XL SPECIALTY INSURANCE COMPANY

<Select One>

PROFESSIONAL AND POLLUTION LEGAL LIABILITY POLICY
FOR
THE CONSTRUCTION AND ENVIRONMENTAL SERVICE INDUSTRIES

This Policy contains a clause which may limit the amount payable.

Certain coverages are “claims-made and reported” and have different reporting requirements from other sections of this Policy. In the event of a Claim, this Policy may require that a Claim be first made against you 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 the Optional Extended Reporting 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.

SECTION I - INSURING AGREEMENTS

A. Professional Coverages

1. Professional Liability Coverage

We will pay on your behalf for Professional Loss 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 Retroactive Date and prior to the end of the Policy Period; and

b. the Claim is first made against you 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, the Optional Extended Reporting Period.

2. Rectification Expense Coverage

We will pay on your behalf for Rectification Expense to avoid or reduce a Claim covered under this Policy, provided that:

a. all Professional Services giving rise to actual or potential damages are rendered on or after the Retroactive Date and prior to the end of the Policy Period;

b. during the Policy Period, you provide us with immediate notice of the negligent act, error or omission and of the proposed corrective action, if any, along with all supporting documentation, in writing prior to incurring any Rectification Expense;
c. you establish and we determine that your proposed **Rectification Expense** is reasonable and necessary in light of the actual liability for a **Claim** covered under this Policy that can be avoided or reduced by incurring the **Rectification Expense**; and

d. all **Rectification Expense** must be approved by us, in writing, prior to being incurred by you.

If following the payment of **Rectification Expense**, a **Claim** is made against you, our total payment, including any payments previously paid by us, will not exceed the Limits of Liability shown in Item (3) and Item (4) of the Declarations.

If, in order to prevent **Bodily Injury or Property Damage**, you take immediate action that results in **Rectification Expense**, but you are not reasonably able to obtain prior approval from us in writing, we will indemnify you for such expense incurred over a period not exceeding ten (10) business days, beginning from the time the immediate action was taken, provided you can reasonably prove to us that such immediate action reduced the amount of the **Bodily Injury** or **Property Damage** that would otherwise have been paid under this Policy in the absence of such immediate action.

3. **Protective Loss Coverage**

We will indemnify the **Named Insured** for **Protective Loss**:

a. in excess of all applicable **Design Professional's Insurance**, or

b. for all amounts not covered by the **Design Professional's Insurance** pursuant to a valid coverage denial or limitation that is not contested by the **Design Professional**,

resulting from an actual or alleged negligent act, error or omission in **Design Professional Services** performed by a **Design Professional**, provided that:

   i. the **Design Professional Services** are rendered on or after the **Retroactive Date** and prior to the end of the **Policy Period**;

   ii. the **Protective Claim** is first made by you against the **Design Professional** and reported to you, in writing, during the **Policy Period**, within ninety (90) days of the end of the **Policy Period**, or, where applicable, the Optional Extended Reporting Period; and

   iii. you have taken all steps necessary to pursue the **Protective Claim** and obtain recovery of all **Protective Loss** from the **Design Professional** and, where legally permissible, the **Design Professional's Insurance**.

B. **Pollution Coverages**

1. **Job Site Coverage - Occurrence**

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

a. the **Bodily Injury**, **Property Damage** or **Environmental Damage** occurs during the **Policy Period**;

b. the **Pollution Condition** results from **Contracting Services** or **Completed Operations**; and

c. the **Pollution Condition** results in a **Claim** against you.
2. **Transportation Coverage**

We will pay on your behalf for **Pollution Loss** as a result of a **Pollution Condition** that first commences and finally ends during the course of **Transportation**, provided that:

a. the **Transportation** takes place during the **Policy Period**; and

b. the **Pollution Condition** is first discovered by you during the **Policy Period** and reported to us, in writing, during the **Policy Period** or within ninety (90) days of the end of the **Policy Period**; or

c. (i) the **Pollution Condition** results in a **Claim** against you; (ii) the **Claim** is for **Pollution Loss** that you become legally obligated to pay; and (iii) the **Claim** is first made against you 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, the Optional Extended Reporting Period.

3. **Emergency Remediation Expense Coverage**

We will indemnify you for **Emergency Remediation Expense** incurred by you, provided that:

a. the **Pollution Condition** and notice of the **Emergency Remediation Expense** are reported to us, in writing, 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 Services** at a **Job Site**, or **Transportation**, rendered during the **Policy Period**.

4. **Pollution Protective Loss Coverage**

We will indemnify you for **Pollution Protective Loss**:

a. in excess of all applicable **Subcontractor’s Insurance**, or

b. for all amounts not covered by the **Subcontractor’s Insurance** pursuant to a valid coverage denial or limitation that is not contested by the **Subcontractor**, resulting from a **Pollution Condition** on, at, under or migrating from a **Job Site** or a **Pollution Condition** in the course of **Transportation**, provided that:

   (i) the **Bodily Injury**, **Property Damage** or **Environmental Damage** occurs during the **Policy Period**;

   (ii) the **Pollution Condition** results from **Subcontractor Services** or **Completed Operations** of the **Subcontractor**;

   (iii) the **Pollution Protective Claim** is first made by you against the **Subcontractor**; and

   (iv) you have taken all steps 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**.
5. **Non-Owned Disposal Site Coverage**

We will pay on your behalf for **Pollution Loss** that you become legally obligated to pay as a result of a **Pollution Condition** on, at, under or migrating from a **Non-Owned Disposal Site**, provided that:

a. the **Pollution Condition** first commences on or after the **Retroactive Date** and prior to the end of the **Policy Period**;

b. the **Pollution Condition** arises from waste or material generated by **Contracting Services** performed at a **Job Site** or originating from **Your Location**;

c. the **Pollution Condition** results in a **Claim** against you; and

d. the **Claim** is first made against you 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, the Optional Extended Reporting Period.

6. **Your Location Coverage**

We will pay on your behalf for **Pollution Loss** as a result of a **Pollution Condition** on, at, under or migrating from **Your Location**, provided that:

a. the **Pollution Condition** originates from **Your Location**; and

b. the **Pollution Condition** is sudden and accidental and first commences during the **Policy Period** and finally ends within ten (10) consecutive days from its first commencement; and

c. the **Pollution Condition** is first discovered by you during the **Policy Period** and reported to us, in writing, during the **Policy Period** or within ninety (90) days of the end of the **Policy Period**; or

d. (i) the **Pollution Condition** results in a **Claim** against you; (ii) the **Claim** is for **Pollution Loss** that you become legally obligated to pay; and (iii) the **Claim** is first made against you 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, the Optional Extended Reporting Period.

**SECTION 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 AGREEMENTS** of this Policy, and payments made under these Supplemental Coverages do not erode the Aggregate Limits of Liability of this Policy. No Self-Insured Retention Amount applies to these Supplemental Coverages.

A. **Disaster Response Expense Coverage**

We will pay on your behalf up to an aggregate limit of liability of $250,000 for any reasonable and necessary expenses incurred by you or a public relations or crisis management firm hired by you, with our prior written consent, to minimize potential harm to your reputation by maintaining or restoring public confidence in you resulting from a negligent act, error or omission in **Professional Services**, or a **Pollution Condition** resulting from **Contracting Services** or **Transportation**, that has or is likely to result in a **Media Event**. This limit of liability is the most we will pay regardless of the number of acts, errors or omissions, **Pollution Condition(s)** or **Media Event(s)**.
B. **Green Building Materials Expense Coverage**

We will pay on your behalf up to an aggregate limit of liability of $250,000 for any reasonable and necessary expenses incurred by you in the use of Green Building Materials, even when the use of such materials is not necessary, as part of Restoration Costs when otherwise covered under this Policy. This limit of liability is the most we will pay regardless of the number of Pollution Condition(s).

C. **Protective Loss/Pollution Protective Loss Bankruptcy Litigation Expense Coverage**

We will indemnify you up to an aggregate limit of liability of $25,000 for the reasonable and necessary fees and expenses incurred by you for retaining bankruptcy counsel in the making of a Protective Claim or a Pollution Protective Claim that qualifies for coverage under this Policy against a Design Professional or Subcontractor, as applicable, who has filed for or has been placed into bankruptcy under the Bankruptcy and Insolvency Act (Canada), provided that the Protective Claim or Pollution Protective Claim results in a judgment for you against the Design Professional or Subcontractor that is final and no longer subject to appeal. This limit of liability is the most we will pay regardless of the number of Claim(s).

D. **Litigation Expense Coverage**

We will indemnify you up to an aggregate limit of liability of $25,000 for the actual loss of earnings and reasonable and necessary expenses incurred by you for attendance at depositions, hearings, arbitrations, Mediation or trials at our written request for Claim(s) covered under this Policy. This limit of liability is the most we will pay regardless of the number of Claim(s).

E. **Subpoena Expense Coverage**

We will pay on your behalf up to an aggregate limit of liability of $25,000 for reasonable and necessary fees and costs of counsel retained and incurred by us to advise you regarding the production of subpoenaed documents or to represent you while preparing for or giving testimony in response to a subpoena that is both served on you during the Policy Period and reported to you, in writing, during the Policy Period, within ninety (90) days of the end of the Policy Period, or, where applicable, the Optional Extended Reporting Period, and arises from Professional Services or Pollution Conditions that are within the scope of coverage under this Policy. This limit of liability is the most we will pay regardless of the number of subpoenas served.

F. **Disciplinary Proceeding Expense Coverage**

We will pay on your behalf up to an aggregate limit of liability of $25,000 for Legal Expense from a disciplinary proceeding against you before a design professional or contractor licensing board, provided that the disciplinary proceeding arises out of a negligent act, error or omission in Professional Services, or a Pollution Condition caused by Contracting Services, rendered on or after the Retroactive Date and before the end of the Policy Period, if the disciplinary proceeding is brought against you during the Policy Period and reported to us, in writing, by you, during the Policy Period, within ninety (90) days of the end of the Policy Period, or, where applicable, the Optional Extended Reporting Period. This limit of liability is the most we will pay regardless of the number of proceedings.

G. **Building Information Modeling Expense Coverage**

We will indemnify you up to an aggregate limit of liability of $25,000 for reasonable and necessary additional expenses payable to a third-party software consulting company, that are not otherwise recoverable from any warranty or guarantee, arising from loss of or damage to information due to a malfunction of software used in connection with a Building Information Modeling (BIM) system purchased from a third-party vendor that was not modified by you or on your behalf, including 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 construction in support of Professional Services or Contracting Services and is reported to us, in writing, by you, during the Policy Period, within ninety (90) days of the end of the Policy Period.
**Period**, or, where applicable, the Optional Extended Reporting Period. This limit of liability is the most we will pay regardless of the number of consulting companies, systems purchased or malfunctions.

**SECTION III - DEFINITIONS**

A. **Bodily Injury** means:
   1. physical injury, sickness or disease, sustained by any person, including death resulting therefrom, and any accompanying medical or environmental monitoring; or
   2. mental anguish, emotional distress or shock, sustained by any person.

B. **Claim** means a monetary demand or notice, or assertion of a legal right, alleging liability or responsibility on your part, and includes, but is not limited to, a lawsuit, petition, or governmental or regulatory action commenced against you.

C. **Client** means the person or entity that directly hires the **Named Insured**, by written agreement signed by the **Named Insured**, to render **Contracting Services** and for whom the **Named Insured** renders such services.

D. **Completed Operations** means **Contracting Services** that are completed.

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

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

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

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

E. **Contracting Services** means any construction or environmental activity that is performed by or on behalf of the **Named Insured**.

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

F. **Design Professional** means any person or entity that is qualified, certified or licensed to perform professional services that are covered by **Design Professional’s Insurance**, including any **Subcontractors** and subconsultants.

G. **Design Professional’s Insurance** means any liability insurance issued to a **Design Professional**.

H. **Design Professional Services** means professional services that any **Design Professional**:

1. agreed to perform pursuant to a written agreement with you or a **Design Professional**; retained by you or on your behalf; and
2. are included within the **Professional Services** that you agreed to perform in your written agreement with a **Client**.
I. Emergency Remediation Expense means reasonable and necessary Remediation Expense incurred on an emergency basis, that you establish and we determine reasonable and necessary to mitigate the immediate effects of the Pollution Condition in light of the liability covered under this Policy that can be avoided or reduced by such mitigation.

J. Environmental Damage means physical damage into or upon land or structures thereupon, the atmosphere or any watercourse or body of water, including groundwater, caused by a Pollution Condition and resulting in Remediation Expense.

Environmental Damage does not include Property Damage.

K. First Named Insured means the person or entity stated in Item (1) of the Declarations.

L. Green Building Materials means building products or materials that are recognized by The Leadership in Energy and Environmental Design (LEED®), Green Globes Assessment and Rating System, International Green Construction Code or Energy Star as:

1. being environmentally preferable or sustainable; or
2. providing enhanced energy efficiency.

M. Insured means each of the following:

1. the First Named Insured;
2. the Named Insured;
3. the Named Insured’s current and former directors, partners, principals, members, officers, stockholders, or trustees, but solely while acting within the course and scope of their duties as such;
4. the Named Insured’s current and former employees, including Leased Worker, but solely within the course and scope of their employment or lease agreement;
5. 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;
6. any Predecessor in Interest;
7. any entity newly formed or acquired by the Named Insured during the Policy Period where the Named Insured has greater than fifty percent (50%) ownership, control, or beneficial interest, provided however that:
   a. coverage shall be provided only for Professional Loss and Protective Loss arising out of Professional Services or Design Professional Services or Pollution Loss and Pollution Protective Loss arising out of Contracting Services or Subcontractor Services, for services performed on or after the date of formation or acquisition, subject to the Retroactive Date; and
   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 detailed information concerning the newly formed or acquired entity and we agree to accept coverage and issue an endorsement confirming coverage;
8. the Named Insured's participation in a legal entity including a limited liability company or joint venture, but only to the extent of the Named Insured's legal liability for its rendering or failure to render Professional Services or Contracting Services under the respective legal entity or joint venture.

9. Solely with regard to SECTION I - INSURING AGREEMENTS, B.1. Job Site Coverage - Occurrence, B.2. Transportation Coverage and B.5. Non-Owned Disposal Site Coverage, any person or entity, including a Client, as required by a written agreement signed by the Named Insured, but only for:

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

provided that such written agreement is signed by the Named Insured prior to the commencement of the Pollution Condition.

Any insurance afforded under the terms and conditions of this Policy shall be limited to the scope of coverage required by such agreement and shall be limited to the lesser of the amount of the limits of liability required by such written agreement or the Limits of Liability under this Policy. In no event shall we be liable for any amounts in excess of the Limits of Liability shown in Item (3) and Item (4) B. Pollution Coverages of the Declarations.

N. Insured Contract means that part of any written 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 or entity, provided that such written agreement is signed 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 agreement.

O. Job Site means the location where Contracting Services are rendered.

   Job Site does not include:

   1. any location that is owned, rented, leased, used, or occupied by you except for:
      a. a location owned, rented, leased, or occupied by the Client; or
      b. a location that is rented, leased, or occupied (but not owned) by the Named Insured and is used on a temporary basis by you for a single project only, during the course of providing Contracting Services for such single project.

   2. a Non-Owned Disposal Site or Your Location.

P. Leased Worker means a person leased to you, by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business.

Q. Legal Expense means legal costs, charges and expenses incurred in the investigation or defence of a Claim arising from Professional Services or Contracting Services, provided such costs, charges and expenses are authorized by us.

Legal Expense does not include the time and expense incurred by you in assisting us in the investigation or resolution of a Claim including, but not limited to, the costs of your in-house counsel, salary charges of your regular employees or officials, and fees and expenses of counsel retained by you, except as provided by SECTION II - SUPPLEMENTAL COVERAGES, D. Litigation Expense Coverage.

Legal Expense also does not include salary charges of our employees.
Legal Expense does not include any legal costs, charges and expenses incurred in relation to Rectification Expense, Emergency Remediation Expense or to any legal costs or expenses incurred by you in the investigation, prosecution, pursuit, adjustment, making or appeal of a Protective Claim or a Pollution Protective Claim, except as provided by SECTION II - SUPPLEMENTAL COVERAGE, C. Protective Loss/Pollution Protective Loss Bankruptcy Litigation Expense Coverage.

R. Low-Level Radioactive Waste and Material means:

1. Low Level Radioactive Waste as defined in Canadian Standards Association (CSA) N292.0-14 and N292.3.14 or subsequent revisions, and that when disposed is acceptable for disposal in a near-surface disposal facility or a land disposal facility; and/or


S. Media Event means a spontaneous happening that produces coverage by any mass media organization, particularly television news and newspapers, in either print or internet editions.

T. Mediation means an informal and non-binding dispute settlement process run by a neutral third-party approved by us.

U. Mould Matter means mould, mildew or any type or form of fungus, including mycotoxins, spores or by-products produced or released by fungi.

V. Named Insured means:

1. the First Named Insured; and

2. any person or entity designated as a Named Insured by endorsement to this Policy.

W. Natural Resource Damage means physical injury to, or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of use of the land or resources to the general public, 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 Canada or 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 Federal, State, Local, Provincial or Territorial 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. The terms Natural Resource Damage and Natural Resource Damage Assessments are as further defined by statute [CERCLA §§101(6); 107(a)(4)(C); OPA §§1001(5); 1002(b)(2)] and regulation [43 CFR Part 11; 15 CFR Part 990].

X. Non-Owned Disposal Site means a location used by you for the treatment, storage or disposal of waste or material, provided that:

1. the Non-Owned Disposal Site is not managed, operated, owned or leased by you or your affiliate;

2. the Non-Owned Disposal Site is permitted or licensed by the applicable federal, provincial, territorial, state, or local authorities to accept such waste or material as of the date the waste or material is treated, stored or disposed at the Non-Owned Disposal Site; and

3. the Non-Owned Disposal Site is not listed on a proposed or final Federal National Priorities List or any provincial, territorial or 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.

Y. Policy Period means the period listed in Item (2) of the Declarations or any shorter period resulting from
cancellation.

Z. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, acids, alkalis, electromagnetic fields, fumes, hazardous substances, bacteria, **Low-Level Radioactive Waste and Material, Mould Matter**, odors, smoke, soot, toxic chemicals, vapors and waste materials, including medical, infectious and pathological wastes.

AA. **Pollution Condition** means:

1. the discharge, dispersal, release, seepage, migration or escape of **Pollutants** into or upon land or structures thereupon, the atmosphere or any watercourse or body of water, including groundwater; and

2. the presence of **Mould Matter** in or on buildings or structures.

BB. **Pollution Loss** means each of the following that results from a **Pollution Condition**:

1. a monetary judgment, award or settlement of compensatory damages:
   a. resulting from **Bodily Injury** or **Property Damage**; or
   b. for **Remediation Expense**;

2. with regard to SECTION I - INSURING AGREEMENTS, B.2. **Transportation Coverage** and B.6. **Your Location Coverage, Remediation Expense**;

3. civil fines and penalties assessed against a **Client** that the **Named Insured** is legally liable, but only where insurance coverage for such fines and penalties is allowable by law;

4. civil fines and penalties assessed against you, but only where insurance coverage for such fines and penalties is allowable by law;

5. punitive, exemplary or multiplied damages that you are legally liable, but only where insurance coverage for such damages is allowable by law;

6. **Legal Expense** associated with Subsections BB.1. through BB.5 above;

7. **Restoration Costs**; and

8. the value of any reasonable and necessary services rendered, pursuant to any resolution that we have approved in advance in writing, by you to mitigate a **Pollution Condition** resulting from **Contracting Services**.

**Pollution Loss** does not include:

a. injunctive or equitable relief;

b. the return of fees or charges for services rendered; or

c. your profit, overhead or mark-up.

CC. **Pollution Protective Claim** means a written demand made or lawsuit commenced by you against a **Subcontractor** alleging liability or responsibility on the part of the **Subcontractor** for **Pollution Protective Loss** based upon or arising out of the **Subcontractor’s** rendering or failure to render **Subcontractor Services**.

DD. **Pollution Protective Loss** means the amount you are legally entitled to recover from a **Subcontractor**, as
determined by:

1. a final monetary judgment by a court of competent jurisdiction;
2. a final monetary award resulting from an arbitration or other dispute resolution proceeding, that you participate with our prior written consent; or
3. a settlement that we agree to in advance, in writing.

EE. **Predecessor in Interest** means any entity whose assets have been acquired by the **Named Insured** or whose partners, principals or shareholders have joined the **Named Insured** and whose name has been stated in the Application, submitted for this Policy and executed by the **Named Insured**, and for whose insurance the **Named Insured** is responsible by written agreement.

FF. **Professional Loss** means:

1. a monetary judgment, award or settlement of compensatory damages;
2. civil fines and penalties assessed against a third-party other than you that you are legally liable, but only where insurance coverage for such fines and penalties is allowable by law;
3. civil fines and penalties assessed against you, but only where insurance coverage for such fines and penalties is allowable by law;
4. punitive, exemplary or multiplied damages that you are legally liable, but only where insurance coverage for such damages is allowable by law;
5. liquidated damages, but only to the extent you would be legally liable in the absence of a contractual agreement;
6. **Legal Expense** associated with Subsections FF.1. through FF.5. above; and
7. the value of any services rendered by you or on your behalf, pursuant to any resolution approved by us in writing, prior to the services being rendered, 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; or
c. your overhead, mark-up or profit.

GG. **Professional Services** means those activities listed in Item (5) of the Declarations that are rendered by or on behalf of the **Named Insured**.

HH. **Property Damage** means each of the following caused by a **Pollution Condition**:  

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

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

JJ. Protective Loss means the amount you are legally entitled to recover from the Design Professional, as determined by:

1. a final monetary judgment by a court of competent jurisdiction;
2. a final monetary award resulting from an arbitration or other dispute resolution proceeding, that you participate in with our prior written consent; or
3. a settlement that we agree to in advance, in writing.

KK. Rectification Expense means direct costs and expenses to correct actual damages or prevent potential damages resulting from a negligent act, error or omission in your Professional Services.

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

LL. Remediation Expense means expense 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.

MM. Responsible Insured means any of your officers, directors, partners, members, managers, supervisors or foreman, or any of your employees that have responsibility, in whole or in part, for risk control, risk management, health and safety or environmental affairs, control or compliance, and any manager of Your Location.

NN. Restoration Costs means reasonable and necessary costs incurred by you to restore, repair or replace real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring Remediation Expense. Restoration Costs include the use of Green Building Materials, but only as set forth in SECTION II - SUPPLEMENTAL COVERAGE; B. Green Building Materials Expense Coverage.

However, these 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 for Green Building Materials. Actual Cash Value means the cost to replace such real or personal property, immediately prior to incurring the Remediation Expense, minus the accumulated depreciation of the real or personal property.

OO. Retroactive Date means the date listed in Item (4) of the Declarations for each applicable coverage that is specified and any Retroactive Date listed on an endorsement to this Policy.

PP. Subcontract means a written agreement, purchase order or any such legal instrument issued under your written agreement for the performance of Contracting Services or Transportation.

QQ. Subcontractor means any person or entity that enters into a Subcontract that assumes some or all of your obligation(s) to the Client.

RR. Subcontractor Services means Contracting Services or Transportation that are rendered by or on behalf of the Subcontractor.

SS. Subcontractor’s Insurance means any liability insurance under which, the Subcontractor qualifies as an
TT. **Transportation** means the movement of waste or material by land motor vehicle, trailer, semi-trailer, mobile equipment and watercraft, including the loading and unloading of such waste or material from the point of origin until the waste or material has arrived at its final destination, provided that:

1. the **Pollution Condition** occurs while in support of **Contracting Services**;
2. the **Pollution Condition** occurs at a location other than the **Job Site** or **Your Location**; and
3. the person or entity transporting the waste or material is properly licensed to transport such waste or material by the means utilized.

UU. **Underground Storage Tank** means any stationary container or vessel, including the associated piping connected thereto, that is ten percent (10%) or more beneath the surface of the ground and is:

1. constructed primarily of non-earthen materials; and
2. designated to contain any substance.

For purposes of this definition, associated piping means piping leading to and away from the **Underground Storage Tank** until such piping is aboveground or terminates in another **Underground Storage Tank**, receptacle or manufacturing process.

VV. **Your Location** means a location owned, rented to or leased by the **Named Insured**, provided that such location is listed in the 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 apply to **SECTION I - INSURING AGREEMENTS**, A. **Professional Coverages** and B. **Pollution Coverages**:

This Policy does not apply to any **Claim**, negligent act, error or omission in **Professional Services**, **Professional Loss**, **Rectification Expense**, **Protective Loss**, **Pollution Condition**, **Pollution Loss**, **Emergency Remediation Expense** or **Pollution Protective Loss** directly or indirectly for or based upon or arising out of:

1. **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:

(i) liability that you would have in the absence of a contract or agreement; or

(ii) solely with regard to **SECTION I – INSURING AGREEMENTS**, B.1. **Job Site Coverage - Occurrence** and B.2. **Transportation Coverage**, liability assumed by the **Named Insured** in an **Insured Contract**.
2. **Employer's Liability**
   any injury to:
   
a. any of your employees, including any Leased Workers, directors, partners, principals, members, officers, stockholders or trustees, if such injury arises in the course of:
      
      (i) employment by you; or

      (ii) performing duties related to the conduct of your business; or

   b. the spouse, domestic partner, child, parent, brother or sister of anyone set forth in Subsection 2.a. above, as a consequence of any injury to any of the persons described in Subsection 2.a. above.

   This exclusion applies whether you may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

3. **Express Warranty and Guaranty**
   any express warranty or guaranty.

   This exclusion does not apply to liability you would have in the absence of such express warranty or guaranty.

4. **Your Faulty Workmanship**
   solely with regard to SECTION I - INSURING AGREEMENTS, B. Pollution Coverages, the cost to repair or replace faulty workmanship, construction, fabrication, installation, assembly, erecting, manufacture or remediation, if such faulty workmanship, construction, fabrication, installation, assembly, erecting, manufacture or remediation was performed, in whole or in part, by you.

5. **Fiduciary Liability**
   any involvement by you:
   
a. as a director, partner, principal, member, officer, stockholder, trustee, or employee of a business enterprise not stated in Item (1) of the Declarations or of any charitable organization, or pension, welfare, profit sharing, mutual or investment fund or trust; or

   b. as a fiduciary under any employee benefit plan.

6. **Hostile Acts**
   any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, or civil commotion.

7. **Insurance and Suretyship**
   the requiring, obtaining, maintaining, advising as to, or the failure to require, obtain, maintain or advise as to any form of insurance, suretyship or bond, either with respect to any Insured or any other person or entity.

8. **Insured versus Insured**
   any Claim made by an Insured against any other Insured.

   This exclusion does not apply to a Claim by any person or entity, including a Client, that meets the definition of an Insured in SECTION III – DEFINITIONS, M. Insured, Subsection 9.
9. **Intentional and Dishonest Acts**
   a. intentional disregard of, or non-compliance with, any statute, regulation, ordinance, law or order, by or at your direction or your agent’s direction; or
   
b. actual or alleged fraudulent, dishonest, malicious or intentionally or inherently harmful conduct by you.

   This exclusion does not apply to any **Insured** that did not allegedly commit or allegedly participate in committing any of the forgoing described above.

10. **Known Circumstances or Conditions**
    a. a **Claim**, negligent act, error or omission in **Professional Services**, **Professional Loss**, **Rectification Expense**, **Protective Claim**, **Protective Loss**, **Pollution Condition**, **Pollution Loss**, **Emergency Remediation Expense**, **Pollution Protective Claim** or **Pollution Protective Loss** known by a **Responsible Insured** prior to the inception of the **Policy Period**; or
    
b. a circumstance or condition known by a **Responsible Insured** prior to the inception of the **Policy Period** where the **Responsible Insured** should have reasonably foreseen that a **Claim**, negligent act, error or omission in **Professional Services**, **Professional Loss**, **Protective Claim**, **Protective Loss**, **Pollution Condition**, **Pollution Loss**, **Pollution Protective Claim**, and **Pollution Protective Loss** could result, or **Rectification Expense** or **Emergency Remediation Expense** could be incurred.

   However, in the event that during the **Policy Period** you exacerbate a **Pollution Condition** caused by others, coverage is not excluded for that portion of the **Pollution Loss**, **Emergency Remediation Expense** or **Pollution Protective Loss** that would not exist but for your exacerbation of the **Pollution Condition**.

11. **Notices to Previous Insurers**
    any **Claim**, negligent act, error or omission in **Professional Services**, **Rectification Expense**, **Protective Claim**, **Pollution Condition**, **Emergency Remediation Expense**, **Pollution Protective Claim** or other circumstance reported by you in part or in whole under any prior policy.

12. **Products**
    any goods, materials or products designed, manufactured, sold, handled, distributed or supplied by you, a **Design Professional**, a **Subcontractor** or by others under license or trade name from you, a **Design Professional** or **Subcontractor**.

   This exclusion does not apply to:

   a. the design of a good or product that has been specifically designed or otherwise provided to accommodate the specifications of a particular project or multiple projects for a specific customer. This exception does not apply to any subsequently manufactured goods or products using the same design, without alteration, as any previously customized good or product;
   
b. computer software or programs specifically developed for a third-party that is not available for general sale and distribution, and is provided in conjunction with **Professional Services**, **Design Professional Services**, **Contracting Services** or **Subcontractor Services**; or
   
c. the fabrication, assembly or installation of goods, materials or products provided in connection with the performance of **Contracting Services**.
13. **Property**
   a. real property owned, rented or leased by you, except for Your Location or real property owned or leased by, or in the care, custody or control of, the Client; or
   b. for the repair, replacement or restoration of any personal property you own or lease, except for personal property owned or leased by, or in the care, custody or control of, the Client.

14. **Radioactive / Nuclear Material**
   a. material or waste that if disposed must be placed in a geologic repository or any other existing or planned disposal facility for waste that would not otherwise qualify as Low-Level Radioactive Waste and Material;
   b. radioactive waste or material for which, you have coverage under any nuclear insurance policy or have received indemnity from any Canadian or international government authority or statute;
   c. tailings, milling wastes, or products produced by the extraction of uranium or thorium from any ore processed for its source material;
   d. any nuclear weapon, engineered assembly, or component thereof designed to cause the release of radiological material or any hazardous substance onto a chosen target or to generate a nuclear detonation; and
   e. the existence, required removal or abatement of naturally occurring radioactive materials or technologically enhanced naturally occurring radioactive materials, including but not limited to radon;

   including, but not limited to the actual, alleged or threatened exposure of any person or property to any such matter.

15. **Related Entities and Individuals**
   a. Claim by an entity or individual:
      a. that wholly or partially owns, operates or manages you;
      b. that you have a direct or indirect ownership interest of twenty-five percent (25%) or more;
      c. that is controlled, operated or managed by you; or
      d. that is an affiliate of you.

16. **Workers’ Compensation and Similar Laws**
   your obligation under a workers’ compensation, unemployment compensation, disability benefits law or any similar law.

   B. The following exclusions apply only to SECTION I - INSURING AGREEMENTS, A.3. **Protective Loss Coverage** and B.4. **Pollution Protective Loss Coverage**:

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

   1. **Default Judgment**
      a default judgment, monetary award or any liability imposed where the Design Professional or Subcontractor failed to appear, respond, answer, defend or otherwise plead in connection with the Protective Claim or Pollution Protective Claim.
This exclusion does not apply if you establish that you would have recovered, from the **Design Professional** or **Subcontractor** in the absence of a default judgment, a monetary award or had any liability imposed where the **Design Professional** or **Subcontractor** failed to appear, respond, answer, defend or otherwise plead in connection with the **Protective Claim** or **Pollution Protective Claim**.

2. **Project-Specific Policy**
   a **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 apply only to **SECTION I - INSURING AGREEMENTS, B.6. Your Location Coverage**:

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

1. **Asbestos and Lead-Based Paint**
   the existence of, required removal or abatement of lead-based paint or asbestos, in any form, in any building or structure on or at **Your Location**, including, but not limited to, products containing asbestos, asbestos fibers, asbestos dust, and asbestos containing materials.

2. **Divested Location**
   any **Pollution Condition** on, at, under or migrating from **Your Location**, where the actual discharge, dispersal, release, seepage, migration or escape of **Pollutants** commenced subsequent to the time **Your Location** was sold, given away, no longer used, or abandoned by you, or condemned.

3. **Material Change in Use**
   a material change in the use of, or operations at, **Your Location** from the use or operations identified by you in the statements and information contained in the Application, submitted for this Policy and executed by you, and any other supplemental materials submitted to us prior to the inception of the **Policy Period** or prior to adding such location to the Your Location Schedule endorsed onto this Policy.

4. **Underground Storage Tank**
   the existence of any **Underground Storage Tank** on, at or under **Your Location**.

This exclusion does not apply to:

a. an **Underground Storage Tank** that is closed, abandoned in place or removed prior to the inception of the **Policy Period**, in accordance with all applicable Federal, Provincial, Territorial, State, or Local regulations, in effect at the time of closure, abandonment or removal;

b. an **Underground Storage Tank** that is identified in the Your Location Schedule endorsed onto this Policy;

c. an **Underground Storage Tank**, the existence of which, is unknown by a **Responsible Insured** as of the inception of the **Policy Period**;

d. flow-through process tanks, including oil/water separators; or

e. storage tank(s) situated in a man-made underground area (such as a basement, cellar, mine shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.
SECTION V - LIMITS OF LIABILITY AND SELF-INSURED RETENTION AMOUNT

A. Aggregate Limits of Liability

1. The Policy Aggregate Limit of Liability set forth in Item (3) of the Declarations is the most we shall pay for the sum of all Professional Loss, Rectification Expense, Protective Loss, Pollution Loss, Emergency Remediation Expense, Pollution Protective Loss, and any other amounts for which, insurance is afforded under SECTION I - INSURING AGREEMENTS of this Policy.

2. The Aggregate Limit of Liability for A. Professional Coverages, set forth in Item (4) A. Professional Coverages of the Declarations is the most we shall pay for the sum of all Professional Loss, Rectification Expense, Protective Loss and any other amounts for which, insurance is afforded under SECTION I - INSURING AGREEMENTS, A. Professional Coverages of this Policy.

3. The Aggregate Limit of Liability for B. Pollution Coverages, set forth in Item (4) B. Pollution Coverages of the Declarations is the most we shall pay for the sum of all Pollution Loss, Emergency Remediation Expense, Pollution Protective Loss, and any other amounts for which, insurance is afforded under SECTION I - INSURING AGREEMENTS, B. Pollution Coverages of this Policy.

B. Limits of Liability

1. Subject to the Aggregate Limit of Liability for A. Professional Coverages, set forth in Item (4) A. Professional Coverages of the Declarations, the Limit of Liability for each negligent act, error or omission for each coverage set forth in Item (4) A. Professional Coverages of the Declarations is the most we shall pay for all Professional Loss, Rectification Expense and Protective Loss based upon or arising out of a single negligent act, error or omission for which, insurance is afforded under SECTION I - INSURING AGREEMENTS, A. Professional Coverages of this Policy.

2. Subject to the Aggregate Limit of Liability for B. Pollution Coverages, set forth in Item (4) B. Pollution Coverages of the Declarations is the most we shall pay for all Pollution Condition, and any other amounts for which, insurance is afforded under SECTION I - INSURING AGREEMENTS, B. Pollution Coverages of this Policy.

C. Legal Expense in Addition to the Limits of Liability

1. Professional Liability

Solely with respect to SECTION I - INSURING AGREEMENTS, A.1. Professional Liability Coverage, once the applicable Self-Insured Retention Amount has been satisfied, Legal Expense shall not begin to reduce the Limits of Liability set forth in Item (3) or Item (4) A. Professional Coverages Aggregate Limit of Liability of the Declarations, until we have incurred, on behalf of one or more Insureds, Legal Expense in the aggregate of that amount, if any, set forth in Item (4) A. Legal Expense Aggregate Limit of Liability of the Declarations. Once we have incurred the Legal Expense Aggregate Limit of Liability, Legal Expense applies to and reduces each applicable Limit of Liability set forth in Item (3) and Item (4) A. Professional Coverages Aggregate Limit of Liability of the Declarations.

2. Pollution Liability

Solely with respect to SECTION I - INSURING AGREEMENTS, B.1. Job Site Coverage - Occurrence, B.2. Transportation Coverage, B.5. Non-Owned Disposal Site Coverage and B.6. Your Location Coverage, once the applicable Self-Insured Retention Amount has been satisfied, Legal Expense shall not begin to reduce the Limits of Liability set forth in Item (3) and Items (4) B. Pollution Coverages Aggregate Limit of Liability of the Declarations until we have incurred, on behalf of one or more Insureds, Legal Expense in the aggregate of that amount, if any, set forth in Item (4) B.
Legal Expense Aggregate Limit of Liability of the Declarations. Once we have incurred the Legal Expense Aggregate Limit of Liability, Legal Expense applies to and reduces each applicable Limit of Liability set forth in Item (3) and Item (4) B. Pollution Coverages Aggregate Limit of Liability of the Declarations.

D. Self-Insured Retention Amount

1. The Self-Insured Retention Amount must be satisfied before we have an obligation to pay. The Self-Insured Retention Amount must be paid by you and be uninsured. In the event that you or the person or entity designated by the First Named Insured does not satisfy the Self-Insured Retention Amount, the First Named Insured is responsible for the Self-Insured Retention Amount obligation.

2. Subject to the Limits of Liability set forth in Item (3) and Item (4) A. Professional Coverages of the Declarations, we are liable only for that portion of Professional Loss and Rectification Expense under SECTION I - INSURING AGREEMENTS, A. Professional Coverages, of this Policy in excess of the Self-Insured Retention Amount for each negligent act, error or omission, if any, set forth in Item (4) A. Professional Coverages of the Declarations for each such coverage.

3. Subject to the Limits of Liability set forth in Item (3) and Item (4) B. Pollution Coverages of the Declarations, we are liable only for that portion of Pollution Loss and Emergency Remediation Expense under SECTION I - INSURING AGREEMENTS, B. Pollution Coverages, of this Policy in excess of the Self-Insured Retention Amount for each Pollution Condition, if any, set forth in Item (4) B. Pollution Coverages of the Declarations for each such coverage.

4. Legal Expense applies to and reduces each applicable Self-Insured Retention Amount set forth in Item (4) A. Professional Coverages and Item (4) B. Pollution Coverages of the Declarations.

5. When a written agreement executed prior to the negligent act, error or omission in Professional Services or discovery of a Pollution Condition, specifies a Self-Insured Retention Amount less than the Self-Insured Retention Amount for the applicable coverage(s) stated in Item (4) of the Declarations, then the Self-Insured Retention Amount applicable to such coverage shall be the lesser amount required by that written agreement, provided that:

   a. you promptly reimburse us for the amount of the difference between the Self-Insured Retention Amount required by written agreement and the Self-Insured Retention Amount for the applicable coverage(s) stated in Item (4) of the Declarations; and

   b. you indemnify us for any loss, cost, expense or attorney's fees and costs incurred by us in enforcing our rights in this Subsection D.4. above.

6. If you mutually agree with us to use Mediation to resolve a Claim and the Claim is subsequently resolved as a direct consequence of Mediation, the Self-Insured Retention Amount applicable to said Claim shall be reduced by fifty percent (50%), subject to a maximum reduction of no more than $25,000. In the event you owe any portion of the Self-Insured Retention Amount, it shall be paid to us within thirty (30) days following receipt of the executed, full and final release of the Claim.

E. Multiple Insureds and Multiple Related Claims

1. The number of Insureds covered by this Policy shall not operate to increase either our Limits of Liability or Legal Expense set forth in Item (3) or Item (4) of the Declarations, or as set forth in SECTION II - SUPPLEMENTAL COVERAGE, notwithstanding any other provision of this Policy.
2. Two or more Claim(s) against one or multiple Insureds, Rectification Expense indemnified for one or multiple Insureds, or Protective Claim(s) made by one or multiple Insureds, for Professional Loss, Rectification Expense or Protective Loss based upon or arising out of the same, related, repeated or continuous negligent act, error or omission shall be treated as a single Claim, subject to:

a. a single Limit of Liability;

b. a single Self-Insured Retention Amount; and

c. shall not operate to increase either our Limits of Liability or Legal Expense set forth in Item (3) or Item (4) of the Declarations.

All such Claim(s), Rectification Expense or Protective Claim(s), whenever made, shall be considered first made on the date the earliest such Claim, Rectification Expense or Protective Claim was first made, or incurred and only a policy providing coverage for the earliest Claim(s), incurred Rectification Expense or Protective Claim(s) shall afford coverage.

If more than one coverage applies to the whole or a part of any Claim(s), Rectification Expense or Protective Claim(s) treated as a single Claim pursuant to this section, then the each negligent act, error or omission Limit of Liability for the entirety of that single Claim and the applicable Self-Insured Retention Amount for that single Claim shall be those set forth in Items (4) A.1. Professional Liability Coverage, A.2. Rectification Expense Coverage, or A.3. Protective Loss Coverage of the Declarations for the applicable coverage with the largest each negligent act, error or omission Limit of Liability and Self-Insured Retention Amount.

If more than one applicable coverage has the same each negligent act, error or omission Limit of Liability, but have different Self-Insured Retention Amounts, then the largest Self-Insured Retention Amount shall apply to that single Claim.

3. Two or more Claim(s) against one or multiple Insureds, Emergency Remediation Expense indemnified for one or multiple Insureds, or Pollution Protective Claim(s) made by one or multiple Insureds, for Pollution Loss, Emergency Remediation Expense or Pollution Protective Claim(s) arising out of the same, related, repeated or continuous Pollution Condition shall be treated as a single Claim, subject to:

a. a single Limit of Liability;

b. a single Self-Insured Retention Amount; and

c. shall not operate to increase either our Limits of Liability or Legal Expense set forth in Item (3) or Item (4) of the Declarations.

All such Claim(s), Emergency Remediation Expense or Pollution Protective Claim(s), whenever made, shall be considered first made on the date the earliest such Claim(s), Emergency Remediation Expense or Pollution Protective Claim(s) was first made and only the policy providing coverage for the earliest Claim(s), Emergency Remediation Expense or Pollution Protective Claim(s) shall afford coverage.

If more than one coverage applies to the whole or a part of a Claim(s), Pollution Protective Claim(s) or Emergency Remediation Expense treated as a single Claim pursuant to this section, then the each Pollution Condition Limit of Liability for the entirety of that single Claim and the applicable Self-Insured Retention Amount for that single Claim shall be those set forth in Items (4) B.1. Job Site Coverage - Occurrence, B.2. Transportation Coverage, B.3. Emergency Remediation Expense, B.4. Pollution Protective Loss Coverage, B.5. Non-Owned Disposal Site Coverage, and B.6. Your Location Coverage of the Declarations for the applicable coverage with the largest each Pollution Condition Limit of Liability.
If more than one applicable coverage has the same each Pollution Condition Limit of Liability, but has different Self-Insured Retention Amounts, then the largest Self-Insured Retention Amount shall apply to that single Claim.

F. Exhaustion of Applicable Limit of Liability

Once an applicable Limit of Liability set forth in Item (3) or Item (4) of the Declarations, or set forth in SECTION II - SUPPLEMENTAL COVERAGES, has been exhausted, we have no obligation to:

1. defend or continue to defend any Claim by paying Legal Expense; or
2. pay any Professional Loss, Rectification Expense, Protective Loss, Pollution Loss, Emergency Remediation Expense, Pollution Protective Loss, SECTION II - SUPPLEMENTAL COVERAGES, or any other amounts under this Policy.

G. Insurance Under Multiple Policies

1. Notwithstanding anything to the contrary in this Policy or any other policy issued by us or an entity affiliated with us, under no circumstances shall more than one policy issued to you by us or an entity affiliated with us apply to any Professional Loss, Rectification Expense, Protective Loss, Pollution Loss, Emergency Remediation Expense or Pollution Protective Loss that:
   a. arise(s) out of the same, related, repeated or continuous act(s), error(s) or omission(s) in rendering or failing to render Professional Services or Design Professional Services; or
   b. arise(s) out of the same, related, repeated or continuous Pollution Condition(s); or
   c. arise(s) out of Bodily Injury, Property Damage, Environmental Damage or other injury, damage or loss that occurs or continues through more than one policy period of two or more policies (including this Policy) issued by us or an entity affiliated with us.

2. If the Bodily Injury, Property Damage, Environmental Damage or other injury, damage or loss arises out of a Pollution Condition(s), then the only policy that shall respond to any resulting Professional Loss, Rectification Expense, Protective Loss, Pollution Loss, Emergency Remediation Expense or Pollution Protective Loss is the first policy in effect when the first exposure to the Pollution Condition(s) occurs.
   
   However, if the date of the first exposure to the Pollution Condition(s):
   a. occurs prior to the first day of the policy period of the first policy issued by us or an entity affiliated with us, or
   b. cannot be determined,
   
   then the first exposure to the Pollution Condition(s) shall be deemed to have occurred only on the first day of the policy period of the first policy issued by us or an entity affiliated with us.

3. If the Bodily Injury, Property Damage, Environmental Damage or other injury, damage or loss arises out of something other than a Pollution Condition, then the only policy that shall respond is the policy in effect when the actual or alleged negligent act(s), error(s) or omission(s) in rendering or failing to render Professional Services or Design Professional Services was first reported to us or an entity affiliated with us.
SECTION VI – OPTIONAL EXTENDED REPORTING PERIOD


1. In the event of non-renewal or cancellation of this Policy by the First Named Insured, the First Named Insured may purchase an Optional Extended Reporting Period of up to three (3) years, for an additional premium of not more than one hundred percent (100%) of the total premium for this Policy, commencing on the last day of the Policy Period. The ninety (90) days of additional reporting, if applicable, will be merged into the Optional Extended Reporting Period and is not in addition to the Optional Extended Reporting Period.

2. The First Named Insured must request the purchase of the Optional 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. If purchased, this extension applies to:

   a. a Claim, Protective Claim or Pollution Protective Claim first made against you or by you, as applicable, during the Policy Period and reported by you to us, in writing, during the Optional Extended Reporting Period, and that is otherwise covered by this Policy; and

   b. a Claim, Protective Claim or Pollution Protective Claim first made against you or by you, as applicable, and reported by you to us, in writing, during the Optional Extended Reporting Period, and that is otherwise covered by this Policy. For the purpose of this section, the Claim, Protective Claim or Pollution Protective Claim shall be deemed to have been made against you or by you, as applicable, on the last day of the Policy Period.

4. Notwithstanding anything to the contrary above, the Optional Extended Reporting Period does not apply where:

   a. this Policy is terminated for fraud, misrepresentation or non-payment of premium or cancelled on any ground set forth in Subsections 2.a., 2.b. or 2.c. of SECTION VIII - CONDITIONS, D. Cancellation; or

   b. you have obtained other insurance from an entity other than us or our affiliate, effective after the end of the Policy Period, where such other insurance applies in whole or in part, to your professional liability, contractor’s liability or pollution legal liability.

5. The Optional Extended Reporting Period granted hereunder shall be subject to all the terms and conditions of this Policy and shall only apply to Claim(s), Protective Claim(s) or Pollution Protective Claim(s) based upon or arising out of the performance of Professional Services, Design Professional Services, Contracting Services or Subcontractor Services prior to the cancellation or non-renewal of this Policy, and that are otherwise covered by this Policy.

6. The Optional Extended Reporting Period shall be non-cancellable. At the commencement of the Optional Extended Reporting Period, the entire premium shall be considered one hundred percent (100%) fully earned.

7. The Limits of Liability applicable to the Optional Extended Reporting Period shall be the Limits of Liability remaining under the terminated policy.

8. 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 - REPORTING, DEFENCE, SETTLEMENT AND COOPERATION

A. 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, Protective Claim or Pollution Protective Claim;
   b. Bodily Injury or Property Damage that may result in a Claim, Protective Claim or Pollution Protective Claim;
   c. an act, error or omission in Professional Services that may result in a Claim, Rectification Expense or Protective Claim;
   d. a Pollution Condition; and
   e. Remediation Expense.

2. You must forward to us or to any of our authorized agents all demands, notices, summonses, legal papers or orders received by you or your representative as soon as practicable.

3. You must provide to us, whether orally or in writing, notice of the particulars including the time, place and circumstances thereof, of the Claim, act, error or omission in Professional Services or Design Professional Services, Protective Claim, Pollution Condition, Pollution Protective Claim, Bodily Injury, Property Damage or Remediation Expense, along with the names and addresses of any injured persons and witnesses. In the event of oral notice, you must furnish to us a written notice of the above of such particulars as soon as practicable.

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

4. You must cooperate with us and upon our request submit to examination under oath by a representative of us, if required, and attend hearings, depositions and trials and assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and otherwise cooperate in the investigation or defence of the Claim, and the maintenance and pursuit of, and recovery of monies in connection with the 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.

B. Prior Consent Required

As a condition precedent to the coverage hereunder:

No costs, charges or expenses, within the Self-Insured Retention Amount or otherwise, shall be incurred, nor payments made, obligations assumed or remediation commenced or undertaken without our prior written consent which, shall not be unreasonably withheld.

This provision does not apply to SECTION I - INSURING AGREEMENTS, B.3. Emergency Remediation Expense Coverage.
C. Defence

We have the right and the duty to defend, including the right to select counsel for, any Claim against you seeking Professional Loss or Pollution Loss to which, this insurance applies, even if any of the allegations are groundless, false or fraudulent. However, we have no duty to defend any Claim against you to which, this insurance does not apply. If we exercise such right set forth above, you must promptly reimburse us for any payments made by us within the Self-Insured Retention Amount, if any. We shall have the right, but not the duty, to defend an Insured against any Claim seeking damages for Professional Loss or Pollution Loss that is within the Self-Insured Retention Amount.

D. Consent to Settle

As a condition precedent to the coverage hereunder:

You shall not admit liability with respect to, or settle, any Claim, Protective Claim or Pollution Protective Claim without our prior written consent.

If we recommend a monetary settlement of a Claim:

1. for an amount within the Self-Insured Retention Amount, and you refuse to settle for such recommended amount, we shall not be liable for any Professional Loss, Rectification Expense or Pollution Loss, in excess of the Self-Insured Retention Amount; or

2. for a total amount in excess of the Self-Insured Retention Amount, and you refuse to settle for such recommended amount, our liability for Professional Loss, Rectification Expense or Pollution Loss or for any amount, for which, coverage is or may be applicable, shall be limited to such recommended amount plus the Legal Expense incurred as of the date we recommended such settlement amount that exceeds the Self-Insured Retention Amount, but falls within the Limits of Liability.

E. Circumstance Reporting

If during the Policy Period, the Named Insured first becomes aware of an actual or alleged negligent act, error or omission in Professional Services or a Pollution Condition, that the Named Insured reasonably believes may result in a Claim (hereafter referred to as a “Circumstance”) that this Policy may apply, the Named Insured may provide written notice, of the actual or alleged negligent act, error omission in Professional Services or the Pollution Condition, to us during the Policy Period.

Any such Circumstance that subsequently becomes a Claim made against the Named Insured and reported to us, in writing, shall be considered to have been first made and reported during the Policy Period and shall be subject to all of the terms and conditions of this Policy.

As a condition precedent to the rights afforded to the Named Insured under this Subsection E., such written notice to us of a Circumstance 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 Services 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 Services; and

4. details explaining how the Named Insured first became aware of the Circumstance.
We shall determine, in our sole discretion, whether the **Named Insured’s** written notice satisfies the condition precedent above.

**SECTION VIII - CONDITIONS**

**A. Action Against Company**

No action shall lie against us unless, as a condition precedent thereto:

1. you have fully complied with all of the terms of this Policy; and

2. the amount you are obligated to pay has been finally determined either by judgment against you after actual trial or by your written agreement, the claimant and us.

Any person or entity that has secured such judgment or entered into such written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or entity shall have any right under this Policy to join us as a party to any action against you to determine your liability, nor shall we be brought into such action by you or your legal representative.

**B. Assignment**

This Policy cannot be assigned without our prior written consent. Such consent shall not be unreasonably withheld or delayed.

**C. Bankruptcy or Insolvency**

Your bankruptcy or insolvency, or of your estate, shall not relieve us of any of our obligations under this Policy.

**D. Cancellation**

The following with regards to cancellation apply to this Policy:

1. **Cancellation by the First Named Insured:**

   This Policy may be cancelled by the First Named Insured by mailing to us written notice stating when thereafter the cancellation shall be effective. The mailing of such notice must be sent 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.

   The Minimum Earned Premium for this Policy shall be the percentage stated in Item (7) of the Declarations of the total premium for this Policy. This means that such percentage of the total premium is fully earned by us on the inception of the Policy Period. The First Named Insured is not entitled to any return of the Minimum Earned Premium upon cancellation.

   If the Minimum Earned Premium is less than one hundred percent (100%) of the total premium for this Policy, and the First Named Insured cancels this Policy, then the amount of premium returnable after the minimum premium earned is retained by us shall be computed in accordance with the customary short-rate table and procedure.

2. **Cancellation by Us:**

   This Policy may be cancelled by us by mailing to the First Named Insured at the address shown in Item (1) of the Declarations, written notice stating when not less than ninety (90) days thereafter [or fifteen (15) days for non-payment of premium] such cancellation shall be 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. you made a material misrepresentation that affects our assessment of the risks insured by this Policy;

b. you breached or failed to comply with Policy terms, conditions, contractual duties or any of your obligations under this Policy or at law; or

c. you failed to pay the premium or the Self-Insured Retention Amount.

If we cancel this Policy for reasons set forth above, then the amount of premium returnable to the First Named Insured is computed on a pro-rata basis.

In the event of cancellation by us from any ground referred to in Subsection 2.b. 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.

3. The following provisions also apply to Subsections D.1. and D.2. above:

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 against you, a Pollution Condition is discovered, a Protective Claim or Protective Pollution Claim is made by you against a Design Professional 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 Optional 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, the ninety (90) days of additional reporting will not apply.

E. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or a change in any part of this Policy or estop us from asserting any right under the terms of this Policy. The terms and conditions of this Policy cannot be waived or changed, except by endorsement issued by us to form a part of this Policy.

F. Choice of Law and Jurisdiction

Unless an applicable statute of a Canadian Province or Territory requires otherwise, all matters arising hereunder including questions related to the validity, interpretation, performance, and enforcement of this policy, shall be determined in accordance with the law of the Province of Ontario, notwithstanding Ontario’s conflict of laws rules. In no event shall the law of any other jurisdiction outside Canada apply.

All disputes arising hereunder, including questions related to the validity, interpretation, performance, and enforcement of this Policy, shall be submitted to the jurisdiction of the courts of the Province of Ontario, notwithstanding that the laws of another jurisdiction may govern the policy.
G. **Currency**

All premiums, limits of liability, retention amounts, loss and other amounts under this Policy are expressed and payable in Canadian currency. If judgement is rendered, settlement is denominated or other elements of loss are stated or incurred in a currency other than Canadian currency, payment of covered amounts under this Policy, subject to its terms, conditions and limitations, shall be made either in such other currency (at your option) or in Canadian dollars at the rate of exchange most recently published in The Globe and Mail on the date of actual payment of each loss component.

H. **Declarations and Representations**

By acceptance of this Policy, you agree that the statements, declarations and information contained in the Application, submitted for this Policy and executed by you, and any other supplemental materials submitted to us are:

1. true, correct and complete;
2. such statements and information are material to our underwriting of this Policy;
3. that 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, submitted for this Policy and executed by you, and any other supplemental materials submitted to us are incorporated in and made part of this Policy.

I. **Design Professional’s Insurance**

You shall require that each Design Professional, with whom you enter into a written agreement, carry professional liability insurance.

J. **Headings**

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

K. **Inspection and Audit**

We shall be permitted, but not obligated, to examine, audit, monitor and inspect 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.

Neither our right to examine, audit, monitor and make inspections, 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.

L. **Other Insurance**

Unless expressly stated to the contrary, this Policy is excess over the Self-Insured Retention Amount and any other valid and collectible insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other policy to this Policy Number in this Policy’s Declarations. When any other insurance has a duty to defend a Claim, we shall have no duty to defend the Claim; if the other insurance does not defend the Claim, we shall have the right, but not the duty to defend the Claim.
With regard to SECTION I - INSURING AGREEMENTS, B. Pollution Coverages, when you are required by written agreement, executed prior to the first commencement of the Pollution Condition, to include any person or entity as an additional Insured, such coverage shall be provided on a primary and non-contributory basis to the extent required by the written agreement.

M. Sanctions

We shall not be deemed to provide cover and shall not be liable to pay any Claim, Protective Claim or Pollution Protective Claim or provide any benefit hereunder, to the extent that the provision of such cover, payment of such Claim, Protective Claim or Pollution Protective Claim or provision of such benefit would conflict with or expose us to any sanction, prohibition, restriction or penalty under United Nations resolutions or the trade or economic sanctions, laws or regulations of Canada, the European Union, the United Kingdom or the United States of America.

N. Severability

Except with respect to the Limits of Liability and the Self-Insured Retention Amount, and any rights or duties specifically assigned in this Policy to the First Named Insured, this insurance applies:

1. as if each Named Insured were the only Named Insured; and

2. separately to each Insured against whom a Claim is made.

O. Sole Agent

The First Named Insured shall act on behalf of all Insureds for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal and the exercise of the rights provided in SECTION V – OPTIONAL EXTENDED REPORTING PERIOD.

P. Subrogation

In the event of any payment under this Policy, we shall be subrogated to all of your rights of recovery against any person or entity and you will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. 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. You shall do nothing at any time to prejudice our subrogation rights.

However, we waive our right of recovery against any person or entity, except for a Design Professional or Subcontractor, including Subcontractors and subconsultants, if and to the extent you agreed to waive your right of recovery against such person or entity in a written agreement signed by you prior to:

1. 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, A. Professional Coverages; or

2. the first commencement of a Pollution Condition out of which the Claim or request for Emergency Remediation Expense or Pollution Loss arises under SECTION I - INSURING AGREEMENTS, B. Pollution Coverages.

Q. Territory

This Policy applies to Professional Services and Contracting Services rendered worldwide, provided that the Claim, Protective Claim or Pollution Protective Claim is first brought, and at all times maintained, within Canada and the United States of America (including its territories and possessions).
IN WITNESS WHEREOF the Company has caused this Policy and the Declarations to be signed by the Chief Agent for Canada.

XL SPECIALTY INSURANCE COMPANY

[Signature]

Urs Uhlmann
Chief Agent for Canada