

# ENVIRONMENTAL INFRASTRUCTURE SOLUTIONS POLICY

## NOTICE

COVERAGES B AND C CONTAIN CLAIMS MADE AND REPORTED REQUIREMENTS AND HAVE REPORTING REQUIREMENTS DIFFERENT FROM THOSE FOR COVERAGE A. PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE THE INSURED'S RIGHTS AND DUTIES, AND WHAT IS AND IS NOT COVERED. VARIOUS PROVISIONS THROUGHOUT THIS POLICY RESTRICT OR EXCLUDE COVERAGE. PLEASE NOTE THAT CERTAIN COVERAGE IS DEPENDENT UPON IMMEDIATE NOTICE TO THE COMPANY. PLEASE NOTE THAT AMOUNTS INCURRED FOR LEGAL DEFENSE REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS AND SHALL BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT. THE DETERMINATION OF WHETHER BODILY INJURY, PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE HAS OCCURRED DURING THE POLICY PERIOD, AND OTHER POLICY PROVISIONS, MAY BE DIFFERENT FROM OTHER POLICIES THE NAMED INSURED HAS PURCHASED.

TERMS APPEARING IN BOLD-FACED TYPE OTHER THAN SECTION HEADINGS ARE DEFINED IN SECTION VII.

In consideration of payment of the premium and deductible by the **First Named Insured** and in reliance upon the statements in the **Named Insured's** Application(s) made a part hereof, the Company agrees with the **Insured**, subject to all the terms, exclusions and conditions of this Policy, as follows:

### I. INSURING AGREEMENTS

#### 1. COVERAGES

##### COVERAGE A – CONSTRUCTION COVERED OPERATIONS LEGAL LIABILITY

- a. The Company will pay on behalf of the **Insured** all sums that the **Insured** shall become legally obligated to pay as **Loss** as a result of **Claims** for **Bodily Injury, Property Damage or Environmental Damage** resulting from **Pollution Conditions** caused by **Construction Covered Operations**. The **Pollution Conditions** must be unexpected and unintended from the standpoint of the **Insured**. The **Bodily Injury, Property Damage, or Environmental Damage** must occur during the **Policy Period**.
- b. Progressive, indivisible **Bodily Injury, Property Damage or Environmental Damage** over a period of days, weeks, months or longer caused by the same, related or continuous **Pollution Conditions** shall be deemed to have occurred only on the date of first exposure to such **Pollution Conditions**.

However, if the date of first exposure is before the inception date of the first Contractors Pollution Liability Policy the Company issued to the **Named Insured** providing coverage for **Bodily Injury, Property Damage or Environmental Damage** which occurs during the policy period, or can not be determined, but the progressive, indivisible **Bodily Injury, Property Damage or Environmental Damage** continues in fact to exist during this **Policy Period**, it will be deemed to have occurred only on the inception date of such first Contractors Pollution Liability Policy providing coverage for **Bodily Injury, Property Damage, or Environmental Damage** which occurs during the policy period.

- c. If the same, related or continuous **Pollution Conditions** result in **Bodily Injury, Property Damage or Environmental Damage** which occurs during the policy periods of different Contractors Pollution Liability policies the Company has issued to the **Named Insured**, providing coverage for **Bodily Injury, Property Damage or Environmental Damage** which occurs during the policy period:
  - (i) All such **Bodily Injury, Property Damage or Environmental Damage** shall be deemed to have occurred only during the first policy period of such Contractors Pollution Liability

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION

policies in which any of the **Bodily Injury, Property Damage or Environmental Damage** occurred; and

- (ii) All **Loss** from all such **Bodily Injury, Property Damage or Environmental Damage** shall be subject to the "Each Loss" Limit applicable under the policy described in Paragraph c.(i) above.

#### **COVERAGE B – OPERATIONS & MAINTENANCE COVERED OPERATIONS AND NEW ON- AND OFF-SITE POLLUTION CONDITIONS LEGAL LIABILITY**

The Company will pay on behalf of the **Insured** all sums that the **Insured** shall become legally obligated to pay as **Loss** as a result of **Claims** for **Bodily Injury, Property Damage or Clean-Up Costs** resulting from **Pollution Conditions** on, under or migrating from the **Insured Property**, or resulting from **Pollution Conditions** caused by **O&M Covered Operations**. **Claims** for **Bodily Injury, Property Damage or Clean-Up Costs** must be first made against the **Insured** during the **Policy Period** and reported to the Company as set forth in Subparagraph 2. below.

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

1. Such **Pollution Conditions** must commence on or after the **Inception Date** and must originate at the **Insured Property**;
2. Such **Claims** are first made against the **Insured** and reported to the Company, in writing, as provided in Section III. **CLAIMS AND NOTICE PROVISIONS, A. INSURED'S DUTIES WHEN THERE IS A CLAIM OR EMERGENCY RESPONSE COSTS**, subparagraph 1., of this Policy, during the **Policy Period** or during the Extended Reporting Period if applicable.
3. Such **Pollution Conditions** must be unexpected and unintended from the standpoint of the **Insured**.

#### **COVERAGE C - EMERGENCY RESPONSE COSTS**

The Company will pay **Emergency Response Costs** resulting from **Pollution Conditions** that commenced on or after the **Inception Date** on, under or migrating from the **Insured Property** or caused by **Construction Covered Operations, O&M Covered Operations, or Transportation**. **Emergency Response Costs** must be first incurred by the **Insured** and reported to the Company during the **Policy Period**.

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

1. The **Insured** must report the **Emergency Response Costs** to the Company, in writing, as provided in Section III. **CLAIMS AND NOTICE PROVISIONS, A. INSURED'S DUTIES WHEN THERE IS A CLAIM OR EMERGENCY RESPONSE COSTS**, Subparagraph 1. and Subparagraph 3. of this Policy, during the **Policy Period**.
2. Such **Pollution Conditions** must be unexpected and unintended from the standpoint of the **Insured**.

## 2. DEFENSE

When a **Claim** is made against the **Insured** to which Section I. **INSURING AGREEMENTS, 1. COVERAGES** applies, the Company has the right to defend, including but not limited to the right to appoint counsel and the duty to defend such **Claim**, even if groundless, false, or fraudulent. All such **Claims** shall be defended on a "joint defense" basis, subject to applicable law including but not limited to the applicable rules of professional conduct applicable to legal counsel, under which:

- a. the Company shall appoint one counsel to defend all of the **Insureds** who are or may be involved with respect to any such **Claim**; and
- b. all of the **Insureds** shall have the obligation to cooperate with respect to the investigation and joint defense of any such **Claims**.

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

## 3. SETTLEMENT

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

## II. EXCLUSIONS

### 1. COMMON EXCLUSIONS – APPLICABLE TO ALL COVERAGES

This Policy does not provide coverage and the Company will not pay any **Claims** or **Loss**:

#### A. PRIOR KNOWLEDGE:

Based upon or arising from **Pollution Conditions** existing prior to the **Inception Date** 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.

#### B. INTENTIONAL NON-COMPLIANCE:

Based upon or arising out of any **Responsible Insured's** knowing, 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.

#### C. CONTRACTUAL LIABILITY:

1. Based upon or arising out of liability of others assumed by an **Insured** under any contract or agreement. This Exclusion does not apply to liability:

- a. Assumed in a contract or agreement that is an **Insured Contract**, provided that the **Claim** occurs subsequent to the execution of the contract or agreement; or

- b. That a **Named Insured** would have in the absence of the contract or agreement.
2. Solely with respect to **Emergency Response Costs**, based upon or arising out of liability of others assumed by an **Insured** under any contract or agreement.

**D. EMPLOYERS LIABILITY:**

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

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

However, solely with respect to **Construction Covered Operations** and **O&M Covered Operations**, this Exclusion does not apply to liability assumed by a **Named Insured** under an **Insured Contract**.

**E. WORKERS COMPENSATION:**

Based upon or arising out of any obligation for which an **Insured** or any party may be held liable under any unemployment, Workers' Compensation, disability benefits, or other similar laws.

**F. WAR:**

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

**G. INSURED VS. INSURED:**

Brought by an **Insured** against another **Insured**. However, this Exclusion does not apply to:

1. **Claims** initiated by third parties; or
2. **Claims** that arise out of an indemnification given by one **Named Insured** to another **Named Insured** in an **Insured Contract**.

**H. CRIMINAL FINES, PENALTIES, AND ASSESSMENTS:**

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

**I. PRODUCT LIABILITY:**

Based upon or arising out of the sale, distribution, design or manufacture of a product unless installed as part of **Construction Covered Operations**.

**J. TRANSFER, STORAGE OR DISPOSAL FACILITY:**

Based upon or arising out of any waste, products or materials which have been delivered to a transfer, storage or disposal facility located beyond the boundaries of a job site where **Construction Covered Operations** or **O&M Covered Operations** are being performed.

However, this Exclusion does not apply to **Loss** based upon or arising out of any waste or any

products or materials transported, shipped, or delivered to a transfer, storage or disposal facility utilized by or on behalf of a **Named Insured** provided that such wastes, products or materials originated from a site at which a **Named Insured** is performing **Construction Covered Operations** or **O&M Covered Operations** and such transfer, storage or disposal facility is:

1. Properly licensed to accept and transfer, store and dispose of such waste, products or materials and is in compliance with applicable **Environmental Laws**;
2. As of the **Inception Date**, such facility is not listed, not proposed and has never been listed on the federal National Priorities List (Superfund), State equivalent list, or local equivalent list;
3. As of the **Inception Date**, such facility is not subject to Federal information requests under Section 104(e) of CERCLA or Section 3007 (a) of RCRA or superceding sections, or State or Local equivalent requests; and
4. As of the **Inception Date** or date that such waste, products or material is accepted by such facility from a **Named Insured**, whichever is later, the non-owned location, its owners and operators are not in bankruptcy or financial insolvency.

**K. PROFESSIONAL LIABILITY:**

Based upon or arising out of professional services rendered or failed to be rendered by a **Named Insured** or others for whom a **Named Insured** is legally liable, including, but not limited to, recommendations, opinions or strategies rendered for architectural, consulting, design or engineering work, such as drawings, designs, maps, reports, surveys, change orders, plan specifications, assessment work, remedy selections, site maintenance, equipment selection, or related construction management, supervisory, inspection or engineering services. This Exclusion does not apply to any **Claims** alleging liability on the basis of improper supervision or lack of supervision by a **Named Insured** of any subcontractors performing **Construction Covered Operations** or **O&M Covered Operations**.

**L. NUCLEAR LIABILITY:**

Based upon or arising out of the radioactive, toxic or explosive properties of **Nuclear Material**, and for which the United States Department of Energy or any other government authority has indemnified the **Insured**, or for which the Price Anderson Act provides protection for the **Insured**.

**M. PROPERTY DAMAGE:**

Based upon or arising out of:

1. **Property Damage** to a **Named Insured's Products**; or
2. **Property Damage** to that particular part of real property on which a **Named Insured** is performing **Construction Covered Operations**, including any **Property Damage** caused by materials, parts or equipment furnished in connection with such **Construction Covered Operations**. However, this Exclusion does not apply to **Completed Operations**.

**N. PROPERTY DAMAGE TO MOTOR VEHICLES:**

Based upon or arising out of **Property Damage** to any **Motor Vehicle** utilized during **Transportation**. This Exclusion does not apply to **Claims** made by third-party carriers of the **Insured** for such **Property Damage** arising from the **Insured's** negligence.

**O. THIRD-PARTY CARRIER CLAIMS:**

Made by a third-party carrier, its agents or employees, for **Bodily Injury, Property Damage** or

**Environmental Damage**, whether or not the **Bodily Injury, Property Damage** or **Environmental Damage** were directly incurred by such third-party carrier. However, this Exclusion does not apply to **Claims** arising from the **Insured's** negligence.

**P. INTERNAL EXPENSES:**

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

**2. COVERAGE B EXCLUSION**

The following exclusion applies to Coverage B.

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

**A. MATERIAL CHANGE IN USE:**

Arising from a material change in use of the **Insured Property(s)** which results in a use which is different from the Intended Use disclosed in the application process.

**3. COVERAGE B AND C EXCLUSIONS**

The following exclusions apply to Coverages B and C.

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

**A. ASBESTOS AND LEAD:**

Solely with respect to **Claims** for **Clean-Up Costs** under Coverage B and **Emergency Response Costs**, based upon or arising from asbestos or any asbestos-containing materials or lead-based paint installed or applied in, on or to any building or other structure. This Exclusion does not apply to **Clean-Up Costs** or **Emergency Response Costs** for the remediation of soil and groundwater.

**B. IDENTIFIED UNDERGROUND STORAGE TANK:**

Arising from **Pollution Conditions** resulting from an **Underground Storage Tank** whose existence is known by a **Responsible Insured** as of the **Inception Date** and which is located on the **Insured Property** unless such **Underground Storage Tank** is specifically scheduled on this Policy by endorsement. However, this Exclusion shall not apply to **Emergency Response Costs** resulting from **Pollution Conditions** caused by **Construction Covered Operations**.

**III. CLAIMS AND NOTICE PROVISIONS**

**A. INSURED'S DUTIES WHEN THERE IS A CLAIM OR EMERGENCY RESPONSE COSTS**

As a condition precedent to the right of coverage provided by this Policy, the **Insured** must do the following:

1. In the event of a **Claim** or **Emergency Response Costs**, the **Insured** shall give the Company's representative(s), as identified in this paragraph, immediate notice of receipt of the **Claim** by the **Insured** or **Emergency Response Costs** incurred by the **Insured**.

All **Claims** and **Emergency Response Costs** shall be reported to:

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

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

2. The **Insured** shall furnish information at the request of the Company. When a **Claim** has been made, the **Insured** shall forward the following to the Company as soon as practicable after receipt, or receipt by the **Insured's** representative or agent:
  - (a) All correspondence between the **Insured** and any third party claimant;
  - (b) All demands, summons, notices or other processes or papers filed with a court of law, administrative agency or an investigative body;
  - (c) All technical reports, laboratory data, field notes or any other documents generated by persons hired by the **Insured** to investigate the **Claim**;
  - (d) All expert reports, investigations and data collected by experts retained by the **Insured** whether or not the **Insured** intends to use the material for any purpose; and
  - (e) Any other information developed or discovered by the **Insured** concerning the **Claim** whether or not deemed by the **Insured** to be relevant to the **Claim**.
3. When **Emergency Response Costs** have been incurred, the **Insured** shall forward to the Company within seven (7) days of the commencement of **Pollution Conditions** for which the **Emergency Response Costs** have been incurred all information including but not limited to: the cause and location of the **Pollution Conditions**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such **Emergency Response Costs**.
4. All **Insureds** shall cooperate with the Company to the fullest extent possible by providing the assistance necessary to adjust, investigate, and defend the **Claim** or adjust and investigate the **Emergency Response Costs**, and shall participate in discussions regarding cleanup or performance of a cleanup should the Company exercise its rights under Paragraph B., Subparagraph 1. of this Section.
  - (a) The **Insured** agrees to provide the Company access to interview any employee, agent, representative, or independent contractor of the **Insured** and review any documents of the **Insured** concerning the **Claim** or **Emergency Response Costs**.
  - (b) Upon the Company's request, the **Insured** shall attend hearings, depositions, and trials, assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses, and offer all reasonable assistance in the investigation and defense of **Claims** made under this Policy.
  - (c) No **Insured** shall admit liability, waive, or extend any statute or period of limitation, or, except at such **Insured's** own cost, voluntarily make any payment, assume any obligation, or incur any expense except for **Emergency Response Costs**, without the Company's prior written consent.

- (d) An **Insured**, as often as the Company may reasonably require, shall separately submit to examination(s) under oath.
- (e) The **Insured** shall refrain from discussing the facts and circumstances of any **Claim** or **Emergency Response Costs** with anyone other than legal counsel or representatives of the Company.

## **B. RIGHTS OF THE COMPANY AND DUTIES OF THE INSURED IN THE EVENT OF POLLUTION CONDITIONS**

### **1. The Company's Rights**

The Company shall have the right but not the duty to participate in decisions regarding **Clean-Up Costs** and to assume direct control over all aspects of the cleanup and the adjustment of any **Claim** or **Emergency Response Costs** up to the Limit of Liability. In case of the exercise of this right, the **Insured**, on demand of the Company, shall promptly reimburse the Company for any element of **Loss** falling within the **Insured's** deductible.

### **2. Duties of the Insured**

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

## **C. MEDIATION**

If a **Named Insured** and the Company jointly agree to utilize **Mediation** as a means to resolve a **Claim** made against the **Insured**, and if such **Claim** is resolved as a direct result of the **Mediation**, the **First Named Insured's** deductible obligation shall be reduced by 50% subject to a maximum reduction of \$25,000. The Company shall reimburse the **First Named Insured** for any such reimbursable deductible payment made prior to the **Mediation** as soon as practicable after the conclusion of the **Mediation**.

## **IV. LIMITS OF LIABILITY AND DEDUCTIBLE**

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

### **A. LIMITS OF LIABILITY - AGGREGATE**

The Company's total liability for all **Loss** shall not exceed the "Aggregate" stated in Item 3. of the Declarations.

Once the "Aggregate" Limit of Liability has been exhausted, the Company shall not defend any **Claim**, or pay **Loss**.

### **B. EACH INCIDENT LIMIT**

Solely with respect to Coverages A and B, and subject to Paragraph **A. LIMITS OF LIABILITY - AGGREGATE** above, the **Each Incident** Limit for Coverages A and B stated in Item 3. of the Declarations is the most the Company will pay for all **Loss** arising out of **Each Incident**. Once the

**Each Incident** Limit of Liability has been exhausted, the Company shall not defend any **Claim**, or pay **Loss**.

Solely with respect to Coverage C, and subject to Paragraph **A. LIMITS OF LIABILITY – AGGREGATE** above, the most the Company will pay for all **Emergency Response Costs** arising out of **Each Incident** is \$250,000.

#### **C. MULTIPLE CLAIMS**

If the **Insured** first notifies the Company of a **Claim** or **Emergency Response Costs** during the **Policy Period** in accordance with Section III., then all **Claims** or **Emergency Response Costs** arising out of **Each Incident** that are reported to the Company under any subsequent Contractors Pollution Liability Policy(ies), Pollution Legal Liability policy(ies) or Environmental Infrastructure Solutions policy(ies) issued by the Company shall be deemed to have been first reported to the Company during the **Policy Period**.

#### **D. DEDUCTIBLE - EACH INCIDENT**

The **Each Incident** deductible stated in Item 4. of the Declarations applies to all **Loss** arising out of **Each Incident**. The deductible shall be paid by the **First Named Insured** and remain uninsured. The Limits of Liability shall apply in excess of the deductible.

The Company may advance payment of part or all of the deductible amount and, upon notification of such payment made, the **First Named Insured** shall promptly reimburse the Company for the deductible amounts advanced by the Company.

#### **V. EXTENDED REPORTING PERIOD**

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

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

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

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

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

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

1. A **Claim** first made during the **Policy Period** and reported within the Optional Extended Reporting Period, if purchased in accordance with the provisions contained in subparagraph 2. immediately below, will be deemed to have been reported during the **Policy Period**, provided that the **Claim** arises from **Pollution Conditions** that commenced before the end of the **Policy Period** and are otherwise covered by this Policy.
2. The Company shall issue an endorsement providing an Optional Extended Reporting Period of up to twelve (12) months from termination of coverage hereunder, provided that the **First Named Insured**:
  - (a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
  - (b) pays the additional premium when due. If that additional premium is paid when due, the Extended Reporting Period may not be canceled, provided that all other terms and conditions of the Policy are met.
3. Termination of coverage occurs at the time of cancellation or nonrenewal of this Policy by the **First Named Insured** or by the Company, or at the time of deletion of a location which previously was an **Insured Property**.

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

## VI. CONDITIONS

### A. HOW OTHER INSURANCE APPLIES

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

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

### B. BANKRUPTCY

Bankruptcy or insolvency of the **Insured's** estate shall not relieve the Company of any of its obligations under this Policy.

### C. APPLICATION

The statements in the Application(s) are the **Named Insureds'** representations and are deemed material. This Policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the Application(s) shall be deemed part of this Policy. This Policy embodies all agreements existing between the **Named Insureds** and the Company or any of its agents relating to

this Policy.

#### D. AUDIT

The Company may examine and audit a **Named Insured's** books and records at any time during the **Policy Period** and within three (3) years after the final termination of this Policy, as far as they relate to this Policy.

#### E. ACTION AGAINST THE COMPANY

No third-party action shall lie against the Company, unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment against the **Insured** after actual trial or by written agreement of the **Insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the **Insured** to determine the **Insured's** liability, nor shall the Company be impleaded by the **Insured** or his legal representative.

#### F. CONCEALMENT OR FRAUD

If the **Insured** reports any **Claim** or **Emergency Response Costs** knowing such **Claim** or **Emergency Response Costs** to be false or fraudulent, this Policy shall become void and all insurance coverage hereunder shall be forfeited. Further, this entire Policy shall be void if, whether before or after **Emergency Response Costs** are incurred or a **Claim** is first made, a **Named Insured** has willfully concealed or misrepresented: (i) any fact or circumstance material to the granting of coverage under this Policy, or (ii) any **Insured's** operations.

#### G. SERVICE OF SUIT

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

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

#### H. INSPECTION

The Company shall be permitted but not obligated to inspect, sample, and monitor on a continuing basis the **Insured's** property or operations, at any time. Neither the Company's right to make inspections, sample, and monitor, nor the actual undertaking thereof nor any report thereon, shall

constitute an undertaking, on behalf of the **Insured** or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule, or regulation.

#### I. **SOLE AGENT**

The **First Named Insured** 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 non-renewal, and the exercise of the rights provided in the Extended Reporting Period section.

#### J. **ASSIGNMENT**

This Policy may be assigned with the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed thereon.

#### K. **SUBROGATION**

If there is a payment made by the Company under this Policy, the Company shall be subrogated to all the **Insured's** rights of recovery against any person or organization. The **Insured** shall cooperate with the Company and do whatever is necessary to secure these rights. The **Insured** shall do nothing after a **Loss** to waive or prejudice such rights.

Any recovery as a result of subrogation proceedings arising out of payment of **Loss** under this Policy (net of expenses incurred in making such recovery) shall accrue first to the **Insured** to the extent of any payment in excess of the limit of coverage of the Policy, then pro-rata to the **Insured** and the Company in proportion to the amount each actually paid as a result of judgment, settlement or defense of a **Claim** or **Emergency Response Costs**.

The Company agrees to waive this right of subrogation against a client of the **Insured** to the extent that the **Insured** had prior to a **Claim** or **Emergency Response Costs**, a written agreement to waive such rights.

#### L. **CHANGES**

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

#### M. **CANCELLATION**

This Policy may be cancelled by the **First Named Insured** by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company by mailing to the **First Named Insured** at the address shown in the Policy, 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.

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 the Company shall be equivalent to mailing. The Minimum Earned Premium shall be 25% as of the policy **Inception Date**. If the **First Named Insured** cancels, earned premium shall be computed in accordance with the customary short rate table and procedure after applying the minimum earned premium stated above. If the Company cancels, earned premium shall be computed pro rata after applying the minimum

earned premium stated above. 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.

#### **N. SEPARATION OF INSUREDS**

Except with respect to the Limits of Insurance, Section II. Paragraph G. (Insured vs. Insured exclusion) and any rights or duties specifically assigned to the **First Named Insured**, this insurance applies: 1. As if each **Named Insured** were the only **Named Insured**; and 2. Separately to each **Insured** against whom a **Claim** is made or suit is brought. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **Insured** shall not prejudice the interest of coverage for another **Insured** under this Policy. Provided, however, that this Condition shall not apply to any entity who is a parent, subsidiary or affiliate of a **Named Insured** that misrepresented, concealed or breached a term or condition, or violated a duty under this Policy.

#### **O. INDEPENDENT COUNSEL**

In the event the **Insured** is entitled by law to select independent counsel to oversee the Company's defense of a **Claim** at the Company's expense, the attorney fees and all other litigation expenses the Company must pay to that counsel are limited to the rates the Company actually pays to counsel the Company retains in the ordinary course of business in the defense of similar **Claims** in the community where the **Claim** arose or is being defended.

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

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

#### **P. CONDITIONS OF PAYMENT**

It is hereby agreed that any payment under this Policy shall only be made in full compliance with all United States of America economic and trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

#### **Q. TERRITORY**

This Policy only applies to:

1. **Claims**, which are made or brought, or
2. **Emergency Response Costs** incurred

in the United States, its territories or possessions, or Canada, its provinces or territories.

However, this Policy does not apply to **Loss** resulting from **Pollution Conditions** that take place anywhere coverage would be in violation of any U.S. economic or trade sanctions such as, but not limited to, those sanctions administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").

#### **R. VOLUNTARY PAYMENTS**

No **Insured** shall voluntarily enter into any settlement, or make any payment or assume any obligation, without the Company's consent which shall not be unreasonably withheld, except at the **Insured's** own cost. This Condition shall not apply if such payment or obligation is an **Emergency Response Cost** or is pursuant to **Environmental Laws** that require immediate remediation of **Pollution Conditions**.

## VII. DEFINITIONS

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

B. **Claim** means a written demand received by an **Insured** seeking a remedy and alleging liability or responsibility on the part of a **Named Insured** for **Bodily Injury, Property Damage, Clean-Up Costs** or **Environmental Damage**.

C. **Claim Expenses** means:

1. Fees charged by any lawyer designated by the Company; and
2. All other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, if authorized by the Company.

**Claim Expenses** shall not include:

1. The salaries of any employee of the Company; and
2. Costs, charges or other expenses incurred by the **Insured** for goods supplied or services performed by or on behalf of the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, unless such costs, charges or other expenses are incurred with the prior written approval of the Company at its sole discretion.

D. **Clean-Up Costs** means reasonable and necessary expenses incurred in the investigation, removal, remediation including the associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:

1. To the extent required by **Environmental Laws**, or specifically mandated by court order, the government or any political subdivision of the United States of America or any state or any municipality thereof, or Canada or any province thereof; or
2. Which 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.

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

E. **Completed Operations** means work from **Construction Covered Operations** that has been completed, including materials, parts or equipment furnished in connection with such work or operations.

**Construction Covered Operations** will be deemed completed at the earliest of the following times:

1. When all of the work called for in the **Insured's** contract has been completed;
2. When all of the work to be done at the job site has been completed if the **Insured's** contract calls for work at more than one job site; or
3. 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 sub-contractor 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.

**F. Construction Covered Operations** means those construction activities performed by or on behalf of a **Named Insured** at the **Insured Property**. **Construction Covered Operations** includes **Transportation and Completed Operations**.

**G. Each Incident** means the same, related, or continuous **Pollution Conditions**.

**H. Emergency Response Costs** means reasonable and necessary expenses, including legal expenses incurred with the Company's written consent which consent shall not be unreasonably withheld or delayed, incurred in the remediation of soil, surfacewater, groundwater or other contamination that must be incurred:

- i. in response to **Pollution Conditions** that necessitate immediate action; and
- ii. within thirty-six (36) hours of the commencement of such **Pollution Conditions**; or

as approved by the Company in writing.

**I. Environmental Damage** means physical damage to soil, surfacewater or groundwater, or plant or animal life, caused by **Pollution Conditions** and giving rise to **Clean-Up Costs**. **Environmental Damage** does not include **Property Damage**.

**J. 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**. **Environmental Laws** does not include laws, statutes, rules, regulations, ordinances or guidance documents promulgated, passed or issued by a **Named Insured** that solely apply to **Pollution Conditions** associated with an **Insured Property(s)**.

**K. First Named Insured** means the person or entity first listed in Item 1. of the Declarations.

**L. Inception Date** means the first date set forth in Item 2. of the Declarations.

**M. Insured** means:

1. The **Named Insureds**;
2. Any person who is or was a director, officer, partner, member, or employee, including a temporary or leased employee, of a **Named Insured** while acting within the scope of his or her duties as such;
3. Joint ventures in which a **Named Insured** is named as a co-venturer but only with respect to the liability arising out of such **Named Insured's Construction Covered Operations** or **O&M Covered Operations**; and
4. A Limited Liability Company in which a **Named Insured** is a member and all members but only with respect to the liability arising out of such **Named Insured's Construction Covered Operations** or **O&M Covered Operations**.

**N. Insured Contract** means:

1. An obligation, as required by ordinance, to indemnify a municipality, except in connection with

work for a municipality;

2. That part of any other contract or agreement pertaining to the **Named Insured's Construction Covered Operations** or **O&M Covered Operations** (including an indemnification of a municipality in connection with work performed for a municipality) whereby a **Named Insured** assumes the tort liability of another **Named Insured** 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.
3. A contract or agreement submitted to and approved by the Company, and scheduled as an **Insured Contract** by endorsement to this Policy.

**O. Insured Property** means each of the location(s) identified in Item 5. of the Declarations.

**P. Loss** means:

1. With respect to **Claims** for **Bodily Injury** or **Property Damage**:

- a. Monetary awards or settlements of compensatory damages;
- b. where allowable by law, punitive, exemplary, or multiple damages; and
- c. civil fines, penalties, or assessments;

2. **Clean-Up Costs**;

3. **Emergency Response Costs**; and

4. **Claim Expenses**.

**Q. Mediation** means non-binding intervention by a neutral third party.

**R. Microbial Matter** means fungi, mold or mildew, whether or not such **Microbial Matter** is living.

**S. Named Insured** means the **First Named Insured** and any other entity(ies) added as **Named Insured(s)** via endorsement to this Policy.

**T. Named Insured's Product** means goods, products, or pieces of equipment, including component parts thereof and including other products in which such goods, products or pieces of equipment are incorporated, which are manufactured, sold, furnished, or supplied by a **Named Insured**, any subsidiary of a **Named Insured**, any entity which wholly or partly owns, operates or manages a **Named Insured** or any subsidiary of such entity, or any person under license from a **Named Insured**.

**U. 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.

**V. Nuclear Material** means Source Material, Special Nuclear Material or By-Product Material as defined in the Atomic Energy Act.

**W. O&M Covered Operations** means operations and maintenance activities performed at the **Insured Property** pursuant to a contract of which a **Named Insured** is a party, including materials, parts or equipment furnished in connection with such activities. **O&M Covered Operations** also includes **Transportation**.

**X. Policy Period** means the period set forth in Item 2. of the Declarations, or any shorter period arising as a result of cancellation of this Policy.

**Y. Pollution Conditions** means the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of **Construction Covered Operations** or **O&M Covered Operations**, and such release or dispersal is unexpected and unintended from the standpoint of the **Insured**. **Pollution Conditions** shall not include **Microbial Matter**.

**Z. Property Damage** means:

1. Physical injury to or destruction of tangible property of parties other than any **Insured** including the resulting loss of use and diminution in value thereof;
2. Loss of use, but not diminution in value, of tangible property of parties other than any **Insured** that has not been physically injured or destroyed; or
3. **Natural Resource Damage**.

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

**AA. Responsible Insured** means the manager or supervisor of a **Named Insured** responsible for environmental affairs, control or compliance, or any manager, member, officer, director or partner of a **Named Insured**.

**BB. Restoration Costs** means reasonable and necessary costs incurred by the **Insured** with the Company's written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **Clean-Up Costs**. **Restoration Costs** do not include costs associated with improvements or betterments.

**CC. Transportation** means the movement of cargo, to or from an **Insured Property**, by a **Motor Vehicle** or watercraft 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 **Motor Vehicle** or watercraft. **Transportation** does not include cargo off-loaded from the **Motor Vehicle** or watercraft, or cargo in or on a **Motor Vehicle** or watercraft at rest for a period longer than seventy-two (72) hours prior to reaching its final destination.

**DD. Underground Storage Tank** means any tank that has at least ten (10) percent of its volume below ground, in existence at the **Inception Date**, or installed thereafter, including associated underground piping connected to the tank.

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