



## NEW YORK - ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY DECLARATIONS

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

THIS IS A CLAIMS MADE INSURANCE POLICY. PLEASE READ IT CAREFULLY.

COMPANY: St. Paul Fire and Marine Insurance Company

POLICY NUMBER: QP03800765 ✓

PRODUCER: PROSURANCE REDEKER GROUP

RENEWAL OF: QP03800765

THIS IS A CLAIMS MADE POLICY. THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT APPLIES AND SUBSEQUENT TO ANY RETROACTIVE DATE. CLAIM EXPENSES ARE WITHIN AND REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY.

Item 1. NAMED INSURED: WM GROUP ENGINEERS PC ✓

Item 2. ADDRESS:

370 SEVENTH AVENUE  
SUITE 701  
NEW YORK NY 10001 ✓

Item 3. POLICY PERIOD:

FROM 07/17/2007 TO 07/17/2008 ✓  
12:01 A.M. Standard Time at the address of the **Named Insured** as stated herein.

Item 4. LIMITS OF LIABILITY Inclusive of claim expenses:

\$3,000,000 Each Claim

\$3,000,000 Each Policy Period Aggregate

Item 5. DEDUCTIBLE Inclusive of claim expenses:

\$25,000 Each Claim

\$75,000 Annual Aggregate

Item 6. PREMIUM:



---

Item 7. **RETROACTIVE DATE** if applicable: UNLIMITED

*Full*

---

Item 8. **KNOWLEDGE DATE:** 07/17/2003

---

Item 9. **NOTICES TO BE SENT TO:**

Report A Claim

All Other Notices

Refer to NP060 - How To Report Losses,  
Claims, or Potential Claims To Us

St. Paul Fire and Marine Insurance Co.  
Professional Liability Department  
111 Schilling Road  
Hunt Valley, MD 21031

---

Item 10. **ENDORSEMENTS ATTACHED AT POLICY EFFECTIVE DATE:**

See attached Policy Forms List.

(FORM # 40705)

2-14054 Engineers Professional / Errors & Omissions

---

Item 11. **PREMIUM FOR EXTENDED REPORTING PERIOD:**

One Year: 100% of Named Insured's last annual premium

Three Year: 200% of Named Insured's last annual premium

---

Date: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative

*Brian MacLean*  
President

*David D. Dunning*  
Secretary



NEW YORK - ARCHITECTS AND ENGINEERS  
PROFESSIONAL LIABILITY POLICY

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

THIS IS A CLAIMS MADE POLICY. THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT APPLIES AND SUBSEQUENT TO ANY RETROACTIVE DATE. CLAIM EXPENSES ARE INCLUDED WITHIN AND REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY.

Words and phrases that appear in **bold** print have special meanings that are defined in Section III., **DEFINITIONS**.

I. **INSURING AGREEMENTS**

- A. The Company will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claims expenses** as a result of a **wrongful act** in the performance of **professional services** anywhere in the world, provided that:
1. The **claim** arising out of a **wrongful act** must first be made against the **Insured** during the **policy period** or any applicable **extended reporting period**. A **claim** is considered first made when the Company receives notice of the **claim** or when the **Insured** reports a circumstance in accordance with Section VI.C., The Insured's Rights and Duties in the Event of a Circumstance;
  2. The **wrongful act** occurred on or after the Retroactive Date in Item 7. in the Declarations; and
  3. No officer, director, principal, partner, or insurance manager, as of the Knowledge Date in Item 8. in the Declarations, had a basis to believe that an act or omission might reasonably be expected to be the basis of a **claim**.
- B. The Company has the right and duty to defend any **claim** against the **Insured** even if any of the allegations are groundless, false, or fraudulent. Defense counsel may be designated by the Company, subject to the **Insured's** consent to the Company's choice of defense counsel, which consent shall not be unreasonably withheld. At the Company's option, the **Insured** may select defense counsel, subject to the Company's written consent and subject to the Company's guidelines. The payment of **claim expenses** reduces the applicable limit of liability. The Company is not obligated to defend, or continue to defend, any suit or pay any **damages** or **claim expenses**, or any combination thereof, after the applicable limit of liability has been exhausted by such payments.
- The **Insured** shall have the right to participate in, and assist in the direction of, the defense to any **claim**.
- C. The Company will not settle any **claim** without the **Named Insured's** written consent, such consent not to be unreasonably withheld.
- D. The Company will not advance the Retroactive Date during the **claims made relationship** or any **extended reporting period**.

## II. SUPPLEMENTARY PAYMENTS

### A. Insured's Reimbursement

The Company will reimburse the **Insured** up to \$300 a day, subject to a maximum of \$7,500 per **claim**, for the **Insured's** actual loss of earnings for attendance, at the Company's request, at a trial, hearing, or deposition involving a **claim** against the **Insured**.

### B. Free Pre-Claim Assistance

The Company will pay for all costs or expenses the Company incurs until the date a **claim** is made as a result of investigating a circumstance reported by the **Insured** in accordance with Section VI.C., The Insured's Rights and Duties in the Event of a Circumstance.

### C. ADA, FHA, OSHA and State Licensing Board Legal Expense Reimbursement

The Company will reimburse the **Insured** up to a maximum of \$10,000 per action or related multiple actions, subject to a maximum of \$30,000 per **policy period** for all actions for legal fees and expenses incurred in responding to:

Regulatory or administrative actions brought directly against the **Insured** by a government agency under the American's With Disability Act of 1990 (ADA), the Fair Housing Act or the Occupational Safety and Health Act or;

Disciplinary hearings or administrative actions brought directly against the **Insured** before a state licensing or regulatory board,

Provided that the investigations, hearings, regulatory or administrative actions are first commenced during the **policy period** and result from the performance of the **Insured's professional services**.

- D. All payments made under this section are not subject to the deductible and are in addition to the limit of liability.

## III. DEFINITIONS

**Bodily Injury** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. **Bodily Injury** also means mental illness, mental anguish, or emotional distress, pain or suffering, or shock sustained by that person, whether or not resulting from physical injury, sickness, disease or death of any person.

**Claim** means a demand for money or services, naming the **Insured** and alleging a **wrongful act**. A **claim** also includes the service of suit or the institution of an arbitration proceeding against the **Insured**.

**Claim expenses** means:

1. Fees charged by an attorney designated by the Company or designated by the **Insured** with the Company's prior written consent;
2. All reasonable and necessary fees, costs, and expenses resulting from the investigation, adjustment, defense and appeal of a **claim**, if incurred by the designated attorney, the Company, or by the **Insured** with the Company's written consent; and
3. Premiums on appeal bonds, attachment bonds or any similar bonds however the Company is not obligated to apply for or furnish any such bond.

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

**Claims made relationship** means the period of time between the effective date of the first claims made policy between the Company and the **Named Insured** and the cancellation or nonrenewal of the last consecutive claims made policy between such parties, where there has been no gap in coverage, but does not include any period covered by **extended reporting period** coverage.

**Damages** means any compensatory sum the **Insured** is legally obligated to pay as a result of a **wrongful act** and includes judgements, awards and settlements. **Damages** do not include:

1. Fines or penalties imposed on the **Insured**;
2. Any return, withdrawal or reduction in professional fees;
3. Punitive damages except where insurable by law.

**Extended reporting period** means the period of time after the end of the **policy period** in which a **claim** resulting from a **wrongful act** that was committed prior to the end of the **policy period** may be reported to the Company and which is otherwise covered by this policy.

**Insured** means the **Named Insured** and:

1. Any past or present partner, officer, director, stockholder, employee, or member of the **Named Insured** while acting within the scope of their duties as such including any leased personnel under the **Insured's** direct supervision;
2. A retired partner, officer, director, stockholder, employee or member of the **Named Insured** while acting within the scope of their duties as a consultant for the **Named Insured**.
3. The estate, heirs, executors, administrators, assigns and legal representatives of any **Named Insured**, or any **Insureds** in 1. above, in the event of death, incapacity or bankruptcy but only to the extent such **Named Insured** or **Insured** would otherwise have been provided coverage under this policy.
4. Any entity newly formed or acquired by the **Named Insured** during the **policy period** in which the **Named Insured** has more than 50% legal or beneficial interest. However:
  - a. The Company will only provide coverage for **claims** arising out **professional services** performed on or after the date of formation or acquisition;
  - b. This coverage will expire within 90 days of such formation or acquisition or the end of the **policy period**, whichever is earlier, unless the **Named Insured** provides written details of such newly formed or acquired entity and pays the additional premium, if any.
5. Any joint venture entered into by the **Insured** but only with respect to the **Insured's** legal liability arising out of its participation in a joint venture. **Insured** does not include the joint venture itself or any other entity that is part of the joint venture.

**Mediation** means the nonbinding intervention of a neutral third party.

**Named Insured** means the persons or entities specified in Item 1. in the Declarations.

**Personal injury** means injury arising out of one or more of the following:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. Wrongful eviction from, wrongful entry into or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies.
4. The publication or utterance of a libel or slander or other defamatory or disparaging statement or material, or a publication or utterance in violation of a persons right of privacy, including publications or utterances in the course of, which arise out of, result from or relate to advertising, broadcasting or telecasting activities conducted by or on behalf of any **Insured**;

**Policy period** means the period of time from the effective date shown in Item 3. in the Declarations to the earliest of the termination, expiration or cancellation of the policy.

**Professional services** means those services that the **Insured** is legally qualified to perform for others in the **Insured's** capacity as an architect, engineer, land surveyor, landscape architect, construction manager, scientist, technical consultant or as defined by endorsement to the policy.

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

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

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

1. Cancellation or nonrenewal of the policy;
2. Decrease in limits, reduction in coverage, increased deductible or self-insured retention, new exclusion, or any other change in coverage less favorable to the **Insured**.

**Wrongful act** means an act, error, or omission in the performance of **professional services** for others by the **Insured** or by any entity or person for whom the **Insured** is legally liable.

#### IV. EXCLUSIONS

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

- A. Any dishonest, fraudulent, intentionally wrongful, criminal or malicious act or omission committed by or at the direction of the **Insured**.
- B. The **Insured's** alleged liability under any contract or agreement except where such liability would have existed in the absence of such contract or agreement.
- C. The cost to repair or replace faulty workmanship in any construction, erection, fabrication, installation, assembly, manufacture, or remediation performed by the **Insured** including the cost of any materials, parts, or equipment furnished in connection therewith.
- D. Express warranties or guarantees. This exclusion does not apply to any guarantee that the **Insured's professional services** conform with the generally accepted standard of care applicable to that **professional service**.

- E. The design or manufacture of any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured**. This exclusion does not apply to software sold or supplied by the **Insured** to its customer or client in connection with the **Insured's** provision of other **professional services** for that customer or client.
- F. A **claim** made against the **Insured** by any entity:
1. That the **Insured** operates, manages, or controls; or
  2. That operates, manages or wholly or partly owns the **Insured**; or
  3. In which the **Insured** has a legal or beneficial interest in excess of 49%.
- G. **Personal injury** or **bodily injury** sustained by any employee of the **Insured** arising out of employment by the **Insured**; or any obligation for which the **Insured**, or any carrier as the **Insured's** insurer must pay under any Unemployment Compensation, Workers Compensation, Disability Benefits, Employers Liability or other similar laws.
- H. Actual or alleged discrimination, humiliation, harassment or misconduct including but not limited to that which is based on an individual's race, religion, color, gender, sexual preference or orientation, national origin, age, disability, or marital status against a past or present partner, officer, director, stockholder, employee or member, or employment applicant of the **Insured**;
- I. Any **claim** brought by or on behalf of one **Insured** against another **Insured**.
- J. Nuclear reaction, radiation, or contamination within or originating from a site where a nuclear reactor is located or where nuclear material or waste is disposed.

## V. LIMITS OF LIABILITY AND DEDUCTIBLES

### A. Limits of Liability

1. Subject to paragraph 2. below, the limit of liability shown under Item 4. in the Declarations is the maximum amount the Company will pay for **damages** and **claim expenses** for each **claim** first made and reported in writing to the Company during the **policy period**.
2. The aggregate limit of liability shown under Item 4. in the Declarations is the maximum amount the Company will pay for **damages** and **claim expenses** for all **claims** first made and reported to the Company in writing during the **policy period**.
3. All **claims** constituting a **single claim** whenever made, will be considered first made during the **policy period** in which the earliest **claim** or reported circumstance was made to the Company in writing and all such **claims** or reported circumstances will be subject to the limit of liability of the **policy period** in which the earliest **claim** or reported circumstance was made to the Company in writing.
4. **Claim expenses** are subject to and included within the applicable limit of liability.

### B. Deductibles

1. The each **claim** deductible shown under Item 5. in the Declarations is the maximum deductible the **Named Insured** is obligated to pay for the sum of **damages** and **claim expenses** resulting from a **claim** or **single claim**.
2. The annual aggregate deductible shown in Item 5. in the Declarations is the maximum deductible the **Named Insured** is obligated to pay for the sum of **damages** and **claims expenses** resulting from all **claims** first made and reported in writing to the Company during each consecutive twelve (12) months of the **policy period** beginning on the effective date identified in Item 3. in the Declarations.

3. If the Company and the **Insured** agree to use **mediation** and if the Company and the **Insured** resolve any **claim** by **mediation**, the **Named Insured's** deductible obligation will be reduced by 50% subject to a maximum reduction of \$25,000. Deductible payments made prior to the application of the above credit will be reimbursed within 30 days of the resolution of the **claim**.

#### C. More than One Insured

The inclusion of more than one **Insured** in any **claim** will not increase the applicable limit of liability.

### VI. CONDITIONS

#### A. First Named Insured As Sole Agent

The first **Named Insured** in Item 1. in the Declarations will be the sole agent and will act on behalf of all of the **Insured's** for the purpose of giving any notices, any amendments to or cancellation of the policy, for the completing of any applications and the making of any statements and representations, for the payment of premium and the receipt of any return premium that may become due under this policy, for the payment of the deductible and the exercising or declining to exercise any right under this policy including the purchase of any **extended reporting period**.

#### B. Insured's Duties in the Event of a Claim

In the event of a **claim** the **Insured** must do the following:

1. Notify the Company in writing as soon as reasonably possible during the **policy period**, or any applicable **extended reporting period** or within 60 days after the end of the **policy period**. Notice should be sent to the Company at the address stated in Item 9. in the Declarations.
2. Specify the names and addresses of the persons making a **claim** against the **Insured** and provide information describing the time, place, and nature of the **claim**;
3. Promptly forward to the Company all documents which the **Insured** receives in connection with the **claim**;
4. Fully cooperate with the Company or the Company's designee in the making of settlement, the conduct of suits or other proceedings and enforcing any right of contribution or indemnity against another who may be liable to the **Insured**. When requested, the **Insured** will 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, assume or admit liability or incur any expense without the Company's prior written consent;
6. Obtain the Company's written consent prior to exercising any right the **Insured** may have under a **professional services** contract to reject or demand arbitration or other alternative dispute resolution process.

#### C. The Insured's Rights And Duties In The Event Of A Circumstance

1. If, during the **policy period**, the **Insured** becomes aware of a circumstance that may reasonably be expected to be the basis of a **claim** and if the **Insured**, during the **policy period**, provides the Company with written notice containing:
  - a. The nature of any possible injury or **damages**;
  - b. What happened and the **professional services** the **Insured** provided;

- c. How the **Insured** first became aware of such circumstance; and
- d. The dates and entities involved;

then any **claim** that is subsequently made against the **Insured** arising out of such circumstance will be deemed to have been made on the date the Company received written notice of the circumstance.

2. The **Insured** will not, except solely at the **Insured's** own cost, voluntarily make any payment, assume or admit liability or incur any expense without the Company's prior written consent.

#### D. Innocent Insureds

If coverage under this policy would not apply because of Exclusion A. or because of noncompliance with Condition B., such Exclusion or Condition will not apply to any **Insured** who did not commit, participate in, or have knowledge of any of the acts described in Exclusion A. or whose conduct did not violate Condition B.

#### E. Subrogation

In the event of any payment of any **claim** under the policy, the Company will be subrogated in the amount of such payment to all of the **Insured's** rights of recovery against any person or organization. The **Insured** must do everything reasonably necessary to secure these rights and must do nothing after a **claim** is made to jeopardize them. The Company hereby waives subrogation rights against the **Insured's** client to the extent that the **Insured** had, prior to the **claim** or circumstance, a written agreement to waive such rights.

#### F. Premium

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

#### G. Examination and Audit

If the Company requests, the **Insured** agrees to allow the Company to examine and audit the **Insured's** financial books and records that relate to this insurance. The Company may do this at any time during the **policy period** or up to three years after the end of the **policy period**.

#### H. Action Against The Company

1. No action may be brought against the Company concerning this policy unless, as a condition precedent to such action, the **Insured** has fully complied with all the terms of this policy, and the amount of the **Insured's** obligation to pay has been decided.
2. Such amount can be decided either by final judgment against the **Insured**, or by written agreement among the **Insured**, the Company, and the claimant. Such action must be brought against the Company in two years, or during any applicable statute of limitations for the bringing of such action, whichever is longer.
3. No person or entity has any right under this policy to include the Company in any action against the **Insured** to determine the **Insured's** liability, nor will the Company be brought into such action by the **Insured** or the **Insured's** representative.
4. If a judgment entered against an **Insured** remains unsatisfied after the expiration of 30 days from the service of notice of entry of the judgment upon the attorney for the **Insured** and upon the Company, then an action may, except during a stay or limited stay of execution against the **Insured** on such judgment, be maintained

against the Company, under the terms of the policy for the amount of such judgment to the extent of the insurance provided by this policy.

#### **I. Bankruptcy or Insolvency**

The bankruptcy or insolvency of the **Insured** or the **Insured's** estate will not relieve the Company of any of its obligations under this policy.

#### **J. Changes**

Notice to any agent of the Company or knowledge possessed by any such agent or any other person will not act as a waiver or change in any part of this policy. It also will not prevent the Company from asserting any rights under the provisions of this policy. None of the provisions of this policy will be waived, changed, or modified except by written endorsement issued by the Company to form a part of this policy. Notwithstanding the foregoing, notice of **claim** given to any licensed agent of the Company in New York State, with particulars sufficient to identify the first **Named Insured**, shall be deemed notice to the Company.

#### **K. Assignment**

The interests of the **Insured** under this policy may not be assigned without the Company's express written consent.

#### **L. Other Insurance**

This policy is excess over any valid and collectible insurance, self insurance, or indemnification agreement available to the **Insured** whether such other insurance is stated to be primary, contributory, excess, contingent, self-insured or otherwise unless such other insurance is written specifically excess of this policy by reference in such other policy to the policy number in this policy's Declarations. When such other insurance available to the **Insured** has been issued for a specific project or projects, this policy will not respond until the limit of liability of such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent, self-insured or otherwise, has been exhausted.

#### **M. Cancellation**

1. This policy may be canceled by the first **Named Insured** by giving the Company written notice stating when, thereafter, such cancellation will be effective. If the first **Named Insured** cancels on any anniversary of the effective date of the **policy period** stated in Item 3. in the Declarations, the earned premium will be calculated on a pro rata basis. If the first **Named Insured** cancels on any other date, the unearned premium will be calculated on a standard short rate basis for the year of cancellation and on a pro rata basis for any subsequent year.
2. This policy may be cancelled by the Company based upon one or more of the following reasons:
  - a. Fraud or material misrepresentation; or
  - b. Nonpayment of premium.
3. The Company shall send written notice of cancellation to the first **Named Insured** at the last address known to the Company. The Company will provide written notice at least 60 days before cancellation is to be effective, except for nonpayment of premium in which case the Company will provide 15 days written notice prior to cancellation. The earned premium will be calculated on a pro rata basis.
4. Notice of cancellation will state the effective date and reason for cancellation. The **policy period** will end on that date. If notice is mailed, proof of mailing will be sufficient notice. A copy of the notice will be sent to the **Named Insured's**

authorized insurance agent or broker. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

5. The policy shall remain in full force and effect, subject to the same terms, conditions and rates, unless the Company shall mail or deliver to the first **Named Insured**, at the address shown on this policy, and to the **Named Insured's** authorized insurance agent or broker, written notice of the Company's intention
- Not to renew this policy;
  - To condition renewal upon change of limits, change in type of coverage, increased deductible or addition of exclusion, or upon increased premiums in excess of ten percent (exclusive of any premium increase generated as a result of increased exposure units, pursuant to New York Insurance Law section 3426(d), or as a result of experience rating, loss rating, retrospective rating or audit), or
  - That the policy will either not be renewed or will not be renewed upon the same terms, conditions or rates, such alternative notice shall further advise that a second notice shall be mailed or delivered at a later date indicating the Company's intention specified in a. or b. of this paragraph and that the coverage afforded by this policy shall continue on the same terms, conditions and rates as the expiring policy, until the later of the expiration date or sixty days after the second notice is mailed or delivered.

If an alternative notice is transmitted in accordance with c. of this paragraph, such alternative notice shall also advise the **Named Insured** of the availability of loss information. The Company will furnish loss information to the **Named Insured** within 20 days of receipt by the Company of a written request from the **Named Insured** for such loss information.

6. The notice specified in a., b. or c. of paragraph 5. above shall be mailed or delivered not less than 60 days prior to the policy expiration date, but not more than 120 days prior to the policy expiration date. The written notice of nonrenewal or conditional renewal shall state the reason(s) therefor, set forth the amount of any premium increase (or, where such amount cannot reasonably be determined as of the time the notice is provided, a reasonable estimate of the premium increase based upon the information available to the Company at that time), and describe in plain and concise terms the nature of any other proposed changes in conditions.
7. If the Company mails or delivers to the first **Named Insured** an alternative renewal notice pursuant to c. of paragraph 5. above, the policy shall remain in full force and effect, subject to the same terms, conditions and rates of the expiring policy, until the later of the expiration date or 60 days after the mailing or delivery of the second notice described therein, except to the extent that, prior thereto, the **Named Insured** has replaced the coverage or elects to cancel, in which event such cancellation shall be on a pro rata premium basis.
- If the Company provides a late notice pursuant to a. or b. of paragraph 5. above prior to the expiration of the **policy period**, the policy shall remain in full force and effect, subject to the same terms and conditions of the expiring policy and at the lower of the current rates or the rates used for the policy, until 60 days after notice is mailed or delivered, except to the extent that, prior thereto, the **Named Insured** has replaced the coverage or elects to cancel, in which event such cancellation shall be on a pro rata premium basis. In the event the **Named Insured** elects to renew the policy on the basis of a conditional notice pursuant to b. of paragraph 5. above, then the terms, conditions and rates of the renewal policy shall govern the policy upon expiration of the 60-day period unless such notice was provided at least 30 days prior to the expiration date of the policy, in which case the terms, conditions and rates set forth in the conditional renewal notice shall apply as of the renewal date.

- b. In the event a late notice is provided by the Company pursuant to a. or b. of paragraph 5. above after the expiration of the policy, the policy shall remain in effect on the same terms and conditions of the expiring policy for another required **policy period**, at the lower of the current rates or the expiring policy's rates, unless the **Named Insured** during the additional **policy period** has replaced the coverage or elects to cancel, in which event such cancellation shall be on a pro rata premium basis.
- c. Any extension of the **policy period** pursuant to this paragraph 6. shall not create a new aggregate limit of liability for the policy, except that the annual aggregate limit of liability of the expiring policy shall be increased in proportion to the length of the policy extension pursuant to this paragraph. In the event the **Insured** elects to accept the terms, conditions and rates of the conditional renewal notice pursuant to b. of paragraph 5. above, the limits of liability of the renewal policy shall govern as of the effective date of the renewal.

#### **N. Transfer of Duties When a Limit of Insurance is Exhausted**

- 1. If the Company concludes that, based on any **claims** which have been reported and to which this insurance may apply, the insurance afforded by this policy is likely to be exhausted by the payment of **damages** and/or **claim expenses** the Company shall provide written notice to that effect to the first **Named Insured** at the address shown on the policy.
- 2. In the event either the each **claim** limit of liability stated in the Declarations or the aggregate limit of liability stated in the Declarations has actually been exhausted by the payment of **damages** or **claim expenses**:
  - a. The Company shall notify the first **Named Insured** in writing, as soon as practicable, that:
    - i) Such a limit has actually been exhausted; and
    - ii) The Company's duty to defend **claims** and suits seeking **damages** subject to that applicable limit of liability also has ended.
  - b. The Company shall initiate, and cooperate in, the transfer of control, to any appropriate **Insured** of all **claims** and suits seeking **damages** which are subject to that limit and which are reported to the Company before that limit is exhausted. The **Insured** must cooperate in the transfer of control of said **claims** and suits.
  - c. The Company agrees to take such steps, as the Company deems appropriate, to avoid a default in, or continue the defense of, any **claims** or suits until such transfer is completed, provided the appropriate **Insured** is cooperating in completing such transfer.
  - d. The Company will take no action whatsoever with respect to any **claim** or suit seeking **damages** that would have been subject to that limit of liability, had it not been used up, if the **claim** or suit is reported to the Company after that limit has been exhausted.
  - e. The **Named Insured** and any other **Insured** involved in a suit seeking **damages** subject to the limit of liability, must arrange for the defense of such **claim** or suit within such time period as agreed to between the appropriate **Insured** and the Company. Absent any such agreement, arrangements for the defense of such **claim** or suit must be made as soon as practicable.
- 3. The **Insured** shall reimburse the Company for expenses incurred by the Company in taking those steps it deems appropriate in accordance with paragraph 2.b. above.

The duty of the **Insured** to reimburse the Company will begin on:

- a. The date on which the applicable limit of liability is exhausted, if the Company sent notice in accordance with paragraph 1. above; or
  - b. The date on which the Company sent notice in accordance with paragraph 2.a. above, if the Company did not send notice in accordance with paragraph 1. above.
4. The exhaustion of any limit of liability by the payment of judgments, settlements or **claim expenses** (if applicable), and the resulting end of the Company's duty to defend, will not be affected by the Company's failure to comply with any of the provisions of this paragraph.

## VII. EXTENDED REPORTING PERIODS

- A. If there is a **termination of coverage**, the **Insured** shall be provided a 60-day automatic **extended reporting period**, immediately following the **termination of coverage**, in which to give written notice of **claims** first made against the **Insured** during such automatic **extended reporting period**, but only in respect of any **wrongful act** committed or allegedly committed prior to the effective date of such **termination of coverage**, and subsequent to the Retroactive Date, if any.
- B. If there is a **termination of coverage**, the first **Named Insured** shall have the right, upon payment of an additional premium, to an **extended reporting period** of either:
1. One year at 100% of the expiring annual premium for this policy, or
  2. Three years at 200% of the expiring annual premium for this policy.

The **extended reporting period** will immediately follow the effective date of **termination of coverage**. The **extended reporting period** will apply to **claims** first made against the **Insured** during such optional **extended reporting period**, but only in respect of any **wrongful act** committed or allegedly committed prior to the effective date of such **termination of coverage**, and subsequent to the Retroactive Date, if any. Notwithstanding the foregoing, the **Insured** shall not be entitled to purchase the optional **Extended Reporting Period** coverage pursuant to this paragraph if the **claims made relationship** has continued for less than one year, and the policy is terminated for nonpayment of premium or for fraud.

- C. Within 30 days after the date of **termination of coverage**, the Company will advise the first **Named Insured** in writing of the automatic **extended reporting period** coverage referred to in paragraph A. above and the availability of, the premium for and the importance of purchasing the optional **extended reporting period** coverage referred to in paragraph B. above. If the policy is cancelled due to nonpayment of premium or fraud on the part of the **Insured**, the Company shall not be required to provide a premium quotation for **extended reporting period** coverage unless requested by the **Named Insured**.
- D. The first **Named Insured** shall have the greater of the following in which to submit written acceptance of the optional **extended reporting period** coverage:
1. 60 days from the effective date of termination of the policy, or
  2. 30 days from the date of mailing or delivery of the advice referred to in paragraph C. above.

Written notice of the **Named Insured's** election to purchase the optional **extended reporting period** coverage, together with the additional premium therefor, must be received by the Company within the time prescribed by this paragraph.

- E. For the purpose of determining the length of the optional **extended reporting period** in paragraph B. above, the 60-day automatic **extended reporting period** in paragraph A. above shall be included in the one-year period.

F. Where the **Named Insured's claims made relationship** has existed with the Company for at least 3 years, the limit of liability in the aggregate for the optional **extended reporting period** coverage shall be equal to one hundred percent (100%) of the limit of liability in the aggregate for this policy. Where the **Named Insured's claims made relationship** has existed with the Company for less than 3 years, the limit of liability in the aggregate for the optional **extended reporting** shall be equal to (i) the amount of coverage remaining in the policy's limit of liability in the aggregate or (ii) fifty percent (50%) of the limit of liability in the aggregate for the policy, whichever is greater. Notwithstanding the foregoing, if the **Insured** is entitled to **extended reporting period** coverage based upon Section III., DEFINITIONS, Termination of Coverage, 2., then the **extended reporting period** coverage provided shall apply only in regard to that coverage terminated.

G. If this policy has been issued to a corporation, partnership or other entity, any individual **Insured** under the policy may purchase additional **extended reporting period** coverage pursuant to paragraph B. above, provided:

1. Such entity has been placed in liquidation or bankruptcy or permanently ceases operations;
2. The entity or its designated trustee does not purchase **extended reporting period** coverage that may be available pursuant to paragraph B. above; and
3. Such individual **Insured** requests the **extended reporting period** coverage and pays the appropriate premium within 120 days of the **termination of coverage**.

The premium charge for coverage to such an individual **Insured** shall be commensurate with such coverage. The Company shall have no obligation to provide notice to any individual **Insured** of the availability of the additional **extended reporting period** coverage pursuant to this paragraph.

H. The offer of a renewal policy with an increase in premium shall not be deemed a change in coverage less favorable to the **Insured**.

I. The **extended reporting period** will not apply to any pending **claim** or proceedings; any paid **claim**; any **professional services** rendered after the effective date of the **extended reporting period**; or **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**.

#### VIII. LIBERALIZATION

If the Company adopts any revision to this form during the **policy period** that would broaden coverage without additional premium, the broadened coverage will apply to this policy at the inception date of the next anniversary, but it will not apply to **Claims** that were first made against the **Insured** prior to the effective date of such revision.

## NEW YORK - FIRST DOLLAR DEFENSE ENDORSEMENT

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

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

### **ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY POLICY**

In consideration of the premium paid, it is agreed that:

- I. Item 5. in the Declarations is amended by deleting the phrase "(inclusive of **claims expenses**)".
- II. Section V, LIMITS OF LIABILITY AND DEDUCTIBLES, B.1. and B.2. are deleted and replaced by the following:
  1. The each **claim** deductible shown under Item 5. in the Declarations is the maximum deductible the **Named Insured** is obligated to pay for **damages** resulting from a **claim** or **single claim**. The deductible will not apply to **claim expenses** arising out of a **claim** or **single claim**.
  2. The annual aggregate deductible shown under Item 5. in the Declarations is the maximum deductible the **Named Insured** is obligated to pay for **damages** resulting from all **claims** made during each consecutive twelve (12) months of the **policy period** beginning on the effective date identified in Item 3. in the Declarations.

All other provisions of this policy remain unchanged.

**THIS ENDORSEMENT MUST BE ATTACHED TO A CHANGE ENDORSEMENT WHEN ISSUED AFTER THE POLICY IS WRITTEN.**



## NEW YORK - CONTRACTOR'S POLLUTION INCIDENT LIABILITY ENDORSEMENT

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

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

This endorsement modifies insurance provided under the following:

### **ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY POLICY**

In consideration of the premium charged, the Company agrees with the **Insured** that the policy is amended as follows:

- I. Section I., INSURING AGREEMENTS, paragraph A.1., 2. and 3. is deleted and replaced in its entirety by the following:
  - A. The Company will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claims expenses** as a result of:
    1. Liability arising out of a **wrongful act** in the performance of **professional services** anywhere in the world; or
    2. Liability arising out of the **Insured's** activities, or the activities of any entity for whom the **Insured** is legally liable, causing a **pollution incident** anywhere in the world;

provided that:

  - a. The **claim** arising out of a **wrongful act** or **pollution incident** must first be made against the **Insured** and reported to the Company in writing during the **policy period** or any applicable **extended reporting period**. A **claim** is considered first made when the **Insured** receives notice of the **claim** or when the **Insured** reports a circumstance in accordance with Condition VI.C., The Insured's Rights and Duties In The Event Of A Circumstance.
  - b. The **claim** must be reported in writing to the Company during the **policy period** or within 60 days after the end of the **policy period** unless an **extended reporting period** applies.
  - c. The **wrongful act** or **pollution incident** occurred on or after the Retroactive Date in Item 7. in the Declarations, and;
  - d. No officer, director, principal, partner, or insurance manager, as of the Knowledge Date in Item 8. in the Declarations, had a basis to believe that an act or omission might reasonably be expected to be the basis of a **claim**.
- II. Section III. Definitions, **Claim**, **Damages**, **Extended reporting period**, **Single claim** and **Related wrongful acts** are deleted in their entirety and replaced by the following:

**Claim** means a demand for money or services, naming the **Insured** and alleging a **wrongful act** or **pollution incident**. A **claim** also includes the service of suit or the institution of an arbitration proceeding against the **Insured**.

**Damages** means any compensatory sum for which the **Insured** is obligated to pay as a result of a **wrongful act** or **pollution incident** and includes judgments, awards, and settlements. **Damages** do not include:

1. Fines or penalties imposed on the **Insured**;
2. Any return, withdrawal or reduction in professional fees;
3. Punitive damages except where insurable by law.

**Extended reporting period** means the period of time after the end of the **policy period** in which a **claim** resulting from a **wrongful act** or **pollution incident** that was committed prior to the end of the **policy period** may be reported to the Company and which is otherwise covered by this policy.

**Single claim** means one or more **claims** arising out of a single **wrongful act** or **pollution incident**, or out of **related wrongful acts** or **pollution incidents**.

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

III. For the purpose of this endorsement the following definitions are added to Section III. DEFINITIONS:

**Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:

1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises the **Insured** owns or rents;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a. Power cranes, shovels, loaders, diggers, or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers, or rollers;
5. Vehicles not described in 1, 2, 3, or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geo-physical exploration, lighting and well servicing equipment; or
  - b. Cherry pickers and similar devices used to raise or lower workers;
6. Vehicles not described in 1., 2., 3., 4. or 5. above maintained primarily for purposes other than the transportation of persons or cargo.

**Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, radiation, electromagnetic force, naturally occurring radioactive materials and waste. Waste includes those of an infectious, medical or pathological nature and materials to be recycled, reconditioned or reclaimed. **Pollutants** does not mean heat, smoke, vapor, soot or fumes from a **hostile fire** or explosion.

**Pollution** means the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**.

**Pollution incident** means the actual or alleged discharge, dispersal, seepage, migration, release or escape of **pollutants** into or upon the land or structures thereupon, the atmosphere or any watercourse or body of water, which results in **bodily injury, personal injury or property damage**.

**Property damage** means the following:

1. Physical injury to or destruction of tangible property including the resulting loss of use thereof.
2. Cleanup costs incurred by a third party or mandated by any governmental entity.
3. Loss of use of tangible property that has not been physically injured or destroyed.
4. Physical damage to soil, surface water, groundwater, or plant or animal life.

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

IV. Section IV. Exclusions B. is deleted and replaced by the following:

B. The liability of others the **Insured** has assumed under a contract or agreement unless the liability is caused by the following and would have attached to the **Insured** even in the absence of such contract or agreement:

1. The Insured's wrongful act; or
2. A pollution incident which resulted from the Insured's activities or the activities of any entity under subcontract to the Insured;

V. Section IV. Exclusions is amended to add the following exclusion:

The Company will not defend any **claim**, or pay under this policy for **damages or claim expenses** arising out of the following, on projects where **professional services** are performed by the **Insured** and the **Insured** is responsible for construction, erection, fabrication or remediation:

1. **Claims** resulting from **pollution** at, onto or from property or facilities which are or were at any time owned or rented by the **Insured** or by any entity in joint venture with the **Insured**;
2. The ownership, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft, or rolling stock.

This exclusion does not apply to **mobile equipment**.

VI. Section VI. Conditions B.6. and C.1.b. are deleted and replaced in their entirety by the following:

**B. Insured's Duties in the Event of a Claim**

6. Obtain the Company's written consent prior to exercising any right the **Insured** may have under a contract to reject or demand arbitration or other alternative dispute resolution process.

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

1. **b.** What happened and the **professional services** or activities the **Insured** provided or engaged in; and;

**VII.** For the purpose of this Endorsement paragraph E. of Section VII EXTENDED REPORTING PERIOD, is amended as follows:

- E.** The **Extended Reporting Period** will not apply to any pending **claim** or proceedings; any paid **claim**; any **professional services** rendered or any **pollution incident** that occurs after the effective date of the **extended reporting period**; or **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**.

All other provisions of this policy remain unchanged.

---

Countersigned by Authorized Representative

**THIS ENDORSEMENT MUST BE ATTACHED TO A CHANGE ENDORSEMENT WHEN ISSUED AFTER THE POLICY IS WRITTEN.**