

AFB MILLENNIUM

ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY, ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY, TECHNOLOGY BASED SERVICES, TECHNOLOGY PRODUCTS, COMPUTER NETWORK SECURITY, AND MULTIMEDIA AND ADVERTISING LIABILITY INSURANCE

THIS IS A CLAIMS MADE AND REPORTED POLICY. PLEASE READ CAREFULLY.

These Declarations along with the completed and signed **Application** and the Policy with endorsements shall constitute the contract between the **Insureds** and the Underwriters.

Underwriters: Syndicate 2623/623 at Lloyd's

Policy Number: [REDACTED]

Authority Reference Number: BUSANMBA0501

Item 1. **Named Insured:**

{Response}

Address:

{Response}

Item 2. **Policy Period:**

From: {Response}

To: {Response}

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

Item 3. **Limit of Liability:**

(a) US\${Response} Each **Claim** – includes **Claims Expenses**

(b) US\${Response} Aggregate for the **Policy Period** – includes **Claims Expenses**

Item 4. **Deductible:**

US\${Response} Each **Claim** deductible – includes **Claims Expenses**

Item 5. **Premium**

US\${Response}

Item 6. **Retroactive Date:**

{Response}

Item 7. **Technology Based Services, Technology Products, Computer Network Security, and Multimedia and Advertising Liability Insurance Coverage Option:**

Purchased If this box is checked then Insuring Agreements C., D., E. and F. of this Policy shall apply.

Not Purchased If this box is checked then Insuring Agreements C., D., E. and F. of this Policy shall not apply.

If no box is checked, then Insuring Agreements C., D., E. and F. of this Policy shall not apply.

Item 8. **Optional Extension Period:**

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

(b) Length of **Optional Extension Period:** {Response}

Item 9. Notification under this Policy:

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

(b) All other notices under this Policy shall be given to:
Beazley USA Services, Inc.
20 Stanford Drive
Farmington, CT 06032
Tel: (860) 677-3700
Fax: (860) 679-0247

Terrorism Coverage:

Item 10. Coverage Purchased: [] Yes [] No
If "Yes", Terrorism Coverage Premium:
US\$

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

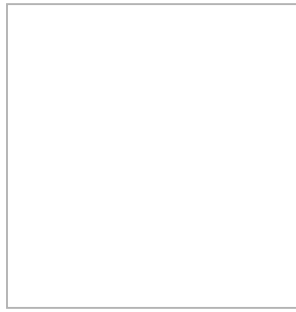
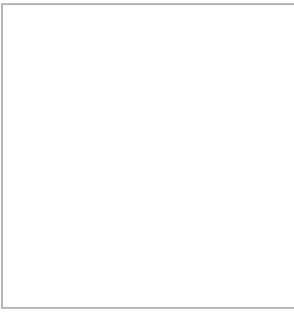
Item 12. Choice of Law: <enter>

Item 13. Endorsements Effective At Inception: {Response}

Dated:

At: 20 Stanford Drive
Farmington
Connecticut 06032
(the office of the Correspondent)

by _____
Beazley USA Services, Inc.(Correspondent)



Lloyd's Insurance

This Insurance is effected with certain Underwriters at Lloyd's, London.

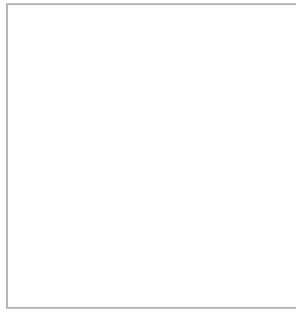
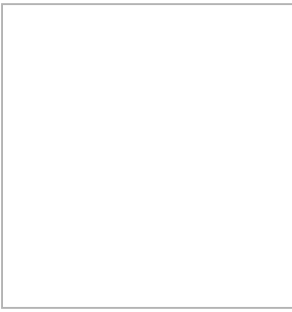
This Certificate is issued in accordance with the limited authorization granted to the Correspondent by certain Underwriters at Lloyd's, London whose syndicate numbers and the proportions underwritten by them can be ascertained from the office of the said Correspondent (such Underwriters being hereinafter called "Underwriters") and in consideration of the premium specified herein, Underwriters hereby bind themselves severally and not jointly, each for his own part and not one for another, their Executors and Administrators.

The Insured is requested to read this Certificate, and if it is not correct, return it immediately to the Correspondent for appropriate alteration.

All inquiries regarding this Certificate should be addressed to the following Correspondent:

CERTIFICATE PROVISIONS

1. **Signature Required.** This Certificate shall not be valid unless signed by the Correspondent on the attached Declaration Page.
2. **Correspondent Not Underwriters.** The Correspondent is not an Underwriter hereunder and neither is nor shall be liable for any loss or claim whatsoever. The Underwriters hereunder are those Underwriters at Lloyd's, London whose syndicate numbers can be ascertained as herein before set forth. As used in this Certificate, "Underwriters" shall be deemed to include incorporated as well as unincorporated persons or entities that are Underwriters at Lloyd's, London.
3. **Cancellation.** If this Certificate provides for cancellation and this Certificate is cancelled after the inception date, earned premium must be paid for the time the insurance has been in force.
4. **Assignment.** This Certificate shall not be assigned either in whole or in part without the written consent of the Correspondent endorsed hereon.
5. **Attached Conditions Incorporated.** This Certificate is made and accepted subject to all the provisions, conditions and warranties set forth herein, attached or endorsed, all of which are to be considered as incorporated herein.
6. It is hereby understood and agreed that wherever the word 'Policy' appears herein it shall be deemed to read 'Certificate.'



**AFB MILLENNIUM
ARCHITECTS AND ENGINEERS PROFESSIONAL LIABILITY,
ARCHITECTS, ENGINEERS AND CONTRACTORS POLLUTION LIABILITY,
TECHNOLOGY BASED SERVICES,
TECHNOLOGY PRODUCTS,
COMPUTER NETWORK SECURITY, AND
MULTIMEDIA AND ADVERTISING LIABILITY INSURANCE**

NOTICE: This Coverage is provided on a Claims Made and Reported Basis. Except as otherwise provided, this coverage applies only to **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters pursuant to the terms of this Insurance Policy. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of the premium and reliance upon the statements in the **Application** which is deemed a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Insurance, the Underwriters agree with the Named Insured, set forth at Item 1. of the Declarations made a part hereof:

I. INSURING AGREEMENTS

A. Architects and Engineers Professional Liability

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission the **Insured Organization** is legally responsible.

B. Architects, Engineers and Contractors Pollution Liability

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally

obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) for a **Pollution Condition** arising out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose **Pollution Condition** the **Insured Organization** is legally responsible.

The Insuring Agreements C., D., E. and F. below only apply if Item 7. of the Declarations indicates that these Insuring Agreements have been purchased.

C. Technology Based Services

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any negligent act, error or omission, or any unintentional breach of contract, in rendering or failure to render **Technology Based Services** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** by the **Insured** or by any person, including an independent contractor, for whose negligent act, error or omission or unintentional breach of contract the **Insured Organization** is legally responsible.

D. Technology Products

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any negligent act, error or omission, or any unintentional breach of contract, by the **Insured** on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** that results in the failure of **Technology Products** to perform the function or serve the purpose intended.

E. Computer Network Security

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of any act, error or omission on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** in the course of providing or managing **Computer Systems** security by the **Insured** or by any person, including an independent contractor, for whose act, error or omission the **Insured Organization** is legally responsible that results in:

1. the inability of a third party, who is authorized to do so, to gain access to **Computer Systems** or your **Technology Based Services**;
2. the failure to prevent **Unauthorized Access** to **Computer Systems** that results in:
 - a. the destruction, deletion or corruption of electronic data on **Computer Systems**;
 - b. **Theft of Data** from **Computer Systems**; or
 - c. denial of service attacks against Internet sites or computers; or
3. the failure to prevent transmission of **Malicious Code** from **Computer Systems** to third party computers and systems.

F. **Multimedia and Advertising**

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of liability imposed by law or **Assumed Under Contract** resulting from any **Claim** first made against any **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period** (if applicable) arising out of one or more of the following acts committed on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period** in the course of the **Insured Organization's** performance of **Professional Services, Media Activities** or **Technology Based Services**:

1. defamation, libel, slander, product disparagement, trade libel, prima facie tort, infliction of emotional distress, outrage,

- outrageous conduct, or other tort related to disparagement or harm to the reputation or character of any person or organization;
2. invasion of or interference with the right to privacy or of publicity;
 3. misappropriation of any name or likeness for commercial advantage;
 4. false arrest, detention or imprisonment or malicious prosecution;
 5. invasion of or interference with any right to private occupancy, including trespass, wrongful entry, eviction or eavesdropping;
 6. plagiarism, piracy or misappropriation of ideas under implied contract;
 7. infringement of copyright;
 8. infringement of trade dress, domain name, title or slogan, or the dilution or infringement of trademark or service mark;
 9. negligence regarding the content of any **Media Communication**, including harm caused through any reliance or failure to rely upon such content; or
 10. misappropriation of trade secret.

Provided, Insuring Agreements A., B., C., D., E. and F. of this Insurance shall not apply to any **Claim** for or arising out of the disclosure, misuse or misappropriation of any ideas, trade secrets or confidential information that came into the possession of any person prior to the date he or she became an employee, officer, director, principal or partner of the **Insured Organization**.

II. SUPPLEMENTARY PAYMENTS

All payments made under this Clause are not subject to the Deductible and are payable by the Underwriters in addition to the Limits of Liability.

A. Pre-Claims Assistance

If the **Insured** reports a **Circumstance** during the **Policy Period**, in accordance with Clause XII.B., until such time a **Claim** is made, any costs or expenses the Underwriters incur as a result of investigating or monitoring such **Circumstance**, will be paid for by the Underwriters. The decision to incur any costs or expenses to monitor or investigate such **Circumstance** shall be at the sole discretion of the Underwriters.

B. Defendants Reimbursement

Upon the Underwriter's request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions and trials relative to the defense of a **Claim**. After the first three (3) days attendance required for each **Claim**, the Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$400 for each day in the aggregate for all **Insureds** subject to a maximum amount of \$7,500 for each **Claim**.

C. ADA, FHA, OSHA Regulatory / Administrative Actions Reimbursement

Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$25,000 in the aggregate for the **Policy Period**, incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a regulatory or administrative action brought directly against the **Insured** during the **Policy Period** by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing (FHA) or the Occupational Safety and Health Act (OSHA) provided that the regulatory or administrative action:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$25,000 under this Clause, the Underwriters shall not be obligated to pay any further legal fees and expenses.

D. Disciplinary Proceedings Reimbursement

Underwriters will reimburse the **Insured**, upon written request, for legal fees and expenses up to \$7,500 in the aggregate for the **Policy Period**,

incurred by the **Insured** with the prior written consent of the Underwriters, in responding to a disciplinary proceeding brought directly against the **Insured** during the **Policy Period** provided that the disciplinary proceeding:

1. arises out of the rendering of or failure to render **Professional Services**; and
2. is reported to the Underwriters during the **Policy Period**.

After the Underwriters have paid \$7,500 under this Clause, the Underwriters shall not be obligated to pay any further legal fees and expenses.

III. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions, and other terms and conditions of this Policy, any **Claim** in the form of a civil suit against the **Insured** that seeks injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction) for one or more of the acts listed in Insuring Agreement F. if:
 1. the **Claim** is first made during the **Policy Period** or **Optional Extension Period** (if applicable) and reported to the Underwriters pursuant to the terms of this Policy; and
 2. the act or acts were committed on or after the Retroactive Date and before the end of the **Policy Period** in the course of the **Insured Organization's** performance of **Professional Services, Media Activities** or **Technology Based Services**.
- C. When the Underwriters defend a **Claim**, they will pay **Claims Expenses** incurred with their prior written consent. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible.
- D. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.

However, notwithstanding the above, the **Insured's** rights under this Policy shall not be prejudiced by any refusal to disclose the identity of any confidential source of information, or to produce any documentation or information obtained in the course of **Media Activities** in respect of which the **Insured** has asserted a claim of reporter's privilege or any other privilege regarding the protection of news-gathering activities.

- E. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, the Underwriters' liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**. The portion of any proposed settlement or compromise that requires the **Insured** to cease, limit or refrain from actual or alleged infringing or otherwise injurious activity or is attributable to future royalties or other amounts that are not **Damages** shall not be considered in determining the amount for which a **Claim** could have been settled.
- F. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

IV. THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. the Named Insured and any **Subsidiaries** of the Named Insured (together the "**Insured Organization**");
- B. a director or officer of the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- C. an employee or temporary employee of the **Insured Organization**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Insured Organization's** business;

- D. a principal if the Named Insured is a sole proprietorship, or a partner if the Named Insured is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- E. any person who previously qualified as an **Insured** under B, C or D above prior to the termination of the required relationship with the **Insured Organization**, but only with respect to the performance of his or her duties as such on behalf of the **Insured Organization**;
- F. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance;
- G. any joint venture in which the **Insured Organization** participates in, but solely for the **Insured Organization's** liability that arises out of a negligent act, error or omission in rendering or failure to render **Professional Services** by or on behalf of the **Insured Organization** or for a **Pollution Condition** that arises out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Insured Organization**; and
- H. solely with respect to Insuring Agreement B., the client for whom the **Insured Organization** renders or rendered **Professional Services** or performs or performed **Contracting Services**, provided that a written contract or agreement is in effect between the **Insured Organization** and the client requiring the client to be an additional insured under the **Insured Organization's** architects, engineers and contractors pollution liability policy. However, such clients are covered under Insuring Agreement B. of this Policy solely with respect to **Damages** and **Claims Expenses** arising from **Professional Services** rendered or **Contracting Services** performed by or on behalf of the **Insured Organization** and are not covered for any **Damages** and **Claims Expenses** arising from the client's own acts, errors or omissions. Clients of the **Insured Organization** are covered under Insuring Agreement B. of this Policy, subject to Clause IX., only for the Limits of Liability required by the written contract or agreement.

V. TERRITORY

This Policy applies to **Claims** made and acts, errors or omissions or **Pollution Conditions** committed or arising anywhere in the world.

VI. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

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

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

Provided, that this exclusion shall not apply to any **Claim** based upon or arising from the **Insured's** unintentional breach of a written agreement to refrain from disclosing confidential or proprietary information in rendering or failure to render **Professional Services** or in the performance of or failure to perform **Contracting Services**.

B. **Prior Knowledge, Prior Notice and Prior Acts**

1. arising out of or resulting from any act, error or omission or **Pollution Condition** committed or arising prior to the inception date of this Insurance:
 - a. if any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** on or before the inception date knew or could have reasonably foreseen that such act, error or omission or **Pollution Condition** might be expected to be the basis of a **Claim**; or
 - b. in respect of which any **Insured** has given notice of a **Circumstance** to the insurer of any other policy in force prior to the inception date of this Policy; or
2. arising out of related or continuing acts, errors or omissions or **Pollution Conditions** where the first such act, error or omission or **Pollution Condition** was committed or arose prior to the Retroactive Date set forth in Item 6. of the Declarations.

C. **Insured versus Insured**

by or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Insurance; provided, that this exclusion shall not apply to a **Claim** by or on behalf of any client of the **Insured Organization** who is an **Insured** by virtue of Clause IV.H.

D. Ownership Interest and Outside Positions

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

E. Discrimination, Humiliation, Harassment and Misconduct

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

F. Assumption of Contractual Liability of Others

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

1. with respect to Insuring Agreement F. for liability **Assumed under Contract**; or
2. to the extent the **Insured** would have been liable in the absence of such contract or agreement.

G. Express Warranties, Representations, Guarantees and Promises

for or arising out of or resulting from:

1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards; or
2. breach of guarantee or any promises of cost savings, profits, or return on investment.

H. **Faulty Workmanship**

under Insuring Agreement A. arising out of the cost to repair or replace any faulty workmanship performed in whole or in part by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, labor or equipment furnished in connection with such repair or replacement.

I. **Asbestos**

either in whole or in part, directly or indirectly, arising out of or resulting from or in consequence of, or in any way involving asbestos, or any materials containing asbestos in whatever form or quantity; provided, that this exclusion does not apply to any **Claim** arising out of any negligent act, error or omission in rendering or failure to render **Professional Services** on or after 1st January 1990 or the Retroactive Date set forth in Item 6. of the Declarations (whichever is the later) by or on behalf of the **Insured**.

J. **Employers Liability**

for or arising out of or resulting from:

1. **Bodily Injury** to any employee of the **Insured Organization** arising out of and in the course of employment by the **Insured Organization**; or
2. the **Insured Organization's** employment obligations, decisions, practices or policies as an employer.

K. **Worker's Compensation**

arising out of any obligation which the **Insured** or any carrier as insurer may be liable under any worker's compensation, unemployment compensation or disability benefits law or similar law.

L. **Property Liability**

arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale,

transfer, exchange, gift, abandonment or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances.

M. **Products Liability**

arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**; provided, that this exclusion shall not to any **Claim** which is covered pursuant to Insuring Agreement D. of this Policy.

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

under Insuring Agreement B. arising out of or resulting from any waste or any products or materials transported, shipped or delivered via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock to a location beyond the boundaries of a site at which **Professional Services** are being rendered or **Contracting Services** are being performed.

O. **Property Damage to Insured Organization's Work and Products**

under Insuring Agreement B. for any **Property Damage**:

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

P. **Patent Infringement**

for or arising out of actual or alleged infringement of patent or patent rights or misuse of patent.

Q. **Failure to Maintain Insurance**

arising out of or resulting from the advising or requiring of, or failure to advise or require, or failure to maintain any form of insurance, suretyship or bond, either with respect to the **Insured** or any other person or entity.

R. **Insolvency and Bankruptcy**

arising out of or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure,

inability, or unwillingness to pay **Claims**, losses, or benefits due to the insolvency, liquidation or bankruptcy of any such individual or entity.

S. War and Terrorism

directly or indirectly caused by, resulting from or in connection with:

1. any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;
 - a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 - b. any act of terrorism.
2. any action taken in controlling, preventing, suppressing or in any way relating to a. or b. above.

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

If the Underwriters allege that by reason of this exclusion, any **Damages** or **Claims Expenses** are not covered by this Insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

VII. EXCLUSIONS APPLICABLE TO INSURING AGREEMENTS C., D., E. AND F.

The coverage under Insuring Agreements C., D., E. and/or F. of this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

A. **Bodily Injury and Property Damage**

for, arising out of, or resulting from **Bodily Injury** or **Property Damage**.

B. **Contractual Liability**

arising out of or resulting from:

1. any contractual liability or obligation, or arising out of or resulting from breach of contract or agreement either oral or written, except:
 - a. with respect to:
 - i. Insuring Agreement C. for breach of an agreement by the **Insured Organization** to perform **Technology Based Services**; or
 - ii. Insuring Agreement D. for breach of an agreement by the **Insured Organization** to manufacture, develop, create, distribute, license, lease or sell **Technology Products**;

provided, this exception VII.B.1.a. shall not apply to breach of any hold harmless or indemnity agreement;
 - b. with respect to Insuring Agreement F. for liability:
 - i. **Assumed under Contract**; or
 - ii. misappropriation of ideas under an implied contract; or
 - c. to the extent the **Insured** would have been liable in the absence of such contract or agreement; or
2. breach of any contractual obligation which goes beyond an express or implied duty to exercise a degree of care or skill as is consistent with applicable industry standards.

C. **Business Risks**

for or arising out of or resulting from:

1. inaccurate, inadequate or incomplete description of the price of goods, products or services;
2. cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates actually or allegedly being exceeded;

3. the failure of goods, products, or services to conform with any represented quality or performance contained in **Advertising**; or
4. any actual or alleged gambling, contest, lottery, promotional game or other game of chance.

D. Licensing Fees and Royalty Payments

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

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

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

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

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

F. Computer Systems Security

arising out of or resulting from:

1. the failure of **Computer Systems** to be protected by security practices and procedures equal to or superior to those disclosed in response to questions in the **Application** relating to **Computer Systems** security, including access protection, intrusion detection,

data back up procedures, **Malicious Code** protection, and data encryption procedures; or

2. the failure to install available software product updates and releases, or to apply security related software patches, to computers and other components of **Computer Systems**.

G. **Electrical and Telecommunications Failure and Malfunction and Force Majeure**

arising out of, resulting from or alleging:

1. any failure or malfunction of electrical or telecommunications infrastructure or services, unless under the **Insured Organization's** operational control; or
2. fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, act of God or other physical or force majeure event.

H. **Antitrust**

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

I. **Federal Trade Commission and Federal Communications Commission**

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

J. **Copyright and Trade Secret Infringement of Technology Products**

for or arising out of actual or alleged infringement of copyright or misappropriation of trade secret arising out of or related to **Technology Products**.

K. **Electromagnetic Fields and Radiation**

for or arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property.

L. **Delay in Delivery or Performance**

for or arising out of or resulting from delay in delivery or performance, or failure to deliver or perform at or within an agreed upon period of time.

VIII. **DEFINITIONS**

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

- A. **“Advertising”** means material which promotes the product, service or business of the **Insured Organization** or others.
- B. **“Application”** means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by Underwriters, of which this Policy is a renewal, replacement or which it succeeds in time.
- C. **“Assumed Under Contract”** means liability assumed by the **Insured Organization** under a written hold harmless or indemnity agreement regarding the content of **Media Material** used in a **Media Communication**, but only as respects acts for which insurance is afforded under Insuring Agreement F.
- D. **“Bodily Injury”** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- E. **“Circumstance”** means any fact, event or situation that could reasonably be the basis for a **Claim**.
- F. **“Claim”** means a demand received by any **Insured** for money or services including the service of suit or institution of arbitration proceedings. **“Claim”** shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

Multiple **Claims** arising from the same or a series of related or repeated acts, errors, omissions or **Pollution Conditions** or from any continuing acts, errors, omissions or **Pollution Conditions** shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

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

Claims Expenses do not include any salary, overhead or other charges of or by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** notified under this Insurance.

- H. **"Cleanup Costs"** means reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Underwriters in the investigation, removal or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition** arising out of the rendering of or failure to render **Professional Services** or the performance of or failure to perform **Contracting Services** by or on behalf of the **Insured Organization**.
- I. **"Computer Systems"** means computers and associated input and output devices, data storage devices, networking equipment, and back up facilities:
1. operated by and either owned by or leased to the **Insured Organization**; or
 2. operated by a third party service provider and used for the purpose of providing hosted computer application services to the **Insured Organization** or for processing, maintaining, hosting or storing the **Insured Organization's** electronic data, pursuant to written contract with the **Insured Organization** for such services.

- J. “**Contracting Services**” means the performance of construction, drilling or remediation activities by or on behalf of the **Insured Organization**.
- K. “**Damages**” means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post-judgment interest thereon.

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

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**, or the costs of an **Insured** to comply with orders granting injunctive or equitable relief;
 2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
 3. costs incurred by the **Insured** to correct, re-perform or complete any **Media Activities** or **Technology Based Services**;
 4. any damages which are a multiple of compensatory damages;
 5. fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;
 6. punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;
 7. discounts, coupons, prizes, awards or other incentives offered to the **Insured’s** customers or clients;
 8. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement; or
 9. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.
- L. “**Malicious Code**” means any virus, Trojan Horse, worm or other similar software program, code or script intentionally designed to insert itself into computer memory or onto a computer disk and spread itself from one computer to another.
- M. “**Media Communication**” means the display, broadcast, dissemination, distribution or release of **Media Material** to the public by the **Insured Organization**.

- N. “**Media Material**” means information in the form of words, sounds, numbers, images, or graphics in electronic, print or broadcast form, including **Advertising**, but does not mean computer software.
- O. “**Media Activities**” means **Media Communications** and/or the gathering, collection or recording of **Media Material** for inclusion in any **Media Communication** in the ordinary course of the **Insured Organization’s** business.
- P. “**Mediation**” means the voluntary and otherwise non-binding process by which a qualified professional mediator mutually agreed upon by the parties intercedes between the parties with the intention to reconcile them to resolve a **Claim**. The term **Mediation** shall not include or mean other dispute resolution by litigation or arbitration.
- Q. “**Optional Extension Period**” means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause XIII. of this Policy.
- R. “**Policy Period**” means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.
- S. “**Pollution Condition**” means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in **Bodily Injury, Property Damage** or **Cleanup Costs**.
- T. “**Professional Services**” means those services performed for others by or on behalf of the **Insured Organization** in the practice of architecture, engineering, land surveying, landscape architecture, interior design, construction management or environmental consulting.
- U. “**Property Damage**” means:
1. physical injury to or destruction of any tangible property, including the loss of use thereof; or
 2. loss of use of tangible property that has not been physically injured or destroyed.
- V. “**Subsidiary**” means any corporate entity while more than 50% of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the Named Insured directly or indirectly, if such entity was so owned on the inception date of this Policy; or:

1. was so owned prior to the inception date of this Policy and was insured under a policy issued by Underwriters of which this Policy is a renewal;
2. becomes so owned after the inception date of this Policy provided the revenues of the entity do not exceed 10% of the Named Insured's Annual Revenues as set forth in their most recent **Application**; or
3. becomes so owned after the inception date of this Policy provided that if the revenues of the entity exceed 10% of the Named Insured's Annual Revenues as set forth in their most recent **Application**, the provisions of Clause XVIII.A., must be fulfilled.

Provided that this Policy only provides coverage for acts, errors or omissions or **Pollution Conditions** taking place while the corporate entity is so owned by the Named Insured.

- W. **"Technology Based Services"** means computer and electronic technology services, including data processing, Internet services, data and application hosting, computer systems analysis, technology consulting and training, custom software programming for a specific client of the **Insured Organization**, computer and software systems installation and integration, computer and software support, and network management services performed by the **Insured**, or by others acting under the **Insured Organization's** trade name, for others for a fee, but shall not mean **Technology Products**.
- X. **"Technology Products"** means a computer or telecommunications hardware or software product, or related electronic product that is created, manufactured or developed by the **Insured Organization** for others, or distributed, licensed, leased or sold by the **Insured Organization** to others, for compensation, including software updates, service packs and other maintenance releases provided for such products.
- Y. **"Theft of Data"** means the unauthorized taking, misuse or disclosure of information on **Computer Systems**, including but not limited to charge, debit, and credit card information, banking, financial, and investment services account information, proprietary information, and personal, private, and confidential information.
- Z. **"Unauthorized Access"** means:
1. the use of or access to **Computer Systems** by a person not authorized to do so by the **Insured Organization**; or

2. the authorized use of or access to **Computer Systems** in a manner not authorized by the **Insured Organization**.

IX. LIMIT OF LIABILITY

- A. The Limit of Liability stated in Item 3.(a) of the Declarations for “Each **Claim**” is the limit of the Underwriters’ liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The “Aggregate for the **Policy Period**” stated in Item 3.(b) of the Declarations is the Underwriters’ combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** or **Circumstances** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- C. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

X. DEDUCTIBLE

- A. The “Each **Claim** Deductible” stated in Item 4. of the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by monetary payments by the Named Insured of **Damages** and **Claims Expenses** resulting from **Claims** first made during the **Policy Period** and the **Optional Extension Period** and reported to the Underwriters pursuant to the terms of this Policy. Satisfaction of the Each **Claim** Deductible is a condition precedent to the payment by the Underwriters of any amounts hereunder, and the Underwriters shall be liable only for the amounts in excess of the Each **Claim** Deductible subject to the Underwriters’ total liability not exceeding the Limits of Liability stated in Items 3.(a) and 3.(b) of the Declarations. The Named Insured shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Underwriters.
- B. If the **Insured** and the Underwriters agree to use **Mediation** and the **Claim** is fully and finally resolved through the use of **Mediation**, the Underwriters will reimburse fifty percent (50%) of the Each **Claim** Deductible paid by the Named Insured, up to \$25,000 for such **Claim**.

XI. INNOCENT INSURED

- A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion VI.A relating to criminal, dishonest, intentional, fraudulent, malicious, willful or knowing acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Underwriters agree that

such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion VI.A.

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

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

XII. NOTICE OF CLAIM OR CIRCUMSTANCE

- A. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters through the persons named in Item 9.(a) of the Declarations written notice of such **Claim** in the form of a telecopy, or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than sixty (60) days after the expiration of the **Policy Period** or the last day of the **Optional Extension Period**, if purchased.
- B. If during the **Policy Period** any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** first becomes aware of any **Circumstance** and gives written notice to the Underwriters in the form of a telecopy, or express or certified mail through persons named in Item 9.(a) of the Declarations as soon as practicable during the **Policy Period** of:
 - 1. the specific details of the act, error or omission or **Pollution Condition** in the provision of **Professional Services, Contracting Services, Media Activities** or **Technology Based Services** or relating to **Technology Products** that gave rise to the **Circumstance**;
 - 2. the injury or damage which may result or has resulted from the **Circumstance**; and
 - 3. the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Insured Organization** first became aware of the act, error or omission or **Pollution Condition**

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

- C. A **Claim** shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of a telecopy, or express or certified mail through persons named in Item 9.(a) of the Declarations of the **Claim** or of a **Circumstance** if provided in compliance with Clause B. above.

XIII. OPTIONAL EXTENSION PERIOD

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

- F. All notices and premium payments made under this clause shall be directed to Underwriters through the entity named in Item 8.(b) of the Declarations.

XIV. REPRESENTATIONS

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

XV. OTHER INSURANCE

This Insurance shall apply in excess of:

- A. any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project specific professional liability and/or contractors pollution liability insurance; and
- B. any self insured retention or deductible portion thereof

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

XVI. ASSIGNMENT

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

XVII. CANCELLATION AND NONRENEWAL

- A. The Named Insured may cancel this Policy by surrender thereof to the Underwriters through the entity named in Item 8.(b) of the Declarations, or by mailing to the Underwriters through the entity named in Item 8.(b) of the Declarations written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- B. The Underwriters may cancel this Policy by mailing or delivering to the Named Insured at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing or delivering a written notice of cancellation to the Named Insured at the address shown in the Declarations stating when not less than ten (10) days thereafter such

cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Underwriters shall be equivalent to mailing.

- C. If this Policy is cancelled pursuant to A. hereinabove, the Underwriters shall retain the short rate portion of the premium hereon calculated in accordance with the Short Rate Cancellation Table set forth in Clause XXIX. of this Policy. If this Policy is cancelled pursuant to B. hereinabove, the Underwriters shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation.
- D. If the Underwriters decide not to renew this Policy, the Underwriters shall mail or deliver written notice to the Named Insured at the address shown in the Declarations at least sixty (60) days before the end of the **Policy Period**. The notice of non-renewal shall state the reason for non-renewal.

XVIII. MERGERS AND ACQUISITIONS

- A. During the **Policy Period**, if the Named Insured or any **Subsidiary** acquires another entity whose annual revenues are more than ten percent (10%) of the Named Insured's total annual revenues as set forth in the most recent **Application**; then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any act, error or omission or **Pollution Condition**, whether committed or arising either before or after such acquisition:
 - 1. by the acquired entity or any person employed by the acquired entity; or
 - 2. involving or relating to the assets, liabilities, or **Computer Systems** of the acquired entity.

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

- B. If during the **Policy Period** the Named Insured consolidates or merges with another entity such that the Named Insured is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to acts, errors or omissions or **Pollution Conditions** committed or arising subsequent to such consolidation, merger or acquisition and Underwriters shall retain the total premium for this Policy, such total premium to be deemed earned at the date of such consolidation, merger or acquisition.

The Named Insured shall provide written notice of such consolidation, merger or acquisition to the Underwriters as soon as practicable, together with such information as the Underwriters may require.

- C. All notices and premium payments made under this section shall be directed to the Underwriters through the entity named in Item 8.(b) of the Declarations.

XIX. ASSISTANCE AND COOPERATION OF THE INSURED

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

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

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters.

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

XX. ACTION AGAINST UNDERWRITERS

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

XXI. SUBROGATION

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers

and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. The Underwriters agree to waive their rights of recovery against any client of the **Insured Organization** for a **Claim** which is covered pursuant to Insuring Agreements A. and/or B. of this Policy to the extent the **Insured Organization** had, prior to such **Claim**, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Underwriters, and third to the Each **Claim** Deductible. Any additional amounts recovered shall be paid to the Named Insured.

XXII. ENTIRE AGREEMENT

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

XXIII. VALUATION AND CURRENCY

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

XXIV. BANKRUPTCY

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

XXV. AUTHORIZATION

By acceptance of this Policy, the **Insureds** agree that the Named Insured set forth at Item 1. of the Declarations will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

XXVI. HEADINGS

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

XXVII. SERVICE OF SUIT

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due under this Insurance, Underwriters hereon, at the request of the **Insured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon Underwriters' representative, designated in Item 11. of the Declarations, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

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

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

XXVIII. CHOICE OF LAW

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

XXIX. SHORT RATE CANCELLATION TABLE

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the **Insured** the Earned Premium shall be computed as follows:-

SHORT RATE CANCELLATION TABLE

A. For insurances written for one year:-

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1 - 73	30	206 - 209	66
74 - 76	31	210 - 214 (7 months)	67
77 - 80	32	215 - 218	68
81 - 83	33	219 - 223	69
84 - 87	34	224 - 228	70
88 - 91 (3 months)	35	229 - 232	71
92 - 94	36	233 - 237	72
95 - 98	37	238 - 241	73
99 - 102	38	242 - 246 (8 months)	74
103 - 105	39	247 - 250	75
106 - 109	40	251 - 255	76
110 - 113	41	256 - 260	77
114 - 116	42	261 - 264	78
117 - 120	43	265 - 269	79
121 - 124 (4 months)	44	270 - 273 (9 months)	80
125 - 127	45	274 - 278	81
128 - 131	46	279 - 282	82
132 - 135	47	283 - 287	83
136 - 138	48	288 - 291	84
139 - 142	49	292 - 296	85
143 - 146	50	297 - 301	86
147 - 149	51	302 - 305 (10 months)	87
150 - 153 (5 months)	52	306 - 310	88
154 - 156	53	311 - 314	89
157 - 160	54	315 - 319	90
161 - 164	55	320 - 323	91
165 - 167	56	324 - 328	92
168 - 171	57	329 - 332	93
172 - 175	58	333 - 337 (11 months)	94
176 - 178	59	338 - 342	95
179 - 182 (6 months)	60	343 - 346	96
183 - 187	61	347 - 351	97
188 - 191	62	352 - 355	98
192 - 196	63	356 - 360	99
197 - 200	64	361 - 365 (12 months)	100
201 - 205	65		

B. For Insurances written for more or less than one year:-

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:

- (a) Determine full annual premium as for an insurance written for a term of one year.
- (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
- (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

Furthermore and notwithstanding the foregoing, Underwriters shall retain the total premium for this Policy, such total premium to be deemed earned upon inception of the Policy if any **Claim** or **Circumstance** is reported to Underwriters under this Policy on or before such date of cancellation.