

# ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY

## THIS IS A CLAIMS MADE AND REPORTED POLICY PLEASE READ CAREFULLY

In consideration of payment of the premium and deductible by the Named Insured and in reliance upon the statements in the "Insured's" application incorporated by reference, the Company agrees with the "Insured", subject to all of the terms, exclusions and conditions of this policy, as follows:

### I. INSURING AGREEMENTS

#### A. COVERAGE: CLAIMS MADE CLAUSE

The Company will pay on behalf of the "Insured" all sums in excess of the deductible that the "Insured" shall become legally obligated to pay as "damages" because of "claims" first made against the "Insured" and reported to the Company during the "policy period". This policy applies to actual or alleged negligent acts, errors or omissions arising out of professional services rendered for others as designated in Item 3. of the Declarations.

For this coverage to apply, all of the following conditions must be satisfied:

1. the negligent act, error or omission arising from professional services took place subsequent to the Retroactive Date stated in Item 7. of the Declarations;
2. the "Insured" had no knowledge prior to the effective date of this policy of such actual or alleged negligent act, error, omission or circumstance likely to give rise to a "claim";
3. the "claim" is first made against the "Insured" during the "policy period";

#### B. TERRITORY

The insurance afforded by this policy applies only to negligent acts, errors or omissions that took place and result in "damages" within the United States, its territories or possessions and Canada.

#### C. DEFENSE PROVISIONS

When a "claim" is made against the "Insured" in the United States of America, its territories or possessions and Canada, the Company has the right to appoint counsel and the duty to defend any covered "claim" against the "Insured" alleging "damage", even if such "claim" is groundless, false or fraudulent.

The Company shall not be obligated to defend or continue to defend any "claim" after the

applicable limit of the Company's liability has been exhausted by payment of "claim expenses" or "damages" or both.

#### D. SETTLEMENT PROVISIONS

The Company will not settle or compromise any "claim" without the consent of the "Insured". If, however, the "Insured" refuses to consent to a settlement or compromise recommended by the Company and elects to contest such "claim" or continue legal proceedings in connection with such "claim", then the Company's liability for the "claim" shall not exceed the amount for which the "claim" could have been so settled plus "claim expenses" incurred up to the date of such refusal subject to the applicable limit of liability under this policy.

#### E. CLAIM EXPENSES

"Claim expenses" shall be paid by the Company and such payments reduce the available limit of liability. The "Insured" must first pay any applicable deductible amounts.

### II. EXCLUSIONS

This policy does not provide coverage and the Company will not pay "claim expenses" or "damages" for:

- A. any "claim" arising from any dishonest, fraudulent, criminal, intentional or malicious act, error or omission, or those of a knowingly wrongful nature committed intentionally by or at the direction of any "Insured";
- B. any "claim" based upon or arising out of any alleged negligent act, error, omission or circumstance likely to give rise to a "claim" that an "Insured" had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to, any prior "claim" or possible "claim" or circumstance referenced in the "Insured's" application;
- C. any "claim" made by any "Insured" against any other "Insured";

- D. any "claim" based upon or arising out of discrimination by the "Insured" on the basis of race, creed, national origin, handicap, age or sex;
  - E. any "claim" based upon or arising out of professional services rendered by the Named Insured in connection with a nuclear facility;
  - F. any "claim" made against an "Insured" based upon or arising out of any "Insured's" involvement as a partner, officer, director, stockholder, employer or employee of any business enterprise not named in the Declarations;
  - G. any "claim" based upon or arising out of any "Insured's" involvement in or professional services rendered to or on behalf of any business enterprise, that wholly or partly owns the "Insured" or which to any extent controls, operates or manages the "Insured", or that is wholly or partly owned by an "Insured" or in which an "Insured" is an officer, partner or employee, or which is to any extent controlled, operated or managed by an "Insured";
  - H. any "claim" alleging the deficiency or malfunction of any product, process, technique or piece of equipment sold, manufactured or furnished by the "Insured", any subsidiary of the "Insured" or any entity which wholly or partly owns, operates or manages the "Insured" or any subsidiary of such entity, or by any person under license from the "Insured";
  - I. any "claim" for infringement of a copyright, patent or trademark;
  - J. any "claim" based upon or arising out of express warranties or guarantees;
  - K. any "claim" based upon or arising out of the "Insured's" advising, requiring, obtaining or failure to advise, require or obtain any bond, suretyship or any form of insurance;
  - L. any "claim" based upon or arising out of a project for which the assembly, construction, erection, fabrication, installation or supplying of materials was provided in whole or in part by:
    1. the "Insured";
    2. a subcontractor of the "Insured";
    3. any enterprise and/or any subsidiary of any enterprise that any "Insured" controls, manages, operates or holds ownership in or by any enterprise that controls, manages, operates or holds ownership in the Named Insured.
- This exclusion does not apply to the supplying and installation of furnishings, furniture, fixtures and equipment, wall and floor covering, and window treatments as part of interior design services and only when interior design services is described in Item 3. the Declarations;
- M. any "claim" based upon or arising out of the "Insured's" participation in any joint venture;
  - N. any "claim" based upon or arising out of liability of others assumed by any "Insured" under any contract or agreement; except this exclusion does not apply to the liability of others assumed under any written contract or agreement provided such liability is caused solely by a negligent act, error or omission of the "Insured" and arises out of the professional services as described in Item 3. of the Declarations;
  - O. any "claim" based upon or arising out of;
    1. the specification of any product, material or process containing asbestos;
    2. the failure to detect the existence of or determine the amount of asbestos in any product, material or process;
    3. professional services rendered in the abatement, replacement or removal of any product, material or process containing asbestos;
    4. "bodily injury" or "personal injury" caused or alleged to be caused in whole or in part by exposure to asbestos or a product, material or process containing asbestos.
  - P. punitive or exemplary "damages", fines or penalties;
  - Q. any "claim" for "bodily injury" or "personal injury" to:
    1. an employee of the "Insured" arising out of and in the course of employment by the "Insured";
    2. the spouse, child, parent, legal guardian, brother or sister of that employee as a consequence of (1) above.
- This exclusion applies:
- a. whether the "Insured" may be liable as an employer or in any other capacity;

- b. to any obligation to share "damages" with or repay somebody else who must pay "damages" because of the injury.
- R. any obligation for which an "Insured" or any other party must pay under any unemployment, Workers' Compensation, disability benefits, or other similar laws;
- S. any "claim" based upon or arising out of the ownership, entrustment, maintenance, operation or use, including loading and unloading by or on behalf of the "Insured" of any watercraft, automobiles, aircraft, or motor vehicles of any kind;
- T. "bodily injury" or "property damage":
1. with respect to which an "Insured" is also an "Insured" under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an "Insured" under any such policy but for its termination upon exhaustion of its limit of liability; or resulting from the hazardous properties of nuclear material and with respect to which (a) any person or any organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "Insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
  2. under any liability coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
    - a. the nuclear material (i) is at any nuclear facility owned by the "Insured" or operated by the "Insured" or on the "Insured's" behalf, or (ii) has been discharged or dispersed therefrom;
    - b. the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by the "Insured" or on the "Insured's" behalf;
    - c. the injury, sickness, disease, death, or destruction rises out of the furnishing by an "Insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to "property damage" to such nuclear facility and any property thereat.
3. As used in this exclusion:
- a. hazardous properties include radioactive, toxic or explosive properties;
  - b. nuclear material means source material, special nuclear material or by-product material;
  - c. source material, special nuclear material and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - d. spent fuel means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;
  - e. waste means any waste material (i) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, and (ii) resulting from the operation by any person or organization of a nuclear facility included within the definition of nuclear facility below;
  - f. nuclear facility means:
    - i. any nuclear reactor;
    - ii. any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging wastes;
    - iii. any equipment or device used for the processing, fabricating, or alloying of special nuclear material if at any time the total amount of such material in the custody of the "Insured" at the premises where such equipment or device is located consists of or contains more than twenty-five (25) grams of plutonium

- or uranium 233 or any combination thereof, or more than two hundred fifty (250) grams of uranium 235;
- iv. any structure, basin, excavation, premises or place prepared or used for storage or disposal of waste, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- g. nuclear reactor means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- h. with respect to injury to or destruction of property, the word injury or destruction includes all forms of radioactive contamination of property.

### III. DEFINITIONS

- A. "Bodily injury" means "bodily injury", sickness or disease sustained by a person, including death resulting from any of these at any time.
- B. "Claim" shall mean any written demand for money or services, including but not limited to, the service of suit or institution of arbitration or mediation proceedings against the "Insured".
- C. "Claim expenses" shall mean:
  - 1. fees charged by any lawyer designated by the Company;
  - 2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a "claim", if authorized by the Company. "Claim expenses" shall not include the salaries of any employee of the Company.
- D. "Damages" shall mean any amount which an "Insured" is legally obligated to pay for any "claim" to which this insurance applies and shall include judgments and settlements, provided always that "damages" shall not include the return or withdrawal of professional fees, sanctions, fines or penalties imposed by law or other matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed.
- E. "Insured" shall mean:
  - 1. the "Insured" listed in Item 1. of the Declarations;

- 2. any person who is or was a partner, officer, director, stockholder or employee of the Named Insured but only while acting in a professional capacity as described in Item 3. of the Declarations on behalf of the Named Insured;
- 3. the heirs, executors, administrators and legal representatives of each "Insured" as defined in 1. and 2. above, in the event of death, incapacity or bankruptcy but only as respects liability arising out of professional services as described in Item 3. of the Declarations rendered on behalf of the Named Insured prior to such "Insured's" death, incapacity or bankruptcy;
- 4. an organization newly acquired or formed, other than a partnership or joint venture, and over which the Named Insured maintains ownership or majority interest, will qualify as a Named Insured if there is no other applicable insurance available to that organization. If applicable insurance is available, this policy provides no coverage for the newly acquired or formed organization. However:
  - (a) Notice of such acquisition or formation must be provided to us within thirty (30) days of the effective date of the acquisition or formation;
  - (b) coverage under this provision is afforded only until the 90<sup>th</sup> day after the acquisition or formation or the end of the "policy period", whichever is earlier;
  - (c) coverage does not apply to any actual or alleged negligent act, error or omission arising out of professional services rendered for others as designated in Item 3. of the Declarations before the acquisition or formation of the organization; and
  - (d) any additional premium due as a condition precedent to the enforceability of this additional extension of coverage must be paid to us.
- F. "Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:
  - 1. false arrest, detention or imprisonment;
  - 2. malicious prosecution;

3. wrongful entry into, or eviction of a person from a room, dwelling, or premises that the person occupies;
4. oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
5. oral or written publication of material that violates a person's right of privacy.

**G.** "Policy period" shall mean the period from the effective date of this policy to the expiration date or earlier termination date, if any, of this policy.

**H.** "Property damage" means:

1. physical injury to or destruction of tangible property, including all resulting loss of use of that property; or
2. loss of use of tangible property that has not been physically injured or destroyed.

Other definitions of terms which are used in this policy are set out in the Nuclear Energy Liability Section II. Exclusions, T.

#### **IV. LIMITS OF LIABILITY AND DEDUCTIBLE**

##### **A. LIMIT OF LIABILITY**

The Limit of Liability stated as Policy Aggregate Limit in Item 4. of the Declarations, regardless of the time of payment by the Company, shall be the maximum liability of the Company for all loss during the "policy period" and the Extended Reporting Period if effective in accordance with Section IV. LIMITS OF LIABILITY AND DEDUCTIBLE B. EXTENDED REPORTING PERIOD.

The Limit of Liability for the Extended Reporting Period is part of, not in addition to, the Limit of Liability for the "policy period".

##### **B. EXTENDED REPORTING PERIOD**

If the Company or the "Insured" shall cancel or refuse to renew this policy, the "Insured" shall have the right, upon payment of an additional premium of 100% of the total annual premium, to a period of twelve (12) months following the effective date of such cancellation or non-renewal in which to give written notice to the Company of "claims" made against the "Insured" during said twelve (12) month period for any wrongful act committed prior to the end of the

"policy period" and otherwise insured hereunder. The rights contained in this clause shall terminate unless written notice of such election together with the additional premium due is received by the Company within ten (10) days of the effective date of cancellation or non-renewal. This clause shall not apply to any cancellation resulting from nonpayment of premium and/or non-compliance with the terms and conditions of this policy.

##### **C. MULTIPLE INSUREDS**

The number of "Insureds" covered by this policy shall not operate to increase the limits of liability as defined above.

##### **D. MULTIPLE CLAIMS**

Two or more covered "claims" arising out of a single negligent act, error or omission or any series of related negligent acts, errors or omissions will be considered a single "claim". This policy shall only apply if the first or earliest "claim" arising from such negligent acts, errors or omissions is made during the "policy period". These provisions apply regardless of the number of "Insureds" involved in such a "claim", the number of "claims" made, or the number of people or organizations that make the "claims".

The number of "claims" made or the number of people or organizations that make "claims" shall not operate to increase the limits of liability as defined above.

##### **E. DEDUCTIBLE - EACH CLAIM**

The deductible stated in Item 5. of the Declarations applies to each "claim" and shall be paid by the "Insured". The deductible shall be applied to the payment of "damages" or "claim expenses" or both.

The Company may advance payment of part or all of the deductible amount and, upon notification of such payment made, the "Insured" must promptly reimburse the Company for the deductible amounts advanced by the Company.

#### **V. CONDITIONS - CLAIMS**

##### **A. INSURED'S DUTIES WHEN THERE IS A CLAIM**

As a condition precedent to the right of coverage provided by this policy, the "Insured" must do the following:

1. If a "claim" to which this policy applies is made against the "Insured", the "Insured"

must give written notice, as soon as practicable, and as otherwise required by this policy, to:

Western World Insurance Group  
400 Parson's Pond Drive  
Franklin Lakes, NJ 07417  
Attn: Claims Department

Written notice shall include every demand, notice, summons or other process received directly by the "Insured" or the "Insured's" representatives.

2. The "Insured" must cooperate with the Company. The Company may require that the "Insured" submit to examination under oath, if required, produce and make available all records, documents and other materials, attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the "Insured's" attendance at meetings with the Company. The "Insured" must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses, all without charge to the Company.
3. If the "Insured" has the right to either accept or reject the arbitration of any "claim" the "Insured" shall exercise such right only with the written consent of the Company.
4. The "Insured" must not make any payment, admit any liability, settle any "claims" or assume any obligations without the prior written consent of the Company.
5. The "Insured" must do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the "Insured" may have.
6. The "Insured" shall refrain from discussing the facts and circumstances of any "claim" with anyone other than legal counsel or representatives of the Company.

**B. REPORTING OF POSSIBLE CLAIM**

This policy will provide coverage for a "claim" made after the "policy period" of this policy if the "claim" is based on a negligent act, error, omission or circumstance that the "Insured" first becomes aware of during the "policy period" of this policy and promptly reports in writing to the Company before the end of the "policy period".

The written report of a possible "claim" must include all available information about the possible "claim".

This report must include:

1. the potential claimant's name and address;
2. a description of the professional services provided or that would have been provided;
3. an explanation of the type of "claim" that is anticipated.

If all the above information is not so provided or is, in the sole judgment of the Company, deemed inadequate, the Company shall inform the "Insured" that any "claim" made after the "policy period" of this policy relating to the report will not be considered as covered under this policy.

**C. TRANSFER OF RIGHTS OF RECOVERY**

If there is a payment made by the Company, the Company shall be subrogated to all of the "Insured's" rights of recovery against any person or organization. The "Insured" will cooperate with the Company and do whatever is necessary to secure these rights. The "Insured" must not waive or prejudice such rights.

**OTHER CONDITIONS**

**D. OTHER INSURANCE PROVISION**

If there is any other valid and collectible insurance for any "claim" brought against this policy, the insurance provided by this policy shall apply in excess of such other insurance.

**E. CHANGES MADE TO THIS POLICY**

The terms and conditions of this policy cannot be waived or changed except by specific written endorsement issued by the Company and made part of this policy.

**F. ASSIGNMENT OF THE INSURED'S INTEREST**

The interest of the "Insured" under this policy is not assignable to any other person or organization.

**G. CANCELLATION**

This policy can be cancelled by the Named Insured by returning the policy to the Company or its authorized representatives. The Named Insured can also cancel the policy by written notice to the Company stating at what future date cancellation is to be effective. If the Named Insured cancels, earned premium shall be computed using the customary short rate table,

or pro rata of the minimum annual policy premium, whichever is greater.

This policy can be cancelled by the Company by written notice to the Named Insured, at the address last known to the Company. The Company will provide written notice thirty (30) days before cancellation is to be effective.

There are exceptions to the length of the notice that must be provided to the Named Insured. The Named Insured will only be entitled to ten (10) days notice if the Company cancels:

1. because the "Insured" has failed to pay a premium when due; or
2. because the "Insured" has failed to pay applicable deductible amounts due.

If the Company cancels, earned premium will be computed pro rata, except that if the Company cancels for the reason specified in 1. or 2. above, earned premium will be computed in the same manner provided above when the Named Insured cancels.

The mailing of any notice of cancellation will be sufficient proof of notice.

The effective date of cancellation terminates the "policy period." Return of unearned premium is not a condition of cancellation. Unearned premium will be returned by the Company as soon as practicable.

#### H. BANKRUPTCY

Bankruptcy or insolvency of the "Insured" or the "Insured's" estate shall not relieve the Company of any of its obligations under this policy.

#### I. APPLICATION

The statements in the application are the "Insured's" representations and are deemed

material. This policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the application shall be attached and become part of this policy.

#### J. ACTION AGAINST THE COMPANY

No action shall be maintained against the Company by the "Insured" to recover for any loss under this policy unless as a condition precedent thereto:

1. the "Insured" has fully complied with all the terms and conditions of this policy; and
2. the amount of loss has been fixed or rendered certain:
  - a. by final judgment against the "Insured" after trial of the issues; or
  - b. the time to appeal such judgment has expired without an appeal being taken; or
  - c. if appeal is taken, after the appeal has been determined; or
  - d. the "claim" is settled in accordance with the terms and conditions of this policy.

In no event shall any action brought by anyone be maintained against the Company unless such action is brought within twenty-four (24) months from the time the right to bring action first becomes available.

#### K. FALSE OR FRAUDULENT CLAIMS

If the "Insured" refers any "claim" knowing such "claim" to be false or fraudulent, this policy shall become void and all insurance coverage hereunder shall be forfeited.