

OWNER'S PROTECTIVE POLICY - OPUS

NOTICE: THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO ITS PROVISIONS, THIS POLICY APPLIES ONLY TO CLAIMS WHICH ARE BOTH FIRST MADE BY OR AGAINST YOU AND FIRST REPORTED IN WRITING TO US DURING THE POLICY PERIOD OR THE EXTENDED REPORTING PERIOD, IF APPLICABLE. UNLESS SPECIFICALLY PROVIDED OTHERWISE, THIRD PARTY CLAIM EXPENSES ARE INCLUDED WITHIN THE LIMIT OF LIABILITY, AND ARE SUBJECT TO ANY APPLICABLE SELF-INSURED RETENTION.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

Words and phrases that appear in bold print, excluding caption headings, have special meanings that are defined in the Definitions of this Policy.

The words "we," "us" and "our" mean the Insurer listed on the Declarations of this Policy. The words "you" and "your" mean any person or entity described in the Definition of **Insured**.

In consideration of the payment of the premium, and in reliance upon the statements made in the application, materials, and information provided by you, which are incorporated into this Policy, form a part hereof, and are a representation upon which this Policy has been issued, we agree with you as follows:

I. **INSURING AGREEMENT**

A. **Protective Professional Indemnity**

We shall indemnify you for your **Protective Professional Loss** on a **Protective Professional Claim** as established by final judgment or settlement to which we agree in writing, in excess of collectible **Recoverable Professional Insurance**, provided that:

1. the **Protective Professional Claim** arises out of an act, error or omission in the rendering of or failure to render **Professional Services** by the **Responsible Professional Entity** for the **Specified Project**, on or after the **Retroactive Date** and before the end of the **Policy Period**; and
2. the **Protective Professional Claim** for such **Protective Professional Loss** is first made by you during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing by you to us during one of those periods; and
3. prior to the effective date of this Policy, the **Principal Personnel** had no knowledge of circumstances which could give rise to **Protective Professional Loss**; and
4. you made all reasonable efforts to recover your **Protective Professional Loss** from the **Responsible Professional Entity**.

B. **Protective Contractor's Pollution**

We shall indemnify you for your **Protective Pollution Loss** on a **Protective Pollution Claim** as established by final judgment or settlement to which we agree in writing, in excess of collectible **Recoverable Pollution Insurance**, provided that:

1. the **Protective Pollution Claim** arises out of a **Pollution Condition** that results from the performance of **Contractor Activities** by the **Responsible Construction Entity** for the **Specified Project** on or after the **Retroactive Date** and before the end of the **Policy Period**; and
2. the **Protective Pollution Claim** for such **Protective Pollution Loss** is first made by you

during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing by you to us during one of those periods; and

3. prior to the effective date of this Policy, the **Principal Personnel** had no knowledge of circumstances which could give rise to **Protective Pollution Loss**; and
4. you made all reasonable efforts to recover your **Protective Pollution Loss** from the **Responsible Pollution Entity**.

C. Third Party Claim Defense and Indemnity

We will defend you against any **Third Party Claim** (as provided in Section III.A. of this Policy) and pay on your behalf all **Third Party Loss** for that **Third Party Claim** in excess of any applicable Self-Insured Retention, provided that:

1. the **Third Party Claim** arises out of:
 - a. an actual or alleged act, error or omission in the rendering of or failure to render **Professional Services** by a **Responsible Professional Entity**, on or after the **Retroactive Date** and before the end of the **Policy Period**; or
 - b. an actual or alleged **Pollution Condition** that results from the performance of **Contractor Activities** by a **Responsible Construction Entity** on or after the **Retroactive Date** and before the end of the **Policy Period**; and
2. the **Third Party Claim** is first made against you during the **Policy Period** or Extended Reporting Period, if applicable, and reported in writing by you to us during one of those periods; and
3. prior to the effective date of this Policy, the **Principal Personnel** had no knowledge of circumstances which could give rise to a **Third Party Claim**.

II. SUPPLEMENTAL COVERAGES

The Limits of Liability for each of the following Supplemental Coverages are separate from the Limits of Liability for the coverages in Section I. Insuring Agreement of this Policy, and payments made under the Supplemental Coverages do not erode the Limits of Liability for those coverages. These Supplemental Coverages apply solely to the **Specified Project**.

A. Litigation Attendance Reimbursement

Upon written request by you, we shall reimburse you for your actual and documented loss of earnings and reasonable expenses incurred when you attend a hearing, deposition, or trial at our written request in the course of our defending a **Third Party Claim** under this Policy.

B. Subpoena Defense Expense

Upon written request by you during the **Policy Period**, or the Extended Reporting Period, if applicable, we will select and retain counsel for you and pay such counsel's reasonable and necessary fees and expenses to advise and represent you regarding the production of documents and during the preparation for and giving of testimony, in response to a subpoena in a proceeding other than a **Third Party Claim** against you or a **Protective Claim**, that is both served on you and reported to us in writing during the **Policy Period**, or the Extended Reporting Period, if applicable, and arising from **Professional Services** or **Pollution Conditions** resulting from the performance of **Contractor Activities**, rendered or performed by the **Responsible Entity** on or after the **Retroactive Date** and before the end of the **Policy Period**.

C. ADA and FHA Defense Expense

Upon written request by you during the **Policy Period** or the Extended Reporting Period, if applicable, we shall select and retain counsel and pay such counsel's reasonable and necessary fees and expenses incurred when you respond to regulatory or administrative actions first brought against you during the **Policy Period** by a government agency under the Americans with Disabilities Act of 1990 (ADA) or the Fair Housing Act (FHA), and alleging an act, error, or omission in the rendering of **Professional Services** on your behalf, on or after the **Retroactive Date** and before either the end of the **Policy Period** or, solely as respects Paragraph 6. of the Definition of **Professional Services**, before the end of the Extended Reporting Period, if applicable.

D. Corporate Reputation Rehabilitation

Upon written request by you during the **Policy Period** or the Extended Reporting Period, if applicable, we shall pay on behalf of you the reasonable and necessary fees and expenses subsequently incurred by a public relations firm approved by us to restore your corporate reputation that is damaged as a result of a **Third Party Claim** that we defend under this Policy. We have the right to require for approval of the public relations firm minimum professional certifications and qualifications (e.g., Examination for Accreditation in Public Relations, or Accredited Business Communicator from International Association of Business Communicators).

E. Protective Claim Bankruptcy Litigation Expense Reimbursement

Upon written request by you during the **Policy Period** or the Extended Reporting Period, if applicable, we shall reimburse you for the reasonable and necessary fees and expenses of retaining bankruptcy counsel in the making of a **Protective Professional Claim** that qualifies for coverage under this Policy against a **Responsible Professional Entity** who has filed for or been put into bankruptcy under the United States Bankruptcy Code, provided that the **Protective Professional Claim**, at least in part, is allowed as against or results in a judgment against the **Responsible Professional Entity** in your favor, which is final and no longer subject to objection or appeal.

F. Building Information Modeling - Extra Expense

Upon written request by you during the **Policy Period** or the Extended Reporting Period, if applicable, we shall reimburse you for any and all reasonable and necessary additional expense payable to a third party software consulting company not otherwise recoverable from any warrantee or guarantee, arising from loss of or damage to any information due to inherent malfunction of any software used in connection with any Building Information Modeling system purchased from a third party vendor and not modified on your behalf, including but not limited to erroneous calculations or modeling, provided that the malfunction is first discovered during the **Policy Period** and after the system has been put to its intended use in the course of actual construction.

III. DEFENSE, SETTLEMENT, AND COOPERATION

A. Defense (Coverage C)

1. We have the right and duty to defend you against any **Third Party Claim** proceeding in the United States or Canada seeking **Damages** or **Pollution Loss** payable under Coverage C of this Policy:
 - a. even if groundless or false;
 - b. with defense counsel of our mutual agreement; and

for any **Third Party Claim** proceeding anywhere else in the world seeking such **Damages** or **Pollution Loss**, we shall have the right, but not the duty, to defend you against such **Third Party Claim**. You shall have the duty to investigate and defend such **Third Party Claims**, and we will treat all reasonable and necessary fees and expenses paid to others in the course of doing so as **Third Party Claim Expense**.

2. If you and we cannot mutually agree upon defense counsel, we shall have the final right to select defense counsel, but we then will allow for a 25% Self-Insured Retention credit, up to a maximum of \$25,000 per **Third Party Claim**, towards the costs of having you retain your own counsel to monitor the **Third Party Claim**. Defense counsel selected by us will have the sole right and responsibility for defending you against the **Third Party Claim**.
3. In the event you are entitled by law to retain independent counsel of your choosing to defend you at our expense and you choose to do so, the attorney fee component of **Third Party Claim Expense** shall be limited to the average of the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar **Third Party Claims** in the community where the **Third Party Claim** arose or is being defended. In addition, we may require that the independent counsel possess certain minimum qualifications, which may include that the selected counsel have (1) at least five years of civil litigation experience defending similar **Third Party Claims**, and (2) errors and omissions coverage. You further agree to require your independent counsel to provide us with information concerning the **Third Party Claim** in a timely manner, to respond to our requests for information concerning the **Third Party Claim** and to comply with our reporting and billing guidelines.
4. We shall have no obligation to pay any **Third Party Claim Expense** or to defend any **Third Party Claim** after any applicable Limit of Liability has been exhausted by incurred amounts or by payment, or after deposit or tender of the remaining applicable Limit of Liability into court.

B. Settlement and Consent (Coverage C)

We have the right to investigate, conduct negotiations concerning and, with your written consent, settle any **Third Party Claim** as we deem expedient. If you refuse to consent to a settlement or compromise recommended by us and acceptable to the claimant, then our Limit of Liability under this Policy with respect to such **Third Party Claim** shall be reduced to the amount for which the **Third Party Claim** could have been settled, including all **Third Party Claim Expense** incurred up to the time we made our recommendation to you.

C. Settlement (Coverages A & B)

1. We have the right to investigate and participate in all negotiations concerning a **Protective Claim**.
2. You will not settle any **Protective Claim** for which coverage may be sought under this Policy without our written consent, which shall not be unreasonably withheld. We will not pay any **Loss** on a **Protective Claim** settled in part or whole without our consent.

D. Proactive Resolution of Substantiated Protective Claim (Coverages A & B)

If you provide us substantiation that satisfies us that the liability of the **Responsible Entities** and the value of your **Protective Loss** are not reasonably disputable and exceed all collectible **Recoverable Insurance**, then upon your written request, we will provide you the following proactive assistance in pursuing recovery for your **Protective Loss**:

1. we will consult with you in the prosecution of your **Protective Claim** and provide our input on strategy for the efficient resolution of the **Protective Claim**;

2. we will attend or otherwise participate in settlement negotiations, including mediations and settlement conferences, for the resolution of the **Protective Claim**;
3. we will assist you in negotiations with representatives for any **Recoverable Insurance**; and
4. if all of your reasonable efforts to recover your **Protective Loss** and the foregoing fail due to the refusal of the **Responsible Entity** or the representatives for **Recoverable Insurance** to settle your substantiated **Protective Claim**, we will pay the portion of your **Protective Loss** in excess of the available collectible **Recoverable Insurance**.

The costs we incur in performing the activities described in Paragraphs 1. through 3., above, shall be borne by us and shall not erode the Limits of Liability described in Section VI. of this Policy.

E. Your Duties (All Coverages)

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

1. You shall promptly forward to us all documents that you send or receive in connection with the **Claim** or circumstance, and you will direct all inquiries regarding a **Third Party Claim** or circumstance to us or to our designated attorney.
2. You shall cooperate fully with us and our designees in the investigation, defense and settlement of any **Claim** or circumstance, the conduct of suit or any other proceeding, and in securing and enforcing any right of contribution, indemnity, or other recovery that you potentially may have; such cooperation includes but is not limited to, when requested, attending any proceedings, assisting in securing evidence and obtaining the attendance and testimony of witnesses, whether in a legal proceeding or in an examination by us; and such cooperation will be without charge to us, except as provided otherwise in the Supplemental Coverage for Litigation Attendance Reimbursement. Such cooperation is agreed by us and you to be in furtherance of our common interest in the **Claim**, such that all such communications shall be protected by all applicable privileges and protections.
3. You shall not voluntarily make any payment, assume or admit any liability, consent to any judgment, settle any **Claim**, or incur any **Third Party Claim Expense** for which coverage may be sought under this Policy without our prior written consent. We shall not be liable for any payment, assumed or admitted liability, consent judgment, settlement, or **Third Party Claim Expense** to which we have not consented. You shall not release or compromise any right you may have with respect to a **Claim** without our prior written consent. We shall not be liable for any **Loss** attributable to a release without such consent.
4. You shall obtain our written consent before exercising any right, assuming any obligation, or making any agreement, with respect to any dispute resolution mechanism or process for a **Claim**, including but not limited to rejecting or demanding arbitration.

IV. DEFINITIONS

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

- A. Bodily Injury** means physical injury, sickness, disease, building-related illness, mental anguish, emotional distress, or shock sustained by any person, including death resulting therefrom. Furthermore, **Bodily Injury** shall extend to include the monitoring of medical conditions.
- B. Claim** means **Protective Claim**, **Third Party Claim**, and any other request of us by you for sums arising out of any of the insuring agreements described in the Supplemental Coverages Section of this Policy.

C. Cleanup Costs means costs for the investigation, monitoring, or disposal of soil, surface water, groundwater, indoor or outdoor atmosphere or other contamination; clean up, abatement, containment, capping, remediation, or correction of a **Pollution Condition** resulting from the performance of **Contractor Activities**. **Cleanup Costs** also includes **Restoration Costs**.

D. Contractor Activities means:

1. any general construction, construction management, or environmental activity; or
2. any loading, unloading, delivery or transportation of goods, materials, products, or waste to or from the **Specified Project** as long as such activity is performed by an entity that is properly licensed and in the business of loading, unloading, delivering or transporting goods, materials, products, or waste; or
3. any operation, use, ownership, or maintenance of a land motor vehicle, off-road motor vehicle, mobile equipment, trailer, semi-trailer, watercraft, aircraft, or rolling stock in connection with the **Specified Project**; or
4. the use of a **Non-Owned Location**.

E. Damages mean any amounts you are legally obligated to pay.

F. Insured means:

1. the individual, partnership, entity, firm or company named in Item 1. of the Declarations;
2. any present or former partner, director, officer, manager, member or employee of the **Insured** solely while acting on behalf of the **Insured**;
3. the estate, heirs, executors, shareholders, administrators or legal representatives of an **Insured** in the event of such **Insured's** death, incapacity, or bankruptcy, or the spouse or legal domestic partner of any **Insured**, but only to the extent such **Insured** would otherwise be provided coverage under this Policy while acting solely on behalf of the **Insured** described in Item 1. of this Definition.

G. Loss means **Protective Loss, Third Party Loss**, and any other amount to which you are entitled under any of the insuring agreements described in the Supplemental Coverages Section of this Policy.

H. Minimum Insurance Requirement means the minimum amount of **Recoverable Insurance** that we require your **Responsible Entity** to evidence and maintain as specified in Item 9. of the Declarations.

I. Natural Resource Damage means physical injury to or destruction of (including the resulting loss of value) land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et. seq.)) any State or Local government, any Foreign government, any Native American tribe or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.

J. Non-Owned Location means:

1. real property rented, leased or managed by a **Responsible Construction Entity**, but only if such real property is utilized on a temporary basis for the storage of goods, materials,

- products or wastes for the purpose of performing the activities, described in Paragraphs 1. through 3. in Definition D. **Contractor Activities**, for the **Specified Project**; or
2. Any location used for the treatment, storage, recycling or disposal of the **Responsible Pollution Entity's** waste material provided that:
 - a. the waste material is generated while performing activities, described in Paragraphs 1. through 3. in Definition D. **Contractor Activities**, for a **Specified Project**; and
 - b. the location is not managed, operated, owned or leased by the **Responsible Pollution Entity** or any of its subsidiaries or affiliates; and
 - c. the location is permitted or licensed by any Federal, State, Local or Provincial authorities to accept such material as of the date of the treatment, storage, recycling or disposal.
- K. Policy Period** means the period from 12:01 a.m. on the effective date of this Policy to 12:01 a.m. on the earliest of the expiration date of this Policy as set forth in Item 3. of the Declarations, any earlier termination date if this Policy is cancelled, or the date upon which the **Specified Project** is completed or put to its intended use. The **Policy Period** shall be automatically extended for a period of up to twelve (12) months if you submit to us documentation that the **Specified Project** is delayed for that amount of time. Any further **Policy Period** extension is subject to our sole discretion and shall be subject to additional pro-rata premium.
- L. Pollution Condition** means the actual or alleged discharge, dispersal, release, seepage, migration, growth or escape of smoke, soot, fumes, acids, alkalis, toxic chemicals, mold, mildew, spores, fungi, microbes, bacteria, legionella pneumophila, asbestos, lead, silica, silt, sediment, liquids, gases, waste materials, contaminants, organic or inorganic pollutants, electromagnetic fields, hazardous substances, hazardous materials, waste materials including medical, infectious, and pathological wastes, or other irritants, into or upon land, any structure on land, the indoor or outdoor atmosphere, any watercourse, or any body of water, including groundwater. Waste materials include materials to be recycled, reconditioned or reclaimed. Radioactive matter shall also be considered a pollutant, except as otherwise covered or protected by insurance or protections provided pursuant to 42 U.S.C. § 2014(w), as amended, or Section 170 of the Atomic Energy Act of 1954, as amended.
- M. Pollution Loss** means any amounts you are legally obligated to pay for **Bodily Injury, Property Damage** or **Cleanup Costs**.
- N. Principal Personnel** means the directors, officers, principals, partners, insurance and risk managers, and those persons responsible for environmental or legal affairs, for the individual, partnership, entity, firm or company named in Item 1. of the Declarations.
- O. Professional Services** means:
1. Construction Management, Program Management, Project Management, Owner's Representation, any delegated design responsibility or design assist services, including but not limited to constructability reviews or value engineering; or

2. architecture; engineering; contract administration as part of design; sprinkler design; fire protection design; life safety design; mechanical, electrical or security systems design; light use, acoustical or signage design; landscaping design; surveying; quantity surveying; project accounting, quality control reviews, assist or documentation, material testing; cost consulting, economic, feasibility, technical consulting or technical studies or opinions, or scientific reviews; software design for the purpose of operating or maintaining any building system; interior design or space planning services; or design services to support Leadership in Energy and Environmental Design (LEED) certification for a project; or
3. professional services with respect to any Building Information Modeling (BIM) systems, including but not limited to modification, alteration, transfer, protection, manipulation, use, or misuse thereof, or design assist system or program, and the foregoing within Integrated Project Delivery (IPD), Public-Private Partnership projects (P3s), or Lean Project Delivery System (LPDS); or
4. environmental consulting, environmental engineering, environmental site assessment, remedial investigations, feasibility studies, remedial design, environmental monitoring, testing and sampling, remedial oversight and management, ecological studies, environmental training, industrial hygiene, forensic inspections and expert witness services; or
5. ordinary technology services utilized in the performance of the **Professional Services** described above. Such technology services include the design, development, programming, analysis, training, use, hosting, management, support, and maintenance of any software, database, internet service, or website; or
6. any of the foregoing **Professional Services** in connection with:
 - a. design services by a professionally qualified architect or engineer in connection with the maintenance or operation of the completed **Specified Project**; or
 - b. the correction of a prior act, error or omission.

The **Professional Services** described in this Paragraph 6. shall, in all cases, be deemed to have been performed during the **Policy Period**.

P. Property Damage means:

1. physical injury to or destruction of tangible property, including resulting loss of use thereof; or
2. loss of use of tangible property that has not been physically injured or destroyed; or
3. diminution of property value; or
4. **Natural Resource Damage**.

Q. Protective Claim means **Protective Professional Claim** and **Protective Pollution Claim**.

R. Protective Loss means **Protective Professional Loss** and **Protective Pollution Loss**.

S. Protective Pollution Claim means a written demand, formal demand for arbitration or mediation or a suit instituted by you against a **Responsible Construction Entity** seeking a remedy and alleging liability or responsibility on the part of such **Responsible Construction Entity** for a **Pollution Condition** that results from the performance of **Contractor Activities**. **Protective Pollution Claim** does not include a demand or proceeding for non-monetary or injunctive relief.

T. Protective Pollution Loss means:

1. any amounts you are legally entitled to recover; or
2. in the event the **Protective Pollution Claim** is made against a **Responsible Construction Entity** in whose favor you have granted a Limitation of Liability permitted by this Policy, any amounts you would have been legally entitled to recover in the absence of such Limitation of Liability;

for **Bodily Injury, Property Damage, or Cleanup Costs** from each **Responsible Construction Entity**. In the event that multiple **Responsible Construction Entities** cause the same or related loss, the amount of **Protective Pollution Loss** shall not exceed the single loss caused by such multiple **Responsible Construction Entities**.

U. Protective Professional Claim means a written demand, formal demand for arbitration or mediation or a suit instituted by you against the **Responsible Professional Entity** seeking a remedy and alleging liability or responsibility on the part of such **Responsible Professional Entity** arising from an act, error or omission in the rendering of or failure to render **Professional Services**. **Protective Professional Claim** does not include a demand or proceeding for non-monetary or injunctive relief.

V. Protective Professional Loss means:

1. any amounts you are legally entitled to recover; or
2. in the event the **Protective Professional Claim** is made against a **Responsible Professional Entity** in whose favor you have granted a Limitation of Liability permitted by this Policy, any amounts you would have been legally entitled to recover in the absence of such Limitation of Liability;

from each **Responsible Professional Entity**. In the event that multiple **Responsible Professional Entities** cause the same or related loss, the amount of **Protective Professional Loss** shall not exceed the single loss caused by such multiple **Responsible Professional Entities**.

W. Recoverable Insurance means **Recoverable Professional Insurance** and **Recoverable Pollution Insurance**.

X. Recoverable Pollution Insurance means:

1. all available liability insurance providing applicable coverage to any **Responsible Construction Entity** or any person or entity for which the **Responsible Construction Entity** is legally responsible; or
2. in the event the **Protective Pollution Claim** is made against a **Responsible Construction Entity** in whose favor you have granted a Limitation of Liability, such Limitation of Liability.

Y. Recoverable Professional Insurance means:

1. all available liability insurance providing applicable coverage to any **Responsible Professional Entity** or any person or entity for which the **Responsible Professional Entity** is legally responsible; or
2. in the event the **Protective Professional Claim** is made against a **Responsible Professional Entity** in whose favor you have granted a Limitation of Liability, such Limitation of Liability.

Z. Responsible Construction Entity means those persons or entities, retained by you or on your behalf, to perform **Contractor Activities**.

AA. Responsible Entity means **Responsible Construction Entity** and **Responsible Professional Entity**.

BB. Responsible Professional Entity means those persons or entities, retained by you or on your behalf, to perform **Professional Services**.

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

DD. Retroactive Date means the date set forth in Item 6. of the Declarations.

EE. Specified Project means the project(s) referenced in Item 7. of the Declarations, or as endorsed herein, to which this insurance specifically applies.

FF. Third Party Claim means a written demand against you by an entity not party to any contract or agreement to provide services of any type for the **Specified Project**, and which does not have a financial interest in the **Specified Project**, seeking a remedy and alleging liability or responsibility on your part for:

1. **Damages** arising out of an actual or alleged act, error or omission in the rendering of or failure to render **Professional Services** by a **Responsible Professional Entity**; or
2. **Pollution Loss** arising out of an actual or alleged **Pollution Condition** resulting from the performance of **Contractor Activities** by a **Responsible Construction Entity**.

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

GG. Third Party Claim Expense means reasonable and necessary fees and costs incurred by us to investigate and defend any **Third Party Claim** for which coverage is provided under this Policy, including fees and costs charged by adjusters appointed by us to investigate a **Third Party Claim**. **Third Party Claim Expense** includes reasonable and necessary fees in defending such a **Third Party Claim**, for attorneys, investigators, arbitrators, mediators, consultants and expert testimony, as well as court and arbitration costs and expenses, but shall not include any remuneration, salaries, regular or overtime wages, benefits, fees or other payment of directors, officers, managers and employees of you or us, or fees and expenses of independent adjusters. **Third Party Claim Expense** also includes premiums for the covered portion of appeal bonds, attachment bonds or any similar bonds; however, we are not obligated to apply for, secure or furnish any such bond.

HH. Third Party Loss means the total of all **Damages** and **Pollution Loss** you are legally obligated to pay, and all related **Third Party Claim Expense**.

V. EXCLUSIONS

We will not be liable to make payments or indemnify you or pay any **Claim** or **Loss** directly or indirectly for or arising out of:

- A. any amounts incurred in connection with the making or prosecution of a **Protective Claim**. This Exclusion applies at all times, including when we are providing Proactive Resolution of Substantiated Protective Claim under Section III.D. of this Policy, excepting only the Supplemental Coverage for Protective Claim Bankruptcy Litigation Expense Reimbursement.

- B. the amount of any default judgment, arbitration award or adjudicator's decision in circumstances where the **Responsible Entity** has failed to plead or provide a defense, response or answer, or take any other procedural step, except that this Exclusion shall not apply to the amount of **Protective Loss** which you would have been entitled to recover from the **Responsible Entity**, respectively, had such defense, response or answer been pleaded or provided, or procedural step been taken.

In such instance where the **Responsible Entity** has failed to plead or provide a defense, response or answer, or take any other procedural step, the burden of proving the extent of **Protective Loss** which you would have been entitled to recover from the **Responsible Entity**, respectively, will be upon you.

- C. any design or manufacture of any goods or products which are sold or supplied by the **Responsible Entity** or by anyone under license to the **Responsible Entity**, including any parts, components, assemblies or equipment installed or incorporated into the **Specified Project**. This Exclusion does not apply to (1) software sold or supplied by the **Responsible Professional Entity** in connection with its provision of other **Professional Services**, or (2) goods or products installed or incorporated into the **Specified Project** which have been specially designed, but not manufactured, by the **Responsible Professional Entity**, or (3) goods or products installed or incorporated in the **Specified Project** that cause a **Pollution Loss** arising out of a **Pollution Condition** resulting from the performance of **Contractor Activities** by a **Responsible Construction Entity**.
- D. any **Protective Claim** against a **Responsible Entity** when you have any ownership interest in, operational control of or common ownership in the **Responsible Entity**, directly or indirectly, in whole or in part.
- E. any **Protective Professional Claim** against a **Responsible Professional Entity** based on any workmanship that is not in accordance with the drawings and specifications with respect to any construction, erection, fabrication, installation, assembly or manufacture unless such workmanship is caused by otherwise covered **Professional Services**.
- F. any actual or alleged harassment, humiliation, discrimination, or similar misconduct on any basis, whether as to a legally protected group or otherwise.
- G. any employment obligations, decisions, conduct, practices or policies as an employer, including but not limited to any obligation for which any party shall be liable under any worker's compensation, unemployment compensation, employer's liability, obligation to pay fair wages or benefits, or disability benefits law or under any similar law.
- H. liability under contract, agreement, warranty or guarantee, except such liability that would have existed in the absence of such contract or agreement. This Exclusion extends to any contractual obligation to make payments to others, including subcontractors, subconsultants, or their employees, or for materials. However, this Exclusion shall not apply to the assumption by a **Responsible Construction Entity**, in its written contract with you, of your liability for **Pollution Loss** arising out of **Pollution Conditions** resulting from the performance of **Contractor Activities**.
- I. any **Claim** by any **Insured** against any other **Insured**.
- J. any **Protective Pollution Loss** or **Pollution Loss** resulting from:
1. the discovery of a **Pollution Condition** on, at or under a **Non-Owned Location**; or
 2. a **Pollution Condition** on, at, under or migrating from a **Non-Owned Location**, which the owner of the **Non-Owned Location** becomes legally obligated to pay;

unless such **Protective Pollution Loss** or **Pollution Loss** results from the performance of the activities described in Paragraphs 1. through 3. of Definition D. **Contractor Activities**.

- K. any fraudulent, criminal, dishonest, intentionally or knowingly wrongful, or malicious act, error, or omission, or those of an inherently harmful nature, except that this Exclusion shall not apply to a **Third Party Claim** against you if you did not commit, participate in, or have knowledge of such conduct.
- L. any **Professional Services** or **Contractor Activities** that constitute violations of either the laws of the United States or any jurisdiction in which they were performed, including U.S. economic, trade sanction or export control laws administered by the U.S. Treasury, State and Commerce Departments (e.g., the economic and trade sanctions administered by the U.S. Treasury Office of Foreign Assets Control), or the U.S. Controlled Substances Act or similar laws in the subject jurisdiction. Additionally, we shall not be required to provide any coverage, pay any **Claim**, or provide any other benefit hereunder to the extent that provision of such coverage, payment of such **Claim** or provision of such other benefit would be in violation of any trade or economic sanctions laws or regulations applicable in our jurisdiction of domicile or with which we are legally obligated to comply.
- M. taxes; criminal fines; criminal penalties; or liability for liquidated damages you or the **Responsible Entity** would not have had in the absence of the agreement for liquidated damages.
- N. any return, withdrawal or reduction in professional fees or contractor charges; any equitable obligation, including restitution, disgorgement, or the costs of complying with injunctive relief; or the time and expense in addressing or resolving an actual or potential **Claim**.
- O. **Bodily Injury** or **Property Damage** arising out of construction means, methods or techniques; site safety; crane erection, use, maintenance or operation; scaffolding; or demolition. However, this Exclusion shall not apply as respects the applicability of Coverage B or of provision 1.b. of Coverage C of this Policy.
- P. any **Loss** caused by or resulting from war, invasion, hostilities, acts of foreign enemies, civil war, rebellion, insurrection, military or usurped power, martial law, or confiscation by order of any government or public authority.

VI. LIMIT OF LIABILITY AND RETENTION

A. Limits of Liability

1. Limit of Liability Each Claim: Our Limit of Liability for the sum of all **Loss** for each single **Claim** to which this Policy applies shall not exceed the amount stated in Item 4.A. of the Declarations specified for each applicable coverage provided by this Policy.
2. Limit of Liability in the Aggregate for Each Coverage for the Policy Period: Our Limit of Liability for all **Loss** under each respective coverage provided by this Policy shall not exceed the amount stated in Item 4.B. of the Declarations for such coverage for the **Policy Period**.
3. Limit of Liability in the Aggregate for All Coverages Described in Section I. of this Policy for the Policy Period: Our Limit of Liability for the sum of all **Loss** arising out of all **Claims** under the coverages described in the Section I. provided by this Policy shall not exceed the amount stated in Item 4.C. of the Declarations for the **Policy Period**

B. Self-Insured Retention

The Self-Insured Retention amount stated in Item 5. of the Declarations applies to each **Third**

Party Claim. The Self-Insured Retention amount shall be paid by you before we pay any **Third Party Loss**, though any payments made by any **Recoverable Insurance** also implicated by the **Third Party Claim** shall serve to reduce your Self-Insured Retention obligation. Our Limits of Liability set forth in Item 4. of the Declarations are in addition to and in excess of the Self-Insured Retention amount. No Self-Insured Retention amount shall apply with respect to the Supplemental Coverages provided by the Policy.

VII. MULTIPLE INSUREDS

The number of **Insureds** covered by this Policy shall not operate to increase the Limit of Liability specified in the Declarations, notwithstanding any other provision of this Policy.

VIII. MULTIPLE CLAIMS

Two or more **Claims** arising out of a single act, error, omission, incident, or **Pollution Condition**, or arising out of a series of acts, errors, omissions or incidents or **Pollution Conditions** related to each other, will be considered a single **Claim** subject to a single Each **Claim** Limit of Liability and one Self-Insured Retention (if applicable) and shall not operate to increase our Limits of Liability. All such **Claims**, whenever made, shall be considered first made when the earliest such **Claim** was first made.

IX. MAINTENANCE OF RECOVERABLE INSURANCE

You shall require that the **Responsible Entity** evidence and maintain **Recoverable Insurance** in compliance with the **Minimum Insurance Requirements** set forth in the Declarations for the **Specified Project**. Evidence of **Recoverable Insurance** shall be provided to us prior to the inception of this Policy. Failure of the **Responsible Entity** to maintain insurance, despite your reasonable efforts to ensure such insurance was maintained, shall not relieve us of our obligations under this Policy.

X. EXTENDED REPORTING PERIOD

Extended Reporting Period means the period of ten (10) years or the statute of repose, whichever period is lesser, commencing at the earlier of (a) the date of expiration of the **Policy Period** or (b) the date when the **Specified Project** is completed or put to its intended use. The Extended Reporting Period shall not serve to increase or reinstate the Limit of Liability set forth in the Declarations. The Aggregate Limit of Liability for the Extended Reporting Period shall be the amount of coverage remaining in this Policy's aggregate Limit of Liability set forth in the Declarations. At the commencement of any Extended Reporting Period, the entire premium shall be deemed fully earned.

XI. REPORTING

A. Reporting a Claim

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

1. Report the **Claim** to us in writing as soon as practicable, which must be during the **Policy Period** or the Extended Reporting Period, if applicable. Reporting should be sent to us at the address stated in the Claims Notice attached to this Policy; and
2. Promptly provide a copy of the **Claim**, if in writing, and specify in the report: the names and addresses of the **Insured** reporting the **Claim**, the persons or entities making the **Claim**, and the persons or entities against whom the **Claim** is made; when the **Claim** was made; the subject of the **Claim**; and any other relevant facts or allegations known to you.

B. Reporting a Circumstance

If during the **Policy Period** or the Extended Reporting Period, if applicable, you become aware of a circumstance that may reasonably be expected to give rise to a **Claim**, which may be covered under the Policy, and if you, during the **Policy Period**, provide to us a written report to us at the address stated in the Claim Notice attached to this Policy of the circumstance as soon as practicable containing particulars sufficient to identify you and all reasonably obtainable information with respect to:

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

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

XII. CONDITIONS

A. Territory

The coverage afforded by this Policy applies worldwide.

B. Construction Report Updates and Audit

We shall be entitled to a final update of the construction work for the **Specified Project**. If at the end of the **Policy Period**, the actual construction values exceed the original estimate by more than ten (10) percent, then we shall be entitled to additional premium in the amount of a percentage of the original premium equal to the percentage by which the original estimate was exceeded.

C. Subrogation

In the event of any payment under this Policy, we shall be subrogated to all of your rights of recovery thereof. You shall execute and deliver all requested instruments and papers in furtherance of such rights to us and do whatever else is reasonably necessary to secure such rights. You shall do nothing to waive or prejudice such rights. We shall have priority in any recovery, and any amounts recovered in excess of our total payment and the cost to us of recovery shall be paid to you. For Coverages A and B only, we will not subrogate against a **Responsible Entity** in excess of its collectible insurance, provided it has maintained the **Minimum Insurance Requirement**, regardless of whether or not such **Recoverable Insurance** was exhausted or reduced. In addition, we will not subrogate against any person or entity, provided such waiver of subrogation is required in a written agreement executed prior to the **Claim** between you and such person or entity, and such person or entity is not a **Responsible Entity**.

D. Changes

None of the provisions of this Policy will be waived, changed, or modified except by written endorsement issued by us to form a part of this Policy. Notice to any of our agents or

knowledge possessed by any such agent or any other person will not act as a waiver or change in any part of this Policy and will not prevent us from asserting any rights under the provisions of this Policy.

E. Action Against Us

Only you can make claims against us under Coverages A and B, and the Supplemental Coverages, of this Policy.

No action shall be taken against us with respect to Coverage A and B unless, as a condition precedent thereto, you shall have fully complied with all the terms of this Policy, and until the amount the **Responsible Entity** is legally obligated to pay shall have been finally determined either by judgment after actual contested trial or arbitration, or other method of dispute resolution for which we have given prior written approval.

No action shall be taken against us with respect to Coverage C unless, as a condition precedent thereto, you shall have fully complied with all the terms of this Policy, and until the amount you are legally obligated to pay shall have been finally determined either by judgment after actual contested trial or arbitration, or other method of dispute resolution for which we have given prior written approval.

No person or organization shall have any right under this Policy to join us in any action against you. No **Responsible Entity** shall be an **Insured** under this Policy.

F. Assignment of Interest

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

G. Cancellation and Termination

1. The premium paid for this Policy shall be fully earned in the first twelve months of the **Policy Period**.
2. This Policy may only be cancelled by us for one or more of the following reasons:
 - a. non-payment of premium; or
 - b. a material misrepresentation or concealment of facts; or
 - c. a material breach of any provision of this Policy.

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

The effective date and hour of cancellation will be stated in such notice. Cancellation by us also cancels the Extended Reporting Period; both the **Policy Period** and the Extended Reporting Period will end on that date. If we cancel for the reason specified in Subparagraph (a) there shall be no return premium. If we cancel for reasons stated in Subparagraphs (b) or (c) in the first twelve months of the **Policy Period**, the earned premium shall be computed pro-rata of the twelve month earned policy term premium. Payment of any return premium

shall not be a condition of cancellation.

3. This Policy may be cancelled by the first **Insured** listed in the Declarations for any reason. In the event that the first **Insured** listed in the Declarations cancels the Policy, the earned premium shall be computed under the customary short-rate table and procedure as a percentage of the total Policy premium stated in the Declarations, and we will return the earned premium to you. Cancellation under this Paragraph shall cancel the **Policy Period** and the Extended Reporting Period on the date of cancellation.
4. Notwithstanding the foregoing, if you report a **Claim** to us prior to the date of cancellation, the Policy premium shall be considered 100% earned, and no premium shall be returned upon cancellation.

I. No Limitation of Liability

You shall not limit the liability of any **Responsible Entity**, except to collectible insurance, without our prior written approval.

J. Your Bankruptcy

Your bankruptcy or insolvency shall not relieve us of our obligations under this Policy.

K. Authorization Clause

By acceptance of this Policy, the first **Insured** listed in the Declarations shall act on behalf of the **Insureds** for all purposes as to the Policy, including but not limited to the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy and providing and receiving notice of cancellation, termination or nonrenewal, the giving of notices and reporting of claims and circumstances, for completing applications and the making of any statements or representations, for making any change to the Policy, and for the exercising or declining to exercise any right under this Policy.

L. Severability of Policy Provisions

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

M. Severability of Insureds (Coverage C)

Except with respect to the Limits of Liability and Self-Insured Retentions, the Authorization Clause of this Conditions Section, and as otherwise provided in this Policy, Coverage C applies as if each **Insured** were the only **Insured** and separately to each **Insured** against whom a **Third Party Claim** is made.