

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO ITS PROVISIONS, THIS POLICY APPLIES ONLY TO CLAIMS WHICH ARE BOTH FIRST MADE BY OR AGAINST THE INSURED DURING THE POLICY PERIOD AND FIRST REPORTED IN WRITING TO THE INSURER DURING THE POLICY PERIOD OR WITHIN 60 DAYS AFTER THE END OF THE POLICY PERIOD SHOWN IN THE DECLARATIONS UNLESS AN OPTIONAL EXTENDED REPORTING PERIOD APPLIES. CLAIM EXPENSES ARE INCLUDED WITHIN AND REDUCE THE LIMIT OF LIABILITY, AND ARE SUBJECT TO ANY APPLICABLE SELF-INSURED RETENTION.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

Words and phrases that appear in bold print have special meanings that are defined in Section III, **DEFINITIONS**.

In consideration of the payment of the premium, and in reliance upon the statements made in the application, materials, and information provided by the **Named Insured**, which are incorporated into this Policy, forms a part hereof, and are a representation upon which this Policy has been issued, the **Insurer** identified in the **Declarations**, herein called the "**Insurer**," agrees with the **Named Insured** as follows:

I. INSURING AGREEMENT

Coverage A - Protective Errors and Omissions

The **Insurer** shall indemnify the **Named Insured** for **Ultimate Loss** on a **Protective Claim**, as established by final judgment or a settlement to which the **Insurer** agrees in writing, in excess of all **Design Professional's Insurance**, provided that:

1. the **Protective Claim** for such **Ultimate Loss** is first made by the **Named Insured** against the **Design Professional** during the **Policy Period** and first reported in writing by the **Named Insured** to the **Insurer** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable; and
2. the **Protective Claim** arises out of an actual or alleged negligent act, error or omission performed by the **Design Professional** in the rendering of **Professional Services** on or after the **Retroactive Date** and before the end of the **Policy Period**; and
3. prior to the effective date of the first policy issued to the **Named Insured** by the **Insurer** and continuously renewed, no **Named Insured**, or principal, partner, director, officer, or risk manager of the **Named Insured**, had a basis to believe that any act, error or omission asserted in the **Protective Claim** might reasonably be expected to be the basis of a **Protective Claim**; and
4. the **Named Insured** has made all reasonable efforts to recover all **Ultimate Loss** from all responsible **Design Professionals**.

Coverage B - Professional Liability

The **Insurer** will pay on behalf of the **Insured** all sums in excess of any applicable Self-Insured Retention that the **Insured** is legally obligated to pay as **Damages** or **Claim Expense** because of a **Claim** for an actual or alleged negligent act, error or omission in the rendering of **Professional Services**, provided that:

1. the **Claim** for such actual or alleged negligent, act, error or omission is first made against the **Insured** during the **Policy Period** and first reported in writing by the **Insured** to the **Insurer** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable; and
2. the **Claim** arises out of an actual or alleged negligent, act, error or omission performed by the **Insured**, or by a **Design Professional** for whom the **Insured** is legally responsible, on or after the **Retroactive Date** and before the end of the **Policy Period**; and
3. prior to the effective date of the first policy issued to the **Insured** and continuously renewed by the **Insurer**, no **Named Insured**, or principal, partner, director, officer, or risk manager of the **Insured**, had a basis to believe that any act, error or omission asserted in the **Claim** might reasonably be expected to be the basis of a **Claim**.

Coverage C - Contractor's Pollution Liability

The **Insurer** will pay on behalf of the **Insured** for all **Pollution Loss** or **Claim Expense** in excess of any applicable Self-Insured Retention that the **Insured** is legally obligated to pay as a result of a **Claim** for **Pollution Conditions** arising out of **Contractor Activities**, provided that:

1. the **Claim** for such **Pollution Loss** is first made against the **Insured** during the **Policy Period** and first reported in writing by the **Insured** to the **Insurer** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable; and
2. the **Claim** arises out of ongoing or completed **Contractor Activities** performed by the **Insured**, or by others for whom the **Insured** is legally responsible, and the resulting **Pollution Conditions** first commences on or after the **Retroactive Date** and before the end of the **Policy Period**; and
3. prior to the effective date of the first policy issued to the **Insured** and continuously renewed by the **Insurer**, no **Named Insured**, or principal, partner, director, officer, risk manager, or person responsible for environmental affairs of the **Insured**, had a basis to believe that any **Contractor Activities** or **Pollution Condition** asserted in the **Claim** might reasonably be expected to be the basis of a **Claim** for **Pollution Loss**.

II. SUPPLEMENTAL COVERAGES

The Limits of Liability for each of the following Supplemental Coverages are separate from the Limits of Liability for Coverages A, B, and C in Section I, and payments made under the Supplemental Coverages do not erode the Limits of Liability for Coverages A, B, and C.

A. Litigation Attendance Reimbursement

Subject to the Litigation Attendance Limit of Liability stated in Item 3.C. of the **Declarations**, upon written request by the **Named Insured**, the **Insurer** shall reimburse the **Named Insured's** actual loss of earnings and reasonable expenses incurred when any **Insured** attends a hearing, deposition, or trial at the written request of the **Insurer**, in the course of defending a **Claim** seeking sums payable under Coverage B – Professional Liability or Coverage C – Contractor's Pollution Liability of this Policy.

B. Disciplinary Proceedings Defense Expense

Subject to the Disciplinary Proceedings Limit of Liability stated in Item 3.D. of the **Declarations**, upon written request by the **Named Insured** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable, the **Insurer** shall retain counsel for the **Insured** and pay such counsel's reasonable and necessary fees and expenses in defense of a disciplinary proceeding first brought against the **Insured** during the **Policy Period**, and arising out of either an actual or alleged negligent, act, error or omission in the rendering of **Professional Services** or **Pollution Conditions** related to **Contractor Activities**, performed by or on behalf of the **Insured** on or after the **Retroactive Date** and before the end of the **Policy Period**.

C. Subpoena Defense Expense

Subject to the Subpoena Defense Limit of Liability stated in Item 3.E. of the **Declarations**, upon written request by the **Named Insured** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable, the **Insurer** shall retain counsel for the **Insured** and pay such counsel's reasonable and necessary fees and expenses in defense of the **Insured** regarding the production of documents and the preparation for and giving of testimony, in response to a subpoena first served on the **Insured** during the **Policy Period** and arising from **Professional Services** or **Pollution Conditions** related to **Contractor Activities**, performed by or on behalf of the **Insured** on or after the **Retroactive Date** and before the end of the **Policy Period**.

D. ADA and FHA Defense Expense

Subject to the ADA and FHA Expense Limit of Liability stated in Item 3.F. of the **Declarations**, upon written request by the **Named Insured** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable, the **Insurer** shall retain counsel for the **Insured** and pay such counsel's reasonable and necessary fees and expenses incurred when the **Insured** responds to regulatory or administrative actions first brought against the **Insured** during the **Policy Period** by a government agency under the Americans with Disabilities Act of 1990 (ADA) or the Fair Housing Act (FHA), and alleging a negligent, act, error or omission in the rendering of **Professional Services** by or on behalf of the **Insured**, on or after the **Retroactive Date** and before the end of the **Policy Period**.

E. Corporate Reputation Rehabilitation

Subject to the Corporate Reputation Rehabilitation Limit of Liability stated in Item 3.G. of the **Declarations**, upon written request by the **Named Insured** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable, the **Insurer** shall pay on behalf of the **Named Insured** the reasonable and necessary fees and expenses subsequently incurred by a public relations firm approved by the **Insurer** to restore an **Insured's** corporate reputation that is damaged as a result of a **Claim** seeking sums payable under Coverage B – Professional Liability or Coverage C – Contractor's Pollution Liability of this Policy. The **Insurer** has the right to require for approval of the public relations firm minimum professional certifications and qualifications (e.g., Examination for Accreditation in Public Relations, or Accredited Business Communicator from International Association of Business Communicators).

F. Bankruptcy of Design Professional

Subject to the Bankruptcy of **Design Professional** Limit of Liability stated in the Item 3.H. of the **Declarations**, upon written request by the **Named Insured** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, if applicable, the **Insurer** shall reimburse the **Named Insured** for the reasonable and necessary fees and expenses of bankruptcy counsel in making a **Protective Claim** seeking sums payable under Coverage A – Protective Errors and Omissions under this Policy against a **Design Professional** who has filed for or been put into bankruptcy under the United States Bankruptcy Code, provided that the **Protective Claim**, at least in part, is allowed as against or results in a judgment against the **Design Professional** in favor of the **Named Insured**, which is final and no longer subject to objection or appeal.

G. Building Information Modeling - Extra Expense

Subject to the Building Information Modeling Limit of Liability stated in Item 3.I. of the **Declarations**, upon written request by the **Named Insured** within 60 days after either the end of the **Policy Period** or the end of the Optional Extended Reporting Period, the **Insurer** shall reimburse the **Named Insured** for any and all reasonable and necessary additional expense arising from loss of or damage to any information due to inherent malfunction of any software used in connection with any Building Information Modeling system, including but not limited to erroneous calculations or modeling, provided that the malfunction is first discovered during the **Policy Period** and after the system has been put to its intended use in the course of actual construction.

H. Mitigation of Damages or Pollution Loss

Subject to the Mitigation of **Damages** or **Pollution Loss** Limit of Liability stated in Item 3. J. of the **Declarations**, the **Insurer** agrees to indemnify the **Insured** against 80% of reasonable and necessary outside fees and direct costs incurred for any corrective action to mitigate or rectify **Professional Services** or **Contractor Activities** that would reasonably be expected to give rise to a **Claim** seeking sums payable under Coverage B – Professional Liability or Coverage C – Contractor's Pollution Liability of this Policy. The **Professional Services** or **Contractor Activities** giving rise to the need for corrective action must have been rendered after the **Retroactive Date** applicable to this coverage, and the **Insured** must provide prompt and prior written notice to the **Insurer** during the **Policy Period** of the **Insured's** proposed corrective action and must present evidence to the **Insurer** of the foregoing requirements and demonstrate the reasonableness and necessity of the proposed corrective action in light of the projected benefit in terms of mitigating or avoiding a

covered **Claim**. The **Insured** shall not accept or undertake any corrective action without the express written consent of the **Insurer**, and such consent not to be unreasonably withheld. The **Insurer** is not responsible for indemnifying the **Insured** for corrective action with respect to potential liability for **Damages** or **Pollution Loss** not covered by this Policy. With respect to a Bacterial Event, the insurance as provided herein shall only apply after the affected project has been completed or put to its intended use, whichever is earlier. For purposes of this section, Bacterial Event shall mean the actual growth, appearance, release or existence of any mold, fungi, spore or bacteria on any project which may result in a **Pollution Loss**. Furthermore, the **Insurer** shall not be obligated to indemnify the **Insured** for the **Insured's** own profit, overhead or salaries, or for corrective action that is betterment, or for 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.

This Supplemental Coverage provided by the **Insurer** is limited to 80% of the covered corrective action, and responsibility for payment of the remaining 20% balance is retained by and the sole responsibility of the **Insured** and shall be paid by the **Insured**. This 20% obligation of the **Insured** is in addition to the Self-Insured Retention stated in Item 4. of the **Declarations**. In the event there is a **Claim** against the **Insured** arising out of the same **Professional Services** or **Pollution Conditions** for which the **Insured** has previously undertaken corrective action pursuant to the provisions of this Supplemental Coverage, the **Insured's** Self-Insured Retention obligation for such **Claim** shall be reduced to the extent of costs paid by the **Insured** under its Self-Insured Retention stated in Item 4. of the **Declarations**.

III. DEFINITIONS

Words stated in the singular will be construed as applying in the plural and vice versa. For purposes of this Policy:

- A. **Bodily Injury** means physical injury, sickness, disease, building-related illness, mental anguish, emotional distress, or shock sustained by any person, including death resulting therefrom.
- B. **Claim** means a demand, including but not limited to a lawsuit, petition, demand for arbitration, or demand for mediation, seeking money or services. Solely for purposes of Coverage C – Contractor's Pollution Liability, a **Claim** also means a notice of assertion of any actual or potential legal liability or responsibility, including but not limited to lawsuits, petitions, claims by federal, state, or tribal trustees, arbitrations or other alternative dispute resolutions, public agency directives, or potential responsible party letters made against the **Insured**, for a **Pollution Loss**.

A **Claim** is deemed first made for purposes of this Policy when received by any **Insured**.

The term **Claim** as used in the Policy includes a **Protective Claim**.

- C. **Claim Expense** means all reasonable and necessary fees, costs, and expenses incurred in the investigation, adjustment, defense and appeal of a **Claim**, if incurred by the **Insurer**, by counsel retained by the **Insurer**, or by the **Insured** with the **Insurer's** prior written consent. Such amounts may include premiums on appeal bonds, attachment bonds or any similar bonds; however, the **Insurer** is not obligated to apply for, secure or furnish any such bond. **Claim Expense** also includes the cost of monitoring medical conditions.

Claim Expense does not include the salaries of the **Insurer** or the **Insured's** management or personnel, or the fees of independent adjusters. Amounts incurred for settlement or resolution of a **Claim** are not **Claim Expense**.

- D. **Cleanup Costs** means costs associated with the investigation, monitoring, or disposal of soil, surface water, groundwater or other contamination, clean up, abatement, containment, capping, or remediation to correct a **Pollution Condition**. **Cleanup Costs** also includes **Restoration Costs**.

- E. **Contractor Activities** means:
1. any general construction or construction management activity performed by an **Insured**, including such activity by any entity for whom the **Insured** is legally responsible; or
 2. any loading, unloading, delivery or transportation of goods, materials, products, or waste to or from any site where **Contractor Activities** are performed by an **Insured**, including such activity by any entity for whom the **Insured** is legally responsible, as long as such activity is performed by an entity that is properly licensed and in the business of loading, unloading, or transporting goods, materials, products, or waste; or
 3. any operation, use, ownership, or maintenance of a land motor vehicle, off-road motor vehicle, mobile equipment, trailer, semi-trailer, watercraft, aircraft, or rolling stock when **Contractor Activities** are performed by

an **Insured**, including such activity by any entity for whom the **Insured** is legally responsible.

- F. **Damages** means any compensatory sum the **Insured** is legally obligated to pay. Where permitted by law, and where arising out of covered **Damages**, **Damages** includes punitive or exemplary damages and the multiple portion of any multiplied award of **Damages**. **Damages** also includes liquidated damages, but only to the extent of liability the **Insured** would have had in the absence of the agreement for liquidated damages.

Damages does not include: fines, taxes or penalties imposed on the **Insured**; any return, withdrawal or reduction in professional fees; any equitable obligation, including restitution, disgorgement, or the costs of complying with injunctive relief; or the time and expense incurred by the **Insured** in addressing or resolving an actual or potential **Claim**.

- G. **Declarations** means the **Declarations** to this Policy noting the Limits, Self-Insured Retentions, **Named Insured**, and other items as applicable, all of which are part of this Policy of insurance.

- H. **Design Professional** means those persons or entities retained by or on behalf of an **Insured** and performing: architecture; engineering; contract administration in the course of design services; sprinkler design; fire protection design; life safety design; security systems design; light use, acoustical or signage design; landscaping design; surveying; quantity surveying; material testing; economic, feasibility, technical consulting or technical studies or opinions, or scientific reviews; software design for the purpose of operating or maintaining any building system; interior design or space planning services; or design services to support Leadership in Energy and Environmental Design (LEED) certification for a project. **Design Professional** also includes any person or entity for whom the **Insured** is legally responsible and who is performing the services of a **Design Professional**.

- I. **Design Professional's Insurance** means all available professional liability insurance policies insuring any **Design Professional**, or any **Design Professional's** subconsultant, or any person or entity for whom the **Design Professional** is legally responsible.

- J. **Insured** means:

1. the **Named Insured**; or
2. any fully owned subsidiary corporations or subsidiary limited liability companies of the **Named Insured**, of any tier, in the past, as now constituted or hereafter constituted; or
3. any present or former partner, director, officer, manager, member, shareholder, principal, trustee, or employee of the **Named Insured** solely while acting on behalf of the **Named Insured**; or
4. any **Insured** with regard to its participation in a legal entity, including a joint venture or limited liability company, but solely for the **Named Insured's** legal liability arising out of the performance of **Professional Services** or **Contractor Activities** under the respective legal entity, joint venture, or limited liability company. Such legal entity itself, the joint venture itself, the limited liability company itself, or any other entity other than an **Insured** that is part of either the legal entity, joint venture, or limited liability company are not **Insureds**; or

5. with regard to Coverage C - Contractor's Pollution Liability only, any client of the **Named Insured**, or any entity or person, that the **Named Insured** is obligated to name as an additional insured on this Policy in a written contract, agreement, or permit, executed prior to when the **Claim** was first made, and solely as respects covered **Pollution Loss** caused by the **Named Insured's Contractor Activities**; or
6. any entity which is specifically identified as an **Insured** in the **Declarations** or by endorsement to this Policy; or
7. the estate, heirs, executors, shareholders, administrators or legal representatives of an **Insured** in the event of such **Insured's** death, incapacity, or bankruptcy, or the spouse or legal domestic partner of any **Insured**, but only to the extent such **Insured** would otherwise be provided coverage under this Policy while acting solely on behalf of the **Named Insured**; or
8. any prior entity that has been reported to the **Insurer** prior to when the **Claim** was first made and whose assets, partners, principals, or shareholders were acquired by the **Named Insured**, and for which the **Named Insured** is required to provide liability insurance under a written contract or agreement executed before the **Claim** was first made; or
9. any entity newly formed or acquired by the **Named Insured** during the **Policy Period** in which the **Named Insured** has more than 50% legal or beneficial interest and over which the **Named Insured** exercises management or financial control and has agreed to provide insurance for such entity prior to the **Claim** being made. However:
 - a. Coverage will only be provided for **Claims** arising out of **Professional Services** or **Contractor Activities** performed on or after the date of formation, acquisition, or exercised financial or management control; and
 - b. This coverage will expire within 90 days for such entity, or the end of the **Policy Period**, whichever is earlier, unless the **Named Insured** provides written details of such newly acquired entity to the **Insurer** and pays the additional premium requested by the **Insurer**, if any.

K. Insured Contract means:

1. a contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to the **Insured** or temporarily occupied by the **Insured** with permission of the owner is not an **Insured Contract**; or
2. a sidetrack agreement; or
3. any easement or license agreement; or
4. an obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
5. an elevator maintenance agreement; or

6. that part of any other contract or agreement pertaining to the **Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Insured** assumes the tort liability of another party to pay for **Bodily Injury, Property Damage, or Pollution Loss** to a third party or organization. This section does not include that part of any contract or agreement that indemnifies an architect, engineer, or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

For the purpose of this section, tort liability means only that liability that would be imposed by law in the absence of any contract or agreement. Any assumption of liability beyond that of tort liability specified in this subparagraph (6) shall not be considered to be part of the **Insured Contract**.

- L. **Mediation** means the non-binding facilitation by a neutral third party of a **Claim** resolution.
- M. **Named Insured** means the individual, partnership, entity, firm, or the company named in Item 1. of the **Declarations**.
- N. **Natural Resource Damage** means physical injury to or destruction of (including the resulting loss of value) land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et. Seq.)), any state or local government, any foreign government, any Native American tribe or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.
- O. **Policy Period** means the period from 12:01 a.m. on the effective date of this Policy as set forth in Item 2. of the **Declarations**, to 12:01 a.m. on the earliest of the date of the expiration, termination, or cancellation of this Policy.
- P. **Pollution Condition** means the actual or alleged discharge, dispersal, release, seepage, migration, growth, or escape of smoke, soot, fumes, acids, alkalis, toxic chemicals, mold, spores, fungi, microbes, bacteria, legionella pneumophila, asbestos, lead, silica, liquids, gases, contaminants, organic or inorganic pollutants, electromagnetic fields, hazardous substances, hazardous materials, waste materials including medical, infectious, and pathological wastes, or other irritants, into or upon land, any structure on land, the indoor or outdoor atmosphere, any watercourse, or any body of water, including groundwater. Radioactive matter shall also be considered a pollutant, except as otherwise covered or protected by insurance or protections provided pursuant to 42 U.S.C. § 2014(w), as amended, or Section 170 of the Atomic Energy Act of 1954, as amended.
- Q. **Pollution Loss** means all amounts the **Named Insured** is legally obligated to pay for **Damages** (including but not limited to **Damages** for **Bodily Injury or Property Damage**), **Cleanup Costs**, or **Natural Resource Damage**, caused by a **Pollution Condition**.

R. Professional Services means those services performed by a **Design Professional** that the **Insured** is legally responsible for, or by the **Insured** in their capacity as a **Design Professional**, or other professional services that the **Insured** performs for others in their capacity as a Construction Manager, Program Manager, Project Manager, Owner's Representative, Property Manager, Real Estate Broker/Agent, Developer, Leasing Agent, any delegated design responsibility or design assist performed by the **Insured**, including but not limited to constructability reviews or value engineering, or the foregoing services performed by anyone or any entity for which the **Insured** is legally liable. **Professional Services** shall also include services with respect to any Building Information Modeling (BIM) systems, including but not limited to modification, alteration, transfer, protection, manipulation, use, or misuse thereof, or design assist system or program, and **Professional Services** within Integrated Project Delivery (IPD), Public-Private Partnership projects (P3s), or Lean Project Delivery System (LPDS).

Professional Services also include ordinary technology services provided for others in the course of **Professional Services** described above. Such technology services include the design, development, programming, analysis, training, use, hosting, management, support, and maintenance of any software, database, internet service, or website.

S. Property Damage means:

1. Physical injury to or destruction of tangible property, including resulting loss of use thereof; or
2. loss of use of tangible property that has not been physically injured or destroyed; or
3. diminution of third party property value.

T. Protective Claim means a **Claim** instituted by the **Insured** against a **Design Professional**. **Protective Claim** does not include a demand or proceeding for non-monetary or injunctive relief.

U. Restoration Costs means the reasonable and necessary costs incurred by the **Insured**, with the **Insurer's** prior written consent, to repair, replace, or restore real or personal property to substantially the same condition it was prior to being damaged during work performed in the course of incurring **Cleanup Costs**. **Restoration Costs** do not include costs associated with improvements or betterments.

V. Retroactive Date(s) means the date(s) set forth in Item 5. of the **Declarations**.

W. Ultimate Loss means any compensatory sum the **Insured** is legally entitled to recover from each responsible **Design Professional**. **Ultimate Loss** includes liquidated damages, but only to the extent of liability the **Design Professional** would have had in the absence of the agreement for liquidated damages.

Ultimate Loss does not include: fines, taxes or penalties imposed on the **Design Professional**; any return, withdrawal or reduction in professional fees; any equitable obligation, including restitution, disgorgement, or the costs of complying with injunctive relief; or the time and expense incurred by the **Design Professional** in addressing or resolving an actual or potential **Claim**.

In the event that multiple **Design Professionals** cause the same or related loss, the amount of **Ultimate Loss** shall not exceed the single loss caused by such multiple **Design Professionals**.

IV. EXCLUSIONS

This Policy does not apply and the **Insurer** will not be liable to make payments, defend or indemnify any **Insured** for any **Ultimate Loss, Damages, Pollution Loss, Claim, or Claim Expense**, or to pay any amounts pursuant to any Supplemental Coverage, directly or indirectly arising out of any of the following. To the extent an exclusion below applies by reason of the act, error or omission of an **Insured**, it shall also apply to the act, error or omission of anyone retained by an **Insured** or for whom the **Insured** is legally responsible.

- A. For Coverage A – Protective Errors and Omissions only, any attorney's fees and any other costs or expenses incurred by any **Insured** in connection with the making or prosecution of a Protective Claim. This exclusion shall not apply to the Supplemental Coverage for Bankruptcy of a **Design Professional**.
- B. For Coverage A – Protective Errors and Omissions only, any liability of a **Design Professional** where the **Design Professional** has failed to plead or provide a defense, response, answer, or discovery response, or to take any other procedural step.

This exclusion shall not apply to the amount of **Ultimate Loss** which the **Insured** would have been entitled to recover from the **Design Professional** had such defense, response, answer, or discovery response been pleaded or provided, or such procedural step been taken. In such circumstances, the **Insured** shall prove the extent of **Ultimate Loss** which the **Insured** would have been entitled to recover from the **Design Professional** absent such circumstances.

- C. Any design or manufacture of any goods or products which are sold or supplied by the **Insured** or by anyone under license by any **Insured**, including any parts, components, assemblies or equipment installed or incorporated by or on behalf of the **Insured** into the **Insured's** work. This exclusion does not apply to (1) software sold or supplied by the **Insured** to its client in connection with the **Insured's** provision of other **Professional Services** for that client, or (2) goods or products installed or incorporated in the **Insured's** work which have been specially designed by or on behalf of the **Insured** by a qualified **Design Professional** for use in a specific project.
- D. Any liability that is insured under a project specific insurance policy, provided, however, that this exclusion shall not apply to the extent the liability is in excess of the limit of liability available under such project specific policy.
- E. The cost to repair or replace faulty workmanship in any construction, erection, fabrication, installation, assembly, or manufacturing process, including materials, parts, or equipment furnished in connection therewith, unless the faulty workmanship is caused by the otherwise covered **Professional Services** of a **Design Professional**. This exclusion does not apply to Coverage C – Contractor's Pollution Liability or the Supplemental Coverage for Mitigation of **Damages** or **Pollution Loss**.
- F. Any employment obligations, decisions, practices or policies as an employer, including but not limited to, any **Claim** under any worker's compensation, unemployment compensation, employee benefits, or disability benefits law or

similar law. Nor does this insurance apply to monopolistic state coverage or states where the **Insured** has rejected coverage for its workers by choosing to be a nonsubscriber. This exclusion shall not apply to the pre-qualification of firms on behalf of a client in the course of **Professional Services** or to a third party action over against the **Insured** arising from a **Bodily Injury** due to **Pollution Conditions** caused by **Contractor Activities** and resulting in a **Claim**.

G. Actual or alleged discrimination, humiliation, harassment or misconduct, including but not limited to that which is based on an individual's race, religion, color, gender, sexual preference or orientation, national origin, age, disability, or marital status. This exclusion does not apply to an otherwise covered **Claim** brought under the Americans with Disabilities Act or the Fair Housing Act, or any similar state or local law or ordinance, or to the Supplemental Coverage for ADA and FHA Defense Expense.

H. Liability under any contract, agreement, express warranty, or guarantee, unless such liability would have existed in the absence of such contract, agreement, express warranty, or guarantee.

Solely for purposes of Coverage C – Contractor's Pollution Liability, this exclusion shall not apply to liability of others assumed under an **Insured Contract**.

I. Any dishonest, fraudulent, criminal, intentionally or knowingly wrongful, or malicious act, error, or omission, or those of an inherently harmful nature, except that this exclusion shall not apply to an **Insured** who did not commit, participate in, or have knowledge of such conduct.

J. Any conduct by an individual, corporation, partnership, or joint venture of which the **Insured** is a partner, director, officer, member, participant, or employee that is not designated in the **Declarations** or by endorsement as an **Insured**.

K. **Claims** made by any **Insured** against any other **Insured**. However, this exclusion shall not apply as respects any entity or person only qualifying as an **Insured** under part (5) of the definition of **Insured** in this Policy.

L. **Claims** made by any individual or entity, or its subrogees or assignees:

1. that wholly or partially owns, controls or operates any **Insured**; or
2. in which any **Insured** has an ownership interest in excess of twenty-five percent (25%); or
3. that is controlled or operated by any **Insured**; or
4. in which any **Insured** is an officer or director; or
5. that is an affiliate of any **Insured**.

With respect to items 2, 3, 4 above, this exclusion shall be limited when the **Claim** is made by a formal joint venture partnership of which the **Insured** is a participant to the **Insured's** percentage of ownership interest in the joint venture, so that the **Insurer** shall only be responsible for that portion of **Damages** or **Pollution Loss** that is the difference between the **Insured's** percentage of ownership interest and the total joint venture ownership interest percentage.

M. **Bodily Injury** or **Property Damage** resulting from any activity in connection with construction means, methods, techniques, sequences, or procedures, or actual construction, erection or fabrication, that is performed by an **Insured**

or anyone for whom the **Insured** is legally responsible. This exclusion shall not apply to Coverage C – Contractor’s Pollution Liability.

- N. Any **Damages, Pollution Loss, or Ultimate Loss** caused by or resulting from war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power, martial law, or confiscation by order of any government or public authority.
- O. Any location(s) used for the treatment, storage, recycling or disposal of an **Insured’s** waste material. This exclusion shall not apply if:
 - 1. the waste material is generated by **Contractor Activities**; and
 - 2. the location(s) is (are) not managed, operated, owned or leased by the **Insured** or any subsidiary or affiliate of the **Insured**; and
 - 3. the location(s) is (are) permitted or licensed by any Federal, State, Local or Provincial authorities to accept such material as of the date of the treatment, storage or disposal.

V. LIMITS OF LIABILITY AND SELF-INSURED RETENTION

A. Limits of Liability

- 1. Limit of Liability Each Claim – Coverages A, B and C: The Limit of Liability of the **Insurer** for the sum of all **Ultimate Loss, Damages, Pollution Loss, and Claims Expense** for each single **Claim** to which this Policy applies shall not exceed the amount stated in Item 3.A. of the **Declarations** for Each **Claim**.
- 2. Limit of Liability in the Aggregate for the Policy Period – Coverages A, B and C: The Limit of Liability of the **Insurer** for the sum of all **Ultimate Loss, Damages, Pollution Loss, and Claims Expense**, for all **Claims** for which this Policy applies shall not exceed the amount stated in Item 3.B. of the **Declarations** as the Aggregate for the **Policy Period**.
- 3. Litigation Attendance Limit of Liability: The Litigation Attendance Limit of Liability set forth in Item 3.C. of the **Declarations** is the maximum amount payable in the aggregate for all **Insureds** under the Supplemental Coverage provided in Section II.A. of the Policy.
- 4. Disciplinary Proceedings Defense Limit of Liability: The Disciplinary Proceedings Defense Limit of Liability set forth in Item 3.D. of the **Declarations** is the maximum amount payable under the Supplemental Coverage provided in Section II.B. of the Policy regardless of the number of disciplinary proceedings initiated against **Insureds** during the **Policy Period** or the number of **Insureds** involved in such proceedings.
- 5. Subpoena Defense Expense Limit of Liability: The Subpoena Defense Expense Limit of Liability set forth in Item 3.E. of the **Declarations** is the maximum amount payable under the Supplemental Coverage provided in Section II.C. of the Policy regardless of the number of subpoenas served on **Insureds** during the **Policy Period** or the number of **Insureds** subject to subpoenas.
- 6. ADA and FHA Defense Expense Limit of Liability: The ADA and FHA Defense Expense Limit of Liability set forth in Item 3.F. of the

Declarations is the maximum amount payable under the Supplemental Coverage provided in Section II.D. of the Policy regardless of the number of regulatory or administrative actions first brought against the **Insureds** during the **Policy Period** or the number of **Insureds** involved in such regulatory or administrative actions.

7. Corporate Reputation Rehabilitation Limit of Liability: The Corporate Reputation Rehabilitation Limit of Liability set forth in Item 3.G. of the **Declarations** is the maximum amount payable under the Supplemental Coverage provided in Section II.E. of the Policy regardless of the number of **Claims** where expenses are necessary to restore corporate reputation.
8. Bankruptcy of Design Professional Limit of Liability: The Bankruptcy of **Design Professional** Limit of Liability set forth in Item 3.H. of the **Declarations** is the maximum amount payable under the Supplemental Coverage provided in Section II.F. of the Policy regardless of the number of **Protective Claims** pursued in Bankruptcy Court or the number of **Design Professionals** involved in such **Protective Claims**.
9. Building Information Modeling Limit of Liability: The Building Information Modeling Limit of Liability set forth in Item 3.I. of the **Declarations** is the maximum amount payable under the Supplemental Coverage provided in Section II.G. of the Policy regardless of the number of Building Information Modeling malfunctions or the number of projects involved.
10. Mitigation of Damages or Pollution Loss Limit of Liability: The Mitigation of **Damages** or **Pollution Loss** Limit of Liability set forth in Item 3.J. of the **Declarations** is the maximum amount payable under the Supplemental Coverage provided in Section II.H. of the Policy regardless of the number of corrective actions made by the **Insureds**.

B. Self-Insured Retention

Where a Self-Insured Retention is shown in the **Declarations** for any Coverage, the **Named Insured** must pay the amount of such Self-Insured Retention for the sum of **Damages, Pollution Loss, and Claims Expense** covered under such Coverage for each single **Claim** to which this Policy applies before the **Insurer** has any obligation to pay any amounts for that **Claim**. The Limits of Liability set forth in the **Declarations** are in addition to and in excess of any Self-Insured Retention for that Coverage. The **Insurer** shall not be responsible for advancing any monies within the Self-Insured Retention. The Self-Insured Retention shall be uninsured and is not satisfied by payments by another insurer. The **Named Insured** shall promptly pay any obligation within the Self-Insured Retention; if it does not, any other **Insured** may pay the Self-Insured Retention to satisfy this obligation.

Mediation Credit: If the **Insurer** and the **Insured** agree beforehand to attempt to resolve a **Claim** at **Mediation**, and if the **Insurer** and the **Insured** resolve such **Claim** by such **Mediation**, the **Named Insured's** Self-Insured Retention obligation for such **Claim** will be reduced by 50%, subject to a maximum reduction of \$25,000.

VI. MULTIPLE INSUREDS

The number of **Insureds** covered by this Policy or against whom a **Claim** is made shall not operate to increase the applicable Limits of Liability or number of Self-Insured Retentions.

VII. MULTIPLE CLAIMS

One or more **Claims** arising out of one or more acts, errors, omissions, incidents, or **Pollution Conditions**, or a series thereof, that are related or that involve the same project, will be treated as a single **Claim** subject to:

1. a single Each **Claim** Limit of Liability; and
2. a single Self-Insured Retention; and

shall not operate to increase the **Insurer's** Limits of Liability. All such **Claims** treated as a single **Claim**, whenever made, shall be considered first made on the date the earliest such **Claim** was first made, and only a Policy during whose **Policy Period** the earliest **Claim** was first made shall have any coverage for such **Claims**.

VIII. DEFENSE, SETTLEMENT AND COOPERATION

A. Defense (Coverages B and C)

1. Once any applicable Self-Insured Retention has been paid by the **Named Insured**, and if no other applicable insurance has a duty to defend, the **Insurer** has the right and duty to defend the **Insured**, with counsel of our mutual agreement, from a **Claim** seeking sums payable under Coverage B – Professional Liability or Coverage C – Contractor's Pollution Liability of this Policy, even if the allegations of the **Claim** are groundless or false. The **Insurer** shall have no duty to defend **Claims** seeking sums payable under Coverage A – Protective Errors and Omissions or any Supplemental Coverage of this Policy.
2. If the **Insured** and the **Insurer** cannot agree to mutual counsel, the **Insurer** shall have the final right to select defense counsel, but will allow for a 25% Self-Insured Retention credit, up to a maximum of \$25,000 per **Claim**, towards the costs of having the **Insured** retain its own counsel for the oversight of the **Claim**. These counsel oversight costs shall first be credited towards the applicable Self-Insured Retention. Counsel selected by the **Insurer** will have the sole right and responsibility for defending the **Insured**.
3. In the event that, notwithstanding the foregoing, the **Insured** is entitled by law to retain independent counsel of its choosing to defend the **Insured** at the **Insurer's** expense and chooses to do so, the attorney fee component of **Claim Expense** shall be limited to the rates the **Insurer** actually pays to counsel it retains in the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** is being defended. In addition, the **Insurer** may require that the independent counsel possess certain minimum qualifications, which may include that the selected counsel have: (1) at least five years of civil litigation experience defending similar **Claims**; and (2) errors and omissions coverage. The **Insured** further agrees to require its independent counsel to provide the **Insurer** with information concerning the **Claim** in a timely manner, to respond to the **Insurer's** requests for information concerning the **Claim**, and to comply with **Insurer's** reporting and billing guidelines.

4. The **Insurer** shall have no obligation to pay any **Claim Expense** or to defend any **Claim** after any applicable Limit of Liability has been exhausted by incurred amounts or by payment, or after deposit or tender of the remaining applicable Limit of Liability into court.

B. Settlement (Coverages B and C)

The **Insurer** has the right to investigate, conduct negotiations concerning, and, with the **Insured's** written consent, settle any **Claim** seeking sums payable under Coverage B – Professional Liability or Coverage C – Contractor's Pollution Liability of this Policy as the **Insurer** deems expedient. If the **Insured** refuses to consent to a settlement or compromise recommended by the **Insurer** and acceptable to the claimant, then the **Insurer's** Limit of Liability Each **Claim** under this Policy with respect to such **Claim** shall be reduced to the sum of the amount for which the **Claim** could have been settled and all **Claim Expenses** incurred for the **Claim** up to the time the **Insurer** made its settlement or compromise recommendation to the **Insured**.

C. Duties of Insured (All Coverages)

As a condition precedent to this insurance, in the event of a **Claim** or reported circumstance:

1. The **Insured** shall promptly forward to the **Insurer** all documents that the **Insured** receives in connection with the **Claim** or circumstance, and will direct all inquiries regarding the **Claim** or circumstance to the **Insurer** or the attorney designated by the **Insurer**.
2. The **Insured** shall cooperate fully with the **Insurer** and its designees in the investigation, defense and settlement of any **Claim** or circumstance, the conduct of suit or any other proceeding, and in securing and enforcing any right of contribution, indemnity, or other recovery that the **Insured** potentially may have; such cooperation includes but is not limited to, when requested, attending any proceedings, assisting in securing evidence and obtaining the attendance and testimony of witnesses, whether in a legal proceeding or in an examination by the **Insurer**; and such cooperation will be without charge to the **Insurer**, except as provided otherwise in the Supplemental Coverage for Litigation Attendance Reimbursement. Such cooperation is agreed by **Insurer** and **Insured** to be in furtherance of their common interest in the **Claim**, such that all such communications shall be protected by all applicable privileges and protections.
3. The **Insured** shall not voluntarily make any payment, assume or admit any liability, consent to any judgment, settle any **Claim**, or incur any **Claim Expense**, without the prior written consent of the **Insurer**. The **Insurer** shall not be liable for any payment, assumed or admitted liability, consent judgment, settlement, or **Claim Expense** to which it has not consented. The **Insured** shall not release or compromise any **Claim** it may have against any potentially responsible **Design Professional** without the prior written consent of the **Insurer**. The **Insurer** shall not be liable for **Ultimate Loss** attributable to a **Design Professional** released without such consent.
4. The **Insured** shall obtain the **Insurer's** written consent before exercising any right, assuming any obligation, or making any

agreement, with respect to any dispute resolution mechanism or process, including but not limited to rejecting or demanding arbitration.

IX. REPORTING

A. Reporting a Claim

As a condition precedent to coverage under this Policy, in the event of a **Claim**, the **Insured** must do the following:

1. Report the **Claim** to the **Insurer** in writing as soon as reasonably possible, which must be during the **Policy Period** or 60 days thereafter, or during any applicable Optional Extended Reporting Period. Reporting should be sent to the **Insurer** at the address stated in the Claims Notice attached to this Policy; and
2. Provide a copy of the **Claim**, if in writing, and specify in the report: the names and addresses of the **Insured** reporting the **Claim**, the persons or entities making the **Claim**, and the persons or entities against whom the **Claim** is made; when the **Claim** was made; the negligent, act, error or omission or **Pollution Condition** that is the subject of the **Claim**; and any other relevant facts or allegations known to the **Insured**.

B. Reporting a Circumstance

For Coverage B – Professional Liability and Coverage C – Contractors Pollution Liability only, if during the **Policy Period**, the **Insured** becomes aware of a circumstance that may reasonably be expected to give rise to a **Claim** covered under the Policy, and if the **Insured** during the **Policy Period** provides to the **Insurer** a written report of the circumstance as soon as practicable containing particulars sufficient to identify the **Insured** and all reasonably obtainable information with respect to:

1. when and how the **Insured** first became aware of such circumstance;
2. any negligent, act, error or omission or **Pollution Condition** asserted or believed to be at issue, and the **Professional Services** or **Contractor Activities** involved in the circumstance;
3. what happened and the dates and entities involved; and
4. the nature of any alleged or potential injury, **Damages**, or **Pollution Loss**;

then any **Claim** made against the **Insured** arising out of such circumstance shall be deemed to have been made on the date the **Insurer** received the written report of the circumstance. At the **Insurer's** sole discretion and cost, it may elect to investigate any circumstance which is reported; any such costs associated with the investigation of a circumstance prior to a **Claim** being made against the **Insured** will not be considered **Claim Expense**, will not reduce the applicable Self-Insured Retention and shall be paid by the **Insurer** in addition to the Limit of Liability.

X. OPTIONAL EXTENDED REPORTING PERIOD

If the **Insurer** or **Insured** terminate or non-renew this insurance for any reason, other than nonpayment of premium, the **Insured's** failure to comply with any material term

or condition, fraud or material misrepresentation, and if the total premium for this Policy has already been paid in full, then the **Named Insured** shall have the option to pay an additional premium and extend the period by which a **Claim** can be first made by or against the **Insured** and first reported to the **Insurer**, provided that the **Professional Services** or **Pollution Condition** took place on or after the **Retroactive Date** and before the end of the **Policy Period**.

The premium for the Optional Extended Reporting Period shall be: (1) 100% of the annual premium for twelve (12) months of extension; (2) 150% for twenty-four (24) months of extension; or (3) 200% for thirty-six (36) months of extension. The purchase of an Optional Extended Reporting Period shall not be effective unless endorsed herein.

The **Named Insured's** right to purchase the Optional Extended Reporting Period must be exercised by notice in writing to the **Insurer** no later than thirty (30) days after the cancellation or termination date of this Policy. Effective notice must indicate the total Optional Extended Reporting Period desired and must include payment of premium for such period. If such notice and premium are not mailed to the **Insurer** within such thirty (30) days, then the **Insured** is not entitled to purchase an Optional Extended Reporting Period at a later date.

At the commencement of any Optional Extended Reporting Period, the entire premium shall be deemed fully earned. In the event the **Insured** terminates the Optional Extended Reporting Period before its term for any reason, the **Insurer** shall not be obligated to return any portion of the premium.

Although the period during which a **Claim** can be reported to the **Insurer** is extended by virtue of the Optional Extended Reporting Period, this fact shall not in any way increase the Limits of Liability of this Policy.

XI. CONDITIONS

A. Territory

This Policy applies to **Claims, Claim Expense, Ultimate Loss, Damages, or a Pollution Loss** anywhere in the world.

B. Audit and Inspection

Upon reasonable prior notice, the **Insurer** shall be permitted to audit the **Insured's** final books and records at any time during the **Policy Period** and within three years after the final termination of this Policy, as far as they relate to the subject matter of this Policy. The **Insurer** shall also be permitted to inspect, sample, and/or monitor the **Insured's** operations on a continuing basis. Neither our right to make inspections, sample, and/or monitor, nor the actual undertaking thereof, nor any report thereon shall constitute an undertaking, on behalf of the **Insurer** or others, to determine or warrant that the **Insured's** operations are safe, healthful, conform to acceptable practice, or are in compliance with any law, rule, or regulation.

C. Subrogation

In the event of any payment under this Policy, the **Insurer** shall be subrogated to all the **Insured's** rights of recovery thereof. The **Insured** shall execute and deliver all requested instruments and papers in furtherance of such rights to the **Insurer** and do whatever else is reasonably necessary to secure such rights. The **Insured** shall do nothing to waive or prejudice such rights. The **Insurer** shall have priority over the **Insured** in allocation of any recovery, and any amounts recovered in excess of the **Insurer's** total

payment and the cost to the **Insurer** of recovery shall be paid to the **Insureds**. The Limit of Liability shall be reinstated by the amount recovered by the **Insurer**, less the cost to the **Insurer** of recovery. However, the **Insurer** waives its rights of subrogation under this Policy against clients of the **Named Insured** to the extent such a waiver is required by a written contract with the **Named Insured** executed prior to the **Claim**.

D. Changes

None of the provisions of this Policy will be waived, changed, or modified except by written endorsement issued by the **Insurer** to form a part of this Policy. Notice to any agent of the **Insurer** or knowledge possessed by any such agent or any other person will not act as a waiver or change in any part of this Policy and will not prevent the **Insurer** from asserting any rights under the provisions of this Policy.

E. Assignment

It is agreed that the insurance provided herein and the interests of the **Insured** hereunder cannot be transferred or assigned to another party without the express written consent of the **Insurer**.

F. Cancellation and Termination

1. This policy may only be cancelled by the **Insurer** for one or more of the following reasons:
 - (i) non-payment of premium; or
 - (ii) a material misrepresentation or concealment of facts; or
 - (iii) a breach of any material provision of this Policy.

If this Policy is cancelled by the **Insurer**, notice of cancellation will be sent in writing to the **Named Insured**, at the address indicated on the **Declarations**. The **Insurer** will provide such written notice at least ninety (90) days prior to the date such cancellation is to take effect; except that, in the event of cancellation for non-payment of premium, the **Insurer** only will provide fifteen (15) days written notice. If the premium is paid by a premium financing company and the premium financing company, acting under a valid premium finance agreement with the **Insured**, requests cancellation of the policy due to non-payment of premium from the **Insured**, the earned premium shall be computed short-rate of the policy term premium and returned to the premium finance company.

The effective date and hour of cancellation will be stated in such notice. Cancellation by the **Insurer** also cancels the additional 60 days for reporting **Claims**, and any Optional Extended Reporting Period; the **Policy Period**, the additional 60 days for reporting **Claims**, and any Optional Extended Reporting Period will end on that date. If the **Insurer** cancels for the reason specified in subparagraph (i), there shall be no return premium. If the **Insurer** cancels for reasons stated in subparagraphs (ii) or (iii), the earned premium shall be computed pro-rata of the policy term premium. Payment of any return premium shall not be a condition of cancellation.

2. This Policy may be cancelled by the first **Named Insured** for any reason. In the event that the first **Named Insured** cancels the Policy, the earned premium shall be computed short-rate of the policy term premium.

G. Action Against the Insurer

No action shall lie against the **Insurer** under Coverage B – Professional Liability and Coverage C – Contractor’s Pollution Liability, unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this Policy, and both the **Insured’s** liability and the amount of the **Insured’s** obligations to pay have been finally determined either by final judgment against the **Insured** after an actual contested trial or by the **Insured’s** written agreement with the claimant to which the **Insurer** has given prior written approval.

No action shall lie against the **Insurer** under Coverage A – Protective Errors and Omissions, unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this Policy, and both the **Design Professionals’** liability and the amount of the **Design Professionals’** obligations to pay have been finally determined either by final judgment against the **Design Professionals** after an actual contested trial or by the **Insured’s** written agreement with the **Design Professionals** to which the **Insurer** has given prior written approval.

No person, entity or organization shall have any right under this Policy to join the **Insurer** as a party to any action against an **Insured** to determine the **Insured’s** liability, nor shall the **Insurer** be brought into such action by an **Insured** or its legal representative. No person, entity, or organization has a right under this Policy to bring the **Insurer** into an action to determine its liability or the **Insured’s** liability.

H. No Limitation of Liability

Under Coverage A – Protective Errors and Omissions only, the **Named Insured** shall not limit the liability of any **Design Professional**, except to insurance proceeds, without the express written approval of the **Insurer**.

I. Bankruptcy of the Insured

The **Insured’s** bankruptcy or insolvency shall not relieve the **Insurer** of its obligations under this Policy.

J. Authorization Clause

The first **Named Insured** shall be the sole agent of and shall act on behalf of the **Insureds** for all purposes as to the Policy, including but not limited to the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, providing and receiving notice of cancellation, termination, or nonrenewal, the giving of notices and reporting of Claims and circumstances, for completing applications and the making of any statements or representations, for making any change to the Policy, and for the exercise or declining to exercise any right under this Policy, including the purchase of an Optional Extended Reporting Period.

K. Severability of Policy Provisions

If any material provision or clause of this Policy is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, that provision will immediately become null and void, leaving the remainder of this Policy in full force and effect.

L. Other Insurance

This Policy is excess over the Self-Insured Retention and any other valid and collectible insurance available to the **Insured**, whether such other insurance is stated to be primary, pro-rata, contributory, excess, contingent, self-insured or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to the Policy number in this Policy's **Declarations**. When any other insurance has a duty to defend a **Claim**, the **Insurer** will have no duty to defend the **Claim**; if no such other insurance defends the **Claim**, the **Insurer** will have the right but not the duty to defend the **Claim**.

Under Coverage C – Contractor's Pollution Liability only, when the **Named Insured** is required by written contract, written agreement, or permit, executed prior to the **Claim**, to include any person or entity as an additional Insured, such coverage will be provided on a primary and non-contributory basis to the extent so required.

Premium Payment Clause

The (Re)Insured undertakes that premium will be paid in full to Underwriters within 60 days of inception of this policy (or, in respect of instalment premiums, when due).

If the premium due under this policy has not been so paid to Underwriters by the 60 days from the inception of this policy (and, in respect of instalment premiums, by the date they are due) Underwriters shall have the right to cancel this policy by notifying the (Re)Insured via the broker in writing. In the event of cancellation, premium is due to Underwriters on a pro rata basis for the period that Underwriters are on risk but the full policy premium shall be payable to Underwriters in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this policy.

It is agreed that Underwriters shall give not less than 15 days prior notice of cancellation to the (Re)Insured via the broker. If premium due is paid in full to Underwriters before the notice period expires, notice of cancellation shall automatically be revoked. If not, the policy shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the Leading Underwriter (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all Underwriters participating in this contract.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

Where the premium is to be paid through a London Market Bureau, payment to Underwriters will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

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LSW3000

Nuclear Incident Exclusion Clause-Liability-Direct (Broad) (U.S.A.)

For attachment to insurances of the following classifications in the U.S.A., its Territories and Possessions, Puerto Rico and the Canal Zone:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This Policy* does not apply:

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction:
 - (a) with respect to which an insured under the Policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial

protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if:
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.
- IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by-product material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a

self-supporting chain reaction or to contain a critical mass of fissionable material. With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

* NOTE: As respects policies which afford liability coverages and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

17/3/60
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Radioactive Contamination Exclusion Clause-Liability-Direct (U.S.A.)

For attachment (in addition to the appropriate Nuclear Incident Exclusion Clause-Liability-Direct) to liability insurances affording worldwide coverage.

In relation to liability arising outside the U.S.A., its Territories or Possessions, Puerto Rico or the Canal Zone, this Policy does not cover any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

13/2/64
NMA1477

WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.

For the purpose of this endorsement 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.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

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

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Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100
15 September 2010