

**ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY  
TUDOR INSURANCE COMPANY  
KEENE, NEW HAMPSHIRE**

(A stock company, herein called the Insurer)

**THIS IS A CLAIMS MADE 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 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. 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 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 includes 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 not 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 Exclusion:

II. Exclusion 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 IV. CONDITIONS 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 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:

TUDOR INSURANCE COMPANY  
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.

- 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.

**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

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.

**IN WITNESS WHEREOF**, we have caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of our duly authorized representatives.

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*Secretary*

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*President*