



## CONTRACTOR ENVIRONMENTAL COVERAGE

### Contractor Environmental Liability Coverage

#### THIS IS A CLAIMS MADE AND REPORTED POLICY.

Throughout this policy, the words "you" and "your" refer to the **named insured** shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this insurance. Other words and phrases that appear in **bold** have special meaning. Refer to Section **II. DEFINITIONS**.

In consideration of the premium paid and in reliance upon the statements that you provided to us in the application and any other supplemental information provided in connection with the application, we agree to provide coverage as shown in the Declarations and described as follows:

#### I. INSURING AGREEMENTS

##### A. Contracting Environmental Liability

###### 1. Contracting Operations Environmental Liability

We will pay for **loss or remediation expense** that the **insured** becomes legally obligated to pay as a result of **contamination** caused by **your contracting operations, completed operations or transportation**:

- a. Provided that the **loss or remediation expense** is the result of a **claim** for **bodily injury, property damage or environmental damage**, that is first made against the **insured** and reported to us during the **policy period**, or within the **extended reporting period**; or
- b. When such **contamination** first begins on or after the **inception date** provided that:
  - (1) The **discovery** of such **contamination** is first made during the **policy period**; and
  - (2) Such **discovery** is reported to us in writing as soon as practicable during the **policy period**.

###### 2. Waste Disposal Liability

We will pay for **loss or remediation expense** that the **insured** becomes legally obligated to pay as a result of a **claim** for **bodily injury, property damage or remediation expense** arising out of **contamination** caused by **waste disposal**, provided such **claim** is first made against the **insured** and reported to us during the **policy period**, or within the **extended reporting period**.

##### B. Your Insured Location Liability

We will pay for **loss or remediation expense** that the **insured** becomes legally obligated to pay as a result of **emergency expenses** or a **claim** for **bodily injury, property damage or remediation expense** arising out of **contamination** on, under or migrating beyond the legal boundaries of **your insured location**, provided that:

1. Such **contamination** originates at **your insured location**;

2. Such **contamination** first commences during the **policy period**;
3. Such **contamination** ceases fully within ten (10) days of its commencement;
4. The **contamination** results in a **claim** against the **insured**, or **emergency expenses**; and
5. Such **claim** is first made against the **insured** and reported to us during the **policy period**, or within the **extended reporting period**.

### C. Image Restoration

We will pay for covered expenses incurred for image restoration arising out of damage to your reputation or consumer confidence as a result of **contamination** reported to us during the **policy period** or the **extended reporting period** and that result in **bodily injury, property damage, or remediation expense** covered under this policy. Covered expenses are limited to the costs of restoring your reputation and consumer confidence through image consulting.

## II. DEFINITIONS

**A. Additional insured** means any individual, organization or entity scheduled to this policy as an **additional insured** by an endorsement, but solely for their liability specified in such endorsement.

**B. Bodily injury** means:

1. Physical injury, sickness or disease including associated medical or environmental monitoring; and
2. Mental anguish, emotional distress or shock sustained by any person;

Including death resulting there from.

**C. Claim** means a written demand, notice, or assertion of a legal right seeking a remedy or alleging liability or responsibility on the part of you or any **insured** as a result of **contamination**. Such demand, notice, or assertion of a legal right includes, but is not limited to legal actions, orders, petitions or governmental or regulatory actions, filed against you or any **insured**.

**D. Completed operations** means work from **your contracting operations** that have been completed.

**Your contracting operations** will be deemed completed at the earliest of the following times:

1. When all of **your contracting operations** to be performed in the contract are complete;
2. When all of **your contracting operations** to be done at a **project site** have been completed; or
3. When that part of **your contracting operations** at a **project site** have been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

**Your contracting operations** that may need service, maintenance, correction, repair or replacement, but are otherwise complete, will be deemed complete.

- E. Contaminant** means any solid, liquid, gaseous or thermal irritant or pollutant, including but not limited to smoke, vapor, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, legionella, electromagnetic fields, **mold**, low level radiological matter and waste materials including but not limited to municipal, industrial, medical, pathological, and low level radioactive waste materials.
- F. Contamination** means:
1. The discharge, dispersal, release or escape of any **contaminants** 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**;
  2. The presence of **contaminants** that have been illegally disposed of or abandoned at **your insured location** or a **project site** by parties other than an **insured** provided such presence, disposal or abandonment are unknown to the **insured**; or
  3. The presence of **mold** on, at or within building or structures.
- G. Conveyance** means motor vehicle, trailer, semi-trailer, aircraft, rolling stock or watercraft, but only if the operator and the conveyance are properly permitted and licensed to transport its cargo, and in the business of transporting such cargo.
- H. Defense expense** means cost, charges and expenses incurred in the defense, investigation or adjustment of any **claim**.
- I. Discovery** means when the **insured** first has knowledge of **contamination**.
- J. Emergency expenses** means reasonable and necessary expenses incurred to contain, control or mitigate **contamination** that is an imminent and substantial endangerment to:
1. The public health, safety or welfare where in the absence of such action to contain, control or mitigate **contamination, bodily injury** or **property damage** to third parties is imminent; or
  2. The environment;
- And pursuant to **laws** that require such immediate response to **contamination**.
- K. Environmental damage** means physical damage to soil, plant or animal life, surface water or groundwater, building or structures, or indoor air caused by **contamination** and requiring remediation.
- L. Environmental professional** means a person or entity chosen by us, in consultation with the **insured**, that possesses appropriate expertise, licensing, certification and qualifications to address the **contamination**.
- M. Extended reporting period** means either:
1. Automatic extended reporting period under Section **IX. EXTENDED REPORTING PROVISIONS**, Paragraph **A.**; or
  2. Extended reporting period under Section **IX. EXTENDED REPORTING PROVISIONS**, Paragraph **B.**;

Whichever is applicable, in which to report a **claim** first made against the **insured** following termination of coverage, as described in Section **IX. EXTENDED REPORTING PROVISIONS**, of this policy.

**N. Inception date** means the first date set forth in ITEM 4. of the Declarations.

**O. Insured** means:

1. The **named insured** and any subsidiary thereof, and any **additional insured**;
2. Any past or present director, officer, partner or employee of the **insured**, including a temporary or leased employee, while acting within the scope of his or her employment as such;
3. Any joint venture in which you participate as a member or co-venturer, but solely with regard to your liability as arising out of **your contracting operations** provided in such joint venture; and
4. Solely with regard to **Coverage A – Contracting Environmental Liability**, the client with whom the **named insured** has a written contract or agreement requiring such client be an **additional insured** under this policy, provided such contract or agreement was executed prior to the date that **your contracting operations** first commenced. However such clients are included as an **insured** under this policy solely to the extent:
  - a. That the client is liable as a result of **your contracting operations** performed by an **insured** other than the client; and
  - b. Up to and not exceeding the amount required by the written contract with you or subject to the applicable Coverage A Limit of Insurance, whichever is less.

The client is not provided any coverage under this policy for their own liability unless such liability attaches as a result of **your contracting operations**.

**P. Law** means any federal, state, provincial or local statutes, rules, regulations, ordinances, guidance documents, voluntary clean up or risk based corrective action programs and judicial or administrative orders and directives and all amendments thereto that apply or may be applied to the **insured's** responsibility for **contamination**.

**Q. Loss** means:

1. Monetary awards or settlements, previously agreed to in writing by us, of compensatory damages and, where allowable by law, punitive, exemplary, or multiplied damages, civil fines, penalties and assessments for **bodily injury** or **property damage**; and
2. Related **defense expense**.

**R. Mold** means mold, mildew or any type or form of fungus including mycotoxins, spores, microbial volatile organic compounds or any other by-products produced by or released by fungi.

**S. Named insured** means the person or entity named in ITEM 1. of the Declarations and responsible for acting on behalf of all other **insureds**, if any, under this policy as described in Section **X. GENERAL CONDITIONS, M. Sole Agent**.

**T. 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 or 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. §1801a 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.

**U. Non-owned location** means:

1. A site or location that is not owned, leased, managed or operated by the **insured**, its parent, subsidiaries or affiliates and scheduled to this policy utilizing the Non-Owned Location Schedule; or
2. A facility used for the recycling, treatment, storage or disposal of the waste or materials generated by **your contracting operations** or at **your insured location**, but only if at the time the waste is accepted by the facility, the facility:
  - a. Is not owned, managed, operated or leased by the **insured** or a parent, subsidiary or affiliate of the **insured**;
  - b. Is permitted and/or licensed and operating in substantial compliance with the applicable regulations or **laws** to accept and process such materials or waste;
  - c. Is not subject to any action under CERCLA or an equivalent state, local or provincial **law**;
  - d. Is not or has not ever been listed on the Federal National Priorities List or state or provincial equivalent (State Superfund or Hazardous Site List); or
  - e. Is not insolvent or in bankruptcy.

**V. Policy period** means the period set forth in ITEM 4. of the Declarations, or any shorter period arising as a result of:

1. Cancellation of this policy; or
2. With respect to any of **your insured location(s)** or **non-owned location(s)**, the deletion of any such location(s) from this policy by us at your written request.

**W. Project site** means:

1. A site or location at which **your contracting operations** are performed; and
2. A site which is rented or leased by you and utilized in the direct support of **your contracting operations** for a specific contract or project.

**Project site** does not include any of the following:

1. Any location used for the recycling, treatment, storage or disposal of the waste or materials generated by **your contracting operations**;
2. **Your insured location**; or

3. Any location owned, leased or rented by you or any subsidiary, affiliate or joint venture of yours other than a location rented or leased by you or any subsidiary, affiliate or joint venture of yours and utilized in the direct support of **your contracting operations** for a specific contract or project.

**X. Property damage** means:

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

However, **property damage** shall not include **remediation expense** or **environmental damage**.

**Y. Remediation expense** means:

1. Reasonable and necessary expenses, including legal expenses, incurred for investigation, removal, abatement, disposal, treatment, clean-up or neutralization, including associated monitoring of **contaminants**:
  - a. To the extent required by **law** or, in the absence of applicable **law**, to the extent recommended by an **environmental professional**; or
  - b. That have been actually incurred by any government department or agency;
2. Monetary awards or settlements, previously agreed to in writing by us, of compensatory damages that the **insured** is legally obligated to pay for investigation, removal, abatement, disposal, treatment, clean-up or neutralization, including associated monitoring of **contaminants**; and
3. Related **defense expense**;

Including **restoration expense** and **emergency expenses**.

- Z. **Responsible individual** means any officer, director, partner or project manager of the **insured**; the manager or supervisor of the **insured** who is responsible for environmental or health and safety affairs or compliance; or any manager of **your insured location** or **project site**.
- AA. **Restoration expense** means reasonable and necessary costs incurred by the **insured** 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 **remediation expense**. However, such **restoration expense** shall not include any costs associated with a betterment or improvement to such real or personal property.
- BB. **Transportation** means the movement of goods, materials, product or waste to or from a **project site** or **your insured location** by **conveyance** in support of or in the performance of **your contracting services**. **Transportation** does not include loading or unloading of such goods, materials, product or waste except at a **project site**.
- CC. **Underground storage tank** means any tank that has at least ten percent (10%) of its volume below ground in existence at the **inception date**, or installed thereafter, including associated underground piping connected to the tank.

- DD. Waste disposal** means the recycling, processing, treatment, storage or disposal at a **non-owned location** of waste generated as a result of **your contracting operations** or generated at **your insured location**.
- EE. Your contracting operations** means the contracting activities and services stated in the application for this policy and performed for third parties for a fee by you or on your behalf at a **project site**.
- FF. Your insured location** means any property or location approved by us and listed in ITEM 3. of the Declarations Page or Your Insured Location Schedule endorsed to this policy. **Your insured location** does not include a **project site**. If ITEM 3. of the Declarations states "not applicable," coverage is not provided.

### III. LIMITS OF INSURANCE AND DEDUCTIBLE

The Limits of Insurance shown in ITEMS 5. and 6. of the Declarations, the Deductible shown in ITEM 7., and the rules below fix the most we will pay regardless of the number of **your insured locations, non-owned location(s), insureds, contamination** incidents, **claims** or claimants:

- A.** The Total Policy Aggregate Limit shown in ITEM 6. of the Declarations is the most we will pay for all **loss, remediation expense** or other coverage afforded under this policy.
- B.** The most we will pay for **claims** from any one **loss, remediation expense** or other coverage afforded under this policy, under any Insuring Agreement or endorsement is the applicable Limit of Insurance shown in ITEM 5. of the Declarations, or in the applicable endorsement. If no Limit of Insurance is shown for a particular Insuring Agreement in the Declarations, then no coverage is provided under that particular Insuring Agreement.
- C.** The same or related discharge, dispersal, release or escape of any **contaminants** shall be deemed the same **contamination** incident to which one Limit of Insurance shall apply under any one insuring agreement or coverage afforded under this policy, and one Deductible shall apply. Regardless of the **policy period** in which such **claim, remediation expense** or other coverage afforded under this policy is reported to us, and arising out of such **contamination**, we will consider it to have been first made under the policy in effect at the time the **insured** first becomes aware of such **contamination**. The Limits of Insurance from that policy only will apply. In the event that more than one Deductible amount could apply to the same **contamination** incident and resulting **loss, remediation expense** or other coverage afforded under this policy, only the highest Deductible amount may be applied.
- D.** We will not pay for **loss, remediation expense** or other coverage afforded under this policy unless the amount of **loss, remediation expense** or other coverage afforded under this policy exceeds the applicable Deductible.
- E.** We will pay the amount of **loss, remediation expense** or other coverage afforded under this policy in excess of the applicable Deductible and up to the applicable Limit of Insurance. In no event will payment exceed the Total Policy Aggregate shown in ITEM 6. of the Declarations. In the event that we advance any portion of the Deductible, the **insured** shall reimburse us for those amounts promptly and as soon as possible.

### IV. EXCLUSIONS

This policy does not apply to **claims, loss, remediation expense** or any other coverage afforded under this policy:

**A. Asbestos and Lead Paint**

Based upon or arising from any asbestos or asbestos-containing product or any lead-based paint installed in or applied to any building or other structure at **your insured location**. This exclusion does not apply to: asbestos or asbestos containing materials; or lead based paint in soil or in any watercourse or body of water including ground water.

**B. Contracting Operations Retroactive Date**

Based upon or arising out of **your contracting operations** that are performed prior to the Contracting Operations Retroactive Date shown in ITEM 9.a. of the Declarations of this policy. This exclusion does not apply if "Not Applicable" is shown in ITEM 9.a. of the Declarations.

**C. Contractual Liability**

Based upon or arising out of the **insured's**:

1. Liability of others assumed under any contract or agreement; or
2. Breach of contract or agreement.

This exclusion does not apply to:

1. Liability that the **insured** would have in the absence of such contract or agreement; or
2. Solely with regard to **your contracting operations**, assumed in a written contract or agreement for **your contracting operations**, provided that the **bodily injury, property damage or environmental damage** occurs subsequent to the execution of such contract or agreement and does not arise from the client's sole negligence.

**D. Damage to Insured's Product**

Based upon or arising out of **property damage or environmental damage** to the **named insured's** product or work. However, this exclusion does not apply to **completed operations**.

**E. Damage to Insured's Property**

Based upon or arising out of physical injury to or destruction of property owned by an **insured** or leased, rented, or loaned to an **insured**, including property in the **insured's** care custody and control. This exclusion applies solely with respect to **claims for property damage** and does not apply to:

1. A **project site**; or
2. A client who qualifies as an **insured**.

**F. Divested Property Limitation**

Based upon or arising out of **contamination** that first begins after **your insured location** has been divested, sold, abandoned, given away, taken by eminent domain or condemned.

**G. Employer Liability**

Based upon or arising out of **bodily injury** to a person while employed by any **insured** or by anyone who has a right to make a claim against any **insured** because of any employment,

blood, marital or any other relationship with said employee. This exclusion applies:

1. Whether the **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 claims.

However, this exclusion does not apply to liability assumed by the **named insured** under a written contract or agreement with a client which is executed by the **named insured** prior to the date that any **bodily injury** occurs as result of **your contracting operations** for such contract.

#### H. Hostile Acts

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

#### I. Insured versus Insured

Based upon or arising out of a **claim** by any **insured** against any other **insured** under this policy. This exclusion does not apply to a **claim** made by clients of the **named insured** as defined in Section II. DEFINITIONS, O. Insured, Subparagraph 4.

#### J. Material Change at Your Insured Location

Based upon or arising out of any material change in the use or operations at **your insured location** from the use or operations stated by you in the application or information submitted to us that forms the basis of coverage.

#### K. Non-Disclosed Known Contamination

Based upon or arising out of **contamination** in existence prior to the **inception date** or prior to the effective date of an endorsement to this policy and known by or reported to any **responsible individual** and not disclosed to us in the application for this policy and any other supplemental information provided in connection with the application for this policy, an endorsement, or any previous policy for which this policy is a renewal thereof. This does not apply to **contamination** at a **project site** provided such **contamination**:

1. Was in existence prior to the **named insured** first performing **your contracting operations**; and
2. Was not caused or exacerbated by **your contracting operations**.

**Contamination** expressly disclosed to us and not otherwise excluded under this policy or by endorsement shall be deemed by us to have been first **discovered** on the **inception date** or the effective date of the applicable endorsement.

#### L. Nuclear Liability

Based upon or arising out of radioactive, toxic, or explosive properties of Source Materials, Special Nuclear Material or By-Product Material, as defined in the Atomic Energy Act, and for which the United States Department of Energy or any other governmental authority or agency has indemnified the **insured**, or for which the Price Anderson Act provides protection for the **insured**.

#### M. Prior Claims

Based upon or arising from **claims, remediation expense, contamination** or other circumstances reported by you under any prior policy that was not issued by us or one of our affiliates.

#### **N. Property Damage to Conveyance**

Based upon or arising out of **property damage** to any **conveyance** utilized during **transportation**. This exclusion does not apply to **claims** made by third party carriers, utilized during **transportation**, for such **property damage** arising out of the **insured's** negligence.

#### **O. Product Liability**

Based upon or arising out of goods or products manufactured, sold, handled or distributed by the **insured** or others trading under the **insured's** name, after possession of such goods or products has been relinquished by the **insured** or others trading under its name, unless such **claim, loss, remediation expense** or any other coverage afforded under the policy arises out of the assembly, fabrication or installation of such product as part of **your contracting operations**. This exclusion does not apply to such products while within the boundaries of **your insured location** or during **transportation** or **waste disposal**.

#### **P. Professional Liability**

Based upon or arising out of the provision of any professional services or advice rendered or failed to be rendered by the **named insured** or others from whom the **named insured** is legally liable. This exclusion does not apply to improper supervision or lack of supervision of any subcontractors performing **your contracting operations**.

#### **Q. Separately Insured Project**

Based upon or arising out of any project that is insured under a valid and collectible project specific insurance policy, including but not limited to a project specific policy, owner protective insurance policy, owner controlled insurance program, contractor controlled insurance program, wrap-up policy or other similar policy or program, under which an **insured** is provided coverage similar to this policy. This exclusion does not apply to projects specifically scheduled as an insured project in an endorsement to this policy.

#### **R. Transportation Retroactive Date**

Based upon or arising out of **transportation** which took place prior to the Transportation Retroactive Date shown in ITEM 9.c. of the Declarations of this policy. This exclusion does not apply if "not applicable" is shown in ITEM 9.c. of the Declarations.

#### **S. Underground Storage Tank**

Based upon or arising out of **contamination** resulting from an **underground storage tank** whose existence is known by you as of the **inception date** and which is located on **your insured location** unless such **underground storage tank** is scheduled on the policy by endorsement. However this exclusion does not apply to any **underground storage tank** that is:

1. A process tank located partially in the ground; or
2. Located on or above the floor of structures built below the ground surface such as vaults or subsurface floors of buildings.

**T. Vehicles**

Based upon or arising out of the use, maintenance or operation of an automobile, aircraft watercraft or other **conveyance**. This exclusion shall not apply to the use of, maintenance or operation of an automobile, aircraft watercraft or other **conveyance** at a **project site** or **your insured location** or during **transportation** or **waste disposal**.

**U. Waste Disposal Retroactive Date**

Based upon or arising out of **waste disposal** which took place prior to the Waste Disposal Retroactive Date shown in ITEM 9.b. of the Declarations of this policy. This exclusion does not apply if "not applicable" is shown in ITEM 9.b. of the Declarations.

**V. Waste Disposal, Transfer, Treatment or Recycling Facility**

Based upon or arising out of any waste, products or materials which have been delivered to a location beyond the boundaries of the **project site**. This exclusion does not apply to **non-owned locations** or **your insured location**.

**W. Workers' Compensation**

Based upon or arising out of the Merchant Marine Act of 1920 (Jones Act) or any workers' compensation, unemployment compensation, or disability benefits law or related laws.

**X. Willful Non-Compliance and Dishonest Acts**

Based upon or arising out of any **contamination** based upon or attributable to:

1. A **responsible individual's** intentional, willful or deliberate noncompliance with or intentional disregard of any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body; or
2. Actual or alleged fraudulent, dishonest, knowingly wrongful or malicious conduct by or at the direction of the **responsible individual**.

**V. POLICY TERRITORY**

This policy is applicable only in the United States, its territories or possessions or Canada, but only if your responsibility is determined in:

- A. A proceeding on the merits conducted in the United States or its territories or possessions; or
- B. A settlement agreed to by us.

All premiums, limits, deductibles, **loss** and other amounts under this policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is denominated or another element of **loss** under this policy is stated in a currency other than United States dollars, payment under this policy shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is reached, the amount of the settlement is agreed upon, or the other element of **loss** is due, respectively.

This policy shall not apply in any situation that would be in violation of the laws of the United States of America or Canada, as applicable, including but not limited to, United States of America economic or trade sanction laws or export controls laws administered by the United States Treasury of Foreign Assets Control.

## VI. DEFENSE AND SETTLEMENT

- A.** We shall have the right and duty to defend any **insured** against any **claim** to which this insurance applies. We shall undertake and manage the defense of such **claim** even if such **claim** is groundless, false or fraudulent. **Defense expense** reduces the Limits of Insurance and is included within the Deductible stated in ITEM 7. of the Declarations. Our duty to defend ends once the Limits of Insurance are exhausted or tendered into a court of applicable jurisdiction or once the **insured** refuses a settlement offer as provided in Paragraph **C.** below.
- B.** We shall have the right to select counsel for the investigation, adjustment and defense of **claims** to which this insurance applies. The **insured** shall have the right to propose such counsel and we will consult with the **insured** on the selection. If more than one **insured** is involved in a **claim** to which this insurance applies, we may, in our sole discretion, appoint separate counsel for one or more of such **insureds** if there is a material (actual or potential) conflict of interest among any such **insureds**.
- C.** We reserve the right, but not the duty, to at any time, with the **insured's** consent, settle any **claim** to which this insurance applies as we deem expedient. If with respect to any **claim** to which this insurance applies, the **insured** refuses to consent to the first settlement acceptable to the claimant which we recommend to the **insured** in writing, and elect to further contest the **claim**, then our liability for such **claim** shall not exceed the amount for which such **claim** could have been settled, including legal expenses incurred, up to the date of such refusal, plus fifty percent (50%) of covered **loss, remediation expense** or other coverage afforded under this policy in excess of such first settlement amount. It being a condition of this insurance that the remaining fifty percent (50%) of such **loss, remediation expense** or other coverage afforded under this policy excess of the first settlement amount shall be borne by the **insured** at the **insured's** own risk, and is uninsured. Notwithstanding the foregoing, this paragraph shall not apply until the settlement amount exceeds the deductible amount stated in ITEM 7. of the Declarations or applicable endorsement.

In addition, if we recommend a first settlement of a **claim** to which this insurance applies within the policy's applicable Limit of Insurance that is acceptable to the claimant, and the **insured** consents to such settlement, then your applicable deductible for such **claim** shall be retroactively reduced by ten percent (10%). It shall be a condition to such reduction that you must consent to the first settlement amount within thirty (30) days after the date we recommend to the **insured** such first settlement amount, or in the case of a first settlement amount which arises from a first settlement offer by the claimant, then within the time permitted by the claimant to accept such first settlement offer, but in all events no later than thirty (30) days after we recommend to the **insured** such first settlement offer. If the **insured** does not consent to the first settlement within the time prescribed above, the applicable deductible amount shall remain the respective amount set forth in ITEM 7. of the Declarations or applicable endorsement, even if consent is given to a subsequent settlement.

## VII. NOTICE AND CLAIM REPORTING PROVISIONS

- A.** Notice under this policy shall be given by you, or on your behalf:
1. In writing to us at:
 

One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004 - 0950  
ATTN: Claims – Environmental
  2. By fax at: 1(800) 685-9238; or
  3. By telephone at: 1(800) 765-9749.

As a condition precedent to our obligations under this policy, the **insured** shall give written notice to us as soon as practicable of any **claim** made against the **insured** for **loss, remediation expense** or other coverage afforded under the policy. Oral notification must be followed with a written notice to us as soon as practicable.

**B.** If during the **policy period**, the **insured** first becomes aware of any **contamination** or incurs **emergency expense** which could reasonably be expected to give rise to a **claim, remediation expense** or other coverage under this policy, the **insured** shall give written notice to us regarding all particulars of said incident as soon as practicable after the **insured** becomes aware of said **contamination**, or **emergency expense**. Oral notification must be followed with a written notice to us as soon as practicable. Such notice of any **contamination** or **emergency expense** must include:

1. The particulars of the specific **contamination** or **emergency expense**;
2. The circumstances by which the **insured** first became aware of such **contamination** or **emergency expense**; and
3. The **claim, loss** or **remediation expense** or other coverage afforded under this policy which has or may result from such **contamination** or **emergency expense**.

Any **claim, remediation expense** or other coverage afforded under this policy then arising out of such **contamination** will be considered to have been first made under the policy in effect at the time the **insured** first become aware of such **contamination**.

## VIII. DUTIES IN THE EVENT OF A CLAIM OR REMEDIATION EXPENSE OR DISCOVERY OF CONTAMINATION

### A. The Insured's Duties

In the event of a **claim, remediation expense**, other coverage afforded under this policy or the **discovery** of **contamination** and pursuant to **VII. NOTICE AND CLAIM REPORTING PROVISIONS** above, the **insured** shall:

1. Give notice containing particulars sufficient to identify the **insured**, time, place and underlying circumstances to us including, but not limited to, immediately forwarding to us every demand, notice, summons, or other process received by the **insured** or the **insured's** representatives;
2. The **insured** shall take reasonable measures to protect their interests. We shall not be liable for **loss** or **remediation expense** or any other coverage afforded under this policy admitted by the **insured** without our prior written consent;
3. Admit no liability, make no payments, assume no obligation and incur no expense related to such **claim, remediation expense**, other coverage afforded or **contamination** without our written consent, except in the case of **remediation expense** that qualifies as **emergency expenses**. In the event the **insured** incurs **remediation expense** that qualifies as **emergency expenses**, it is a condition precedent for coverage of such **remediation expense** under this policy that we are notified by the **insured** as soon as practicable of such **remediation expense** that qualifies as **emergency expenses**;
4. Cooperate with us and, upon our request, assist in investigations, making settlements and in the conduct of suits. The **insured** shall, at the **insured's** cost, attend inquires, interviews, hearings, trials and depositions and shall assist in securing and giving evidence and in obtaining the attendance of witnesses and employees; and

5. Not demand or agree to arbitration of any **claim** or any part of your responsibilities for **remediation expense**, or other coverage afforded or **contamination** without our written consent. Such consent shall not be unreasonably withheld.

#### B. Rights and Duties Concerning Contamination

The **insured** shall have the right and duty to retain an **environmental professional**, subject to our consent, to perform the investigation or remediation of **contamination** covered by this insurance after **discovery** or notification of the existence of such **contamination**. We have the right, but not the duty, to review and approve all aspects of any such investigation or remediation.

In the event of **emergency expenses**, the **insured** may select an **environmental professional** without our prior consent. Except for **emergency expenses**, any costs incurred without our consent will not be covered under this policy or credited against the Deductible. As a condition precedent for coverage of **emergency expenses** under this policy, we must be notified by the **insured** as soon as practicable of such **emergency expenses**.

In addition, we shall retain the right but not the duty to investigate or remediate **contamination** on behalf of the **insured** after receipt of notice of such **contamination**. Any expenses incurred in such investigation or remediation shall be deemed to be incurred by the **insured** and applied against the Limits of Insurance and credited against the Deductible.

### IX. EXTENDED REPORTING PROVISIONS

#### A. Automatic Extended Reporting Period

If you cancel or refuse to renew this policy or, if we cancel or refuse to renew this policy for reasons other than non-payment of premium or fraud or material misrepresentation on your part, we will provide to you a sixty (60) day automatic extension of the coverage granted by this policy, at no additional charge, for any **claim** first made against you and reported to us in writing during the sixty (60) day extension period, but only as respects **contamination** you first **discovered** during the **policy period** and reported to us during the **policy period** or, solely with respect to **contamination** first **discovered** by you within twenty-four (24) hours prior to the termination of the policy, the five (5) days immediately following the termination of the policy.

If you purchase replacement coverage for this policy or an **extended reporting period** under **B.** below, the sixty (60) day automatic extension period will end on the effective date of the replacement coverage or the **extended reporting period**.

#### B. Extended Reporting Period

If we or you refuse to cancel or renew this policy for reasons other than non-payment of premium, fraud or material misrepresentation, you shall have the right to purchase an **extended reporting period** of three (3) years for a premium of no more than two hundred and fifty percent (250%) of the expiring policy premium. This extension will provide coverage granted by this policy for any **claim** first made against you and reported to us in writing during the **extended reporting period** but only as respects **contamination** you first **discovered** during the **policy period** and reported to us in writing during the **policy period** or, solely with respect to **contamination** first **discovered** by you within twenty-four (24) hours prior to the termination of the policy, the five (5) days immediately following the termination of the policy.

You must apply for this extension in writing, accompanied by payment of premium, prior to the expiration of the sixty (60) day automatic extension period under **A.** above. The extended reporting period is subject to the following conditions:

1. All premium paid with respect to an extension period shall be deemed to be fully earned as of the first day of the extension period.
2. The **extended reporting period** described herein shall commence upon the day that this policy terminates.
3. For the purpose of Paragraph **B. Extended Reporting Period**, any change in premium, deductible, Limits of Insurance or other terms or conditions at renewal is not a refusal to renew.
4. Limits of Insurance available during any **extended reporting period** shall not exceed the balance of the Limits of Insurance in effect at the time the policy terminated.
5. In the event similar insurance is in force covering any **claims** first made during the sixty (60) day extension period or during any **extended reporting period**, coverage provided by this policy shall be excess over any such other insurance.

## X. GENERAL CONDITIONS

### A. Subrogation

If we pay any amount under this policy, we shall be subrogated to the **insured's** rights of recovery against any person, firm or organization. The **insured** shall execute and deliver instruments and papers and do whatever is necessary to secure such rights. The **insured** shall not waive or prejudice such rights subsequent to a **claim** or **discovery of contamination**.

### B. Changes

Notwithstanding anything to the contrary, no provision of this policy may be amended, waived or otherwise changed except by endorsement issued by us to form part of this policy.

### C. Action Against Us

No person or organization has a right under this insurance:

1. To join us as a party or otherwise bring us into a **claim**; or
2. To sue us under this insurance unless all of its terms have been fully complied with.

A person or organization may sue us to recover on a fully executed settlement agreement or on a final judgment against the **insured** obtained after an actual trial; but we will not be liable for **loss** that is not payable under the terms of this insurance or that is in excess of the applicable Limits of Insurance.

### D. Bankruptcy

Your bankruptcy or insolvency, or that of your successors in interest, shall not relieve us of our obligations under this policy.

### E. Cancellation or Non-Renewal

You may cancel this policy by surrendering it to us or one of our authorized agents or by mailing written notice to us and providing to us a future date when cancellation shall be effective. If you cancel this policy, we shall retain the customary short-rate portion of the premium less the minimum earned premium, if applicable.

We may cancel the policy by mailing to you at the address stated in the Declarations written notice stating when, not less than sixty (60) days thereafter; or ten (10) days in the case of cancellation for non-payment of premium or deductible, such cancellation shall become effective. If we cancel the policy, earned premium shall be computed pro-rata. The mailing of Notice of Cancellation as aforementioned shall be sufficient notice of the intent to cancel. The effective date of cancellation specified in the notice shall terminate this **policy period**.

This policy may only be cancelled by us for:

1. Non-payment of premium or deductible;
2. Change in your operations that materially increase risks covered under this policy;
3. Fraud or material misrepresentation by you; or
4. Your failure to comply with terms and conditions or your contractual obligations under this policy. You shall have a right of sixty (60) days from the date of notice of cancellation to remedy such non-compliance. If the remedy is satisfactory to us, we shall rescind such notice in writing and the policy shall remain in force.

#### F. Assignment

Assignment of interest under this policy shall not bind us and such assignment is void unless our consent is endorsed hereon.

#### G. Authorization Clause

By acceptance of this policy, you agree that the statements in the Declarations are your agreements, and that the statements in your application and any other supplemental information provided in connection with the application are your representations and that this policy is issued in reliance upon the truth and accuracy of such agreements and representations. This policy embodies all existing agreements between you and us relating to this insurance.

#### H. Other Insurance

If other valid and collectible insurance is available to the **insured** for coverage granted under this policy, our obligations are limited as follows:

1. This insurance is primary, and our obligations are not affected unless any other insurance is also primary. In that case, we will share with all such other insurance by the method described in Paragraph **2.** below; and
2. If all of the other insurance permits contribution by equal shares, we will also follow this method. In 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. In contribution by limits, each insurer's share is based upon the ratio of its applicable limit of insurance bears to the total applicable limits of insurance of all insurers.

#### I. Independent Counsel

In the event that an **insured** is entitled by law to select independent counsel to defend such **insured** at our expense, the attorney's fees and all other litigation expenses incurred by

us shall be limited to the same rates that we would pay to counsel selected by us to defend a similar **claim** in the jurisdiction where the **claim** arose or is being defended. We may require that such counsel meet certain minimum qualifications and maintain errors and omissions insurance. The **insured** agrees that such counsel will respond in a timely manner to any request for information we may make with regard to the **claim**.

#### J. Headings

The descriptions in the headings of this policy and any endorsements attached hereto are solely for convenience, and form no part of the terms and conditions of coverage.

#### K. Consent

Where consent by us or an **insured** is required under this policy, such consent shall not be unreasonably withheld, delayed, conditioned or denied.

#### L. Access and Inspection

In connection with underwriting of this insurance or with our defense or adjustment of any **loss, claim, remediation expense** or any other coverage afforded under this policy, we shall be allowed, but not obligated to, conduct inspections, surveys, audits or reviews of your location, operations or other information deemed pertinent by us. Such inspections, surveys, audits or reviews could involve the taking of samples, interviewing of employees, physical access to locations or access to materials or information concerning your operations, structure or financials of your company.

The **insured** agrees to cooperate with us, and provide us with access to locations, information, and employees for such inspections, surveys, audits, or reviews, whether or not you deem such location or information relevant to the underwriting of this insurance, or with our defense or adjustment of any **claim, remediation expense** or any other coverage afforded under this policy.

Neither our right to conduct such inspections, surveys, audits or reviews nor the results or conclusions of such actual inspections, surveys, audits or reviews shall warrant, in any way, that the operations or location are safe, healthful or compliant with or conform to applicable laws, standards or accepted practices. This condition applies to any agents or representative that we allow to conduct such inspections, surveys, audits or reviews on our behalf.

#### M. Sole Agent

You shall act on behalf of all other **insureds**, if any, for the payment or return of any premium, payment of any deductible, receipt and acceptance of any endorsement issued to form a part of the policy, giving and receiving notice of cancellation or non-renewal, and the exercise of the rights provided in the **extended reporting period**.

#### N. Severability

Except with respect to Limits of Insurance, Deductible, Exclusion **I. Insured versus Insured**, Cancellation or Non-Renewal and any rights and duties assigned in this policy to you, this insurance applies as if each **insured** were the only **insured** and separately to each **insured** against whom a **claim** is made. Any misrepresentation, act, or omission that is in violation of a term, duty or condition under this policy by one **insured** shall not prejudice another **insured** under this policy. This condition shall not apply to an **insured** who is a parent, subsidiary or affiliate of the **insured** which committed the misrepresentation, act, or omission referenced above.

#### **O. Shared Limits**

You and all other **insureds** understand, agree and acknowledge that this policy contains an Aggregate Limit that is applicable to and shared by all **insureds** who are or may become an **insured**. As such all **insureds** understand and agree that the limits of this policy may be depleted or exhausted by payments to other **insureds**.

#### **P. Arbitration**

If we and any **insured** do not agree whether coverage is afforded under this policy of insurance for payment of a **claim** made by or against the **insured** or other coverage afforded under this policy, both parties may, by mutual consent, agree in writing to arbitration of the disagreement.

If both parties agree to arbitrate, each party will select an arbitrator. The two (2) arbitrators will select a third arbitrator. If they cannot agree upon the selection of a third arbitrator within thirty (30) days, both parties must request that selection of a third arbitrator be made by a judge of a court having jurisdiction.

Unless both parties agree otherwise, arbitration will take place in the county in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply.

A decision agreed to by any two (2) arbitrators will be binding.

Payment of the arbitrator's fee shall be made by us if coverage is found to exist. If coverage is not found, each party will:

1. Pay its chosen arbitrator; and
2. Bear the expenses of the third arbitrator equally.

**IN WITNESS WHEREOF, WE HAVE CAUSED THIS POLICY TO BE SIGNED BY OUR PRESIDENT AND SECRETARY. THIS POLICY SHALL NOT BE VALID UNLESS COUNTERSIGNED ON THE DECLARATIONS PAGE BY OUR DULY AUTHORIZED REPRESENTATIVE.**