

## AFB ENVIRO CPL INSURANCE POLICY

### CONTRACTORS POLLUTION LIABILITY, TRANSPORTATION POLLUTION LIABILITY, NAMED INSURED LOCATION POLLUTION LIABILITY AND NON-OWNED DISPOSAL SITE POLLUTION LIABILITY INSURANCE

NOTICE: This coverage is provided on a Claims Made and Reported Basis. Except as otherwise provided, this coverage applies only to **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters pursuant to the terms of this Insurance Policy. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of the premium and reliance upon the statements in the **Application** which is deemed a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, deductible, exclusions, conditions and other terms of this Insurance, the Underwriters agree with the **Named Insured**:

#### I. INSURING CLAUSE

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Each **Claim** Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** first made against the **Insured** during the **Policy Period** or **Optional Extension Period** (if applicable) and reported in writing to the Underwriters either during the **Policy Period**, within sixty (60) days after the expiration of the **Policy Period**, or during the **Optional Extension Period** (if applicable) arising out of one or more of the following acts or events committed or taking place on or after the Retroactive Date set forth in Item 6. of the Declarations and before the end of the **Policy Period**:

##### A. Contractors Pollution Liability Coverage

a **Pollution Condition** arising out of the performance of or failing to perform **Contracting Services** by the **Insured** or by any person, including an independent contractor, for whom the **Named Insured** is legally responsible;

The following Insuring Clause I.B., I.C., I.D. only applies if Item 12. of the Declarations indicates that these Coverages have been purchased.

##### B. Transportation Pollution Liability Coverage

a **Pollution Condition** wholly occurring during and resulting solely from **Transportation**.

This Insuring Clause shall not be utilized to evidence financial responsibility of any **Insured** under any federal, state, provincial or local law;

C. **Named Insured Location Pollution Liability Coverage**

a **Pollution Condition**, originating from a **Named Insured Location**, that is on, at, under or migrates from such **Named Insured Location**; provided that the **Pollution Condition** is both sudden and accidental and first commences during the **Policy Period** and finally ends within seven (7) consecutive days from its first commencement; or

D. **Non-Owned Disposal Site Pollution Liability Coverage**

a **Pollution Condition**, originating from a **Non-Owned Disposal Site**, that is on, at, under or migrates from such **Non-Owned Disposal Site**; provided that the **Pollution Condition** arises from waste or materials generated by the performance of **Contracting Services** or originating from a **Named Insured Location**.

II. **SUPPLEMENTARY PAYMENTS**

All payments made under this Clause are not subject to the Each **Claim** Deductible and are payable by the Underwriters in addition to the Limits of Liability.

A. Pre-Claims Assistance

If the **Insured** reports a **Circumstance** during the **Policy Period**, in accordance with Clause X.B., until such time a **Claim** is made, any costs or expenses the Underwriters incur as a result of investigating or monitoring such **Circumstance**, will be paid for by the Underwriters. The decision to incur any costs or expenses to monitor or investigate such **Circumstance** shall be at the sole discretion of the Underwriters.

B. Defendants Reimbursement

Upon the Underwriters request, the **Insured** shall attend mediation meetings, arbitration proceedings, hearings, depositions and trials relative to the defense of a **Claim**. After the first three (3) days' attendance required for each **Claim**, the Underwriters shall reimburse the **Insured**, upon written request, for actual loss of earnings and reasonable expenses due to such attendance up to \$500 for each day in the aggregate for all **Insureds** subject to a maximum amount of \$10,000 for each **Claim**.

C. Reputation Management Reimbursement

The Underwriters will reimburse the **Named Insured** fifty percent (50%) of the first \$30,000 in Reputational Management Expenses in the aggregate for the **Policy Period** incurred by the **Named Insured** for reputational management consulting services which are incurred in connection with a **Claim** covered under this Policy that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

Reputational Management Expenses means reasonable fees, costs, and expenses incurred by the **Named Insured** for reputational management consulting services provided by a public relations firm to the **Named Insured** in response to a **Claim**.

After the Underwriters have paid \$15,000 under this Clause II.C., the Underwriters shall not be obligated to pay any further Reputational Management Expenses.

### III. DEFINITIONS

Wherever used in this Policy in bold face type, the following definitions shall apply.

- A. **"Application"** means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by the Underwriters, of which this Policy is a renewal, replacement or which it succeeds in time.
- B. **"Bodily Injury"** means physical injury, sickness, disease or death of any person, including any mental anguish or emotional distress resulting therefrom.
- C. **"Cargo"** means any waste or materials transported by motorized land vehicle for delivery by a carrier properly licensed to transport such waste or materials.
- D. **"Circumstance"** means any fact, event or situation that could reasonably be the basis for a **Claim**.
- E. **"Claim"** means a demand received by any **Insured** for money or services including the service of suit or institution of arbitration proceedings.

Multiple **Claims** arising from the same or a series of related or repeated **Pollution Conditions** or from any continuing **Pollution Conditions** shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants or **Insureds** involved in the **Claim**. All such

**Claims** shall be deemed to have been made at the time of the first such **Claim**.

F. “**Claims Expenses**” means:

1. reasonable and necessary fees charged by an attorney designated or consented to by the Underwriters;
2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters; and
3. premiums for appeal bonds for covered judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any **Insured** for a covered **Pollution Condition**, provided, however, that the Underwriters shall have no obligation to appeal or to obtain such bonds.

**Claims Expenses** do not include any salary, overhead or other charges of or by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim** notified under this Insurance, or costs to remediate a **Pollution Condition** without the prior written consent of the Underwriters.

G. “**Cleanup Costs**” means reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Underwriters in the investigation, assessment, removal, remediation (including the associated testing and monitoring) or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition** arising out of the performance of or failure to perform **Contracting Services** by or on behalf of the **Named Insured** or that is on, at, under or migrates from a **Named Insured Location**.

The term **Cleanup Costs** shall also include:

1. reasonable and necessary legal costs, where such costs have been incurred by the **Insured** with the prior written consent of the Underwriters; and
2. reasonable and necessary expenses required to restore, repair or replace real or personal property, owned by third parties, to substantially the same condition it was in prior to being damaged during the course of responding to a **Pollution Condition** to which this Insurance applies. However, these costs will not exceed the actual cash value of such real or personal property immediately prior to incurring the **Cleanup Costs** or include costs associated with improvements or betterments. Actual Cash Value

shall mean the cost to replace such real or personal property, immediately prior to incurring the **Cleanup Costs**, minus the accumulated depreciation of the real or personal property.

- H. **“Contracting Services”** means the performance of construction, drilling, operations and/or maintenance services, or remediation activities by or on behalf of the **Named Insured**.
- I. **“Damages”** means a monetary judgment, award or settlement of compensatory damages, including any pre-judgment and/or post-judgment interest thereon. Solely with respect to the coverage afforded under Insuring Clauses I.A. and I.C., the term **Damages** shall also include **Cleanup Costs**.

The term **Damages** shall not include or mean:

1. future profits, restitution, disgorgement of unjust enrichment or profits by an **Insured**;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;
3. any damages which are a multiple of compensatory damages;
4. fines, taxes or loss of tax benefits, sanctions or penalties assessed against the **Insured**;
5. punitive or exemplary damages, unless insurable by law under the law under which this Policy is construed;
6. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
7. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**; or
8. matters deemed uninsurable under the law pursuant to which this Policy shall be construed.

- J. **“Insured”** shall mean:

1. the **Named Insured**;
2. a director or officer of the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;

3. an employee or **Temporary Employee** of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Named Insured's** business;
  4. a principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
  5. any person who previously qualified as an **Insured** under 2, 3 or 4 above prior to the termination of the required relationship with the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
  6. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance;
  7. the **Named Insured** with regard to its participation in a joint venture, but solely for the **Named Insured's** liability that arises out of a **Pollution Condition** that arises out of the performance of or failing to perform **Contracting Services** by the **Named Insured**; and
  8. solely with respect to Insuring Clause I.A., the client for whom the **Named Insured** performs or performed **Contracting Services**, provided that a written contract or agreement is in effect between the **Named Insured** and the client requiring the client to be an additional insured under the **Named Insured's** contractors pollution liability policy. However, such clients are covered under Insuring Clause I.A. of this Policy solely with respect to **Damages** and **Claims Expenses** arising from **Contracting Services** performed by or on behalf of the **Named Insured** and are not covered for any **Damages** and **Claims Expenses** arising from the client's own acts, errors or omissions. Clients of the **Named Insured** are covered under Insuring Clause I.A. of this Policy, subject to Clause VII., only up to and to the extent of the Limits of Liability required by the written contract or agreement.
- K. "**Insured Contract**" shall mean that part of any written contract or agreement under which the **Named Insured** assumes tort liability of another party to pay compensatory damages for **Bodily Injury** or **Property Damage** to a third party or organization. Tort liability means liability that would be imposed by law in the absence of any contract or agreement.

The term **Insured Contract** shall not include the assumption of liability of another party to pay compensatory damages based upon, arising from, or in consequence of (1) any actual or alleged act, error or omission or claimed damages that otherwise would not be covered under this Policy; or (2) liability resulting solely from the actual or alleged acts, errors or omissions of the client of the **Named Insured**.

- L. **“Mediation”** means the voluntary and otherwise non-binding process by which a qualified professional mediator mutually agreed upon by the parties intercedes between the parties with the intention to reconcile them to resolve a **Claim**. The term **Mediation** shall not include or mean other dispute resolution by litigation or arbitration.
- M. **“Named Insured”** means only those persons, partnerships, corporations or entities specified in Item 1 of the Declarations.

The term **Named Insured** shall include any corporate entity while more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured** if such entity becomes so owned after the inception date of the Policy, subject to the terms and conditions of Clause XVI.A.

- N. **“Named Insured Location”** means any location owned, rented or leased by the **Named Insured**, provided that such location is specified in Item 9. of the Declarations.
- O. **“Natural Resource Damage”** means 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 on alienation, any member of a native american tribe.
- P. **“Non-Owned Disposal Site”** means any location used by the **Named Insured** for the treatment, storage or disposal of waste or material provided that:
  - 1. such location is not managed, operated, owned or leased by any **Insured** or an affiliate of any **Insured**; and
  - 2. such location is permitted and/or licensed by the applicable federal, state, local or provincial authorities to accept such waste

or materials as of the date the waste or materials are treated, stored or disposed of at such location; and

3. such location is within the United States, its territories or possessions, or in Canada; and
4. such location is not listed on a proposed or final Federal National Priorities List and/or any state or provincial equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of the waste or material at such location.

Q. “**Optional Extension Period**” means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause XI. of this Policy.

R. “**Policy Period**” means the period of time between the inception date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Optional Extension Period** or any prior policy period or renewal period.

S. “**Pollution Condition**” means the actual or alleged discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land or structures thereupon, the atmosphere or any watercourse or body of water, which results in **Bodily Injury, Property Damage or Cleanup Costs**.

T. “**Property Damage**” means:

1. physical injury to or destruction of any tangible property, including the loss of use thereof;
2. loss of use of tangible property that has not been physically injured or destroyed;
3. diminished value of property owned by third parties; or
4. **Natural Resource Damage**.

U. “**Temporary Employee**” means a natural person furnished or leased to the **Named Insured** to meet short term or project specific workloads and for whom the **Named Insured** has the right to direct and control the means of performance.

V. “**Transportation**” means the movement of **Cargo** from the place where **Contracting Services** are being performed and and the **Cargo** is

accepted by the carrier toward the place designated for delivery by the **Insured**.

**Transportation** includes the carrier's loading and unloading of **Cargo** onto or from a motorized land vehicle provided that the loading and unloading is performed by or on behalf the **Insured**.

- X. **"Underground Storage Tank"** means any stationary container or vessel, including the associated piping connected thereto, which is (1) ten percent (10%) or more beneath the surface of the ground; (2) constructed primarily of non-earthen materials; and (3) designated to contain any substance.

#### IV. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. When the Underwriters defend a **Claim**, it will pay **Claims Expenses** incurred with its prior written consent. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the Each **Claim** Deductible.
- C. The Underwriters shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.
- D. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the Claimant and elects to contest the **Claim**, the Underwriters liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Each **Claim** Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.
- E. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages** and/or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the

right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

#### V. TERRITORY

Subject to Clause III.P., this Policy applies to **Claims** made and **Pollution Conditions** arising anywhere in the world.

#### VI. EXCLUSIONS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** in connection with or resulting from any **Claim**:

##### A. **Criminal, Dishonest, Intentional, Fraudulent, Malicious, Willful or Knowing Acts**

arising out of or resulting from any criminal, dishonest, intentional, fraudulent, malicious, willful or knowing act, error or omission committed by any **Insured**; however, this Policy shall apply to **Claims Expenses** incurred in defending any such **Claim** alleging the foregoing until such time as there is a final adjudication, judgment, binding arbitration decision or conviction against the **Insured**, or admission by the **Insured**, establishing such criminal, dishonest, intentional, fraudulent, malicious willful or knowing conduct, or a plea of *nolo contendere* or no contest regarding such conduct, at which time the **Named Insured** shall reimburse the Underwriters for all **Claims Expenses** incurred defending the **Claim** and the Underwriters shall have no further liability for **Claims Expenses**.

Provided, that this exclusion shall not apply to any **Claim** based upon or arising from the **Insured's** unintentional breach of a written agreement to refrain from disclosing confidential or proprietary information in the performance of or failure to perform **Contracting Services**.

##### B. **Prior Knowledge, Prior Notice and Prior Acts**

1. arising out of or resulting from any actual or alleged **Pollution Condition** arising prior to the inception date of this Insurance:
  - a. if any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** on or before the inception date knew or could have reasonably foreseen that such **Pollution Condition** might be expected to be the basis of a **Claim**; or
  - b. in respect of which any **Insured** has given notice of a **Claim** or **Circumstance** to the insurer of any other policy in force prior to the inception date of this Policy; or

2. arising out of related or continuing **Pollution Conditions** where the first such **Pollution Condition** arose prior to the Retroactive Date set forth in Item 6. of the Declarations.

**C. Insured versus Insured**

by or on behalf of any **Insured**; provided, that this exclusion shall not apply to a **Claim** by or on behalf of any client of the **Named Insured** who is an **Insured** by virtue of Clause III.J.8.

**D. Ownership Interest and Outside Positions**

1. arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the **Named Insured**; or
2. made by any entity, arising out of **Contracting Services** or **Transportation** performed for such entity which:
  - a. is operated, managed or controlled by an **Insured** or in which any **Insured** has an ownership interest which cumulatively exceeds twenty-five percent (25%), or in which any **Insured** is an officer or director; or
  - b. operates, controls or manages the **Named Insured**, or has an ownership interest of more than fifteen percent (15%) in the **Named Insured**.

**E. Discrimination, Humiliation, Harassment and Misconduct**

for or arising out of or resulting from any actual or alleged discrimination, humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion, disability or pregnancy; provided.

**F. Assumption of Contractual Liability of Others**

arising out of or resulting from the liability of others assumed by the **Insured** under any contract or agreement either oral or written, including any hold harmless or indemnity agreements, except:

1. with respect to Insuring Clause I.A. for liability assumed under a contract or agreement that is an **Insured Contract** provided the **Pollution Condition** occurs subsequent to the execution of the contract or agreement; or

2. to the extent the **Insured** would have been liable in the absence of such contract or agreement.

G. **Express Warranties, Representations, Guarantees and Promises**

for or arising out of or resulting from:

1. breach of any express warranty or representation except for an agreement to perform within a reasonable standard of care or skill consistent with applicable industry standards; or
2. a demand for satisfaction of or breach of guarantee or any promises including, without limitation, cost savings, cost of construction, maximum construction price, financing, profits, or return on investment.

H. **Faulty Workmanship**

under Insuring Clause I.A. arising out of the cost to repair or replace any faulty workmanship performed in whole or in part by any **Insured** on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, labor or equipment furnished in connection with such repair or replacement.

I. **Asbestos / Lead Based Paint**

either in whole or in part, directly or indirectly, arising out of or resulting from or in consequence of, or in any way involving asbestos or lead-based paint, or any materials containing asbestos or lead-based paint in whatever form or quantity; provided, that this exclusion does not apply to:

1. any **Claim** arising out of any asbestos or lead abatement operations performed on behalf of the **Named Insured** by a certified and insured asbestos and/or lead abatement subcontractor or subconsultant; or
2. any **Claim** arising out of the inadvertent disturbance of asbestos or lead-based paint or materials containing asbestos or lead-based paint by or on behalf of an **Insured** during the performance of **Contracting Services**; or
3. any **Claim** which is covered pursuant to Insuring Clause I.B. or I.D. of this Policy.

J. **Employers Liability and Workers Compensation**

for or arising out of or resulting from:

1. **Bodily Injury** to any employee of the **Named Insured** arising out of and in the course of:
  - (a) employment by the **Named Insured**; or
  - (b) performing duties related to the conduct of the **Named Insured's** business; or
2. **Bodily Injury** to any spouse (or person living together as spouse), child, parent, brother, sister or dependent of the employee as a consequence of 1. above; or
3. the **Named Insured's** employment obligations, decisions, practices or policies as an employer; or
4. any obligation which the **Insured** or any carrier as insurer may be liable under any workers compensation, unemployment compensation or disability benefits law or similar law.

Provided, parts 1. and 2. of this exclusion do not apply to liability assumed by the **Insured** in a contract or agreement that is an **Insured Contract**.

K. **Property Liability**

arising out of or resulting from the **Insured's** ownership, rental, lease, maintenance, operation, use, repair, voluntary or involuntary sale, transfer, exchange, gift, abandonment or condemnation of any real or personal property including without limitation, automobiles, aircraft, watercraft and other kinds of conveyances; provided, that this exclusion does not apply to:

1. any **Claim** which is covered pursuant to Insuring Clause I.A. of this Policy arising out of any property the **Named Insured** has voluntarily or involuntarily sold, transferred, exchanged, given away, abandoned or that has been condemned where the **Named Insured** performed **Contracting Services** and has never occupied, used, rented or leased such property; or
2. any **Claim** which is covered pursuant to Insuring Clause I.B. or I.C. of this Policy.

L. **Products Liability**

arising out of or resulting from the design or manufacture of any goods or products for multiple sales or mass distribution which are sold or supplied by the **Insured** or by others under license from the **Insured**; provided, that this exclusion shall not apply to:

1. any **Claim** which is covered pursuant to Insuring Clause I.A. of this Policy arising out of the fabrication, assembly or installation of any goods or products provided by the **Named Insured** in the performance of or failing to perform **Contracting Services**; or

M. **Transportation, Shipment or Delivery of Waste, Products or Materials**

under Insuring Clause I.A. arising out of or resulting from any waste or any products or materials transported, shipped or delivered via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock to a location beyond the boundaries of a site at which **Contracting Services** are being performed.

N. **Property Damage to Named Insured's Work and Products**

under Insuring Clause I.A. for any **Property Damage**:

1. to work performed by or on behalf of the **Named Insured** resulting from the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith; or
2. to any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured** resulting from such goods or products or any portion thereof.

O. **Patent Infringement**

for or arising out of actual or alleged infringement of patent or patent rights or misuse of patent.

P. **Fungi**

for, arising out of or resulting from the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; and any governmental or regulatory order, requirement,

directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins.

**Q. Material Change in Use**

under Insuring Clause I.C. arising out of a material change in the use of, or operations at, a **Named Insured Location** from the use or operations identified by the **Insured** in the statements and information contained in the **Application** and other supplemental materials submitted to the Underwriters prior to the inception of the **Policy Period** or prior to adding such location as a **Named Insured Location** as specified in Item 9. of the Declarations.

**R. Underground Storage Tank**

under Insuring Clause I.C. arising out of the existence of any **Underground Storage Tank** on, at or under a **Named Insured Location**; provided, that this exclusion does not apply to:

1. an **Underground Storage Tank** that is closed, abandoned in place or removed prior to the inception date of this Policy, in accordance with all applicable federal, state, local or provincial regulations, in effect at the time of closure, abandonment or removal;
2. an **Underground Storage Tank** that is identified as a **Named Insured Location** as specified in Item 9. of the Declarations;
3. an **Underground Storage Tank**, the existence of which is unknown by any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** or any employee of the **Named Insured** that has responsibility, in whole or in part, for risk control, risk management, health and safety or environmental affairs, control or compliance as of the inception date of this Policy;
4. a flow-through process tank, including oil/water separators; or
5. a storage tank situated in an underground area (such as a basement, cellar, mine shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

S. **Professional Services**

for, arising out of or resulting from any act, error or omission by or on behalf of the **Insured** in the provision of professional services.

VII. **LIMIT OF LIABILITY**

- A. The Limit of Liability stated in Item 3.(a) of the Declarations for “Each **Claim**” is the limit of the Underwriters liability for all **Damages** and **Claims Expenses** arising out of each **Claim**.
- B. The “Aggregate for the **Policy Period**” stated in Item 3.(b) of the Declarations is the Underwriters combined total Limit of Liability for all **Damages** and **Claims Expenses** arising out of all **Claims** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- C. The Underwriters’ maximum aggregate Limit of Liability with respect to all **Claims** brought by or on behalf of or in the name or right of or involving the same claimant on a single project or related projects shall not exceed the Each **Claim** Limit of Liability stated in Item 3.(a) of the Declarations.
- D. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

VIII. **DEDUCTIBLE**

- A. The “Each **Claim** Deductible” stated in Item 4. of the Declarations applies separately to each **Claim**. The Each **Claim** Deductible shall be satisfied by monetary payments by the **Named Insured** of **Damages** and **Claims Expenses** resulting from **Claims** first made during the **Policy Period** and the **Optional Extension Period** (if applicable) and reported to the Underwriters pursuant to the terms of this Policy. Satisfaction of the Each **Claim** Deductible is a condition precedent to the payment by the Underwriters of any amounts hereunder, and the Underwriters shall be liable only for the amounts in excess of the Each **Claim** Deductible subject to the Underwriters total liability not exceeding the Limits of Liability stated in Items 3.(a) and 3.(b) of the Declarations. The **Named Insured** shall make direct payments within the Each **Claim** Deductible to appropriate other parties designated by the Underwriters.
- B. If the **Insured** and the Underwriters agree to use **Mediation** and the **Claim** is fully and finally resolved through the use of **Mediation**, the

Insured's Deductible shall be reduced by fifty percent (50%) of the Each **Claim** Deductible, up to \$25,000 for such **Claim**.

- C. Any payments by the **Named Insured** in satisfaction of its deductible obligations under any other valid and collectible insurance shall not satisfy the Each **Claim** Deductible under this Policy.

#### IX. INNOCENT INSURED

- A. Whenever coverage under this Insurance would be excluded, suspended or lost because of Exclusion VI.A relating to criminal, dishonest, intentional, fraudulent, malicious, willful or knowing acts, errors or omissions by any **Insured**, and with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof, then the Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of one or more of the acts, errors or omissions described in Exclusion VI.A.

This provision is inapplicable to any **Claim** or **Circumstance** against the **Named Insured** arising from acts, errors or omissions known to any present or former principal, partner, director or officer of the **Named Insured**.

- B. With respect to this provision, the Underwriters obligation to pay in such event shall only be in excess of the full extent of any recoverable assets of any **Insured** to whom Exclusion VI.A. applies and shall be subject to the terms, conditions and limitations of this Policy.

#### X. NOTICE OF CLAIM OR CIRCUMSTANCE

- A. If any **Claim** is made against an **Insured**, the **Insured** shall forward as soon as practicable to the Underwriters through the persons named in Item 8.(a) of the Declarations written notice of such **Claim** in the form of a facsimile, email or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than sixty (60) days after the expiration of the **Policy Period** or during the **Optional Extension Period**, if purchased.
- B. If during the **Policy Period** any director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first becomes aware of any **Circumstance** and gives written notice to the Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item 8.(a) of the Declarations as soon as practicable during the **Policy Period** of:

1. the specific details of the **Pollution Condition** in the provision of, **Contracting Services** or **Transportation** or relating to a **Non-Owned Disposal Site** that gave rise to the **Circumstance**;
2. the injury or damage which may result or has resulted from the **Circumstance**; and
3. the facts by which such director, officer, principal, partner, insurance manager or any member of the risk management or legal department of the **Named Insured** first became aware of the **Pollution Condition**

then any subsequent **Claim** made against the **Insured** arising out of such **Circumstance** which is the specific subject of the written notice will be deemed to have been made at the time written notice complying with the above requirements was first given to the Underwriters.

- C. A **Claim** shall be considered to be reported to the Underwriters when written notice is first received by the Underwriters in the form of a facsimile, email or express or certified mail through persons named in Item 8.(a) of the Declarations of the **Claim** or of a **Circumstance** if provided in compliance with Clause B. above.

#### **XI. OPTIONAL EXTENSION PERIOD**

- A. If this Policy is cancelled or non-renewed by the Underwriters or by the **Named Insured**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 7.(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the period of time set forth in Item 7.(b) of the Declarations after the end of the **Policy Period**, but only with respect to any **Pollution Condition** arising on or after the Retroactive Date and before the effective date of cancellation or non-renewal.
- B. As a condition precedent to the right to purchase the **Optional Extension Period**, the total premium for this Policy must have been paid. The right to purchase the **Optional Extension Period** shall terminate unless written notice together with full payment of the premium for the **Optional Extension Period** is given to the Underwriters within sixty (60) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to the Underwriters, there shall be no right to purchase the **Optional Extension Period**.
- C. In the event of the purchase of the **Optional Extension Period**, the entire premium for the **Optional Extension Period** shall be deemed earned at its commencement.

- D. The Limit of Liability for the **Optional Extension Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.
- E. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause XI.

## **XII. REPRESENTATIONS**

By acceptance of this Policy, all **Insureds** agree that the statements contained in the **Application** are their agreements and representations, that they shall be deemed material to the risk assumed by the Underwriters, and that this Policy is issued in reliance upon the truth thereof.

## **XIII. OTHER INSURANCE**

This Insurance shall apply in excess of:

- A. any other valid and collectible insurance available to any **Insured**, including, but not limited to, any project specific professional liability and/or contractors pollution liability insurance; and
- B. any self insured retention or deductible portion thereof

unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

## **XIV. ASSIGNMENT**

The interest hereunder of any **Insured** is not assignable. If an **Insured** shall die or be adjudged incompetent, such insurance shall cover that **Insured's** legal representative as the **Insured** as would be permitted by this Policy.

## **XV. CANCELLATION AND NONRENEWAL**

- A. The **Named Insured** may cancel this Policy by surrender thereof to the Underwriters, or by mailing to the Underwriters written notice stating when thereafter such cancellation shall be effective. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice shall be equivalent to mailing.
- B. The Underwriters may cancel this Policy by mailing or delivering to the **Named Insured** at the address shown in the Declarations written notice stating when, not less than sixty (60) days thereafter, such cancellation shall be effective. However, if the Underwriters cancel this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing or delivering a written

notice of cancellation to the **Named Insured** at the address shown in the Declarations stating when not less than ten (10) days thereafter such cancellation shall be effective. The notice of cancellation shall state the reason for cancellation. The mailing of such notice shall be sufficient notice and the effective date of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice by the Underwriters shall be equivalent to mailing

- C. If this Policy is cancelled pursuant to A. hereinabove, the Underwriters shall retain the short rate portion of the premium hereon calculated in accordance with the Short Rate Cancellation Table set forth in Clause XXVIII. of this Policy. If this Policy is cancelled pursuant to B. hereinabove, the Underwriters shall retain the pro rata portion of the premium hereon. Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of cancellation.
- D. If the Underwriters decide not to renew this Policy, the Underwriters shall mail or deliver written notice to the **Named Insured** at the address shown in the Declarations at least sixty (60) days before the end of the **Policy Period**. The notice of nonrenewal shall state the reason for nonrenewal.

#### **XVI. MERGERS AND ACQUISITIONS**

- A. If during the **Policy Period**, the **Named Insured** acquires another entity for whom more than fifty percent (50%) of the outstanding securities representing the present right to vote for the election of such entity's directors are owned by the **Named Insured**, then no **Insured** shall have coverage under this Policy for any **Claim** that arises out of any **Pollution Condition**, whether arising either before or after such acquisition:
  - 1. by the acquired entity or any person employed by the acquired entity; or
  - 2. involving or relating to the assets or liabilities of the acquired entity.

The foregoing provision shall not apply if the **Named Insured** gives the Underwriters written notice within sixty (60) days after the effective date of the acquisition, obtains the written consent of the Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by the Underwriters.

- B. If during the **Policy Period** the **Named Insured** consolidates or merges with another entity such that the **Named Insured** is not the surviving entity, is acquired by another entity, or sells substantially all of its assets to any other entity, then coverage under this Policy shall not apply to **Pollution Conditions** arising subsequent to such consolidation, merger or acquisition. The **Named Insured** shall provide written notice of such

consolidation, merger or acquisition to the Underwriters as soon as practicable, together with such information as the Underwriters may require.

- C. All notices and premium payments made under this section shall be directed to the Underwriters through the entity named in Item 8.(b) of the Declarations.

## **XVII. ASSISTANCE AND COOPERATION OF THE INSURED**

The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the **Application** for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The **Insured** agrees not to take any action which in any way increases the Underwriters exposure under the Policy.

Upon the Underwriters request, the **Insured** shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the **Insured** because of **Pollution Conditions** with respect to which insurance is afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense (including, but not limited to, any **Claims Expenses** or **Cleanup Costs**), enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters.

Except as provided for in Clause II.B., expenses incurred by the **Insured** in assisting and cooperating with the Underwriters, as described above, do not constitute **Claims Expenses** and are not reimbursable under the Policy.

## **XVIII. ACTION AGAINST THE UNDERWRITERS**

No action shall lie against the Underwriters unless, as a condition precedent thereto, the **Insured** shall have fully complied with all of the terms of this Policy, nor until the amount of the **Insured's** obligation to pay shall have been fully and finally determined either by judgment against them or by written agreement between them, the claimant and the Underwriters. Nothing contained herein shall give any person or organization any right to join the Underwriters as a party to any **Claim** against the **Insured** to determine their liability, nor shall the Underwriters be impleaded by the **Insureds** or their legal representative in any **Claim**.

## **XIX. SUBROGATION**

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. The Underwriters agree to waive its rights of recovery against any client of the **Named Insured** for a **Claim** which is covered pursuant to Insuring Clause I.A. or I.B. of this Policy to the extent the **Named Insured** had, prior to such **Claim**, a written agreement to waive such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages** and **Claims Expenses** paid by the Underwriters, and third to the Each **Claim** Deductible. Any additional amounts recovered shall be paid to the **Named Insured**.

## **XX. ENTIRE AGREEMENT**

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriters relating to this Insurance. 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 Underwriters from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

## **XXI. VALUATION AND CURRENCY**

All premiums, limits, deductibles, **Damages** and other amounts under this Policy are expressed and payable in the currency of the United States. If judgment is rendered, settlement is denominated or another element of **Damages** under this Policy is stated in a currency other than United States dollars or if **Claims Expenses** are paid in a currency other than United States dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in the *Wall Street Journal* on the date the judgment becomes final or payment of the settlement or other element of **Damages** is due or the date such **Claims Expenses** are paid.

## **XXII. BANKRUPTCY**

Bankruptcy or insolvency of the **Insured** shall not relieve the Underwriters of their obligations nor deprive the Underwriters of its rights or defenses under this Policy.

## **XXIII. AUTHORIZATION**

By acceptance of this Policy, the **Insureds** agree that the **Named Insured** will act on their behalf with respect to the giving and receiving of any notice provided for in this Policy, the payment of premiums and the receipt of any return

premiums that may become due under this Policy, and the agreement to and acceptance of endorsements.

#### **XXIV. SINGULAR FORM OF A WORD**

Whenever the singular form of a word is used herein, the same shall include the plural when required by context.

#### **XXV. HEADINGS**

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

#### **XXVI. SERVICE OF SUIT**

It is agreed that in the event of the failure of Underwriters hereon to pay any amount claimed to be due under this Insurance, Underwriters hereon, at the request of the **Insured**, will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States. It is further agreed that service of process in such suit may be made upon Underwriters' representative, designated in Item 11. of the Declarations, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The Underwriters' representative designated in Item 11. of the Declarations is authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the **Insured** to give a written undertaking to the **Insured** that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his or her successor in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the **Insured** or any beneficiary hereunder arising out of this contract of Insurance, and hereby designate the Underwriters' representative, designated in Item 11. of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

**XXVII. CHOICE OF LAW**

Any disputes involving this Policy shall be resolved applying the law designated in Item 12. of the Declarations.

**XXVIII. SHORT RATE CANCELLATION TABLE**

Notwithstanding anything to the contrary contained herein and in consideration of the premium for which this Insurance is written it is agreed that in the event of cancellation thereof by the **Insured** the Earned Premium shall be computed as follows:-

**SHORT RATE CANCELLATION TABLE**

A. For insurances written for one year:-

Days Insurance in Force	Per cent. of One Year Premium	Days Insurance in Force	Per cent. of One Year Premium
1 - 73 .....	30	206 - 209 .....	66
74 - 76 .....	31	210 - 214 (7 months) .....	67
77 - 80 .....	32	215 - 218 .....	68
81 - 83 .....	33	219 - 223 .....	69
84 - 87 .....	34	224 - 228 .....	70
88 - 91 (3 months) .....	35	229 - 232 .....	71
92 - 94 .....	36	233 - 237 .....	72
95 - 98 .....	37	238 - 241 .....	73
99 - 102 .....	38	242 - 246 (8 months) .....	74
103 - 105 .....	39	247 - 250 .....	75
106 - 109 .....	40	251 - 255 .....	76
110 - 113 .....	41	256 - 260 .....	77
114 - 116 .....	42	261 - 264 .....	78
117 - 120 .....	43	265 - 269 .....	79
121 - 124 (4 months) .....	44	270 - 273 (9 months) .....	80
125 - 127 .....	45	274 - 278 .....	81
128 - 131 .....	46	279 - 282 .....	82
132 - 135 .....	47	283 - 287 .....	83
136 - 138 .....	48	288 - 291 .....	84
139 - 142 .....	49	292 - 296 .....	85
143 - 146 .....	50	297 - 301 .....	86
147 - 149 .....	51	302 - 305 (10 months).....	87
150 - 153 (5 months) .....	52	306 - 310 .....	88
154 - 156 .....	53	311 - 314 .....	89
157 - 160 .....	54	315 - 319 .....	90
161 - 164 .....	55	320 - 323 .....	91
165 - 167 .....	56	324 - 328 .....	92
168 - 171 .....	57	329 - 332 .....	93

172 - 175 .....	58	333 - 337 (11 months).....	94
176 - 178 .....	59	338 - 342 .....	95
179 - 182 (6 months) .....	60	343 - 346 .....	96
183 - 187 .....	61	347 - 351 .....	97
188 - 191 .....	62	352 - 355 .....	98
192 - 196 .....	63	356 - 360 .....	99
197 - 200 .....	64	361 - 365 (12 months).....	100
201 - 205 .....	65		

B. For Insurances written for more or less than one year:-

1. If insurance has been in force for 12 months or less, apply the standard short rate table for annual insurances to the full annual premium determined as for an insurance written for a term of one year.
2. If insurance has been in force for more than 12 months:
  - (a) Determine full annual premium as for an insurance written for a term of one year.
  - (b) Deduct such premium from the full insurance premium, and on the remainder calculate the pro rata Earned Premium on the basis of the ratio of the length of time beyond one year the insurance has been in force to the length of time beyond one year for which the insurance was originally written.
  - (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

Furthermore and notwithstanding the foregoing, Underwriters shall retain the total premium for this Policy, such total premium to be deemed earned upon inception of the Policy if any **Claim** or **Circumstance** is reported to Underwriters under this Policy on or before such date of cancellation.