

**ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY,  
ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY  
INSURANCE**

NOTICE: This Coverage is provided on a Claims Made and Reported Basis. Except as otherwise provided, this coverage applies only to **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the Company pursuant to the terms of this Insurance Policy. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of the premium and reliance upon the statements in the **Application** which is deemed a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Insurance, the Company agrees with the Named Insured, set forth at Item 1 of the Declarations made a part hereof:

**I. INSURING AGREEMENTS**

**A. Architects and Engineers Professional Liability**

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to the Company either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** on or after the Retroactive Date set forth in Item 6 of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission the **Insured Organization** is legally responsible.

**B. Architects, Engineers and Contractors Pollution Liability**

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to the Company either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) for a **Pollution Condition** arising out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** on or after the Retroactive Date set forth in Item 6 of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose **Pollution Condition** the **Insured Organization** is legally responsible.

## II. SUPPLEMENTARY PAYMENTS

All payments made under this Clause are not subject to the Deductible and are payable by the Company in addition to the Limits of Liability.

### A. Defendants Reimbursement

Upon the Company's request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions and trials relative to the defense of a **Claim**. After the first three (3) days attendance required for each **Claim**, the Company shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$400 for each day in the aggregate for all **Insureds** subject to a maximum amount of \$7,500 for each **Claim**.

### B. ADA, FHA, OSHA Regulatory / Administrative Actions Reimbursement

The Company will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$25,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Company, in responding to a regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA) or the Occupational Safety and Health Act (OSHA) provided that the regulatory or administrative action:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Company during the **Policy Period**.

After the Company has paid \$25,000 under this Clause, the Company shall not be obligated to pay any further legal fees and expenses.

### C. Disciplinary Proceedings Reimbursement

The Company will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$7,500 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Company, in responding to a disciplinary proceeding brought directly against the **Insured** during the **Policy Period** provided that the disciplinary proceeding:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Company during the **Policy Period**.

After the Company has paid \$7,500 under this Clause, the Company shall not be obligated to pay any further legal fees and expenses.

## III. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Company shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against

the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.

- B. The Company shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Agreement F if:
1. the **Claim** is first made during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to the Company pursuant to the terms of this Policy; and
  2. the act or acts were committed on or after the Retroactive Date and before the end of the **Policy Period** in the course of the **Insured Organization's** performance of **Professional Services**.
- C. When the Company defends a **Claim**, they will pay **Claims Expenses** incurred with their prior written consent. 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 Each **Claim** Deductible.
- D. The Company shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.
- E. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Company and acceptable to the Claimant and elects to contest the **Claim**, the Company's liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Company shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** shall not be considered in determining the amount for which a **Claim** could have been settled.
- F. It is further provided that the Company shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Company shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

#### IV. THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. the Named Insured and any **Subsidiaries** of the Named Insured (together the "**Insured Organization**");

- B. a director or officer of the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- C. an employee or temporary employee of the **Insured Organization**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Insured Organization's** business;
- D. a principal if the Named Insured is a sole proprietorship, or a partner if the Named Insured is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- E. any person who previously qualified as an **Insured** under B, C or D above prior to the termination of the required relationship with the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- F. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance;
- G. any joint venture in which the **Insured Organization** participates in, but solely for the **Insured Organization's** liability that arises out of a negligent act, error or omission in rendering or failure to render **Professional Services** by or on behalf of the **Insured Organization** or for a **Pollution Condition** that arises out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Insured Organization**; and
- H. solely with respect to Insuring Agreement B, the client for whom the **Insured Organization** renders or rendered **Professional Services** or performs or performed **Contracting Services**, provided that a written contract or agreement is in effect between the **Insured Organization** and the client requiring the client to be an additional Insured under the **Insured Organization's** architects, engineers and contractors pollution liability policy. However, such clients are covered under Insuring Agreement B of this Policy solely with respect to **Damages and Claims Expenses** arising from **Professional Services** rendered or **Contracting Services** performed by or on behalf of the **Insured Organization** and are not covered for any **Damages and Claims Expenses** arising from the client's own acts, errors or omissions. Clients of the **Insured Organization** are covered under Insuring Agreement B of this Policy, subject to Clause IX, only for the Limits of Liability required by the written contract or agreement.

## V. TERRITORY

This Policy applies to **Claims** made and acts, errors or omissions or **Pollution Conditions** committed or arising in the United States and its Territories.

## VI. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any Claim:

### A. **Criminal, Dishonest, Intentional, Fraudulent, Malicious, Willful or Knowing Acts**

arising out of or resulting from any criminal, dishonest, intentional, fraudulent, malicious, willful or knowing act, error or omission committed by any **Insured**; however, this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, intentional, fraudulent, malicious, willful or knowing conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the Named Insured shall reimburse the Company for all **Claims Expenses** incurred defending the **Claim** and the Company shall have no further liability for **Claims Expenses**.

Provided, that this exclusion shall not apply to any **Claim** based upon or arising from the **Insured's** unintentional breach of a written agreement to refrain from disclosing confidential or proprietary information in rendering or failure to render **Professional Services** or in the performance of or failure to perform **Contracting Services**.

### B. **Prior Knowledge, Prior Notice and Prior Acts**

1. arising out of or resulting from any act, error or omission or **Pollution Condition** committed or arising prior to the inception date of this Insurance:
  - (a) if any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** on or before the inception date knew or could have reasonably foreseen that such act, error or omission or **Pollution Condition** might be expected to be the basis of a **Claim**; or
  - (b) in respect of which any **Insured** has given notice of a **Circumstance** to the insurer of any other policy in force prior to the inception date of this Policy; or
2. arising out of related or continuing acts, errors or omissions or **Pollution Conditions** where the first such act, error or omission or **Pollution Condition** was committed or arose prior to the Retroactive Date set forth in Item 6 of the Declarations.

### C. **Insured versus Insured**

by or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Insurance; provided, that this exclusion shall not apply to a **Claim** by or on behalf of any client of the **Insured Organization** who is an **Insured** by virtue of Clause IV.H.

**D. Ownership Interest and Outside Positions**

1. arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Insured Organization**; or
2. made by any entity, arising out of **Professional Services, Contracting Services, Media Activities** or **Technology Based Services** performed for such entity, or **Technology Products** provided to such entity which:
  - (a) is operated, managed or controlled by an **Insured** or in which any **Insured** has an ownership interest in excess of 25%; or in which any **Insured** is an officer or director; or
  - (b) operates, controls or manages the Named Insured, or has an ownership interest of more than 15% in the Named Insured.

**E. Discrimination, Humiliation, Harassment and Misconduct**

for or arising out of or resulting from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability or pregnancy; provided, that this exclusion shall not apply to any **Claim** based upon the Americans with Disabilities Act of 1990 (ADA), as amended, or the Fair Housing Act (FHA), or any state or local versions of those acts, and arising out of the **Insured's** rendering or failure to render **Professional Services**.

**F. Assumption of Contractual Liability of Others**

arising out of or resulting from the liability of others assumed by the **Insured** under any contract or agreement either oral or written, including any hold harmless or indemnity agreements, except:

1. to the extent the **Insured** would have been liable in the absence of such contract or agreement.

**G. Express Warranties, Representations, Guarantees and Promises**

for or arising out of or resulting from:

1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards; or
2. breach of guarantee or any promises of cost savings, profits, or return on investment.

**H. Faulty Workmanship**

under Insuring Agreement A arising out of the cost to repair or replace any faulty workmanship performed in whole or in part by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including

any materials, parts, labor or equipment furnished in connection with such repair or replacement.

**I. Asbestos**

either in whole or in part, directly or indirectly, arising out of or resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity; provided, that this exclusion does not apply to any **Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** on or after the **Retroactive Date** set forth in Item 6 of the **Declarations** by or on behalf of the **Insured**.

**J. Employers Liability**

for or arising out of or resulting from:

1. **Bodily Injury** to any employee of the **Insured Organization** arising out of and in the course of employment by the **Insured Organization**; or
2. the **Insured Organization's** employment obligations, decisions, practices or policies as an employer.

**K. Worker's Compensation**

arising out of any obligation which the **Insured** or any carrier as insurer may be liable under any worker's compensation, unemployment compensation or disability benefits law or similar law.

**L. Property Liability**

arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances.

**M. Products Liability**

arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**.

**N. Transportation, Shipment or Delivery of Waste, Products or Materials**

under Insuring Agreement B arising out of or resulting from any waste or any products or materials transported, shipped or delivered via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock to a location beyond the boundaries of a site at which **Professional Services** are being rendered or **Contracting Services** are being performed.

**O. Property Damage to Insured Organization's Work and Products**

under Insuring Agreement B for any **Property Damage**:

1. to work performed by or on behalf of the **Insured Organization** resulting from the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; or
2. to any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured** resulting from such goods or products or any portion thereof.

**P. Patent Infringement**

for or arising out of actual or alleged infringement of patent or patent rights or misuse of patent.

**Q. Failure to Maintain Insurance**

arising out of or resulting from 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 **Insured** or any other person or entity.

**R. Insolvency and Bankruptcy**

arising out of or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay **Claims**, losses, or benefits due to the insolvency, liquidation or bankruptcy of any such individual or entity.

**S. War and Terrorism**

directly or indirectly caused by, resulting from or in connection with:

1. any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
  - (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
  - (b) any act of terrorism.
2. any action taken in controlling, preventing, suppressing or in any way relating to (a) or (b) above.

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.



If the Company allege that by reason of this exclusion, any **Damages** or **Claims Expenses** are not covered by this Insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

## VII. DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

- A. “**Advertising**” means material which promotes the product, service or business of the **Insured Organization** or others.
- B. “**Application**” means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by Company, of which this Policy is a renewal, replacement or which it succeeds in time.
- C. “**Assumed Under Contract**” means liability assumed by the **Insured Organization** under a written hold harmless or indemnity agreement.
- D. “**Bodily Injury**” means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- E. “**Circumstance**” means any fact, event or situation that could reasonably be the basis for a **Claim**.
- F. “**Claim**” means a demand received by any **Insured** for money or services including the service of suit or institution of arbitration proceedings. “**Claim**” shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, omissions or **Pollution Conditions** or from any continuing acts, errors, omissions or **Pollution Conditions** shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

- G. “**Claims Expenses**” means:
  - 1. reasonable and necessary fees charged by an attorney designated or consented to by the Company;
  - 2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by the Company, or by the **Insured** with the prior written consent of the Company; and
  - 3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any

**Insured** for a covered act, error or omission, provided however that the Company shall have no obligation to appeal or to obtain such bonds.

**Claims Expenses** do not include any salary, overhead or other charges of or by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** notified under this Insurance.

- H. “**Cleanup Costs**” means reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Company in the investigation, removal or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition** arising out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Insured Organization**.
- I. “**Computer Systems**” means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. operated by and either owned by or leased to the **Insured Organization**; or
  2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization’s** electronic data, pursuant to written contract with the **Insured Organization** for such services.
- J. “**Contracting Services**” means the performance of construction, drilling or remediation activities by or on behalf of the **Insured Organization**.
- K. “**Damages**” means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post-judgment interest thereon.

The term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of an **Insured** to comply with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. any damages which are a multiple of compensatory damages;
4. fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;
5. punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;
6. discounts, coupons, prizes, awards or other incentives offered to the **Insured’s** customers or clients;
7. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement; or

8. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.
- L. “**Optional Extension Period**” means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause XIII of this Policy.
- M. “**Policy Period**” means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- N. “**Pollution Condition**” means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in **Bodily Injury, Property Damage** or **Cleanup Costs**.
- O. “**Professional Services**” means those services performed for others by or on behalf of the **Insured Organization** in the practice of architecture, engineering, land surveying, landscape architecture, interior design, construction management or environmental consulting.
- P. “**Property Damage**” means:
1. physical injury to or destruction of any tangible property, including the loss of use thereof; or
  2. loss of use of tangible property that has not been physically injured or destroyed.
- Q. “**Subsidiary**” means any corporate entity while more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the Named Insured directly or indirectly, if such entity was so owned on the inception date of this Policy; or:
1. was so owned prior to the inception date of this Policy and was insured under a policy issued by the Company of which this Policy is a renewal;
  2. becomes so owned after the inception date of this Policy provided the revenues of the entity do not exceed 10% of the Named Insured’s Annual Revenues as set forth in their most recent **Application**; or
  3. becomes so owned after the inception date of this Policy provided that if the revenues of the entity exceed 10% of the Named Insured’s Annual Revenues as set forth in their most recent **Application**, the provisions of Clause XVIII.A., must be fulfilled.

Provided that this Policy only provides coverage for acts, errors or omissions or **Pollution Conditions** taking place while the corporate entity is so owned by the Named Insured.

## IX. LIMIT OF LIABILITY

- A. The Limit of Liability stated in Item 3(a) of the Declarations for “Each **Claim**” is the limit of the Company’s liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The “Aggregate for the **Policy Period**” stated in Item 3(b) of the Declarations is the Company’s combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** or **Circumstances** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- C. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Company for the **Policy Period**.

## X. DEDUCTIBLE

The “Each **Claim** Deductible” stated in Item 4 of the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by monetary payments by the Named Insured of **Damages** and **Claims Expenses** resulting from **Claims** first made during the **Policy Period** and the **Optional Extension Period** and reported to the Company pursuant to the terms of this Policy. Satisfaction of the Each **Claim** Deductible is a condition precedent to the payment by the Company of any amounts hereunder, and the Company shall be liable only for the amounts in excess of the Each **Claim** Deductible subject to the Company’s total liability not exceeding the Limits of Liability stated in Items 3(a) and 3(b) of the Declarations. The Named Insured shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Company.

## XI. INNOCENT INSURED

- A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion VI.A relating to criminal, dishonest, intentional, fraudulent, malicious, wilful, or knowing acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Company agrees that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion VI.A.

This provision is inapplicable to any **Claim** or **Circumstance** against the **Insured Organization** arising from acts, errors or omissions known to any present or former principal, partner, director or officer of the **Insured Organization**.

- B. With respect to this provision, the Company’s obligation to pay in such event shall only be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion VI.A applies and shall be subject to the terms, conditions and limitations of this Policy.

## XII. NOTICE OF CLAIM OR CIRCUMSTANCE

- A. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Company through the persons named in Item 9 of the Declarations written notice of such **Claim** in the form of a telecopy, or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than sixty (60) days after the expiration of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased.
- B. If during the **Policy Period** any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** first becomes aware of any **Circumstance** and gives written notice to the Company in the form of a telecopy, or express or certified mail through persons named in Item 8 of the Declarations as soon as practicable during the **Policy Period** of:
1. the specific details of the act, error or omission or **Pollution Condition** in the provision of **Professional Services or Contracting Services** that gave rise to the **Circumstance**;
  2. the injury or damage which may result or has resulted from the **Circumstance**; and
  3. the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** first became aware of the act, error or omission or **Pollution Condition**

then any subsequent **Claim** made against the **Insured** arising out of such **Circumstance** which is the subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Company.

- C. A **Claim** shall be considered to be reported to the Company when written notice is first received by the Company in the form of a telecopy, or express or certified mail through persons named in Item 9 of the Declarations of the **Claim** or of a **Circumstance** if provided in compliance with Clause B above.
- D. If any **Insured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

## XIII. OPTIONAL EXTENSION PERIOD

- A. If this Policy is cancelled or non-renewed by the Company, then the Named Insured designated in Item 1 of the Declarations shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 8(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Company during the period of time set forth in Item 8(b) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission or **Pollution Condition** committed or arising on or after the Retroactive Date and before the effective date of cancellation or non-renewal.

- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the Company within thirty (30) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to the Company, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
- D. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Company for the **Policy Period**.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XIII.
- F. All notices and premium payments made under this clause shall be directed to Company through the entity named in Item 10 of the Declarations.

#### XIV. REPRESENTATIONS

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Company, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Insured** or its agent in the **Application** will render the Policy null and void and relieve the Company from all liability under the Policy.

#### XV. OTHER INSURANCE

This Insurance shall apply in excess of:

- A. any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project specific professional liability and/or contractors pollution liability insurance; and
- B. any self insured retention or deductible portion thereof

unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

#### XVI. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable. If an **Insured** shall die or be adjudged incompetent, such insurance shall cover that **Insured's** legal representative as an **Insured** as would be permitted by this Policy.

## XVII. CANCELLATION

- A. The Named Insured may cancel this Policy by surrender thereof to the Company through the entity named in Item 10 of the Declarations, or by mailing to the Company through the entity named in Item 10 of the Declarations written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- B. The Company may cancel this Policy by mailing or delivering to the Named Insured at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Company cancels this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Company by mailing or delivering a written notice of cancellation to the Named Insured at the address shown in the Declarations stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Company shall be equivalent to mailing.
- C. If this Policy is cancelled pursuant to A hereinabove, the Company shall retain the short rate portion of the premium. If this Policy is cancelled pursuant to B hereinabove, the Company shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Company shall not be a condition precedent to the effectiveness of cancellation.

## XVIII. MERGERS AND ACQUISITIONS

- A. During the **Policy Period**, if the Named Insured or any **Subsidiary** acquires another entity whose annual revenues are more than ten percent (10%) of the Named Insured's total annual revenues as set forth in the most recent **Application**; then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission or **Pollution Condition**, whether committed or arising either before or after such acquisition:
1. by the acquired entity or any person employed by the acquired entity; or
  2. involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity.

The foregoing provision shall not apply if the Named Insured gives the Company written notice within sixty (60) days after the effective date of the acquisition, obtains the written consent of the Company to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by the Company.

- B. If during the **Policy Period** the Named Insured consolidates or merges with another entity such that the Named Insured is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to acts, errors or omissions or **Pollution Conditions** committed or arising subsequent to such consolidation, merger or acquisition and Company shall retain the total premium for this Policy, such total premium to be deemed earned at the date of such consolidation, merger or acquisition. The Named

Insured shall provide written notice of such consolidation, merger or acquisition to the Company as soon as practicable, together with such information as the Company may require.

- C. All notices and premium payments made under this section shall be directed to the Company through the entity named in Item 9 of the Declarations.

#### **XIX. ASSISTANCE AND COOPERATION OF THE INSURED**

The **Insured** shall cooperate with the Company in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Company. The **Insured** agrees not to take any action which in any way increases the Company's exposure under the Policy.

Upon the Company's request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of acts, errors or omissions or **Pollution Conditions** with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Company.

Except as provided for in Clause II.B, expenses incurred by the **Insured** in assisting and cooperating with the Company, as described above, do not constitute **Claims Expenses** and are not reimbursable under the Policy.

#### **XX. ACTION AGAINST COMPANY**

No action shall lie against the Company unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Company. Nothing contained herein shall give any person or organization any right to join the Company as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Company be impleaded by the **Insureds** or their legal representative in any **Claim**.

#### **XXI. SUBROGATION**

In the event of any payment under this Insurance, the Company shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. The Company agrees to waive their rights of recovery against any client of the **Insured Organization** for a **Claim** which is covered pursuant to Insuring Agreements A and/or B of this Policy to the extent the **Insured Organization** had, prior to such **Claim**, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages and Claims Expenses** paid by the Company, and third to the Each **Claim** Deductible. Any additional amounts recovered shall be paid to the Named Insured.



## **XXII. ENTIRE AGREEMENT**

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Company relating to this Policy. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy, nor shall the terms of this Policy be waived or changed except by written endorsement issued to form a part of this Policy, signed by the Company.

## **XXIII. BANKRUPTCY**

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

## **XXIV. AUTHORIZATION**

By acceptance of this Policy, the **Insureds** agree that the Named Insured set forth at Item 1 of the Declarations will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

## **XXV. SINGULAR FORM OF A WORD**

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

## **XXVI. HEADINGS**

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

## **XXVII. SERVICE OF SUIT**

It is agreed that in the event of the failure of Company hereon to pay any amount claimed to be due under this Insurance, Company hereon, at the request of the **Insured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Company's rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon Company's representative, designated in Item 10 of the Declarations, and that in any suit instituted against any one of them upon this contract, Company will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The Company's representative designated in Item 10 of the Declarations is authorized and directed to accept service of process on behalf of Company in any such suit and/or upon the request of the **Insured** to give a written undertaking to the **Insured** that they will enter a general appearance upon the Company's behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, the Company hereon hereby designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the

statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of Insurance, and hereby designate the Company's representative, designated in Item 10 of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.