

Contractors Advantage Professional Liability Policy

THIS IS A CLAIMS MADE AND REPORTED POLICY. THIS POLICY IS LIMITED TO LIABILITY FOR ONLY THOSE CLAIMS AND PROTECTIVE INDEMNITY CLAIMS THAT ARE FIRST MADE DURING THE POLICY PERIOD OR AN OPTIONAL EXTENDED REPORTING PERIOD, IF APPLICABLE, AND REPORTED TO THE COMPANY IN WRITING PURSUANT TO THE TERMS AND CONDITIONS OF THIS POLICY. LOSS, PROTECTIVE INDEMNITY LOSS, CLAIM EXPENSES, RECTIFICATION EXPENSES AND NOTIFICATION EXPENSES REDUCE THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY WITH YOUR INSURANCE BROKER OR ADVISOR.

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

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

I. INSURING AGREEMENTS

(A) Professional Services Liability Coverage

(1) Contractors Professional Liability Coverage

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

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

(2) **Rectification Expenses Coverage**

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

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

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

(3) **Network Security and Privacy Liability Coverage**

The Company shall pay **Loss, Claim Expenses** and **Notification Expenses**, in excess of the Deductible, up to a Sublimit of Liability of USD50,000 in the aggregate, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services** or **Contracting Activities** and resulting in a **Privacy Breach** or a **Security Breach**, provided always that:

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

This Sublimit of Liability is part of, and not in addition to, the Limit of Liability stated in the Declarations of this Policy. Payment of **Loss, Claim Expenses** and **Notification Expenses** as a result of a **Privacy Breach** or a **Security Breach** shall reduce the available Sublimit of Liability, which will also reduce the available Limit of Liability of this Policy.

The following **Insuring Agreements, (B) and (C)**, are applicable only when the Declarations of this Policy reflects that such respective **Insuring Agreement** has been purchased:

(B) Contractors Pollution Incident Liability Coverage

The Company shall pay **Loss** and **Claim Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Pollution Incident** arising from **Contracting Activities** performed by or on behalf of an **Insured**, provided always that:

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

(C) Contractors Protective Indemnity

The Company shall indemnify an **Insured** for **Protective Indemnity Loss**, as established by a final judgment or settlement to which the Company has agreed in writing, in excess of the **Design Professional's Insurance**, subject always to this Policy's Deductible and Limit of Liability, provided always that:

- (1) a **Protective Indemnity Claim** is first made by an **Insured** against the **Design Professional** during the **Policy Period** or during the Optional Extended Reporting Period, if applicable; and reported to the Company in writing during the **Policy Period** or during the Optional Extended Reporting Period, if applicable;
- (2) the **Protective Indemnity Claim** arises from an actual or alleged negligent act, error or omission in the performance of **Professional Services** by a **Design Professional**;
- (3) the **Professional Services** were rendered on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**;
- (4) an **Insured** has taken all steps necessary to pursue the **Protective Indemnity Claim** and obtain recovery from all **Design Professional's Insurance**; and
- (5) an **Insured's** partners, principals, officers, directors or managers of the insurance, legal or risk management department had no knowledge of any circumstance, dispute, situation or incident that could reasonably have been expected to give rise to such **Protective Indemnity Claim** prior to the Effective Date stated in the Declarations of this Policy.

Notwithstanding any other provision of this Policy, a **Design Professional** shall not be considered an **Insured**, and the Company has no obligation to defend any **Design Professional** or to pay **Claim Expenses** to, or on behalf of, any **Design Professional** in response to any **Claim** or **Protective Indemnity Claim**.

II. SUPPLEMENTAL COVERAGES

All payments made by the Company pursuant to coverage provided by Section **II.** shall not be subject to any Deductible and shall not operate to reduce this Policy's Limit of Liability.

(A) Disciplinary Proceedings

The Company shall reimburse an **Insured**, upon written request, up to USD15,000 per disciplinary proceeding, subject to a maximum of USD30,000 in the aggregate under this Policy, for reasonable and necessary legal fees and expenses incurred by an **Insured**, with the prior written consent of the Company, in responding to a disciplinary proceeding brought directly against an **Insured** by or before a state licensing board or professional self-regulating board with authority to regulate the **Professional Services** performed by an **Insured**, provided always that the following conditions are satisfied:

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

After the Company has paid USD30,000 in the aggregate under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any disciplinary proceeding under this Policy.

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

(B) ADA, FFHA and OSHA Proceedings Reimbursement

The Company shall reimburse an **Insured**, upon written request, up to USD15,000 in the aggregate under this Policy, for reasonable and necessary legal fees and expenses incurred by an **Insured**, with prior written consent of the Company, in responding to a regulatory or administrative proceeding brought directly against an **Insured** by a government agency under the Americans with Disabilities Act ("ADA"), the Federal Fair Housing Act ("FFHA"), or the Occupational Safety and Health Act ("OSHA") provided always that the following conditions are satisfied:

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

After the Company has paid USD15,000 in the aggregate under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any regulatory or administrative proceeding under this Policy.

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

(C) Insured's Expense Reimbursement

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

- (1) the maximum reimbursement for such expenses shall not exceed USD500 per day, and USD7,500 per **Claim**, for an **Insured** who attends such proceedings at the Company's request; and
- (2) the Company's maximum aggregate liability for payment of reasonable and necessary expenses shall not exceed USD25,000 under this Policy.

After the Company has paid USD25,000 in the aggregate under this provision, the Company shall not be obligated to pay any further expenses incurred or wages lost by any **Insured** under this Policy.

(D) Subpoena Response Assistance

The Company shall reimburse an **Insured**, upon written request, up to USD10,000 per subpoena, subject to a maximum of USD20,000 in the aggregate under this Policy, for reasonable and necessary legal fees and expenses incurred by an **Insured**, with the prior written consent of the Company, in responding to a subpoena served upon an **Insured**, provided always that the following conditions are satisfied:

- (1) the subpoena arises out of an **Insured's Professional Services**; or
- (2) the subpoena is related to a **Pollution Incident** arising from **Contracting Activities**;

The subpoena must be served upon an **Insured** during the **Policy Period** and also reported to the Company, in writing, during the **Policy Period** or Optional Extended Reporting Period, if applicable.

After the Company has paid USD20,000 in the aggregate under this provision, the Company shall not be obligated to pay any further legal fees or expenses in connection with any subpoena under this Policy.

When this provision applies, the Company shall have the right, but not the duty, to defend any **Insured** in connection with any subpoena.

If a **Claim** is subsequently made against an **Insured** related to the subpoena, the Company shall have the right to cease any payment under this provision.

(E) Public Relations

The Company shall reimburse an **Insured**, upon written request, up to fifty percent (50%) of the first USD30,000 per **Public Relations Incident**, to which this Policy applies, for reasonable and necessary **Public Relations Expenses** incurred by an **Insured** arising out of a **Public Relations Incident**.

An **Insured** has the right to incur **Public Relations Expenses** without the Company's prior consent. The Company shall, in its sole discretion, reimburse an **Insured** only for **Public Relations Expenses** that the Company deems to be reasonable and necessary. All reimbursable **Public Relations Expenses** must be incurred during the **Policy Period** or Optional Extended Reporting Period, if applicable.

After the Company has paid USD30,000 in the aggregate under this provision, the Company shall not be obligated to pay any further **Public Relations Expenses** under this Policy.

III. DEFENSE, INVESTIGATION & SETTLEMENT

(A) Defense

The Company shall have the right and duty to defend any **Claim** to which this Policy applies, even if the allegations are groundless or false. The Company has the sole right to select and appoint legal counsel to represent any **Insured** with respect to any **Claim** to which this Policy applies. The Company's duty to defend any **Claim** shall cease upon exhaustion of the applicable Limit of Liability or Sublimit of Liability.

(B) Investigation and Settlement of Claim

- (1) An **Insured** shall not, except at its own expense, incur any **Claim Expenses**, engage in settlement negotiations, enter into any settlement agreement, make any payment, agree to make any payment, admit any liability, assume any obligation or incur any expense without the prior written consent of the Company, such consent not to be unreasonably withheld. The Company shall not be liable for any **Claim Expenses**, settlement or other amount, assumed obligation or admission, to which it has not given its prior written consent.
- (2) The Company shall have the right and sole discretion to conduct any investigation it deems necessary.
- (3) The Company may, with the consent of the **Named Insured**, settle any **Claim** it deems reasonable and necessary.
- (4) If any **Insured** refuses to consent to any settlement recommended by the Company, then the Company's liability for such **Claim** shall not exceed:
 - (a) the amount of the recommended settlement plus **Claim Expenses** incurred up to the date of an **Insured's** refusal to consent to the recommended settlement; plus
 - (b) fifty percent (50%) of any **Loss** and **Claim Expenses**, in excess of the amount referenced in paragraph (a) above, incurred in connection with such **Claim**, subject always to all other applicable terms and conditions of this Policy, including, but not limited to, the Deductible and the Limit of Liability.

The remaining fifty percent (50%) of any **Loss** and **Claim Expenses**, in excess of the amount referenced in paragraph (b) above, shall be the sole responsibility of an **Insured**.

(C) Investigation and Settlement of a Protective Indemnity Claim

The Company has the right, but not the duty, to participate in the investigation or settlement of a **Protective Indemnity Claim**. An **Insured** shall not initiate settlement discussions or negotiations of any **Protective Indemnity Claim** with any **Design Professional** or its representative(s) involving any **Protective**

Indemnity Loss for which an **Insured** seeks indemnity from the Company without the Company's prior knowledge and written consent. Upon notice of such discussions or negotiations, the Company may, however, in its sole and absolute discretion provide an **Insured** with a written waiver of the Company's election to participate in and consent to such negotiations or settlement. If the Company elects to participate in the negotiation and settlement of any **Protective Indemnity Claim**, every **Insured** shall fully cooperate with the Company's investigation of such **Protective Indemnity Claim**, including but not limited to responding to requests for information and permitting the Company to associate with an **Insured** in any such negotiations or settlement.

IV. DEFINITIONS

(A) Application

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

(B) Bodily Injury

"Bodily Injury" shall mean physical injury, sickness, disease or death of a person, and any mental anguish, emotional distress, mental injury, shock, humiliation or pain and suffering resulting therefrom. **"Bodily Injury"** shall also include the monitoring of medical conditions resulting from physical injury, sickness or disease.

(C) Claim

"Claim" shall mean:

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

"Claim" shall not include a regulatory or administrative proceeding brought directly against an **Insured** by a government agency under the Americans with Disabilities Act ("ADA"), the Federal Fair Housing Act ("FFHA"), or the Occupational Safety and Health Act ("OSHA").

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

(D) Claim Expenses

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

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

(E) Cleanup Costs

“**Cleanup Costs**” shall mean:

- (1) reasonable and necessary costs, charges and expenses incurred with the written consent of the Company in the investigation, removal or neutralization of a **Pollution Incident**, including such costs incurred by a third party to the extent mandated by a court order or by any governmental agency;
- (2) reasonable and necessary costs, charges and expenses, on an emergency basis, incurred to prevent clear and imminent danger to an individual or to property; and
- (3) reasonable and necessary costs, charges and expenses incurred with the written consent of the Company to repair, replace or restore real or personal property to substantially the same condition it was prior to the **Pollution Incident**.

“**Cleanup Costs**” shall not exceed the value of the real or personal property prior to the **Pollution Incident**, and shall not include an **Insured’s** own profit, overhead or salaries, or any corrective action that is betterment or associated with any improvements.

(F) Computer System

“**Computer System**” shall mean computer hardware, software, firmware, and components thereof, including electronic data stored therein, which are linked together through a network of two or more computers, including such networks accessible through the **Internet**, intranets, extranets, clouds or other virtual private networks.

(G) Contracting Activities

“**Contracting Activities**” shall mean:

- (1) any construction, fabrication, assembling, erection, excavation, drilling, installation, demolition, remediation or related work on any structure, facility, element, earthwork, component, or supplying of equipment or

materials incorporated therein, performed for others for a fee, by or on behalf of an **Insured**;

- (2) the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock, by or on behalf of any **Insured**, in the course of the performance of services enumerated in paragraph (1) of this Definition;
- (3) the transportation of any waste or materials, by any **Insured** licensed or permitted to do so, or on behalf of any **Insured** by an individual or entity licensed or permitted to do so, in the course of the performance of services enumerated in paragraph (1) of this Definition; or
- (4) the treatment, storage, recycling or disposal of any waste material at a location, not owned, leased, operated or managed by any **Insured** at any time, permitted or licensed by a Federal, State or Local authority to accept such material as of the date of the treatment, storage, recycling or disposal, in the course of the performance of services enumerated in paragraph (1) of this Definition.

(H) Design Professional

“**Design Professional**” shall mean any person or entity, with whom an **Insured** executed a written contract or written agreement, that is legally qualified, certified or licensed to perform **Professional Services**. “**Design Professional**” also includes any individual or entity, at any tier, for whom the **Design Professional** is legally responsible.

(I) Design Professional’s Insurance

“**Design Professional’s Insurance**” shall mean all valid and collectible professional liability insurance policies issued to any **Design Professional** whether such insurance is stated to be primary, excess, contributory, contingent or otherwise.

(J) Domestic Partner

“**Domestic Partner**” shall mean any person qualifying as such under any federal, state or local laws, or under an **Insured’s** employee benefit plan or program.

(K) Hostile Fire

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

(L) Insured

“**Insured**” shall mean:

- (1) the **Named Insured** designated as such in the Declarations of this Policy;
- (2) any natural person who is a current or former partner, principal, officer, director, member or employee of any **Insured**, but only while acting within the scope of his or her duties on behalf of any **Insured**;

- (3) any **Insured** with regard to its participation in a joint venture, provided the **Insured** is named in writing as a co-venturer in such joint venture agreement, but solely for that **Insured's** legal liability with respect to a **Wrongful Act** arising from **Professional Services** by the joint venture, or for a **Pollution Incident** arising from **Contracting Activities** performed by any **Insured** to which this insurance applies. "**Insured**" shall not include the joint venture itself or any other individual or entity that is part of the joint venture;
- (4) any temporary or leased personnel rendering **Professional Services** or **Contracting Activities**, to which this insurance applies, but only while acting under the direct supervision of and on behalf of any **Insured** (as defined in paragraphs (1) – (3) above);
- (5) the lawful spouse or **Domestic Partner** of an **Insured** (as defined in paragraphs (1) – (4) above) for any **Claim** made against such spouse or **Domestic Partner** solely by reason of his/her status as a spouse or **Domestic Partner** of an **Insured** or ownership interest in marital property/assets that are sought as recovery for such **Claim**, but only if the **Claim** does not allege any act, error or omission by such spouse or **Domestic Partner**;
- (6) the estate, heirs, assigns or legal representatives (in the event of death or incompetency) of any individual **Insured** under this Policy;
- (7) a client of an **Insured**, or other individual or entity that an **Insured** is obligated to name as an additional **Insured**, but only if a written contract or written agreement, executed by an **Insured** prior to the commencement of **Contracting Activities** specifically requires such, and only for their vicarious liability for a **Claim** made as a result of a **Pollution Incident** arising from **Contracting Activities** performed by or on behalf of an **Insured**; and
- (8) any other individual or entity specifically added as an **Insured** by Endorsement to this Policy.

(M) Internet

"**Internet**" shall mean the worldwide public network of computers commonly known as the internet, as it currently exists or may exist in the future.

(N) Interrelated Wrongful Acts

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

(O) Loss

"**Loss**" shall mean a monetary judgment, award or settlement for damages including an award by a court of reasonable attorney's fees and costs to a claimant. **Loss** shall also include the non-multiplied portion of punitive and exemplary

damages to the extent such damages are insurable under the law of the most favorable applicable jurisdiction that allows coverage for such damages. **Loss** shall not include:

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

(P) Malicious Code

“**Malicious Code**” shall mean unauthorized, corrupting or harmful software code, including, but not limited to, computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms and logic bombs.

(Q) Media Injury

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

- (1) infringement of copyright, piracy, plagiarism or misappropriation or unauthorized use of ideas shared with an **Insured**;
- (2) infringement or dilution of trademark, service mark, service name, domain name, title, slogan or trade dress; or
- (3) misappropriation of any name or likeness for commercial advantage;

solely in the performance of or failure to perform **Professional Services**.

(R) Mediation

“**Mediation**” shall mean the voluntary, non-binding process by which a qualified, professional third party neutral intercedes between the parties to a **Claim** with the

intention to resolve such **Claim**. The term "**Mediation**" shall not include any court-ordered dispute resolution nor shall the term include arbitrations.

(S) Named Insured

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

(T) Network Security

"**Network Security**" shall mean any hardware or software with a function or purpose of loss mitigation or prevention of a computer attack. "**Network Security**" shall include, but shall not be limited to, the following: firewalls, filters, DMZs, computer virus protection software, intrusion detection, the electronic use of passwords or similar identification of authorized users, and encryption.

(U) Notification Expenses

"**Notification Expenses**" shall mean those reasonable and necessary expenses that an **Insured** shall become legally obligated to pay, solely to comply with **Privacy Regulations**, including communications with, and credit monitoring services for, affected customers and/or clients. "**Notification Expenses**" shall not include **Claim Expenses**.

(V) Personal Information

"**Personal Information**" shall mean an individual's first and last name together with any one or more of that individual's:

- (1) social security number;
- (2) medical or healthcare data or other protected health information;
- (3) driver's license number, state identification number, or zip code;
- (4) account number, debit or credit card number together with any required security code, access code or password that would permit access to the individual's financial account; or
- (5) any non-public information of an individual as defined by a **Privacy Regulation**.

"**Personal Information**" shall not include any information that is lawfully available to the general public for any reason including, but not limited to, any information contained in federal, state or local government records.

(W) Personal Injury

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

- (1) false arrest, detention, or imprisonment;
- (2) wrongful entry, wrongful eviction, or other invasions of privacy;

- (3) assault or battery;
- (4) harassment or humiliation in any form including, but not limited to, sexual harassment;
- (5) malicious prosecution; or
- (6) libel, slander, or defamation of character;

solely in the performance of or failure to perform **Professional Services**.

(X) Policy Period

"Policy Period" shall mean the period from the Effective Date of this Policy to its Expiration Date as set forth in the Declarations of this Policy, or this Policy's earlier termination date, if any. **"Policy Period"** specifically excludes the sixty (60) days following expiration referenced in Section **IX.(A)** and specifically excludes the Optional Extended Reporting Period.

(Y) Pollution Incident

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

(Z) Privacy Breach

"Privacy Breach" shall mean a common law or statutory breach of confidence or violation of any common law or statutory rights to privacy, including, but not limited to, a breach of an **Insured's Privacy Policy**, or public disclosure of a person's **Personal Information**.

(AA) Privacy Policy

"Privacy Policy" shall mean an **Insured's** policies in written or electronic form that govern the collection, dissemination, confidentiality, integrity, accuracy or availability of **Personal Information** provided to an **Insured's** employees or third parties.

(BB) Privacy Regulation

“Privacy Regulation” shall mean any federal, state or local statute, legislative act or regulation governing the confidentiality, control and use of personally identifiable financial, medical or other sensitive information, including, but not limited to:

- (1) Health Insurance Portability and Accountability Act of 1996 or any regulations promulgated thereunder;
- (2) Gramm-Leach-Bliley Act of 1999 or any regulations promulgated thereunder;
- (3) the Identity Red Flags under the Fair and Accurate Credit Transactions Act of 2003 or any regulations promulgated thereunder; and
- (4) any other similar federal, state or local identity theft and privacy protection statutes or regulations that require commercial entities that collect **Personal Information** to post privacy policies, adopt privacy policies and/or controls, or notify individuals if **Personal Information** potentially has been compromised.

(CC) Professional Services

“Professional Services” shall mean:

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

“Professional Services” shall include ordinary technology services utilized for the sole purpose of performing **Professional Services** referenced in paragraphs (1),

(2), (3) and (4) of this Definition. Ordinary technology services shall include the design, development, programming, analysis, training, use, hosting, management, support or maintenance of any software, database, **Internet** service, or website.

(DD) Property Damage

“Property Damage” shall mean:

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

(EE) Protective Indemnity Claim

“Protective Indemnity Claim” shall mean any written demand by an **Insured** against a **Design Professional** seeking a remedy from or alleging, or asserting liability or responsibility on part of, such **Design Professional** for **Protective Indemnity Loss** caused by the **Design Professional’s** performance of **Professional Services**.

(FF) Protective Indemnity Loss

“Protective Indemnity Loss” shall mean the amount an **Insured** is legally entitled to recover in excess of any **Design Professional’s Insurance**. **“Protective Indemnity Loss”** does not include:

- (1) injunctive or equitable relief, or costs or expenses to comply with or undertake such relief;
- (2) the return of fees or charges for services rendered;
- (3) any overhead, mark-up, profit or any interest charge of any kind or nature; or
- (4) any legal fees, costs or expenses incurred by or on behalf of any **Insured** in making, pursuing or prosecuting a **Protective Indemnity Claim** against any **Design Professional** or any other person or entity.

(GG) Public Relations Expenses

“Public Relations Expenses” shall mean reasonable fees, costs, and expenses incurred and paid by an **Insured** for services provided by a public relations firm to an **Insured** to mitigate any actual or potential negative publicity arising out of any **Public Relations Incident**. **“Public Relations Expenses”** shall not include **Claim Expenses**.

(HH) Public Relations Incident

“Public Relations Incident” shall mean:

- (1) the death, departure or debilitating illness of a current partner, principal, officer, or director of any **Insured**;
- (2) an incident of workplace violence;
- (3) dissolution of the **Named Insured** for any reason other than bankruptcy; or
- (4) a **Claim** made against the **Named Insured** that may reasonably be expected to have an adverse effect on the **Named Insured's** public reputation.

(II) Rectification Expenses

“**Rectification Expenses**” shall mean reasonable and necessary fees and expenses incurred by an **Insured** to mitigate or rectify an actual negligent act, error or omission arising from **Professional Services** performed by or on behalf of an **Insured**. “**Rectification Expenses**” shall not include an **Insured's** own profit, overhead or salaries, or any corrective action that is betterment, or any liability for consequential damages arising from the corrective action, including, but not limited to, project delay costs, cost overruns, increase in funding costs, or any loss of use.

(JJ) Security Breach

“**Security Breach**” shall mean:

- (1) the failure by any **Insured** to prevent the transmission of a **Malicious Code** from a **Computer System** to a third party's computers and systems;
- (2) the failure by any **Insured** to provide any authorized third party user of an **Insured's** website, or an **Insured's** computer or communications network, with access to such website, computer or communications network;
- (3) the failure by any **Insured** to prevent unauthorized access to or use of data containing **Personal Information** of others; or
- (4) the failure by any **Insured** to provide notification of any actual or potential unauthorized access to or use of data containing **Personal Information** of others if such notification is required by **Privacy Regulation**.

(KK) Wrongful Act

“**Wrongful Act**” shall mean:

- (1) any actual or alleged negligent act, error or omission, committed or allegedly committed by any **Insured**, or by an individual or entity for whom an **Insured** is legally liable, to which this Policy applies; or
- (2) **Personal Injury** or **Media Injury**, actually or allegedly caused by an **Insured**, or by an individual or entity for whom an **Insured** is legally liable, to which this Policy applies.

For all purposes under this Policy, the same **Wrongful Act** or any **Interrelated Wrongful Acts** shall be deemed to have been committed at the time when the first such **Wrongful Act** was committed.

V. EXCLUSIONS AS TO THE ENTIRE POLICY

This Policy does not apply to any **Claim, Protective Indemnity Claim, Claim Expenses, Notification Expenses, Rectification Expenses, Loss or Protective Indemnity Loss:**

(A) Acts of War

based upon or arising out of war, invasion, acts of foreign enemies, actual or alleged terrorism, hostilities or warlike operations (whether war is declared or not), strikes, lock-outs, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military acts or usurped power.

(B) Breach of Warranty / Guarantee

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

(C) Construction Procedures

based upon or arising out of any construction means, methods, techniques, sequences or procedures; falsework; formwork; shoring; scaffolding; rigging; demolition; crane erection, use, maintenance, or operation; temporary traffic control; or site safety; resulting in **Bodily Injury** or **Property Damage**. This Exclusion shall not apply to that portion of a **Claim** for a **Pollution Incident** arising from **Contracting Activities**.

(D) Contractual Liability

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

(E) Fiduciary / Employment Liability

based upon or arising out of:

- (1) **Personal Injury, Media Injury, Bodily Injury**, sickness, disease or death to any employee of any **Insured** arising out of and in the course of employment by any **Insured**;
- (2) any obligation for which any **Insured** or any insurer may be liable under any workers' compensation, unemployment compensation, employers liability, or disability benefits law, or any similar law or regulation; or
- (3) any actual or alleged violation of the Employee Retirement Income Security Act of 1974, as may be amended, or any similar provisions of any foreign, federal, state or local statutory or common law and any rules or regulations promulgated under such laws.

(F) Fraud / Intentional Acts

based upon or arising out of any dishonest, criminal, fraudulent, malicious or intentional acts, errors or omissions committed or allegedly committed by any **Insured** or any individual or entity for whom any **Insured** is legally liable. However, the Company may pay **Claim Expenses** incurred in connection with the defense of any actual or alleged dishonest, criminal, fraudulent, malicious or intentional acts, errors or omissions committed or allegedly committed by any **Insured**, until such time as there is a final adjudication in the matter.

(G) Insurance or Financing

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

(H) Insured vs. Insured

based upon or arising out of any assertions, allegations, causes of action, demands or **Claims** by or on behalf of any **Insured** under this Policy against another **Insured**. This Exclusion shall not apply to a **Claim** made by a client or other entity considered as an **Insured** under Section IV. **DEFINITIONS, (L) INSURED**, paragraph (7).

(I) Nuclear Incident

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

(J) Performance

based upon or arising out of:

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

This Exclusion shall not apply if such **Claim** is a direct result of a **Wrongful Act** arising from **Professional Services**; or the **Protective Indemnity Claim** is a direct result of an actual or alleged negligent act, error or omission in the performance of **Professional Services** by a **Design Professional**.

(K) Personal Property

based upon or arising out of:

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

- (2) a **Pollution Incident** at, onto or from any real or personal property at any time owned, rented, leased, occupied or used by any **Insured** or by any person or entity for whom any **Insured** is legally liable. This paragraph shall not apply to real or personal property rented, leased or occupied (but not owned) by any **Insured** on a temporary basis for a single project, and during the performance of **Contracting Activities** for that project.

(L) Product Liability

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

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

(M) Related Entities / Individuals

based upon or arising out of any assertions, allegations, causes of action, demands or **Claims** made by any individual or entity (or any employee, principal, owner, shareholder, director, partner, stockholder, assignee or subrogee of such individual or entity), arising out of **Professional Services** or **Contracting Activities** provided to such individual or entity which:

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

(N) Vehicle Liability

based upon or arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock. This Exclusion shall not apply to that portion of a **Claim** for a **Pollution Incident** arising from **Contracting Activities**.

(O) Wrongful Employment Practices

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

- (1) any actual or alleged discrimination, harassment, or wrongful employment conduct by any **Insured**; or

- (2) any actual or alleged violation of any local, state, or federal law, regulation or ordinance by any **Insured**.

VI. EXCLUSIONS AS TO INSURING AGREEMENT I. (A)(3)

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

(A) Acts of God or Physical Events

based upon or arising out of fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, regardless of the cause.

(B) Electromagnetic Discharge

based upon or arising out of the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any real or personal property, or that actually or allegedly causes **Bodily Injury** or **Property Damage**.

(C) Failure of Electrical Infrastructure / Communication Systems

based upon or arising out of:

- (1) any failure, outage, surge, brownout or blackout, or any other disruption of power, utility services, satellites, or telecommunications services not within an **Insured's** direct operational control; or
- (2) any failure of telephone lines, cable lines, data transmission lines or other infrastructure comprising or supporting the **Internet** not within an **Insured's** direct operational control.

(D) Failure of Insured's Computer System

based upon or arising out of any failure or defective design, architecture or configuration of any **Insured's Computer System**, including, but not limited to, the failure to design for traffic or capacity requirements.

(E) Failure of Insured's Network Security

based upon or arising out of:

- (1) the inability to use, or the lack of performance of, any software: (a) due to the expiration, cancellation or withdrawal of such software; (b) that had not yet been released to the production environment; or (c) that has not passed all test runs or proven successful in daily operations;
- (2) any **Insured's** failure to take reasonable steps to use, design, maintain and/or upgrade its **Network Security**; or

(3) any inadequacy or weakness in any **Insured's Network Security** of which any **Insured** had knowledge prior to the Effective Date of this Policy.

(F) Failure to Disclose

based upon or arising out of an **Insured's** intentional failure to disclose the loss of **Personal Information** in violation of any **Privacy Regulation** or common law.

(G) Failure to Maintain Computer Security

based upon or arising out of the **Insured's** failure to reasonably ensure that an **Insured's Computer System** is protected by security practices and systems maintenance procedures that are equal to or superior to those disclosed in the **Application** for this Policy.

VII. EXCLUSIONS AS TO INSURING AGREEMENT I. (C)

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

(A) Default Judgment

based upon or arising out of any **Protective Indemnity Loss** resulting from default judgment or other adverse order of finding which results from any **Design Professional's** failure to answer, plead, respond or failure to defend itself or failure to indemnify an **Insured** in response to a **Protective Indemnity Claim**.

This Exclusion will not apply to that amount of **Protective Indemnity Loss** that the **Named Insured** and the Company mutually agree would have been the **Protective Indemnity Loss** in the absence of such default judgement or other action or inaction.

VIII. INNOCENT INSUREDS

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

IX. LIMIT OF LIABILITY / DEDUCTIBLE

(A) Limit of Liability

The amount stated in the Declarations of this Policy shall be the Company's per **Claim**, including a **Protective Indemnity Claim**, if applicable, and maximum aggregate Limit of Liability for all **Loss** and **Protective Indemnity Loss**, including **Claim Expenses, Notification Expenses** and **Rectification Expenses**, for all **Claims** and **Protective Indemnity Claims** to which this Policy applies.

(B) Exhaustion of Limit of Liability

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

The payment of **Loss, Protective Indemnity Loss, Claim Expenses, Notification Expenses** and **Rectification Expenses** by the Company reduces and may totally exhaust the applicable Limit of Liability.

(C) Deductible

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

(D) Mediation of Claims Deductible Credit

The applicable Deductible amount stated in the Declarations of this Policy will be decreased by 50%, subject to a maximum reduction of USD15,000, if a **Claim** is fully and finally resolved to the satisfaction of all parties, including the Company, through **Mediation**. In the event such **Mediation** does not fully and finally resolve the **Claim**, there shall be no reduction of the Deductible obligation, and all **Claim Expenses** incurred in the **Mediation** shall be included in the total **Claim Expenses** for the **Claim**.

(E) Multiple Claims

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

(F) Multiple Protective Indemnity Claims

Two or more **Protective Indemnity Claims** sharing as a common nexus, any fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes, shall be considered a single **Protective Indemnity Claim** and shall be deemed to have been made when the first such **Protective Indemnity Claim** was made by any **Insured**. A single Deductible and a single per **Claim** Limit of Liability shall apply to any **Protective Indemnity Claim** or the total of all **Protective Indemnity Claims** arising from the same fact, circumstance, situation, event, transaction, cause or series of causally connected facts, circumstances, situations, events, transactions or causes.

(G) Allocation

If a **Claim** made against any **Insured** includes both covered and uncovered allegations or is made against both an **Insured** and others not insured under this Policy, the **Named Insured** and the Company agree that there must be an allocation between insured and uninsured **Loss** and **Claim Expenses**.

Additionally, the **Named Insured** and the Company agree that in determining a fair and appropriate allocation of insured and uninsured **Loss** and **Claim Expenses**, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with, the defense and/or settlement of the **Claim** by the **Named Insured** and others. If there is no agreement as to the allocation of **Claim Expenses**, the Company shall pay the allocated portion of **Claim Expenses** which the Company deems fair and appropriate until such time as an agreement can be reached. In addition, if there is no agreement on allocation of **Loss** and **Claim Expenses**, no presumption as to allocation shall exist in any arbitration, suit or other proceeding.

(H) Rectification Expenses and Protective Indemnity Loss Dispute Resolution

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

X. TERRITORY

This Policy shall apply worldwide, provided always that a **Claim** is made and maintained against an **Insured** within the United States of America, its territories and possessions, or Canada.

XI. NOTIFICATION / NOTICE OF CIRCUMSTANCE

(A) Notification

As a condition precedent to any available rights under this Policy, if any **Claim** is made against any **Insured**, then any **Insured** shall give written notice of the **Claim** to the individual designated in the Declarations of this Policy as soon as practicable but no later than sixty (60) days after the end of the **Policy Period** or during the Optional Extended Reporting Period, if applicable.

Further, if any **Protective Indemnity Claim** is made by any **Insured**, then any **Insured** shall give written notice of the **Protective Indemnity Claim** to the individual designated in the Declarations of this Policy during the **Policy Period** or during the Optional Extended Reporting Period, if applicable.

(B) Notice of Circumstances

If, during the **Policy Period**, any **Insured** first becomes aware of any circumstance that may lead to a **Claim** or **Protective Indemnity Claim**, and if that **Insured**, during the **Policy Period** (which shall not include the sixty (60) days after the end of the **Policy Period** or the Optional Extended Reporting Period, if applicable), gives written notice to the Company of:

- (1) the circumstances (including the names of the parties involved);

- (2) the specific actual or alleged negligent act, error or omission; and
- (3) the consequences that have resulted or may result therefrom;

then any **Claim** or **Protective Indemnity Claim** subsequently made arising in whole or in part out of such circumstances shall be deemed for the purposes of this Policy to have been first made on the date such circumstances were first reported to the Company. The Company shall have no obligation to pay any fees, expenses, or other amounts incurred prior to the time such circumstances become a **Claim** or **Protective Indemnity Claim** and written notice of such **Claim** or **Protective Indemnity Claim** is provided to the Company pursuant to Section XI.(A).

XII. CONDITIONS

(A) Assistance and Cooperation

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

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

(B) Audit

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

(C) Subrogation

In the event of any **Claim** or payment under this Policy, the Company shall be subrogated to the extent of such **Claim** or payment to all rights of recovery therefore, and an **Insured** shall execute all documents required and shall do everything that may be necessary to secure such rights, including the execution of

such documents necessary to enable the Company to effectively bring suit in the name of any **Insured**. An **Insured** shall do nothing after a **Claim** is made against them to prejudice such rights. However, the Company agrees to waive its rights to recover against any **Insured's** client to the extent that any **Insured** had, prior to the **Claim** at issue, a written agreement with the client to waive such subrogation rights. Any and all such subrogation rights that may accrue as against any and all other parties shall remain intact and unchanged.

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

This Section shall not apply to **Insuring Agreement I.(C)**.

(D) Other Insurance

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

Notwithstanding the foregoing, and only with respect to a **Claim** made as a result of a **Pollution Incident** arising from **Contracting Activities**, if a written contract or agreement executed prior to the date on which **Contracting Activities** first commenced requires this Policy to be primary and non-contributory, this Policy will be primary and non-contributory relative to any other valid and collectible insurance available to a client listed as an **Insured** under Section **IV. DEFINITIONS, (L) INSURED**, paragraph (7).

(E) Cancellation

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

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

- (1) non-payment of premium;
- (2) fraud or material misrepresentation or omission in obtaining this Policy;

- (3) substantial breach of Policy terms and conditions; or
- (4) the risk originally accepted has significantly increased or materially changed.

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

(F) Non-Renewal

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

(G) Optional Extended Reporting Period

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

- For 12 months: 100% of the full annual premium.
- For 24 months: 150% of the full annual premium.
- For 36 months: 200% of the full annual premium.
- For 60 months: 250% of the full annual premium.

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

Any such Optional Extended Reporting Period:

- (1) shall only apply with respect to any **Claim** first made during the Optional Extended Reporting Period and only with respect to any **Professional Services** or **Contracting Activities** rendered on or after the Retroactive Date stated in the Declarations of this Policy and before the effective date of cancellation, if applicable, or the Expiration Date of this Policy;
- (2) shall only apply with respect to any **Protective Indemnity Claim** first made during the Optional Extended Reporting Period and only with respect to any actual or alleged negligent act, error or omission in the performance of **Professional Services** by a **Design Professional** rendered on or after the Retroactive Date stated in the Declarations of this Policy and before the

effective date of cancellation, if applicable, or the Expiration Date of this Policy;

- (3) shall be evidenced by issuance of an Endorsement to this Policy;
- (4) is subject to all of the terms, conditions, limitations and exclusions of this Policy;
- (5) shall require payment within thirty (30) days from the **Named Insured's** written request to bind such Optional Extended Reporting Period;
- (6) shall be effective on the effective date of such cancellation, if applicable, or the Expiration Date of this Policy;
- (7) shall not apply to any **Claim** or **Protective Indemnity Claim** where, prior to the date that the Optional Extended Reporting Period is bound, any **Insured** had knowledge of any circumstance, dispute, situation or incident that could reasonably have been expected to give rise to such **Claim** or **Protective Indemnity Claim**; and
- (8) shall not apply to Section I. **(A)(2), Rectification Expenses Coverage.**

The aggregate Limit of Liability for the Optional Extended Reporting Period shall be part of, and not in addition to, the aggregate Limit of Liability for the **Policy Period** set forth in the Declarations. The purchase of the Optional Extended Reporting Period shall not increase or reinstate the Limit of Liability set forth in the Declarations, which shall be the Company's maximum liability for all **Loss, Protective Indemnity Loss, Claim Expenses** and **Notification Expenses**.

As used herein, "full annual premium" means the equivalent annual premium level for the coverage terms in effect immediately prior to the end of the **Policy Period**.

A change in Policy terms, conditions or exclusions and/or premiums shall not be considered a non-renewal for purposes of triggering the **Named Insured's** right to purchase the Optional Extended Reporting Period.

The rights contained in this provision shall terminate, however, unless the **Named Insured** provides written notice of such election to purchase the Optional Extended Reporting Period to the Company within thirty (30) days of the effective date of cancellation, if applicable, or the Expiration Date of this Policy. Furthermore, as a condition precedent to the **Named Insured's** rights to purchase the Optional Extended Reporting Period, the total premium for this Policy must have been paid in full and any outstanding Deductible fully satisfied.

(H) Action Against the Company

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

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

(I) Assignment

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

(J) Authorization Clause

The **Named Insured**, designated in the Declarations of this Policy, shall have the sole authority and responsibility to act on behalf of every **Insured** with respect to: (1) the payment or return of premium; (2) the receipt of and agreement to any Endorsements issued to form a part of this Policy; (3) the receipt of any notice provided for or required by this Policy; (4) the payment of any Deductible; (5) the exercise of the rights provided in Section **III.(B)** regarding consent to settlement; and (6) the exercise of the rights provided in Section **XII.(G)** regarding the Optional Extended Reporting Period.

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

(K) Representations

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

(L) False or Fraudulent Claims

If any **Insured** shall commit fraud, or any misrepresentation, omission, intentional misconduct or collusion in proffering any **Claim**, **Protective Indemnity Claim** or **Rectification Expenses** with regard to amount or otherwise, this Policy in its entirety shall be void from the date such fraudulent **Claim**, **Protective Indemnity Claim** or **Rectification Expenses** is proffered.

(M) Bankruptcy

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

(N) Office of Foreign Assets Control

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

(O) Headings

The descriptions in the headings of this Policy are solely for convenience and in no way alter the terms and conditions of coverage.

(P) Policy Conformance

Any terms of this Policy that are in conflict with any local or state law, regulation or ordinance of the state that applies, will be thereby amended to the extent necessary in order to conform to such local or state law, regulation or ordinance.

XIII. MATERIAL CHANGES

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

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

- (1) the **Named Insured** gives the Company notice of such Transaction as soon as practicable after the effective date of the Transaction;
- (2) the **Named Insured** gives the Company information regarding the Transaction as it may reasonably require; and
- (3) the Company specifically agrees, by written Endorsement to this Policy, to include such entity, affiliate, partnership or subsidiary and the **Named Insured** accepts any terms, conditions, exclusions, limitations and additional premium, if any, as the Company, in its sole discretion, may impose. If the Company, at its sole discretion, includes such entity, affiliate, partnership or subsidiary, this Policy shall not apply to, and the Company shall not pay any **Loss, Protective Indemnity Loss, Claim Expenses, Notification Expenses** or **Rectification Expenses** caused by such entity, affiliate, partnership or subsidiary or any **Insured** thereof happening before:
(a) the effective date of the Transaction; or (b) the effective date of an Endorsement

issued to extend coverage to such entity, affiliate, partnership or subsidiary, whichever is later.

XIV. ENTIRE AGREEMENT

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