

COMMERCIAL POLLUTION LEGAL LIABILITY POLICY

NOTICE: THIS POLICY CONTAINS CLAIMS-MADE-AND-REPORTED REQUIREMENTS. PLEASE READ CAREFULLY. ADDITIONALLY, THIS POLICY HAS CERTAIN PROVISIONS AND REQUIREMENTS UNIQUE TO IT AND MAY BE DIFFERENT FROM OTHER POLICIES THE INSURED MAY HAVE PURCHASED. DEFINED TERMS, OTHER THAN HEADINGS, APPEAR IN BOLD FACE TYPE.

THE DESCRIPTIONS IN ANY HEADINGS OR SUB-HEADINGS OF THIS POLICY ARE INSERTED SOLELY FOR CONVENIENCE AND DO NOT CONSTITUTE ANY PART OF THE TERMS OR CONDITIONS HEREOF.

In consideration of the payment of the premium, in reliance upon the statements in the Declarations and Application annexed hereto and subject to all the terms of this Policy, the Company agrees with the **Named Insured** as follows:

I. INSURING AGREEMENTS

A. COVERAGES

COVERAGE A – ON-SITE CLEAN-UP OF POLLUTION CONDITIONS

To pay on behalf of the **Insured**, **Clean-Up Costs** resulting from **Pollution Conditions** on or under an **Insured Property** if such **Pollution Conditions** are discovered by the **Insured** during the **Policy Period**, provided:

1. The discovery of such **Pollution Conditions** is reported to the Company in writing as soon as possible after discovery by the **Insured** and in any event during the **Policy Period** in accordance with Section III. of the Policy.

Discovery of **Pollution Conditions** happens when a **Responsible Insured** becomes aware of **Pollution Conditions**.

2. Where required, such **Pollution Conditions** have been reported to the appropriate governmental agency in substantial compliance with applicable **Environmental Laws** in effect as of the date of discovery.

COVERAGE B – LEGAL LIABILITY FOR POLLUTION CONDITIONS

To pay on behalf of the **Insured**, **Loss** that the **Insured** is legally obligated to pay as a result of **Claims** for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** resulting from **Pollution Conditions**, provided such **Claims** are first made against the **Insured** and reported to the Company, in writing, during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE C - EMERGENCY RESPONSE COSTS

The Company will pay **Emergency Response Costs** resulting from **Pollution Conditions**. **Emergency Response Costs** must be first incurred by the **Insured** and reported to the Company during the **Policy Period**.

For this Coverage to apply, all of the following conditions must be satisfied:

1. The **Insured** must report the **Emergency Response Costs** to the Company, in writing, as provided in Section III. **NOTICE REQUIREMENTS AND CLAIM PROVISIONS, A. NOTICE OF POLLUTION CONDITIONS, CLAIMS AND EMERGENCY RESPONSE COSTS**, Subparagraph 1. and Subparagraph 3. of this Policy during the **Policy Period**.
2. Such **Pollution Conditions** must be unexpected and unintended from the standpoint of the **Insured**.

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B. DEFENSE

When a **Claim** is made against the **Insured** to which Section I. **INSURING AGREEMENTS, A. COVERAGES, COVERAGE B** applies, the Company has the right to defend, including but not limited to the right to appoint counsel, and the duty to defend such **Claim**, even if groundless, false, or fraudulent.

Upon the **Insured's** satisfaction of any applicable deductible amounts, defense costs, charges and expenses shall be paid by the Company and such payments shall be included as **Loss** and reduce the available Limit of Liability. The Company shall not be obligated to defend or continue to defend any **Claim** after the applicable Limit of Liability has been exhausted by payment of **Loss**.

C. SETTLEMENT

The Company will present any settlement offers to the **Insured**, and if the **Insured** refuses to consent to any settlement within the limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company's duty to defend the **Insured** shall then cease and the **Insured** shall thereafter negotiate or defend such **Claim** independently of the Company and the Company's liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the **Claim** could have been settled if such recommendation was consented to.

II. EXCLUSIONS

This insurance does not apply to **Loss**:

A. CRIMINAL FINES, PENALTIES, AND ASSESSMENTS:

Due to any criminal fines, criminal penalties or criminal assessments.

B. CONTRACTUAL LIABILITY:

Arising from liability of others assumed by the **Insured** under any contract or agreement, unless the liability of the **Insured** would have attached in the absence of such contract or agreement or the contract or agreement is an **Insured Contract**.

C. PRIOR WASTE DISPOSAL ACTIVITIES:

Arising out of **Waste Disposal Activities** which took place prior to the Waste Disposal Retroactive Date stated in Item 6 of the Declarations.

D. INTENTIONAL NONCOMPLIANCE:

Arising from **Pollution Conditions** based upon or attributable to any **Responsible Insured's** intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

E. INTERNAL EXPENSES:

For costs, charges or expenses incurred by the **Insured** for goods supplied or services performed by the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, except for **Emergency Response Costs** or unless such costs, charges or expenses are incurred with the prior written approval of the Company in its sole discretion.

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F. INSURED vs. INSURED:

By any **Insured** against any other person or entity who is also an **Insured** under this Policy.

G. ASBESTOS AND LEAD:

Arising from asbestos or any asbestos-containing materials or lead-based paint installed or applied in, on or to any building or other structure. This exclusion does not apply to **Claims** for **Bodily Injury** or **Property Damage**, or to **Clean-Up Costs** for the remediation of soil and groundwater.

H. EMPLOYER LIABILITY:

For **Bodily Injury** sustained by any employee while engaged in employment by any **Named Insured**, or by any person whose right to assert a **Claim** against any **Named Insured** arises by reason of any employment, blood, marital, or any other relationship with such employee. This Exclusion applies:

1. Whether any **Named Insured** may be responsible as an employer or in any other capacity; or
2. To any obligation to share damages with or repay someone else who must pay damages because of **Bodily Injury**.

I. PRIOR KNOWLEDGE/NON-DISCLOSURE:

Arising from **Pollution Conditions** existing prior to the **Inception Date** or at any time prior to the binding of this Policy and known by a **Responsible Insured** unless such **Pollution Conditions** are disclosed to the Company in the application for this Policy or any previous policy for which this Policy is a renewal thereof.

J. IDENTIFIED UNDERGROUND STORAGE TANK:

Arising from **Pollution Conditions** resulting from an **Underground Storage Tank** whose existence is known by a **Responsible Insured** as of the **Inception Date** and which is located on any property owned, operated, managed, leased or rented by the **Insured** unless such **Underground Storage Tank** is specifically scheduled on this Policy by endorsement.

K. ACQUIRED PROPERTIES:

Arising from **Pollution Conditions** at any property the **Insured** first acquires, leases, manages, rents or occupies after the **Inception Date**, unless coverage for such property is specifically scheduled on this Policy by endorsement.

L. DIVESTED PROPERTY:

Arising from **Pollution Conditions** at any property, which the **Insured** sold, gave away, terminated lease, abandoned or relinquished operational or management control of prior to the **Inception Date**.

M. DAMAGE TO INSURED'S PRODUCTS AND WORK:

For **Property Damage** to the **Insured's Products** or for **Property Damage** to work performed by, or on behalf of the **Insured** arising out of the work or any portion thereof.

N. INSURED'S PROFESSIONAL SERVICES:

Arising out of professional services performed or rendered by the **Named Insured**, including but not limited to, recommendations, opinions and strategies rendered for architectural, consulting and engineering work, such as drawings, designs, maps, reports, surveys, change orders, plan

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specifications, assessment work, remedy selections, site maintenance equipment selection, and supervisory, inspection or engineering service.

O. PRODUCTS LIABILITY:

Arising from the **Insured's Products** after possession of such **Insured's Products** have been relinquished to others by the **Insured** or others trading under its name. However, this exclusion shall not apply solely for the period during which such **Insured's Products** are being stored or transported by others on behalf of the **Named Insured**.

P. PROPERTY DAMAGE TO CONVEYANCE:

For **Property Damage** to any conveyance utilized during the transportation of the **Insured's Products** or waste. This exclusion does not apply to **Claims** arising from the **Insured's** negligence.

Q. WAR:

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

III. NOTICE REQUIREMENTS AND CLAIM PROVISIONS

The **Insured** shall provide the Company with notice of **Pollution Conditions, Claims** and **Emergency Response Costs** as follows:

A. NOTICE OF POLLUTION CONDITIONS, CLAIMS AND EMERGENCY RESPONSE COSTS

1. In the event of **Pollution Conditions, Claims** or **Emergency Response Costs** the **Insured** shall give written notice to:

Manager, Pollution Insurance Products Dept.
Chartis Claims, Inc.
Attn.: CID
101 Hudson Street, 31st Floor
Jersey City, NJ 07302
Fax: 866-260-0104
Email: severityfnol@chartisinsurance.com

or other address(s) as substituted by the Company in writing.

2. The **Insured** shall give written notice of **Pollution Conditions** as soon as possible. Notice shall include at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollution Conditions**, and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Conditions**.

3. When **Emergency Response Costs** have been incurred, the **Insured** shall forward to the Company within seven (7) days of the commencement of the **Pollution Conditions** for which the **Emergency Response Costs** have been incurred, all information pertaining to the **Emergency Response Costs** including but not limited to: the cause and location of the **Pollution Conditions**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such **Emergency Response Costs**.

4. The **Insured** shall give notice of any **Claim** as soon as possible but in any event during the **Policy Period** or during the **Extended Reporting Period** if applicable. The **Insured** shall furnish information at

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the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as possible:

- (a) All reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the claimant(s) and available witnesses.
- (b) All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body;
- (c) Other information in the possession of the **Insured** or its hired experts which the Company reasonably deems necessary.

B. NOTICE OF POSSIBLE CLAIM

1. If during the **Policy Period**, the **Insured** first becomes aware of a **Possible Claim**, the **Insured** may provide written notice to the Company during the **Policy Period** containing all the information required under paragraph 2. below. Any **Possible Claim** which subsequently becomes a **Claim** made against the **Insured** and reported to the Company within five (5) years after the end of the **Policy Period** of this Policy or any continuous, uninterrupted renewal thereof, shall be deemed to have been first made and reported during the **Policy Period** of this Policy. Such **Claim** shall be subject to the terms, conditions and limits of coverage of the policy under which the **Possible Claim** was reported.
2. It is a condition precedent to the coverage afforded by this Section III. B that written notice under Paragraph 1. above contain all of the following information: (a) the cause of the **Pollution Conditions**; (b) the **Insured Property** or other location where the **Pollution Conditions** took place; (c) the **Bodily Injury, Property Damage or Clean-Up Costs** which has resulted or may result from such **Pollution Conditions**; (d) the **Insured(s)** which may be subject to the **Claim** and any potential claimant(s); (e) all engineering information available on the **Pollution Conditions** and any other information that the Company deems reasonably necessary; and (f) the circumstances by which and the date the **Insured** first became aware of the **Possible Claim**.

IV. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF POLLUTION CONDITIONS

A. The Company's Rights

The Company shall have the right but not the duty to clean up or mitigate **Pollution Conditions** upon receiving notice as provided in Section III. of this Policy. Any sums expended in taking such action by the Company will be deemed incurred or expended by the **Insured** and shall be applied against the limits of coverage and deductible under this Policy. The Company shall have the right but not the duty to participate in decisions regarding **Clean-Up Costs** and to assume direct control over all aspects of the cleanup and the adjustment of any **Claim** or **Emergency Response Costs** up to the Limit of Liability. In case of the exercise of this right, the **Insured**, on demand of the Company, shall promptly reimburse the Company for any element of **Loss** falling within the **Insured's** deductible.

B. Duties of the Insured

The **Named Insured** shall have the duty to mitigate **Pollution Conditions** and the duty to clean up **Pollution Conditions** to the extent required by **Environmental Laws**, by retaining competent professional(s) or contractor(s) mutually acceptable to the Company and the **Named Insured**. The Company may also exercise the right to require that such professional(s) or contractor(s) have certain qualifications with respect to their competency, including experience with similar **Pollution Conditions** and clean-up, mitigation or methodologies. The Company shall have the right but not the duty to review and approve all aspects of any such clean-up. The **Named Insured** shall notify the Company of actions and measures taken pursuant to this Paragraph.

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V. LIMIT OF LIABILITY AND DEDUCTIBLE

Regardless of the number of **Claims**, claimants, **Pollution Conditions** or **Insureds** under this Policy, the following limits of liability apply:

A. Policy Aggregate Limit

The Company's total liability for all **Loss** shall not exceed the "Policy Aggregate" shown in Item 3 of the Declarations. The Company's internal expenses do not erode the limit of liability available for any **Loss**.

B. Each Incident Limit

1. Subject to Paragraph A. above and solely with respect to Coverages A and B, the Company's total liability for all **Loss** arising from **Each Incident** shall not exceed the **Each Incident** limit of liability stated in Item 3 of the Declarations.
2. Subject to Paragraph A. above and solely with respect to Coverage C, the Company's total liability for all **Emergency Response Costs** arising from **Each Incident** shall not exceed \$250,000, without the prior written consent of the Company. This Coverage C **Each Incident** limit of liability is in addition to the Coverages A and B **Each Incident** limit of liability provided in paragraph 1. above.

C. Discovery of or Claims Arising From Single Incident

If the **Insured** first discovers **Pollution Conditions** during the **Policy Period** and reports them to the Company in accordance with Section III., all **Pollution Conditions** arising from that **Each Incident** and reported to the Company under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during the **Policy Period**.

If the **Insured** first notifies the Company of a **Claim** or **Emergency Response Costs** during the **Policy Period** in accordance with Section III., then all **Claims** or **Emergency Response Costs** arising out of that **Each Incident** that are reported to the Company under a subsequent Pollution Legal Liability Policy issued by the Company or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first made and reported during the **Policy Period**.

Coverage under this Policy for such **Pollution Conditions**, **Claim** or **Loss** shall not apply unless at the time such **Pollution Conditions**, **Claim** or **Loss** are first discovered or made, and reported, the **Insured** has maintained with the Company or its affiliate Pollution Legal Liability coverage substantially the same as this coverage on a continuous, uninterrupted basis since the first such **Claim** was made against the **Insured** or **Pollution Conditions** discovered and reported to the Company.

D. Deductible

Subject to Paragraphs A. and B. above, this Policy is to pay covered **Loss** in excess of the Deductible amount stated in Item 4 of the Declarations, up to but not exceeding the **Each Incident** limit of liability. The Deductible amount applies to all **Loss** arising from **Each Incident**.

The **Insured** shall promptly reimburse the Company for advancing any element of **Loss** falling within the Deductible.

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VI. CONDITIONS

- A. Assignment** - This Policy may be assigned with the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed thereon.
- B. 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 including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollution Conditions** on account of which the Company made any payment under this Policy. The **Insured** shall do nothing to prejudice the Company's rights under this Paragraph subsequent to **Loss**. Any recovery as a result of subrogation proceedings arising out of the payment of **Loss** covered under this Policy shall accrue first to the **Insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the Policy; and then to the **Insured** to the extent of its Deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.
- C. Cooperation** - The **Insured** shall cooperate with the Company and offer all reasonable assistance in the investigation and defense of **Claims** and the clean up and mitigation of **Pollution Conditions**. The Company may require that the **Insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **Insured's** attendance at meetings with the Company. The **Insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.
- D. Changes** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any rights 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.
- E. Condition of Payment** - It is hereby agreed that any payment under this Policy shall only be made in full compliance with all United States of America economic and trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").
- F. Voluntary Payments** - No **Insured** shall voluntarily enter into any settlement, or make any payment or assume any obligation, without the Company's consent which shall not be unreasonably withheld, except at the **Insured's** own cost. This Condition shall not apply if such payment or obligation is an **Emergency Response Cost** or is pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions**.
- G. Concealment or Fraud** - This entire Policy shall be void if, whether before or after **Clean-Up Costs** or **Emergency Response Costs** are incurred or a **Claim** is first made, the **Named Insured** has willfully concealed or misrepresented: (i) any fact or circumstance material to the granting of coverage under this Policy; (ii) the description of any **Insured Property** or the interest of the **Insured** therein; (iii) any **Insured's** operations; or (iv) any **Waste Disposal Activities**.
- H. Cancellation** - This Policy may be cancelled 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 thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the **Named Insured** at the address shown in the Policy, written notice stating when not less than 60 days (10 days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.
1. Material misrepresentation by the **Insured**;

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2. The **Insured's** failure to comply with the material terms, conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due;
3. A change in operations during the **Policy Period** that materially increases a risk covered under this Policy.

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 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.

I. **Other Insurance** - Where other insurance may be available for **Loss** covered under this Policy, the **Insured** shall promptly upon request of the Company provide the Company with copies of all such policies. If other valid and collectible insurance is available to the **Insured** for **Loss** covered by this Policy, the Company's obligations are limited as follows:

1. This insurance is primary, and the Company's obligations are not affected unless any of the other Insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 2. below.
2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares the Company will contribute 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 insurers.

J. **Right of Access and Inspection** - To the extent the **Insured** has such rights, any of the Company's authorized representatives shall have the right and opportunity but not the obligation to interview persons employed by the **Insured** and to inspect at any reasonable time, during the **Policy Period** or thereafter, an **Insured Property** or any other location, facility or item associated with a **Claim** or **Pollution Condition**. Neither the Company nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right of inspection. 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 the property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Company's representatives during any inspection.

K. **Access to Information** - The **Named Insured** agrees to provide the Company with access to any information developed or discovered by the **Insured** concerning **Loss** covered under this Policy, whether or not deemed by the **Insured** to be relevant to such **Loss** and to provide the Company access to interview any **Insured** and review any documents of the **Insured**.

L. **Representations** - By acceptance of this Policy, the **Named Insured** agrees that the statements in the Declarations and the Application are their agreements and representations, that this Policy is issued in reliance upon the truth of such representations and that this Policy embodies all agreements existing between the **Insured** and the Company or any of its agents relating to this insurance.

M. **Action Against Company** - No third-party 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 actual trial or by written agreement of the **Insured**, the claimant and the Company.

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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 the 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.

- N. Arbitration** - It is hereby understood and agreed that all disputes or differences that may arise under or in connection with this Policy, whether arising before or after termination of this Policy, including any determination of the amount of **Loss**, may be submitted to the American Arbitration Association under and in accordance with the United States Arbitration Act (Title 9, U.S.C.) and its then prevailing commercial arbitration rules. The arbitrators shall be chosen in the manner and within the time frames provided by such rules. If permitted under such rules, the arbitrators shall be three disinterested individuals having knowledge of the legal, corporate management, or insurance issues relevant to the matters in dispute.

Any party may commence such arbitration proceeding and the arbitration shall be conducted in the **Insured's** state of domicile. The arbitrators shall give due consideration to the general principles of the law of the **Insured's** state of domicile in the construction and interpretation of the provisions of this Policy; provided, however, that the terms, conditions, provisions and exclusions of this Policy are to be construed in an evenhanded fashion as between the parties. Where the language of this Policy is alleged to be ambiguous or otherwise unclear, the issue shall be resolved in the manner most consistent with the relevant terms, conditions, provisions or exclusions of the Policy (without regard to the authorship of the language, the doctrine of reasonable expectation of the parties and without any presumption or arbitrary interpretation or construction in favor of either party or parties, and in accordance with the intent of the parties.)

The written decision of the arbitrators shall set forth its reasoning, shall be provided simultaneously to both parties and shall be binding on them. The arbitrators' award shall not include attorney fees or other costs. Judgment on the award may be entered in any court of competent jurisdiction. Each party shall bear equally the expenses of the arbitration.

- O. Service Of Suit** – Subject to Paragraph N above, it is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the **Insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon Counsel, Legal Department, 175 Water Street, New York, New York 10038, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

P. Independent Counsel

In the event the **Insured** is entitled by law to select independent counsel to oversee the Company's defense of a **Claim** at the Company's expense, the attorney fees and all other expenses the Company must pay to that counsel are limited to the rates the Company would actually pay to counsel that the Company retains in

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the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **Claims** similar to the one pending against the **Insured**, and to require such counsel to have errors and omissions insurance coverage. As respects any such counsel, the **Insured** agrees that counsel will timely respond to the Company's request for information regarding the **Claim**.

Furthermore, the **Insured** may at any time, by the **Insured's** signed consent, freely and fully waive these rights to select independent counsel.

Q. Acknowledgment of Shared Limits – By acceptance of this Policy, the **Named Insureds** understand, agree and acknowledge that the Policy contains a Policy Aggregate Limit that is applicable to, and will be shared by, all **Named Insureds** and all other **Insureds** who are or may become insured hereunder. In view of the operation and nature of this shared Policy Aggregate Limit, the **Named Insureds** and all other **Insureds** understand and agree that prior to filing a **Claim** or clean-up of **Pollution Conditions** or **Emergency Response Costs** under the Policy; the Policy Aggregate Limit may be exhausted or reduced by prior payments for other **Loss** under the Policy.

R. Separation of Insureds - It is hereby agreed that except with respect to the Limit of Liability, Section II. F. (Insured vs. Insured exclusion), and any rights and duties specifically assigned to the first **Named Insured**, this insurance applies: (1) As if each **Named Insured** were the only **Named Insured**; and (2) Separately to each **Named Insured** against who a **Claim** is made. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **Named Insured** shall not prejudice the interest of coverage for another **Named Insured** under this Policy. Provided, however, that this Condition shall not apply to any entity who is a parent, subsidiary or affiliate of the **Named Insured** that misrepresented, concealed or breached a term or condition, or violated a duty under this Policy.

S. Policy Territory - This Policy only applies to **Pollution Conditions** in the United States, its territories and possessions, and Canada.

VII. EXTENDED REPORTING PERIOD

The **Named Insured** shall be entitled to an Automatic **Extended Reporting Period**, and (with certain exceptions as described in paragraph B. of this Section VII.) be entitled to purchase an Optional **Extended Reporting Period** upon termination of coverage as defined in Paragraph B.3. of this Section VII. Neither the Automatic nor the Optional **Extended Reporting Period** shall reinstate or increase any of the limits of liability of this Policy.

A. Automatic Extended Reporting Period

Provided (i) that the **Named Insured** has not purchased any other insurance to replace this insurance and which applies to a **Claim** otherwise covered hereunder, and (ii) the **Named Insured** has not purchased the Optional **Extended Reporting Period** available under paragraph B. below, the **Named Insured** shall have the right to the following: a period of sixty (60) days following the effective date of such termination of coverage in which to provide written notice to the Company of **Claims** first made against the **Insured** during the **Policy Period** and reported within the Automatic **Extended Reporting Period**.

A **Claim** first made against the **Insured** during the **Policy Period** and first reported to the Company within the Automatic **Extended Reporting Period** will be deemed to have been first reported on the last day of the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and are otherwise covered by this Policy. No part of the Automatic **Extended Reporting Period** shall apply if the Optional **Extended Reporting Period** is purchased.

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B. Optional Extended Reporting Period

The **Named Insured** shall be entitled to purchase an Optional **Extended Reporting Period** upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

1. A **Claim** first made during the **Policy Period** and reported within the Optional **Extended Reporting Period**, if purchased in accordance with the provisions contained in Paragraph 2. below, will be deemed to have been reported during the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and are otherwise covered by this Policy.
2. The Company shall issue an endorsement providing an Optional **Extended Reporting Period** of up to forty (40) months from termination of coverage hereunder, provided that the **Named Insured**:
 - (a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
 - (b) pays the additional premium when due. If that additional premium is paid when due, the **Extended Reporting Period** may not be canceled, provided that all other terms and conditions of the Policy are met.
3. Termination of coverage occurs at the time of cancellation or nonrenewal of this Policy by the **Named Insured** or by the Company, or at the time of deletion of a location which previously was an **Insured Property**.

The Optional **Extended Reporting Period** is available to the **Named Insured** for not more than 200% of the full Policy premium.

VIII. DEFINITIONS

- A. **Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress sustained by any person, including death resulting therefrom.
- B. **Claim** means a written demand received by the **Insured** alleging liability or responsibility and seeking a remedy on the part of the **Insured** for **Loss**. For purposes of this Policy, a **Claim** does not include a **Possible Claim** that was reported under a prior policy but which has become a **Claim** during the **Policy Period** of this Policy as described in Section III. B.
- C. **Clean-Up Costs** means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, remediation including associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:
 1. to the extent required by **Environmental Laws**;
 2. that have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof; or
 3. that have been actually incurred by third parties.

Clean-Up Costs also include **Restoration Costs**.

- D. **Covered Operations** means those activities performed for a third party for a fee by or on behalf of the **Named Insured** at a job site.

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- E. Each Incident** means the same, related, or continuous **Pollution Conditions**.
- F. Environmental Laws** means any federal, state, provincial or local laws (including, but not limited to, statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives) that are applicable to **Pollution Conditions**.
- G. Extended Reporting Period** means either the automatic additional period of time or the optional additional period of time, whichever is applicable, in which to report **Claims** following termination of coverage, as described in Section VII. of this Policy.
- H. Emergency Response Costs** means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, incurred in the remediation of soil, surfacewater, groundwater or other contamination that must be incurred:
- i. in response to **Pollution Conditions** that necessitate immediate action; and
 - ii. within thirty-six (36) hours of the commencement of such **Pollution Condition(s)**; or as approved by the Company in writing.
- I. Inception Date** means the first date set forth in Item 2 of the Declarations.
- J. Insured** means the **Named Insured**, and any past or present director, officer, partner, member or employee thereof, including a temporary or leased employee, while acting within the scope of his/her duties as such.
- K. Insured Contract** means:
1. A contract or agreement submitted to and approved by the Company, and scheduled as an Insured Contract by Endorsement to this Policy.
 2. A written contract or that part of any written contract or agreement, if such contract or agreement was executed prior to **Loss** and discovery of **Pollution Conditions**, pertaining to the **Named Insured's Covered Operations** (including an indemnification of a municipality in connection with work performed for a municipality, under which the **Named Insured** assumes the tort liability of another party to pay for **Bodily Injury, Property Damage** or **Clean-Up Costs** to a third party arising from **Pollution Conditions** resulting from the **Named Insured's** work at a job site. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement. However, such an **Insured Contract** shall not include a contract or that part of any contract or agreement that indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the **Bodily Injury, Property Damage** or **Clean-Up Costs**.
- L. Insured's Products** means goods or products manufactured, sold, handled or distributed by the **Insured** or others trading under the **Insured's** name, and includes containers (other than automobiles, rolling stock, vessels or aircraft), materials, parts or equipment furnished in connection therewith, and includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use thereof, or the failure to provide warnings or instructions.
- M. Insured Property** means real property owned, leased, rented or occupied by the **Insured** at the **Inception Date**.

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- N. Loss** means, under the applicable Coverages: (1) monetary awards or settlements of compensatory damages for **Bodily Injury** or **Property Damage**, and where allowable by law, punitive, exemplary, or multiple damages, and civil fines, penalties, or assessments for **Bodily Injury** or **Property Damage**; (2) costs, charges and expenses incurred in the defense, investigation or adjustment of **Claims** for such compensatory damages or punitive, exemplary or multiple damages, and civil fines, penalties or assessments, or for **Clean-Up Costs**; (3) **Clean-Up Costs**; or (4) **Emergency Response Costs**.
- O. Microbial Matter** means fungi, mold or mildew, whether or not such **Microbial Matter** is living.
- P. Named Insured** means the person or entity named in Item 1 of the Declarations acting on behalf of all other **Insureds**, if any, for the payment or return of any premium, payment of any deductible, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or nonrenewal, and the exercise of the rights provided in the **Extended Reporting Period** clause.
- Q. Natural Resource Damage** means physical injury to or destruction of, 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 or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.
- R. Policy Period** means the period set forth in Item 2 of the Declarations, or any shorter period as a result of cancellation of this Policy.
- S. Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the amounts or concentrations discovered. **Pollution Conditions** shall not include **Microbial Matter**.
- T. Possible Claim** means **Pollution Conditions** that commenced on or after the **Inception Date** that the **Insured** reasonably expects may result in a **Claim**.
- U. Property Damage** means:
1. Physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use and diminution in value thereof. However, **Property Damage** shall not include diminution in value of tangible property of parties other than the **Insured** that was at any time leased, rented, occupied or loaned to the **Insured**;
 2. Loss of use, but not diminution in value, of tangible property of parties other than the **Insured** that has not been physically injured or destroyed;
 3. **Natural Resource Damage**.

Property Damage does not include **Clean-Up Costs**.

- V. Responsible Insured** means (a) the manager or supervisor of the **Named Insured** responsible for environmental affairs, control or compliance; (b) any manager of an **Insured Property**; (c) any manager or supervisor responsible for any of the **Named Insured's** operations; or (d) any officer, director or partner of the **Named Insured**.

- W. Restoration Costs** means reasonable and necessary costs incurred by the **Insured** with the Company's written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore

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real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **Clean-Up Costs**. However, such **Restoration Costs** shall not exceed the actual value of such property prior to incurring **Clean-Up Costs**. **Restoration Costs** do not include costs associated with improvements or betterments or costs to repair, replace or restore real or personal property damaged or otherwise impacted by **Pollution Conditions**.

- X. **Underground Storage Tank** means any tank that has at least ten (10) percent of its volume below ground, in existence at the **Inception Date**, or installed thereafter, including associated underground piping connected to the tank.
- Y. **Waste Disposal Activities** means the transportation, processing, treatment or disposal, or the arranging for the transportation, processing, treatment or disposal of the **Named Insured's** waste.

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Specimen