

INDIAN HARBOR INSURANCE COMPANY
STAMFORD, CONNECTICUT
(A Stock Insurance Company Herein Called the Company)

OCCURRENCE GENERAL CONTRACTOR'S POLLUTION LEGAL LIABILITY POLICY

THE POLICY CONTAINS PROVISIONS WHICH LIMIT THE AMOUNT OF LEGAL DEFENSE EXPENSE THE COMPANY IS RESPONSIBLE TO PAY IN CONNECTION WITH CLAIMS. LEGAL DEFENSE EXPENSES SHALL BE APPLIED AGAINST ANY RETENTION AMOUNT AND ARE 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 6. 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, the Company agrees with the NAMED INSURED as follows:

I. INSURING AGREEMENT

CONTRACTOR'S POLLUTION LEGAL LIABILITY

To pay on behalf of the INSURED all LOSS in excess of the Retention amount stated in Item 4. of the Declarations which the INSURED becomes legally obligated to pay as a result of an OCCURRENCE during the POLICY PERIOD which arises out of COVERED OPERATIONS. In the event the OCCURRENCE continues through more than one policy placed with the Company, only one policy will respond. The policy that will respond to any resulting LOSS is the policy in which the POLLUTION CONDITION commenced.

The Company has the right and duty to defend the INSURED against any CLAIM for LOSS to which this Policy applies. However, the Company has no duty to defend the INSURED against any CLAIM for BODILY INJURY, PROPERTY DAMAGE or CLEANUP COSTS to which this Policy does not apply. The Company's right and duty to defend any CLAIM ends when the Company has paid the applicable Limits of Liability in the payment of judgments and settlements in connection with LOSS under the Policy.

II. DEFINITIONS

- A. BODILY INJURY** means bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death resulting therefrom, caused by POLLUTION CONDITIONS arising out of COVERED OPERATIONS stated in Item 5. of the Declarations.
- B. CLAIM(S)** means the assertion of a legal right alleging liability or responsibility on the part of the INSURED or the NAMED INSURED, arising out of POLLUTION CONDITIONS, and shall include but not necessarily be limited to lawsuits, petitions, arbitrations or other alternative dispute resolution requests filed against the INSURED.
- C. CLAIMS EXPENSE** means:
1. legal fees and expenses incurred by the Company in the investigation, defense and appeal of a CLAIM for LOSS arising from COVERED OPERATIONS by attorney(s) retained by the Company; or

2. all other fees, costs, pre-judgment interest, post-judgment interest and expenses resulting from the investigation, adjustment, defense and appeal of such CLAIM, if incurred by the Company, or with the written consent of the Company, by the INSURED;

CLAIMS EXPENSE does not include salary charges of regular employees or officials of the Company or fees and expenses of supervisory counsel retained by the Company. The time and expense incurred by the INSURED in assisting in resolving a CLAIM, including but not limited to the costs of the INSURED's in-house counsel, are not CLAIMS EXPENSE.

- D. **CLEANUP COSTS** means costs, charges and expenses incurred in the investigation, removal or neutralization of POLLUTION CONDITIONS, provided that such costs, charges and expenses are caused by POLLUTION CONDITIONS arising out of the performance or lack thereof by or on behalf of the NAMED INSURED of COVERED OPERATIONS stated in Item 5. of the Declarations.
- E. **COVERED OPERATIONS** means those operations stated in Item 5. of the Declarations that are performed by or on behalf of the NAMED INSURED.
- F. **INSURED** means the NAMED INSURED and:
 1. any director, executive officer, current partner, employee or LEASED WORKER thereof while acting within the scope of their duties as such.
 2. all clients of the NAMED INSURED, but only when required by written contract or agreement and solely for COVERED OPERATIONS performed by or on behalf of the NAMED INSURED.
 3. any NAMED INSURED with regard to its participation in a joint venture, but solely for the NAMED INSURED's liability for the NAMED INSURED's performance of COVERED OPERATIONS under the respective joint venture.
- G. **INSURED CONTRACT** means that part of any contract or agreement under which the NAMED INSURED assumes tort liability of the INSURED's client to pay compensatory damages to persons other than an INSURED because of CLEANUP COSTS, BODILY INJURY or PROPERTY DAMAGE resulting from POLLUTION CONDITIONS. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- H. **LEASED WORKER** means a person leased to the INSURED by a labor leasing firm under an agreement between the INSURED and the labor leasing firm, to perform duties related to the conduct of the INSURED's business. LEASED WORKER does not include TEMPORARY WORKER.
- I. **LOSS** means monetary judgment, award or settlement of compensatory damages, including CLEANUP COSTS and CLAIMS EXPENSE.
- J. **NAMED INSURED** means the individual, partnership, trust or corporation stated in Item 1. of the Declarations.
- K. **OCCURRENCE** means a POLLUTION CONDITION, including continuous or repeated exposure to the same POLLUTION CONDITION.
- L. **POLICY PERIOD** means the period from the inception date of this Policy to the Policy expiration date as stated in Item 2. of the Declarations or its earlier termination date, if any.

M. POLLUTION CONDITIONS means the discharge, dispersal, release, seepage, migration 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.

N. PROPERTY DAMAGE means:

1. physical injury to or destruction of tangible property including the resulting loss of use thereof, or
2. loss of use of tangible property that has not been physically injured or destroyed;

which is caused by POLLUTION CONDITIONS arising out of the performance of COVERED OPERATIONS stated in Item 5. of the Declarations.

O. TEMPORARY WORKER means a person who is furnished to the INSURED to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.

III. TERRITORY

The Policy only applies to CLAIMS arising from COVERED OPERATIONS rendered worldwide, provided that the suit is brought or CLAIM is made within 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 including, but not limited to, U.S. economic or trade sanction laws or export control laws administered by the U.S. Treasury, State, and Commerce Departments (e.g. the economic and trade sanctions administered by the U.S. Treasury Office of Foreign Assets Control).

IV. EXCLUSIONS

This Policy does not apply to LOSS arising from:

1. **Known Condition(s)**
POLLUTION CONDITIONS existing prior to the inception of this Policy, and reported to any officer, director, partner or other employee responsible for environmental affairs of the INSURED provided such POLLUTION CONDITIONS were caused by operations performed by or on behalf of the INSURED. This exclusion shall apply to any CLAIM, suit, demand, notice or governmental order or directive seeking damages of any kind, including, but not limited to, money, repairs or remediation for POLLUTION CONDITIONS and prohibits any defense of the INSURED where the INSURED knew or should have known of the POLLUTION CONDITIONS, injury or damages prior to the effective date of this policy.
2. **Multiplied Damages/Fines/Penalties**
any CLAIMS seeking payment of fines, taxes, penalties or punitive, exemplary or multiplied damages, injunctive or equitable relief, or the return of fees or charges for operations performed;
3. **Workers' Compensation**
any CLAIM based upon any worker's compensation, unemployment compensation or disability benefits law or similar law;
4. **Employer Liability**
any CLAIM based upon injury to any employee, director, officer, partner or LEASED WORKER of the NAMED INSURED. With respect to injury to any employee, director, officer, partner or LEASED WORKER, this exclusion does not apply to liability assumed

by the NAMED INSURED while actively participating in COVERED OPERATIONS under an INSURED CONTRACT;

5. Contractual Liability

any CLAIM based upon a result of liability of others assumed by the INSURED under any contract or agreement except when such liability is imposed upon the NAMED INSURED under an INSURED CONTRACT;

6. Vehicles

any CLAIM based upon the ownership, maintenance, use or operation of any automobile, aircraft, watercraft or rolling stock beyond the boundaries of the job sites where COVERED OPERATIONS are being performed;

7. Nuclear Hazard

a. Under any Liability Coverage, to BODILY INJURY or PROPERTY DAMAGE

(1) with respect to which an INSURED under this Policy is also an INSURED under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an INSURED under any such policy but for its termination upon exhaustion of its limits of liability; or

(2) resulting from the HAZARDOUS PROPERTIES of NUCLEAR MATERIAL and with respect to which:

(a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or

(b) the INSURED is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under any Liability Coverage, to BODILY INJURY or PROPERTY DAMAGE resulting from the HAZARDOUS PROPERTIES of NUCLEAR MATERIAL, if

(1) the NUCLEAR MATERIAL

(a) is at any NUCLEAR FACILITY owned by, or operated by or on behalf of, an INSURED or

(b) has been discharged or dispersed therefrom; or

(2) the NUCLEAR MATERIAL is contained in SPENT FUEL or WASTE at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an INSURED; or

(3) the BODILY INJURY or PROPERTY DAMAGE arises out of the furnishing by an INSURED of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any NUCLEAR FACILITY, but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion 7.b.(3). applies only to PROPERTY DAMAGE to such NUCLEAR FACILITY and any property thereat.

c. As used in this exclusion:

(1) "HAZARDOUS PROPERTIES" include radioactive, toxic or explosive properties;

(2) "NUCLEAR MATERIAL" means SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL or BYPRODUCT MATERIAL;

- (3) "SOURCE MATERIAL", "SPECIAL NUCLEAR MATERIAL" and "BYPRODUCT MATERIAL" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (4) "SPENT FUEL" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a NUCLEAR REACTOR;
- (5) "WASTE" means any waste material:
 - (a) containing BYPRODUCT MATERIAL; and
 - (b) resulting from the operation by any person or organization of any NUCLEAR FACILITY included within the definition of NUCLEAR FACILITY under paragraph 6(a) or 6(b) thereof;
- (6) "NUCLEAR FACILITY" means:
 - (a) any NUCLEAR REACTOR,
 - (b) any equipment or device designed or used for separating the isotopes of uranium or plutonium, processing or utilizing SPENT FUEL, or handling, processing or packaging WASTE,
 - (c) any equipment or device used for the processing, fabricating or alloying of SPECIAL NUCLEAR MATERIAL if at any time the total amount of such material in the custody of the INSURED at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
 - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of WASTE, and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;
- (7) "NUCLEAR REACTOR" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "PROPERTY DAMAGE" includes all forms of radioactive contamination of property.

8. Products Liability/Own Products

any CLAIM based upon goods or products manufactured, sold and/or distributed by the INSURED or by others under license or trade name from the INSURED. This includes, but is not limited to, any PROPERTY DAMAGE to the INSURED's own goods or products themselves;

9. Intentional Damages and Dishonest Acts

any CLAIM based upon POLLUTION CONDITIONS which are based upon or attributable to the INSURED's dishonest, intentional, fraudulent, malicious, deliberate or knowingly wrongful act or non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body. Furthermore, such insurance as would otherwise be afforded under this Policy shall be applicable with respect to each and every INSURED 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 dishonest, intentional, fraudulent or malicious or knowingly wrongful acts described above;

10. Hostile Acts

any CLAIM based upon any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot or civil commotion;

11. Professional Liability

any CLAIM based upon the rendering of or the failure to render professional services by the INSURED, except when POLLUTION CONDITIONS arise as a result of COVERED OPERATIONS;

12. Asbestos

any CLAIM based upon the removal, cleanup, encapsulation or disposal of asbestos, asbestos products, asbestos fibers or asbestos dust performed by the NAMED INSURED;

13. INSURED'S Property/Bailee Liability

any CLAIM based upon the INSURED's ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of real property. This exclusion does not apply to any CLAIM arising from property rented or leased by the NAMED INSURED during the course of providing COVERED OPERATIONS for parties other than the NAMED INSURED.

V. LIMITS OF LIABILITY AND RETENTION

- A.** This Policy is to pay for LOSS in excess of the Retention amount stated in Item 4. of the Declarations. The Retention amount is to be borne by the INSURED and is not to be insured. To the extent a LOSS first occurs during the POLICY PERIOD, all LOSS arising out of the same or related POLLUTION CONDITIONS shall be considered a single LOSS, and the "each occurrence" Limit of Liability stated in Item 3. of the Declarations shall apply.
- B.** Subject to the foregoing, the Company's total liability for all LOSS from CLAIMS first made against the INSURED and reported to the Company shall not exceed the "total for all occurrences" Limit of Liability stated in Item 3. of the Declarations.
- C.** The Company's right and duty to defend any CLAIM ends when the applicable limits of the Company's liability have been exhausted by payment of LOSS, including CLAIMS EXPENSE.

VI. CLAIM PROVISIONS

- A.** In the event of a CLAIM, immediate written or oral notice containing particulars sufficient to identify the INSURED and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the INSURED to the Company or any of its authorized agents. In the event of oral notice, the INSURED agrees to furnish a written report as soon as possible.
- B.** If a CLAIM is made or suit is instituted against the INSURED, the INSURED shall immediately forward to the Company every demand, notice, summons, order or other process received by the INSURED or the INSURED's representative.
- C.** No costs, charges or expenses shall be incurred without the Company's consent which shall not be unreasonably withheld. The Company shall have the right and the duty to designate legal counsel for the investigation and defense of CLAIMS. The INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a settlement of a CLAIM:

1. for an amount within the Retention amount and the INSURED refuses such settlement, the Company shall not be liable for any LOSS in excess of the Retention amount; or
 2. for a total amount in excess of the balance of the Retention amount and the INSURED refuses such settlement, the Company's liability for LOSS shall be limited to that portion of the recommended settlement and the costs, charges and expenses as of the INSURED's refusal which exceed the Retention amount and fall within the Limits of Liability.
- D. The Company shall have the right and the duty to assume the defense and/or adjustment of any CLAIM. In case of the exercise of this right, the NAMED INSURED, on demand of the Company, shall promptly reimburse the Company for any element of LOSS falling within the NAMED INSURED's Retention amount. The NAMED INSURED shall assist and cooperate with the Company.
- E. This policy does not apply to any CLAIM(S) and/or OCCURRENCE(S) which have been first reported under another General Contractor's Pollution Legal Liability policy provided by the Company.

VII. CONDITIONS

- A. **Application:** By acceptance of this Policy, the INSURED agrees that the statements in the application and any supplemental materials and information submitted therewith are complete, then current and truthful representations, that they shall be deemed material, that this Policy is issued in reliance upon 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.
- B. **Inspection and Audit:** The Company shall be permitted but not obligated to inspect, sample and monitor on a continuing basis the INSURED's property or operations, at any time during the POLICY PERIOD and after the final termination of the Policy, as far as they relate to the subject matter of the Policy. Neither the Company's right to make inspections, sample 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.
- C. **Cancellation:** This Policy may be canceled by the NAMED INSURED by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when the cancellation shall be effective. This Policy may be canceled by the Company by mailing to the NAMED INSURED at the address shown in this Policy, written notice stating when not less than sixty (60) days (ten (10) days for non-payment of premium) such cancellation shall be effective. The mailing of notice shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the POLICY PERIOD. Delivery of such written notice either by the NAMED INSURED or by the Company shall be equivalent to mailing.

If the NAMED INSURED cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

- D. Action Against Company:** No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the INSURED's obligation to pay shall have been finally determined either by judgment against the INSURED after final judgment has been rendered 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 his 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 if assigned or transferred without written consent of 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 therefor 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 after a CLAIM to prejudice such rights.
- G. Changes:** Notice to any agent or knowledge possessed by any agent or by any other person acting on behalf of the Company 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 NAMED INSURED first 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 and the giving and receiving notice of cancellation or non-renewal.
- I. Headings:** The headings of this Policy and any endorsements are for reference only and form no part of the Policy terms and conditions or the endorsements.
- J. 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.
- K. 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).
- L. Severability:** Except with respect to the Limits of Liability and the rights or duties specifically assigned to the first NAMED INSURED stated in Item 1. of the Declarations, this insurance applies:
1. As if each NAMED INSURED were the only NAMED INSURED; and
 2. Separately to each INSURED against whom CLAIM is made or suit is brought.

IN WITNESS WHEREOF the Company has caused this Policy to be signed by its President and Secretary and countersigned on the Declarations by a duly authorized agent of the Company.

Theresa M. Morgan

SECRETARY

Nicholas M. Brown, Jr.

PRESIDENT

SPECIMEN