



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

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

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

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

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

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

**SECTION I. INSURING AGREEMENTS**

**EACH OF THE FOLLOWING COVERAGES IS IN EFFECT ONLY IF LIMITS OF LIABILITY ARE INDICATED FOR SUCH COVERAGE IN THE DECLARATIONS. EACH COVERAGE THAT IS IN EFFECT IS SUBJECT TO SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION.**

**A. COVERAGE A – PROFESSIONAL LIABILITY**

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

**B. COVERAGE B – OCCURRENCE CONTRACTING SERVICES POLLUTION LIABILITY**

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

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

**C. COVERAGE C – POLLUTION LEGAL LIABILITY ARISING FROM AN OWNED LOCATION**

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

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

but only if:

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

**D. COVERAGE D – OCCURRENCE NON-OWNED DISPOSAL SITE**

The Company will pay on behalf of the INSURED for LOSS, CLEAN-UP COSTS, and related LEGAL EXPENSE because of a POLLUTION CONDITION on, at, under, or migrating from a NON-OWNED DISPOSAL SITE, which the INSURED becomes legally obligated to pay as a result of a CLAIM because of BODILY INJURY, PROPERTY DAMAGE or ENVIRONMENTAL DAMAGE that occurs during the POLICY PERIOD.

**E. COVERAGE E – OCCURRENCE IN-BOUND AND OUT-BOUND CONTINGENT TRANSPORTATION COVERAGE**

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

1. a JOB SITE; or
2. a COVERED LOCATION,

including any loading or unloading of such goods, products, or waste, which the INSURED becomes legally obligated to pay as a result of a CLAIM because of BODILY INJURY, PROPERTY DAMAGE, or ENVIRONMENTAL DAMAGE that occurs during the POLICY PERIOD.

**F. COVERAGE F – MITIGATION COSTS COVERAGE**

The Company will pay the INSURED's MITIGATION COSTS because of an actual act, error or omission in PROFESSIONAL SERVICES, but only if:

1. the PROFESSIONAL SERVICES were rendered subsequent to the applicable Retroactive Date, but prior to the end of the POLICY PERIOD;
2. during the POLICY PERIOD and prior to incurring any MITIGATION COSTS, the INSURED provides the Company with:
  - (a) written notice of such act, error or omission in PROFESSIONAL SERVICES; and
  - (b) a proposed written plan for correcting such act, error or omission, along with documentation supporting the reasonableness and necessity of such proposed plan;

3. all MITIGATION COSTS are approved by the Company, in writing, prior to being incurred by the INSURED; and
4. the MITIGATION COSTS are not covered under any other Coverage afforded under this Policy.

## SECTION II. DEFINITIONS

- A. ADDITIONAL NAMED INSURED** means any person, organization, or entity identified as an ADDITIONAL NAMED INSURED in an endorsement issued by the Company.
- B. AUTOMOBILE** means a land motor vehicle, trailer, semi-trailer, mobile equipment, or off-road motor vehicle, including any machinery or apparatus attached thereto.
- C. BODILY INJURY** means:
1. physical injury, sickness, disease, or building-related illness sustained by any person, including death resulting therefrom and, solely with regard to this Item C.1., any accompanying medical or environmental monitoring;
  2. court-ordered medical monitoring; or
  3. mental anguish, emotional distress, or shock,
- caused by a POLLUTION CONDITION.
- D. CARRIER** means a person or entity, other than an INSURED or any subsidiary or affiliate company of an INSURED, engaged by or on behalf of the INSURED to transport material by AUTOMOBILE, aircraft, watercraft, or rolling stock, but only if such person or entity is properly licensed to transport such material and in the business of transporting such material.
- E. CLAIM** means a demand, notice, or assertion of a legal right alleging liability or responsibility on the part of the INSURED because of: (i) a POLLUTION CONDITION; or (ii) an actual or alleged act, error or omission in PROFESSIONAL SERVICES, including but not be limited to lawsuits, orders, petitions or governmental or regulatory actions filed against the INSURED.
- F. CLEAN-UP COSTS** mean the reasonable and necessary expenses incurred to investigate, remove, dispose of, abate, contain, treat, or neutralize a POLLUTION CONDITION, including any associated monitoring and testing costs:
1. to the extent required by federal, state, local or provincial laws, including but not limited to statutes, rules, ordinances, guidance documents, regulations and all amendments thereto, including state voluntary cleanup or risk based corrective action guidance, governing the liability or responsibilities of the INSURED; or
  2. in the absence of items in 1. above, to the extent recommended by an ENVIRONMENTAL PROFESSIONAL.

CLEAN-UP COSTS include:

- (a) REPLACEMENT COSTS;
- (b) EMERGENCY RESPONSE COSTS;
- (c) any associated punitive, exemplary, or multiplied damages where insurable by law; and
- (d) civil fines, penalties and assessments, but only to the extent they: (i) arise solely from the investigation, removal, disposal of, abatement, containment, treatment or neutralization of a POLLUTION CONDITION; (ii) are imposed by a government entity acting under authority of applicable federal, state, local or provincial laws; and (iii) are insurable by law.

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

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

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

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

**I. COVERED LOCATION** means any location stated in the Declarations or any location scheduled as such onto this Policy by an endorsement issued by the Company. COVERED LOCATION does not include a JOB SITE.

**J. EMERGENCY RESPONSE COSTS** mean costs, charges or expenses incurred by the INSURED on an emergency basis, where delay on the part of the INSURED would cause injury to persons, damage to property, or increase significantly the cost of responding to a POLLUTION CONDITION. The INSURED shall notify the Company of all such expenses immediately after the emergency ends.

**K. ENVIRONMENTAL DAMAGE** means physical injury to the atmosphere, structures, soil, surface water or groundwater arising from a POLLUTION CONDITION and resulting in CLEAN-UP COSTS. ENVIRONMENTAL DAMAGE does not include PROPERTY DAMAGE.

**L. ENVIRONMENTAL PROFESSIONAL** means an individual designated by the Company who is duly certified or licensed in a recognized field of environmental science as required by a state board, a professional association, or both. The Company shall consult with the FIRST NAMED INSURED in conjunction with the selection of the ENVIRONMENTAL PROFESSIONAL. The Company may require that such professional meet certain minimum qualifications and maintain errors and omissions insurance.

**M. EXTENDED REPORTING PERIOD** means the Automatic Extended Reporting Period or, if applicable, the Optional Extended Reporting Period described in Section V. of this Policy.

**N. FIRST NAMED INSURED** means the person or entity stated in Item 1. of the Declarations.

**O. GREEN BUILDING MATERIALS** mean any building products or construction materials that are recognized by The Leadership in Energy and Environmental Design (LEED®) or Energy Star as: (i) being environmentally preferable or sustainable; or (ii) providing enhanced energy efficiency.

**P. INSURED** means:

1. the FIRST NAMED INSURED;
2. any ADDITIONAL NAMED INSURED; and
3. any present or former director, officer, partner, member, employee, leased or temporary worker of the FIRST NAMED INSURED or any ADDITIONAL NAMED INSURED, while acting within the scope of his/her duties as such; and
4. any organization or entity, in existence at any time prior to the POLICY PERIOD, in which the FIRST NAMED INSURED has: (i) an ownership interest of fifty percent (50%) or more; or (ii) control over the management thereof; and

5. any joint venture in which the FIRST NAMED INSURED or any ADDITIONAL NAMED INSURED is named as a co-venturer, but solely to the extent such FIRST NAMED INSURED or ADDITIONAL NAMED INSURED is liable because of its performance CONTRACTING SERVICES provided under such joint venture; and
6. solely with regard to Coverage B under this Policy and only when required by written contract, INSURED also includes:
  - A. the client for whom the INSURED performs CONTRACTING SERVICES provided that such contract was signed by the INSURED and such client prior to the date the POLLUTION CONDITION first commenced. However, the client is included as an INSURED under this Policy solely to the extent that the client is found liable based upon CONTRACTING SERVICES negligently performed by an INSURED other than the client. No coverage will be provided for such entity's own negligence or strict liability; and
  - B. any entity unrelated to the FIRST NAMED INSURED or any ADDITIONAL NAMED INSURED, provided that such contract was signed by the INSURED and the client for whom the INSURED performs CONTRACTING SERVICES prior to the date the POLLUTION CONDITION first commenced. However, such entity is included as an INSURED under this Policy solely to the extent that it is found liable based upon CONTRACTING SERVICES negligently performed by an INSURED other than such entity. No coverage will be provided for such entity's own negligence or strict liability.

Coverage for such client or entity under this Policy shall not exceed the lesser of the following amounts:

- (i) the Limit of Liability required under such written contract; or
- (ii) the applicable Coverage B Limit of Liability of this Policy.

Notwithstanding Section IX. CONDITIONS, Item L. OTHER INSURANCE, and only when required by such written contract, the coverage afforded under this Policy for any person or entity who is an INSURED solely by reason of subparagraph 6. of the Definition of INSURED will apply as primary as to any other valid and collectible insurance available to such INSURED.

- Q. JOB SITE** means a location at which CONTRACTING SERVICES are performed. JOB SITE also includes real property rented or leased by the INSURED during the course of performing CONTRACTING SERVICES, but only if such real property is utilized in direct support of such CONTRACTING SERVICES. However, JOB SITE does not include any:
1. COVERED LOCATION; or
  2. other location that is managed, operated, owned, or leased by an INSURED or any subsidiary or affiliate of an INSURED, except for any such location that is managed, operated, owned, or leased solely by any person or organization that is an INSURED only by reason of subparagraph 6. of the definition of INSURED.
- R. LEGAL EXPENSE** means attorneys' fees and other charges and expenses incurred in the investigation, adjustment, defense, or settlement of any CLAIM for LOSS or CLEAN-UP COSTS, or in connection with the payment of any CLEAN-UP COSTS. LEGAL EXPENSE includes the fees and expenses of consultants, expert witnesses, accountants, court reporters, and other vendors, for goods or services in connection with such investigation, adjustment, defense, or settlement, whether incurred by the INSURED, defense counsel, or the Company.

LEGAL EXPENSE also includes costs of appeal bonds, and pre-judgment and post-judgment interest.

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

- S. LOSS** means:

1. solely with regard to Coverage A, a monetary judgment, award, or settlement of:

- (a) compensatory damages; or
  - (b) punitive, exemplary or multiplied damages, civil fines, penalties and assessments, where insurable by law;
2. with regard to any coverage(s) other than Coverage A, a monetary judgment, award, or settlement of:
- (a) compensatory damages; or
  - (b) punitive, exemplary or multiplied damages, civil fines, penalties and assessments, where insurable by law,

because of BODILY INJURY or PROPERTY DAMAGE.

However, LOSS does not include any:

- (i) return, refund, or disgorgement of any INSURED's fee or other sum, whether or not the INSURED received it for PROFESSIONAL SERVICES, expenses, or otherwise;
- (ii) cost of complying with any injunctive or other equitable relief; or
- (iii) liquidated damages, whether such liquidated damages are pursuant to contract or otherwise.

**T. MEDIATION** means the process by which a neutral third party evaluates a CLAIM and provides non-binding recommendations in an effort to facilitate a resolution of such CLAIM.

**U. MITIGATION COSTS** mean the reasonable costs and expenses that are necessary to:

- 1. prevent further harm, injury or damage to persons or tangible property; or
- 2. reduce the INSURED's liability to any person or organization that is not an INSURED, but only if the INSURED expects to incur such liability as a direct result of an act, error or omission in the PROFESSIONAL SERVICES.

However, MITIGATION COSTS do not include: (i) any of the INSURED's overhead, mark-up, profit or labor costs; (ii) any consequential damages or costs, including but not limited to delay damages, cost over-runs, lost profits, liquidated damages, or loss of use; or (iii) any work that is a betterment or exceeds the scope of the original project.

**V. MOLD MATTER** means mold, mildew, or any type or form of fungus, including any mycotoxins, spores, or byproducts produced or released by fungi.

**W. NON-OWNED DISPOSAL SITE ("NODS")** means a location used for the treatment, storage, or disposal of waste, but only if:

- 1. the waste is generated by CONTRACTING SERVICES or at a COVERED LOCATION; and
- 2. the NODS is not managed, operated, owned, or leased by the INSURED or any subsidiary or affiliate of the INSURED; and
- 3. the NODS is permitted and/or licensed by any federal, state, local or provincial authorities to accept such material as of the date of the treatment, storage, or disposal; and
- 4. the NODS is not listed on a proposed or final Federal National Priorities List ("NPL") and any State or Provincial equivalent NPL, Superfund, or Hazardous Waste list prior to the treatment, storage, or disposal.

**X. POLICY PERIOD** means the period stated in Item 2. of the Declarations. However, if this Policy is cancelled by either the FIRST NAMED INSURED or the Company, the policy period ends at the effective date and time of the cancellation.

**Y. POLLUTANTS** mean any solid, liquid, gaseous or thermal pollutant, irritant or contaminant, including but not limited to smoke, vapors, odors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, petroleum hydrocarbons, waste, including medical, infectious, red bag, and pathological wastes, legionella, electromagnetic fields, MOLD MATTER and low-level radioactive waste and material.

**Z. POLLUTION CONDITION** means:

1. the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS into or upon land or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater;
2. the illicit abandonment of contained or uncontained POLLUTANTS at a JOB SITE or COVERED LOCATION, but only if such abandonment was committed by a person(s) or entity(ies) other than an INSURED and without the knowledge of any RESPONSIBLE PERSON;
3. the existence of MOLD MATTER, on, at, or within a building or structure;
4. the discharge, dispersal, release, or escape of methamphetamines or other chemicals associated with methamphetamine laboratories within a building or structure; and
5. solely with regard to Coverage E, the illicit abandonment of any waste beyond the legal boundaries of a COVERED LOCATION by a CARRIER, but only if such abandonment was committed by a CARRIER that is not an INSURED and without the knowledge of any RESPONSIBLE PERSON.

**AA. PROFESSIONAL SERVICES** mean:

1. solely with regard to Coverage A, any professional services stated in the Declarations, or scheduled as such onto this Policy by endorsement issued by the Company, performed by or on behalf of the INSURED; and
2. solely with regard to Coverage F, design, design assist, engineering, or value engineering performed by the INSURED.

**BB. PROPERTY DAMAGE** means:

1. physical injury to, or destruction of, the real property or tangible personal property of any: (a) person or organization that is not an INSURED; or (b) any person or organization that is an INSURED only by reason of subparagraph 6. of the definition of INSURED, including the resulting loss of use of such property; or
2. loss of use of such property that has not been physically injured or destroyed;
3. diminution in the value of such property; or
4. natural resource damage which means the physical injury to, or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act(16 U.S.C. 1801 et. seq.)), any State, Local or Provincial government, any foreign government, any Native American tribe, or, if such resources are subject to a trust restriction or alienation, any member of a Native American tribe.

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

**CC. REPLACEMENT COSTS** mean reasonable and necessary costs incurred by the INSURED, with the Company's written consent, to repair, restore or replace damaged real property or tangible personal property in order to restore the property to the condition it was in prior to it being damaged, but only if the damage to such real property or tangible personal property occurred in the course of incurring CLEAN-UP COSTS. REPLACEMENT COSTS includes the use of GREEN BUILDING MATERIALS.

REPLACEMENT COSTS shall not exceed the actual cash value of such real property or tangible personal property prior to incurring the CLEAN-UP COSTS, plus the increased costs, if any, for GREEN BUILDING MATERIALS. For

the purposes of this definition, actual cash value means replacement cost reduced by physical depreciation and obsolescence.

**DD. RESPONSIBLE PERSON** means:

1. any officer, director, or partner of the INSURED;
2. the manager, foreman, or supervisor of the INSURED responsible for environmental or health and safety affairs, control or compliance; or
3. any manager of a COVERED LOCATION.

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

UNDERGROUND STORAGE TANK does not include any oil/water separators, storm-water collection systems, or any tank contained in a subterranean room of a COVERED LOCATION.

**SECTION III. TERRITORY**

This Policy applies only to a CLAIM first made or brought in, or a POLLUTION CONDITION located within, the United States, its territories or possessions, Puerto Rico or Canada, but only if the INSURED's responsibility to pay for LOSS is determined in:

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

**SECTION IV. EXCLUSIONS**

This Insurance does not apply to any LOSS, CLEAN-UP COSTS, MITIGATION COSTS, LEGAL EXPENSE or other coverage afforded under this Policy that is:

**1. Asbestos**

based upon or arising out of the existence of, required removal of, or abatement of, asbestos in any form, including, but not limited to, products containing asbestos, asbestos fibers, asbestos dust, and asbestos containing materials. This exclusion does not apply to:

- (a) Coverages A and F;
- (b) Coverage B; or
- (c) asbestos in any form,
  - (i) with respect to Coverages C and D, in soil or in any watercourse or body of water including groundwater; or
  - (ii) with respect to Coverage E, where the exposure occurs during the course of transportation as a result of a POLLUTION CONDITION that first commenced during the POLICY PERIOD.

**2. Communicable Diseases**

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

**3. Contractual Liability**

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

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



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

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

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

**5. Discrimination**

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

**6. Employer's Liability/Workers' Compensation**

based upon or arising out of:

(a) BODILY INJURY to any INSURED, or any employee of its parent, subsidiary or affiliate:

(i) arising out of and incurred in the course of employment by such INSURED or its parent or subsidiary or affiliate; or

(ii) who is performing duties related to the conduct of the INSURED's business; or

(b) BODILY INJURY or pecuniary loss to the spouse, child, parent, brother or sister of such INSURED or employee of its parent, subsidiary or affiliate, as a consequence of Item (a) above.

This exclusion applies whether an INSURED may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay another who must pay damages as a result of the BODILY INJURY or pecuniary loss. However, this exclusion does not apply to liability for LOSS assumed by the INSURED in a written contract that was signed by the INSURED and the INSURED's client prior to the date the POLLUTION CONDITION first commenced, provided that the LOSS is only due to a POLLUTION CONDITION arising from CONTRACTING SERVICES and does not arise from the sole negligence of the client.

**7. Faulty Workmanship/Own Work**

based upon or arising out of the costs to repair or replace faulty workmanship, construction, fabrication, installation, assembly or remediation, if such faulty workmanship, construction, fabrication, installation, assembly or remediation was performed, in whole or in part, by an INSURED or an entity for whom an INSURED is legally responsible. This exclusion does not apply to:

(a) LOSS under Coverage A which arises from an actual or alleged act, error or omission in PROFESSIONAL SERVICES; or

(b) CLEAN-UP COSTS under Coverage B.

**8. Hostile Acts**

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

**9. Insured vs. Insured**

based upon or arising out of any CLAIM by one INSURED against any other INSURED. This exclusion does not apply to a CLAIM:

(a) made by a person or organization that is an INSURED only by reason of subparagraph 6. of the Definition of INSURED; or

- (b) that arises out of an indemnification given by one INSURED to another INSURED as specified in a contract that was submitted to and approved by the Company and added to this Policy by endorsement.

#### 10. Insured's Property

based upon or arising out of damage to:

- (a) real or personal property owned by, leased by, operated by, or loaned to an INSURED; or
- (b) personal property in the care, custody, or control of an INSURED,

even if such damage is incurred to avoid or mitigate LOSS or CLEAN-UP COSTS which may be covered under this Policy.

This exclusion does not apply to:

- (i) REPLACEMENT COSTS;
- (ii) damage to property owned, leased or operated by, or in the care, custody or control of, a person or organization that is an INSURED only by reason of subparagraph 6. of the Definition of INSURED; or
- (iii) damage to real property rented or leased by the INSURED during the course of performing CONTRACTING SERVICES, but only if such real property is utilized in direct support of such CONTRACTING SERVICES.

#### 11. Intentional Acts

based upon or arising out of:

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

#### 12. Known Conditions

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

- (a) the beginning of the POLICY PERIOD; or
- (b) the effective date of any endorsement issued by the Company adding to this Policy any:
  - (i) COVERED LOCATION not scheduled onto this Policy as of the first day of the POLICY PERIOD; or
  - (ii) CONTRACTING SERVICES not covered by this Policy as of the first day of the POLICY PERIOD; or
  - (iii) PROFESSIONAL SERVICES not covered by this Policy as of the first day of the POLICY PERIOD.

Any such POLLUTION CONDITION, or actual or alleged act, error or omission in PROFESSIONAL SERVICES, specifically reported, in writing, to the Company, which is not otherwise excluded under this Policy by endorsement, is deemed to be first discovered on the date the COVERED LOCATION, CONTRACTING SERVICES or PROFESSIONAL SERVICES, as applicable, were added to this Policy.

#### 13. Lead-Based Paint

based upon or arising out of lead-based paint in, on, or applied to, any building or other structure. This exclusion does not apply to:

- (a) Coverages A, B, D, E or F; or

- (b) with respect to Coverage C, lead-based paint in soil or in any watercourse or body of water including groundwater.

#### **14. Material Change in Use**

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

#### **15. Natural Occurring Material(s)**

based upon or arising out of the existence, required removal, or abatement, of any naturally occurring material(s). This exclusion does not apply:

- (a) where such substances are present at, or migrate from, a JOB SITE due to CONTRACTING SERVICES;
- (b) where such substances are present at a COVERED LOCATION only because of human activities or processes;
- (c) to silt and sediment that migrate from a JOB SITE because of CONTRACTING SERVICES;
- (d) to MOLD MATTER; or
- (e) to LOSS and related LEGAL EXPENSE because of radon.

#### **16. New Pollution Conditions at Divested Property**

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

#### **17. Other Businesses**

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

#### **18. Prior Claims**

based upon or arising out of any CLAIM reported under any insurance policy that was both: (i) in effect before the beginning of the POLICY PERIOD; and (ii) issued by an entity other than the Company.

#### **19. Products Liability**

based upon or arising out of goods or products:

- (a) designed, manufactured, sold, handled, distributed, altered or repaired by the INSURED or by others trading under the INSURED's name, including any container thereof, any failure to warn, or any reliance upon a representation or warranty made at any time with respect thereto; or
- (b) fabricated or installed by the INSURED, unless a POLLUTION CONDITION arises from the fabrication or installation of such goods or products as part of CONTRACTING SERVICES.

This exclusion does not apply to such goods or products while they remain within the legal boundaries of a COVERED LOCATION.

#### **20. Property Held for Others**

based upon or arising out of damage to personal property that is warehoused or stored for a fee, by any person, organization or entity that is not an INSURED, in or about any building or structure at a COVERED LOCATION. This exclusion does not apply to REPLACEMENT COSTS.

#### **21. Retroactive Date**

based upon or arising out of:

- (a) any POLLUTION CONDITION that first commenced prior to the Retroactive Date set forth in the Declarations or as otherwise applicable, including any further dispersal, migration or movement of that POLLUTION CONDITION on or after that date; or
- (b) an actual or alleged act, error or omission in PROFESSIONAL SERVICES that first commenced prior to the Retroactive Date set forth in the Declarations or as otherwise applicable, including any continuous or related actual or alleged act(s), error(s) or omission(s) on or after that date.

**22. Related Entities and/or Individuals**

based upon or arising out of a CLAIM made by any person or entity:

- (a) that wholly or partially owns an INSURED;
- (b) in which an INSURED owns an interest in excess of twenty percent (20%);
- (c) that is managed, operated or otherwise controlled by an INSURED; or
- (d) in which an INSURED is a principal, officer or director.

**23. Surety, Insurance or Bonding**

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

**24. Underground Storage Tank(s)**

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

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

**25. Vehicles**

based upon or arising out of the ownership, maintenance, use, operation, loading or unloading of any AUTOMOBILE, aircraft, watercraft, rolling stock or any other form of transportation, including any cargo carried thereby, beyond the legal boundaries of a JOB SITE or a COVERED LOCATION. This exclusion does not apply to Coverage E.

**26. Wage and Wage Related Payments**

based upon or arising out of the actual or alleged failure to pay, afford, or cause to be paid or afforded, to any person or entity, in whole or in part, any wages, earnings, compensation, merit pay, overtime pay, commissions, benefits or other remuneration, including but not limited to any such wages or benefits actually or allegedly due under any contract or pursuant to the Fair Labor Standards Act, the Davis-Bacon and Related Acts, Service Contract Act, Contract Work Hours and Safety Standards Act, Family Medical Leave Act, or any jurisdiction's prevailing wage act, labor laws or similar statutes.

**27. Warranties**

based upon or arising out of any express warranty or guarantee. This exclusion does not apply to a warranty or guarantee by the INSURED that its CONTRACTING SERVICES or PROFESSIONAL SERVICES conform to generally accepted standards.

**SECTION V. EXTENDED REPORTING PERIOD**

The provisions of Section V. apply to any and all coverage provided by this Policy, or by any endorsement issued by the Company, that applies on a Claims Made and Reported basis. This Section V. does not apply to Coverage F.

**A. Automatic Extended Reporting Period**

In the event of the termination of this insurance before the expiration date shown in Item 2. of the Declarations, the INSURED shall be entitled to a ninety (90) day Automatic Extended Reporting Period for no additional premium. The Automatic Extended Reporting Period will only apply to:

1. a CLAIM first made against the INSURED during the POLICY PERIOD and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM is otherwise covered by this Policy; and
2. a CLAIM first made against the INSURED and reported to the Company, in writing, during the ninety (90) days immediately following the effective date of such termination will be deemed to have been made on the last day of the POLICY PERIOD, provided such CLAIM arises from:
  - (a) a POLLUTION CONDITION that is first discovered and reported to the Company, in writing, prior to such termination, and otherwise covered by this Policy; or
  - (b) an actual or alleged act, error or omission in PROFESSIONAL SERVICES performed prior to the end of the POLICY PERIOD, and that is otherwise covered by this Policy.

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

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

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

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

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

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

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

The Optional Extended Reporting Period will only apply to each CLAIM first made against the INSURED during the Optional Extended Reporting Period, but only by reason of:

1. a POLLUTION CONDITION that is first discovered and reported to the Company, in writing, during the POLICY PERIOD and otherwise covered by this Policy; or
2. an actual or alleged act, error or omission in PROFESSIONAL SERVICES performed prior to the end of the POLICY PERIOD, and that is otherwise covered by this Policy.

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

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

1. either cancellation or non-renewal shall be deemed to be a termination of this insurance; and

2. in the event of non-renewal, the expiration date shown in the Declarations shall be deemed the effective date of the termination.

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

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

## **SECTION VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION**

- A. The Limits of Liability and Self-Insured Retention shown in the Declarations and the rules below fix the most the Company will pay regardless of the number of INSUREDs, COVERED LOCATIONs, CONTRACTING SERVICES, PROFESSIONAL SERVICES, POLLUTION CONDITIONs, CLAIMs made, or persons or organizations making a CLAIM.
- B. For purposes of this Policy: (1) the same or related POLLUTION CONDITIONs at any one JOB SITE, or at any one COVERED LOCATION, shall be deemed a single POLLUTION CONDITION; and (2) all of a group or series of related or connected actual or alleged acts, errors and omissions in PROFESSIONAL SERVICES shall be deemed a single actual or alleged act, error or omission in PROFESSIONAL SERVICES.
- C. This Policy will pay covered LOSS, CLEAN-UP COSTS, MITIGATION COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto only: (1) in excess of the applicable Self-Insured Retention Amount set forth in the Declarations; and (2) subject to the applicable Limit of Liability stated in the Declarations and the other terms and conditions of this Policy.

However, if a CLAIM is made against the INSURED by an entity with whom the INSURED has, prior to such CLAIM, entered into a written contract that requires a Self-Insured Retention that is less than the Self-Insured Retention Amount specified in the Declarations of this Policy, then the Self-Insured Retention applicable to such CLAIM shall be such lesser amount (hereinafter referred to as "the lesser Self-Insured Retention"). Under all such circumstances, the INSURED hereby agrees to promptly reimburse the Company for the difference between the lesser Self-Insured Retention amount specified on the evidence of insurance document and the Self-Insured Retention Amount specified in the Declarations to the extent the Company pays an amount on behalf of the INSURED in excess of the lesser Self-Insured Retention.

- D. The Self-Insured Retention Amount is to be borne by the INSURED and is not to be insured unless the Company has expressed its prior consent, in writing, to the FIRST NAMED INSURED. If the same or related POLLUTION CONDITIONs or any one actual or alleged act, error or omission, or out of any one group or series of related or connected actual or alleged acts, errors and omissions, in PROFESSIONAL SERVICES, could result in coverage under more than one coverage section for which a limit is stated in the Declarations, or under any other coverage afforded under this Policy, only the single highest Self-Insured Retention amongst such applicable coverages shall apply to that POLLUTION CONDITION or actual or alleged act, error or omission in PROFESSIONAL SERVICES, as applicable.

If, as a result of MEDIATION, a CLAIM made under Coverage A is successfully resolved, the Self-Insured Retention Amount applicable to such CLAIM will be reduced by 50%, subject to a maximum reduction of \$20,000. This reduced Self-Insured Retention Amount will only apply to the resolved CLAIM.

- E. Subject to Items H. and I. below, the Each POLLUTION CONDITION Limit set forth in the Declarations is the most the Company will pay for the sum of all LOSS, CLEAN-UP COSTS, and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy, arising out of the same or related POLLUTION CONDITIONs.
- F. Subject to Items H. and I. below, the Each Act, Error or Omission Limit set forth in the Declarations is the most the Company will pay for the sum of all LOSS and LEGAL EXPENSE under Coverages A arising out of any one actual or alleged act, error or omission, or out of any one group or series of related or connected actual or alleged acts, errors and omissions, in PROFESSIONAL SERVICES.

- G.** Subject to Items H. and I. below, the Each Act, Error or Omission Limit stated in the Declarations is the most the Company will pay for all MITIGATION COSTS under Coverage F arising out of any one actual act, error or omission, or out of any one group or series of related or connected actual acts, errors and omissions, in PROFESSIONAL SERVICES.

Further, in the event there is a CLAIM made against the INSURED under Coverage A:

- (a) that arises out of the same or related PROFESSIONAL SERVICES for which the INSURED has previously undertaken corrective measures in accordance with Coverage F; and
- (b) for which coverage is thereafter afforded under Coverage A of this Policy,

then the INSURED's Self-Insured Retention obligation for such CLAIM shall be reduced to the extent of costs paid by the INSURED pursuant to its Self-Insured Retention obligation for Coverage F.

- H.** Subject to Item I. below, the Coverage Section Aggregate Limit set forth in the Declarations is the most the Company will pay for the sum of all LOSS, CLEAN-UP COSTS, MITIGATION COSTS and LEGAL EXPENSE under each coverage section stated in the Declarations, or under any other coverages afforded under this Policy.

- I.** The Company's total liability for the sum of all LOSS, CLEAN-UP COSTS, MITIGATION COSTS, LEGAL EXPENSE and any other coverage afforded under this Policy, shall not exceed the Policy Aggregate Limit of Liability as stated in the Declarations.

- J.** With regard to Coverages afforded under this Policy:

1. on a claims-made and reported basis, any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy or any endorsements attached hereto, incurred and reported to the Company, in writing, over more than one policy period, and resulting from the same or related POLLUTION CONDITIONS, shall be considered a single POLLUTION CONDITION. The associated LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverage afforded under this Policy or any endorsements attached thereto will be subject to the same Limit of Liability and Self-Insured Retention Amount(s) as indicated in the Policy in effect at the time the POLLUTION CONDITION was first reported to the Company, in writing.
2. on an occurrence basis, progressive, indivisible BODILY INJURY, PROPERTY DAMAGE or ENVIRONMENTAL DAMAGE that occurs over more than one policy period and results from the same or related POLLUTION CONDITIONS, shall be considered to have occurred only in the policy period in which the first exposure to the POLLUTION CONDITION takes place. If the date of that first exposure: (i) is prior to the beginning of the Policy Period of the first policy issued to the INSURED by the Company that contains coverage that is the same or substantially similar to that contained in Coverages afforded under this Policy on an occurrence basis; or (ii) cannot be determined, then such progressive, indivisible BODILY INJURY, PROPERTY DAMAGE or ENVIRONMENTAL DAMAGE shall be considered to have occurred only on the first day of the Policy Period of the first policy issued to that INSURED by the Company that contains coverage that is the same or substantially similar to that contained in Coverages afforded under this Policy on an occurrence basis.

- K.** Any LOSS, CLEAN-UP COSTS, MITIGATION COSTS, LEGAL EXPENSE or any other coverages afforded under this Policy, incurred and reported to the Company, in writing, over more than one POLICY PERIOD, and resulting from the same or related POLLUTION CONDITION, or out of any one group or series of related or connected actual or alleged acts, errors and omissions in PROFESSIONAL SERVICES, shall be considered a single POLLUTION CONDITION or a single actual or alleged act, error or omission in PROFESSIONAL SERVICES, respectively. The LOSS, CLEAN-UP COSTS, LEGAL EXPENSE or any other coverage afforded under this Policy will be subject to the same Limit of Liability and Self-Insured Retention Amount(s) in effect at the time the POLLUTION CONDITION, or actual or alleged act, error or omission in PROFESSIONAL SERVICES, as applicable, was first reported to the Company, in writing.

- L.** The Limits of Liability set forth in Item 3. of the Declarations are inclusive of LEGAL EXPENSE. An additional Limit for LEGAL EXPENSE will apply to all Coverages. However, this additional Limit is:

1. subject to the Self-Insured Retention set forth in Item 3. of the Declarations;
2. exclusively for LEGAL EXPENSE; and

3. limited to the lesser of: (a) 25% of the applicable Limits of Liability set forth in Item 3. of the Declarations; or (b) \$2,000,000.

In the event a CLAIM is made against the INSURED for LOSS or CLEAN-UP COSTS, or a POLLUTION CONDITION is first discovered that results in LOSS or CLEAN-UP COSTS, the additional Limit for LEGAL EXPENSE will be applied first. After the additional Limit for LEGAL EXPENSE has been fully eroded, any other covered LEGAL EXPENSE will erode the applicable Limits of Liability shown in Item 3. of the Declarations.

Furthermore, the Policy Aggregate Limit of Liability set forth in Item 4. of the Declarations shall be increased by the lesser of 25% or \$2,000,000. However, this increase to the Policy Aggregate Limit of Liability will only be available for the payment of LEGAL EXPENSE.

## **SECTION VII. REPORTING, DEFENSE, SETTLEMENT AND COOPERATION**

- A. As a condition precedent to the coverage hereunder, in the event a CLAIM is made against an INSURED for LOSS or CLEAN-UP COSTS, or a POLLUTION CONDITION is first discovered that results in a LOSS or CLEAN-UP COSTS, written or oral notice containing particulars sufficient to identify the INSURED and all reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the INSURED to the Company or any of its authorized agents as soon as practicable. In the event of oral notice, the INSURED agrees to furnish a written report as soon as practicable. The INSURED shall also forward to the Company every demand, notice, summons, order or other process received by the INSURED or the INSURED's representative as soon as practicable.
- B. No costs, charges or expenses shall be incurred, nor payments made, obligations assumed or remediation commenced, without the Company's consent which shall not be unreasonably withheld. This provision does not apply to:
  1. EMERGENCY RESPONSE COSTS. The INSURED shall notify the Company of all EMERGENCY RESPONSE COSTS immediately after the emergency ends; and
  2. Public Relations Expenses - The reasonable and necessary costs and fees incurred by the FIRST NAMED INSURED (up to a maximum of \$250,000 and subject to applicable Coverage B Self-Insured Retention Amount (for each POLLUTION CONDITION) for the hiring of a public relations firm to minimize potential harm to the FIRST NAMED INSURED and to maintain and restore public confidence in the FIRST NAMED INSURED, including amounts for printing, advertising, and mailing of materials, and travel expenses by the FIRST NAMED INSURED's directors, officers, employees or agents or by employees of the public relations firm, but only if:
    - (a) such costs and fees arise directly from a POLLUTION CONDITION:
      - (i) that arises from covered CONTRACTING SERVICES;
      - (ii) that first commences at a JOB SITE during the POLICY PERIOD; and
      - (iii) for which coverage is not otherwise excluded under this Policy; and
    - (b) in the good-faith, reasonable opinion of the FIRST NAMED INSURED such POLLUTION CONDITION:
      - (i) poses an imminent, significant, and material health risk to the public or will result in imminent, significant, and material property damage to the JOB SITE; and
      - (ii) will result in significant and material adverse publicity to the FIRST NAMED INSURED.

Subject to: (a) the Company's pre-approval; (b) the Self-Insured Retention and maximum amount indicated above; and (c) the Company's agreement that both conditions 2(a) and (b) above have been fully satisfied, the Company may also consider paying other related reasonable and necessary expenses that are: (i) incurred by any person or entity that is not an INSURED, except for contractor or subcontractor engaged by the FIRST NAMED INSURED or otherwise performing covered CONTRACTING SERVICES; and (ii) not otherwise covered as EMERGENCY RESPONSE COSTS, including: psychological counseling, temporary living expenses, travel



costs, and expenses to secure areas impacted by the POLLUTION CONDITION. Notwithstanding Section VI. LIMIT OF LIABILITY AND SELF-INSURED RETENTION, Item G., the costs and fees indicated in Item 2. above, as well as the other related expenses indicated in this paragraph, will not erode the applicable Limits of Liability.

It is a condition precedent to coverage for all costs and fees outlined in Item 2. above that the FIRST NAMED INSURED notify the Company of the POLLUTION CONDITION associated with such costs and fees no later than forty-eight (48) hours after the FIRST NAMED INSURED first becomes aware of such POLLUTION CONDITION.

The payment of costs and fees outlined above by the Company will not be determinative of the Company's obligations under this Policy, nor will it create any inference with regard to the Company's duty to defend or duty to indemnify any INSURED with regard to any CLAIM or POLLUTION CONDITION.

Under no circumstances will the Company pay for the hiring of a public relations firm to minimize the potential harm to, or to restore public confidence in, any contractor or subcontractor engaged by the FIRST NAMED INSURED or otherwise performing covered CONTRACTING SERVICES.

- C. The Company shall have the right to designate legal counsel for the investigation, adjustment and defense of any CLAIM. The Company shall consult with the INSURED in conjunction with the selection of counsel. The Company has the right and duty to defend an INSURED against any CLAIM for LOSS or for CLEAN-UP COSTS. However, the Company will have no duty to defend the INSURED for LOSS or for CLEAN-UP COSTS to which this Policy does not apply.
- D. Once the applicable Limit of Liability has been exhausted, the Company shall not be obligated to defend or continue to defend any CLAIM or pay for any LOSS, CLEAN-UP COSTS or any other coverage afforded under this Policy.
- E. The Company may, where allowable by law, appoint one counsel to defend all of the INSUREDS under this Policy on a joint defense basis.
- F. In the event that the INSURED is entitled by law to select independent counsel (Cumis Counsel) to defend the INSURED at the Company's expense, that counsel's fees and all other litigation expenses charged to or paid by the Company shall be limited to the same rates that the Company would pay to counsel selected by the Company to defend a similar CLAIM in the location where the CLAIM arose or is being defended. The Company may require that such counsel meet certain minimum qualifications and maintain adequate errors and omissions insurance. The INSURED agrees that such counsel will timely respond to the Company's request for information.
- G. The INSURED shall not admit liability or settle any CLAIM without the Company's consent. If the Company recommends a monetary settlement of a CLAIM acceptable to a claimant:
  - 1. for an amount within the Self-Insured Retention Amount and the INSURED refuses such settlement, the Company shall not be liable for any LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverage afforded under this Policy or any endorsements attached hereto, in excess of the Self-Insured Retention Amount; or
  - 2. for a total amount in excess of the Self-Insured Retention Amount and within the applicable Limits of Liability and the INSURED refuses such settlement, the Company's liability for LOSS, CLEAN-UP COSTS, LEGAL EXPENSE, or any other coverage afforded under this Policy, shall be limited to that portion of the sum of: (a) the recommended settlement; and (b) the costs, charges and expenses already incurred as of the date of the INSURED's refusal, which exceeds the Self-Insured Retention Amount and is within the Limit of Liability.
- H. All INSUREDS shall cooperate with the Company and, upon the Company's request, shall submit to examination by a representative of the Company, under oath, and shall attend hearings, depositions, and trials and shall assist in effecting settlement, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits, as well as in the investigation and defense, all without charge to the Company. All INSUREDS shall further cooperate with the Company and do whatever is necessary to secure and enforce any rights of indemnity, contribution or apportionment which the INSURED may have.
- I. If, during the POLICY PERIOD, the INSURED first becomes aware of an actual or alleged act, error or omission in PROFESSIONAL SERVICES that first commenced on or after the Retroactive Date set forth in the Declarations, which the INSURED reasonably believes may result in a CLAIM (herein referred to as a "Circumstance"), then the

INSURED may provide written notice to the Company, during the POLICY PERIOD, containing all of the information stated below. Any such Circumstance that subsequently becomes a CLAIM made against the INSURED and reported to the Company, in writing, shall be considered to have been first made and reported during the POLICY PERIOD and shall be subject to all of the terms and conditions of this Policy. It is a condition precedent to the coverage under this provision that such written notice to the Company of a Circumstance contain all of the following information:

1. details of the actual or alleged act, error or omission in PROFESSIONAL SERVICES, including the specific PROFESSIONAL SERVICES involved; and
2. the injury or damage that has taken place or may result; and
3. the date the actual or alleged act, error or omission in PROFESSIONAL SERVICES took place; and
4. the identity of the INSURED(s) who may be the subject of any subsequent CLAIM; and
5. the likely location of any subsequent CLAIM; and
6. the names and addresses of all known potential witnesses and claimants; and
7. details of how the INSURED became aware of the Circumstance.

The Company shall determine, in its sole discretion, whether an INSURED's written notice adequately supplies the information described in items 1. through 7. and satisfies the condition precedent. This provision I. applies only to Coverage A.

#### **SECTION VIII. TRANSFER OF LEGAL DEFENSE DUTIES**

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

#### **SECTION IX. CONDITIONS**

- A. **ACTION AGAINST COMPANY** - No action brought by an organization or entity, other than an INSURED, shall lie against the Company unless, as a condition precedent thereto, the INSURED has fully complied with all of the terms of this Policy and, the amount of the INSURED's obligation to pay shall have been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

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

- B. **ASSIGNMENT** - This Policy shall be void as to the assignee or transferee, if assigned or transferred without written consent of the Company.

**C. BANKRUPTCY** - Bankruptcy or insolvency of the INSURED or of the INSURED's estate shall not relieve the Company of any of its obligations hereunder.

**D. CANCELLATION** - This Policy may be cancelled by the FIRST NAMED INSURED by surrender thereof to the Company or any of its authorized agents or by mailing, delivering, emailing, or faxing to the Company written notice stating when thereafter the cancellation shall be effective. In the event of cancellation by the FIRST NAMED INSURED, the return premium shall be computed in accordance with the customary short rate table and procedure after applying the minimum earned premium percentage stated in the Declarations. If a CLAIM is made, a POLLUTION CONDITION is discovered or coverage is otherwise afforded under this Policy, then the premium shall be considered fully earned by the Company and the INSURED is not entitled to a return premium upon cancellation.

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

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

**E. CHANGES** - Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy. The terms of this Policy cannot be waived or changed, except by an endorsement issued by the Company to form a part of this Policy.

**F. CHOICE OF LAW** - All matters arising hereunder, including questions related to the validity, interpretation, performance and enforcement of this Policy, shall be determined in accordance with the law and practice of the State of New York (not including New York's choice of law rules).

**G. CONSENT** - Where the consent of the Company or the INSURED is required under this Policy, such consent shall not be unreasonably withheld, delayed, conditioned, or denied.

**H. DECLARATIONS AND REPRESENTATIONS** - By acceptance of this Policy, the INSURED agrees that the statements contained in the Declarations, the application and any other supplemental materials and information submitted in connection with the application or any amendments to the Policy during the POLICY PERIOD are the INSURED's declarations and representations, that they shall be deemed material, that this Policy is issued in reliance upon the truth of such declarations and representations and that this Policy embodies all agreements existing between the INSURED and the Company or any of its agents relating to this insurance.

**I. HEADINGS** - The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.

**J. INSPECTION AND AUDIT** - The Company shall be permitted, but not obligated, to inspect and monitor on a continuing basis the INSURED's property or operations and any JOB SITE and COVERED LOCATION, at any time. Neither the Company's right to make inspections and monitor, nor the actual undertaking thereof, nor any report thereon, shall constitute an undertaking, on behalf of the INSURED or others, to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. Access for the inspection and audit will be coordinated through the broker or agent of the FIRST NAMED INSURED.

**K. JURISDICTION AND VENUE** - It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder, the Company and the INSURED will submit to the jurisdiction of the State of New York and will comply with all the requirements necessary to give such court jurisdiction. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's right to remove an action to a United States District Court.

**L. MINIMUM EARNED PREMIUM** - Upon cancellation of this Policy, earned premium will be calculated using the appropriate pro-rata or short-rate method as outlined in Section IX. CONDITIONS, Item D. CANCELLATION. The amount of premium earned under this Policy will be the greater of:

1. the calculated pro-rata or short rate premium; or
2. the Minimum Earned Premium percentage set forth in Item 10. of the Declarations.

**M. MITIGATION PLAN** - It is a condition precedent to any coverage being afforded under Coverage A of this Policy for any CLAIM because of an act, error or omission in PROFESSIONAL SERVICES for which the Company has previously afforded coverage to an INSURED under Coverage F, that the INSURED fully implement the written plan for correcting the purported act, error or omission as approved by the Company.

**N. OTHER INSURANCE** - Subject to Section VI. Limit of Liability and Self-Insured Retention, this insurance shall apply only in excess of the sum of the Self-Insured Retention amount stated in the Declarations and the applicable limits of any other valid and collectible insurance available to the INSURED, whether such other insurance is stated to be primary, pro rata, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the applicable Limits of Liability of this Policy.

**O. SEVERABILITY** - Except with respect to the Limits of Liability, Self-Insured Retention, Exclusion 9. ("Insured vs. Insured") and any rights and duties assigned in this Policy to the FIRST NAMED INSURED, this insurance applies as if each INSURED were the only INSURED and separately to each INSURED against whom a CLAIM is made. Any misrepresentation, act or omission that is in violation of a term, duty or condition under this Policy by one INSURED shall not by itself affect coverage for another INSURED under this Policy. This Condition O. shall not apply to an INSURED who is a parent, subsidiary or affiliate of the INSURED which committed the misrepresentation, act or omission referenced above.

**P. SOLE AGENT** - The FIRST NAMED INSURED stated in the Declarations shall act on behalf of all INSUREDS for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, giving and receiving notice of cancellation or non-renewal, and the exercise of the rights provided under Section V., EXTENDED REPORTING PERIOD.

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

However, the Company specifically waives any rights of recovery against any person or organization as required in a written contract that was fully executed prior to the commencement of the applicable CONTRACTING SERVICES or PROFESSIONAL SERVICES.