

# NON-PROFIT ORGANIZATION LIABILITY POLICY

## IMPORTANT NOTICE

THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY IN WRITING DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF PURCHASED. THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS SHALL BE REDUCED AND MAY BE COMPLETELY EXHAUSTED BY THE PAYMENT OF CLAIMS EXPENSES. LOSS AND CLAIMS EXPENSES SHALL BE APPLIED AGAINST THE DEDUCTIBLE. PLEASE REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, when due, and in reliance upon the statements in the application and attachments thereto, which are made part of this Policy and subject to all of the provisions of this Policy, the Company named in the Declarations (a stock Company, herein called the "Company") agrees with the **Insured** as follows:

### 1. **Insuring Clause**

To pay on behalf of the **Insured** all **Loss** in excess of the deductible which the **Insured** shall become legally obligated to pay as a result of **Claims** first made against the **Insured** during the **Policy Period** or **Extended Reporting Period**, if purchased, because of any **Wrongful Act** committed by the **Insured**.

### 2. **Definitions**

A. **Claim** means a demand received by an **Insured** including, but not limited to, service of a lawsuit or institution of an arbitration proceeding against an **Insured** by which any person or entity intends to hold the **Insured** responsible for a **Wrongful Act**.

B. **Claims Expenses** means:

- (1) fees charged by legal counsel designated by the Company;
- (2) all other fees, costs and expenses resulting from the investigation, defense, settlement and appeal of a **Claim** incurred with the prior written consent of the Company;

**Claims Expenses** do not include salary charges and administrative expenses of regular employees or officials of the **Organization** or any supervisory counsel retained by the **Insured**.

C. **Loss** means any amount including **Claims Expenses** which an **Insured** is legally obligated to pay or which the **Organization** shall be required or permitted by law to pay on behalf of any **Insured Person**, for any covered **Claim**, including judgments and settlements. **Loss** does not include:

- (1) punitive or exemplary damages, any damages which are multiple of compensatory damages, sanctions, fines, penalties or taxes. However, if a suit is brought against the **Insured** with respect to a **Claim** falling within the coverage of this Policy, seeking both compensatory and punitive or exemplary damages, the Company will afford a defense to such suit without liability, however, for such punitive or exemplary damages; or
- (2) judgments or awards deemed uninsurable under the law pursuant to which this Policy shall be construed.

D. **Extended Reporting Period** means the period specified in Item 7 of the Declarations immediately following the effective date of cancellation or expiration of this Policy as described in Section 9.

E. **Insured Persons** means any person who is, was or shall become a director, officer, trustee, volunteer, employee (whether salaried or not) or committee member of a duly constituted committee of the **Organization**, and in the event of the death, incapacity or bankruptcy of any **Insured Persons**, the estate, heirs, legal representatives or assigns of such **Insured Persons**.

- F. **Insured** means:
- (1) the **Organization**; or
  - (2) any past, present or future director, officer, trustee, volunteer, employee (whether salaried or not) or any duly constituted committee of the **Organization**, for **Wrongful Acts** arising out of the discharge of an **Insured's** duties solely on behalf of the **Organization**;
- G. **Organization** means the non-profit Entity which is named in the Declarations, and any non-profit **Subsidiary** as of the inception date of this Policy, and (1) any non-profit **Subsidiary** created or acquired during the **Policy Period**; and (2) any for-profit **Subsidiary** created or acquired during the **Policy Period** provided the conditions of Section 14 are complied with, and the Company specifically agrees to add the for-profit **Subsidiary**.
- H. **Policy Period** means the period from the effective date of this Policy to the expiration date as set forth in Item 3 of the Declarations or its earlier termination date, if applicable.
- I. **Policy Year** means the period of one year following the inception of this Policy or any anniversary thereof, or if the time between such inception or any anniversary and the termination of the Policy is less than one year, such lesser period. If the **Extended Reporting Period** is exercised, then such **Extended Reporting Period** shall be part of the last **Policy Year** and not an additional period.
- J. **Subsidiary** means any entity which is more than fifty (50%) percent owned by the **Organization**.
- K. **Wrongful Act** means any actual or alleged act, error, misstatement, misleading statement or omission, neglect or breach of the **Insured's** duties arising solely from the **Insured's** capacity with the **Organization**.
- L. **Interrelated Wrongful Acts** mean **Wrongful Acts** which have as a common nexus any fact, circumstance, situation, event, transaction or series of facts, circumstances, situations, events or transactions.

### 3. Exclusions

This insurance does not apply to:

- A. any **Claim** arising out of false arrest, detention or imprisonment, malicious prosecution, assault, battery, actual or alleged invasion of privacy, wrongful eviction, wrongful entry or invasion of the right of private occupancy;
- B. any **Claim** for any actual or alleged generation, storage, transportation, discharge, dispersal, escape, treatment, removal or disposal of any pollutant or contaminate, including without limitation waste, infectious or otherwise, and medical and pharmaceutical supplies;
- C. any **Claim** based upon, arising out of, or in any way involving the Employee Retirement Income Security Act of 1974 (or any regulations promulgated thereunder) or similar provisions of any federal, state or local statutory law or common law;
- D. any **Claim** arising out of actual or alleged mental anguish or emotional distress, bodily injury, sickness, disease or death or any person, actual or alleged damage to or destruction of any tangible property, including Loss of use thereof;
- E. any **Claim** brought by or at the behest of the **Organization**, except that this Exclusion shall not apply to any derivative action brought totally independent of, and totally without the solicitation of, assistance of, participation of, or intervention of, any of the **Insureds**;
- F. any **Claim** arising from (1) any dishonest, fraudulent, or malicious **Wrongful Act** committed by an **Insured** or at the direction of any **Insured**; or (2) the **Insured** gaining in fact any personal profit or advantage to which the **Insured** was not legally entitled, provided however, the **Insured** shall be protected by the terms of this Policy until such time as there has been a final adjudication, adverse to the **Insured**, of the dishonest, fraudulent, or malicious **Wrongful Act**,

or gaining of personal profit, and that such **Wrongful Act** or gaining of personal profit, was committed with actual dishonest purpose and intent and was material to the cause of action so adjudicated;

- G. any **Claim** arising from the return by an **Insured** of any remuneration paid in fact to an **Insured** which payment shall be held to be in violation of law;
- H. Any **Claim** seeking relief or redress, in any form other than money damages, including but not limited to any attorney fees and costs which may be awarded to the claimant in connection with the proceeding for non-monetary relief or redress;
- I. any **Claim** made against any **Subsidiary** or **Insured** arising out of: (1) any **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**; (2) any **Wrongful Act** occurring subsequent to the date such entity became a **Subsidiary** which, together with a **Wrongful Act** occurring prior to the date such entity became a **Subsidiary**, would constitute **Interrelated Wrongful Acts**; or (3) any **Wrongful Act** occurring subsequent to the date such entity ceases to be a **Subsidiary**.

Any **Wrongful Act** pertaining to an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of any of the Exclusions contained in Section 3.

#### 4. **Defense and Settlement of Claims**

The Company shall have the right and the duty to defend any **Claim** to which this insurance applies, even if any allegations of the **Claim** are groundless, false or fraudulent. Defense counsel shall be designated by the Company.

The Company may make such investigation as it deems expedient. The Company shall pay premiums on appeal bonds or bonds to release attachments required in any such suit defended by the Company. The Company's obligation to pay premiums on appeal bonds or bonds to release attachments; or to post collateral in connection with any appeal of a suit defended by the Company shall be limited to the applicable limit of liability, less any **Loss** previously paid by the Company.

The Company's right and duty to defend any **Claim** shall end when the applicable limit of the Company's liability has been exhausted by payment of any **Loss**. When the Company's liability has been paid, the Company shall have the right to withdraw from further defense thereof by tendering control of said defense to the **Insured**.

The **Insured** shall not, agree to arbitration or settlement of any **Claim** or admit liability, assume any obligation, make any payment or incur any expense in connection with any **Claim** without the Company's prior written consent.

The Company shall not settle any **Claim** without the **Insured's** consent. If the Company recommends a settlement to the **Insured** which is acceptable to the Claimant, and the **Insured** refuses to settle; the Company's liability for the **Claim** shall not exceed the amount for which the **Claim** could have been settled, plus the **Claims Expenses** incurred up to the time of such refusal (the "Company's liability"), or the applicable limit of liability, whichever is less.

#### 5. **Limit of Liability and Deductible**

The limit of liability stated in Item 4 the Declarations is the maximum amount payable by the Company for all **Loss** as a result of all **Claims** first made during each **Policy Year** or the **Extended Reporting Period**, if purchased.

The Company's obligation to pay any **Loss** applies in excess of the deductible stated in Item 5 of the Declarations. The **Insured** shall pay all **Loss** up to the amount of the deductible. The deductible stated in the Declarations applies to each **Claim** and shall be paid by the **Insured**.

The inclusion of more than one **Insured** in any **Claim** or the making of **Claims** by more than one person or entity shall not operate to increase the limit of liability and deductible. The bringing of one suit by one or more persons or entities shall always be treated as a single **Claim** regardless of whether the complaint alleges a single **Wrongful Act** or **Interrelated Wrongful Acts**.

All such **Claims** whenever made shall be considered first made in the **Policy Year** in which the earliest **Claim** arising out of a **Wrongful Act** or **Interrelated Wrongful Act** was first made and all such **Claims** are subject to the same limit of liability and deductible.

Payment of the applicable limit of liability stated in the Declarations ends the Company's duty to defend or settle. If the limit of liability applicable to Claims is exhausted prior to the conclusion of any **Claim**, the Company shall have the right to withdraw from the further defense of the **Claim**.

#### 6. **Reporting of Potential Claims**

If during the **Policy Year** the **Insured** first becomes aware of any **Wrongful Act** which might reasonably give rise to a **Claim** against the **Insured** under this Policy, and gives written notice of the **Claim** during the **Policy Year**, any **Claim** subsequently made against the **Insured** arising out of that **Wrongful Act** or **Interrelated Wrongful Act** shall be considered to have been made during the **Policy Year** when notice was first given.

Written notice of a potential **Claim** shall include:

- A. the specific **Wrongful Act**;
- B. the injury or damage that may reasonably result; and
- C. the circumstances by which the **Insured** became aware of the **Wrongful Act**.

The **Insured** shall cooperate with the Company as set forth in Section 7.

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

As a condition precedent to the availability of coverage under this Policy, the **Insured's** duties in the event of a **Claim** are as follows:

- A. If a **Claim** is made against the **Insured**, the **Insured** must give written notice to the Company as soon as practicable but no later than sixty (60) days after the policy expiration date. Notice shall include every demand, notice, summons or other process received by the **Insured**.
- B. The **Insured** shall cooperate with the Company in the defense and investigation and settlement of any **Claim**. Upon the Company's request, the **Insured** shall submit to examination or questioning, attend hearings, depositions and trials, assist in effecting settlement, securing and giving evidence, and obtaining the attendance of witnesses in the conduct of suits.
- C. The **Insured** shall assist the Company in effecting any rights of indemnity, contribution or apportionment available to the **Insured** or the Company.
- D. The **Insured** shall not, without prior written consent of the Company, make any payments, admit liability, settle **Claims**, assume any obligations, agree to arbitration or any similar means of resolution of any dispute, waive any rights or incur any **Claims Expenses** on behalf of the Company.

The Company agrees that such insurance as would otherwise be afforded under this Policy shall apply with respect to each and every **Insured** who did not personally commit or did not personally participate in the concealment of a **Claim** and the failure of any other **Insured** to comply with the notice requirements of Section 7A.

The waiver shall apply provided, the **Insured** entitled to the benefit of the waiver of the Exclusions or breach of condition shall promptly comply with the requirements of Section 7A after obtaining knowledge of the failure of any other **Insured** to comply with the requirements of Section 7A.

#### 8. **Additional Time in Which to Report Claims Made at the End of the Policy Period**

If a **Claim** is first made against an **Insured** during the last thirty (30) calendar days of **Policy Period**, such **Claim** will be treated as if it had reported to the Company during the **Policy Period** when the **Claim** was first made against the **Insured** if the **Insured** gives the Company written notice of such **Claim** no later than sixty (60) days after the end of the **Policy Period**.

#### 9. **Extended Reporting Period**

If the **Organization** or the Company cancels or refuses to renew this Policy, the **Organization** shall have the right to purchase an **Extended Reporting Period** by payments of the premium reflected in Item 7 of the Declarations. The **Extended Reporting Period** will extend the insurance afforded by this Policy to apply to **Claims** first made against the **Insured** and reported to the Company during the period specified in Item 7 of the Declarations immediately following the effective date of cancellation or expiration, but only with respect to a **Wrongful Act** committed prior to such date and otherwise covered by this Policy. The **Extended Reporting Period** will not reinstate or increase the limit of liability or extend the **Policy Year**. The right to purchase the **Extended Reporting Period** shall lapse if the **Organization** does not make a written request for the **Extended Reporting Period** and pay the additional premium to the Company within thirty (30) days after the effective date of cancellation or expiration of the **Policy Period**.

10. **Other Insurance**

This insurance is excess over any other insurance, self-insurance, self-insured retention or similar program, whether primary, excess, contingent or on any other basis. We will pay only our share of the amount of the **Loss**, if any, that exceeds the sum of:

- A. the total amount that all such other insurance would pay in absence of this insurance; and
- B. the total of all deductible and self-insured amounts under all such other insurance or other available program.

This insurance does not apply to other insurance that was bought by you specifically to apply in excess of the limit of liability shown on the Declarations of this Policy.

11. **Application & Severability**

By accepting this Policy, the **Insured** agrees at the effective date of this Policy that the statements in the application and attachments thereto which are made a part of this Policy (1) are the **Insured's** true and accurate representations; (2) are deemed material; and (3) have been relied upon by the Company in the issuance of this Policy.

This Policy shall be void and of no effect whatsoever only as to any **Insured** who is responsible for or who has knowledge of any misrepresentation in the application. Such responsibility or knowledge shall not be imputed to any other **Insured** for the purposes of determining the availability of coverage.

12. **Rights of Recovery**

If the Company makes any payment under this Policy, the Company shall be subrogated to all of the **Insured's** rights of recovery against any other person or entity. The **Insured** shall execute and deliver to the Company such instruments and papers, and do everything necessary to secure these rights and must do nothing that would jeopardize them.

13. **Legal Action Limitation**

The **Insured** may not bring any legal action against the Company concerning this Policy until:

- A. the **Insured** has fully complied with all of the provisions of this Policy; and
- B. the amount of the **Insured's** obligation to pay has been decided by the judgment against the **Insured** after actual trial or by written agreement between the **Insured**, the Company and the claimant.

Any person, **Entity**, or their legal representative is entitled to recover under this Policy after they have recovered a judgment or written agreement. Recovery is limited to the extent of the insurance afforded under this Policy. 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 an action by the **Insured** or the **Insured's** representative. If the **Insured** or the **Insured's** estate becomes bankrupt or insolvent, it does not change any of the Company's obligation under this Policy.

14. **Changes in Risk**

Within ninety (90) days of the date the **Organization** creates or acquires a for-profit **Subsidiary**, the **Organization** shall provide the Company with written notice and request coverage for the for-profit **Subsidiary**. Coverage may be provided from the date the for-profit **Subsidiary** was created or acquired, subject to terms and premium adjustments as may be required by the Company.

15. **Changes**

This Policy contains all agreements between the **Insured** and the Company or any of its agents relating to this Insurance. None of the provisions of this Policy can be waived, changed or modified except by written endorsement issued to form a part of this Policy.

16. **Transfer of Interest**

The **Insured** must first obtain the Company's written consent to transfer or assign this Policy.

17. **Cancellation**

The **Organization** may cancel this Policy by mailing or delivering to the Company advance written notice of the cancellation.

The Company may cancel this Policy by mailing or delivering to the **Organization** at the **Organization's** last mailing address known to the Company written notice of cancellation at least:

- A. 10 days before the effective date of cancellation if the Company cancels for non-payment of premium; or
- B. 60 days before the effective date of cancellation if the Company cancels for any other reason.

Notice of cancellation will state the effective date of cancellation. The **Policy Period** will end on that date. If the **Organization** cancels, the Company shall retain the customary short rate proportion of the premium. If the Company cancels, the return premium shall be computed pro rata. The Company will make the premium adjustment with the **Organization** at the time the cancellation is effective or as soon as practicable after that time, but premium adjustment is not a condition of cancellation.

18. **Authorization**

The **Organization** shown in the Declarations will act on behalf of all **Insureds** with respect to the giving and receiving of any notices under this Policy, the payment of any premiums and deductibles and the receiving of any return premiums that may become due under this Policy.

19. **Conformity to Statute**

Any terms or conditions of this Policy which are in conflict with any applicable statutes of the state wherein this Policy is construed are hereby amended to conform to such statutes.

Agrees with the insured, named in the Declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy to provide insurance as set forth in the coverage form(s) and endorsement(s) attached herewith.

**IN WITNESS WHEREOF**, the Company has caused this policy to be signed by its president and secretary but this policy shall not be valid unless countersigned by a duly authorized representative of the Company.

*SPECIMEN*

Secretary

*SPECIMEN*

President

**NUCLEAR ENERGY LIABILITY EXCLUSION**  
**(Broad Form)**

**1. This policy does not apply:**

- A. Under any Liability Coverage, to bodily injury or property damage
- (1) with respect to which an insured under the policy 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
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or 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 its 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;
- B. Under any Medical Payments Coverage, or any Supplemental Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- C. Under any Liability Coverage, to bodily injury or property damage resulting from the hazardous properties of nuclear material, if:
- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (9) has been discharged or dispersed therefrom;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (3) the bodily injury or property damage arises 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 (3) applies only to property damage to such nuclear facility and any property thereat.

**2. As used in this endorsement:**

“hazardous properties” include radioactive, toxic or explosive properties;

“nuclear material” means source material, special nuclear material or byproduct material;

“source material”, “special nuclear material”, and “byproduct material” have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

“spent fuel” means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

“waste” means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

“nuclear facility” means

- (a) any nuclear reactor;
- (b) 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 waste;

- (c) any equipment or device used for 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 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the 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;

“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;

“property damage” includes all forms of radioactive contamination of property.