



# Environmental Impairment Liability Insurance

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POLICY WORDING

# Coast Insurance Environmental Impairment Liability Policy Wording

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## ABOUT THIS DOCUMENT

This booklet contains two separate parts: Important Information and Policy Terms and Conditions.

### Important Information

This part of the booklet contains information You need to know before You take out an insurance policy. Please read it carefully before taking out this insurance.

For the purposes of the Important Information section all references to:

- 'You', 'Your' or 'Yours' have the same meaning as You/Your/Yours as defined in the 'Definitions' section of the Policy;
- 'We', 'Us' or 'Our' have the same meaning as We/Our/Us/Insurer(s) as defined in the 'Definitions' section of the Policy.

### Policy Terms and Conditions

This part of the booklet contains the Policy Terms and Conditions, which detail all the terms, conditions and exclusions relating to the Policy. It forms part of Your legal contract with Us.

If We issue You with an insurance policy, You will be given a Policy Schedule. The Policy Schedule sets out the specific terms applicable to Your cover and should be read together with the Policy Terms and Conditions.

The Policy Terms and Conditions and the Policy Schedule We send to You form Your legal contract with Us so please keep them in a safe place for future reference.

If You require further information about this product, please contact Your insurance broker.

## IMPORTANT INFORMATION

### About The Insurer

This Policy is underwritten by certain underwriters at Lloyd's ('Underwriters'). The Underwriters are collectively referred to as 'We, Us, Our, the Insurer(s)' in this Policy.

Certain underwriters at Lloyd's are authorised and regulated by the Australian Prudential Regulation Authority ('APRA') under the provisions of the Insurance Act 1973 (Cth) to conduct insurance business in Australia.

Lloyd's is the world's specialist insurance and reinsurance market.

With expertise earned over centuries, Lloyd's is the foundation of the insurance industry and the future of it. Led by expert underwriters and brokers who cover more than 200 territories, the Lloyd's market develops the essential, complex and critical insurance needed to underwrite human progress.

Backed by diverse global capital and excellent financial ratings, Lloyd's works with a global network to grow the insured world - building resilience for businesses and local communities and strengthening economic growth around the world.

You should contact Coast Insurance in the first instance in relation to this insurance.

### About Coast Insurance

Coast Insurance Pty Ltd (ABN 44 108 154 829, AFSL 268726) ('Coast') acts under a binding authority given to it by Us, to administer and issue policies, alterations and renewals. In all aspects of arranging the Policy, Coast acts as an agent for the Insurer(s) and not for You.

If You have any queries in relation to this Policy, contact Coast in any of the following ways:

**Street Address:** 1st Floor, 186 Scarborough Beach Road, Mt Hawthorn Western Australia 6016

**Postal Address:** PO Box 120, Mount Hawthorn WA 6915

**Phone:** +61 8 6374 7000

## General Insurance Code of Practice

The Insurance Council of Australia Limited has developed the General Insurance Code of Practice ("the Code"), which is a voluntary self-regulatory code. The Code aims to raise the standards of practice and service in the insurance industry.

Lloyd's has adopted the Code on terms agreed with the Insurance Council of Australia. For further information on the Code please visit [www.codeofpractice.com.au](http://www.codeofpractice.com.au).

The Code Governance Committee (CGC) is an independent body that monitors and enforces insurers' compliance with the Code. For more information on the Code Governance Committee (CGC) go to [www.insurancecode.org.au](http://www.insurancecode.org.au).

## Our Contract with You

This Policy is a contract of insurance between You and Us and contains all the details of the cover that We provide.

The Policy consists of:

- this Policy wording which tells You what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover (this document);
- the Proposal, which is the information You provide to Us when applying for insurance cover;
- Your most current Policy Schedule issued by Us. The Schedule is a separate document unique to You, which shows the insurance details relevant to You. It includes any changes, exclusions, terms and conditions made to suit Your individual circumstances and may amend the Policy;
- any Endorsement;
- any other document We tell You forms part of the Policy which may vary or modify the above documents.

Please note, only those cover sections shown as covered in Your Schedule are insured.

These documents should be read together as they jointly form the contract of insurance between You and Us.

## Duty of Disclosure

Before You enter into an insurance contract, You have a duty to tell Us anything that You know, or could reasonably be expected to know, that may affect Our decision to insure You and on what terms. You have this duty until We agree to insure You.

You have the same duty before You renew, extend, vary or reinstate an insurance contract.

### **You do not need to tell Us anything that:**

- reduces the risk We insure You for; or
- is common knowledge; or
- We know or should know as an insurer; or
- We waive Your duty to tell Us about.

### **If You do not tell Us something**

If You do not tell Us anything You are required to, We may cancel Your contract or reduce the amount We will pay You if You make a claim, or both.

If Your failure to tell Us is fraudulent, We may refuse to pay a claim and treat the contract as if it never existed.

## Cooling-Off Period

There is a twenty-one (21) day cooling-off period. If You wish to cancel the Policy, You can cancel it from its date of issue by contacting Coast in writing within twenty-one (21) days of its date of issue.

We will refund Your premium less any non-refundable government charges, taxes and levies We have paid. You cannot exercise this right if:

- You have made a claim or become entitled to make a claim under the Policy; or
- You have exercised any right or power You have in respect of the Policy or the Policy has ended.

Even after this cooling-off period ends, You still have cancellation rights. Please refer to 'Cancellation' in the

General Conditions section of the Policy.

## Privacy Statement

In this Privacy Statement the use of "We", "Us" and "Our" means the Insurer(s) and Coast unless specified otherwise.

We are committed to the safe and careful use of Your personal information in the manner required by the *Privacy Act 1988 (Cth)* and the Australian Privacy Principles and the terms of this Policy.

We collect Your personal information in order to assess Your application for insurance and, if Your application is accepted, to administer and manage Your insurance policy and respond to any claim that You make. To do this, Your personal information may need to be disclosed to reinsurers and service providers and related entities who carry out activities on Our behalf, such as assessors and facilitators, some of whom may be located in overseas countries such as the United Kingdom and Europe.

Our contractual arrangements generally include an obligation for these reinsurers, service providers and related entities to comply with Australian privacy laws.

By providing Us with Your personal information, You consent to the disclosure of Your personal information to reinsurers, service providers and related entities in overseas countries to enable Us to assess Your application, to administer and manage Your insurance Policy and to respond to any claim that You make. If You consent to the disclosure of Your personal information to overseas recipients, and the overseas recipient handles Your personal information in a way other than in accordance with the Australian privacy laws, We may not be responsible for the handling of Your personal information by the overseas recipient.

If You choose not to provide Your personal information and/or choose not to consent and/or withdraw Your consent to the disclosure of Your personal information to overseas entities at any stage, We may not be able to assess Your application or administer and manage Your insurance policy and respond to any claim that You make.

Our privacy policies contain information on how You may access personal information that each of us hold, or seek correction of Your personal information and information on how to make a complaint about the handling of Your personal information and how complaints are handled. If You require more information, You can access Coast's Privacy Policy at [www.coastins.com.au](http://www.coastins.com.au)

## Complaints & Disputes

If you have any concerns or wish to make a complaint in relation to this policy, our services or your insurance claim, please let us know and we will attempt to resolve your concerns in accordance with our Internal Dispute Resolution procedure. Please contact Coast in the first instance:

Complaints Officer  
Coast Insurance Pty Ltd  
**Email:** [info@coastins.com.au](mailto:info@coastins.com.au)  
**Phone:** +61 8 6374 7000  
**Address:** PO Box 120, Mount Hawthorn WA 6915

We will acknowledge receipt of your complaint and do our utmost to resolve the complaint to your satisfaction within 10 business days.

If we cannot resolve your complaint to your satisfaction, we will escalate your matter to Lloyd's Australia who will determine whether it will be reviewed by their office or the Lloyd's UK Complaints team. Lloyd's contact details are:

Lloyd's Australia Limited  
**Email:** [ldraustralia@lloyds.com](mailto:ldraustralia@lloyds.com)  
**Phone:** (02) 8298 0783  
**Address:** Suite 1603 Level 16, 1 Macquarie Place, Sydney NSW 2000

A final decision will be provided to you within 30 calendar days of the date on which you first made the complaint unless certain exceptions apply.

You may refer your complaint to the Australian Financial Complaints Authority (AFCA), if your complaint is not resolved to your satisfaction within 30 calendar days of the date on which you first made the complaint or at any time. AFCA can be contacted as follows:

**Phone:** 1800 931 678  
**Email:** [info@afca.org.au](mailto:info@afca.org.au)  
**Address:** GPO Box 3 Melbourne VIC 3001  
**Website:** [www.afca.org.au](http://www.afca.org.au)

Your complaint must be referred to AFCA within 2 years of the final decision, unless AFCA considers special circumstances apply. If your complaint is not eligible for consideration by AFCA, you may be referred to the Financial Ombudsman Service (UK) or you can seek independent legal advice. You can also access any other external dispute resolution or other options that may be available to you.

The Underwriters accepting this Insurance agree that:

- (i) if a dispute arises under this Insurance, this Insurance will be subject to Australian law and practice and the Underwriters will submit to the jurisdiction of any competent Court in the Commonwealth of Australia;
- (ii) any summons notice or process to be served upon the Underwriters may be served upon:

Lloyd's Underwriters' General Representative in Australia  
Suite 1603  
Level 16  
1 Macquarie Place  
Sydney NSW 2000

who has authority to accept service on the Underwriters' behalf;

- (iii) if a suit is instituted against any of the Underwriters, all Underwriters participating in this Insurance will abide by the final decision of such Court or any competent Appellate Court.

In the event of a claim arising under this Insurance immediate notice should be given to:

Coast Insurance Pty Ltd  
**Email:** [info@coastins.com.au](mailto:info@coastins.com.au)  
**Phone:** +61 8 6374 7000  
**Address:** PO Box 120, Mount Hawthorn WA 6915

LMA5544  
17 May 2021

## Renewal Procedure

Before this Policy expires, We will advise You whether We intend to offer renewal and if so on what terms. It is important to check the terms of any renewal before renewing to ensure that the details are correct. This document will apply to any renewal unless We tell You otherwise.

## Policy Interpretation

Throughout this Policy, words are sometimes capitalised wherever they appear in the Policy to show that those words have a particular defined meaning. These words are defined under 'Definitions' as applicable to each particular section of the Policy. Where any word is defined every derivative of that word has a corresponding meaning.

References to the masculine include the feminine, the singular also includes the plural and vice versa. The headings are included for descriptive purposes only and do not form part of the Policy for the purpose of its construction or interpretation.

## Preventing Our Right of Recovery

Where another person is liable to compensate You for any loss, damage or liability which is covered by this Policy but You have agreed not to seek recovery of any monies from that person, We will not cover You under this Policy for that loss, damage or liability.

# POLICY TERMS AND CONDITIONS

## Section 1. Coverage

In consideration of the payment of the Premium specified in Item 10 of the Schedule, and in reliance upon the statements contained in the **Application** and any other information provided prior to, or at, the **Policy Inception Date**, and subject to all the terms and conditions of this Policy and the Limits of Insurance and Deductible amounts specified in Items 4 and 5 of the Schedule respectively, the Underwriter and the **Insured** agree as follows:

### A. Coverage

#### PREMISES COVERAGE

Subject to the Requirements below, the Underwriter will pay to, or on behalf of, the **Insured** for:

#### 1. Bodily Injury, Property Damage, Clean-Up and Natural Resource Damage (Coverage A)

Loss that the Insured becomes legally liable to pay as a result of a Claim for Bodily Injury, Property Damage, Clean-Up or Natural Resource Damage resulting from Pollution that is at, on, under or migrating from the Insured Premises.

#### 2. Insured's Emergency Costs (Coverage B)

Emergency Costs resulting from an Emergency.

#### 3. Defence Costs (Coverage C)

Defence Costs incurred solely by reason of Claims covered by this Policy.

### B. Requirements

Coverage under Section I. (Premises Coverage) only applies provided that:

1. such Pollution (for all Coverages) is unexpected and unintended;
2. where a Retroactive Date applies, such Pollution (for all Coverages) first commences on or after the Retroactive Date;
3. where a Delineation Date applies, such Pollution (for all Coverages) first commences before the Delineation Date;
4. such Claim is first made against the Insured (for Coverage A), or such Emergency first occurred (for Coverage B), during the Policy Period;
5. such Claim (for Coverage A), or such Emergency (for Coverage B), is reported in writing to the Underwriter in accordance with the terms and conditions of the Policy and in any event during the Policy Period or, where an Extended Reporting Period applies, during the Extended Reporting Period; and
6. such Pollution arises (for all Coverages), and such Claim is made, maintained and pursued (for Coverage A), within the Geographical Limits specified in Item 9c of the Schedule.

## Section 2 Interpretation and Definitions

### A. Interpretation

1. The headings of this Policy are for convenience only and form no part of the interpretation of the terms and conditions of this Policy.
2. Words importing the singular include the plural and vice versa, words importing a gender include every gender, and references to persons include corporations, partnerships and other unincorporated associations.
3. The word "including" or similar expression in this Policy shall be deemed to mean "including without limitation".

### B. Definitions

1. **Additional Expenses** means costs, charges and expenses that are described in a "Supplementary Coverage" Endorsement, if such an Endorsement is attached to this Policy.
2. **Additional Insured** means any person or entity specifically endorsed on to the Policy as an **Additional Insured**. Such **Additional Insured** shall maintain only those rights pursuant to this Policy as are specified by Endorsement.
3. **Application** means any information supplied to the Underwriter by, or on behalf of, any **Insured**, including all items set out in any "Disclosed Documents Schedule" Endorsement, if such an Endorsement is attached to this Policy.
4. **Bodily Injury** means physical injury, sickness, disease, illness, disability, mental harm or shock sustained by a **Third Party**, including death resulting therefrom.
5. **Claim** means:
  - (a) a written demand or written notice; or
  - (b) a Regulatory Notice, issued to the **Insured** seeking a remedy against the **Insured** or asserting liability or responsibility on the part of the **Insured**.
6. **Clean-Up** means the investigation, assessment, monitoring, containment, immobilisation, stabilisation, neutralisation, mitigation, treatment, abatement, remediation, removal or disposal of **Pollutants**, or soil, land (including buildings and structures), surface water, groundwater or other media contaminated by **Pollutants**.
7. **Clean-Up Costs** means:
  - (a) reasonable and necessary costs and expenses to conduct **Clean-Up** to, but not beyond, the minimum necessary extent and standard required by **Environmental Law**; or
  - (b) Reinstatement Costs.

**Clean-Up Costs** under paragraph (a) include such costs and expenses incurred by a regulatory authority exercising its powers under **Environmental Law** or by a **Third Party**, provided that such costs and expenses have actually been incurred.

**Clean-Up Costs** do not include **Natural Resource Damage Expenses**.
8. **Defence Costs** means reasonable legal and other professional fees, costs and expenses incurred by the **Insured**, with the Underwriter's prior written consent, in the investigation, defence, adjustment, settlement or appeal of a **Claim** to which this Policy applies.



9. **Delineation Date** means the date(s) specified in Item 6b of the Schedule or any applicable Endorsement. If no date is entered or the words None, Nil, Not Applicable or N/A appear in the corresponding space of Item 6b of the Schedule, then a **Delineation Date** shall not apply.
10. **Emergency** means the discovery by the **Insured** of **Pollution** at, on, under or migrating from the **Insured Premises**, where such **Pollution** is causing serious harm to the **Environment**, or is likely to cause such harm imminently.
11. **Emergency Costs** means **Clean-Up Costs** incurred by the **Insured** within the first seventy-two (72) consecutive hours of an **Emergency** first occurring, to mitigate the consequences of such **Emergency**.
12. **Environment** means air, water, soil and land (including buildings and structures), and any ecological systems and living organisms (including humans) supported by these media.
13. **Environmental Law** means any Commonwealth, federal, state, territorial, municipal or local law, statute, statutory instrument, by-law, rule, regulation, ordinance, circular or guidance provided that such has the force of law, any permit, authorisation, licence or approval issued thereunder, and any notice, order, request or instruction of any federal, state, territorial, municipal or local governmental or statutory authority, agency, court or like entity, that is applicable to **Pollution**.
14. **Extended Reporting Period** means the additional period of time, if any, following the **Policy Expiry Date**, in which the **Insured** may report a **Claim**, a **Potential Claim** or an **Emergency**.
15. **First Named Insured** means the person or entity identified in Item 1a of the Schedule.

The **First Named Insured** shall:

- (a) be responsible for payment of all Premiums and for reimbursement of the Deductible for all other **Insureds**; and
  - (b) act on behalf of all other **Insureds**:
    - (i) for the giving and receiving of notice of cancellation, termination or non-renewal;
    - (ii) for receipt and acceptance of any Endorsement issued to form a part of this Policy;
    - (iii) for receipt of any return Premiums that may become payable under this Policy; and
    - (iv) in respect of the exercise of any applicable **Extended Reporting Period**.
16. **Insured** means:
    - (a) the First Named Insured;
    - (b) any Named Insured(s);
    - (c) any Additional Insured(s); and
    - (d) any past or present director, officer, partner, or full time, temporary or agency employee of the First Named Insured, Named Insured(s) or Additional Insured(s), while acting within the scope of his or her duties as such.
  17. **Insured Contract** means a contract entered into by the **Named Insured** in the course of its business which contains an indemnity, hold harmless or similar agreement, including any assignment of such agreement to which the **Named Insured** is a party, which is identified in an "Insured Contract Schedule" Endorsement, if such an Endorsement is attached to this Policy.
  18. **Insured Premises** means the premises identified in Item 7 of the Schedule, or any other premises specifically endorsed on to this Policy as **Insured Premises**.
  19. **Loss** means:
    - (a) monetary awards or settlements of compensatory damages, including claimants' legal costs and expenses;
    - (b) where insurable by law, and only to the extent insurable by law: punitive, exemplary or multiplied damages;
    - (c) Clean-Up Costs; or
    - (d) Natural Resource Damage Expenses.

20. **Microbial Matter** means any type or form of fungus, including mould or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
21. **Named Insured** means the **First Named Insured**, and any person or entity identified in Item 1b of the Schedule or specifically endorsed onto this Policy as a **Named Insured**.
22. **Natural Resource** means natural habitats, ecosystems, wildlife, flora, fauna, air, land, water (including groundwater), drinking water supplies and other such natural resources.
23. **Natural Resource Damage** means damage to, injury to, or destruction of a **Natural Resource**.
24. **Natural Resource Damage Expenses** means reasonable and necessary costs and expenses to restore, rehabilitate, replace or provide an equivalent alternative to the **Natural Resource** that has suffered **Natural Resource Damage**, to, but not beyond, the minimum necessary extent and standard required by **Environmental Law**.

**Natural Resource Damage Expenses** do not include **Clean-Up Costs**.

24. **Naturally Occurring Substance** means any substance that has not been directly or indirectly altered in concentration, state or location by man-made activity.
25. **Policy Expiry Date** means:
- (a) the last date shown in Item 2 of the Schedule;
  - (b) the effective date of cancellation or termination of the Policy where this is earlier; or
  - (c) the date as otherwise expressly provided in an Endorsement to this Policy.
26. **Policy Inception Date** means the date identified in Item 2 of the Schedule.
27. **Policy Period** means:
- (a) the period identified in Item 2 of the Schedule;
  - (b) any shorter period resulting from the cancellation or termination of this Policy; or
  - (c) as otherwise expressly provided in an Endorsement to this Policy.
28. **Pollutant** means any substance that is capable of causing harm or damage to the **Environment**.
29. **Pollutant** does not include noise, heat, light or vibration, **Microbial Matter** or **Naturally Occurring Substances**.
30. **Pollution** means the discharge, dispersal, release, escape, migration or seepage of any **Pollutant** into or upon land, or any structure on land, the atmosphere, or any watercourse or body of water, including groundwater and the sea.
31. **Potential Claim** means **Pollution** that the **Insured** first becomes aware of during the **Policy Period**, which is likely to result in a **Claim** for **Bodily Injury** or **Property Damage**.
32. **Product** means anything sold, supplied, manufactured, constructed, installed, altered, repaired, serviced, treated or distributed by or on behalf of the **Insured**, including materials, parts, equipment, containers, packaging or labelling, after they have ceased to be in the possession or control of the **Insured**, and includes warranties or representations made at any time with respect to the fitness, quality, durability, performance or use thereof.
33. **Property Damage** means:
- (a) physical damage to, or destruction of, a **Third Party's** tangible property of which the **Third Party** has legal ownership, including the resulting loss of use, and in the case of such property located beyond the boundary of **Insured Premises**, the resulting reduction in value;
  - (b) loss of use of a **Third Party's** tangible property of which the **Third Party** has legal ownership, that has not been physically damaged or destroyed; and
  - (c) loss of, or interference with, amenity or enjoyment of a **Third Party's** tangible property of which the **Third Party** has legal ownership, that has not been physically damaged or destroyed.

**Property Damage** does not include:

- (a) reduction in value of a **Third Party's** tangible property that has not been physically damaged or destroyed;
- (b) Clean-Up Costs or Natural Resource Damage Expenses; or
- (c) any cost of re-doing any work that gave rise to **Pollution**.

34. **Regulatory Notice** means the written requirement of a regulatory authority exercising its powers under **Environmental Law** to take action in respect of **Pollution**.
35. **Reinstatement Costs** means reasonable and necessary costs incurred by the **Insured** with the Underwriter's prior written consent, to reinstate, restore, repair or replace real or personal property to substantially the same condition it was in prior to being physically damaged during **Clean-Up**, where such physical damage is necessary to enable **Clean-Up** to be undertaken.
36. **Reinstatement Costs** do not include any such costs constituting an improvement or betterment.
37. **Responsible Insured** means an officer, director or partner of the **Insured**, or any employee of the **Insured** responsible for compliance, risk management, insurance, environmental or health and safety affairs, control or compliance, or managing **Insured Premises**.
38. **Retroactive Date** means the date(s) specified in Item 6a of the Schedule, or any applicable Endorsement, which is the earliest date that **Pollution** can first commence for coverage to be provided under this Policy. If no date is entered or the words None, Nil, Not Applicable or N/A appear in the corresponding space of Item 6a of the Schedule, then a **Retroactive Date** shall not apply.
39. **Third Party** means a person, entity or organisation other than the **Insured**.
40. **Underground Storage Tank** means any tank (including any underground pipework connected to it) that:
- (a) is present at the **Insured Premises** during the **Policy Period**; and
  - (b) has at least ten (10) percent of its total volume below ground.
42. **Underlying Insurance** means those policies (and subsequent renewals of such policies) specifically identified in Item 14 of the Schedule or in an "Underlying Insurance Schedule" Endorsement, if such an Endorsement is attached to this Policy.

## Section 3. Exclusions

This Policy does not apply to:

1. any costs, charges or expenses:
  - 1.1 Facility Maintenance And Upgrades**  
to maintain, test, monitor, repair, upgrade, install, commission, decommission, remove or replace any plant or equipment at the Insured Premises.
  - 1.2 Payroll And Other Internal Costs**  
incurred by the **Insured** for goods supplied or services performed by the **Insured** or its parent, subsidiary or affiliate (including payroll expenses).  
  
This Exclusion does not apply to:
    - (a) **Emergency Costs** provided such costs are limited to the **Insured's** actual out of pocket labour and expense costs that are not marked-up for overhead, profit or fringe benefits; or
    - (b) costs, charges or expenses that are incurred with the prior written approval of the Underwriter in its sole discretion.
2. any Loss, Claim, Emergency Costs, Defence Costs or Additional Expenses for, or howsoever arising directly or indirectly out of:

- 2.1 Asbestos**  
asbestos or asbestos-containing materials installed or applied in, on or to any fixture, building or other structure.

This Exclusion does not apply to any Claims for Clean-Up solely to the extent such Claim results from asbestos in soil and groundwater.

- 2.2 Contractual Liability**  
liability that the **Insured** has assumed in any contract or agreement. This Exclusion does not apply to liability that:

- (a) the **Insured** would have in the absence of such contract or agreement; or
- (b) is specifically assumed in an **Insured Contract**.

- 2.3 Fines And Penalties**  
fines, penalties and assessments.

- 2.4 Damage To First Party Property**  
any damage to, or destruction of, or reduction in value of, or loss of use of, or loss of or interference with amenity or enjoyment of, property owned, leased, rented or occupied by, loaned or licensed to, or otherwise in the care, custody or control of, any Insured.

This Exclusion does not apply to Clean-Up Costs or Emergency Costs.

- 2.5 Employers Liability**
  - (a) any physical injury, sickness, disease, illness, disability, mental harm or shock sustained by, or death of, an **Insured** or a current or former employee of its parent, subsidiary or affiliate, arising out of and in the course of employment by the **Insured** or its parent, subsidiary or affiliate;
  - (b) any **Claim** for physical injury, sickness, disease, illness, disability, mental harm, shock or death asserting that the **Insured** is liable as an employer; or
  - (c) the provisions of employers' liability legislation, common law or similar law.  
This Exclusion also applies to any obligation to contribute with or indemnify any **Third Party** who must pay damages arising from any such matters.

- 2.6 Flood Water**  
any escape of water or flooding.

This Exclusion does not apply to that portion of Loss, Claim, Emergency Costs, Defence Costs or Additional Expenses that can be directly attributed to:

- (a) any hazardous chemicals, hazardous materials or waste materials contained within, or transported by, escaped water or flood water; or
- (b) **Pollution** resulting from an escape of water or flooding.

## 2.7 Insured Versus Insured

any Claim made by one Insured against any other Insured.

This Exclusion does not apply to a Claim by one Named Insured against another Named Insured:

- (a) pursuant to an **Insured Contract**; or
- (b) which is initiated by a **Claim** by a **Third Party**,

provided that the **Loss** payable under the Policy for such **Claim** does not include any claimant's legal costs and expenses incurred by a **Named Insured** claiming against another **Named Insured**.

## 2.8 Intentional Non-Compliance

any fraudulent, criminal, malicious, intentional, wilful or wrongful act or omission, or intentional or wilful disregard of, or deliberate non-compliance with, Environmental Law by, or at the direction of, a Responsible Insured.

This Exclusion does not apply to a Responsible Insured:

- (a) acting in good faith under exceptional circumstances to mitigate the consequences of an
- (b) **Emergency**; or
- (c) that did not personally acquiesce in, or remain passive after having personal knowledge of, one or more of the acts described above.

## 2.9 Known Matter

Pollution that:

- (a) the Insured has reported to another insurer under a prior policy, regardless of whether the limits of liability under such policy have been exhausted or the terms and conditions of the policy are materially different to this Policy;
- (b) the Insured had knowledge of prior to the Policy Inception Date and failed to disclose to the Underwriter prior to the Policy Inception Date; or
- (c) is the subject of, or connected to, any Loss, Claim, Potential Claim, Emergency Costs, Defence Costs or Additional Expenses under any other policy issued by the Underwriter and held at any time by the Insured.

## 2.10 Material Change In Risk

a change in use or operation of an Insured Premises from the use or operation of the Insured Premises

as at the Policy Inception Date, which gives rise to a material change in risk.

For purposes of this Exclusion, a material change in risk includes a change that:

- (a) results in the imposition of stricter clean-up standards, guideline values or thresholds than those that were or would have been imposed as of the Policy Inception Date; or
- (b) had the Underwriter been aware of the change prior to the Policy Inception Date, it would have caused the Underwriter to decline the risk outright, or to alter the terms and conditions of this Policy.

This Exclusion does not apply to a change which the Underwriter has given its prior written consent.

**2.11 Nuclear**

- (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (c) nuclear weapons material; or
- (d) the hazardous properties of nuclear material if such liability arises out of the furnishing by the Insured of services, material, parts or equipment in connection with planning, construction, maintenance, operation or use of any nuclear facility.

**2.12 Product Pollution**

any Products.

**2.13 Redevelopment**

**Pollution** caused by, arising from, discovered or encountered during or as a result of (re)development, sub-surface construction work, underground utility work, excavation, site regrading, or movement of any ground material at the **Insured Premises**, including any associated geotechnical, environmental or similar intrusive ground investigation.

**2.14 Terrorism and war**

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

**2.15 Underground Storage Tanks**

any **Underground Storage Tank**, the existence of which is known by a **Responsible Insured** as of the **Policy Inception Date** or, for **Insured Premises** added to this Policy during the **Policy Period**, the effective date of the Endorsement by which such **Insured Premises** was added to the Policy.

This Exclusion does not apply to:

- (a) an Underground Storage Tank that has been:
  - (i) scheduled on to the Policy in Item 8 of the Schedule or by Endorsement;
  - (ii) removed from an **Insured Premises** prior to the **Policy Inception Date**; or
  - (iii) closed or abandoned in place at the **Insured Premises** in accordance with all applicable laws, prior to the **Policy Inception Date**;
- (b) oil/water separators, silt traps, stormwater retention basins or other similar pollution protection devices;
- (c) septic tanks, cesspits, cesspools or other vessels, pits or containers that are used to store or contain sewerage; or
- (d) any storage tank that is present in a basement, cellar or similar underground area, if such storage tank is wholly situated on or above the surface of the floor.

## **2.16 ENDORSEMENT EXCLUDING A COMMUNICABLE DISEASE FOLLOWING A PUBLIC HEALTH EMERGENCY OF INTERNATIONAL CONCERN (PHEIC)**

2.16.1 In the event that the World Health Organization ('WHO') has determined an outbreak of a **Communicable Disease** to be a Public Health Emergency of International Concern (a '**Declared Communicable Disease**'), no coverage will be provided under this (re)insurance for any loss, damage, liability, cost or expense directly arising from any transmission or alleged transmission of the **Declared Communicable Disease**.

2.16.2 The exclusion in paragraph 1 of this endorsement will not apply to any liability of the (re)insured otherwise covered by this (re)insurance where the liability directly arises from an identified instance of a transmission of a **Declared Communicable Disease** and where the (re)insured proves that identified instance of a transmission took place before the date of determination by the WHO of the **Declared Communicable Disease**.

2.16.3 However even if the requirements of paragraph 2 of this endorsement are met, no coverage will be provided under this (re)insurance for any:

- A. liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for the **Declared Communicable Disease** whether the measures are preventative or remedial;
- B. liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of the **Declared Communicable Disease**;
- C. loss, damage, liability, cost or expense caused by or arising out of fear of or the threat of the **Declared Communicable Disease**.

2.16.4 As used in this endorsement, **Communicable Disease** means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:

- A. the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and
- B. the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and
- C. the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

2.16.5 This endorsement shall not extend this (re)insurance to cover any liability which would not have been covered under this (re)insurance had this endorsement not been attached.

All other terms, conditions and limitations of this (re)insurance remain the same.

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## **2.17 Marine Cyber Endorsement**

2.17.1 Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.

2.17.2 Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.

2.17.3 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive,

paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

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**2.18 Institute Radioactive Contamination, Chemical, Biological, Bio-Chemical And Electromagnetic Weapons Exclusion Clause - 10/11/03**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith

- 2.18.1 In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from
- 2.18.2 ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- 2.18.3 the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- 2.18.4 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- 2.18.5 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
- 2.18.6 any chemical, biological, bio-chemical, or electromagnetic weapon.

CL 370 10<sup>th</sup> November 2003 Section 4. Limits of Insurance and Deductible



## Section 4. Limits of Insurance and Deductible

### A. Limits of Insurance

1. The Limits of Insurance specified in Item 4 of the Schedule and the rules below fix the most the Underwriter will pay regardless of the number of **Insureds, Insured Premises, Losses, Claims, Clean-Ups, Emergencies** or instances of **Pollution** or **Natural Resource Damage**.
2. The Limits of Insurance will apply to the entire **Policy Period** and not separately to any portion of it. If the **Policy Period** is extended after the **Policy Inception Date**, the additional period will be deemed to be part of the preceding period for purposes of determining the Limits of Insurance.

### 3. Aggregate Policy Limit

- 3.1 The Aggregate Policy Limit specified in Item 4 of the Schedule is the maximum the Underwriter will pay for all **Losses, Claims, Emergency Costs, Defence Costs and Additional Expenses**.
- 3.2 Any amounts so paid for **Losses, Claims, Emergency Costs, Defence Costs and Additional Expenses** shall reduce the Aggregate Policy Limit available.

### 4. Each Condition Limit

- 4.1 Subject to the Aggregate Policy Limit, the maximum the Underwriter will pay for all **Losses, Claims, Emergency Costs, Defence Costs and Additional Expenses** arising from the same, continuous, repeated or related **Pollution** is the Each Condition Limit specified in Item 4 of the Schedule. Such amounts so paid will reduce the Aggregate Policy Limit available for payment of **Losses, Claims, Emergency Costs, Defence Costs and Additional Expenses** arising from any other **Pollution**.
- 4.2 If the Aggregate Policy Limit has been reduced by payment of **Losses, Claims, Emergency Costs, Defence Costs or Additional Expenses** to an amount that is less than the Each Condition Limit specified in the Schedule, the remaining Aggregate Policy Limit is the maximum that will be available for payment of **Losses, Claims, Emergency Costs, Defence Costs and Additional Expenses** arising from any other **Pollution**.

### 5 Multiple Policy Periods

The following provisions only apply if the Underwriter has issued claims-made Environmental Insurance to the **Named Insured** in one or more policy periods. Where:

- (a) a **Claim** (for Coverage A), **Pollution** (for **Potential Claim**), or an **Emergency** (for Coverage B) is first reported to the Underwriter under this Policy in accordance with the terms and conditions of this Policy; and
- (b) there are **Losses, Claims, Emergency Costs, Defence Costs or Additional Expenses** arising under a subsequent Environmental Insurance policy issued by the Underwriter which result directly or indirectly out of the same, continuous, repeated or related **Pollution** giving rise to the **Claim, Pollution or Emergency** first reported under this Policy,

then all such subsequent **Losses, Claims, Emergency Costs, Defence Costs or Additional Expenses** shall be deemed to arise from the **Claim** (for Coverage A), **Pollution** (for **Potential Claim**), or **Emergency** (for Coverage B) first reported under this Policy and shall be dealt with under the terms and conditions of this Policy.

## B. Deductible

1. The Underwriter will pay **Loss, Claims, Emergency Costs, Defence Costs** and **Additional Expenses** to which this Policy applies in excess of the Deductible specified in Item 5 of the Schedule (or as otherwise provided by Endorsement, if such an Endorsement is attached to the Policy).
2. The Deductible applies to all **Losses, Claims, Emergency Costs, Defence Costs** and **Additional Expenses** arising from the same, continuous, repeated or related **Pollution**.
3. Sums paid within the Deductible do not reduce the Limits of Insurance.
4. If, at the **Insured's** request, the Underwriter advances any part of **Loss, Claims, Emergency Costs, Defence Costs** and **Additional Expenses** that is within the Deductible, the **Insured** shall reimburse the Underwriter for such amount as soon as practicable.

## Section 5. Extended Reporting Period

1. The following automatic **Extended Reporting Period** shall apply for no additional Premium:

- 1.1 Non-renewal

Where this Policy is not renewed by the **Insured** with the Underwriter upon cancellation, termination or expiry of the Policy, the **Insured** shall have a sixty (60) day **Extended Reporting Period** from the **Policy Expiry Date**, provided that:

- (a) the **Insured** has not purchased any insurance to replace this Policy; and
    - (b) the cancellation or termination of the Policy is not as a result of non-payment of Premium.

- 1.2 Renewal

Where this Policy is renewed by the **Insured** with the Underwriter upon cancellation, termination or expiry of the Policy, the **Insured** shall have a fifteen (15) day **Extended Reporting Period** from the **Policy Expiry Date**.

- 1.3 There is no **Extended Reporting Period** that applies in any other circumstances.

2. Where an **Extended Reporting Period** applies, subject to all of the terms and conditions of the Policy:

- 2.1 a **Claim** (for Coverage A);

- 2.2 a **Potential Claim**; or

- 2.3 an **Emergency** (for Coverage B),

that is reported to the Underwriter during the **Extended Reporting Period** will be deemed to have been reported on the **Policy Expiry Date**, provided that:

- (a) the **Claim** is first made against the **Insured** (for Coverage A);
    - (b) the **Insured** first becomes aware of the **Pollution** (for **Potential Claim**); or
    - (c) the **Emergency** first occurred (for Coverage B), during the **Policy Period**.

3. The **Extended Reporting Period** shall not reinstate or increase any Limits of Insurance of this Policy.

## Section 6. Conditions Applying Upon Pollution or Discovery of Pollution

### 1. Insured's Duties

Upon **Pollution** taking place or the **Insured's** discovery of **Pollution**:

1.1 The **Insured** has the duty to:

- (a) mitigate any Loss, Claim, Emergency Costs, Defence Costs or Additional Expenses under this Policy; and
- (b) carry out Clean-Up to, but not beyond, the minimum necessary extent and standard required by Environmental Law within a reasonable time of the Pollution taking place or the discovery of Pollution.

1.2 The **Insured** has the right to retain a qualified competent professional or contractor to perform any **Clean- Up** provided that the Underwriter's prior written consent has been obtained for the retention of the professional or contractor concerned. The Underwriter will not withhold such consent unreasonably.

1.3 In addition to the **Insured's** duties under Section VII., Sub-Section A., Reporting Conditions, the **Insured** shall notify the Underwriter as soon as reasonably practicable of all actions and measures taken under this Clause 1.

1.4 The **Insured** shall bear all costs and expenses incurred or expended in connection with the discharge of its duties or exercise of its rights under this Clause 1 unless such costs and expenses are covered under Section I. Coverage of this Policy.

### 2. Underwriter's Rights

Upon receiving notice as provided for under Section 7., Sub-Section A., Reporting Conditions or Clause 1 above:

2.1 The Underwriter shall have the right, but not the duty, to:

- (a) mitigate any Loss, Claim, Emergency Costs, Defence Costs or Additional Expenses under this Policy if the Insured fails to do so;
- (b) carry out Clean-Up to, but not beyond, the minimum necessary extent and standard required by
- (c) Environmental Law, if the Insured fails to do so;
- (d) assume direct control over any or all aspects of any Clean-Up by the Insured whilst having regard to the interests of the Insured and acting reasonably; and
- (e) review, participate in and approve all/any Clean-Up actions or decisions by the Insured.

2.2 Any costs or expenses incurred or expended by the Underwriter in connection with the exercise of its rights under this Clause 2 shall be deemed incurred or expended by the **Insured** and:

2.2.1 where such costs or expenses would have been covered under Section I. Coverage of this Policy if they had been incurred or expended by the **Insured**, then such costs or expenses shall be applied against the applicable Limits of Insurance and Deductible, and upon demand by the Underwriter, the **Insured** shall as soon as reasonably practicable reimburse the Underwriter for any part of such costs or expenses that fall within the Deductible; and

2.2.2 for all other costs or expenses, upon demand by the Underwriter, the **Insured** shall as soon as reasonably practicable reimburse the Underwriter for all such costs or expenses

## Section 7. Reporting and Claims Conditions

### A. Reporting Conditions

#### 1 Contact

All **Claims**, **Potential Claims** or **Emergencies** must be reported in writing to the Underwriter's Manager of Claims at the address identified in Item 13 of the Schedule or such other address(es) substituted by the Underwriter in writing.

#### 2 Reporting

##### 2.1 COVERAGE A: Bodily Injury, Property Damage, Clean-Up and Natural Resource Damage

- (a) It is a condition precedent to the Underwriter's liability to make any payment under the Policy for any claim made by the **Insured** for indemnity under Coverage A that:
- (i) the **Insured** must report a **Claim** to which this Policy applies to the Underwriter as soon as practicable, and in any event within seven (7) days of the **Claim** being made;
  - (ii) such report shall include as a minimum:
    - 1) a statement that the **Insured** is making a claim under Coverage A of the Policy in respect of the **Claim**;
    - 2) a description of the **Pollution**, including how, when and where it took place;
    - 3) the nature and extent of any injury, damage or other adverse impact resulting from the **Pollution**, including the names and addresses of any potential witnesses and of injured or affected parties; and
    - 4) the date that the **Claim** was received by the **Insured**; and
  - (iii) the **Insured** shall forward to the Underwriter as soon as reasonably practicable, copies of any and all demands, notices, summonses or other process or legal papers received in connection with such **Claim**, and authorise the Underwriter to obtain records and other information.
- (b) For purposes of Coverage A only, the **Insured** may report a **Potential Claim** to the Underwriter during the **Policy Period** or any applicable **Extended Reporting Period** provided that:
- (i) the **Insured** first becomes aware of the **Pollution** during the **Policy Period**;
  - (ii) the **Pollution** is likely to result in a **Claim** for **Bodily Injury** or **Property Damage**;
  - (iii) the **Potential Claim** is reported as soon as practicable, and in any event within fifteen (15 days) of the **Insured** first becoming aware of the **Pollution**; and
  - (iv) the report includes as a minimum:
    - 1) a statement that the **Insured** is reporting a **Potential Claim** under Coverage A of the Policy;
    - 2) a description of the **Pollution**, including how, when and where it took place;
    - 3) the nature and extent of any injury, damage or other adverse impact resulting from the **Pollution**, including the names and addresses of any potential witnesses and of injured or affected parties;
    - 4) how and when the **Insured** first became aware of the **Pollution**;

- and
- 5) a statement explaining why the **Pollution** is likely to result in a **Claim for Bodily Injury** or
  - 6) **Property Damage** which is covered under the Policy.
- (c) If any **Potential Claim** which has been reported in accordance with Clause (b) above, should subsequently become a **Claim** made against the **Insured**, the **Claim** will be deemed to have been first made and reported during the **Policy Period** and shall be subject to the terms, conditions and Limits of Insurance of this Policy.
- (d) The **Insured** may report **Pollution** to the Underwriter during the **Policy Period** or any applicable **Extended Reporting Period**. Any such report of **Pollution** is not notice of a **Claim** or **Potential Claim** unless the requirements under Clauses (a)(i) and (ii) or (b) above (as applicable) are fully complied with.

## 2.2 COVERAGE B: Emergency Costs

- (a) It is a condition precedent to the Underwriter's liability to make any payment under the Policy for any claim made by the **Insured** for indemnity under Coverage B that:
- (i) the **Insured** must report the **Emergency** to which this Policy applies to the Underwriter as soon as practicable, and in any event within seven (7) days of the **Emergency** first occurring;
  - (ii) such report shall include as a minimum:
    - 1) a statement that the **Insured** is making a claim under Coverage B of this Policy in respect of the **Emergency**;
    - 2) a description of the **Pollution**, including how, when and where it took place;
    - 3) the nature and extent of any injury, damage or other adverse impact resulting from the **Pollution**, including the names and addresses of any potential witnesses and of injured or affected parties;
    - 4) the date that the **Pollution** was discovered by the **Insured**; and
    - 5) a description of the **Emergency Costs** incurred, or likely to be incurred, by the **Insured**; and
  - (iii) the **Insured** shall forward to the Underwriter as soon as reasonably practicable, copies of any and all demands, notices, summonses or other process or legal papers received in connection with such **Pollution** and authorise the Underwriter to obtain records and other information.
- (b) The **Insured** may report **Pollution** to the Underwriter during the **Policy Period** or any applicable **Extended Reporting Period**. Any such report of a **Pollution** is not notice of a claim by the **Insured** under Coverage B unless the requirements under Clause (a)(i) and (ii) above are fully complied with.

## B. Claims conditions

### 1. Admission of Liability, Assumption of Obligations, Voluntary Payments and Voluntary Settlements

It is a condition precedent to the Underwriter's liability to make any payment under the Policy that, except for payments made for Emergency Costs, the Insured shall not voluntarily enter into any settlement, make any payment, assume any obligation, or admit liability with respect to any Pollution, Loss, Claim, Potential Claim, Clean-Up, Natural Resource Damage, Emergency or any other matter under this Policy without the Underwriter's prior written consent. The Underwriter will not withhold such consent unreasonably.

### 2. Co-operation and Mitigation

2.1 It is a condition precedent to the Underwriter's liability to make any payment under the Policy

that all **Insureds** shall assist and co-operate with the Underwriter in the defence, investigation, adjustment or settlement of a **Claim** or the mitigation of **Pollution** or an **Emergency**.

- 2.2 Such assistance and co-operation may include:
- (a) participating at meetings and legal proceedings;
  - (b) securing evidence;
  - (c) pursuing coverage that may be available from other insurance policies or indemnities for any amounts which may also be covered under this Policy;
  - (d) to the extent the **Insured** has rights to do so, providing the Underwriter and its representatives with full access to the **Insured's** premises, including the **Insured Premises**, and permitting the Underwriter and its representatives to interview persons, collect documents and inspect the **Insured Premises**; and
  - (e) taking such actions as the Underwriter deems necessary to defend, investigate, adjust or settle a
  - (f) **Claim**, or mitigate the **Pollution** or the **Emergency** provided that such actions are reasonable and take into account the interests of both the **Insured** and the Underwriter.
- 2.3 No such provision of access, inspection or actions shall impose any liability, responsibility or obligation on the Underwriter.
- 2.4 The **Insured's** obligation to assist and co-operate with the Underwriter shall continue notwithstanding the cancellation or termination of this Policy.

### 3. Defence

- 3.1 The Underwriter shall have the right but not the duty to defend the **Insured** against a **Claim** to which this Policy applies provided, however, that the right to defend or continue defending such **Claim** and to pay any **Loss, Claim, Emergency Costs, Defence Costs** or **Additional Expenses** shall end once the Limits of Insurance are exhausted or are tendered to the **Insured**. **Defence Costs** reduce the Limits of Insurance and erode the Deductible.
- 3.2 The Underwriter shall have the right but not the duty at any time to take over and conduct in the name of the **Insured**, the defence, investigation, adjustment and settlement of any **Claim** for which the **Insured** may become entitled to indemnity under this policy. The Underwriter shall have regard to the interests of the **Insured** and act reasonably at all times. The Underwriter shall exercise its discretion in the conduct of such proceedings and in the settlement of any **Claim** reasonably, and may withdraw from conduct of the defence, investigation and adjustment of any **Claim** at its absolute discretion.
- 3.3 If the Underwriter recommends a settlement offer for a **Claim** to the **Insured** that is acceptable to a claimant, and which exceeds any applicable Deductible, and which is within the Limits of Insurance, and the **Insured** rejects such settlement offer, then the **Insured** shall defend the **Claim** independently of the Underwriter, and the Underwriter's liability shall not exceed the amount for which the **Claim** could have been resolved if the **Insured** had accepted such settlement offer, plus **Defence Costs** incurred up to and including the date of such rejection by the **Insured**, less any outstanding Deductible amount, subject always to the Limits of Insurance.

### 4. Subrogation

- 4.1 The Underwriter shall be subrogated to all of the **Insured's** rights of recovery against any person or organisation, including any rights to contribution from another insurer.
- 4.2 The **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.
- 4.3 The **Insured** shall do nothing to prejudice the Underwriter's rights, and in the event the **Insured** waives its claim against a **Third Party**, the Underwriter shall be relieved of its obligation to indemnify the **Insured** to the extent that the Underwriter would otherwise have had the right to effect recovery.
- 4.4 Any recovery obtained through subrogation shall be applied in accordance with the provisions of section 67 of the Insurance Contracts Act 1984 as amended.

## Section 8. General Conditions

### 1. Assignment and Changes

The terms, definitions, conditions, exclusions and limitations of this Policy shall not be waived or changed, and no assignment of any interest in this Policy shall bind the Underwriter, except as provided by Endorsement issued by, or on behalf of, the Underwriter and attached to this Policy.

### 2. Cancellation

2.1 The **First Named Insured** may cancel this Policy by sending a written request or by returning this Policy to the Underwriter, including in such request or return, the date cancellation is effective. If no such date is given, the Policy will be cancelled upon receipt of the request or Policy. The Premium percentage set forth in Item 11 of the Schedule shall be the minimum percentage of the Premium that the Underwriter earns on the **Policy Inception Date**. Thereafter, the Underwriter shall retain the *pro-rata* proportion of the remaining unearned Premium, if any.

2.2 The Underwriter may cancel this Policy as and in the manner permitted by law and shall be entitled to retain the *pro-rata* proportion of the Premium.

### 3. Care and Compliance

The **Insured** shall at its own expense:

3.1 take all reasonable care and precautions (including maintaining plant, equipment and other business assets in good repair) to prevent any circumstances that may give rise to any **Loss, Claim, Emergency Costs, Defence Costs** or **Additional Expenses** under this Policy; and

3.2 comply with all statutory obligations and requirements.

### 4. Consent and Approval

Wherever the Underwriter's or the **Insured's** consent or approval is required in connection with this Policy, such consent or approval shall not be unreasonably withheld, delayed, denied or conditioned. It is further agreed that this Policy imposes an obligation on each party to act reasonably and in good faith.

### 5. Enforceability

If any part of this Policy is deemed invalid or unenforceable, it shall not affect the validity or enforceability of any other part of this Policy, which shall be enforced to the full extent permitted by law.

### 6. Entire Agreement

The Insured agrees that this Policy, including any Endorsements attached to and forming part of this Policy, and including the Application and any materials submitted in connection with such Application, which are on file with the Underwriter and are a part of this Policy as if physically attached, constitutes the entire agreement existing between the Insured(s) and the Underwriter relating to this Policy.

### 7. Fraud and Intentional Misrepresentation or Non-Disclosure

In the event that the **Insured** fails to comply with the Duty of Disclosure or makes any misrepresentation, whether such non-disclosure or misrepresentation is fraudulent or otherwise, or makes any false, fraudulent or exaggerated claim, the Underwriter's rights shall be as provided in the applicable provisions of the Insurance Contracts Act 1984 and all such rights and entitlements will be rigorously proved.

### 8. Governing Law and Jurisdiction

8.1 This Policy, its interpretation and any non-contractual obligations arising from or connected with it shall be governed by the laws specified in Item 9a of the Schedule.

8.2 The Underwriter and the **Insured** irrevocably agree that the courts specified in Item 9b of the Schedule shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Policy. The Underwriter and the **Insured** each agrees irrevocably to waive any objection to such courts, whether on the grounds of venue or that the forum is not appropriate.

8.3 Nothing in this Condition shall prevent the Underwriter and the **Insured** from resolving any



dispute between them by arbitration, mediation or any other form of alternative dispute.

#### **9. Insurance Contracts Act 1984**

Nothing contained in this Policy is to be construed to reduce or waive the **Insured's** or Underwriter's privileges, rights, duties or remedies available under the Insurance Contract Act 1984.

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

10.1 The Underwriter will not pay for any amounts which are insured by any **Underlying Insurance** or would be so insured but for:

- (a) the existence of this Policy; or
- (b) the **Insured's** failure to comply with the terms and conditions of such **Underlying Insurance**.

10.2 Subject to Clause 10.1 above:

10.2.1 Should any **Underlying Insurance** by virtue of its scope of cover not indemnify the **Insured** in whole or in part in respect of any **Loss, Claim, Emergency Costs, Defence Costs** or **Additional Expenses** as herein provided, this Policy shall, subject to its terms, conditions, limits, sub-limits, Deductibles and exclusions, provide indemnity to the extent that such indemnity is not provided by the terms and conditions of such **Underlying Insurance**.

10.2.2 Where Clause 10.2.1 applies, the indemnity provided under this Policy:

- (a) is only to the extent that such indemnity is not provided by the terms and conditions of the relevant **Underlying Insurance**;
- (b) does not include indemnity to the **Insured** for amounts falling within the Deductibles of any other Underlying Insurance.

10.3 With respect to all other liabilities, this Policy is primary and the Underwriter's obligations are not affected unless any other insurance is also primary. In such case, the Underwriter will contribute on an equal shares basis whereby each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the **Loss, Claim, Emergency Costs, Defence Costs** or **Additional Expenses** remains, whichever comes first. If any of the other insurance does not permit contribution on an equal shares basis, the Underwriter will contribute on a limits basis whereby each insurer's share is calculated on the ratio its applicable limit of insurance bears to the total applicable limits of insurance of all insurers.

#### **11. Representations**

The **Named Insured(s)** represents that the particulars and statements in the **Application** and all materials submitted in connection with the **Application** are true, accurate and complete, and agrees that:

- (a) the Underwriter has issued this Policy in reliance upon the truth of such representation; and
- (b) such particulars and statements, which are incorporated into and constitute part of the Policy, are subject to all the terms and conditions of the Policy, and are material to the Underwriter's acceptance of the risks covered by the Policy.

#### **12. Sanctions**

The Policy does not provide any indemnity where the provision of such indemnity would expose the Underwriter to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, United Kingdom or United States of America.

#### **13. Separation of Insureds**

Except with respect to the Limits of Insurance, Cancellation Condition, Fraud and Intentional Misrepresentation or Non-Disclosure Condition, Known Matters Exclusion, Intentional Non-Compliance Exclusion, Material Change in Risk Exclusion, and any rights or duties specifically assigned to the **First Named Insured**, this Policy applies as if:

- (a) each Named Insured were the only Named Insured; and
- (b) separately to each Named Insured which is making a claim under this Policy.

#### **14. LSW 1001 (INSURANCE) – Several Liability Notice**

The subscribing Insurers' obligations under contracts of Insurance to which they subscribe are several and not joint and are limited solely to the extent of the individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co-subscribing Insurer who for any reason does not satisfy all or part of its obligations.

#### **15. Shared Limits**

All **Insureds** understand, agree and acknowledge that the Policy contains an Aggregate Policy Limit that is applicable to, and will be shared by, all **Insureds** who are or may become insured under this Policy. As such, it is understood and agreed that the Aggregate Policy Limit may be exhausted or reduced by prior payments for other **Loss, Claim, Emergency Costs, Defence Costs** or **Additional Expenses** under this Policy

## General Information

### **1. Sanction Limitation and Exclusion Clause**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall 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 that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10 LMA3100

The information contained in this section is general information only and does not form part of Your contract with us. The Policy Terms and Conditions in the rest of this booklet contain details of Your contract.