigation Incentive per **claim**.

**1. Risk Mitigation Credit**

The Insurer will reduce the **Insured's** deductible obligation for a **claim** by 50%, up to \$25,000, if, within sixty (60) days of the date of the Insurer's request, the **Insured** provides the Insurer with a copy of the written agreement that was executed by the **Insured** and the **Insured's** client prior to the **Insured's** performance of the agreed-to **professional services** giving rise to such **claim** and the **Insured** demonstrates, to the Insurer's reasonable satisfaction, the existence of any three (3) of the following six (6) conditions:

- a. The **Insured's** written agreement with the **Insured's** client specified payment terms, including a schedule of when payments were to be paid to the **Insured**, which the **Insured** consistently followed and enforced, or documented the **Insured's** attempt to do so.
- b. Prior to the performance of the agreed-to **professional services** giving rise to the **claim**, the **Insured** executed a separate written agreement and obtained certificates of insurance evidencing both Professional Liability and General Liability insurance with each architect, engineer, landscape architect, land surveyor, contractor, or construction manager the **Insured** engaged or who engaged the **Insured**.
- c. The **Insured** engaged with the **Insured's** client in a structured, contemporaneously documented, pre-project planning process that produced a project definition document or package that substantially addressed the following project parameters (only "i" through "iii" are required to satisfy this condition for study-contracts and report-only contracts):
  - i. project objectives (e.g., business, economic, aesthetic, other);
  - ii. project constraints (e.g., budget, schedule, regulatory, other);
  - iii. the bases for the design/investigation (e.g., site data/requirements, utilities data/requirements, facility programming/requirements, equipment/technology requirements, alternatives to be considered);
  - iv. project execution approach (e.g., staging, procurement strategy, delivery method, other); and
  - v. project monitoring and control procedures (e.g., quality, cost, schedule, other).
- d. Prior to delivery to the **Insured's** client of the instruments or deliverables of the **Insured's** **professional services**, a documented, independent peer review was completed, internally or externally, by a qualified professional to assess the likelihood that such instruments or deliverables would satisfy the **Insured's** client's objectives and would be in conformance with good professional practice.
- e. The **Insured** engaged with representatives of the project owner, entities responsible for construction, and any other project stakeholders the **Insured** deemed appropriate in a structured, contemporaneously documented constructability review process that provided for the timely integration of construction input into project planning, design, and field operations.



- f. The **Insured** maintained a contemporaneously documented construction phase submittal log indicating the as-planned and actual dates the **Insured** received and responded to every submittal and the action taken.

2. Early Resolution Credit

If negotiation or mediation of a **claim** results in a resolution of such **claim** within one hundred and eighty (180) days of the time it was reported to the Insurer in accordance with the Section of the Policy entitled **CONDITIONS**, the condition entitled The **Insured's** Duties if There is a **Claim**, and such resolution includes an indemnity payment by the Insurer, the deductible applicable to such **claim** will be reduced by 50%, up to \$10,000.

**VI. CONDITIONS**

**A. The Insured's Rights and Duties as the First Named Insured on the Policy Declarations**

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

1. authorized to make changes in the terms of this Policy with the Insurer's written consent;
2. authorized to receive any amounts the Insurer refunds; and
3. responsible for:
  - a. the payment of all premiums and deductible obligations due the Insurer;
  - b. keeping records of the information the Insurer needs for premium computation, and sending the Insurer copies as it may request; and
  - c. notifying the Insurer of any cancellation or non-renewal.

**B. The Insured's Duties if There is a Claim**

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

1. promptly notify the Insurer in writing. This notice must be given to the Insurer within the **policy year** in which the **claim** is made or within sixty (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 the Insurer within such **extended reporting period**. Notice of a **claim** must be sent to the attention of either of the following:
  - a. CNA – Claim Reporting  
P.O. Box 8317  
Chicago, IL 60680-8317  
fax: 866-773-7504  
email: [SpecialtyProNewLoss@cna.com](mailto:SpecialtyProNewLoss@cna.com)
  - b. Attn: AE Claims  
Victor Insurance Managers Inc.  
AE Professional Liability Claims  
7700 Wisconsin Avenue, Suite 400  
Bethesda, Maryland 20814  
fax: 301-951-5444  
[designclaims.us@victorinsurance.com](mailto:designclaims.us@victorinsurance.com)
2. specify the names and addresses of the persons making a **claim** against the **Insured** and provide the Insurer with information on the time, place and nature of the **claim**;
3. immediately forward to the Insurer all documents that the **Insured** receives in connection with the **claim**;



4. fully cooperate with the Insurer or the Insurer's designee in the defense of a **claim**, including but not limited to assisting the Insurer 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 the **Insured**. The **Insured** shall attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses;
5. refuse, except solely at the **Insured's** own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense, without the Insurer's prior written approval; and
6. pay the deductible amount when due.

After the **Insured** reports a **circumstance** or a **claim** is made and the **Insured** has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the **Insured** shall only do so with the Insurer's prior written consent.

**C. The Insured's Rights and Duties in the Event of a Circumstance**

If the **Insured** reports a **circumstance** for which there may be coverage under this Policy, and the **Insured** gives the Insurer written notice containing as much detail as the **Insured** can reasonably provide regarding:

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

then any **claim** or **related claims** that subsequently may be made against the **Insured** arising out of such **circumstance** shall be deemed to have been made on the date the Insurer received written notice of the **circumstance**.

The **Insured** will cooperate with the Insurer in addressing the **circumstance**, and refuse, except solely at the **Insured's** own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense without the Insurer's prior written approval.

**D. Subrogation**

If any **Insured** has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of the Insurer's payment. The **Insured** must do everything necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. The Insurer hereby waives subrogation rights against any person or organization to the extent that the **Named Insured** has, prior to a **wrongful act** or **circumstance**, entered into a written agreement to waive such rights.

**E. Premium**

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

**F. Examination and Audit**

The **Insured** agrees to allow the Insurer to examine and audit the **Insured's** financial books and records that relate to this insurance. The Insurer 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 Limitation**

1. The **Insured** agrees not to bring any legal action against the Insurer concerning this Policy unless the **Insured** has 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 the Insurer regarding the handling or settlement of any **claim**, the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both



parties. Should the **Insured** and the Insurer 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 the Insurer's written consent.

**J. Other Insurance**

If there is other collectible insurance, including but not limited to project specific insurance, that applies to a **claim** covered by this Policy, the other insurance must pay first, and this Policy is excess over the other insurance. This Policy applies to the amount of the **claim** that exceeds the available limit of liability and any deductibles or retention amounts of the other insurance. Provided, however, that for liability assumed by the **Named Insured** pursuant to the definition of **Insured**, subparagraph 4., this insurance is primary and non-contributory.

**K. Cancellation/Non-Renewal**

The **Insured's** and the Insurer's rights are stated below and in the attached State Provisions endorsement.

The Insurer will make the premium adjustment at the time that cancellation is effective, or as soon as practicable after that time. Premium return will be computed pro rata if the Insurer cancels or if the **Insured** cancels at the end of a **policy year**. But if the **Insured** cancels at any other time, only 90% of the prorated premium will be returned.

**L. Severability/Innocent Parties**

Any **Insured** who did not commit, participate in, or have prior knowledge of any dishonest, fraudulent, criminal, malicious act or omission, or an intentional wrongdoing, or who did not fail to comply with the Section of the Policy entitled **CONDITIONS**, the condition entitled The **Insured's** Duties if There is a **Claim**, paragraph 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, assigns, spouses, and any **domestic partner** of any natural person within the definition of **Insured**, 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 **Insured** to their spouse or **domestic partner**. No coverage is provided for any act, error, or omission of an estate, heir, legal representative, assign, spouse or **domestic partner**. All terms and conditions of this Policy, including without limitation the deductible applicable to any **claim**, shall also apply to any **claim** made against such estates, heirs, legal representatives, assigns, spouses, and **domestic partners**.

**N. Extended Reporting Periods**

**1. Automatic extended reporting period**

If this Policy is canceled or non-renewed either by the Insurer or by the first **Named Insured** and the first **Named Insured** has not obtained similar coverage, the Insurer will provide an automatic, non-cancelable **extended reporting period** starting at the termination of the **policy term**. This



automatic **extended reporting period** will terminate after sixty (60) days.

**2. Optional extended reporting period**

- a. If this Policy is canceled or non-renewed either by the Insurer or by the first **Named Insured**, then the first **Named Insured** shall have the right to purchase a non-cancelable optional **extended reporting period**.

If purchased, the first sixty (60) days of the optional **extended reporting period** run concurrently with the sixty (60) days of the automatic **extended reporting period**.

- b. The additional premium for the optional **extended reporting period** shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the **policy term** and shall be for one (1) year at 100% of the **policy term** premium divided by the total number of **policy years** in the **policy term**; three (3) years at 190% of the **policy term** premium divided by the total number of **policy years** in the **policy term**; and five (5) years at 250% of the **policy term** premium divided by the total number of **policy years** in the **policy term**.
- c. The first **Named Insured** must provide the Insurer with written notice of its election to purchase the optional **extended reporting period** and pay the full payment for such period within sixty (60) days after the end of the **policy term**.

**3. Death or disability extended reporting period**

- a. If an **Insured** dies or becomes **totally and permanently disabled** during the **policy term**, then, upon the latter of the expiration of: the **policy term**; any renewal or successive renewal of this Policy; or any automatic or optional **extended reporting period**, such **Insured** shall be provided with a death or disability **extended reporting period**, as provided below.
- i. In the event of death, such **Insured's** estate, heirs, executors or administrators must, within sixty (60) days of the expiration of the **policy term**, provide the Insurer with written proof of the date of death. This **extended reporting period** is provided to such **Insured's** estate, heirs, executors and administrators.
- ii. If such **Insured** becomes **totally and permanently disabled**, such **Insured** or such **Insured's** legal guardian must, within sixty (60) days of the expiration of the **policy term**, provide the Insurer with written proof that such **Insured** is **totally and permanently disabled**, including the date the disability commenced, certified by such **Insured's** physician. The Insurer retains the right to contest the certification made by such **Insured's** physician, and it is a condition precedent to this coverage that such **Insured** agrees to submit to medical examinations by any physician designated by the Insurer at the Insurer's expense. This **extended reporting period** is provided until such **Insured** shall no longer be **totally or permanently disabled** or until such **Insured's** death, in which case subparagraph i. hereof shall apply.
- b. No additional premium will be charged for any death or disability **extended reporting period**.

**4. Non-practicing extended reporting period**

- a. If, during the **policy term**, an **Insured** retires from, or otherwise voluntarily ceases, permanently and totally, such **Insured's** practice as an architect, engineer or any other profession specifically listed in the definition of **professional services**, and has been continuously insured by the Insurer for at least ten (10) consecutive years, then such **Insured** shall have the right to purchase a non-practicing **extended reporting period** commencing upon the latter of the expiration of: the **policy term**; any renewal or successive renewal of this Policy; or any automatic or optional **extended reporting period**.
- b. The additional premium for the non-practicing **extended reporting period** shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the **policy term** and shall be for ten (10) years at 250% of the **policy term** premium divided by the total





number of **policy years** in the **policy term**.

- c. The **Insured** must provide the Insurer with written notice of such **Insured's** election to purchase the non-practicing **extended reporting period** and pay the full premium for such period within sixty (60) days after such **Insured's** date of retirement or sixty (60) days after the end of the **policy term**, whichever is earlier.

As used herein, the **Insured's** "practice as an architect, engineer or any other profession specifically listed in the definition of **professional services**" means such **Insured's** practice of any such profession for a fee, whether as a sole practitioner or as a partner, officer, director, member, stockholder or employee. The **Insured's** "practice as an architect, engineer or any other profession specifically listed in the definition of **professional services**" does not include any pro bono services performed by the **Insured**.

**5. Extended reporting periods limits of liability**

- a. Automatic and optional **extended reporting periods** limits of liability

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

- b. Separate death or disability and non-practicing **extended reporting period** limits of liability

- i. Limit of Liability - each **claim**

Subject to paragraph **ii.** below, the Insurer's limit of liability for each **claim** first made against the **Insured**, and reported to the Insurer during the death or disability **extended reporting period** or non-practicing **extended reporting period**, shall not exceed the amount shown on the Declarations as the each **claim** death or disability and non-practicing **extended reporting period** Limit of Liability.

- ii. Limit of Liability - in the aggregate

The Insurer's limit of liability for all **claims** first made against the **Insured**, and reported to the Insurer during the death or disability **extended reporting period** or non-practicing **extended reporting period**, shall not exceed the amount shown on the Declarations as the aggregate death or disability and non-practicing **extended reporting period** Limit of Liability.

**6. Elimination of right to an extended reporting period**

There is no right to any **extended reporting period** if the Insurer cancels or refuses to renew this Policy due to:

- a. non-payment of amounts due the Insurer;
- b. non-compliance by the **Insured** with any of the terms and conditions of this Policy; or
- c. any misrepresentation or omission in the application for this Policy.

**7. Extended reporting period limitations**

No **extended reporting period** shall apply to:

- a. any **claim** or proceedings pending at the inception date of such **extended reporting period**;
- b. any paid **claim**; or
- c. **claims** that are covered under any subsequent insurance purchased by the **Insured**, or that would be covered but for exhaustion of the limits of liability applicable to such **claims**.

**8. Extended reporting period not a new policy**





It is understood and agreed that the **extended reporting period** shall not be construed to be a new policy and any **claim** submitted during such period shall otherwise be governed by this Policy.

**O. Liberalization**

If, during the **policy term**, the Insurer files with the appropriate regulator, general revisions to the terms and conditions of this Policy that are intended to apply to all **Insureds** and provide broadened coverage without an additional or increased premium charge, then such broadened coverage will apply immediately to this Policy as of the date the filed revision is effective in the state shown in the mailing address of the Declarations (hereinafter "effective date"). However, this provision will not apply to **claims** that were first made against the **Insured** prior to the effective date of such revision.

**P. Economic and Trade Sanctions**

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

**Q. Territory**

The coverage afforded by this Policy applies worldwide.

**R. 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, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless signed by its duly authorized representative.

Chairman

Secretary



Professional Liability and Pollution Incident Liability Insurance  
Policy Endorsement

DEDUCTIBLE ENDORSEMENT BIII - DEDUCTIBLE NOT APPLICABLE TO CLAIM EXPENSES

It is understood and agreed that the Section of the Policy entitled **LIMITS OF LIABILITY/DEDUCTIBLE**, the subsection entitled Deductible, is deleted in its entirety and replaced by the following:

Deductible

The **Insured's** obligation to pay up to the per **claim** Deductible amount shown on the Declarations and the aggregate Deductible per **policy year** shown on the Declarations, if any, including but not limited to **claim expenses**, shall apply to all Insuring Agreements and Supplemental Insuring Agreements under the Section of the Policy entitled **COVERAGE**; provided, however, such Deductibles do not apply to **claim expenses**.

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 unless another expiration date is shown below.



AMENDATORY ENDORSEMENT - NEW YORK FREE TRADE ZONE

It is understood and agreed that Policy is amended as follows:

- I. The introductory Notice paragraph to the Policy beginning "THIS PROFESSIONAL LIABILITY AND POLLUTION INCIDENT INSURANCE POLICY IS WRITTEN" is deleted in its entirety and replaced with the following:

**THIS PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY IS WRITTEN ON A "CLAIMS-MADE AND REPORTED" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST AN INSURED AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE SECTION OF THE POLICY ENTITLED CONDITIONS, THE CONDITION ENTITLED THE INSURED'S DUTIES IF THERE IS A CLAIM. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST THE INSURED AND/OR REPORTED TO THE INSURER AFTER THE POLICY PERIOD UNLESS, AND TO THE EXTENT THAT, THE EXTENDED REPORTING PERIOD APPLIES. CLAIM EXPENSES SHALL BE APPLIED TO, AND ACT AS A REDUCTION OF, UP TO 100% OF THE DEDUCTIBLE, AND UP TO 100% OF THE LIMITS OF INSURANCE. THIS COULD THEN RESULT IN SUCH DEDUCTIBLE AND SUCH LIMIT OF INSURANCE BECOMING COMPLETELY EXHAUSTED BY THE PAYMENT OF CLAIM EXPENSES. THE INSURER SHALL NOT BE LIABLE FOR ANY CLAIM EXPENSES OR DAMAGES UNTIL AFTER THE EXHAUSTION OF THE DEDUCTIBLE, AND THE INSURER SHALL NOT BE LIABLE FOR ANY CLAIM EXPENSES OR DAMAGES AFTER THE EXHAUSTION OF THE LIMITS OF INSURANCE. PLEASE REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.**

- II. The section entitled **COVERAGE** is amended as follows:

- A. The subsection entitled **INSURING AGREEMENTS**, the insuring agreements entitled **Professional Liability** and **Pollution Incident Liability**, the phrase "the Insurer will pay all amounts in excess of the deductible up to the limit of liability" is deleted in its entirety and replaced with the following:

"The Insurer will pay on behalf of the **Insured** all amounts in excess of the deductible up to the limit of liability".

- B. The subsection entitled **DEFENSE AND SETTLEMENT** is deleted in its entirety and replaced as follows:

1. The Insurer has the right and duty to defend any **claim** against the **Insured** seeking amounts that are payable under the terms of this Policy, even if any of the allegations of the **claim** are groundless, false or fraudulent. The Insurer is not obligated to defend any **claim** or pay any amounts after the applicable limit of liability has been exhausted.

2. The first **Named Insured** shall have the option to:

- a. select the defense attorney or consent to the Insurer's choice of defense attorney, which consent shall not be unreasonably withheld;
- b. participate in and assist in the direction of, the defense of any **claim**; and
- c. consent to any settlement, which consent shall not be unreasonably withheld.

3. Limitation on Insurer's Duty to Defend

If the Insurer concludes that the limit of liability applicable to a **claim** may become exhausted prior to the conclusion of such **claim**, the Insurer will notify the **Insured**, in writing, to that effect.

When the limit of liability applicable to a **claim** has actually been exhausted prior to the conclusion



of the **claim**, the Insurer will notify the **Insured**, in writing, as soon as practicable, that such limit of liability has been exhausted and that the Insurer's duty to defend such **claim**, and any other affected **claim**, has ended.

The Insurer will initiate, and cooperate in, the transfer of control to the **Insured**, of any **claims** which were subject to that limit of liability and which were reported to the Insurer prior to the exhaustion of such limit of liability. The **Insured** must cooperate in the transfer of such **claims**.

The Insurer agrees to take the necessary steps as it deems appropriate to avoid a default in, or continue the defense of, such **claims** until such transfer has been completed, provided that the **Insured** is cooperating in completing such transfer.

The **Insured** must reimburse the Insurer for expenses the Insurer incurs in taking those steps the Insurer deems appropriate to avoid a default in, or continuing the defense of, any **claim**.

The Insurer will not take any action with respect to any **claim** that would have been subject to such limit of liability, had it not been exhausted, if the **claim** is reported to the Insurer after that limit of liability has been exhausted.

The exhaustion of any limit of liability by payment of any **claim**, and the resulting end of the Insurer's duty to defend, will not be affected by the Insurer's failure to comply with any of the terms and conditions of this provision.

**III. The section entitled SUPPLEMENTARY PAYMENTS is amended to add the following language at the end:**

This SUPPLEMENTARY PAYMENTS section does not apply to indemnification of any penalties or other similar monetary amounts that the **Insured** may become obligated for as the result of such proceedings; nor does it apply to **claims** of entitlement to non-employment related benefits, provided either directly or indirectly, from any government, governmental agency or political subdivision pursuant to any entitlement program.

**IV. The section entitled DEFINITIONS is amended to add the following definitions:**

**Claims made relationship** means the period of time beginning with the effective date of the first claims made policy issued by the Insurer to the **Insured** and ending with the date of termination, cancellation or expiration of the last consecutive claims made policy issued by the Insurer to the **Insured**, where there has been no gap in coverage. **Claims made relationship** does not include any applicable **extended reporting periods**.

**Termination of coverage** means, whether made by the Insurer or the **Named Insured** at any time:

1. cancellation or non-renewal of the Policy; or
2. decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the **Insured** during the **policy term**.

**V. The section entitled EXCLUSIONS is amended to delete the exclusion entitled "L. Intentional Acts" and replaced it with the following:**

**Fraudulent Acts**

arising out of any actual or alleged dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing by an **Insured** except that the Insurer shall provide the **Insured** with a defense of such **claim** unless or until the dishonest, fraudulent, criminal, malicious act or omission or intentional wrongdoing has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of the Insurer's rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against any **Insured**.

**VI. The section entitled CONDITIONS is amended as follows:**

- A. the condition entitled "the Insured's Duties if there is a claim" amended as follows:**



1. Paragraph 1. Is deleted in its entirety and replaced with the following:

promptly notify the Insurer or its licensed agent in writing. This written notice must be given to the Insurer or its licensed agent as soon as practicable. 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. Notice to the Insurer must be sent to the attention of either of the following:

- a. CNA – Claim Reporting  
P.O. Box 8317  
Chicago, IL 60680-8317  
fax: 866-773-7504  
email:
- b. Attn: AE Claims  
Victor Insurance Managers LLC  
AE Professional Liability Claims  
7700 Wisconsin Avenue, Suite 400  
Bethesda, Maryland 20814  
fax: 301-951-5444  
[designclaims.us@victorinsurance.com](mailto:designclaims.us@victorinsurance.com)

2. The paragraph beginning “After the **Insured** reports a **circumstance** or a **claim** is made” is deleted and replaced as follows:

After the **Insured** reports a **circumstance** or a **claim** is made and the **Insured** has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the **Insured** shall only do so with the Insurer’s prior written consent.

The failure to give any written notice required by this Policy within the time prescribed herein shall not invalidate coverage for any **claim** made if it can be shown that it was not reasonably possible to give such notice within the prescribed time and if notice was given as soon as was reasonably possible.

With respect to a **claim** arising out of the death or personal injury of any person, if the Insurer disclaims liability or denies coverage based upon the **Insured’s** failure to provide timely notice, then the injured person or other claimant may maintain an action directly against the Insurer, in which the sole question is the Insurer’s disclaimer or denial based on the failure to provide timely notice, unless within sixty (60) days following such disclaimer or denial, the Insurer or the **Insured**:

- i. initiates an action to declare the rights of the parties under the Policy; and
- ii. names the injured person or other claimant as a party to the action.

- B. The condition entitled “the **Insured’s** Rights and Duties in the Event of a **Circumstance**,” the words ‘and the **Insured** gives the Insurer written notice” are deleted in their entirety and amended to read:

“and the **Insured** gives the Insurer or its licensed agent written notice.”

- C. The condition entitled **EXAMINATION AND AUDIT** is deleted in its entirety and replaced with the following:

#### Examination and Audit

The **Insured** agrees to allow the Insurer to examine and audit the **Insured’s** financial books and records that relate to this insurance. The Insurer may do this within one hundred and eighty (180) days after expiration of this Policy. But the audit may be waived if the total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1500. The Insurer shall, as soon as practicable following such audit, refund or credit the **Insured’s** account for any return premium due the **Insured**, or bill and make a good faith effort to collect any additional premium due the Insurer, as a result of such audit.



If the **Insured** fails to cooperate with the Insurer in its attempt to conduct such audit, including the **Insured's** failure to return any questionnaires or self-audit worksheets, the Insurer shall have the right to non-renew the **Insured's** Policy upon completion of the current **policy term**, in accordance with the provisions of Section 3426 of the New York Insurance Law, due to the Insurer's inability to establish the **Insured's** proper premium.

- D. The condition entitled Legal Action Limitation, paragraph 1. is deleted in its entirety and replaced with the following:
1. The **Insured** agrees not to bring any legal action against the Insurer concerning this Policy unless the **Insured** has fully complied with all the provisions of this Policy and until the amount of the **Insured's** obligation to pay has been determined either by judgement against the Insured, or by written agreement of the **Insured**, the claimant, and the Insurer.

- E. The condition entitled Other Insurance is deleted in its entirety and replaced as follows:

Other Insurance

If there is other valid and collectible insurance, including but not limited to project specific insurance, that applies to a **claim** covered by this Policy, the other valid and collectible insurance must pay first, and this Policy is excess over the other insurance. This Policy applies to the amount of the **claim** that exceeds the available limit of liability and any deductibles or retention amounts of the other valid and collectible insurance. Provided, however, that for liability assumed by the **Named Insured** pursuant to the definition of **Insured**, subparagraph 4., this insurance is primary and non-contributory.

- F. The condition entitled Cancellation/Non-Renewal is deleted in its entirety and replaced with the following:

Cancellation/Non-Renewal/Conditional Non-Renewal

1. Cancellation

- a. This Policy may be canceled by the **Named Insured** by surrendering it to the Insurer or any of its authorized agents. The **Named Insured** may also cancel this Policy by written notice to the Insurer or the Insurer's licensed agent stating at what future date cancellation is to be effective.
- b. If this Policy has been in effect for sixty (60) days or less, this Policy may be canceled by the Insurer by mailing or delivering to the **Named Insured** written notice stating the reason for cancellation at the mailing address shown on the Declarations, and to its authorized agent or broker at least:
  - i. twenty (20) days before the effective date of cancellation if this Policy is canceled for any reason not included in paragraph ii. below;
  - ii. fifteen (15) days before the effective date of cancellation if this Policy is canceled for any of the following reasons:
    - (a) non-payment of premium provided; however, a notice of cancellation on this ground shall inform the **Insured** of the amount due;
    - (b) conviction of a crime arising out of acts increasing the hazard insured against;
    - (c) any discovery of fraud or material misrepresentation in the obtaining of this Policy or in the presentation of a **claim**;
    - (d) after issuance of this Policy or after the last renewal date, discovery of an act or omission, or a violation of any Policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current **policy term**;
    - (e) material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of this Policy, which causes the risk of loss to be





substantially and materially increased beyond that contemplated at the time this Policy was issued or last renewed;

- (f) a determination by the New York State Superintendent of Insurance that continuation of the present premium volume of the Insurer would jeopardize the Insurer's solvency or be hazardous to the interest of the Insurer's Policyholders, creditors or the public; or
  - (g) a determination by such Superintendent that the continuation of this Policy would violate, or would place the Insurer in violation of, any provision of the New York Insurance Code,
- c. If this Policy has been in effect for more than sixty (60) days, or if this Policy is a renewal or continuation of a Policy issued by the Insurer, this Policy may be canceled by the Insurer only for any reasons listed in paragraph **b.2.** above provided a written notice stating the reason for cancellation is mailed or delivered to the **Named Insured** at the address shown in the Declarations, and its authorized agent or broker, at least fifteen (15) days before the effective date of cancellation.
  - d. Notice of cancellation will state the effective date of cancellation. The **policy term** will end on this date. If notice is mailed, proof of mailing will be sufficient proof of notice.
  - e. If the **Named Insured** cancels, earned premium will be computed in accordance with the customary short rate table and procedure. If the Insurer cancels, earned premium shall be computed pro rata. However, when the premium is advanced under a premium finance agreement, the cancellation refund will be pro rata. Under such financed policies, the Insurer will be entitled to retain a minimum earned premium of 10% of the total Policy premium or \$60, whichever is greater. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.
  - f. If one of the reasons for cancellation set forth in paragraph **b.ii.** exists, the Insurer may cancel this entire Policy, even if the reason for cancellation pertains only to a new coverage or endorsement initially effective subsequent to the original issuance of this Policy.
2. Non-Renewal/Conditional Non-Renewal
- a. If the Insurer elects not to renew this Policy, the Insurer shall send notice as provided in paragraph **c.** below along with the reason for nonrenewal.
  - b. If the Insurer conditions renewal of this Policy upon:
    - i. change of limits;
    - ii. change in type of coverage;
    - iii. reduction of coverage;
    - iv. increased deductible;
    - v. addition of exclusion; or
    - vi. increased premiums in excess of 10%, exclusive of any premium increased due to and commensurate with insured value added or increased exposure units; or as a result of experience rating, loss rating, retrospective rating or audit;the Insurer shall send notice as provided in paragraph **c.ii.** below.
  - c. Notice of nonrenewal and conditional renewal will be provided as follows:
    - i. If the Insurer decides not to renew this Policy or to conditionally renew this Policy as provided in paragraphs **a.** and **b.** above, the Insurer shall mail or deliver written notice to the **Named Insured** at least sixty (60) days, but not more than one hundred twenty (120) days,



before the expiration date or, if this is a continuous Policy, the anniversary date.

- ii. Notice will be mailed or delivered to the **Named Insured** at the address shown in the Declarations and its authorized agent or broker. If notice is mailed, proof of mailing will be sufficient proof of notice.
- iii. The Insurer will not send the **Named Insured** notice of non-renewal or conditional renewal if the **Named Insured** or its authorized agent or broker or another insurer of the **Named Insured** mails or delivers notice that this Policy has been replaced or no longer desired.
- d. If the Insurer violates any of the provisions of this subsection by sending the **Named Insured** an incomplete or late conditional notice:
  - i. Coverage will remain in effect at the same terms and conditions of this Policy at the lower of the current rates or the prior period's rates until sixty (60) days after such notice is mailed or delivered, unless the **Named Insured**, during this sixty (60) day period, has replaced the coverage or elects to cancel.
  - ii. On or after the expiration date of this Policy, coverage will remain in effect at the same terms and conditions of this Policy for another **policy term**, at the lower of the current rates or the prior period's rates, unless the **Named Insured**, during the additional **policy term**, has replaced the coverage or elects to cancel.
- G. The condition entitled Extended Reporting Periods is deleted in its entirety and is replaced with the following:

Extended Reporting Periods

1. Automatic **extended reporting period**

Upon **termination of coverage** of this Policy, the Insurer will provide an automatic, non-cancelable **extended reporting period** starting at the termination of the **policy term**. This automatic **extended reporting period** will terminate after sixty (60) days.

2. Optional **extended reporting period**

a. Upon **termination of coverage** of this Policy:

- i. the first **Named Insured** shall have the right to purchase a non-cancelable optional **extended reporting period**. Such optional **extended reporting period** coverage shall apply only in regard to the coverage terminated, and shall be made available on the same terms and conditions as those specified in this Policy.
  - ii. the Insurer will advise the first **Named Insured** in writing of the availability of, the premium for, and the importance of purchasing the optional **extended reporting period** coverage. This notice will be sent within thirty (30) days after **termination of coverage**. The Insurer is not required to provide such advice if the **termination of coverage** is due to non-payment of premium or self-insured retention due to the Insurer for coverage during the **claims made relationship** or fraud.
  - iii. any return premium due the first **Named Insured** shall be credited toward the premium for the optional **extended reporting period** coverage, if the first **Named Insured** elects such coverage; or
  - iv. where money is due to the Insurer from unpaid premium or self-insured retentions due to the Insurer for coverage during the **claims made relationship**, any monies received by the Insurer as payment for the **extended reporting period** coverage shall first be applied to satisfy such unpaid premium or self-insured retention.
- b. If purchased, the first sixty (60) days of the optional **extended reporting period** run concurrently with the sixty (60) days of the automatic **extended reporting period**.



- c. The additional premium for the optional **extended reporting period** shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the **policy term** and shall be for one (1) year at 100% of the **policy term** premium divided by the total number of **policy years** in the **policy term**; three (3) years at 190% of the **policy term** premium divided by the total number of **policy years** in the **policy term**; and five (5) years at 250% of the **policy term** premium divided by the total number of **policy years** in the **policy term**.
  - d. There is no right to an optional **extended reporting period** if:
    - i. the Insurer does not receive written notice of the **Named Insured's** election to purchase the optional **extended reporting period** and full payment of the premium for such optional **extended reporting period** within the greater of:
      - (a) sixty (60) days from the effective date of **termination of coverage**; or
      - (b) thirty (30) days from the date of mailing or delivery of any notice required by the terms of paragraph 2.a.ii. above; or
    - ii. the **claims made relationship** has been less than one year and the Policy has been terminated for fraud or non-payment of premium or self-insured retentions due to the Insurer for coverage during the **claims made relationship**.
3. Death or disability **extended reporting period**
- a. If an **Insured** dies or becomes **totally and permanently disabled** during the **policy term**, then, upon the latter of the expiration of: the **policy term**; any renewal or successive renewal of this Policy; or any automatic or optional **extended reporting period**, such **Insured** shall be provided with a death or disability **extended reporting period**, as provided below.
    - i. In the event of death, such **Insured's** estate, heirs, executors or administrators must, within sixty (60) days of the expiration of the **policy term**, provide the Insurer with written proof of the date of death. This **extended reporting period** is provided to such **Insured's** estate, heirs, executors and administrators.
    - ii. If such **Insured** becomes **totally and permanently disabled**, such **Insured** or such **Insured's** legal guardian must, within sixty (60) days of the expiration of the **policy term**, provide the Insurer with written proof that such **Insured** is **totally and permanently disabled**, including the date the disability commenced, certified by such **Insured's** physician. The Insurer retains the right to contest the certification made by such **Insured's** physician, and it is a condition precedent to this coverage that such **Insured** agrees to submit to medical examinations by any physician designated by the Insurer at the Insurer's expense. This **extended reporting period** is provided until such **Insured** shall no longer be **totally or permanently disabled** or until such **Insured's** death, in which case subparagraph i. hereof shall apply.
  - b. No additional premium will be charged for any death or disability **extended reporting period**.
4. Non-practicing **extended reporting period**
- a. If, during the **policy term**, an **Insured** retires from, or otherwise voluntarily ceases, permanently and totally, such **Insured's** practice as an architect, engineer or any other profession specifically listed in the definition of **professional services**, and has been continuously insured by the Insurer for at least ten (10) consecutive years, then such **Insured** shall have the right to purchase a non-practicing **extended reporting period** commencing upon the latter of the expiration of: the **policy term**; any renewal or successive renewal of this Policy; or any automatic or optional **extended reporting period**.
  - b. The additional premium for the non-practicing **extended reporting period** shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the **policy term** and shall be for ten (10) years at 250% of the **policy term** premium divided by the total number of **policy years** in the **policy term**.



- c. The **Insured** must provide the Insurer with written notice of such **Insured's** election to purchase the non-practicing **extended reporting period** and pay the full premium for such period within sixty (60) days after such **Insured's** date of retirement or sixty (60) days after the end of the **policy term**, whichever is earlier.

As used herein, the **Insured's** "practice as an architect, engineer or any other profession specifically listed in the definition of **professional services**" means such **Insured's** practice of any such profession for a fee, whether as a sole practitioner or as a partner, officer, director, member, stockholder or employee. The **Insured's** "practice as an architect, engineer or any other profession specifically listed in the definition of **professional services**" does not include any pro bono services performed by the **Insured**.

## 5. Extended reporting periods limits of liability

### a. Automatic and optional **extended reporting periods** limits of liability

- i. The Insurer's liability for all **claims** reported during the automatic **extended reporting period** shall be part of and not in addition to the remaining Limits of Liability for the final **policy year**.
- ii. If the **claims made relationship** has continued for more than three (3) years, the Insurer's liability for all **claims** reported during the optional **extended reporting period** shall be reinstated to the Limits of Liability for the final **policy year**.
- iii. If the **claims made relationship** has continued for less than three (3) years, the Insurer's liability for all **claims** reported during the optional **extended reporting period** shall be equal to the greater of:
  - (1) the amount remaining in the final **policy year's** limit of liability; or
  - (2) fifty percent (50%) of the final **policy year's** limit of liability.

### b. Separate death or disability and non-practicing **extended reporting period** limits of liability.

#### i. limit of liability - each **claim**

Subject to paragraph ii. below, the Insurer's limit of liability for each **claim** first made against the **Insured**, and reported to the Insurer during the death or disability **extended reporting period** or non-practicing **extended reporting period**, shall not exceed the amount shown on the Declarations as the each **claim** death or disability and non-practicing **extended reporting period** limit of liability.

#### ii. limit of liability - in the aggregate

The Insurer's limit of liability for all **claims** first made against the **Insured**, and reported to the Insurer during the death or disability **extended reporting period** or non-practicing **extended reporting period**, shall not exceed the amount shown on the Declarations as the aggregate death or disability and non-practicing **extended reporting period** limit of liability.

## 6. Elimination of right to death or disability and non-practicing **extended reporting period**

There is no right to any death or disability and non-practicing **extended reporting period** if the Insurer cancels or refuses to renew this Policy due to:

- a. non-payment of amounts due the Insurer; or
- b. non-compliance by the **Insured** with any of the terms and conditions of this Policy; or
- c. any misrepresentation or omission in the application for this Policy.

## 7. Extended reporting period limitations

No **extended reporting period** shall apply to:



- a. any **claim** or proceedings pending at the inception date of such **extended reporting period**;
- b. any paid **claim**; or
- c. **claims** that are covered under any subsequent insurance purchased by the **Insured**, or that would be covered but for exhaustion of the Limits of Liability applicable to such **claims**.

**8. Extended reporting period not a new policy**

It is understood and agreed that any **extended reporting period** shall not be construed to be a new policy and any **claim** submitted during such period shall otherwise be governed by this Policy.

**9. Insured's right to automatic or optional extended reporting period in name of first Named Insured**

If the first **Named Insured** has been placed in receivership, liquidation or bankruptcy or permanently ceases operations, then any **Insured** has the right to automatic or optional **extended reporting period** coverage in the name of the first **Named Insured** for the benefit of all who qualify as an **Insured**. The request for such **extended reporting period** coverage must be made within one hundred and twenty (120) days of the **termination of coverage**.

**H. The following condition is added:**

**Bankruptcy/Insolvency**

The insolvency or bankruptcy of the first **Named Insured**, or the insolvency of its estate, shall not release the Insurer from the payment of damages for injury sustained or loss occasioned during the life of and within the coverage of 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 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 unless another expiration date is shown below.





Policy No: AEH591888058  
Endorsement No: 3  
Effective Date: 04/21/2024

**NOTICE ENDORSEMENT -  
CANCELLATION OR NON-RENEWAL**

We agree with **you** that **your** Policy is amended to include the following additional provisions:

1. **Your** Policy will not be:

☒ Cancelled by us until we provide at least:

10 days prior written notice if we cancel **your** Policy for non-payment of Premium;

\_\_\_\_\_ days prior written notice if we cancel **your** Policy for the following reasons:

\_\_\_\_\_

30 days prior written notice if we cancel **your** Policy for any other reason not specifically addressed above to the person or entity named in 2. below.

☐ Non-renewed by us until at least \_\_\_\_\_ days prior written notice is given to the person or entity named in 2. below.

2. Person or Entity:

ALPHA PLATFORMS  
2351 East 26th Street  
Attn: Insurance Compliance  
Brooklyn, NY 11229

All other terms and conditions of the Policy remain unchanged.

---

Countersigned by Authorized Representative



Policy No: AEH591888058  
Endorsement No: 3  
Effective Date: 04/21/2024

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 and expires concurrently with said Policy unless another effective date is shown below.

By Authorized Representative \_\_\_\_\_  
(No signature is required if issued with the Policy or if it is effective on the Policy Effective Date)

Countersigned by Authorized Representative



NOTICE ENDORSEMENT - CANCELLATION OR NON-RENEWAL

It is understood and agreed that the Section of the Policy entitled **CONDITIONS**, the condition entitled Cancellation/Non-Renewal is amended by the addition of the following:

Notwithstanding anything to the contrary in the Policy, this Policy will not be:

- ☒ 1. cancelled by the Insurer until the Insurer provides at least:
- a. 10 days prior written notice if the Insurer cancels the Policy for non-payment of Premium;
  - b. \_\_\_\_ days prior written notice if the Insurer cancels the Policy for the following reasons:  
\_\_\_\_\_
  - c. 30 days prior written notice if the Insurer cancels the Policy for any other reason not specifically addressed above;
- to the person or entity named below;
- ☐ 2. non-renewed by the Insurer until at least \_\_\_\_ days prior written notice is given to the person or entity named below.

Person or Entity:

Livingston Management Services LLC  
225 West 35th Street  
New York, NY 10001

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 unless another expiration date is shown below.