The Hartford Premier Choice Professional Liability Policy

NOTICE: THIS LIABILITY COVERAGE PART PROVIDES CLAIMS MADE COVERAGE. EXCEPT AS OTHERWISE SPECIFIED HEREIN: COVERAGE APPLIES ONLY TO A CLAIM FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD AND WHICH HAS BEEN REPORTED TO THE INSURER IN ACCORDANCE WITH THE APPLICABLE NOTICE PROVISIONS. COVERAGE IS SUBJECT TO THE INSURED'S PAYMENT OF THE APPLICABLE RETENTION. PAYMENTS OF DEFENSE COSTS ARE SUBJECT TO, AND REDUCE, THE AVAILABLE LIMIT OF LIABILITY. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

DESIGN PROFESSIONALS LIABILITY COVERAGE PART

I. INSURING AGREEMENTS

(A) Professional Liability

The Insurer shall pay **Loss** that an **Insured** becomes legally obligated to pay as a result of a **Claim** made against the **Insured** for a **Wrongful Act** arising out of the performance of **Professional Services**.

(B) Personal Injury Liability

The Insurer shall pay **Loss** that an **Insured** becomes legally obligated to pay as a result of a **Claim** made against the **Insured** for a **Personal Injury Wrongful Act** arising out of the performance of **Professional Services.**

(C) Pollution Incident

The Insurer shall pay **Loss** that an **Insured** becomes legally obligated to pay as a result of a **Claim** made against the **Insured** for a **Pollution Incident** arising out of the performance of **Professional Services**.

(D) Network Intrusion Liability

The Insurer shall pay **Loss** that an **Insured** becomes legally obligated to pay as a result of a **Claim** made against the **Insured** for a **Network Intrusion** arising out of the performance of **Professional Services**.

Coverage under **SECTIONS (A), (B), (C) and (D)** above applies only if all of the following conditions are satisfied:

(1) the **Wrongful Act**, **Personal Injury Wrongful Act**, **Pollution Incident**, or **Network Intrusion** giving rise to the **Claim** first takes place on or after the applicable **Retroactive Date**;

(2) prior to the Policy's inception date, or the first such policy issued and continually renewed by the **Named Entity**, no board member, director, executive officer, partner, managing member, principal, general counsel, or risk manager of the **Named Entity** knew or could reasonably have foreseen that any **Wrongful Act**, **Personal Injury Wrongful Act**, **Pollution Incident**, or **Network Intrusion** might be expected to be the basis of a **Claim**; and

(3) the **Claim** arising out of the **Wrongful Act**, **Personal Injury Wrongful Act**, **Pollution Incident**, or **Network Intrusion** is first made against the **Insured** during the **Policy Period**.

(E) Rectification Expense

The Insurer shall pay the **Named Entity** for **Rectification Expense** in excess of the retention and up to the Limits of Liability, provided that:

(1) the **Named Entity** reports the **Design Error Circumstance** as soon as practicable during the **Policy Period**;

(2) the **Named Entity** demonstrates to the Insurer's satisfaction there is a **Design Error** which is reasonably likely to give rise to a covered **Claim** under this policy;

(3) within the **Policy Period** and prior to incurring any **Rectification Expense,** except for an **Emergency Response,** the **Named Entity** provides the Insurer with details as to how the **Named Entity** intends to minimize any potential liability resulting from the **Design Error** and the amount of **Rectification Expense** required for such action;

(4) prior to incurring any **Rectification Expense** the Insurer agrees in writing to such **Rectification Expense** provided that such agreement is not required if the **Named Entity** can establish that an **Emergency Response** was necessary;

(5) such **Design Error Circumstance** does not arise out of the same or similar **Design Error Circumstance** for which **Rectification Expenses** have previously been requested or paid; and

(6) the **Named Entity** has not previously reported a **Design Error Circumstance** during the applicable **Policy Period.**

Such **Rectification Expense** will be reimbursed within 90 days of the **Named Entity's** submission of proof of loss of such **Rectification Expense.**

In the event that a **Claim** arises out of the **Design Error,** the Insurer may, at its sole discretion, cease paying further **Rectification Expense** associated with such **Design Error Circumstance.**

II. SUPPLEMENTARY PAYMENTS

(A) Disciplinary Proceedings Coverage

Notwithstanding any other provisions of this Policy, but subject to all terms and conditions of this Policy, the Insurer shall reimburse **Defense Costs** (but not **Damages**) incurred for defending a proceeding first brought against an **Insured** during the **Policy Period** before a regulatory or governmental disciplinary official or agency alleging professional misconduct in the rendering of or failure to render **Professional Services,** up to a maximum payment by the Insurer, regardless of the number of proceedings brought by a regulatory or disciplinary official or agency, as set forth on the Declarations. This amount will not be included within (and shall not serve to reduce) the Limits of Liability and is not subject to any retention obligation of the **Insured**. In order to receive coverage under this provision, the disciplinary proceeding must commence during the **Policy Period** and the **Insured** must give written notice during the **Policy Period** of any regulatory or disciplinary allegation made against any **Insured**. The Insurer shall not be obligated to defend any disciplinary action, or pay any fine penalty or award resulting from a disciplinary action.

(B) Expense and Loss of Earning Reimbursements

Notwithstanding any other provisions of this Policy, but subject to all terms and conditions of this Policy, the Insurer shall reimburse reasonable and necessary expenses, other than **Defense Costs,** incurred with the Insurer's prior written consent by an **Insured** in the investigation or litigation of any **Claim**, including actual loss of earnings up to the amount set forth on the Declarations**.** This amount will not be included within (and shall not reduce) the Limits of Liability.

(C) Subpoena Assistance Coverage

If, during the **Policy Period**, an **Insured** receives a subpoena for documents or testimony as a fact witness arising from a **Professional Service** which occurred on or after the **Retroactive Date**, and the **Insured** requests the Insurer's assistance, then the Insurer will appoint an attorney to represent the **Insured** regarding the production of documents, to prepare the **Insured** for sworn testimony, and to represent the **Insured** at their deposition provided that:

(1) the subpoena arises out of a lawsuit or other legal proceeding to which the **Insured** is not a party and

(2) the **Insured** has not been engaged to provide advice or testimony in connection with the lawsuit and the **Insured** has not been engaged to provide such advice or testimony in the past.

Regardless of the number of subpoenas received or the number of individuals receiving subpoenas, the maximum limit for this coverage is set forth on the Declarations. This amount will not be included in (and shall not reduce) the Limits of Liability.

(D) FHA, OSHA and ADA Proceedings Reimbursement

Notwithstanding any other provisions of this Policy, but subject to all terms and conditions of this Policy, the Insurer shall reimburse, subject to the limit set forth on the Declarations, all reasonable and necessary legal fees, costs or expenses incurred by an **Insured** in responding to regulatory or administrative actions brought directly against the **Insured** by a governmental agency under the Fair Housing Act (FHA), Occupational Safety and Health Act (OSHA) or the Americans with Disability Act (ADA), provided that the regulatory or administrative action under FHA, OSHA and ADA is first commenced against the **Insured** during the **Policy Period** and is the result of an **Insured's Professional Services**.

(E) Pre Claim Assistance and Prevention Expense

The Insurer will, at its sole discretion, pay all fees, costs and expenses which an **Insured** incurs in the investigation and mitigation of any potential **Claim** reported by the **Insured** In accordance with **Section V. (B) Notice of Claim** provided that said fees, costs and expenses are authorized and incurred prior to the date that a **Claim** is actually made. Any fees, costs and expenses incurred after the date that a **Claim** is made are subject to the **Limit of Liability** and **Retention** sections of the Policy.

(F) Crisis Event Management Reimbursement

The Insurer will reimburse an I**nsured** for **Crisis Event Management Expenses** that are a direct result of a **Crisis Event** which first occurs and is reported to the Insurer during the **Policy Period**. The maximum amount payable, regardless of the number of **Crisis Events** or the number of **Insureds**, shall be the amount set forth in the Declarations. The Insurer will issue reimbursement, as set forth above, at the written request of the **Named Entity**.

(G) Non Profit Directors and Officers Coverage

The Insurer will reimburse an **Insured** for any amounts, including reasonable attorneys' fees, costs and expenses incurred by counsel, that the **Insured** becomes legally obligated to pay as a result of a demand for money or services first made against the **Insured** and reported in writing to the Insurer during the **Policy Period** arising out of the **Insured's** acts, errors or omissions in the **Insured's** capacity as a director or officer of a **Non Profit entity**. The maximum amount payable per **Policy Period** shall be the amount set forth in the Declarations.

(H) Client Entity(ies) Fee Assistance

If a **Client Entity(ies)** is 180 days or more past due in paying a fee owed to an **Insured** and as a result of the **Insured's** collection efforts the **Client Entity(ies)** brings a **Claim** against the **Insured** alleging negligence in the rendering of a **Professional Service** and:

(1) the claim is for an amount in excess of the past due payment;

(2) the **Professional Services** were fully rendered as per a fully executed professional services contract between the **Insured** and the **Client Entity(ies);** and

(3) the **Insured** and the **Client Entity(ies)** have executed an agreement approved by the Insurer whereby the **Client Entity(ies)** agrees to withdraw their **Claim**;

then the Insurer agrees to pay the **Insured** 50% of the amount of the past due payment. The maximum amount payable per **Policy Period** is as set forth in the Declarations.

III. DEFINITIONS

The following terms, whether used in the singular or plural, shall have the meanings specified below:

(A) **“Client Entity(ies)”** means any individual, partnership, corporation or limited liability company, other than those that qualify as **Insureds** under this Policy, to whom the **Insured** provides **Professional Services**.

(B) **“Claim”** means:

(1) a written demand seeking monetary , injunctive, declaratory or other non-monetary relief;

(2) a civil proceeding, including an arbitration or other alternative dispute proceeding, commenced by the service of a complaint, filing of a demand for arbitration, or similar pleading**;** or

(3) a request received by an **Insured** to toll or waive the statute of limitations or other bars against the filing or maintenance of a lawsuit or arbitration proceeding seeking **Damages** against, or services from, an **Insured**.

(C) **“Computer System(s)”** means the following if leased or owned by a **Client Entity(ies)** or operated on their behalf by a third party service provider: computers, input and output devices, network devices and equipment, peripheral devices, storage devices, back-up facilities, mobile devices, and associated computer programs, software and applications, including cloud-based computer programs, software and applications.

(D) **“Crisis Event “** means any:

(1) **Wrongful Act**;

(2) death, departure or debilitating illness of a member of the board of managers, director, executive officer, natural person partner or principal of the **Named Entity**;

(3) potential dissolution of the **Named Entity** for any reason other than bankruptcy;

(4) incident of workplace violence or accident that results in negative local or national media coverage; or

(5) other significant event;

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

(E) **“Crisis Event Management Expenses”** means reasonable fees, costs and expenses incurred by the **Named Entity** and approved by the Insurer for consulting services provided by a public relations firm or law firm to the **Named Entity** in response to a **Crisis Event.**

(F) **“Damages”** means the amounts, other than **Defense Costs**, that an **Insured** is legally liable to pay solely as a result of a **Claim** covered by this **Liability Coverage Part**, including:

(1) compensatory damages;

(2) settlement amounts;

(3) pre- and post-judgment interest;

(4) costs awarded pursuant to judgments;

(5) punitive and exemplary damages;

(6) the multiple portion of any multiplied damage award; and

(7) claimant’s attorney fees awarded by a court.

However, **Damages** shall not include:

(a) taxes, fines or penalties imposed by law;

(b) equitable, injunctive or other non-monetary relief;

(c) any other matters uninsurable pursuant to any applicable law; provided, however, that with respect to punitive and exemplary damages or the multiple portion of any multiplied damage award, the insurability of such damages shall be governed by the internal laws of any applicable jurisdiction that most favors coverage of such damages; and

(d) restitution and disgorgement of profits, fees, costs and expenses paid or incurred or charged by an **Insured**, no matter whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise; nor economic injuries that are a consequence of any of the foregoing.

(G) **"Design Error"** means a **Wrongful Act** but does not include any actual or alleged negligence in the review of shop drawings and submittals, issuance of change orders, observation of construction or review of any contractor's request for payment.

(H) **"Design Error Circumstance"** means a situation arising out of a **Design Error** for which the **Named Entity** has requested reimbursement of a **Rectification Expense** from the Insurer.

(I) **"Emergency Response"** means an action taken by an **Insured** to rectify a **Design Error** that prevents imminent bodily injury or material physical harm to or destruction of tangible property due to a **Design Error** which is otherwise insured under this Policy.

(J) **"Insured Person"** means:

(1) any person who was, is now, or hereafter becomes principal, partner, officer, director, employee, or principal shareholder of an **Insured Entity,** but only if such person was performing **Professional Services** on behalf of an **Insured Entity** at the time of the alleged **Wrongful Act;**

(2) any retired partner, principal, officer, director, shareholder, employee, or member of an **Insured Entity** while acting within the scope of their duties as a consultant for the **Insured Entity** or any **Predecessor Firm**; or

(3) any past or present independent contractor or leased employee of an **Insured Entity** but only while acting within the scope of their duties for the **Insured Entity.**

(K) **"Insured(s)"** means any:

(1) **Insured Entity**;

(2) **Insured Person**;

(3) **Predecessor Firm(s)**; or

(4) All joint ventures entered into, but only for legal liabilities arising out of **Wrongful Acts** caused by an **Insured Person** or by an **Insured Entity.** No coverage will be afforded to the joint venture itself or any other person or entity that is a part of such joint venture.

(L) **"Network Intrusion"** means the gaining of access to or use of a **Client Entity(ies) Computer System** by an unauthorized person, or by an authorized person in an unauthorized manner.

(M) **"Non Profit Entity"** means non-profit corporation, community chest, fund or foundation that is exempt from federal income tax as an entity described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(N) **"Personal Injury Wrongful Act"** means:

(1) false arrest, detention or imprisonment;

(2) abuse of process or malicious prosecution;

(3) wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;

(4) the publication or utterance of a libel or slander or other defamatory or disparaging material; or publication or utterance in violation of an individual's right of privacy; or use of the name or likeness of a person in violation of an individual's right to privacy; or

(5) infringement of copyright or trade dress.

(O) **"Predecessor Firm"** means any design firm (partnership, professional association, limited liability partnership, sole proprietorship, limited liability corporation or corporation) as of the policy period inception date in the Declarations, which has undergone dissolution or is inactive and no longer providing **Professional Services**, and at least 51% of such firm assets and liabilities have been assigned, acquired or transferred to an **Insured Entity**.

(P) **"Pollution Incident"** means the actual or alleged discharge, dispersal, seepage, migration, or escape of smoke, vapor, fumes, acids, alkalis, chemicals, asbestos, liquid or gases, waste materials or other irritants, contaminants, or pollutants into or upon, land, atmosphere or any water course or body of water and caused by a **Professional Service** committed by an **Insured** or by any entity or person for whom the **Insured** is legally responsible. Waste materials include materials to be recycled, reconditioned or reclaimed.

(Q) **"Professional Services"** means services performed by an **Insured** for others in the **Insured's** practice as:

(1) an architect, engineer, land surveyor, landscape architect, construction manager, space planner, land planner, interior designer, scientist, technical consultant, or expert witness professional; and

(2) a member of a formal accreditation, standards review, or other professional board or committee for the Design Professional profession.

Professional Services also includes information technology services provided for others in the rendering of the **Professional Services** described above. Information technology services include software consultation, interoperability analysis, programming, hosting, and design support and maintenance of websites, software or databases.

However **Professional Services** shall not include any services to computer or telecommunications hardware or the supplying of electronic products or software, except where the software was designed or modified in connection with the rendering of **Professional Services** to a **Client Entity(ies).**

(R) **"Rectification Expense"** means reasonable and necessary costs incurred by the **Named Entity** for the rectification of a **Design Error** caused by **Professional Services** in any part of a project for which the **Insured** was responsible for the design. **Rectification Expense** does not include any overhead, mark up, profit or any fee, charge, cost, or expense incurred by any **Insured** for materials supplied or services performed by any **Insured**.

(S) **"Retroactive Date"** means the date specified in the Declarations, or in any endorsement attached to this Policy, on or after which the **Wrongful Act** must have occurred in order for any **Claim** or any notification given to us pursuant to **V. NOTICE OF CLAIM** to be covered under this Policy.

(T) **"Wrongful Act"** means an actual or alleged act, error or omission in the performance of or the failure to perform **Professional Services** including a **Personal Injury Wrongful Act**, **Pollution Incident**, or a **Network Intrusion** committed or alleged to have been committed by an **Insured** or by any entity (including a joint venture) or person for whom the **Insured** is legally liable.

IV. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The following exclusions apply to all Insuring Agreements and any coverage provided by endorsement to this Policy.

The Insurer shall not pay any **Loss:**

(A) In connection with any **Claim** based upon, arising from, or in any way related to any prior or pending written demand, suit or proceeding against an **Insured** as of the applicable Prior or Pending Date in ITEM 8 of the Declarations or the same or any substantially similar fact, circumstance or situation underlying or alleged in such demand, suit or proceeding.

(B) In connection with any **Claim** based upon, arising from, or in any way related to any fact, circumstance or situation that, before the Inception Date in ITEM 3 of the Declarations, was the subject of any notice given under any other errors and omissions, professional liability or cyber liability insurance policy of which this **Liability Coverage Part** is a direct or indirect renewal or replacement.

(C) In connection with any **Claim** based upon, arising from, or in any way related to the liability of others assumed under any contract or agreement, including any warranty or guarantee, provided that this exclusion shall not apply to liability that would have been incurred in the absence of such contract or agreement.

(D) In connection with any **Claim** based upon, arising from, or in any way related to:

(1) an **Insured** gaining any personal profit, remuneration or financial advantage to which such **Insured** is not legally entitled;

(2) any intentional **Wrongful Act** or any deliberately fraudulent act or omission or any willful violation of law by an **Insured; or**

(3) any actual or alleged criminal or unlawful acts by an **Insured**.

Regarding this **Exclusion**, the **Wrongful Acts** of an **Insured** will not be imputed to any other **Insured** unless said other **Insured** knew of the **Wrongful Act**.

The Insurer will provide the **Insured** with a defense of such **Claim** unless and until such dishonest, intentionally wrongful, fraudulent, criminal or malicious act error or omission has been determined by any final adjudication, finding of fact, or admission by any Insured. Such defense will not waive any of the Insurer's rights under this Policy. Upon establishment that the dishonest, intentionally wrongful, fraudulent, criminal or malicious act, error or omission by the **Insured** was committed, the Insurer will have the right to seek recovery of the **Defense Costs** incurred from the **Insured** found to have committed such acts, errors or omissions.

(E) In connection with any **Claim** made, directly or indirectly, by or on behalf of, or with the assistance of:

(1) an **Insured**;

(2) any entity which is operated, controlled or managed by an **Insured**;

(3) any entity or individual that operates, manages, or is wholly or partly owned by an **Insured**; and

(4) Any entity in which an **Insured** or the spouse or legal domestic partner of an **Insured** individually or collectively has an ownership interest in excess of 49%.

(F) In connection with any **Claim** based upon, arising from, or in any way related to the actual or alleged discrimination, humiliation, harassment or misconduct by an **Insured** because of race, creed, color, age, gender, sexual preference or orientation, national origin, religion, disability, handicap, marital status or any other class protected under federal, state, local or other law.

(G) In connection with any **Claim** made, directly or indirectly, by or on behalf of any employee, former employee of an **Insured** or applicant for employment.

(H) In connection with any **Claim** based upon, arising from, or in any way related to the performance or failure to perform any services other than a **Professional Service.**

(I) In connection with any **Claim** based upon, arising from, or in any way related to any nuclear reaction, radiation, or contamination, under any circumstances and regardless of cause, within or originating from a site where a nuclear reactor is located or where nuclear waste or material is disposed.

(J) In connection with any **Claim** based upon, arising from or in any way related to the design or manufacture of any products or goods which are sold or supplied by the **Insured** or by others under license from the **Insured**. However, this exclusion does not apply to:

(1) software designed or modified for a **Client Entity(ies)** in connection with a **Professional Service** for that **Client Entity(ies)**; and

(2) The supplying of furnishings or fixtures by the **Insured** as part of an interior design or decorating service.

(K) In connection with any **Claim** based upon, arising from, or in any way related to the cost to repair or replace faulty workmanship the **Insured** performed on any construction, erection, fabrication, installation, assembly, manufacture, remediation, drilling, dismantling, demolition, excavation, dredging, including the cost of equipment, parts or materials furnished in connection therewith. However, this exclusion does not apply to drilling, excavation or other sampling or testing procedures required to perform **Professional Services** otherwise insured by this policy.

(L) In connection with any **Claim** based upon, arising from or in any way related to a **Pollution Incident** at, onto or from property or facilities which are or were at any time owned, rented or occupied by the **Insured** or any entity in joint venture with the **Insured**.

(M) In connection with any **Claim** based upon, arising from, or in any way related to the actual or alleged **Wrongful Act** which first occurred prior to the **Retroactive Date**.

(N) In connection with any liability assumed by an **Insured** under an indemnity, hold harmless or liquidated damages provision or similar provisions or agreements, but this exclusion does not apply to liability an **Insured** would have in the absence of such agreements.

V. NOTICE OF CLAIM

(A) As a condition precedent to coverage under this **Liability Coverage Part**, an **Insured** shall give the Insurer written notice of any **Claim** as soon as practicable after the **Insured** becomes aware of such **Claim**, but in no event later than:

(1) if this Policy expires (or is otherwise terminated) without being renewed with the Insurer, sixty (60) days after the effective date of said expiration or termination; or sixty (60) days after the expiration of the last policy issued by this Insurer as a renewal of this policy, whichever is later; or

(2) the expiration of the Extended Reporting Period, if applicable.

provided, that if this Policy is cancelled for non payment of premium, the **Insured** will give to the Insurer written notice of such **Claim**, prior to the effective date of cancellation.

(B) If, during the **Policy Period**, an **Insured** first becomes aware of an act, error or omission that may reasonably be expected to give rise to a **Claim**, and, if written notice of such act, error or omission is given to the Insurer during the **Policy Period**, including:

(1) the reasons for anticipating such a **Claim**;

(2) the specific nature and date of the act, error or omission;

(3) the **Professional Services** or activities which the **Insured** provided or engaged in;

(4) the identity of the **Insureds** allegedly involved, the alleged injuries or damages sustained;

(5) the names of potential claimants; and

(6) the potential damages or injury, the manner in which the **Insureds** first became aware of the act, error or omission, then any **Claim** subsequently made which arises from such act, error or omission shall be deemed to be a **Claim** first made during the **Policy Period,** and therefore subject to the terms and conditions of this Policy, including, without limitation, Section **VII. DEFENSE AND SETTLEMENT** of the Common Terms and Conditions and the reporting requirements set forth in this **Liability Coverage Part**, on the date that the Insurer receives the above notice.

