

# Contractors Pollution Liability and Errors & Omissions Insurance Policy

## Claims-Made Liability Coverage

This Policy is issued by the stock insurance company identified in the Declarations (hereinafter *the Insurer*).

**THIS POLICY PROVIDES LIABILITY COVERAGE ON A CLAIMS-MADE AND REPORTED BASIS, WHICH COVERS ONLY CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD OR WITHIN THIRTY DAYS THEREAFTER, UNLESS AN EXTENDED REPORTING PERIOD APPLIES. COVERAGE C. OF THIS POLICY PROVIDES FIRST-PARTY COVERAGE ON A DISCOVERED AND REPORTED BASIS, WHICH COVERS ONLY POLLUTION CONDITIONS AND SITE ENVIRONMENTAL CONDITIONS, AS APPLICABLE, FIRST DISCOVERED AND FOR WHICH AN EMERGENCY CLAIM IS REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD OR WITHIN THIRTY DAYS THEREAFTER, PROVIDED THAT COVERAGE FOR EMERGENCY RESPONSE COSTS IS LIMITED BY MORE SPECIFIC REPORTING CRITERIA AND COVERS ONLY EMERGENCY RESPONSE COSTS INCURRED, AND REPORTED TO THE INSURER, IN WRITING, WITHIN THE SPECIFIC TIMING REQUIREMENTS IDENTIFIED IN THIS POLICY. FINALLY, COVERAGES D. AND E. OF THIS POLICY ALSO HAVE SPECIFIC REPORTING CRITERIA AND ONLY COVER LOSS RELATED TO WRONGFUL ACTS FOR WHICH CONTEMPLATED ACTIONS OR AFFIRMATIVE CLAIMS, RESPECTIVELY, ARE REPORTED TO THE INSURER, IN WRITING, WITHIN THE SPECIFIC TIMING REQUIREMENTS IDENTIFIED IN THIS POLICY. PLEASE READ THIS POLICY CAREFULLY. SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE YOUR RIGHTS AND DUTIES. LEGAL DEFENSE EXPENSES ARE SUBJECT TO AND SHALL ERODE THE LIMITS OF LIABILITY AND ANY APPLICABLE SELF-INSURED RETENTION.**

Throughout this Policy the words *the Insurer* shall refer to the company providing this insurance. Other words and phrases that appear in quotation marks have special meanings and are defined in Section V., **DEFINITIONS**.

In consideration of the payment of the premium and in reliance upon all statements made in the Application to this Policy, including the information furnished in connection therewith, and subject to all terms, definitions, conditions, exclusions and limitations of this Policy, the Insurer agrees to provide insurance coverage to the “insured” as described herein.

### I. INSURING AGREEMENTS

Solely to the extent that the coverages below are identified on the Declarations to this Policy as being underwritten by the Insurer, the Insurer agrees to pay on behalf of the “insured” for:

#### A. ERRORS AND OMISSIONS COVERAGE (Coverage A.)

“Loss”, in excess of the “self-insured retention”, resulting from “claims” arising out of a “wrongful act”, provided that the “claim” is first made during the “policy period”. Any such “claim” must be reported to the Insurer, in writing, during the “policy period” or within thirty (30) days after the expiration of the “policy period”, or during any applicable “extended reporting period”.

The coverage afforded pursuant to this Coverage A. only applies to “wrongful acts” that result from “covered professional services” performed on or after the retroactive date identified in Item 5. of the Declarations, and prior to the expiration of the “policy period”.

#### B. CONTRACTORS LIABILITY COVERAGE (Coverage B.)

“Loss”, in excess of the “self-insured retention”, resulting from “claims” arising out of a “pollution condition” or “site environmental condition”, provided that the “claim” is first made during the “policy period”. Any such “claim” must be reported to the Insurer, in writing, during the “policy period” or within thirty (30) days after the expiration of the “policy period”, or during any applicable “extended reporting period”.

The coverage afforded pursuant to this Coverage B. only applies to “pollution conditions” and “site environmental conditions” that result from “covered operations” or “transportation” performed on or after the retroactive date identified in Item 5. of the Declarations, and prior to the expiration of the “policy period”.

**C. CONTRACTORS EMERGENCY RESPONSE AND CATASTROPHE MANAGEMENT COVERAGE (Coverage C.)**

“Loss”, in excess of the “self-insured retention”, resulting from “emergency claims” arising out of a “pollution condition” or “site environmental condition”, provided the “insured” first discovers such “pollution condition” or “site environmental condition” during the “policy period”. Any such “emergency claim” must be reported to the Insurer, in writing, during the “policy period” or within thirty (30) days after the expiration of the “policy period”.

The coverage afforded pursuant to this Coverage **C.** only applies to “pollution conditions” and “site environmental conditions” that result from “covered operations” or “transportation” performed during the “policy period”.

**D. RECTIFICATION COVERAGE (Coverage D.)**

“Loss”, in excess of the “self-insured retention”, arising out of a “wrongful act” in the performance of “covered professional services”.

It is a condition precedent to the coverage afforded pursuant to this Coverage **D.** that:

1. Prior to the effective date of the first Rectification Coverage issued to the “named insured” by the Insurer and continuously renewed, no “responsible person” had a basis to believe that any such “wrongful act” might reasonably be expected to be the basis of a “claim”;
2. The “named insured” demonstrates to the Insurer’s satisfaction that any such “wrongful act” can reasonably be expected to result in a “loss” covered pursuant to Coverage **A.** of this Policy;
3. The “wrongful act” arose out of the performance of “covered professional services” that first commenced, in their entirety, on or after the retroactive date identified in Item **5.** of the Declarations, and before the end of the “policy period”; and
4. Details of the actions contemplated by the “named insured” to minimize its liability for the “wrongful act”, including the scope and amount of any associated “loss”, are reported to the Insurer, in writing, during the “policy period” or within a term not to exceed thirty (30) days after the expiration of the “policy period”.

**E. CONTINGENT PROFESSIONAL INDEMNITY COVERAGE (Coverage E.)**

“Loss”, in excess of the “self-insured retention”, arising out of an actual or alleged “wrongful act” of a “responsible professional” in the performance of “covered professional services”, provided an “affirmative claim” for the “named insured’s” total loss is first made by the “named insured” and reported to the Insurer during the “policy period”.

It is a condition precedent to coverage afforded pursuant to this Coverage **E.** that:

1. Prior to the effective date of the first Contingent Professional Indemnity Coverage issued to the “named insured” by the Insurer and continuously renewed, no “responsible person” had a basis to believe that any such “wrongful act” asserted in the “affirmative claim” might reasonably be expected to be the basis of an “affirmative claim”;
2. The “wrongful act” arose out of the performance of “covered professional services” that first commenced, in their entirety, on or after the retroactive date identified in Item **5.** of the Declarations, and before the end of the “policy period”;
3. The “named insured” has used reasonable, good-faith efforts to recover its total loss from all “responsible professionals”; and
4. The “named insured” has not contractually limited the liability of any “responsible professional”, except to the limits of all available insurance proceeds, without the prior express written consent of the Insurer.

**II. LIMITS OF LIABILITY AND SELF-INSURED RETENTION**

- A.** It is expressly agreed that the Insurer’s obligation to pay for any covered “loss” pursuant to this Policy shall attach to the Insurer only after the “first named insured” has paid, or has provided evidence to the Insurer that another “named insured” has paid, the full amount of the “self-insured retention” with respect to any covered “wrongful act”, “pollution condition” or “site environmental condition”. Under no circumstances, including, but not limited to, an “insured’s” insolvency and/or bankruptcy, shall the Insurer be liable to pay any amount within the “self-insured retention”. In the event that the “first named insured” cannot provide satisfactory evidence that a “named insured” has paid the full amount of the “self-insured retention” with respect to any covered “wrongful act”, “pollution condition” or “site environmental condition”, the “first named insured” shall remain responsible to pay the “self-insured retention” before the Insurer’s payment obligation pursuant to this Policy shall attach with respect to coverage sought by any “insured”.

Notwithstanding the foregoing, if the “insured” agrees with the Insurer to use “mediation” to successfully resolve any “claim” for which “legal defense expenses” have been incurred, then the “self-insured retention” applicable to the “wrongful act”, “pollution condition” or “site environmental condition” that corresponds to such “claim” shall be reduced by fifty percent (50%), subject to a maximum reduction in the “self-insured retention” of twenty-five thousand dollars (\$25,000).

- B.** One “self-insured retention” shall apply to all “loss” arising out of the same, continuous, repeated, or related “wrongful act”, “pollution condition” or “site environmental condition”. If the same, continuous, repeated, or related “wrongful act”, “pollution condition” or “site environmental condition” triggers coverage pursuant to multiple coverage parts, or otherwise involves multiple exposures that have been assigned exposure-specific “self-insured retention” amounts by endorsement to this Policy, the single largest of the associated “self-insured retention” amounts identified in: **1)** Items **4.a.** through **4.e** of the Declarations; **2)** any Supplemental Coverage added by endorsement to this Policy; or **3)** any exposure-specific “self-insured retention” endorsement identified as part of this Policy, shall apply to all “loss” and other covered exposures arising out of such “wrongful act”, “pollution condition” or “site environmental condition”, except for any “catastrophe management costs” that are assigned an exposure-specific “self-insured retention” in Item **4.** of the Declarations, if any (hereinafter Catastrophe Management-Specific SIR Obligation). Amounts within any such Catastrophe Management-Specific SIR Obligation shall be independent of, and shall not otherwise erode, the single largest “self-insured retention” applicable to all other covered exposures arising out of the same “pollution condition” or “site environmental condition” as contemplated herein.
- C.** Subject to Subsections **D.** and **E.**, below, the most the Insurer shall pay for all “loss” arising out of the same, continuous, repeated, or related “wrongful act”, “pollution condition” or “site environmental condition” is the Per Wrongful Act, Pollution Condition or Site Environmental Condition Limit of Liability identified in Item **3.a.** of the Declarations to this Policy.
- D.** Subject to Subsection **C.**, above, and Subsection **E.**, below, **\$250,000** shall be the maximum amount the Insurer shall pay for all “catastrophe management costs” arising out of all “pollution conditions” and “site environmental conditions”.
- E.** Subject to Subsections **C.** and **D.**, above, the Total Policy and Program Aggregate Limit of Liability identified in Item **3.b.** of the Declarations shall be the maximum liability of the Insurer pursuant to this Policy with respect to all “loss”.
- F.** If more than one Insuring Agreement pursuant to this Policy applies to the same “loss”, the Insurer shall not pay any more than the Limit of Liability identified in Item **3.a.** of the Declarations for the same, continuous, repeated or related “wrongful act”, “pollution condition” or “site environmental condition” that gave rise to the “loss”.
- G.** If the Insurer or an affiliate has issued claims-made professional or pollution liability coverage to the “insured” over successive policy periods, then all “loss” resulting from multiple “claims”, which: arise out of the same, continuous, repeated or related “wrongful act”, “pollution condition” or “site environmental condition”; and are reported to the Insurer over multiple policy periods, shall be treated as a single “claim” arising out of a single “wrongful act”, “pollution condition” or “site environmental condition” pursuant to a single policy. Said “claim” shall be subject to the Limits of Liability and “self-insured retention” of the policy in effect at the time that the “wrongful act”, “pollution condition” or “site environmental condition” was first reported to the Insurer, and no other policy shall respond.
- H.** If the Insurer or an affiliate has issued emergency response or catastrophe management coverage on a discovered and reported basis consistent with coverage afforded pursuant to this Policy in one or more policy periods, and a “pollution condition” or “site environmental condition” is first discovered and reported to the Insurer in accordance with the terms and conditions of this Policy, then any continuous, repeated, or related “pollution condition” or “site environmental condition” that is subsequently reported to the Insurer during later policy periods shall be deemed to be one “pollution condition” or “site environmental condition” discovered during this “policy period”, and no other policy shall respond.

### III. DEFENSE AND SETTLEMENT

- A.** The Insurer shall have the right and, subject to the “self-insured retention” obligation, the duty to defend the “insured” against a “claim” to which this insurance applies. The Insurer shall have no duty to: **1)** defend the “insured” against any “claim” to which this insurance does not apply; or **2)** defend any “claims” seeking sums payable pursuant to, or have any duty to prosecute “affirmative claims” contemplated in, Coverage **E.** of this Policy. The Insurer’s duty to defend the “insured” ends once the Limits of Liability are exhausted or are tendered into a court of applicable jurisdiction, or once the “insured” refuses a settlement offer as provided in Subsection **E.**, below.
- B.** The Insurer shall have the right to select legal counsel to: **1)** represent the “insured” for the investigation, adjustment, and defense of any “claims” covered pursuant to this Policy; and **2)** assist the “insured” with clarifying

the extent of, and to help minimize, any “emergency response costs”. Selection of legal counsel by the Insurer shall not be done without the consent of the “insured”; such consent shall not be unreasonably withheld.

In the event the “insured” is entitled by law to select independent counsel to defend itself at the Insurer's expense, the attorney fees and all other litigation expenses the Insurer shall pay to that counsel are limited to the rates the Insurer actually pays to counsel that the Insurer normally retains in the ordinary course of business when defending “claims” or lawsuits of similar complexity in the jurisdiction where the “claim” arose or is being defended. In addition, the “insured” and the Insurer agree that the Insurer may exercise the right to require that such counsel: **1)** have certain minimum qualifications with respect to their competency, including experience in defending “claims” similar to those being asserted against the “insured”; **2)** maintain suitable errors and omissions insurance coverage; **3)** be located within a reasonable proximity to the jurisdiction of the “claim”; and **4)** agree in writing to respond in a timely manner to the Insurer's requests for information regarding the “claim”. The “insured” may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

- C. The “insured” shall have the right and the duty to retain a qualified environmental consultant or “catastrophe management firm” to: **1)** perform any investigation and/or remediation of any “pollution condition” or “site environmental condition” covered pursuant to this Policy; or **2)** perform “catastrophe management services” covered pursuant to this Policy, respectively. The “insured” must receive the consent of the Insurer prior to the selection and retention of any such environmental consultant or “catastrophe management firm”, except in the event of an “emergency claim” that results in “emergency response costs”.
- D. “Legal defense expenses” reduce the Limits of Liability identified in the Declarations to this Policy, and, unless specifically stated otherwise herein, any applicable Limits or Sublimits of Liability identified in any endorsement hereto. “Legal defense expenses” shall also be applied to the “self-insured retention”.
- E. The Insurer shall present all settlement offers to the “insured”. If the Insurer recommends a settlement which is acceptable to a claimant, exceeds any applicable “self-insured retention”, is within the Limits of Liability, and does not impose any additional unreasonable burdens on the “insured”, and the “insured” refuses to consent to such settlement offer, then the Insurer's duty to defend shall end. Thereafter, the “insured” shall defend such “claim” independently and at the “insured's” own expense. The Insurer's liability shall not exceed the amount for which the “claim” could have been settled if the Insurer's recommendation had been accepted, exclusive of the “self-insured retention”.
- F. Solely with respect to coverage afforded pursuant to Coverage **D.** of this Policy, in the event that the “named insured” and the Insurer do not agree that the “loss” proposed by the “named insured” is reasonable and necessary, the parties agree to submit such dispute to any standard form of alternative dispute resolution acceptable to the parties. If the parties cannot agree on the particular form of alternative dispute resolution, then the dispute shall be submitted for arbitration via the American Arbitration Association and administered pursuant to its Commercial Arbitration Rules. Judgment on the arbitration award may be entered into any court having jurisdiction.

#### IV. COVERAGE TERRITORY

The coverage afforded pursuant to this Policy shall only apply to “covered professional services”, “covered operations” and “transportation” performed, and “claims” made, within the United States of America.

#### V. DEFINITIONS

**A. “Additional insured” means:**

- 1.** Any person or entity specifically endorsed onto this Policy as an “additional insured”, if any. Such “additional insured” shall maintain only those rights that are specified by endorsement to this Policy; and
- 2.** All clients, or other persons or entities, which a “named insured” is required by written contract or agreement with its client to secure such coverage, but solely with respect to “covered operations” or “transportation” performed for that client (hereinafter Client Additional Insureds). Such Client Additional Insureds are covered solely with respect to their vicarious liability for a monetary judgment, award or settlement of compensatory damages, including associated “extra damages”, to which this insurance applies.

**B. “Adverse media coverage”** means national or regional news exposure in television, radio, print or internet media that is reasonably likely to have a negative impact on the “insured” with respect to its income, reputation, community relations, public confidence or good will.

**C. “Affirmative claim”** means a written demand, including, but not limited to, a lawsuit, petition, demand for arbitration, or demand for mediation, instituted by a “named insured” against all applicable “responsible professionals” seeking compensation for its compensatory damages.

**“Affirmative claim”** does not mean a demand or proceeding for non-monetary or injunctive relief.

- D. “Bodily injury”** means physical injury, illness, disease, mental anguish, emotional distress, or shock, sustained by any person, including death resulting therefrom, and any prospective medical monitoring costs that are intended to confirm any such physical injury, illness or disease.
- E. “Catastrophe management costs”** means reasonable and necessary expenses approved by the Insurer, in writing, except for those expenses incurred during the same seven (7) day period associated with “emergency response costs”, which have been incurred by the “insured” for the following:
1. Responsive consulting services rendered by a “catastrophe management firm”;
  2. Printing, advertising, mailing of materials of public relations materials;
  3. Travel by directors, officers, employees or agents of the “insured”, or the “catastrophe management firm”, incurred at the direction of a “catastrophe management firm”;
  4. To secure the scene of a “pollution condition” or “site environmental condition”; or
  5. Sums advanced to third-parties directly harmed by the “pollution condition” or “site environmental condition” for their medical costs; funeral costs; psychological counseling; travel expense costs; temporary living costs or other necessary response costs,

but solely in those instances when, in the good faith opinion of a “key executive”, the associated “pollution condition” or “site environmental condition” has resulted in or is reasonably likely to result in: **a)** “loss” (exclusive of “catastrophe management costs”) that will exceed the applicable “self-insured retention”; and **b)** a need for “catastrophe management services” due to “adverse media coverage”.

**“Catastrophe management costs”** do not include any “legal defense expense”.

- F. “Catastrophe management firm”** means any firm that is approved, in writing, except for firms retained for the same seven (7) day period associated with “emergency response costs”, by the Insurer to perform “catastrophe management services” in connection with a “pollution condition” or “site environmental condition”.
- G. “Catastrophe management services”** means advising the “insured” with respect to minimizing potential harm to the “insured” from a covered “pollution condition” or “site environmental condition” by managing “adverse media coverage” and maintaining and restoring public confidence in the “insured”, and its services or products.
- H. “Claim”** means the written assertion of a legal right received by the “insured” from a third-party, or from another “insured” that is party to an “environmental indemnity obligation”, including, but not limited to, a “government action”, suits or other actions alleging responsibility or liability on the part of the “insured” for:

Coverage A.

1. “Wrongful acts” to which this insurance applies; or

Coverage B.

2. “Bodily injury”, “property damage” or “remediation costs” arising out of “pollution conditions” or “site environmental conditions” to which this insurance applies.
- I. “Covered operations”** means all contracting services that are performed at a “work site” by or on behalf of a “named insured”, including project management and site supervision duties, along with any attendant coordination, facilitation or effectuation of the disposal and/or recycling of waste materials generated from such operations at a “non-owned disposal site”.
- J. “Covered professional services”** means:

Coverages A. and E.

1. Professional services rendered in the practice of architecture, engineering, design, land surveying, landscape architecture, interior design, space planning, construction management, program management, Leadership in Energy and Environmental Design (LEED) and consulting, provided that such services are performed by or on behalf of the “named insured” by qualified persons or entities.

**“Covered professional services”** shall also mean a “named insured’s” use of standard technology applications, including, but not limited to, design, development, programming, hosting and support applications, for the benefit of its client, its subconsultants or others engaged in professional services.

**Coverage D.**

2. Preparation of architectural or engineering designs, plans, drawings, specifications, calculations and studies by or on behalf of a “named insured” on any project for which such “named insured” is responsible for architectural and/or engineering design services.

“Covered professional services” does not mean any actual or negligent: **a)** review of shop drawings and submittals; **b)** issuance of change orders; **c)** construction management; **d)** construction observation; **e)** value engineering/analysis; or **f)** review of contractors’ request for payments.

- K. “Emergency claim”** means the first-party discovery of a “pollution condition” or a “site environmental condition” during the “policy period” by an “insured” to which this insurance applies.

- L. “Emergency response costs”** means:

1. Reasonable and necessary “remediation costs” incurred within seven (7) days following the discovery of a “pollution condition” or “site environmental condition” by a “responsible person” in order to abate or respond to an imminent and substantial threat to human health or the environment arising out of a “pollution condition” or “site environmental condition” resulting from “covered operations” or “transportation”, provided such “emergency response costs” are reported to the Insurer within fourteen (14) days of when that “responsible person” first became aware of such “pollution condition” or “site environmental condition”; and
2. Additional “remediation costs” incurred after the expiration of the seven (7) day period contemplated in Paragraph 1., above, provided the applicable “insured” has secured the Insurer’s prior written consent to its incurrence of such expenses.

If no applicable laws exist that govern the remediation, investigation, quantification, monitoring, removal, disposal, treatment, neutralization, or immobilization of such “pollution condition” or “site environmental condition” in the jurisdiction of the “covered operations” or “transportation”, necessary “remediation costs” may be established by securing the written professional recommendations of an “environmental professional”.

“Emergency response costs” also means reasonable and necessary expenses required to restore, repair or replace real or personal property to substantially the same condition it was in prior to being damaged during the course of responding to such “pollution condition” or “site environmental condition”. Such expenses shall not include costs associated with betterments or improvements, except to the extent that such betterments or improvements are exclusively associated with the use of building materials which are environmentally sustainable. Any such environmentally sustainable material must be: **a)** certified as such by an applicable independent certifying institution where such certification is available; or **b)** in the absence of any such certification, based solely on the judgment of the Insurer and at its sole discretion.

- M. “Environmental indemnity obligation”** means that part of any written contract or agreement wherein a “named insured” assumes the vicarious liability of a Client Additional Insured or third-party to pay for a monetary judgment, award or settlement of compensatory damages, including associated “extra damages”, resulting from “covered operations” to which this insurance applies.

- N. “Environmental professional”** means a licensed professional that is:

1. Mutually agreed upon by the Insurer and the “insured”, except with respect to “emergency response costs” or coverage afforded pursuant to Coverage B. of this Policy; and
2. Qualified by licensure, knowledge, skill, education and training to perform an assessment, prepare an investigation protocol, interpret the results and prepare a scope of work to remediate a “pollution condition” or “site environmental condition”.

- O. “Extended reporting period”** means the additional period of time in which to report a “claim” first made against the “insured” during or subsequent to the end of the “policy period”.

- P. “Extra damages”** means punitive, exemplary or multiplied damages, and civil fines, penalties and assessments, but solely to the extent that the punitive, exemplary or multiplied damages, and civil fines, penalties and assessments:

1. Are insurable under applicable law; and
2. Arise out of a “wrongful act”, or a “pollution condition” or “site environmental condition”, as applicable, which results in compensatory damages to which this insurance otherwise applies.

- Q. “First named insured”** means the person or entity as identified in Item 1. of the Declarations to this Policy. The “first named insured” is the party responsible for the payment of any premiums and the payment of, or evidencing

payment of, any applicable “self-insured retention” amounts. The “first named insured” shall also serve as the sole agent on behalf of all “insureds” with respect to the provision and receipt of notices, including notice of cancellation or non-renewal, receipt and acceptance of any endorsements or any other changes to this Policy, return of any premium, assignment of any interest pursuant to this Policy, as well as the exercise of any applicable “extended reporting period”, unless any such responsibilities are otherwise designated by endorsement.

- R. “Fungi”** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents, or byproducts produced or released by “fungi”.
- S. “Government action”** means action taken or liability imposed by any Federal, state, commonwealth, municipal or other local government agency or body acting pursuant to the authority of applicable law.
- T. “Illicit abandonment”** means the intentional placement or abandonment of any waste or materials beyond the boundaries of a “work site” or “non-owned disposal site” during “transportation” by a person or entity that:
1. Is not an “insured”; and
  2. Is not affiliated by common ownership with an “insured”.

“Illicit abandonment” does not mean any such placement or abandonment, above, which takes place, in whole or in part, prior to the inception date identified in Item 2. of the Declarations of this Policy.

- U. “Insured”** means the “first named insured”, any “named insured”, any “additional insured”, and:
1. Any past or present director or officer of, partner in, employee of, or, with respect to a limited liability company, a member of, any of the foregoing while acting within the scope of his or her duties as such;
  2. Any retired director of, officer of, partner in, or employee of, a “named insured”, but only to the extent they are acting as a consultant to that “named insured” during its provision of “covered professional services”;
  3. The heirs, executors, administrators, and legal representatives of each “insured”, as defined in Paragraphs 1. and 2., above, in the event of death, incapacity or bankruptcy, but only with respect to liability arising out of “covered professional services” or “covered operations” rendered on behalf of a “named insured” prior to death, incapacity or bankruptcy;
  4. Any person who is a temporary or leased worker performing “covered professional services” or “covered operations” on behalf of, and pursuant to the supervision of, an “insured”; and
  5. A joint venture to which a “named insured” is a party, but only to the extent the joint venture’s legal liability arises out of the “named insured’s” performance of “covered professional services” or “covered operations” pursuant to any such joint venture.
- V. “Key executive”** means the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, President, General Counsel, general partner or managing partner (if the “insured” is a partnership), managing member (if the “insured” is a limited liability company) or sole proprietor (if the “insured” is a sole proprietorship) of the “insured”. A “key executive” also means any other person holding a title designated by the “first named insured”, approved by the Insurer, and identified by endorsement to this Policy.
- W. “Legal defense expense”** means reasonable legal costs, charges, and expenses, including expert charges, incurred by the “insured”:
1. In the investigation, adjustment or defense of “claims”; or
  2. In order to clarify the extent of, minimize, and effect resolution of, any obligation to incur “emergency response costs”.

- X. “Loss”** means:

**Coverage A.**

1. A monetary judgment, award or settlement of compensatory damages, including associated “extra damages” and “legal defense expense”.

**Coverage B.**

2. A monetary judgment, award or settlement of compensatory damages arising from “bodily injury”, “property damage” or “remediation costs”, including associated “extra damages” and “legal defense expense”.

**Coverage C.**

3. “Emergency response costs” and associated “legal defense expense”; and

4. "Catastrophe management costs".

Coverage D.

5. Reasonable and necessary fees, costs and expenses actually incurred by a "named insured" for rectification of a "wrongful act" in the performance of "covered professional services".

Coverage E.

6. Any compensatory damages the "named insured" is legally entitled to recover from any and all "responsible professionals" less all "third-party professional insurance" available to the "responsible professionals", provided such damages have first been established by final judgment or a settlement of an "affirmative claim" to which the Insurer agrees in writing.

"Loss" does not mean: fines, taxes or penalties imposed on the "responsible 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 "responsible professional" in addressing or resolving an actual or potential claim.

Supplemental Coverages

7. Any other liability or first-party exposure insured pursuant to any Supplemental Coverage added by endorsement to this Policy.

**Y. "Low-level radioactive waste" means waste:**

1. Defined as such in Title 10 Code of Federal Regulations Part 61.2;
2. Classified as Class A, B or C waste in accordance with Title 10 Code of Federal Regulations Part 61.55; and
3. Regulated by the United States Nuclear Regulatory Commission (NRC) or a NRC Agreement State pursuant to a Type A, B or C Specific License of Broad Scope in accordance with Title 10 Code of Federal Regulations Part 33.11.

**Z. "Mediation" means a conciliatory, non-binding attempt to resolve a "claim" using a neutral, third-party facilitator.**

**AA. "Mixed waste" means a waste that contains both "low-level radioactive waste" and hazardous waste regulated by the Resource Conservation and Recovery Act and defined as hazardous in accordance with Title 40 Code of Federal Regulations Part 261.3.**

**BB. "Named insured" means the "first named insured" and any other person or entity specifically endorsed onto this Policy as a "named insured", if any. "Named insureds" shall maintain the same rights pursuant to this Policy as the "first named insured", except for those rights specifically: 1) reserved to the "first named insured" as defined herein; or 2) limited by endorsement to this Policy.**

**CC. "Natural resource damage" means injury to, destruction of, or loss of, including the resulting loss of value of, fish, wildlife, biota, land, 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 of America (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et. seq.)), any state, commonwealth or local government, or any Native American Tribe, or, if such resources are subject to a trust restriction on alienation, any members of any Native American Tribe, including the reasonable costs of assessing such injury, destruction or loss resulting therefrom.**

**DD. "Non-owned disposal site" means:**

1. Any treatment, storage, transfer, disposal or recycling site or facility located within the United States of America that has not at any time been owned or operated, in whole or in part, by any "insured", which receives, or has historically received, a waste resulting from "covered operations"; provided that such treatment, storage, transfer, disposal or recycling site or facility:
  - a. Was properly permitted and licensed to accept the wastes at the time of such disposal by the Federal, state, commonwealth, municipal or other local government agencies or bodies with applicable jurisdiction;
  - b. Was not owned or operated by any person, corporation or unincorporated association that was in bankruptcy at the time the waste was received for disposal; and
  - c. Has not, prior to the time the waste was received for disposal, been identified on the United States EPA (CERCLA) National Priorities List or pursuant to any functional equivalent of that list made by Federal,



state, commonwealth, municipal or other local government agency or body with applicable jurisdiction,  
or

2. Any treatment, storage, transfer, disposal or recycling site or facility specifically identified on a Schedule of Non-Owned Disposal Sites Endorsement attached to this Policy, if any.

**EE. “Policy period”** means the period of time specifically identified in Item 2. of the Declarations to this Policy, or any shorter period of time resulting from the cancellation of this Policy.

**FF. “Pollution condition”** means:

1. “Illicit abandonment”; or
2. The discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous or thermal irritant, contaminant, or pollutant, including soil, silt, sedimentation, smoke, soot, vapors, fumes, acids, alkalis, chemicals, electromagnetic fields (EMFs), hazardous substances, hazardous materials, waste materials, “low-level radioactive waste”, “mixed waste” and medical, infectious or pathological wastes, on, in, into, or upon land and structures thereupon, the atmosphere, surface water, or groundwater.

**GG. “Property damage”** means:

1. Physical injury to, or destruction of, tangible property of a third-party, including all resulting loss of use of that property and costs required to restore, repair or replace such property;
2. Loss of use of tangible property of a third-party, that is not physically injured or destroyed;
3. Diminished value of tangible property owned by a third-party; or
4. “Natural resource damages”.

“Property damage” does not mean “remediation costs”.

**HH. “Remediation costs”** means:

Coverage B.

1. Expenses incurred to investigate, quantify, monitor, remove, dispose, treat, neutralize, or immobilize “pollution conditions” or “site environmental conditions” to the extent required by applicable law in the jurisdiction of such “pollution conditions” or “site environmental conditions”. If no applicable laws exist that govern the remediation of such “pollution conditions” or “site environmental conditions”, required expenses may be established by securing the written professional recommendations of an “environmental professional”.

Coverage C.

2. Expenses incurred to investigate, quantify, monitor, remove, dispose, treat, neutralize, or immobilize “pollution conditions” or “site environmental conditions” to the extent required by applicable law in the jurisdiction of such “pollution conditions” or “site environmental conditions”.

**II. “Responsible person”** means any employee of an “insured” responsible for environmental affairs, control, or compliance of “covered professional services”, “covered operations” or “transportation”, or any “key executive” of, officer or director of, or partner in, an “insured”.

**JJ. “Responsible professional”** means any person or entity retained by or on behalf of a “named insured” to perform “covered professional services”.

**KK. “Self-insured retention”** means the largest applicable dollar amount among triggered coverage parts identified in Item 4. of the Declarations to this Policy, or as otherwise designated by endorsement to this Policy, if any.

**LL. “Site environmental condition”** means:

1. The presence of “fungi”; or
2. The discharge, dispersal, release, escape, migration or seepage of *legionella pneumophila* at a “work site”, provided that such “fungi” or *legionella pneumophila* are not naturally occurring in the environment in the amounts and concentrations alleged or discovered as part of the attendant “claim” or “emergency claim”, respectively.

**MM. “Temporary works”** means formwork, structures, or mechanical plant designed and constructed for use as construction aids for a specific project.

**NN. “Terrorism”** means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
  - a. Use or threat of force or violence; or
  - b. Commission or threat of a dangerous act; or
  - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
  - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
  - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

**OO. “Third-party professional insurance”** means all professional liability insurance policies insuring any “responsible professional” or any person or entity for whom the “responsible professional” is legally responsible.

**PP. “Transportation”** means the movement of waste derived from “covered operations” or materials reasonably related to “covered operations” by automobile, aircraft, watercraft, rolling stock or other conveyance, including any associated loading or unloading thereof, by or on behalf of an “insured”, provided that any such movement, and associated loading and unloading activities are:

1. Within the boundaries of a “work site”;
2. To or from a “work site”; or
3. From a “work site” to a “non-owned disposal site”.

**QQ. “War”** means war, whether or not declared, civil war, martial law, insurrection, revolution, invasion, bombardment or any use of military force, usurped power or confiscation, nationalization or damage of property by any government, military or other authority.

**RR. “Work Site”** means a location where “covered operations” are being performed, including real property rented or leased by the “named insured” on a temporary basis for the purpose of providing “covered operations” for a client.

“Work site” does not mean:

1. A “non-owned disposal site”; or,
2. To the extent that Premises Pollution Liability Coverage is added by endorsement to this Policy, only, a “covered location”.

**SS. “Wrongful act”** means any act, error, omission, misstatement, misleading statement or breach of duty actually or allegedly committed or attempted while performing “covered professional services”.

## VI. EXCLUSIONS

### *Exclusions Applicable to All Coverages*

This insurance shall not apply to:

#### **A. Bankruptcy**

“Loss” arising out of or related to the bankruptcy or insolvency of an “insured” or of any other person, firm or organization.

#### **B. Contractual Liability**

“Loss” arising out of or related to liability of others assumed by any “insured” through contract or agreement, except if the liability would have attached to the “insured” in the absence of such contract or agreement.

This exclusion shall not apply to “environmental indemnity obligations”.

#### **C. Criminal Fines and Criminal Penalties**

“Loss” arising out of or related to criminal fines, criminal penalties or criminal assessments.

#### **D. Discrimination**

“Loss” arising out of or related to discrimination by the “insured” whether based upon age, color, race, sex, creed, national origin, marital status, physical disability, or sexual preference.

#### **E. Employers Liability**

“Loss” arising out of or related to “bodily injury” to:

1. Any “insured” or any employee of its parent corporation, subsidiary or affiliate:
  - a. Arising out of, or in the course of, employment by any “insured”, its parent corporation, subsidiary or affiliate; or
  - b. Performing duties related to the conduct of the business of any “insured”, its parent corporation, subsidiary or affiliate.
2. The spouse, child, parent, brother or sister of any “insured” or employee of its parent corporation, subsidiary or affiliate as a consequence of Paragraph 1., above.

This exclusion applies:

1. Whether any “insured” may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of such “bodily injury”.

This exclusion shall not apply to liability assumed by a “named insured” in an “environmental indemnity obligation”.

#### **F. Failure to Maintain Insurance**

“Loss” arising out of or related to the actual or alleged failure to advise or require or failure to effect and maintain any policy of insurance, suretyship or bond.

#### **G. Faulty Workmanship**

“Loss” arising out of or related to the cost to repair or replace faulty construction or workmanship in any construction, erection, fabrication, installation, assembly, manufacture, or remediation performed by the “insured”, including the cost of any materials, parts or equipment furnished in connection therewith.

This exclusion shall not apply to “loss” arising out of an actual or alleged “wrongful act” in the performance of “covered professional services”.

#### **H. Fiduciary Liability**

“Loss” arising out of or related to an “insured’s” services and/or capacity as:

1. An officer, director, partner, trustee or employee of an organization not identified in Item 1. of the Declarations, or charitable organization or pension, welfare, profit sharing, mutual or investment fund or trust; or
2. A fiduciary pursuant to the Employee Retirement Income Security Act of 1974 and its amendments, or any regulation or order issued pursuant thereto; or any other employee benefit plan.

#### **I. Insured’s Internal Expenses**

“Loss” arising out of or related to expenses incurred by any “insured” for services performed by its salaried staff and any employees.

This exclusion shall not apply to:

1. “Emergency response costs”, along with any associated “catastrophe management costs” incurred during that same seven (7) day period, but solely to the extent that such costs are limited to the “insured’s” actual out-of-pocket labor and expense costs that are not marked-up using multipliers for fringe benefits, overhead or profit;
2. Any other costs, charges or expenses incurred with the prior approval of the Insurer at its sole discretion; or
3. “Loss” otherwise covered pursuant to Coverage D. or Coverage E., but solely to the extent that such costs are limited to the “named insured’s” actual out-of-pocket labor and expense costs that are not marked-up using multipliers for fringe benefits, overhead or profit.

## **J. Intentional or Fraudulent Acts**

“Loss” arising out of or related to:

1. Any knowing, willful or deliberate noncompliance with any statute, regulation, ordinance, municipal code, administrative complaint, notice of violation, notice letter, administrative order, or instruction of any governmental agency or body; or
2. Any fraudulent, criminal, or malicious act or those of a knowingly wrongful nature committed intentionally by or at the direction of a “responsible person”.

This exclusion shall not apply to any “insured” that did not personally acquiesce in or remain passive after having personal knowledge of one or more of the acts described above.

## **K. Known Conditions**

1. “Loss” arising out of or related to “wrongful acts” that first commenced prior to the inception date of this Policy, or the inception date of the first policy with the Insurer when consecutively renewed, if any “responsible person” knew or reasonably could have foreseen that a “claim” may result;
2. “Loss” arising out of or related to “pollution conditions” or “site environmental conditions” in existence prior to the “policy period”, or arising out of any resumption, change or continuation of such “pollution condition” or “site environmental condition”, provided any “responsible person” knew or reasonably could have foreseen prior to the “policy period” that such “pollution conditions” or “site environmental conditions” could give rise to “loss” to which this Policy may apply; and
3. “Loss” arising out of or related to “wrongful acts”, “pollution conditions” or “site environmental conditions” that an “insured” has reported to another insurer pursuant to a prior policy. This provision shall apply whether or not the Limits of Liability have been exhausted pursuant to such prior policy or the terms of said prior policy are materially different from this Policy.

This exclusion shall not apply to “loss” that directly results from the exacerbation of any such “pollution condition” or “site environmental condition” when such “pollution condition” or “site environmental condition” is the subject of “covered operations”.

## **L. Named Insured vs. Named Insured**

“Loss” arising out of or related to “claims” made by any “named insured” against any person or entity that is also a “named insured” pursuant to this Policy.

## **M. Non-Owned Disposal Sites**

“Loss” arising out of or related to “pollution conditions” on, at, under or migrating from any treatment, storage, disposal, transfer or recycling site or facility that is not a “non-owned disposal site”.

## **N. Nuclear or Radioactive Hazard**

“Loss” arising out of or related to:

1. Radiation or contamination by radioactivity from, or the radioactive, toxic, explosive, or hazardous properties of, nuclear fuel, nuclear materials, nuclear waste, nuclear assembly or components thereof, radioactive waste, including, but not limited to, high-level radioactive waste (e.g., spent nuclear fuel or the highly radioactive waste produced if spent fuel is reprocessed), uranium milling residues and waste with elevated quantities of elements heavier than uranium; or
2. Naturally occurring radioactive materials (commonly referred to as NORM, TNORM, or TENORM), unless such naturally occurring radioactive materials are released or dispersed as a direct result of “covered operations”.

This exclusion shall not apply to “loss” arising out of “low-level radioactive waste” or “mixed waste”.

## **O. Products Liability**

“Loss” arising out of or related to any goods, products or equipment designed, manufactured, sold, supplied or distributed by any “insured”.

This exclusion shall not apply to “claims” arising out of:

1. The installation of building components associated with “covered operations”; or

2. Software sold or supplied by the “named insured” to its client in connection with its performance of “covered professional services” for such client.

**P. Related Entities**

“Loss” arising out of or related to “claims” asserted by any organization that: **1)** is or was operated, managed, owned or controlled, in whole or in part, by a “named insured”, or an “additional insured” affiliated by common ownership with a “named insured”; or **2)** did or does operate, manage, own or control, in whole or in part, a “named insured”, or an “additional insured” affiliated by common ownership with a “named insured”.

**Q. Trademark/Copyright Infringement**

“Loss” arising out of or related to the infringement, misappropriation, or violation of copyright, patent, service marks, trademarks, trade secrets, title or other proprietary or licensing rights or intellectual property of any products, technologies or services.

**R. Vehicles**

“Loss” arising out of or related to “pollution conditions” resulting from the use, maintenance or operation of an automobile, aircraft, watercraft, rolling stock or other conveyance.

This exclusion shall not apply to “pollution conditions” resulting from “transportation”.

**S. War or Terrorism**

“Loss” arising out of or related to “wrongful acts”, “pollution conditions” or “site environmental condition” attributable, whether directly or indirectly, to any acts that involve, or that involve preparation for, “war” or “terrorism” regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

**T. Warranties**

“Loss” arising out of or related to express warranties and guarantees.

This exclusion shall not apply to a warranty or guarantee by the “insured” that its “covered professional services” are in conformity with generally accepted architectural or engineering standards.

**U. Workers’ Compensation**

“Loss” arising out of or related to any obligation of any “insured” pursuant to the Jones Act or any workers’ compensation, unemployment compensation, or disability benefits law or related laws.

***Exclusions Applicable to Coverage D.***

This insurance shall not apply to:

**V. Financing**

“Loss” arising out of or related to acts or omissions involving insurance, suretyship, bonding or financing for any projects.

**W. Non-Project Property**

“Loss” arising out of or related to the loss of, or damage to, property other than property which forms the subject of the contract for which the “covered professional services” were performed.

**X. Temporary Works**

“Loss” arising out of or related to the failure of “temporary works” to perform as intended.

**Y. Timely Completion of a Project/Cost Estimates/Bid Inaccuracies**

“Loss” arising out of or related to:

1. The actual or alleged failure to: perform any “covered professional service” on time, complete any project on time, or any other delay;
2. The exceeding of any cost estimate; and
3. Bid inaccuracies.

## ***Exclusions Applicable to Coverage E.***

This insurance shall not apply to:

### **Z. Affirmative Claim Costs**

Attorneys fees and associated costs incurred by an “insured” for the investigation, adjustment, appeal or prosecution of an “affirmative claim”.

### **AA. Affirmative Claims Not Fully Adjudicated**

Any amount awarded pursuant to a default judgment or other proceeding in which any “responsible professional” has failed to answer, plead, respond to discovery, take other appropriate procedural efforts, or otherwise adequately defend itself or indemnify the “named insured.”

This exclusion shall not apply if the “named insured” cooperates with the Insurer to determine what the actual “loss” would have been in the absence of such default judgment or the other proceeding been adequately defended.

### **BB. Named Insured Affirmative Claims Against Insureds**

“Affirmative claims” made by any “named insured” against any person or entity that is also an “insured” pursuant to this Policy.

### **CC. Related Affirmative Claims**

“Affirmative claims” brought against any person or entity, or their successors or assigns:

1. That wholly or partially owns a “named insured”;
2. In which a “named insured” has an ownership interest;
3. That is controlled or operated by a “named insured”; or
4. In which the “named insured” is, or has appointed, an officer or director.

## **VII. REPORTING AND COOPERATION**

**A.** Without limiting the specific requirements contained in any Insuring Agreement or any other exposure-specific reporting requirements contained within this Policy, the “insured” shall also see to it that the Insurer receives notice of any “claim” or “emergency claim”, as soon as practicable, by one or more of the following:

1. Provide written notice to the address, fax number, or email address identified in Item **8.a.** of the Declarations to this Policy; or
2. Provide verbal or electronic notice utilizing the **Environmental Incident Alert 24-hour Emergency Response and Incident Reporting System** by calling the telephone number identified in Item **8.** of the Declarations to this Policy or by using the associated telephone web application, respectively.

Such notice should include reasonably detailed information as to:

1. The identity of the “insured”, including contact information for an appropriate person to contact regarding the handling of the “claim” or “emergency claim”;
2. A description of the “covered professional services” or “covered operations”;
3. The nature of the “claim” or “emergency claim”; and
4. Any steps undertaken by the “insured” to respond to the “claim” or “emergency claim”.

**B.** The “insured” must:

1. As soon as practicable, send the Insurer copies of any demands, notices, summonses or legal papers received in connection with any “claim”;
2. Authorize the Insurer to obtain records and other information;
3. Cooperate with the Insurer in the investigation, settlement or defense of the “claim”;
4. Assist the Insurer, upon the Insurer’s request, in the enforcement of any right against any person or organization which may be liable to the “insured” because of “loss” to which this Policy may apply; and

5. Provide the Insurer with such information and cooperation as it may reasonably require.
- C. No “insured” shall make or authorize an admission of liability or attempt to settle or otherwise dispose of any “claim”, without the written consent of the Insurer. Nor shall any “insured” retain any consultants or “catastrophe management firms”, or incur any “emergency response costs” or “catastrophe management costs” with respect to a “emergency claim”, without the prior consent of the Insurer, except for “emergency response costs”.
- D. Upon the discovery of a “pollution condition” or “site environmental condition”, the “insured” shall make every attempt to mitigate any loss and comply with applicable law. The Insurer shall have the right, but not the duty, to mitigate such “pollution conditions” or “site environmental condition” if, in the sole judgment of the Insurer, the “insured” fails to take reasonable steps to do so. In that event, any “remediation costs” or “catastrophe management costs” incurred by the Insurer shall be deemed incurred by the “insured”, and shall be subject to the “self-insured retention” and Limits of Liability identified in the Declarations to this Policy.
- E. Solely with respect to Coverage A., of this Policy, if during the “policy period” the “insured” becomes aware of a circumstance which may reasonably give rise to a “claim” covered pursuant to this Policy, and the “insured” gives written notice to the Insurer during the “policy period” of:
1. The names of the potential claimants;
  2. Details of the alleged “wrongful act”, error or omission in the performance of “covered professional services”;
  3. The identity of the “insured” allegedly involved;
  4. The specific nature and extent of the type of damage which may have been sustained that could result in a covered “loss”; and
  5. Details on how the “insured” became aware of such circumstances,
- then any “claim” which arises out of such “professional loss” shall be deemed to have been first made at the time such written notice was received by the Insurer. No coverage shall be afforded for any fees, expenses and other costs associated with the investigation of a circumstance prior to a “claim” being made.
- F. It is a condition precedent to coverage afforded pursuant to the Coverage E. of this Policy that:
1. The “named insured” provides the Insurer with written notice at the address identified in Item 8.a. of the Declarations of any "affirmative claim" and that such written notice be provided at the same time that it makes such "affirmative claim" against a "responsible professional".
  2. The “named insured” provides the Insurer with the opportunity to participate in the investigation or settlement of an "affirmative claim" even though the Insurer has no duty to do so pursuant to this Policy. Whether or not the Insurer chooses to participate in the settlement of an "affirmative claim," the "named insured" shall make every reasonable effort to obtain from the "responsible professional" that is a party to such settlement an assignment of its rights to pursue claims against any other "responsible professionals" that are related to or arising from the “wrongful acts” included in the "affirmative claim" and settlement.
  3. The “named insured” agrees not to enter negotiations of, or otherwise settle, compromise or release, an "affirmative claim" with the "responsible professional" or its representative involving, in whole or in part, matters that may, in whole or in part, be covered pursuant to the Contingent Professional Indemnity Coverage Endorsement of this Policy without the Insurer’s knowledge and consent to such negotiation, settlement compromise or release (hereinafter Settlement). However, the Insurer may, in writing, and at its sole discretion, waive its participation and consent to such Settlement. If the Insurer elects to participate in the Settlement of an "affirmative claim", the “insureds” shall fully cooperate with the Insurer’s requests for information. The “insureds” duty to cooperate with the Insurer is also condition precedent to coverage pursuant to the Contingent Professional Indemnity Coverage Endorsement of this Policy and the “insureds” failure to cooperate shall relieve the Insurer of its obligations and liability thereunder.

For the purposes of fulfilling the notice requirements contained in the Insuring Agreements to this Policy, notice supplied pursuant to one or more of the verbal or electronic notice mechanisms specifically contemplated in Subsection A., above, or on the Declarations shall constitute written notice to the Insurer.

### VIII. EXTENDED REPORTING PERIOD

- A. Provided the “first named insured” has not purchased any other insurance to replace the liability coverages of this Policy, the “first named insured” shall be entitled to a basic “extended reporting period”, and may purchase an optional supplemental “extended reporting period”, following Cancellation, as described in Subsection A.,

Paragraph **1.** of Section **IX., GENERAL CONDITIONS**, or nonrenewal of this Policy, in accordance with the terms and conditions described in Subsections **B.** through **D.**, below.

- B.** “Extended reporting periods” shall not reinstate or increase any of the Limits of Liability. “Extended reporting periods” shall not extend the “policy period” or change the scope of coverage provided. A “claim” first made against an “insured” and reported to the Insurer within the basic “extended reporting period” or supplemental “extended reporting period”, whichever is applicable, shall be deemed to have been made and reported on the last day of the “policy period”.
- C.** The “first named insured” shall have a ninety (90) day basic “extended reporting period” without additional charge.
- D.** The “first named insured” shall also be entitled to purchase a supplemental “extended reporting period” of up to thirty-three (33) months for not more than two hundred percent (200%) of the full premium identified in Item **6.** of the Declarations to this Policy, and any additional premiums resulting from coverage added during the “policy period”. Such supplemental “extended reporting period” starts when the basic “extended reporting period” ends. The Insurer shall issue an endorsement providing a supplemental “extended reporting period” provided that the “first named insured”:
  - 1.** Makes a written request, to the address identified in Item **8.b.** of the Declarations to this Policy, for such endorsement which the Insurer receives prior to the expiration of the “policy period”; and
  - 2.** Pays the additional premium when due. If that additional premium is paid when due, the supplemental “extended reporting period” may not be cancelled, provided that all other terms and conditions of the Policy are met.

## **IX. GENERAL CONDITIONS**

### **A. Cancellation**

- 1.** This Policy may be cancelled only by the “first named insured”, or through the “first named insured’s” agent, by mailing to the Insurer at the address identified in Item **8.b.** of the Declarations to this Policy, written notice stating when such cancellation shall be effective.
- 2.** This Policy may be cancelled by the Insurer for the following reasons:
  - a.** Non-payment of premium;
  - b.** Fraud or material misrepresentation on the part of any “insured”; or
  - c.** Material change in the “covered professional services” and/or “covered operations” from the description identified in the Application to this Policy and supporting materials which results in a material increase in the likelihood or severity of any “loss”, “wrongful acts”, “pollution conditions” or “site environmental conditions”,

by mailing to the “first named insured” at the “first named insured’s” last known address, written notice stating when, not less than sixty (60) days thereafter, fifteen (15) days if cancellation is for non-payment of any unpaid portion of the premium, such cancellation shall be effective. The mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall be the end of the “policy period”.

Subparagraph **2.b.**, herein, shall apply only to that “insured” that engages in the fraud or misrepresentation. This exception shall not apply to any “insured” that is a parent corporation, subsidiary, employer of, or otherwise affiliated by ownership with, such “insured”.

- 3.** In the event of cancellation, the premium percentage identified in Item **6.** of the Declarations to this Policy shall be the minimum-earned premium upon the inception date of this Policy. Thereafter, the remaining unearned premium, if any, shall generally be deemed earned by the Insurer on a *pro rata* basis over the remainder of the “policy period”. Notwithstanding the foregoing, in the event a “claim” is first made against an “insured”, or a “wrongful act”, “pollution condition” or “site environmental condition” is first discovered by an “insured”, during the “policy period”, to which this insurance may apply, in whole or in part, then any remaining unearned premium, if any, shall be deemed immediately earned upon such event. Any unearned premium amounts due the “first named insured” upon cancellation of this Policy shall be calculated on a *pro rata* basis and refunded within thirty (30) days of the effective date of cancellation.

### **B. Inspection and Audit**



To the extent of the “insured’s” ability to provide such access, and with reasonable notice to the “insured”, the Insurer shall be permitted, but not obligated, to inspect the “insured’s” property and/or operations. Neither the Insurer’s right to make inspections, the making of said inspections, nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the “insured” or others, to determine or warrant that such property or operations are safe or in compliance with applicable law.

The Insurer may examine and audit the “insured’s” books and records during this “policy period” and extensions thereof and within three (3) years after the final termination of this Policy.

### **C. Legal Action Against the Insurer**

No person or organization other than an “insured” has a right pursuant to this Policy:

1. To join the Insurer as a party or otherwise bring the Insurer into a suit against any “insured”; or
2. To sue the Insurer in connection with this insurance unless all of the Policy terms have been fully complied with.

A person or organization may sue the Insurer to recover after an agreed settlement or on a final judgment against an “insured”. However, the Insurer shall not be liable for amounts that are not payable pursuant to the terms of this Policy or that are in excess of the applicable Limit of Liability. An agreed settlement means a settlement and release of liability signed by the Insurer, the “insured”, and the claimant or the claimant’s legal representative.

#### **Coverage E.**

Notwithstanding the foregoing, and solely with respect to coverage afforded pursuant to Coverage E. of this Policy, no action shall lie against the Insurer unless, as a condition precedent thereto, there has been full compliance with all of the terms and conditions of this Policy, and both the “responsible professionals” liability and the amount of the “responsible professionals” obligations to pay have been finally determined either by final judgment against the “responsible professionals” after an actual contested “affirmative claim” or by the “named insured’s” written settlement with the “responsible professionals” to which the Insurer has given its prior written approval.

### **D. Bankruptcy**

The insolvency or bankruptcy of any “insured”, or any “insured’s” estate, shall not relieve the Insurer of its obligations pursuant to this Policy. However, any such insolvency or bankruptcy of the “insured”, or the “insured’s” estate, shall not relieve the “insured” of its “self-insured retention” obligations pursuant to this Policy. This insurance shall not replace any other insurance to which this Policy is excess, nor shall this Policy drop down to be primary, in the event of the insolvency or bankruptcy of any underlying insurer.

## **E. Subrogation**

In the event of any payment pursuant to this Policy by the Insurer, the Insurer shall be subrogated to all of the rights of recovery against any person or organization, and the "insured" shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. All "insureds" shall do nothing to prejudice such rights. Any recovery as a result of subrogation proceedings arising pursuant to this Policy shall accrue first to the "insureds" to the extent of any payments in excess of the limit of coverage; then to the Insurer to the extent of its payment pursuant to the Policy; and then to the "insured" to the extent of the "self-insured retention". Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

Notwithstanding the foregoing, the Insurer hereby waives its rights to subrogate against all clients of a "named insured" where such waiver is required by written contract or agreement executed between a "named insured" and such client prior to the relevant "claim" or discovery of a "wrongful act", "pollution condition" or "site environmental condition" to which this insurance applies.

### **Coverage E.**

Notwithstanding the foregoing, and solely with respect to coverage afforded pursuant to Coverage E. of this Policy,, the "named insured" agrees to provide a written transfer to the Insurer any rights against other "responsible professionals" that the "named insured" obtains pursuant to Section VII., **NOTICE AND COOPERATION**, Subsection F., of this Policy if the "named insured" has reasonably elected not to pursue same in furtherance of its "affirmative claim". The "named insureds" agree not to do anything to prejudice those rights.

## **F. Representations**

By accepting this Policy, the "first named insured" agrees that:

1. The statements in the Declarations, schedules and endorsements to, and Application for, this Policy are accurate and complete;
2. Those statements and representations constitute warranties that the "first named insured" made to the Insurer; and
3. This Policy has been issued in reliance upon the "first named insured's" warranties.

## **G. Separation of Insureds**

Except with respect to the Limits of Liability, Cancellation condition **2.a.**, and any applicable exclusions, this Policy applies:

1. As if each "named insured" were the only "insured"; and
2. Separately to each "named insured" against whom a "claim" is made,

and any fraud, misrepresentation, breach of a condition or violation of any duty (hereinafter Breach) by an "insured" shall not prejudice coverage for any "named insured" pursuant to this Policy, provided that: **1)** such "named insured" did not participate in, know of or assist in such Breach; and **2)** such "named insured" is not a parent, subsidiary, partner, member, director, officer of, employer of or otherwise affiliated with, the "insured" that committed such Breach.

## **H. Other Insurance**

### **Coverage A.**

1. If other valid and collectible insurance is available to any "insured" covering a "loss" also covered by this Policy, other than a policy that is specifically written to apply in excess of this Policy, the insurance afforded by this Policy shall apply in excess of and shall not contribute with such other insurance.

### **Coverages B. and C.**

2. If other valid and collectible insurance is available to any "insured" covering "loss" also covered by this Policy, this insurance shall apply as primary insurance. The Insurer's obligations are not affected unless any other applicable, unaffiliated insurance is also determined to be primary. In that event, the Insurer shall share with the insurer underwriting such other insurance by the method described in Paragraph **2.**, below.
3. *Method of Sharing*

If all of the other insurance permits contribution by equal shares, the Insurer shall follow this method also. Pursuant to this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, the Insurer shall contribute by limits. Pursuant to this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 4. *Excess*

Notwithstanding anything to the contrary contained herein, any coverage provided by this Policy shall be excess over and shall not contribute with any other policy of insurance issued in relation to a specific project, including, but not limited to, any owner-controlled insurance program, contractor-controlled insurance program, owner's protective policy, wrap-up policy, builder's risk policy, installation risk policy or any other similar insurance, policy or program, whether such other insurance, policy or program is issued on a primary, excess, contributory, contingent or other basis.

#### Primary Non-Contributory By Contract

5. Notwithstanding the foregoing, and solely with respect to coverage afforded pursuant to Coverage **B.** of this Policy, the insurance afforded by this Policy shall apply as primary to, and not contributory with respect to, any such other insurance that is directly procured by a client for its own benefit.; provided that: **a)** such primary and non-contributory insurance obligation is required by written contract or agreement executed between a "named insured" and such client prior to the relevant "claim" or discovery of a "pollution condition" or "site environmental condition" to which this insurance applies; and **b)** the scope of the Insurer's agreement not to seek contribution, herein, shall be further limited to the specific requirements of such written contract or agreement.

#### **I. Changes and Assignment**

Notice to or knowledge possessed by any person shall not effect waiver or change in any part of this Policy or estop the Insurer from asserting any right pursuant to the terms of this Policy. The terms, definitions, conditions, exclusions and limitations of this Policy shall not be waived or changed, and no assignment of any interest in this Policy shall bind the Insurer, except as provided by endorsement and attached to this Policy.

#### **J. Headings**

The descriptions in the headings and sub-headings of this Policy are inserted solely for convenience and do not constitute any part of the terms or conditions hereof.

#### **K. Consent**

Where the consent of the Insurer, or an "insured", is required pursuant to this Policy, such consent shall not be unreasonably withheld, delayed, conditioned, or denied.

#### **L. Supplementary Payments**

With respect to any covered "claim" or "emergency claim" that the Insurer investigates, settles or defends pursuant to this Policy, the insurer shall pay for:

1. All internal expenses incurred by the Insurer;
2. All reasonable expenses incurred by an "insured" at our request to assist us in the investigation, settlement or defense of the "claim" or "emergency claim", including loss of earnings because of time off work, up to the aggregate amount of **five thousand dollars (\$5,000)** per "pollution condition" or "site environmental condition";
3. All court costs taxed against the "insured" in a suit, but such costs shall not include attorneys' fees or attorneys' expenses taxed against the "insured"; and
4. Up to **five thousand dollars (\$5,000)** in civil fines, sanctions or penalties levied against the "named insured" pursuant to the American with Disabilities Act of 1990 or the Occupational Safety and Health Act. Coverage afforded pursuant to this Supplementary Payment is subject to the internal laws of the applicable jurisdiction regarding the insurability of such fines, sanctions and penalties. The maximum amount that the Insurer shall pay pursuant to this Supplementary Payment shall be **fifteen thousand dollars (\$15,000)**, regardless of the number of "claims", "emergency responses", "wrongful acts", "pollution conditions" or "site environmental conditions".

The Supplementary Payments identified above shall not be subject to the “self-insured retention” of this Policy, but shall, with the exception of internal expenses incurred by the Insurer in Paragraph 1., above, reduce and erode the Limits of Liability discussed in Section II., **LIMITS OF LIABILITY AND SELF-INSURED RETENTION**, Subsections C., D. and E., of this Policy, along with any applicable exposure-specific Limit or Sublimit of Liability added by endorsement hereto.

**M. Underlying Professional Insurance**

It is a condition precedent to coverage afforded pursuant to Coverage E. of this Policy that the “named insured” contractually require and secure evidence of insurance documentation to support that each “responsible professional” has professional liability insurance for professional services to be performed on behalf of such “named insured” prior to the undertaking of such services.

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