

CONTRACTOR'S OPERATIONS AND PROFESSIONAL SERVICES ENVIRONMENTAL INSURANCE

NOTICE: COVERAGE A PROVIDES CLAIMS-MADE-AND-REPORTED COVERAGE, HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT, AND MAY BE DIFFERENT FROM OTHER POLICIES THE NAMED INSURED MAY HAVE PURCHASED. COVERAGE A REQUIRES THAT A CLAIM BE MADE UPON THE INSURED AND REPORTED IN WRITING TO THE COMPANY DURING THE SAME POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY.

PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE THE INSURED'S RIGHTS AND DUTIES, AND WHAT IS AND IS NOT COVERED. VARIOUS PROVISIONS THROUGHOUT THIS POLICY RESTRICT OR EXCLUDE COVERAGE. PLEASE NOTE THAT AMOUNTS INCURRED FOR LEGAL DEFENSE REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS AND SHALL BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT. THE DETERMINATION OF WHETHER BODILY INJURY, PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE HAS OCCURRED DURING THE POLICY PERIOD, AND OTHER POLICY PROVISIONS, MAY BE DIFFERENT FROM OTHER POLICIES THE NAMED INSURED HAS PURCHASED.

TERMS APPEARING IN BOLD-FACE TYPE, OTHER THAN SECTION HEADINGS, ARE DEFINED IN SECTION VI.

In consideration of payment of the premium by the **Named Insured** and in reliance upon the statements in the **Named Insured's** Application made a part hereof, the Company agrees with the **Insured**, subject to all the terms, exclusions and conditions of this Policy, as follows:

I. INSURING AGREEMENTS

1. COVERAGES

COVERAGE A - PROFESSIONAL LIABILITY

The Company will pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of **Claims** first made against the **Insured** and reported to the Company in writing during the **Policy Period** for actual or alleged errors or omissions arising out of **Professional Services** rendered by or on behalf of the **Insured** provided:

1. The **Professional Services** which result in a **Claim** must commence on or after the Retroactive Date stated in the Declarations; and
2. The **Insured** must report the **Claim** to the Company in accordance with Section III. A.1. of this Policy during the **Policy Period**, within sixty (60) days immediately following the end of the **Policy Period**, or during the Extended Reporting Period if applicable.

COVERAGE B - CONTRACTOR'S POLLUTION LIABILITY

1. The Company will pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of **Claims** for **Bodily Injury**, **Property Damage** or **Environmental Damage** caused by **Pollution Conditions** resulting from **Covered Operations**. The **Pollution Conditions** must be unexpected and unintended from the standpoint of the **Insured**. The **Bodily Injury**, **Property Damage**, or **Environmental Damage** must occur during the **Policy Period**.

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION

2. Progressive, indivisible **Bodily Injury, Property Damage or Environmental Damage** over a period of time caused by the same, related or continuous **Pollution Conditions** shall be deemed to have occurred only on the date of first exposure to such **Pollution Conditions**. However, if the date of first exposure is before the inception date of the first **Like Policy**, or can not be determined, but the progressive, indivisible **Bodily Injury, Property Damage or Environmental Damage** continues in fact to exist during the **Policy Period**, it will be deemed to have occurred only on the inception date of the first **Like Policy**.

2. DEFENSE

When a **Claim** is made against the **Insured** to which Coverage A or Coverage B above applies, the Company has the right to appoint counsel and the duty to defend such **Claim**, even if groundless, false, or fraudulent.

Upon the **Insured's** satisfaction of any applicable deductible amounts, **Claim Expenses** shall be paid by the Company and such payments shall be included as **Loss** and reduce the available Limit of Liability. The Company shall not be obligated to defend or continue to defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Loss**.

3. SETTLEMENT

The Company will not settle or compromise a **Claim** without the consent of the **Insured**. If the **Insured** refuses to consent to a settlement or compromise recommended by the Company and elects to contest such **Claim** or continue legal proceedings in connection with such **Claim**, the Company's Limit of Liability for the **Claim** shall not exceed the amount for which the **Claim** could have been so settled plus **Claim Expenses** incurred up to the date of such refusal, subject to the applicable Limits of Liability of this Policy.

4. CLEAN-UP UNDER COVERAGE B

With respect to Coverage B, the Company shall have the right, but not the duty, to participate in decisions regarding **Clean-Up Costs** and to assume direct control over all aspects of the clean up and the adjustment of any **Claim** up to the Limit of Liability. In case of the exercise of this right, the **Named Insured**, on demand of the Company, shall promptly reimburse the Company for any element of **Loss** falling within the **Insured's** deductible.

II. EXCLUSIONS

This Policy does not provide coverage, and the Company will not pay **Loss** for:

- A. 1. Any **Claim** based upon or arising out of any fraudulent, criminal, or malicious act or omission, or those of a knowingly wrongful nature committed intentionally by or at the direction of an **Insured**; or
2. Any **Claim** based upon or arising out of an **Insured's** knowing, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

This exclusion shall not apply to an **Insured** who did not commit, participate in or have knowledge of such act, omission or noncompliance.

- B. Any **Claim** made by an **Insured** against another **Insured**. With respect to Coverage B, this exclusion shall not apply to a **Claim** against the **Insured** by a client who is an **Insured**, as defined in Section VI., Paragraph I.4.

- C. Any **Claim** based upon or arising out of discrimination by an **Insured** on the basis of race, creed, national origin, disability, age, marital status, sex, or sexual orientation.
- D. Any **Claim** based upon or arising out of an **Insured's** involvement as a partner, officer, director, stockholder, employer or employee of a business enterprise not named in the Declarations.
- E. Any **Claim** based upon or arising out of an **Insured's** involvement in **Professional Services** or **Covered Operations** rendered to, or on behalf of, any organization, or subsidiary or affiliate thereof, not named in the Declarations, which an **Insured** controls, manages, operates or holds more than a 25% ownership interest in, or which controls, manages, operates or holds more than a 25% ownership interest in an **Insured**.
- F. Any **Claim** based upon or arising out of the design or manufacture of the **Named Insured's Products**.
- G. Solely with respect to Coverage B, any **Claim** for (1) **Property Damage** to the work performed by the **Insured** or its parent, subsidiary or affiliate arising out of work or any portion thereof or out of materials, parts or equipment furnished in connection therewith; or (2) **Property Damage** to the **Named Insured's Products**. This exclusion shall not apply if the damaged work or the work out of which the damage arises was performed on behalf of the **Insured** by a sub-contractor.
- H. Any **Claim** based upon or arising out of express warranties or guarantees, provided that this exclusion shall not apply if **Loss** would have resulted in the absence of such express warranties or guarantees.
- I. Any **Claim** based upon or arising out of an **Insured's** requiring, obtaining, maintaining, advising, or failing to require, obtain, maintain or advise of any bond, suretyship or any form of insurance.
- J. Any **Claim** arising out of the cost to repair or replace faulty workmanship, assembly, construction, erection, fabrication, installation or remediation if such work is performed in whole or in part by:
1. an **Insured**; or
 2. any organization, or subsidiary or affiliate thereof, which an **Insured** controls, manages, operates or holds more than a 25% ownership interest in, or which controls, manages, operates or holds more than a 25% ownership interest in an **Insured**.
- K. Any **Claim** based upon or arising out of liability of others assumed by a **Named Insured** under any contract or agreement. This exclusion does not apply to liability:
1. for actual or alleged errors or omissions arising out of **Professional Services** rendered by or on behalf of the **Insured**;
 2. with respect to Coverage B., assumed in a contract or agreement that is an **Insured Contract**, provided that the **Bodily Injury, Property Damage or Environmental Damage** occurs subsequent to the execution of the contract or agreement; or
 3. that the **Insured** would have in the absence of the contract or agreement.
- L. Any **Claim** for any civil, administrative or criminal fines or penalties imposed directly against an **Insured**.
- M. Any **Claim** based upon or arising out of the bankruptcy or insolvency of an **Insured** or of any other person, firm or organization.

N. Any **Claim** for **Bodily Injury** sustained by an employee of the **Named Insured** while engaged in employment by the **Named Insured** or by any person whose right to assert a **Claim** against the **Named Insured** arises by reason of employment, blood, marital, or any other relationship with the employee. This exclusion applies:

1. whether the **Named Insured** may be liable as an employer or in any other capacity; or
2. to any obligation to share damages with or repay someone else who must pay damages because of **Bodily Injury**.

This exclusion does not apply to liability assumed by the **Named Insured** in an **Insured Contract**.

O. Any **Claim** based upon or arising out of any obligation for which an **Insured** or any party may be held liable under any unemployment, Workers' Compensation, disability benefits, or other similar laws.

P. Any **Claim** based upon or arising out of the entrustment, maintenance, operation, use, loading or unloading of any watercraft, aircraft, motor vehicle, or rolling stock of any kind, which is owned, operated, rented by or loaned to the **Insured**. With respect to Coverage B, this exclusion does not apply to **Pollution Conditions** at a job site resulting from **Covered Operations**.

Q. Any **Claim** based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities, whether war be declared or not, civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot or civil commotion.

R. Any **Claim** based upon or arising out of any waste or products or materials which have been delivered to a location beyond the boundaries of a site at which the **Insured** is rendering **Professional Services** or performing **Covered Operations**.

S. Any **Claim** in connection with any real property or facility which is, or was at any time, owned, operated or rented by the **Named Insured** or by any entity that:

1. wholly or partly owns, operates, manages, or otherwise controls the **Named Insured**; or
2. is wholly or partly owned, operated, managed, or otherwise controlled by the **Named Insured**.

T. Any **Claim** for **Bodily Injury**, **Property Damage** or **Environmental Damage** resulting from the radioactive, toxic or explosive properties of **Nuclear Material**, and for which the United States Department of Energy or any other government authority has indemnified the **Named Insured**, or for which the Price Anderson Act provides protection for the **Named Insured**.

U. Any **Claim** based upon or arising out of **Professional Services** rendered or **Pollution Conditions** existing prior to the inception date of this Policy, if any employee of the **Named Insured** responsible for environmental affairs, control or compliance or any manager, supervisor, officer, director, or partner of the **Named Insured** knew or reasonably could have foreseen that such **Professional Services** or **Pollution Conditions** could give rise to a **Claim** under this Policy.

V. Any **Claim** or part thereof which may be alleged as covered under one coverage section of this Policy if the Company has accepted coverage or coverage has been held to apply for such a **Claim** or part thereof under the other coverage Section.

III. CLAIMS PROVISIONS

A. INSURED'S DUTIES WHEN THERE IS A CLAIM

As a condition precedent to the right of coverage provided by this Policy, the **Insured** must do the following:

1. In the event a **Claim** to which this Policy applies is made against the **Insured**, the **Insured** must give written notice, as soon as practicable, and as otherwise required under this section, to:

Manager, Pollution Insurance Products Dept.
Chartis Claims, Inc.
Attn.: CID
101 Hudson Street, 31st Floor
Jersey City, NJ 07302
Fax: 866-260-0104
Email: severityfnol@chartisinsurance.com

or other address(s) as substituted by the Company in writing.

Written notice shall include every demand, notice, summons or other process received by the **Insured** or the **Insured's** representatives.

2. The **Insured** must cooperate with the Company. The Company may require that the **Insured** submit to examination under oath, produce and make available all records, documents and other materials, attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements of the **Insured's** attendance at meetings with the Company. The **Insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses, all without charge to the Company.
3. If the **Insured** has the right to either accept or reject arbitration of a **Claim**, the **Insured** shall exercise such right only with the written consent of the Company.
4. The **Insured** must not make any payment, admit any liability, settle any **Claims** or assume any obligations without the prior written consent of the Company.
5. The **Insured** must do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the **Insured** may have.
6. The **Insured** shall refrain from discussing the facts and circumstances of a **Claim** with anyone other than legal counsel or representatives of the Company.

B. REPORTING OF A POSSIBLE CLAIM UNDER COVERAGE A

If during the **Policy Period**, the **Insured** first becomes aware of a **Possible Claim**, the **Insured** may provide written notice to the Company during the **Policy Period** containing all the information listed below. Any **Possible Claim** that subsequently becomes a **Claim** shall be deemed for the purpose of this Policy to have been made during the **Policy Period** of this Policy, and such **Claim** shall be subject to the terms, conditions and limits of coverage of this Policy. The **Insured** shall cooperate fully with the Company and any investigation conducted by the Company or its authorized representatives and shall be subject to the terms set forth in Section III. paragraph A., above, applicable to a **Claim**.

It is a condition precedent to the coverage afforded by this Section that written notice contain all of the following information:

1. The circumstances of the actual or alleged errors or omissions which is the subject of the **Possible Claim**;
2. The **Professional Services** which gave rise to 1. above;
3. The date(s) of such conduct;
4. The injury or damage which has or may result from such conduct;
5. The identity(s) of the **Insured(s)** who may be subject of the **Possible Claim**;
6. The identity(s) of any potential claimant(s);
7. The anticipated location(s) of any such **Possible Claim**; and
8. The circumstances by which the **Insured** first became aware of the **Possible Claim**.

If all the above information is not so provided or is, in the reasonable judgment of the Company, deemed inadequate, the Company shall inform the **Insured** that any **Claim** made after the **Policy Period** relating to the written notice will not be considered as covered under this Policy.

C. EXTENDED REPORTING PERIOD FOR COVERAGE A

If the Company cancels, for any reason other than non-payment of premium, or refuses to renew this Policy, the **Named Insured** shall have the right to purchase, for an additional premium of 100% of the total annual premium of this Policy, a twelve (12) month Extended Reporting Period applicable for Coverage A. Any **Claim** made against the **Insured** during the Extended Reporting Period must arise out of **Professional Services** rendered prior to the end of the **Policy Period** or cancellation date and on or after the Retroactive Date stated in the Declarations. To exercise this right, the **Named Insured** must send a request for the Extended Reporting Period in writing to the Company not later than thirty (30) days after the end of the **Policy Period** or cancellation date. Failure by the **Named Insured** to give such notice within thirty (30) days waives the right to the Extended Reporting Period. The entire additional premium due must be paid at the time such request is made. Mailing by the **Named Insured** by registered mail of such notice to the Company at its address stated in the Declarations shall be sufficient proof of notice.

The quotation of a different premium or Limit of Liability for renewal does not constitute a cancellation or refusal to renew for the purpose of this provision.

As a condition precedent to the **Named Insured's** right to purchase the Extended Reporting Period, the **Insured** shall have satisfied all conditions of the Policy.

At the commencement of any Extended Reporting Period, the entire premium therefor shall be considered earned, and in the event the **Named Insured** terminates the Extended Reporting Period before its term, for any reason, the Company shall not be liable to return to the **Named Insured** any portion of the premium paid for such Extended Reporting Period.

The purchase of the Extended Reporting Period provision shall not serve to increase or reinstate the Aggregate Limit or otherwise increase the Limits of Liability set forth in the Declarations.

IV. LIMITS OF LIABILITY AND DEDUCTIBLE

The Limits of Liability shown in the Declarations and the rules below fix the most the Company will pay regardless of the number of: (i) **Insureds**; (ii) **Claims**; or (iii) Persons or organizations making **Claims**.

A. LIMITS OF LIABILITY - AGGREGATE

The Company's total limit of liability for all **Loss** shall not exceed the "Aggregate" stated in Item 3 of the Declarations. Once the "Aggregate" Limit of Liability has been exhausted, the Company shall not be obligated to defend or continue to defend any **Claim** or pay any **Loss**.

B. LIMITS OF LIABILITY - EACH CLAIM

Subject to paragraph A, above, the "Each Claim" Limit stated in Item 3 of the Declarations is the most the Company will pay for: (1) all **Loss** for each covered **Claim** under Coverage A, or (2) all **Loss** arising out of the same, related or continuous **Pollution Conditions** under Coverage B. Once the "Each Claim" Limit of Liability has been exhausted, the Company shall not be obligated to defend or continue to defend any **Claim**, or pay any **Loss**.

C. MULTIPLE CLAIMS

1. COVERAGE A

Regardless of the number of **Claims**, claimants or **Insureds**, the total Limit of Liability of the Company for all **Claims** that are made and reported during one or more policy periods and arise out of the same, related or continuous actual or alleged errors or omissions shall be considered a single **Claim**, subject to the Deductible and the "Each Claim" Limit of Liability shown in Item 3 of the Declarations of the policy in effect when the first **Claim** was made and reported to the Company and shall be deemed first reported to the Company during the policy period in which the first **Claim** was first reported to the Company.

2. COVERAGE B

If the same, related or continuous **Pollution Conditions** result in **Bodily Injury, Property Damage** or **Environmental Damage** which occurs during the policy periods of different **Like Policies**:

- a. All such **Bodily Injury, Property Damage** or **Environmental Damage** shall be deemed to have occurred only during the policy period of the first **Like Policy**; and
- b. All **Loss** from such **Bodily Injury, Property Damage** or **Environmental Damage** shall be subject to the "Each Claim" Limit of Liability applicable under the policy described in paragraph a. above.

D. DEDUCTIBLE

The Deductible stated in the Declarations applies to each **Claim** under Coverage A and all **Loss** arising out of any one **Pollution Condition** or out of the same, related or continuous **Pollution Conditions** under Coverage B. The Deductible shall be paid by the **Named Insured** and remain uninsured. The Limits of Liability shall apply in excess of the Deductible.

The Company may advance payment of part or all of the deductible amount, and, upon notification of such payment made, the **Named Insured** shall promptly reimburse the Company for the deductible amounts advanced by the Company.

E. MEDIATION

If the **Named Insured** and the Company jointly agree to utilize **Mediation** as a means to resolve a **Claim** made against the **Insured**, and if such **Claim** is resolved as a direct result of the **Mediation**, the **Named Insured's** deductible obligation shall be reduced by 50% subject to a maximum reduction of \$20,000. The Company shall reimburse the **Named Insured** for any such reimbursable deductible payment made prior to the **Mediation** as soon as practicable after the conclusion of the **Mediation**.

V. CONDITIONS

A. HOW OTHER INSURANCE APPLIES

Where other insurance may be available for **Loss** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. The Company's obligations are limited as follows:

1. With respect to Coverage A:
 - a. This Policy shall apply as excess insurance over any other valid insurance, whether collectible or not, be it primary or excess. This excess insurance shall in no way be increased or expanded as a result of the receivership, insolvency, or inability to pay of any insurer with respect to both the duty to indemnify and the duty to defend. This also applies to the **Insured** while acting as a self-insured for any coverage.
 - b. Where this Policy is excess insurance, the Company will pay only its share of the amount of **Loss**, if any, that exceeds the total amount of all such valid insurance, whether collectible or not.
2. With respect to Coverage B:
 - a. This insurance is primary, and the Company's obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph b. below.
 - b. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under 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 Company will contribute by limits. Under 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.
3. With respect to any project where the **Named Insured** is an insured on a project specific pollution liability policy providing coverage for **Professional Services** or **Covered Operations**, this Policy shall apply as excess insurance as described in paragraph 1. a. and b. above.

B. BANKRUPTCY

Bankruptcy or insolvency of the **Insured's** estate shall not relieve the Company of any of its obligations under this Policy.

C. APPLICATION

The statements in the Application are the **Insured's** representations and are deemed material. This Policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the Application shall be attached to and become part of this Policy. This Policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this Policy.

D. AUDIT

The Company may examine and audit the **Insured's** books and records as they relate to this Policy at any time during the **Policy Period** and within three (3) years after the final termination of this Policy.

E. ACTION AGAINST THE COMPANY

No third-party action shall lie against the Company, unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

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

F. FALSE OR FRAUDULENT CLAIMS

If the **Insured** reports a **Claim** knowing such **Claim** to be false or fraudulent, this Policy shall become void and all insurance coverage hereunder shall be forfeited.

G. SERVICE OF SUIT

It is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Named Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon General Counsel, Legal Department, 175 Water Street, New York, New York 10038, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Named Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named General Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

H. INSPECTION

The Company shall be permitted but not obligated to inspect, sample, and monitor on a continuing basis the **Insured's** property or operations, at any time. Neither the Company's right to make inspections, sample, and monitor, nor the actual undertaking thereof nor any report thereon, shall constitute an undertaking, on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule, or regulation.

I. SOLE AGENT

The **Named Insured** first listed in Item 1 of the Declarations shall act on behalf of all other **Insureds**, if any, for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, and giving and receiving notice of cancellation or nonrenewal.

J. ASSIGNMENT

This Policy shall not be assigned without the prior written consent of the Company, which shall not be unreasonably withheld. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed onto this Policy.

K. SUBROGATION

If there is a payment made by the Company under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery against any person or organization. The **Insured** shall cooperate with the Company and do whatever is necessary to secure these rights. The **Insured** shall do nothing after a **Claim** to waive or prejudice such rights.

Any recovery as a result of subrogation proceedings arising out of payment of **Loss** under this Policy (net of expenses incurred in making such recovery) shall accrue first to the **Named Insured** to the extent of any payment in excess of the limit of coverage of the Policy, then pro-rata to the **Named Insured** and the Company in proportion to the amount each actually paid as a result of judgment, settlement or defense of a **Claim**.

The Company agrees to waive this right of subrogation against a client of the **Insured** to the extent that the **Insured** had, prior to a **Claim**, a written agreement to waive such rights.

L. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

M. CANCELLATION

This Policy can be canceled by the **Named Insured** by returning the Policy to the Company or its authorized representatives. The **Named Insured** can also cancel the Policy by written notice to the Company stating at what future date cancellation is to be effective. If the **Named Insured** cancels, earned premium shall be computed using the customary short rate table, or pro-rata of the Minimum Annual Policy Premium, whichever is greater.

This Policy can be canceled by the Company by written notice to the **Named Insured**, at the address last known to the Company. The Company shall provide written notice sixty (60) days before

cancellation is to be effective. The **Named Insured** shall, however, only be entitled to ten (10) days notice if the Company cancels because the **Insured** has failed to pay a premium or deductible amounts when due.

If the Company cancels, earned premium shall be computed pro-rata, except if the Company cancels for failure to pay premium or deductible, earned premium shall be computed in the same manner provided above when the **Named Insured** cancels.

The mailing of any notice of cancellation shall be sufficient proof of notice.

The effective date of cancellation terminates the **Policy Period**. Return of unearned premium is not a condition of cancellation. Unearned premium shall be returned by the Company as soon as practicable.

N. POLICY TERRITORY

1. This Policy only applies to **Loss**:

- a. that takes place and results in **Claims** within the United States, its territories or possessions, or Canada; or
- b. that takes place and result in **Claims** anywhere in the world except: Angola, Cuba, Haiti, Iran, Iraq, Libya, Afghanistan, the Democratic Republic of Sudan or the or the Federal Republic of Yugoslavia (Serbia and Montenegro).

2. With respect to **Claims** subject to Paragraph 1.b. above:

- a. The Company shall have the right but not the duty to investigate, defend, or settle such **Claims**;
- b. If the Company does not exercise the right described in Paragraph 2.a. above, the **Named Insured** shall, under the Company's supervision, make such investigation and defense as is reasonably necessary. Subject to prior written authorization of the Company, the **Named Insured** may also effect settlement. The Company shall reimburse the **Insured** for the reasonable costs of such actions, subject to all other provisions of this Policy.

3. a. This insurance shall not serve as proof of insurance: (i) in any country where non-admitted insurance is prohibited by local applicable law; or (ii) without the prior written consent of the Company.

- b. The Company in its sole discretion may issue proof of insurance documents to a third party upon the request of the **Named Insured**, but the Company is not obligated to do so.

O. SEPARATION OF INSUREDS

Except with respect to the Limits of Insurance, Section II. EXCLUSIONS, paragraph B, and any rights or duties specifically assigned to the first **Named Insured**, this insurance applies: (1) As if each **Insured** were the only **Insured**; and (2) Separately to each **Insured** against whom a **Claim** is made or suit is brought.

P. INDEPENDENT COUNSEL

In the event the **Insured** is entitled by law to select independent counsel to defend the **Insured** at the Company's expense, the attorney fees and all other litigation expenses the Company must pay

to that counsel are limited to the rates the Company actually pays to counsel the Company retains in the ordinary course of business in the defense of similar **Claims** or suits in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending **Claims** or suits similar to the one pending against the **Insured** and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the **Insured** agrees that counsel will timely respond to the Company's requests for information regarding the **Claim** or suit. The **Insured** may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

VI. DEFINITIONS

A. Bodily Injury means physical injury, or sickness, disease, mental anguish or emotional distress sustained by any person, including death resulting therefrom.

B. Claim means a written demand received by an **Insured** seeking a remedy and alleging liability or responsibility on the part of the **Insured** for **Loss**. A **Claim** does not include a **Possible Claim** that has been reported under a prior policy but which has become a **Claim** during the **Policy Period** of this Policy as described in Section III. B.

C. Claim Expenses means:

1. Fees charged by any lawyer designated by the Company; and
2. All other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if authorized by the Company.

Claim Expenses shall not include:

1. The salaries of any employee of the Company; and
2. Costs, charges or other expenses incurred by the **Insured** for goods supplied or services performed by or on behalf of the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, unless such costs, charges or other expenses are incurred with the prior written approval of the Company at its sole discretion.

D. Clean-Up Costs means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent, which consent shall not be unreasonably withheld or delayed, incurred in the investigation, removal, remediation (including the associated monitoring) or disposal of soil, surfacewater, groundwater, or other contamination:

1. to the extent required by **Environmental Laws**; or
2. which have been actually incurred by the government or any political subdivision of the United States of America or any state thereof, or Canada or any province thereof, or by third parties.

E. Covered Operations means those activities performed at a job site by the **Insured** or others for whom the **Insured** is legally obligated.

F. **Damages** means any amount which an **Insured** is legally obligated to pay for any **Claim** to which this insurance applies and shall include judgments, settlements, and interest on judgments. **Damages** shall not include the return or withdrawal of professional fees, sanctions, fines or penalties imposed by law directly against the **Insured**, or other matters that may be deemed uninsurable under applicable law.

G. **Environmental Damage** means physical damage to soil, surfacewater or groundwater, or plant or animal life, caused by **Pollution Conditions** and giving rise to **Clean-Up Costs**. **Environmental Damage** does not include **Property Damage**.

H. **Environmental Laws** means any federal, state, provincial or local laws, (including, but not limited to, statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives), that are applicable to **Pollution Conditions**.

I. **Insured** means:

1. The **Named Insured**.
2. Any person who is or was a director, officer, partner, or employee of the **Named Insured** while acting within the scope of their duties as such.
3. The heirs, executors, administrators, and legal representatives of each **Insured** as defined in 1. and 2. above in the event of death, incapacity or bankruptcy, but only with respect to liability arising out of **Professional Services** or **Covered Operations** rendered on behalf of the **Insured** prior to death, incapacity or bankruptcy.
4. With respect to Coverage B, the client for whom the **Insured** performs or performed **Covered Operations**, provided that a written contract or agreement is in effect between the **Insured** and the client. However, such clients are covered under this Policy solely with respect to **Loss** arising from **Covered Operations** and are not covered for any **Loss** arising from the client's own liability. Clients of the **Insured** are covered under this Policy only for limits of liability up to but not exceeding the amount required by the written contract with the **Insured** and subject to the limits of liability of this Policy.
5. Any person who is a temporary or leased worker performing **Professional Services** or **Covered Operations** under the supervision of and on behalf of the **Insured**.
6. Joint ventures in which the **Insured** is named as a co-venturer but only with respect to the **Insured's** legal liability arising out of its participation in such joint venture.
7. Any retired principal, partner, officer, director or employee of the **Insured** but only for the rendering of **Professional Services** or **Covered Operations**.

J. **Insured Contract** means:

1. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality.
2. That part of any other contract or agreement pertaining to **Covered Operations** (including an indemnification of a municipality in connection with **Covered Operations** performed for a municipality) whereby the **Named Insured** assumes the tort liability of another party to pay for **Bodily Injury, Property Damage** or **Environmental Damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

- K. Like Policy** means a prior policy issued by the Company to the **Named Insured** providing coverage for **Bodily Injury, Property Damage, or Environmental Damage** which occurs during the policy period caused by **Pollution Conditions** resulting from **Covered Operations**.
- L. Loss** means:
1. Monetary awards or settlements of compensatory **Damages**; and
 2. **Claim Expenses**.
- M. Mediation** means the non-binding intervention of a neutral third-party to effect settlement of a **Claim**.
- N. Named Insured** means the person or entity designated as such in Item 1 of the Declarations.
- O. Named Insured's Products** means goods, products, or pieces of equipment, including component parts thereof and including other products in which such goods, products or pieces of equipment are incorporated, which are manufactured by the **Named Insured**, any subsidiary of the **Named Insured**, any entity which wholly or partly owns, operates or manages the **Named Insured** or any subsidiary of such entity, or any person under license from the **Named Insured**.
- P. Natural Resource Damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act 116 U.S.C. 1801 et seq.), any state or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.
- Q. Nuclear Material** means Source Material, Special Nuclear Material or By-Product Material. The terms Source Material, Special Nuclear Material and By-Product Material shall have the same meanings given them in the Atomic Energy Act.
- R. Policy Period** means the period set forth in Item 2 of the Declarations, or any shorter period arising as a result of cancellation of this Policy.
- S. Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered.
- T. Possible Claim** means actual or alleged errors or omissions arising out of **Professional Services** commencing on or after the Retroactive Date stated in the Declarations which are reasonably expected to result in a **Claim** under Coverage A and as referenced in Section III. B.
- U. Professional Services** means those architectural, engineering, consulting, project management or construction management services, including those as set forth in the application, or other services as specifically defined by endorsement to this Policy, that are performed for a fee by or on behalf of the **Named Insured**.
- V. Property Damage** means:

1. Physical injury to or destruction of tangible property of parties other than the **Insured** including the resulting loss of use and diminution in value thereof;
2. Loss of use, but not diminution in value, of tangible property of parties other than the **Insured** that has not been physically injured or destroyed; or
3. **Natural Resource Damage.**

Property Damage does not include **Environmental Damage.**

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