

# EVEREST ELEVATION® ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY POLICY

**THIS IS A CLAIMS-MADE POLICY AND COVERS CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE INSURER PURSUANT TO THE TERMS HEREIN. AMOUNTS INCURRED AS CLAIM EXPENSES SHALL REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS INCLUDING JUDGMENTS AND SETTLEMENTS AND MAY COMPLETELY EXHAUST THE POLICY LIMITS. PLEASE READ THE ENTIRE POLICY CAREFULLY.**

In consideration of the payment of the premium and in reliance upon all information provided to and statements made to the Insurer, including those statements in the **Application**, which is made part hereof and deemed attached hereto in connection with the underwriting of this Policy, and subject to all terms, conditions and limitations of this Policy, including those in the Declarations, which is made part hereof, the Insurer and the **Named Insured**, on behalf of all **Insureds**, agree as follows:

**All definitions are in Section XX – DEFINITIONS below.**

## SECTION I – INSURING AGREEMENT

### A. PROFESSIONAL LIABILITY

The Insurer shall pay on behalf of the **Insured**, all **Loss** in excess of the Deductible, resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported during the **Policy Period** or **Extended Reporting Period**, if exercised, arising out of a **Wrongful Act** committed on or after the **Retroactive Date**, provided that prior to the inception date of this Policy or the first such policy issued and continually renewed by the Insurer, no **Insured** knew or could have reasonably expected that the **Wrongful Act** might give rise to a **Claim**.

### B. POLLUTION LIABILITY

The Insurer shall pay on behalf of the **Insured**, all **Loss** in excess of the Deductible, resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported during the **Policy Period** or **Extended Reporting Period**, if exercised, arising out of a **Pollution Incident** taking place on or after the **Retroactive Date**, provided that prior to the inception date of this Policy or the first such policy issued and continually renewed by the Insurer, no **Insured** knew or could have reasonably expected that the **Wrongful Act** might give rise to a **Claim**.

### C. THIRD PARTY CYBER LIABILITY

The Insurer shall pay on behalf of the **Insured**, all **Loss** in excess of the Deductible, resulting from any **Claim** first made against the **Insured** during the **Policy Period** and reported during the **Policy Period** or **Extended Reporting Period**, if exercised, arising out of a **Cyber Security Wrongful Act** committed on or after the **Retroactive Date**, provided that prior to the inception date of this Policy or the first such policy issued and continually renewed by the Insurer, no **Insured** knew or could have reasonably expected that the **Cyber Security Wrongful Act** might give rise to a **Claim**.

## SECTION II – SUPPLEMENTAL PAYMENTS

The Insurer shall reimburse the **Insured** for all **Expenses** incurred by the **Insured**, with the Insurer's prior consent, as referenced in Sections A-I below, subject to the respective Sublimit for each such **Expense** as set forth in ITEM 6 of the Declarations. The Sublimits in Section A-H below, shall be in addition to and not part of the Aggregate Limit of Liability referenced in ITEM 3 of the Declarations and shall not be subject to the Deductibles set forth in ITEM 4 of the Declarations. The Sublimit in Section I below shall be part of, and not in addition to the Aggregate Limit of Liability referenced in ITEM 3 of the Declarations and shall be subject to the Deductibles set forth in ITEM 4 of the

Declarations. The Insurer shall have no duty to defend any **Insured** in connection with any **Expense Event** referenced in this Section.

#### A. CRISIS EVENT EXPENSES

The Insurer will reimburse the **Named Insured** for all **Crisis Event Expenses** incurred as a result of all **Crisis Events** that first occur during the **Policy Period**, subject to the Sublimit of Liability referenced in ITEM 6.A of the Declarations.

#### B. DISCIPLINARY PROCEEDINGS

The Insurer will reimburse all **Insureds** for all **Disciplinary Proceeding Expenses** incurred in connection with all **Disciplinary Proceedings** first commenced against any **Insured** during the **Policy Period**, subject to the Sublimits of Liability referenced in ITEM 6.B of the Declarations. The Insurer shall not pay and there shall be no coverage for any fines, judgments, awards or settlements in connection with any **Disciplinary Proceeding**.

#### C. SECURITY INCIDENT RESPONSE EXPENSES

The Insurer shall reimburse the **Named Insured** for all **Security Incident Response Expenses** incurred in connection with all **Security Incidents** first occurring during the **Policy Period**, subject to the Sublimits of Liability referenced in ITEM 6.C of the Declarations.

#### D. NON-PARTY SUBPOENA EXPENSES

The Insurer shall reimburse all **Insureds** for all reasonable attorneys' fees and expenses incurred in connection with all **Non-Party Subpoenas** first received by an **Insured** during the **Policy Period** arising out of **Professional Services** performed by such **Insureds**, subject to the Sublimits of Liability referenced in ITEM 6.D of the Declarations.

At the **Insured's** request, and upon the Insurer's receipt of a copy of the **Non-Party Subpoena**, the Insurer shall assign an attorney to provide advice regarding the production of documents, to prepare for sworn testimony and represent the **Insured** at their deposition. Coverage provided hereunder shall not include coverage in connection with any **Disciplinary Proceeding** or any proceeding or action referenced in Section II.F below.

#### E. LITIGATION PARTICIPATION EXPENSES

Upon the Insurer's request, the **Insureds** shall attend all **Litigation Events** relative to the defense of a **Claim**. The Insurer shall reimburse the **Insureds** for all **Litigation Participation Expenses** incurred in connection with such **Litigation Events**, subject to the Sublimits referenced in ITEM 6.E of the Declarations.

#### F. ADA/FHA/OSHA

The Insurer shall reimburse the **Insureds** for all reasonable attorneys' fees and expenses incurred in connection with all **Regulatory Actions** brought against all **Insureds**, provided that the **Regulatory Action** is: (i) first commenced during the **Policy Period**, and (ii) arises out of the performance of **Professional Services** rendered solely after the **Retroactive Date**, subject to the Sublimits of Liability referenced in ITEM 6.F of the Declarations.

After the Insurer has paid the applicable Sublimits of Liability shown in ITEM 6.F of the Declarations, the Insurer may, at its sole discretion, agree to pay, upon exhaustion of the Deductible set forth in ITEM 4 of the Declarations, any additional fees and expenses, and such fees and expenses will be treated as **Claim Expenses**. The Insurer shall not be liable for any other **Loss**, or taxes, fines or penalties incurred in connection with any such **Regulatory Action(s)**. No **Regulatory Action** shall be deemed a **Claim** under this Policy.

## G. FIRST PARTY CLEANUP COSTS

The Insurer shall reimburse the **Insured** for all **Cleanup Costs** incurred resulting directly from all **Pollution Incidents** first occurring during the **Policy Period**, subject to the Sublimits of Liability referenced in ITEM 6.G of the Declarations. Such **Pollution Incident** requiring **Cleanup Costs** must be first discovered during the **Policy Period** and the **Insured's** request for such **Cleanup Costs** must first be made to the Insurer in writing in accordance with Section IV.B.

## H. PEER REVIEW EXPENSES

The Insurer shall reimburse the **Insured** fifty percent (50%) of the fees and expenses incurred for a peer review program conducted by a qualified independent consulting firm or nationally recognized professional society such as the American Institute of Architects or the American Council of Engineering Companies, subject to the Sublimit of Liability referenced in ITEM 6.H of the Declarations.

## I. RECTIFICATION EXPENSES

The Insurer shall reimburse the **Insured** for all **Rectification Expenses** in excess of the Deductible in ITEM 4 of the Declarations, that are incurred by the **Insured** during the **Policy Period** to redesign or remediate a **Design Defect**, subject to the Sublimit of Liability referenced in ITEM 6.I of the Declarations for all **Design Defects**, provided that:

1. the **Design Defect** is caused by or results from **Professional Services** rendered by an **Insured** after the **Retroactive Date**;
2. the **Insured** first becomes aware of the **Design Defect** during the **Policy Period** and prior to the earliest of either: (i) the issuance of a certificate of substantial completion, or (ii) the date that the constructed project has been put to its intended use by any person other than a contractor or subcontractor;
3. the **Insured** provides written notice to the Insurer prior to incurring or committing to incur, any **Rectification Expenses**, but in no event later than sixty (60) days after the end of the **Policy Period**;
4. the **Insured** demonstrates by clear and convincing evidence that the **Design Defect** could result in a covered **Claim** being made against an **Insured**;
5. prior to the **Insured** incurring any **Rectification Expenses**, the Insurer consents in writing to such **Rectification Expenses**; and
6. to the extent of any reimbursement under this Section II.I, the **Insured** agrees to transfer its rights of recovery against any person or organization responsible for the **Design Defect**, if applicable, and the **Named Insured** shall execute and deliver instruments and papers and do whatever is necessary to secure such rights. The **Insured** shall not waive these rights of subrogation either before or after such rights accrue.

If such **Design Defect** results in a **Claim** against the **Insured**:

- a. the Insurer will not pay any further **Rectification Expenses** related to such **Design Defect** after the **Claim** is made;
- b. the Insurer's available Per Claim Limit of Liability and Aggregate Limit of Liability to pay **Loss** resulting from such **Claim** will be reduced by the amount of **Rectification Expenses** incurred for all related **Design Defects** giving rise to such **Claim**, paid prior to the **Claim** being made;
- c. There shall be no additional Deductible applicable to such **Claim** if the **Insured** has already exhausted the Deductible applicable to the **Rectification Expenses**. If the applicable Deductible for the **Rectification Expenses** has not been fully exhausted, the Insurer shall only be liable for **Loss** in connection with such **Claim** in excess of the remaining amount of the applicable Deductible for the **Rectification Expenses**.

- d. such **Claim** shall be deemed made during the **Policy Period** in which such **Design Defect** and request for **Rectification Expenses** was first reported to the **Insured**.

Provided however, there shall be no coverage under this Policy for any **Rectification Expenses** based upon, arising out of or attributable to:

- i. a **Cosmetic Defect**;
- ii. any actual or alleged deficiency in connection with construction means, methods, techniques or sequences or procedures;
- iii. any intentional act which results directly or indirectly, in a **Design Defect**;
- iv. coverage provided under any property policy or endorsement, including builder's risk insurance, an installation floater, or other property coverage that would provide coverage for loss that is covered or would be subject to coverage under this Section II.I, but for the exhaustion of the limits of insurance of such property policy or endorsement; or
- v. any activity or services provided as a construction manager.

### SECTION III – EXCLUSIONS

This Policy does not apply to any **Claim** or **Expense Event**:

#### A. CAPACITY

based upon, arising out of or attributable to a natural person **Insured's** services or capacity as an officer, director, partner, principal, trustee, manager, owner, or employee of a corporation, partnership, association, or any other business enterprise, other than an **Insured**.

#### B. CONDUCT

based upon, arising out of or attributable to:

1. the gaining of any profit, remuneration or advantage to which the **Insured** was not legally entitled;
2. any intentional, criminal, dishonest, malicious or deliberately fraudulent act, error or omission by and **Insured**;

if established by a final, non-appealable adjudication of the **Claim** in any judicial, administrative or alternative dispute resolution proceeding.

For purposes of determining the applicability of this exclusion, no fact pertaining to, knowledge possessed by or conduct of a natural person **Insured**, shall be imputed to any other natural person **Insured**.

#### C. CONTRACT

based upon, arising out of or attributable to any actual or alleged liability of the **Insured** pursuant to any written or oral contract or agreement, including but not limited to a hold harmless or indemnity agreement, provided that this exclusion does not apply to the extent the **Insured** would have been liable in the absence of such contract or agreement.

#### D. CONTROLLED ENTITY EXCLUSION

brought by or on behalf of an entity:

1. which is operated, managed or controlled by any **Insured**;
2. in which the **Insured** has a collective ownership interest in excess of 50%;
3. in which any **Insured** is an officer or director; or
4. which wholly or partly owns, operates or manages any **Insured**.

## E. CYBER

1. based upon, arising out of, or attributable to any **System Breach, Denial of Service Attack or Privacy Event** of which an **Insured** could have reasonably foreseen would lead to a **Claim** prior to the inception date of this Policy, provided however, that no **Wrongful Act** of any natural person **Insured** who acts outside the scope of his or her employment shall be imputed to any other natural person **Insured**.
2. based upon, arising out of, or attributable to any electrical or mechanical failures or interruption, including but not limited to any electrical disturbance, surge, spike, brownout or blackout, and outages to gas, water, telephone, cable, satellite, telecommunications or other infrastructure;
3. based upon, arising out of, or attributable to any interruption, suspension, failure or outage of any component of the internet that is not part of an **Insured's Computer System**, including without limitation any hardware or software infrastructure supporting the internet;
4. based upon, arising out of, or attributable to fire, smoke, explosion, lightning, wind, water, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, act of God or any other physical event, however caused;
5. based upon, arising out of, or attributable to the loss, transfer or theft of monies, securities or tangible property in the care, custody or control of the **Insured**; or
6. based upon, arising out of, or attributable to the **Insured's** intentional failure to disclose the loss of **Private Information** in violation of any law or regulation.

## F. DISCRIMINATION, HUMILIATION, HARASSMENT AND MISCONDUCT

based upon, arising out of or attributable to any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability or pregnancy; provided that this exclusion shall not apply to: (i) any **Regulatory Action**, or (ii) arising out of the **Insured's** rendering or failure to render **Professional Services**.

## G. EMPLOYMENT PRACTICES

based upon, arising out of or attributable to any employment-related practices, policies, acts or omissions, including but not limited to coercion, demotion, evaluation, reassignment, discipline, defamation, harassment or discrimination of an applicant or a past, present or future employee of an **Insured**.

## H. EXPRESS WARRANTIES

based upon, arising out of or attributable to any express warranties or guarantees; provided that this exclusion shall not apply to any guarantee that the **Insured's Professional Services** conform to any generally accepted standard of care applicable to any **Professional Services**.

## I. FAULTY WORKMANSHIP

based upon, arising out of or attributable to the cost to repair or replace faulty workmanship performed by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture or remediation including any materials, parts or equipment furnished in connection therewith.

## J. GOODS AND PRODUCTS

based upon, arising out of or attributable to the design or manufacture of any products or goods which are sold or supplied by any **Insured** or by others under license from any **Insured**. However, this exclusion does not apply to software designed or modified for an individual client of the **Insured** in connection with the **Insured's Professional Services** for that client. In addition, this exclusion does not apply to the supplying of furnishings or fixtures by the **Insured** as part of interior design or decorating services.

#### K. INSURED V. INSURED

brought by or on behalf of an **Insured** against another **Insured**.

#### L. INSURED'S PROPERTY

based upon, arising out of or attributable to the **Insured's** ownership, rental, leasing, operation, maintenance, use or repair of any real or personal property, including **Property Damage** to property owned by, occupied by, rented or leased by or to the **Insured**.

#### M. INTELLECTUAL PROPERTY

based upon, arising out of or attributable to any actual or alleged:

1. infringement of any copyright or misappropriation of any trade secrets arising out of or related to **Technology Products**; or
2. infringement of patent, including any product or process for which a patent application has been filed, but the patent has not yet been issued;

provided however, solely with respect to coverage provided in Section I.C, if elected, this exclusion shall not apply to **Loss** in connection with that portion of any **Claim** that alleges an inadvertent disclosure of a trade secret by any **Insured** as a result of a **Cyber Security Wrongful Act**.

#### N. NUCLEAR

based upon, arising out of or attributable to nuclear projects, nuclear reaction, radiation or radioactive contamination or any consequence thereof, regardless of cause.

#### O. PRIOR NOTICE

based upon, arising out of or attributable to any act, fact, circumstance, situation or **Wrongful Act** which has been the subject of any notice given prior to the inception of this Policy under any professional liability, cyber liability or other equivalent insurance policy to this Policy.

#### P. VIOLATIONS OF LAW

for an actual or alleged violation of the responsibilities, obligations or duties imposed by:

1. any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law; and
2. the Employee Retirement Income Security Act of 1974, or the Pension Protection Act of 2006, Telephone Consumer Protection Act, Securities Act of 1933, Securities Exchange Act of 1934, the Racketeer Influence and Corrupt Organizations Act 18 USC Section 1961 et seq., the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, the Fair Credit Reporting Act, or the Fair and Accurate Credit Transactions Act, including any amendments or any rules, regulations or orders issued thereto, or any similar provisions of any federal, state or local law.

### SECTION IV – NOTICE

- A. As a condition precedent to their rights under the Policy, the **Insureds** shall give to the Insurer written notice of any **Claim** made against any **Insured** as soon as practicable, but in no event later than: (i) sixty (60) days after the end of the **Policy Period**, or (ii) the expiration of the applicable **Extended Reporting Period**, if exercised.

- B. With respect to coverage under SECTION II-SUPPLEMENTAL PAYMENTS, the **Insured** shall provide written notice to the Insurer of any **Expense Event** as soon as practicable but no later than the expiration of the **Policy Period** or **Extended Reporting Period**, if exercised, or as otherwise set forth in Section II.
- C. If during the **Policy Period** an **Insured** first becomes aware of any **Wrongful Act** or circumstance that might reasonably be expected to result in a **Claim** against any **Insured**, and gives written notice to the Insurer of such potential **Claim** during the **Policy Period** including:
1. a description of the specific **Wrongful Act** or circumstance, including all relevant dates;
  2. the date the **Insured** first became aware of the specific **Wrongful Act** or circumstance;
  3. the names of the potential claimants and **Insureds**, to the extent known, involved in the potential **Claim**;
  4. particulars as to the reasons for anticipating a **Claim**, including the manner in which the **Insured** first became aware of the specific **Wrongful Act** or circumstance;

then any **Claim** subsequently made against any **Insured** arising out of such **Wrongful Act** or circumstance shall be deemed under this Policy to be a **Claim** first made during the **Policy Period** in which such specific circumstance or **Wrongful Act** was first reported to the Insurer. At the Insurer's discretion, notice of any **Expense Event** may be deemed a notice of circumstance, and any **Claim** subsequently made against any **Insured** arising out of such **Expense Event** shall be deemed under this Policy to be a **Claim** first made during the **Policy Period** in which such specific **Expense Event** was first reported to the Insurer.

- D. Except as otherwise provided in this Policy, all notices under any provision of this Policy shall be in writing and given by prepaid express courier, certified mail, email or fax properly addressed to the appropriate party. Notice to the Insurer shall be given to the respective address shown in ITEM 10 of the Declarations. Notice to the **Insureds** may be given to the **Named Insured** at the address shown in ITEM 1 of the Declarations. Notice given as described above shall be deemed to be received and effective upon actual receipt thereof by the addressee or one day following the date such notice is sent, whichever is earlier, subject to proof of transmittal.

## SECTION V - DEFENSE, INVESTIGATION & CONSENT TO SETTLE

### A. Defense of Claims

The Insurer has the right and duty to defend any **Claim** made against an **Insured** to which this Policy applies, even if the allegations of the **Claim** are groundless, false or fraudulent. The Insurer shall appoint counsel to defend any **Claim**, provided however, the **Insured** may request, in writing, the appointment of specific counsel, subject to the approval and written consent of the Insurer and subject to the Insurer's litigation management guidelines. However, the Insurer shall have no duty to defend any **Insured** against any **Claim** to which this insurance does not apply.

The Insurer shall not be obligated to pay any **Loss**, or to undertake or continue the defense of any **Claim**, after the applicable Limit of Liability has been exhausted by the payment of **Loss**, or after the applicable Limit of Liability has been deposited with, or becomes subject to control of, a court of competent jurisdiction. The duty to defend also terminates when all potentially covered **Claims** are dismissed or withdrawn.

If a **Claim** is subject to arbitration or mediation, the Insurer or defense counsel assigned by the Insurer shall be entitled to exercise all of the **Insured's** rights in the choice of arbitrators or mediators and in the conduct of the arbitration or mediation proceeding.

### B. Pre-Claim Assistance

If the **Insured** gives notice of a potential **Claim** pursuant to Section IV.C of the Policy, the Insurer may, at its sole discretion, pay any costs and expenses it incurs to investigate the potential **Claim**. Such payment is not subject to a Deductible and shall be in addition to and not part of, the Aggregate Limit of Liability referenced in ITEM 3 of the Declarations. Once such potential **Claim** becomes a **Claim**, all **Loss** incurred thereafter in

connection with such **Claim**, shall be subject to a Deductible and the Aggregate Limit of Liability stated in ITEM 3 of the Declarations.

### C. Consent to Settle

The Insurer shall not settle any **Claim** without the consent of the **Insured**, such consent not to be unreasonably withheld or delayed. As a condition precedent to coverage under this Policy, the **Insured** shall not admit liability for or settle any **Claim**, incur any **Expenses** or **Claim Expenses**, without the Insurer's prior written consent, such consent not to be unreasonably withheld. The Insurer shall have the right to investigate and conduct negotiations and, with the written consent of the **Named Insured**, effect settlement of any **Claim** as the Insurer deems reasonable. The Insurer shall not be liable for any settlement, **Loss** or assumed obligations to which it has not given its prior written consent.

### D. Collaborative Defense

The **Insured's** Deductible as provided in ITEM 4.A of the Declarations will be reduced by fifty percent (50%) for any **Claim** fully and finally settled as a result of mediation, as evidenced by a written settlement agreement, within twelve (12) months of when the **Claim** is first made against the **Insured** and reported in accordance with Section IV of the Policy. Provided, however, the amount of the Deductible reduction shall not exceed \$25,000 for any such **Claim**.

### E. Cooperation

The **Insureds** agree to provide the Insurer with all information, assistance and cooperation which the Insurer reasonably requests, and agree that in the event of a **Claim**, the **Insureds** shall do nothing that will prejudice the Insurer's position or its potential or actual rights of recovery, or increase the Insurer's exposure under the Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Insurer. The **Insured** shall not make any admissions or voluntary settlements without the consent of the Insurer.

Upon the Insurer's request, the **Insured** shall assist in making settlements, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured**. The **Insured** shall attend all hearings, trials, depositions, mediations and arbitrations, and assist in securing and giving evidence and obtaining the attendance of witnesses.

## SECTION VI – LIMIT OF LIABILITY & DEDUCTIBLE

### A. Limit of Liability

1. The most the Insurer will pay for all **Loss** on account of all **Claims** covered by this Policy is the Aggregate Limit of Liability stated in ITEM 3 of the Declarations. The most the Insurer will pay for all **Loss** for each **Claim** is the Per Claim Limit of Liability stated in ITEMS 5.A-C of the Declarations. The most the Insurer will pay for all **Loss** for all **Claims** under each respective Insuring Agreement is the respective Aggregate Limit of Liability stated in ITEMS 5.A-C of the Declarations, which amounts shall be part of and not in addition to the Aggregate Limit of Liability stated in ITEM 3 of the Declarations.
2. The most the Insurer will pay for each of the respective **Expenses** referenced in SECTION II-SUPPLEMENTAL PAYMENTS, is the respective Sublimit set forth in ITEMS 6.A-I of the Declarations, for each such **Expense** regardless of the number claimants or **Insureds** involved, or **Expense Events** that occur, and subject to any Aggregate Limit, if applicable, set forth in ITEMS 6.A-I of the Declarations. The amounts as set forth in ITEMS 6.A-H shall be in addition to and not part of the Aggregate Limit of Liability referenced in ITEM 3 of the Declarations. The amount set forth in ITEM 6.I of the Declarations shall be part of and not in addition to the Aggregate Limit of Liability referenced in ITEM 3 of the Declarations.
3. Once the Aggregate Limit of Liability as shown in ITEM 3 of the Declarations is exhausted by the Insurer's payment of **Loss**, the Insurer will have no further obligations of any kind under this Policy, and all such obligations, including with respect to any coverage provided under Section II, shall be completely



fulfilled and extinguished. The Insurer is entitled to pay **Loss** as it becomes due and payable by the **Insureds**, without consideration of other future payment obligations.

4. The Aggregate Limit of Liability for any **Extended Reporting Period**, if exercised, shall be part of and not in addition to the Aggregate Limit of Liability as set forth in ITEM 3 of the Declarations.
5. If a single **Claim** is covered in whole or in part under more than one Insuring Agreement, the Insurer's maximum liability for all **Loss** covered on account of such **Claim** shall not exceed the largest applicable Limit of Liability.

#### **B. Claim Expenses**

**Claim Expenses** are part of and not in addition to the Limits of Liability set forth in ITEM 5 of the Declarations and the Aggregate Limit of Liability set forth in ITEM 3 of the Declarations and the payment by the Insurer of **Claim Expenses** reduces such Limits of Liability.

#### **C. Deductible**

The Deductible stated in ITEM 4.A of the Declarations shall apply separately to each **Claim**. The Insurer shall only be liable for **Loss** incurred by the **Insured** in excess of the applicable Deductible. Any payment of a Deductible in connection with a **Claim** shall not reduce any other applicable Deductible for any other **Claim** (that is not a **Related Claim**). A Deductible shall be satisfied by monetary payments of **Loss** by the **Named Insured** or upon the **Named Insured's** failure to pay, jointly and severally by all **Insureds**. The **Insured** must pay any Deductible within thirty (30) days of the Insurer's written request regardless of the number of **Claims** covered by this Policy.

If a single **Claim** is subject to multiple Deductible amounts, each applicable Deductible will be applied separately to each part of such **Claim**, but the maximum Deductible amount applicable to such **Claim** will not exceed the largest applicable Deductible.

Once the Aggregate Deductible stated in ITEM 4.B of the Declarations has been exhausted by the payment of **Loss** in connection with any **Claims(s)**, there shall be no further Deductible required to be paid for any additional **Claims(s)** made under the Policy.

#### **D. Multiple Insureds, Claims and Claimants**

The Limits of Liability shown in the Declarations is the most the Insurer will pay for all **Loss** regardless of the number of **Insureds**, **Claims** or claimants. All **Related Claims** shall be deemed a single **Claim**. Such single **Claim** shall be deemed to be first made on the date the earliest of such **Related Claims** is first made against any **Insured** regardless of whether such date is before or during the **Policy Period**. Only one Deductible shall apply to such single **Claim**. The **Insured** shall provide notice to the Insurer of any subsequent **Related Claim** pursuant to Section IV.A above. This Policy shall not cover any **Loss** incurred in connection with any subsequent **Related Claim** before such subsequent **Related Claim** is reported to the Insurer in accordance with Section IV.A of the Policy.

### **SECTION VII – EXTENDED REPORTING PERIOD**

#### **A. Automatic Extended Reporting Period**

If the **Named Insured** or Insurer terminates or non-renews this Policy, other than for non-payment of premium, the **Insured** shall have an Automatic Extended Reporting Period of sixty (60) days to commence immediately after the expiration of the Policy, to report to the Insurer any **Claim** first made against any **Insured** during the **Policy Period** but only for **Wrongful Acts** taking place solely after the **Retroactive Date** and prior to the effective date of the termination or non-renewal.

## B. Optional Extended Reporting Period

1. If the Insurer or the **Named Insured** terminates or non-renews this Policy, other than for non-payment of premium, then the **Named Insured** shall have the right, upon payment of the additional premium as set forth in ITEM 8 of the Declarations, to purchase an **Extended Reporting Period** for an additional period as set forth in ITEM 8 of the Declarations. The **Extended Reporting Period** shall commence immediately following the effective date of such termination or non-renewal but only with respect to any **Claim** first made against any **Insured** during the **Policy Period** and reported in writing to the Insurer during the **Extended Reporting Period**, and only for **Wrongful Acts** taking place solely after the **Retroactive Date** and prior to the effective date of the termination or non-renewal.
2. This right of extension will lapse unless written notice of such election, together with payment of the additional premium, is given by the **Insureds** to the Insurer within sixty (60) days following the effective date of cancellation or nonrenewal. The **Extended Reporting Period** is not cancellable by the Insurer and the entire additional premium for the **Extended Reporting Period** will be deemed fully earned at inception of the **Extended Reporting Period**.
3. The first sixty (60) days of the Optional Extended Reporting Period shall run concurrent with the Automatic Extended Reporting Period referenced in Section VII.A above.

## C. Non-Practicing Extended Reporting Period

If an **Insured** as defined in Section XX.Q.2 retires, or otherwise voluntarily ceases, permanently and totally, the practice of providing **Professional Services** during the **Policy Period**, then such **Insured** shall have the right, upon payment of the additional premium as set forth in ITEM 8 of the Declarations, to purchase an **Extended Reporting Period**, for an additional period as set forth in ITEM 8 of the Declarations, provided that such premium shall be calculated pro rata based upon the per individual professional price of coverage under this Policy. Such **Extended Reporting Period** shall commence upon the latter of the expiration of the **Policy Period**, any renewal or successive renewal of this Policy, Automatic Extended Reporting Period or any optional **Extended Reporting Period**, but only for **Wrongful Acts** taking place solely after the **Retroactive Date** and prior to the earlier of, the effective date of the termination or non-renewal of the Policy or the effective date of the retirement or cessation.

This right of extension will lapse unless written notice of such election, together with payment of the additional premium, is given by the **Insured** to the Insurer within sixty (60) days following the effective date of retirement or cessation. The entire additional premium for the non-practicing **Extended Reporting Period** will be deemed fully earned at inception of the **Extended Reporting Period**; provided there shall be no additional premium for any **Extended Reporting Period** elected up to three (3) years if the **Insured** retires or ceases the practice of providing **Professional Services** during the **Policy Period** and has been insured by the Insurer under a primary professional liability policy for at least five (5) consecutive years.

This **Extended Reporting Period** is provided until such **Insured** resumes the practice of providing **Professional Services** or until the death of such **Insured** in which case paragraph **D** below applies.

## D. Death or Disability Extended Reporting Period

If a natural person **Insured** dies or becomes **Totally and Permanently Disabled** during the **Policy Period**, then upon the latter of the expiration of the **Policy Period**, any renewal or successive renewal of this Policy, or any Optional Extended Reporting Period, such **Insured** shall be provided with a death or disability **Extended Reporting Period** as provided below:

1. In the event of death, the estate, heirs, executors or administrators of such **Insured** must provide the Insurer with written proof of the date of death. This **Extended Reporting Period** is provided to the estate, heirs, executors and administrators of such **Insured** until the executor or administrator of the estate of such **Insured** is discharged, but only with respect to any **Wrongful Act** of such **Insured** committed in their capacity as such.

2. If an **Insured** becomes **Totally and Permanently Disabled**, such **Insured** or **Insured's** legal guardian must provide the Insurer with written proof that such **Insured** is **Totally and Permanently Disabled**, including the date the disability commenced, certified by the **Insured's** physician. The Insurer retains the right to contest the certification made by the **Insured's** physician.

No additional premium will be charged for any death or disability **Extended Reporting Period**.

#### E. All Extended Reporting Period Options

1. As a condition precedent to the right to purchase an **Extended Reporting Period**, the total premium that is due shall be paid within sixty (60) days of the effective date of the cancellation or non-renewal.
2. No **Extended Reporting Period** is available to any **Insured** who is suspended or resigns from the practice of providing **Professional Services** in lieu of suspension, in any state where the **Insured** has a license or right to provide **Professional Services**.
3. There shall be no coverage for any **Claim(s)** otherwise subject to coverage under this Section VII, if there is any other insurance in effect that would apply to such **Claim(s)**.
4. No **Extended Reporting Period** is renewable.
5. The Limit of Liability applicable to any **Extended Reporting Period** shall be part of, and not in addition to, the Limit of Liability for the **Policy Period** and the fact that the coverage provided by this Policy may be extended by the purchase or availability of an **Extended Reporting Period** shall not in any way renew, replenish or increase the Aggregate Limit of Liability stated in ITEM 3 of the Declarations nor change the scope of coverage available under this Policy.
6. An offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this extension of coverage.
7. All notices and premium payments made under this Section VII shall be submitted to the Insurer by the **Named Insured**.

### SECTION VIII - ORGANIZATIONAL CHANGES

#### Acquisition of the Named Insured

If, during the **Policy Period**, either of the following events occur:

1. the acquisition of the **Named Insured**, or of all or substantially all of its assets, by another entity; or
2. the merger or consolidation of the **Named Insured** into or with another entity such that the **Named Insured** is not the surviving entity;

then coverage under this Policy will continue in full force and effect until termination of this Policy, but only with respect to a **Claim** for a **Wrongful Act** or **Interrelated Wrongful Acts** taking place prior to such merger or acquisition. As of the effective date of the merger or acquisition, coverage under this Policy will cease with respect to **Claims** for a **Wrongful Act** or **Interrelated Wrongful Acts** taking place after such merger or acquisition. This Policy may not be cancelled after the effective time of such merger or acquisition, and the entire premium for this Policy shall be deemed fully earned as of such time.

### SECTION IX - OTHER INSURANCE

If **Loss** resulting from any **Claim** is insured under any other valid and collectible professional liability, cyber liability, general liability or similar insurance to the insurance provided under this Policy, then this Policy shall apply only excess to the deductible or retention, if applicable, and limit of liability of such other insurance whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written specifically excess over the Limits of Liability provided in this Policy.

## SECTION X - SUBROGATION

In the event of any payment under this Policy, the Insurer shall be subrogated to all of the **Insured's** rights of recovery against any person or organization, including any rights the **Insured** may have against any other **Insured** who personally participated or personally acquiesced in or remained passive after having knowledge of any dishonest, intentionally wrongful, fraudulent, criminal, or malicious act, error or omission. The **Insured** shall do whatever is necessary to secure and collect upon such right. The **Insured** shall do nothing to prejudice such rights. Provided however, if the **Insured** has waived its rights to subrogate against a third party through a written agreement made before a circumstance or **Wrongful Act** giving rise to a **Claim** or **Loss** has occurred, then the Insurer waives its rights to subrogation against such third party.

## SECTION XI - BANKRUPTCY

Bankruptcy or insolvency of the **Named Insured** or any **Insured** shall not relieve the Insurer of any of its obligations under this Policy, nor deprive the **Insured** of any of its rights or defenses under this Policy.

## SECTION XII - REIMBURSEMENT OF THE INSURER

If the Insurer pays any **Loss** in excess of the applicable Limits of Liability (other than with respect to coverage provided under SECTION II-SUPPLEMENTAL PAYMENTS), or within the amount of any applicable Deductible, each **Insured** shall be liable to the Insurer for any and all such amounts, and, upon demand, shall pay such amounts within sixty (60) days of the Insurer's request. If it is negotiated or determined that any **Claim Expenses** are not covered under this Policy, each **Insured** agrees to repay the Insurer the amount of such **Claim Expenses** within sixty (60) days of the Insurer's request.

## SECTION XIII - NAMED INSURED - SOLE AGENT

The **Named Insured** shall be the sole agent of **all Insureds** hereunder for the purpose of effecting or accepting any amendments to or cancellation of this Policy, for the purpose of receiving such notices as may be required by law and/or any provision(s) of this Policy, for the completing of any **Application** and the making of any representations, for the payment of any premium and the receipt of any return premium that may become due under this Policy, for the payment of any Deductible obligations that may become due under this Policy, and the exercising or declining to exercise any right under this Policy, including declining or exercising any **Extended Reporting Period**.

## SECTION XIV – TERRITORY, VALUATION AND CURRENCY

This Policy applies to **Claims** made or **Wrongful Acts** occurring anywhere in the world where permissible by law. If a judgment, settlement or amount of **Loss** under this Policy is stated in currency other than United States dollars, payment under this Policy will be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other **Loss** becomes payable.

## SECTION XV - ALTERATION, ASSIGNMENT AND HEADINGS

No change in, modification of, or assignment of interest under this Policy shall be effective unless made by the Insurer via a written endorsement to this Policy. The titles and headings to the various sections, subsections and endorsements of this Policy are included solely for ease of reference and do not in any way limit, expand or otherwise affect the provisions or existence of such sections, subsections or endorsements.

## SECTION XVI - NO ACTION AGAINST THE INSURER

No action shall lie against the Insurer unless, as a condition precedent, there shall have been full compliance with all of the terms and conditions of this Policy. No person or organization shall have the right under this Policy to join the Insurer as a party to any action against any **Insured** to determine the liability of the **Insured**, nor shall the Insurer be impleaded by the **Insureds** or their legal representatives in any such action.

## SECTION XVII - CANCELLATION & NONRENEWAL

- A. The **Named Insured** may cancel this Policy by mailing or delivering advance written notice of cancellation to the Insurer.
- B. The Insurer may cancel only for non-payment of premium. In such event, the Insurer shall mail or deliver written notice of cancellation to the **Named Insured** at least:
  - 1. Ten (10) days before the effective date of cancellation if the Insurer cancels for nonpayment of premium; or
  - 2. Thirty (30) days before the effective date of cancellation if the Insurer cancels for any other reason.
- C. If this Policy is cancelled, as referenced in paragraphs **A** or **B** above, the Insurer shall send to the **Named Insured** a partial premium refund, computed pro rata.
- D. Any notice of cancellation shall state the effective date of cancellation. The **Policy Period** shall end on the effective date of the cancellation.
- E. If the Insurer decides to non-renew this Policy, the Insurer will mail or deliver to the **Named Insured** written notice of non-renewal at least sixty (60) days prior to the end of the **Policy Period**.
- F. The Insurer shall send all notices required under this Section XVII to the **Named Insured** at the address in ITEM 1 of the Declarations, and by mail or electronic mail to this Policy's broker of record, if any. Proof of mailing will be sufficient proof of notice.

## SECTION XVIII – STATE AMENDATORY INCONSISTENCY

It is agreed that to the extent there is an inconsistency between any terms and/or conditions of the Policy or any endorsement thereto, and any state amendatory endorsement attached to this Policy, then to the extent permitted by law, the Insurer will apply those terms and conditions that are more favorable to the **Insured**.

## SECTION XIX - ENTIRE CONTRACT

By acceptance of this Policy, all **Insured(s)** agree that all statements made and information furnished to the Insurer are true, accurate and complete and that this Policy has been issued in reliance upon the truth and accuracy of such statements and information, subject to all of the terms and conditions of this Policy.

## SECTION XX – DEFINITIONS

- A. **Application** means all materials and information, including all signed applications and any materials submitted therewith or incorporated therein, submitted by or on behalf of the **Insureds** to the Insurer in connection with the underwriting of this Policy.
- B. **Bodily Injury** means physical injury, sickness or disease sustained by a person, including death, mental anguish or emotional distress resulting therefrom.
- C. **Claim** means any:
1. written demand against any **Insured** for monetary, non-monetary or injunctive relief, including a written demand that the **Insured** toll or waive a statute of limitations and a written demand or request for arbitration, mediation or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of such demand; and
  2. civil action or proceeding against an **Insured** including any appeal therefrom, commenced by and which shall be deemed first made upon the service upon, or receipt by, an **Insured** of a complaint or similar pleading;
- for a **Wrongful Act**; provided that **Claim** shall not include any investigation, demand, action or proceeding brought by any administrative, regulatory or governmental agency or body, or **Expense Event**.
- D. **Claim Expenses** means reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, including but not limited to the premium for appeal bond, attachment bond or similar bond but without any obligation by the Insurer to apply for or furnish any such bonds. **Claim Expenses** do not include salaries, wages or expenses of any **Insured** including but not limited to, partners, principals, officers, directors, managers, owners, members or employees of the **Insured**.
- E. **Cleanup Costs** means reasonable expenses incurred by the **Insured** in the investigation, evaluation, monitoring, testing, removal, containment, treatment, response, disposal, remediation, detoxification or neutralization of smoke, soot, fumes, acids, alkalis, toxic chemicals, asbestos, liquids or gases, waste materials or other irritants, contaminants or pollutants, as a direct result of a **Pollution Incident**. **Cleanup Costs** do not include any such expenses incurred after the cleanup is deemed to be complete upon final approval from the supervising governmental authority.
- F. **Computer System** means computer hardware, software or any components thereof that are owned or leased, and operated by any **Insured** and are linked together through a network of two or more devices accessible through the Internet, internal network or connected with data storage or other peripheral devices.
- G. **Confidential Information** means, with respect to an organization, any information held by the **Insured**:
1. that is subject to any form of confidentiality agreement or confidentiality provision in a contract or agreement between a third party and the **Named Insured**; or
  2. any non-public information which was provided to the **Insured** in confidence.
- H. **Cosmetic Defect** means a superficial or surface defect that does not: (1) affect the structural soundness of the construction project, or (2) interfere with the functionality of the construction project.
- I. **Crisis Event** means:
1. the death, departure or debilitating illness of the sole proprietor or managing partner of the **Named Insured**;
  2. an incident of workplace violence at the offices of the **Named Insured** referenced in ITEM 1 of the Declarations; or
  3. the filing of an involuntary bankruptcy petition against the **Named Insured**.

- J. **Crisis Event Expenses** means reasonable fees incurred by the **Named Insured** and consented to by the Insurer, for necessary consulting services provided by a public relations firm in response to a **Crisis Event**.
- K. **Cyber Security Wrongful Act** means any actual or alleged act, error, omission, neglect or breach of duty by an **Insured** that results in a **System Breach**, **Denial of Service Attack** or **Privacy Event**.
- L. **Denial of Service Attack** means a malicious attack by a third-party which is designed to slow, deny or interrupt access to a **Computer System**.
- M. **Design Defect** means a defect in the design of the construction intended to be part of a completed and permanent project caused by negligence, defined as the failure to meet the professional standard of care legally required or reasonably expected under the circumstances in the performance or non-performance of **Professional Services**, rendered to others by the **Insured** or any entity for whom the **Insured** is legally liable.
- N. **Disciplinary Proceeding** means a formal investigation or proceeding regarding an **Insured's** adherence to professional standards of conduct before a court, state licensing board, peer review committee, or other regulatory body.
- Disciplinary Proceeding** does not include any: (i) criminal proceedings or proceedings or hearings to determine the reasonableness of, or right or entitlement to, any fees or charges by any **Insured**, or (ii) any subpoena otherwise covered under Section II.D of the Policy.
- O. **Disciplinary Proceeding Expenses** means reasonable and necessary fees, costs and expenses incurred for legal work performed by attorneys, in connection with **Disciplinary Proceedings**.
- P. **Expenses** means **Crisis Event Expenses**, **Disciplinary Proceeding Expenses**, **Security Incident Response Expenses**, **Litigation Participation Expenses**, **Cleanup Costs**, **Rectification Expenses** and the reasonable fees and expenses as referenced in Sections II.D, II.F. and II.H.
- Q. **Expense Event** means any **Crisis Event**, **Disciplinary Proceeding**, **Security Incident**, **Litigation Event**, or **Regulatory Action** referenced in Section II, the **Insured's** receipt of a **Non-Party Subpoena** as referenced in Section II.D, a **Pollution Incident** as referenced in Section II.G, a peer review program as referenced in Section II.H., and a **Design Defect** as referenced in Section II.I.
- R. **Extended Reporting Period** means the period of coverage as shown in ITEM 8 of the Declarations.
- S. **Insured** means:
1. the **Named Insured** shown in the Declarations or any **Predecessor**;
  2. any past, present or future partner, principal, officer, director, shareholder, member, or manager of the **Named Insured** but only with respect to **Professional Services** rendered on behalf of the **Named Insured** or any **Predecessor**;
  3. all employees, interns, volunteers or independent contractors but only with respect to liability arising from and in the course of their services on behalf of the **Named Insured** or any **Predecessor**;
  4. the estates, heirs, executors, administrators, assigns and legal representatives of a natural person **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only in their capacity as such, and only to the extent that such **Insured** would otherwise be provided coverage under the Policy;
  5. all joint ventures entered into by the **Named Insured**, but only for liability arising out of **Professional Services** performed by an **Insured** as a participant in a joint venture;
  6. any entity newly formed or acquired by the **Named Insured** during the **Policy Period** in which the **Named Insured** owns more than 50% of the issued and outstanding voting stock, either directly or indirectly. Provided, however:
    - a. coverage shall only apply to **Claims** arising out of **Wrongful Acts** committed on or after the date of formation or acquisition; and

b. coverage hereunder will expire ninety (90) days after the formation or acquisition or the end of the **Policy Period**, whichever is earlier.

- T. Interrelated Wrongful Acts** means any and all **Wrongful Acts** that have as a common nexus any fact, circumstance, event, transaction, written service agreement or cause or series of causally or logically connected facts, circumstances, events, transactions, written service agreements or causes.
- U. Litigation Events** means all mediations, settlement conferences, arbitration proceedings, hearings, depositions and trials relative to the defense of any **Claim**.
- V. Litigation Participation Expenses** means any actual loss of earnings and reasonable expenses incurred by an Insured in connection with a **Litigation Event**.

**W. Loss** means:

1. those amounts any **Insured** becomes legally obligated to pay as a result of a **Claim**, including but not limited to damages (including punitive, exemplary and multiple damages), judgments, settlements, **Claim Expenses** and any award of pre-judgment and post-judgment interest with respects to covered damages, judgments or settlements; and
2. solely with respect to coverage under Section I.B, **Loss** shall also include **Cleanup Costs**;
3. the cost of correcting, re-performing or completing any **Professional Services** by an **Insured**, provided that prior to the **Insured** incurring any such costs, the Insurer consents in writing to such costs.

The insurability of punitive, exemplary or multiple damages shall be determined under the internal laws of any jurisdiction most favorable to the **Insureds**, including the jurisdiction in which the **Named Insured**, the Insurer, this Policy or such **Claim** is located.

**Loss** does not include:

1. the multiplied portion of multiplied awards;
  2. fines, penalties, taxes or sanctions imposed by law, other than as referenced above;
  3. any amount for which an **Insured** is absolved from payment by reason of any covenant, agreement, court order, or bankruptcy of any **Insured**;
  4. the return, reduction, restitution, withdrawal, forgiveness, waiver or offset of any fees, costs, expenses or receivables, paid to, incurred, charged or chargeable by, an **Insured**;
  5. the cost of complying with any injunctive or other non-monetary relief; and
  6. amounts which are uninsurable by law.
- X. Malicious Code** means unauthorized, corrupting, or harmful software code, or malware, including but not limited to computer viruses, Trojan horses, keystroke loggers, cookies, spyware, adware, worms and logic bombs.
- Y. Named Insured** means the entity referenced in ITEM 1 of the Declarations.
- Z. Non-Party Subpoena** means any subpoena received by an **Insured** to provide documents or testimony in connection with any proceeding in which no **Insured** is named a party. **Non-Party Subpoena** shall not include any subpoena received by an **Insured** in its capacity as an expert witness.
- AA. Personal Injury** means injury arising out of one or more of the following offenses:
1. false arrest, unlawful detention, imprisonment, malicious prosecution, wrongful eviction, wrongful entry or trespassing;
  2. libel, slander or public disclosure of other defamatory or disparaging material; or
  3. infringement of copyright, piracy, plagiarism or misappropriation or unauthorized use of ideas under contract.



**Personal Injury** does not mean any oral or written publication, in any manner, which arises out of advertising broadcasting or telecasting activities conducted by, or on behalf of, the **Insured**.

- BB. Policy Period** means the period of time set forth in ITEM 2 of the Declarations, subject to prior termination in accordance with Section XVII.
- CC. Pollution Incident** means any actual or alleged discharge, dispersal, seepage, migration, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, or structures there upon, the atmosphere or any watercourse or body of water arising out of the **Insured's** performance of **Professional Services** that results in **Bodily Injury, Property Damage** or **Cleanup Costs**.
- DD. Predecessor** means any individual or entity engaged in **Professional Services** and identified in the **Application** that, prior to the inception of this **Policy Period**, the **Named Insured** became the successor in interest to greater than fifty-percent (50%) of such entity or individual's financial assets and liabilities.
- EE. Privacy Event** means the loss, theft, unauthorized access, or disclosure of; (i) **Private Information** in the care, custody or control of an **Insured**, (ii) **Confidential Information** in the care, custody or control of an **Insured**, or (iii) actual or alleged breach by an Insured of any state or federal laws (or foreign equivalent) regulating the use and protection of non-public information.
- FF. Private Information** means:
1. any information, whether tangible or digital, from which an individual may be uniquely and reliably identified or contacted, including, but not limited to an individual's name, telephone number, email or social security number; medical or healthcare data or other protected health information, driver's license number or state identification number;
  2. account number, credit card number or access code that would permit access to that individual's financial accounts; or
  3. any non-public personally identifiable information as defined in any state, federal, domestic or foreign privacy laws.
- GG. Professional Services** means those services provided by an **Insured** to others for a fee in the practice of architecture, engineering, land surveying, landscape architecture, interior design, project or construction management or environmental consulting, including services provided in the capacity as an expert witness, or as otherwise set forth by Endorsement to this Policy.
- HH. Property Damage** means:
1. physical injury to tangible property, including any resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  2. loss of use of tangible property that has not been physically injured. All such loss of use shall be deemed to occur at the time such loss of use first manifests itself;
- For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means facts or programs stored as or on, created or used on, or transmitted to or from computer software including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- II. Rectification Expenses** means any reasonable and necessary direct costs and expenses incurred by the **Insured** to rectify a **Design Defect** or to prevent further damage resulting from a **Design Defect**. **Rectification Expenses** do not include: (1) any of the **Insured's** profit, mark-up, overhead or betterment to a project to which **Rectification Expenses** apply; (2) **Claim Expenses**; (3) indirect costs for consequential damages, including but not limited to delay costs, costs overruns, increase in funding costs or loss of use; or (4) any costs or expenses incurred by any **Insured** prior to the Insurer's written consent.

- JJ. Regulatory Action** means any administrative or regulatory action or proceeding brought by a governmental agency or body under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA) or the Occupational Safety and Health Act (OSHA).
- KK. Related Claims** means all **Claims** for **Wrongful Acts** or **Interrelated Wrongful Acts**, which in whole or part, have as a common nexus any fact, circumstance, event, transaction, written service agreement, cause, or series of causally or logically connected facts, circumstances, events, transactions, written service agreements or causes, regardless of whether the **Claim** or **Claims** alleging such acts involves the same or different claimants, causes of action or are brought in the same or different jurisdictions.
- LL. Retroactive Date** means the date specified in ITEM 9 of the Declarations.
- MM. Security Incident** means the unauthorized access to or use of, data containing private or confidential information in connection with the performance of **Professional Services**, that is in the **Insured's** care, custody or control, which results in the violation of any law or regulation pertaining to the protection of such private or confidential information.
- NN. Security Incident Response Expenses** means any expenses incurred by the **Insured** to: 1) hire cyber forensic analysts to determine the extent of an actual security breach that has occurred; or 2) comply with state or local privacy laws requiring that notification and credit monitoring services are to be provided to individuals when the security, confidentiality or integrity of their personal information has been compromised.
- OO. System Breach** means:
1. unauthorized access to or unauthorized use of, or alteration of a **Computer System**; or
  2. distribution or transmission of **Malicious Code** into or from a **Computer System**.
- PP. Technology Products** means any computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **Named Insured** for others, or distributed, licensed, leased or sold by the **Named Insured** to others for compensation, including software updates, service packs and other maintenance releases provided for such products.
- QQ. Totally and Permanently Disabled** means that the **Insured** has become so disabled as to be wholly unable to provide any **Professional Services** in such **Insured's** capacity and such disability has existed continuously for not less than six (6) months and is expected to be continuous and permanent. **Totally and Permanently Disabled** shall not include any condition which:
1. is a result of war or acts of war, whether or not declared;
  2. occurred during active service in the armed forces of any country; or
  3. results from:
    - a. intentionally self-inflicted Injuries; or
    - b. attempted suicide, whether or not sane; or the abuse or misuse of an addictive substance.
- RR. Wrongful Act** means:
1. solely with respect to Section I.A:
    - a. any actual or alleged act, error, omission or breach of duty by an **Insured** in the rendering or failure to render **Professional Services**; or
    - b. any actual or alleged **Personal Injury** by an **Insured** committed in the rendering or failure to render **Professional Services**;
 other than a **Cyber Security Wrongful Act**;
  2. solely with respect to Section I.B., a **Pollution Incident**; and
  3. solely with respect to Section I.C, a **Cyber Security Wrongful Act**.