

UNDERWRITERS AT LLOYD'S OF LONDON

ELDERCARE POLLUTION LEGAL LIABILITY POLICY

NOTICE: This Coverage is Provided on a Claims Made and Reported Basis. Except to such extent as may otherwise be provided herein, the coverage afforded under this Insurance Policy is limited to liability for only those covered **Claims** that are first made against the **Insured**, or **Environmental Damage** or **Business Interruption Loss** sustained, and reported to the Underwriters while the Insurance is in force that arise from **Pollution Incidents** or **Waste Disposal Activities** occurring on or after the applicable Retroactive Date and before the end of the **Policy Period**. The Limit of Liability available to pay **Damages, Clean-Up Costs and Business Interruption Loss** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. The deductible applies to **Damages, Claims Expenses, Clean-Up Costs, or Business Interruption Loss** resulting from each and every **Claim** or **Pollution Incident**. Please review the coverage afforded under this Insurance Policy carefully and discuss the coverage hereunder with your insurance agent or broker.

The Underwriters agree with the **Named Insured**, set forth at Item I. of the Declarations made a part hereof, in consideration of the payment of the premium and reliance upon the statements in the application which is made a part of this Insurance Policy (hereinafter referred to as the "Policy" or "Insurance") and subject to the Limit of Liability, exclusions, conditions and other terms of this Insurance:

I. INSURING AGREEMENTS

COVERAGE A.: REIMBURSEMENT OF MANDATED ON-SITE CLEAN-UP COSTS

To pay on behalf of the **Insured Clean-Up Costs** resulting from **Environmental Damages** to the **Insured's Property** only if such **Environmental Damages** are discovered and reported by the **Insured** to Underwriters during the **Policy Period**, provided:

1. The amount the Underwriters will pay for such **Clean-Up Costs** is limited as described in Section VI. – Limits of Insurance;
2. The **Environmental Damage** is caused by a **Pollution Incident** that commences on or after the Retroactive Date shown in Item 6. on or under the **Insured's Property** in the coverage territory; and
3. where required, such **Environmental Damages** have been reported to the appropriate governmental agency in compliance with **Environmental Laws**.

Discovery of **Environmental Damages** will be deemed to occur when an **Insured** first becomes aware of such damage.

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COVERAGE B.: LEGAL LIABILITY FOR POLLUTANTS AND POLLUTION INCIDENTS

To pay on behalf of the **Insured**, **Damages** and **Claims Expenses** that the **Insured** is legally obligated to pay as a result of **Claims** for **Bodily Injury**, **Property Damage** or **Clean-Up Costs** resulting from **Pollutants** or **Pollution Incidents** that commence on or after the **Retroactive Date** shown in Item 6. of the Declarations, provided such **Claims** are first made against the **Insured** and reported to the Underwriters, in writing, during the **Policy Period**, or during the **Extended Reporting Period** if applicable.

COVERAGE C.: BUSINESS INTERRUPTION LOSS

To pay on behalf of the **Insured Business Interruption Loss**, in excess of the applicable Deductible, incurred by the Insured Organization during the **Period of Restoration** or the **Extended Interruption Period** (if applicable) as a result of **Environmental Damage** on or under the **Insured's Property** caused by a **Pollution Incident** which must take place on or after the **Retroactive Date** and before the end of the **Policy Period** and such **Environmental Damage** directly causes **Business Interruption Loss** provided the interruption is reported to the Underwriters during the **Policy Period**.

II. DEFENSE, SETTLEMENT, AND INVESTIGATION OF CLAIMS

- A. The Underwriters shall have the right and duty to defend, subject to the Limit of Liability, exclusions and other terms and conditions in this Policy, any **Claim** against the **Insured** seeking **Damages** under Coverage B: Legal Liability for **Pollutants** or **Pollution Incidents** which are payable under the terms of this Policy, even if any of the allegations of the **Claim** are groundless, false or fraudulent.
- B. It is agreed that Underwriters' right and duty to defend shall be limited to payment of **Claims Expenses**. The Limit of Liability available to pay **Damages** shall be reduced and may be completely exhausted by payment of **Claims Expenses**. **Damages** and **Claims Expenses** shall be applied against the deductible.
- C. The Underwriters shall have the right to make any investigation they deem necessary, including, without limitation, any investigation with respect to the application and statements made in the application and with respect to coverage.
- D. If the **Insured** shall refuse to consent to any settlement or compromise recommended by the Underwriters and acceptable to the claimant and elects to contest the **Claim**, Underwriters' liability for any **Damages** and **Claims Expenses** shall not exceed the amount for which the **Claim** could have been settled, less the remaining deductible, plus the **Claims**

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Expenses incurred up to the time of such refusal, or the applicable Limit of Liability, whichever is less, and the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

- E. It is further provided that the Underwriters shall not be obligated to pay any **Damages** or **Claims Expenses**, or to undertake or continue defense of any suit or proceeding after the applicable limit of the Underwriters' liability has been exhausted by payment of **Damages** or **Claims Expenses** or after deposit of the applicable Limit of Liability in a court of competent jurisdiction, and that upon such payment, the Underwriters shall have the right to withdraw from the further defense thereof by tendering control of said defense to the **Insured**.

III. EXCLUSIONS

The coverage under this Insurance does not apply to **Damages** or **Claims Expenses** incurred with respect to any **Claim**:

- A. for or arising out of any liability or obligation of the **Insured** under any contract or agreement, either oral or written, except and only to the extent the **Insured** would have been liable in the absence of such contract or agreement or the contract or agreement is an **Insured Contract**;
- B. for or arising out of any **Waste Disposal Activities** which took place prior to the **Waste Disposal Retroactive Date** stated in Item 7. of the Declarations;
- C. for or arising out of any **Pollution Incidents** based upon or attributable to any **Insured's** intentional, willful or deliberate noncompliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body;
- D. for or arising out of any costs, charges or expenses incurred by the **Insured** for goods supplied or services performed by the staff or salaried employees of the **Insured**, or its parent, subsidiary or affiliate, except if in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollutants** or **Pollution Incidents**, or unless such costs, charges or expenses are incurred with the prior written approval of the Underwriters in their sole discretion.
- E. by or on behalf of one or more **Insureds** under this Insurance against any other **Insured** or **Insureds** under this Policy;
- F. either in whole or in part, directly or indirectly, arising out of or resulting from or in consequence of, or in any way involving asbestos, or any

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materials containing asbestos in whatever form or quantity; provided, that this exclusion does not apply to any **Claim** for **Bodily Injury, Property Damage** or **Clean-Up Costs** for the remediation of soil and groundwater.

- G. arising from lead-based paint installed or applied in, on or to any building or other structure;
- H. 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 employment by the **Named Insured** or its parent, subsidiary or affiliate; or
 - 2. the **Named Insured's** employment obligations, employer-employee relations, acts, omissions, misconduct with respect to employees, decisions, practices or policies as an employer.

This exclusion applies whether the **Insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay third parties who must pay damages because of the **Bodily Injury**.

- I. arising out of or resulting from any **Pollution Incident** or **Environmental Damage** existing or occurring prior to the **Inception Date** of this Policy:
 - 1. if any **Insured** on or before the inception date knew or could have reasonably foreseen that such **Pollution Incident** or **Environmental Damage** might be expected to be the basis of a **Claim** or result in any **Clean-Up Costs** or **Business Interruption Loss**; or
 - 2. in respect of which any **Insured** has given notice of a circumstance which might lead to a **Claim** to the insurer of any other policy in force prior to the **Inception Date** of this Policy;
- J. arising out of or resulting from any **Pollutants** or **Pollution Incidents** resulting from an **Underground Storage Tank** whose existence is known by any **Insured** as of the **Inception Date** and which is located on the **Insured Property**; unless such **Underground Storage Tank** is scheduled on the Policy by endorsement.
- K. arising out of or resulting from any **Pollutants** or **Pollution Incidents** at any property the **Insured** first acquires, leases, rents or occupies after the **Inception Date**; unless coverage for such property is specifically endorsed to this Policy.
- L. arising out of or resulting from any **Pollutants** or **Pollution Incidents** at any property owned, leased, rented or occupied by the **Insured**, which the **Insured** sold, leased, gave away, abandoned or relinquished operational

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control of prior to the **Inception Date**.

- M. for or arising out of any **Property Damage**:
1. to the **Insured's Products** resulting from such goods or products or any portion thereof; or
 2. to work performed by, or on behalf of the **Insured** resulting from the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.
- N. arising out of nursing home professional liability or related healthcare professional liability services performed or rendered by the **Named Insured**.
- O. arising out of or resulting from the **Insured's Products** which are sold or supplied by the **Insured**, or after possession of such **Insured's Products** have been relinquished to others by the **Insured** or others trading under its name, or by others under license from the **Insured**.
- P. arising out of or resulting from the insolvency or bankruptcy of any **Insured** or of any other entity including but not limited to the failure, inability, or unwillingness to pay Claims, losses, or benefits due to the insolvency, liquidation or bankruptcy of any such individual or entity;
- Q. made by any business enterprise in which any **Insured** has greater than a 15% ownership interest, or arising out of or resulting from any **Insured's** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the Insured Organization;
- R. for or arising out of or resulting from actual or alleged discrimination of any kind including but not limited to age, color, race, sex, creed, national origin, marital status, sexual preference, disability or pregnancy;
- S. for or arising out of any breach of warranty, guarantee, or service level agreement, or for or arising out of any delay of delivery, failure to deliver, or non-acceptance of products or services;
- T. arising out of 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;
- U. directly or indirectly caused by, resulting from or in connection with:
1. any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

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- a. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
 - b. any act of terrorism.
2. any action taken in controlling, preventing, suppressing or in any way relating to a. or b. above.

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

If the Underwriters allege that by reason of this exclusion, any **Damages, Claims Expenses, Clean-Up Costs** or **Business Interruption Loss** are not covered by this Insurance, the burden of proving the contrary shall be upon the **Insured**.

In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- W. directly or indirectly arising out of or resulting from the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that actually or allegedly affects the health, safety or condition of any person or the environment, or that affects the value, marketability, condition or use of any property. This exclusion shall not apply however to the existence, emission or discharge of any electromagnetic field, electromagnetic radiation or electromagnetism that is used in or results from the treatment of any resident of the **Insured**;

If a **Retroactive Date** or **Waste Removal Retroactive Date** is applicable to this coverage, it will appear at Item 6. or 7. of the Declarations and the following exclusion shall apply:

- X. or circumstance that might lead to a **Claim** or incurring any **Clean-Up Costs** or **Business Interruption Loss** arising out of any **Pollutants, Environmental Damage** or **Pollution Incident** which took place, or is alleged to have taken place, prior to the **Retroactive Date** or **Waste Removal Retroactive Date** as set forth in Item 6. or 7. of the Declarations.

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- Y. for or arising out of the actual, alleged or suspected presence or ingestion of, or exposure to, **microbial matter** in or on any food or other edible good or product intended for human or animal consumption; or
- Z. solely with respect to Insuring Agreement B, for or arising out of the actual, alleged or suspected presence of, exposure to or contact with any diseased humans or animals, humans or animals infected with any **microbial matter** or other pathogen regardless whether such person or animal exhibits any symptoms of disease, or any such person's or animal's bodily fluids or organic materials.

IV. NOTICE OF CLAIM, OR CIRCUMSTANCE THAT MIGHT LEAD TO A CLAIM

- A. The **Insured** shall give written notice of **Pollutants** or **Pollution Incidents** to Underwriters as soon as possible. Notice shall include at a minimum, information sufficient to identify the **Named Insured**, the **Insured Property**, the names of persons with knowledge of the **Pollutants** or **Pollution Incidents**, and all known and reasonably obtainable information regarding the time, place, cause, nature of and other circumstances of the **Pollutants** or **Pollution Incidents**.
- B. With respect to Coverage B, if any **Claim** is made against the **Insured**, the **Insured** shall immediately forward to Underwriters through persons named in Item 8. of the Declarations written notice of such **Claim** in the form of a telecopy, or express or certified mail together with every demand, notice, summons or other process received by the **Insured** or the **Insured's** representative, but in no event later than thirty (30) days after the expiration of the **Policy Period** or the last day of the **Extended Reporting Period**, if applicable.
- C. With respect to Coverage C, the **Insured** shall forward immediately to the Underwriter through persons named in Item 8. of the Declarations, written notice of the interruption to which this Policy applies in the form of a telecopy or express mail. Such notice must be provided during the **Policy Period**, or no later than 10 days after the end of the **Policy Period** for interruptions occurring within 10 days of the end of the **Policy Period**; provided, all covered **Business Interruption Loss** must be reported to the (in accordance with sub-paragraph V. Conditions C.1, Proof of Loss) no later than six months after the end of the **Policy Period**.
- D. If during the **Policy Period** the **Insured** first becomes aware of any **Pollutants** or **Pollution Incident** that could reasonably be the basis for a **Claim** it must give written notice to Underwriters through persons named in Item 8. of the Declarations as soon as practicable during the **Policy Period** of:

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1. the specific details of the **Pollutants** or **Pollution Incident** that could reasonably be the basis for a **Claim**, including but not limited to the following information:
 - a. the cause of the **Pollutants** or **Pollution Incidents**;
 - b. the **Insured Property** or other location where the **Pollutants** or **Pollution Incidents** took place;
 - c. the **Bodily Injury, Property Damage** or **Clean-Up Costs** which has resulted or may result from such **Pollutants** or **Pollution Incidents**;
 - d. the **Insured(s)** which may be subject to the **Claim** and any potential claimant(s);
 - e. all engineering information available on the **Pollutants** or **Pollution Incidents** and any other information that the Underwriters deems reasonably necessary; and
 - f. the facts by which the **Insured** first became aware of the **Pollutants** or **Pollution Incident**.

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

- E. A **Claim** shall be considered to be reported to the Underwriters when notice is first given to Underwriters through persons named in Item 8. of the Declarations of the **Claim** or of **Pollutants** or a **Pollution Incident**, which could reasonably be expected to give rise to a **Claim** if provided in compliance with Section B above.
- F. In the event of non-renewal of this Insurance by the Underwriters, the **Insured** shall have thirty (30) days from the expiration date of the **Policy Period** to notify Underwriters of **Claims** made against the **Insured** during the **Policy Period** which arise out of **Pollutants** or **Pollution Incidents** occurring prior to the termination date of the **Policy Period** and otherwise covered by this Policy.
- G. If any **Insured** shall make any **Claim** under this Policy knowing such **Claim** to be false or fraudulent, as regards amount or otherwise, this Policy shall become null and void and all coverage hereunder shall be forfeited.

V. RIGHTS OF THE UNDERWRITERS AND DUTIES OF THE INSURED IN THE

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EVENT OF POLLUTANTS OR POLLUTION INCIDENTS

A. The Underwriters's Rights

The Underwriters shall have the right but not the duty to clean up or mitigate **Pollutants** or **Pollution Incidents** upon receiving notice as provided in Section IV. of this Policy. Any sums expended in taking such action by the Underwriters will be deemed incurred or expended by the **Insured** and shall be applied against the limits of coverage and deductible under this Policy.

B. Duties of the **Insured**

The **Named Insured** shall have the duty to clean up **Pollutants** or **Pollution Incidents** to the extent required by **Environmental Laws**, by retaining competent professional(s) or contractor(s) mutually acceptable to the Underwriters and the **Named Insured**. The Underwriters shall have the right but not the duty to review and approve all aspects of any such clean-up. The **Named Insured** shall notify the Underwriters of actions and measures taken pursuant to this paragraph.

VI. LIMIT OF LIABILITY

- A. The "Annual Aggregate" stated in Item 3. of the Declarations is Underwriters' combined total Limit of Liability for all **Damages, Claims Expenses, Clean-Up Costs, Bodily Injury, Property Damage** and **Business Interruption Loss** arising out of all **Claims, Pollution Incidents, or Environmental Damage** 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.
- B. The Limit of Liability stated in Item 3. of the Declarations for "Each **Incident**" is the limit of Underwriters' Liability for all **Damages, Claims Expenses, Clean-Up Costs, Bodily Injury, Property Damage** and **Business Interruption Loss** arising out of each **Claim, Pollution Incident or Business Interruption Loss**.
- 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**.
- D. If the **Insured** first discovers **Pollutants** or **Pollution Incidents** during the **Policy Period** and reports them to the Underwriters in accordance with Section IV., all continuous or related **Pollutants** or **Pollution Incidents** reported to the Underwriters under a subsequent Pollution Legal Liability Policy issued by the Underwriters or its affiliate providing substantially the same coverage as this Policy shall be deemed to have been first discovered and reported during the **Policy Period**.

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If a **Claim** for **Bodily Injury, Property Damage, or Clean-Up Costs** is first made against the **Insured** and reported to the Underwriters during the **Policy Period**, all **Claims** for **Bodily Injury, Property Damage or Clean-Up Costs**, arising from the same, continuous or related **Pollutants** or **Pollution Incidents** that are first made against the **Insured** and reported under a subsequent Pollution Legal Liability Policy issued by the Underwriters or its affiliate providing substantially the same coverage as this Policy, shall be deemed to have been first made and reported during the **Policy Period**. Coverage under this Policy for such **Claims** shall not apply, however, unless at the time such **Claims** are first made and reported, the **Insured** has maintained with the Underwriters or its affiliate Pollution Legal Liability coverage substantially the same as this coverage on a continuous, uninterrupted basis since the first such **Claim** was made against the **Insured** and reported to the Underwriters.

VII. DEDUCTIBLE

The "Each **Incident** deductible" stated in Item 4. of the Declarations applies separately to each and every **Claim, Pollution Incident, and/or Business Interruption Loss**. The deductible shall be satisfied by payments by the **Named Insured** of **Damages, Claims Expenses, Clean-Up Costs or Business Interruption Loss** resulting from **Claims or Pollution Incidents** to which this Policy applies and reported in conformance with Section IV. above or during the **Extended Reporting Period**, if applicable, as 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 such deductible subject to Underwriters' total liability not exceeding the limits stated in Item 3. of the Declarations. The **Named Insured** shall make direct payments within the deductible to appropriate other parties designated by the Underwriters.

VIII. PROOF AND APPRAISAL OF LOSS

- A. Proof of Damages. With respect to Coverage C, before coverage will apply, the **Named Insured** must:
1. prepare and submit to the persons named in Item 8. of the Declarations a written and detailed proof of loss sworn by an officer of the **Named Insured** within ninety (90) days after the **Named Insured** sustains a **Business Interruption Loss**, but in no event later than 6 months following the end of the Policy Period (unless such period has been extended by the Underwriter's written consent). Such proof of loss shall include a narrative with full particulars of such **Business Interruption Loss**, including, the time, place and cause of the **Business Interruption Loss**, a detailed calculation of any **Business Interruption Loss**, the **Named Insured's** interest and the interest of all others in the **Insured Property**, the sound value thereof and the amount of

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Business Interruption Loss or damage thereto and all other insurance thereon; and

2. upon the Underwriter's request, submit to an examination under oath and provide copies of the underlying documents, data and materials that reasonably relate to or are part of the basis of the claim for such **Business Interruption Loss**.

The costs and expenses of preparing and submitting a proof of loss, and establishing or proving **Business Interruption Loss** or any other **Damages** under this Policy shall be the **Insured's** obligation, and are not covered under this Policy.

- B. Appraisal of **Business Interruption Loss**. If the **Named Insured** and the Underwriter do not agree on the amount of a **Business Interruption Loss**, each party shall select and pay an appraiser or other qualified expert (the "Appraiser") to state the amount of **Business Interruption Loss** or reasonable expenses, and the Appraisers shall choose an umpire. If the Appraisers cannot agree on an umpire, the **Named Insured** or the Underwriter may request a judge of a court having jurisdiction to make the selection. Each Appraiser shall submit the amount of **Business Interruption Loss** or reasonable expenses to the umpire, and agreement by the umpire and at least one of the Appraisers as to the amount of **Business Interruption Loss** shall be binding on all **Insureds** and Underwriter. The **Named Insured** and Underwriter will equally share the costs of the umpire and any other costs other than the cost of the Appraisers. This provision shall govern only the appraisal of the amount of **Business Interruption Loss**, and shall not control the determination of whether such **Business Interruption Loss** is otherwise covered by the Policy. The Underwriter will still retain and does not waive its right to deny coverage or enforce any obligation under this Policy.

IX. INNOCENT INSURED

A. Whenever coverage under this Insurance would be excluded, suspended or lost:

2. because of Exclusion III.C. with respect to which any other **Insured** did not personally participate or personally acquiesce or remain passive after having personal knowledge thereof; or
3. because of non-compliance of Section IV. relating to the giving of notice of **Claim** to the Underwriters with respect to which any other **Insured** shall be in default solely because of the failure to give such notice or concealment of such failure by one or more **Insureds** responsible for the loss or damage otherwise insured hereunder;

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then Underwriters agree that such insurance as would otherwise be afforded under this Policy shall cover and be paid with respect to those **Insureds** who did not personally commit or personally participate in committing or personally acquiesce in or remain passive after having personal knowledge of:

1. the non-compliance described in Exclusion III.C.; or
2. such failure to give notice, provided that the **Insured** entitled to the benefit of this provision under Section IV shall comply with such condition promptly after obtaining knowledge of the failure of any other **Insured** to comply therewith, and that the reporting of any such **Claim** must be made during the **Policy Period** or the **Extended Reporting Period**, if applicable.

This provision is inapplicable to any **Claim** or circumstance that could reasonably be the basis of a **Claim** against the **Insured Organization** arising from **Pollutants, Pollution Incidents, or Environmental Damage** known to any present or former principal, partner, director or officer of the **Insured Organization**.

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

X. ASSIGNMENT

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

XI. SUBROGATION

In the event of any payment under this Policy, 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 including without limitation, assignment of the **Insured's** rights against any person or organization who caused **Pollutants** or **Pollution Incidents** on account of which the Underwriters made any payment under this Policy. The **Insured** shall do nothing to prejudice such rights. Any recoveries shall be applied first to subrogation expenses, second to **Damages, Claims Expenses, Clean-Up Costs** and **Business Interruption Loss** paid by Underwriters, and third to the deductible. Any additional amounts recovered shall be paid to the **Named Insured**.

XII. ASSISTANCE AND COOPERATION OF THE INSURED

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The **Insured** shall cooperate with the Underwriters in all investigations, including investigations regarding the application for and coverage under this Policy. The **Insured** shall execute or cause to be executed all papers and render all assistance as is requested by the Underwriters.

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** with respect to the insurance afforded under this Policy; and the **Insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

The **Insured** shall not admit liability, make any payment, assume any obligations, incur any expense, enter into any settlement, stipulate to any judgement or award or dispose of any **Claim** without the consent of Underwriters, unless in response to an emergency or pursuant to **Environmental Laws** that require immediate remediation of **Pollutants** or **Pollution Incidents**, without the Underwriter's consent which shall not be unreasonably withheld, except at the **Insured's** own cost.

Expenses incurred by the **Insured** in assisting and cooperating with Underwriters, as described above, do not constitute **Claims Expenses** under the Policy.

XIII. CANCELLATION

- A. This Policy of Insurance may be cancelled by the **Named Insured** by surrender thereof to Underwriters or by mailing to Underwriters through the entity named in Item 8. of the Declarations written notice stating when thereafter the cancellation shall be effective. The Underwriters may cancel this Policy by mailing to the **Named Insured** at the address shown in the Declarations written notice stating when not less than 60 days thereafter such cancellation shall be effective. However, if the Underwriters cancel this Policy because the **Insured** has failed to pay a premium when due, this Policy may be cancelled by the Underwriters by mailing a written notice of cancellation to the **Named Insured** at the address shown in the Declarations stating when not less than 10 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of surrender or the effective date and hour of cancellation stated in the notice shall become the end of the **Policy Period**. Delivery (where permitted by law) of such written notice either by the **Named Insured** or by the Underwriters shall be equivalent to mailing.
- B. If the **Named Insured** cancels this Policy, the earned premium shall be computed in accordance with the attached short rate table and procedure.

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- C. If the Underwriters cancel this Policy prior to any **Claim, Pollution Incident** or **Business Interruption Loss** being reported under this Policy, earned premium shall be computed pro rata.
- D. The premium shall be deemed fully earned if any **Claim, Pollution Incident** or **Business Interruption Loss** under this Policy is reported to Underwriters on or before the date of cancellation.
- E. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

XIV. OTHER INSURANCE

This Insurance shall apply in excess of any other valid and collectible insurance available to any **Insured**, including any self insured retention or deductible portion thereof unless such other insurance is written only as specific excess insurance over the Limit of Liability of this Policy.

XV. RIGHT OF ACCESS AND INSPECTION

- A. The Underwriters' authorized representatives have the right and opportunity but not the duty to interview persons employed by the **Insured** and to inspect at any reasonable time, during the **Policy Period** or thereafter, the **Insured Property**. Neither the Underwriters nor its representatives shall assume any responsibility or duty to the **Insured** or to any other party, person or entity, by reason of such right or inspection.
- B. Any inspections, samples and monitoring, or any report the Underwriters may make relate only to insurability and the premium to be charged. The Underwriters do not make safety inspections and they do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. The Underwriters do not warrant that conditions:
 - 1. are safe or healthful; or
 - 2. conform to acceptable engineering practices or are in compliance with any laws, regulations, codes or standards.
- C. The **Named Insured** agrees to provide appropriate personnel to assist the Underwriters' representatives during any inspection.

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XVI. ACCESS TO INFORMATION

The **Named Insured** agrees to provide the Underwriters with access to any information developed or discovered by the **Insured** concerning **Damages, Claims Expenses, Clean-Up Costs** or **Business Interruption Loss** covered under this Policy, whether or not deemed by the **Insured** to be relevant to such **Damages, Claims Expenses, Clean-Up Costs** or **Business Interruption Loss** and to provide the Underwriters access to interview any **Insured** and review any documents of the **Insured**.

XVII. WARRANTY BY THE INSURED

By acceptance of this Policy, all **Insureds** agree that the statements contained in the application, any application for Insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are their agreements and representations, that they shall be deemed material to the risk assumed by Underwriters, and that this Policy is issued in reliance upon the truth thereof.

The misrepresentation or non-disclosure of any matter by the **Insured** or its agent in the application, any application for Insurance of which this Policy is a renewal, or any supplemental materials submitted therewith, including but not limited to the description of any **Insured Property** or the interest of the **Insured** therein, will render the Policy null and void and relieve the Underwriters from all liability under the Policy whether before or after **Clean-Up Costs** are incurred, **Business Interruption Loss** is sustained, or a **Claim** is first made.

The application and any application for Insurance of which this Policy is a renewal, and any supplemental materials submitted therewith are deemed incorporated into and made a part of this Policy.

XVIII. ACTION AGAINST UNDERWRITERS

No action shall lie against the Underwriters or their representatives unless, as a condition precedent thereto: (1) there shall have been full compliance with all terms of this Policy; and (2) until the amount of the **Insured's** obligation to pay shall have been finally determined either by judgment or award against the **Insured** after actual trial or arbitration or by written agreement of the **Insured**, the Claimant and the Underwriters.

Any person or organization or the legal representative thereof who has secured such judgment, award or written agreement shall thereafter be entitled to make a claim under this Policy to the extent of the insurance afforded by this Policy. No person or organization shall have any right under this Policy to join the Underwriters as a party to an action or other proceeding against the **Insured** to determine the **Insured's** liability, nor shall the Underwriters be impleaded by the **Insured** or his legal representative.

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Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate shall not relieve the Underwriters of its obligations hereunder.

XIX. ARBITRATION

- A. All disputes which may arise between one or more **Insureds** (including persons claiming benefits under this Policy regardless of whether the Underwriters agree they are **Insureds**) and the Underwriters (including their directors, officers, employees or agents) out of or in relation to this Policy (including disputes as to its validity, construction or enforceability), or for its breach, shall be finally settled by arbitration held according to the Commercial Arbitration Rules of the American Arbitration Association, by which the **Insureds** and the Underwriters agree to be bound. In addition to the rules governing such arbitration, the parties shall have at their disposal the broadest pre-trial discovery rights as are then available under the laws and judicial rules of the jurisdiction in which the arbitration is to be held, provided that any dispute between the parties relating to discovery shall be submitted to the arbitration panel for resolution. Disputes regarding interim or ancillary relief pending a final decision of the arbitration panel in a matter hereunder shall also be submitted to the arbitration panel for resolution.
- B. An **Insured** shall not be required to contest any Claim by judicial proceedings in the event such Claim can by agreement with the claimant be contested by arbitration in accordance with the rules then obtaining of the American Arbitration Association, the International Chamber of Commerce, or such other commercial arbitration rules as may be reasonably acceptable to the Underwriters.
- C. Any party demanding arbitration pursuant to Paragraph A above shall provide written notice to the other party setting forth its request to arbitrate and a brief statement regarding the issue to be arbitrated. The person or entity named in Item 8. of the Declarations is authorized and directed to accept the notice of arbitration on behalf of the Underwriter. The **Named Insured** is authorized and directed to accept the notice of arbitration on behalf of any **Insured**.
- D. Unless the parties consent in writing to a lesser number, the arbitration panel shall consist of three (3) practicing attorneys, one (1) to be appointed by the **Insureds**, one (1) to be appointed by the Underwriters, and the third by the two (2) arbitrators so appointed.
- E. The **Insured** and the Underwriter shall each bear 50% of the expense of the arbitration. Any arbitration proceedings shall take place at a location mutually agreed upon by the **Insured** and the Underwriter, but notwithstanding the location of the arbitration, in interpreting and construing this Policy, the arbitrators shall apply the law of the state in which the **Named Insured** has its principal place of business or is

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incorporated notwithstanding any conflicts-of-law rules; provided, however, that the arbitrators shall apply the terms and conditions of the Policy in an even-handing fashion as between the parties.

- F. For purposes of implementing this Clause, including entering judgment upon any award by the arbitration panel and enforcing any decision of the arbitration panel in respect of disputes over discovery or the availability of ancillary relief, the Underwriters and each of the **Insureds** hereby submit themselves to any competent jurisdiction in the United States.

XX. SERVICE OF SUIT CLAUSE (U.S.A.)

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due under this Insurance, after arbitration as set forth in this Policy, the 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 the Underwriters' representative, designated in Item 10. 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 10. 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 therefor, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his 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 10. of the Declarations, as the person to whom the said officer is authorized to mail such process or a true copy thereof.

XXI. SEPARATION OF INSUREDS

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It is hereby agreed that except with respect to the Limit of Liability, Section II. F. (**Insured** vs. **Insured** exclusion), and any rights and duties specifically assigned to the first **Named Insured**, this insurance applies: (1) As if each **Named Insured** were the only **Named Insured**; and (2) Separately to each **Named Insured** against whom a **Claim** is made. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one **Named Insured** shall not prejudice the interest of coverage for another **Named Insured** under this Policy. Provided, however, that this Condition shall not apply to any **Named Insured** who is a parent, subsidiary or affiliate of the first **Named Insured**.

XXII. POLICY TERRITORY

This Policy only applies to **Claims, Clean-Up Costs, or Business Interruption Loss** arising from **Pollutants or Pollution Incidents** in the United States, its territories and possessions, and only if such **Claims** are made or brought, or **Clean-Up Costs or Business Interruption Loss** are incurred or sustained in the United States, its territories and possessions, during the **Policy Period** or **Extended Reporting Period** purchased in accordance with Section XXX.

XXIII. THE INSURED AND THE INSURED ORGANIZATION

As used throughout this Policy, whether expressed in singular or plural, "**Insured**" shall mean:

- A. The Insured Organization and any **Subsidiaries** of the Insured Organization (together the "**Named Insured**");
- B. A director, officer or employee, including a temporary or leased employee, of the **Named Insured**, but only while acting in that capacity solely on behalf of the **Named Insured**;
- C. A manager or supervisor of the **Named Insured** responsible for environmental affairs, control or compliance, or any manager of an **Insured Property** but only while acting in that capacity solely on behalf of the **Named Insured**;
- D. A principal if the **Named Insured** is a sole proprietorship, or a partner if the **Named Insured** is a partnership, but only while acting in that capacity solely on behalf of the **Named Insured**;
- E. Any person who previously qualified as an **Insured** under B or C above prior to the termination of the required relationship with the **Named Insured**, but only while acting in that capacity solely on behalf of the **Named Insured**; and

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- F. The estate, heirs, executors, administrators, assigns and legal representatives of any **Insured** in the event of such **Insured's** death, incapacity, insolvency or bankruptcy, but only to the extent that such **Insured** would otherwise be provided coverage under this Insurance.

XXIV. ENTIRE AGREEMENT

By acceptance of the Policy, all **Insureds** agree that this Policy embodies all agreements between them and the Underwriters relating to this Policy. 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 stop 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 endorsement issued to form a part of this Policy, signed by Underwriters.

XXV. MERGERS AND ACQUISITIONS

- A. During the **Policy Period**, if the **Named Insured** or any **Subsidiary**:
4. purchases assets or acquires liabilities from another entity in an amount greater than ten percent (10%) of the **Named Insured's** assets as listed in its most recent financial statement; or
 5. acquires another entity whose annual revenues are more than ten percent (10%) of the **Named Insured's** total annual revenues as set forth in the most recent application for insurance;

then no **Insured** shall have coverage under this Policy for any **Claim**, **Clean-Up Costs** or **Business Interruption Loss** that arises out of any **Pollutants** or **Pollution Incident**, whether occurring either before or after such merger, purchase or acquisition:

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1. at the premises of the acquired entity;
2. by the acquired entity or any person employed by the acquired entity;
6. involving or relating to the assets or liabilities of the acquired entity;
or
7. involving or relating to the purchased assets or liabilities,

unless the **Named Insured** gives the Underwriters written notice prior to the purchase or acquisition, obtains the written consent of Underwriters to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by Underwriters.

- B. If during the **Policy Period** the **Named Insured** consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless Underwriters have issued an endorsement extending coverage under this Policy, and the **Named Insured** has agreed to any additional premium and terms of coverage required by Underwriters.
- C. All notices and premiums payments made under this section shall be directed to Underwriters through the entity named in Item 8. of the Declarations.

XXVI. SINGULAR FORM OF A WORD

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

XXVII. TITLES OF PARAGRAPHS

The titles of paragraphs sections, provisions or endorsements of or to this Policy are intended solely for convenience and reference, and are not deemed in any way to limit or expand the provisions to which they relate and are not part of the Policy.

XXVIII. NAMED INSURED AS AGENT

The **Named Insured** specified in Item 9. of the Declarations shall be considered the agent of all **Insureds**, and shall act on behalf of all **Insureds** with respect to the giving of or receipt of all notices pertaining to this Policy, the acceptance of any endorsements to this Policy, and the **Named Insured** shall be responsible for the payment of all premiums and deductibles.

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XXIX. COMPLIANCE WITH STATE LAWS

If any portion of this Policy conflicts with state law, that portion of the Policy is automatically changed to conform to law.

XXX. EXTENDED REPORTING ENDORSEMENT

- A. In the event of cancellation or non-renewal of this Insurance by the Underwriters, the **Named Insured** designated in Item I. of the Declarations shall have the right, upon payment in full and not proportionally or otherwise in part of 100% of the Premium set forth in Item 5. of the Declarations, to have issued an endorsement providing a 12-month **Extended Reporting Period** for **Claims** first made against any **Insured** and reported to the Underwriters during the **Extended Reporting Period**, and arising out of any **Pollutants, Pollution Incidents** or **Business Interruption Loss** occurring on or after the Retroactive Date and before the end of the **Period of Insurance**, subject to the conditions set forth in the definition of **Extended Reporting Period** herein. In order for the **Named Insured** to invoke the **Extended Reporting Period** option, the payment of the additional premium for the **Extended Reporting Period** must be paid to Underwriters within 30 days of the non-renewal or cancellation.
- B. 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 **Period of Insurance**.
- C. The quotation by Underwriters of a different premium or deductible or Limit of Liability or changes in policy language for the purpose of renewal shall not constitute a refusal to renew by the Underwriters.
- D. The right to the **Extended Reporting Period** shall not be available to the **Named Insured** where cancellation or non-renewal by the Underwriters is due to non-payment of premium or failure of an **Insured** to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable deductible.
- E. All notices and premiums payments with respect to the **Extended Reporting** option shall be directed to Underwriters through the entity named in Item 9. of the Declarations.
- F. At the commencement of the **Extended Reporting Period** the entire premium shall be deemed earned, and in the event the **Named Insured** terminates the **Extended Reporting Period** for any reason prior to its natural expiration, Underwriters will not be liable to return any premium paid for the **Extended Reporting Period**.

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XXXI. DEFINITIONS

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

- A. **Bodily Injury** means physical injury, or sickness, disease, mental anguish or emotional distress sustained by any person, including death resulting therefrom.
- B. **Business Interruption Loss** means the total of:
 - 1. **Income Loss and Extra Expense** during the **Period of Restoration**; and
 - 2. **Extended Income Loss** if the **Income Loss** during the **Period of Restoration** is in excess of the applicable Deductible.

Provided that **Business Interruption Loss** shall not mean and shall not cover any of the following: **Damages** and **Claims Expenses** arising out of any liability to any third party for whatever reason; **Clean-Up Costs**; legal costs or legal expenses of any type; **Damages** or **Claims Expenses** incurred as a result of unfavorable business conditions, loss of market or any other consequential loss; or costs or expenses the **Named Insured** incurs to identify and remove **Pollutants**.

All **Business Interruption Loss** resulting from multiple covered **Pollutants** or **Pollution Incidents** that arise out of the same or continuing **Pollutants** or **Pollution Incidents**, from related or repeated **Pollution Incidents**, or from multiple **Pollution Incidents** resulting in **Environmental Damage** shall be deemed to be a single **Business Interruption Loss**.

- C. **Claim** means a demand received by any **Insured** for money or services or alleging liability for **Bodily Injury**, **Property Damage** or **Clean-Up Costs**, including the service of suit or institution of arbitration proceedings. . For purposes of this Policy, a **Claim** does not include a circumstance that was reported under a prior policy but which has become a **Claim** during the **Policy Period** of this Policy as described in Section IV.

Multiple **Claims** arising from or related to the **Pollutants**, **Pollution Incident** or **Environmental Damage** or any continuing **Pollutants** or **Pollution Incidents** shall be considered a single **Claim** for the purposes of this Policy, irrespective of the number of Claimants. All such **Claims** shall be deemed to have been made at the time of the first such **Claim**.

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D. **Claims Expenses** means:

1. reasonable and necessary fees charged by an attorney designated by the Underwriters; and
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, or circumstance which might lead to a **Claim**, if incurred by the Underwriters, or by the **Insured** with the written consent of the Underwriters;

Claims Expenses does not include any salary, overhead or other charges by the **Insured** for any time spent in cooperating in the defense and investigation of any **Claim**, **Clean-Up Costs** or **Business Interruption Loss** or circumstance that might lead to a **Claim** or **Pollution Incident**, **Clean-Up Costs**, or **Business Interruption Loss** notified under this Policy.

E. **Clean-Up Costs** means:

1. reasonable and necessary costs, charges and expenses incurred with the prior written consent of the Underwriters in the investigation, neutralization, removal, remediation (including associated monitoring) or disposal of soil, surface water, groundwater or other "**Pollutants**" to the extent required by **Environmental Laws** or that have been actually incurred by the government or any political subdivision of the United States of America or any state thereof or Canada or any province thereof, or in the absence of an applicable **Environmental Law** to the extent recommended by a Licensed and or Certified Environmental Professional mutually agreed upon by the **Insured** and the Underwriters.
2. **Restoration Costs**

F. **Damages** means a monetary judgment, award or settlement.

The term **Damages** shall not include:

1. future royalties or future profits, restitution, disgorgement of profits by an **Insured**, or the costs of complying with orders granting injunctive or equitable relief;
2. return or offset of fees, charges, or commissions for goods or services already provided or contracted to be provided;

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3. punitive or exemplary damages, unless insurable by law;
 4. any damages which are a multiple of compensatory damages, or fines, sanctions or penalties; or
 5. any amounts for which the **Insured** is not liable, or for which there is no legal recourse against the **Insured**.
- G. **Environmental Damage** means the injurious presence on or under land, the atmosphere, any watercourse, groundwater or body of water, or any structure on land and the atmosphere contained within that structure of solid, liquid, gaseous or thermal contaminants or irritants or **Pollutants**.
- H. **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 **Pollutants** or **Pollution Incidents**.
- I. **Extended Income Loss** means the **Income Loss** during the **Extended Interruption Period**.
- J. **Extended Interruption Period** means the period of time that:
1. begins on the date and time that the **Period of Restoration** ends; and
 2. terminates on the date and time the **Insured** restores, or would have restored if the **Insured** had exercised due diligence and dispatch, the net profit before income taxes that would have been earned by the **Insured** directly through its business operations had the actual and necessary interruption or suspension of the **Insured's** business operations not occurred;
- provided that in no event shall the **Extended Interruption Period** mean more than or exceed thirty (30) days.
- K. **Extended Reporting Period** means the 12-month period of time after the end of the **Policy Period** for reporting **Claims** as provided in Section XXX. of this Policy.
- L. **Extra Expense** means:
1. reasonable and necessary expenses that are incurred by the **Named Insured** during the **Period of Restoration** to minimize, reduce or avoid an **Income Loss**, provided:
 - a. that such expenses are over and above those the **Named**

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Insured would have incurred had no interruption or suspension of its business operations due to a Pollution Incident occurred; and

- b. do not exceed the amount by which the **Income Loss** in excess of the Deductible and covered under this Policy is thereby reduced; and

provided that **Extra Expense** shall not mean, and there shall be no coverage under Coverage C. Business Interruption for expenses incurred by the **Insured** to update, upgrade, enhance or replace any of its facilities or business equipment to a level beyond that which existed prior to the actual and necessary interruption

M. **Inception Date** means the first date set forth in Item 2 of the Declarations.

N. **Income Loss** means:

1. the net profit before income taxes that the **Named Insured** is prevented from earning through its business operations or the net loss before income taxes that the **Named Insured** is unable to avoid through its business operations as a direct result of the actual and necessary interruption or suspension of the **Insured's** business operations due to a **Pollution Incident**; and
2. fixed operating expenses incurred by the **Named Insured** (including payroll), but only to the extent that a. such operating expenses must necessarily continue during the **Period of Restoration** (or **Extended Interruption Period**, if applicable); and b. such expenses would have been incurred by the **Named Insured** had such interruption or suspension not occurred.

Income Loss shall be reduced to the extent the **Insured** or **Dependent Business** (if applicable) is able, with reasonable dispatch and due diligence, to reduce or limit such **Pollutants** or **Pollution Incident** or conduct its business operations by other means.

In determining **Income Loss**, due consideration shall be given to the prior experience of the **Named Insured's** business operations before the beginning of the **Period of Restoration** and to the probable business operations the **Named Insured** could have performed had no actual and necessary interruption or suspension occurred as result of **Environmental Damage** on or under the **Insured's Property**.

Income Loss will be calculated on an hourly basis based on the **Named Insured's** net profit (or loss) and fixed operating expenses as set forth above.

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O. **Insured Contract** means:

1. A contract or agreement submitted to and approved by the Underwriters, and listed on an Endorsement to this Policy.
2. A contract or that part of any contract or agreement pertaining to the **Named Insured's** work (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **Bodily Injury, Property Damage or Clean-Up Costs** to a third party arising from **Pollutants** or **Pollution Incidents** resulting from the **Named Insured's** work at a job site. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement. However, such an **Insured Contract** shall not include a contract or that part of any contract or agreement 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 **Bodily Injury, Property Damage or Clean-Up Costs**.

P. **Insured's Products** means goods or products manufactured, sold, handled or distributed by the **Insured** or others trading under the **Insured's** name, and includes containers (other than automobiles, rolling stock, vessels or aircraft), materials, parts or equipment furnished in connection therewith..

Q. **Insured Property** means real property owned, leased, rented or occupied by the **Insured**.

R. **Natural Resource Damage** means physical injury to or destruction of, 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 or local government, any foreign government, any Indian tribe, or, if such resources are subject to a trust restriction on alienation, any member of an Indian tribe.

S. **Period of Restoration** means the time period that:

1. begins on the specific date and time that the actual and necessary

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interruption or suspension of the **Insured's** business operations first occurred; and

2. ends on the specific date and time that the actual and necessary interruption or suspension of the **Insured's** business operations ends, or would have ended had the **Insured** acted with due diligence and dispatch;

provided that in no event shall the **Period of Restoration** mean more than or exceed thirty (30) days.

T. **Policy Period** means the period set forth in Item 2 of the Declarations, or any shorter period as a result of cancellation of this Policy and specifically excludes any **Extended Reporting Period**.

U. **Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, waste and Microbial Matter in any structure. Waste includes materials to be recycled, reconditioned or reclaimed including medical waste. Microbial Matter means fungi, bacterial or viral matter which reproduces through the release of spores or the splitting of cells or other means, including but not limited to, mold, mildew and viruses, whether or not such Microbial Matter is living.

V. **Pollution Incident** means emission, discharge, release or escape of **Pollutants** on or under land, the atmosphere or any watercourse, or groundwater or body of water, or any structure on land and the atmosphere contained within that structure, provided that such emission, discharge, release or escape results in **Environmental Damage**. The entirety of such emission, discharge, release or escape shall be one **Pollution Incident**.

W. **Property Damage** means:

1. Physical injury to or destruction of tangible property of parties other than the **Insured**, including the resulting loss of use and diminution in value thereof. However, **Property Damage** shall not include diminution in value of tangible property of parties other than the **Insured** that was at any time leased, rented, occupied or loaned to the **Insured**;
2. Loss of use, but not diminution in value, of tangible property of parties other than the **Insured** that has not been physically injured or destroyed;
3. **Natural Resource Damage**.

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Property Damage does not include **Clean-Up Costs**.

- X. **Restoration Costs** means reasonable and necessary costs incurred by the **Insured** with the Underwriters' written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **Clean-Up Costs**. However, such **Restoration Costs** shall not exceed the net present value of such property prior to incurring **Clean-Up Costs**. **Restoration Costs** do not include costs associated with improvements or betterments.
- Y. **Underground Storage Tank** means any tank that has at least ten (10) percent of its volume below ground, in existence at the **Inception Date**, or installed thereafter, including associated underground piping connected to the tank.
- Z. **Waste Disposal Activities** means the transportation, processing, treatment or disposal, or the arranging for the transportation, processing, treatment or disposal of the **Named Insured's** waste.

XXXII. SHORT RATE CANCELLATION TABLE

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

SHORT RATE CANCELLATION TABLE

A. For insurances written for one year:-

| Days Insurance in Force | Percent. of One Year Premium | Days Insurance in Force | Percent. of One Year Premium |
|-------------------------------|---------------------------------------|-------------------------------|---------------------------------------|
| 1 - 73 | 30 | 206 - 209 | 66 |
| 74 - 76 | 31 | 210 - 214 (7 months) | 67 |
| 77 - 80 | 32 | 215 - 218 | 68 |
| 81 - 83 | 33 | 219 - 223 | 69 |
| 84 - 87 | 34 | 224 - 228 | 70 |

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

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

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

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

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- (c) Add premium produced in accordance with items (a) and (b) to obtain Earned Premium during full period insurance has been in force.

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

Specimen Policy