

GREAT AMERICAN E & S INSURANCE COMPANY
PROFESSIONAL PLUS AND CONTRACTING SERVICES
ENVIRONMENTAL LIABILITY INSURANCE POLICY

THIS POLICY CONTAINS SOME CLAIMS MADE AND REPORTED COVERAGES. READ IT CAREFULLY.

SOME OF THE COVERAGES CONTAINED WITHIN THIS POLICY REQUIRE THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR, IF APPLICABLE, THE EXTENDED REPORTING PERIOD.

SOME OF THE PROVISIONS CONTAINED IN THIS POLICY RESTRICT COVERAGE, SPECIFY WHAT IS AND IS NOT COVERED AND DESIGNATE RIGHTS AND DUTIES. LEGAL EXPENSE IS SUBJECT TO AND WILL ERODE THE LIMIT OF LIABILITY AND ANY APPLICABLE SELF-INSURED RETENTION.

In this Policy, "the Company" refers to the company providing this insurance. Some other words and phrases that appear in capital letters have special meaning. Refer to Section II – DEFINITIONS.

In consideration of the payment of the Policy Premium and in reliance upon the statements contained in the Application and any other supplemental materials and information submitted in connection with the Application, and subject to all the terms, conditions, exclusions and limitations of this Policy, the Company agrees to provide insurance coverage to the INSURED as described herein:

SECTION I. INSURING AGREEMENTS

EACH OF THE FOLLOWING COVERAGES IS IN EFFECT ONLY IF IT IS SCHEDULED IN THE DECLARATIONS. EACH COVERAGE THAT IS IN EFFECT IS SUBJECT TO SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION.

A. COVERAGE A – PROFESSIONAL LIABILITY

The Company will pay on behalf of the INSURED for LOSS and related LEGAL EXPENSE because of an actual or alleged act, error or omission in PROFESSIONAL SERVICES, which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD, but only if the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

B. COVERAGE B – INDEMNITY OF INSURED'S OWN LOSS FROM DESIGN PROFESSIONAL'S ERROR

The Company will indemnify the INSURED for LOSS that is in excess of the REQUIRED INSURANCE because of an actual or alleged act, error or omission in PROFESSIONAL SERVICES performed by the DESIGN PROFESSIONAL, but only if:

1. a CLAIM is first made by the INSURED against such DESIGN PROFESSIONAL during the POLICY PERIOD; and
2. the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

C. COVERAGE C – OCCURRENCE CONTRACTING SERVICES POLLUTION LIABILITY

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE because of a POLLUTION CONDITION arising from CONTRACTING SERVICES or COMPLETED OPERATIONS:

1. which the INSURED becomes legally obligated to pay as a result of a CLAIM because of BODILY INJURY, PROPERTY DAMAGE or ENVIRONMENTAL DAMAGE that occurs during the POLICY PERIOD; or
2. if, during the POLICY PERIOD:
 - a. the POLLUTION CONDITION first begins; and
 - b. the INSURED first discovers the POLLUTION CONDITION; and
 - c. the INSURED first reports the POLLUTION CONDITION to the Company in writing.

D. COVERAGE D – POLLUTION LEGAL LIABILITY ARISING FROM AN OWNED LOCATION

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE because of a POLLUTION CONDITION migrating from a COVERED LOCATION(S):

1. which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD; or
2. if, during the POLICY PERIOD, the INSURED first discovers the POLLUTION CONDITION;

but only if:

- (i) the INSURED notifies the Company of the CLAIM or POLLUTION CONDITION, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD; and
- (ii) the POLLUTION CONDITION originates at a COVERED LOCATION(S) and subsequently migrates from that location; and
- (iii) the POLLUTION CONDITION first begins and ends within a period of seven (7) consecutive days.

E. COVERAGE E - NON-OWNED DISPOSAL SITE

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, under or migrating from a NON-OWNED DISPOSAL SITE, which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD, but only if the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

F. COVERAGE F – IN-BOUND AND OUT-BOUND CONTINGENT TRANSPORTATION COVERAGE

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE because of a POLLUTION CONDITION arising from the INSURED's goods, products or waste during the course of their transportation by a CARRIER to or from:

1. a JOB SITE where CONTRACTING SERVICES are being performed; or
2. a COVERED LOCATION(S);

including any loading or unloading of such goods, products or waste, which the INSURED becomes legally obligated to pay as a result of a CLAIM first made against the INSURED during the POLICY PERIOD, but only if the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or, if applicable, the EXTENDED REPORTING PERIOD.

SECTION II. DEFINITIONS

- A. ADDITIONAL NAMED INSURED** means any person, organization, or entity identified as an ADDITIONAL NAMED INSURED in an endorsement issued by the Company, but solely for their liability as specified in such endorsement.

B. AUTOMOBILE means a land motor vehicle, trailer, semi-trailer, mobile equipment, or off-road motor vehicle, including any machinery or apparatus attached thereto.

C. BODILY INJURY means:

1. physical injury, sickness, disease, or building-related illness sustained by any person, including death resulting therefrom, and, solely with regard to this Item C.1., any accompanying medical or environmental monitoring; and
2. mental anguish, emotional distress, or shock;

caused by a POLLUTION CONDITION.

D. CARRIER means a person or entity, other than the INSURED or any subsidiary or affiliate company of the INSURED, engaged by or on behalf of the INSURED to transport material by AUTOMOBILE, aircraft, watercraft or rolling stock, but only if such person or entity is properly licensed to transport such material and in the business of transporting such material.

E. CLAIM means:

1. with regard to all coverages other than Coverage B, a demand, notice or assertion of a legal right alleging liability or responsibility on the part of the INSURED, arising out of a POLLUTION CONDITION or an actual or alleged act, error or omission in PROFESSIONAL SERVICES, and shall include but not be limited to lawsuits, orders, petitions or governmental or regulatory actions, filed against the INSURED.
2. solely with regard to Coverage B, a written demand made by the INSURED alleging liability or responsibility on the part of the DESIGN PROFESSIONAL for LOSS arising out of an actual or alleged act, error or omission in PROFESSIONAL SERVICES performed by the DESIGN PROFESSIONAL.

F. CLEAN-UP COSTS means reasonable and necessary expenses incurred to investigate, remove, dispose of, abate, contain, treat or neutralize a POLLUTION CONDITION, including any monitoring and testing costs:

1. to the extent required by Federal, State, Local or Provincial Laws, including but not limited to statutes, rules, ordinances, guidance documents, regulations and all amendments thereto, including state voluntary cleanup or risk based corrective action guidance, governing the liability or responsibilities of the INSURED; or
2. in the absence of items in 1. above, to the extent recommended by a ENVIRONMENTAL PROFESSIONAL;

with respect to a POLLUTION CONDITION.

CLEAN-UP COSTS includes REPLACEMENT COSTS and also includes any associated punitive, exemplary or multiplied damages, where insurable by law.

G. COMPLETED OPERATIONS means CONTRACTING SERVICES that are completed. COMPLETED OPERATIONS does not include any CONTRACTING SERVICES that have not been completed or have otherwise been abandoned. CONTRACTING SERVICES will be considered completed at the earliest of the following times:

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

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

H. CONTRACTING SERVICES means any contracting services stated in the Declarations or scheduled as such onto this Policy by an endorsement issued by the Company, performed by or on behalf of the INSURED at a JOB SITE.

- I. COVERED LOCATION(S)** means any location(s) stated in the Declarations or any location(s) scheduled as such onto this Policy by an endorsement issued by the Company. COVERED LOCATION(S) does not include a JOB SITE.
- J. DESIGN PROFESSIONAL** means an organization or entity, or any sub-contractor or sub-consultant thereof, that performs PROFESSIONAL SERVICES on behalf of the INSURED pursuant to a written contract with the INSURED. DESIGN PROFESSIONAL does not include any organization or entity, or sub-contractor or sub-consultant thereof, that is not duly certified or licensed to perform such PROFESSIONAL SERVICES.
- K. ENVIRONMENTAL DAMAGE** means physical injury to soil, surface water or groundwater arising from a POLLUTION CONDITION and resulting in CLEAN-UP COSTS. ENVIRONMENTAL DAMAGE does not include PROPERTY DAMAGE.
- L. ENVIRONMENTAL PROFESSIONAL** means an individual designated by the Company who is duly certified or licensed in a recognized field of environmental science as required by a state board, a professional association, or both. The Company shall consult with the INSURED in conjunction with the selection of the ENVIRONMENTAL PROFESSIONAL. The Company may require that such professional meet certain minimum qualifications and maintain errors and omissions insurance.
- M. EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period or, if applicable, the Optional Extended Reporting Period described in Section V. of this Policy.
- N. FIRST NAMED INSURED** means the person or entity stated in the Declarations.
- O. INSURED** means:
1. the FIRST NAMED INSURED, any ADDITIONAL NAMED INSURED, and any present or former director, officer, partner, member, employee, leased or temporary worker thereof, while acting within the scope of his/her duties as such; and
 2. INSURED also includes any organization or entity in which the FIRST NAMED INSURED has an ownership interest of fifty percent (50%) or more, or otherwise has management control over, as of the inception date of this Policy; and
 3. INSURED also includes joint ventures in which the INSURED is named as a co-venturer, but solely with regard to the INSURED's liability arising out of its CONTRACTING SERVICES provided under such joint venture; and
 4. Solely with regard to Coverage C under this Policy:

When required by written contract INSURED also includes the client for whom the INSURED performs CONTRACTING SERVICES provided that such contract was signed by the INSURED and such client prior to the date the POLLUTION CONDITION first commenced. However, the client is included as an INSURED under this Policy solely to the extent that the client is found liable based upon CONTRACTING SERVICES negligently performed by an INSURED other than the client. Coverage for such client under this Policy shall not exceed the lesser of the following amounts:
 - i. the Limit of Liability required under such written contract; or
 - ii. the applicable Coverage C Limit of Liability of this Policy.
 5. INSURED does not include any DESIGN PROFESSIONAL.
- P. JOB SITE** means a location at which CONTRACTING SERVICES are performed. JOB SITE also includes real property rented or leased by the INSURED during the course of performing CONTRACTING SERVICES but only if such real property is utilized in direct support of such CONTRACTING SERVICES. However, JOB SITE does not include any of the following:
1. a COVERED LOCATION(S); or

2. any location managed, operated, owned or leased by an INSURED or any subsidiary or affiliate of an INSURED; but this subparagraph 2. does not apply to a location that is managed, operated, owned or leased solely by one or more persons or organizations that are INSURED only by reason of subparagraph 4. of the definition of INSURED.

Q. LEGAL EXPENSE means attorneys' fees and other charges and expenses incurred in the investigation, adjustment, defense, or settlement of any CLAIM for LOSS or CLEAN-UP COSTS, or in connection with the payment of any CLEAN-UP COSTS. LEGAL EXPENSE includes the fees and expenses of consultants, expert witnesses, accountants, court reporters, and other vendors, for goods or services in connection with such investigation, adjustment, defense, or settlement, whether incurred by the INSURED, defense counsel, or the Company.

LEGAL EXPENSE does not include salary charges of regular employees or officials of the Company, fees and expenses of supervisory counsel retained by the Company, or the time and expense incurred by the INSURED in assisting in the investigation or resolution of a CLAIM or in connection with CLEAN-UP COSTS, including but not limited to the costs of the INSURED's in-house counsel.

In no event shall the Company either defend any DESIGN PROFESSIONAL or incur any expense associated with any DESIGN PROFESSIONAL'S defense, including but not limited to any attorneys' fees or other charges or expenses incurred by or on behalf of the DESIGN PROFESSIONAL or its counsel in the investigation, adjustment, defense, or settlement of any CLAIM.

R. LOSS means:

1. solely with regard to Coverage A, a monetary judgment, award or settlement of:
 - i. compensatory damages; or
 - ii. punitive, exemplary or multiplied damages, civil fines, penalties and assessments, where insurable by law.
2. solely with regard to Coverage B, the sum the INSURED is legally entitled to recover from the DESIGN PROFESSIONAL as determined by:
 - i. a final judgment by a court of competent jurisdiction; or,
 - ii. a final award in an arbitration or other form of dispute resolution to which the INSURED must submit, or to which it submits with the Company's prior written consent; or
 - iii. a settlement with the DESIGN PROFESSIONAL, which the INSURED makes with the Company's prior written consent.
3. with regard to any coverage(s) other than Coverages A and B, a monetary judgment, award or settlement of:
 - i. compensatory damages; or
 - ii. punitive, exemplary or multiplied damages, civil fines, penalties and assessments, where insurable by law; because of BODILY INJURY or PROPERTY DAMAGE.
4. However, under 1., and 2., above, LOSS does not include any:
 - i. INSURED's return, refund, or disgorgement of any fee or other sum, whether or not the INSURED received it for PROFESSIONAL SERVICES, expenses, or otherwise;
 - ii. cost of complying with any injunctive or other equitable relief; or
 - iii. liquidated damages, whether such liquidated damages are pursuant to contract or otherwise.

- S. MOLD MATTER** means mold, mildew or any type or form of fungus; including any mycotoxins, spores, or byproducts produced or released by fungi.
- T. NON-OWNED DISPOSAL SITE(S) ("NODS")** means a location(s) used for the treatment, storage or disposal of an INSURED'S waste material, but only if:
1. the waste material is generated by CONTRACTING SERVICES or at a COVERED LOCATION(S); and
 2. the NODS is not managed, operated, owned or leased by the INSURED or any subsidiary or affiliate of the INSURED; and
 3. the NODS is permitted and/or licensed by any Federal, State, Local or Provincial authorities to accept such material as of the date of the treatment, storage or disposal; and
 4. the NODS is not listed on a proposed or final Federal National Priorities List ("NPL") and any State or Provincial equivalent NPL, Superfund or Hazardous Waste list prior to the treatment, storage or disposal.
- U. POLICY PERIOD** means the period stated in the Declarations. However, if this Policy is cancelled, by either the FIRST NAMED INSURED or the Company, the policy period ends at the effective date and time of the cancellation.
- V. POLLUTANTS** mean any solid, liquid, gaseous or thermal pollutant, irritant or contaminant, including but not limited to smoke, vapors, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, waste materials, including medical, infectious and pathological wastes, legionella, electromagnetic fields, MOLD MATTER and low-level radioactive waste and material.
- W. POLLUTION CONDITION** means any one or more of the following:
1. the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS into or upon land or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater;
 2. the illicit abandonment of POLLUTANTS at a COVERED LOCATION(S) provided that such abandonment was committed by a person(s) or entity(ies) other than an INSURED and without any knowledge by a RESPONSIBLE PERSON;
 3. the existence of MOLD MATTER on, at, or within buildings or structures.
- X. PROFESSIONAL SERVICES** means any professional services stated in the Declarations, or otherwise scheduled as such onto this Policy in an endorsement issued by the Company, performed by or on behalf of the INSURED.
- Y. PROPERTY DAMAGE** means:
1. physical injury to or destruction of tangible property of any person or organization other than an INSURED, including persons or organizations that are INSUREDS only by reason of subparagraph 4. of the definition of INSURED, including the resulting loss of use of such property, and including the personal property of such parties; or
 2. loss of use of such property that has not been physically injured or destroyed; or
 3. diminution in the value of such property; or
 4. natural resource damage which means the physical injury to or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act(16 U.S.C. 1801 et. seq.)), any State, Local or Provincial government, any foreign government, any Native American tribe, or, if such resources are subject to a trust restriction or alienation, any member of a Native American Tribe.

caused by a POLLUTION CONDITION. However, PROPERTY DAMAGE does not include CLEAN-UP COSTS or ENVIRONMENTAL DAMAGE.

Z. REPLACEMENT COSTS means reasonable and necessary costs incurred by the INSURED with the Company's written consent, to repair, restore or replace damaged real or personal property in order to restore the property to the condition it was in prior to being damaged in the course of incurring CLEAN-UP COSTS. REPLACEMENT COSTS shall not exceed the actual cash value of such real or personal property prior to incurring the CLEAN-UP COSTS. For the purposes of this definition, actual cash value means replacement cost reduced by physical depreciation and obsolescence.

AA.REQUIRED INSURANCE means the minimum amount of professional liability insurance a DESIGN PROFESSIONAL must have available to them prior to commencing PROFESSIONAL SERVICES for or on behalf of the INSURED, as shown in the Declarations. In no event shall the initial sum of such insurance be less than the amount stated in the Declarations. It is a condition precedent to coverage hereunder that the INSURED require the DESIGN PROFESSIONAL to evidence such insurance and warrant that the minimum amount of insurance shown in the Declarations are fully available and unimpaired immediately prior to the date the PROFESSIONAL SERVICES begin.

BB.RESPONSIBLE PERSON means any officer, director or partner of the INSURED; the manager, foreman or supervisor of the INSURED responsible for environmental or health and safety affairs, control or compliance; or any manager of a COVERED LOCATION(S).

CC.UNDERGROUND STORAGE TANK means any container or vessel, including the associated piping connected thereto, which is ten percent (10%) or more beneath the surface of the ground.

SECTION III. TERRITORY

This Policy applies only to CLAIMS first made or brought in the United States, its territories or possessions, Puerto Rico or Canada, but only if the INSURED'S responsibility to pay for LOSS is determined in:

- A. a proceeding on the merits conducted in the United States, its territories or possessions, Puerto Rico or Canada; or
- B. a settlement agreed to by the Company.

SECTION IV. EXCLUSIONS

This Insurance does not apply to any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or other coverage afforded under this Policy or any endorsement issued by the Company:

1. Asbestos

based upon or arising out of any asbestos or asbestos containing materials, in, on, or applied to any building or other structure at a COVERED LOCATION(S). This exclusion does not apply to asbestos, or asbestos containing materials, in soil or in any watercourse or body of water including groundwater.

2. Claims Against and Settlement with the Design Professional

solely with regard to Coverage B, based upon or arising out of:

- (a) any settlement made by the INSURED and a DESIGN PROFESSIONAL without the Company's prior written consent; or
- (b) attorneys' fees or other charges and expenses incurred by an INSURED in connection with any INSURED'S CLAIM against a DESIGN PROFESSIONAL, including but not limited to charges and expenses for any related investigation, adjustment or appeal; or
- (c) any judgment or sum awarded against a DESIGN PROFESSIONAL by default, or by reason of that DESIGN PROFESSIONAL's failure or refusal to appear, plead, or defend itself or indemnify the INSURED. This exclusion does not apply if the INSURED and the Company agree on the LOSS the INSURED would have been legally entitled to recover had there been no such default, failure, or refusal.

3. Communicable Diseases

based upon or arising out of any exposure to infected humans or animals, or contact with bodily fluids of infected humans or animals.

4. Contractual Liability

based upon or arising from the INSURED's assumption, under any contract or agreement, of the liability of another. This exclusion does not apply to:

(a) liability the INSURED would have had in the absence of the contract or agreement; or

(b) solely with regard to Coverage C, a written contract that was signed by the INSURED and the INSURED's client prior to the date the POLLUTION CONDITION first commenced provided that the liability for the LOSS and/or CLEAN-UP COSTS arises directly from a POLLUTION CONDITION arising from CONTRACTING SERVICES or COMPLETED OPERATIONS and does not arise from the sole negligence of the client.

5. Criminal Fines, Penalties and Assessments

based upon or arising out of any criminal fine, criminal penalty, or criminal assessment.

6. Discrimination

based upon or arising out of discrimination by any INSURED on the basis of age, creed, disability, marital status, national origin, race, sex, sexual orientation, or any other unlawful or illegal basis. This exclusion does not apply to CLAIMS under Coverage A arising from the INSURED's failure to make reasonable accommodation under the Americans With Disabilities Act, or amendments thereto.

7. Employer's Liability/Workers' Compensation

based upon or arising out of any BODILY INJURY to an INSURED, or an employee of its parent, subsidiary or affiliate, arising out of and in the course of employment by the INSURED or its parent or subsidiary or affiliate, including BODILY INJURY or pecuniary loss to the spouse, child, parent, brother or sister of such injured employee. This exclusion applies whether the INSURED may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay another who must pay damages as a result of the BODILY INJURY.

This exclusion does not apply to liability assumed by the INSURED under a written contract that was signed by the INSURED and the INSURED's client prior to the date the POLLUTION CONDITION first commenced, provided that the LOSS arises directly from a POLLUTION CONDITION arising from CONTRACTING SERVICES and does not arise from the sole negligence of the client.

8. Faulty Workmanship/Own Work

based upon or arising out of:

(a) the costs to repair or replace faulty workmanship, construction, fabrication, installation, assembly or remediation, if such faulty workmanship, construction, fabrication, installation, assembly or remediation was performed in whole or in part by an INSURED. This exclusion does not apply to LOSS under Coverage A which arises from an actual or alleged act, error or omission in PROFESSIONAL SERVICES.

(b) solely with regard to Coverage B, a CLAIM made by the INSURED against the DESIGN PROFESSIONAL because of any workmanship not in accordance with drawings or specifications as they relate to any assembly, construction, erection, fabrication, installation or process.

9. Geotechnical Services

solely with regard to Coverage A and Coverage B, based upon or arising out of any geotechnical services performed by or on behalf of an INSURED.

10. Hostile Acts

based upon or arising out of any consequence, whether direct or indirect, of declared or undeclared war, invasion, act of foreign enemy, hostilities, civil war, rebellion, revolution, insurrection, or military or usurped power, or in defending against any one or more of those.

11. Insured vs. Insured

based upon or arising out of any CLAIM by one INSURED against any other INSURED. This exclusion does not apply to a CLAIM (a) made by a person or organization that is an INSURED only by reason of subparagraph 4. of the definition of INSURED; or (b) that arises out of an indemnification given by one INSURED to another INSURED as specified in a contract that was submitted and approved by the Company and added to this Policy by endorsement.

12. Insured's Property/Bailee Liability

with respect to property damage to property owned, leased or operated by, or in the care, custody or control of, the INSURED, even if such property damage is incurred to avoid or mitigate LOSS or CLEAN-UP COSTS which may be covered under this Policy.

This exclusion does not apply to:

- (a) REPLACEMENT COSTS; or
- (b) property owned, leased or operated by, or in the care, custody or control of, a person or organization that is an INSURED only by reason of subparagraph 4. of the definition of INSURED.
- (c) real property rented or leased by the INSURED during the course of performing CONTRACTING SERVICES but only if such real property is utilized in direct support of such CONTRACTING SERVICES.

13. Intentional Acts

based upon or arising out of:

- (a) a POLLUTION CONDITION that results from any RESPONSIBLE PERSON's intentional disregard of, or deliberate, willful, or dishonest non-compliance with, any statute, regulation, ordinance, administrative complaint, notice letter, or instruction by or on behalf of any governmental agency or representative; or
- (b) any dishonest, criminal, fraudulent, negligent misrepresentation or knowingly wrongful conduct, in the performance of, or failure to perform, PROFESSIONAL SERVICES, on the part of, or at the direction of, any INSURED.

14. Known Condition(s)

based on or arising out of any POLLUTION CONDITION, or out of any actual or alleged act, error or omission in PROFESSIONAL SERVICES, that was known by or reported to any RESPONSIBLE PERSON, and was not expressly reported in writing to the Company, before:

- (a) the beginning of the POLICY PERIOD (as respects a POLLUTION CONDITION at any COVERED LOCATION(S), or arising out of any CONTRACTING SERVICES, or arising out of any PROFESSIONAL SERVICES, shown in the Declarations at the beginning of the POLICY PERIOD), or
- (b) the Company issues an endorsement to add:
 - i. the COVERED LOCATION(S) at which the POLLUTION CONDITION exists, or
 - ii. the CONTRACTING SERVICES from which the POLLUTION CONDITION arises, or
 - iii. the PROFESSIONAL SERVICES from which the actual or alleged act, error or omission arises,

to the Policy (as respects a POLLUTION CONDITION at any COVERED LOCATION(S), or arising out of any CONTRACTING SERVICES, or arising out of any PROFESSIONAL SERVICES, that was not shown in the Declarations at the beginning of the POLICY PERIOD).

Any POLLUTION CONDITION, or actual or alleged act, error or omission in PROFESSIONAL SERVICES, that was both (i) known by or reported to any RESPONSIBLE PERSON and (ii) expressly reported in writing to the Company, before the applicable time described in (a) or (b), and which is not otherwise excluded from coverage under this Policy by endorsement, will be deemed to have been first discovered on the date the COVERED LOCATION(S), CONTRACTING SERVICES, or PROFESSIONAL SERVICES, as applicable, first became insured by this Policy.

15. Lead-Based Paint

based upon or arising out of lead-based paint in, on, or applied to, any building or other structure at a COVERED LOCATION(S). This exclusion does not apply to lead-based paint in soil or in any watercourse or body of water including groundwater.

16. Material Change in Use

based upon or arising out of a change in the use of, or operations at, a COVERED LOCATION(S) from the use or operations as of the date the COVERED LOCATION(S) became insured by this Policy, if that change materially increases the likelihood or severity of a POLLUTION CONDITION or CLAIM.

17. Natural Occurring Material(s)

based upon or arising out of the existence, required removal, or abatement, of naturally occurring material(s). This exclusion does not apply where such substances are present at a JOB SITE due to the performance of CONTRACTING SERVICES or at a COVERED LOCATION(S) only because of human activities or processes. This exclusion also does not apply to MOLD MATTER.

18. New Pollution Conditions at Divested Property

based upon or arising out of a POLLUTION CONDITION on, at, under or migrating from a COVERED LOCATION(S), if the discharge, dispersal, release, seepage, migration or escape of those POLLUTANTS begins after such COVERED LOCATION(S) is sold, given away, or abandoned by the INSURED, or condemned.

19. Other Businesses

based upon or arising out of any INSURED's status, duties, or involvement as an officer, director, partner, member, participant, stockholder, employer or employee of any business or organization that is not stated in the Declarations or otherwise designated as or added to this Policy as an INSURED.

20. Prior Claims

based upon or arising out of any CLAIM reported under any insurance policy that was both (a) in effect before the beginning of the Policy Period shown in the Declarations and (b) issued by an entity other than the Company.

21. Products Liability

based upon or arising out of goods or products manufactured, sold, handled, distributed, altered or repaired by the INSURED, by any DESIGN PROFESSIONAL, or by others trading under the INSURED's name, including any container thereof, any failure to warn, or any reliance upon a representation or warranty made at any time with respect thereto. This exclusion does not apply to such goods or products while they remain within the legal boundaries of a COVERED LOCATION(S).

22. Retroactive Date

based upon or arising out of:

- (a) a POLLUTION CONDITION that first commenced prior to the Retroactive Date stated in the Declarations, including any further dispersal, migration or movement of that POLLUTION CONDITION on or after that date.
- (b) an actual or alleged act, error or omission that first commenced prior to the Retroactive Date stated in the Declarations, including any continuous or related actual or alleged act(s), error(s) or omission(s) on or after such date.

23. Related Entities and/or Individuals

based upon or arising out of a CLAIM made by an entity or individual that wholly or partially owns an INSURED, or in which an INSURED owns an interest in excess of twenty percent (20%), or that is managed, operated or otherwise controlled by an INSURED, or in which an INSURED is a principal, officer or director.

24. Separately Insured Project

based upon or arising out of any CONTRACTING SERVICES, PROFESSIONAL SERVICES, JOB SITE, or project that is insured under a valid and collectible project-specific insurance policy, owner protective insurance policy, owner-controlled insurance policy, contractor-controlled insurance policy, wrap-up policy, or similar insurance program, under which an INSURED is covered. This exclusion does not apply where the Company specifically schedules such project as an insured project in an endorsement attached to this Policy.

25. Suretyship, Insurance or Bonding

based upon or arising out of obtaining, requiring, acquiring, or maintaining any form of surety, insurance or bond, or any failure to do any of those.

26. Underground Storage Tank(s)

based upon or arising out of the existence of any UNDERGROUND STORAGE TANK(s) at a COVERED LOCATION(S). This exclusion does not apply to an UNDERGROUND STORAGE TANK:

- (a) that is either closed, abandoned in place or removed, in accordance with all applicable federal, state, or provincial regulations, prior to the inception date of this Policy; or
- (b) that is endorsed to this Policy in the Underground Storage Tank(s) and Associated Piping Schedule, if any; or
- (c) the existence of which is unknown by all RESPONSIBLE PERSONS as of the inception date of this Policy.

27. Vehicles

based upon or arising out of the ownership, maintenance, use, operation, loading or unloading of any AUTOMOBILE, aircraft, watercraft, rolling stock or any other form of transportation, including any cargo carried thereby, beyond the legal boundaries of a JOB SITE where CONTRACTING SERVICES are being performed or a COVERED LOCATION(S). This exclusion does not apply to Coverage F.

28. Warranties/Cost Estimates

based upon or arising out of:

- (a) any express warranty or guarantee. This exclusion does not apply to a warranty or guarantee by the INSURED that its CONTRACTING SERVICES or PROFESSIONAL SERVICES conform to generally accepted standards.
- (b) cost guarantees, cost representations, or contract price estimates of probable costs or cost estimates being exceeded.

SECTION V. EXTENDED REPORTING PERIOD

The provisions of Section V. apply to any and all coverage provided by this Policy, or by any endorsement issued by the Company, that applies on a Claims Made and Reported basis.

A. Automatic Extended Reporting Period

In the event of the termination of this insurance before the expiration date shown in the Declarations, the INSURED shall be entitled to a ninety (90) day Automatic Extended Reporting Period for no additional premium. The Automatic Extended Reporting Period shall apply as follows:

- (1) A CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM is otherwise covered by this Policy.
- (2) A CLAIM first made by the INSURED against a DESIGN PROFESSIONAL during the POLICY PERIOD and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM is otherwise covered by Coverage B of this Policy.
- (3) A CLAIM first made (a) against the INSURED or (b) by the INSURED against the DESIGN PROFESSIONAL, and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM arises from:
 - (a) a POLLUTION CONDITION first discovered and reported to the Company, in writing, prior to such termination, and is otherwise covered by this Policy; or

- (b) an actual or alleged act, error or omission in PROFESSIONAL SERVICES performed prior to such cancellation or non-renewal, and is otherwise covered by this Policy.

The Automatic Extended Reporting Period does not apply where: (1) the Policy is terminated for fraud or non-payment of premium; or (2) the INSURED has purchased other insurance to replace the insurance provided under this Policy.

For the purposes of Section V.A. – Automatic Extended Reporting Period, under this Policy:

- (a) either cancellation or non-renewal shall be deemed to be a termination of this insurance; and
- (b) in the event of non-renewal, the expiration date shown in the Declarations shall be deemed the effective date of the termination.

B. Optional Extended Reporting Period

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period upon cancellation or non-renewal of the Policy, subject to the following terms and conditions:

The FIRST NAMED INSURED shall be entitled to purchase an Optional Extended Reporting Period upon payment of an additional premium of not more than 200% of the full Policy Premium.

The Optional Extended Reporting Period shall be effective for three (3) consecutive three-hundred and sixty-five (365) day periods commencing immediately following the effective date of cancellation or non-renewal. The FIRST NAMED INSURED must elect to purchase this Optional Extended Reporting Period in writing within thirty (30) days from the cancellation or non-renewal of the Policy. The Automatic Extended Reporting Period of ninety (90) days will be merged into this period and is not in addition to this period.

The Optional Extended Reporting Period shall only apply to CLAIMS first made:

- (1) against the INSURED during the Optional Extended Reporting Period; or
- (2) by the INSURED against the DESIGN PROFESSIONAL;

but only by reason of:

- (a) a POLLUTION CONDITION that is first discovered and reported to the Company, in writing, during the POLICY PERIOD and otherwise covered by this Policy; or
- (b) an actual or alleged act, error or omission in PROFESSIONAL SERVICES performed prior to such cancellation or non-renewal, and is otherwise covered by this Policy.

The Optional Extended Reporting Period does not apply where: (1) the Policy is terminated for fraud or non-payment of premium; or (2) the INSURED has purchased other insurance to replace the insurance provided under this Policy.

For the purposes of Section V.B. – Optional Extended Reporting Period under this Policy:

- (a) either cancellation or non-renewal shall be deemed to be a termination of this insurance; and
- (b) in the event of non-renewal, the expiration date shown in the Declarations shall be deemed the effective date of the termination.

It is a condition precedent to the operation of the rights granted under Section V.B. that payment of the appropriate premium shall be made not later than thirty (30) days after expiration in the case of non-renewal or prior to cancellation in the case of cancellation.

For purposes of Section V., the Company's quotation of different Limits of Liability, Self-Insured Retentions, terms or conditions shall not be construed as either a termination of, or a decision not to renew, this Policy.

SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION

- A. The Limits of Liability and Self-Insured Retention shown in the Declarations and the rules below fix the most the Company will pay regardless of the number of INSUREDS, COVERED LOCATION(S), CONTRACTING SERVICES, PROFESSIONAL SERVICES, DESIGN PROFESSIONALS, POLLUTION CONDITIONS, CLAIMS made, or persons or organizations making CLAIMS.
- B. For purposes of this Policy, the same or related POLLUTION CONDITIONS at any one JOB SITE where CONTRACTING SERVICES are performed, or at any one COVERED LOCATION, shall be deemed a single POLLUTION CONDITION. For purposes of this Policy, all of a group or series of related or connected actual or alleged acts, errors and omissions in PROFESSIONAL SERVICES shall be deemed a single actual or alleged act, error or omission in PROFESSIONAL SERVICES.
- C. With regard to coverage(s) other than Coverage B, this Policy will pay covered LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto only (1) in excess of the applicable Self-Insured Retention Amount stated in the Declarations and (2) subject to the applicable Limit of Liability stated in the Declarations and the other terms and conditions of this Policy.

Solely with regard to Coverage B, the Company's obligation to indemnify the INSURED for LOSS (a) begins upon full payment of the REQUIRED INSURANCE amount and (b) is subject to the applicable Limit of Liability stated in the Declarations and the other terms and conditions of this Policy. If the full REQUIRED INSURANCE amount is not available due to the prior depletion or exhaustion of its limits of liability, or due to an enforceable exclusion under the REQUIRED INSURANCE, then the Company's obligation to indemnify the INSURED shall attach in excess of any remaining REQUIRED INSURANCE amount and in excess of the applicable Self-Insured Retention Amount stated in the Declarations.

- D. The Self-Insured Retention Amount is to be borne by the INSURED and is not to be insured unless the Company has expressed its prior consent in writing to the FIRST NAMED INSURED. If the same or related POLLUTION CONDITION or, actual or alleged act, error or omission in PROFESSIONAL SERVICES, results in coverage under more than one coverage section for which a limit is stated in the Declarations, or under any other coverage afforded under this Policy or any endorsements attached hereto, only the single highest Self-Insured Retention amongst such applicable coverages shall apply to that POLLUTION CONDITION or, actual or alleged act, error or omission in PROFESSIONAL SERVICES, as applicable.
- E. Each POLLUTION CONDITION Limit - Subject to Items G. and H. below, the most the Company will pay for the sum of all LOSS, CLEAN-UP COSTS, and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy or any endorsements attached hereto, arising out of the same or related POLLUTION CONDITION is the Each POLLUTION CONDITION Limit applicable to that particular coverage.
- F. Each Act, Error or Omission Limit - Subject to Items G. and H. below, the most the Company will pay for the sum of all LOSS and LEGAL EXPENSE arising out of any one actual or alleged act, error or omission, or out of any one group or series of related or connected actual or alleged acts, errors or omissions, in PROFESSIONAL SERVICES is the Each Act, Error or Omission Limit stated in the Declarations that is applicable to that particular coverage. If any one actual or alleged act, error or omission, or any one group or series of related or connected actual or alleged acts, errors or omissions, in PROFESSIONAL SERVICES results in a CLAIM or LOSS under both Coverage A and Coverage B, it shall be considered a single CLAIM or LOSS and shall be subject to one Each Act, Error or Omission Limit and one Self-Insured Retention. Only the single highest Self-Insured Retention amongst Coverages A and B shall apply to that actual or alleged act, error or omission in PROFESSIONAL SERVICES. In no event will the Company pay LOSS under both Coverages A and B that the Company deems, in its sole judgment, to be duplicative in nature.
- G. Coverage Section Aggregate Limit - Subject to Item H. below, the Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy or any endorsements attached thereto, during the POLICY PERIOD or EXTENDED REPORTING PERIOD, if applicable, shall not exceed the Coverage Aggregate Limit of Liability applicable to that particular coverage.
- H. Policy Aggregate Limit - The Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, LEGAL EXPENSE

and any other coverages afforded under this Policy or any endorsements attached thereto, shall not exceed the Policy Aggregate Limit of Liability as stated in the Declarations.

- I. Progressive, indivisible BODILY INJURY, PROPERTY DAMAGE or ENVIRONMENTAL DAMAGE over more than one POLICY PERIOD, and resulting from the same or related POLLUTION CONDITION, shall be considered to have occurred only in the POLICY PERIOD in which the first exposure to the POLLUTION CONDITION takes place. If the date of that first exposure (1) is prior to the beginning of the Policy Period of the first Contracting Services

Environmental Liability Policy issued to the INSURED by the Company, or (2) cannot be determined, then such progressive, indivisible BODILY INJURY, PROPERTY DAMAGE or ENVIRONMENTAL DAMAGE shall be considered to have occurred only on the first day of the Policy Period of the first Contracting Services Environmental Liability Policy issued to that INSURED by the Company.

- J. Any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto, incurred and reported to the Company, in writing, over more than one POLICY PERIOD, and resulting from the same or related POLLUTION CONDITION or, the same or related actual or alleged act, error or omission in PROFESSIONAL SERVICES, shall be considered a single POLLUTION CONDITION or a single actual or alleged act, error or omission in PROFESSIONAL SERVICES, respectively. The LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached thereto will be subject to the same Limit of Liability and Self-Insured Retention Amount(s) in effect at the time the POLLUTION CONDITION, or actual or alleged act, error or omission in PROFESSIONAL SERVICES, as applicable, was first reported to the Company in writing during the POLICY PERIOD or an applicable EXTENDED REPORTING PERIOD.

SECTION VII. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION

- A. As a condition precedent to the coverage hereunder, in the event a CLAIM is made against the INSURED for LOSS or CLEAN-UP COSTS, or a POLLUTION CONDITION is first discovered that results in a LOSS or CLEAN-UP COSTS, written or oral notice containing particulars sufficient to identify the INSURED and all reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the INSURED to the Company or any of its authorized agents as soon as practicable. In the event of oral notice, the INSURED agrees to furnish a written report as soon as practicable. The INSURED shall also forward to the Company every demand, notice, summons, order or other process received by the INSURED or the INSURED's representative as soon as practicable.

As a condition precedent to the coverage hereunder, in the event a CLAIM is made by the INSURED against the DESIGN PROFESSIONAL for LOSS, notice of such CLAIM shall be given by or for the INSURED to the Company or any of its authorized agents as soon as practicable.

- B. No costs, charges or expenses shall be incurred, nor payments made, obligations assumed or remediation commenced, without the Company's consent which shall not be unreasonably withheld. This provision does not apply to costs incurred by the INSURED on an emergency basis, where delay on the part of the INSURED would cause injury to persons or damage to property or increase significantly the cost of responding to a POLLUTION CONDITION. The INSURED shall notify the Company of all such expenses immediately after the emergency ends.

Without the Company's prior written consent, no INSURED may negotiate or settle any CLAIM against a DESIGN PROFESSIONAL, if such negotiations, settlement, or CLAIM may involve this Policy or affect any of the Company's rights.

- C. With regard to all coverages other than Coverage B, the Company shall have the right to designate legal counsel for the investigation, adjustment and defense of CLAIMS. The Company shall consult with the INSURED in conjunction with the selection of counsel. The Company shall have the right and duty to defend an INSURED against any CLAIM for LOSS or for CLEAN-UP COSTS, however, the Company will have no duty to defend the INSURED for LOSS or for CLEAN-UP COSTS to which this Policy does not apply.

Solely with regard to Coverage B, until the REQUIRED INSURANCE has been exhausted or determined by the DESIGN PROFESSIONAL'S insurer to be unavailable due to an enforceable exclusion, the Company shall have the right, but not the duty, to associate with the INSURED and the DESIGN PROFESSIONAL in the investigation,

settlement or defense of any claim, suit, or legal, equitable, administrative, or other proceeding that may involve this Policy or affect any of the Company's rights. The Company shall be given the opportunity to exercise that right effectively. If the Company exercises that right, it shall do so at its own expense. With regard to a CLAIM made by the INSURED against the DESIGN PROFESSIONAL, the Company may require that the INSURED'S counsel in such matter meet certain minimum qualifications and maintain adequate errors and omissions insurance.

In no event will the Company defend a DESIGN PROFESSIONAL.

- D. Once the applicable Limit of Liability has been exhausted, the Company shall not be obligated to defend or continue to defend any CLAIM or pay for any LOSS, CLEAN-UP COSTS or other coverage afforded under this Policy.
- E. The Company may, where allowable by law, appoint one counsel to defend all of the INSUREDs under this Policy on a joint defense basis.
- F. In the event that the INSURED is entitled by law to select independent counsel (Cumis Counsel) to defend the INSURED at the Company's expense, that counsel's fees and all other litigation expenses charged to or paid by the Company shall be limited to the same rates that the Company would pay to counsel selected by the Company to defend a similar CLAIM in the location where the CLAIM arose or is being defended. The Company may require that such counsel meet certain minimum qualifications and maintain adequate errors and omissions insurance. The INSURED agrees that such counsel will timely respond to the Company's request for information.
- G. The INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a monetary settlement of a CLAIM acceptable to a claimant:
 - 1. for an amount within the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company shall not be liable for any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverages afforded under this Policy or any endorsements attached hereto, in excess of the Self-Insured Retention Amount; or
 - 2. for a total amount in excess of the Self-Insured Retention and within the applicable Limits of Liability and the INSURED refuses such settlement, the Company's liability for LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverages afforded under this Policy or any endorsements attached hereto, shall be limited to that portion of the sum of (a) the recommended settlement and (b) the costs, charges and expenses already incurred as of the date of the INSURED's refusal, which exceeds the Self-Insured Retention Amount and is within the Limit of Liability.
- H. All INSUREDs shall cooperate with the Company and upon the Company's request shall submit to examination by a representative of the Company, under oath if required, and shall attend hearings, depositions and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the investigation and/or defense, all without charge to the Company. The INSURED shall further cooperate with the Company and do whatever is necessary to secure and enforce any rights of indemnity, contribution or apportionment which the INSURED may have.
- I. If during the POLICY PERIOD the INSURED first becomes aware of an actual or alleged act, error or omission in PROFESSIONAL SERVICES that first commenced on or after the Retroactive Date stated in the Declarations which the INSURED reasonably believes may result in a CLAIM (herein referred to as a Circumstance), the INSURED may provide written notice to the Company during the POLICY PERIOD containing all of the information stated below. Any such Circumstance that subsequently becomes a CLAIM made against the INSURED and reported to the Company, in writing, within three (3) years after the end of the POLICY PERIOD shall be considered to have been first made and reported during the POLICY PERIOD and shall be subject to all of the terms and conditions of this Policy. It is a condition precedent to the coverage under this provision that such written notice to the Company of a Circumstance contain all of the following information:
 - 1. details of the actual or alleged act, error or omission in PROFESSIONAL SERVICES, including the specific PROFESSIONAL SERVICES involved; and
 - 2. the injury or damage that has taken place or may result; and
 - 3. the date the actual or alleged act, error or omission in PROFESSIONAL SERVICES took place; and
 - 4. the identity of the INSURED(s) who may be the subject of any subsequent CLAIM; and
 - 5. the likely location of any subsequent CLAIM; and

6. the names and addresses of all known potential witnesses and claimants; and
7. details of how the INSURED became aware of the Circumstance.

The Company shall determine, in its sole reasonable judgment, whether an INSURED's written notice adequately supplies the information described in 1. through 7. and satisfies the condition precedent.

This provision I. applies only to Coverage A.

SECTION VIII. TRANSFER OF LEGAL DEFENSE DUTIES

- A. If the Company believes that any of the applicable Limits of Liability stated in the Declarations has been or soon will be exhausted in defending a CLAIM, or that the Company has paid out or will soon pay out the Policy Aggregate Limit of Liability stated in the Declarations, the Company will so notify the FIRST NAMED INSURED in writing as soon as possible. The Company will advise that its duty to defend CLAIMS seeking damages subject to those limits has terminated, subject to payment of the limits, and that it will no longer handle the defense of any CLAIM for which notice is given after the date it sends out such notice. The Company will take prompt and appropriate steps to transfer control of any existing defense prior to exhaustion of the limits to the FIRST NAMED INSURED. The FIRST NAMED INSURED agrees to reimburse the Company for any costs which the Company bears in connection with the transfer of the defense.
- B. The Company will take appropriate steps necessary to defend the CLAIM during the transfer of the defense and avoid any unfavorable legal action provided that the INSURED cooperates in the transfer of the duties of the defense.
- C. The Company's failure to comply with any of the provisions of Section VIII. shall in no way obligate the Company to defend or continue to defend any CLAIM, or to pay any LOSS, CLEAN-UP COSTS or other sum covered under this Policy, after exhaustion of an applicable Limit of Liability.

SECTION IX. CONDITIONS

- A. **ACTION AGAINST COMPANY** - No action brought by an organization or entity, other than an INSURED, shall lie against the Company unless, as a condition precedent thereto, the INSURED has fully complied with all of the terms of this Policy and, 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 this 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.

- B. **ASSIGNMENT** - This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company.
- C. **BANKRUPTCY** - Bankruptcy or insolvency of the INSURED or of the INSURED's estate shall not relieve the Company of any of its obligations hereunder.
- D. **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. In the event of cancellation by the FIRST NAMED INSURED, the return premium shall be computed in accordance with the customary short rate table and procedure after applying the minimum earned premium percentage stated in the Declarations. If a CLAIM is made, a POLLUTION CONDITION is discovered or coverage is otherwise afforded under this Policy, then the premium shall be considered fully earned by the Company and the INSURED is not entitled to a return premium upon cancellation.

This Policy may be cancelled by the Company by mailing to the FIRST NAMED INSURED at the address shown in the Declarations, written notice stating when not less than ninety (90) days [ten (10) days for non-payment of premium] thereafter such cancellation shall be effective. The mailing of notice as aforesaid 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. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is affected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

This Policy may be cancelled by the Company for the following reasons: (1) Non-payment of premium, or (2) Fraud or material misrepresentation on the part of the INSURED, such as can be proven in a court of law.

- E. 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 can the terms of this Policy be waived or changed, except by an endorsement issued by the Company to form a part of this Policy.
- F. CHOICE OF LAW** - All matters arising hereunder, including questions related to the validity, interpretation, performance and enforcement of this Policy, shall be determined in accordance with the law and practice of the State of New York (not including New York's choice of law rules).
- G. CONSENT** - Where the consent of the Company or the INSURED is required under this Policy, such consent shall not be unreasonably withheld, delayed, conditioned or denied.
- H. DECLARATIONS AND REPRESENTATIONS** - By acceptance of this Policy, the INSURED agrees that the statements contained in the Declarations, the application and any other supplemental materials and information submitted in connection with the application or any amendments to the Policy during the POLICY PERIOD are the INSURED's declarations and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such declarations and representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.
- I. HEADINGS** - The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.
- J. INSPECTION AND AUDIT** - The Company shall be permitted but not obligated to inspect and monitor on a continuing basis the INSURED's property or operations and any JOB SITE and COVERED LOCATION(S), at any time. Neither the Company's right to make inspections 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. Access for the inspection and audit will be coordinated through the broker or agent of the FIRST NAMED INSURED.
- K. JURISDICTION AND VENUE** - It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit to the jurisdiction of the State of New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.
- L. OTHER INSURANCE** - Subject to Section VI., Limit of Liability and Self-Insured Retention, this insurance shall apply only in excess of the sum of the Self-Insured Retention amount stated in the Declarations and the applicable limits of any other valid and collectible insurance available to the INSURED, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the applicable Limits of Liability of this Policy.
- M. SEVERABILITY** - Except with respect to the Limits of Liability, Self-Insured Retention, Exclusion 10. ("Insured vs. Insured") and any rights and duties assigned in this Policy to the FIRST NAMED INSURED, 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 by itself affect coverage for another INSURED under this Policy. This Condition M. 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.
- N. SOLE AGENT** - The FIRST NAMED INSURED stated in the Declarations shall act on behalf of all INSUREDS 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 under Section V., EXTENDED REPORTING PERIOD.

- O. SUBROGATION** - If the INSURED has rights to recover, from another person or organization, all or any part of a payment the Company makes under this Policy, those rights are transferred to the Company. The INSURED shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED shall do nothing to prejudice such rights. Any monies recovered as a result of subrogation proceedings shall accrue first to the INSURED to the extent of any payments it made in excess of the limits of liability, then to the Company to the extent of its payment under the Policy, and then to the INSURED to the extent of its payment of the self-insured retention. Expenses incurred in such subrogation proceedings shall be apportioned amongst the INSURED and Company in the proportion that each interested party's share in the recovery bears to the total recovery.

Specimen