

# Architects and Engineers Professional Liability Insurance

VA 15

Valid as of 1 January 2021

Pohjola Insurance (hereafter the Underwriters) architects/engineers professional liability claims made and reported insurance policy

## Notice

This is a claims made and reported Policy. Unless stated otherwise coverage afforded under this insurance is limited to claims that:

- (a) are first made against the Assured during the policy period and reported in writing to the Underwriters either during the policy period, or within sixty (60) days after the expiration of the policy period and;
- (b) arise from professional services rendered subsequent to the retroactive date stated in item 6 of the Declarations.

The limit of liability available to pay damages shall be reduced and may be completely exhausted by the payment of claims expenses. Damages and claims expenses shall be applied against the Self-Insured Retention.

## Insuring agreements

The Underwriters, in consideration of the payment of the premium, and the Assured undertaking to promptly pay the Self-Insured Retention as described in Item 4 of the Declarations, and in reliance upon the statements and representations in the application and any supplemental materials submitted therewith, which are made a part hereof, and attached hereto and subject to all the terms and conditions of this Policy, agree with the Assured as follows:

## I. Coverage - professional liability

To pay on behalf of the Assured:

- (a) those sums which the Assured shall become legally obligated to pay as "damages" by reason of a claim first made against the Assured during the policy period and reported in writing to the Underwriters either during the policy period, or within sixty (60) days after the expiration of the policy period arising out of any negligent act, error or omission in rendering or failure to render professional services by the Assured or by any person for whose negligent act, error or omission the Assured is legally responsible; and

- (b) Claims expenses:
  - provided always that such negligent act, error or omission was committed:
  - (i) during the policy period; or
  - (ii) prior to the commencement of the policy period and subsequent to the Retroactive Date specified in Item 6 of the Declarations.

## II. Defence and settlement

- (a) The Underwriters shall have the right and duty to defend, subject to the limit of liability, a claim against the Assured seeking damages which are payable under the terms of this insurance, even if any of the allegations of the claim are groundless, false or fraudulent.
- (b) It is agreed that the limit of liability available to pay damages shall be reduced and may be completely exhausted by payment of claims expenses. Damages and claims expenses shall be applied against the Self-Insured Retention.
- (c) The Underwriters shall have the right to make any investigation they deem necessary with respect to coverage, including, without limitation, any investigation with respect to the application, statements made in the application and any supplemental materials submitted therewith. The Assured shall submit for examination by a representative of the Underwriters, under oath if requested, in connection with all matters relating to this Policy.
- (d) If the Named assured shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the claimant and elects to contest the claim, Underwriters' liability for any damages and claims expenses shall not exceed the amount for which the claim could have been settled including the claims expenses incurred up to the time of such refusal, or the applicable limit of liability, whichever is less and the Underwriters shall have the right to withdraw from the further defence thereof by tendering control of said defence to the named assured.
- (e) It is further provided that the Underwriters shall not be obligated to pay any damages or claims expenses or to undertake or continue defence of a claim after the

applicable limit of liability has been exhausted by payment of damages or claims expenses, and that upon such payment, the Underwriters shall have the right to withdraw from the further defence thereof by tendering control of said defence to the named assured.

- (f) The insurance covers the damages for which the Assured is liable. The amount of damages shall be calculated according to the regulations concerning damages and legal practice.

If several parties are jointly responsible for the same loss, the insurance shall only cover the part of the loss that corresponds to the Assured's share of the liability. If no other grounds exist, the indemnity is paid per capita.

### III. Limit of liability

The Limit of Liability of the Underwriters for all claims covered under the terms of the Policy, regardless of the number of claims, shall not exceed the amount of the Limit of Liability stated in Item 3 of the Declarations. Neither the inclusion herein of more than one Assured, nor the making of claims by more than one person or entity, shall increase the Limit of Liability.

### IV. Self-insured retention

The Self-Insured Retention amount stated in Item 4 of the Declarations shall apply separately to each and every claim and shall apply to damages and claims expenses, separately or in combination. Subject to the Limit of Liability stated in Item 3 of the Declarations, the obligation of the Underwriters to pay on behalf of the Assured for damages and claims expenses, separately or in combination, shall only be in excess of the Self-Insured Retention amount.

### V. Territory

The insurance afforded herein applies worldwide.

#### Exclusions

This Policy shall not apply to claims or claims expenses arising out of:

- I. Any facts or circumstances in respect of which the Assured, prior to the commencement of this policy, has given notice to any insurer on any other policy, whether or not indemnified or collectible in whole or in part under such a policy;
- II. Any facts or circumstances known to the Assured prior to commencement of this Policy which a reasonably prudent person, if aware of said facts or circumstances, might expect to give rise to a claim against the Assured;
- III. Any Assured acting in his capacity as a director and/or officer of any entity other than the named assured;
- IV. Any fraudulent, criminal, malicious or knowingly or intentionally wrongful or dishonest acts, errors or omissions of any Assured. However, nothing contained in the foregoing shall exclude coverage to the named assured or to any other Assured who neither committed nor had knowledge of such acts, errors or omissions as described above except that this Policy shall then only pay in excess of the full extent of the assets in the named assured of any Assured who committed such acts, errors or omissions as described above, and any other personal assets of such Assured recovered

by the named assured shall inure, to the extent of the amount paid by this Policy, to the benefit of Underwriters;

- V. Any liability of one or more Assureds under this Policy to any other one or more Assureds under this Policy;
- VI. Any projects where project specific professional liability insurance has been purchased and is in force, unless specifically endorsed hereon;
- VII.
  - (a) the actual or alleged generation, transportation, storage or disposal of pollutants by the Assured, or the arranging of transportation, storage or disposal of pollutants by the Assured; or
  - (b) pollution arising out of gross negligence or wilful acts; or
  - (c) pollution occurring in the United States, its territories, possessions or Canada; or
  - (d) pollution at, onto or from property or facilities which are or were at any time owned or rented by the Assured;

This exclusion does not apply to claims or claims expenses resulting from professional services by or on behalf of the Assured in connection with waste water treatment systems; potable water systems; storm water systems; electrical systems or heating, ventilating or air conditioning systems;

VIII.

- (a) Actual or alleged:-
  - (i) specification or installation of a product, material or process containing asbestos; or
  - (ii) generation, transportation, storage or disposal of a product or material containing asbestos; or
  - (iii) physical removal or abatement of a product or material containing asbestos;
- (b) Any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:-
  - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any waste from the combustion of nuclear fuel; or
  - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- IX. The advising or requiring of, or failure to advise or require, or failure to maintain any form of insurance, suretyship or bond, either with respect to the Assured or any other person;
- X. Discrimination by the Assured on the basis of race, creed, religion, age, handicap, disability, sex or marital status against a past or present employee or officer of, or applicant for employment with the Assured;
- XI. Personal injury, bodily injury, sickness, disease or death to any employee of the Assured; or any other person unless it arises directly out of a negligent act, error or omission in rendering or failing to render professional services by the Assured; or any obligation for which the Assured or any carrier as his insurer may be liable under any Worker's Compensation, Unemployment Compensation, Employer's Liability, Disability Benefits Law or under any similar law;

XII. Express warranties, guarantees or hold harmless agreements or any other liability assumed under contract which would not have existed in the absence of such contract;

XIII. The design or manufacture of any goods or products which are sold or supplied by the Assured or by others under license from the Assured.

XIV. Any entity which:

- (a) is operated, managed or controlled by the Assured or in which the Assured has an ownership interest in excess of 50%; or in which the Assured is an officer or director; or
- (b) wholly or partly owns, operates, controls or manages the Assured.

This exclusion does not apply to legal liability that arises out of a negligent act, error or omission in the performance of the Assured's professional services in a joint venture.

XV. Any penalty, fine or other similar consequence, including punitive and exemplary damages.

XVI. Any consequential loss such as a decrease or an interruption in production or turnover or other loss of income due to a contract with a third party having become void or not being fulfilled.

XVII. The insurance does not cover loss or expenses caused by or in some manner resulting from a violation of immaterial rights.

## Definitions

As used throughout this Policy, whether expressed in singular or plural:

I. Assured shall mean:

- (a) the named assured designated in Item 1 of the Declarations;
- (b) a present principal, partner, director or officer of the named assured but only while acting in his capacity as such on behalf of the named assured;
- (c) a present employee of the named assured but only while acting in his capacity as such on behalf of the named assured;
- (d) a former principal, partner, director, officer or employee (and estate of any such former principal, partner, director, officer or employee) of the named assured, but only while acting in his capacity as such on behalf of the named assured during the period of such service with the named assured; provided always that any such Assured must have been performing those professional services as defined in IX hereunder;
- (e) the legal heir, executor, administrator or legal representative of the Assured in the event of the Assured's death, incapacity or bankruptcy, but only with respect to the performance of professional services;

II. claim shall mean: (a) the Assured's receipt of a written demand for money or services or a request for arbitration; or, (b) the Assured's receipt of a suit seeking relief against it, which is covered under the terms of the policy. Two or more claims arising from a single or related series of negligent acts, errors or omissions shall be considered as a single claim for the purposes of this policy, irrespective of the number of claimants and all such multiple claims shall be deemed to have been made at the time of the first claim.

III. claims expenses shall mean those fees, costs and expenses incurred by an attorney consented to by the Underwriters to represent the Assured and all other costs, charges and expenses incurred for the investigation, adjustment, settlement, arbitration, defence or appeal of a claim which is covered under the terms of the policy.

claims expenses do not include salaries of Underwriters' employees, representatives or officials, or fees and expenses of independent adjusters or supervisory counsel.

IV. damages shall mean a judgement, award or settlement, including any interest thereon. The term damages shall not include sanctions, fines, penalties, taxes, return of fees, multiple damages, exemplary damages, punitive damages and any matters uninsurable under the law under which this policy shall be construed.

V. named assured shall mean only those persons, partnerships, corporations or entities specified in Item 1 of the Declarations. The term named assured shall not include any partnerships, corporations or entities formed or acquired by the named assured subsequent to the inception date of this policy unless specifically endorsed hereon.

VI. policy period shall mean that period between the inception and expiration dates specified in Item 2 of the Declarations subject to any earlier termination date.

VII. pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. Pollutants does not mean heat, smoke, vapour, soot or fumes from a hostile fire or explosion.

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

IX. professional services shall mean only those services provided by the Assured acting in the capacity of an architect, engineer, construction manager, landscape architect, land surveyor, planner or as specifically endorsed hereon.

X. customary short rate will apply in case this policy comes to an end for reasons other than through termination by the Underwriters. The premium for the validity period already elapsed of this policy will be calculated as follows:

Period of premium validity in months for the policy period	Premium % of validity in months
0 to 3	35
3 to 6	60
6 to 9	80
9 to 12	100

## Conditions

I.

### A. Notice of claims

If any claim is made against the Assured, whether or not the alleged damages fall within or in excess of the Self-Insured Retention, the Assured shall have the duty to as soon as practicable give written notice to the Underwriters.

Such written notice must contain complete details of the claim, the exact date the claim was first made, the location, the circumstances giving rise to such claim, the identity of all claimants and a full description of the nature and scope of the alleged damages. The Assured must as soon as practicable forward every demand, notice, summons or other process received by it or its representative.

## B. Notice of circumstances

If the Assured becomes aware of any specific negligent act, error or omission which may reasonably be expected to give rise to a claim, the Assured shall, during the policy period, give written notice to Underwriters of:

- (i) the specific act, error or omission;
- (ii) the injury or damage which has or may result from such act, error or omission; and
- (iii) the circumstance by which the Assured first became aware of such act, error or omission.

Then if the Assured complies with the foregoing notice requirements (i), (ii) and (iii), any claim subsequently made against the Assured arising out of such act, error or omission shall be treated as a claim first made on the date on which such written notice was received by Underwriters.

## II. Purchase of extended reporting period

If the Underwriters cancel or refuse to renew this Policy, the Assured shall then have the right, in consideration of an additional premium equal to one hundred percent (100%) of the full annual Premium charged hereunder, to an extension of the cover granted by this Policy, subject to its terms, conditions, exclusions, definitions and limitations, in respect of any claim first made against the Assured and reported in writing to the Underwriters during the period of twelve (12) months after the cancellation or expiry date of this Policy but only when such claim arises as a result of professional services rendered subsequent to the retroactive date and prior to the cancellation date of this Policy, or the Expiration date stated in Item 2 of the Declarations.

To exercise this right, the Assured must give notice in writing within thirty (30) days of the cancellation or expiry date of this policy, to the Underwriters and remit full payment of the premium for this Extended Reporting Period to Underwriters within thirty (30) days of the cancellation or expiry date of this Policy. In the event of failure by the Assured to give such notice and remit such premium prior to such date, it shall not at a later date be able to invoke this extension.

In the event of the purchase of the Extended Reporting Period, the entire premium therefor shall be deemed earned at its commencement and in the event the Assured terminates the Extended Reporting Period before its term for any reason, Underwriters shall not be liable to return any portion of the premium paid for the Extended Reporting Period.

The quotation by Underwriters of a different premium or Self-Insured Retention or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.

This Condition II does not apply if the Assured has failed to pay the full premium for this Policy or if the Underwriters have given notice of cancellation for a lack of such full payment of Premium.

The purchase of the Extended Reporting Period shall not reinstate or increase the Limit of Liability as stated in item 3 of the Declarations.

## III. Cooperation and assistance of the assured

The Assured shall have the duty to cooperate fully with and assist the Underwriters and their representatives with respect to the investigation, settlement or defence of any claim or potential claim.

It is expressly understood however that in no event shall the Assured be reimbursed for loss of earnings or fees, or for internal expenses or costs incurred in cooperating with or assisting the Underwriters in investigating or settling any claim at the direction of the Underwriters or in the Assured's defence of any claim, nor shall any such loss of earnings or fees or costs or expenses apply to the Assured's responsibility to pay the Self-Insured Retention.

However, the above condition does not apply to reasonable costs incurred in securing the co-operation of former principals, officers or employees in the defence of a claim otherwise covered herein.

## IV. Admission of liability

The Assured shall not, without the prior written consent of the Underwriters, incur any expenses, including but not limited to forgoing or reducing any compensation due or alleged to be due, or make any other payment, assume any obligation, make any settlement, attempt any remedial measure or in any way admit or acknowledge liability in connection with any claim or potential claim.

If the Assured makes good the loss, agrees there on or accepts the claim, this shall in no way be binding upon the Underwriters, unless the amount and basis of the indemnity are clearly legitimate.

## V. Action against underwriters

No action shall lie against the Underwriters or their representatives unless, as a condition precedent thereto, the Assured shall have fully complied with all the terms and conditions of this Policy, or until the amount of any damages has been finally determined either by operation of law or by written agreement of the Assured, the claimant and the Underwriters.

Nothing contained in this Policy shall give any person or organisation any right to join the Underwriters as a defendant or co-defendant or other party in any action against the Assured to determine the Assured's liability.

## VI. Other insurance

The coverage afforded by this Policy shall be excess of all other applicable professional liability insurance, whether or not valid or collectible, including any Self-Insured Retention portion thereof.

## VII. Changes

None of the Insuring Agreements, Exclusions, Definitions or Conditions or other terms of this Policy shall be amended, waived or otherwise changed except by endorsement hereto signed by the Underwriters.



## VIII. Named assured as agent

The named assured specified in Item 1 of the Declarations shall be considered the agent of all Assureds with respect to the giving of or receipt of all notices pertaining to this Policy and shall be responsible for the payment to the Underwriters of all premiums and for payment of the Self-Insured Retention.

## IX. Premium

The premium for this Policy shall be the amount specified in Item 5 of the Declarations.

## X. Subrogation

In the event of any claim under this Policy, the Underwriters shall be subrogated to all of the Assured's rights of recovery against any person or entity, and the Assured shall execute and deliver to the Underwriters any and all necessary documentation, instruments and records and do whatever else is necessary to secure and enforce such rights. The Assured shall take no action after such claim is made against it which prejudices such rights of the Underwriters.

## XI. Assignment

No assignment or transfer of any Assured's rights under this Policy shall bind the Underwriters.

## XII. Application

By acceptance of this Policy, all Assureds agree that the statements contained in the application and any supplemental materials submitted therewith are their agreements and representations, that this Policy is issued in reliance upon the truth thereof, and that this Policy embodies all agreements existing between themselves and the Underwriters. The application and any supplemental materials submitted therewith or a copy thereof is attached to and is specifically made a part of this Policy and is the basis upon which this Policy is issued.

## XIII. Cancellation

The named assured may cancel this Policy by mailing, registered mail, to the Underwriters written notice stating when thereafter such cancellation shall be effective however not less than ten (10) days thereafter the notice is received by the Underwriters.

The Underwriters may cancel this Policy by mailing to the named assured, at the mailing address specified in Item 1 of the Declarations, written notice stating when not less than thirty (30) days thereafter such cancellation shall be effective except that for nonpayment of premium, not less than ten (10) days advance notice of cancellation shall be given.

The mailing of notice as aforesaid shall be sufficient proof of the intent to cancel. The date and hour of cancellation specified in such notice shall represent the time of termination of this Policy. Delivery of such notice shall be equivalent to mailing.

If the named assured cancels, the earned premium shall be computed in accordance with the customary short rate. If the Underwriters cancel, the earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effective or as soon as practicable thereafter, but payment or tender of unearned premium or the return of this Policy shall not be a condition of cancellation.

If the Limit of Liability stated in Item 3 of the Declarations has been exhausted by payment of claims, the policy shall be deemed earned and Underwriters shall not be liable for return of any premium paid.

## XIV. Forfeiture

- (a) Any action or failure to act by the Assured with the intent to defraud the Underwriters shall render this Policy null and void, and all coverage hereunder shall be forfeited; or
- (b) any material misrepresentation or non-disclosure of any material fact by the Assured in the application or in any supplemental materials submitted therewith shall damages and claims expenses be either reduced or withheld completely.

## XV. Disputes regarding this policy

Disputes concerning a claim settlement decision, contents of this policy and other matters pertaining to this policy are subject to Finnish law, and any related legal action can be brought only in the Helsinki District Court.

Pohjola Insurance Ltd, Business ID: 1458359-3

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Domicile: Helsinki, main line of business: non-life insurance companies

Regulatory authority: Financial Supervisory Authority, [finanssivalvonta.fi/en](https://finanssivalvonta.fi/en)

