CONTRACTORS POLLUTION LIABILITY POLICY

NOTICE

PLEASE READ THE ENTIRE POLICY CAREFULLY TO DETERMINE THE INSURED’S RIGHTS AND DUTIES, AND WHAT IS AND IS NOT COVERED. VARIOUS PROVISIONS THROUGHOUT THIS POLICY RESTRICT OR EXCLUDE COVERAGE. PLEASE NOTE THAT CERTAIN COVERAGE IS DEPENDENT UPON IMMEDIATE NOTICE TO THE COMPANY. PLEASE NOTE THAT AMOUNTS INCURRED FOR LEGAL DEFENSE MAY REDUCE THE LIMIT OF LIABILITY AVAILABLE TO PAY LOSS AND SHALL BE APPLIED AGAINST THE DEDUCTIBLE AMOUNT. THE DETERMINATION OF WHETHER BODILY INJURY, PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE HAS OCCURRED DURING THE POLICY PERIOD, AND OTHER POLICY PROVISIONS, MAY BE DIFFERENT FROM OTHER POLICIES THE NAMED INSURED HAS PURCHASED.

TERMS APPEARING IN BOLD-FACED TYPE OTHER THAN SECTION HEADINGS ARE DEFINED IN SECTION VI.

In consideration of payment of the premium and deductible by the Named Insured and in reliance upon the statements in the Named Insured’s Application made a part hereof, the Company agrees with the Insured, subject to all the terms, exclusions and conditions of this Policy, as follows:

I. INSURING AGREEMENTS

1. COVERAGE A - LEGAL LIABILITY

   1. The Company will pay on behalf of the Insured all sums that the Insured shall become legally obligated to pay as Loss as a result of Claims for Bodily Injury, Property Damage or Environmental Damage resulting from Pollution Conditions caused by Covered Operations. The Pollution Conditions must be unexpected and unintended from the standpoint of the Insured. The Bodily Injury, Property Damage, or Environmental Damage must occur during the Policy Period.

   2. Progressive, indivisible Bodily Injury, Property Damage or Environmental Damage over a period of days, weeks, months or longer caused by the same, related or continuous Pollution Conditions shall be deemed to have occurred only on the date of first exposure to such Pollution Conditions.

However, if the date of first exposure is before the inception date of the first Contractors Pollution Liability Policy the Company issued to the Named Insured providing coverage for Bodily Injury, Property Damage or Environmental Damage which occurs during the Policy Period, or cannot be determined, but the progressive, indivisible Bodily Injury, Property Damage or Environmental Damage continues in fact to exist during this Policy Period, it will be deemed to have occurred only on the inception date of such first Contractors Pollution Liability Policy providing coverage for Bodily Injury, Property Damage, or Environmental Damage which occurs during the Policy Period.

   3. If the same, related or continuous Pollution Conditions result in Bodily Injury, Property Damage or Environmental Damage which occurs during the policy periods of different Contractors Pollution Liability policies the Company has issued to the Named Insured, providing coverage for Bodily Injury, Property Damage or Environmental Damage which occurs during the Policy Period:

NOTICE: THIS INSURER IS NOT LICENSED IN THE STATE OF NEW YORK AND IS NOT SUBJECT TO ITS SUPERVISION

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(i) All such Bodily Injury, Property Damage or Environmental Damage shall be deemed to have occurred only during the first policy period of such Contractors Pollution Liability policy in which any of the Bodily Injury, Property Damage or Environmental Damage occurred; and

(ii) All Loss from all such Bodily Injury, Property Damage or Environmental Damage shall be subject to the "Each Loss" Limit applicable under the policy described in Paragraph 3.(i) above.

COVERAGE B - EMERGENCY RESPONSE COSTS

The Company will pay Emergency Response Costs resulting from Pollution Conditions caused by Covered Operations. Emergency Response Costs must be first incurred by the Insured and reported to the Company during the Policy Period.

For this Coverage to apply, all of the following conditions must be satisfied:

1. The Insured must report the Emergency Response Costs to the Company, in writing, as provided in Section III. CLAIMS AND NOTICE PROVISIONS, A. INSURED’S DUTIES WHEN THERE IS A CLAIM, EMERGENCY RESPONSE COSTS, CRISIS MANAGEMENT EVENT OR PRE-CLAIM CIRCUMSTANCE Subparagraph 1. and Subparagraph 3. of this Policy, during the Policy Period;

2. Such Pollution Conditions must be unexpected and unintended from the standpoint of the Insured; and

3. Such Pollution Conditions do not arise from Microbial Matter or Legionella pneumophila.

COVERAGE C - PRE-CLAIM CIRCUMSTANCE EXPENSES

The Company will pay Pre-Claim Expenses on behalf of the Insured.

For this Coverage to apply, all of the following conditions must be satisfied:

1. The Insured must first become aware of the Pre-Claim Circumstance during the Policy Period; and

2. The Insured must report the Pre-Claim Circumstance to the Company, in writing during the Policy Period, as provided in Section III. CLAIMS AND NOTICE PROVISIONS, INSURED’S DUTIES WHEN THERE IS A CLAIM, EMERGENCY RESPONSE COSTS, CRISIS MANAGEMENT EVENT OR PRE-CLAIM CIRCUMSTANCE.

COVERAGE D - CRISISRESPONSE® AND CRISIS MANAGEMENT

1. The Company will pay CrisisResponse® Costs on behalf of the Insured that may be associated with Loss covered by this Policy arising from a Crisis Management Event first commencing during the Policy Period. The Company will advance CrisisResponse® Costs that may be associated with Loss covered by this Policy directly to third parties.

2. The Company will pay Crisis Management Loss on behalf of the Insured arising from a Crisis Management Event first commencing during the Policy Period. A Crisis Management Event shall first commence at the time during the Policy Period when a Responsible Insured first becomes aware of Pollution Conditions that gives rise to a Crisis Management Event and shall end at the earliest of the time when the Company determines that a crisis no longer exists or when the CrisisResponse® limit of insurance and/or the Crisis Management limit of insurance, whichever applies, as described in Section IV. LIMITS OF LIABILITY AND DEDUCTIBLE has been exhausted.
3. Any advancement of CrisisResponse® Costs or payment of Crisis Management Loss that the Company makes under the coverage provided by this coverage section will not be a determination of the Company’s obligations under this Policy, nor create any duty to defend any Claim under any other part of this Policy.

2. DEFENSE

When a Claim is made against the Insured to which Section I. INSURING AGREEMENTS, Paragraph 1., COVERAGES, COVERAGE A - LEGAL LIABILITY above applies, the Company has the right to defend, including, but not limited to, the right to appoint counsel and the duty to defend such Claim, even if groundless, false, or fraudulent. With respect to any such Claim being defended by the Company, the Company shall, at its own expense, pay all reasonable expenses incurred by the Insured at the Company’s request to assist it in the investigation or defense of the Claim, including actual loss of earnings up to $500 a day because of time off from work; provided, however, that the Company’s aggregate liability for all such expenses under this Policy shall not exceed $5,000.

Claim Expenses are not included in the definition of Loss, and are not subject to the Deductible amount and do not reduce the applicable limit of liability, as described in Section IV. LIMITS OF LIABILITY AND DEDUCTIBLE, until Claim Expenses in the aggregate total $1,000,000. Upon payment of Claim Expenses equaling this total, Claim Expenses are included with the definition of Loss, and are subject to the Deductible amount and reduce the applicable limit of liability, as described in Section IV. LIMITS OF LIABILITY AND DEDUCTIBLE.

The Company shall not be obligated to defend or continue to defend any Claim after the applicable Limit of Liability has been exhausted by payment of Loss.

3. SETTLEMENT

The Company will present any monetary settlement offers to the Insured, and if the Insured refuses to consent to any monetary settlement within the limits of liability of this Policy recommended by the Company and acceptable to the claimant, the Company’s duty to defend the Insured shall then cease and the Insured shall thereafter negotiate or defend such Claim independently of the Company and the Company’s liability shall not exceed the amount, less the Deductible or any outstanding Deductible balance, for which the Claim could have been settled if such recommendation was consented to.

II. EXCLUSIONS

This Policy does not provide coverage and the Company will not pay any Claim, Claim Expenses, Crisis Management Loss, Pre-Claim Expenses or Loss:

A. PRIOR KNOWLEDGE:

Based upon or arising from Pollution Conditions resulting from Covered Operations existing prior to the Inception Date and known by a Responsible Insured and not disclosed in the application for this Policy, or any previous policy for which this Policy is a renewal thereof.

B. INTENTIONAL NON-COMPLIANCE:

Based upon or arising out of any Responsible Insured’s knowing, 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. However, this Exclusion does not apply to such non-compliance based upon:

1. The Insured’s good faith reliance upon the written advice of qualified outside counsel received in advance of such non-compliance or upon the Company’s written consent; or
2. The Insured’s reasonable response to emergency circumstances in order to mitigate Pollution Conditions or Loss, provided such emergency circumstances are reported in writing to the Company within ninety-six (96) hours of the discovery of such emergency circumstances.

C. LIMITED PRODUCT LIABILITY:

Based upon or arising out of the sale, distribution, design or manufacture of a product unless such product was installed as part of Covered Operations or arises from Transportation.

However, this Exclusion does not apply to any Claims or Loss based upon or arising out of any waste generated from the Named Insured’s Covered Operations and such waste is relinquished to others to recycle or reuse in a manner that is environmentally preferable to disposal.

D. CONTRACTUAL LIABILITY:

1. Based upon or arising out of liability of others assumed by the Insured under any contract or agreement. This Exclusion does not apply to liability:
   a. Arising from Covered Operations performed by subcontractors of the Named Insured, provided such liability is assumed by the Named Insured in a written contract with its client for such operations and the Claim occurs subsequent to the execution of the contract;
   b. Assumed in a contract or agreement that is an Insured Contract, provided that the Claim occurs subsequent to the execution of the contract or agreement; or
   c. That the Named Insured would have in the absence of the contract or agreement.

2. Solely with respect to Emergency Response Costs, based upon or arising out of liability of others assumed by the Insured under any contract or agreement.

E. EMPLOYERS LIABILITY:

For Bodily Injury sustained by any employee of an Insured while engaged in employment by an Insured or by any person whose right to assert a Claim against an Insured arises by reason of any employment, blood, marital, or any other relationship with the employee. This Exclusion applies:

1. Whether an Insured may be responsible as an employer or in any other capacity; or

2. To any obligation to share damages with or repay someone else who must pay damages because of Bodily Injury.

However, this Exclusion does not apply to liability assumed by the Named Insured under an Insured Contract.

F. WORKERS COMPENSATION:

Based upon or arising out of any obligation for which an Insured or any party may be held liable under any unemployment, Workers’ Compensation, disability benefits, or other similar laws.

G. WAR:

Based upon or arising, directly or indirectly, out of:
1. War, including undeclared or civil war; or

2. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

3. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

H. TRANSFER, STORAGE OR DISPOSAL FACILITY:

Based upon or arising out of any waste, products or materials which have been delivered to a transfer, storage or disposal facility located beyond the boundaries of a job site where Covered Operations are being performed.

However, this Exclusion does not apply to Loss based upon or arising out of any waste or any products or materials transported, shipped, or delivered to a transfer, storage or disposal facility utilized by or on behalf of the Named Insured provided that such wastes, products or materials originated from a site at which the Named Insured is performing Covered Operations, were generated in the course of performing such Covered Operations and, on the date that the waste was accepted from the Named Insured, such transfer, storage or disposal facility was:

1. Properly licensed to accept and dispose of waste and in compliance with applicable Environmental Laws;

2. Not listed, not proposed to be listed and had never been listed on the federal National Priorities List (Superfund), State equivalent list, or local equivalent list;

3. Not subject to Federal information requests under Section 104(e) of CERCLA or Section 3007(a) of RCRA or, State or Local equivalent requests;

4. Not operated or owned by any person or entity in bankruptcy or otherwise financially insolvent.

I. PROFESSIONAL LIABILITY:

Based upon or arising out of professional services rendered or failed to be rendered by an Insured or others for whom an Insured is legally liable, including, but not limited to, recommendations, opinions or strategies rendered for architectural, consulting, design or engineering work, such as drawings, designs, maps, reports, surveys, change orders, plan specifications, assessment work, remedy selections, site maintenance, equipment selection, or related construction management, supervisory, inspection or engineering services.

However, this Exclusion does not apply to:

1. Claims alleging liability against an Insured on the basis of improper supervision or lack of supervision of any sub-contractors performing Covered Operations; or

2. Construction means, methods, techniques, sequences and procedures in connection with Covered Operations performed by or on behalf of an Insured in its capacity as a specialty trade contractor.

J. INDEMNIFIED NUCLEAR LIABILITY:

Based upon or arising out of the radioactive, toxic or explosive properties of Nuclear Material, and for which the United States Department of Energy or any other government authority has indemnified the
Insured, or for which the Price Anderson Act provides protection for the Insured.

K. PROPERTY DAMAGE:

Based upon or arising out of:

1. Property Damage to the Named Insured’s Products; or

2. Property Damage to that particular part of real or tangible property on which the Named Insured, or any persons or entities acting on the Named Insured’s behalf, are performing Covered Operations, including any Property Damage caused by materials, parts or equipment furnished in connection with such Covered Operations. However, this Exclusion does not apply to Completed Operations.

L. PROPERTY DAMAGE TO MOTOR VEHICLES:

Based upon or arising out of Property Damage to any Motor Vehicle utilized during Transportation. This Exclusion does not apply to Claims made by third-party carriers of the Insured for such Property Damage arising from the Insured’s negligence.

M. INSURED VS. INSURED:

Brought by an Insured against another Insured. However, this Exclusion does not apply to:

1. Claims brought by clients of the Named Insured, as included in Section VI. DEFINITIONS, Paragraph Q. Insured, Subparagraph 4.; or

2. Claims initiated by third parties including cross-claims, counterclaims, or claims for contribution.

N. OWNED PROPERTY:

Based upon, arising from, or in connection with any real property or facility which is, or was at any time, owned, operated or rented by the Named Insured or by any entity that:

1. wholly or partly owns, operates, manages, or otherwise controls the Named Insured; or

2. is wholly or partly owned, operated, managed or otherwise controlled by the Named Insured.

However, this Exclusion does not apply to any real property operated, managed, rented, leased or otherwise controlled by the Named Insured, or other entities defined above in subparagraphs 1. and 2. of this Exclusion, where that real property is utilized for Covered Operations, including the temporary storage of equipment and materials at any associated staging or storage areas.

III. CLAIMS AND NOTICE PROVISIONS

A. INSURED’S DUTIES WHEN THERE IS A CLAIM, EMERGENCY RESPONSE COSTS, CRISIS MANAGEMENT EVENT OR PRE-CLAIM CIRCUMSTANCE

As a condition precedent to the right of coverage provided by this Policy, the Insured must do the following:

1. In the event of a Claim, Emergency Response Costs, Crisis Management Event or Pre-Claim Circumstance, the Insured shall give notice as soon as practicable to the Company’s representative(s), as identified in this paragraph, of receipt of the Claim, Crisis Management Event, Pre-Claim Circumstance, or Emergency Response Costs incurred.

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All Claim(s), Emergency Response Costs, Crisis Management Event(s) and Pre-Claim Circumstance(s) shall be reported to:

AIG Claims, Inc  
P.O. Box 305904  
Nashville, TN 37230-5904  
Fax: 866-260-0104  
Email: SeverityFNOL@aig.com  
or other address(es) as substituted by the Company in writing.

2. The Insured shall furnish information at the request of the Company. When a Claim has been made, the Insured shall forward the following to the Company as soon as practicable after receipt, or receipt by the Insured’s representative or agent:

(a) All correspondence between the Insured and any third party claimant;

(b) All demands, summons, notices or other processes or papers filed with a court of law, administrative agency or an investigative body;

(c) All technical reports, laboratory data, field notes or any other documents generated by persons hired by the Insured to investigate the Claim;

(d) All expert reports, investigations and data collected by experts retained by the Insured whether or not the Insured intends to use the material for any purpose; and

(e) Any other information developed or discovered by the Insured concerning the Claim whether or not deemed by the Insured to be relevant to the Claim.

3. When Emergency Response Costs have been incurred, the Insured shall forward to the Company within ten (10) days of the commencement of Pollution Conditions for which the Emergency Response Costs have been incurred all information including but not limited to: the cause and location of the Pollution Conditions, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such Emergency Response Costs.

4. All Insureds shall cooperate with the Company to the fullest extent possible by providing the assistance necessary to adjust, investigate, and defend the Claim or adjust and investigate Emergency Response Costs, Crisis Management Event or Pre-Claim Circumstance, and shall participate in discussions regarding cleanup or performance of a cleanup should the Company exercise its rights under Paragraph B. of this Section.

(a) The Insured agrees to provide the Company free access to interview any employee, agent, representative, or independent contractor of the Insured and review any documents of the Insured concerning the Claim or Emergency Response Costs.

(b) Upon the Company’s request, the Insured shall attend hearings, depositions, and trials, assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses, and offer all reasonable assistance in the investigation and defense of Claims made under this Policy.

(c) No Insured shall admit liability, waive, or extend any statute or period of limitation, or, except at such Insured’s own cost, voluntarily make any payment, assume any obligation, or incur any expense except for Emergency Response Costs, without the Company’s prior written consent.
(d) An **Insured**, as often as the Company may reasonably require, shall separately submit to examination(s) under oath.

(e) The **Insured** shall refrain from discussing the facts and circumstances of any **Claim** or **Emergency Response Costs** with anyone other than legal counsel or representatives of the Company.

5. The **Insured** must report any **Crisis Management Event** to the Company within twenty-four (24) hours of the time that a **Responsible Insured** first becomes aware of **Pollution Conditions** that gives rise to a **Crisis Management Event** or as soon as practicable to be eligible for the advancement of **CrisisResponse® Costs** and the payment of **Crisis Management Loss**.

Notice of a **Crisis Management Event** may be given by calling 1-877-244-3100. If notice is given by telephone, written notice will be given as soon as practicable thereafter. Written notice should include:

(a) How, when and where the **Crisis Management Event** is taking or took place;

(b) The names and addresses of any injured persons and any witnesses; and

(c) The nature and location of any injury or damage arising out of the **Crisis Management Event**.

6. There shall be no requirement that the **Insured** obtain prior written approval from the Company before incurring any **Crisis Management Loss**, provided that the **Crisis Management Firm** selected by the **Insured** to perform the **Crisis Management Services** has been approved by the Company. If the **Insured** chooses to retain a firm that does not appear in the Schedule attached to and forming a part of this Policy, the **Insured** must obtain the Company’s consent, which shall remain in the Company’s sole discretion, prior to retaining the services of such firm.

7. Any payments for **Crisis Management Loss** or advancement of **CrisisResponse® Costs** that the Company makes under this Policy:

(a) Shall not be deemed to be a determination of the insured’s liability with respect to any **Claim** or **Loss** under the Policy; and

(b) Shall not create any duty to defend any **Claim** or to investigate any **Claim** or **Pollution Conditions** arising from a **Crisis Management Event**, nor any coverage obligations under this Policy.

8. If the Crisis Management Insurance provided by this Policy and any other insurance issued to the **Named Insured** by the Company or any of its affiliated companies shall apply to the same crisis the maximum limit of insurance under all insurance available shall not exceed the highest applicable limit of insurance available under any one policy or endorsement.

9. In the event of a dispute between the **Insured** and the Company as to whether a **Crisis Management Event** has occurred, the **Insured** may, at its own cost, retain the services of an approved **Crisis Management Firm** and/or advance **CrisisResponse® Costs**. Provided, however, if the **Insured** elects to retain an approved **Crisis Management Firm** or to advance **CrisisResponse® Costs**, the Company shall have no obligation to reimburse the **Insured** under this Policy for such costs or expenses. The right to reimbursement shall be arbitrated pursuant to the rules of the American Arbitration Association in New York, New York or in the state indicated in Item 1. of the Declarations of this Policy as the address of the **Named Insured**.

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B. RIGHTS OF THE COMPANY

The Company shall have the right but not the duty to participate in decisions regarding Clean-Up Costs and to assume direct control over all aspects of the cleanup and the adjustment of any Claim or Emergency Response Costs up to the Limit of Liability. In case the Company exercise of this right, the Insured, on demand of the Company, shall promptly reimburse the Company for any element of Loss falling within the Insured’s deductible.

C. MEDIATION

If the Named Insured and the Company jointly agree to utilize Mediation as a means to resolve a Claim made against the Insured, and if such Claim is resolved as a direct result of the Mediation, the Named Insured’s deductible obligation shall be reduced by 50% subject to a maximum reduction of $25,000. The Company shall reimburse the Named Insured for any such reimbursable deductible payment made prior to the Mediation as soon as practicable after the conclusion of the Mediation.

IV. LIMITS OF LIABILITY AND DEDUCTIBLE

Regardless of the number of Claims, claimants, Pollution Conditions or Insureds under this Policy, the following limits of liability apply:

A. LIMITS OF LIABILITY - AGGREGATE

The Company’s total liability for all Loss shall not exceed the “Aggregate” stated in Item 3. of the Declarations.

Once the “Aggregate” Limit of Liability has been exhausted, the Company shall not defend any Claim, or pay Loss.

Further, the Company’s total liability for all CrisisResponse® Costs and/or Crisis Management Loss shall not exceed $250,000 combined, regardless of the number of Crisis Management Events first commencing during the Policy Period. The Company will have no obligation to advance CrisisResponse® Costs or to pay Crisis Management Loss from the earliest of the time when the Company determines that a Crisis Management Event has ended or when this $250,000 limit of liability has been exhausted. CrisisResponse® Costs and/or Crisis Management Loss shall not be included as Loss and do not reduce the available “Aggregate” Limit of Liability.

B. LIMITS OF LIABILITY - EACH LOSS

Solely with respect to Coverage A, and subject to Paragraph A. LIMITS OF LIABILITY – AGGREGATE above, the “Each Loss” Limit stated in Item 3. of the Declarations is the most the Company will pay for all Loss arising out of any one Pollution Condition or the same, related or continuous Pollution Conditions.

Solely with respect to Coverage B, and subject to Paragraph A. LIMITS OF LIABILITY – AGGREGATE above, the most the Company will pay for all Loss arising out of any one Pollution Condition or the same, related or continuous Pollution Conditions is the “Each Loss” Limit stated in Item 3. of the Declarations.
Once the “Each Loss” Limit of Liability has been exhausted, the Company shall not be obligated to defend or continue to defend any Claim, or pay Loss for any Claim.

C. LIMITS OF LIABILITY – PRE-CLAIM EXPENSES

Solely with respect to Coverage C, in addition to the applicable limit of liability and not subject to the deductible, the most the Company shall pay for Pre-Claim Expenses is $10,000 in total. Any additional Pre-Claim Expenses above $10,000 may be paid by the Company at its sole discretion. In the event a Pre-Claim Circumstance becomes a Claim, the full deductible shall be applied to any Loss arising from such Claim.

D. DEDUCTIBLE - EACH LOSS

Except with respect to Coverages C and D, the “Each Loss” deductible stated in Item 4. of the Declarations applies to all Loss arising out of any one Pollution Condition or out of the same, related or continuous Pollution Conditions. The deductible shall be paid by the Named Insured and remain uninsured. The Limits of Liability shall apply in excess of the deductible.

The Company may advance payment of part or all of the deductible amount and, upon notification of such payment made, the Named Insured shall promptly reimburse the Company for the deductible amounts advanced by the Company.

Solely with respect to Coverage C, a deductible amount does not apply.

Solely with respect to Coverage D, this Policy is to pay covered CrisisResponse® Costs and/or Crisis Management Loss in excess of the following Deductible amount: $25,000, up to but not exceeding the limits set forth in Paragraph A. above; provided that payment of Deductible amounts for CrisisResponse® Costs and/or Crisis Management Loss shall erode the Deductible amount applicable to that particular Loss arising out of the same, related or continuous Pollution Conditions for all other Coverages under this Policy.

The Insured shall promptly reimburse the Company for advancing any element of Loss falling within the Deductible.

PIER RESPONSE DEDUCTIBLE REDUCTION

If the Named Insured utilizes a PIER Network Provider in response to an incident which results in Emergency Response Costs covered under the Policy, and such Emergency Response Costs are incurred by a PIER Network Provider, the Named Insured’s Deductible obligation shall be reduced by 50% subject to a maximum reduction of $25,000, and such reduced Deductible amount shall apply among all the coverage sections applicable to the Loss arising out of any one Pollution Condition or arising out of the same, related or continuous Pollution Conditions. In order for this Deductible reduction to apply, the Named Insured must provide proof of use of a PIER Network Provider including, at a minimum, a copy of the executed written contract between the PIER Network Provider and the Named Insured and a copy of the invoice(s) for such services which have been rendered under the aforementioned executed written contract in response to Emergency Response Costs. This provision does not alter the Insured’s reporting obligations under Section III. of the Policy.

In the event that Loss arising out of any one Pollution Condition or arising out of the same, related or continuous Pollution Conditions is subject to more than one reduced deductible provision under this Policy, only the highest deductible reduction among all such provisions will apply.
V. CONDITIONS

A. HOW OTHER INSURANCE APPLIES

Where other insurance may be available for Loss covered under this Policy, the Insured shall promptly upon request of the Company provide the Company with copies of all such policies. If other valid and collectible insurance is available to the Insured for Loss covered by this Policy, the Company’s obligations are limited as follows:

1. Except as set forth in Subparagraph 3. below, this insurance is primary, and the Company’s obligations are not affected unless any of the other insurance is also primary. In that case, the Company will share with all such other insurance by the method described in Paragraph 2. below.

2. If all of the other insurance permits contribution by equal shares, the Company will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Company will contribute by limits. Under this method, each insurer’s share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

3. This insurance is excess where the Named Insured is an insured under another Contractor’s Pollution Liability insurance policy, issued by the Company or by an affiliate of the Company, applying to or purporting to apply to a project, where Covered Operations are performed by or on behalf of the Named Insured in connection with such project. To the extent that a Claim, or part thereof, is not covered by any such Contractor’s Pollution Liability insurance policy, this Policy shall be primary and non-contributory with respect to such Claim or part thereof. Further, the “Each Loss” deductible under this policy shall be satisfied by the deductible and/or limits of liability paid under such Contractor’s Pollution Liability insurance for Loss which is also covered by this Policy and arises out of any one Pollution Condition or out of the same, related or continuous Pollution Conditions.

The Company will pay only its share of the amount of Loss, if any, that exceeds the total amount of all such other valid insurance. This excess insurance shall in no way be increased or expanded as a result of the receivership, insolvency, or inability to pay of any insurer with respect to both the duty to indemnify and the duty to defend.

B. BANKRUPTCY

Bankruptcy or insolvency of the Insured’s estate shall not relieve the Company of any of its obligations under this Policy.

C. APPLICATION

The statements in the Application are the Named Insured’s representations and are deemed material. This Policy is issued based upon the truth and accuracy of such representations. Upon the binding of coverage, the Application shall be deemed part of this Policy. This Policy embodies all agreements existing between the Named Insured and the Company or any of its agents relating to this Policy.
D. ACTION AGAINST THE COMPANY

No third party action shall lie against the Company, unless as a condition precedent thereto, there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured’s obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by the Policy. No person or organization shall have any right under this Policy to join the Company as a party to any action against the Insured to determine the Insured’s liability, nor shall the Company be impleaded by the Insured or his legal representative. Bankruptcy or insolvency of the Insured or of the Insured’s estate shall not relieve the Company of any of its obligations hereunder.

E. CONCEALMENT OR FRAUD

If the Insured reports any Claim or Emergency Response Costs knowing such Claim or Emergency Response Costs to be false or fraudulent, this Policy shall become void and all insurance coverage hereunder shall be forfeited. Further, this entire Policy shall be void if, whether before or after Emergency Response Costs are incurred or a Claim is first made, the Named Insured has willfully concealed or misrepresented: (i) any fact or circumstance material to the granting of coverage under this Policy, or (ii) any Insured’s operations.

F. SERVICE OF SUIT

It is agreed that in the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company’s 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 Counsel, Legal Department, AIG Specialty Insurance Company, 175 Water Street, New York, New York 10038, or his or her representative, and that in any suit instituted against the Company upon this contract, the Company will abide by the final decision of such court or of any appellate court in the event of any appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, the Company hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his or her successor or successors in office as its 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 designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.
G. INSPECTION

The Company shall be permitted but not obligated to inspect, sample, and monitor on a continuing basis the Insured’s property or operations, at any time. Neither the Company’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 property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule, or regulation.

H. SOLE AGENT

The Named Insured first listed in Item 1. of the Declarations shall act on behalf of all other Insureds, if any, for the payment or return of premium, receipt and acceptance of any endorsement issued to form a part of this Policy, and giving and receiving notice of cancellation or non-renewal.

I. ASSIGNMENT

This Policy may be assigned with the prior written consent of the Company, which consent shall not be unreasonably withheld or delayed. Assignment of interest under this Policy shall not bind the Company until its consent is endorsed onto this Policy.

J. SUBROGATION

If there is any payment made by the Company under this Policy and regardless of whether the Insured has been made whole for its Loss, the Company shall be subrogated to all the Insured’s rights of recovery against any person or organization. The Insured shall cooperate with the Company and do whatever is necessary to secure these rights. The Insured shall do nothing after a Loss to waive or prejudice such rights.

Any recovery as a result of subrogation proceedings arising out of payment of Loss under this Policy (net of expenses incurred in making such recovery) shall accrue first to the Insured to the extent of any payment made by the Insured in excess of the limit of coverage of the Policy, then pro-rata to the Insured and the Company in proportion to the amount each actually paid as a result of judgment, settlement or defense of a Claim or Emergency Response Costs.

Notwithstanding anything to the contrary in this Condition J., the Company hereby expressly waives any rights of subrogation against an entity where such right has been waived in writing by the Insured prior to a Claim or Emergency Response Costs.

K. CHANGES

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Company from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy.

L. CANCELLATION

This Policy may be cancelled by the Named Insured by surrender thereof to the Company or any of its authorized agents or by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This Policy may be cancelled by the Company only for the reasons stated below by mailing to the Named Insured at the address shown in the Policy, written notice stating when not less than ninety (90) days (ten (10) days for nonpayment of premium) thereafter such cancellation shall be effective. Proof of mailing of such notice shall be sufficient proof of notice.
1. Material misrepresentation by the Insured.

2. The Insured’s failure to comply with the material terms, conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due. However, the Insured shall have the ability, within the first thirty (30) days (ten (10) days for non-payment of premium) of the ninety (90) day notice period stated above, to cure such failure to comply with the material terms, conditions or contractual obligations. The determination of whether or not the Insured has cured any such failure is within the sole discretion of the Company.

3. A change in Covered Operations identified in the application as of the Inception Date that materially increases a risk covered under this Policy.

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 Company shall be equivalent to mailing. If the Named Insured cancels the Policy, earned premium shall be computed in accordance with the customary short rate rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment may be 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.

M. SEPARATION OF INSUREDS

Except with respect to the Limits of Insurance, Section II Paragraph M. (Insured vs. Insured exclusion) and any rights or 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 Insured against whom a Claim is made or suit is brought. Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this Policy by one Insured shall not prejudice the interest of coverage for another Insured under this Policy. Provided, however, that this Condition shall not apply to any Insured who is a parent, subsidiary or affiliate of the Named Insured that misrepresented, concealed or breached a term or condition, or violated a duty under this Policy.

N. INDEPENDENT COUNSEL

In the event the Insured is entitled by law to select independent counsel to oversee the Company’s defense of a Claim at the Company’s expense, the attorney fees and all other expenses the Company must pay to that counsel are limited to the rates the Company actually pays to counsel the Company retains in the ordinary course of business in the defense of similar Claim(s) or suits in the community where the Claim arose or is being defended.

Additionally, the Company may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending Claim(s) or suits similar to the one pending against the Insured and to require such counsel to have errors and omissions insurance coverage. With respect to any such counsel, the Insured agrees that counsel will timely respond to the Company’s requests for information regarding the Claim or suit.

Furthermore, the Insured may at any time, by its signed consent, freely and fully waive its right to select independent counsel.

O. CONDITIONS OF PAYMENT

The Company shall not be deemed to provide cover and the Company shall not be liable to pay any Claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Company, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions.
or the trade or economic sanctions, laws or regulations of the European Union or the United States of America.

P. TERRITORY

This Policy only applies to Covered Operations performed in the United States and its territories or possessions, or in Canada and its provinces or territories.

Q. VOLUNTARY PAYMENTS

No Insured shall voluntarily enter into any settlement, or make any payment or assume any obligation unless in response to an emergency or pursuant to Environmental Laws that require immediate remediation of Pollution Conditions, without the Company’s consent which shall not be unreasonably withheld, except at the Insured’s own cost.

VI. DEFINITIONS

A. Bodily Injury means:

1. physical injury, sickness or disease sustained by any person, including death resulting therefrom, and solely with respect to this item A.1, any accompanying medical monitoring; or

2. mental anguish, emotional distress, or shock.

B. Certified Industrial Hygienist means a licensed professional as established by the American Board of Industrial Hygiene, mutually agreed upon by the Company and the Named Insured. The Company may also exercise the right to require that such Certified Industrial Hygienist have certain minimum qualifications with respect to his or her competency, including experience with similar Microbial Matter remediation.

C. Claim means a written demand received by an Insured seeking a remedy and alleging liability or responsibility on the part of the Named Insured for Bodily Injury, Property Damage or Environmental Damage.

D. Claim Expenses means:

1. Fees charged by any lawyer designated by the Company; and

2. All other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a Claim, if authorized by the Company.

Claim Expenses shall not include:

1. The salaries of any employee of the Company; and

2. Costs, charges or other expenses incurred by the Insured for goods supplied or services performed by or on behalf of the staff or salaried employees of the Insured, or its parent, subsidiary or affiliate, unless such costs, charges or other expenses are incurred with the prior written approval of the Company at its sole discretion.

E. Clean-Up Costs means reasonable and necessary expenses incurred in the investigation, removal, remediation including the associated monitoring, or disposal of soil, surfacewater, groundwater or other contamination:
1. To the extent required by **Environmental Laws**, or specifically mandated by court order, the government or any political subdivision of the United States of America or any state or any municipality thereof, or Canada or any province thereof;

2. Which 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 by third parties;

3. With respect to **Microbial Matter**, in the absence of any applicable **Environmental Laws**, to the extent recommended in writing by a **Certified Industrial Hygienist**;

4. With respect to Legionella pneumophila, in the absence of any applicable **Environmental Laws**, to the extent required in writing by the Center for Disease Control or local health department; or

5. With respect to viruses or bacteria, as defined by the Center for Disease Control, in the absence of **Environmental Laws**, to the extent required in writing by the Center for Disease Control or local health department.

**Clean-Up Costs** also includes **Restoration Costs**.

**F. Completed Operations** means work from **Covered Operations** that has been completed, including materials, parts or equipment furnished in connection with such work or operations.

**Covered Operations** will be deemed completed at the earliest of the following times:

1. When all of the work called for in the **Insured’s** contract has been completed;

2. When all of the work to be done at the job site has been completed if the **Insured’s** contract calls for work at more than one job site; or

3. When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or sub-contractor working on the same project.

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

**G. Covered Operations** means those activities performed for a third party, including project estimating, service response and operations tied to a client, by or on behalf of the **Named Insured**. **Covered Operations** includes **Completed Operations** and **Transportation**.

**H. Crisis Management Event** means an event that in the good faith opinion of a **Responsible Insured**, in the absence of **Crisis Management Services**, has been associated with or may reasonably be associated with:

1. **Loss** covered by this Policy; and

2. Significant adverse regional or national news media coverage.

**I. Crisis Management Firm** means any public relations firm or crisis management firm approved by the Company that is hired by the **Insured** to perform **Crisis Management Services** in connection with a **Crisis Management Event**. Attached to and forming a part of this Policy is a Schedule of firms that have been pre-approved by the Company and may be hired by the **Insured** without further approval by the Company.
J. Crisis Management Loss means the following amounts incurred during a Crisis Management Event:

1. Amounts for the reasonable and necessary fees and expenses incurred by a Crisis Management Firm in the performance of Crisis Management Services for the Insured solely arising from a covered Crisis Management Event; and

2. Amounts for reasonable and necessary printing, advertising, mailing of materials, or travel by the Named Insured’s directors, officers, employees or agents or a Crisis Management Firm incurred at the direction of a Crisis Management Firm, solely arising from a covered Crisis Management Event.

K. Crisis Management Services means those services performed by a Crisis Management Firm in advising the Insured on minimizing potential harm to the Insured from a covered Crisis Management Event by maintaining and restoring public confidence in the Insured.

L. CrisisResponse® Costs means the following reasonable and necessary expenses incurred during a Crisis Management Event directly caused by a Crisis Management Event, provided that such expenses have been pre-approved by the Company and may be associated with Loss that would be covered by this Policy:

1. Medical expenses;
2. Funeral expenses;
3. Psychological counseling;
4. Travel expenses;
5. Temporary living expenses;
6. Expenses to secure the scene of a Crisis Management Event; and
7. Any other expenses pre-approved by the Company.

CrisisResponse® Costs does not include defense costs or Crisis Management Loss.

M. Emergency Response Costs means reasonable and necessary expenses, including legal expenses incurred with the Company’s written consent which consent shall not be unreasonably withheld or delayed, incurred in the remediation of soil, surfacewater, groundwater or other contamination that must be incurred:

1. in response to Pollution Conditions that necessitate immediate action; and
2. within ninety six (96) hours of the commencement of such Pollution Condition(s); or as approved by the Company in writing.

N. Environmental Damage means physical damage to tangible or real property of parties other than an Insured, soil, surfacewater or groundwater, or plant or animal life, caused by Pollution Conditions and giving rise to Clean-Up Costs. Environmental Damage does not include Property Damage. Solely with respect to this definition, Insured does not include a client of the Named Insured.

O. Environmental Laws means:

1. 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; or

2. A written directive or notice from a Licensed Site Professional stating that Clean-Up Costs must be incurred by the Named Insured pursuant to federal, state, provincial or local laws as described in subparagraph 1. above.

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

Q. Insured means:

1. The Named Insured;

2. Any person who is or was a director, officer, partner, member or employee, including a temporary or leased employee or shareholder of the Named Insured while acting within the scope of his or her duties as such;

3. Joint ventures in which the Named Insured is named as a co-venturer but only with respect to the liability arising out of the Named Insured’s Covered Operations;

4. The client for whom the Named Insured performs or performed Covered Operations, provided that a written contract or agreement is in effect between the Named Insured and the client. However, such clients are covered under this Policy solely with respect to Loss arising from Covered Operations and are not covered for any Loss arising from the client’s own liability. Clients of the Named Insured are covered under this Policy only for Limits of Liability up to and not exceeding the amount required by the written contract with the Named Insured and subject to the Limits of Liability of this Policy;

5. A Limited Liability Company in which the Named Insured is a member and all members but only with respect to the liability arising out of the Named Insured’s Covered Operations; and

6. Owners, lessees, project lenders, financiers or contractors of a job site where Covered Operations are being performed by or on behalf of the Named Insured and the Named Insured is required under a written contract, executed prior to Claim or Loss, to add such entities as additional Insured(s) to this Policy but only with respect to the liability arising out of the Named Insured’s Covered Operations. Such entities are covered under this Policy only for Limits of Liability up to and not exceeding the amount required by the written contract with the Named Insured and subject to the Limits of Liability of this Policy.

R. Insured Contract means:

1. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

2. That part of any other contract or agreement pertaining to the Named Insured’s Covered Operations (including an indemnification of a municipality in connection with work performed for a municipality) whereby the Named Insured assumes the tort liability of another party to pay for Bodily Injury, Property Damage or Environmental Damage to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

S. Licensed Site Professional means an individual or entity mutually agreed upon by the Company and the Named Insured that is qualified and duly acting as a professional under the applicable state statutes and/or regulations to supervise the remediation of or other response to Pollution Conditions. The
Company may also exercise the right to require that such professional have certain minimum qualifications with respect to his or her competency, including experience with the remediation of or other response to a similar Pollution Conditions.

T. Loss means:

1. With respect to Claims for Bodily Injury or Property Damage:
   a. Monetary awards or settlements of compensatory damages;
   b. Where allowable by law, punitive, exemplary, or multiple damages; and
   c. Civil fines, civil penalties, or civil assessments;

2. Clean-Up Costs arising from Environmental Damage;

3. Emergency Response Costs; or


U. Low Level Radioactive Material means radioactive material or waste, including any radioactive waste from nuclear medicine, medical imaging, not classified as high level radioactive waste, transuranic waste, spent nuclear waste, or by product waste as defined by the Atomic Energy Act, or any amendment thereof.

V. Mediation means non-binding dispute resolution conducted by a neutral third party.

W. Microbial Matter means fungi, mold or mildew, whether or not such Microbial Matter is living.

X. Misdelivery means the delivery of any liquid product into a wrong receptacle or to a wrong address or the erroneous delivery of one type of liquid for another type of liquid.

Y. Motor Vehicle means an automobile, van, truck, trailer or semi-trailer designed and registered to travel on public roads.

Z. Named Insured means the person or entity designated as such in Item 1. of the Declarations and any and all corporations, partnerships, companies or other entities as have existed at any time, or as now or may hereafter exist during the Policy Period and in which the Named Insured did or does have more than a 50% ownership interest. However, (i) there is no coverage for any entity acquired during the policy period for any Claim made against such entity prior to the acquisition date, or any Pollution Condition associated with any such Claim and (ii) Named Insured shall not include any entity with revenues greater than 20% of the Named Insured’s revenues as reported in the application that is acquired after the Inception Date other than an acquired entity that is subject to all of the conditions set forth below:

1. The Named Insured shall notify the Company of any entity acquired during the Policy Period by the Named Insured with revenues greater than 20% of the Named Insured’s revenues as reported in the application. Underwriting information as requested by the Company must be submitted.

2. Any such entity acquired during the Policy Period by the Named Insured shall be a Named Insured for a period of one hundred and twenty (120) days following the acquisition date.

3. No coverage will be provided after the one hundred and twentieth (120th) day unless the entity is specifically endorsed onto the Policy as a Named Insured. Additional premiums may be required in order to endorse the acquired entity on to the Policy as a Named Insured.
The first **Named Insured** designated in Item 1. of the Declarations will act on behalf of all other **Insureds**, if any, for the payment or return of any premium, payment of any deductible, receipt and acceptance of any endorsement issued to form a part of this Policy, and giving and receiving notice of cancellation or nonrenewal.

**AA. Named Insured’s Product** means goods, products, or pieces of equipment, including component parts thereof and including other products in which such goods, products or pieces of equipment are incorporated, which are manufactured, sold, furnished, or supplied by the **Named Insured**, any subsidiary of the **Named Insured**, any entity which wholly or partly owns, operates or manages the **Named Insured** or any subsidiary of such entity, or any person under license from the **Named Insured**.

**BB. 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.

**CC. Nuclear Material** means Source Material, Special Nuclear Material or By-Product Material as defined in the Atomic Energy Act or any amendments thereof.

**DD. PIER Network Provider** means an environmental or emergency response contractor that is a member of the Company’s PIER (Pollution Incident and Environmental Response®) program.

**EE. Policy Period** means the period set forth in Item 2. of the Declarations, or any shorter period arising as a result of cancellation of this Policy.

**FF. Pollution Conditions** means:

1. the discharge, dispersal, release or escape; or

2. illicit abandonment by a third party without the **Insured’s** consent at a job site, of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, **Low Level Radioactive Material**, electromagnetic fields, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered, unless such natural condition(s) are released or dispersed as a result of the performance of **Covered Operations**, and such release or dispersal is unexpected and unintended from the standpoint of the **Insured**. **Pollution Conditions** shall include **Microbial Matter** and Legionella pneumophila in any structure on land and the atmosphere contained within that structure. Solely with respect to **Clean-Up Costs**, **Pollution Conditions** shall also include the discharge, dispersal, release or escape of viruses or bacteria, as defined by the Center for Disease Control, **Pollution Conditions** shall also include the discharge, dispersal, release or escape of silt or sedimentation that originated at and migrated from a job site.

**GG. Pre-Claim Circumstance** means an event, incident, circumstance, dispute or situation arising solely out of the **Insured’s Covered Operations**, which the **Insured** first becomes aware of during the **Policy Period**, and that a reasonably minded, prudent person might expect to give rise to a **Claim**.
HH. Pre-Claim Expenses means:

1. Reasonable and necessary fees charged by a licensed environmental services professional or attorney mutually agreed upon by the Company and the Named Insured, for environmental consulting, investigative, testing or legal services, solely to the extent such fees are incurred as a result of a Pre-Claim Circumstance.

2. Costs, charges and expenses incurred by the Company in the investigation or adjustment of Pre-Claim Circumstances; and

3. All reasonable and necessary expenses incurred by the Insured at the Company’s request to assist the Company in the investigation of a Pre-Claim Circumstance, including the Insured’s employees lost salaries or wages, up to $500 a day.

Except as expressly set forth in this Definition, Pre-Claim Expenses shall not include costs, charges or other expenses incurred by the Insured for goods supplied by or on behalf of the staff or salaried employees of the Insured, or its parent, subsidiary or affiliate, unless such costs, charges or other expenses are incurred with the prior written approval of the Company at its sole discretion.

II. 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;

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; or


Property Damage does not include Environmental Damage.

Solely with respect to this definition, Insured does not include a client of the Named Insured.

JJ. Responsible Insured means the manager or supervisor of the Named Insured responsible for environmental affairs, control or compliance, or any member, officer, director or partner of the Named Insured.

KK. Restoration Costs means reasonable and necessary costs incurred by the Insured with the Company’s 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 arising from Environmental Damage.

Restoration Costs shall not include costs associated with improvements or betterments, except to the extent that such improvements or betterments of the damaged property entail the use of materials which are environmentally preferable to those materials which comprised the damaged property. Such environmentally preferable material must be certified as such by an applicable independent certifying body, where such certification is available, or, in the absence of such certification, based on the judgment of the Company in its sole discretion.

LL. Transportation means the use of a Motor Vehicle, aircraft, rolling stock, or watercraft while in due course of transit from the time of movement from its point of origin to its final destination, including loading or unloading onto or from the Motor Vehicle, aircraft, rolling stock or watercraft. In the course
of the performance of Covered Operations, Transportation includes Misdelivery and the loading of fuel into a power unit by or on behalf of the Named Insured.

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