



DECLARATIONS

BEAZLEY CONTRACTORPRO

INSURING CLAUSE I.A. OF THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS AND APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR OPTIONAL EXTENSION PERIOD, IF APPLICABLE, AND REPORTED IN WRITING TO UNDERWRITERS IN ACCORDANCE WITH CLAUSE X.L.

INSURING CLAUSE I.B. OF THIS POLICY PROVIDES FIRST PARTY COVERAGE TO THE NAMED INSURED.

AMOUNTS INCURRED AS CLAIMS EXPENSES SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY AND ARE SUBJECT TO THE DEDUCTIBLE. UNDERWRITERS SHALL NOT BE LIABLE FOR ANY CLAIMS EXPENSES, DAMAGES, RECTIFICATION COSTS, EMERGENCY CLEANUP COSTS AND PROTECTIVE LOSS AFTER THE LIMIT OF LIABILITY HAS BEEN EXHAUSTED. PLEASE READ THIS POLICY CAREFULLY.

These Declarations and the Policy with endorsements shall constitute the contract between the **Insureds** and Underwriters.

Policy Number:

Item 1. **Named Insured:**

Address:

Item 2. **Policy Period:**

From:

To:

Both dates at 12:01 a.m. Local Time at the Address stated in Item 1.

Item 3. **Limit of Liability:**

(a)

Each **Claim** under Insuring Clause I.A., each negligent act, error or omission reported under Insuring Clause I.B.1., each **Pollution Condition** under Insuring Clause I.B.2. and each **Protective Claim** under Insuring Clause I.B.3. - includes **Claims Expenses**

(b)

Aggregate for the **Policy Period** - includes **Claims Expenses**

Item 4. **Deductible:**

Each **Claim** under Insuring Clause I.A., each negligent act, error or omission reported under Insuring Clause I.B.1., each **Pollution Condition** under Insuring Clause I.B.2. or each **Protective Claim** under Insuring Clause I.B.3. - includes **Claims Expenses**

Item 5. **Premium:**

Item 6. **Retroactive Date:**

Item 7. **Knowledge Date:**

Item 8. **Optional Extension Period:**

(a) Premium for **Optional Extension Period:** % of the total
 premium for this Policy

(b) Length of **Optional Extension Period:** 12 months.

Item 9. Notification under this Policy:

(a) Notification pursuant to Clause X.M. shall be given to:

Email a&eclaims@beazley.com
 Mail Beazley
 Plantation Place South
 60 Great Tower Street
 London
 EC3R 5AD
 Attn: A&E Claims

(b) All other notices under this Policy shall be given to:

Beazley
 Plantation Place South
 60 Great Tower Street
 London
 EC3R 5AD

Item 10. Named Insured Location:

Item 11. Service of process in any suit shall be made upon:

Item 12. Choice of Law:

Item 13. Endorsements Effective at Inception:

BEAZLEY CONTRACTORPRO

NOTICE: Coverage under Insuring Clause I.A. of this Policy is provided on a Claims Made and Reported Basis and applies only to **Claims** first made against the **Insured** during the **Policy Period** or Optional Extension Period, if applicable, and reported in writing to Underwriters in accordance with Clause X.L. Coverage under Insuring Clause I.B. of this Policy provides first party coverage to the **Named Insured**. Amounts incurred as **Claims Expenses** shall reduce and may exhaust the Limit of Liability and are subject to the Deductible. Underwriters shall not be liable for any **Claims Expenses, Damages, Rectification Costs, Emergency Cleanup Costs** and **Protective Loss** after the Limit of Liability has been exhausted.

Please review the coverage afforded under this Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

I. INSURING CLAUSES

In consideration of the payment of the premium and reliance upon the statements in the **Application** and subject to the Limit of Liability, Deductible, exclusions, conditions and other terms of this Policy, Underwriters agree with the **Named Insured**:

A. **Third Party Liability - Professional Liability, Contractors Pollution Liability, Transportation Pollution Liability, Named Insured Location Pollution Liability, Non-Owned Disposal Site Pollution Liability and Technology Liability**

To pay on behalf of the **Insured, Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** arising out of an **Act or Event**; and

B. **First Party Indemnity - Rectification Costs, Emergency Cleanup Costs and Contractors Protective Professional and Pollution Indemnity**

To indemnify the **Named Insured** for:

1. **Rectification Costs**, in excess of the Deductible, incurred as a result of any actual or alleged negligent act, error or omission committed by the **Insured** or by any **Subcontractor** in the performance of **Professional Services**;
2. **Emergency Cleanup Costs**, in excess of the Deductible, incurred as a result of a **Pollution Condition** arising out of the performance of **Contracting Services** by the **Insured** or by any **Subcontractor**, but only if:

- a) such **Pollution Condition** is on, at, under or migrates from a **Job Site**; and
 - b) such **Pollution Condition** is first discovered by the **Insured** during the **Policy Period**;
3. **Protective Loss**, in excess of the Deductible and any collectible insurance available to the **Subcontractor**, as a result of any **Protective Claim** arising out of:
- a) any negligent act, error or omission by a **Subcontractor** in the performance of **Professional Services**, or
 - b) one or more of the following events:
 - i) a **Pollution Condition** caused by a **Subcontractor** arises out of the performance of **Contracting Services**; or
 - ii) a **Pollution Condition** wholly occurring during and resulting solely from **Transportation** by a **Subcontractor**; or
 - iii) a **Pollution Condition** originating from a **Non-Owned Disposal Site** that is on, at, under or migrates from such **Non-Owned Disposal Site**; but only if the **Pollution Condition** arises from waste or materials generated by the performance of **Contracting Services** by a **Subcontractor**;

provided always that:

- 1. such act, error or omission or **Pollution Condition** was committed or took place on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period**; and
- 2.
 - a) such **Claim** or **Protective Claim** is reported in writing to Underwriters in accordance with Clause X.L.; or
 - b) such negligent act, error or omission, in the case Clause I.B.1., is reported in writing to Underwriters during the **Policy Period** where any director, officer, principal, partner, insurance manager, project manager or any member of the risk management or legal department of the **Named Insured** first becomes aware of such negligent act, error or omission during the **Policy Period**; or
 - c) such **Pollution Condition**, in the case Clause I.B.2., is reported to Underwriters in writing within seven (7) days from discovery of the **Pollution Condition**, or the expiration of the **Policy Period**, whichever occurs first; and

3. prior to the Knowledge Date set forth in Item 7. of the Declarations, no director, officer, principal, partner, insurance manager, project manager or any member of the risk management or legal department of the **Named Insured** knew or could have reasonably foreseen that any such act, error or omission or **Pollution Condition** might be expected to be the basis of a **Claim** or **Protective Claim**; and
4. no **Insured** has given notice of such act, error or omission or **Pollution Condition** to the insurer of any other policy prior to the inception date of this Policy.

II. SUPPLEMENTARY PAYMENTS

All payments made under these Clauses shall be limited to an amount of \$25,000 in the aggregate for the **Policy Period** and are not subject to the Deductible stated in Item 4. of the Declarations.

A. Defendants Reimbursement

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

B. Disciplinary / Regulatory / Administrative Actions Reimbursement

Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses incurred by the **Insured** with the prior written consent of Underwriters, in responding to a disciplinary, regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency provided that the disciplinary, regulatory or administrative action:

1. arises out of **Professional Services**; and
2. is reported pursuant to Section X.L. of this Policy.

C. Reputation Management Reimbursement

Underwriters will reimburse the **Named Insured** fifty percent (50%) of any Reputational Management Expenses in the aggregate for the **Policy Period** incurred by the **Named Insured** for reputational management consulting services which are incurred in connection with a **Claim**, circumstance or incident covered under this Policy that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

Reputational Management Expenses means reasonable fees, costs, and expenses incurred by the **Named Insured** for reputational management consulting services provided by a public relations firm to the **Named Insured**.

D. Bankruptcy of Subcontractor

Underwriters will reimburse the **Named Insured**, upon written request, for legal fees and expenses of bankruptcy counsel incurred by the **Named Insured** with the prior written consent of Underwriters, in bringing a **Protective Claim** during the **Policy Period** seeking amounts payable under Insuring Clause I.B.3. against a **Subcontractor** who has filed for or been placed into bankruptcy under the United States Bankruptcy Code provided that such **Protective Claim** results in a final non-appealable judgment against **Subcontractor** in favor of the **Named Insured**.

E. Subpoena Expenses

Underwriters will reimburse the **Named Insured**, upon written request, for fees and expenses incurred by the **Named Insured** with the prior written consent of Underwriters, to engage legal counsel to assist the **Named Insured** in connection with the production of documents and the preparation for and giving of testimony, in response to a subpoena first served on the **Named Insured** during the **Policy Period** (other than a **Claim** or a **Protective Claim**) arising out of the negligent acts, errors or omissions by a **Subcontractor** or **Pollution Conditions** caused by a **Subcontractor**.

III. DEFINITIONS

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

A. “**Act or Event**” means:

1. any actual or alleged negligent act, error or omission in the performance of **Professional Services** by the **Insured** or by any **Subcontractor**;
2. a **Pollution Condition**:
 - a) arising out of the performance of **Contracting Services** by the **Insured** or by any **Subcontractor**;
 - b) wholly occurring during and resulting solely from **Transportation**;
 - c) originating from a **Named Insured Location**, that is on, at, under or migrates from such **Named Insured Location**; provided that the **Pollution Condition** is both sudden and accidental and first commences during the **Policy Period**

and finally ends within seven (7) consecutive days from its first commencement; or

- d) originating from a **Non-Owned Disposal Site**, that is on, at, under or migrates from such **Non-Owned Disposal Site**; provided that the **Pollution Condition** arises from waste or materials generated by the performance of **Contracting Services** or originating from a **Named Insured Location**; or

3. a **Technology or Advertising Act.**

- B. “**Advertising**” means material which promotes the product, service or business of the **Named Insured** or others.
- C. “**Application**” means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by Underwriters, of which this Policy is a renewal, replacement or which it succeeds in time.
- D. “**Assumed Under Contract**” means liability assumed by the **Named Insured** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in a **Media Communication**, but only as respects acts detailed in Clause III.LL.4.
- E. “**Bodily Injury**” means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- F. “**Breach Notice Law**” means any state, federal or foreign statute or regulation that requires notice to persons whose **Personally Identifiable Information** was accessed or may reasonably have been accessed by an unauthorized person.
- G. “**Cargo**” means any waste or materials transported by motorized land vehicle for delivery by a carrier properly licensed to transport such waste or materials.
- H. “**Circumstance**” means any fact, event or situation that could reasonably be the basis for a **Claim**.
- I. “**Claim**” means:
 - 1. a written demand first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) for money or services including the service of suit or institution of arbitration proceedings; and

2. a written threat or initiation of a suit first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

J. **"Claims Expenses"** means:

1. reasonable and necessary fees charged by an attorney designated or consented to by Underwriters;
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by Underwriters, or by the **Insured** with the prior written consent of Underwriters; and
3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any **Insured** for a covered act, error or omission or **Pollution Condition** provided; however, that Underwriters shall have no obligation to appeal or to obtain such bonds.

Claims Expenses do not include any salary, overhead or other charges of or by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** notified under this Insurance, or costs to remediate an act, error or omission or **Pollution Condition** without the prior written consent of Underwriters.

K. **"Cleanup Costs"** means reasonable and necessary costs, charges and expenses incurred with the prior written consent of Underwriters in the investigation, assessment, removal, remediation (including the associated testing and monitoring) or neutralization of a **Pollution Condition** to the extent required by **Environmental Laws**, provided that such costs, charges and expenses are caused by a **Pollution Condition** arising out of the performance of or failure to perform **Contracting Services** by or on behalf of the **Named Insured** or that is on, at, under or migrates from a **Named Insured Location**.

The term **Cleanup Costs** shall also include:

1. reasonable and necessary legal costs, where such costs have been incurred by the **Insured** with the prior written consent of Underwriters; and
2. reasonable and necessary expenses required to restore, repair or replace real or personal property, owned by third parties, to substantially the same condition it was in prior to being damaged during the course of responding to a **Pollution Condition** to which this Insurance applies. However, these costs will not exceed the actual cash value of such real or personal property immediately prior to incurring the **Cleanup Costs** or include costs associated with improvements or betterments. Actual Cash Value

shall mean the cost to replace such real or personal property, immediately prior to incurring the **Cleanup Costs**, minus the accumulated depreciation of the real or personal property.

- L. **“Computer Systems”** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. operated by and either owned by or leased to the **Named Insured**; or
 2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Named Insured** or for processing, maintaining, hosting or storing the **Named Insured’s** electronic data, pursuant to written contract with the **Named Insured** for such services.
- M. **“Contracting Services”** means the performance of construction, drilling, operations and/or maintenance services, or remediation activities by or on behalf of the **Named Insured**.
- N. **“Damages”** means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post-judgment interest thereon. Solely with respect to the coverage afforded under this Policy for events detailed in Clause III.A.2., the term **Damages** shall also include **Cleanup Costs**.

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

1. disgorgement of unjust enrichment, future profits, restitution or profits by an **Insured**, or the costs of an **Insured** to comply with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. costs incurred by the **Insured** to correct, re-perform or complete any **Media Activities** or **Technology Based Services**;
4. any damages which are a multiple of compensatory damages;
5. fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;
6. punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;
7. discounts, coupons, prizes, awards or other incentives offered to the **Insured’s** customers or clients;

8. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
 9. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
 10. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- O. **“Emergency Cleanup Costs”** means those costs as defined in Clause III.K. incurred by the **Named Insured** without Underwriters' prior written consent on an emergency basis which Underwriters, subsequent to receiving notice of the **Pollution Condition**, deem reasonable and necessary to mitigate the immediate effects of such **Pollution Condition**.
- P. **“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** to which this Insurance applies.
- Q. **“Insured”** shall mean:
1. the **Named Insured**;
 2. a director or officer of the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
 3. an employee or **Temporary Employee** of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Named Insured’s** business;
 4. a principal if the **Named Insured** is a sole proprietorship or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
 5. any person who previously qualified as an **Insured** under 2., 3. or 4. above prior to the termination of the required relationship with the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
 6. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Policy;

7. the lawful spouse or Domestic Partners of any of the person set forth in 2., 3., 4., 5., or 6. above, but only for **Claims** arising out of an act, error or omission actually or allegedly committed by such **Insured** and only to the extent that such **Insured** would otherwise be provided coverage under this Policy. Underwriters has no obligation to make any payment for **Damages** or **Claims Expenses** in connection with any **Claim** made against a spouse or Domestic Partner of an **Insured** for any actual or alleged acts, errors or omissions committed by such spouse or Domestic Partner.

For the purposes of this provision, the terms "Domestic Partner" shall mean any natural person qualifying as a domestic partner under the provisions of any applicable Federal, State, or local law; or the provisions of any formal program established by the **Named Insured**.

8. the **Named Insured** with regard to its participation in a joint venture, but solely for the **Named Insured's** liability that arises out of a negligent act, error or omission in the performance of **Professional Services** by the **Named Insured** or for a **Pollution Condition** that arises out of the performance of **Contracting Services** by the **Named Insured**; and
9. solely with respect to **Claims** arising out of any event detailed in Clause III.A.2., the client for whom the **Named Insured** performs or performed **Contracting Services**, provided that a written contract or agreement is in effect between the **Named Insured** and the client requiring the client to be an additional insured under the **Named Insured's** contractors pollution liability policy. However, such clients are covered hereunder solely with respect to **Damages** and **Claims Expenses** arising from **Contracting Services** performed by or on behalf of the **Named Insured** and are not covered for any **Damages** and **Claims Expenses** arising from the client's own acts, errors or omissions. Clients of the **Named Insured** are covered hereunder, subject to Clause VIII., or the Limits of Liability required by the written contract or agreement, whichever is less.

- R. "**Insured Contract**" shall mean that part of any written contract or agreement under which the **Named Insured** assumes tort liability of another party to pay compensatory damages for **Bodily Injury** or **Property Damage** to a third party or organization. Tort liability means liability that would be imposed by law in the absence of any contract or agreement.

The term **Insured Contract** shall not include the assumption of liability of another party to pay compensatory damages based upon, arising from, or in consequence of 1. any actual or alleged act, error or omission or claimed damages that otherwise would not be covered under this Policy;

or 2. liability resulting solely from the actual or alleged acts, errors or omissions of the client of the **Named Insured**.

- S. "**Job Site**" means the location where **Contracting Services** are performed by the **Insured** or any **Subcontractor**.

Job Site does not include or mean:

1. any location that is owned, rented, leased, used, or occupied by any **Insured** except for:
 - a) a location owned, rented, leased, or occupied by a client of the **Named Insured** who is an **Insured** by virtue of Clause III.Q.9.; or
 - b) a location that is rented, leased, occupied (but not owned) by the **Named Insured** and is used on a temporary basis by the **Insured** for a single project only during the course of performing **Contracting Services** for such single project;
2. **Non-Owned Disposal Site**; or
3. any location at which the **Insured** is engaged to provide remediation activities.

- T. "**Media Communication**" means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Named Insured**.

- U. "**Media Material**" means information in the form of words, sounds, numbers, images, or graphics in electronic, print or broadcast form, including **Advertising**, but does not mean computer software.

- V. "**Media Activities**" means **Media Communication** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Named Insured's** business.

- W. "**Named Insured**" means only those persons, partnerships, corporations or entities specified in Item 1. of the Declarations.

The term **Named Insured** shall include any corporate entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** if such entity becomes so owned after the inception date of the Policy, subject to the terms and conditions of Clause X.J.

- X. **“Named Insured Location”** means any location owned, rented or leased by the **Named Insured**, provided that such location is specified in Item 10. of the Declarations.

- Y. **“Natural Resource Damage”** means physical injury to or destruction of, as well as the assessment of such injury or destruction, 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 16 U.S.C. 1801 et. seq.), any state, local or provincial government, any foreign government, any Native American tribe or if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.

- Z. **“Non-Owned Disposal Site”** means any location used by the **Named Insured** for the treatment, storage or disposal of waste or material provided that:
 - 1. such location is not managed, operated, owned or leased by any **Insured** or an affiliate of any **Insured**; and
 - 2. such location is permitted and/or licensed by the applicable federal, state, local or provincial authorities to accept such waste or materials as of the date the waste or materials are treated, stored or disposed of at such location; and
 - 3. such location is within the United States, its territories or possessions, or in Canada; and
 - 4. such location is not listed on a proposed or final Federal National Priorities List and/or any state or provincial equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of the waste or material at such location.

- AA. **“Optional Extension Period”** means the period of time after the end of the **Policy Period** for reporting **Claims** or **Protective Claims** as provided in Clause X.M. of this Policy.

- BB. **“Personally Identifiable Information”** means:
 - 1. information concerning the individual that constitutes “non-public personal information” as defined in the Gramm-Leach Bliley Act of 1999, as amended, and regulations issued pursuant to the Act;
 - 2. medical or health care information concerning the individual, including “protected health information” as defined in the Health Insurance Portability and Accountability Act of 1996, as amended, and regulations issued pursuant to the Act; or

3. information concerning the individual that is defined as private personal information under a **Breach Notice Law**;
 4. the individual's social security number, driver's license or state identification number, unpublished telephone number, and credit, debit or other financial account numbers and associated security codes, access codes, passwords or pins; if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information.
- CC. "**Policy Period**" means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Policy and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- DD. "**Pollution Condition**" means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land or structures thereupon, the atmosphere or any watercourse or body of water, which results in **Bodily Injury, Property Damage** or **Cleanup Costs**.
- EE. "**Privacy Policy**" means the **Named Insured's** public declaration of its policy for collection, use, disclosure, sharing, dissemination and correction or supplementation of, and access to, **Personally Identifiable Information**.
- FF. "**Professional Services**" means the preparation of architectural and engineering designs, plans, specifications, calculations, review of shop drawings, LEED certification, space planning services, surveying and construction management services , review of contractor's request for payment, review of project to determine dates of substantial completion performed by licensed or similarly qualified professionals in the design or consulting field.

The term **Professional Services** shall not include or mean property manager, real estate asset manager, real estate and real estate asset management consultant services, real estate appraisal services, real estate broker services, financial or investment advisory services or any services resulting from the acquisition of any real estate or the securing of financing for the acquisition of any real estate.

- GG. "**Property Damage**" means:
1. physical injury to or destruction of any tangible property, including the loss of use thereof;
 2. loss of use of tangible property that has not been physically injured or destroyed;

3. diminished value of property owned by third parties; or
 4. **Natural Resource Damage.**
- HH. “**Protective Claim**” means a written demand by the **Named Insured** first made against any **Subcontractor** during the **Policy Period** or **Optional Extension Period** (if applicable) who are under contract with the **Named Insured** seeking a remedy from or alleging liability or responsibility on the part of such **Subcontractor**.
- II. “**Protective Loss**” means any amounts the **Named Insured** is legally entitled to recover from the **Subcontractor** as determined by:
1. a final monetary judgment by a court of competent jurisdiction;
 2. a final monetary award resulting from an arbitration or other dispute resolution proceeding, in which the **Named Insured** participates with Underwriters' prior written consent; or
 3. a settlement to which Underwriters agree in writing.

The term **Protective Loss** shall not include or mean:

- a) any fees charged by an attorney incurred by the **Named Insured** resulting from the investigation, adjustment, prosecution and appeal of a **Protective Claim**, except as provided for in Clause II.E.; or
 - b) matters deemed uninsurable under the law pursuant to which this Policy shall be construed.
- JJ. **Rectification Costs** means reasonable and necessary costs and expenses incurred by the **Named Insured**, with the prior written consent of Underwriters, to rectify, prior to handover of a project, a defect in the works constructed by the **Named Insured** or any **Subcontractor** which are necessary to mitigate a **Claim** or likely **Claim** that would otherwise have been insured under Insuring Clause I.A. which arises out of any actual or alleged negligent act, error or omission in the performance of **Professional Services** by the **Insured** or by any **Subcontractor**.

Rectification Costs do not include any of the **Insured's** profit, overhead, or mark-up, or any betterment to a project to which such costs and expenses apply.

- KK. **“Subcontractor”** means any entity (including sub-consultant or sub-supplier) engaged by the **Named Insured** to undertake **Professional Services** or **Contracting Services** for, on behalf or in the name of the **Named Insured** and for whose negligent acts, errors or omissions or **Pollution Conditions** the **Named Insured** is legally liable.
- LL. **“Technology or Advertising Act”** means
1. any negligent act, error or omission, or any unintentional breach of contract, in rendering or failing to render **Technology Based Services** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission or unintentional breach of contract the **Named Insured** is legally responsible;
 2. any negligent act, error or omission, or any unintentional breach of contract, by the **Insured** that results in the failure of **Technology Products** to perform the function or serve the purpose intended;
 3. a) the failure to prevent **Unauthorized Access to Computer Systems** that results in:
 - i) the destruction, deletion or corruption of electronic data on **Computer Systems**;
 - ii) denial of service attacks against Internet sites or computers;
 - iii) the failure to prevent transmission of malicious code from **Computer Systems** to third party computers and systems; or
 - iv) the inability of a third party, who is authorized to do so, to gain access to **Computer Systems** or your **Technology Based Services**;
 - b) theft, loss or **Unauthorized Disclosure of Personally Identifiable Information** or **Third Party Information** that is in the care, custody or control of the **Named Insured**, or an independent contractor that is holding or processing such information on behalf of the **Named Insured**;
 - c) the **Named Insured’s** failure to timely disclose an incident described in 3.a) or 3.b) above in violation of any **Breach Notice Law**;
 - d) failure by the **Insured** to comply with that part of a **Privacy Policy** that specifically:

- i) prevents or prohibits improper or intrusive collection of **Personally Identifiable Information** from a person;
- ii) requires notice to a person of the **Named Insured's** collection or use of, or the nature of the collection or use of his or her **Personally Identifiable Information**;
- iii) provides a person with the ability to assent to or withhold assent for (e.g. opt-in or opt-out) the **Named Insured's** collection or use his or her **Personally Identifiable Information**;
- iv) prohibits or restricts the **Named Insured's** disclosure, sharing or selling of a person's **Personally Identifiable Information**;
- v) requires the **Named Insured** to provide access to **Personally Identifiable Information** or to correct incomplete or inaccurate **Personally Identifiable Information** after a request is made by a person; or
- vi) mandates procedures and requirements to prevent the loss of **Personally Identifiable Information**;

provided the **Named Insured** must, at the time of such acts, errors or omissions have in force a **Privacy Policy** that directly addresses those subsections above that are relevant to such **Claim**; and

- 4. liability imposed by law or **Assumed Under Contract** arising out of:
 - a) defamation, libel, slander, product disparagement, trade libel, prima facie tort, infliction of emotional distress, outrage, outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
 - b) invasion of or interference with the right to privacy or of publicity;
 - c) misappropriation of any name or likeness for commercial advantage;
 - d) false arrest, detention or imprisonment or malicious prosecution;

- e) invasion of or interference with any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;
- f) plagiarism, piracy or misappropriation of ideas under implied contract;
- g) infringement of copyright;
- h) infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
- i) negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content; or
- j) misappropriation of trade secret;

in the course of the **Named Insured's** performance of **Professional Services, Media Activities or Technology Based Services**.

MM. **"Technology Based Services"** means computer and electronic technology services, including data processing, Internet services, data and application hosting, computer systems analysis, technology consulting and training, custom software programming for a specific client of the **Named Insured**, computer and software systems installation and integration, computer and software support, use of Building Information Modeling Systems and network management services performed by the **Insured**, or by others acting under the **Named Insured's** trade name, for others for a fee, but shall not mean **Technology Products**.

NN. **"Technology Products"** means a computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **Named Insured** for others, or distributed, licensed, leased or sold by the **Named Insured** to others, for compensation, including software updates, service packs and other maintenance releases provided for such products.

OO. **"Temporary Employee"** means a person furnished or leased to the **Named Insured** to meet short term or project specific workloads and for whom the **Named Insured** has the right to direct and control the means of performance.

PP. **"Third Party Information"** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not insured under this Policy which is not available to the general public and is provided to the **Insured** subject to a mutually executed written confidentiality agreement or which the **Named**

Insured is legally required to maintain in confidence; however, **Third Party Information** shall not include **Personally Identifiable Information**.

QQ. “**Transportation**” means the movement of **Cargo** from the place where **Contracting Services** are being performed and the **Cargo** is accepted by the carrier toward the place designated for delivery by the **Insured**.

Transportation includes the carrier’s loading and unloading of **Cargo** onto or from a motorized land vehicle provided that the loading and unloading is performed by or on behalf the **Insured**.

RR. “**Unauthorized Access**” means:

1. the gaining of access to or use of **Computer Systems** by an unauthorized person or persons; or
2. the use of **Computer Systems** in an unauthorized manner.

SS. “**Unauthorized Disclosure**” means the disclosure of (including disclosure resulting from phishing) or access to information in a manner that is not authorized by the **Named Insured** and is without knowledge of, consent, or acquiescence of any director, officer, principal, partner, or any member of the risk management or legal department of the **Named Insured**.

TT. “**Underground Storage Tank**” means any stationary container or vessel, including the associated piping connected thereto, which is 1. ten percent (10%) or more beneath the surface of the ground; 2. constructed primarily of non-earthen materials; and 3. designated to contain any substance.

IV. DEFENSE, SETTLEMENT, AND INVESTIGATION

A. Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.

Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Clause III.LL.4.

When Underwriters defend a **Claim**, they will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages, Rectification Costs, Emergency Cleanup Costs** shall be reduced and may be completely exhausted by payment of **Claims Expenses. Damages, Rectification Costs, Emergency Cleanup Costs** and **Claims Expenses** shall be applied against the Deductible.

If the **Insured** shall refuse to consent to any settlement or compromise recommended by Underwriters and acceptable to the Claimant and elects to contest the **Claim**, Underwriters liability for any **Damages** and **Claims Expenses** shall not exceed:

1. the amount for which the **Claim** could have been settled, less the remaining Deductible, plus the **Claims Expenses** incurred up to the time of such refusal; and
2. fifty percent (50%) of any **Claims Expenses** incurred after the date such settlement or compromise was recommended to the **Insured** with the remaining fifty percent (50%) of such **Claims Expenses** to be borne by the **Insured** at their own risk and uninsured;

or the applicable Limit of Liability, whichever is less. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** shall not be considered in determining the amount for which a **Claim** could have been settled.

- B. Underwriters have the right but not the duty to participate in the investigation or settlement of any **Protective Claim** which is covered under the terms of this Policy.

The **Named Insured** shall not enter negotiations and/or settlement of a **Protective Claim** with their **Subcontractor** involving the Limits of Liability of this Policy without Underwriters' knowledge and consent to such negotiation and settlement. However, Underwriters may, in writing, and at their election, waive its participation and consent to such negotiation and settlement.

If Underwriters elect to participate in the negotiation and settlement of a **Protective Claim**, the **Named Insured** shall fully cooperate with requests for information by Underwriters.

The duty of the **Named Insured** to cooperate with Underwriters is a condition precedent to coverage under this Policy and the **Named Insured's** failure to cooperate shall relieve Underwriters of their obligations and liability under this Policy.

- C. Underwriters shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.

However, notwithstanding the above, the **Insured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Activities** in respect of which

the **Insured** has asserted a claim of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

- D. It is further provided that Underwriters shall not be obligated to pay any **Damages, Claims Expenses, Rectification Costs, Emergency Cleanup Costs** and/or **Protective Loss**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages, Claims Expenses, Rectification Costs, Emergency Cleanup Costs** and/or **Protective Loss** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.
- E. To the extent that Underwriters pay any **Damages, Claims Expenses, Rectification Costs, Emergency Cleanup Costs** and/or **Protective Loss** or other sums that are not covered under this Policy, Underwriters are entitled to reimbursement from the **Named Insured** and any **Insured** (or other party) on whose behalf such **Damages, Claims Expenses, Rectification Costs, Emergency Cleanup Costs** and/or **Protective Loss**, or sums are paid.

V. TERRITORY

Subject to Clause III.CC., this Policy applies to **Claims** and **Protective Claims** made and acts, errors or omissions, **Pollution Conditions** committed, arising or occurring anywhere in the world.

VI. EXCLUSIONS APPLICABLE TO ALL COVERAGES UNDER THIS POLICY

The coverage under this Policy does not apply to (i) **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**, (ii) any **Rectification Costs** or **Emergency Cleanup Costs** and/or (iii) **Protective Loss** in connection with or resulting from any **Protective Claim**:

A. Asbestos / Lead Based Paint

either in whole or in part, directly or indirectly, arising out of or resulting from or in consequence of, or in any way involving asbestos or lead-based paint, or any materials containing asbestos or lead-based paint in whatever form or quantity; provided, that this exclusion does not apply to:

- 1. a) any **Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** on or after January 1, 1990 or the Retroactive Date set forth in Item 6. of the Declarations (whichever is the later) by or on behalf of the **Insured**; or
- b) any **Protective Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** on or after January 1, 1990 or the

Retroactive Date set forth in Item 6. of the Declarations (whichever is the later) by a **Subcontractor**; or

2. any **Claim** or **Protective Claim** arising out of any asbestos or lead abatement operations performed on behalf of the **Named Insured** by a certified and insured asbestos and/or lead abatement **Subcontractor**; or
3. any **Claim** or **Protective Claim** arising out of the inadvertent disturbance of asbestos or lead-based paint or materials containing asbestos or lead-based paint by or on behalf of an **Insured**; or
4. any **Claim** arises out of an event listed in Clause III.A.2.b) or d),

B. Contractual Assumption of Liability

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

1. to the extent the **Insured** would have been liable in the absence of such contract or agreement; or
2. for an otherwise covered **Claim** arising out of any event listed in Clause III.A.2. for liability assumed under a contract or agreement that is an **Insured Contract** provided the **Pollution Condition** occurs subsequent to the execution of the contract or agreement; or
3. to the extent the **Insured** has contractually assumed an obligation to reimburse any person or entity for the reasonable costs of defense of an **Insured's** client pursuant to any hold harmless or indemnity agreement as long as such obligation is limited to the proportionate share of the **Insured's** liability for rendering **Professional Services**, and only upon a final adjudication in a legal proceeding of proportionate fault against the **Insured**. This exception shall not apply to any immediate duty to defend assumed by the **Insured**, and Underwriters shall have no obligation to defend the client or to pay any costs incurred by the client on an ongoing or interim basis. Underwriters will, however, have the right, to be exercised in their sole discretion, to appoint counsel to defend both the **Insured** and the client should applicable ethical rules permit such representation. If the client elects to not accept a joint defense from Underwriters, then this exception shall not apply.

C. Construction Means, Methods and Techniques

arising out of any act listed in Clause III.A.1., for **Bodily Injury** or **Property Damage** arising out of construction means, methods or

techniques, site safety, crane erection, use, maintenance or operation, scaffolding or demolition.

D. **Cost Overruns**

for or arising out of or resulting from cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded; provided, that this exclusion does not apply to:

1. any **Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** by or on behalf of the **Insured**; or
2. any **Protective Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** by a **Subcontractor**.

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

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

F. **Delay in Construction, Erection, Fabrication, Installation and Assembly**

for or arising out of or resulting from delay in construction, erection, fabrication, installation or assembly, or failure to complete any construction, erection, fabrication, installation or assembly at or within an agreed upon period of time; provided, that this exclusion does not apply to:

1. any **Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** by or on behalf of the **Insured**; or
2. any **Protective Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** by a **Subcontractor**.

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

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

H. **Employers Liability and Workers' Compensation**

for or arising out of or resulting from:

1. **Bodily Injury** to any employee of the **Named Insured** arising out of and in the course of:
 - a) employment by the **Named Insured**; or
 - b) performing duties related to the conduct of the **Named Insured's** business; or
2. **Bodily Injury** to any spouse (or person living together as spouse), child, parent, brother, sister or dependent of the employee as a consequence of 1. above; or
3. the **Named Insured's** employment obligations, decisions, practices or policies as an employer; or
4. any obligation which the **Insured** or any carrier as insurer may be liable under any workers' compensation, unemployment compensation or disability benefits law or similar law.

- I. **Express Warranties, Representations, Guarantees and Promises**
arising out of or resulting from any breach of any express warranty or guarantee to the extent the **Insured** would have been liable in the absence of any such warranty or guarantee.

J. **Failure to Maintain Finance**

arising out of or resulting from the advising or requiring of, or failure to advise or require, or failure to maintain or procure any financing or monies for the payment of any portion of any project, or of services or labor connected with any project.

- K. **Faulty Workmanship / Deleterious Materials / Supervision**
arising out of any act or event listed in Clause III.A.1., 2. or 3. which arises out of or results from:

1. any faulty or defective workmanship performed in whole or in part by any **Insured** or any **Subcontractor**; or
2. for the incorporation into the works of any defective or deleterious materials; or
3. in respect of **Claims** arising out of the supervision of or failure to supervise the **Insured's** own labor or that of its **Subcontractors**.

L. Insured versus Insured

For, arising out of, or resulting from a **Claim** by or on behalf of any **Insured**; provided, that this exclusion shall not apply to:

1. a **Claim** by or on behalf of any client of the **Named Insured** who is an **Insured** by virtue of Clause III.Q.9; or
2. an otherwise covered **Claim** made by an employee of the **Named Insured** for any act listed in Clause III.LL.3.a), b) or c).

M. Material Change in Use

arising out of any event listed in Clause III.A.2.c) resulting from a material change in the use of, or operations at, a **Named Insured Location** from the use or operations identified by the **Insured** in the statements and information contained in the **Application** and other supplemental materials submitted to Underwriters prior to the inception of the **Policy Period** or prior to adding such location as a **Named Insured Location** as specified in Item 10. of the Declarations.

N. Ownership Interest and Outside Positions

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

3. against any **Subcontractor** that the **Named Insured** wholly or partially owns.

O. **Products Liability**

arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**; provided, that this exclusion shall not apply to:

1. any **Claim** which arises out of any event listed in Clause III.A.2.a) resulting from the fabrication, assembly or installation of any goods or products provided by the **Named Insured** in the performance of or failing to perform **Contracting Services**; or
2. any **Claim** which arises out of any act listed in Clause III.LL.2.

P. **Property Damage to Named Insured's Work and Products**

arising out of any event listed in Clause III.A.2. or 3. for any **Property Damage**:

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

Q. **Property Liability**

arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances; provided, that this exclusion does not apply to:

1. any **Claim** which arises out of any event listed in Clause III.A.2.(i) resulting from any property the **Named Insured** has voluntarily or involuntarily sold, transferred, exchanged, given away, abandoned or that has been condemned where the **Named Insured** performed **Contracting Services** and has never occupied, used, rented or leased such property; or
2. any **Claim** which arises out of any event listed in Clause III.A.2.b).

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

arising out of any act or event listed in Clause III.A.1., 2. or 3. resulting from any waste or any products or materials transported, shipped or delivered via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock to a location beyond the boundaries of a site at which **Professional Services** are being rendered or **Contracting Services** are being performed.

S. **Underground Storage Tank**

arising out of any event listed in Clause III.A.2.c) resulting from the existence of any **Underground Storage Tank** on, at or under a **Named Insured Location**; provided, that this exclusion does not apply to:

1. an **Underground Storage Tank** that is closed, abandoned in place or removed prior to the inception date of this Policy, in accordance with all applicable federal, state, local or provincial regulations, in effect at the time of closure, abandonment or removal;
2. an **Underground Storage Tank** that is identified as a **Named Insured Location** as specified in Item 10. of the Declarations;
3. an **Underground Storage Tank**, the existence of which is unknown by any director, officer, principal, partner, insurance manager, project manager or any member of the risk management or legal department of the **Named Insured** or any employee of the **Named Insured** that has responsibility, in whole or in part, for risk control, risk management, health and safety or environmental affairs, control or compliance as of the inception date of this Policy;
4. a flow-through process tank, including oil/water separators; or
5. a storage tank situated in an underground area (such as a basement, cellar, mine shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

VII. **EXCLUSIONS APPLICABLE TO TECHNOLOGY OR ADVERTISING ACTS**

The coverage under this Policy for **Technology or Advertising Acts** does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

A. **Antitrust**

for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, violation of the Sherman Antitrust Act, the Clayton Act, the Robinson-Patman Act, as amended, or any similar law or legislation of any state, province or other jurisdiction, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive or misleading advertising.

B. Business Risks

for or arising out of or resulting from:

1. inaccurate, inadequate or incomplete description of the price of goods, products or services;
2. cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;
3. the failure of goods, products, or services to conform with any represented quality or performance contained in **Advertising**; or
4. any actual or alleged gambling, contest, lottery, promotional game or other game of chance.

C. Contractual Liability

for, arising out of or resulting from any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written; provided, that this exclusion will not apply to:

1. an otherwise covered **Claim** arising out of any act listed in Clause III.LL.1. or 2.;
2. only with respect to coverage provided for any act listed in Clause III.LL.3.b), to any obligation of the **Named Insured** to maintain the confidentiality or security of **Personally Identifiable Information** or of **Third Party Information**;
3. with respect to any act listed in Clause III.LL.4. for:
 - a) liability **Assumed Under Contract**; or
 - b) misappropriation of ideas under an implied contract;
4. the extent the **Insured** would have been liable in the absence of such contract or agreement.

D. Electrical and Telecommunications Failure and Malfunction and Force Majeure

arising out of, resulting from or alleging:

1. any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Named Insured's** operational control; or

2. fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical or force majeure event.

E. Federal Trade Commission and Federal Communications Commission

brought by or on behalf of the Federal Trade Commission, the Federal Communications Commission, or any similar governmental entity, in such entity's regulatory or official capacity.

F. Intellectual Property

for, arising out of or resulting from any actual or alleged:

1. infringement of copyright or misappropriation of trade secret arising out of or related to **Technology Products**; or
2. disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person prior to the date he or she became an employee, officer, director, principal or partner of the **Named Insured**.

G. Licensing Fees and Royalty Payments

arising out of or resulting from any actual or alleged obligation to make licensing fee or royalty payments, including but not limited to the amount or timeliness of such payments.

H. Reprinting, Recall, Removal, Disposal, Withdrawal, Inspection, Repair, Replacement, Reproduction Costs and Expenses

for or arising out of or resulting from any costs or expenses incurred or to be incurred by the **Insured** or others for:

1. the reprinting, recall, removal or disposal of any **Media Material**, including any media or products containing such **Media Material**; or
2. the withdrawal, recall, inspection, repair, replacement, reproduction, removal or disposal of:
 - a) **Technology Products**, including any products or other property of others that incorporate **Technology Products**;
 - b) work product resulting from or incorporating the results of **Technology Based Services**; or
 - c) any products or other property on which **Technology Based Services** are performed;

provided, that this exclusion shall not apply to **Claims** for the resulting loss of use of such **Media Material** or **Technology Products**, or loss of use of the work product resulting from such **Technology Based Services**.

I. **Unlawful collection, acquisition or retention of Personally Identifiable Information**

with respect to any act listed in Clause III.LL.3., for, arising out of or resulting from the actual or alleged unlawful collection, acquisition or retention of **Personally Identifiable Information** or other personal information by, on behalf of, or with the consent or cooperation of the **Named Insured**; or the failure to comply with a legal requirement to provide individuals with the ability to assent to or withhold assent (e.g. opt-in or opt-out) from the collection, disclosure or use of **Personally Identifiable Information**.

VIII. **LIMIT OF LIABILITY**

A. The Limit of Liability stated in Item 3.(a) of the Declarations is the limit of Underwriters liability for:

1. all **Damages** and **Claims Expenses** arising out of each **Claim**;
2. all **Rectification Costs** arising out of each reported negligent act, error or omission;
3. all **Emergency Cleanup Costs** arising out of each **Pollution Condition**; and
4. all **Protective Loss** arising out of each **Protective Claim**.

B. The Limit of Liability stated in Item 3.(b) of the Declarations is Underwriters combined total Limit of Liability for:

1. all **Damages** and **Claims Expenses** arising out of all **Claims**;
2. all **Rectification Costs** arising out of all reported negligent acts, errors or omissions;
3. all **Emergency Cleanup Costs** arising out of all **Pollution Conditions**; and
4. all **Protective Loss** arising out of all **Protective Claims**;

which are covered under the terms and conditions of this Policy. Neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** or **Protective Claims** by more than one person or entity shall increase the Limit of Liability.

- C. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of Underwriters for the **Policy Period**.

IX. DEDUCTIBLE

- A. The Deductible stated in Item 4. of the Declarations applies separately to:
 - 1. each **Claim**;
 - 2. each negligent act, error or omission reported under Insuring Clause I.B.1.;
 - 3. each **Pollution Condition** under Insuring Clause I.B.2.; and
 - 4. each **Protective Claim**.
- B. The Deductible shall be satisfied by monetary payments by the **Named Insured** of:
 - 1. **Damages and Claims Expenses** arising out of **Claims** first made during the **Policy Period** and the **Optional Extension Period** (if applicable) and reported to Underwriters pursuant to the terms of this Policy;
 - 2. **Rectification Costs** arising out of negligent acts, errors or omissions reported under Insuring Clause I.B.1.;
 - 3. **Emergency Cleanup Costs** arising out of **Pollution Conditions** under Insuring Clause I.B.2.; and
 - 4. **Protective Loss** arising out of **Protective Claims** first made during the **Policy Period** and the **Optional Extension Period** (if applicable) and reported to Underwriters pursuant to the terms of this Policy.

Satisfaction of the Deductible is a condition precedent to the payment by Underwriters of any amounts hereunder, and Underwriters shall be liable only for the amounts in excess of such Deductible subject to Underwriters' total liability not exceeding the Limits of Liability stated in Item 3. of the Declarations. The **Named Insured** shall make direct payments within the Deductible to appropriate other parties designated by Underwriters.

Any payments by the **Named Insured** in satisfaction of its deductible obligations under any other valid and collectible insurance shall not satisfy the Deductible under this Policy.

X. GENERAL CONDITIONS

A. **Action Against Underwriters, Service of Suit and Choice of Law**

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

2. It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due under this Policy, Underwriters hereon, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' 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 Underwriters' representative, designated in Item 11. of the Declarations, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such court or of any Appellate Court in the event of an appeal.

Underwriters' representative designated in Item 11. of the Declarations is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **Insured** to give a written undertaking to the **Insured** that they will enter a general appearance on Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this Policy, and hereby designate Underwriters' representative, designated in Item 11. of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

3. Any disputes involving this Policy shall be resolved applying the law designated in Item 12. of the Declarations.

B. Assignment

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

C. Assistance and Cooperation of the Insured

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

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

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense (including, but not limited to, any **Claims Expenses, Cleanup Costs, Rectification Costs** or **Emergency Cleanup Costs**), enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of Underwriters. However, the **Named Insured** may incur **Rectification Costs** up to fifty percent (50%) of the Deductible without Underwriters' consent. Once this threshold has or is likely to be breached, it is a condition of this Policy that the **Named Insured** must obtain Underwriters' written consent prior to incurring any further **Rectification Costs**, unless such notice would delay performing rectification that is essential to protecting the project against an imminent dangerous state, in which case notice shall be given promptly after rectification begins.

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

D. Authorization

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

E. Cancellation and Nonrenewal

1. The **Named Insured** may cancel this Policy by surrender thereof to Underwriters, or by mailing to Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
2. Underwriters may cancel this Policy by mailing or delivering to the **Named Insured** at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if Underwriters cancel this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by Underwriters by mailing or delivering a written notice of cancellation to the **Named Insured** at the address shown in the Declarations stating when not less than ten (10) days thereafter such cancellation shall be effective. The notice of cancellation shall state the reason for cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by Underwriters shall be equivalent to mailing.
3. If this Policy is cancelled pursuant to 1. hereinabove, Underwriters shall retain the customary short rate portion of the premium hereon, unless a **Claim**, negligent act, error or omission, Pollution Condition, **Protective Claim** or **Circumstance** has been reported under this Policy, in which case the premium shall be deemed fully earned at the inception date of this Policy. If this Policy is cancelled pursuant to 2. hereinabove, Underwriters shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by Underwriters shall not be a condition precedent to the effectiveness of cancellation.
4. If Underwriters decide not to renew this Policy, Underwriters shall mail or deliver written notice to the **Named Insured** at the address shown in the Declarations at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

F. **Bankruptcy**

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

G. **Entire Agreement**

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

H. **Headings**

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

I. **Innocent Insured**

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

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

2. With respect to this provision, Underwriters obligation to pay in such event shall only be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion VI.E. applies and shall be subject to the terms, conditions and limitations of this Policy.

J. **Mergers and Acquisitions**

1. If during the **Policy Period**, the **Named Insured** acquires another entity for whom more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured**, then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission or **Pollution Condition**, whether committed or arising either before or after such acquisition:
 - a) by the acquired entity or any person employed by the acquired entity; or
 - b) involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity.

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

2. If during the **Policy Period** the **Named Insured** consolidates or merges with another entity such that the **Named Insured** is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to acts, errors, omissions or other breach or **Pollution Conditions** committed or arising subsequent to such consolidation, merger or acquisition. The **Named Insured** shall provide written notice of such consolidation, merger or acquisition to Underwriters as soon as practicable, together with such information as Underwriters may require.
3. All notices and premium payments made under this section shall be directed to Underwriters through the entity named in Item 9.(b) of the Declarations.

K. **Multiple Claim and Protective Claims**

Multiple **Claims** and/or **Protective Claims** arising from the same or a series of related or repeated acts, errors, omissions or **Pollution Conditions** or from any continuing acts, errors, omissions or **Pollution Conditions** shall be considered a single **Claim** and/or **Protective Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim** or **Protective Claim**. For all purposes, all such **Claims** or **Protective Claims** shall be deemed to have been made at the time of the first such **Claim** or **Protective Claim**, regardless of whether or not coverage was afforded by Underwriters when the first such **Claim** or **Protective Claim** was made.

L. **Notice of Claim, Protective Claim or Circumstance**

1. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to Underwriters through the persons named in Item 9.(a) of the Declarations written notice of such **Claim** in the form of a facsimile, email or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period**, if purchased.
2. As a condition precedent to coverage under this Policy, the **Named Insured** shall forward to Underwriters through the persons named in Item 9.(a) of the Declarations written notice of any **Protective Claim** at the same time that the **Named Insured** makes a claim against a **Subcontractor** and in no event later than sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period**, if purchased.
3. If after the Knowledge Date set forth in Item 7. of the Declarations any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first becomes aware of any **Circumstance** and gives written notice to Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item 9.(a) of the Declarations as soon as practicable during the **Policy Period** of:
 - a) the specific details of the **Act or Event** that gave rise to the **Circumstance**;
 - b) the injury or damage which may result or has resulted from the **Circumstance**; and
 - c) the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first became aware of the **Act or Event**'

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

4. A **Claim** or **Protective Claim** shall be considered to be reported to Underwriters when written notice is first received by Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item 9.(a) of the

Declarations of the **Claim**, **Protective Claim** or of a **Circumstance** if provided in compliance with Clause 3. above.

M. Optional Extension Period

1. If this Policy is cancelled or non-renewed by Underwriters or by the **Named Insured**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 8.(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to Underwriters or any **Protective Claim** first made by the **Named Insured** during the period of time set forth in Item 8.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any act, error or omission or **Pollution Condition** committed or arising on or after the Retroactive Date set forth in Item 6. of the Declarations and before the effective date of cancellation or non-renewal.
2. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to Underwriters within sixty (60) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to Underwriters, there shall be no right to purchase the **Optional Extension Period**.
3. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.
4. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of Underwriters for the **Policy Period**.
5. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause X.M.

N. Other Insurance

1. This Policy (other than Insuring Clause I.B.3.) shall apply in excess of:
 - a) any other valid and collectible insurance available to any **Insured** including, but not limited to, any project specific professional liability and/or contractors pollution liability insurance; and

- b) any self insured retention or deductible portion thereof; and
2. Insuring Clause I.B.3. of this Policy shall apply in excess of:
- a) any valid and collectible insurance available to the **Subcontractor**; and
 - b) any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project specific professional liability and/or contractors pollution liability insurance and any self insured retention or deductible portion thereof;

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

O. **Representations**

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

P. **Subrogation**

In the event of any payment under this Policy, Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

Underwriters agree to waive their right of recovery, under Insuring Clause I.A. against any client of the **Named Insured** to the extent the **Named Insured** had, prior to such **Claim**, a written agreement to waive such rights.

The **Insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages, Rectification Costs, Emergency Cleanup Costs** and **Claims Expenses** paid by Underwriters, and third to the Deductible. Any additional amounts recovered shall be paid to the **Named Insured**.

Q. **Valuation and Currency**

All premiums, limits, deductibles, **Damages, Protective Loss** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the

Wall Street Journal on the date the judgment becomes final or payment of the settlement or other element of **Damages** or **Protective Loss** is due or the date such **Claims Expenses** are paid.

R. **Subcontractor's Insurance**

The **Named Insured** shall require each **Subcontractor** with whom the **Named Insured** has a written contract provide and maintain professional liability and contractors pollution liability insurance. In the event any **Subcontractor** with whom the **Named Insured** has a written contract fails to maintain such professional liability and contractors pollution liability insurance, then Underwriters' liability will attach as if such professional liability and contractors pollution liability insurance were still in effect and then excess of the Deductible stated in Item 4. of the Declarations.