

CONTRACTORS POLLUTION AND PROFESSIONAL LIABILITY POLICY

THIS FORM PROVIDES CLAIMS-MADE COVERAGE FOR COVERAGE PARTS A and B. PLEASE READ THE ENTIRE FORM CAREFULLY.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the **Named Insured** shown in the Declarations, and any other person or organization qualifying as a **Named Insured** under this policy. The words "we", "us", and "our" refer to the Company providing this insurance.

Other words and phrases that appear in bold have special meaning. Refer to Section **VIII. Definitions**.

This policy provides coverage on a Claims Made and Reported basis and only applies to a **claim** that is first made against you during the **policy period** and first reported to us during the **policy period** or applicable Extended Reporting Period. The application is the basis of this policy and is incorporated in and constitutes a part of this policy. A copy of the application is attached hereto. Any material received with the application will be maintained on file with the Company and will be deemed to be attached thereto as if physically attached. It is agreed by all **insureds** that the statements in the application are their representations, that they are material and that this policy is issued in reliance upon the truth of such representations. Please note **defense costs** under Coverages A and B.5 shall be applied against the deductible and will erode the Limits of Insurance. This policy includes all of the agreements existing between the **insureds** and the Company or any of its agents relating to this policy.

The coverages described below are in effect only if scheduled on the Declarations. Any coverage not shown on the Declarations or listed as "Not Provided" is not a part of this policy and is excluded.

I. INSURING AGREEMENTS

COVERAGE A – PROFESSIONAL LIABILITY

- a. We will pay those sums that the **insured** becomes legally obligated to pay as **damages** in excess of the deductible, if any, that result from **professional services** to which this insurance applies. The **damages** must result from an actual or alleged negligent act, error or omission in the performance of **professional services** rendered by the **insured** or by a person or entity retained by you and for whom you are legally liable. We will have the right and duty to defend the **insured** against any **suit** seeking those **damages**. However, we will have no duty to defend the **insured** against any **suit** seeking **damages** to which this insurance does not apply. We may, at our discretion, investigate any actual or alleged negligent act, error or omission and settle any **claim** or **suit** that may result, but:
- (1) The amount we will pay for **damages** and **defense costs** is limited as described in Section **IV. Limits Of Insurance**; and
 - (2) Our right and duty to defend ends under Coverage A when we have used up the applicable limit of insurance in the payment of judgments or settlements for **damages** under Coverage A, or **loss** under Coverage B and/or payment of **defense costs** under Coverages A and, if applicable, B.5.
No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **III. Supplementary Payments**.
- b. This insurance shall only apply if:
- (1) The **claim** is first made against the **insured** during the **policy period** and reported to us, in writing, during the **policy period**, or Extended Reporting Period, if applicable; and
 - (2) The actual or alleged negligent act, error or omission takes place in the **coverage territory**; and
 - (3) The actual or alleged negligent act, error or omission takes place on or after the **retroactive date**, shown in the Declarations, and before the end of the **policy period**; and
 - (4) Prior to the effective date of the first policy issued to you by us and continuously renewed, no **responsible insured** had knowledge of any circumstances which could be expected to give rise to a **claim** or **suit** to which this insurance applies.

Notwithstanding the above, this policy will not respond to **damages, loss** or **defense costs** covered in whole or in part by other valid and collectible insurance in force prior to this **policy period**.

COVERAGE B – ENVIRONMENTAL IMPAIRMENT LIABILITY

COVERAGE B.1 – CONTRACTORS POLLUTION LIABILITY

- a. We will pay those sums that the **insured** becomes legally obligated to pay for **loss** from **bodily injury** or **property damage** in excess of the deductible, directly caused by **pollution conditions** that result from your **covered operations** and/or **completed operations** of your **covered operations** to which this insurance applies.

We will have the right and duty to defend the **insured** against any **suit** seeking payment for **loss** caused by **pollution conditions** resulting from your **covered operations** or **completed operations** of your **covered operations**; However, we will have no duty to defend the **insured** against any **suit** seeking payment for **loss** to which this insurance does not apply. We may, at our discretion, investigate any **pollution condition** and settle any **claim** or **suit** that may result, but:

- (1) The amount we will pay for **loss** and **defense costs** is limited as described in Section IV. **Limits Of Insurance**; and
- (2) Our right and duty to defend ends under Coverage B when we have used up the applicable limit of insurance in the payment of judgments or settlements for **damages** under Coverage A, or **loss** under Coverage B, and/or **defense costs** under Coverages A and, if applicable, B.5.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section III. **Supplementary Payments**.

b. This insurance applies to **bodily injury** and **property damage** to the extent caused by a **pollution condition** only if:

- (1) The **bodily injury** or **property damage** is caused by a **pollution condition** that takes place in the **coverage territory** and is the result of your **covered operations** and/or **completed operations** of your **covered operations**; and
- (2) The **claim** or **suit** alleging **bodily injury** or **property damage** is first made against the **insured** during the **policy period** and reported to us, in writing, during the **policy period**, or the extended reporting period, if applicable; and
- (3) The **pollution condition** first commences on or after the **retroactive date** shown in the Declarations, if any, and was unexpected and unintended from the standpoint of the **insured**; and
- (4) Your **covered operations**, or **completed operations** of those **covered operations**, that resulted in the **claim** commenced on or after the **retroactive date** shown in the Declarations, if any, and before the end of the **policy period**.

Notwithstanding the above, this policy will not respond to **damages**, **loss(es)** or **defense costs** covered in whole or in part by other valid and collectible insurance in force prior to this **policy period**.

COVERAGE B.2 – TRANSPORTATION POLLUTION LIABILITY

a. We will pay those sums the **Named Insured** becomes legally obligated to pay for **loss** from **bodily injury** or **property damage** in excess of the deductible, that results from a **claim** made against the **Named Insured** by a third party, to the extent directly caused by a **pollution condition** occurring during the course of **transportation** by the **Named Insured** or by a **carrier**, including any **loading or unloading**, to which this insurance applies. We will have the right and duty to defend the **insured** against any **suit** seeking payment for **loss** caused by **pollution conditions** occurring during the course of **transportation**; however, we will have no duty to defend the **Insured** against any **suit** seeking payment for **loss** to which this insurance does not apply. We may, at our discretion, investigate any **pollution condition** and settle any **claim** or **suit** that may result, but;

- (1) The amount we will pay for **loss** and **defense costs** is limited as described in Section IV. **Limits Of Insurance**; and
- (2) Our right and duty to defend ends under Coverage B when we have used up the applicable limit of insurance in the payment of judgments or settlements for **damages** under Coverage A, or **loss** under Coverage B, and/or payment of **defense costs** under Coverages A and B.5.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section III. **Supplementary Payments**.

b. This insurance applies to **bodily injury** and **property damage** to the extent caused by a **pollution condition** only if:

- (1) The **bodily injury** or **property damage** is caused by a **pollution condition** that takes place in the **coverage territory** and is the direct result of the **transportation of your products**, materials or waste by the **Named Insured**, or by a **carrier** on behalf of the **Named Insured**; and
- (2) The **claim** for **bodily injury** or **property damage** is first made against the **insured** during the **policy period** and reported to the insurer, in writing, during the **policy period**, or Extended Reporting Period, if applicable; and
- (3) The **pollution condition** first commences on or after the **retroactive date** shown in the Declarations, if any, and was unexpected and unintended from the standpoint of the **insured**; and
- (4) The **Named Insured** and/or the **carrier** are properly licensed to transport **your products**, materials or wastes that cause the **pollution condition**.

Notwithstanding the above, this policy will not respond to **loss** or **defense costs** covered in whole or in part by other valid and collectible insurance in force prior to this **policy period**.

It is also hereby agreed and understood that the coverage provided under this **COVERAGE B.2 – TRANSPORTATION POLLUTION LIABILITY** shall not constitute or be evidence of financial responsibility under any federal, state or local law(s).

COVERAGE B.3 – THIRD PARTY CLAIMS FOR NON-OWNED DISPOSAL SITE(S)

- a. We will pay those sums that the **insured** becomes legally obligated to pay as a result of a **claim** made by a third party for **cleanup costs** or **loss** from **bodily injury** and **property damage** in excess of the deductible, which is directly caused by a **pollution condition** on, at, under or migrating from a **non-owned disposal site(s)** to which this insurance applies. We will have the right and duty to defend the **insured** against any **suit** seeking payment for **cleanup costs** or **loss** from **bodily injury** and **property damage** which is caused by a **pollution condition** on, at, under or migrating from a **non-owned disposal site(s)**; however, we will have no duty to defend the **insured** against any **suit** seeking payment for **cleanup costs** or **loss** to which this insurance does not apply. We may, at our discretion, investigate any **pollution condition** and settle any **claim** or **suit** that may result, but:
- (1) The amount we will pay for **cleanup costs**, **loss** and **defense costs** is limited as described in Section **IV. Limits Of Insurance**; and
 - (2) Our right and duty to defend ends under Coverage B when we have used up the applicable limit of insurance in the payment of judgments or settlements for **damages** under Coverage A, or **loss** or **cleanup costs** under Coverage B, and/or payment of **defense costs** under Coverages A and, if applicable, B.5.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **III. Supplementary Payments**.

- b. This insurance applies to **cleanup costs**, **bodily injury** and **property damage** to the extent caused by a **pollution condition** only if:
- (1) The **cleanup costs**, or **loss** from **bodily injury** and **property damage** is caused by a **pollution condition** on, at, under or migrating from a **non-owned disposal site(s)**; and
 - (2) The **claim** is made by a third party which is not an owner, operator or contractor of the **non-owned disposal site(s)**; and
 - (3) The **claim** is first made against the **insured** during the **policy period**, and first reported to us, in writing, during the **policy period**, or, where applicable, Extended Reporting Period; and
 - (4) The **pollution condition** first commences on or after the **retroactive date**, if any, but before the end of the **policy period** and takes place in the **coverage territory**.

Notwithstanding the above, this policy will not respond to **cleanup costs**, **loss(es)** or **defense costs** covered in whole or in part by other valid and collectible insurance in force prior to this **policy period**.

COVERAGE B.4 – MICROBIAL SUBSTANCES CONTRACTORS POLLUTION LIABILITY

- a. We will pay those sums that the **insured** becomes legally obligated to pay for **loss** from **bodily injury** or **property damage** in excess of the deductible, caused by **microbial substances** that result from your **covered operations** and/or **completed operations** of your **covered operations** to which this insurance applies. We will have the right and duty to defend the **insured** against any **suit** seeking payment for **loss** caused by **microbial substances** that result from your **covered operations** and/or **completed operations** of your **covered operations**; however, we will have no duty to defend the **insured** against any **suit** seeking payment for **loss** to which this insurance does not apply. We may, at our discretion, investigate any **microbial substances** and settle any **claim** or **suit** that may result, but:
- (1) The amount we will pay for **loss** and **defense costs** is limited as described in Section **IV. Limits Of Insurance**; and
 - (2) Our right and duty to defend ends under Coverage B when we have used up the applicable limit of insurance in the payment of judgments or settlements for **damages** under Coverage A, or **loss** under Coverage B, and/or **defense costs** under Coverages A and, if applicable, B.5.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **III. Supplementary Payments**.

- b. This insurance applies to **bodily injury** and **property damage** to the extent caused by **microbial substances** only if:
- (1) The **bodily injury** or **property damage** is caused by **microbial substances** that takes place in the **coverage territory** and is the result of your **covered operations** and/or **completed operations** of your **covered operations**; and
 - (2) The **claim** or **suit** alleging **bodily injury** or **property damage** is first made against the **insured** during the **policy period**, and first reported to us, in writing, during the **policy period** or where applicable, the Extended Reporting Period; and
 - (3) The **microbial substance** first commences on or after the **retroactive date** shown in the Declarations, if any, and was unexpected and unintended from the standpoint of the **insured**; and

- (4) Your **covered operations**, or **completed operations** of those **covered operations**, that resulted in the **claim** commenced on or after the **retroactive date** shown in the Declarations, if any, and before the end of the **policy period**.

Notwithstanding the above, this policy will not respond to **loss(es)** or **defense costs** covered in whole or in part by other valid and collectible insurance in force prior to this **policy period**.

COVERAGE B.5 – NAMED INSURED’S LOCATIONS

a. First Party Cleanup Costs

- (1) We will pay those sums the **Named Insured** becomes legally obligated to pay for **cleanup costs** in excess of the deductible caused by a **pollution condition** on, at, under or migrating from an **insured location(s)**, provided that:
- The **pollution condition** first commences during the **policy period** set forth on the Declarations page of this policy; and
 - The **pollution condition** first commences at an identified time and place and must be confirmed by the **Named Insured** at its sole expense during the **policy period**; and
 - The **pollution condition** is first discovered by the **Named Insured** during the **policy period** and reported to us in writing no later than seven (7) calendar days from the date of the first commencement of the **pollution conditions**, but before the end of the **policy period**.

The amount we will pay for **cleanup costs** and associated **defense costs** is limited as described in Section **IV. Limits Of Insurance**; and

b. Third Party Claims for Cleanup Costs, Bodily Injury or Property Damage Liability

- (1) We will pay those sums that the **Named Insured** becomes legally obligated to pay as a result of a **claim** made by a third party for **loss** from **bodily injury** or **property damage** in excess of the deductible, which is directly caused by a **pollution condition** on, at, under or migrating from an **insured location(s)** to which this insurance applies. We will have the right and duty to defend the **insured** against any **suit** seeking payment for **loss** from **bodily injury** or **property damage** which arises from a **pollution condition** on, at, under or migrating from an **insured location(s)**; however, we will have no duty to defend the **insured** against any **suit** seeking payment for **loss** to which this insurance does not apply. We may, at our discretion, investigate any **pollution condition** and settle any **claim** or **suit** that may result, but:
- The amount we will pay for **bodily injury, property damage, cleanup costs, loss** and **defense costs** is limited as described in Section **IV. Limits Of Insurance**; and
 - Our right and duty to defend ends under Coverage B when we have used up the applicable limit of insurance in the payment of judgments or settlements for **damages** under Coverage A, or **cleanup costs** or **loss** under Coverage B, and/or **defense costs** under Coverages A and, if applicable, B.5.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Section **III. Supplementary Payments**.

- (2) This insurance applies to **cleanup costs, bodily injury** and **property damage** to the extent caused by a **pollution condition** only if:
- The **pollution condition** first commences during the **policy period** set forth on the Declarations page of this policy; and
 - The **pollution condition** first commences at an identified time and place and must be confirmed by the **Named Insured** at its sole expense during the **policy period**; and
 - The **pollution condition** is first discovered by the **Named Insured** during the **policy period** and reported to us in writing no later than seven (7) calendar days from the date of the first commencement of the **pollution condition**, but before the end of the **policy period**; and
 - The **claim** for **cleanup costs, bodily injury** and/or **property damage** resulting from the **pollution condition** is first made against the **Named Insured** during the **policy period**, and reported to us, in writing, during the **policy period**, or where applicable, the Extended Reporting Period.

Notwithstanding the above, this policy will not respond to **cleanup costs, loss** or **defense costs** covered in whole or in part by other valid and collectible insurance in force prior to this **policy period**.

COVERAGE B.6 – EMERGENCY REMEDIATION COSTS

- a. We will pay **emergency remediation costs** in excess of the self-insured retention, which qualify as **cleanup costs** incurred by or on behalf of the **Named Insured** to take emergency action in response to a **pollution condition** caused by:
- Covered operations** or the **completed operations** of **covered operations**, and otherwise covered under Coverage B.1; or
 - A **pollution condition** occurring during the course of **transportation** by the **Named Insured** or by a **carrier**, including any **loading or unloading**, and otherwise covered under Coverage B.2; or

(3) A **pollution condition** on, at, under or migrating from an **insured location(s)**, and otherwise covered under Coverage B.5.

The amount we will pay for **emergency remediation costs** is limited as described in Section **IV. Limits Of Insurance**; and

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- b. This insurance applies to **emergency remediation costs** incurred by the **Named Insured** prior to providing notice to the company, provided that:
- (1) The **pollution condition** first occurs during the **policy period**; and
 - (2) The **pollution condition** is first discovered during the **policy period** by an **insured**; and
 - (3) The **Named Insured** would be liable to a third party for the **cleanup** of the **pollution condition** if the **emergency remediation costs** had not been incurred; and
 - (4) The **emergency remediation costs** are for a period of no longer than seven (7) days after the **pollution condition** first commences and are incurred for services rendered during the **policy period**; and
 - (5) Written notice of the **emergency remediation costs** is provided to us as soon as practicable, but in no event later than seven (7) days from the earlier of the first commencement of the **pollution condition** or the expiration of the **policy period**.

Notwithstanding the above, this policy will not respond to **emergency remediation costs** covered in whole or in part by other valid and collectible insurance in force prior to this **policy period**.

II. EXCLUSIONS

This insurance does not apply to **damages, loss, bodily injury, property damage, claims, suits, microbial substances, emergency remediation costs**, mitigation of damages and related **defense costs**:

1. Asbestos

Solely with respect to **insured location(s)** scheduled to this policy for coverage under **COVERAGE B.5 – NAMED INSURED’S LOCATIONS** if selected on the Declarations page of this policy, based upon or arising out of, in whole or in part, asbestos in any form including but not limited to asbestos containing products, asbestos dust, asbestos fibers or asbestos containing materials within, on or applied to any buildings or structures located at an **insured location(s)** This exclusion does not apply to **cleanup costs** to the extent directly and solely attributable to the inadvertent disturbance of asbestos at an **insured location** during the **policy period**. However, such **cleanup costs** will only apply to that portion of the asbestos that has been inadvertently disturbed at an **insured location** and will not apply to the disturbance of asbestos caused during any asbestos abatement, removal, or repair project or any building renovation project at an **insured location**.

2. Auto; Aircraft; Watercraft or Rolling Stock

Based upon or arising out of the ownership, maintenance, use or the entrustment to others of any **auto**, aircraft, watercraft, or rolling stock owned or operated by or rented or loaned to any **insured**. Use includes operation and **loading or unloading**.

This exclusion applies even if the **claims** against any **insured** allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **insured**, if the **occurrence** which caused the **bodily injury** or **property damage** involved the ownership, maintenance, use or entrustment to others of any **auto**, aircraft, watercraft or rolling stock that is owned or operated by or rented or loaned to any **insured**.

This exclusion does not apply to **pollution conditions** arising out of the ownership, maintenance, use, operation, **loading or unloading** of any **auto**, aircraft, watercraft, or rolling stock within the fixed boundaries of a site where your **covered operations** are being performed.

This exclusion also does not apply to the coverage provided under **COVERAGE B.2 – TRANSPORTATION POLLUTION LIABILITY** if selected on the Declarations page of this policy.

3. Bankruptcy

Based upon or arising out of bankruptcy or insolvency of an **insured** or of any other firm, person, or organization.

4. Bonds & Insurance

Based upon or arising out of an **insured’s** obtaining, maintaining or requiring any bond, suretyship or insurance, or failing to do so.

5. Construction Means and Methods

Based upon or arising out of **claims** for **bodily injury** and/or **property damage** arising out of construction means, methods, techniques, sequences or procedures. This exclusion does not apply to Coverage B.

6. Contractual Liability

Based upon or arising out of the liability of others assumed by an **insured** under any contract or agreement. This exclusion does not apply to:

- a. Liability for **bodily injury, property damage** or **cleanup costs** under Coverage B assumed in a written contract or agreement that is an **insured contract**, provided the **pollution conditions** that result in **bodily injury, property damage** and/or **cleanup costs** first commence subsequent to the execution of the contract or agreement in writing; or
- b. Liability that the **Named Insured** would have in the absence of the contract or agreement.

7. Criminal Fines and Penalties

Based upon or arising out of any claim seeking payment of:

- a. Criminal fines, criminal penalties or associated multiple damages; or
- b. Punitive or exemplary damages, except where allowable by law; or
- c. The cost of injunctive relief based upon or arising out of non-compliance with any statute, regulation, ordinance or administrative complaint.

8. Damage to a Conveyance

Based upon or arising out of **property damage** to any conveyance utilized in the **transportation** by a **carrier** on behalf of the **insured**. This exclusion does not apply to a **claim** made by a **carrier** for such **property damage** to their conveyance caused by the **Named Insured's** negligence.

9. Discrimination

Based upon or arising out of the discrimination by the **insured** on the basis of age, color, race, sex, creed, national origin, marital status, physical disability or sexual preference. This exclusion does not apply to ADA and FHA Defense Expense provided for under section III. **Supplementary Payments**.

10. Employer's Liability and Worker's Compensation

Based upon or arising out of **bodily injury** to:

- a. An employee of any **insured** arising out of and in the course of:
 - (1) Employment by any **insured**; or
 - (2) Performing duties related to the conduct of any **insured's** business; or
- b. The spouse, child, parent, brother or sister of that employee or any person whose right to assert a cause of action against any **insured** by reason of employment, blood or any other relationship with that employee as a consequence of Paragraph (1) above; or
- c. Based upon or arising under any workers compensation, unemployment compensation or disability benefits law or similar law;
- d. This exclusion applies:
 - (1) Whether any **insured** may be liable as an employer or in any other capacity; or
 - (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

Under Coverage B.1, B.2, and B.4 only, this exclusion does not apply to liability assumed by the **Named Insured** under an **insured contract** for the performance of **covered operations**.

11. Express Warranties or Guarantees

Based upon or arising out of any express warranty or guarantee. This exclusion does not apply to a warranty or guarantee by the **Named Insured** that the **Named Insured's covered operations** and or **professional services** are in conformity with the generally accepted standard of care that would be applicable in the absence of such express warranty or guarantee.

12. Faulty Workmanship

Solely with respect to Coverages B.1 and B.4, based upon or arising out of the costs to repair or replace faulty construction or workmanship in any construction, erection, fabrication, installation, assembly, manufacture or remediation performed, in whole or in part, by or on behalf of, the **insured**, including the cost of any materials, parts or equipment furnished in connection with it.

This exclusion does not apply to **loss** the **Named Insured** is legally obligated to pay for the reasonable and necessary expenses incurred for the investigation, monitoring, testing, removal, abatement, containment, treatment, detoxifying, neutralization, encapsulation or disposal of **pollution conditions**.

13. Insured vs. Insured

Based upon or arising out of any **claim, suit**, or assertion of liability by one **insured** against another **insured** under this policy. With respect to Coverage B, this exclusion shall not apply to any **claim** against an **insured** by a client of the **insured** who is an **insured** as defined in Section VIII. 17.i. of this policy.

14. Insured's Property

Based upon or arising out of any real or personal property owned, occupied, leased or rented by any **insured**. However, under Coverage B, this exclusion shall not apply to:

- a. A **claim** against the **Named Insured** by a client who is also an **insured** under Section VIII 17.i. of this policy;
- b. A **claim** arising from property rented or leased by the **Named Insured** during the course of performing **covered operations** and/or **professional services** for parties other than the **Named Insured**; or
- c. The coverage provided under **COVERAGE B.5 – NAMED INSURED'S LOCATIONS**, if selected on the Declarations page of this policy.

15. Job Site Safety

Based upon or arising out of: job site safety including the failure to protect persons or property; the preparing of,

or the failure to prepare, any safety plans, safety precautions or safety procedures; or the failure to properly supervise site safety in connection with the performance of **professional services**.

16. Knowingly Wrongful Acts

Based upon or arising out of any **insured's** dishonest, fraudulent, malicious, or knowingly wrongful act, error or omission or non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body. However, this exclusion shall not apply to any **responsible insured** that did not commit, participate in, or have knowledge of any of the acts described above.

17. Known Circumstances or Conditions

Based upon or arising out of **covered operations** or **professional services** performed prior to the inception date of this policy, if any **responsible insureds** knew or reasonably could have foreseen that your **covered operations** or **professional services** could give rise to a **claim, suit, loss, damages, emergency remediation costs, rectification expense**, crisis management expense or corporate reputation rehabilitation expenses under this policy. This includes, but is not limited to, any **claim, suit, loss, pollution condition, emergency remediation costs, rectification expense** crisis management expense or corporate reputation rehabilitation expense reported under any insurance policy in effect prior to the inception of this **policy period**.

18. Known Pollution Conditions

Based upon or arising out of a **pollution condition** known by any **insured** prior to the inception of this **policy period**.

In the event the **Named Insured** exacerbates a **pollution condition**, which was known by any **insured**, during the performance of **covered operations**, this exclusion does not apply to **claims, loss, cleanup costs** or **emergency remediation costs** associated with that portion of the **pollution conditions** that would not exist but for the **Named Insured's** exacerbation of the known **pollution condition** caused by **covered operations**.

19. Lead-Based Paint

Solely with respect to **insured location(s)** scheduled to this policy for coverage under **COVERAGE B.5 – NAMED INSURED'S LOCATIONS** if selected on the Declarations page of this policy, based upon or arising out of lead-based paint within or on any structures located at an **insured location(s)**. This exclusion does not apply to **cleanup costs** to the extent directly and solely attributable to the inadvertent disturbance of lead-based paint at an **insured location(s)** during the **policy period**. However, such **cleanup costs** will only apply to that portion of the lead-based paint that has been inadvertently disturbed at the **insured location** and will not apply to the disturbance of lead-based paint caused during any lead-based paint abatement or removal project or any building renovation project at the **insured location(s)**.

20. Microbial Substances

- a. Based upon or arising, in whole or in part, out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any **microbial substances** on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage; and
- b. Based upon or arising out of any **loss**, cost or expenses arising out of the investigation, monitoring, testing, removal, abatement, containment, treatment, detoxifying, neutralization, encapsulation or disposal of, or in any way responding to, or assessing the effects of, **microbial substances**, by any **insured** or by any other person or entity.

This exclusion does not apply to the coverage provided under **COVERAGE A – PROFESSIONAL LIABILITY** or **COVERAGE B.4 – MICROBIAL SUBSTANCE CONTRACTORS POLLUTION LIABILITY**, if selected on the Declarations page of this policy.

21. Nuclear Hazard

- a. Based upon or arising out of damages:
 - (1) With respect to which an **insured** under the policy is also an **insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (2) Resulting from the **hazardous properties of nuclear material** and with respect to which:
 - a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
 - b) The **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- b. **Damages** resulting from the **hazardous properties of nuclear material**, if:
 - (1) The **nuclear material**:

- a) Is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured**; or
- b) Has been discharged or dispersed therefrom;
- (2) The **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or
- (3) The damage arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to **property damage** to such **nuclear facility** and any property thereat.

As used in this exclusion:

- a. **Hazardous properties** include radioactive, toxic or explosive properties;
- b. **Nuclear Material** means **source material**, **special nuclear material** or **by-product material**;
- c. **Source material**, **special nuclear material**, and **by-product material** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; **spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;
- d. **Waste** means any waste material:
 - (1) Containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content; and
 - (2) Resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.
- e. **Nuclear Facility** means:
 - (1) Any **nuclear reactor**;
 - (2) Any equipment or device designed or used for:
 - a) Separating the isotopes of uranium or plutonium;
 - b) Processing or utilizing **spent fuel**; or
 - c) Handling, processing or packaging **waste**;
 - (3) Any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
 - (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**;

And includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.
- f. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- g. **Property Damage** includes all forms of radioactive contamination of property.

22. Products Liability

Based upon or arising out of **your product** or its design, including but not limited to, goods or products manufactured, sold, handled, distributed, altered or repaired by the **Named Insured** or by others trading under its name including any container thereof, or any reliance upon a representation or warranty made at any time with respect thereto. This exclusion does not apply to Coverage B where the **pollution condition** is the result of the fabrication, assembly or installation of goods, materials or products provided by the **Named Insured** in connection with the performance of **covered operations**.

23. Off-Site Waste Disposal

Based upon or arising out of **pollution conditions** on, at, under or migrating from any **non-owned disposal site** to which wastes have been delivered.

This exclusion does not apply to the coverage provided by **COVERAGE B.3 – THIRD PARTY CLAIMS FOR NON-OWNED DISPOSAL SITE(S)**, if selected on the Declarations page of this policy.

24. Project-Specific Coverage

Based upon or arising out of any project to which any **insured** is an **insured** on a project-specific policy issued by any insurer, however, this exclusion shall not apply where your liability is found to be in excess of the limits of liability available under all such project specific insurance policies.

25. Related Entities

Based upon or arising out of a **claim** by your parent company or any affiliated subsidiary, or any entity which is owned, operated, managed, or controlled by you.

26. Transportation

Based upon or arising out of **pollution conditions** caused by **your products**, materials or waste transported by you or a **carrier** within an **auto**, aircraft, watercraft or rolling stock beyond the fixed boundaries of an **insured**

location, or a site at which your **covered operations** or **professional services** are being performed.

This exclusion does not apply to the coverage provided under **COVERAGE B.2 – TRANSPORTATION POLLUTION LIABILITY**, if selected on the declarations page of this policy.

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27. Underground Storage Tanks

Solely with respect to **insured location(s)** scheduled to this policy for coverage under **COVERAGE B.5 – NAMED INSURED'S LOCATIONS** if selected on the Declarations page of this policy, based upon or arising out of **pollution conditions** migrating from any **underground storage tank(s)**.

28. War and Hostile Acts

Based upon or arising directly or indirectly, out of:

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

III. SUPPLEMENTARY PAYMENTS

1. We will pay the following supplemental expenses subject to the Supplementary Payments Limits as set forth in the Declarations Page for:
 - a. **Rectification expense** – With respect to Coverage A only and subject to the **rectification expense** Limit of Liability stated in the Declarations, we agree to indemnify you, in excess of the self-insured retention for **rectification expense** shown on the Declarations page of this policy, against direct costs and expenses which are reasonable and necessary to rectify a negligent act, error or omission arising from **professional services** that otherwise would be subject to a **claim** under Coverage A of this policy, provided that:
 - (1) The negligent act, error or omission is first discovered during the **policy period** and reported to us as soon as practicable during the **policy period**; and
 - (2) Your **professional services** which result in the negligent act, error or omission are rendered on or after the **rectification expense retroactive date** shown on the Declarations page of this policy and prior to the end of the **policy period**; and
 - (3) You present evidence to us, to our satisfaction, that the negligent act, error or omission would likely result in an eventual **claim** under Coverage A in the absence of your undertaking of the **rectification expense**; and
 - (4) You provide prior written notice to us of the details of your proposed corrective actions and the estimated cost of those corrective actions as soon as practicable during the **policy period**; and
 - (5) Prior to incurring any **rectification expense**, we consent in writing to such **rectification expense**. Such consent shall not be unreasonably withheld.

Under no event shall we be responsible for indemnifying you for **rectification expense** that are betterments or that are a consequential damage such as cost overruns, project delay costs, additional debt service expenses, or any loss of use damages associated with the negligent act, error or omission. In addition, we will not indemnify you for **rectification expense** in connection with the salaries of your executive officers, managers, supervisors or for any of your mark-up and profit you would otherwise charge in performing such rectification work. Any payments made under this section shall be subject to the **rectification expense** self-insured retention stated in the Declarations and a 20% co-insurance requirement, which will be your sole responsibility. It is a condition of this coverage that the 20% coinsurance be borne by the **insured** at its own risk and shall remain uninsured. The coinsurance shall apply concurrently as we make payments and is not intended to apply after we have paid our 80% of the applicable **rectification expense** Limit. This coverage shall be subject to the **rectification expense retroactive date** stated in the Declarations. Nothing contained herein shall act as a waiver of your rights, nor shall we accept any liability for **rectification expense** without our prior express written consent.

In the event that a **claim** is made arising out of the same negligent act, error or omission for which the **Named Insured** has previously undertaken rectification expense pursuant to the provisions of this section, we may, at our sole discretion, cease paying further **rectification expense** associated with such negligent act, error or omission. Any payments made by the **Named Insured** to satisfy the self-insured retention pursuant to this section concurrently reduce the deductible obligation of the **Named Insured** in the event an actual **claim** is made against Coverage A of this policy arising out of the same negligent act, error or omission for which the **Named Insured** has undertaken **rectification expense** under this section.

- b. **Corporate Reputation Rehabilitation** – With respect to Coverages A and B and subject to the Corporate Reputation Rehabilitation Limit of Liability stated in the Declarations, we shall pay on behalf of the **Named Insured**, in excess of the deductible shown under Coverage A or B of the Declarations page, whichever applies, reasonable and necessary costs, charges, expenses and fees required to restore the corporate reputation of a client of the **Named Insured** that is damaged as a result of a covered **claim** under Coverages A or B and for which a **claim** has been made against the **Named Insured** for such damages. Subject to our approval, the **Named Insured** will select a public relations firm that meets certain certifications and qualifications at our sole discretion.

- c. **Crisis Management Expense** – With respect to Coverage B only and subject to the Crisis Management Limit of Liability stated in the Declarations, we shall pay on behalf of the **Named Insured**, in excess of the deductible shown under Coverage B of the Declarations page, for reasonable and necessary costs, charges, expenses and fees in response to a covered **claim** under Coverage B of this policy for essential emergency travel expenses incurred by the **Named Insured**, rental of temporary staging, office or meeting space necessary to continue **covered operations**, and the temporary rental of equipment necessary to replace equipment damaged or destroyed by the covered **claim**.
 - d. **ADA and FHA Defense Expense** – With respect to Coverage A only and subject to the ADA and FHA Defense Expense Limit of Liability set forth in the Declarations, upon written request by you during the **policy period** or the Extended Reporting Period, if applicable, we shall select and retain counsel and pay such counsel's reasonable and necessary fees and expenses incurred when you respond to regulatory or administrative actions first brought against you during the **policy period** by a government agency under the Americans with Disabilities Act of 1990 (ADA) or the Fair Housing Act (FHA), and alleging a negligent act, error, or omission in the rendering of **professional services** by you or on your behalf, on or after the **retroactive date** but before the end of the **policy period**.
2. We will pay, with respect to any **claims** we investigate or settle, or any **suit** against an **insured** we defend;
- a. All expenses we incur.
 - b. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - c. All reasonable expenses incurred by the **insured** at our request to assist us in the investigation or defense of the **claim** or **suit**, including actual loss of earnings up to \$250 a day because of time off from work.
 - d. All costs taxed against the **insured** in the **suit**.
 - e. Prejudgment interest awarded against the **insured** on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the Limits of Insurance for Coverages A and B.5 only.

3. If we defend an **insured** against a **suit** and an indemnitee of the **insured** is also named as a party to the **suit**, we will defend that indemnitee if all of the following conditions are met:
- a. The **suit** against the indemnitee seeks damages for which the **insured** has assumed the liability of the indemnitee in an **insured contract**;
 - b. This insurance applies to such liability assumed by the **insured**;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the **insured** in the same **insured contract**;
 - d. The allegations in the **suit** and the information we know about the **claim** are such that no conflict appears to exist between the interests of the **insured** and the interests of the indemnitee;
 - e. The indemnitee and the **insured** ask us to conduct and control the defense of that indemnitee against such **suit** and agree that we can assign the same counsel to defend the **insured** and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - a) Cooperate with us in the investigation, settlement or defense of the **suit**;
 - b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **suit**;
 - c) Notify any other insurer whose coverage is available to the indemnitee; and
 - d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - a) Obtain records and other information related to the **suit**; and
 - b) Conduct and control the defense of the indemnitee in such **suit**.

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments.

Our obligation to defend an **insured's** indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements, or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

IV. LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. **Insureds**;
 - b. **Insured locations**;
 - c. **Claims** made or **suits** brought; or
 - d. Persons or organizations making **claims** or bringing **suits**.
2. The Policy Aggregate Limit is the most we will pay for the sum of:
 - a. All **damages** under Coverage A; and
 - b. All **emergency remediation costs, claims, cleanup costs, and loss** because of **bodily injury** and **property damage** under Coverage B; and
 - c. All related **defense costs** and Supplementary Payments paragraph **2.** and **3.** incurred under Coverage A and Coverage B.5; and
 - d. All expenses for **rectification expense**.
3. Subject to Paragraph **1.** and Paragraph **2.** above, the Each Claims Limit set forth on the Declarations is the most we will pay for:
 - a. all **rectification expense, damages, defense costs, and Supplementary Payments** paragraphs **2.** and **3.** under Coverage A;
 - b. all **emergency remediation costs, claims, cleanup costs, and loss** under Coverage B;
 - c. all **defense costs** and Supplementary Payments paragraph **2.** and **3.** under Coverage B.5, because of any one **claim**.
4. Any payment made for **emergency remediation costs, cleanup costs, loss** from **bodily injury** or **property damage** under Coverage B; related **defense costs** and Supplementary Payments paragraphs **2.** and **3.** under Coverage B.5, and B.6 as it related to B.5; and for **damages** including related **defense costs, Supplementary Payments** paragraphs **2.** and **3.** and **rectification expense** under Coverage A, shall concurrently reduce the Each Claim Limit and the Policy Aggregate Limit available under Coverages A, and B. Our right and duty to defend ends under Coverage A and Coverage B when the Each Claim Limit under Coverage A and B, or the Policy Aggregate Limit, have been exhausted.
5. Subject to Paragraph **1.**, Paragraph **2.**, Paragraph **3.** and Paragraph **4.** above, the **rectification expense** limit of liability set forth in the Declarations page is the most we will pay under Supplementary Payments Section **III, 1.a.** of the policy regardless of the amount of **rectification expense** paid during the **policy period**.
6. Subject to Paragraph **1.**, the Corporate Reputation Rehabilitation limit of liability set forth in the Declarations page is the most we will pay under Supplementary Payments Section **III 1.b.** of the policy regardless of the amount of costs, charges, expenses and fees of Corporate Reputation Rehabilitation paid during the **policy period**.
7. Subject to Paragraph **1.**, the Crisis Management limit of liability set forth in the Declarations page is the most we will pay under Supplementary Payments Section **III 1.c.** of the policy regardless of the amount of costs, charges, expenses and fees of Crisis Management paid during the **policy period**.
8. Subject to Paragraph **1.**, the ADA and FHA Defense Expense limit of liability set forth in the Declarations page is the most we will pay under Supplemental Payments Section **III 1.d.** of the policy regardless of the number of negligent acts, errors or omissions.

9. **Deductible**

The deductible or self-insured retention amounts stated in the Declarations applies to all **loss(es)** because of **bodily injury** or **property damage; emergency remediation costs; claim(s); suits; damages; cleanup costs; crisis management expense; corporate reputation rehabilitation expense; rectification expense; ADA and FHA defense expense; and related defense costs, arising out of any one claim.** Our obligation under the policy to pay damages on your behalf applies only to the amount of damages in excess of any deductible or self-insured retention amounts stated in the Declarations and as applicable to each coverage part.

The terms of this insurance under all applicable coverages (Coverages A and B), including those with respect to:

- a. Our right and duty to defend the **insured** against any **suits** seeking those damages; and
- b. Your duties in the event of a **claim, or suit,**

apply irrespective of the application of the deductible or self-insured retention amounts stated in the Declarations.

The Company may advance in its discretion payment of all or part of the deductible amounts stated in the Declarations, but not self-insured retention amounts. The **insured** must promptly reimburse the Company for any such deductible payments and the limits of insurance will be deemed to have been paid by the Company and the available limits reduced in a commensurate amount unless and until the reimbursement is made. Such reduction, however, does not relieve the **insured** of its obligation to repay such advanced amount and the Company

continues to have the right to recover such amount from the **insured**. Once the payments are recovered in whole or in part, the limits of insurance shall be reinstated, but only as to that amount of the deductible that was repaid. The deductible shall be paid by the **insured** and is not to be insured unless the Company has given its prior consent in writing to the **Named Insured**.

If an **insured** does not repay any such advance, the deductible shall also become the obligation of the **Named Insured**.

10. Multiple Pollution Conditions or Claims

All continuous or related **pollution conditions, microbial substances**, and/or negligent acts, errors, or omissions reported to the Company under a subsequent policy issued by the Company or its affiliates, providing substantially the same coverages as this policy, shall be deemed to have been first discovered and reported during this **policy period** and shall be subject to the same limit of insurance. All **claims** and reports of **pollution conditions, microbial substances**, and/or negligent acts, errors, or omissions made during one or more **policy periods** issued by the Company or its affiliates, providing substantially the same coverages, resulting in **bodily injury** or **property damage**, or in any combinations thereof, and arising out of the same, or continuous or related **pollution conditions, microbial substances**, and/or negligent acts, errors, or omissions, shall be considered one **claim, pollution condition, microbial substances**, and/or negligent act, error, or omission and will be subject to the same Each Claim Limit, **rectification expense** Limit, Corporate Reputation Rehabilitation Limit, Crisis Management Expense Limit, or ADA and FHA Defense Expense Limit whichever applies, and one deductible and one Policy Aggregate Limit. Such **claims** or reports of **pollution conditions, microbial substances**, and/or negligent acts, errors or omissions shall be deemed first reported to the Company during the **policy period** in which the first such **claim** or report of **pollution condition, microbial substances**, and/or negligent acts, errors, or omissions was reported to the Company or an affiliate and will be subject to the Each Claim Limit and deductible applicable to that **policy period**.

11. Two or More Coverage Forms or Policies Issued By Us.

If this coverage form and any other coverage form or policy issued to you by us or any company affiliated with us apply to the same **pollution conditions, microbial substances**, and/or negligent acts, errors, or omissions, the aggregate maximum Limit of Insurance under all the coverage forms or policies shall not exceed the highest applicable Limit of Insurance under the first policy issued by us and for which there is coverage, subject to any erosion of the policy limits. This condition does not apply to any coverage form or policy issued by us or an affiliate company specifically to apply as excess insurance over this coverage form.

V. REPORTING, DEFENSE, SETTLEMENT & COOPERATION

1. Duties in the event of a Pollution Condition

An **insured** must see to it that we are notified in writing as soon as practicable after an **insured** first becomes aware of a **pollution condition**. The **insured** shall cooperate and assist us, upon our request and without charge, in the enforcement of any right against any person or organization which may be liable to the **insured(s)** because of cleanup, injury or damage to which this insurance may also apply. Notice shall include:

- a. How, when and where the **pollution condition** took place;
- b. The names and addresses of any injured persons and witnesses; and
- c. The nature and location of any injury or damage arising out of the **pollution condition**.

Notice of a **pollution condition** is not notice of a **claim** or **suit**.

2. Duties in the event of a Claim or Suit

- a. You must see to it that we are notified as soon as practicable of a **pollution condition** or an alleged negligent act, error or omission, which may result in a **claim** or **suit**. To the extent possible, notice should include:
 - (1) How, when and where the **pollution condition** or an alleged negligent act, error or omission took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the **pollution condition** or an alleged negligent act, error or omission.
- b. If a **claim** is made or **suit** is brought against any **insured** or any legal action is initiated, you must:
 - (1) Immediately record the specifics of the **claim** or **suit** and the date received; and
 - (2) Notify us as soon as possible.

You must see to it that we receive written notice of the **claim** or **suit** as soon as possible.

- c. You and any other involved **insured** must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit**;
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the **claim** or defense against the **suit**; and
 - (4) Assist us, upon our request and without charge, in the enforcement of any right against any person or

organization which may be liable to the **insured** because of **damages, cleanup costs, bodily injury or property damage** to which this insurance may also apply.

- d. At the time you first become aware of an actual or alleged negligent act, error or omission or **pollution condition** to which this policy applies, if during the **policy period** you give us written notice containing the following:
- (1) Details of the actual or alleged negligent act, error or omission and the **professional services** rendered by you or on your behalf or details of the **pollution condition** and the **covered operations**;
 - (2) The specific nature of the damages which have been sustained; and
 - (3) Details of how you first became aware of such actual or alleged negligent act, error or omission or **pollution condition**;

Then any **claim** that may subsequently be made against you arising out of such **pollution condition** or actual or alleged negligent act, error or omission shall be deemed to have been made on the date we first received written notice from you of the **pollution condition** or the actual or alleged negligent act, error or omission. This also applies to the **pollution condition** or the actual or alleged negligent acts, errors or omissions first discovered by the **Named Insured** during the **policy period** and reported to us during the **policy period** under Supplementary Payments Section III 1.a. – **rectification expense** and 1.b. - **corporate reputation rehabilitation**.

This **pollution condition** or actual or alleged negligent act, error or omission reporting provision shall terminate at the end of the **policy period** and shall not exist during the Automatic Extended Reporting Period or the Supplemental Extended Reporting Period.

3. Voluntary Payments

No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent, except as set forth in **COVERAGE B.6 – EMERGENCY REMEDIATION COSTS**. In the event that the **Named Insured** incurs **emergency remediation costs**, the **Named Insured** shall provide notice to the Company within seven (7) days from the earlier of the first commencement of the **pollution conditions** for which the **emergency remediation costs** have been incurred or the expiration of the **policy period**.

Upon discovery of a **pollution condition** or incurring **emergency remediation costs**, the **Named Insured** shall make every attempt to mitigate any **loss** and comply with applicable environmental laws. The **insured** shall have the responsibility and duty to select, retain, and oversee contractors or consultants to perform any investigation and/or remediation of any **pollution condition** to which this insurance applies. Except in the event of incurring **emergency remediation costs**, the **Named Insured** must cooperate with the Company and receive our consent in writing of the selection and retention of qualified contractors or consultants.

4. Defense, Settlement and Cooperation

The Company shall have the right and the duty to assume the investigation, adjustment or defense of any **claim** or **suit**. **Defense costs** under Coverage A and B.5 erode the applicable limits of insurance. **Defense costs** under Coverages B.1, B.2, B.3, B.4 and ADA and FHA Defense Expense do not erode the applicable limits of insurance. It is further agreed that the Company may make such investigation of any **claim** or **suit** as it deems expedient, but the Company shall not be obligated to pay any damages or to defend or to continue to defend any **claim** or **suit** after the applicable limits of insurance have been exhausted by payment of **rectification expense** and/or **damages** under Coverage A; **loss, bodily injury, property damage, cleanup costs, or emergency remediation costs** under Coverage B; Supplementary Payments paragraphs 2. and 3. and **defense costs** under Coverages A, and B.5. We will have no duty to defend the **insured** against any **claim** or **suit** to which this policy does not apply. **Defense costs** shall be repaid to the Company by the **insured** in the event and to the extent that the **insured** shall not be entitled, under the terms and conditions of this policy, to payment of **rectification expense** and **damages** under Coverage A; **loss, bodily injury, property damage, cleanup costs** or **emergency remediation costs** under Coverage B; or related **defense costs** under Coverages A or B.5.

The **insured** shall cooperate with the Company and offer all reasonable assistance in the investigation of a **claim, pollution condition, actual or alleged negligent act, error or omission or microbial substance** and the defense of a **claim** or **suit** under the applicable coverages purchased. The Company may require that the **insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **insured's** attendance at meetings with the Company. The **insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses. The **insured** agrees to provide appropriate personnel to assist our representatives during any inspection.

The **insured** shall further cooperate with the Company and do whatever is necessary to secure and affect any rights of indemnity, contribution, or apportionment which the **insured** may have.

In the event the **insured** is entitled by law to select independent counsel to defend it, the following shall apply:

- a. The attorney fees and all other litigation expenses we must pay to that counsel are limited to the rates we would actually pay to counsel that we retain in the ordinary course of business in the defense of a similar **claim** or **suit** in the community where the **claim** or **suit** arose or is being defended.
- b. We may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **claims** or **suits** similar to the one pending against the **insured**, and to require such counsel to have errors and omissions insurance coverage. With respect to any such counsel, the **insured** agrees that counsel will timely respond to our request for information regarding the **claim** or **suit**. The **insured** may at any time waive its right to select independent counsel.

If a settlement amount is acceptable to the claimant or claimants, and the Company recommends said settlement to the first **Named Insured**, the first **Named Insured** may elect to allow the settlement of the **claim** or **suit** as recommended, subject to all applicable policy terms including any deductible or self-insured retention provisions. Alternatively, the first **Named Insured** may elect not to allow such a settlement and continue to contest the **claim** or **suit** or continue any legal proceedings in connection with such **claim** or **suit**. However, if the first **Named Insured** elects to not settle and continues to contest the **claim** or **suit** or continue any legal proceedings in connection with such **claim** or **suit**, then the Company's liability for the **claim** or **suit** shall not exceed the amount for which the **claim** or **suit** could have been settled plus **defense costs** incurred up to the date of such refusal. Such amounts are subject to the limits of insurance and any deductible or self-insured retention provisions of the Policy. If the first **Named Insured** is not involved in the **claim** or **suit**, then any consent to settle by any **insured** or additional **insured** shall not be required and the Company shall have the full and absolute right to settle any **claim** or **suit** as set forth in the Insuring Agreements above.

VI. POLICY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the **insured** or of the **insured's** estate will not relieve us of our obligations under this policy.

2. Cancellation

- a. This policy may be cancelled by the first **Named Insured** shown in the Declarations or by endorsement by mailing or delivering written notice to us stating when the cancellation date shall be effective.
- b. This policy may be cancelled by us for the following reasons:
 - (1) Non-payment of premium;
 - (2) Material misrepresentation or fraud by you;
 - (3) Material change in your **covered operations** or **professional services**, or the material change in the use or operation of an **insured location(s)** from the use contemplated in the application and/or supporting materials which result in a materially increased likelihood of **claims** or **pollution conditions** without prejudice to other remedies; or
 - (4) The **insured's** failure to comply with the terms and conditions under this policy including the failure to pay any deductible amount when due;

By mailing to the first **Named Insured**, at the last known address, written notice of not less than ten (10) days if cancellation is for either reasons (1) or (2) above, or ninety (90) days if cancellation is for either reasons (3) or (4) above. Proof of mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall be the end of the **policy period**.

3. 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 rights under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued by the Company to form a part of this policy.

4. Choice of Law

The **insured** and the Company agree that all matters or disputes arising hereunder, including any questions relating to the validity, interpretation, performance, and enforcement of this policy, the meaning, interpretation or operation of any term, condition, definition or provision, or the fulfillment of any party of any obligation with respect to the policy, shall be determined in accordance with the law and practices of the State of New York without giving effect to New York conflict of law principles.

5. Choice of Forum

The **insured** and the Company agree that in the event a dispute arises under the policy relating to the validity, interpretation, performance, and enforcement of the policy, the meaning, interpretation or operation of any term, condition, definition or provision, or the fulfillment of any party of any obligation with respect to the policy, all litigation shall take place in the State of New York, and that all parties shall submit to the jurisdiction of any court of competent jurisdiction within the State of New York, including federal courts, and will comply with all the requirements necessary to give such court jurisdiction. In the event of arbitration or other forms of dispute

resolution, such resolution shall take place in the State of New York. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to remove an action to a United States District Court.

6. Headings

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

7. Inspection and Survey

With reasonable notice to the **insured**, we shall be permitted, but not obligated, to inspect the **insured's** property and/or operations. Neither our right to make inspections or any report thereon, shall constitute an undertaking, on behalf of or for the benefit of you or others, to determine or warrant that such property or operations are safe or in compliance with environmental law, or any other law.

8. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a **suit** asking for damages from an **insured**; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an **insured**; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative. For purposes of this condition, a consent judgment, stipulated judgment, agreed judgment, consent decree or consent order reached without our written agreement is neither an agreed settlement nor a final judgment.

9. Limitation of Damages

Our damages for extra-contractual liability, bad faith, or similar damages under this policy are limited to one (1) times the relevant policy limit applicable to the underlying matter.

10. Other Insurance

If other valid and collectible insurance is available to the **insured** covering **claim(s), damages, bodily injury, property damage, emergency remediation costs, cleanup costs, defense costs** or supplementary payments also covered by this policy, other than a policy that is specifically written to apply in excess of this policy, the insurance afforded by this policy shall apply in excess of and shall not contribute with such other insurance as to defense and/or indemnity. The **insured** shall promptly, upon the request of the Company, provide the Company with copies of all such policies or documentation.

With respect to Coverage B.1, B.3 and Coverage B.4 only, this insurance is primary to and will not seek contribution from any other insurance available to an additional **insured** as defined in **Definition 17.i.** of this policy provided that:

- a. The additional **insured** is a Named Insured under such other insurance; and
- b. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional **insured**.

11. Premium Payment

The first **Named Insured** shown in the Declarations is responsible for the payment of all deductibles, self-insured retentions, coinsurance and premiums due and will be the payee for any returned premiums we pay.

12. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

13. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first **Named Insured**, this insurance applies:

- a. As if each **insured** were the only **insured**; and
- b. Separately to each **insured** against whom a **claim** is made or **suit** is brought.

14. Sole Agent

The **Named Insured** shown in the Declarations shall act on behalf of, and serve as the sole agent for all **insureds** with respect to the return or payment of any premiums or retained amounts, the issuance by the Company of the policy, the receipt or acceptance of any endorsements issued to form a part of the policy or the receiving of any notices from the Company required by this policy.

15. Transfer of Policy

Your rights and duties under this policy may not be transferred without our written consent.

16. Subrogation

In the event of any payment under this policy by the Company, the Company shall be subrogated to all of the rights of recovery 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.

Any recovery as a result of subrogation proceedings arising out of the payment of **loss** or **damages** covered under this policy shall accrue first to the **insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the policy; and then to the **insured** to the extent of its deductible or self-insured retention. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

Under Coverages **B.1**, **B.3** and **B.4** only, we waive any right of recovery we may have against the additional insureds as defined pursuant to **Definition 17.i.** of this policy because of payments we make for **loss** from **bodily injury** or **property damage** caused by **covered operations** or **completed operations** of the **covered operations**, performed for those additional **insureds**, but only to the extent required by written contract, executed prior to **loss**, between you and the additional **insured**.

VII. EXTENDED REPORTING PERIOD – COVERAGES A and B

1. We will provide one or more Extended Reporting Periods, as described below, if:
 - a. This policy is canceled or not renewed; or
 - b. We renew or replace the coverage provided under Coverage A. or B of this policy with insurance that:
 - (1) Has a **retroactive date** later than the date shown in the Declarations; or
 - (2) Does not apply on a claims-made basis.
2. Extended Reporting Periods do not extend the **policy period**, change the scope of coverage provided or reinstate or increase the Limits of Insurance. The Extended Reporting Periods apply only to **claims** made during the **policy period** resulting from actual or alleged negligent acts, errors or omissions in the performance of **professional services**, or to a **claim** made by a third party for **cleanup costs** or **loss** from **bodily injury** or **property damage** which arises from a **pollution condition** otherwise covered under Coverage B. The actual or alleged negligent acts, errors or omissions under Coverage A must take place on or after the **retroactive date** and before the end of the **policy period**. The **pollution condition** under Coverage B must first commence on or after the **retroactive date** and before the end of the **policy period**. Once in effect, Extended Reporting Periods may not be cancelled.
3. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the **policy period** and lasts for sixty (60) days with respect to **claims** first made against you, or to **pollution conditions** first discovered by you, during the **policy period** and reported to us in writing during the **policy period** or extended reporting period. The Basic Extended Reporting Period does not apply to **claims** or **pollution conditions** that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such **claims** or **pollution conditions**.
4. A Supplemental Extended Reporting Period of up to thirty-six (36) months is available with respect to **claims** first made against you, or to **pollution conditions** first discovered by you during the **policy period** and reported to us in writing during the **policy period**, basic extended reporting period or the supplemental extended reporting period, if purchased, but only by endorsement to this policy and payment of an additional premium charge. This supplemental period starts when the Basic Extended Reporting Period, set forth in Paragraph **3.** above, ends.

You must give us a written request for the endorsement within 60 days after the end of the **policy period**. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due.

We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

- a. The exposures insured;
- b. Previous types and amounts of insurance;
- c. Limits of Insurance available under this policy for future payment of **damages**;
- d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this policy.

The Extended Reporting Period endorsement shall set forth the terms, not inconsistent with this section, applicable to the Supplemental Extended Reporting Period, including a provision to the effect that the insurance afforded for **claims** first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental Extended Reporting Period starts.

VIII. DEFINITIONS

1. **Auto** means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
 - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.
2. **Bacteria** mean any type or form of bacteria and any materials or substances that are produced or released by bacteria.
3. **Bodily Injury** means:
 - a. Physical injury, sickness or disease, sustained by any person, and solely with respect to **3.a.** the monitoring or medical conditions or death resulting from any of these; and
 - b. Mental anguish or emotional distress sustained by any person.
4. **Carrier** means any person or entity, other than the **Named Insured** or a subsidiary or an affiliated company of the **Named Insured**, engaged by or on behalf of the **Named Insured**, and in the business of and properly licensed to transport **your products**, materials or waste for hire by **auto**, aircraft, watercraft or rolling stock.
5. **Certified Industrial Hygienist** means a licensed professional currently certified per the requirements as established by the American Board of Industrial Hygiene mutually agreed upon by the Company and the **Named Insured** and who has experience in the investigation, assessment and remediation of **microbial substances**.
6. **Claim** means the written assertion of a legal right to money or services received by an **insured** from a third party, including but not limited to lawsuits or civil actions alleging liability or responsibility on the part of the **insured** for **damages, loss, cleanup costs, bodily Injury** and/or **property damage**.
7. **Cleanup Costs** mean:
 - a. The reasonable and necessary expenses incurred for the investigation, monitoring, testing, removal, abatement, containment, treatment, detoxifying, neutralization, encapsulation or disposal of **pollution conditions** to the extent required by applicable federal, state or local governmental law, rule, regulation or order under which the **insured** has or may have a legal obligation; and
 - b. With respect to **microbial substances** coverage provided under Coverage B.4, if purchased, in the absence of any applicable laws established pursuant to **a.** above, to the extent recommended in writing by an **environmental professional** retained with our prior written consent or as required by court; and
 - c. **Restoration Costs**; and
 - d. **Emergency remediation costs**; and
 - e. civil fines, civil penalties and assessments resulting directly from **pollution conditions** otherwise covered under Coverages A or B.
8. **Completed Operations** mean **covered operations** that have been completed. **Covered operations** will be deemed completed at the earliest of the following:
 - a. When all of the work in your contract has been completed; or
 - b. When all of the work to be done by you at the job site has been completed, if your contract calls for work at more than one job site; or
 - c. When that part of your work done at the job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
 - d. Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as **completed operations**.
9. **Coverage Territory** means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada; and
 - b. All other parts of the world if the **insured's** responsibility to pay **damages** is determined in a **suit** on the merits, in any court of competent jurisdiction within the territory described in **a.** above or in a settlement we agree to. However, whenever coverage provided by this policy would be in violation of U.S. export controls or trade sanctions, such coverage is null and void and will be deemed not to be within the **coverage territory**.
10. **Covered Operations** mean those activities performed for a third party by you or on your behalf at a site not owned or leased by you. **Covered operations** do not include **completed operations**.
11. **Damages** mean a monetary judgment, award or settlement of compensatory damages resulting from an actual or alleged negligent act, error or omission in the performance of **professional services**. **Damages** do not include injunctive or equitable relief; the reduction, return or withdrawal of fees, charges or profit for services rendered; or the costs or expenses incurred by the **insured** to redesign, redo or correct the **Named Insured's** work, except as provided for under Supplementary Payments Section III. 1.a. – **Rectification Expense**.
12. **Defense Costs** mean any reasonable and necessary fees charged by an attorney designated by the Company, and where the **insured** has the legal right to select independent counsel, the rates we would actually pay to counsel that we retain in the ordinary course of business in the defense of a similar **claim** or **suit** in the

community where the **claim** or **suit** arose or is being defended, as well as other reasonable and necessary costs, including expert witnesses and court reporters, in connection with the investigation, adjustment, settlement, defense or appeal of a **claim** or **suit**. It does not include the salaries of our regular employees or supervisory counsel retained by us, or any cost or expense incurred by the **insured** in assisting in the investigation or defense of the **claim** or **suit**.

13. **Emergency Remediation Costs** mean those reasonable and necessary costs, charges, and expenses which qualify as **cleanup costs** incurred by or on behalf of the **Named Insured** to take emergency action in response to a **pollution condition** within 7 days of the first commencement of the **pollution condition**. Such **emergency remediation costs** must be essential and necessary to contain, control or mitigate a **pollution condition** that is an imminent and substantial endangerment or threat to the public, human health, or the environment defined by the regulating agencies and environmental laws that require immediate response. **Emergency remediation costs** do not include the salaries of any directors, officers or supervisors of any **insured** or any profit element of any **insured**.
14. **Environmental Professional** means a person designated by us, or by you with our prior written consent, who is certified or licensed as a **Certified Industrial Hygienist (CIH)** by the American Board of Industrial Hygiene, a Professional Engineer (P.E.), a Professional Geologist (P.G.) or other certified or licensed professional with the applicable state environmental regulatory agency. We may require that certain minimum professional criteria be met, including a demonstration that the individual has experience with similar projects as the one involving **cleanup costs** covered under this policy, and the maintenance of adequate errors and omissions insurance.
15. **Fungi/Fungus** means any type or form of **fungus**, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by **fungi**, but does not include any **fungi** intended by the **insured** for consumption.
16. **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: (a) being environmentally preferable or sustainable; or (b) providing enhanced energy efficiency that are required to bring existing real property into compliance with applicable and enforceable codes, laws or regulations. **Green Building Materials** shall be installed by qualified green contractors. **Green Building Materials** do not include any costs arising out of the use of **Green Building Materials**, including but not limited to delay costs.
17. **Insured** means:
 - a. You;
 - b. Any additional insured specifically endorsed onto this policy;
 - c. Your current or former partner, executive officer, director, or trustee solely while acting within the scope of his or her duties as such;
 - d. The heirs, executors, administrators, and the legal representatives of each **insured** as defined in a. and c. above in the event of death, incapacity or bankruptcy, but only with respect to liability arising out of your **covered operations** and/or **professional services** rendered on behalf of the **insured** prior to death, incapacity or bankruptcy;
 - e. Your employees solely while acting within the scope of their employment by you or while performing duties related to the conduct of your business;
 - f. Your retired partner, executive officer, director, or employee while acting within the scope of his or her duties as a consultant on your behalf;
 - g. Any person who is a leased worker performing **covered operations** and/or **professional services** under your supervision or on your behalf;
 - h. You, with regard to your participation in a joint venture, but solely for your liability for the performance of **covered operations** and/or **professional services** under the respective joint venture;
 - i. Solely with respect to Coverages B.1, B.3 and B.4 your clients, or other entities, provided a written contract or agreement is in effect between you and your client prior to the **loss** specifically requiring that your client and the other entities be added as additional **insured(s)**. Your clients and other required entities are covered under this policy as additional **insured(s)** only with respect to liability for **bodily injury** or **property damage** directly caused by your negligence or the negligence of those acting on your behalf in the performance of **covered operations** and **completed operations** of the **covered operations** and only for Limits of Liability up to and not exceeding the amount required by the written contract or agreement and subject to the Limits of Liability of this policy;
 - j. Any entity newly formed or acquired by the **Named Insured** during the **policy period** in which the **Named Insured** has more than a 50% legal interest and over which the **Named Insured** exercises management or financial control and has agreed to provide insurance for such entity. However, coverage will only be provided for **claims** arising out of **professional services** or **covered operations** performed on or after the date of incorporation or acquisition and the coverage will expire in 90 days from the date of incorporation or acquisition or the end of the **policy period**, whichever is earlier, unless the **Named Insured** provides written

details of such newly formed or acquired entity to us and pays the additional premium requested by us, if any.

18. **Insured Contract** means any contract or agreement in writing for the performance of your **covered operations** whereby the **Named Insured** assumes the tort liability of another party to pay for **loss** from **bodily injury** or **property damage** to a third person, firm or organization caused by **pollution conditions**. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
19. **Insured Location** means a location in the **coverage territory** owned, rented, leased or occupied by the **Named Insured** during the **policy period** and scheduled to this policy for coverage under **COVERAGE B.5 – NAMED INSURED’S LOCATIONS** if selected on the Declarations page.

SPECIMEN

- 20. Loading or Unloading** means the handling of property, material or waste:
- After it is moved from the place where it is accepted for movement into or onto an **auto**, aircraft, watercraft or rolling stock; or
 - While it is in or on an **auto**, aircraft, watercraft or rolling stock; or
 - While it is being moved from an **auto**, aircraft, watercraft, or rolling stock to the place where it is finally delivered.
- 21. Loss** means a monetary judgment, award, settlement of compensatory damages and punitive or exemplary damages, where such coverage is allowed by law, because of **bodily injury** and/or **property damage**.
- 22. Microbial Substance** means any substance that reproduces through release of spores or the splitting of its own cell, including but not limited to mold, mildew, spores, **fungi**, **bacteria** and Legionella Pnuemophila whether or not the **microbial substance** is living. **Microbial substances** do not include viruses.
- 23. Named Insured** means the person, individual, partnership, corporation or entity listed in the Declarations or expressly added as a **Named Insured** by endorsement. The person, individual, partnership, corporation or entity listed in the Declarations shall be considered the first **Named Insured**.
- 24. Natural Resource Damage** means the physical injury to, destruction of, or the assessment of physical 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, pertaining 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, Provincial, foreign government, or Native American tribe, or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.
- 25. Non-Owned Disposal Site** means any waste treatment, waste storage or waste disposal facilities, which are utilized by or on behalf of the **Named Insured** for waste generated from an **insured location** or from your **covered operations**, provided that as of the date that the waste was delivered to the waste treatment, waste storage or waste disposal facility, the facility(ies):
- Are within the United States of America (including its territories and possessions), Puerto Rico and Canada;
 - Are not owned, operated or managed by the **insured** or any subsidiary or affiliate of the **insured**;
 - Are properly licensed to accept such waste for treatment, storage or disposal;
 - Are not listed or proposed for listing on the federal national priorities list, state equivalent or local equivalent list.
- 26. Occurrence** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions that is unexpected and unintended from the standpoint of a reasonable person.
- 27. Policy Period** means the period of time stated in the Declarations, or any shorter period arising as a result of cancellation.
- 28. Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, lead, asbestos, silica, silt, sediment, hazardous substances, hazardous materials, electromagnetic fields, low level radioactive material, medical, infectious and pathologic waste and waste materials. Waste includes materials to be recycled, reconditioned or reclaimed. For purposes of Coverage B.4 only, **pollutants** mean **microbial substances**.
- 29. Pollution Condition(s)** means the discharge, dispersal, release, seepage, migration, growth or escape of **Pollutants** into or upon land, any structure on land, the atmosphere or any watercourse or body of water, including groundwater.
- 30. Professional Services** mean those **professional services** performed by you or on your behalf, that are related to your practice as an engineer, technical consultant, architect, industrial hygienist, construction manager, LEED accredited professional, certified professional geologist, geophysicist, land surveyor, environmental consultant, material tester, interior designer and landscape designer, program management, project management, owner's representation, property management, contract administration as part of design, any delegated design responsibility or design assist services, including but not limited to constructability reviews, value input or value engineering.

Professional services shall also include liability imposed by law in connection with the creation, maintenance, use, modification, alteration, transfer, protection, manipulation, or input into any building information modeling (BIM) design assist system or program.

Professional services also include ordinary technology services provided for others in the course of performing the **professional services** described above. Such technology services include website design, website development, website programming, database design, database management, design and development of computer software programs, analysis, training, use, hosting, support and maintenance of any software, database, internet service or website.

31. Property Damage means:

- a. Physical injury to tangible property, including resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **pollution condition** that caused it;
- c. **Cleanup Costs**; or
- d. **Natural Resource Damage**; or
- e. Diminution in value of third party property.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

32. Rectification expense means direct costs and expenses that we deem reasonable and necessary to:

- a. Rectify a negligent act, error or omission arising from **professional services**; and
- b. Prevent **bodily injury, property damage** or other **damages** that would result in a **claim** under Coverage A if rectification measures are not performed; and
- c. Reduce the potential for a **claim** for **damages** by a party for whom the **Named Insured** performed **professional services**.

Rectification expense does not include costs for improvements or betterments or costs that are consequential damages such as cost overruns, project delay costs, additional debt service expenses, or any loss of use damages associated with the negligent act, error or omission. **Rectification expense** also does not include the salaries of your executive officers, managers, supervisors or any of your mark-up and profit you would otherwise charge in performing such rectification work.

33. Responsible Insured means your current and former directors, officers, principals, partners, managers, insurance and risk managers, all facility managers, and those persons responsible for the environmental, health, safety or legal affairs of the **Named Insured**.

34. Restoration Costs mean the reasonable and necessary costs incurred by the **insured** to restore or repair real or personal property of third parties to substantially the same condition it was in prior to being damaged during work performed in the course of conducting **cleanup costs** resulting from a covered **loss** under this policy. These costs shall not exceed the actual cash value of the real or personal property, prior to the **pollution conditions** that resulted in a covered **loss**. **Restoration Costs** includes the cost of **Green Building Materials**, if legally required to bring existing real property into compliance with applicable and enforceable codes, laws or regulations, but only to the extent specifically required.

Restoration costs do not include costs for improvements or betterments and shall not include any additional costs to bring the existing real or personal property into compliance with any code, law or regulation that was not applicable and or enforced against the real or personal property before it was damaged, except for the cost of **Green Building Materials** as accepted in the paragraph above.

35. Retroactive date means the date set forth in the Declarations which is the earliest date a negligent act, error or omission or a **pollution condition** can first commence for coverage under this policy. If no entry appears or the words Not Applicable or N/A appear in the Declarations, then a **retroactive date** shall not apply.

36. Suit means a civil proceeding in which **bodily injury** and or **property damage** resulting from **pollution conditions** caused by **covered operations** are alleged, or **damages** caused by **professional services** are alleged, to which this insurance applies. **Suit** includes;

- a. An arbitration proceeding in which such damages are claimed and to which the **insured** must submit or does submit with our consent; or
- b. Any other alternative dispute resolutions proceeding in which such damages are claimed and to which the **insured** submits with our consent.

37. Transportation means the movement of **your products**, materials or waste by **auto**, aircraft, watercraft or rolling stock including the **loading** and **unloading** of **your products**, materials or waste.

38. Underground storage tank means any tank with associated piping and equipment connected thereto which has more than ten (10) percent of its volume below ground. **Underground storage tank** does not include septic tanks, sump pumps, oil/water separators, or storm-water collection systems.

39. Your Product

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- a) You;
 - b) Others trading under your name; or
 - c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

SPECIMEN