

**COMMERCIAL GENERAL LIABILITY AND POLLUTION  
LEGAL LIABILITY COVERAGE FORM**

**COVERAGE D PROVIDES "CLAIMS MADE AND REPORTED" COVERAGE, AND HAS REPORTING REQUIREMENTS DIFFERENT FROM THOSE FOR COVERAGES A, B AND E. COVERAGE D REQUIRES THAT A CLAIM BE MADE UPON THE INSURED AND REPORTED IN WRITING TO US DURING THE POLICY PERIOD OR EXTENDED REPORTING PERIOD, IF ANY.**

**PLEASE READ THE ENTIRE FORM CAREFULLY**

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered. This Policy is issued in reliance upon the statements in the Application, deemed to be annexed hereto.

Throughout this Policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this Policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

Defined terms, other than headings, appear in bold face type. Refer to **SECTION VI - DEFINITIONS**.

**SECTION I - COVERAGES**

**COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of **bodily injury** or **property damage** to which this insurance applies. We will have the right and duty to defend the insured against any **suit** seeking those damages. However, we will have no duty to defend the insured against any **suit** seeking damages for **bodily injury** or **property damage** to which this insurance does not apply. We may, at our discretion, investigate any **occurrence** and settle any **claim** or **suit** that may result. But:

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE**, and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B, medical expenses under Coverage C, or **loss** under Coverages D or E.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A, B and E**.

- b. This insurance applies to **bodily injury** and **property damage** only if:
- (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**; and
- (2) The **bodily injury** or **property damage** occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** and no **employee** authorized by you to give or receive notice of an **occurrence** or **claim**, knew that the **bodily injury** or **property damage** had occurred, in whole or in part. If such a listed insured or authorized **employee** knew, prior to the policy period, that the **bodily injury** or **property damage** occurred, then any continuation, change or resumption of such **bodily injury** or **property damage** during or after the policy period will be deemed to have been known prior to the policy period.

c. **Bodily injury** or **property damage** which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** or any **employee** authorized by you to give or receive notice of an **occurrence** or **claim**, includes any continuation, change or resumption of that **bodily injury** or **property damage** after the end of the policy period.

d. **Bodily injury** or **property damage** will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of **SECTION II – WHO IS AN INSURED** or any **employee** authorized by you to give or receive notice of an **occurrence** or **claim**:

(1) Reports all, or any part, of the **bodily injury** or **property damage** to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the **bodily injury** or **property damage**; or

(3) Becomes aware by any other means that **bodily injury** or **property damage** has occurred or has begun to occur.

e. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **bodily injury**.

## 2. Exclusions

This insurance does not apply to:

### a. Expected or Intended Injury

**Bodily injury** or **property damage** expected or intended from the standpoint of the insured. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

**Bodily injury** or **property damage** for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury** or **property damage** occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of **bodily injury** or **property damage**, provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and

(b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

**Bodily injury** or **property damage** for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers Compensation and Similar Laws**

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

**Bodily injury** to:

- (1) An **employee** of the insured, arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that **employee** as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an **insured contract**.

**f. Pollution**

- (1) **Bodily injury** or **property damage** which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time.
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
  - (b) **Claim** or **suit** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

**g. Aircraft, Auto or Watercraft**

**Bodily injury or property damage** arising out of the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and **loading or unloading**.

This exclusion applies even if the **claims** against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the **occurrence** which caused the **bodily injury or property damage** involved the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is not being used to carry persons or property for a charge;
- (3) An aircraft hired or chartered by or loaned to an insured with a paid crew; but not owned by any insured;
- (4) Parking an **auto** on, or on the ways next to, premises you own or rent, provided the **auto** is not owned by or rented or loaned to you or the insured;
- (5) Liability assumed under any **insured contract** for the ownership, maintenance or use of aircraft or watercraft;
- (6) **Bodily injury or property damage** arising out:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law in the state where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in paragraph **f.(2)** or **f.(3)** of the definition of **mobile equipment**; or
- (7) **Bodily injury or property damage** arising out of:
  - (a) The delivery of **your product** into a wrong receptacle or to a wrong address; or
  - (b) The erroneous delivery of **your product** for another product by any **conveyance**;if, under (a) or (b), the **bodily injury or property damage** occurs after such operations have been completed or abandoned at the site of such delivery.  
Operations which may require further service, maintenance, correction, repair or replacement because of performance at the wrong address or because of any error, defect or deficiency, but which are otherwise completed, will be deemed completed.

**h. Mobile Equipment**

**Bodily injury or property damage** arising out of:

- (1) The transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to any insured; or

(2) The use of **mobile equipment** in, or while in practice for or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

i. **War**

**Bodily injury** or **property damage** arising directly or indirectly as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution.

j. **Damage to Property**

**Property damage** to:

- (1) Property you own, rent, or occupy including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire, lightning or explosion) to premises, including the contents of such premises, rented to you for a period of 30 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work** and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

k. **Damage to Your Product**

**Property damage** to **your product** arising out of it or any part of it.

l. **Damage to Your Work**

**Property damage** to **your work** arising out of it or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage to Impaired Property or Property Not Physically Injured**

**Property damage to impaired property** or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **your product** or **your work** after it has been put to its intended use.

**n. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) **Your product**;
- (2) **Your work**; or
- (3) **Impaired property**;

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal and Advertising Injury**

**Bodily injury** arising out of **personal and advertising injury**.

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, **electronic data** means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Nuclear Material and Radioactivity**

**Bodily injury** or **property damage** arising from the radioactive, toxic or explosive properties of **nuclear material** or arising out of the actual, alleged or threatened exposure of persons or property to any radioactive matter.

**r. Asbestos**

- (1) **Bodily injury** arising out of the presence, ingestion or inhalation of, or exposure to, asbestos in any form; or
- (2) **Property damage** arising out of the presence of, or exposure to, asbestos in any form.

**s. Lead**

(1) **Bodily injury** arising out of the presence, ingestion, inhalation or absorption of, or exposure to, lead in any form; or

(2) **Property damage** arising out of the presence of, or exposure to, lead in any form.

**t. Employment - Related Practices**

**Bodily injury** to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of the person as a consequence of **bodily injury** to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**u. Professional Services**

**Bodily injury** or **property damage** arising out of the rendering or failure to render any **professional services**.

**v. Punitive Damages**

Any punitive, exemplary or the multiplied portion of multiple damages, or any civil or administrative fines, penalties or assessments, except where such damages, fines, penalties or assessments are insurable by applicable law.

**w. Criminal Fines, Penalties and Assessments**

Any criminal fines, criminal penalties or criminal assessments.

**x. Violation of Statutes in Connection with Sending, Transmitting or Communicating any Material or Information**

**Bodily injury** or **property damage** arising out of or resulting from, caused directly or indirectly, in whole or in part by, any act that violates any statute, ordinance or regulation of any federal, state or local government, including any amendment of or addition to such laws, that includes, addresses or applies to the sending, transmitting or communicating of any material or information, by any means whatsoever.

y. **Covered under Coverage D or E**

Any **bodily injury** or **property damage** covered, or associated with a **suit** for which a defense is being provided, under **COVERAGE D – POLLUTION LEGAL LIABILITY** or **COVERAGE E - ADDITIONAL POLLUTION LEGAL LIABILITY**.

Exclusions c. through n. do not apply to damage by fire, lightning or explosion to premises while rented to or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE**, paragraph 6.

**COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of **personal and advertising injury** to which this insurance applies. We will have the right and duty to defend the insured against any **suit** seeking those damages. However, we will have no duty to defend the insured against any **suit** seeking damages for **personal and advertising injury** to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any **claim** or **suit** that may result. But:

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE**; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B, medical expenses under Coverage C, or **loss** under Coverages D or E.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A, B AND E**.

- b. This insurance applies to **personal and advertising injury** caused by an offense arising out of your business but only if the offense was committed in the **coverage territory** during the policy period.

**2. Exclusions**

This insurance does not apply to:

- a. **Knowing Violation of Rights of Another**

**Personal and advertising injury** caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**.

- b. **Material Published with Knowledge of Falsity**

**Personal and advertising injury** arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

- c. **Material Published Prior to Policy Period**

**Personal and advertising injury** arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

- d. **Criminal Acts**

**Personal and advertising injury** arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

**Personal and advertising injury** for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach of Contract**

**Personal and advertising injury** arising out of a breach of contract, except an implied contract to use another's advertising idea in your **advertisement**.

**g. Quality of Performance of Goods – Failure to Conform to Statements**

**Personal and advertising injury** arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your **advertisement**.

**h. Wrong Description of Prices**

**Personal and advertising injury** arising out of the wrong description of the price of goods, products or services stated in your **advertisement**.

**i. Infringement of Copyright, Patent, Trademark or Trade Secret**

**Personal and advertising injury** arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your **advertisement**.

However, this exclusion does not apply to infringement, in your **advertisement**, of copyright, trade dress or slogan.

**j. Insureds in Media and Internet Type Businesses**

**Personal and advertising injury** committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **30. a., b. and c.** of **personal and advertising injury** under **SECTION VI – DEFINITIONS**.

For the purpose of this exclusion, the placing of frames, borders, or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms or Bulletin Boards**

**Personal and advertising injury** arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use of Another's Name or Product**

**Personal and advertising injury** arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

**Personal and advertising injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time.

**n. Pollution-Related**

**Personal and advertising injury** arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
- (2) **Claim** or **suit** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to or assessing the effects of **pollutants**.

**o. War**

**Personal and advertising injury** arising directly or indirectly as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution.

**p. Nuclear Material and Radioactivity**

**Personal and advertising injury** arising from the radioactive, toxic or explosive properties of **nuclear material** or arising out of the actual, alleged or threatened exposure of persons or property to any radioactive matter.

**q. Asbestos**

**Personal and advertising injury** arising out of the presence, ingestion or inhalation of, or exposure to, asbestos in any form.

**r. Lead**

**Personal and advertising injury** arising out of the presence, ingestion, inhalation or absorption of, or exposure to, lead in any form.

**s. Employment - Related Practices**

**Personal and advertising injury** to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of the person as a consequence of **bodily injury** to that person at whom any of the employment-related practices described in paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**t. Professional Services**

**Personal and advertising injury** arising out of the rendering or failure to render any **professional services**.

**u. Punitive Damages**

Any punitive, exemplary or the multiplied portion of multiple damages, or any civil or administrative fines, penalties or assessments, except where such damages, fines, penalties or assessments are insurable by applicable law.

**v. Criminal Fines, Penalties and Assessments**

Any criminal fines, criminal penalties or criminal assessments.

**w. Violation of Statutes in Connection with Sending, Transmitting or Communicating any Material or Information**

**Personal and advertising injury** arising out of or resulting from, caused directly or indirectly, in whole or in part by, any act that violates any statute, ordinance or regulation of any federal, state or local government, including any amendment of or addition to such laws, that includes, addresses or applies to the sending, transmitting or communicating of any material or information, by any means whatsoever.

**COVERAGE C - MEDICAL PAYMENTS**

**1. Insuring Agreement**

a. We will pay medical expenses as described below for **bodily injury** caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the **coverage territory** and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral service.

## 2. Exclusions

We will not pay expenses for **bodily injury**:

### a. Any Insured

To any insured, except **volunteer workers**.

### b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

### c. Injury on Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

### d. Workers Compensation and Similar Laws

To a person, whether or not an **employee** of any insured, if benefits for the **bodily injury** are payable or must be provided under a workers compensation or disability benefits law or a similar law.

### e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletics contests.

### f. Products-Completed Operations Hazard

Included within the **products-completed operations hazard**.

### g. Coverage A Exclusions

Excluded under Coverage A.

## COVERAGE D - POLLUTION LEGAL LIABILITY

### 1. Insuring Agreements

#### COVERAGE D-1

#### a. THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY OR PROPERTY DAMAGE

We will pay **loss** that the insured becomes legally obligated to pay as a result of **claims** for **bodily injury** or **property damage** resulting from **pollution conditions** on or under the **insured property** while the person injured or property damaged is on the **insured property** and such **pollution conditions** did not first commence before the Retroactive Date, if any, shown in the Schedule of Insured Property(ies) Endorsement, provided the **claim** for **bodily injury** or **property damage** is first made against the insured and reported to us in writing during the policy period or any **extended reporting period** if applicable.

#### b. THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS

We will pay **loss** that the insured becomes legally obligated to pay as a result of **claims** for **bodily injury, property damage or clean-up costs** resulting from **pollution conditions**, beyond the boundaries of the **insured property**, that migrated from the **insured property** and did not first commence before the Retroactive Date, if any, shown in the Schedule of Insured Property(ies) Endorsement provided the **claim** for **bodily injury, property damage or clean-up costs** is first made against the insured and reported to us in writing during the policy period or any **extended reporting period** if applicable.

**c. THIRD-PARTY CLAIMS FOR ON-SITE AND OFF-SITE BODILY INJURY, PROPERTY DAMAGE OR CLEAN-UP COSTS – NON-OWNED LOCATIONS**

We will pay **loss** that the insured becomes legally obligated to pay as a result of **claims** for:

- (i) **Clean-up costs** resulting from **pollution conditions** on or under the **non-owned location** or **bodily injury or property damage** of parties other than: (a) **employees** of the **non-owned location** if the **non-owned location** was used at any time for the handling, storage, disposal, processing or treatment of waste or (b) the owners, operators or contractors of the **non-owned location**; or
- (ii) For **bodily injury, property damage or clean-up costs** resulting from **pollution conditions**, beyond the boundaries of the **non-owned location**, that migrated from the **non-owned location**;

provided such **pollution conditions** did not first commence before the Retroactive Date shown in the Schedule of Non-Owned Location(s) Endorsement, if any, and the **claim** for **bodily injury, property damage or clean-up costs** is first made against the insured and reported to us in writing during the policy period or any **extended reporting period** if applicable.

Under this Coverage D-1, if a **claim** for **loss** is first made against the insured and reported to us in writing during the policy period or any **extended reporting period**, if applicable, in accordance with **SECTION IV – CONDITIONS**, Paragraph 2. of this Policy, all **claims** for **loss** arising from the same, related or continuous **pollution conditions** which are first made against the insured and reported under a subsequent renewal Policy issued by us or any other subsidiary or affiliate of Chartis, Inc. providing substantially the same coverage as this Policy, shall be deemed to have been first made against the insured and reported to us during this policy period. Coverage under this Policy for such subsequent **claims** shall not apply, however, unless at the time such **claims** are first made and reported, the insured has maintained with us or any other subsidiary or affiliate of Chartis, Inc. 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 and reported to us.

**COVERAGE D-2**

**a. THIRD-PARTY CLAIMS FOR ON-SITE BODILY INJURY OR PROPERTY DAMAGE**

We will pay on behalf of the insured, **loss** that the insured becomes legally obligated to pay as a result of **claims** for **bodily injury or property damage** resulting from **pollution conditions** on or under an **insured property**, if such **bodily injury or property damage** takes place while the person injured or property damaged is on such **insured property**.

**b. THIRD-PARTY CLAIMS FOR OFF-SITE BODILY INJURY OR PROPERTY DAMAGE**

We will pay on behalf of the insured, **loss** that the insured becomes legally obligated to pay as a result of **claims** for **bodily injury or property damage** resulting from **pollution conditions**, beyond the boundaries of an **insured property**, that migrated from such **insured property**.

**c. EMERGENCY RESPONSE COSTS**

We will pay **emergency response costs** resulting from **pollution conditions** on, under or that migrated from an **insured property**. **Emergency response costs** must be first incurred by the insured and reported to us during the policy period.

All of the following requirements must be satisfied for this coverage D-2, paragraphs a. and b. to apply:

- (1) The **bodily injury** or **property damage** results from **pollution conditions**, which **pollution conditions** first commence during the policy period;
- (2) Such **pollution conditions** first commence at an identified time and place during the policy period;
- (3) A **responsible insured** discovers the **pollution conditions** no later than ten (10) calendar days after its commencement;
- (4) The insured reports the **pollution conditions** to us in writing no later than thirty (30) business days following its discovery by a **responsible insured** as described in Paragraph (3) above and in accordance with Section IV.2. of the Policy;
- (5) Such **pollution conditions** do not originate or arise from, or relate to an **underground storage tank**;
- (6) Such **pollution conditions** are not (i) heat, smoke or fumes from a **hostile fire** or (ii) solely with respect to **bodily injury**, smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests; and
- (7) Such **pollution conditions** are not a continuation or repetition of another event.

For this Coverage D-2, paragraph c. to apply, all of the following conditions must be satisfied:

- (1) The insured must report the **emergency response costs** to us, in writing and in accordance with Section IV.2. of the Policy; and
- (2) Such **pollution conditions** must be unexpected and unintended from the standpoint of the insured.

Under this Coverage D-2, all **claims** for **bodily injury** or **property damage**, whether or not such **claim** is first made against the insured during the policy period, arising from the same, related or continuous **pollution conditions** shall be subject to the terms, conditions, and limits of this Policy solely, whether or not another policy has been issued by us or any other subsidiary or affiliate of Chartis, Inc. In the event that a **claim** that is otherwise covered under Coverage D-2 of this Policy is submitted by the insured to us or any other subsidiary or affiliate of Chartis, Inc. under another policy of insurance and such **claim** is covered in whole or in part by us or any other subsidiary or affiliate of Chartis, Inc. under such other policy of insurance, coverage under Coverage D-2 shall not apply.

#### **DEFENSE APPLICABLE TO COVERAGE D**

We will have the right and the duty to defend any **claim** covered under Coverage D-1 and D-2, whichever is applicable. Our duty to defend or continue defending any such **claim**, and to pay any **loss**, shall cease once the applicable limit of liability as described in **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE** has been exhausted. Defense costs, charges and expenses are included in **loss**, reduce the applicable limit of insurance as described in **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE** and are included within the **COVERAGE D** Deductible amount shown in **ITEM 4. COVERAGE AND DEDUCTIBLES**: of the Declarations.

We will present any settlement offers to the insured and if the insured refuses to consent to any settlement recommended by us and acceptable to the claimant, our duty to defend the insured shall then cease and the insured shall thereafter negotiate or defend such **claim** independently of us and our liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the **claim** could have been settled if our recommendation was consented to.

## **2. Exclusions - Applicable to Coverage D**

This insurance does not apply to **claims** or **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. Transportation**

Arising out of the maintenance, use, operation or **loading or unloading** of any **conveyance** beyond the boundaries of the **insured property**.

**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 our prior written approval at our sole discretion.

**f. Insured vs. Insured**

By any insured against any other insured. This exclusion does not apply to **claims** initiated by third parties or **claims** that arise out of an indemnification given by you to another insured in an **insured contract**.

**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 shall not apply to **claims** for **bodily injury**, **property damage**, or to **clean-up costs** for the remediation of soil and groundwater.

**h. Employer's Liability**

Arising from **bodily injury** to an **employee** of the insured arising out of and in the course of employment by the insured. This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**i. Prior Knowledge/Non-Disclosure**

Arising from **pollution conditions** existing prior to the inception date of this Policy and known by a **responsible insured** and not disclosed in the application for this Policy, or any previous policy for which this Policy is a renewal thereof.

**j. Identified Underground Storage Tank**

Solely with respect to Coverage D-1, arising from **pollution conditions** resulting from an **underground storage tank** whose existence is known by a **responsible insured** as of the inception date of the Policy and which is located on the **insured property** unless such **underground storage tank** is scheduled on the Policy by endorsement.

**k. War**

Arising directly or indirectly as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution.

**COVERAGE E – ADDITIONAL POLLUTION LEGAL LIABILITY**

**1. Insuring Agreements**

**COVERAGE E-1 – HOSTILE FIRE AND BUILDING EQUIPMENT**

We will pay those sums that the insured becomes legally obligated to pay as **loss** because of:

- (1) **Bodily injury** sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests; or
- (2) **Bodily injury, property damage or environmental damage** caused by heat, smoke or fumes from a **hostile fire**.

**COVERAGE E-2 – PRODUCTS POLLUTION AND EXPOSURE LIABILITY**

We will pay those sums that the insured becomes legally obligated to pay as **loss** because of **bodily injury, property damage or environmental damage** resulting from **pollution conditions** caused by **your product** and included in the **products-completed operations hazard**.

We will also pay those sums that the insured becomes legally obligated to pay as **loss** because of **bodily injury or property damage** resulting from ingestion or inhalation of, contact with, or exposure to, any fumes, dust, particles, vapors, liquids or other substances originating from **your product** and included in the **products-completed operations hazard**.

**COVERAGE E-3 – CONTRACTORS POLLUTION LIABILITY**

We will pay those sums that the insured becomes legally obligated to pay as **loss** because of **bodily injury, property damage, or environmental damage** resulting from **pollution conditions** caused by **your work**.

**COVERAGE E-4 – TRANSPORTED CARGO**

We will pay those sums that the insured becomes legally obligated to pay as **loss** because of **bodily injury, property damage or environmental damage** resulting from **pollution conditions** caused by an **occurrence** during the **transportation of cargo**.

**COVERAGE E EMERGENCY RESPONSE COSTS**

We will pay **emergency response costs** resulting from **pollution conditions** caused by: (a) heat, smoke or fumes from a **hostile fire**, provided Coverage E-1 is purchased; (b) **your product**, provided Coverage E-2 is purchased; (c) **your work**, provided Coverage E-3 is purchased; or (d) an **occurrence** during the **transportation of cargo**, provided Coverage E-4 is purchased. **Emergency response costs** must be first incurred by the insured and reported to us during the policy period. The insured must report the **emergency response costs** to us, in writing and in accordance with Section IV.2. of the

Policy and such **pollution conditions** must be unexpected and unintended from the standpoint of the insured.

Each of the following paragraphs is applicable to Coverages E-1 through E-4:

a. We will have the right and duty to defend the insured, to the extent applicable under each coverage of Section E-1 through E-4, against any **suit** seeking damages for **bodily injury, property damage or environmental damage**. However, we will have no duty to defend the insured against any **suit** seeking those damages to which this insurance does not apply. We may, at our discretion, investigate any **occurrence** and settle any **claim** or **suit** that may result. But:

(1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE**; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B, medical expenses under Coverage C, or **loss** under Coverages D or E.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A, B and E**.

b. This insurance applies to **bodily injury, property damage, or environmental damage** only if:

(1) The **bodily injury, property damage, or environmental damage** is caused by an **occurrence** that takes place in the **coverage territory**; and

(2) The **bodily injury, property damage or environmental damage** occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of **SECTION II - WHO IS AN INSURED** and no **employee** authorized by you to give or receive notice of an **occurrence** or **claim**, knew that the **bodily injury, property damage or environmental damage** had occurred, in whole or in part. If such a listed insured or authorized **employee** knew, prior to the policy period, that the **bodily injury, property damage or environmental damage** occurred, then any continuation, change or resumption of such **bodily injury, property damage or environmental damage** during or after the policy period will be deemed to have been known prior to the policy period.

c. **Bodily injury, property damage or environmental damage** which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of **SECTION II - WHO IS AN INSURED** or any **employee** authorized by you to give or receive notice of an **occurrence** or **claim**, includes any continuation, change or resumption of that **bodily injury, property damage, or environmental damage** after the end of the policy period.

d. **Bodily injury, property damage or environmental damage** will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of **SECTION II - WHO IS AN INSURED** or any **employee** authorized by you to give or receive notice of an **occurrence** or **claim**:

(1) Reports all, or any part, of the **bodily injury, property damage or environmental damage** to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the **bodily injury, property damage or environmental damage**; or

(3) Becomes aware by any other means that **bodily injury, property damage or environmental damage** has occurred or has begun to occur.

e. All **bodily injury, property damage or environmental damage** caused by continuous or repeated exposure to substantially the same general harmful conditions or substances, which results in progressive, indivisible **bodily injury, property damage or environmental damage** over a period of

days, weeks, months or longer, shall be deemed to have occurred solely on the date of first exposure to such conditions or substances.

- f. If the date of first exposure is before the inception date of the first Commercial General Liability and Pollution Legal Liability policy we issue to you, or the date of first exposure can not be determined, and the **bodily injury, property damage or environmental damage** continues during this policy period, then the date of first exposure will be deemed to have occurred only on the inception date of the first Commercial General Liability and Pollution Legal Liability policy we issue to you.
- g. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **bodily injury**.

## 2. Exclusions

This insurance does not apply to:

### a. Expected or Intended Injury

**Bodily injury, property damage or environmental damage** expected or intended from the standpoint of the insured. This exclusion does not apply to **bodily injury or property damage** resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

**Bodily injury, property damage, environmental damage or emergency response costs** for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury, property damage or environmental damage** occurs, or the **emergency response costs** are incurred, subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of **bodily injury or property damage**, provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**, and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Workers Compensation and Similar Laws

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

### d. Employer's Liability

**Bodily injury** to:

- (1) An **employee** of the insured, arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or

- (2) The spouse, child, parent, brother or sister of that **employee** as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an **insured contract**.

**e. Aircraft, Auto or Watercraft**

**Bodily injury, property damage, environmental damage or emergency response costs** arising out of the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and **loading or unloading**.

This exclusion applies even if the **claims** against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the **occurrence** which caused the **bodily injury, property damage, environmental damage or emergency response costs** involved the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to Coverage E-4, except with respect to **bodily injury, property damage, environmental damage or emergency response costs** arising from the **transportation of cargo** by a third-party carrier (a) that is not caused by an **occurrence** arising from the insured's negligence and (b) that involves:

- (1) The delivery of any **cargo** into a wrong receptacle or to a wrong address; or
- (2) The erroneous delivery of one type of **cargo** for another;

if, under (1) or (2), the **bodily injury, property damage or environmental damage** occurs or the **emergency response costs** are incurred after such operations have been completed or abandoned at the site of such delivery.

Operations which may require further service, maintenance, correction, repair or replacement because of performance at the wrong address or because of any error, defect or deficiency, but which are otherwise completed, will be deemed completed.

**f. War**

**Bodily injury, property damage, environmental damage or emergency response costs** arising directly or indirectly as a result of or in connection with war, whether declared or not, or any act or condition incident to war. War includes civil war, insurrection, act of foreign enemy, civil commotion, factional civil commotion, military or usurped power, rebellion or revolution.

**g. Damage to Property**

**Property damage or environmental damage** to:

- (1) Property you own, rent, or occupy including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

- (2) Premises you sell, give away or abandon, if the **property damage** or **environmental damage** arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the **property damage** or **environmental damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are **your work** and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** or **environmental damage** included in the **products-completed operations hazard**.

#### h. **Damage to Your Product**

**Property damage** or **environmental damage** to **your product** arising out of it or any part of it.

#### i. **Damage to Your Work**

**Property damage** or **environmental damage** to **your work** arising out of it or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

#### j. **Damage to Impaired Property or Property Not Physically Injured**

**Property damage** or **environmental damage** to **impaired property** or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **your product** or **your work** after it has been put to its intended use.

#### k. **Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) **Your product**;

(2) **Your work**; or

(3) **Impaired property**;

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**I. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**m. Nuclear Material and Radioactivity**

(1) **Bodily injury, property damage, environmental damage or emergency response costs** arising from the radioactive, toxic or explosive properties of **nuclear material**, and for which the United States Department of Energy or any other governmental authority has indemnified the insured, or for which the Price Anderson Act provides protection for the insured; or

(2) **Bodily injury, property damage, environmental damage or emergency response costs** arising out of (i) **your product** and (ii) the actual, alleged or threatened exposure of persons or property to any radioactive matter.

**n. Asbestos**

Solely with respect to Coverages E-1 and E-2:

(1) **Bodily injury** arising out of the presence, ingestion or inhalation of, or exposure to, asbestos in any form; or

(2) **Property damage** arising out of the presence of, or exposure to, asbestos in any form.

**o. Lead**

Solely with respect to Coverages E-1 and E-2

(1) **Bodily injury** arising out of the presence, ingestion, inhalation or absorption of, or exposure to, lead in any form; or

(2) **Property damage** arising out of the presence of, or exposure to, lead in any form.

**p. Internal Expenses**

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 our prior written approval at our sole discretion.

**q. Criminal Fines, Penalties and Assessments**

Any criminal fines, criminal penalties or criminal assessments.

r. **Damage to Conveyance**

**Property damage** to any conveyance utilized during the **transportation** of **cargo**. This exclusion does not apply to a claim made by a third-party carrier for such **property damage** to their conveyance arising from the insured's negligence.

s. **Third-Party Carrier**

**Loss** incurred by a third-party carrier for **bodily injury, property damage, environmental damage, or emergency response costs**. This exclusion does not apply to an **occurrence** arising from the insured's negligence.

t. **Facilities or Maintenance Operations**

Solely with respect to Coverage E-3, **bodily injury, property damage, environmental damage or emergency response costs** arising from facilities operated by you or on your behalf, including associated maintenance operations.

u. **Non-Owned Site Disposal**

**Bodily injury, property damage, environmental damage or emergency response costs** arising from the final disposal of material and/or substances of any type (including but not limited to any waste) at any site or location which is not owned, leased or rented by you, including **loading or unloading** at such site or location. However, this exclusion does not apply to **bodily injury, property damage, environmental damage or emergency response costs** arising from unloading operations that are performed during the policy period at such site or location.

**SUPPLEMENTARY PAYMENTS - COVERAGES A, B and E**

1. We will pay, with respect to any **claim** we investigate or settle, or any **suit** against an insured we defend under Coverages A, B and E:
  - a. All expenses we incur.
  - b. Up to \$1000 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the **claim** or **suit**, including actual loss of earnings up to \$500 a day because of time off from work.
  - e. All costs taxed against the insured in the **suit**. However, these payments do not include attorney's fees or attorney's expenses taxed against the insured.
  - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a **suit** and an indemnitee of the insured is also named as a party to the **suit**, we will defend that indemnitee if all of the following conditions are met:
  - a. The **suit** against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an **insured contract**;
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same **insured contract**;
  - d. The allegations in the **suit** and the information we know about the **occurrence** are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of the indemnitee against such **suit** and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the **suit**;
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **suit**;
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the **suit**; and
      - (b) Conduct and control the defense of the indemnitee in such **suit**.

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us in connection with such defense and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 2.b.(2) of **SECTION I – COVERAGES, COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or paragraph 2.b. (2) of **SECTION I – COVERAGES, COVERAGE E – ADDITIONAL POLLUTION LEGAL LIABILITY**, such payments will not be deemed to be damages for **bodily injury** and **property damage** and, under Coverage E, **environmental damage** and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in paragraph 2f. above, are no longer met.

## SECTION II - WHO IS AN INSURED

Applicable to Coverages A, B, C and E

Each of the following is an insured under Coverages A, B, C and E:

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your **executive officers** and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your **volunteer workers** only while performing duties related to the conduct of your business or your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these **employees** or **volunteer workers** are insureds for:
    - (1) **Bodily injury or personal and advertising injury:**
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company);
      - (b) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) above; or
      - (c) Arising out of his or her providing or failing to provide professional health care services, except as respects any physician, dentist, nurse, emergency medical technician or paramedic who is employed by you to provide such services, provided you are not engaged in the business of providing such services.
    - (2) **Property damage or environmental damage** to property:
      - (a) Owned, occupied or used by,
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by  
  
you, any of your **employees**, **volunteer workers**, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your **employee** or **volunteer worker**) or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Policy.
  - e. Any subsidiary, associated, affiliated or allied company or corporation, including subsidiaries thereof, of which you have more than 50% ownership interest as of the inception date of this Policy.
3. Any organization you newly acquire or form, other than a partnership, joint venture, or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only (a) until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, (b) provided that you give us written notification within 180 days of the date of such acquisition or formation or before the end of the policy period, whichever is earlier, and (c) an additional premium to be charged at our discretion, determined by the rates utilized at policy inception, is paid when due;
  - b. Coverages A and E do not apply to **bodily injury, property damage, environmental damage or emergency response costs** that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to **personal and advertising injury** arising out of an offense committed before you acquired or formed the organization.
4. Any person or organization, other than a third party carrier, with whom you agreed to include as an insured, because of a written contract, written agreement or permit, but only with respect to **bodily injury, property damage, environmental damage, emergency response costs or personal and advertising injury** caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf, arising out of your operations, **your work**, equipment or premises leased, rented or owned by you, or **your products** which are distributed or sold in the regular course of a vendor's business, however:

As respects vendors, this insurance does not apply to

- a. **Bodily injury, property damage, environmental damage or emergency response costs** for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
- b. Any express warranty unauthorized by you;
- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. **Bodily injury, property damage, environmental damage or emergency response costs** arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

(1) The exceptions contained in Sub-paragraphs d. or f. above; or

(2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

As respects a manager or lessor of premises, a lessor of leased equipment, or a mortgagee, assignee, or receiver, this insurance does not apply to:

- (a) Any **occurrence** which takes place after the equipment lease expires or you cease to be a tenant.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor of premises, or mortgagee, assignee, or receiver.

- 5. Any person or organization that has at least a 50% controlling interest in you but only with respect to **bodily injury, property damage, environmental damage, emergency response costs or personal and advertising injury** caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf, arising out of their financial control of you.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture, or limited liability company unless a current or past partnership, joint venture, or limited liability company is an insured pursuant to paragraphs 1. through 5. above.

#### Applicable to Coverage D

Each of the following is an insured under Coverage D:

The Named Insured designated in the declarations and any past or present director, officer, partner, member or **employee** thereof, while acting within the scope of his or her duties as such and any customer with whom you have agreed in writing to include, prior to a **claim** being made or **loss** being incurred with respect to such customer, as an insured for **loss** arising from your storage, handling, treatment, processing or disposal of their product or waste on any **insured property**.

#### SECTION III - LIMITS OF INSURANCE AND DEDUCTIBLE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. **Claims** made or **suits** brought; or
  - c. Persons or organizations making **claims** or bringing **suits**.
- 2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A except damages because of **bodily injury or property damage** included in the **products-completed operations hazard**;

- c. Damages under Coverage B;
- d. **Loss** under Coverage D; and
- e. **Loss** under Coverage E except damages because of **bodily injury, property damage, environmental damage or emergency response costs** included in the **products-completed operations hazard**.

The General Aggregate Limit shall apply separately to **occurrences** and **loss** on or at a single **location** owned or rented by you and separately as to each other operation or project away from **locations** owned or rented by you.

- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverages A, E-2 and E-3 for damages because of **bodily injury, property damage, environmental damage or emergency response costs** included in the **products-completed operations hazard**.
- 4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all **personal and advertising injury** sustained by any one person or organization.
- 5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C

because of all **bodily injury** and **property damage** arising out of any one **occurrence**

- 6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of **property damage** to any one premises, while rented to you, or in the case of damage by fire, lightning or explosion while rented to you or temporarily occupied by you with permission of the owner.
- 7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of **bodily injury** sustained by any one person.
- 8. Subject to 2. above, the Each Loss Limit Applicable to Coverage D is the most we will pay for **loss** under Coverage D for all **loss** because of **bodily injury, property damage, clean-up costs and emergency response costs** arising out of the same, related, or continuous **pollution conditions**.
- 9. Subject to 2. or 3. above, whichever applies, the Each Loss Limit Applicable to Coverage E is the most we will pay for **loss** because of all **bodily injury, property damage, environmental damage and emergency response costs** arising out of any one **occurrence**.
- 10. The Limits of Insurance apply in excess of the Deductible amounts shown in Item 4. of the Declarations. The Deductible amount applies as follows:
  - a. Under Coverage D, to all **loss** arising out of a **pollution condition** or the same, related, or continuous **pollution conditions**.
  - b. Under Coverage A or E, to all damages because of **bodily injury, property damage, environmental damage or emergency response costs** as the result of any **occurrence**, regardless of the number of persons or organizations who sustain damages because of that **occurrence**.

We may pay any part or all of the deductible amount to effect settlement of any **claim** or **loss** and upon notification, you shall promptly reimburse us for such part of the Deductible. Subject to **SECTION IV - CONDITIONS**, Paragraph 15. **Multiple Coverages**, if the same **claim** or **occurrence** results in coverage

under more than one Coverage of this Policy, only the highest Deductible under all coverages applicable to the **claim** or **occurrence** shall apply.

11. The Limits of Insurance of this Policy apply to the entire policy period. If the policy period is extended after issuance for an additional period, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## SECTION IV - CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or that of the insured's estate will not relieve us of our obligations under this Policy.

### 2. Duties in the Event of Occurrence, Offense, Claim, Suit or Emergency Response Costs

#### Applicable to Coverages A, B, C and E

- a. When an **occurrence** or offense is known to: (i) you, if you are an individual; (ii) a partner, if you are a partnership; (iii) a member, if you are a limited liability company; or (iv) an **executive officer** or risk manager, if you are a corporation, you must see to it that we are notified as soon as practicable of an **occurrence** or an offense which may result in a **claim**. To the extent possible, notice should include:

- (1) How, when and where the **occurrence** or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the **occurrence** or offense.

- b. If a **claim** is made or **suit** is brought against any insured, you must:

- (1) Immediately record the specifics of the **claim** or **suit** and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the **claim** or **suit** as soon as practicable. However, this requirement will not be considered breached unless the breach occurs after such **claim** or **suit** is known to (i) you, if you are an individual; (ii) a partner, if you are a partnership; (iii) a member, if you are a limited liability company; or (iv) an **executive officer** or risk manager, if you are a corporation.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or a **suit**;
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the **claim** or defense against the **suit**; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid or **emergency response costs**, without our consent.

- e. All Notices shall be made in writing and addressed to:

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

or other address we substitute in writing.

**Applicable to Coverage D**

- a. In the event of a **claim**, the insured shall notify us as soon as practicable but in any event during the policy period or during the **extended reporting period**, if applicable. The insured shall furnish information at our request. When a **claim** has been made, the insured shall forward the following to us as soon as practicable:

- (1) 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;
- (2) All demands, summonses, notices or other process or papers filed with a court of law, administrative agency or an investigative body; and
- (3) Other information in the possession of the insured or its hired experts which we reasonably deem necessary.

- b. In the event of **pollution conditions**, the insured shall give written notice of such **pollution conditions**: (a) with respect to Coverage D-1, as soon as practicable and (b) with respect to Coverage D-2, no later than thirty (30) business days following the discovery of such **pollution conditions** by a **responsible insured**. Notice under all coverages 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**.

- c. The insured must cooperate with us and offer all reasonable assistance in the investigation and defense of **claims**. We may require that the insured submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, we may require written statements of the insured's attendance at meetings with us. The insured must assist us in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.

- d. All notices under this Section shall be made in writing and addressed to:

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

or other address we substitute in writing.

- e. No insured shall voluntarily enter into any settlement, or make any payment or assume any obligation, unless in response to an emergency or pursuant to **environmental laws** that require

immediate remediation of **pollution conditions**, without our consent, which shall not be unreasonably withheld, except at the insured's own cost.

### **Applicable to Emergency Response Costs under Coverages D-2 and E**

When **emergency response costs** have been incurred, the insured shall forward to us as soon as practicable, all information including but not limited to: the cause, commencement 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**.

### **Applicable to All Coverages**

Failure to timely notify us of an **occurrence** or an offense which may result in a **claim** or to timely notify us of a **claim** or **suit**, shall not automatically invalidate coverage under this Policy; provided, however, that all of the following conditions are met:

- a. Timely notice must have been inadvertently provided to another insurer; and
- b. Notice must be provided to us as soon as possible once you become aware that such notice was inadvertently provided to another insurer; and
- c. Such subsequent notice to us must not, in our sole discretion: (i) materially prejudice our defense or **claims** handling of any **claim** or **suit**; or (ii) materially increase our costs for any **claim** or **suit**.

Solely as respects Coverage D, in any event, notice must be provided to us during the policy period or during the **extended reporting period**, if applicable.

## **3. Legal Action Against Us**

### **Applicable to Coverages A, B, C and E**

No person or organization has a right under this Policy:

- a. To join us as a party or otherwise bring us into a **suit** asking for damages from an insured; or
- b. To sue us on this Policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### **Applicable to Coverages D**

No third-party action shall lie against us, 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 us.

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 us as a party to any action against the insured to determine the insured's liability, nor shall we be impleaded by the insured or his legal representative. Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve us of any of our obligations hereunder.

#### 4. Other Insurance

##### Applicable to Coverages A, B and E

If other valid and collectible insurance is available to the insured for damages or **loss** we cover under Coverages A, B or E of this Policy, our obligations are limited as follows:

##### a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

However, regardless of whether **b.** below applies, in the event that a written contract or agreement or permit requires this insurance to be primary for any person or organization with whom you agreed to insure and such person or organization is an insured under this policy, we will not seek contributions from any such other insurance issued to such person or organization.

##### b. Excess Insurance

This insurance is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for **your work**;
- (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (c) That is insurance purchased by you to cover your liability as a tenant for **property damage** to premises rented to you or temporarily occupied by you with permission of the owner; or
- (d) If the damages or **loss** arises out of the maintenance or use of aircraft, **autos** or watercraft to the extent not subject to Exclusion **g.** of Coverage A.

(2) Any other insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverage A, B or E to defend the insured against any **suit** if any other insurer has a duty to defend the insured against that **suit**. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the damages or **loss**, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the damages or **loss** in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining damages or **loss**, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Policy.

##### c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we 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 damages or **loss** remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we 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.

#### **Applicable to Coverage D**

You shall promptly upon our request provide us with copies of all policies potentially applicable to **loss** covered by Coverage D. If other valid and collectible insurance is available to the insured for **loss** covered under the terms and conditions of Coverage D, our obligation to the insured shall be as follows:

- a. This insurance is primary, and our obligations are not affected unless any of the other insurance is also primary. In that case, we will share with all such other insurance by the method described in Subparagraph **b.** below.
- b. If all of the other insurance permits contribution by equal shares, we 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, we 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.

#### **5. Representations**

By accepting this Policy, you agree:

- a. The statements in the Declarations and application for this Policy are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We have issued this Policy in reliance upon your representations; and
- d. This Policy embodies all agreements existing between the insured and us or any of our agents relating to this insurance.

Except with respect to coverage provided by **SECTION I – COVERAGES, COVERAGE D – POLLUTION LEGAL LIABILITY**, if you unintentionally fail to disclose to us, prior to the inception date, all existing hazards at the inception date of this Policy, we shall not deny coverage under the applicable Coverage section because of such unintentional failure.

#### **6. Separation of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom **claim** is made or **suit** is brought.

Solely with respect to Coverage D, this condition shall not apply to an insured that is a parent, subsidiary or affiliate of you.

#### **7. Transfer of Rights of Recovery Against Others to Us**

### Applicable to Coverages A, B, C and E

If the insured has rights to recover all or part of any payment we have made under this Policy, those rights are transferred to us. The insured must do nothing after **loss** to impair them. At our request, the insured will bring **suit** or transfer those rights to us and help us enforce them.

### Applicable to Coverage D

In the event of any payment under this Policy, we 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 we made any payment under this Policy. The insured shall do nothing to prejudice our 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 us to the extent of our 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.

### 8. When We Do Not Renew

If we decide not to renew this Policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than sixty (60) days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

### 9. Cancellation

This Policy may be cancelled by the first Named Insured by surrender thereof to us or any of our authorized agents or by mailing to us written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by us only for the reasons stated below by mailing to the first Named Insured at the mailing address shown in the Declarations, written notice stating when not less than sixty (60) days (ten (10) days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.

- a. Material misrepresentation by the insured;
- b. 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;
- c. A change in operations at an **insured property** during the policy period which 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 first Named Insured or by us shall be equivalent to mailing. If the first Named Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If we cancel, 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.

### 10. Sole Agent

The Named Insured first listed in Item 1. of the Declarations shall act on behalf of all other insureds, if any, 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 nonrenewal, and the exercise of the rights provided in **SECTION V - EXTENDED REPORTING PERIOD - COVERAGE D**.

## 11. Assignment

This Policy may not be assigned without our prior written consent. Assignment of interest under this Policy shall not bind us until our consent is endorsed thereon.

## 12. 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 us 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.

## 13. Independent Counsel – Applicable to Coverages A, B, D and E

In the event the insured is entitled by law to select independent counsel to oversee our defense of a **suit** or **claim** at our expense, the attorney fees and all other litigation expenses we must pay to that counsel are limited to the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar **claims** or **suits** in the community where the **claim** or **suit** arose or is being defended.

Additionally, we may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending **claims** or **suits** 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 our requests for information regarding the **claim** or **suit**.

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

## 14. Service of Suit

It is agreed that in the event of failure of us to pay any amount claimed to be due hereunder, we, 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 our 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 General Counsel, Legal Department, 175 Water Street, New York, NY 10038 or his or her representative, and that in any suit instituted against us upon this contract, we 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 therefore, we hereby designate 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 authorized to mail such process or a true copy thereof.

## 15. Multiple Coverages

Any loss, **claim** or **suit** or part thereof arising out of the same event, which may be alleged as covered under any of the Coverages A, B, C, D-1, D-2 or E shall not be subject to coverage under such Coverage parts if we have accepted coverage, provided a defense or coverage has been held to apply for any other loss, **claims** or **suits** or part thereof arising out of the same event under any of the other Coverages A, B, C, D-1, D-2 or E of this Policy. This condition does not apply to any **claim** for medical expenses under Coverage C caused by **bodily injury** which is covered under Coverage A or Coverage E.

## 16. Our Rights and Your Duties in the Event of Pollution Conditions (Applicable to Coverages D and E)

We shall have the right but not the duty to clean up or mitigate **pollution conditions**, upon receiving notice as provided in Section IV.2., of this Policy. Any sums expended in taking such action by us will be deemed incurred or expended by the insured and shall be applied against the limits of coverage and deductible under this Policy. You shall have the duty to clean up or mitigate **pollution conditions** to the extent required by **environmental laws**, by retaining competent professional(s) or contractor(s) mutually acceptable to you and us. We shall have the right but not the duty to review and approve all aspects of any such clean up. You shall notify us of actions and measures taken pursuant to this paragraph.

## 17. Right of Access and Inspection

To the extent the insured has such rights, our 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, the **insured property**. Neither we nor our representatives shall assume any responsibility or duty to the insured or to any other party, person or entity, by reason of such right or inspection. Neither our right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the insured or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. You agree to provide appropriate personnel to assist our representatives during any inspection.

## 18. Access to Information (Applicable to Coverages D and E)

You agree to provide to us 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 us access to interview any insured and review any documents of the insured.

## 19. Concealment or Fraud (Applicable to Coverage D)

Coverage D shall be void if, whether before or after **clean-up costs** are incurred or a **claim** is first made, you have willfully concealed or misrepresented any fact or circumstance material to the granting of such coverage, the description of the **insured property**, or the interest of the insured therein.

## SECTION V - EXTENDED REPORTING PERIOD - COVERAGE D

You shall be entitled to an automatic **extended reporting period** (as described in paragraph **A.** below), and (with certain exceptions as described in Paragraph **B.** below) be entitled to purchase an optional **extended reporting period** for Coverage D, upon termination of coverage as defined in Paragraph **B.3.** of this Section. If you renew this policy, you shall be entitled to a renewal **extended reporting period** (as described in paragraph **C.** below). Neither the automatic, the optional nor the renewal **extended reporting period** shall reinstate or increase any of the limits of liability of this Policy.

### A. Automatic Extended Reporting Period

Provided (i) that you have not renewed this policy or purchased any other insurance to replace this insurance which applies to a **claim** otherwise covered hereunder and (ii) you have not purchased the optional **extended reporting period** available under Paragraph **B.** below, you 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 us of **claims** first made against an insured during the policy period.

A **claim** first made against an insured during the policy period and reported within the automatic **extended reporting period** will be deemed to have been made on the last day of the policy period, provided that the **claim** arises from **pollution conditions** that first commenced before the end of the policy period and is otherwise covered by this Policy. No part of the automatic **extended reporting period** shall apply if the optional **extended reporting period** is purchased.

## B. Optional Extended Reporting Period

You 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) and provided you have not renewed this policy or purchased any other insurance to replace this insurance, as follows:

1. A **claim** first made against an insured 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 made on the last day of the policy period, provided that the **claim** arises from **pollution conditions** that first commenced before the end of the policy period and is otherwise covered by this Policy.
2. We shall issue an endorsement providing an optional **extended reporting period** of up to forty (40) months from termination of coverage hereunder for all **insured properties** and **non-owned locations**, if applicable, or any specific **insured property** or **non-owned location**, provided that you:
  - (a) make a written request for such endorsement to us which is received within thirty (30) days after termination of coverage as defined herein; and
  - (b) pay the additional premium when due. If that additional premium is paid when due, the **extended reporting period** may not be cancelled, 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 you or us, or at the time of our deletion of a location which previously was an **insured property** or **non-owned location**.
4. The optional **extended reporting period** is available to you for not more than 200% of the full Policy premium stated in the Declarations.

## C. Renewal Extended Reporting Period

Provided that you have renewed this policy you shall have the right to the following: a period of sixty (60) days following the expiration of the policy period in which to provide written notice to us of **claims** first made against an insured within sixty (60) days prior to the expiration of the policy period.

A **claim** first made against an insured within sixty (60) days prior to the expiration of the policy period and reported within the renewal **extended reporting period** will be deemed to have been made on the last day of the policy period of this Policy.

## SECTION VI – DEFINITIONS

1. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.

For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.

2. **Auto** means

- (a) A. land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment.

(b) Any other land vehicle that is subject to a compulsory or financial responsibility law in the state where it is licensed or principally garaged.

However, **auto** does not include **mobile equipment**.

3. **Bodily injury** means bodily injury, physical injury, sickness, disease, mental anguish, shock or emotional distress, sustained by any person, including death resulting from any of these at any time.
4. **Cargo** means the insured's goods, products or wastes transported by the insured or by third-party carriers properly licensed to transport such goods, products or wastes.
5. **Claim** means:

**Applicable to Coverages A or B**

A written demand received by the insured alleging liability or responsibility on the part of the insured.

**Applicable to Coverage D or E**

A written demand seeking a remedy or alleging liability or responsibility on the part of the insured for loss.

6. **Certified industrial hygienist** means a licensed professional as established by the American Board of Industrial Hygiene, mutually agreed upon by you and us. We may also exercise the right to require that such **certified industrial hygienist** have certain minimum qualifications with respect to their competency, including experience with similar **microbial matter** remediation.
7. **Clean-up costs** means reasonable and necessary expenses, including legal expenses incurred with our written consent which consent shall not be unreasonably withheld or delayed, for the investigation, removal, abatement or remediation including associated monitoring, or disposal of soil, surfacewater, groundwater, **microbial matter**, legionella pneumophila or other contamination:
  - a. To the extent required by **environmental laws**; or
  - b. With respect to **microbial matter**, in the absence of an applicable **environmental law**, to the extent recommended in writing by a **certified industrial hygienist** or a **registered occupational hygienist** or **registered occupational hygiene technologist**;
  - c. 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 by third parties; or
  - d. With respect to legionella pneumophila, in the absence of an applicable **environmental law**, to the extent required in writing by the United States' Center for Disease Control or Public Health Agency of Canada or local health department.

**Clean-up costs** also include **restoration costs**.

8. **Conveyance** means any **auto**, railcar, train, watercraft or aircraft used in the **transportation** of **cargo**. A **conveyance** does not include pipelines.
9. **Coverage territory** means:

**Applicable to Coverages A, B and C**

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or

c. All other parts of the world if the injury or damages arises out of:

- (1) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
- (2) **Personal and advertising injury** offenses that take place through the Internet or similar electronic means of communication;

Provided that, with respect to (1) and (2) above, the insured's responsibility to pay damages is determined in a **suit** on the merits, in the territory described in a. above or in a settlement we agree to.

(3) Goods or products made or sold by you in the territory described in a. above, but

(a) This insurance does not serve to satisfy any requirement in any country that requires the purchase of locally admitted insurance; and

(b) With respect to **claims** or **suits** instituted in courts in other than the territory described in a. above, we shall have the right, but not the duty to:

(i) Defend any such **suit**; or

(ii) Make such investigation, negotiation and settlement of any such **claim** or **suit** as we deem expedient. You, under our supervision, will make or cause to be made such investigation and defense as may be reasonably necessary for any **claim** or **suit**, which we elect not to investigate, settle or defend. Subject to prior authorization by us, you will effect, to the extent possible, such settlements as we and you deem prudent. We will reimburse you for the cost of any such investigation, settlement or defense, in currency of the United States of America at the rate of exchange prevailing on the date of payment.

(c) We assume no responsibility for furnishing certificates or evidence of insurance or bonds in any country in which we are not an admitted or authorized insurer.

(d) We will not be liable for any fine or penalty imposed on you for:

(i) Your failing to insure in an admitted or authorized insurer; or

(ii) Any other failure of yours to comply with an insurance law of a county, state, province, territory or possession in which we are not an admitted or authorized insurer.

#### **Applicable to Coverage D**

The United States of America (including its territories and possessions), and Canada.

#### **Applicable to Coverage E**

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above and further provided the insured's responsibility to pay damages is determined in a **suit** on the merits, in the territory described in a. above or in a settlement we agree to;

c. All other parts of the world if the injury or damages arises out of goods or products made or sold by you in the territory described in a. above, but;

- (1) This insurance does not serve to satisfy any requirement in any country that requires the purchase of locally admitted insurance; and
- (2) With respect to **claims** or **suits** instituted in courts in other than the territory described in a. above, we shall have the right, but not the duty to:
  - (i) Defend any such **suit**; or
  - (ii) Make such investigation, negotiation and settlement of any such **claim** or **suit** as we deem expedient. You, under our supervision, will make or cause to be made such investigation and defense as may be reasonably necessary for any **claim** or **suit**, which we elect not to investigate, settle or defend. Subject to prior authorization by us, you will effect, to the extent possible, such settlements as we and you deem prudent. We will reimburse you for the cost of any such investigation, settlement or defense, in currency of the United States of America at the rate of exchange prevailing on the date of payment.
- (3) We assume no responsibility for furnishing certificates or evidence of insurance or bonds in any country in which we are not an admitted or authorized insurer.
- (4) We will not be liable for any fine or penalty imposed on you for:
  - (i) Your failing to insure in an admitted or authorized insurer; or
  - (ii) Any other failure of yours to comply with an insurance law of a county, state, province, territory or possession in which we are not an admitted or authorized insurer.

10. **Emergency response costs** means reasonable and necessary expenses, including legal expenses incurred with our written consent, which consent shall not be unreasonably withheld or delayed, incurred by you or third parties to respond to **pollution conditions** that necessitate immediate action; and are incurred within seventy two (72) hours of the first commencement of such **pollution conditions**; or as pre-approved by us in writing.

11. **Employee** includes a **leased worker**. **Employee** does not include a **temporary worker**, except with respect to Coverage D-1 (c.) wherein **employee** includes a **temporary worker**.

12. **Environmental Damage** means:

**Applicable to Coverages E-1, E-2 and E-4**

Physical damage to soil, surfacewater or groundwater caused by **pollution conditions** and giving rise to **clean-up costs**.

**Applicable to Coverage E-3**

a. Physical damage to soil, surfacewater or groundwater caused by **pollution conditions** and giving rise to **clean-up costs**; and

b. Solely with respect to **microbial matter**, physical damage to buildings or other structures caused by **pollution conditions** and giving rise to **clean-up costs**.

**Environmental damage** does not include **property damage**.

13. **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**.

14. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

**15. Extended reporting period** means either the automatic additional period of time or the optional additional period of time or the renewal period of time, whichever is applicable, in which to report **claims** following termination of coverage, as described in **SECTION V - EXTENDED REPORTING PERIOD** of this Policy.

**16. Hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.

**17. Impaired property** means tangible property, other than **your product** or **your work**, that cannot be used or is less useful because:

- a. It incorporates **your product** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of **your product** or **your work**; or
- b. Your fulfilling the terms of the contract or agreement.

**18. Insured contract** means:

**Applicable to Coverages A and E**

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises in excess of thirty (30) consecutive days that indemnifies any person or organization for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for **bodily injury**, **property damage** or **environmental damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

(1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(2) Under which the insured, if an architect, engineer or surveyor, assumes liability for any injury or damage arising out of the insured's rendering or failure to render **professional services**, including

those listed in (1)(a) and (b) above and supervisory, inspection, architectural or engineering services.

**Applicable to Coverage D**

A written contract or agreement with your customer that indemnifies them for **loss** arising from your storage, handling, treatment, processing or disposal of their product or waste on any **insured property**, or any other written contract or agreement submitted to and approved by us and listed on an endorsement to this Policy.

**19. Insured property means:**

**Applicable to Coverage D-1**

Each of the locations identified in the Schedule of Insured Property(ies) Endorsement attached to and made a part of this policy.

**Applicable to Coverage D-2**

A premise located in the **coverage territory** during the time that such premise is owned, occupied, rented or leased by the insured during the policy period.

**20. Leased worker** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.

**21. Loading or unloading** means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, railcar, watercraft or **auto**;
- b. While it is in or on an aircraft, railcar, watercraft or **auto**, or
- c. While it is being moved from an aircraft, railcar, watercraft or **auto** to the place where it is finally delivered;

but solely with respect to Coverages A, B and C, **loading or unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, railcar, watercraft or **auto**.

**22. Location** means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

**23. Loss** means:

**Applicable to Coverage D-1**

- a. Monetary awards or settlements of compensatory damages; where allowable by law, punitive, exemplary, or multiple damage; and civil fines, penalties, or assessments for **bodily injury** or **property damage**;
- b. 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**;
- c. **Clean-up costs**; or

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the **claim** or **suit**, including actual loss of earnings up to \$500 a day because of time off from work.

**Applicable to Coverage D-2**

- a. Monetary awards or settlements of compensatory damages; where allowable by law, punitive, exemplary, or multiple damage; and civil fines, penalties, or assessments for **bodily injury** or **property damage**;
- b. 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;
- c. **Emergency response costs**; or
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the **claim** or **suit**, including actual loss of earnings up to \$500 a day because of time off from work.

**Applicable to Coverage E**

- a. Monetary awards or settlements of compensatory damages; where allowable by law, punitive, exemplary, or multiple damage; and civil fines, penalties, or assessments for **bodily injury**, **property damage** or **environmental damage**;
- b. **Clean-up costs**; or
- c. **Emergency response costs**.

**24. Microbial matter** means fungi, mold or mildew, whether or not such **microbial matter** is living.

**25. Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the **transportation** of persons or **cargo**.

However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressor, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However **mobile equipment** does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

**26. 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.

**27. Non-owned location** means each of the locations identified in the Schedule of Non-Owned Locations(s) Endorsement attached to and made a part of this Policy.

**28. Nuclear material** means source material, special nuclear material or by-product material which have the meanings given them in the Atomic Energy Act.

**29. Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**30. Personal and advertising injury** means injury, including consequential **bodily injury**, arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your **advertisement**;

- g. Infringing upon another's copyright, trade dress or slogan in your **advertisement**; or
- h. Discrimination or humiliation that results in injury to the feelings or reputation of a natural person provided such discrimination or humiliation:
  - (1) is done without the direction, knowledge or consent of (i) any insured; or (ii) any **executive officer**, director, officer, stockholder, partner or member of any insured; and
  - (2) is not directly or indirectly related to employment, former or prospective employment, termination of employment, or application for employment of any person or persons by any insured.

**31. Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. **Pollutants** shall include **Microbial Matter** and legionella pneumophila.

**32. Pollution conditions** means the discharge, dispersal, release or escape of **pollutants** 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.

**33. Products - completed operations hazard:**

a. Includes all **bodily injury, property damage or environmental damage** occurring away from premises you own or rent and arising out of **your product or your work** except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, **your work** will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed;
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site;
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include **bodily injury, property damage or environmental damage** arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the **loading or unloading** of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

**34. Professional services** means those architectural, engineering, consulting, land surveying or landscape architecture services that are performed for a fee by you or on your behalf. **Professional services** does not include:

- a. Services for or associated with the management or operation of any facility by you or on your behalf.
- b. Any evaluation, consultation, opinion or advice given by you, or others for whom you are legally liable, in connection with **your product**; or

- c. Any actual construction, erection, demolition, dismantling, assembly, fabrication, installation or remediation services performed by you or on your behalf, including the means, methods, techniques, sequences and procedures employed in the performance of those operations by you or on your behalf.

**35. Property damage** means:

**Applicable to Coverages A and B**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it.

**Applicable to Coverage D-1 a. and D-2 a.**

- a. Physical injury to or destruction of tangible property, other than tangible property owned or rented by or in the care, custody or control of the insured, including the resulting loss of use, but not diminution in value, thereof;
- b. Loss of use but not diminution in value, of tangible property, other than tangible property owned or rented by or in the care, custody or control of the insured, that has not been physically injured or destroyed; or
- c. **Natural Resource Damage.**

**Applicable to Coverage D-1. b and c. and Coverage D-2 b.**

- a. Physical injury to or destruction of tangible property, other than tangible property owned or rented by or in the care, custody or control of the insured, including the resulting loss of use and diminution in value thereof;
- b. Loss of use, but not diminution in value, of tangible property, other than tangible property owned or rented by or in the care, custody or control of the insured, that has not been physically injured or destroyed; or
- c. **Natural Resource Damage.**

**Applicable to Coverage E**

- a. Except with respect to Coverage E-4, physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Solely with respect to coverage E-4, physical injury to tangible property, including the resulting loss of use and diminution in value thereof. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- d. **Natural Resource Damage.**

In no event under this Policy shall **property damage** include **clean-up costs** or **environmental damage**.

For the purpose of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted

to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 36. Registered occupational hygienist and registered occupational hygiene technologist** means a licensed professional as established by the Canadian Registration Board of Occupational Hygienist, mutually agreed upon by you and us. We may also exercise the right to require that such **registered occupational hygienist and registered occupational hygiene technologist** have certain minimum qualifications with respect to their competency, including experience with similar **microbial matter** remediation.
- 37. Responsible insured** means your manager or supervisor responsible for environmental affairs, control or compliance, or any manager of the **insured property**, or any of your officers, directors or partners.
- 38. Restoration costs** means reasonable and necessary costs incurred by the insured with our written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property that is damaged during work performed in the course of incurring **clean-up costs**, whether or not such property is also damaged by **pollution conditions**, to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **clean-up costs**. **Restoration costs** do not include costs associated with improvements or betterments.
- 39. Suit** means a civil proceeding in which damages because of **bodily injury, property damage, environmental damage or personal and advertising injury** to which this insurance applies are alleged. **Suit** includes:
- a. An arbitration proceeding in which such damages or **clean-up costs** are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or **clean-up costs** are claimed and to which the insured submits with our consent.
- 40. Temporary worker** means a person who is furnished to you to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.
- 41. Transportation** means the movement of **cargo**, beyond the boundaries of premises owned, rented, leased or occupied by you, by a **conveyance** while in due course of transit from the time of movement from its point of origin until its delivery to its final destination, including **loading or unloading** onto or from the **conveyance**. **Transportation** does not include **cargo** off-loaded from the conveyance, or **cargo** in or on a **conveyance** at rest for a period longer than seven (7) days prior to reaching its final destination.
- 42. Underground Storage Tank** means any tank that has at least ten (10) percent of its volume below ground in existence at the inception date of the policy, or installed thereafter including associated underground piping connected to the tank.
- 43. Volunteer worker** means a person who is not your **employee**, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 44. Your product** means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed by:
    - (1) You;
    - (2) Others trading under your name; or
    - (3) A person or organization whose business or assets you have acquired; and

- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

**Your product** includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
- b. The providing of or failure to provide warnings or instructions.

**45. Your work** means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

**Your work** includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**; and
- b. The providing of or failure to provide warnings or instructions.

**The remainder of this page has been intentionally left blank. Policy Signature Page shall immediately follow.**

Specimen