

Contractors Professional Liability and Pollution Incident Liability Policy

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS CONTRACTORS PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR AN OPTIONAL EXTENDED REPORTING PERIOD (IF APPLICABLE) AND REPORTED TO THE COMPANY IN WRITING PURSUANT TO THE TERMS AND CONDITIONS OF THIS POLICY. LOSS, CLAIM EXPENSES AND MITIGATION EXPENSES REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

In consideration of the payment of the premium, the undertaking of the **Named Insured** to pay the Deductible herein and in reliance upon all statements made and information in the **Application**, which is deemed attached hereto and made a part of this Policy, and subject to the Limit of Liability and Deductible as well as all the terms, conditions, limitations and exclusions of this Policy, the Company agrees with the **Named Insured** as follows:

The Company shall mean the insurance carrier stated in the Declarations of this Policy.

I. INSURING AGREEMENTS

(A) Professional Services Liability Coverage

(1) Contractors Professional Liability

The Company shall pay **Loss** and **Claim Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services**, provided always that:

- (a) the **Claim** is first made against an **Insured** during the **Policy Period** or an Optional Extended Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, within sixty (60) days after the end of the **Policy Period** or during an Optional Extended Reporting Period (if applicable);
- (b) an **Insured's** partners, principals, officers, directors or managers of the insurance, legal or risk management department had no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Effective Date stated in the Declarations of this Policy; and,
- (c) the **Wrongful Act** takes place on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**.

(2) **Mitigation Expenses Coverage**

The Company shall pay **Mitigation Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, to mitigate or rectify an actual negligent act, error or omission arising from engineering or architectural designs, plans or specifications performed by or on behalf of an **Insured** provided always that:

- (a) the negligent act, error or omission giving rise to the need to mitigate or rectify must have been rendered on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**;
- (b) an **Insured's** partners, principals, officers, directors or managers of the insurance, legal or risk management department had no knowledge of any circumstance, dispute, situation or incident that gave rise to the need to mitigate or rectify prior to the Effective Date stated in the Declarations of this Policy;
- (c) an **Insured** shall give written notice to the individual designated in the Declarations of this Policy as soon as practicable during the **Policy Period** of the need to mitigate and rectify and will present evidence demonstrating to the Company's satisfaction that such negligent act, error or omission is reasonably likely to give rise to a **Claim** under this Policy;
- (d) an **Insured** shall provide the Company, in writing, with details of the proposed plan to mitigate or rectify and the amount of the proposed **Mitigation Expenses**;
- (e) the Company agrees to such corrective action plan, in writing, prior to any **Insured** incurring any **Mitigation Expenses**, unless such **Mitigation Expenses** are necessary to prevent any imminent **Bodily Injury** or **Property Damage**; and,
- (f) such **Mitigation Expenses** do not arise from the same or similar negligent act, error or omission for which **Mitigation Expenses** have been previously requested or paid.

In the event a **Claim** is subsequently made against an **Insured** alleging a **Wrongful Act** arising from **Professional Services**, the Company shall have the right to cease any payment for **Mitigation Expenses**.

The following Insuring Agreement is applicable only when the Declarations of this Policy reflect that such Insuring Agreement has been purchased:

(B) **Contractors Pollution Incident Liability Coverage**

The Company shall pay **Loss** and **Claim Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a

Pollution Incident arising from **Contracting Activities** performed by or on behalf of an **Insured**, provided always that:

- (1) the **Claim** is first made against an **Insured** during the **Policy Period** or an Optional Extended Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, within sixty (60) days after the end of the **Policy Period** or during an Optional Extended Reporting Period (if applicable);
- (2) an **Insured's** partners, principals, officers, directors or managers of the insurance, legal or risk management department had no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Effective Date stated in the Declarations of this Policy; and,
- (3) the **Contracting Activities** that resulted in the **Pollution Incident** take place on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**.

II. SUPPLEMENTAL COVERAGES

Only payments made by the Company under this Supplemental Coverages Section shall not be subject to any Deductible and shall not operate to reduce this Policy's Limit of Liability.

(A) Disciplinary Proceedings

The Company shall reimburse an **Insured**, upon written request, up to a maximum of \$7,500 under this Policy, for reasonable and necessary legal fees and expenses incurred by an **Insured**, with the prior written consent of the Company, in responding to a disciplinary proceeding brought directly against an **Insured** by or before a state licensing board, provided always that the following conditions are satisfied:

- (1) the disciplinary proceeding arises out of **Professional Services**; and,
- (2) the disciplinary proceeding is first initiated against an **Insured** during the **Policy Period** and is also reported to the Company, in writing, during the **Policy Period** or Optional Extended Reporting Period (if applicable).

After the Company has paid \$7,500 under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any disciplinary proceeding under this Policy.

When this provision is applicable, the Company shall have the right, but not the duty, to defend any **Insured** in the disciplinary proceeding.

(B) ADA, FFHA and OSHA Proceedings Reimbursement

The Company shall reimburse an **Insured**, upon written request, up to a maximum of \$15,000 under this Policy, for reasonable and necessary legal fees

and expenses incurred by an **Insured**, with prior written consent of the Company, in responding to a regulatory or administrative proceeding brought directly against an **Insured** by a government agency under the Americans with Disabilities Act (“ADA”), the Federal Fair Housing Act (“FFHA”), or the Occupational Safety and Health Act (“OSHA”) provided always that the following conditions are satisfied:

- (1) the regulatory or administrative proceeding arises out of **Professional Services**; and,
- (2) the regulatory or administrative proceeding is first initiated against an **Insured** during the **Policy Period** and is reported, in writing, to the Company during the **Policy Period** or Optional Extended Reporting Period (if applicable).

After the Company has paid \$15,000 under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any regulatory or administrative proceeding under this Policy.

When this provision is applicable, the Company shall have the right, but not the duty, to defend any **Insured** in the regulatory or administrative proceeding.

(C) Insured’s Expense Reimbursement

The Company shall reimburse an **Insured**, upon written request, for reasonable and necessary expenses incurred by an **Insured** and provable loss of wages sustained by an **Insured**, if an **Insured** is required, by the Company, to attend legal proceedings in connection with the defense of a **Claim**. Such reimbursement shall be subject always to the following:

- (1) the maximum reimbursement for such expenses shall not exceed \$300 per day for any **Insured** who attends such proceedings at the Company’s request; and,
- (2) the Company’s maximum total liability for reimbursement of reasonable and necessary expenses shall not exceed \$7,500 under this Policy.

III. DEFENSE, INVESTIGATION & SETTLEMENT

(A) Defense

The Company shall have the right and duty to defend any **Claim** covered by this Policy that is brought against an **Insured** alleging a **Wrongful Act** arising from **Professional Services** or a **Pollution Incident** arising from **Contracting Activities**, performed by or on behalf of an **Insured**, even if the allegations are groundless or false. The Company has the right to select and appoint legal counsel to represent any **Insured** with respect to any **Claim** to which this Policy applies. The Company’s duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability.

(B) Investigation and Settlement of Claim

An **Insured** shall not make any payment, admit any liability, assume any obligation, settle any **Claim** or incur any expense without the prior written consent of the Company. The Company shall not be liable for any settlement, expense, assumed obligation or admission to which it has not given its prior written consent.

The Company shall have the right and sole discretion to investigate any circumstance, dispute, situation or event regardless of whether any **Claim** has been made. The Company may, with the consent of the **Named Insured**, settle any **Claim** it deems reasonable and necessary. If the **Named Insured** refuses to consent to any settlement recommended by the Company, then the Company's liability for such **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, less the Deductible or the outstanding Deductible balance and subject to the applicable Limit of Liability.

IV. DEFINITIONS

(A) Application

"Application" shall mean all applications and/or proposals, including any attachments thereto, and all other information and materials submitted by or on behalf of any **Insured** to the Company in connection with the underwriting of this Policy, or any other policy or policies of which this Policy is a renewal or replacement.

(B) Bodily Injury

"Bodily Injury" shall mean physical injury, sickness, disease or death of a person, and any mental anguish, emotional distress or pain and suffering resulting therefrom.

(C) Claim

"Claim" shall mean:

- (1) a demand made against any **Insured** for monetary damages or services including a request to waive or toll a statute of limitations; or,
- (2) any civil, judicial, administrative, regulatory or arbitration proceeding commenced against any **Insured** by the service of a complaint or similar pleading.

A **Claim** will be deemed to have been first made against an **Insured** when any **Insured** first receives notice of such **Claim**.

(D) Claim Expenses

“**Claim Expenses**” shall mean (1) reasonable and necessary legal fees and expenses charged by an attorney selected and appointed by the Company in defense of a **Claim** or circumstance that may lead to a **Claim**; and (2) all other reasonable and necessary fees, costs or expenses incurred in the investigation, adjustment, **Mediation**, defense and appeal of a **Claim** if incurred by the Company or an attorney selected and appointed by the Company, or by an **Insured** with the prior written consent of the Company.

“**Claim Expenses**” shall not include: (1) salary expenses, wages or lost earnings of any **Insured** except as provided in **Section II. (C)**, or (2) any fees, costs, or expenses incurred with respect to any criminal proceedings or criminal actions against any **Insured**.

(E) Cleanup Costs

“**Cleanup Costs**” shall mean reasonable and necessary costs, charges and expenses incurred with the written consent of the Company in the investigation, removal or neutralization of a **Pollution Incident** on property not owned, rented, leased, occupied or used, at any time, by any **Insured** including such costs incurred by a third party to the extent mandated by a court order or by any governmental agency or to prevent clear and imminent danger to an individual or to property.

(F) Contracting Activities

“**Contracting Activities**” shall mean any construction, fabrication, assembling, erection, excavation, drilling, installation, demolition, remediation, manufacture, related work on any structure, facility, element, earthwork, component, or supplying of equipment or materials incorporated therein, performed for others for a fee, by or on behalf of an **Insured**.

(G) Domestic Partner

“**Domestic Partner**” shall have the meaning prescribed by applicable state or local law, or in the absence of such law, means one of two natural persons who form a couple living together in a committed, long standing relationship, provided that such persons:

- (1) have a common residence that they have shared for a period of two years or more;
- (2) are not blood relatives and are not married or in a **Domestic Partnership** with someone else; and,
- (3) are mentally competent, at least 18 years of age and registered as **Domestic Partners** in a local registry, if one exists.

(H) Hostile Fire

“**Hostile Fire**” shall mean a combustion that cannot be controlled, that escapes from where it was initially set and confined, or one that was not intended to exist.

(I) Insured

“**Insured**” shall mean:

- (1) the **Named Insured** designated as such in the Declarations of this Policy;
- (2) any current, retired or former partner, principal, officer, director, trustee, member or employee of any **Insured**, but only for conduct occurring while acting within the scope of his or her duties on behalf of any **Insured**;
- (3) any **Insured** with regard to its participation in a joint venture, provided the **Insured** is named in writing as a co-venturer in such joint venture agreement, but solely for that **Insured**'s legal liability with respect to a **Wrongful Act** arising from **Professional Services** by the joint venture, or for a **Pollution Incident** arising from **Contracting Activities** performed by any **Insured** to which this insurance applies. **Insured** shall not include the joint venture itself or any other entity that is part of the joint venture;
- (4) any temporary or leased personnel rendering **Professional Services** or **Contracting Activities**, to which this insurance applies, and while acting under the direct supervision of and on behalf of any **Insured** (as defined in subsections 1-3 above);
- (5) the lawful spouse or **Domestic Partner** of an **Insured** (as stated in subsections 1-4 above) for any **Claim** made against such spouse or **Domestic Partner** solely by reason of his/her status as a spouse or **Domestic Partner** of an **Insured** or ownership interest in marital property/assets that are sought as recovery for such **Claim**, but only if the **Claim** does not allege any **Wrongful Act** by such spouse or **Domestic Partner**;
- (6) the estate, heirs, assigns or legal representatives (in the event of death or incompetency) of any individual **Insured** under this Policy; and,
- (7) any other individual or entity specifically added as an **Insured** by Endorsement to this Policy.

(J) Interrelated Wrongful Acts

“**Interrelated Wrongful Acts**” shall mean all **Wrongful Acts** that have as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

(K) Loss

“**Loss**” shall mean a monetary judgment, award or settlement for damages including an award by a court of reasonable attorney's fees and costs to a claimant. **Loss** shall also include the non-multiplied portion of punitive and exemplary damages to the extent such damages are insurable under the law of the most favorable applicable jurisdiction that allows coverage for such damages. **Loss** shall not include:

- (1) any amount for which any **Insured** is not legally obligated to pay;
- (2) all fines, penalties, taxes or sanctions sought from or awarded against any **Insured**;
- (3) the multiple portion of any multiplied award;
- (4) discounts, coupons, prizes, awards or other incentives offered to any **Insured's** clients or customers;
- (5) the return, reduction, loss, disgorgement, restitution or offset of money, assets, fees, charges, royalties, profits or commissions;
- (6) liquidated damages, to the extent that such damages exceed the amount for which any **Insured** would have been liable in the absence of such liquidated damages agreement;
- (7) all costs with respect to injunctive, non-monetary or declaratory relief orders, including costs associated with specific performance or any agreement to provide such relief;
- (8) any matters, judgments, damages or other amounts uninsurable under the laws pursuant to which this Policy is construed; or,
- (9) any amount allocable to uncovered **Loss** under this Policy.

(L) Mediation

“**Mediation**” shall mean the voluntary, non-binding process by which a qualified, professional third party neutral intercedes between the parties to a **Claim** with the intention to resolve such **Claim**. The term **Mediation** shall not include any court-ordered dispute resolution nor shall the term include arbitrations.

(M) Mitigation Expenses

“**Mitigation Expenses**” shall mean reasonable and necessary fees and expenses incurred by an **Insured** to mitigate or rectify an actual negligent act, error or omission arising from engineering or architectural designs, plans or specifications performed by or on behalf of an **Insured**, but only for a project for which an **Insured** is responsible for both the design and the construction. “**Mitigation Expenses**” shall not include an **Insured's** own profit, overhead or salaries, or any corrective action that is betterment, or any liability for

consequential damages arising from the corrective action, including but not limited to project delay costs, cost overruns, increase in funding costs, or any loss of use.

(N) Named Insured

“**Named Insured**” shall mean the individual or entity designated as such in the Declarations of this Policy.

(O) Personal Injury

“**Personal Injury**” shall mean any injury arising out of one or more of the following offenses:

- (1) false arrest, detention, or imprisonment;
- (2) wrongful entry, wrongful eviction, or other invasions of privacy;
- (3) assault or battery;
- (4) harassment or humiliation in any form, including, but not limited to sexual harassment;
- (5) malicious prosecution; or,
- (6) libel, slander, or defamation of character.

(P) Policy Period

“**Policy Period**” shall mean the period from the Effective Date of this Policy to its Expiration Date stated in the Declarations of this Policy, or its earlier termination date, if any, and specifically excludes any Optional Extended Reporting Period.

(Q) Pollution Incident

“**Pollution Incident**” shall mean the actual or alleged emission, discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials (including materials to be recycled, reconditioned or reclaimed) on, in, into, or upon land and structures thereupon, the atmosphere, any watercourse, body of water, or groundwater, which results in **Bodily Injury** or **Property Damage**. “**Pollution Incident**” shall not include heat, smoke, vapor, soot or fumes from a **Hostile Fire** or explosion. Any emission, discharge, release, escape, migration or seepage or any series of continuous, repeated or related emissions, discharges, dispersals, releases, escapes, migrations or seepages shall be deemed to be a single **Pollution Incident**.

(R) Professional Services

“Professional Services” shall mean:

- (1) those services performed for others for a fee, by or on behalf of an **Insured**, as an architect, engineer, land surveyor, landscape architect, interior designer, LEED consultant, environmental consultant, expert or forensic witness, land planner, space planner or scientist;
- (2) those services performed for others for a fee, by or on behalf of an **Insured**, as a professional qualified to perform sprinkler design, electrical design, mechanical design, HVAC design, plumbing design, fire protection design, life safety design, security system design, acoustical design, materials testing, laboratory testing, Building Information Modeling (BIM), custom software design used for the sole purpose of operating or maintaining systems, building commissioning, value engineering, constructability review or design-assist;
- (3) those services performed for others for a fee, by or on behalf of an **Insured**, as a construction manager, project manager, program manager, or owner’s representative, but only to the extent such services are specifically defined by a written contract; or,
- (4) the management, by an **Insured**, of an **Insured’s** subconsultants in their capacity as an architect, engineer, land surveyor, landscape architect, interior designer, LEED consultant, environmental consultant, expert or forensic witness, land planner, space planner, scientist, construction manager, project manager, or program manager.

(S) Property Damage

“Property Damage” shall mean:

- (1) physical injury to, or destruction of, tangible property of parties other than any **Insured**, including loss of use resulting therefrom;
- (2) loss of use of tangible property of parties other than any **Insured**, that has not been physically injured or destroyed; or,
- (3) **Cleanup Costs.**

(T) Wrongful Act

“Wrongful Act” shall mean any actual or alleged negligent act, negligent error, negligent omission, negligent misstatement, negligent misleading statement or negligent breach of duty committed or allegedly committed by any **Insured** or by an individual or entity for whom an **Insured** is legally liable.

V. EXCLUSIONS AS TO THE ENTIRE POLICY

This Policy does not apply to any **Claim, Loss, Claim Expenses** or **Mitigation Expenses**:

(A) Breach of Warranty / Guarantee

based upon or arising out of any warranty or guarantee made by any **Insured**. This exclusion shall not apply to the warranty or guarantee that **Professional Services** adhere to the generally accepted standard of care applicable to those **Professional Services**;

(B) Construction Procedures

based upon or arising out of the design, construction or failure of any falsework, formwork, shoring, scaffolding, rigging, crane erection or any other construction means, methods, techniques, sequences or procedures;

(C) Contractual Liability

based upon or arising out of any liability of others assumed by any **Insured** under any oral or written contract or agreement, unless such liability would have attached to that **Insured** even in the absence of such contract or agreement;

(D) Faulty Workmanship

based upon or arising out of any cost to repair or replace faulty workmanship due to the performance or the failure to perform **Contracting Activities** by any **Insured**, its subcontractors, or on any **Insured's** behalf. This exclusion shall not apply to the portion of the **Claim** arising from a **Pollution Incident**;

(E) Fiduciary / Employment Liability

based upon or arising out of:

- (1) **Personal Injury, Bodily Injury**, sickness, disease or death to any employee of any **Insured** arising out of and in the course of employment by any **Insured**;
- (2) any obligation for which any **Insured** or any insurer may be liable under any Workers' Compensation, Unemployment Compensation, Employers Liability, or Disability Benefits law, or any similar law or regulation; or,
- (3) based upon or arising out of any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as may be amended, or any similar provisions of any foreign, federal, state or local statutory or common law and any rules or regulations promulgated under such laws.

(F) Fraud / Intentional Acts

based upon or arising out of any dishonest, criminal, fraudulent, malicious or intentional acts, errors or omissions committed or allegedly committed by any **Insured** or any individual or entity for whom any **Insured** is legally liable;

(G) Insurance or Financing

based upon or arising out of any **Insured's** advising or requiring, or failure to advise or require, or failure to provide, procure or maintain any form of or sufficient insurance, suretyship, bonding, financing, or monies for any projects;

(H) Insured vs. Insured

based upon or arising out of any assertions, allegations, causes of action, demands or **Claims** by or on behalf of any **Insured** under this Policy against another **Insured**;

(I) Nuclear Incident

based upon or arising out of a nuclear reaction, radiation, or contamination or originating from a nuclear facility where nuclear material is stored or disposed of, or where a nuclear reactor is located, under any circumstances and regardless of cause;

(J) Performance

based upon or arising out of:

- (1) the actual or alleged failure to complete any project on time or any other delay;
- (2) any cost estimates being exceeded or cost overruns; or,
- (3) any bid inaccuracies.

This exclusion shall not apply if such **Claim** is a direct result of a **Wrongful Act** arising from **Professional Services**, but only to the extent such services are specifically defined by a written contract;

(K) Personal Property

based upon or arising out of:

- (1) any real or personal property at any time owned, rented, leased, occupied or used by any **Insured** or by any person or entity for whom any **Insured** is legally liable; or,
- (2) a **Pollution Incident** at, onto or from any real or personal property at any time owned, rented, leased, occupied or used by any **Insured** or by any person or entity for whom any **Insured** is legally liable.

(L) Related Entities / Individuals

based upon or arising out of the rendering or failure to render **Professional Services** or **Contracting Activities** by any **Insured** for any individual or entity (or any employee, principal, owner, shareholder, director, partner, stockholder, assignee or subrogee of such individual or entity) that:

- (1) wholly or partly owns, operates, controls, or manages any **Insured**; or,
- (2) at any time during or subsequent to the performance or failure to perform **Professional Services** or **Contracting Activities** is, or was operated, managed or controlled by any **Insured**, or for which any **Insured** was an officer or director, or in which any **Insured** has an ownership interest of 25% or more.

(M) Sale or Distribution of Products

based upon or arising out of any design, fabrication or manufacture of any goods or products that are sold or supplied by any **Insured** or by others under license from any **Insured**, including any parts, components, assemblies or equipment installed or incorporated into any goods or products. This exclusion shall not apply to a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services** rendered during:

- (1) the development, creation or tailoring of software or programming for a specific application or project; or,
- (2) the design of custom equipment specifically designed for a custom built system or process.

(N) Site Safety

based upon or arising out of any job site safety, including but not limited to:

- (1) the failure to protect any property or persons;
- (2) the preparation or failure to prepare any safety precautions, procedures or plans in connection with any project including, but not limited to first aid stations, temporary traffic control plans, temporary utilities, temporary fencing, temporary signs, or temporary barricades, falsework, formwork, shoring, scaffolding, harnessing, equipment, rigging, or crane erection;
- (3) demolition or project clean up; or,
- (4) review or supervision of the safety obligations or plans of others.

(O) Substitutions

based upon or arising out of any actual or alleged decision to substitute a material or product for one specified on plans, drawings, blueprints, work orders,

contracts, architectural or engineering specifications, unless there has been written approval by an authorized third party or client, for such substitution;

(P) Vehicle Liability

based upon or arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock. This exclusion shall not apply to a **Pollution Incident** arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock, or arising from waste or materials transported by or on behalf of any **Insured** by an automobile, aircraft, watercraft or rolling stock during the course of **Contracting Activities**;

(Q) Waste Disposal

based upon or arising out of the treatment, storage, recycling or disposal of any waste material at a location not permitted or licensed by a Federal, State or Local authority to accept such material as of the date of the treatment, storage, recycling or disposal; and,

(R) Wrongful Employment Practices

based upon or arising out of any actual or alleged wrongful employment practices, including but not limited to:

- (1) any actual or alleged discrimination, harassment, or wrongful employment conduct by any **Insured**; or,
- (2) any actual or alleged violation of any local, state, or federal law, regulation or ordinance by any **Insured**.

VI. INNOCENT INSUREDS

Section V. (F) shall not apply to any **Insured**, who is a natural person, who did not commit, participate in, or have prior knowledge of any dishonest, criminal, fraudulent, malicious, or intentional, acts, errors or omissions to which **Section V. (F)** would otherwise apply.

VII. LIMIT OF LIABILITY / DEDUCTIBLE

(A) Limit of Liability

Regardless of anything, the Company's total liability under this Policy shall not exceed the amount stated in the Declarations of this Policy as Limit of Liability. The Limit of Liability shall be excess of the Deductible amount.

(B) Exhaustion of Limit of Liability

The Company shall not be liable to pay any **Loss, Claim Expenses** or **Mitigation Expenses** or continue the defense of any **Claim** after the Limit of Liability has been exhausted.

(C) Deductible

The Deductible amount stated in the Declarations of this Policy shall apply to **Loss, Claim Expenses and Mitigation Expenses**. The Company shall not be obligated to pay **Loss, Claim Expenses or Mitigation Expenses** until an **Insured** pays the applicable Deductible in full.

(D) Mediation of Claims Deductible Credit

The applicable Deductible amount stated in the Declarations of this Policy will be decreased by 50%, subject to a maximum reduction of \$15,000, if a **Claim** is fully and finally resolved to the satisfaction of all parties, including the Company, through **Mediation**. In the event such **Mediation** does not fully and finally resolve the **Claim**, there shall be no reduction of the Deductible obligation, and all **Claim Expenses** incurred in the **Mediation** shall be included in the total **Claim Expenses** for the **Claim**.

(E) Multiple Claims

Two or more **Claims** based upon or arising out of the same **Wrongful Act, Interrelated Wrongful Acts, Contracting Activities or Pollution Incident**, shall be considered a single **Claim** and shall be deemed to have been made when the first such **Claim** was made against any **Insured**. Further, any **Interrelated Wrongful Acts** shall be deemed to have been committed at the time when the first such **Wrongful Act** was committed. A single Deductible and a single per **Claim** Limit of Liability shall apply to any **Claim** or the total of all **Claims** arising from the same **Wrongful Act, Interrelated Wrongful Acts, Contracting Activities or Pollution Incident**.

(F) Allocation

If both **Loss** covered under this Policy and **Loss** not covered by this Policy are incurred in connection with any **Claim**, the **Named Insured** and the Company shall use reasonable efforts to agree upon a fair and proper allocation of such amount between covered **Loss** and **Claim Expenses** and uncovered **Loss** and **Claim Expenses** based on the relative legal exposure of the parties to covered and uncovered matters. If there is no agreement on allocation of **Loss** and **Claim Expenses**, the Company may apply any allocation it deems appropriate and no presumption as to allocation shall exist in any arbitration, suit or other proceeding.

(G) Mitigation Expenses Dispute Resolution

If the Company and the **Named Insured** cannot agree on the reasonableness of the proposed **Mitigation Expenses**, then the Company and the **Named Insured** may submit such dispute to alternative dispute resolution. In the event such dispute is not fully and finally resolved, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction over such dispute.

VIII. TERRITORY

Coverage under this Policy shall apply to **Wrongful Acts** arising from **Professional Services** worldwide or a **Pollution Incident** arising from **Contracting Activities** worldwide, provided always that a **Claim** is made and maintained against an **Insured** within the United States of America, its territories and possessions, or Canada.

IX. NOTICE OF CIRCUMSTANCE

If, during the **Policy Period**, any **Insured** first becomes aware of any circumstance that may lead to a **Claim**, and if that **Insured**, during the **Policy Period**, gives written notice to the Company of:

- (A) the circumstances (including parties involved);
- (B) the consequences that have or may result therefrom; and,
- (C) the circumstances by which that **Insured** first became aware thereof;

then any **Claim** subsequently made against any **Insured** arising in whole or in part out of such circumstances shall be deemed for the purposes of this Policy to have been first been made on the date such circumstances were first reported to the Company.

X. CONDITIONS

(A) Notification

- (1) As a condition precedent to any available rights under this Policy, in the event any **Claim** is first made against any **Insured** during the **Policy Period**, that **Insured** shall give written notice of the **Claim** to the individual designated in the Declarations of this Policy as soon as practicable, but in no event later than sixty (60) days after the end of the **Policy Period**, containing particulars sufficient to identify any **Insured** and including, but not limited to, information regarding the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses. Notice of a **Claim** to an **Insured's** insurance representative, agent or broker shall not constitute notification of a **Claim** to the Company.
- (2) If the institution of arbitration proceedings or suit is brought against any **Insured**, that **Insured** shall immediately forward to the individual designated in the Declarations of this Policy every demand, notice, summons or other process received by any **Insured** or any **Insured's** representative.
- (3) Notice to the Company under this Policy shall be made promptly to the individual designated in the Declarations of this Policy.

(B) Assistance and Cooperation

As a condition precedent to every **Insured's** rights under this Policy:

- (1) Every **Insured** shall cooperate with the Company and its representatives and, upon the Company's request, shall submit to examination and interrogation by a representative of the Company, under oath if required; shall attend hearings, depositions and trials; shall assist in effecting settlement; shall cooperate in securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and shall give a written statement or statements to the Company's representatives and meet with such representatives for the purpose of investigation and/or defense, all without charge to the Company, except as stated in **Section II. (C)** of this Policy. Every **Insured** shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that any **Insured** may have.
- (2) Every **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Claim Expenses** or **Mitigation Expenses**, or otherwise assume any contractual obligation, or admit any liability with respect to any **Claim** without the prior written consent of the Company. Every **Insured** must take all reasonable action, within its ability, to prevent and/or mitigate any **Claim** or **Loss** which could be covered under this Policy and agrees that it shall not take any action which in any way increases the Company's exposure under this Policy.

(C) Audit

The Company may examine and audit any **Insured's** books and records at any time during the **Policy Period** and after the final termination of this Policy and may require reports as far as they relate to the subject matter of this Policy.

(D) Subrogation

In the event of any **Claim** or payment under this Policy, the Company shall be subrogated to the extent of such **Claim** or payment to all rights of recovery therefore, and an **Insured** shall execute all documents required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company to effectively bring suit in the name of any **Insured**. An **Insured** shall do nothing after a **Claim** is made against them to prejudice such rights. However, it is agreed that the Company waives its rights to recover against any **Insured's** client to the extent that any **Insured** had, prior to the **Claim** at issue, a written agreement with the client to waive such subrogation rights. Any and all such subrogation rights that may accrue as against any and all other parties shall remain intact and unchanged.

Any more recovery (after first deducting the costs and expenses incurred by the Company in obtaining such recovery) shall first be paid to the Company to the extent of any **Loss, Claim Expenses** or **Mitigation Expenses** incurred by the Company, with the balance paid to an **Insured**.

(E) Other Insurance

This Policy shall be excess over and shall not contribute with any other valid and collectible insurance, including the amount of any deductibles and/or retentions in such insurance, and any insurance under which there is a duty to defend and regardless of whether such other policy or policies are stated to be primary, contributory, excess, contingent or otherwise, unless such insurance is written specifically as excess insurance of this Policy by reference in such other policy to the Policy number stated in the Declarations of this Policy.

(F) Cancellation

The **Named Insured** may cancel this Policy by mailing to the Company a written notice stating that cancellation shall take effect upon the date notice is received or at a specified date subsequent to the date of receipt. The date of receipt will be deemed the date of postmark.

If the Company decides to cancel this Policy, the Company will mail a written notice to the **Named Insured** stating on what date cancellation shall be effective and the reason for cancellation. If the reason is because of nonpayment of premium, then the date of cancellation will be at least ten (10) days from the date of the Company's notice of cancellation. If it is for any other reason, then the date of cancellation will be at least sixty (60) days from the date of the Company's notice of cancellation. After this Policy has been in effect for sixty (60) days or more, the Company shall limit the reasons for which it would cancel this Policy to the following:

- (1) nonpayment of premium;
- (2) fraud or material misrepresentation or omission in obtaining this Policy;
- (3) substantial breach of Policy terms and conditions; or,
- (4) the risk originally accepted has significantly increased or materially changed.

If this Policy is cancelled by the Company before the Expiration Date the return portion of the premium shall be computed on a prorated basis. If the **Named Insured** elects to cancel this Policy before the Expiration Date, the Company will return 90% of the unearned premium as computed on a prorated basis. Cancellation is not contingent upon the Company tendering or paying the unearned premium or its acceptance by the **Named Insured**.

(G) Non-Renewal

If the Company elects to non-renew this Policy, it will mail a written notice to the **Named Insured** stating the reason for non-renewal at least sixty (60) days before the Expiration Date of this Policy.

(H) Optional Extended Reporting Period

If this Policy is cancelled or non-renewed by the Company for any reason other than fraud, material misrepresentation, material omission or for the non-payment of premium, or if the **Named Insured** cancels or chooses not to renew this Policy, then the **Named Insured** shall have the right, following the effective date of such cancellation, if applicable, or the Expiration Date of this Policy, to purchase an Optional Extended Reporting Period, upon written request and payment of an additional premium of up to the percentage of the full annual premium not to exceed:

For 12 months: 100% of the full annual premium.

For 24 months: 150% of the full annual premium.

For 36 months: 200% of the full annual premium.

At the commencement of the Optional Extended Reporting Period, the entire premium shall be considered earned.

Any such Optional Extended Reporting Period:

- (1) shall extend the time within which to report a **Claim** but shall not provide coverage for **Professional Services** or **Contracting Activities** rendered subsequent to the effective date of cancellation, if applicable, or the Expiration Date of this Policy;
- (2) shall be evidenced by issuance of an Endorsement to this Policy;
- (3) is subject to all of the terms, conditions, limitations and exclusions of this Policy;
- (4) shall require payment within thirty (30) days from the **Named Insured's** written request to bind such Optional Extended Reporting Period;
- (5) shall be effective on the effective date of such cancellation, if applicable, or the Expiration Date of this Policy;
- (6) shall not apply to any **Claim** where, prior to the date that the Optional Extended Reporting Period is bound, any **Insured** had knowledge of a **Wrongful Act** or **Pollution Incident** that did or was about to give rise to a **Claim**; and,
- (7) shall not apply to any **Mitigation Expenses**.

The aggregate Limit of Liability for any Optional Extended Reporting Period shall be part of, and not in addition to, the aggregate Limit of Liability for the **Policy Period**. As used herein, "full annual premium" means the equivalent annual premium level for the coverage terms in effect immediately prior to the end of the **Policy Period**.

The rights contained in this provision shall terminate, however, unless the **Named Insured** provides written notice of such election to purchase the Optional Extended Reporting Period to the Company within sixty (60) days of the effective date of cancellation, if applicable, or the Expiration Date of this Policy. This provision and the rights contained herein shall not apply to any cancellation resulting from fraud, material misrepresentation, material omission or for the non-payment of premium to the Company or the finance company. Furthermore, as a condition precedent to the **Named Insured's** rights to purchase the Optional Extended Reporting Period, the total premium for this Policy must have been paid in full and any outstanding Deductible fully satisfied.

(I) Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, and the amount of an **Insured's** obligation to pay with respect to a **Claim** shall have been finally determined either by judgment against an **Insured** after actual trial or by written agreement of an **Insured**, the claimant and the Company.

Any individual or entity or the legal representative thereof who has secured such a judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No individual or entity shall have any right under this Policy to join the Company as a party to any action against any **Insured** to determine an **Insured's** liability, nor shall the Company be impleaded by any **Insured** or their legal representative.

(J) Assignment

No assignment of interest under this Policy shall bind the Company unless its prior written consent is endorsed hereon.

(K) Authorization Clause

The **Named Insured**, designated in the Declarations of this Policy, shall have the sole authority and responsibility to act on behalf of every **Insured** with respect to: (1) the payment or return of premium; (2) the receipt and agreement of any Endorsements issued to form a part of this Policy; (3) the receiving of any notice provided for or required by this Policy; (4) the payment of any Deductible; and, (5) the exercise of the rights provided in **Section X. (H)** regarding the Optional Extended Reporting Period.

Each **Insured** under this Policy understands and agrees that the **Named Insured** shall have the authority set forth in this **Section X. (K)**.

(L) Representations

(1) Each **Insured** represents and acknowledges that statements made in the **Application**, and the information submitted therewith, are true and accurate, and that such statements and information:

- (a) are the basis upon which this Policy was issued and are considered to be incorporated herein and form a part of this Policy; and,
 - (b) are deemed material to the acceptance of the risk assumed by the Company under this Policy.
- (2) Each **Insured** understands and agrees that this Policy was issued in reliance upon the truth and accuracy of the representations, statements, and information made in or submitted with the **Application**.

(M) Bankruptcy

Bankruptcy or insolvency of any **Insured** shall not relieve the Company of its obligations nor deprive the Company of its rights or defenses under this Policy.

(N) Office of Foreign Assets Control

Payment of **Loss, Claim Expenses** or **Mitigation Expenses** under this Policy shall only be made in full compliance with all United States of America economic or trade sanctions, laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

(O) Headings

The descriptions in the headings of this Policy are solely for convenience and are, in no way, included as part of the terms and conditions of coverage.

XI. MATERIAL CHANGES

If, during the **Policy Period**, any **Insured** acquires or creates another entity, affiliate partnership or subsidiary or any **Insured** becomes a partner in a partnership which is not designated in the Declarations of this Policy; or if any **Insured** merges or consolidates with another entity (any of which events is referred to as a "Transaction" in this condition); then, the Company shall have the option of providing coverage for such entity, affiliate, partnership or subsidiary.

No coverage shall be afforded under this Policy for any **Claim, Loss, Claim Expenses** or **Mitigation Expenses** in any way involving any entity, affiliate, partnership or subsidiary which is acquired, created, merged with or consolidated into, unless:

- (1) the **Named Insured** gives the Company notice of such Transaction as soon as possible, but in no event later than sixty (60) days after the effective date of the Transaction;
- (2) the **Named Insured** gives the Company information regarding the Transaction as it may reasonably require; and,
- (3) the Company specifically agrees, by written Endorsement to this Policy, to provide coverage to such entity, affiliate, partnership or subsidiary and the

Named Insured accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the Company, in its sole discretion, may impose. If the Company, at its sole discretion, elects to provide coverage with respect to such entity, affiliate, partnership or subsidiary, this Policy shall not apply to, and the Company shall not pay any **Mitigation Expenses** or any **Loss** or **Claim Expenses** for any **Claim** based upon or arising out of any **Wrongful Act** or **Pollution Incident** caused by such entity, affiliate, partnership or subsidiary or any **Insured** thereof happening before: (a) the effective date of the Transaction; or (b) the effective date of coverage under this Policy for such entity, affiliate, partnership or subsidiary stated in an Endorsement to be issued to extend coverage to such entity, affiliate, partnership or subsidiary, whichever is later.

XII. ENTIRE AGREEMENT

By acceptance of this Policy, the **Named Insured** agrees that this Policy embodies all agreements existing between the **Named Insured** and the Company or any of the Company's agents relating to this Policy. Notice to, or knowledge possessed by, any agent or other individual acting on behalf of the Company shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights under the terms of this Policy, nor shall the terms be waived or changed except by written endorsement or rider issued by the Company and signed by an authorized representative of the Company to form a part of this Policy.