

Indian Harbor Insurance Company  
**STAMFORD, CONNECTICUT**  
(A Stock Insurance Company Herein Called the Company)

**POLLUTION AND REMEDIATION LEGAL LIABILITY POLICY**

**THIS IS A "CLAIMS-MADE AND REPORTED" POLICY. THIS POLICY REQUIRES THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR, WHERE APPLICABLE, THE EXTENDED REPORTING PERIOD. IN ADDITION, THIS POLICY MAY HAVE PROVISIONS OR REQUIREMENTS DIFFERENT FROM OTHER POLICIES YOU MAY HAVE PURCHASED. PLEASE READ CAREFULLY.**

**THIS POLICY CONTAINS PROVISIONS WHICH LIMIT THE AMOUNT OF LEGAL EXPENSE THE COMPANY IS RESPONSIBLE TO PAY. LEGAL EXPENSE SHALL BE APPLIED AGAINST THE SELF-INSURED RETENTION AMOUNT STATED IN ITEM 4. OF THE DECLARATIONS AND IS SUBJECT TO THE LIMITS OF LIABILITY STATED IN ITEM 3. OF THE DECLARATIONS.**

In consideration of the payment of the Policy Premium stated in Item 7. of the Declarations and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted herewith, and subject to all the terms and conditions of this Policy, and the Limits of Liability, and Self-Insured Retention Amount stated in the Declarations, the Company agrees with the INSURED as follows:

**I. INSURING AGREEMENT**

**A. Coverage A - POLLUTION LEGAL LIABILITY**

The Company will pay on behalf of the INSURED for LOSS and related LEGAL EXPENSE resulting from any POLLUTION CONDITION on, at, under or migrating from any COVERED LOCATION, which the INSURED has or will become legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

**B. Coverage B - REMEDIATION LEGAL LIABILITY**

The Company will pay on behalf of the INSURED for REMEDIATION EXPENSE and related LEGAL EXPENSE resulting from any POLLUTION CONDITION on, at, under or migrating from any COVERED LOCATION:

1. for a CLAIM first made against the INSURED during the POLICY PERIOD which the INSURED has or will become legally obligated to pay; or
2. that is first discovered during the POLICY PERIOD,

provided that the INSURED reports such CLAIM or POLLUTION CONDITION to the Company, in writing, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

**C. Coverage C - CONTINGENT TRANSPORTATION COVERAGE**

The Company will pay on behalf of the INSURED for LOSS, REMEDIATION EXPENSE and related LEGAL EXPENSE resulting from any POLLUTION CONDITION that arises solely during the course of TRANSPORTATION by any CARRIER, which the INSURED has or will become legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

**II. DEFINITIONS**

- A. ADDITIONAL NAMED INSURED** means any person(s) or entity(ies) endorsed onto this Policy as an ADDITIONAL NAMED INSURED, but solely to the extent such person(s) or entity(ies) is liable as a result of the ownership, occupation, development, operation, maintenance, financing or use of any COVERED LOCATION.
- B. BODILY INJURY** means:
1. physical injury, sickness, disease or building related illness, including death resulting therefrom, and any accompanying medical or environmental monitoring; and/or
  2. mental anguish, emotional distress, or shock,
- caused by any POLLUTION CONDITION.
- C. CARRIER** means any person(s) or entity(ies), other than the INSURED or any subsidiary or affiliate company of the INSURED, engaged by or on behalf of the INSURED, licensed and in the business of transporting property for hire by land motor vehicle or watercraft.
- D. CLAIM** means any demand(s), notice(s) or assertion(s) of a legal right alleging liability or responsibility on the part of the INSURED and shall include but not be limited to lawsuit(s), petition(s), order(s) or government and/or regulatory action(s), filed against the INSURED.
- E. COVERED LOCATION** means any location(s) listed in the Covered Location Schedule endorsed onto this Policy.
- F. EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period or, if applicable, the Optional Extended Reporting Period, as described in Section V. EXTENDED REPORTING PERIOD of this Policy.
- G. FIRST NAMED INSURED** means the person or entity stated in Item 1. of the Declarations.
- H. INSURED** means the FIRST NAMED INSURED, any ADDITIONAL NAMED INSURED endorsed onto this Policy, and any present or former director, officer, partner, employee, leased worker or temporary worker thereof while acting within the course and scope of his/her duties as such.
- I. LEGAL EXPENSE** means legal costs, charges and expenses incurred in the investigation, adjustment or defense of any CLAIM for LOSS or REMEDIATION EXPENSE, or in connection with the payment of any REMEDIATION EXPENSE as applicable, and shall include any necessary expert fees paid to experts retained by defense counsel.

LEGAL EXPENSE does not include the time and expense incurred by the INSURED in assisting in the investigation or resolution of a CLAIM or in connection with REMEDIATION EXPENSE, including but not limited to the costs of the INSURED'S in-house counsel, salary charges of

regular employees or officials of the INSURED, and fees and expenses of supervisory counsel retained by the INSURED.

- J. LOSS** means monetary judgment, award or settlement of compensatory damages as well as related punitive, exemplary or multiplied damages where insurance coverage is allowable by law arising from:
1. BODILY INJURY; and/or
  2. PROPERTY DAMAGE.
- K. LOW-LEVEL RADIOACTIVE WASTE AND MATERIAL** means:
1. Waste as defined in Title 10 Code of Federal Regulations, Part 61.2; and/or
  2. material regulated by the United States Nuclear Regulatory Commission or an Agreement State under a Type A, B or C Specific License of Broad Scope as defined in Title 10 Code of Federal Regulations, Part 33.11.
- L. MOLD MATTER** means mold, mildew or any type or form of fungus; including any mycotoxins, spores, or byproducts produced or released by fungi.
- M. MOLD MATTER REMEDIATION STANDARD** means standards for the investigation and abatement of MOLD MATTER imposed by a Federal, State, Local or Provincial governmental authority pursuant to a law or regulation governing the investigation and abatement of MOLD MATTER. If no standards have been imposed by such authority, then the standards for investigation and abatement shall be those necessary to protect human health at the COVERED LOCATION, as determined in consultation with a MOLD MATTER PROFESSIONAL, and shall be no less than those remediation activities recommended by the New York City Department of Health & Mental Hygiene Guidelines on Assessment and Remediation of Fungi in Indoor Environments ("NYC Guidelines"), or any subsequent amendments thereof. All of these standards shall take into consideration the use of the COVERED LOCATION on the date the COVERED LOCATION was endorsed onto this Policy.
- N. MOLD MATTER PROFESSIONAL** means a Certified Industrial Hygienist, or similarly qualified health and safety professional experienced in performing mold investigation and remediation, retained by or with the prior written consent of the Company.
- O. NATURAL RESOURCE DAMAGE** means physical injury to or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C. 1801 et. seq.), any State, Local or Provincial government, any foreign government, any Native American tribe or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.
- P. POLICY PERIOD** means the period stated in Item 2. of the Declarations, or any shorter period arising as a result of cancellation.
- Q. POLLUTANTS** means any solid, liquid, gaseous or thermal pollutant, irritant or contaminant including but not limited to smoke, vapors, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, waste materials, including medical, infectious and pathological wastes, electromagnetic fields, LOW-LEVEL RADIOACTIVE WASTE AND MATERIAL, and MOLD MATTER.

**R. POLLUTION CONDITION** means:

1. the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS into or upon land, or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater;
2. the presence of any uncontrolled or uncontained POLLUTANTS into land, the atmosphere, or any watercourse or body of water including groundwater; or
3. the presence of MOLD MATTER on buildings or structures.

**S. PROPERTY DAMAGE** means:

1. physical injury to or destruction of tangible property, including the resulting loss of use thereof, and including the personal property of third parties;
2. loss of use of such property that has not been physically injured or destroyed;
3. diminished third party property value; and/or
4. NATURAL RESOURCE DAMAGE,  
caused by any POLLUTION CONDITION.

PROPERTY DAMAGE does not include REMEDIATION EXPENSE.

**T. REMEDIATION EXPENSE** means expenses caused by a POLLUTION CONDITION and incurred to investigate, assess, remove, dispose of, abate, contain, treat or neutralize a POLLUTION CONDITION, to the extent required by:

1. Federal, State, Local or Provincial Laws, Regulations or Statutes, or any subsequent amendments thereof, or MOLD MATTER REMEDIATION STANDARDS, enacted to address a POLLUTION CONDITION, including any individual or entity acting under the authority thereof; and/or
2. a legally executed state voluntary program governing the cleanup of a POLLUTION CONDITION.

REMEDATION EXPENSE shall also include any associated (i) monitoring and testing costs, or (ii) punitive, exemplary or multiplied damages, where insurable by law. REMEDIATION EXPENSE shall also include RESTORATION COSTS.

**U. RESTORATION COSTS** means reasonable and necessary costs incurred by the INSURED to restore, repair or replace real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring REMEDIATION EXPENSE.

However, these costs shall not exceed the actual cash value of such real or personal property immediately prior to incurring the REMEDIATION EXPENSE or include costs associated with improvements or betterments. Actual cash value is defined as the cost to replace such real or personal property, immediately prior to incurring the REMEDIATION EXPENSE, minus the accumulated depreciation of the real or personal property.

**V. RESPONSIBLE INSURED** means:

1. any officer, director, or partner of the INSURED;
2. any person(s) or entity(ies) authorized by the INSURED to act for or in place of the INSURED; and/or
3. any employee of the INSURED responsible for the environmental or health and safety affairs of the INSURED.

**W. TRANSPORTATION** means:

1. **Out-Bound** - the movement by a CARRIER of the INSURED'S product or waste generated by the INSURED, after a CARRIER crosses the legal boundary of a COVERED LOCATION until the INSURED'S waste or product is delivered or unloaded by the CARRIER; and/or
2. **In-Bound** - the loading and movement by a CARRIER of material, from a location other than a COVERED LOCATION, until the CARRIER crosses the legal boundary of a COVERED LOCATION.

- X. UNDERGROUND STORAGE TANK(S)** means any stationary container or vessel, including the associated piping connected thereto, which is ten percent (10%) or more beneath the surface of the ground and is: (i) constructed primarily of non-earthen materials; and (ii) designed to contain any substance.

### III. TERRITORY

A CLAIM must be made or brought in the United States, its territories or possessions or in Canada.

This Policy shall not apply to any risk which would be in violation of the laws of the United States or Canada, as applicable, including, but not limited to, United States economic or trade sanction laws or export control laws administered by the United States Treasury, State, and Commerce Departments (e.g. the economic and trade sanctions administered by the United States Treasury Office of Foreign Assets Control).

### IV. EXCLUSIONS

**This Policy does not apply to LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE or any other coverages afforded by endorsement attached to this Policy:**

1. **Non-Disclosed Conditions**  
arising from any POLLUTION CONDITION existing prior to the inception date of this Policy, and reported to or known by a RESPONSIBLE INSURED, which was not disclosed in writing to the Company in the Application or related materials prior to the inception date of this Policy or prior to the COVERED LOCATION being endorsed onto this Policy. Any POLLUTION CONDITION disclosed in writing to the Company and not otherwise excluded under this Policy is deemed to be first discovered on the date a COVERED LOCATION is endorsed onto this Policy.
2. **Fines/Penalties/Assessments**  
based upon or arising out of any fines, penalties or assessments.

This exclusion does not apply to punitive, exemplary or multiplied damages.

**3. Employer's Liability/Workers' Compensation**

based upon or arising out of injury to:

- a. any employee, director, officer, partner, leased worker or temporary worker of the INSURED if such injury occurs during and in the course of said employment, or during the performance of duties related to the conduct of the INSURED'S business, or arising out of any Workers' Compensation, unemployment compensation or disability benefits law or similar law; and
- b. the spouse, child, parent, brother or sister of such employee, director, officer, partner, leased worker or temporary worker of the INSURED as a consequence of Item a. above.

**4. Contractual Liability**

based upon or arising as a result of liability of others assumed by the INSURED in any contract or agreement unless the liability would exist in the absence of a contract or agreement.

Only as it applies to coverages offered under this Policy, this exclusion does not apply to liability of others assumed by the INSURED in contracts listed in the Insured Contract(s) Schedule endorsed onto this Policy.

**5. Insured's Property/Bailee Liability**

with respect to PROPERTY DAMAGE only, to property owned, leased or operated by, or in the care, custody or control of the INSURED, even if such PROPERTY DAMAGE is incurred to avoid or mitigate LOSS or REMEDIATION EXPENSE which may be covered under this Policy.

This exclusion does not apply to RESTORATION COSTS or NATURAL RESOURCE DAMAGE.

**6. New Pollution Conditions at Divested Property**

based upon or arising from any POLLUTION CONDITION on, at, under or migrating from any COVERED LOCATION, where the actual discharge, dispersal, release, seepage, migration or escape of POLLUTANTS commenced subsequent to the time such COVERED LOCATION was sold, given away, or abandoned by the INSURED, or condemned.

**7. Radioactive / Nuclear Material**

based upon or arising out of:

- a. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the processing or reaction of nuclear fuel;
- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- c. the existence, required removal or abatement of Naturally Occurring Radioactive Material, including but not limited to radon;
- d. high-level radioactive waste (spent nuclear fuel or the highly radioactive waste produced if spent fuel is reprocessed), uranium milling residues and waste with greater than specified quantities of elements heavier than uranium; or
- e. mixed Waste as defined in Title 40 Code of Federal Regulations, Part 266.210; however, this clause e. does not apply to Mixed Waste that contains Waste as defined in Title 10 Code of Federal Regulations, Part 61.2,

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

**8. Products Liability**

based upon or arising out of goods or products manufactured, sold, handled, distributed, altered or repaired by the INSURED or by others trading under the INSURED's name including any container thereof, any failure to warn, or any reliance upon a representation or warranty made at any time with respect thereto, but only if the POLLUTION CONDITION took place away from a COVERED LOCATION and after physical possession of such goods or products has been relinquished to others.

This exclusion does not apply to Coverage C – CONTINGENT TRANSPORTATION COVERAGE, as stated in Section I. INSURING AGREEMENT of this Policy.

**9. Non-Compliance**

arising from any POLLUTION CONDITION that results from the intentional disregard of, or the deliberate, willful or dishonest non-compliance by a RESPONSIBLE INSURED with any statute, regulation, ordinance, order, notice letter or instruction from, by or on behalf of any governmental body or entity.

**10. Hostile Acts**

based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

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

based upon or arising out of the existence, required removal or abatement of lead-based paint or asbestos, in any form, in any building or structure, including but not limited to products containing asbestos, asbestos fibers, asbestos dust, and asbestos containing materials.

**12. Underground Storage Tank(s)**

based upon or arising out of the existence of any UNDERGROUND STORAGE TANK(S) on, at or under a COVERED LOCATION. This exclusion does not apply to UNDERGROUND STORAGE TANK(S):

- a. which are closed, abandoned-in-place or removed prior to the inception date of this Policy, in accordance with all applicable Federal, State, Local or Provincial Regulations in effect at the time of closure, abandonment or removal;
- b. listed in the Underground Storage Tank(s) Schedule endorsed onto this Policy, if any;
- c. the existence of which is unknown by a RESPONSIBLE INSURED as of the inception date of this Policy;
- d. flow-through process tanks, including oil/water separators; or
- e. storage tank(s) situated in an underground area (such as a basement, cellar, mine shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

**13. Insured vs. Insured**

based upon or arising from a CLAIM by one INSURED against another INSURED.

**14. Material Change in Use or Operations**

based upon or arising out of a material change in the use of, or a material change in the operations at, any COVERED LOCATION from those set forth by the INSURED in the Application or related materials as of the inception date of this Policy.

- 15. Retroactive Date**  
based upon or arising out of any POLLUTION CONDITION that commenced prior to the Retroactive Date stated in Item 5. of the Declarations which includes any dispersal, migration or further movement of the aforementioned POLLUTION CONDITION on or after the Retroactive Date stated in Item 5. of the Declarations.
- 16. Reverse Retroactive Date**  
based upon or arising out of any POLLUTION CONDITION that commenced subsequent to the Reverse Retroactive Date stated in Item 6. of the Declarations.
- 17. Communicable Diseases**  
based upon or arising out of the exposure to infected individuals or animals, or contact with bodily fluids of infected individuals or animals.

## **V. EXTENDED REPORTING PERIOD**

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

The INSURED shall be entitled to a ninety (90) day Automatic Extended Reporting Period for no additional premium, commencing on the last day of the POLICY PERIOD, subject to the following terms and conditions:

1. The Automatic Extended Reporting Period shall apply to a CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED during the Automatic Extended Reporting Period and otherwise covered by this Policy.
2. The Automatic Extended Reporting Period shall also apply to a CLAIM first made against the INSURED during the Automatic Extended Reporting Period, resulting from any POLLUTION CONDITION first discovered and reported to the Company, in writing, by the INSURED during the POLICY PERIOD and otherwise covered by this Policy. In this case, the CLAIM shall be deemed to have been made against the INSURED on the last day of the POLICY PERIOD.
3. The Automatic Extended Reporting Period shall also apply to any POLLUTION CONDITION first discovered by the INSURED during the POLICY PERIOD and reported to the Company, in writing, by the INSURED within the Automatic Extended Reporting Period and otherwise covered under this Policy.

The ninety (90) day Automatic Extended Reporting Period does not apply where:

1. this Policy is terminated for fraud, misrepresentation or non-payment of premium as described in Section IX. CONDITIONS, B. Cancellation, Items 2.a. and 2.b.; or
2. the INSURED has purchased other insurance to replace this Policy, which provides coverage for a CLAIM and/or POLLUTION CONDITION.

### **B. Optional Extended Reporting Period:**

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period in the event this Policy is non-renewed, subject to the following terms and conditions:

1. The Optional Extended Reporting Period shall become effective upon payment of an additional premium of not more than one hundred percent (100%) of the full Policy Premium. The Optional Extended Reporting Period shall be effective for three (3)

consecutive three-hundred and sixty-five (365) day periods commencing on the last day of the POLICY PERIOD. The FIRST NAMED INSURED must indicate its intention, in writing, to purchase this Optional Extended Reporting Period within thirty (30) days from the last day of the POLICY PERIOD. The Automatic Extended Reporting Period of ninety (90) days will be merged into this period and is not in addition to this period.

2. The Optional Extended Reporting Period shall only apply to a CLAIM first made against the INSURED during the Optional Extended Reporting Period, resulting from any POLLUTION CONDITION first discovered and reported to the Company, in writing, by the INSURED, during the POLICY PERIOD and otherwise covered by this Policy.

The Optional Extended Reporting Period does not apply where:

1. this Policy is terminated for fraud, misrepresentation or non-payment of premium as described in Section IX. CONDITIONS, B. Cancellation, Items 2.a. and 2.b.; or
2. the INSURED has purchased other insurance to replace this Policy, which provides coverage for a CLAIM and/or POLLUTION CONDITION.

It is a condition precedent to the operation of the rights granted under Item B. above that payment of the appropriate premium shall be made not later than thirty (30) days after expiration of this Policy in the case of non-renewal.

For purposes of Item B. Optional Extended Reporting Period as referenced above, the quotation of different terms and conditions by the Company shall not be construed as a non-renewal of this Policy.

## **VI. LIMITS OF LIABILITY AND SELF-INSURED RETENTION**

- A. The Company will pay one hundred percent (100%) of all covered LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement attached to this Policy in excess of the applicable Self-Insured Retention Amount stated in Item 4. of the Declarations and subject to the Limits of Liability stated in Item 3. of the Declarations and the other terms and conditions of this Policy.
- B. The Self-Insured Retention Amount is borne by the INSURED and is not to be insured unless the Company has expressed its prior consent in writing to the FIRST NAMED INSURED. The applicable Self-Insured Retention Amount stated Item 4. of the Declarations shall apply.
- C. All LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement attached to this Policy arising out of the same or related POLLUTION CONDITION at any one COVERED LOCATION shall be considered a single POLLUTION CONDITION and shall be subject to the applicable Limits of Liability stated in Item 3a. of the Declarations and the Self-Insured Retention Amount stated in Item 4. of the Declarations.
- D. All LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE or any other coverages afforded by endorsement attached to this Policy during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD shall not exceed the Limits of Liability stated in Item 3b. of the Declarations.
- E. Any LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement incurred and reported to the Company, in writing, over more than one policy period, and resulting from the same or related POLLUTION CONDITION, shall be considered a single POLLUTION CONDITION. The LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement attached to this Policy will be subject to the same

Limits of Liability and the Self-Insured Retention Amount in effect at the time the POLLUTION CONDITION was first reported to the Company, in writing, by the INSURED, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

## VII. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION

**A.** As a condition precedent to the coverage hereunder, in the event any CLAIM is made against the INSURED for LOSS or REMEDIATION EXPENSE, or any POLLUTION CONDITION is first discovered by the INSURED that results in a LOSS or REMEDIATION EXPENSE:

1. The INSURED shall forward to the Company or to any of its authorized agents every demand, notice, summons, order or other process received by the INSURED or the INSURED's representative as soon as practicable; and
2. The INSURED shall provide to the Company, whether orally or in writing, notice of the particulars with respect to the time, place and circumstances thereof, along with the names and addresses of the injured and of available witnesses. In the event of oral notice, the INSURED agrees to furnish to the Company a written report as soon as practicable.

It is further agreed, that the INSURED shall cooperate with the Company and upon the Company's request shall submit to examination by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the investigation and/or defense thereof, all without charge to the Company. The INSURED shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment which the INSURED may have.

- B.** No costs, charges or expenses shall be incurred, nor payments made, obligations assumed or remediation commenced without the Company's written consent which shall not be unreasonably withheld. This provision does not apply to costs incurred by the INSURED on an emergency basis, where any delay on the part of the INSURED would cause injury to persons or damage to property, or increase significantly the cost of responding to any POLLUTION CONDITION. If such emergency occurs, the INSURED shall notify the Company immediately thereafter.
- C.** The Company shall have the right and the duty to defend an INSURED against any CLAIM seeking damages for a LOSS or for REMEDIATION EXPENSE. The Company will have no duty to defend the INSURED against any CLAIM for LOSS or for REMEDIATION EXPENSE to which this Policy does not apply.
- D.** The Company shall have the right and the duty to assume the investigation, adjustment or defense of any CLAIM. In case of the exercise of this right, the INSURED, on demand of the Company, shall promptly reimburse the Company for any element of LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE or any other coverages afforded by endorsement falling within the Self-Insured Retention Amount stated in Item 4. of the Declarations.

The INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a settlement of any CLAIM:

1. for an amount within the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company shall not be liable for any LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement in excess of the Self-Insured Retention Amount; or

2. for a total amount in excess of the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company's liability for LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement shall be limited to that portion of the recommended settlement and the costs, charges and expenses as of the date of the INSURED's refusal which exceed the Self-Insured Retention Amount but fall within the Limits of Liability.
- E. If a POLLUTION CONDITION is first discovered by the INSURED during the POLICY PERIOD and reported in writing to the Company during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD, and a CLAIM associated with such POLLUTION CONDITION is made against the INSURED and reported to the Company after the expiration of this Policy, such CLAIM shall be deemed to have been first made and reported on the last day of the POLICY PERIOD in which the POLLUTION CONDITION is first discovered, provided that the INSURED has maintained an equivalent policy with the Company on a continuous uninterrupted basis and the CLAIM is made against the INSURED and reported to the Company prior to the cancellation or expiration of such subsequent policy. It is further agreed that coverage for such CLAIM will not be provided under any subsequent policy issued by the Company.
  - F. The Company shall have the right to designate legal counsel for the investigation, adjustment and defense of a CLAIM. The Company shall consult with the INSURED in conjunction with the selection of counsel.

#### VIII. TRANSFER OF LEGAL DEFENSE DUTIES

- A. If the Company believes that the Limits of Liability stated in Item 3. of the Declarations has been or soon will be exhausted in defending a CLAIM or that the Company has paid out or will soon pay out the Aggregate Liability stated in Item 3.b. of the Declarations, the Company will so notify the FIRST NAMED INSURED in writing as soon as possible. The Company will advise that its duty to defend a CLAIM seeking damages within those Limits of Liability has terminated, subject to payment of the Limits of Liability, and that it will have no duty to defend or indemnify the INSURED for any CLAIM for which notice is given after the date it sends out such notice. The Company will take immediate and appropriate steps to transfer control of any existing defense prior to exhaustion of the limits to the FIRST NAMED INSURED. The FIRST NAMED INSURED agrees to reimburse the Company for any costs which the Company bears in connection with the transfer of the defense.
- B. The Company will take appropriate steps necessary to defend the CLAIM during the transfer of the defense and avoid any unfavorable legal action provided that the FIRST NAMED INSURED cooperates in the transfer of the duties of the defense.
- C. The exhaustion of the applicable Limits of Liability by the payment of LOSS, REMEDIATION EXPENSE, LEGAL EXPENSE and any other coverages afforded by endorsement will not be affected by the Company's failure to comply with any of the provisions of this section.

#### IX. CONDITIONS

- A. **Inspection and Audit** -- The Company shall be permitted but not obligated to inspect and monitor on a continuing basis the INSURED'S property or operations at any COVERED LOCATION, at any time. Neither the Company's right to make inspections and monitor nor the actual undertaking thereof nor any report thereon shall constitute an undertaking, on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Access for the inspection and audit may be coordinated through the broker or agent of the FIRST NAMED INSURED.

**B. Cancellation** -- The INSURED and the Company agree to the following with regard to cancellation:

1. **Cancellation by the FIRST NAMED INSURED** -- This Policy may be canceled by the FIRST NAMED INSURED by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice of cancellation. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD. Confirmed delivery of such written notice by the FIRST NAMED INSURED shall be equivalent to mailing.

The Minimum Earned Premium for this Policy will be the percentage stated in Item 8. of the Declarations of the total premium for this Policy. The FIRST NAMED INSURED is not entitled to any return of the Minimum Earned Premium upon cancellation by the FIRST NAMED INSURED.

If the Minimum Earned Premium is less than one hundred percent (100%), and the FIRST NAMED INSURED cancels this Policy, then the amount of premium returnable after the minimum premium earned is retained by the Company shall be computed in accordance with the customary short rate table and procedure.

2. **Cancellation by the Company** -- This Policy may be canceled by the Company by mailing to the FIRST NAMED INSURED at the address shown in Item 1. of the Declarations, written notice stating when not less than sixty (60) days [ten (10) days for non-payment of premium] thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice of cancellation. The effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD.

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

- a. the INSURED has made a material misrepresentation which affects the Company's assessment of the risk of insuring any COVERED LOCATION; or
- b. the INSURED breaches or fails to comply with Policy terms, conditions, contractual duties, or any of its obligations under this Policy or at law; or
- c. the INSURED fails to pay the premium or fails to pay any Deductible or the Self-Insured Retention Amount for this Policy.

If the Company cancels this Policy, then the amount of premium returnable to the INSURED shall be computed pro rata and no minimum earned premium shall apply.

In the event of cancellation of this Policy by the Company from Item b. above, the INSURED shall have sixty (60) days from the date of notice to remedy such breach or failure to comply that is the cause for cancellation. If such remedy is satisfactory to the Company, in its sole discretion, during the applicable notice period, the Company will rescind the Notice of Cancellation with a written confirmation to the FIRST NAMED INSURED that the Policy shall remain in place.

With regard to both Items 1. and 2. above:

1. The premium adjustment may be made either at the time cancellation is affected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation; and
2. If a CLAIM is made against the INSURED, and the POLLUTION CONDITION related to such CLAIM is discovered or coverage is requested from the Company by the INSURED during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD, then the total premium shall be considered one hundred percent (100%) earned, and the INSURED is not entitled to any return of premium upon cancellation.

**C. Declarations and Representations** -- By acceptance of this Policy, the INSURED agrees that the statements contained in the Application and any other supplemental materials and information submitted herewith are the INSURED's agreements and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.

**D. Action Against Company** -- No action shall lie against the Company unless, as a condition precedent thereto:

1. the INSURED has fully complied with all of the terms of this Policy; and
2. the amount the INSURED is obligated to pay has been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED's liability, nor shall the Company be impleaded by the INSURED or its legal representative. Bankruptcy or insolvency of the INSURED or of the INSURED's estate shall not relieve the Company of any of its obligations hereunder.

**E. Assignment** -- This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company. Such consent shall not be unreasonably withheld or delayed by the Company.

**F. Subrogation** -- In the event of any payment under this Policy, the Company shall be subrogated to all the INSURED'S rights of recovery 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.

**G. Changes** -- 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 Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

**H. Sole Agent** -- The FIRST NAMED INSURED stated in Item 1. of the Declarations shall act on behalf of all INSUREDS for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or

non-renewal and the exercise of the rights provided in Section V. EXTENDED REPORTING PERIOD, Item B. Optional Extended Reporting Period.

- I. **Other Insurance** -- Subject to Section VI. LIMITS OF LIABILITY AND SELF-INSURED RETENTION, this insurance shall be in excess of the Self-Insured Retention Amount stated in Item 4. of the Declarations and any other valid and collectible insurance available to the INSURED, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limits of Liability provided in this Policy.
- J. **Headings** -- The descriptions in the headings of this Policy are solely for convenience and form no part of this Policy terms and conditions.
- K. **Jurisdiction and Venue** -- It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit to the jurisdiction of the State of New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.
- L. **Choice of Law** -- All matters arising hereunder including questions related to the validity interpretation, performance and enforcement of this Policy shall be determined in accordance with the law and practice of the State of New York (notwithstanding New York's conflicts of law rules).
- M. **Severability** -- Except with respect to Limits of Liability and any rights and duties assigned in this Policy to the FIRST NAMED INSURED, this insurance applies as if each INSURED were the only INSURED and separately to each INSURED against whom a CLAIM is made.

Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one INSURED shall not by itself affect coverage for another INSURED under this Policy. However, this condition shall not apply to the INSURED who is a parent, subsidiary or affiliate of the INSURED which committed the misrepresentation, act or omission referenced above.