

**Indian Harbor Insurance Company**  
**Stamford, Connecticut**  
(A Stock Insurance Company Herein Called the Company)

**PROFESSIONAL AND CONTRACTOR'S POLLUTION LEGAL LIABILITY POLICY**

Section I., Coverages A.1., B.3., B.4. and B.5. include "claims-made and reported" coverages and have different reporting requirements from other sections of this Policy. In the event of a CLAIM, this Policy may require that the 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 purchased by the INSURED. Please read this Policy carefully.

This Policy contains provisions which limit the amount of LEGAL EXPENSE the Company is responsible to pay. LEGAL EXPENSE will be applied against any Self-Insured Retention Amount and is subject to the Limits of Liability stated in the Declarations.

**Section I. Insuring Agreements**

**A. Coverage A – Professional Liability:**

**1. PROFESSIONAL LOSS**

The Company will pay on behalf of the INSURED for PROFESSIONAL LOSS which the INSURED becomes legally obligated to pay because of a CLAIM resulting from an act, error or omission in PROFESSIONAL SERVICES, provided that:

- a. the CLAIM arises out of PROFESSIONAL SERVICES rendered on or after the RETROACTIVE DATE and prior to the expiration of the POLICY PERIOD;
- b. the CLAIM is not covered under Coverage B – Contractor's Pollution Legal Liability below; and
- c. the CLAIM is first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the POLICY PERIOD or, where applicable, the EXTENDED REPORTING PERIOD.

**2. MITIGATION EXPENSE**

The Company will pay MITIGATION EXPENSE on behalf of the INSURED resulting from an act, error or omission in PROFESSIONAL SERVICES rendered by the INSURED during the POLICY PERIOD or prior to the POLICY PERIOD, but subsequent to the RETROACTIVE DATE.

As a condition precedent to this coverage:

- a. during the POLICY PERIOD, the INSURED must provide the Company with immediate notice of the act, error or omission in PROFESSIONAL SERVICES and of the proposed corrective action, if any, along with all supporting documentation, in writing, prior to incurring any MITIGATION EXPENSE;
- b. all MITIGATION EXPENSE must be approved by the Company, in writing, prior to being incurred by the INSURED; and

- c. the MITIGATION EXPENSE must not be covered under Coverage B – Contractor’s Pollution Legal Liability below.

**B. Coverage B – Contractor’s Pollution Legal Liability:**

**1. JOB SITE – Occurrence**

The Company will pay on behalf of the INSURED for POLLUTION LOSS which the INSURED becomes legally obligated to pay as a result of a POLLUTION CONDITION at a JOB SITE, provided that:

- a. BODILY INJURY, PROPERTY DAMAGE or ENVIRONMENTAL DAMAGE occurs during the POLICY PERIOD;
- b. the POLLUTION CONDITION results from CONTRACTING SERVICES or COMPLETED OPERATIONS;
- c. the POLLUTION CONDITION is on, at, under or migrating from a JOB SITE; and
- d. the POLLUTION CONDITION results in a CLAIM against the INSURED.

**2. EMERGENCY REMEDIATION EXPENSE**

The Company will pay for EMERGENCY REMEDIATION EXPENSE incurred by the INSURED prior to providing notice to the Company, provided that:

- a. the POLLUTION CONDITION results from CONTRACTING SERVICES rendered during the POLICY PERIOD;
- b. the POLLUTION CONDITION is on, at, under or migrating from a JOB SITE;
- c. the POLLUTION CONDITION is first discovered by the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the POLICY PERIOD, but in no event later than seven (7) days from the discovery of the POLLUTION CONDITION, or the expiration of the POLICY PERIOD, whichever occurs first; and
- d. notice of the EMERGENCY REMEDIATION EXPENSE is provided to the Company as soon as practicable following the discovery of the POLLUTION CONDITION, but in no event later than seven (7) days from the discovery of the POLLUTION CONDITION, or the expiration of the POLICY PERIOD, whichever occurs first.

**3. NAMED INSURED’S LOCATION**

The Company will pay on behalf of the NAMED INSURED for POLLUTION LOSS as a result of a POLLUTION CONDITION on, at, under or migrating from a NAMED INSURED’S LOCATION, provided that:

- a. the POLLUTION CONDITION originates from a NAMED INSURED’S LOCATION; and
- b. the POLLUTION CONDITION is sudden and accidental and first commences during the POLICY PERIOD and finally ends within seven (7) consecutive days from its first commencement; and

- (i) the POLLUTION CONDITION is first discovered by the NAMED INSURED during the POLICY PERIOD and reported to the Company, in writing, during the POLICY PERIOD, or where applicable, the EXTENDED REPORTING PERIOD; or
- (ii) (1) the POLLUTION CONDITION results in a CLAIM against the NAMED INSURED; (2) the CLAIM is for POLLUTION LOSS which the NAMED INSURED becomes legally obligated to pay; and (3) the CLAIM is first made against the NAMED INSURED during the POLICY PERIOD and reported to the Company, in writing, during the POLICY PERIOD, or where applicable, the EXTENDED REPORTING PERIOD.

#### **4. TRANSPORTATION**

The Company will pay on behalf of the INSURED for POLLUTION LOSS as a result of a POLLUTION CONDITION which first commences and finally ends during the course of TRANSPORTATION, provided that:

- a. the TRANSPORTATION takes place during the POLICY PERIOD; and
- b. the POLLUTION CONDITION is discovered by the INSURED or results in a CLAIM against the INSURED; and
  - (i) the POLLUTION CONDITION is first discovered by the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the POLICY PERIOD, or where applicable, the EXTENDED REPORTING PERIOD; or
  - (ii) (1) the POLLUTION CONDITION results in a CLAIM against the INSURED; (2) the CLAIM is for POLLUTION LOSS which the INSURED becomes legally obligated to pay; and (3) the CLAIM is first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the POLICY PERIOD, or where applicable, the EXTENDED REPORTING PERIOD.

#### **5. NON-OWNED DISPOSAL SITE**

The Company will pay on behalf of the INSURED for POLLUTION LOSS which the INSURED becomes legally obligated to pay as a result of a POLLUTION CONDITION at a NON-OWNED DISPOSAL SITE, provided that:

- a. the POLLUTION CONDITION is on, at, under or migrating from a NON-OWNED DISPOSAL SITE;
- b. the POLLUTION CONDITION first commences on or after the RETROACTIVE DATE and prior to the expiration of the POLICY PERIOD;
- c. the POLLUTION CONDITION arises from waste or material generated by CONTRACTING SERVICES performed at a JOB SITE or originating from a NAMED INSURED'S LOCATION;
- d. the POLLUTION CONDITION results in a CLAIM against the INSURED; and
- e. the CLAIM is first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the POLICY PERIOD, or where applicable, the EXTENDED REPORTING PERIOD.

## **Section II. Definitions**

**A. BODILY INJURY** means physical injury, sickness or disease, sustained by any person, including death resulting therefrom or mental anguish, emotional distress or shock, sustained by any person.

**B. CLAIM** means a monetary demand or notice, or assertion of a legal right alleging liability or responsibility on the part of any INSURED and includes a lawsuit, petition, or governmental or regulatory action commenced against any INSURED.

CLAIM does not include any of the foregoing arising out of an act, error or omission in PROFESSIONAL SERVICES or a POLLUTION CONDITION reported under a prior policy issued by the Company or any entity affiliated with the Company.

**C. CLIENT** means the person or organization that directly hires the NAMED INSURED, by written contract signed by the NAMED INSURED, to render CONTRACTING SERVICES and for whom the NAMED INSURED renders such services.

**D. CONTRACTING SERVICES** means those activities listed in Item (6) of the Declarations that are rendered by or on behalf of the NAMED INSURED.

**E. COMPLETED OPERATIONS** means CONTRACTING SERVICES that are completed.

COMPLETED OPERATIONS does not include CONTRACTING SERVICES that have been abandoned. CONTRACTING SERVICES will be deemed completed at the earliest of the following times:

1. when all CONTRACTING SERVICES to be performed under the contract have been completed; or
2. when all CONTRACTING SERVICES to be performed at the JOB SITE have been completed; or
3. when that portion of the CONTRACTING SERVICES have been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

**F. EMERGENCY REMEDIATION EXPENSE** means reasonable and necessary REMEDIATION EXPENSE incurred on an emergency basis at a JOB SITE to address a POLLUTION CONDITION resulting from the rendering or failure to render CONTRACTING SERVICES, which the Company deems reasonable and necessary to mitigate the immediate effects of the POLLUTION CONDITION.

**G. ENVIRONMENTAL DAMAGE** means physical damage in or upon land, the atmosphere, watercourse, body of water or groundwater, caused by a POLLUTION CONDITION and resulting in REMEDIATION EXPENSE.

ENVIRONMENTAL DAMAGE does not include PROPERTY DAMAGE.

**H. EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period or, where applicable, the Optional Extended Reporting Period, as set forth in Section V. Extended Reporting Period.

**I. INSURED** means each of the following:

1. Any NAMED INSURED, and any current or former director, partner, member, executive officer, employee or LEASED WORKER of the NAMED INSURED, but solely while acting within the course and scope of his/her duties as such.
2. With regard to Coverage B.1. JOB SITE – Occurrence, Coverage B. 4. TRANSPORTATION, and Coverage B.5. NON-OWNED DISPOSAL SITE only, as set forth in Section I. Insuring Agreements, the CLIENT, but only:
  - a. if the NAMED INSURED is required to include the CLIENT as an additional INSURED in a written contract in effect during the POLICY PERIOD and signed by the NAMED INSURED prior to the first commencement of the POLLUTION CONDITION; and
  - b. with respect to the CLIENT's vicarious liability resulting from the NAMED INSURED's CONTRACTING SERVICES.

Any insurance afforded to the CLIENT under the terms and conditions of this Policy, will be limited to the lesser of the amount of the limits of liability required by such written contract and the Limits of Liability under this Policy. In no event will the Company be liable for any amounts in excess of the Limits of Liability shown in Item (3) and Item (4) of the Declarations.

3. In the event of the INSURED's bankruptcy, the trustees of the INSURED and in the event of the INSURED's death or incapacity, the INSURED's legal representatives or executors, but only with respect to each such trustee's, representative's or executor's vicarious liability resulting from the NAMED INSURED's PROFESSIONAL SERVICES or CONTRACTING SERVICES.

**J. INSURED CONTRACT** means that part of any written contract or written agreement under which the NAMED INSURED assumes the Tort Liability of another party to pay compensatory damages for BODILY INJURY or PROPERTY DAMAGE, to a third person or organization, provided that such written contract or written agreement is signed by the NAMED INSURED prior to the BODILY INJURY or PROPERTY DAMAGE. Tort Liability means a liability that would be imposed by law in the absence of any contract or agreement.

**K. JOB SITE** means the location where CONTRACTING SERVICES are being rendered.

JOB SITE does not include any location that is owned, rented, leased, used, or occupied by any INSURED except for: (i) a location owned, rented, leased, or occupied by the CLIENT; or (ii) a location that is rented, leased, or occupied (but not owned) by the NAMED INSURED and is used on a temporary basis by the INSURED for a single project only, during the course of providing CONTRACTING SERVICES for such single project.

JOB SITE also does not include a NON-OWNED DISPOSAL SITE or a NAMED INSURED'S LOCATION.

**L. 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.

**M. LEGAL EXPENSE** means legal costs, charges and expenses incurred in the investigation or defense of a CLAIM arising from PROFESSIONAL SERVICES or CONTRACTING SERVICES, provided such costs, charges and expenses are authorized by the Company.

LEGAL EXPENSE does not include the time and expense incurred by the INSURED in assisting in the investigation or resolution of a CLAIM 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 counsel retained by the INSURED.

LEGAL EXPENSE also does not include salary charges of employees of the Company.

LEGAL EXPENSE does not apply to Coverage A.2. MITIGATION EXPENSE and Coverage B.2. EMERGENCY REMEDIATION EXPENSE, as set forth in Section I. Insuring Agreements.

**N. 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.

**O. MITIGATION EXPENSE** means costs and expenses that the Company deems reasonable and necessary to prevent further harm, injury or damage to persons or tangible property and to reduce the cost of the INSURED's potential liability to a person or organization other than an INSURED resulting from an act, error or omission in PROFESSIONAL SERVICES by the INSURED.

MITIGATION EXPENSE does not include: (i) costs and expenses incurred by the INSURED to redo, change, supplement or fix the INSURED's work or services, including redesign; or (ii) any of the INSURED's overhead, mark-up or profit.

**P. MOLD MATTER** means mold, mildew or any type or form of fungus, including mycotoxins, spores or by-products produced or released by fungi.

**Q. NAMED INSURED** means the person or entity listed in Item (1) of the Declarations and any other person or entity designated as a NAMED INSURED by endorsement to this Policy.

**R. NAMED INSURED'S LOCATION** means a location owned, rented or leased, if any, by the NAMED INSURED, provided that such location is listed in the Named Insured's Location Schedule endorsed onto this Policy.

The NAMED INSURED'S LOCATION does not include a JOB SITE or NON-OWNED DISPOSAL SITE.

**S. 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.

**T. NON-OWNED DISPOSAL SITE** means a location used by the NAMED INSURED for the treatment, storage or disposal of waste or material, provided that:

1. the waste or material is generated by CONTRACTING SERVICES performed by the NAMED INSURED at a JOB SITE or originates from a NAMED INSURED'S LOCATION;

2. the NON-OWNED DISPOSAL SITE is not managed, operated, owned or leased by any INSURED or an affiliate of any INSURED;
  3. the NON-OWNED DISPOSAL SITE is permitted and/or licensed by the applicable Federal, State, Local or Provincial authorities to accept such waste or material as of the date the waste or material is treated, stored or disposed at the NON-OWNED DISPOSAL SITE; and
  4. the NON-OWNED DISPOSAL SITE is not listed on a proposed or final Federal National Priorities List and/or any State or Provincial equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of the waste or material at the NON-OWNED DISPOSAL SITE.
- U. POLICY PERIOD** means the period listed in Item (2) of the Declarations or any shorter period resulting from cancellation or rescission.
- V. 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, electromagnetic fields, LOW-LEVEL RADIOACTIVE WASTE AND MATERIAL, MOLD MATTER, and waste materials, including medical, infectious and pathological wastes.
- W. POLLUTION CONDITION** means:
1. the discharge, dispersal, release, seepage, migration or escape of POLLUTANTS into or upon land, or structures thereupon, the atmosphere or any watercourse or body of water, including groundwater; and
  2. the presence of MOLD MATTER in or on buildings or structures.
- X. POLLUTION LOSS** means each of the following that solely and directly results from a POLLUTION CONDITION:
1. a monetary judgment, award or settlement of compensatory damages: (i) resulting from BODILY INJURY or PROPERTY DAMAGE; or (ii) for REMEDIATION EXPENSE;
  2. civil fines and penalties assessed against a CLIENT for which the NAMED INSURED is legally liable, but only where insurance coverage for such fines and penalties is allowable by law;
  3. civil fines and penalties assessed against the INSURED, but only where insurance coverage for such fines and penalties is allowable by law;
  4. punitive, exemplary or multiplied damages for which the INSURED is legally liable, but only where insurance coverage for such damages is allowable by law;
  5. solely with regard to Coverage B.3. NAMED INSURED'S LOCATION and Coverage B.4. TRANSPORTATION, as set forth in Section I. Insuring Agreements, REMEDIATION EXPENSE;
  6. RESTORATION COSTS; and

7. LEGAL EXPENSE associated with Subsections X.1. through X.5. referenced above.

POLLUTION LOSS does not include: (i) injunctive or equitable relief; or (ii) the return of fees or charges for services rendered.

**Y. PROFESSIONAL LOSS** means:

1. a monetary judgment, award or settlement of compensatory damages;
2. civil fines and penalties assessed against a third party other than an INSURED for which the INSURED is legally liable, but only where insurance coverage for such fines and penalties is allowable by law;
3. civil fines and penalties assessed against the INSURED, but only where insurance coverage for such fines and penalties is allowable by law;
4. punitive, exemplary or multiplied damages for which the INSURED is legally liable, but only where insurance coverage for such damages is allowable by law; and
5. LEGAL EXPENSE associated with Subsections Y.1. through Y.4. referenced above.

PROFESSIONAL LOSS does not include: (i) injunctive or equitable relief; (ii) the return of fees or charges for services rendered; (iii) costs and expenses incurred by the INSURED to redo, change, supplement or fix the INSURED's work or services, including redesign; or (iv) any of the INSURED's overhead, mark-up or profit.

**Z. PROFESSIONAL SERVICES** means those activities listed in Item (5) of the Declarations that are rendered by or on behalf of the NAMED INSURED.

**AA. PROPERTY DAMAGE** means each of the following caused by a POLLUTION CONDITION:

1. physical injury to or destruction of tangible property, including the resulting loss of use thereof;
2. loss of use of tangible property that has not been physically injured or destroyed;
3. diminished third-party property value; and
4. NATURAL RESOURCE DAMAGE.

PROPERTY DAMAGE does not include ENVIRONMENTAL DAMAGE.

**BB. REMEDIATION EXPENSE** means expense resulting from ENVIRONMENTAL DAMAGE caused by a POLLUTION CONDITION and incurred to investigate, assess, remove, dispose of, treat, abate, contain or neutralize a POLLUTION CONDITION, including any associated monitoring and testing costs.

**CC. RESPONSIBLE INSURED** means any officer, director, partner, member, manager, supervisor or foreman of any INSURED or any employee of an INSURED that has responsibility, in whole or in part, for risk control, risk management, health and safety or environmental affairs, control or compliance.

**DD. 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 will 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.

**EE. RETROACTIVE DATE** means the date listed in Item (4) of the Declarations for each applicable coverage specified.

**FF. TRANSPORTATION** means the movement of waste or material by motorized land vehicle, including the Loading and Unloading of such waste or material, provided that:

1. the POLLUTION CONDITION occurs at a location other than the JOB SITE or a NAMED INSURED'S LOCATION; and
2. the person or entity transporting the waste or material is properly licensed to transport such waste or material by motorized land vehicle.

Loading and Unloading means all loading and unloading activities except for those activities which occur during the course of disposal, abandonment, or final delivery of such waste or material.

**GG. UNDERGROUND STORAGE TANK** 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) designated to contain any substance.

### **Section III. Territory**

This Policy only applies to a CLAIM arising out of PROFESSIONAL SERVICES or CONTRACTING SERVICES rendered worldwide, provided that the CLAIM is first brought, and at all times maintained, within the United States, its territories or possessions, or in Canada.

This Policy does not apply to any CLAIM which payment would be in violation of the laws of the United States 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, for example the economic and trade sanctions administered by the United States Treasury Office of Foreign Assets Control.

### **Section IV. Exclusions**

This Policy does not apply to any CLAIM, PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION CONDITION, POLLUTION LOSS or EMERGENCY REMEDIATION EXPENSE:

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

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

This exclusion does not apply to lead-based paint or asbestos on, at, under or migrating from a JOB SITE or a NON-OWNED DISPOSAL SITE.

**B. Contractual Liability**  
arising from the INSURED's:

1. assumption of liability in a contract or agreement; or
2. breach of contract or agreement.

This exclusion does not apply to: (i) liability that the INSURED would have in the absence of the contract or agreement; or (ii) solely with regard to Coverage B.1. JOB SITE - Occurrence, as set forth in Section I. Insuring Agreements, liability assumed by the NAMED INSURED in a contract or agreement that is an INSURED CONTRACT.

**C. Divested Location**

arising from any POLLUTION CONDITION on, at, under or migrating from a location where the actual discharge, dispersal, release, seepage, migration or escape of POLLUTANTS commenced subsequent to the time such location was sold, given away, no longer used, or abandoned by an INSURED, or condemned.

This exclusion does not apply to a POLLUTION CONDITION on, at, under or migrating from a JOB SITE.

**D. Discrimination**

arising from any discrimination on the basis of age, color, race, sex, creed, national origin, marital status, disability or sexual preference, unless such CLAIM is based upon or arises out of the failure to make a reasonable accommodation for a disability in violation of the Americans With Disabilities Act 42 U.S.C. 12101, et seq., as amended.

**E. Employer's Liability**

arising from any injury to:

1. any employee, director, officer, partner or member of any INSURED, or LEASED WORKER of any INSURED, if such injury arises in the course of: (i) employment by an INSURED; or (ii) performing duties related to the conduct of an INSURED's business; or
2. the spouse, child, parent, brother or sister of such employee, director, officer, partner or member of any INSURED, or LEASED WORKER of the INSURED, as a consequence of any injury to any of the persons described in Subsection E.1. above.

This exclusion does not apply to liability assumed by the NAMED INSURED in a contract or agreement that is an INSURED CONTRACT.

**F. Express Warranty and Guaranty**

arising from any express warranty or guaranty.

This exclusion does not apply to any warranty or guaranty by the INSURED that the INSURED's PROFESSIONAL SERVICES are in conformity with the standard of care that would be applicable in the absence of such express warranty or guaranty.

**G. Faulty Workmanship / Own Work**

solely with regard to Coverage B – Contractor's Pollution Legal Liability, as set forth in Section I. Insuring Agreements, arising from the cost to repair or replace faulty workmanship, construction, fabrication, installation, assembly, erecting, manufacture or remediation, if such faulty workmanship, construction, fabrication, installation, assembly, erecting, manufacture or remediation was performed, in whole or in part, by or on behalf of an INSURED.

**H. Fiduciary Liability**

arising from any involvement by an INSURED as:

1. an officer, director, partner, member, trustee, employer or employee of a business enterprise not stated in Item (1) of the Declarations or any charitable organization, or pension, welfare, profit sharing, mutual or investment fund or trust; or
2. a fiduciary under the Employee Retirement Income Security Act of 1974 and its amendments or any regulation or order issued pursuant thereto; or any other employee benefit plan.

**I. Hostile Acts**

arising from 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.

**J. Insurance and Suretyship**

arising out of the requiring, obtaining, maintaining, advising as to, or the failure to require, obtain, maintain or advise as to any form of insurance, suretyship or bond, either with respect to any INSURED or any other person or organization.

**K. Insured versus Insured**

arising from any CLAIM made by an INSURED against any other INSURED.

This exclusion does not apply to a CLAIM by a CLIENT.

**L. Intentional and Dishonest Acts**

arising from any: (i) intentional disregard of, or non-compliance with, any statute, regulation, ordinance, law or order, by or at the direction of the INSURED or its agent; or (ii) actual or alleged fraudulent, dishonest or malicious conduct by the INSURED.

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

**M. Joint Venture or Co-Venture**

arising out of an INSURED's participation in a joint venture or co-venture.

This exclusion does not apply to the NAMED INSURED's liability resulting from the rendering or failure to render PROFESSIONAL SERVICES or CONTRACTING SERVICES as a partner or member of a joint venture or co-venture.

**N. Known Circumstances or Conditions**

arising from:

1. a CLAIM, PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION LOSS or EMERGENCY REMEDIATION EXPENSE, known by a RESPONSIBLE INSURED prior to the inception of the POLICY PERIOD; or
2. a POLLUTION CONDITION known by a RESPONSIBLE INSURED prior to the inception of the POLICY PERIOD; or
3. a circumstance or condition known by a RESPONSIBLE INSURED prior to the inception of the POLICY PERIOD where the RESPONSIBLE INSURED should have reasonably foreseen that a CLAIM, PROFESSIONAL LOSS or POLLUTION LOSS would result, or MITIGATION EXPENSE or EMERGENCY REMEDIATION EXPENSE would be incurred.

4. a circumstance or condition known by a RESPONSIBLE INSURED prior to the inception of the POLICY PERIOD where the RESPONSIBLE INSURED should have reasonably foreseen that a POLLUTION CONDITION would result.

However, in the event the INSURED exacerbates a POLLUTION CONDITION, N.2 and N.4 above do not apply to exclude coverage for that portion of the POLLUTION LOSS or EMERGENCY REMEDIATION EXPENSE that would not exist but for the INSURED's exacerbation of the POLLUTION CONDITION.

**O. Material Change in Use**

arising out of a material change in the use of, or operations at, a NAMED INSURED'S LOCATION from the use or operations identified by the INSURED in the statements and information contained in the Application and other supplemental materials submitted to the Company prior to the inception of the POLICY PERIOD or prior to adding such location to the Covered Location Schedule endorsed onto this Policy.

**P. Notices to Previous Insurers**

arising from any CLAIM, act, error or omission in PROFESSIONAL SERVICES, POLLUTION CONDITION or other circumstance reported by an INSURED under any prior policy issued by a person or organization other than the Company or any entity affiliated with the Company.

**Q. Personal Injury**

arising from the false arrest, humiliation, harassment, detention, imprisonment, wrongful entry or eviction or other invasion of private occupancy, malicious prosecution, abuse of process, libel, slander, harassment, or other defamatory or disparaging material, or a publication or an utterance in violation of an individual's right of privacy.

**R. Products**

arising from any goods, materials or products designed, manufactured, sold, handled, distributed and/or supplied by any INSURED or by others under license or trade name from any INSURED.

Solely with regard to Coverage B.1. JOB SITE – Occurrence, as set forth in Section I. Insuring Agreements, this exclusion does not apply to the fabrication, assembly or installation of goods, materials or products provided by the NAMED INSURED in connection with the performance of CONTRACTING SERVICES.

**S. Property**

arising out of:

1. any property owned by the INSURED, except for the NAMED INSURED'S LOCATION; or
2. personal property in the care, custody or control of the INSURED, other than personal property owned or leased by, or in the care, custody or control of, the CLIENT.

**T. Radioactive / Nuclear Material**

arising out of:

1. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the processing or reaction of nuclear fuel;
2. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
3. the existence, required removal or abatement of Naturally Occurring Radioactive Materials, including but not limited to radon;

4. 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
5. Mixed Waste as defined in Title 40 Code of Federal Regulations, Part 266.210; however, this clause 5. 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.

**U. Related Entities and Individuals**

arising from a CLAIM by an entity or individual:

1. that wholly or partially owns, operates or manages an INSURED;
2. in which an INSURED has a direct or indirect ownership interest of ten percent (10%) or more;
3. that is controlled, operated or managed by an INSURED; or
4. that is an affiliate of an INSURED.

**V. Securities Violation**

arising from any violation of the Securities Act of 1933 as amended or the Securities Exchange Act of 1934 as amended or any state Blue Sky or securities law or similar State, Federal, or other governmental law, statute and any regulation or order issued pursuant to any of the foregoing statutes.

**W. Transportation**

arising from the ownership, maintenance, use, operation, loading or unloading of any motorized land vehicle, aircraft, watercraft or rolling stock, including any machinery or apparatus attached thereto or any cargo carried thereby.

This exclusion does not apply to Coverage B.4. TRANSPORTATION, as set forth in Section I. Insuring Agreements.

**X. Underground Storage Tank**

arising out of the existence of any UNDERGROUND STORAGE TANK on, at or under a NAMED INSURED'S LOCATION.

This exclusion does not apply to:

1. an UNDERGROUND STORAGE TANK that is 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;
2. an UNDERGROUND STORAGE TANK that is identified in the Named Insured's Location Schedule endorsed onto this Policy;
3. an UNDERGROUND STORAGE TANK, the existence of which is unknown by a RESPONSIBLE INSURED as of the inception date of this Policy;
4. flow-through process tanks, including oil/water separators; or

5. 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.

**Y. Workers' Compensation and Similar Laws**

arising from any obligation of an INSURED under a Workers' Compensation, disability benefits or unemployment compensation law or any similar law.

**Section V. Extended Reporting Period**

Section V. Extended Reporting Period only applies to insurance afforded by this Policy under Section I., Coverages A.1., B.3., B.4. and B.5.

**A. Automatic Extended Reporting Period**

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

1. The Automatic Extended Reporting Period applies to a CLAIM first made against the INSURED during the POLICY PERIOD and reported by the INSURED to the Company, in writing, during the Automatic Extended Reporting Period, provided that the CLAIM results from: (i) an act, error or omission in PROFESSIONAL SERVICES performed during the POLICY PERIOD; or (ii) a POLLUTION CONDITION that is first discovered during the POLICY PERIOD and reported by the INSURED to the Company, in writing, during the POLICY PERIOD or Automatic Extended Reporting Period, and is otherwise covered by this Policy.
2. The Automatic Extended Reporting Period also applies to a CLAIM first made against the INSURED and reported by the INSURED to the Company, in writing, during the Automatic Extended Reporting Period, provided that the CLAIM results from: (i) an act, error or omission in PROFESSIONAL SERVICES performed during the POLICY PERIOD; or (ii) a POLLUTION CONDITION that is first discovered during the POLICY PERIOD and reported by the INSURED to the Company, in writing, during the POLICY PERIOD or Automatic Extended Reporting Period, and is otherwise covered by this Policy. For the purpose of this section, the CLAIM will be deemed to have been made against the INSURED on the last day of the POLICY PERIOD.
3. Solely with respect to Section I., Coverage B.3.b.(i) and Coverage B.4.b.(i), the Automatic Extended Reporting Period also applies to a POLLUTION CONDITION that is first discovered by the INSURED during the POLICY PERIOD and reported by the INSURED to the Company, in writing, during the Automatic Extended Reporting Period, and is otherwise covered by this Policy.
4. Notwithstanding anything to the contrary above, the ninety (90) day Automatic Extended Reporting Period does not apply where:
  - a. the INSURED has purchased from the Company or any entity affiliated with the Company, a renewal policy of this Policy after the expiration of the POLICY PERIOD of this Policy;
  - b. this Policy is terminated for fraud, misrepresentation or non-payment of premium or cancelled on any ground set forth in Subsections 2.a., 2.b. or 2.c., of Section VIII. Conditions, D. Cancellation; or

- c. the INSURED has obtained other insurance from an entity other than the Company or its affiliates, effective after the expiration of the POLICY PERIOD of this Policy, where such other insurance applies in whole or in part, to the INSURED's professional liability, contractor's liability or pollution legal liability.

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

The NAMED INSURED listed in Item (1) of the Declarations is 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 becomes effective upon payment of an additional premium. Regardless of the period purchased for the Optional Extended Reporting Period, the additional premium will be not more than one hundred percent (100%) of the total Premium for this Policy. The Optional Extended Reporting Period commences on the day after the last day of the POLICY PERIOD of this Policy and becomes effective for up to three (3) consecutive three hundred sixty-five (365) day periods. The NAMED INSURED listed in Item (1) of the Declarations must indicate its intention, in writing to the Company, to purchase this Optional Extended Reporting Period within thirty (30) days from the last day of the POLICY PERIOD of this Policy. The Automatic Extended Reporting Period of ninety (90) days, if applicable, will be merged into the Optional Extended Reporting Period and is not in addition to the Optional Extended Reporting Period.
2. The Optional Extended Reporting Period applies to a CLAIM first made against the INSURED during the POLICY PERIOD and reported by the INSURED to the Company, in writing, during the Optional Extended Reporting Period, provided that the CLAIM results from: (i) an act, error or omission in PROFESSIONAL SERVICES performed during the POLICY PERIOD; or (ii) a POLLUTION CONDITION that is first discovered during the POLICY PERIOD and reported by the INSURED to the Company, in writing, during the POLICY PERIOD or Optional Extended Reporting Period, and is otherwise covered by this Policy.
3. The Optional Extended Reporting Period also applies to a CLAIM first made against the INSURED and reported by the INSURED to the Company, in writing, during the Optional Extended Reporting Period, provided that the CLAIM results from: (i) an act, error or omission in PROFESSIONAL SERVICES performed during the POLICY PERIOD; or (ii) a POLLUTION CONDITION that is first discovered during the POLICY PERIOD and reported by the INSURED to the Company, in writing, during the POLICY PERIOD or Optional Extended Reporting Period, and is otherwise covered by this Policy. For the purpose of this section, the CLAIM will be deemed to have been made against the INSURED on the last day of the POLICY PERIOD.
4. Notwithstanding anything to the contrary above, the Optional Extended Reporting Period does not apply where:
  - a. the INSURED has purchased from the Company or any entity affiliated with the Company, a renewal policy of this Policy after the expiration of the POLICY PERIOD of this Policy;
  - b. this Policy is terminated for fraud, misrepresentation or non-payment of premium or cancelled on any ground set forth in Subsections 2.a., 2.b. or 2.c., of Section VIII. Conditions, D. Cancellation; or

- c. the INSURED has obtained other insurance from an entity other than the Company or its affiliates, effective after the expiration of the POLICY PERIOD of this Policy, where such other insurance applies in whole or in part, to the INSURED's professional liability, contractor's liability or pollution legal liability.
5. It is a condition precedent to the NAMED INSURED's right to purchase the Optional Extended Reporting Period in accordance with this Subsection B, identified above, that payment of the appropriate premium will be made within the sixtieth (60th) day after the last day of the POLICY PERIOD of this Policy in the event of non-renewal.

**C. Quotation of Different Terms and Conditions by the Company**

For purposes of Section V. Extended Reporting Period, the quotation of different terms and conditions by the Company and the INSURED's choice not to accept the quoted terms and conditions will not be construed as non-renewal of this Policy.

**Section VI. Limits of Liability and Self-Insured Retention**

The Limits of Liability shown in the Declarations and the rules below fix the most the Company will pay regardless of the number of: (i) INSURED(s); (ii) CLAIM(s); (iii) persons or organizations making CLAIM(s); (iv) acts, errors or omissions; or (v) POLLUTION CONDITION(s).

**A. Aggregate Limits of Liability**

1. The Policy Aggregate Limit of Liability set forth in Item (3) of the Declarations is the most the Company will pay for the sum of all PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION LOSS and EMERGENCY REMEDIATION EXPENSE and any other amounts for which insurance is afforded under this Policy. The Company's total liability for all insurance afforded under this Policy, combined, will not exceed the Policy Aggregate Limit of Liability set forth in Item (3) of the Declarations.
2. Subject to Section VI.A.1. above, the Coverage A – Professional Liability Aggregate Limit of Liability set forth in Item (4)A. of the Declarations is the most the Company will pay for the sum of all PROFESSIONAL LOSS and MITIGATION EXPENSE for which insurance is afforded under Section I., Coverage A. of this Policy.
3. Subject to Section VI.A.1. above, the Coverage B – Contractor's Pollution Legal Liability Aggregate Limit of Liability set forth in Item (4)B. of the Declarations is the most the Company will pay for the sum of all POLLUTION LOSS, EMERGENCY REMEDIATION EXPENSE for which insurance is afforded under Section I., Coverage B. of this Policy.

**B. Coverage A – Professional Liability Limits of Liability**

1. Subject to Section VI.A.1. and Section VI.A.2. above, the Coverage A – Professional Liability Limit of Liability for each Act, Error or Omission set forth in Item (4)A. of the Declarations is the most the Company will pay for all PROFESSIONAL LOSS and MITIGATION EXPENSE arising out of a single act, error or omission in rendering or failing to render PROFESSIONAL SERVICES for which insurance is afforded under Section I., Coverage A. of this Policy.

2. Subject to Section VI.B.1. above, the PROFESSIONAL LOSS Aggregate Limit of Liability set forth in Item (4)A.1. of the Declarations is the most the Company will pay for the sum of all PROFESSIONAL LOSS for which insurance is afforded under this Policy. Subject to the preceding sentence, the PROFESSIONAL LOSS Limit of Liability for each Act, Error or Omission set forth in Item (4)A.1. of the Declarations is the most the Company will pay for all PROFESSIONAL LOSS arising out of a single act, error or omission in rendering or failing to render PROFESSIONAL SERVICES.
3. Subject to Section VI.B.1. above, the MITIGATION EXPENSE Aggregate Limit of Liability set forth in Item (4)A.2. of the Declarations is the most the Company will pay for the sum of all MITIGATION EXPENSE for which insurance is afforded under this Policy. Subject to the preceding sentence, the MITIGATION EXPENSE Limit of Liability for each Act, Error or Omission set forth in Item (4)A.2. of the Declarations is the most the Company will pay for all MITIGATION EXPENSE arising out of a single act, error or omission in rendering or failing to render PROFESSIONAL SERVICES.
4. All PROFESSIONAL LOSS and/or MITIGATION EXPENSE arising out of the same, related, repeated or continuous act(s), error(s) or omission(s) in rendering or failing to render PROFESSIONAL SERVICES is deemed to arise out of a single act, error or omission and subject to the rules set forth in Section VI.B.1, Section VI.B.2. and Section VI.B.3. above for PROFESSIONAL LOSS and/or MITIGATION EXPENSE arising out of a single act, error or omission in rendering or failing to render PROFESSIONAL SERVICES.

**C. Coverage B – Contractor’s Pollution Legal Liability Limits of Liability**

1. Subject to Section VI.A.1. and Section VI.A.3. above, the Coverage B – Contractor’s Pollution Legal Liability Limit of Liability for each POLLUTION CONDITION set forth in Item (4)B. of the Declarations is the most the Company will pay for all POLLUTION LOSS and EMERGENCY REMEDIATION EXPENSE arising out of a single POLLUTION CONDITION for which insurance is afforded under Section I., Coverage B. of this Policy.
2. Subject to Section VI.C.1. above, the JOB SITE - Occurrence Aggregate Limit of Liability set forth in Item (4)B.1. of the Declarations is the most the Company will pay for the sum of all POLLUTION LOSS for which insurance is afforded under Section I., Coverage B.1. of this Policy. Subject to the preceding sentence, the JOB SITE - Occurrence Limit of Liability for each POLLUTION CONDITION set forth in Item (4)B.1. of the Declarations is the most the Company will pay under Section I., Coverage B.1. for all POLLUTION LOSS arising out of a single POLLUTION CONDITION.
3. Subject to Section VI.C.1. above, the EMERGENCY REMEDIATION EXPENSE Aggregate Limit of Liability set forth in Item (4)B.2. of the Declarations is the most the Company will pay for the sum of all EMERGENCY REMEDIATION EXPENSE for which insurance is afforded under Section I., Coverage B.2. of this Policy. Subject to the preceding sentence, the EMERGENCY REMEDIATION EXPENSE Limit of Liability for each POLLUTION CONDITION set forth in Item (4)B.2. of the Declarations is the most the Company will pay under Section I., Coverage B.2. for all EMERGENCY REMEDIATION EXPENSE arising out of a single POLLUTION CONDITION.

4. Subject to Section VI.C.1. above, the NAMED INSURED'S LOCATION Aggregate Limit of Liability set forth in Item (4)B.3. of the Declarations is the most the Company will pay for the sum of all POLLUTION LOSS for which insurance is afforded under Section I., Coverage B.3. of this Policy. Subject to the preceding sentence, the NAMED INSURED'S LOCATION Limit of Liability for each POLLUTION CONDITION set forth in Item (4)B.3. of the Declarations is the most the Company will pay under Section I., Coverage B.3. for all POLLUTION LOSS arising out of a single POLLUTION CONDITION.
5. Subject to Section VI.C.1. above, the TRANSPORTATION Aggregate Limit of Liability set forth in Item (4)B.4. of the Declarations is the most the Company will pay for the sum of all POLLUTION LOSS for which insurance is afforded under Section I., Coverage B.4. of this Policy. Subject to the preceding sentence, the TRANSPORTATION Limit of Liability for each POLLUTION CONDITION set forth in Item (4)B.4. of the Declarations is the most the Company will pay under Section I., Coverage B.4. for all POLLUTION LOSS arising out of a single POLLUTION CONDITION.
6. Subject to Section VI.C.1. above, the NON-OWNED DISPOSAL SITE Aggregate Limit of Liability set forth in Item (4)B.5. of the Declarations is the most the Company will pay for the sum of all POLLUTION LOSS for which insurance is afforded under Section I., Coverage B.5. of this Policy. Subject to the preceding sentence, the NON-OWNED DISPOSAL SITE Limit of Liability for each POLLUTION CONDITION set forth in Item (4)B.5. of the Declarations is the most the Company will pay under Section I., Coverage B.5. for all POLLUTION LOSS arising out of a single POLLUTION CONDITION.
7. All POLLUTION LOSS and/or EMERGENCY REMEDIATION EXPENSE arising out of the same, related, repeated or continuous POLLUTION CONDITION(s) is deemed to arise out of a single POLLUTION CONDITION and subject to the rules set forth in Section VI.C.1, Section VI.C.2., Section VI.C.3., Section VI.C.4., Section VI.C.5. and Section VI.C.6. above for POLLUTION LOSS and/or EMERGENCY REMEDIATION EXPENSE arising out of a single POLLUTION CONDITION.

**D. Self-Insured Retention Amounts**

1. Subject to the Limits of Liability set forth in Item (3) and Item (4) of the Declarations, the Company is liable only for that portion of:
  - a. PROFESSIONAL LOSS and MITIGATION EXPENSE under Section I. Insuring Agreements, Coverage A.1. PROFESSIONAL LOSS and Coverage A.2. MITIGATION EXPENSE, of this Policy in excess of the Self-Insured Retention Amount for each Act, Error or Omission, if any, set forth in Item (4) of the Declarations for each such coverage; and
  - b. POLLUTION LOSS and EMERGENCY REMEDIATION EXPENSE under Section I. Insuring Agreements, Coverage B.1. JOB SITE – Occurrence, Coverage B.2. EMERGENCY REMEDIATION EXPENSE, Coverage B.3. NAMED INSURED'S LOCATION, Coverage B.4. TRANSPORTATION and Coverage B.5. NON-OWNED DISPOSAL SITE, of this Policy in excess of the Self-Insured Retention Amount for each Pollution Condition, if any, set forth in Item (4) of the Declarations for each such coverage.
2. The Self-Insured Retention Amount must be borne by the INSURED and uninsured unless the Company has expressed its prior consent, in writing, to the NAMED INSURED.

3. LEGAL EXPENSE applies to and reduces each applicable Self-Insured Retention Amount and Limits of Liability set forth in Item (3) and Item (4) of the Declarations.
4. In the event that the INSURED does not satisfy the Self-Insured Retention Amount, then the NAMED INSURED is responsible for the INSURED's Self-Insured Retention obligation.

**E. Exhaustion of Applicable Limit of Liability**

Once an applicable Limit of Liability set forth in Item (3) or Item (4) of the Declarations has been exhausted, the Company has no obligation to: (i) defend or continue to defend any CLAIM; or (ii) pay any PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION LOSS, EMERGENCY REMEDIATION EXPENSE or other amounts under this Policy.

**F. Insurance Under Multiple Policies**

Notwithstanding anything to the contrary in this Policy or any other policy issued by the Company or an entity affiliated with the Company, under no circumstances will more than one policy issued by the Company or an entity affiliated with the Company apply to any PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION LOSS and/or EMERGENCY REMEDIATION EXPENSE that:

1. arise(s) out of the same, related, repeated or continuous act(s), error(s) or omission(s) in rendering or failing to render PROFESSIONAL SERVICES; or
2. arise(s) out of the same, related, repeated or continuous POLLUTION CONDITION(s); or
3. arise(s) out of BODILY INJURY, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE or other injury, damage or loss that occurs or continues through more than one policy period of two or more policies (including this Policy) issued by the Company or an entity affiliated with the Company.

If the BODILY INJURY, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE or other injury, damage or loss arises out of a POLLUTION CONDITION, then the only policy that will respond to any resulting PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION LOSS and/or EMERGENCY REMEDIATION EXPENSE is the policy in effect when the first exposure to the POLLUTION CONDITION(s) occurs. However, if the date of the first exposure to the POLLUTION CONDITION(s): (i) occurs prior to the first day of the policy period of the first policy issued by the Company or an entity affiliated with the Company; or (ii) cannot be determined, then the first exposure to the POLLUTION CONDITION(s) shall be deemed to have occurred only on the first day of the policy period of the first policy issued by the Company or an entity affiliated with the Company.

If the BODILY INJURY, PROPERTY DAMAGE, ENVIRONMENTAL DAMAGE or other injury, damage or loss arises out of something other than a POLLUTION CONDITION, then the only policy that will respond is the policy in effect when the actual or alleged act(s), error(s) or omission(s) in rendering or failing to render PROFESSIONAL SERVICES was first reported to the Company or an entity affiliated with the Company.

**Section VII. Reporting, Defense, Settlement and Cooperation**

**A.** As a condition precedent to the coverage hereunder:

1. The INSURED must notify the Company of each of the following, as soon as practicable:
  - a. a CLAIM;

- b. BODILY INJURY or PROPERTY DAMAGE which may result in a CLAIM;
  - c. an act, error or omission in PROFESSIONAL SERVICES, which may result in a CLAIM or MITIGATION EXPENSE;
  - d. a POLLUTION CONDITION; and
  - e. a REMEDIATION EXPENSE.
2. The INSURED must forward to the Company or to any of its authorized agents all demands, notices, summonses, legal papers or orders received by the INSURED or the INSURED's representative as soon as practicable.
  3. The INSURED must provide to the Company, whether orally or in writing, notice of the particulars including the time, place and circumstances thereof, the CLAIM, act, error or omission in PROFESSIONAL SERVICES, POLLUTION CONDITION, BODILY INJURY, PROPERTY DAMAGE or REMEDIATION EXPENSE, along with the names and addresses of any injured persons and witnesses. In the event of oral notice, the INSURED must furnish to the Company a written notice of the above of such particulars as soon as practicable.
  4. The INSURED must cooperate with the Company and upon the Company's request submit to examination under oath by a representative of the Company, if required, and attend hearings, depositions and trials and assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and otherwise cooperate in the investigation and/or defense of the CLAIM, all without charge to the Company. The INSURED will further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution, apportionment or subrogation which the INSURED and/or the Company may have.
- B.** No costs, charges or expenses will be incurred, nor payments made, obligations assumed or remediation commenced or undertaken without the Company's written consent which will not be unreasonably withheld. This provision does not apply to any covered EMERGENCY REMEDIATION EXPENSE.
- C.** The Company has the right and the duty to defend any CLAIM against the INSURED seeking PROFESSIONAL LOSS or POLLUTION LOSS to which this insurance applies, including the right to select counsel, even if any of the allegations are groundless, false or fraudulent. However, the Company has no duty to defend any CLAIM against the INSURED to which this insurance does not apply. If the Company exercises such right set forth above, the INSURED, on demand of the Company, will promptly reimburse the Company for any payments made by it within the Self-Insured Retention Amount, if any.
- D.** The INSURED will not admit liability or settle any CLAIM without the Company's prior written consent. If the Company recommends a monetary settlement of a CLAIM:
1. for an amount within the Self-Insured Retention Amount, and the INSURED refuses to settle for such recommended amount, the Company will not be liable for any PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION LOSS, or EMERGENCY REMEDIATION EXPENSE, 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 to settle for such recommended amount, the Company's liability for PROFESSIONAL LOSS, MITIGATION EXPENSE, POLLUTION LOSS, EMERGENCY REMEDIATION EXPENSE or for any amount, for which coverage is or may be applicable, will be limited to such recommended amount plus the LEGAL EXPENSE incurred as of the date the Company recommended such settlement amount which exceeds the Self-Insured Retention Amount, but falls within the Limits of Liability.

- E.** If during the POLICY PERIOD, any NAMED INSURED first becomes aware of an actual or alleged act, error or omission in PROFESSIONAL SERVICES or a POLLUTION CONDITION for which any INSURED reasonably believes may result in a CLAIM (hereafter referred to as a "Circumstance") for which this Policy may apply, the NAMED INSURED may provide written notice, of the actual or alleged act, error omission in PROFESSIONAL SERVICES or the POLLUTION CONDITION, to the Company during the POLICY PERIOD.

Any such Circumstance that subsequently becomes a CLAIM made against the INSURED and reported to the Company, in writing, will be considered to have been first made and reported during the POLICY PERIOD and will be subject to all of the terms and conditions of this Policy.

As a condition precedent to the rights afforded the NAMED INSURED under this Subsection E., such written notice to the Company of a Circumstance shall contain all of the following information:

1. the date and details of all actual and alleged acts, errors or omissions in PROFESSIONAL SERVICES which took place, along with the specific nature, date and extent of any injury or damage which has been sustained;
2. the date and details of the POLLUTION CONDITION and the CONTRACTING SERVICES that may have caused such condition;
3. copies of any contracts that have been entered into by any INSURED that are related to the PROFESSIONAL SERVICES or CONTRACTING SERVICES; and
4. details explaining how the INSURED first became aware of the Circumstance.

The Company will determine, in its sole discretion, whether the NAMED INSURED's written notice satisfies the condition precedent above.

#### **Section VIII. Conditions**

- A. Action Against Company --** No action will 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 who has secured such judgment or entered into such written agreement will thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organization will 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 will the Company be brought into such action by the INSURED or its legal representative.

**B. Assignment** -- This Policy cannot be assigned without the prior written consent of the Company. Such consent will not be unreasonably withheld or delayed by the Company.

**C. Bankruptcy or Insolvency** -- Bankruptcy or insolvency of the INSURED, or of the INSURED's estate, will not relieve the Company of any of its obligations under this Policy.

**D. Cancellation** -- The following with regards to cancellation apply to this Policy:

1. Cancellation by the NAMED INSURED: This Policy may be canceled by the NAMED INSURED listed in Item (1) of the Declarations by mailing to the Company written notice stating when thereafter the cancellation will be effective. The mailing of such notice must be sent certified mail, return receipt requested or by electronic mail. The effective date and time of cancellation stated in the written notice will be the end of the POLICY PERIOD.

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. This means that such percentage of the total premium is fully earned by the Company on the inception date of this Policy. The NAMED INSURED listed in Item (1) of the Declarations is not entitled to any return of the Minimum Earned Premium upon cancellation by such NAMED INSURED.

If the Minimum Earned Premium is less than one hundred percent (100%) of the total premium for this Policy, and the NAMED INSURED listed in Item (1) of the Declarations cancels this Policy, then the amount of premium returnable after the minimum premium earned is retained by the Company will 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 NAMED INSURED listed in Item (1) of the Declarations at the address shown in Item (1) of the Declarations, written notice stating when not less than sixty (60) days thereafter [or ten (10) days for non-payment of premium] such cancellation will be effective. The mailing of such notice will be sufficient proof of notice of cancellation. The effective date and time of cancellation stated in the written notice will be the end of the POLICY PERIOD.

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

- a. any INSURED has made a material misrepresentation which affects the Company's assessment of the risks insured by this Policy;
- b. any 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. any INSURED fails to pay the premium or the Self-Insured Retention Amount.

If the Company cancels this Policy, then the amount of premium returnable to the INSURED is computed on a pro-rata basis and the Minimum Earned Premium will not apply.

In the event of cancellation by the Company from any ground referred to in Subsection 2.b. above, the INSURED will have sixty (60) days from the date of notice of cancellation to remedy each breach and each failure that is a ground for cancellation, but only as to each and every breach and failure that are capable of being remedied. If the INSURED's remedial efforts are completed within such sixty (60) day period and are satisfactory to the Company, the Company will rescind the Notice of Cancellation with a written confirmation to the NAMED INSURED listed in Item (1) of the Declarations.

3. The following provisions also apply to Subsections D.1. and D.2. above:
- a. The premium adjustment will occur as soon as practicable after cancellation becomes effective however, payment of unearned premium is not a condition of cancellation by the Company.
  - b. If a CLAIM for PROFESSIONAL LOSS and POLLUTION LOSS is made against any INSURED, a POLLUTION CONDITION is discovered or coverage is otherwise requested from the Company by the INSURED during the POLICY PERIOD or the EXTENDED REPORTING PERIOD, then the premium will be considered one hundred percent (100%) earned, and the INSURED is not entitled to any return of premium upon cancellation.
- E. Changes** -- Notice to any agent or knowledge possessed by any agent or by any other person will not affect 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. The terms and conditions of this Policy cannot be waived or changed, except by endorsement issued by the Company to form a part of this Policy.
- F. Choice of Law** -- All matters arising hereunder including questions or disputes related to the validity, interpretation, performance and enforcement of this Policy will be determined in accordance with the law and practice of the State of New York (notwithstanding New York's conflicts of law rules).
- G. Declarations and Representations** -- By acceptance of this Policy, the INSURED agrees that the statements and information contained in the Application and other supplemental materials submitted to the Company are: (i) true and correct; (ii) such statements and information are material to the Company's underwriting of this Policy; and (iii) that this Policy has been issued by the Company in reliance upon the truth and correctness of such statements and information.
- H. Headings** -- The descriptions in the headings of this Policy are solely for convenience and form no part of the terms and conditions of this Policy.
- I. Inspection and Audit** -- The Company will be permitted, but not obligated to examine, audit, monitor and inspect on a continuing basis any of the INSURED's books, records, services, properties and activities at any time, as far as they relate to the subject matter of this Policy.
- Neither the Company's right to examine, audit, monitor and make inspections, or the actual undertaking thereof, or any report thereon, neither constitutes an undertaking to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Any inspections will be coordinated through the broker or agent of the NAMED INSURED listed in Item (1) of the Declarations.
- The Company may modify, amend or delete any of the terms and conditions of this Policy including the right to charge additional premium and the right to cancel, rescind or void this Policy, if its examination, audit, monitoring or inspection reveals any material risk, hazard or condition that was not previously disclosed by any INSURED in the Application or supplemental materials, or which deviates from the information disclosed in the Application or supplemental materials.
- 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. Other Insurance** -- Where other valid and collectible insurance is available to the INSURED, the Company's obligations to the INSURED are as follows:
1. This insurance is excess over the Self-Insured Retention Amount applicable for the coverage specified in Item (4) of the Declarations.
  2. With regard to Coverage A – Professional Liability, as set forth in Section I. Insuring Agreements, this insurance is excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.
  3. With regard to Coverage B – Contractor's Pollution Legal Liability, as set forth in Section I. Insuring Agreements, this insurance is primary except when Section VIII.K.4. and Section VIII.K.5. apply.
  4. With regard to RESTORATION COSTS, this insurance is excess over any other valid and collectible insurance, whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.
  5. This insurance is excess over any other valid and collectible insurance available to the INSURED under a project specific insurance policy, contractor controlled insurance program, owner controlled insurance program, consolidated (wrap-up) insurance program or any other similar insurance or program, whether such other insurance or program is stated to be primary, contributory, excess, contingent or otherwise.
  6. Where other valid and collectible insurance is available to the INSURED and is also primary, the Company's obligation to the INSURED is as follows:
    - a. If other primary insurance permits contribution by equal shares, the Company will also follow this method. Under this method, each Insurer contributes equal amounts until it has paid the applicable limit of insurance or none of the loss remains, whichever comes first; or
    - b. If any other insurance does not permit contribution by equal shares, the Company will contribute pro-rata by limits. Under this method, each Insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all primary Insurers.
- L. Severability** -- Except with respect to the Limits of Liability and the Self-Insured Retention Amount, and any rights or duties specifically assigned in this Policy to the NAMED INSURED listed in Item (1) of the Declarations, this insurance applies: (i) as if each NAMED INSURED were the only NAMED INSURED; and (ii) separately to each INSURED against whom a CLAIM is made.
- M. Sole Agent** -- The NAMED INSURED listed in Item (1) of the Declarations will act on behalf of all INSURED(s) 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, B. Optional Extended Reporting Period.
- N. Subrogation** -- In the event of any payment under this Policy, the Company will be subrogated to all of the INSURED's rights of recovery against any person or organization and the INSURED will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED will do nothing at any time to prejudice the Company's subrogation rights.

However, the Company waives its right(s) of recovery against any person or organization if and to the extent the NAMED INSURED has agreed to waive its right(s) of recovery against such person or organization in a written contract signed by the NAMED INSURED prior to: (i) the act, error or omission in PROFESSIONAL SERVICES out of which the CLAIM or request for MITIGATION EXPENSE arises under Section I. Insuring Agreements, A. Coverage A - Professional Liability; or (ii) the first commencement of a POLLUTION CONDITION out of which the CLAIM or request for EMERGENCY REMEDIATION EXPENSE arises under Section I. Insuring Agreements, B. Coverage B – Contractor's Pollution Legal Liability.

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