

## Combined General Liability and Site Specific Pollution Liability

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.

The word **insured** means any person or organization qualifying as such under Section III - Who Is An insured.

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

**Coverage E Site Specific Pollution Liability provides Claims Made and Reported Coverage, and has claim reporting requirements that differ from Coverages A, B, C, and D. Coverage E Site Specific Pollution Liability only applies to a claim that is made first made against you during the policy period and 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 hereto 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 E** shall be applied against the deductible and will erode the Limits of Insurance. Only those insuring agreements specifically indicated on the Declarations as having been selected as included are effective. **If an insuring agreement is not selected as included on the Declarations page, it is not a part of this policy.** This policy includes all of the agreements existing between the **insureds** and the Company or any of its agents relating to this policy.

### SECTION I – COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the **insured** becomes legally obligated to pay as damages because of **bodily injury** or **property damage** in excess of the deductible to which this insurance applies. 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 for **bodily injury** or **property damage** to which this insurance does not apply. We may, at our discretion, investigate any **occurrence** and settle any claim or **suit** that may result. But:

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

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to **bodily injury** and **property damage** only if:

- (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**;
- (2) The **bodily injury** or **property damage** occurs during the **policy period**; and
- (3) Prior to the **policy period**, no **insured** listed under Paragraph 1. of Section III – Who Is An Insured and no **employee** authorized by you to give or receive notice of an **occurrence** or claim knew that the **bodily injury** or **property damage** had occurred, in whole or in part. If such a listed **insured** or authorized **employee** knew, prior to the **policy period**, that the **bodily injury** or **property damage** occurred, then any continuation, change or resumption of such **bodily injury** or **property damage** during or after the **policy period** will be deemed to have been known prior to the **policy period**.

- c. **Bodily injury or property damage** which occurs during the **policy period** and was not, prior to the **policy period**, known to have occurred by any **insured** listed under Paragraph 1. of Section III – Who Is An Insured or any **employee** authorized by you to give or receive notice of an **occurrence** or claim includes any continuation, change or resumption of that **bodily injury or property damage** after the end of the **policy period**.
- d. **Bodily injury or property damage** will be deemed to have been known to have occurred at the earliest time when any **insured** listed under Paragraph 1. of Section III – Who Is An Insured or any **employee** authorized by you to give or receive notice of an **occurrence** or claim:
  - (1) Reports all, or any part, of the **bodily injury or property damage** to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the **bodily injury or property damage**; or
  - (3) Becomes aware by any other means that **bodily injury or property damage** has occurred or has begun to occur.
- e. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of services or death resulting at any time from the **bodily injury**.

## 2. Exclusions

**See also Section II – Shared Exclusions for additional exclusions applicable to Coverage A**

The insurance afforded under Coverage A does not apply to:

### a. Aircraft, Auto Or Watercraft

**bodily injury or property damage** arising out of the ownership, maintenance, use or entrustment to others of any aircraft, **auto** or watercraft 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 aircraft, **auto** or watercraft that is owned or operated by or rented or loaned to any **insured**.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an **auto** on, or on the ways next to, premises you own or rent, provided the **auto** is not owned by or rented or loaned to you or the **insured**;
- (4) Liability assumed under any **insured contract** for the ownership, maintenance or use of aircraft or watercraft; or
- (5) **bodily injury or property damage** arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of **mobile equipment** if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
  - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of **mobile equipment**.

### b. Contractual Liability

**bodily injury or property damage** for which the **insured** is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the **insured** would have in the absence of the contract or agreement; or
- (2) Assumed in a written contract or written agreement that is an **insured contract**, provided the **bodily injury or property damage** occurs subsequent to the execution of the written contract or written agreement. Solely for the purposes of liability assumed in an **insured contract**, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an **insured** are deemed to be damages because of **bodily injury or property damage**, provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and

- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. **Damage To Impaired Property Or Property Not Physically Injured**

**property damage** to **impaired property** or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **your product** or **your work** after it has been put to its intended use.

d. **Damage To Property**

**property damage** to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of any **insured**;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven (7) or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section IV – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are **your work** and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

e. **Damage To Your Product**

**property damage** to **your product** arising out of it or any part of it.

f. **Damage To Your Work**

**property damage** to **your work** arising out of it or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

g. **Electronic Data**

damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of **bodily injury** of the type of **bodily injury** set forth in Section VIII, Definitions, Paragraph 3. a. only.

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

h. **Employer's Liability**

**bodily injury** to:

- (1) An **employee** of any **insured** arising out of and in the course of:
  - (a) Employment by any **insured**; or

(b) Performing duties related to the conduct of any **insured's** business; or

(2) The spouse, child, parent, brother or sister of that **employee** as a consequence of Paragraph (1) above.

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

Subparagraph (1) of this exclusion does not apply to liability assumed by any **insured** under an **insured contract** unless the **insured contract** is with another **insured**.

i. **Expected Or Intended Injury**

**bodily injury** or **property damage** expected or intended from the standpoint of any **insured**. This exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property.

j. **Liquor Liability**

**bodily injury** or **property damage** for which any **insured** may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any **insured** allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that **insured**; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

If the **occurrence** which caused the **bodily injury** or **property damage**, involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purpose of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

k. **Mobile Equipment**

**bodily injury** or **property damage** arising out of:

- (1) The transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to any **insured**; or
- (2) The use of **mobile equipment** in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

l. **Personal And Advertising Injury**

**bodily injury** arising out of **personal and advertising injury**.

m. **Recall Of Products, Work Or Impaired Property**

damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) **Your product**;
- (2) **Your work**; or
- (3) **Impaired property**;

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

n. **Workers' Compensation And Similar Laws**

**bodily injury** based upon, arising out of or relating to any obligation of the **insured** under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

Exclusions a, c, d, e, f, h, j, k, m and n do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section IV - Limits of Insurance.

## COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

### 1. Insuring Agreement

- a. We will pay those sums that the **insured** becomes legally obligated to pay as damages because of **personal and advertising injury** in excess of the deductible to which this insurance applies. 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 for **personal and advertising injury** to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or **suit** that may result. But:
  - (1) The amount we will pay for damages is limited as described in Section IV – Limits Of Insurance; and
  - (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A, B, D or medical expenses under Coverage C.No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.
- b. This insurance applies to **personal and advertising injury** caused by an offense arising out of your business, but only if the offense was committed in the **coverage territory** during the **policy period**.

### 2. Exclusions

**See also Section II – Shared Exclusions for additional exclusions applicable to Coverage B**

The insurance afforded under Coverage B does not apply to:

#### a. Breach Of Contract

**personal and advertising injury** arising out of a breach of contract, except an implied contract to use another's advertising idea in your **advertisement**.

#### b. Contractual Liability

**personal and advertising injury** for which the **insured** has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the **insured** would have in the absence of the contract or agreement.

#### c. Criminal Acts

**personal and advertising injury** arising out of a criminal act committed by or at the direction of the **insured**.

#### d. Electronic Chatrooms Or Bulletin Boards

**personal and advertising injury** arising out of an electronic chatroom or bulletin board the **insured** hosts, owns, or over which the **insured** exercises control.

#### e. Infringement Of Copyright, Patent, Trademark Or Trade Secret

**personal and advertising injury** arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your **advertisement**.

However, this exclusion does not apply to infringement, in your **advertisement**, of copyright, trade dress or slogan.

#### f. Insureds In Media And Internet Type Businesses

**personal and advertising injury** committed by an **insured** whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Section VIII, Definition, Paragraph 31. a., b. and c. of **personal and advertising injury**.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting, unless done for a fee.

g. **Knowing Violation Of Rights Of Another**

**personal and advertising injury** caused by or at the direction of the **insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**.

h. **Material Published Prior To Policy Period**

**personal and advertising injury** arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the **policy period**.

i. **Material Published With Knowledge Of Falsity**

**personal and advertising injury** arising out of oral or written publication, in any manner, of material, if done by or at the direction of the **insured** with knowledge of its falsity.

j. **Quality Or Performance Of Goods – Failure To Conform To Statements**

**personal and advertising injury** arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your **advertisement**.

k. **Unauthorized Use Of Another's Name Or Product**

**personal and advertising injury** arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

l. **Wrong Description Of Prices**

**personal and advertising injury** arising out of the wrong description of the price of goods, products or services stated in your **advertisement**.

**SUPPLEMENTARY PAYMENTS – COVERAGES A and B**

1. These Supplementary Payments apply solely to Coverages A and B. We will pay, with respect to any claim we investigate or settle, or any **suit** against an **insured** we defend:
  - a. All expenses we incur.
  - b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - c. 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.
  - d. 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 \$500 a day because of time off from work.
  - e. All court costs taxed against the **insured** in the **suit**. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the **insured**.
  - f. 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.
  - g. 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 not reduce the limits of insurance.

2. Solely with respect to Coverages A and B, 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 a contract or agreement that is 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 **occurrence** 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. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for **bodily injury** and **property damage** and will not reduce the limits of insurance.

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.

## COVERAGE C MEDICAL PAYMENTS

### 1. Insuring Agreement

- a. We will pay medical expenses in excess of the deductible as described below for **bodily injury** caused by an accident that is otherwise covered under Coverage A:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
 provided that:
  - (a) The accident takes place in the **coverage territory** and during the **policy period**;
  - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and,
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

### 2. Exclusions

We will not pay under Coverage C expenses for **bodily injury**:

#### a. Any Insured

To any **insured**, except **volunteer workers**.

#### b. Hired Person

To a person hired to do work for or on behalf of any **insured** or a tenant of any **insured**.

c. **Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

d. **Workers Compensation And Similar Laws**

To a person, whether or not an **employee** of any **insured**, if benefits for the **bodily injury** are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. **Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. **Products-Completed Operations Hazard**

Included within the **products-completed operations hazard**.

g. **Coverage A Exclusions**

Excluded under Coverage A.

## COVERAGE D ADDITIONAL POLLUTION LIABILITY

**EACH OF THE COVERAGES LISTED UNDER THE INSURING AGREEMENTS IN THIS COVERAGE PART APPLIES IF, AND ONLY IF, IT IS LISTED AS AN INCLUDED COVERAGE ON THE DECLARATIONS. NONSELECTION OF A COVERAGE PART MEANS THAT ANY MATTER THAT WOULD HAVE BEEN COVERED BY THAT COVERAGE PART IS EXCLUDED FROM COVERAGE UNDER THIS POLICY.**

### 1. Insuring Agreements – Coverage D

#### Coverage D.1 – Contractor's Pollution Legal Liability

a. **Legal Liability**

(1) 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 **pollution conditions** to which this insurance applies. 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 **pollution condition** and settle any **claim** or **suit** that may result. But:

(a) The amount we will pay for **loss** is limited as described in Section IV. Limits Of Insurance; and

(b) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of **loss**.

(2) This insurance applies to **bodily injury** and **property damage** only if:

(a) The **bodily injury** or **property damage** is the result of a **pollution condition** that takes place in the **coverage territory** and is caused by an **occurrence**;

(b) The **pollution condition** that causes the **bodily injury** or **property damage** first occurs during the **policy period** and is the result of your **covered operations**;

(c) The **pollution conditions** were unexpected and unintended from the standpoint of the **insured**; and

(d) The **bodily injury** or **property damage** is caused by your **covered operations**.

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**.

b. **Emergency Remediation Costs**

We will pay for **emergency remediation costs** in excess of the deductible, incurred by the **Named Insured** prior to providing notice to the company, provided that:

(1) such costs result from a **pollution condition** that takes place in the **coverage territory** and is caused by your **covered**

**operations** performed during the **policy period**;

- (2) the **pollution condition** is first discovered and first occurs during the **policy period** by an **insured**;
- (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;
- (4) the **emergency remediation costs** are for a period of no longer than seventy two (72) hours 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**.

#### **Coverage D.2 - Third Party Claims for Contingent Transportation**

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 caused by a **pollution condition** occurring during the course of **transportation** by a **carrier**, to or from an **insured location** or the fixed boundaries of a site at which **covered operations** are being performed, 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 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 **pollution condition** and settle any **claim** or **suit** that may result. But:

- (1) The amount we will pay for **loss** is limited as described in Section IV. Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of **loss**.

b. This insurance applies to **bodily injury** and **property damage** only if:

- (1) The **bodily injury** or **property damage** is the result of a **pollution condition** that takes place in the **coverage territory** and is caused by an **occurrence**;
- (2) The **pollution condition** that causes the **bodily injury** or **property damage** first occurs during the **policy period** and is caused by **your product**, or results from waste from, or materials necessary for, your **covered operations**; and
- (3) The **bodily injury** or **property damage** is caused by the **transportation** by a **carrier**.

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 D.3 – Products 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 **pollution conditions** to which this insurance applies. 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 **pollution condition** and settle any **claim** or **suit** that may result. But:

- (1) The amount we will pay for **loss** is limited as described in Section IV. Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of **loss**.

b. This insurance applies to **bodily injury** and **property damage** only if:

- (1) The **bodily injury** or **property damage** is the result of a **pollution condition** that takes place in the **coverage territory** and is caused by an **occurrence**;
- (2) The **pollution condition** that causes the **bodily injury** or **property damage** first occurs during the **policy period** and is caused by **your product** and is included in the **products completed operations hazard**; and

- (3) The **bodily injury** or **property damage** is caused by **your product** and is included in the **products completed operations hazard**.

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 D.4 – Hostile Fire and Building Service Equipment Liability**

- a. We will pay those sums that the **insured** becomes legally obligated to pay for **bodily injury**, in excess of the deductible, if sustained within a building and if caused by smoke, fumes, vapors or soot produced by or originating from **Building Service Equipment**, or **loss** from **bodily injury** or **property damage** in excess of the deductible, caused by heat, smoke or fumes from a **hostile fire** to which this insurance applies. 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 **pollution condition** and settle any **claim** or **suit** that may result. But:

- (1) The amount we will pay for **loss** is limited as described in Section IV. Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of **loss**.

- b. This insurance applies to **bodily injury** and **property damage** only if:

- (1) The **bodily injury** is the result of smoke, fumes, vapors or soot produced by or originating from **Building Service Equipment** that takes place in the **coverage territory** and is caused by an **occurrence**; or
- (2) The **bodily injury** or **property damage** is the result of heat, smoke or fumes from a **hostile fire** that takes place in the **coverage territory** and is caused by an **occurrence**; and
- (3) The smoke, fumes, vapors or soot produced by or originating from **Building Service Equipment** that causes **bodily injury**, or the heat, smoke or fumes from a **hostile fire** that causes the **bodily injury** or **property damage**, first occurs during the **policy period** at an **insured location**;

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**.

## **2. EXCLUSIONS**

**See also Section II – Shared Exclusion for additional exclusions applicable to Coverage D**

The insurance afforded under Coverage D does not apply to **loss**, **emergency remediation costs**, **claim(s)** or related **defense costs**:

### **a. Asbestos**

solely with respect to Coverages D.3 and D.4, based upon or arising out of:

- (1) **bodily injury** arising out of the presence, ingestion or inhalation of, or exposure to, asbestos in any form; or
- (2) **property damage** arising out of the presence of, or exposure to, asbestos in any form.

### **b. Bankruptcy**

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

### **c. Bonds**

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

### **d. 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 liability for damages:

- (1) assumed in a contract or agreement in writing that is an **insured contract**, provided the **pollution condition** first occurs subsequent to the execution of the contract or agreement in writing; or

(2) that the **insured** would have in the absence of the contract or agreement.

e. **Covered under Nonselected Coverage Part within Coverage D**

based upon, arising out of, or relating to coverage under any nonselected coverage part within Coverage D, if coverage or a defense would have been provided under that coverage part if it had been selected.

f. **Damage to Conveyance**

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

g. **Faulty Workmanship**

based upon or arising out of the cost to repair or replace faulty construction or workmanship in any construction, erection, fabrication, installation, assembly, manufacture or remediation performed by the **insured**, including the cost of any materials, parts or equipment furnished in connection therewith.

h. **Fines and Penalties**

based upon or arising out of any **claim** seeking payment of:

- (1) fines, penalties, or multiplied damages;
- (2) punitive or exemplary damages, except where allowable by law; or
- (3) the cost of injunctive relief based upon or arising out of non-compliance with any statute, regulation, ordinance or administrative complaint.

i. **Fungi**

- (1) based upon or arising out of **bodily injury** or **property damage** 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 **fungi** or bacteria regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- (2) based upon or arising out of any loss, cost or expenses arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of **fungi** or bacteria by any **insured** or by any other person or entity.

j. **Insured Location**

based upon or arising out of **pollution conditions** on, at or migrating from an **insured location**. This exclusion does not apply to Coverage D.4

k. **Known Conditions**

based upon or arising out of **covered operations** performed prior to the inception date of this policy, if any of your management, directors, partners or **employee(s)** responsible for environmental affairs knew or reasonably could have foreseen that your **covered operations** could give rise to a **claim** under this policy. This includes, but is not limited to, any **claim, suit** or **pollution condition** reported under any insurance policy in effect prior to the inception of this **policy period**.

l. **Lead**

solely with respect to Coverages D.3 and D.4, based upon or arising out of:

- (1) **bodily injury** arising out of the presence, ingestion, inhalation or absorption of, of exposure to lead in any form; or
- (2) **property damage** arising out of the presence of, or exposure to, lead in any form.

m. **Off-Site Waste Disposal**

based upon or arising out of **pollution conditions** on, at or migrating from any location to which wastes, products or materials have been delivered.

n. **Products Liability**

based upon or arising out of any **property damage** to **your product** and, unless covered, if at all, by **Coverage D.2 –Third Party Claims for Contingent Transportation** or **Coverage D.3 - Products Pollution 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 **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 the negligent performance of **your product** installed as part of **covered operations**.

o. **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, unless specifically endorsed onto this policy.

p. **Recall Of Products, Work Or Impaired Property**

based upon or arising out of the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) **your product**;
- (2) **your work**; or
- (3) **impaired property**;

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

q. **Related Entities**

claimed by your parent company or any affiliated subsidiary, or any entity which is owned, operated, managed, or controlled by any insured.

r. **Third-Party Carrier**

incurred by a **carrier** for **bodily injury** or **property damage**. This exclusion does not apply to an **occurrence** caused by a **Named Insured's** negligence.

s. **Transportation**

based upon or arising out of:

- (1) **pollutants** or materials transported by **auto**, aircraft, vessel or rolling stock beyond the fixed boundaries of a site at which your **covered operations** are being performed; or
- (2) **your product** or **pollutants** from **your product** or its by-product transported by **auto**, aircraft, vessel or rolling stock unless covered by **Coverage D.2 -Third Party Claims for Contingent Transportation**, if selected on the Declarations.

t. **Warranties**

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 its **covered operations** conform to generally accepted standards.

## **COVERAGE E SITE SPECIFIC POLLUTION LIABILITY**

**EACH OF THE COVERAGES LISTED UNDER THE INSURING AGREEMENTS IN THIS COVERAGE PART APPLIES IF, AND ONLY IF, IT IS LISTED AS AN INCLUDED COVERAGE ON THE DECLARATIONS. NONSELECTION OF A COVERAGE PART MEANS THAT ANY MATTER THAT WOULD HAVE BEEN COVERED BY THAT COVERAGE PART IS EXCLUDED FROM COVERAGE UNDER THIS POLICY.**

### **1. Insuring Agreements – Coverage E**

#### **COVERAGE E.1 – THIRD PARTY CLAIMS FOR CLEANUP COSTS, BODILY INJURY OR PROPERTY DAMAGE LIABILITY FROM A SUDDEN POLLUTION EVENT**

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** beyond the boundaries of a **covered location(s)** or **loss** from **bodily injury** and **property damage** in excess of the deductible, to the extent resulting from a **pollution condition** on, at, under or migrating from a **covered location(s)**, provided all of the following conditions are met:

- a. the **pollution condition** must first commence during the **policy period** and take place in the **coverage territory**,
- b. such **pollution condition** must first commence at an identified time and place during the **policy period** and be confirmed by the **insured** at its sole expense,
- c. such **pollution condition** must be discovered by the **insured** within seventy-two (72) hours of commencement,
- d. such **pollution condition** must be reported to us in accordance with **Section V. 1. Duties in the Event of a Pollution Condition**, but not later than thirty (30) calendar days from the earlier of the date the **pollution condition** first commences or the expiration of the **policy period**, and
- e. the **claim** is first made against the **insured** during the **policy period**.

We will have the right and duty to defend any **suit** to which this insurance applies. **Defense costs** shall be subject to and shall erode the limits of insurance and any applicable deductible. However, we will have no duty to defend the **insured** against any **claim** or **suit** 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. Our right and duty to defend ends when the applicable limit of insurance, as described in the Declarations and Section IV. Limits of Insurance, has been exhausted by payment of **defense costs**, **cleanup costs**, or **loss**.

#### **COVERAGE E.2 – THIRD PARTY CLAIMS FOR CLEANUP COSTS, BODILY INJURY OR PROPERTY DAMAGE LIABILITY**

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 arises from a **pollution condition** on, at, under or migrating from a **covered location(s)**, provided that:

- a. the **claim** is first made against the **insured** during the **policy period**, and reported to us, in writing, during the **policy period** or, where applicable, extended reporting period, and
- b. the **pollution condition** first commences on or after the **retroactive date** but before the end of the **policy period** and takes place in the **coverage territory**.

We will have the right and duty to defend any **suit** to which this insurance applies. **Defense costs** shall be subject to and shall erode the limits of insurance and any applicable deductible. However, we will have no duty to defend the **insured** against any **claim** or **suit** 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. Our right and duty to defend ends when the applicable limit of insurance, as described in the Declarations and Section IV. Limits of Insurance, has been exhausted by payment of **defense costs**, **cleanup costs**, or **loss**.

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

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 arises from a **pollution condition** on, at, under or migrating from a **non-owned disposal site(s)**, provided that:

- a. the **claim** is made by a third party which is not an owner, operator or contractor of the **non-owned disposal site(s)**,
- b. the **claim** is first made against the **insured** during the **policy period**, and reported to us, in writing, during the **policy period**, or, where applicable, extended reporting period, and
- c. the **pollution condition** first commences on or after the **retroactive date**, but before the end of the **policy period** and takes place in the **coverage territory**.

We will have the right and duty to defend any **suit** to which this insurance applies. **Defense costs** shall be subject to and shall erode the Limits of Insurance and any applicable deductible. However, we will have no duty to defend the **insured** against any **claim** or **suit** 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. Our right and duty to defend ends when the applicable limit of insurance, as described in the Declarations and Section IV. Limits of Insurance, has been exhausted by payment of **defense costs**, **cleanup costs**, or **loss**.

#### **COVERAGE E.4 – Emergency Remediation Costs**

We will pay **emergency remediation costs** in excess of the deductible, caused by a **pollution condition** on, at, under or

migrating from a **covered location**, provided Coverages E.2 and E.4 are purchased, or from a **non-owned disposal site**, provided Coverage E.3. and E.4 are purchased, provided that:

- (1) such costs result from a **pollution condition** that takes place in a **coverage territory** and would be covered under Coverage E.2 or E.3, if purchased;
- (2) the **pollution condition** is first discovered and first occurs during the **policy period** by an **insured**;
- (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;
- (4) the **emergency remediation costs** are for a period of no longer than seventy two (72) hours 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 discovery of the **pollution condition** or the expiration of the **policy period**.

## 2. EXCLUSIONS

*See also Section II – Shared Exclusion for additional exclusions applicable to Coverage E*

The insurance afforded under Coverage E does not apply to **loss, emergency remediation costs, cleanup costs, claim(s)** or related **defense costs** based upon, arising out of, or relating to:

### a. Asbestos

asbestos in any form, including but not limited to, asbestos containing products, asbestos dust, asbestos fibers or asbestos containing materials. This exclusion shall not apply to **cleanup costs** to the extent directly and solely attributable to asbestos or asbestos containing materials in soil or groundwater.

### b. Business Interruption

any **insured's** loss of use of any business, loss of income or profit, or consequential loss of any kind or nature to any business operation, unless specifically endorsed onto this policy.

### c. Contractual Liability

the liability of others assumed by an **insured** in a contract or agreement. This exclusion shall not apply to liability that the **insured** would have in the absence of the contract or agreement or for liability it assumed under those contracts listed in the Schedule of Insured Contracts endorsement attached to this policy, if applicable.

### d. Covered under Nonselected Coverage Part within Coverage E

coverage under any nonselected coverage part within Coverage E, if coverage or a defense would have been provided under that coverage part if it had been selected.

### e. Divested Property

**pollution conditions** on, at, under or emanating from any **covered location(s)** where the actual discharge, dispersal, release, seepage, migration or escape of **pollution conditions** begins subsequent to the time such **covered location(s)** is sold, given away, condemned, abandoned, leased or subleased, unless the lease or sublease has been approved in writing by us prior to the commencement of the lease or sublease.

### f. Fines and Penalties

any criminal fine, criminal penalty, criminal assessment, punitive, exemplary or multiplied damages, or injunctive relief. However, this exclusion shall not apply to punitive damages where such coverage is allowable by law.

### g. Internal Expense

expenses incurred by the **insured** for services performed by **employees** of the **insured** or of any affiliate, parent, subsidiary, or entity with common ownership. This exclusion shall not apply to **emergency remediation costs** under Coverage E.4, if purchased.

### h. Lead-based Paint

lead-based paint in, on, coming from or applied to any building or structure. This exclusion shall not apply to **cleanup costs** to the extent directly and solely attributable to lead-based paint in soil or groundwater.

i. **Maintenance, Improvements or Installation**

any costs, charges, fines, fees or expenses for maintenance, upgrade or improvement of, or installation of any preventative measure to, any real or personal property or processes on, at, within or under a **covered location**, even if such maintenance, upgrade, improvement or installation is required:

- (1) by any ordinance, code, law or regulation; or,
- (2) as a result of **cleanup costs** or **loss** otherwise covered under this policy.

j. **Non-Disclosed Known Pollution Conditions**

**pollution conditions** known to exist prior to the inception date of this policy, by any current or former officer, director, partner, or **employee** responsible for environmental affairs of the **insured**, which was not disclosed in writing to us in the application or supporting materials prior to the inception date of this policy. Any **pollution condition** disclosed in writing to us and not otherwise excluded under this policy is deemed to be discovered on the date a **covered location** is endorsed onto this policy.

k. **Products Liability**

**your product**, including but not limited to, goods or products manufactured, sold, handled, distributed, altered or repaired by the **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 occurring beyond the boundaries of a **covered location**. This exclusion includes, but is not limited to, any **property damage to your product**.

l. **Underground Storage Tank System(s)**

**pollution Conditions** originating or arising from, or in any way relating to an **underground storage tank system(s)**.

**Solely with respect to Coverage E.2, if the insured has selected Coverage E.2. and it remains in effect:**

**Pollution condition(s)** migrating from any **underground storage tank system(s)** unless they are:

- (1) Listed within the Underground Storage Tank Coverage endorsement attached to this policy, if any;
- (2) **Storage Tank System(s)** which are removed prior to the inception date of this policy in accordance with all applicable Federal, State or Local regulations in effect at the time of closure;
- (3) **Storage Tank System(s)** that are situated in an enclosed underground area of a building or similarly enclosed structure, in a basement, cellar or tunnel, if such tank is situated totally upon or above the surface of the floor and the related piping is not run underground; and,
- (4) **Storage Tank System(s)** which are unknown by any **insured** as of the inception date of this policy.

This exclusion does not apply to any **pollution condition(s)** migrating onto a **covered location** from an **underground storage tank system(s)** not located on a **covered location**, as applicable.

## Section II – SHARED EXCLUSIONS

### 1. EXCLUSIONS APPLICABLE TO COVERAGES A, B, D, AND E.

**See Also Exclusions Applicable to Coverages A and B (Section II. 2.) and Exclusions Applicable to Coverages D and E (Section II.3.)**

This insurance does not apply to:

a. **Insurance Provided in Other Coverage Sections**

any **bodily injury, property damage, personal and advertising injury, loss, emergency remediation costs, cleanup costs, claim(s)** or related **defense costs** for which coverage is or would have been provided by any other coverage section offered by this policy, but which is shown as Excluded on the Declarations page.

b. **Nuclear Hazard**

- (1) **bodily injury, property damage, personal and advertising injury, loss, emergency remediation costs, cleanup costs, claims** or related **defense costs** 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.
- (3) based upon **bodily injury, property damage, personal and advertising injury, loss, emergency remediation costs, cleanup costs, claims** or related **defense costs** resulting from the **hazardous properties** of **nuclear material**, if:
  - (a) The **nuclear material**
    - (i) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured**, or
    - (ii) has been discharged or dispersed therefrom;
  - (b) 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
  - (c) The **bodily injury, property damage, personal and advertising injury, loss, emergency remediation costs, cleanup costs, claims** or related **defense costs** 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:

- (1) **Hazardous properties** include radioactive, toxic or explosive properties;
- (2) **Nuclear material** means **source material, special nuclear material** or **by-product material**;
- (3) **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**;
- (4) **Waste** means any waste material:
  - (a) 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
  - (b) 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**.
- (5) **Nuclear facility** means:
  - (a) Any **nuclear reactor**;
  - (b) Any equipment or device designed or used for:
    - (i) separating the isotopes of uranium or plutonium,
    - (ii) processing or utilizing **spent fuel**, or
    - (iii) handling, processing or packaging **waste**;

(c) 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;

(d) 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;

(6) **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;

(7) **Property damage, emergency remediation costs, and Cleanup Costs** include all forms of radioactive contamination of property.

c. **Professional Services exclusion**

**bodily injury, property damage, personal and advertising injury, loss, emergency remediation costs, cleanup costs, claims** or related **defense costs** based upon or arising out of the rendering of or failure to render any **professional services**.

d. **Radioactive Matter**

any liability of whatever nature arising out of, resulting from, caused by or contributed to, in whole or in part, by:

- (1) ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
- (2) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
- (3) any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force of matter.
- (4) except for Coverage D and E, radioactive contamination, however caused and whenever or wherever happening and not otherwise excluded by Exclusion b., Nuclear Hazard.

e. **War and Hostile Acts**

**bodily injury, property damage, personal and advertising injury, loss, emergency remediation costs, cleanup costs, claims** or related **defense costs**, however caused, arising, directly or indirectly, out of:

- (1) war, including undeclared or civil war;
- (2) 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
- (3) insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. **EXCLUSIONS APPLICABLE TO COVERAGES A AND B**

**See also Shared Exclusions Applicable to Coverages A, B, D, and E**

This insurance does not apply to:

a. **Asbestos**

- (1) **bodily injury** or **personal and advertising injury** arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion, of, asbestos
- (2) **property damage** or **personal and advertising injury** arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of, asbestos.
- (3) any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing effects of asbestos, by any **insured** or by another other person or entity.

b. **Communicable Disease Exclusion**

**bodily injury, property damage, or personal and advertising injury** arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claim(s), **suit(s)** or allegations against any **insured** allege negligence or other wrongdoing in the:

- (1) supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- (2) testing for a communicable disease;
- (3) failure to prevent the spread of the disease; or
- (4) failure to report the disease to authorities.

c. **Covered under Coverage D or E**

any **bodily injury, personal or advertising injury, or property damage** covered, or associated with a claim(s), **suit(s)**, or allegation(s) for which a defense is being provided, under **Coverage D – Additional Pollution Liability** or **Coverage E – Site Specific Pollution Liability**.

d. **Employment-Related Practices**

**bodily injury or personal and advertising injury** to:

- (1) a person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) the spouse, child, parent, brother or sister of that person as a consequence of **bodily injury** to that person at whom any of the employment-related practices described in Paragraph (1)(a),(b), or (c) above is directed.

This exclusion applies:

- (1) whether the injury-causing event described in Paragraph (1)(a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) whether the **insured** may be liable as an employer or in any other capacity; and
- (3) to any obligation to share damages with or repay someone else who must pay damages because of the injury.

f. **Distribution Of Material In Violation Of Statutes**

**bodily injury, property damage, or personal and advertising injury** arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) the CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) any federal, state or locale statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communication or distribution of material or information.

g. **Fines and Penalties**

any claim seeking payment of:

- (1) fines, penalties, or multiplied damages;
- (2) punitive or exemplary damages, except where allowable by law; or
- (3) the cost of injunctive relief based upon or arising out of non-compliance with any statute, regulation, ordinance or administrative complaint.

h. **Fungi Or Bacteria**

- (1) **bodily injury, property damage, or personal and advertising injury** 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 **fungi** or bacteria 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.
- (2) any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, **fungi** or bacteria, by any **insured** or by any other person or entity.

i. **Lead**

- (1) **bodily injury or personal and advertising injury** arising, in whole or in part, out of the actual, alleged, threatened or suspected inhalation of, or ingestion of, or absorption of, lead;
- (2) **property damage or personal and advertising injury** arising, in whole or in part, out of the actual, alleged, threatened or suspected contact with, exposure to, existence of, or presence of lead; and
- (3) any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing effects of lead, by any **insured** or by any other person or entity.

j. **Pollution**

- (1) **bodily injury, property damage, or personal and advertising injury** which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time.
- (2) any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**; or
  - (b) Claim or **suit** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, **pollutants**.
- (3) **bodily injury, personal and advertising injury, or property damage** which would not have occurred, in whole or in part, but for **hostile fire**.

k. **Silica**

- (1) any **bodily injury, property damage, or personal and advertising injury** arising out of or in any way related to the actual, alleged or threatened discharge, dispersal, emission, release, escape, handling, contact with, exposure to or inhalation, ingestion or respiration of silica or products or substances containing silica or silicon dioxide in any form including, but not limited to, silica dust, sand or otherwise, or work involving the use of or handling of silica or silicon dioxide in any form, even if other causes are alleged to contribute to or aggravate such loss, claim or **occurrence**.
- (2) any **bodily injury, property damage, or personal and advertising injury** arising from or related to:
  - (a) any supervision, instruction, recommendation, warnings or advice given or which should have been given in connection with the event described in Paragraph (1).;
  - (b) any obligation to indemnify, defend, share damages with or repay someone else who must pay damages because of events described in Paragraph (1); and
  - (c) any fines or penalties imposed because of events described in Paragraph (1).

3. **EXCLUSIONS APPLICABLE TO COVERAGES D AND E**

**See also Shared Exclusions Applicable to Coverages A, B, D, and E**

This insurance does not apply to **loss, emergency remediation costs, cleanup costs, claim(s)** or related **defense costs**:

a. **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 aircraft, **auto** or watercraft that is owned or operated by or rented or loaned to any **insured**.

However, under Coverage D only, 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.

**b. Employer's Liability and Worker's Compensation**

based upon **Bodily injury to:**

- (1) an **employee** of any **insured** arising out of and in the course of:
  - (a) Employment by any **insured**; or
  - (b) Performing duties related to the conduct of any **insured's** business; or
- (2) 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.
- (3) damages or **loss** based upon or arising under any workers compensation, unemployment compensation or disability benefits law or similar law.
- (4) This exclusion applies:
  - (a) Whether any **insured** may be liable as an employer or in any other capacity; or
  - (b) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

However, under Coverage D only, this exclusion does not apply to liability assumed by the **Named Insured** under an **insured contract**.

**c. Financial Assurance**

arising out of any obligation to demonstrate or meet financial assurance or financial responsibility requirements under any federal, state or local law including any requirement that the **insured** obtain a bond. This exclusion shall not apply to any such obligation specifically provided by endorsement onto this policy, if any.

**d. Insured Versus Insured**

arising out of any **claim, suit**, or assertion of liability by one **insured** against another **insured**.

Under Coverage D only, this exclusion shall not apply to a **claim** or **suit** against the **insured** by a client who is an **insured** only by operation of the Additional Insured endorsement, if purchased.

**e. Insured's Property**

based upon or arising out of any real or personal property owned, occupied, leased or rented by an **insured**.

Under Coverage D only, this exclusion shall not apply to a **claim** or **suit** against the **insured** by a client who is an **insured** only by operation of the Additional Insured endorsement, if purchased.

**f. Knowingly Wrongful Acts**

based upon or arising out of any **insured's** dishonest, fraudulent, malicious, knowingly wrongful, deliberate disregard, or willful or intentional non-compliance with any law, statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

### **SECTION III – WHO IS AN INSURED**

1. With respect to Coverages A, B and C, if you are designated in the Declarations as:
  - a. An individual, you and your spouse are **insureds**, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an **insured**. Your members, your partners, and their spouses are also **insureds**, but only with respect to the conduct of your business.

- c. A limited liability company, you are an **insured**. Your members are also **insureds**, but only with respect to the conduct of your business. Your managers are **insureds**, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an **insured**. Your **executive officers** and directors are **insureds**, but only with respect to their duties as your officers or directors. Your stockholders are also **insureds**, but only with respect to their liability as stockholders.
  - e. A trust, you are an **insured**. Your trustees are also **insureds**, but only with respect to their duties as trustees.
2. With respect to Coverages A, B and C, each of the following is also an **insured**:
- a. Your **volunteer workers** only while performing duties related to the conduct of your business, or your **employees**, other than either your **executive officers** (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these **employees** or **volunteer workers** are **insureds** for:
    - (1) **bodily injury** or **personal and advertising injury**:
      - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-employee while in the course of his or her employment or performing duties related to the conduct of your business, or to your other **volunteer workers** while performing duties related to the conduct of your business;
      - (b) To the spouse, child, parent, brother or sister of that co-**employee** or **volunteer worker** as a consequence of Paragraph (1) (a) above;
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
      - (d) Arising out of his or her providing or failing to provide professional health care services.
    - (2) **property damage** to property:
      - (a) Owned, occupied or used by;
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by; you, any of your **employees**, **volunteer workers**, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your **employee** or **volunteer worker**), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under Coverages A, B and C.
3. With respect to Coverage A, B and C, any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a **Named Insured** if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the **policy period**, whichever is earlier;
  - b. Coverage A does not apply to **bodily injury** or **property damage** that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to **personal and advertising injury** arising out of an offense committed before you acquired or formed the organization.
- No person or organization is an **insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations.
4. With respect to Coverage D **Insured** means:
- a. You;
  - b. Any additional **insured** specifically endorsed onto this policy;

- c. Your former or current director, executive officer, partner, **employee** or **leased worker** while acting within the scope of his or her duties as such; and
- d. You, with regard to your participation in a joint venture, but solely with respect to your liability arising from the performance of **covered operations** under the respective joint venture.

5. With respect to Coverage E an **Insured** means:

- a. The **Named Insured**;
- b. Any additional **Named Insured** expressly endorsed onto this policy; or
- c. Any current or former member, director, executive officer, partner, or employee of the **Named Insured** while acting within the scope of his or her duties as such.

#### SECTION 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. **Claims** made or **suits** brought; or
  - c. Persons or organizations making **claims** or bringing **suits**.
2. The Policy Aggregate Limit (Coverages A, B, C, D and E) is the most we will pay for the sum of all:
  - a. Damages under Coverage A;
  - b. Damages under Coverage B;
  - c. Medical expenses under Coverage C;
  - d. All **emergency remediation costs, cleanup costs**, and all **claims** for **emergency remediation costs, cleanup costs** or for **loss** because of **bodily injury** and **property damage** under Coverage D and E; and
  - e. all related **defense costs** incurred for **claims** under Coverage E.
3. The Aggregate Limit (Coverages A, B and C) is the most we will pay for the sum of all:
  - a. Damages under Coverage A, except damages because of **bodily injury** or **property damage** included in the **products-completed operations hazard** ;
  - b. Damages under Coverage B, ; and
  - c. Medical expenses under Coverage C.
4. Subject to the policy Aggregate Limit, the Products Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of **bodily injury** or **property damage** included in the **products-completed operations hazard**.
5. Subject to Paragraph 2. or Paragraph 3. above, whichever applies, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all **personal and advertising injury** sustained by any one person or organization.
6. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C  
because of all **bodily injury** and **property damage** arising out of any one **occurrence**.
7. Subject to Paragraph 2, 3, and 6. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of **property damage** to any one premises, while rented to you.
8. Subject to Paragraph 2, 3, and 6. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of **bodily injury** sustained by any one person.

9. Subject to Paragraph 1. and 2 above, the Total All Pollution Conditions and Claims Limit set forth on the Declarations is the most we will pay for the sum of:
- a. All **emergency remediation costs** and **cleanup costs** under Coverages D or E; and
  - b. All **claims** for **emergency remediation costs, cleanup costs** and for **loss** because of all **bodily injury** and **property damage** under Coverages D or E; and
  - c. All related **defense costs** incurred for **claims** under Coverages E, and
  - d. With respect to Coverage E.4, Emergency Remediation Costs, the applicable limit is the limit for either Coverage E.2 or Coverage E.3, if applicable and if purchased, unless a lower limit applicable to Coverage E.4 is set forth in the Declarations or an endorsement.
10. Subject to Paragraphs 2. and 9. above, the Per Pollution Condition Limit set forth on the Declarations is the most we will pay for the sum of:
- a. All **emergency remediation costs** and **cleanup costs** under Coverages D and E; and
  - b. All **claims** for **emergency remediation costs, cleanup costs** and for **loss** because of **bodily injury** and **property damage** under Coverages D and E; and
  - c. All related **defense costs** incurred for **claims** under Coverage E;
- arising from any one **pollution condition** as referenced in 13. below, regardless of the number of coverages that may apply.

11. Subject to Paragraphs 1. through 10. above, the Coverage Section Limit, if any, set forth on the Declarations or under an applicable endorsement is the most we will pay under each individual coverage section for the sum of all **cleanup costs, claims, loss** and related **defense costs** incurred under each applicable coverage section stated on the Declarations, or incurred under each other applicable coverages afforded under any endorsements attached thereto. Any Coverage Section Limit is considered a sub-limit of insurance.

## 12. Deductible

The deductible stated in the Declarations applies to all damages because of **bodily injury, property damage**, advertising injury, personal injury, **loss(es), emergency remediation costs, cleanup costs, claim(s)**, and additionally for Coverage E only related **defense costs**, arising out of any one **occurrence, personal and advertising injury**, one offense, or any one **pollution condition** or out of the same, related or continuous **pollution condition(s)**. The applicable deductible for Coverage E.4, Emergency Remediation Costs, is the deductible for either Coverage E.2 or Coverage E.3, if applicable and if purchased. Our obligation under the policy to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Declarations and as applicable to each coverage part. The limit of insurance for each occurrence under Coverage A, each **personal and advertising injury** under Coverage B, and each **pollution condition** under Coverage D will not be reduced by the application of such deductible amounts. Supplementary payments under Coverage A and B and **defense costs** under Coverage D are not applicable to the exhaustion of the stated deductible amounts and do not reduce the limits of insurance. **Defense costs** payable under Coverage E shall contribute to the exhaustion of the stated deductible amount and will reduce the limits of insurance.

The terms of this insurance under all applicable coverages (Coverages A, B, C, D, and E), 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 an **occurrence, claim, or suit**
- apply irrespective of the application of the deductible amount.

We retain final settlement authority within the deductible. The Company may advance in its discretion payment of all or part of the deductible. The **insured** must promptly reimburse the Company any such payment 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**.

### 13. Multiple Pollution Conditions or Claims

All continuous or related **pollution conditions** 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** made during one or more **policy periods** issued by the Company or its affiliates, providing substantially the same coverages, resulting in **bodily injury, property damage or cleanup costs**, or in any combinations thereof, and arising out of the same, or continuous or related **pollution conditions**, shall be considered one **pollution condition** and will be subject to the same Per Pollution Condition Limit and one deductible. Such **claims** or reports of **pollution conditions** shall be deemed first reported to the Company during the **policy period** in which the first such **claim** or report of **pollution condition** was reported to the Company or an affiliate and will be subject to the Per Pollution Condition Limit and deductible applicable to that **policy period**. Under Coverage D, all continuous or related **pollution conditions** shall be deemed to have occurred when the **pollution condition** first occurred.

Coverage under this policy for such subsequent **pollution conditions** or **claims** shall not apply unless, at the time such **pollution conditions** are first discovered and reported or **claim** was first made and first reported, the **insured** has maintained with the Company or its affiliates coverage providing substantially the same coverages on a continuous, uninterrupted basis since the first such **claim** made against the **insured** and reported or first **pollution condition** was discovered and reported to the Company.

## SECTION 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 possible after an **insured** first becomes aware of a **pollution condition**. The **insured(s)** 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 an Occurrence, Offense, Claim or Suit

a. You must see to it that we receive written notice as soon as practicable of an **occurrence** or an offense which may result in a **claim**. To the extent possible, notice should include:

- (1) How, when and where the **occurrence** or offense 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 **occurrence** or offense.

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 practicable.

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 cleanup, injury or damage to which this insurance may also apply.

### 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 Coverages D.1.B. and Coverage E.4.. 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. The **Named Insured** must cooperate with the Company and receive approval in writing of the selection and retention of qualified contractors or consultants.

### 4. Defense, Settlement & Cooperation

The Company shall have the right and the duty to assume the investigation, adjustment or defense of any **claim** or **suit**. Supplementary Payments, under Coverage A and B, and **defense costs** under Coverage D do not erode the applicable limits of insurance; under Coverage E, such **defense costs** 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 damages, **loss**, **emergency remediation costs**, **cleanup costs** or related **defense costs**. 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 damages, **loss**, **emergency remediation costs**, **cleanup costs** or related **defense costs**.

The **insured** shall cooperate with the Company and offer all reasonable assistance in the investigation of an **occurrence**, offense or **pollution condition** 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** shall further cooperate with the Company and do whatever is necessary to secure and effect 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 the **insured** refuses to consent to any settlement recommended by the Company and elects 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 deductible provisions of the Policy.

## SECTION VI – 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**, without prejudice to other remedies;
- (4) material change in the nature of risk or your property, as outlined in the application and submission materials on file with us; or
- (5) the **insured's** failure to comply with the terms and conditions under this policy including the failure to pay any deductible amount or audit premium 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 sixty (60) days if cancellation is for either reasons (3),(4), or (5) 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 Audit

- a. We may examine and audit your books and records as they relate to this policy at any time during the **policy period** and up to three (3) years after the end of the **policy period**;
- b. We may be permitted, but not obligated, to interview persons employed by the **insured**; and
- c. The **insured** agrees to provide appropriate personnel to assist our representatives during any inspection.

### 8. Legal Action Against Us

No person or organization has the 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. **Material Change in Risk**

The **insured** must notify the Company, in writing, within thirty (30) days of any change in information that the **insured** provided to us which materially increases the risk from that originally assumed by the Company at policy inception. This does not limit or right to exercise our options under Section VI, Conditions, 2. Cancellation, Paragraphs b.(2), b.(3), b.(4) and b.(5).

#### 10. **Other Insurance**

- a. With respect to Coverages A, B and C, if other valid and collectible insurance is available to the **insured** for a loss we cover under Coverages A, B or C of this policy, our obligations are limited as follows:

##### (1) **Primary Insurance**

This insurance is primary except when Paragraph 2. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all other insurance by the method described in Paragraph 3. below.

##### (2) **Excess Insurance**

- (a) This insurance is excess over:

- (i) Any of the other insurance, whether primary, excess, contingent or on any other basis:

1. That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for **your work**;
2. That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
3. That is insurance purchased by you to cover your liability as a tenant for **property damage** to premises rented to you or temporarily occupied by you with permission of the owner; or
4. If the loss arises out of the maintenance or use of aircraft, **autos** or watercraft to the extent not subject to Exclusion a. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

- (ii) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you are an additional insured. When this insurance is excess, we will have no duty under Coverages A, B or C to defend the insured against any suit, if any other insurer has a duty to defend the insured against that suit. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- (iii) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

1. The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
2. The total of all deductibles under all that other insurance.

- (iv) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations for Coverages A, B, C, and D.

##### (3) **Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

- (4) With respect to Coverages D and E,

If other valid and collectible insurance is available to any **insured** covering **bodily injury, property damage, emergency remediation costs, cleanup costs** and **defense costs** 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.

#### 11. Other Insurance Issued By Us

If any **bodily injury, property damage, occurrence**, advertising injury, personal injury, offense or **pollution condition** covered under this policy is also covered in whole or in part under any other insurance issued by us or an affiliate company, and both this policy and such other insurance cover the **insured** for **bodily injury, property damage, occurrence**, advertising injury, personal injury, offense or **pollution condition** arising out of:

- a. substantially the same or related general harmful conditions, substances, or **pollutants** or repeated or continuous exposure to substantially the same or related harmful conditions, substances or **pollutants** or
- b. **bodily injury, property damage, occurrence**, advertising injury, personal injury, offense or **pollution condition** which extends over a period of days, weeks, months or longer,

then all such **bodily injury, property damage, occurrence**, advertising injury, personal injury, offense or **pollution condition** shall be deemed to have taken place only during the first **policy period** of such policies in which any of the **bodily injury, property damage, occurrence**, advertising injury, personal injury, offense or **pollution condition** took place and all damages arising from such **bodily injury, property damage, occurrence**, advertising injury, personal injury, offense or **pollution condition** shall be deemed to have arisen from one **occurrence**, offense or **pollution condition** and shall be subject to any remaining Each Occurrence Limit, Each Pollution Condition Limit or, if lesser, Coverage Limit applicable to the policy for such first **policy period**.

In no event shall we pay more for **bodily injury, property damage, occurrence**, advertising injury, personal injury, offense or **pollution condition** covered under this policy and all such other insurance than the limits of liability set forth in the Declarations of this policy.

#### 12. Premiums

The **Named Insured** shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

#### 13. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the **Named Insured**. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the **policy period** is greater than the earned premium, we will return the excess to the first **Named Insured**.
- c. The first **Named Insured** must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 14. 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.

#### 15. 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.

#### 16. **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.

#### 17. **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** 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. 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.

#### 18. **Transfer of Policy**

This policy shall be void if assigned or transferred without our written consent.

#### 19. **Limitation of Damages**

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

### **SECTION VII - CANCELLATION, NON-RENEWAL AND EXTENDED REPORTING PERIOD – COVERAGE E ONLY**

#### **1. CANCELLATION AND NON-RENEWAL EFFECT ON EXTENDED REPORTING PERIOD**

- a. The **insured** may be entitled to one or more Extended Reporting Periods, as described below, but only for Coverages E.2 and E.3, and not coverage E.1 unless required by law, if:

(1) This policy is canceled or non-renewed, except if such cancellation or non-renewal is based upon the reasons:

- (a) non-payment of premium;
- (b) material misrepresentation or fraud by you;
- (c) material change in the use or operation of a **covered 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**;  
or
- (d) the **insured's** failure to comply with the terms and conditions under this policy including the failure to pay any deductible or premium 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 (a) or (b) above, or sixty (60) days if cancellation is for either reasons (c) or (d) 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**.

- (2) With respect to a **covered location**:
- (a) There is a deletion of a **covered location**; or
  - (b) The sale, giving away, condemning, abandonment, leasing or subleasing unless the leasing or subleasing has been approved in writing by the underwriter prior to the commencing of the leasing or subleasing of such a **covered location** by you, or
- (3) We renew or replace the coverage of this policy with insurance that:
- (a) Has a **retroactive date** later than the date shown in the Declarations and/or in the Schedule of Covered Location(s) endorsement attached to this policy; or
  - (b) Does not apply on a Claims Made basis.
- (4) With respect to a **covered location** that has been deleted from the policy, the effective date of cancellation is the date that the **covered location** was deleted pursuant to the Schedule of Covered location(s) endorsement.

## 2. EXTENDED REPORTING PERIODS

With respect to Coverage E:

- a. An **insured** shall be entitled to an automatic extended reporting period, and the **Named Insured** may be entitled to purchase an optional extended reporting period upon cancellation or non-renewal of the policy, unless cancellation or non-renewal is for one of the reasons set forth in **Section VII., 1.** above. The automatic and optional extended reporting periods are more fully described in Paragraphs b. and c. below. If the **Named Insured** renews this policy, the **Named Insured** shall be entitled to a renewal extended reporting period, as described more fully below in Paragraph d. The automatic, the optional or the renewal extended reporting periods shall not reinstate or increase any of the limits of insurance of this policy, extend the **policy period** or change the scope of coverage provided.

b. **Automatic Extended Reporting Period**

Solely with respect to a **claim**, provided: (i) that the **Named Insured** has not renewed this policy or purchased any other insurance to replace this insurance which applies to a **claim** or **pollution condition(s)** otherwise covered by this policy; and, (ii) the **Named Insured** has not purchased the optional extended reporting period available under **Paragraph c.** of this Section, an **insured** shall have the right to the following: a period of sixty (60) days following the effective date of such cancellation or non-renewal of the policy, unless cancellation or non-renewal is for one of the reasons set forth in **Section VII., 1.** above, in which to provide written notice to the Company of **claim(s)** first made against the **insured** during the **policy period**. Such a **claim** reported to the Company within the automatic extended reporting period will be deemed to have been made and reported on the last day of the **policy period**, provided that the **claim** arises from a **pollution condition** that commenced before the end of the **policy period** and is otherwise covered by this policy. No part of the automatic extended reporting period shall apply if the optional extended reporting period is purchased.

c. **Optional Extended Reporting Period**

The **Named Insured** shall be entitled to purchase an optional extended reporting period upon cancellation or non-renewal of the policy, unless cancellation or non-renewal is for one of the reasons set forth in **Section VII, 1.** above, as follows: (i) A **claim** first made against the **insured** and reported to the Company within the optional extended reporting period, if purchased in accordance with the provisions contained in Paragraph d. below, will be deemed to have been made and reported on the last day of the **policy period**, provided that the **claim** arises from a **pollution condition** that commenced before the end of the **policy period** and is otherwise covered by this policy; and (ii) The Company shall issue an endorsement providing an optional extended reporting period of up to thirty-six (36) months from termination of coverage hereunder for all **covered location(s)** or any specific **covered location** provided that the **Named Insured**: (a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and (b) pays the additional premium when due. If that additional premium is paid when due, the extended reporting period may not be cancelled, provided that all other terms and conditions of the policy continue to be met.

For purposes of the optional extended reporting period cancellation or non-renewal of coverage occurs at the time of cancellation or non-renewal of this policy by the **Named Insured** or by the Company, or at the time of the Company's deletion of a location which previously was a **covered location**, if earlier. The optional extended reporting period is available to the **Named Insured** for not more than 200% of the full policy premium stated in the Declarations.

d. **Renewal Extended Reporting Period**

Provided that the **Named Insured** has renewed this policy with the Company or an affiliate of the Company designated by the Company, an **insured** shall have the right to the following: a period of sixty (60) days following the expiration of this policy's **policy period** in which to provide written notice to the Company under this policy's **policy period of claims** first made against the **insured** within thirty (30) days prior to the expiration of this policy's **policy period** or a **pollution condition** first discovered within thirty (30) days prior to the expiration of this policy's **policy period**. A **claim** first made against the **insured** within thirty (30) days prior to the expiration of the policy's **policy period** or a **pollution condition** first discovered within thirty (30) days prior to the expiration of the **policy period** and which **pollution condition** or **claim** is reported to the Company within this renewal extended reporting period will be deemed to have been made and reported on the last day of this policy's **policy period** of this policy.

## SECTION VIII – DEFINITIONS

1. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.
2. **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.However, **auto** does not include **mobile equipment**.
3. **Bodily Injury** means:
  - a. physical injury, sickness or, disease, sustained by any person, including death, and solely with respect to section 1.a. medical monitoring resulting from any of these; and,
  - b. mental anguish or emotional distress sustained by any person.
4. **Building Service Equipment** means equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.
5. **Carrier** means any person or entity, other than the **insured** or a subsidiary or affiliated company of the **insured**, engaged by or on behalf of the **insured**, and in the business of transporting property for hire by **auto**, aircraft, watercraft or rolling stock. **Carrier** includes any current or former member, director, executive officer, partner, or employee of the **carrier** while acting within the scope of his or her duties as such.
6. **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 similar projects.
7. **Claim(s)** means, under Coverage D and Coverage E, 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 **bodily injury**, **property damage**, and/or **cleanup costs**.
8. **Cleanup Costs** means the reasonable and necessary expenses incurred for the investigation, monitoring, testing, removal, disposal, neutralization, or treatment of **pollution conditions** to the extent required:
  - a. by any legislatively or administratively enacted law, rule, regulation or order applicable within the jurisdiction in which the **Insured Location(s)** under Coverage D or **Covered Location(s)** under Coverage E lie(s) including any government action or demand pursuant thereto; or

- b. Under Coverage E only, to satisfy a voluntary cleanup program to conduct voluntary cleanup, removal, or remediation of a **pollution condition** that exceeds actionable levels, established pursuant to **a.** above; or
  - c. Where covered, with respect to **fungus** and legionella, in the absence of any applicable laws established pursuant to **a.** above, to the extent recommended in writing by a **Certified Industrial Hygienist** or as required by a court. Under Coverage E only, **cleanup costs** do not include **property damage, bodily injury, or loss** from **property damage** or **bodily injury**.
9. **Completed Operations** with respect to Coverage D means **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 the **insured's** contract has been completed;
  - b. When all of the work to be done by the **insured** at the job site has been completed, if the **insured's** contract calls for work at more than one job site; or
  - c. When that part of the **insured's** work done at a job site has been put to its intended use by any person or organization other than another contractor or sub-contractor working on the same project.
10. **Covered Operations** means those activities performed for a third party by you or on your behalf at a site not owned or leased by you and as are set forth and described in your application. **Covered Operations** does not include **Completed Operations**.
11. **Covered Location(s)** means any location(s) listed in the Declarations and/or listed within the Schedule of Covered Location(s) endorsement attached to this policy.
12. **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 legal action or **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**.
13. **Defense Costs** means 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**.
14. **Emergency remediation costs** means those reasonable and necessary costs, charges, and expenses which qualify as **clean-up costs** incurred by:
- a. the **Named Insured** for services rendered by another to take emergency action in response to a **pollution condition** caused by **covered operations**, under Coverage D.1.b. only; and
  - b. incurred by the **Named Insured** to take emergency action in response to a **pollution condition**, under Coverage E.4 only.
- 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, as defined by the regulating agencies and environmental laws that require immediate response. **Emergency remediation costs** do not include any profit element of any **insured**.
15. **Employee** includes a **leased worker** and a **temporary worker**.
16. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
17. **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.

18. **Hostile Fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be. It does not include a fire that occurred:
- a. At any premises, site or location which is or was at any time used by or for any **insured** or others for the handling, storage, disposal, processing, or treatment of waste; or
  - b. At any premises, site, or location on which any **insured** or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations to test for, monitor, clean up, remove, contain, treat, detoxify, neutralize or in any way respond to or assess the effects of, **pollutants**.

For purposes of **Coverage D.4.** only, heat is a **pollutant**.

19. **Impaired property** means tangible property, other than **your product** or **your work**, that cannot be used or is less useful because:
- a. It incorporates **your product** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of **your product** or **your work** or your fulfilling the terms of the contract or agreement.

20. **Insured** means how that term is defined for the respective Coverage Parts in Section III – Who is an Insured.

21. **Insured contract** means for Coverages A and B:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for **bodily injury** or **property damage** arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the **insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the **insured's** rendering or failure to render **professional services**, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

For Coverage D, **Insured Contract** means any contract or agreement in writing for performance of your **covered operations** whereby the **Named Insured** assumes the tort liability of another party to pay for damages because of **loss** from **bodily injury** or **property damage** to a third person, firm or organization. An **insured contract** does not include that part of any contract or agreement by which the **Named Insured** assumes liability for the sole negligence or tortious conduct of another. Tort liability

means a liability that would be imposed by law in the absence of any contract or agreement. Such written contract or agreement must be in writing and executed prior to the first **occurrence** of the **bodily injury** or **property damage**, or when the **pollution condition** first occurs, whichever is earliest.

22. **Insured Location** means a location in the **coverage territory** owned, rented, occupied, or leased by the **insured** during the **policy period**.
23. **Leased worker** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.
24. **Loading or unloading** means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or **auto**;
  - b. While it is in or on an aircraft, watercraft or **auto**; or
  - c. While it is being moved from an aircraft, watercraft or **auto** to the place where it is finally delivered;
- but **loading or unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or **auto**.
25. **Loss** means a monetary judgment, award or settlement of:
- a. compensatory damages and punitive or exemplary damages, where such coverage is allowable by law; and
  - b. under Coverage E only, civil fines, civil penalties and civil assessments
- because of **bodily injury** and/or **property damage**.
26. **Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers;
  - f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, **mobile equipment** does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered **autos**.

27. **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**.
28. **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, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C.1801 et seq.), any State, Local, 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.
29. **Non-owned Disposal Site** means any waste treatment, waste storage or waste disposal facilities, which are utilized by or on the behalf of the **insured** for waste generated from a **covered location**, provided that as of the date that the waste was delivered to the waste treatment, waste storage or waste disposal facility, the facilities:
- (1) Are within the United States of America (including its territories and possessions), Puerto Rico and Canada;
  - (2) Are not owned, operated or managed by the **insured** or any subsidiary or affiliate of the **insured**;
  - (3) Are properly licensed to accept such waste for treatment, storage or disposal;
  - (4) Are not listed, proposed for listing or formerly listed on the federal National Priorities List, State equivalent, or local equivalent list;
  - (5) Are not subject to, and have not been subject to in the previous four years, an information request under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act or Section 3007(a) of the Resource Conservation and Recovery Act, or a State or local equivalent request; and
  - (6) Are not owned or operated by a bankrupt or financially insolvent entity.
30. **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.
31. **Personal and advertising injury** means injury, including consequential **bodily injury**, arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - f. The use of another's advertising idea in your **advertisement**; or
  - g. Infringing upon another's copyright, trade dress or slogan in your **advertisement**.
32. **Policy period** means the period of time stated in the Declarations, or any shorter period arising as a result of cancellation.
33. **Pollutants** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed. For purposes of Coverage D.4. only, heat is considered a **pollutant**.
34. **Pollution Condition(s)** means any of the following:
- a. the discharge, dispersal, release, seepage, migration, or escape of any solid, liquid, gaseous or thermal irritant or contaminant,

including smoke, vapor, soot, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, legionella, electromagnetic fields, low level radioactive waste, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater. Waste includes materials to be recycled, reconditioned or reclaimed,

- b. under Coverage E only, the presence of **fungus** on buildings or structures, or the presence of materials listed in paragraph a. above that have been abandoned or deposited illegally on or after the Policy Inception Date by a third party at a **covered location** without the **insured's** consent or knowledge

provided the above are in amounts, concentrations or levels in excess of those naturally present in the environment.

**35. Products-completed operations hazard:**

- a. Includes all **bodily injury, property damage** and **cleanup costs** occurring away from premises you own or rent and arising out of **your product** or **your work** except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, **your work** will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a 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.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include **bodily injury, property damage,** and **cleanup costs** arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the **loading or unloading** of that vehicle by any **insured**;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

**36. Professional services** means those professional services performed by you or on your behalf including, but not limited to supervisory or inspections activities and to those professional services related to your practice as an engineer, consultant, construction manager by agency, architect or surveyor.

**37. Property damage** means:

- a. Physical injury to tangible property, including all 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 **occurrence** that caused it;
- c. For Coverage D only, **property damage** includes **cleanup costs** of third party property, not to exceed the replacement or other legal measure of damage;
- d. For Coverages D and E only, **natural resource damage**; or
- e. For Coverage E only, loss of use of tangible property that is not physically injured or destroyed but has been evacuated, withdrawn from use or rendered inaccessible because of a **pollution condition**. For Coverage E.1 and E.2 only, **property damage** includes diminution in value. Under Coverage E, **property damage** does not include **cleanup costs**.

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 or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

38. **Retroactive Date** means the date set forth in the Declarations which is the earliest date a **pollution condition** can commence for coverage under this policy. If the words Not Applicable or N/A appear in the Declarations, then a retroactive date shall not apply. If no entry appears, then the retroactive date is the policy inception date.
39. **Storage Tank Systems** means any tank(s) including any connected piping, ancillary equipment and containment system.
40. **Suit** means a civil proceeding in which damages because of **bodily injury, property damage, personal and advertising injury** or **cleanup costs** to which this insurance applies are alleged. **Suit** includes:
- An arbitration proceeding in which such damages are claimed and to which the **insured** must submit or does submit with our consent; or
  - Any other alternative dispute resolution proceeding in which such damages are claimed and to which the **insured** submits with our consent.
41. **Transportation** means the movement of **your product** or waste generated by you beyond the boundaries of an **insured location** by a **carrier**. Transportation includes the **loading** or **unloading** of **your product** or waste to or from a **carrier**.
42. **Temporary worker** means a person who is furnished to you to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.
43. **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 sump pumps, oil/water separators or storm water collection system.
44. **Volunteer worker** means a person who is not your **employee**, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
45. **Your product:**
- Means:
    - Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - You;
      - Others trading under your name; or
      - A person or organization whose business or assets you have acquired; and
    - Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - Includes:
    - Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
    - The providing of or failure to provide warnings or instructions.
  - Does not include vending machines or other property rented to or located for the use of others but not sold.
46. **Your work:**
- Means:
    - Work or operations performed by you or on your behalf; and
    - Materials, parts or equipment furnished in connection with such work or operations.
  - Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your work**, and
- (2) The providing of or failure to provide warnings or instructions.

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