



## ENVIRONMENTAL LEGAL LIABILITY POLICY

**NOTICE:** THIS POLICY INCLUDES CLAIMS MADE AND REPORTED COVERAGES WHICH CONTAIN PROVISIONS THAT RESTRICT COVERAGE AND ARE UNIQUE. THE INSURED SHOULD READ THE ENTIRE POLICY CAREFULLY TO DETERMINE RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. BOLD WORDS AND PHRASES, OTHER THAN HEADINGS, ARE DEFINED IN SECTION VII. OF THIS POLICY, AND OTHER TERMS ARE ALSO DEFINED THROUGHOUT THE POLICY.

In consideration of payment of premium when due and in reliance upon the **application**, only those purchased Coverage Sections as set forth in Item 7 of the Declarations are applicable.

### I. INSURING AGREEMENTS

#### INSURING AGREEMENT A. COVERAGES

##### 1. Coverage Section 1 – First Party Protection

Provided, for each of Coverages 1.a. – 1.d., the **pollution incident** is first discovered by a **responsible insured** and reported to the **insurer** during the **policy period**:

###### a. Clean-up

The **insurer** will pay on behalf of the **insured**, **clean-up cost** resulting from a **pollution incident** on, at, under, or migrating from or through an **insured location**.

###### b. Emergency Response

The **insurer** will pay on behalf of the **insured**, **emergency response cost** resulting from a **pollution incident**: (i) on, at, under, or migrating from or through an **insured location**; (ii) caused by **transportation**; or (iii) caused by **covered operations**.

###### c. Environmental Crisis

The **insurer** will pay on behalf of the **insured**, **crisis cost** resulting from a **crisis event**.

###### d. Business Interruption

The **insurer** will pay the **business interruption cost** and **extra expense** incurred by the **insured** and caused solely and directly by a **pollution incident** on, at or under an **insured location**, provided the **pollution incident** results in **clean-up cost** covered by this Policy.

##### 2. Coverage Section 2 – Legal Liability Protection

Provided, for each of Coverages 2.a. – 2.d., the **claim** for damages because of such **bodily injury** or **property damage**, or a **claim** for such **clean-up cost**, is first made against an **insured** and reported to the **insurer** during the **policy period**:

###### a. Insured Location

The **insurer** will pay on behalf of the **insured** those sums that the **insured** becomes legally obligated to pay (i) as damages because of **bodily injury** or **property damage**, or (ii) for **clean-up cost**, resulting from a **pollution incident** on, at, under, or migrating from or through an **insured location**.

###### b. Non-owned Site

The **insurer** will pay on behalf of the **insured** those sums that the **insured** becomes legally obligated to pay (i) as damages because of **bodily injury** or **property damage**, or (ii) for **clean-up cost**, resulting from a **pollution incident** on, at, under or migrating from or through any **non-owned site**.

###### c. Transportation

The **insurer** will pay on behalf of the **insured** those sums that the **insured** becomes legally obligated to pay (i) as damages because of **bodily injury** or **property damage**, or (ii) for **clean-up cost**, resulting from a **pollution**

incident caused by **transportation**.

d. **Covered Operations**

The **insurer** will pay on behalf of the **insured** those sums that the **insured** becomes legally obligated to pay (i) as damages because of **bodily injury** or **property damage**, or (ii) for **clean-up cost**, resulting from a **pollution incident** caused by **covered operations**.

INSURING AGREEMENT B. **DEFENSE, SUPPLEMENTARY PAYMENTS AND SETTLEMENT**

1. **Defense**

a. The **insurer** has the right and duty to defend the **insured** against any **claim** seeking damages or **clean-up cost** subject to coverage under Coverage Section 2 (Legal Liability Protection). The **insurer** has no duty to defend the **insured** against a claim to which that Coverage does not apply. The **insurer's** duty to defend ends when the applicable Limit of Liability is exhausted by payment of **loss**. Legal expense incurred for defense of any **claim** shall erode the applicable Limit of Liability. The **insurer** has the right but not the duty to investigate any **pollution incident** and settle any **claim** that may result therefrom.

b. The **insurer** will also pay **supplementary payment** incurred by the **insured** resulting from a **pollution incident** covered under this Policy. **Supplementary payment** is not included in **loss** and shall not erode the aggregate limit of liability. Notwithstanding the foregoing, any **supplementary payment** for an **insured**, as defined in Section VII. **DEFINITIONS**, Paragraph U. **Insured**, Subparagraph 4., shall be included in **loss** and shall erode the aggregate limit of liability.

c. Where the **insured** is legally entitled to select independent counsel to defend it, the attorneys' fees and expenses the **insurer** will pay are limited to the rates that the **insurer** normally pays to counsel selected by the **insurer** to defend similar claims in the jurisdiction where the **claim** is being defended. The **insurer** may require that such counsel meet certain minimum qualifications and maintain errors and omissions insurance. The **insured** may at any time by its written consent waive any right to select independent counsel.

2. **Settlement**

a. The **insurer** will present all settlement offers to the **insured**. If the **insurer** recommends a settlement of a **claim** that is acceptable to a claimant and is within the applicable Limits of Liability, and the **insured** refuses to consent to such settlement, then the **insurer's** duty to defend shall end and the **insurer** may tender the defense to the **insured**. The **insured** shall thereafter defend such **claim** independently. The **insurer's** liability shall not exceed the amount for which the **claim** could have been settled had the **insurer's** recommendation been accepted plus legal expenses, exclusive of the Deductible, incurred up to the time the **insurer** recommended the settlement.

b. In the event the **insured** and the **insurer** resolve any **claim** as a direct result of mediation or other alternative non-binding dispute resolution process facilitated by a neutral third-party, the **insurer** shall reimburse the **first named insured** for 50% of any applicable Deductible paid by the **first named insured**, up to a maximum of \$50,000 for such **claim**.

II. **EXCLUSIONS**

This Policy does not apply to:

A. **Contractual Liability**

**Loss** that the **insured** is obligated to pay by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability: 1. For **loss** that the **insured** would have in the absence of the contract or agreement; or 2. Assumed in an **insured contract**.

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

Any criminal fines, criminal penalties or criminal assessments.

C. **Damage to Insured's Work**

**Property damage** to work performed by or on behalf of any **insured** caused by **covered operations**.

#### D. Divested Properties

**Loss** arising from any property that the **insured**: 1. Prior to the **inception date**, sold, terminated a lease in which the **insured** was the lessee, gave away or relinquished operational or management control of; or 2. Abandoned at any time. This exclusion does not apply to **insured locations** listed in any Schedule of Insured Locations Endorsement attached to this Policy.

#### E. Employment Liability

**Bodily injury** to:

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

This Exclusion applies whether the **insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

#### F. Identified Underground Storage Tanks

A **pollution incident** arising out of an **underground storage tank** located at an **insured location**, the existence of which is known by any **responsible insured** as of the **inception date** or which is identified in the **approved acquisition standard**, unless such **underground storage tank** is scheduled on an Underground Storage Tank Endorsement attached to this Policy. This Exclusion does not apply to any **underground storage tank** which has been closed, abandoned in place or removed, in accordance with **environmental law**, prior to the **inception date**.

#### G. Installed Asbestos and Lead

**Clean-up cost** arising out of asbestos, asbestos-containing materials or lead-based paint installed or applied in, on, or to any building or structure, including any removal of such materials and disposal thereof.

This Exclusion does not apply to:

1. Clean-up cost that arises from inadvertent disturbance of such installed or applied asbestos or asbestos-containing materials or lead-based paint; or
2. In the absence of inadvertent disturbance described in (i) above, remediation of soil, surface water or groundwater contamination.

#### H. Insured's Products

**Loss** arising out of any goods or products (including containers thereof) manufactured, sold, handled, distributed, altered or repaired by any **insured** or others trading or operating under any **insured's** name. This Exclusion applies to any obligation or liability arising from or related to warranties and representations respecting the fitness of such goods or products and to the failure to provide warnings or instructions for such goods or products. This Exclusion does not apply to **loss** arising from **transportation** or storage of such products at an **insured location** or **non-owned site**.

#### I. Insured Versus Insured

Any **claim** brought by or on behalf of any **insured** against any other **insured** under this Policy. This Exclusion does not apply to a **claim** initiated by a third-party or that arises out of an indemnification given by one **insured** to another **insured** in an **insured contract**.

#### J. Intentional Non-Compliance

**Loss** arising out of a **responsible insured's** intentional non-compliance with **environmental law**. This Exclusion does not apply to the **insured's** action taken in good faith in reliance upon written advice of outside counsel received in advance of such non-compliance or in response to an imminent and material threat to human health or the

environment.

#### K. Internal Expenses

Any costs, charges or expenses, incurred by any **insured** for goods supplied or services performed by the staff or salaried employees of any **insured**, unless such costs, charges or expenses are incurred with the prior written approval of the **insurer** in its discretion. This Exclusion does not apply to **supplementary payment**.

#### L. Prior Knowledge/ Non-Disclosure

A **pollution incident** or imminent threat thereof known by a **responsible insured** prior to the **inception date** and not specifically disclosed in the application.

#### M. Punitive Damages, Fines and Penalties

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

#### N. War

**Loss** arising, directly or indirectly, out of:

1. War, including undeclared or civil war;
2. War-like action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### O. Workers' Compensation and Similar Laws

**Loss** arising out of any obligation of the **insured** under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### III. LIMITS OF LIABILITY AND DEDUCTIBLE

The Limits of Liability shown in the Declarations and the rules below fix the most the **insurer** will pay under this Policy regardless of the number of **insureds**, claimants, **claims**, **crisis events**, or **pollution incidents**. The applicable Limits of Liability apply in excess of the applicable Deductible amounts.

#### A. Aggregate Limit

The Aggregate Limit of Liability set forth in Item 6 of the Declarations is the most the **insurer** will pay for all **loss** under this Policy.

#### B. Coverage Section Limits

Subject to Paragraph A. above, the applicable Coverage Section Limit of Liability set forth in Item 7 of the Declarations is the most the **insurer** will pay for all **loss** or **crisis cost** under each corresponding Coverage Section.

#### C. Pollution Incident Limits

Subject to Paragraphs A. and B. above, for each Coverage Section, the applicable Pollution Incident Limit of Liability set forth in Item 7 of the Declarations is the most the **insurer** will pay for all **loss** or **crisis cost** arising out of any one **pollution incident** or related, continuous or repeated **pollution incidents**. In the event a **pollution incident** or related, continuous or repeated **pollution incidents** give rise to coverage under multiple Coverage Sections under this Policy, the most the insurer will pay under all Coverage Sections for all **loss** or **crisis cost** arising out of such **pollution incident** or related, continuous or repeated **pollution incidents** is the highest applicable Pollution Incident Limit of Liability.

## D. Deductible

Except with respect to Coverage Section 1.d. (Business Interruption), for each Coverage Section, the applicable Pollution Incident Deductible set forth in Item 7 of the Declarations applies separately to **loss** arising from each **pollution incident** or related, continuous or repeated **pollution incidents**. In the event a **pollution incident** or related, continuous or repeated **pollution incidents** gives rise to coverage under multiple Coverage Sections under this Policy, only the highest applicable Pollution Incident Deductible shall apply.

For Coverage Section 1.d. (Business Interruption), the applicable Deductible stated in Item 7 of the Declarations applies to all **business interruption cost** and **extra expense** incurred during the number of days specified in Item 7 of the Declarations of the **business interruption period**.

The Deductible shall be paid by the **first named insured** and remain uninsured. The **insurer** may, but is not obligated to, advance amounts for **loss** within the Deductible. Upon the **insurer's** request, the **first named insured** will promptly reimburse the **insurer** for any amounts within the Deductible that the **insurer** has advanced.

## E. Related Claims

Under Coverage Section 1 (First Party Protection), if a **pollution incident** is first discovered by a **responsible insured** and reported to the **insurer** during this **policy period**, or under Coverage Section 2 (Legal Liability Protection) if a **claim** is first made against an **insured** and reported to the **insurer** during this **policy period**, then, provided the **first named insured** has maintained Environmental Legal Liability coverage with the **insurer** or its affiliate on a continuous, uninterrupted basis:

### 1. Coverage Section 1 (First Party Protection)

All **pollution incidents** first discovered by a **responsible insured** and reported to the **insurer** during a subsequent policy period that arise from the same, related, continuous or repeated **pollution incidents** that was first discovered by a **responsible insured** and reported to the **insurer** during this **policy period**, will be deemed to have been first discovered by a **responsible insured** and reported to the **insurer** during this **policy period**. All **loss** arising out of such **pollution incidents** will be subject to the applicable limits, deductible, terms and conditions of this Policy.

### 2. Coverage Section 2 (Legal Liability Protection)

All **claims** first made against an **insured** and reported to the **insurer** during a subsequent policy period that arise from the same, related, continuous or repeated **pollution incidents** that gave rise to a **claim** first made against an **insured** and reported to the **insurer** during this **policy period**, will be deemed to have been first made against the **insured** and reported to the **insurer** during this **policy period**. All such **claims** will be subject to the applicable limits, deductible, terms and conditions of this Policy.

## IV. RIGHTS AND DUTIES OF THE INSURER AND THE INSURED

### A. The Insured's Duties in the Event of a Pollution Incident

The **insured** must notify the **insurer** as soon as practicable of any **pollution incident**, whether or not it has received a **claim**. To the extent possible, such notice should include:

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

Notice of a **pollution incident** is not notice of a **claim**.

### B. The Insured's Duties in the Event of a Claim

If a **claim** is made against any **insured**, the **insured** must:

1. Immediately record the specifics of the **claim** and the date received;

2. Notify the **insurer** as soon as practicable;
3. Immediately send the **insurer** copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
4. Authorize the **insurer** to obtain records and other information;
5. Cooperate with the **insurer** in the investigation, settlement or defense of the **claim**; and
6. Assist the **insurer**, upon its request, in the enforcement of any right against any person or organization which may be liable to the **insured** because of injury or damage to which this Policy may also apply.

### C. Rights and Duties With Respect to Pollution Incidents

1. In the event the **insured** becomes aware of a **pollution incident** or imminent threat thereof, the **insured** must:
  - (i) Promptly report the **pollution incident** or imminent threat thereof to the **insurer** and to the appropriate governmental authority as required by **environmental law**;
  - (ii) Mitigate and clean-up any **pollution incident** or imminent threat thereof to the extent required by **environmental law** by retaining an **environmental professional**;
  - (iii) Provide the **insurer** with proposed work plans, bids, contracts, agreements or any similar document, concerning work to result in **clean-up cost** (except for **emergency response cost**), which proposals shall be subject to the **insurer's** right to prior approval; and
  - (iv) Provide the **insurer** at reasonable intervals (and always at least thirty (30) days, or as soon as practicable and prior to submission of any progress report to any regulatory agency) written progress reports concerning the work resulting in **clean-up cost**.
2. The **insurer** shall have the right but not the duty to mitigate and clean-up (including assuming direct control of any mitigation or clean-up) any **pollution incident** that may be covered under this Policy or any imminent threat that may result in a **pollution incident** that may be covered under this Policy. In the event the **insurer** asserts a right to mitigate or clean-up, then any amounts the **insurer** spends to mitigate or clean-up shall erode the applicable Limits of Liability and the **insured** will reimburse the insurer for any portion of any applicable Deductible advanced while taking such action.

### D. Insured's Duties in the Event of Emergency Response Costs

When **emergency response costs** have been or may be incurred, the **insured** shall forward to the **insurer** as soon as practicable all information related to such **emergency response costs**, including the cause, commencement and location of the **pollution incident**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, and correspondence with regulatory authorities.

### E. Insured's Right to Give Notice of Possible Claim Under Coverage Section 2 (Legal Liability Protection)

If during the **policy period** the **insured** first becomes aware of a **pollution incident** which may reasonably be expected to give rise to a **claim** against the **insured**, the **insured** may give the **insurer** written notice during the **policy period** of such **pollution incident** and the reasons for believing that a **claim** may arise. Such notice must include the following to the extent possible:

1. The circumstances under which the **insured** first became aware of the **pollution incident**;
2. The nature, location and date of commencement of the **pollution incident**;
3. The identity of anticipated or potential claimants;
4. The **bodily injury, property damage** or **clean-up cost** that has resulted or may result from the **pollution incident**;
5. All available engineering information relating to the **pollution incident**; and
6. Any other information that the **insurer** deems reasonably necessary.

In the event the **insured** provides such notice, all claims otherwise covered under Coverage Section 2 (Legal Liability Protection) that arise out of such **pollution incident** and are first made against an **insured** and reported to the **insurer** within 6 years after the end of the **policy period** shall be deemed to have been first made against

an **insured** and reported to the **insurer** during the **policy period**.

## V. EXTENDED REPORTING PERIOD

This Section applies solely to Coverage Section 2 (Legal Liability Protection):

If the Policy was not terminated due to non-payment of premium, fraud or misrepresentation in the **application** for this Policy, or failure to comply with the material terms, conditions or contractual obligations under this Policy, and the **first named insured** has not purchased any other insurance to replace this insurance, the **insurer** will provide an Automatic Extended Reporting Period as described in Paragraph A. below, or, if the **first named insured** purchases it, an Optional Extended Reporting Period as described in Paragraph B. below.

### A. Automatic Extended Reporting Period

The Automatic Extended Reporting Period is ninety (90) days following the end of the **policy period**. A **claim** first made against an **insured** and reported to the **insurer** during the Automatic Extended Reporting Period will be deemed to have been first made against the **insured** and reported to the **insurer** on the last day of the **policy period**, provided the **pollution incident** commenced before the end of the **policy period**. The Automatic Extended Reporting Period shall not apply if the Optional Extended Reporting Period is purchased pursuant to Paragraph B. below.

### B. Optional Extended Reporting Period

The **first named insured** is entitled to purchase an Optional Extended Reporting Period Endorsement upon providing written notice to the **insurer**, within the first thirty (30) days following the end of the **policy period**, of its election to purchase the Endorsement. The Optional Extended Reporting Period shall be effective for up to forty-eight (48) months at a rate of not more than 200% of the premium set forth in Item 4(c) of the Declarations. The Optional Extended Reporting Period Endorsement shall not become effective unless the **first named insured** pays the additional premium when due, which will be fully earned upon payment. Once the **first named insured** pays the additional premium when due, the Optional Extended Reporting Period may not be cancelled. A **claim** first made against an **insured** and reported to the **insurer** during the Optional Extended Reporting Period will be deemed to have been first made against the **insured** and reported to the **insurer** on the last day of the policy period, provided the **pollution incident** commenced before the end of the policy period.

C. The provision of an Extended Reporting Period does not increase or reinstate any aggregate limit under this Policy.

## VI. CONDITIONS

### A. Assignment

Assignment of this Policy or any of the **insured's** rights or duties hereunder, shall not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereto.

### B. Bankruptcy

Bankruptcy or insolvency of the **insured** or the **insured's** estate will not relieve the **insurer** of any obligations under this Policy.

### C. Cancellation

1. The **first named insured** may cancel this Policy by delivering advance written notice of cancellation to the **insurer** stating when cancellation is to be effective. If the **first named insured** cancels, any unearned premium shall be paid to the **first named insured** calculated on the customary short rate basis.
2. The **insurer** may cancel this Policy for the reasons stated below in 2.(i) and 2.(ii) by mailing or delivering to the **first named insured** at the address stated in Item 8(a) of the Declarations written notice of cancellation at least:
  - (i) Fifteen (15) days before the effective date of cancellation if the **insurer** cancels for nonpayment of premium or the applicable Deductible;
  - (ii) Ninety (90) days before the effective date of cancellation if the **insurer** cancels for fraud or

misrepresentation in the **application** for this Policy or failure to comply with the material terms, conditions or contractual obligations under this Policy.

If the **insurer** cancels, any premium refund will be calculated on a pro rata basis.

3. Any written notice of cancellation provided under Paragraphs 1. or 2. shall state the effective date of cancellation and the **policy period** will end on such date. Proof of mailing of notice shall be sufficient proof of notice of cancellation.
4. The **insurer** will tender any premium refund due upon cancellation to the **first named insured** as soon as practicable after cancellation is effective, but tender of such premium refund is not a condition of cancellation.

#### **D. Changes**

This Policy contains all the agreements between the **insurer** and the **first named insured** concerning the insurance afforded under this Policy. This Policy's terms cannot be changed, amended or waived except by an endorsement issued by the **insurer** and made a part of this Policy.

#### **E. Cooperation**

The **insured** shall cooperate with the **insurer** and provide such reasonable assistance and cooperation in the investigation and defense of **claims** as the **insurer** may require. At the **insurer's** request, the **insured** shall submit to examination under oath, attend depositions, hearing and trials, and assist in effecting settlements and providing evidence and the attendance of witnesses.

#### **F. Coverage Territory**

This Policy shall apply to any covered **pollution incident** that takes place anywhere in the world if permissible under applicable local law, provided the insurer's obligation to provide any coverage under this Policy shall be determined only by a court in the United States of America, its territories or possessions, Puerto Rico or Canada. Judgments against the insurer may be enforced only in the United States of America. In no event shall this insurance be used as evidence of financial assurance in any jurisdiction outside of the United States of America.

#### **G. Economic and Trade Sanctions**

Any term or condition of this Policy in violation of any United States of America economic or trade sanctions, including but not limited to, sanctions administered and enforced by the United States Treasury Department's Office of Foreign Assets Control, shall be null and void.

#### **H. Headings**

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

#### **I. Legal Action Against Insurer**

No person or organization shall have the right under this Policy to join the **insurer** as a party, or otherwise bring the **insurer** into a suit seeking damages from an **insured**, or to bring any action against the **insurer** in connection with this Policy, unless as a condition precedent thereto all terms of this Policy have been fully complied with. A person or organization may sue the **insurer** to recover after an agreed settlement or on a final judgment against an insured. However, the **insurer** will not be liable for amounts that are not payable under the terms of this Policy or that are in excess of the applicable Limit of Liability.

#### **J. Notices**

All notices to the **first named insured** required under this Policy shall be in writing and mailed or delivered to the address stated in Item 8(a) of the Declarations. All notices to the **insurer** shall be in writing and mailed or delivered to the address stated in: 1. Item 8(b) of the Declarations for notices required or permitted under Section IV. of the Policy, or 2. Item 8(c) for all other notices. Proof of mailing any notice required under this Policy to such



address will be sufficient proof of notice under this Policy.

#### **K. Other Insurance**

If other valid and collectible insurance is available for any **loss** covered under this Policy, the **insurer's** obligations are limited as follows:

1. This insurance is primary and the **insurer's** obligations are not affected unless any of the other insurance is also primary, in which case the **insurer** will share with all other primary insurance by the method described in Paragraph 2. below. However, in the event that an **insured contract** requires this insurance to be primary for any person or organization whom the **first named insured** agreed to insure, and provided such person or organization is an **insured** under this Policy, this insurance will be primary and the **insurer** will not seek contribution from any other insurance issued to such person or organization.
2. If all of the other insurance permits contribution by equal shares, the **insurer** also will follow such method. Under this method, each insurer contributes equal amounts until it has paid its limit of liability or no **loss** remains, whichever comes first; or  
If any of the other insurance does not permit contribution by equal shares, the **insurer** will contribute by limits. Under this method, each **insurer's** share is based on the ratio of its limit of liability to the total limits of insurance of all insurers.

#### **L. Representations**

By acceptance of this Policy, the **first named insured** hereby represents that the **application** is material to the underwriting of this Policy and the **insurer** issued this Policy in reliance upon such representation.

#### **M. Right of Access and Inspection**

The **insurer** and its representatives shall have the right and opportunity but not the obligation to interview the **insured's** employees and to inspect at any reasonable time during the **policy period** or thereafter, an **insured location** or any other location or facility. The **insurer** and its representatives shall not assume any responsibility or duty to the **insured** or to any other party, person or entity, by reason of such right or inspection. The **insurer's** right to make inspection, the actual undertaking thereof or any report thereon shall not constitute an undertaking on behalf of the **insured** or others, to determine or warrant that the property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **first named insured** agrees to provide appropriate personnel to assist the insurer or its representatives during any inspection. The **insured's** compliance with this Condition is a condition precedent to coverage under this Policy.

#### **N. Separation of Insureds**

Except with respect to the Limits of Liability, the Insured Versus Insured exclusion, and any rights or duties specifically assigned in this Policy to the **first named insured**, this Policy applies as if each **insured** were the only **insured** and applies separately to each **insured** against whom a **claim** is made.

#### **O. Service of Suit**

In the event of failure of the **insurer** to pay any amount claimed to be due hereunder, the **insurer**, at the request of the **insured**, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes a waiver of the **insurer's** right to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon counsel at the notice address provided in Item 8(c) of the Declarations. Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the **insurer** hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successors in office as its true and lawful agent upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of an **insured** arising out of this Policy.

#### **P. Sole Agent**

The **first named insured** shall act on behalf of all **insureds** for the payment or return of premium and Deductibles, negotiation, receipt and acceptance of any endorsement issued by the **insurer** and made part of this

Policy, giving or receiving notice of cancellation, and exercising the right to an extended reported period.

**Q. Subrogation**

If the **insured** has any right to recover all or part of any payment by the **insurer** under this Policy, such right is hereby transferred to the **insurer** and the **insured** shall not do anything to impair such rights. At the request of the **insurer**, the **insured** will bring suit or take any action to effectuate transfer of such rights to the **insurer** and help the **insurer** enforce such rights. Any amounts so recovered by the **insurer** shall be allocated first to the expenses incurred in such recovery efforts and proceedings, proportioned in accordance with each interested party's share in the total recovery; then to the **insured** to the extent of its paid Deductible and its payments in excess of the limit of coverage; and last to the **insurer** to the extent of its payment under this Policy. However, if the **insured** has waived rights of recovery against any person or organization in an **insured contract** entered into prior to the discovery of a **pollution incident** giving rise to loss or a claim under this Policy, the insurer also waives such right of recovery it may have under this Policy against such person or organization.

**R. Voluntary Payments**

No **insured** will, except at that **insured's** own cost, admit liability or voluntarily make a payment, assume any obligation, make any settlement or incur any expense, other than **emergency response cost** or **crisis cost**, without the **insurer's** prior written consent.

**VII. DEFINITIONS**

**A. Application** means all applications, including any attachments, other materials provided therewith or incorporated or referenced therein submitted by or on behalf of the **insured** in connection with the underwriting of this Policy or for any other policy of which this Policy is a renewal, replacement or which it succeeds in time. All **applications**, attachments and other materials are deemed attached to and made a part of this Policy.

**B. Approved acquisition standard** means the **insured's** receipt of an ASTM E1527-05 (or any amendments thereto or subsequent versions thereof) compliant report identifying no Recognized Environmental Conditions, except for the presence of an **underground storage tank** which is not known or reported to be leaking and which is reported to be operated and maintained in accordance with all applicable **environmental law**, related to the subject property. Such ASTM compliant report must be based on an environmental survey conducted no earlier than ninety (90) days prior to the date of acquisition of the subject property by the named insured.

**C. Biological agent** means, solely with respect to **loss** arising directly or indirectly as a result of certified "acts of terrorism" as defined in the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, or any uncertified acts of terrorism, any microorganism (including bacteria, viruses, rickettsia, or protozoa) or infectious substance, or naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance capable of causing:

1. Death, disease, or other biological malfunction in a human, animal, plant, or another living organism;
2. Degradation of food, water, equipment, supplies, or other material of any kind; or
3. Deleterious alteration of the environment.

**D. Bodily injury** means physical injury, sickness, mental anguish, shock or emotional distress or disease sustained by a person, including death resulting therefrom. **Bodily injury** also includes medical monitoring cost when accompanied by physical injury.

**E. Business interruption cost** means:

1. Net profit loss, including **rental value**, before taxes that the **insured** would have earned or incurred during the **business interruption period**; and
2. Continuing normal operating expenses incurred by the **insured** during the **business interruption period**, including payroll expense for the **insured's** employees, except employees under contract, officers, executives, and department managers,

due to the reasonable and necessary interruption of the **insured's** operations at an **insured location** during the **business interruption period**.

If the **insured** would have incurred a net loss under Paragraph 1. above, such net loss shall reduce the operating expenses recoverable under Paragraph 2. above.

If it is or was practicable to resume any portion of standard business operations by making use of any portion of the **insured location** or other premises but such operations were not resumed, the **insurer** will reduce **business interruption cost** to account for such non-resumption of operations.

- F. Business interruption period** means period of time that begins with the interruption of the **insured's** operations at an **insured location** due to a **pollution incident** and ends on the earliest of:
1. When the **insured location** is reasonably restored to operations;
  2. When the **insured location** should have been restored to operations with reasonable speed and quality; or
  3. When business activities resume at a new permanent location. **Business interruption period** does not include any time period resulting from delay in resuming standard business operations because of interference by any third-party or the **insured**, including any of its employees.
- G. Claim** means a written demand seeking a remedy and alleging liability or responsibility on the part of the **insured**.
- H. Clean-up cost** means reasonable and necessary expense incurred with the **insurer's** prior written consent, including legal expense and **restoration cost**, to investigate, abate, contain, treat, remove, remediate, monitor, neutralize or dispose of contaminated soil, surface water or groundwater or other contamination caused by a **pollution incident** but only:
1. To the extent required by **environmental law** or, in the absence of applicable **environmental law**, as determined to be reasonable and necessary by an **environmental professional**;
  2. If required to satisfy a **voluntary clean-up program**; or
  3. If incurred by any governmental entity of the United States of America including its territories and possessions, Puerto Rico or Canada, or by a third-party.
- I. Conveyance** means an automobile, railcar, train, watercraft or aircraft, but does not include pipelines.
- J. Covered operations** means activity performed for a third-party for a fee by or on behalf of the **insured** at any job site that is not located on or at an **insured location**. **Covered operations** do not include **transportation**.
- K. Crisis cost** means reasonable and necessary fees and expenses incurred by a firm listed in any Schedule of Crisis Management Firms, attached to this Policy or by any other firm selected by the **insured** with the **insurer's** prior written consent, within the first twenty-one (21) days following the **crisis event**, for services in advising the **insured** on minimizing potential harm from a covered **crisis event** by maintaining and restoring public confidence in the **insured**. **Crisis cost** includes amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by the **insured's** directors, officers, employees or agents at the direction of a Crisis Management Firm.
- L. Crisis event** means a **pollution incident** that in the good faith judgment of an **executive officer** results, or in the absence of action to restore public confidence in the **insured** is likely to result, in significant adverse media coverage.
- M. Emergency response cost** means reasonable and necessary costs, charges or expenses, including legal expense and **restoration cost**, to investigate, remove, dispose of, abate, contain, treat, neutralize, monitor or test soil, surface water, groundwater or other contaminated media, provided such costs, charges or expenses are incurred up to seven (7) days after commencement of a **pollution incident** that poses an imminent and significant threat to human health or the environment and requires immediate action.
- N. Environmental law** means any federal, state, provincial, municipal or other local law, statute, ordinance, rule, guidance document, regulation, administrative order or directive, including any **voluntary clean-up program** or risk-based corrective action guidance, that is applicable to a **pollution incident**.
- O. Environmental professional** means a person qualified to address the remediation of the subject **pollution incident** and whom the **insurer** approves in advance in writing, in its sole discretion after consultation with the **insured**.

- P. Executive officer** means a person holding any of the officer positions created by the **insured** in its charter, constitution, by-laws or any other similar governing document.
- Q. Extra expense** means necessary expenses, other than the **insured's** continuing normal operating expenses, that the **insured** incurs during the **business interruption period** and that the **insured** would not have incurred had there been no **pollution incident** on, at or under an **insured location**. To the extent it reduces the **business interruption cost** that otherwise would have been payable under Business Interruption coverage, **extra expense** includes expenses the **insured** incurs to avoid or minimize the suspension of business and to continue operations:
1. At the **insured location**; or
  2. At replacement or temporary location(s), including relocation expenses and costs to equip and operate the replacement or temporary location(s).
- Extra expense** will be reduced by any salvage or other value of property obtained for temporary or other use during the **business interruption period** that remains after the resumption of operations.
- R. First named insured** means the entity named in Item 1 of the Declarations.
- S. Green up-grade cost** means reasonable cost to replace damaged material with environmentally superior material serving the same purpose, as certified by an independent qualified certifying body. If such certification is not available, such costs for such environmentally superior material must be approved in advance in writing by the **insurer** in its sole discretion.
- T. Inception date** means the date set forth in Item 3(a) of the Declarations.
- U. Insured** means:
1. The **first named insured**;
  2. Any person or organization listed on any Schedule of Named Insureds Endorsement, attached to this Policy;
  3. Any past or present director, officer, partner, member, manager, or employee, including any **executive officer** or temporary, leased or volunteer employee, while acting within the scope of his or her duties as such for either 1. or 2. above; and
  4. Any person or organization that the **insured** has agreed to include as an insured under this Policy pursuant to an **insured contract**, but such person or organization is an **insured**: (i) only for **bodily injury, property damage or clean-up costs** arising from the **first named insured's** operations or premises; and (ii) only for the lesser of the applicable limits of liability set forth in Section III. of the Policy or the minimum limits of liability required by the **insured contract**. Notwithstanding any other provision of this Policy, any **supplementary payment** with respect to such person or organization shall be included in **loss** and shall erode the aggregate limit of liability.
- V. Insured contract** means any contract entered into prior to the discovery of a **pollution incident** giving rise to **loss** or a **claim** under this Policy, and listed in any Schedule of Insured Contracts Endorsement, attached to this Policy.
- W. Insured location** means real property owned or managed by, or leased or rented to, the **insured** and listed on the Schedule of Insured Location(s) Endorsement attached to this Policy.
- X. Insurer** means the entity set forth in Item 8(c) of the Declarations.
- Y. Loss** means:
1. Damages because of **bodily injury or property damage**, including, where insurable under applicable law, punitive, exemplary, or multiple damages, and civil fines, penalties, or assessments;
  2. **Clean-up cost**;
  3. **Emergency response cost**;

4. **Business interruption cost** and **extra expense**; and

5. Legal expense.

**Loss** does not include **crisis cost** or **supplementary payment**, except as set forth in Section I. **INSURING AGREEMENTS**, INSURING AGREEMENT B. **DEFENSE, SUPPLEMENTARY PAYMENTS AND SETTLEMENT**, Paragraph 1. **Defense**, Subparagraph b.

**Z. Microbial matter** means fungi, mold, yeast, bacteria or mildew including any spores, mycotoxins, or by-products produced or released therefrom, whether or not such matter is living.

**AA. Misdelivery** means the delivery of any liquid product into any receptacle or to an address, other than the correct receptacle or the correct address, or the mistaken delivery of one liquid product for another.

**BB. Nanotechnology** matter means any engineered matter or particle, purposefully manufactured with one or more external dimensions of 100 nanometers or less.

**CC. Natural resource damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 et seq.)), any state, local or provincial government, any foreign government, any Native American tribe, or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.

**DD. Non-owned site** means any premises that were never owned, occupied, rented, managed, operated or loaned by, to or on behalf of any **insured** or any subsidiary or affiliate thereof. **Non-owned site** does not include any premises that:

1. Are not licensed by the appropriate state or federal authority to perform storage, disposal, processing or treatment of waste from the **insured's** operations in compliance with **environmental law** as of the date of the storage, disposal, processing, or treatment of such waste; or
2. Are subject to a consent order or corrective action under **environmental law** or are listed or proposed to be listed on the National Priorities List (NPL) as of either: (i) the inception date, or the **inception date** of the first Environmental Legal Liability Policy issued by the **insurer** to the **insured** of which this is a continuous and uninterrupted renewal; or (ii) the Retroactive Date set forth in Item 9 of the Declarations Page of this Policy.

**EE. Policy period** means the period of time set forth in Item 3 of the Declarations, except if this Policy is cancelled or otherwise terminated, then the expiration date shall become the effective date of such cancellation or termination.

**FF. Pollutant** means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, hazardous substances, petroleum hydrocarbons, low-level radioactive matter or waste, medical, infectious or pathological waste or waste materials, methamphetamines, electromagnetic fields, or **biological agent**. **Pollutant** does not include **nanotechnology matter**, **microbial matter** or Legionella pneumophila.

**GG. Pollution incident** means:

1. The discharge, emission, seepage, migration, dispersal, release or escape of any **pollutant** into or upon land, or any structure on land, the atmosphere or any watercourse or body of water including groundwater, provided such **pollutant** is not naturally present in the environment in the concentration or amounts discovered; or
2. The illicit abandonment of a **pollutant** by a third-party without the **insured's** consent.

**Pollution incident** also means **microbial matter** or Legionella pneumophila in any structure on land and the atmosphere contained within that structure.

**HH. Property damage** means:

1. Physical injury to tangible property of parties other than an **insured**, including all resulting loss of use and diminished value of such property;

2. Loss of use of tangible property of parties other than an **insured** that is not physically injured or destroyed, arising out of physical injury to or destruction of other tangible property; or
3. **Natural resource damage.**

**Property damage** does not include **clean-up cost**. Electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**II. Rental value** means:

1. The total anticipated rental income from tenant occupancy of the **insured location** as furnished and equipped by the **insured**;
2. All charges that are the legal obligation of the tenant(s) pursuant to a lease and that would otherwise be the **insured's** obligations; and
3. The fair rental value of any portion of the **insured location** that is occupied by the **insured** during the **business interruption period**, less any rental income the **insured** could earn:
  - (i) By complete or partial rental of the **insured location**; or
  - (ii) By making use of other property on the **insured location** or elsewhere.

**JJ. Responsible insured** means any **insured's** manager or supervisor responsible for environmental affairs, control or compliance.

**KK. Restoration cost** means reasonable and necessary expense incurred by the **insured** with the **insurer's** prior written consent to restore, repair or replace physically damaged real or personal property, when such damage occurs during the course of incurring covered **clean-up cost** or **emergency response cost**, regardless of whether such damage to such real or personal property is directly caused by a **pollution incident**. **Restoration cost** shall not exceed the replacement cost of such real or personal property. **Restoration cost** also includes **green up-grade cost**. Except for **green up-grade cost**, cost of restoration, repair or replacement in kind or quality exceeding that of the real or personal property before it was damaged is not included in **restoration cost**.

**LL. Supplementary payment** means actual loss of earnings and reasonable personal and travel expense up to \$500 per day incurred by the **insured** to attend a hearing, deposition or trial at the written request of the **insurer**, or to respond to a subpoena for records related to the defense of a **claim** covered under this Policy; provided the maximum amount the **insurer** will pay for all such expenses for the **insured's** attendance at any one hearing, deposition, trial, disciplinary proceeding or subpoena response for any one **claim** shall not exceed \$10,000.

**MM. Transportation** means the movement by the **insured**, or by a third-party carrier on behalf of the **insured** properly licensed to conduct such movement, of goods, products, merchandise, supplies or waste by any **conveyance**. Transportation includes: (i) the loading or unloading of goods, products, merchandise, supplies or waste into, onto or from any **conveyance**; and (ii) **misdelivery**.

**NN. Underground storage tank** means any one tank or combination of tanks, including underground pipes attached thereto, that has at least 10% of its volume below ground level if outdoors or below the ground floor level if indoors. **Underground storage tank** does not include septic tanks, sumps, oil-water separators, storm-water or wastewater collection systems.

**OO. Voluntary clean-up program** means a program of the United States or any state, enacted pursuant to **environmental law**, that requires governmental written approval to conduct voluntary corrective action to address a **pollution incident**.