



**Beazley ECLIPSE**  
**ENVIRO COVERED LOCATION INSURANCE POLICY (SITE ENVIRONMENTAL)**

**COVERED LOCATION POLLUTION LIABILITY - NEW POLLUTION CONDITIONS,  
COVERED LOCATION POLLUTION LIABILITY - EXISTING POLLUTION  
CONDITIONS, TRANSPORTATION POLLUTION LIABILITY AND NON-OWNED  
DISPOSAL SITE POLLUTION LIABILITY INSURANCE**

NOTICE: The coverage under Insuring Clause I.A.1., I.B.1., I.C. and I.D. is provided on a Claims Made and Reported Basis. Except as otherwise provided, the coverage under Insuring Clause I.A.1., I.B.1., I.C. and I.D. applies only to **Claims** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters pursuant to the terms of this Insurance Policy. The coverage under Insuring Clause I.A.2. and I.B.2. is first party coverage for **Cleanup Costs**. The Limit of Liability available to pay **Damages** and **Cleanup Costs** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

In consideration of the payment of the premium and reliance upon the statements in the **Application**, which is deemed a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and which, unless waived by the Underwriters in writing, is a condition precedent to coverage under the Policy, and subject to the Limit of Liability, Deductible, Exclusions, conditions and other terms of this Insurance, the Underwriters agree with the **Named Insured**:

**I. INSURING CLAUSE**

**A. Covered Location Pollution Liability Coverage - New Pollution Conditions**

To pay on behalf of the **Insured**:

1. **Damages and Claims Expenses**, in excess of the Deductible which the **Insured** shall become legally obligated to pay because of any **Claim** for a **Pollution Condition** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Policy Period**, within ninety (90) days following the end of the **Policy Period** or during the **Extended Reporting Period** (if applicable); and/or
2. **Cleanup Costs**, in excess of the Deductible, because of a **Pollution Condition** first discovered by the **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Policy Period** or within ninety (90) days following the end of the **Policy Period**,

provided that, such **Pollution Condition**:

- (a) first commenced after the Inception Date set forth in Item 2. of the Declarations and before the end of the **Policy Period**; and
- (b) is on, at, under or migrates from a **Covered Location**.

**B. Covered Location Pollution Liability Coverage - Existing Pollution Conditions**

To pay on behalf of the **Insured**:

1. **Damages and Claims Expenses**, in excess of the Deductible which the **Insured** shall become legally obligated to pay because of any **Claim** for a **Pollution Condition** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Policy Period**, within ninety (90) days following the end of the **Policy Period** or during the **Extended Reporting Period** (if applicable); and/or
2. **Cleanup Costs**, in excess of the Deductible, because of a **Pollution Condition** first discovered by the **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Policy Period** or within ninety (90) days following the end of the **Policy Period**,

provided that, such **Pollution Condition**:

- (a) first commenced on or after the Retroactive Date, if any, set forth in Item 6.(a) of the Declarations and before the Inception Date set forth in Item 2. of the Declarations; and
- (b) is on, at, under or migrates from a **Covered Location**.

**C. Transportation Pollution Liability Coverage**

To pay on behalf of the **Insured Damages and Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** for a **Pollution Condition** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Policy Period**, within ninety (90) days following the end of the **Policy Period** or during the **Extended Reporting Period** (if applicable), wholly occurring during and resulting solely from **Transportation**; provided that such **Pollution Condition** first commenced on or after the Retroactive Date set forth in Item 6.(b) of the Declarations and before the end of the **Policy Period**.

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

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

To pay on behalf of the **Insured Damages** and **Claims Expenses**, in excess of the Deductible, which the **Insured** shall become legally obligated to pay because of any **Claim** for a **Pollution Condition** first made against the **Insured** during the **Policy Period** and reported in writing to the Underwriters during the **Policy Period**, within ninety (90) days following the end of the **Policy Period** or during the **Extended Reporting Period** if applicable, provided that such **Pollution Condition**:

1. first commenced on or after the Inception Date set forth in Item. 2. of the Declarations and before the end of the **Policy Period**; and
2. is on, at, under or migrates from a **Non-Owned Disposal Site**.

II. **SUPPLEMENTARY PAYMENTS**

Payments made under this Clause are not subject to the Deductible and are payable by the Underwriters in addition to the Limits of Liability.

A. **Defendants Reimbursement**

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

B. **Reputation Management Reimbursement**

The Underwriters will reimburse the **Named Insured** fifty percent (50%) of the first \$100,000 in Reputational Management Expenses in the aggregate for the **Policy Period** incurred by the **Named Insured** for reputational management consulting services which are incurred in connection with a **Claim** covered under this Policy that the **Named Insured** reasonably believes will have a material adverse effect upon the **Named Insured's** reputation.

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

After the Underwriters have paid \$50,000 under this Clause II.B., the Underwriters shall not be obligated to pay any further Reputational Management Expenses.

### III. DEFINITIONS

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

- A. “**Application**” means all signed applications, including all attachments and other materials submitted therewith or incorporated therein, and any other such documents submitted in connection with the underwriting of this Policy including any endorsement or other part thereof, or any other policy issued by the Underwriters, of which this Policy is a renewal, replacement or which it succeeds in time.
- B. “**Bodily Injury**” means physical injury, sickness or disease, including death resulting therefrom, and any accompanying medical monitoring and mental anguish, emotional distress or shock sustained by any person.
- C. “**Cargo**” means an **Insured’s** waste, materials, goods or products transported by automobile, aircraft, watercraft, or other conveyance for delivery by a carrier properly licensed to transport such waste, materials, goods or products.
- D. “**Claim**” means:
1. a written demand received by any **Insured** for money or services or alleging liability or responsibility including the service of suit or institution of arbitration proceedings; or
  2. a court or government agency order or government or regulatory action filed against the **Insured**.
- E. “**Claims Expenses**” means:
1. reasonable and necessary fees charged by an attorney designated or consented to by the Underwriters, such consent not to be unreasonably withheld or delayed;
  2. all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a **Claim**, suit or proceeding arising in connection therewith, if incurred by the Underwriters, or by the **Insured** with the prior written consent of the Underwriters, such consent not to be unreasonably withheld or delayed; and
  3. premiums for appeal bonds for judgments or bonds to release property used to secure a legal obligation, if required for a **Claim** against any **Insured** for a **Pollution Condition** to which this Insurance applies, provided, however, that the Underwriters shall have no obligation to appeal or to obtain such bonds.

**Claims Expenses** do not include any goods supplied or services performed by the staff or salaried employees of the **Insured** in connection

with the investigation, adjustment, defense or appeal of any **Claim** noticed under this Insurance or in connection with the investigation or remediation of a **Pollution Condition**, without the prior written consent of the Underwriters.

- F. “**Cleanup Costs**” means reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Underwriters in the investigation, assessment, removal, disposal, abatement, containment, treatment, remediation (including the associated testing and monitoring) or neutralization of a **Pollution Condition**, provided that such costs, charges and expenses are caused by a **Pollution Condition**, to the extent required by **Environmental Laws** or required to satisfy the **Insured’s** obligations under a federal or state voluntary cleanup program.

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

1. reasonable and necessary legal costs, where such costs have been incurred by the **Insured** with the prior written consent of the Underwriters, such consent not to be unreasonably withheld or delayed; and
2. reasonable and necessary expenses required to restore, repair or replace real or personal property, to substantially the same condition it was in prior to being damaged during the course of responding to a **Pollution Condition** to which this Insurance applies. However, these costs will not exceed the actual cash value of such real or personal property immediately prior to such damage or include costs associated with improvements or betterments. Actual Cash Value shall mean the cost to replace such real or personal property, immediately prior to such damage, minus the accumulated depreciation of the real or personal property; and
3. reasonable and necessary expenses incurred to respond to an imminent and substantial endangerment to the public health or welfare or to the environment.

- G. “**Covered Location**” means any location that is owned, rented, occupied or leased by the **Named Insured**, provided that such location is specified in Item 9. of the Declarations.

- H. “**Damages**” means a monetary judgment, award or settlement of compensatory damages incurred for **Bodily Injury** or **Property Damage**, including any pre-judgment and/or post-judgment interest thereon. Solely with respect to the coverage afforded under Insuring Clauses I.A.1, I.B.1., 1.C. and 1.D. the term **Damages** shall also include **Cleanup Costs**.

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

1. criminal fines, taxes or loss of tax benefits, sanctions or criminal penalties assessed against the **Insured**;
  2. civil fines and penalties assessed against the **Insured**, punitive damages, exemplary damages or any damages which are a multiple of compensatory damages, unless insurable by the law under which this Policy is construed;
  3. liquidated damages to the extent that such damages exceed the amount for which the **Insured** would have been liable in the absence of such liquidated damages agreement;
  4. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**;
  5. matters deemed uninsurable under the law pursuant to which this Policy is construed; or
  6. goods supplied or services performed by the staff or salaried employees of the **Insured** in connection with the investigation, adjustment, defense or appeal of any **Claim** noticed under this Insurance or in connection with the investigation or remediation of a **Pollution Condition**, without the prior written consent of the Underwriters.
- I. "**Environmental Laws**" means any federal, state, provincial or local laws, including but not limited to statutes, rules, regulations, ordinances, guidance documents, and governmental, judicial or administrative orders and directives that are applicable to **Pollution Conditions** to which this Insurance applies.
- J. "**Extended Reporting Period**" means the period of time after the end of the **Policy Period** for reporting **Claims** as provided in Clause X. of this Policy.
- K. "**Insured**" shall mean:
1. the **Named Insured**;
  2. a present or former director or officer of the **Named Insured**, but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;
  3. a present or former employee or **Temporary Employee** of the **Named Insured**, but only for work done while acting within the scope of his or her employment and related to the conduct of the **Named Insured's** business;
  4. a present or former principal if the **Named Insured** is a sole proprietorship or a partner if the **Named Insured** is a partnership,

but only with respect to the performance of his or her duties as such on behalf of the **Named Insured**;

5. the estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be entitled to coverage under this Insurance.
- L. **"Microbial Matter"** means fungi, mold or mildew.
- M. **"Named Insured"** means only the person or entity specified in Item 1. of the Declarations.
- N. **"Natural Resource Damage"** means physical injury to or destruction of, as well as the assessment of such injury or destruction, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et. seq.), any state, local or provincial government, any foreign government, any Native American Tribe or if such resources are subject to a trust restriction on alienation, any member of a Native American Tribe.
- O. **"Non-Owned Disposal Site"** means any location used by the **Named Insured** for the treatment, storage or disposal of waste or materials provided that such location:
1. is not managed, operated, owned or leased by any **Insured** or an affiliate of any **Insured**; and
  2. is properly permitted and/or licensed by the applicable federal, state, local or provincial authorities to accept such waste or materials as of the date the waste or materials are treated, stored or disposed of at such location; and
  3. is within the United States, its territories or possessions, or in Canada; and
  4. is not listed on a proposed or final Federal National Priorities List and/or any state or provincial equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of the waste or material at such location; and
  5. is not owned or operated by a bankrupt or financial insolvent entity as of the date the waste or materials are treated, stored or disposed of at such location.

- P. **“Policy Period”** means the period of time between the Inception Date shown in the Declarations and the effective date of termination, expiration or cancellation of this Insurance and specifically excludes any **Extended Reporting Period** or any prior policy period or renewal period.
- Q. **“Pollution Condition”** means the actual or alleged discharge, dispersal, release, escape, migration, seepage or illicit abandonment of any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to, smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hazardous substances, waste materials, including medical infectious and pathological waste, low-level radioactive waste and material, Legionella and **Microbial Matter** into or upon land or structures thereupon, the atmosphere or any watercourse, body of water or groundwater, which results in **Bodily Injury, Property Damage** or **Cleanup Costs** to which this Insurance applies.

For the purpose of this Policy, the same, continuing or series of related or repeated **Pollution Conditions** shall be considered a single **Pollution Condition**, irrespective of the number of Claimants or **Insureds** involved in the **Claim**.

- R. **“Property Damage”** means:
1. physical injury to or destruction of any tangible property, including the loss of use thereof;
  2. loss of use of tangible property that has not been physically injured or destroyed;
  3. diminished value of property owned by third parties, but only where there is physical injury to or destruction of such tangible property; or
  4. **Natural Resource Damage**.
- S. **“Responsible Insured”** means:
1. any director, officer, principal, or partner of the **Named Insured**;
  2. any manager or supervisor of the **Named Insured** responsible for environmental health and safety affairs, control or compliance;
  3. any insurance manager or any member of the risk management or legal department of the **Named Insured**; or
  4. any manager of a **Covered Location**.
- T. **“Temporary Employee”** means a natural person furnished or leased to the **Named Insured** to meet short term or project specific workloads and



for whom the **Named Insured** has the right to direct and control the means of performance.

U. “**Transportation**” means the movement of **Cargo** to or from a **Covered Location** and includes the carrier’s loading and unloading of **Cargo** onto or from an automobile, aircraft, watercraft or other conveyance provided that the loading and unloading is performed by or on behalf the **Insured**.

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

**IV. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS (Insuring Clause I.A.1., I.B.1., I.C. and I.D.)**

A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions of this Policy, any **Claim** against the **Insured** seeking **Damages** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.

B. The Limit of Liability available to pay **Damages** and **Cleanup Costs** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages, Cleanup Costs** and **Claims Expenses** shall be applied against the Deductible.

C. The Underwriters shall have the right to make any investigation it deems necessary, including, without limitation, any investigation with respect to the **Application** and statements made in the **Application** and with respect to coverage.

D. If the **Insured** shall refuse to consent to any settlement or compromise of a **Claim** recommended by the Underwriters and acceptable to the Claimant, the Underwriters’ liability for any **Damages** and **Claims Expenses** associated with such **Claim** shall not exceed the amount for which the **Claim** could have been settled, less the remaining Deductible, plus the **Claims Expenses** incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

E. It is further provided that the Underwriters shall not be obligated to pay any **Damages, Cleanup Costs** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable Limit of Liability has been exhausted by payment of **Damages, Cleanup Costs** and/or **Claims Expenses**.

## V. TERRITORY

Subject to Clause III.O., this Policy applies to **Claims** made and **Pollution Conditions** arising anywhere in the world where permitted by applicable law.

## VI. EXCLUSIONS

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

### A. Intentional Acts

arising out of or resulting from any actual or alleged **Pollution Condition** that results from a **Responsible Insured's** intentional disregard of, or willful, deliberate, or dishonest non compliance with, any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, order or instruction by or on behalf of any governmental agency or representative.

### B. Prior Knowledge

except where specifically disclosed in the **Application** for this Policy, arising out of any **Pollution Condition** existing prior to the Inception Date of this Insurance and known by a **Responsible Insured**. Any **Pollution Condition** disclosed and not otherwise excluded under this Policy or by endorsement shall be deemed to have been first discovered as of the date the **Covered Location** was added to this Policy.

### C. Insured versus Insured

by or on behalf of any **Insured** against any other person or entity who is also an **Insured**.

### D. Assumption of Contractual Liability of Others

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

1. the **Insured** would have been liable in the absence of such contract or agreement; or
2. covered under contracts approved by the Underwriters and identified on a schedule attached by Endorsement to this Policy.

### E. Asbestos / Lead-Based Paint

arising out of or resulting from or in consequence of, or in any way involving asbestos or lead-based paint, or materials containing asbestos

or lead-based paint in whatever form or quantity; provided, that this exclusion does not apply to:

1. any **Claim** which is covered pursuant to Insuring Clause I.A. or I.B. of this Policy arising out of asbestos or lead-based paint, or materials containing asbestos or lead-based paint, in soil or in any watercourse or body of water or in groundwater; or
2. any **Claim** which is covered pursuant to Insuring Clause I.C. or I.D. of this Policy.

**F. Employers Liability and Workers Compensation**

for or arising out of or resulting from:

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

**G. Products Liability**

arising out of or resulting from the design or manufacture of any goods or products which are sold or supplied by the **Insured** or by others under license from the **Insured** but only if the **Pollution Condition** takes place away from a **Covered Location** and after physical possession of such goods or products has been relinquished to others.

**H. Communicable Diseases**

for, arising out of or resulting from any exposure to infected humans or animals, or contact with bodily fluids of infected humans or animals.

I. **Property Damage to Named Insured's Property**

for any **Property Damage** to any property owned, leased or operated by, or in the care, custody or control of the **Named Insured**, even if such **Property Damage** is incurred to avoid or mitigate **Damages** or **Cleanup Costs** which may be covered under this Policy.

J. **Natural Occurring Materials**

for, arising out of or resulting from the existence, removal, abatement or remediation of naturally occurring materials; provided that this exclusion does not apply where such substances are present at a **Covered Location** only because of human activities or processes or where such removal, abatement or remediation is required by order of a court or government agency.

K. **New Pollution Conditions at Divested Property**

for, arising out of or resulting from a **Pollution Condition** on, at, under or migrating from a **Covered Location**, where such **Pollution Condition** first commences after such **Covered Location** is sold, given away or abandoned by the **Insured** or condemned.

L. **Aircraft, Auto or Watercraft**

for, arising out of or resulting from the ownership, maintenance, use or entrustment to others of any aircraft, automobile or watercraft beyond the boundaries of a **Covered Location**. Use includes operation and loading or unloading.

This exclusion does not apply to any **Claim** which is covered pursuant to Insuring Clause I.C. of this Policy.

M. **Material Change in Use**

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

N. **Underground Storage Tank**

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

1. an **Underground Storage Tank** that is closed, abandoned in place or removed prior to the Inception Date of this Policy, in accordance with all applicable federal, state, local or provincial regulations, in effect at the time of closure, abandonment or removal;
2. an **Underground Storage Tank** that is identified as a **Covered Location** as specified in Item 9. of the Declarations;
3. an **Underground Storage Tank**, the existence of which is not known to any **Responsible Insured** as of the Inception Date of this Policy;
4. a flow-through process tank, including oil/water separators; or
5. a storage tank situated in an underground area (such as a basement, cellar, mine shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

#### VII. LIMIT OF LIABILITY

- A. The Limit of Liability stated in Item 3.(a) of the Declarations for “Each **Pollution Condition**” is the limit of the Underwriters liability for all **Damages, Cleanup Costs** and **Claims Expenses** arising out of each **Pollution Condition**.
- B. The “Aggregate for the **Policy Period**” stated in Item 3.(b) of the Declarations is the Underwriters combined total Limit of Liability for all **Damages, Cleanup Costs** and **Claims Expenses** arising out of all **Pollution Conditions** which are covered under the terms and conditions of this Policy, and neither the inclusion of more than one **Insured** under this Policy, nor the making of **Claims** by more than one person or entity shall increase the Limit of Liability.
- C. The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Underwriters for the **Policy Period**.

#### VIII. DEDUCTIBLE

- A. The “Deductible” stated in Item 4. of the Declarations applies separately to each **Pollution Condition**. The Deductible shall be satisfied by monetary payments by the **Named Insured of Damages, Cleanup Costs** and **Claims Expenses** resulting from **Claims** first made and **Pollution Conditions** first discovered during the **Policy Period** and reported to the Underwriters pursuant to the terms of this Policy. Satisfaction of the Deductible is a condition precedent to the payment by the Underwriters of any amounts hereunder, and the Underwriters shall be liable only for the amounts in excess of the Deductible subject to the Underwriters total

liability not exceeding the Limits of Liability stated in Items 3.(a) and 3.(b) of the Declarations. The **Named Insured** shall make direct payments within the Deductible to appropriate other parties designated by the Underwriters.

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

#### IX. NOTICE OF CLAIM AND POLLUTION CONDITION

- A. With respect to Insuring Clause I.A.1., I.B.1., I.C. and I.D., if any **Claim** is made against an **Insured**, the **Insured** shall forward written notice as soon as practicable to the Underwriters. Notice shall be forwarded via facsimile, email or express or certified mail to the persons identified in Item 8.(a) of the Declarations. Such notice should include a copy of every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative.
- B. With respect to Insuring Clause I.A.2. and I.B.2., the **Insured** shall forward written notice to the Underwriters as soon as practicable after a **Responsible Insured** becomes aware of any such **Pollution Condition**. Notice shall may be forwarded via facsimile, email or express or certified mail to the persons identified in Item 8.(a) of the Declarations.

Notice shall include, at minimum, information sufficient to identify the **Named Insured**, the **Covered Location** affected, the names of persons with knowledge of the **Pollution Condition**, and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollution Condition** and any resulting injuries or damages and remedial steps proposed to be undertaken by the **Insured**.

- C. A **Claim** or **Pollution Condition** shall be considered to be reported to the Underwriters when written notice is first received by the person identified in Item 8.(a) of the Declarations.

#### X. EXTENDED REPORTING PERIOD

- A. If this Policy is cancelled or non-renewed by the Underwriters or by the **Named Insured**, then the **Named Insured** shall have the right to an automatic extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the ninety (90) day period following the end of the **Policy Period**, but only with respect to a **Pollution Condition** first discovered by the **Insured** and reported in writing to the Underwriters during the **Policy Period**, which is otherwise covered by this Policy.

The above automatic extension of coverage shall not apply in the event the **Insured** has purchased other insurance to replace the insurance provided under this Policy.

- B. If this Policy is cancelled or non-renewed by the Underwriters or by the **Named Insured**, then the **Named Insured** shall have the right, upon payment of an additional premium calculated at that percentage shown in Item 7.(a) of the Declarations of the total premium for this Policy, to an extension of the coverage granted by this Policy with respect to any **Claim** first made against any **Insured** and reported in writing to the Underwriters during the period of time set forth in Item 7.(b) of the Declarations following the end of the **Policy Period**, but only with respect to any **Pollution Condition** first discovered by the **Insured** and reported in writing to the Underwriters during the **Policy Period**, which is otherwise covered by this Policy.

If the above mentioned extension of coverage is purchased, the ninety (90) day automatic extension of coverage referred to in Clause A. above, shall form part of, and not be in addition to, the above mentioned extension of coverage.

- C. As a condition precedent to the right to purchase the extension of coverage as referred to in Clause B. above, the total premium for this Policy must have been paid. The right to purchase such extension of coverage shall terminate unless written notice together with full payment of the premium for such extension of coverage is given to the Underwriters within sixty (60) days after the effective date of cancellation or non-renewal. If such notice and premium payment is not so given to the Underwriters, there shall be no right to purchase such extension of coverage.
- D. In the event of the purchase of the extension of coverage as referred to in Clause B. above the entire premium for such extension of coverage shall be deemed earned at its commencement.
- E. The Limit of Liability for the **Extended Reporting Period** shall be part of and not in addition to the Limit of Liability of the Underwriters stated in Items 3.(a) and 3.(b) of the Declarations.
- F. The offer of renewal terms, conditions or premiums different from those in effect prior to renewal shall not constitute a refusal to renew for purposes of this Clause X.

## XI. REPRESENTATIONS

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

This entire Policy shall be void if, whether before or after a **Claim** or **Pollution Condition** is first reported to the Underwriters, the **Named Insured** has willfully concealed or misrepresented any fact or circumstance material to the granting of coverage under this Policy.

## XII. OTHER INSURANCE

- A. Except as set forth in Clause C. below, this Insurance is primary, and the Underwriter's obligations are not affected unless any other insurance is also primary. In that case, the Underwriters will share with all such other insurance by the method described in Clause C. below.
- B. When this Insurance is excess, the Underwriters will pay only its share of the amount of **Damages, Cleanup Costs** or **Claims Expenses**, if any, that exceeds the total amount of such other insurance.
- C. When both this Insurance and other insurance apply to **Damages, Cleanup Costs** or **Claims Expenses**, the Underwriters shall not be liable under this Policy for a greater proportion of **Damages, Cleanup Costs** or **Claims Expenses** than the amount resulting from the following contribution methods, whichever is lesser:
  - (i) contribution by equal shares where each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the **Damages, Cleanup Costs** or **Claims Expenses** remains, whichever occurs first; or
  - (ii) contribution by limits where 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.

Where other insurance may be available for **Damages, Cleanup Costs** or **Claims Expenses** covered under this Insurance as noted above, the **Insured** shall promptly, upon request, provide the Underwriters with copies of all such policies.

## XIII. ASSIGNMENT

The interest hereunder of any **Insured** is not assignable except with the prior written consent of the Underwriters, such consent not to be unreasonably withheld or delayed. If an **Insured** shall die or be adjudged incompetent, such insurance shall cover that **Insured's** legal representative to the extent that the **Insured** would be covered by this Policy.

## XIV. CANCELLATION

This Insurance may be cancelled by the **Named Insured** by surrender of this Policy to the Underwriters or by mailing to the Underwriters written notice stating when thereafter cancellation shall be effective.



This Insurance may be cancelled by the Underwriters, by mailing the **Named Insured** at the address set forth in Item 1. of the Declarations, a notice stating when thereafter such cancellation shall be effective. The Underwriters may only cancel this Insurance for the following reasons:

- (i) material misrepresentation or fraud;
- (ii) any **Insured's** material failure to comply with the terms, conditions or contractual obligations under this Policy, including the failure to pay any premium or Deductible when due; or
- (iii) a material change in the use of, or operations at, a **Covered Location** from the use or operations identified by the **Insured** in the statements and information contained in the **Application** and other supplemental materials submitted to the Underwriters prior to the Inception Date of this **Policy Period** or prior to adding such location as a **Covered Location** as specified in Item 9. of the Declarations.

The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery of such written notice either by the **Named Insured** or by the Underwriters shall be the equivalent of mailing. Notice of pending cancellation will be provided not less than: (a) ninety (90) days prior to the effective date of cancellation for any **Insured's** failure to comply with the terms, conditions or contractual obligations under this Policy including failure to pay the Deductible when due or where there is a material change in the use of, or operations at, a **Covered Location**; (b) thirty (30) days prior to the effective date of cancellation for material misrepresentation or fraud; and (c) ten (10) days prior to the effective date of cancellation for non-payment of premium.

If the Underwriter's cancel, subject to any minimum earned premium that may apply, the return premium will be calculated on a pro rata basis. If the **Named Insured** cancels, subject to any minimum earned premium that may apply, the return premium will be calculated in accordance with the customary short rate table and procedure.

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

The **Insured** shall cooperate with the Underwriters and offer all reasonable assistance in the investigation and defense of **Claims**, including investigations regarding the **Application** for and coverage under this Policy, and the cleanup and mitigation of **Pollution Conditions**.

The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters. The Underwriters may require that the **Insured** submit to examination under oath, attend hearings, depositions and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. In the course of investigation or defense, the Underwriters may require written statements or the **Insured's** attendance at meetings with the Underwriters.

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

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense (including, but not limited to, any **Claims Expenses** or **Cleanup Costs**), enter into any settlement, stipulate to any judgment or award or dispose of any **Claim** without the written consent of the Underwriters, such consent not to be unreasonably withheld or delayed. The **Insured** agrees not to take any action which in any way increases the Underwriters exposure under the Policy.

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

#### **XVI. ACTION AGAINST THE UNDERWRITERS**

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

#### **XVII. SUBROGATION**

In the event of any payment under this Insurance, the Underwriters shall be subrogated to all the **Insureds'** rights of recovery therefore against any person or organization, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to the **Named Insured** to the extent of any payments in excess of the Limit of Liability, third to **Damages, Cleanup Costs** and **Claims Expenses** paid by the Underwriters, and fourth to the Deductible. Any additional amounts recovered shall be paid to the **Named Insured**.

#### **XIII. ENTIRE AGREEMENT**

By acceptance of this Policy, all **Insureds** agree that this Policy embodies all agreements existing between them and the Underwriters relating to this Insurance. Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Underwriters from asserting any right under the terms of this Policy; nor

shall the terms of this Policy be waived or changed, except by written endorsement issued to form a part of this Policy, signed by the Underwriters.

**XIX. VALUATION AND CURRENCY**

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

**XX. BANKRUPTCY**

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

**XXI. AUTHORIZATION**

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

**XXII. RIGHT OF ACCESS AND INSPECTION**

The **Named Insured** agrees to provide the Underwriters with access to any information developed or discovered by an **Insured** concerning a **Claim** or **Pollution Condition** covered under this Policy, whether or not deemed by an **Insured** to be relevant and to provide the Underwriters with access to interview any **Insured** and review any documents of an **Insured**. Further, to the extent that an **Insured** has such rights, any of the Underwriter's representatives shall have the right and opportunity but not the obligation to inspect at any reasonable time, during the **Policy Period** or thereafter, a **Covered Location** associated with a **Claim** or **Pollution Condition** reported to the Underwriters. Neither the Underwriters nor its representatives shall assume any responsibility or duty to the **Insured** or to any other person or entity, by reason of such right of inspection. Neither the Underwriter's right to make inspections, sample and monitor, nor the actual undertaking thereof nor any report thereon shall constitute an undertaking on behalf of the **Insured** or others, to determine or warrant that the property or operations are safe, healthful or conform to acceptable engineering practices or are in compliance with any law, rule or regulation. The **Named Insured** agrees to provide appropriate personnel to assist the Underwriters representatives during any inspection.

### **XXIII. HEADINGS**

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

### **XXIV. SERVICE OF SUIT**

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

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

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

### **XXV. CHOICE OF LAW**

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