

# CONTRACTORS POLLUTION AND PROFESSIONAL LIABILITY POLICY

Certain sections within this Policy are Claims-Made and Reported. In the event of a **Claim**, Claims-Made and Reported Coverage requires that a **Claim** be first made and reported to us, in writing, during the **Policy Period**, within ninety (90) days of the end of the **Policy Period**, or, where applicable, as expressly provided for in the Supplemental Extended Reporting Period.

Other sections within this Policy provide Coverage for a **Pollution Condition** first discovered and reported to us by the **Insured** during the **Policy Period**.

Please read this Policy carefully, including the Declarations and all Endorsements.

This Policy contains provisions that limit the amount of **Legal Expense** we are responsible to pay.

Throughout this Policy, the words “we”, “us”, and “our” mean the Company stated in the Declarations. The words “you” and “your” mean the **Insured**.

Words that are **bolded**, except for caption headings, have the meaning set forth in SECTION III - DEFINITIONS, whether expressed in singular or plural throughout this Policy.

In consideration of the payment of premium, in reliance upon the Application and subject to the Declarations and the terms and conditions of this Policy, we agree with you as follows:

## SECTION I - INSURING AGREEMENTS

### A. Contractors Pollution Coverages

#### 1. Contracting Operations Coverage

We will pay on your behalf for **Pollution Loss** in excess of the applicable Retention that you become legally obligated to pay as a result of a **Claim** arising from a **Pollution Condition** on, at, under, or migrating beyond the legal boundaries of a **Job Site**, provided that:

- a. the **Bodily Injury, Property Damage or Environmental Damage** first commences on or after the Contracting Operations Coverage Retroactive Date shown in ITEM 5.A.1. of the Declarations and prior to the end of the **Policy Period**; and
- b. the **Pollution Condition** results from **Contracting Operations** or **Completed Operations**.

#### 2. Emergency Expense Coverage

We will indemnify you for **Emergency Expense** incurred by you in excess of the applicable Retention, provided that:

- a. the **Pollution Condition** is discovered by you within seventy-two (72) hours of the **Pollution Condition** first commencing, and notice of the **Emergency Expense** is reported to us, in writing, as soon as practicable during the **Policy Period**, but in no event later than fourteen (14) days from the discovery of the **Pollution Condition**, or the end of the **Policy Period**, whichever occurs first; and
- b. the **Pollution Condition** results from **Contracting Operations** at a **Job Site**, or **Transportation**, performed during the **Policy Period**.

#### 3. Non-Owned Disposal Site Coverage

We will pay on your behalf for **Pollution Loss** in excess of the applicable Retention that you become

legally obligated to pay as a result of a **Claim** arising from a **Pollution Condition** on, at, under, or migrating beyond the legal boundaries from a **Non-Owned Disposal Site**, provided that:

- a. the **Pollution Condition** first commences on or after the Non-Owned Disposal Site Coverage Retroactive Date shown in ITEM 5.A.3. of the Declarations and prior to the end of the **Policy Period**;
- b. the **Pollution Condition** arises from waste or material generated by **Contracting Operations** performed at a **Job Site** or originates from **Your Location**; and
- c. the **Claim** is first made during the **Policy Period** and reported to us, in writing, during the **Policy Period**, within ninety (90) days of the end of the **Policy Period**, or, where applicable, as expressly provided for in SECTION VI – EXTENDED REPORTING PERIOD, B. SUPPLEMENTAL EXTENDED REPORTING PERIOD.

#### 4. **Your Location Coverage**

We will pay on your behalf for **Pollution Loss** in excess of the applicable Retention that you become obligated to pay as a result of a **Claim** arising from a **Pollution Condition** on, at, under, or migrating beyond the legal boundaries of **Your Location**, provided that:

- a. the **Pollution Condition** is the result of an unforeseen, unplanned, or unexpected event or circumstance;
- b. the **Pollution Condition** first commences during the **Policy Period** and ceases fully within ten (10) consecutive days from its first commencement; and
- c. the **Claim** is first made during the **Policy Period** and reported to us, in writing, during the **Policy Period**, within ninety (90) days of the end of the **Policy Period**, or, where applicable, as expressly provided for in the SECTION VI – EXTENDED REPORTING PERIOD, B. SUPPLEMENTAL EXTENDED REPORTING PERIOD.

#### 5. **Transportation Coverage**

- a. We will pay on your behalf for **Pollution Loss** in excess of the applicable Retention that you become obligated to pay as a result of a **Claim** arising from a **Pollution Condition** resulting from **Transportation**, provided that: the **Transportation** first commences on or after the Transportation Coverage Retroactive Date shown in ITEM 5.A.5. of the Declarations and prior to the end of the **Policy Period**.

#### 6. **Pollution Protective Loss Coverage**

We will indemnify you for **Pollution Protective Loss** in excess of all applicable **Subcontractor's Insurance** and the applicable Retention resulting from a **Pollution Condition** on, at, under, or migrating beyond the legal boundaries of a **Job Site** or a **Pollution Condition** resulting from **Transportation**, provided that:

- a. the **Bodily Injury, Property Damage** or **Environmental Damage** first commences on or after the Pollution Protective Loss Coverage Retroactive Date shown in ITEM 5.A.6. of the Declarations and prior to the end of the **Policy Period**;
- b. the **Pollution Condition** results from **Subcontracted Services** or **Completed Operations** of the **Subcontractor**;
- c. the **Pollution Protective Claim** is first made by you against the **Subcontractor** during the **Policy Period**; and

- d. you have exhausted all methods necessary to pursue the **Pollution Protective Claim** and obtain recovery of all **Pollution Protective Loss** from the **Subcontractor** and, where legally permissible, the **Subcontractor's Insurance**.

Our obligation to indemnify you for **Pollution Protective Loss** shall not attach until all applicable **Subcontractor's Insurance** has been fully diminished solely as a result of payments explicitly covered by such **Subcontractor's Insurance** and the applicable Retention has been satisfied by you.

Further, notwithstanding any other provision of this Policy, we have no obligation to defend any **Subcontractor** in response to any **Claim**, even if the **Subcontractor's Insurance** has been fully diminished or is otherwise unavailable for any reason.

## **B. Professional Coverages**

### **1. Professional Liability Coverage**

We will pay on your behalf for **Professional Loss** in excess of the applicable Retention that you become legally obligated to pay because of a **Claim** resulting from an actual or alleged negligent act, error or omission in **Professional Services**, provided that:

- a. the **Professional Services** are rendered on or after the Professional Liability Coverage Retroactive Date shown in ITEM 5.B.1. of the Declarations and prior to the end of the **Policy Period**; and
- b. the **Claim** is first made during the **Policy Period** and reported to us, in writing, during the **Policy Period**, within ninety (90) days of the end of the **Policy Period**, or, where applicable, as expressly provided for in SECTION VI - EXTENDED REPORTING PERIOD.

### **2. Rectification Expense Coverage**

We will pay **Rectification Expense** on your behalf to avoid or reduce a **Claim** resulting from a negligent act, error or omission in the performance of **Professional Services**, provided that:

- a. all **Professional Services** giving rise to actual or potential damages are rendered on or after the Rectification Expense Coverage Retroactive Date shown in ITEM 5.B.2. of the Declarations and prior to the end of the **Policy Period**;
- b. you provide us with immediate notice of the negligent act, error or omission and of the proposed corrective actions;
- c. you cooperate with us and provide any supporting documentation, in writing, prior to incurring any **Rectification Expense**;
- d. we determine that your proposed **Rectification Expense** is reasonable and necessary to reduce actual liability for a **Claim** covered under this Policy that can be avoided or reduced by incurring the **Rectification Expense**;
- e. all **Rectification Expense** must be approved by us, in writing, prior to being incurred by you; and
- f. Such **Rectification Expense** did not arise from the same or similar negligent act, error or omission for which prior **Rectification Expense** have been requested or paid.

### 3. Professional Protective Loss Coverage

We will indemnify the **Named Insured** for **Professional Protective Loss** in excess of all applicable **Professional Subconsultant's Insurance** and the applicable Retention resulting from an actual or alleged negligent act, error or omission in **Professional Subconsultant Services** performed by a **Professional Subconsultant**, provided that:

- a. the **Professional Subconsultant Services** are rendered on or after the Professional Protective Loss Coverage Retroactive Date shown in ITEM 5.B.3. of the Declarations and prior to the end of the **Policy Period**;
- b. the **Professional Protective Claim** is first made by you against the **Professional Subconsultant** and reported by you to us, in writing, during the **Policy Period**, within ninety (90) days of the end of the **Policy Period**, or, where applicable, as expressly provided for in SECTION VI - EXTENDED REPORTING PERIOD; and
- c. you have exhausted all methods necessary to pursue the **Professional Protective Claim** and obtain recovery of all **Professional Protective Loss** from the **Professional Subconsultant** and, where legally permissible, the **Professional Subconsultant's Insurance**.

### C. Supplemental Coverages

#### 1. Adverse Media Coverage

We will reimburse you for **Adverse Media Expenses** incurred by you in excess of the applicable Retention provided that:

- a. all **Adverse Media Expenses** have been approved by us, in writing, prior to being incurred by you; and
- b. reimbursement is limited to the costs directly associated with restoring your reputation and public confidence in you resulting from an actual negligent act, error or omission in **Professional Services**, or a **Pollution Condition** resulting from **Contracting Services** or **Transportation**, that has resulted in an **Adverse Media Event**.

## SECTION II - TERRITORY

This Policy applies only to **Professional Services** and **Contracting Operations** performed in the United States. All premiums, limits, Retentions, **Pollution Loss**, **Pollution Protective Loss**, **Professional Loss**, **Rectification Expense**, **Professional Protective Loss** and other amounts under this Policy are payable in the currency of the United States of America.

This Policy shall not apply to any situation that would be in violation of the laws of the United States, as applicable, including but not limited to, United States of America economic or trade sanction laws or export control laws administered by the United States Treasury Office of Foreign Assets Control.

## SECTION III - DEFINITIONS

### A. **Adverse Media Event** means:

A public announcement by a third party that a **Pollution Condition**, for which you are legally responsible, has resulted in:

1. **Bodily Injury** to third parties;

2. **Property Damage**; or
3. **Environmental Damage**.

**B. Adverse Media Expense** means:

Reasonable and necessary costs and fees incurred by you for services provided by a professional firm that provides image restoration or crisis management services, exclusive of any salaries, wages, overhead or benefits expenses incurred by you, or expenses that are covered by any other valid and collectable insurance, including any applicable Retention or deductibles.

**C. Bodily Injury** means:

1. physical injury, sickness or disease, sustained by any individual, including death resulting therefrom, and any accompanying medical or environmental monitoring; and
2. mental anguish, emotional distress or shock, sustained by any individual.

including resultant death there from.

**D. Claim** means a written demand, notice, or assertion of a legal right, alleging liability or responsibility on the part of you or any **Insured**, and includes, but is not limited to, a legal action, order, lawsuit, petition, order, or government or regulatory action filed against you or any **Insured**.

**E. Completed Operations** means **Contracting Operations** that have been completed.

**Completed Operations** does not include **Contracting Operations** that have been abandoned.

**Contracting Operations** will be deemed completed at the earliest of the following times:

1. when all **Contracting Operations** to be performed under a contract have been completed;
2. when all **Contracting Operations** to be performed at the **Job Site** have been completed; or
3. when that part of the **Contracting Operations** performed at the **Job Site** has been put to its intended use by any individual or entity other than another contractor or **Subcontractor** working on the same project.

**Contracting Operations** that may need service, maintenance, correction, repair, or replacement, but are otherwise complete, shall be deemed completed.

**F. Contracting Operations** means any construction or environmental contracting services performed by or on behalf of the **Named Insured**.

**Contracting Operations** also includes **Completed Operations**.

**G. Emergency Expense** means **Remediation Expense** covered by this insurance and incurred by you on an emergency basis that we determine was reasonable and necessary to contain, control or mitigate the immediate effects of a **Pollution Condition** that is an imminent and substantial endangerment to public health, safety or welfare, or the environment.

**H. Employee** means temporary and leased staff working on behalf of and under your direct supervision and control, but only while acting within the scope of performing **Contracting Operations**, **Professional Services**, **Completed Operations**, or **Transportation**, as applicable.

**I. Environmental Damage** means direct physical damage to soil, plant or animal life, surface water or

groundwater, into or upon land or structures thereupon, indoor air, or the atmosphere, caused by a **Pollution Condition** and resulting in **Remediation Expense**.

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

- J. First Named Insured** means the individual or entity stated in ITEM 2. of the Declarations.
- K. Green Building Materials** means building materials or products recognized by The United States Green Building Council Leadership in Energy and Environmental Design (LEED®), Energy Star, or the International Green Construction Code as:
1. being environmentally sustainable; or
  2. providing improved energy efficiency.
- L. Insured** means each of the following:
1. the **First Named Insured**;
  2. the **Named Insured**;
  3. any current or former director, officer, principal, partner, stockholder, member, trustee, or **Employee** of the **Named Insured**, but solely while acting within the course and scope of their employment as such;
  4. the **Named Insured's** heirs, executors, administrators, assigns, or legal representatives in the event of death, incapacity, or bankruptcy, but only with respect to the liability of the **Named Insured** otherwise insured herein;
  5. any legal entity, including a joint venture or limited liability company, in which the **Named Insured** participates as a member, but solely with regard to the **Named Insured's** legal liability arising out of its performing or failure to perform **Professional Services** or **Contracting Operations** under the respective legal entity. **Insured** does not include the legal entity itself or any other entity that is part of the legal entity;
  6. any entity added via Endorsement to this Policy expressly naming such entity as an **Insured**;
  7. any entity newly formed or acquired by the **Named Insured** during the **Policy Period** provided that the **Named Insured** has greater than fifty percent (50%) ownership, control, or beneficial interest, and such entity performs operations and services consistent with your **Contracting Operations** and **Professional Services**, provided that:
    - a. this Coverage shall be provided only for **Professional Loss** and **Professional Protective Loss** arising out of **Professional Services** or **Professional Subconsultant Services** or **Pollution Loss** and **Pollution Protective Loss** arising out of **Contracting Operations** or **Subcontracted Services**, for services performed on or after the date of formation or acquisition, subject to the applicable **Retroactive Date**;
    - b. this Coverage shall expire at the end of the **Policy Period** or within ninety (90) days of such formation or acquisition of the entity, whichever is earlier, unless you submit written notice to us providing all relevant particulars concerning such entity, including but not limited to any formation, acquisition or operational documents, or other documents we may request from you; and
    - c. we agree to accept Coverage by issuing an Endorsement to this Policy expressly naming such entity as an **Insured**.

8. Solely with regard to SECTION I - INSURING AGREEMENTS, A.1. Contracting Operations Coverage, A.3. Non-Owned Disposal Site Coverage and A.5. Transportation Coverage, any individual or entity, as required by a written contract or agreement, but only for:

- a. a **Pollution Condition** caused by **Contracting Operations**; and
- b. the liability of the individual or entity that results from the performance of the **Named Insured's Contracting Operations**,

provided that such written contract or agreement was fully executed prior to the date the **Contracting Operations** first commenced.

Any insurance afforded under this Subsection 8. shall be limited to the scope of Coverage required by such contract or agreement and shall be limited to the amount of the Limits of Liability required by such written contract or agreement or the Limits of Liability under this Policy, whichever is less. In no event shall we be liable for any amounts in excess of the Limits of Liability shown in ITEMS 5. and 6. of the Declarations.

**M. Insured Contract** means that part of any written contract or agreement under which the **Named Insured** assumes the tort liability of another party to pay compensatory damages for **Bodily Injury, Property Damage** or **Environmental Damage**, to a third person, entity or organization, provided such written contract or agreement was executed by the **Named Insured** prior to the **Bodily Injury, Property Damage** or **Environmental Damage**. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

**N. Job Site** means:

1. a site or location at which **Contracting Operations** are performed; or
2. a site owned, rented, leased, used, or occupied by you and utilized in the direct support of **Contracting Operations**.

**Job Site** does not include any of the following:

- a. **Your Location**.
- b. a **Non-Owned Disposal Site**.
- c. any location owned, rented, leased, used, or occupied by the **Named Insured** or any subsidiary, affiliate, or joint venture of yours other than a site owned, rented, leased, used, or occupied by you and utilized in the direct support of **Contracting Operations**.

**O. Legal Expense** means reasonable and necessary legal costs, fees, charges, and expenses incurred by you or on your behalf in the investigation, adjustment or defense of a **Claim** arising from **Professional Services** or **Contracting Operations** and includes any necessary expert fees paid to experts retained by defense counsel.

**Legal Expense** does not include any of the following:

1. salaries, wages, overhead, or benefit expenses incurred by you, including, but not limited to the costs of your in-house counsel, salary charges of your **Employee** or officials, and fees and expenses of counsel retained by you, assisting us in the investigation, adjustment, or resolution of any **Claim** to which this insurance applies, or in connection with **Remediation Expense**.
2. legal cost, fees, charges, and expenses incurred by you or on your behalf in connection with **Rectification Expense, Emergency Expense** or to any legal costs, fees, charges, or expenses

incurred by you or on your behalf in the investigation, prosecution, pursuit, adjustment, making, or appeal of a **Professional Protective Claim** or a **Pollution Protective Claim**.

- P. Low-Level Radioactive Waste and Material** means waste or material defined in 10 CFR § 61.2, and/or material regulated by the U.S. Nuclear Regulatory Commission or a U.S. State participating in the Agreement State Program under a type A, B or C Specific License of Broad Scope as defined in 10 CFR § 33.11.
- Q. Mediation** means a non-binding dispute resolution process run by an impartial third-party approved by us.
- R. Mold Matter** means mold, mildew or any type or form of fungus, including mycotoxins, spores, microbial volatile organic compounds, or any by-products produced or released by fungi.
- S. Named Insured** means:
1. the **First Named Insured**; and
  2. any individual or entity expressly designated as a **Named Insured** by Endorsement to this Policy.
- T. Natural Resource Damage** means physical injury to, or destruction of, including the resultant loss of value or use, as well as the assessment of such injury or destruction, of the land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, or 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 or Local Government, any foreign government, any Indian Tribe or, if such resources are subject to a trust restriction on alienation, any member of a Native American Tribe. The terms Natural Resource Damage and Natural Resource Damage Assessments are as further defined by statute [CERCLA §§101(6); 107(a)(4)(C); 111(b); OPA §§1001(5); 1002(b)(2)] and regulation [43 CFR Part 11; 15 CFR Part 990].
- U. Non-Owned Disposal Site** means a site or location that is not managed, operated, owned, or leased by an **Insured**, or its respective parents, subsidiaries, or affiliates, provided that:
1. the **Non-Owned Disposal Site** is used by you for the recycling, treatment, storage, or disposal of waste or material generated by **Contracting Operations**, but only if at the time the waste or material is accepted by the **Non-Owned Disposal Site** the **Non-Owned Disposal Site** possesses valid permits and/or licenses and is operating in compliance with applicable Federal, State, or Local authorities to accept, store or process such waste or material;
  2. the **Non-Owned Disposal Site** is not subject to any proceeding or litigation under CERCLA, RCRA or any equivalent U.S. state or local law; and
  3. the **Non-Owned Disposal Site** is not listed on a proposed or final Federal National Priorities List or any State equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of the waste or material at the **Non-Owned Disposal Site**.
- V. Policy Period** means the period listed in ITEM 4. of the Declarations beginning on the Effective Date and ending on the earlier of the Expiration Date set forth in ITEM 4. of the Declarations, or
1. on any date of cancellation; or
  2. with respect to **Your Location** or **Non-Owned Disposal Sites**, on the date of deletion from this Policy.
- W. Pollutant** means any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to smoke, vapor, odors, soot fumes, acids, alkalis, electromagnetic fields (EMFs), hazardous substances, bacteria, petroleum hydrocarbons, **Mold Matter**, toxic chemicals and waste materials, including municipal, industrial, medical, infectious and pathological, silt or sediment that originated at and migrated from a **Job Site** and **Low-Level Radioactive Waste and Material**.



**X. Pollution Condition** means:

1. the discharge, dispersal, release, escape, migration, or seepage of **Pollutants** into or upon land, or any structures upon land, the atmosphere, surface water, or groundwater. The continued discharge, dispersal, release, escape, migration or seepage of such **Pollutants** comprises a single **Pollution Condition**;
2. the presence of **Mold Matter** in or on buildings or structures; and
3. the intentional placement or abandonment of **Pollutants** at **Your Location** or a **Job Site** by an entity or individual that is not an **Insured**.

**Y. Pollution Loss** means:

1. a monetary award, judgment, or settlement, previously agreed to in writing by us, of compensatory damages;
2. punitive, exemplary, or multiplied damages, civil fines, penalties, and assessments, for **Bodily Injury, Property Damage** or **Remediation Expense** together with associated **Legal Expense**, but only where allowable by law;
3. **Restoration Expense** previously agreed to in writing by us; and
4. the cost of reasonable and necessary services performed by you or on your behalf, pursuant to any resolution previously agreed to in writing by us, to mitigate a **Pollution Condition** resulting from **Contracting Operations**.

**Pollution Loss** does not include:

- a. non-pecuniary, injunctive or equitable relief;
- b. the return or withholding of fees or charges for services rendered by you or on your behalf;
- c. your **Employee** salaries;
- d. your profit, overhead or mark-up; or
- e. costs to correct, re-perform or complete any **Contracting Operations**.

**Z. Pollution Protective Claim** means a written demand by you against a **Subcontractor** wherein you seek a remedy from or allege liability or responsibility on the part of such **Subcontractor** for **Pollution Protective Loss** based upon or arising out of the **Subcontractor's** rendering or failure to render **Subcontracted Services**.

**AA. Pollution Protective Loss** means the amount you are legally entitled to recover from a **Subcontractor**, as determined by a final monetary judgement by a court of competent jurisdiction, a final non-appealable adjudication, arbitration, or other method of dispute resolution approved by us, or by a settlement entered into with our prior written consent.

**Pollution Protective Loss** does not include:

- a. non-pecuniary, injunctive, or equitable relief;
- b. the return or withholding of fees or charges for services rendered by you or on your behalf;
- c. your **Employee** salaries; or

d. your profit, overhead or mark-up.

**BB. Professional Loss** means:

1. a monetary award, judgment, or settlement, previously agreed to in writing by us, of compensatory damages;
2. only where allowable by law:
  - a. civil fines and penalties assessed against a third-party other than you that you are legally liable for;
  - b. civil fines and penalties assessed against you;
  - c. punitive, exemplary or multiplied damages that you are legally liable for.
4. **Legal Expense** previously agreed to in writing, by us, associated with Subsections 1. and 2. of this Definition; and
5. the cost of reasonable and necessary services performed by you or on your behalf, pursuant to any resolution previously agreed to in writing, by us, prior to the services being performed, to correct a negligent act, error or omission in the performance of **Professional Services**.

**Professional Loss** does not include:

- a. injunctive or equitable relief;
- b. the return of fees or charges for services rendered;
- c. **Employee** salaries;
- d. your profit, overhead or mark-up;
- e. costs to correct, re-perform or complete any work; or
- f. 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.

**CC. Professional Services** means those services listed in ITEM 12. of the Declarations that are rendered by or on behalf of the **Named Insured**.

**DD. Professional Subconsultant** means any individual or entity qualified, certified, or licensed to perform professional services that are covered by **Professional Subconsultant's Insurance**, including any **Subcontractors** and **Subconsultants**.

**EE. Professional Subconsultant's Insurance** means any liability insurance issued to a **Professional Subconsultant**.

**FF. Professional Subconsultant Services** means professional services that any **Professional Subconsultant** agreed to perform pursuant to a written agreement with you or a **Professional Subconsultant** retained by you or on your behalf.

**GG. Property Damage** means:

1. physical injury to or destruction of tangible property of a third-party, including the resulting loss of use and diminished value thereof;
2. loss of use and diminished value of tangible property of a third-party that has not been physically injured or destroyed; or
3. **Natural Resource Damage.**

**Property Damage** does not include **Environmental Damage** or **Remediation Expense**.

**HH. Professional Protective Claim** means a written demand made or lawsuit initiated by you against a **Professional Subconsultant** alleging liability or responsibility on the part of the **Professional Subconsultant** for **Professional Protective Loss** based upon or arising out of the **Professional Subconsultant's** rendering or failure to render **Professional Subconsultant Services**.

**II. Professional Protective Loss** means the amount you are legally entitled to recover from the **Professional Subconsultant**, as determined by a final monetary judgment by a court of competent jurisdiction, a final non-appealable adjudication, arbitration, or other method of dispute resolution approved by us, or by a settlement entered into with our prior written consent.

**JJ. Rectification Expense** means reasonable and necessary costs and expenses to correct actual damages or prevent potential damages, or prevent harm, injury or damage to individuals or tangible property, resulting from a negligent act, error, or omission in your **Professional Services**.

**Rectification Expense** does not include any of your overhead, mark-up, or profit; or any betterment to a project to which **Rectification Expense** applies.

**KK. Remediation Expense** means reasonable and necessary expenses resulting from **Environmental Damage** caused by a **Pollution Condition** and incurred to investigate, assess, remove, dispose of, treat, abate, contain or neutralize a **Pollution Condition**, including any associated monitoring and testing costs.

**LL. Responsible Individual** means:

1. any of your officers, directors, partners, managers, supervisors, or foreman; and
2. any of your managers or supervisors who are responsible, in whole or in part, for risk control, risk management, or health and safety or environmental affairs, control or compliance, and any manager or supervisor of **Your Location**.

**MM. Restoration Expense** means reasonable and necessary costs incurred by you to repair, replace, or restore real or personal property to substantially the same general condition it was in prior to being physically damaged during work performed while incurring **Remediation Expense** provided that, except with respect to **Your Location**, the real or personal property is not owned by you.

However, the costs shall not exceed the Actual Cash Value of such real or personal property immediately prior to incurring the **Remediation Expense** or include costs associated with improvements or betterments, except to the extent that such improvements or betterments to the real or personal property result from the use of **Green Building Materials**.

**NN. Retroactive Date** means the date listed in ITEM 5. of the Declarations for each applicable Coverage, if any, or any **Retroactive Date** listed on an Endorsement to this Policy.

**OO. Subcontract** means a written agreement, purchase order or any such legally binding instrument issued by you for the performance of **Contracting Operations** or **Transportation**.

**PP. Subcontractor** means any individual or entity that enters into a **Subcontract** that assumes some or all of the obligations of your **Contracting Operations**.

**QQ. Subcontracted Services** means **Contracting Operations** or **Transportation** that are rendered by or on behalf of the **Subcontractor**.

**RR. Subcontractor's Insurance** means any insurance under which the **Subcontractor** qualifies as an **Insured**.

**SS. Transportation** means the movement of goods, waste, product or material by land motor vehicle, trailer, semi-trailer, mobile equipment, or watercraft while in support of **Contracting Operations** including the loading and unloading of such goods, waste, products, or material from the point of origin until it has arrived at its final destination, provided that:

1. the **Pollution Condition** occurs at a location other than the **Job Site** or **Your Location**;
2. the individual and entity transporting the goods, waste, products, or material are properly permitted and licensed at the time the **Transportation** occurs.

**TT. Underground Storage Tank** means any tank, including any underground piping and ancillary equipment connected to the tank, that has at least ten percent (10%) of its combined volume underground.

**UU. Your Location** means any property or location listed in ITEM 11. of the Declarations or listed in the Change Endorsement - Your Location Schedule endorsed onto this Policy.

**Your Location** does not include a **Job Site** or **Non-Owned Disposal Site**.

#### SECTION IV - EXCLUSIONS

A. The following exclusions are applicable to all Coverages.

This Policy does not apply to any **Claim**, negligent act, error or omission in **Professional Services, Professional Loss, Rectification Expense, Professional Protective Loss, Pollution Condition, Pollution Loss, Emergency Expense, Pollution Protective Loss**, or any other Coverage afforded under this Policy based upon or arising out of:

1. **Bankruptcy**  
bankruptcy or insolvency of an you or of any other individual or entity.
2. **Contractual Liability**  
your:
  - a. assumption of liability in a contract or agreement; or
  - b. breach of contract or agreement.

This exclusion does not apply to liability:

- (i) that you would have in the absence of such contract or agreement; or
  - (ii) solely with regard to **Contracting Operations** and **Transportation**, liability assumed by the **Named Insured** in an **Insured Contract** provided that the **Insured Contract** was fully executed prior to the **Bodily Injury, Property Damage** or **Environmental Damage** occurring.
3. **Damage to Your Property**  
damage to or destruction of any real property owned, rented, loaned, or leased by you, including property in your care, custody, or control.

This exclusion does not apply to:

- (i) a **Job Site**; or
- (ii) a client who qualifies as an **Insured**.

**2. Employer's Liability**

any **Bodily Injury** to:

- a. any **Insured** or **Employee**, but solely within the course and scope of their employment and only if such injury arises in the course of:
  - (i) employment by you; or
  - (ii) performing duties related to the conduct of your business.
- b. the spouse, domestic partner, child, parent, brother, or sister of anyone set forth in Subsection 2.a. directly above, as a consequence of any injury to any of the individuals described in Subsection 2.a. directly above.

This exclusion applies:

- a. whether you may be liable as an employer or in any other capacity; and
- b. to any obligation to share damages with or repay someone else who must pay damages because of the **Claim**.

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

**4. Faulty Workmanship**

the cost to repair or replace faulty construction or workmanship in any fabrication, construction, installation, assembly, erection, manufacture, or remediation, performed, in whole or in part, by you, including the cost of materials, parts or equipment provided in connection therewith.

This exclusion does not apply to **Professional Loss** arising out of **Professional Services**.

**5. Fiduciary Liability**

your services and/or capacity as:

- a. an officer, director, partner, principal, member stockholder, trustee, or employee of an organization not identified in ITEM 2. of the Declarations or of any charitable organization, or pension, welfare, profit sharing, mutual or investment fund, or trust; or
- b. a fiduciary pursuant to the Employee Retirement Income Security Act of 1974 and its amendments, or any regulation or order issued pursuant thereto, or under any other employee benefit plan.

**6. Hostile Acts**

any consequence of, whether direct or indirect, war, invasion, act of a foreign enemy, hostilities whether declared as war or not, civil war, rebellion, revolution, insurrection, military or usurped power, strike, riot, civil commotion, or covert military action.

**7. Insurance and Suretyship**

the requiring, obtaining, procuring, purchasing, maintaining, advising as to, or the failure to require, obtain, procure, purchase, maintain or advise as to any form of insurance, suretyship, or bond, either with respect to any **Insured** or any other individual or entity.

**8. Insured Versus Insured**

any **Claim** made by any **Insured** against any other **Insured** under this Policy.

This exclusion does not apply to a **Claim** by any individual or entity that meets the Definition of an **Insured** in SECTION III - DEFINITIONS, **L. Insured**, Subsection 8.

**9. Intentional and Dishonest Acts**

- a. intentional, willful or deliberate noncompliance with or disregard of any statute, regulation, ordinance, municipal code, administrative complaint, notice of violation, notice letter, administrative order, law, or instruction of any governmental agency or body by or at your direction or your agent's direction; or
- b. actual or alleged fraudulent, criminal, dishonest, knowingly wrongful, or malicious conduct or intentionally or inherently harmful conduct committed by or at the direction of a **Responsible Individual**.

This exclusion does not apply to any **Insured** that did not commit, participate in, or have knowledge of any of the acts described above.

**10. Known Circumstances or Conditions**

- a. a **Claim**, negligent act, error or omission in **Professional Services, Professional Loss, Rectification Expense, Professional Protective Claim, Professional Protective Loss, Pollution Condition, Pollution Loss, Emergency Expense, Pollution Protective Claim** or **Pollution Protective Loss** reported to or known by a **Responsible Individual** prior to the inception of the **Policy Period**; or
- b. a circumstance or condition known by a **Responsible Individual** prior to the inception of the **Policy Period**, which is not identified by you in the statements, declarations and information contained in the Application for this Policy, where the **Responsible Insured** should have reasonably foreseen that a **Claim**, negligent act, error or omission in **Professional Services, Professional Loss, Professional Protective Claim, Professional Protective Loss, Pollution Condition, Pollution Loss, Pollution Protective Claim, or Pollution Protective Loss** would result, or **Rectification Expense** or **Emergency Expense** would be incurred.

This exclusion does not apply to **Pollutants** at a **Job Site** provided the **Pollution Condition** was in existence prior to you first performing any **Contracting Services** or **Professional Services** at such **Job Site** and the **Pollution Condition** would not exist but for your **Contracting Services** resulting in exacerbation of the **Pollution Condition**.

**11. Nuclear and Radioactive Material**

- a. radioactive, toxic, or explosive properties of Source Materials, Special Nuclear Material or By-Product Material, as defined in the Atomic Energy Act, and for which the United States Department of Energy or any other governmental authority or agency has indemnified the **Insured**, or for which the Price Anderson Act provides protection for the **Insured**;
- c. tailings, milling wastes, or products produced by the extraction of uranium or thorium from any ore processed for its source material; and
- e. naturally occurring radioactive materials, unless such naturally occurring radioactive materials are released or dispersed as a direct result of **Contracting Operations**.

This exclusion shall not apply to **Low Level Radioactive Waste and Material**.

**12. Prior Reported Claims**

any **Claim**, negligent act, error or omission in **Professional Services, Rectification Expense, Professional Protective Claim, Pollution Condition, Emergency Expense, Pollution Protective Claim**, or other circumstance reported by you in part or in whole under any prior insurance policy that:

- a. was in effect prior to the Effective Date of this **Policy Period**; and
- b. was not issued by us or one of our affiliate companies.

**13. Products Liability**

any goods, materials, equipment, or products designed, manufactured, sold, distributed, or supplied by you, a **Professional Subconsultant**, a **Subcontractor** or by others trading under your name.

This exclusion does not apply to:

- a. the fabrication, assembly or installation of goods, materials or products provided in connection with the performance of **Contracting Operations**;
- b. software that is not available for general sale and distribution, and is sold or supplied by the **Named Insured** in conjunction with the performance of **Professional Services**, **Professional Subconsultant Services**, **Contracting Operations**, or **Subcontracted services**; or
- c. any goods, materials, equipment, or products while within the legal boundaries of **Your Location** or during **Transportation**.

**14. Related Entities**

a **Claim** by an entity or individual that is or was operated, managed, owned, or controlled, in whole or in part, by you or your parent company, or any affiliate successor, or assignee of such company not named in the Declarations.

**15. Warranties and Guarantees**

any express warranty or guarantee.

This exclusion does not apply to a warranty or guarantee by you that **Contracting Operations** or **Professional Services** conform to generally accepted standards or any liability you would have in the absence of such express warranty or guarantee.

**16. Workers' Compensation and Similar Laws**

your obligation under a workers' compensation, disability benefits, unemployment compensation law, or any similar law.

- B.** The following exclusions are applicable only to SECTION I - INSURING AGREEMENTS, A.6. Pollution Protective Loss Coverage and B.3. Professional Protective Loss Coverage:

We shall not be liable to make any payment or indemnify you for any **Pollution Protective Loss** or **Professional Protective Loss** directly or indirectly for or based upon or arising out of:

**1. Default Judgment**

a default judgment, other action or inaction, monetary award or any liability imposed where the **Professional Subconsultant** or **Subcontractor** failed to answer, plead, appear, respond, or otherwise failed to defend itself or failed to indemnify you in response to a **Professional Protective Claim** or **Pollution Protective Claim**.

This exclusion does not apply to an amount that the **Insured** and the Company mutually agree would have been recovered from the **Professional Subconsultant** or **Subcontractor** in the absence of a default judgment, a monetary award or had any liability imposed where the **Professional Subconsultant** or **Subcontractor** failed to answer, plead, appear, respond, or otherwise failed to defend itself or failed to indemnify you in response to a **Professional Protective Claim** or **Pollution Protective Claim**. If the **Insured** and the Company cannot mutually agree on an amount, either party may submit their dispute to an appraiser. In this event, each party will select a competent and

impartial appraiser. The two appraisers will select an umpire. If cannot agree on an umpire, either may request the umpire be selected by a judge of a court having jurisdiction. If the appraisers fail to agree, they will submit their appraisals to the umpire. A decision agreed to by any two of the appraisers and umpire shall be binding.

If we submit to an appraisal, we retain our right to deny the **Professional Protective Claim** or **Pollution Protective Claim**.

**2. Project-Specific Policy**

a **Professional Protective Claim** or **Pollution Protective Claim** for which insurance is available to you under a project specific policy or would have been available but for the exhaustion of limits of liability under such policy.

**C.** The following exclusions are applicable only to SECTION I - INSURING AGREEMENTS, A.4. Your Location Coverage:

We shall not be liable to make any payment for any **Pollution Loss** directly or indirectly for or based upon or arising out of:

**1. Asbestos and Lead-Based Paint**

any asbestos, asbestos products or any substance or material containing asbestos, or any lead, lead products or any substance containing lead, in any form, in or on any building or structure, on or at **Your Location**.

**2. Divested Location**

any **Pollution Condition** on, at, under, or migrating from **Your Location** where the **Pollution Condition** first began after **Your Location** was divested, sold, abandoned, given away, no longer used, or leased by you, abandoned by you, taken by eminent domain, or condemned.

**3. Material Change at Your Location**

any material changes in the use or operations at **Your Location** from the use or operations stated by you in the Application or information submitted to us that forms the basis of Coverage, including any other supplemental materials submitted to us prior to the inception of the **Policy Period** or prior to **Your Location** being endorsed onto this Policy.

**4. Underground Storage Tank**

any **Pollution Condition** resulting directly or indirectly from an **Underground Storage Tank** on, at or under **Your Location** the existence of which is known by, or which reasonably should have been known by, a **Responsible Individual**.

This exclusion does not apply to any **Underground Storage Tank**:

- a. that is closed, abandoned in place or removed prior to the inception of the **Policy Period**, in accordance with all applicable Federal, State, or Local regulations;
- b. that is a flow-through process or septic tank, including oil/water separator located partially in the ground; or
- c. that is located on or above the floor in a man-made underground area such as a basement, cellar, mine shaft, or tunnel.

**SECTION V - LIMITS OF LIABILITY AND RETENTION**

**A. Per Claim, Aggregate and Policy Aggregate Limit**



1. The Limits of Liability shown in the Declarations and as described below are the most we will pay regardless of the number of **Insureds**, locations, **Claims** made or suits brought, or persons or organization making **Claims** or bringing suits.
2. The Total Policy Aggregate Limit is the most we will pay for the sum of:
  - a. all **Pollution Loss, Emergency Expense, and Pollution Protective Loss**, and any other amounts for which insurance is afforded under Coverage A;
  - b. all **Professional Loss, Rectification Expense and Professional Protective Loss** and any other amounts for which insurance is afforded under Coverage B; and
  - c. all **Adverse Media Expenses** under Coverage C.
3.
  - a. Subject to Paragraph 2. above, the Aggregate Limit of Liability for Insuring Agreement A. Contractors Pollution Coverages shown in ITEM 6.A. of the Declarations is the most we will pay for the sum of all **Pollution Loss, Emergency Expense, Pollution Protective Loss**, and any other amounts for which insurance is afforded under SECTION I - INSURING AGREEMENTS, A. Contractors Pollution Coverages.
  - b. Subject Paragraph 3.a. above, the most we will pay for all **Pollution Loss** under Contracting Operations Coverage is the Contracting Operations Coverage Aggregate Limit shown in the Declarations. Subject to the Contracting Operations Coverage Aggregate Limit, the Contracting Operations Coverage Per Claim Limit is the most we will pay for all Pollution Loss as the result of one **Claim**.
  - c. Subject to Paragraph 3.a. above, the most we will pay for all **Emergency Expense** under Emergency Expense Coverage is the Emergency Expense Coverage Aggregate Limit shown in the Declarations. Subject the Emergency Expense Coverage Aggregate Limit, the Emergency Expense Coverage Per Claim Limit is the most we will pay for all **Emergency Expenses** as the result of one **Pollution Condition**.
  - d. Subject to Paragraph 3.a. above, the most we will pay for all **Pollution Loss** under Non-Owned Disposal Site Coverage is the Non-Owned Disposal Site Coverage Aggregate Limit shown in the Declarations. Subject to the Non-Owned Disposal Site Coverage Aggregate Limit, the Non-Owned Disposal Site Coverage Per Claim Limit is the most we will pay for all **Pollution Loss** as the result of one **Claim**.
  - e. Subject to Paragraph 3.a. above, the most we will pay for all **Pollution Loss** under Your Location Coverage is the Your Location Coverage Aggregate Limit shown in the Declarations. Subject to the Your Location Coverage Aggregate Limit, the Your Location Coverage Per Claim Limit is the most we will pay for all **Pollution Loss** as the result of one **Claim**.
  - f. Subject to the Transportation Coverage Aggregate Limit, the most we will pay for all **Pollution Loss** under Transportation Coverage is the Transportation Coverage Aggregate Limit shown in the Declarations. Subject to Paragraph 6.e. above, the Transportation Coverage Per Claim Limit is the most we will pay for all **Pollution Loss** as the result of one **Claim**.
  - g. Subject to Paragraph 3.a. above, the most we will pay for all **Pollution Protective Loss** under Pollution Protective Loss Coverage is the Pollution Protective Loss Coverage Aggregate Limit shown in the Declarations. Subject to the Pollution Protective Loss Coverage Aggregate Limit, the Pollution Protective Loss Coverage Per Claim Limit is the most we will pay for all **Pollution Protective Loss** as the result of one **Pollution Condition**.
4.
  - a. Subject to Paragraph 2. above, the Aggregate Limit of Liability for Insuring Agreement B. Professional Coverages shown in ITEM 6.B. of the Declarations is the most we will pay for the sum of all **Professional Loss, Rectification Expense, Professional Protective Loss**, and any other amounts for which insurance is afforded under SECTION I - INSURING AGREEMENTS, B. Professional Coverages.
  - b. Subject to Paragraph 4.a. above, the most we will pay for all **Professional Loss** under Professional Liability Coverage is the Professional Liability Coverage Aggregate Limit shown in the Declarations. Subject to Professional Liability Coverage Aggregate Limit, the Professional Liability Coverage Per Claim Limit is the most we will pay for all **Pollution Loss** as the result of one **Claim**.
  - c. Subject to Paragraph 4.a. above, the most we will pay for all **Rectification Expense** under

Rectification Expense Coverage is the Rectification Expense Aggregate Coverage Limit shown in the Declarations. Subject to the Rectification Expense Aggregate Coverage Limit, the Rectification Expense Aggregate Coverage Per Claim Limit is the most we will pay for all **Rectification Expense** as the result of one **Claim**.

- d. Subject to Paragraph 4.a. above, the most we will pay for all **Professional Protective Loss** under Professional Protective Loss Coverage is the Professional Protective Loss Coverage Aggregate Limit shown in the Declarations. Subject to the Professional Protective Loss Coverage Aggregate Limit, the Professional Protective Loss Coverage Per Claim Limit is the most we will pay for all **Professional Protective Loss** as the result of a **Professional Protective Claim**.
5. a. Subject to Paragraph 2. above, the Aggregate Limit of Liability for Insuring Agreement C. Supplemental Coverages, set forth in ITEM 6.C. of the Declarations is the most we will pay for the sum of all **Adverse Media Expenses** afforded under SECTION I - INSURING AGREEMENTS, C. Supplemental Coverages.  
b. Subject to Paragraph 5.a. above, the most we will pay for all **Adverse Media Expenses** under Adverse Media Coverage is the Adverse Media Coverage Aggregate Limit shown in the Declarations. Subject to the Adverse Media Coverage Aggregate Limit, the Adverse Media Coverage Per Claim Limit is the most we will pay for all **Adverse Media Expenses** as a result of an **Adverse Media Event**.
6. Subject to the applicable Aggregate Limits, if more than one Per Claim Limit applies to the same **Claim**, the most we will pay is the highest applicable Per Claim Limit of Insurance.

## **B. Retention**

1. You agree to assume the applicable Retention shown in the Declarations. The Retention must first be satisfied by payments by you that have been made with our prior written consent, or by covered **Emergency Expense**. The Retention must be paid by you and be uninsured and cannot be satisfied by payments made under another Insurance Policy. We will not pay for **Pollution Loss, Emergency Expense, Pollution Protective Loss, Professional Loss, Rectification Expense, Professional Protective Loss, Adverse Media Coverage**, or other Coverage afforded under this Policy unless the amount of **Pollution Loss, Emergency Expense, Pollution Protective Loss, Professional Loss, Rectification Expense, Professional Protective Loss, Adverse Media Expense**, or other amounts for Coverage afforded under this Policy exceeds the applicable Retention shown in ITEM 5. of the Declarations or otherwise endorsed to this Policy.
2. **Legal Expense** applies to and reduces each applicable Retention shown in ITEM 5. of the Declarations.
3. One Retention shall apply to all **Pollution Loss, Emergency Expense, Pollution Protective Loss, Professional Loss, Rectification Expense, Professional Protective Loss, Adverse Media Expense**, or other amounts for Coverage afforded under this Policy arising out of or resulting from the same, related, repeated, or continuous negligent act, error or omission, or **Pollution Condition**. If the same, related, similar, repeated, or continuous negligent act, error or omission, or **Pollution Condition** triggers Coverage under multiple Insuring Agreements of this Policy, the largest applicable Retention will apply.
4. If we jointly agree with you to use **Mediation** as a means to resolve a **Claim** made against you and such **Claim** is resolved as a direct result of and during, or directly after, **Mediation** with the same mediator, the applicable Retention for said **Claim** shall be reduced by fifty percent (50%), subject to a maximum reduction of no more than \$25,000 and a minimum post-reduction retained Retention of \$2,500. In the event you owe any portion of the Retention, it shall be paid to us within thirty (30) days following receipt of the executed, full and final release of the **Claim**.

## **C. Multiple Insureds and Multiple Related Claims**

1. The number of **Insureds** covered by this Policy shall not operate to increase either any Limits of Liability set forth in ITEM 5. and ITEM 6. of the Declarations or the applicable **Legal Expense**, notwithstanding any other provisions of this Policy.
2. Two or more **Claims** arising out of or resulting from the same, related, similar, repeated, or continuous negligent act, error or omission, or **Pollution Condition**, as applicable, will be deemed to:
  - a. be a single **Claim**;
  - b. have been first made at the time the first such **claim** was made against an **Insured**; and
  - c. be subject to only one Limit of Insurance shown in ITEM 5. of the Declarations or applicable Endorsement, if applicable.

The same, related, similar, repeated, or continuous **Pollution Condition** is a **Pollution Condition** that is based upon, arises out of, is the result of or is logically or causally connected to the same, similar, or related facts, circumstances, or situations. The same, related, similar, repeated, or continuous negligent act, error or omission is a negligent act, error, or omission that is based upon, arises out of, is the result of, or is logically or causally connected to the same, similar or related facts, circumstances, or situations.

**D. Depletion of Applicable Limit of Liability**

Once any applicable Limit of Liability set forth in ITEM 5. or ITEM 6. of the Declarations has been depleted, we have no obligation to pay any additional amount under that applicable Limit of Liability.

**E. Insurance Under Multiple Policies**

If we or an affiliated company have issued multiple Contractors Pollution and Professional Liability Coverage Policies or policies providing Coverage similar thereto to you, in no event will more than one such Policy apply to any **Pollution Loss, Emergency Expense, Pollution Protective Loss, Professional Loss, Rectification Expense, Professional Protective Loss, Adverse Media Expense**, or other Coverage afforded under this Policy that arises out of the same, related, similar, repeated or continuous **Pollution Condition**, or the same, related, similar or continuous act, error or omission in **Professional Services**. In that event, only the Policy in effect when the **Claim** arising from such **Pollution Loss, Emergency Expense, Pollution Protective Loss, Professional Loss, Rectification Expense, Professional Protective Loss, Adverse Media Expense**, or other Coverage afforded under this Policy is first made against you and reported to us, or when the **Insured** discovers such **Pollution Condition** and reports it to us, as applicable, shall apply.

**SECTION VI - EXTENDED REPORTING PERIOD**

The provisions of this Section VI - EXTENDED REPORTING PERIOD shall apply only to Coverage provided by this Policy on a Claims-Made and Reported Basis.

**A. Automatic Extended Reporting Period**

1. If the event of non-renewal or cancellation of this Policy by you, or if we cancel or refuse to renew this Policy for reasons other than non-payment of premium or fraud or material misrepresentation on your part, we will provide to you a ninety (90) day Automatic Extended Reporting Period, at no additional charge.
2. The Automatic Extended Reporting Period will apply to any **Claim** first made against you and reported to us in writing during the ninety (90) day extension period, but only with respect to:

- a. A **Pollution Condition** discovered by you during the **Policy Period** and reported to us in writing during the **Policy Period**, provided that such **Pollution Condition** is otherwise covered by this Policy; or
  - b. A negligent act, error or omission in **Professional Services**, provided that such **Professional Services** are otherwise covered by this Policy.
3. If you purchase replacement coverage for this Policy or a Supplemental Extended Reporting Period under Subsection **B.** below, the ninety (90) day Automatic Extended Reporting Period will end on the Effective Date of the replacement coverage or on the Effective Date of the Supplemental Extended Reporting Period, whichever is earliest.

**B. Supplemental Extended Reporting Period**

- 1. In the event of non-renewal or cancellation of this Policy by you, or if we cancel or refuse to renew this Policy for reasons other than non-payment of premium or fraud or material misrepresentation on your part, the **First Named Insured** may purchase a Supplemental Extended Reporting Period of up to three (3) consecutive years from the Expiration Date set forth in ITEM 4. of the Declarations., for not more than two hundred and fifty percent (250%) of the expiring Policy premium.
  - 2. The **First Named Insured** must request the purchase of the Supplemental Extended Reporting Period in writing to us within thirty (30) days following the termination of this Policy and pay the premium to us promptly when due.
  - 3. The Supplemental Extended Reporting Period will apply to any **claim** first made against you and reported to us in writing during the Supplemental Extended Reporting Period, but only with respect to:
    - a. A **Pollution Condition** discovered by you during the **Policy Period** and reported to us in writing during the **Policy Period**, provided that such **Pollution Condition** is otherwise covered by this Policy; or
    - b. A negligent act, error or omission in **Professional Services**, provided that such **Professional Services** are otherwise covered by this Policy.
- C.** Solely with respect to SECTION I - INSURING AGREEMENTS, A.4. Your Location Coverage, if purchased, the Supplemental Extended Reporting Period does not apply where a **Pollution Condition** is first discovered by you after the **Policy Period**.
- D.** The Supplemental Extended Reporting Period shall commence upon the day that the Automatic Extended Reporting Period terminates.
- E.** In the event other similar or replacement insurance is in force covering any **Claim(s)** first made during the Automatic Extended Reporting Period, there is no Coverage under this Policy.
- F.** In the event other similar or replacement insurance is in force covering **Claim(s)** first made during the Supplemental Extended Reporting Period, Coverage provided by this Policy shall be excess over any such other insurance, including any applicable deductibles or retention amounts of such other insurance. For purposes of this provision, other insurance includes all types of self-insurance, indemnification or other funding arrangement or program that is available to compensate an **Insured** for liability.
- G.** The Supplemental Extended Reporting Period shall be non-cancellable except for fraud or for any ground set forth in Subsections 2.a., 2.b., and 2.c. of SECTION VIII - GENERAL CONDITIONS, E. Cancellation. At the commencement of the Supplemental Extended Reporting Period, the entire premium shall be considered one hundred percent (100%) fully earned.

- H. The Limits of Liability applicable to the Extended Reporting Period shall be the Limits of Liability remaining under this Policy.
- I. The quotation of different terms and conditions by us and the **First Named Insured's** choice not to accept those quoted terms and conditions shall not be construed as non-renewal of this Policy.

## SECTION VII - NOTICE AND CLAIM REPORTING CONDITIONS

A. Notice as required under this Policy must be given by you, or on your behalf:

1. FOR EMERGENCIES REQUIRING IMMEDIATE ATTENTION:

STRAVA 24-hour Emergency Response Hotline (administered by HETI): 1 (844) 232-4907

2. FOR NON-EMERGENCY CLAIMS:

North American Risk Services, Inc. (NARS)

Telephone: (800) 315-6090

Facsimile: (866) 261-8507

Internet: <http://www.narisk.com/report-a-claim/>

Electronic Mail: [reportclaim@narisk.com](mailto:reportclaim@narisk.com)

Regular Mail: North American Risk Services

P.O. Box 166002

Altamonte Springs, FL 32716-6002

Attn: New Loss Unit

The **Insured** must give written notice to us as soon as practicable during the **Policy Period** or Extended Reporting Period, if applicable, of any **Claim** made against the **Insured** for **Pollution Loss, Pollution Protective Loss, Professional Loss, Professional Protective Loss**, or other Coverage afforded under the Policy, including **Rectification Expense**. Oral notification must be followed with a written notice to us as soon as practicable during the **Policy Period** or Extended Reporting Period, if applicable.

B. If during the **Policy Period**, the **Named Insured** first becomes aware of a **Pollution Condition**, or an actual or alleged negligent act, error, or omission in **Professional Services** that the **Named Insured** reasonably believes may give rise to a **Claim**, the **Named Insured** must provide written notice to us regarding all particulars of such incident. Notice must be provided to us as soon as practicable after the **Named Insured** discovers said incident, but in no event later than the expiration of the **Policy Period**. Oral notification must be followed with a written notice to us as soon as practicable, but in no event later than the expiration of the **Policy Period**.

As a condition precedent to the rights afforded to the **Named Insured** under this Subsection B., such written notice to us of a **Pollution Condition**, or an actual or alleged negligent act, error, or omission in **Professional Services** that the **Named Insured** reasonably believes may give rise to a **Claim** shall contain all of the following information:

1. the date and details of all actual and alleged negligent acts, errors or omissions in **Professional Services** that took place, along with the specific nature, date and extent of any injury or damage that has been sustained;
2. the date and details of the **Pollution Condition** and the **Contracting Operations** that may have caused such condition;
3. copies of any agreements that have been entered into by the **Named Insured** that are related to the

**Professional Services or Contracting Operations;** and

4. details explaining how the **Named Insured** first became aware of the incident.

We shall determine, in our sole discretion, whether the **Named Insured's** written notice satisfies the condition precedent above.

## **SECTION VIII - DUTIES IN THE EVENT OF A CLAIM, DEFENSE AND SETTLEMENT**

### **A. Insured's Duties**

As a condition precedent to the Coverage hereunder:

1. You must notify us of each of the following, as soon as practicable:
  - a. a **Claim, Professional Protective Claim or Pollution Protective Claim;**
  - b. **Bodily Injury, Property Damage or Environmental Damage** that may result in a **Claim, Professional Protective Claim or Pollution Protective Claim;**
  - c. an act, error or omission in **Professional Services** that may result in a **Claim, Rectification Expense or Professional Protective Claim;**
  - d. a **Pollution Condition;** and
  - e. **Remediation Expense.**
2. You must immediately forward to us or to any of our authorized agents every demand, notice, summons, legal papers, or orders received by you or your representative.
3. You must provide to us, whether orally or in writing, notice of the particulars including the time, place and circumstances of the **Claim**, act, error or omission in **Professional Services or Professional Subconsultant Services, Professional Protective Claim, Pollution Condition, Pollution Protective Claim, Bodily Injury, Property Damage, or Remediation Expense**, along with the names and addresses of any injured individuals and witnesses. In the event of oral notice, you must furnish to us a written notice of such particulars as soon as practicable.

Notice, whether orally or in writing, must be provided to us when a **Professional Protective Claim or Pollution Protective Claim** is initiated.

4. You must take reasonable measures to protect your interests, and to mitigate any **Pollution Loss, Pollution Protective Loss, Professional Loss, Rectification Expense, Professional Protective Loss, Adverse Media Expense**, or any other Coverage afforded under this Policy, and to comply with applicable laws.
5. You must fully cooperate with us and, upon our request, assist in investigations, making settlements and in the conduct of defense of **Claims**, and the maintenance and pursuit of, and recovery of monies in connection with the **Professional Protective Claim and Pollution Protective Claim**. You must further cooperate with us and do whatever is necessary to secure and affect any rights of indemnity, contribution, apportionment, or subrogation that you or we may have. The **Insured** shall, at the **Insured's** cost, attend inquires, interviews, hearings, trials, and depositions, and shall assist in securing and giving evidence and in obtaining the attendance of witnesses and **Employees**. Upon our request, you shall submit to examination under oath by our representative.

### **B. Defense**

1. We have the right and the duty to defend any **Insured** against any **Claim** seeking **Professional Loss** or **Pollution Loss** to which this Insurance applies, subject to satisfaction of the Retention, even if any of the allegations are groundless, false or fraudulent. We shall have the right, but not the duty to defend you against any **Claim** for **Professional Loss** or **Pollution Loss** where the Retention has not yet been satisfied. However, we have no duty to defend any **Claim** against you to which this Policy does not apply.
2. We have the right to select counsel for the investigation, adjustment and defense of **Claims** or **Pollution Conditions** to which this Policy applies. The **Insured** shall have the right to propose such counsel and we will consult with the **Insured** on the selection. If we exercise such rights set forth above, you must promptly reimburse us for any payments made by us within the Retention, if any. If more than one **Insured** is involved in a **Claim** to which this Insurance applies, we may, in our sole discretion, appoint separate counsel for one or more of such **Insureds** if there is a material (actual or potential) conflict of interest among any such **Insureds**.
3. In the event that by mutual agreement or by applicable law the **Insured** is entitled to select independent counsel to defend a **Claim** to which this Policy applies, the **Legal Expense** we must pay to such counsel is limited to the rates we would actually pay to counsel that we retain in the ordinary course of business in the defense of similar **Claims** in the venue where the **Claim** arose or is being defended. We have the right to require that such counsel have certain minimum qualifications with respect to competency, including experience in defending **Claims** similar to the one pending against the **Insured**, and to require that such counsel have acceptable limits of Errors and Omissions Insurance Coverage. The **Insured** agrees that such counsel will timely respond to our requests for information regarding any **Claim**. Notwithstanding the foregoing, the **Insured** may at any time, by its written consent, freely and fully waive any right to select independent counsel. This applies to **Legal Expense** both within and excess of any Retention.

#### C. Admission of Liability and Recommended Settlement

With respect to any **Claim**, you shall admit no liability, make no payments, assume no obligation and incur no expense without our prior written consent. We shall not be liable for **Pollution Loss**, **Pollution Protective Loss**, **Professional Loss**, **Rectification Expense**, **Professional Protective Loss**, **Adverse Media Expense**, or any other Coverage afforded under this Policy admitted by the **Insured** without our prior written consent.

If we recommend a settlement of a **Claim**:

1. for an amount within the Retention, and you refuse to settle for such recommended amount, we shall not be liable for any **Professional Loss**, **Pollution Loss**, and any other Coverage afforded by Endorsement; or
2. for a total amount in excess of the Retention, and you refuse to settle for such recommended amount, our liability for **Professional Loss**, **Pollution Loss**, and any other Coverage afforded by Endorsement, shall be limited to that portion of such recommended amount, plus the **Legal Expense** incurred as of the date we recommended such settlement amount, which exceeds the Retention, but falls at or within the Limits of Liability.

### SECTION IX - GENERAL CONDITIONS

#### A. Action Against Us

No person or organization has a right under this Insurance to:

1. join us as a party or otherwise bring us into a **Claim**; or

2. sue us under this Policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on a fully executed settlement agreement or on a final judgment against the **Insured** obtained after an actual trial; but we will not be liable for **Pollution Loss** or **Professional Loss** that is not payable under the terms of this Insurance or that is in excess of the applicable Limits of Insurance.

**B. Assignment**

This Policy cannot be assigned without our prior written consent.

**C. Authorization Clause**

By acceptance of this Policy, you warrant that:

1. the statements, declarations and information contained in the Application and information submitted to us as part of the Application process for this Policy are true, correct and complete;
2. all such statements, declarations and information are material to our underwriting of this Policy;
3. this Policy has been issued by us in reliance upon the truth, correctness and completeness of such statements, declarations and information; and
4. the Application for this Policy, including all statements, declarations and information submitted to us as part of the Application process, is incorporated in and made part of this Policy.

**D. Bankruptcy or Insolvency**

Your bankruptcy or insolvency, or that of your successors in interest, shall not relieve us of any of our obligations under this Policy.

**E. Cancellation**

1. This Policy may be cancelled by the **First Named Insured** by surrendering it to us or one of our authorized agents or by mailing written notice and providing us a future date when the cancellation shall be effective. The mailing of such notice must be sent by certified mail, return receipt requested or by electronic mail. The Effective Date and time of cancellation stated in the written notice shall become the end of the **Policy Period**. If you cancel this Policy, we shall retain the customary short-rate portion of the premium less the Minimum Earned Premium, if applicable. The Minimum Earned Premium for this Policy shall be the percentage stated in ITEM 9. of the Declarations of the total premium for this Policy.
2. This Policy may be cancelled by us by mailing written notice to the **First Named Insured** at the Mailing Address stated in ITEM 3. of the Declarations stating, when not less than ninety (90) days thereafter (or fifteen (15) days for non-payment of premium or Retention) such cancellation shall become effective. The mailing of such notice shall be sufficient proof of Notice of Cancellation. The Effective Date and time of cancellation stated in the written notice shall become the end of the **Policy Period**.

We may cancel this Policy at any time, but only for the following reasons:

- a. failure to pay the premium or Retention;
- b. change in your operations that materially increase risks covered under this Policy;



- c. fraud or material misrepresentation by you that affects our assessment of the risks insured by this Policy; or
- d. you breached or failed to comply with Policy terms, conditions, contractual duties or any of your obligations under this Policy or at law.

If we cancel the Policy for reasons set forth in Subsection E.2.a. directly above, there shall be no return premium. If we cancel this Policy for reasons set forth in Subsections E.2.b., E.2.c. or E.2.d. directly above, then the amount of premium returnable to the **First Named Insured** is computed on a pro-rata basis.

3. In the event of cancellation by us from any ground referred to in Subsection E.2.d. referenced directly above, you shall have ninety (90) days from the date of Notice of Cancellation to remedy each breach and each failure that is a ground for cancellation, but only as to each and every breach and failure that are capable of being remedied. If your remedial efforts are completed within such ninety (90) day period and are satisfactory to us, we shall rescind the Notice of Cancellation with a written confirmation to the **First Named Insured**.

The following provisions also apply:

- a. The premium adjustment shall occur as soon as practicable after cancellation becomes effective however, payment of unearned premium is not a condition of our cancellation.
- b. If a **Claim** for **Professional Loss** or **Pollution Loss** is made, a **Pollution Condition** is discovered, a **Professional Protective Claim** or **Pollution Protective Claim** is made by you against a **Professional Subconsultant** or **Subcontractor**, or Coverage is otherwise requested from us by you, during the **Policy Period**, within ninety (90) days of the end of the **Policy Period**, or the Extended Reporting Period, then the premium shall be considered one hundred percent (100%) earned, and the **First Named Insured** is not entitled to any return of premium upon cancellation.
- c. If this Policy is terminated for fraud, misrepresentation, or non-payment of premium or Retention, the ninety (90) days of additional reporting will not apply.

## F. Changes

Notwithstanding anything to the contrary, no provision of this Policy may be amended, waived or otherwise changed except by Endorsement issued by us to form part of this Policy.

## G. Choice of Law and Jurisdiction and Venue

All matters arising from or related to this Policy, including without limitation questions related to the validity, interpretation, performance, and enforcement of this Policy, and all forms of contractual, tort and statutory claims, shall be determined in accordance with the law and practice of the State of New York (notwithstanding New York's Conflicts of Law Rules).

It is agreed that, in the event of any dispute arising from or related to this Policy, including without limitation questions related to the validity, interpretation, performance, and enforcement of this Policy, and all forms of contractual, tort and statutory claims, we and the **Insured** will submit to the jurisdiction of any court (state or federal) in New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the right of us or the **Insured** to remove an action to the United States District Court, regardless of the jurisdiction in which, an action is commenced.

## H. Consent

Where consent by us or an **Insured** is required under this Policy, such consent shall not be unreasonably

withheld, delayed, conditioned, or denied.

#### **I. Headings**

The descriptions in the headings of this Policy and any Endorsements attached hereto are solely for convenience and form no part of the terms and conditions of this Policy.

#### **J. Inspection and Audit**

In connection with underwriting of this Policy or with our defense or adjustment of any **Pollution Loss, Pollution Protective Loss, Professional Loss, Rectification Expense, Professional Protective Loss, Adverse Media Expense**, or any other Coverage afforded under this Policy, we shall be permitted, but not obligated, to conduct inspections, surveys, audits or reviews on a continuing basis any of your books, records, services, properties, and activities at any time, as far as they relate to the subject matter of this Policy. Such inspections, surveys, audits or reviews could involve the taking of samples, interviewing of **Employees**, physical access to locations or access to materials or information concerning your operations, structure or financials.

Neither our right to conduct inspections, surveys, audits or reviews, or the actual undertaking thereof, or any report thereon, neither constitutes an undertaking to determine or warrant that property or operations are safe, healthful, or conform to acceptable engineering practice, or are in compliance with any law, rule or regulation. Any inspections shall be coordinated through the broker or agent of the **First Named Insured**.

#### **K. Other Insurance**

If other valid and collectable insurance is available to the **Insured** for Coverage granted under this Policy, our obligations are limited as follows:

1. This Policy is primary, and our obligations are not affected unless any other insurance is also primary. In that case, we will share with all such other insurance by the method described in Subsection K. 2. below, or this Policy will be primary and non-contributory when Subsection K. 3. below applies; and
2. If all of the other insurance permits contribution by equal shares, we will also follow this method. In this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the applicable loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. In contribution by limits, each insurer's share is based upon the ratio its applicable limit of insurance bears to the total applicable limits of insurance of all insurers.
3. This Policy is primary and non-contributory with other valid and collectable insurance, but only if the **First Named Insured** has a written contract or agreement requiring this Policy to be primary and non-contributory, and such contract or agreement was executed prior to the date that **Contracting Operations** or **Professional Services**, as applicable first commenced.

For purposes of this provision, other insurance includes all types of self-insurance, indemnification or other funding arrangement or program that is available to compensate an **Insured** for liability.

#### **L. Professional Subconsultant's Insurance**

You will require that each **Professional Subconsultant** with whom you enter into a written agreement or contract carry a minimum limit of Per Claim Limit of \$500,000 of Professional Liability Insurance.

**M. Severability**

Except with respect to the Limits of Liability and the Retention, and any rights or duties specifically assigned in this Policy to the **First Named Insured**, this Policy applies as if each **Named Insured** were the only **Named Insured**, and separately to each **Insured** against whom a **Claim** is made. Any misrepresentation, act, error or omission that is in violation of a duty, term or condition under this Policy by one **Insured** shall not by itself affect Coverage for another **Insured** under this Policy. However, this exception shall not apply to the **Insured** who is a parent, subsidiary or affiliate of the **Insured** which committed the misrepresentation, act, error or omission referenced above.

**N. Sole Agent**

The **First Named Insured** shall act on behalf of all **Insureds**, if any, for the payment or return of any premium, payment of any Retention, receipt and acceptance of any Endorsement issued to form a part of this Policy, giving and receiving Notices of Cancellation or Non-Renewal, the exercise of the rights provided in SECTION VI - EXTENDED REPORTING PERIOD, and the receipt and acceptance of any payment required to be made by us under the Policy.

**O. Subrogation**

In the event of any payment under this Policy, we shall have the right to seek recoupment against you in the event we determine no Coverage exists and/or be subrogated to all of your rights of recovery against any individual or entity and you will execute and deliver instruments and papers and do whatever is necessary to secure such rights. You shall not waive or prejudice such rights subsequent to when a **Claim** is first made and reported in writing or when the **Insured** discovers **Pollution Condition**.

Any recovery as a result of subrogation proceedings under this Policy shall accrue first to you to the extent of your payments in excess of the Limits of Liability of this Policy; then to us to the extent of our payment under this Policy, and then to you to the extent of your payment of the Retention. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery amount.

We shall have priority in any recovery, and any amounts recovered in excess of our total payment and the cost of recovery shall be paid to you.

However, we waive our right of recovery against any individual or entity, except for a **Professional Subconsultant** or **Subcontractor**, including **Subcontractors** and subconsultants, as referenced in SECTION I - INSURING AGREEMENTS, A.6. Pollution Protective Loss Coverage and B.3. Professional Protective Loss Coverage, if and to the extent you agreed to waive your right of recovery against such individual or entity in a written agreement signed by the **Named Insured** prior to:

1. the first commencement of a **Pollution Condition** out of which the **Claim** or request for **Emergency Expense** or **Pollution Loss** arises under SECTION I - INSURING AGREEMENTS, A. Contractors Pollution Coverages; or
2. the negligent act, error or omission in **Professional Services** out of which the **Claim** or request for **Rectification Expense** arises under SECTION I - INSURING AGREEMENTS, B. Professional Coverages.