

Premises Environmental Liability Insurance Policy



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THIS POLICY CONTAINS A CLAUSE WHICH MAY LIMIT THE AMOUNT PAYABLE.

1 Our agreement in general

1.1 Parties to this agreement

This Premises Environmental Liability Insurance Policy is between the **named insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

1.2 Words in bold

Words in bold typeface used in this **policy** document, other than in the headings, have specific meanings attached to them as set out in the General definitions and interpretation.

1.3 Policy structure

1.3.1 The **insured sections** set out the scope of main coverage and the circumstances in which the **insurer's** liability to the **named insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions. The cover by each **insured section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.

1.3.2 The General exclusions set out limitations and exclusions that apply to all **insured sections**.

1.3.3 The following general terms apply to all **insured sections**, clauses and endorsements:

- a) duties in the event of a claim;
- b) general terms and conditions;
- c) general definitions;
- d) complaints.

1.4 Period of insurance and premium

1.4.1 The **policy** will provide insurance as described herein for the **period of insurance** provided the premium and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

1.4.2 The premium is deemed paid and accepted on receipt by the **insurer** or the broker appointed to place this insurance with the **insurer**.

1.5 Signature

In evidence of the **insurer's** intention to be bound by this insurance, it prints the signature of its Chief Underwriting Officer - Property, Casualty and Motor.



2 Insured section A - Own clean-up costs

2.1 Own clean-up costs cover

The **insurer** will pay on behalf of the **named insured** for **clean-up costs**, including those resulting from **environmental damage**, arising from a **pollution condition** in on under or migrating from the **insured premises** listed in the **schedule** providing such **clean-up costs** are the subject of a **claim** against the **named insured** by a **regulator**.

All **claims** made against the **named insured** during the **period of insurance** must be notified to the **insurer** during the same **period of insurance** or any applicable **extended reporting period**.

The **insurer** will also pay **costs and expenses** in respect of any **clean-up costs**.

3 Insured section B – Third-party liability

3.1 Third-party liability cover

The **insurer** will pay on behalf of the **named insured** for **loss** resulting from:

- a) **bodily injury**;
- b) **property damage**;
- c) **clean-up costs** incurred by a third party in accordance with **environmental law**;
- d) **trespass or nuisance**

which arises from any **pollution condition** in on under or migrating from the **insured premises** listed in the **schedule** providing the **claim** for such **loss** is made against the **named insured** during the **period of insurance**.

All **claims** made against the **named insured** during the **period of insurance** must be notified to the **insurer** during the same **period of insurance** or any applicable **extended reporting period**.

The **insurer** will also pay **costs and expenses** in respect of any **loss**.

4 Insured section C - Transportation

4.1 Transportation cover

The **insurer** will pay on behalf of the **named insured** for **loss** resulting from:

- a) **bodily injury**;
- b) **property damage**;
- c) **clean-up costs** incurred by a third party in accordance with **environmental law**;
- d) **trespass or nuisance**

which arises from any **pollution condition** caused during **transportation**, providing the **claim** for such **loss** is made against the **named insured** during the **period of insurance**.

The **insurer** will also pay **clean-up costs**, including those resulting from **environmental damage**, where such **clean-up costs** arise from any **pollution condition** caused during **transportation** and are the subject of a **claim** against the **named insured** by a **regulator**.

All **claims** made against the **named insured** during the **period of insurance** must be notified to the **insurer** during the same **period of insurance** or any applicable **extended reporting period**.

The **insurer** will also pay **costs and expenses** in respect of any **loss** or **claim**.

5 Insured section D - Business interruption

5.1 Business interruption cover

The **insurer** will pay on behalf of the **named insured** for **business interruption costs** incurred by the **named insured** as a result of **business interruption** providing such **business interruption** arises during the **period of insurance**.

The **insurer** will also pay **costs and expenses** in respect of any **business interruption**.

6 General extensions to insured sections A, B, C and D

6.1 Extended reporting period

In the event that this **policy** expires or is cancelled in accordance with general condition 9.3 and providing no other insurance has been arranged, which replaces all or part of this **policy**, the following applies:

a) Automatic extended reporting period

The **named insured** shall be entitled to an automatic **extended reporting period** of 60 days commencing from the date the **policy** expires or is cancelled.

b) Optional extended reporting period

The **named insured** shall also be entitled to purchase an optional **extended reporting period** of 34 consecutive months for no more than 200% of the policy premium stated in the **schedule** to this **policy**, which will commence upon expiry of the automatic **extended reporting period**

The application of automatic **extended reporting period** or optional **extended reporting period** will not have the effect of increasing the **limit of liability** or extending the **period of insurance**.

Any **claim** notified to the **insurer** during the automatic **extended reporting period** or optional **extended reporting period** shall be deemed to have been notified on the last day of the **period of insurance**.

The first **named insured** must notify the **insurer** in writing before the end of the **period of insurance** of the intention to purchase the optional **extended reporting period**.

6.2 Indemnity to additional insureds

Other than with respect to insured section D, at the request of the first **named insured**, the **insurer** will separately indemnify each **additional insured** provided that the:

- a) first **named insured** would have been entitled to indemnity by this **policy** had the claim or suit been made against the first **named insured**;
- b) **insurer** has the sole conduct and control of any claim;
- c) **additional insured** shall, as though he were the first **named insured**, observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply;
- d) **insurer's** liability under this clause shall in no way operate to increase the **policy limit of liability** or **limit each pollution condition**.

7 General exclusions

This **policy** does not apply to **clean-up costs, loss, business interruption costs or costs and expenses**:

7.1 Asbestos and lead

arising out of or related in any way to asbestos, asbestos fibres, asbestos dust or asbestos-containing materials or lead-based paint installed or applied in on or to any structure or building;

provided that this exclusion does not apply to **clean-up costs** in respect of soil and groundwater.

7.2 Capital expenditure

in respect of expenditure, costs or any other liability of any nature in relation to reinstatement, upgrade, maintenance, improvement or supplementation of any equipment, plant, foundations, building or any above or below ground structure.

7.3 Contractual liability

assumed under any contract or agreement unless:

- a) such liability would have attached in the absence of such contract or agreement; or
- b) such contract or agreement is an **insured contract** and is included in an applicable insured contract endorsement to the **policy**;

and subject always to the terms conditions and exclusions of the **policy**.

7.4 Conveyance

arising from or caused by the ownership possession control or use by or on behalf of the **named insured** beyond the boundaries of **insured premises** of any **conveyance** provided that this exclusion does not apply to **clean-up costs, loss or costs and expenses** which result from a **pollution condition** caused by the release, escape, migration, leak, disturbance, emission or loss of **cargo** during **transportation**.

7.5 Custody or control

in respect of loss of, damage to, loss of use of or diminishment in value of property belonging to the **named insured** or in the custody or control of the **named insured** or any **employee** or agent of the **named insured** other than in respect of **clean-up costs**.

7.6 Damage to conveyance

in respect of damage to any **conveyance** where such damage is caused by, contributed to by or arises from the release, escape, migration, leak, disturbance, emission or loss of **cargo** during **transportation**. This exclusion also applies to any **loss** which results from such damage to any **conveyance**.

7.7 Employee injury

in respect of **bodily injury** sustained by any **employee** arising out of and in the course of employment by the **named insured**.

7.8 Fines and penalties

for criminal, civil or administrative fines, penalties liquidated damages punitive or exemplary damages or contractual penalties.

7.9 Internal Expenses

for costs and expenses incurred by the **named insured** for services performed by any **employee** of the **named insured**.

7.10 Known incidents

arising from any **pollution condition** which was in existence prior to the inception of this **policy** and was known or should have been known to any **responsible insured** unless detailed as a **covered known condition** in a covered known condition endorsement to the **policy**.

7.11 Microbial matter

arising out of any **microbial matter**.

7.12 Naturally occurring materials

arising from the presence or required removal of naturally occurring materials other than where such materials are identified at an **insured premises** in concentrations in excess of their natural concentration at that **insured premises**.

7.13 Non-compliance

arising from the intentional, knowing, wilful or deliberate non-compliance with any national or local statute, regulation or bye-law or instruction, notice or order of any national or local governmental or statutory authority, agency or body.

7.14 Products

arising from goods or products which are provided, manufactured, sold, supplied or distributed by or on behalf of the **named insured** provided that this exclusion does not apply to any good or product which is **cargo** covered under this **policy**.

7.15 Radioactive contamination

of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiations 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.

7.16 Retroactive coverage

arising from a **pollution condition** which first commenced prior to the **retroactive dates** stated in the **schedule** to this **policy**.

7.17 Road Traffic Act

arising from liability for which insurance is necessary or compulsory to comply with any Road Traffic Acts or Highways legislation relating to insurance against civil liability in respect of the use of motor vehicles or similar legislation.

7.18 Terrorism

arising directly or indirectly as a result of or in connection with **terrorism**, including, but not limited to any contemporaneous or ensuing liability, **clean-up costs**, **loss damage** or **business interruption** caused by fire looting or theft.

If the **insurer** alleges that by reason of this exclusion any liability is not covered by this **policy**, the onus of proving to the contrary shall be upon the **named insured**.

7.19 Transported cargo

arising from **cargo** once such **cargo** is no longer in the control of the **named insured** or the carrier undertaking **transportation** on behalf of the **named insured** or such **cargo** has been finally surrendered to a third party.

7.20 Underground storage tanks

arising from a **pollution condition**, which emanates from an **underground storage tank** the presence of which was known to or should have been known to a **responsible insured** prior to the inception of this **policy** unless such **underground**

storage tank is included as a **covered underground storage tank** in an applicable covered underground storage tank endorsement to the **policy**.

7.21 War

arising directly or indirectly as a result of **war**

7.22 Waste disposal sites

arising directly or indirectly as a result of any waste, products or other materials delivered to a transfer, storage or disposal site which is beyond the boundaries of an **insured premises**.

8 Duties in the event of a claim

8.1 Claims notification

It is a condition precedent to any liability of the **insurer** under this **policy** that the **named insured** shall notify the **insurer** of any **pollution condition** or **claim** as soon as possible and always prior to the end of the **period of insurance** or applicable **extended reporting period**.

Wherever possible, such notification must include the following information:

- a) how, when and where the **pollution condition** took place;
- b) names and addresses of any injured parties or witnesses;
- c) nature and location of any injury or damage that has or could arise out of such **pollution condition**;
- d) date the **claim** was received;
- e) any response or actions taken by the **named insured**.

The **named insured** must immediately provide to the **insurer** copies of all written communications, demands, writs, summonses, remediation notices, statements, declarations or similar, instructions, notices, orders, documents or other papers filed in any court of law or by any **regulator**.

Any **business interruption** must be reported to the **insurer** within 30 days of its commencement.

8.2 Notifications

Any notifications should be made to the **insurer** at the address stated in the **schedule**.

8.3 Duty to mitigate and remediate

In the event of a **pollution condition**, the **named insured** must take all necessary actions to mitigate or avoid a **claim** or **business interruption** and to comply with **environmental law**, including, with respect to **clean-up costs**, the retention of competent professionals and contractors. The **insurer** has the right to review and approve all such actions of the **named insured**. The **insurer** also has the right but not the duty to participate in decisions regarding the mitigation and avoidance of a **claim** or **business interruption** and **clean-up costs** in order to comply with **environmental law** if the **named insured** fails to do so. All costs incurred by the **insurer** in following such course of action shall be considered incurred by the **named insured** and will reduce the applicable **limit of liability** under this **policy**.

8.4 Subrogation

The **insurer** shall be subrogated to all the **named insured's** rights to recovery against any person or organisation. The **named insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **named insured** must do nothing to prejudice such rights.

9 General terms and conditions

9.1 Applicable law

This **policy** will be governed by and interpreted in accordance with the law and jurisdiction of the province of residence of the Canadian head or principal office of the **named insured** as determined by the relevant Insurance Acts(s).

9.2 Assignment

Assignment of this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

9.3 Cancellation

9.3.1 The first **named insured** may cancel this **policy** at any time by notifying the **insurer** in writing stating the effective date of such cancellation.

The **insurer** may cancel this **policy** for any of the following reasons:

a) The **named insured's** failure to comply with any material terms, conditions or contractual obligations under the **policy**, including failure to pay any premium or **excess**;

b) fraud or misrepresentation on the part of the **named insured**;

by providing written notice to the first **named insured** at their last known address and giving at least 60 days' notice thereof but reduced to 30 days' notice in the event of non-payment of premium.

9.3.2 In the event of notice of cancellation being issued by the **insurer** for non-payment of premium, the **policy** shall terminate at the expiry of such notice period, unless the premium has been received by the effective date of cancellation, whereupon the notice of cancellation shall be automatically revoked.

9.3.3 No return of premium will be allowed in the event of cancellation whether invoked by the first **named insured** or the **insurer**.

9.4 Change in risk

The **named insured** shall give notice of any change in operations at an **insured premises**, which materially increases the risk covered under this **policy**. Until the **insurer** has agreed in writing to accept liability for such change in risk, such agreement not to be unreasonably withheld, no coverage shall be provided under the **policy** for any **pollution condition, claim** or **business interruption** due altogether or in part to any such change in risk.

9.5 Changes to policy

Any changes to this **policy** will only be by written endorsement thereto issued by the **insurer**. Such endorsement must be signed by an authorised representative of the **insurer**.

9.6 Confidentiality

The **named insured** or any **additional insured** will not disclose the terms, conditions, exclusions, **limit of liability** of this **policy** or the amount of the premium paid, to any third party except to the extent that they are required by law to do so or the **insurer** consents in writing to such disclosure.

9.7 Document management

The **insurer** may hold documents relating to this **policy** and any **claims** under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

9.8 Data Protection

- 9.8.1 The **insurer** records and holds data in accordance with strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. The **insurer** may find it necessary to pass data to other firms or businesses that supply products and services associated with this **policy** or otherwise as it is required or permitted by law (e.g. a subpoena, fraud investigation, regulatory reporting etc.).
- 9.8.2 Further, by accessing and updating various databases the **insurer** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the databases. Details of databases accessed or contributed to, are available on request.

9.9 Dispute resolution

- 9.9.1 All matters in dispute between the **named insured** and the **insurer** arising out of or in connection with this **policy**, will be referred to a mediator to be agreed by the parties within fourteen (14) working days of a written notice served on one party by the other requesting such an agreement. If a mediator is not agreed then either party may apply to the Arbitration and Mediation Institute Foundation (AMIF) of **Canada** for the appointment of a mediator. The parties shall share equally the costs of AMIF and of the mediator and that the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.
- 9.9.2 The parties shall continue to perform their respective continuing obligations under this **policy**, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.
- 9.9.3 If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be referred by either party to be determined and be subject to the law and jurisdiction of a Canadian province or territory as determined by the relevant Insurance Act(s).

9.10 Duty to defend

- 9.10.1 The **insurer** will be under a duty to defend any **claim** and to undertake the conduct of any proceedings in connection with such **claim** in accordance with the civil law of the relevant province in which the **claim** is brought against the **named insured**.
- 9.10.2 The **insurer** may at any time pay the **limit of liability** (after deduction of any sums already paid) or such lesser sum for which the **claim** can be settled and will relinquish the conduct and control of the **claim** and be under no further liability except as set out above under the **insurer's** duty to defend.
- 9.10.3 The **insurer's** duty to defend ceases where **costs and expenses**, inclusive within the **limit of liability**, paid by the **insurer** in settlement of the **claim** equal the **limit of liability** available under the **policy** in respect of such **claim**.
- 9.10.4 This extension only applies where the claimant makes a written allegation of a **claim** in which the primary allegation is properly pleaded and is covered by this **policy**.

9.11 Excess

- 9.11.1 **Insured sections A, B and C**
Subject to the **limit of liability**, the **insurer** will pay **clean-up costs, loss and costs and expenses** over and above the **excess** stated in the **schedule** to this **policy**. Any sums paid within this **excess** do not erode the **limit of liability**.
- 9.11.2 **Insured section D**
Subject to the **limit of liability**, the **insurer** will pay **business interruption costs** over and above any **business interruption costs** incurred by the **named insured** during the **excess period** as stated in the **schedule** to this **policy**.

9.12 First named insured

The first **named insured** is primarily responsible for the payment of premiums and any **excess** applicable under this **policy** and will act on behalf of all other **named insureds** and any **additional insureds** in connection with any notices of cancellation or non-renewal, receipt and acceptance of any endorsements to the **policy**, receipt of any applicable return premiums and the exercise of any **extended reporting period**.

9.13 Fraud, wilful act or omission

If

9.13.1 the **claim** or **business interruption** is in or in part in any respect fraudulent or if any fraudulent means or devices are used by the **named insured** or anyone acting on their behalf to obtain any benefit under this **policy**; or

9.13.2 any **pollution condition** is occasioned by wilful act, omission or with the connivance of the **named insured**;

then there will be no rights to any form of payment under this **policy** and the **insurer** shall be entitled to treat the **policy** as terminated immediately without any obligation to return any premium. Further, any **clean-up costs, loss business interruption costs** or **costs and expenses** paid to the **named insured** in respect of any fraudulent means or device must be repaid to the **insurer**.

9.14 Inspection and audit

The **insurer** or their appointed representatives shall have the right to inspect, survey or audit any **insured premises** and operations undertaken thereon. Any such inspection, survey or audit relates solely to the underwriting and insurability of such **insured premises** and any results or findings there from in no way imply that such **insured premises** is in compliance with any law, including **environmental law**.

9.15 Multiple periods of insurance

Where the **insurer** has issued claims-made premises environmental liability coverage for the **insured premises** in one or more **periods of insurance** and a **claim** is first made against the **named insured** and reported to the **insurer** in writing in accordance with the terms and conditions of this **policy**, all **claims** arising out of the same, continuous, repeated or related **pollution condition** shall be deemed to have been first made and notified to the **insurer** during the **period of insurance**, provided the **named insured** has maintained premises environmental liability cover with the **insurer** on an uninterrupted basis since that first **claim** was made.

9.16 Observance

9.16.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **named insured**, and are not described in the **policy** as conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.

9.16.2 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce payments relating to **claims** or **business interruption** connected with the breach providing the **insurer** can demonstrate some prejudice.

9.16.3 In the event of a breach of any condition precedent in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce payments for **claims** or **business interruption** connected with the breach, and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such **claim** or **business interruption** has already been made the **named insured** will repay forthwith all payments on account to the **insurer**.

9.17 Other Insurance

If there is any other valid and collectable insurance in force, which covers the **named insured for clean-up costs, loss, business interruption costs or costs and expenses** to which this **policy** applies, this **policy** is primary and will operate as if such other insurance were not in force.

9.18 Representation

9.18.1 The **named insured** represents that any statements made in a **proposal** and any other information submitted to the **insurer** by or on behalf of the **named insured** in connection with this **policy** are true, accurate and complete. The **named insured** agrees that this **policy** is issued in reliance on the truth, accuracy and completeness of such representations.

9.19 Risks in Canada

For purposes of the Insurance Companies Act (Canada), this document was issued in the course of the Lloyd's underwriter's insurance business in Canada.

9.20 Rights of third parties

This **policy** does not confer or create any right enforceable (including under legislation) by any person who is not named as the **named insured** and both the **insurer** and **named insured** may amend, cancel or lapse this **policy** without giving notice to, or requiring the consent of, any other third party.

9.21 Sanctions and embargo

Notwithstanding anything to the contrary in the **policy** the following condition shall apply:

9.21.1 If, by virtue of any law or regulation which is applicable at the inception of this **policy** or which becomes applicable at any time thereafter, providing coverage to the **named insured** and/or paying a **claim** or for **business interruption** and/or providing a benefit under the **policy** directly or indirectly breaches an embargo or sanction, the **insurer** shall make any payment or provide any economic benefit to the **named insured** under this **policy** to the extent that it would be in breach of such law or regulation.

9.21.2 In circumstances where the payment or provision of a valid and otherwise collectable **claim**, payment for **business interruption** or other benefit may directly or indirectly breach an embargo or sanction, then the **insurer** will take all reasonable measures to obtain the necessary authorisation to make such payment or provision.

9.22 Separation of insureds

Other than with respect to **limit of liability** and any rights or duties specifically assigned to the first **named insured**, this **policy** applies as if each **named insured** were the only **named insured** and separately to each **named insured** against whom a **claim** is made.

Any misrepresentation, non-disclosure, breach of terms or conditions, or breach of any duty under the **policy** by one **named insured** will not prejudice another **named insured**. This condition will not apply to a **named insured** that is a parent, subsidiary or affiliate of the first **named insured**.

9.23 Shared limits

The **named insureds** understand, agree and acknowledge that this **policy** is subject to a **policy limit of liability**, which is applicable to and will be shared by all **named insureds** and any **additional insureds** under the **policy**. Therefore, all **named insureds** and any **additional insureds** agree that such **policy limit of liability** may be exhausted or reduced by prior payments for other **claims** under the **policy**.

9.24 Subscribing insurer

The **insurers'** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reasons does not satisfy all or part of its obligations.

9.25 Voluntary payments

Other than with respect to **emergency expenditure**, the **named insured** is not permitted to voluntarily enter into settlement or make any payment or assume any obligation without the **insurer's** prior written consent, not to be unreasonably withheld.

10 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in bold type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute or regulation will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

10.1 Additional insured

Additional insured means the party(ies) specified as additional insured in the **schedule**.

10.2 Bodily injury

Bodily injury means death, disease, illness, physical and mental injury, shock or distress of or to an individual.

10.3 Business income

Business income means:

- 10.3.1 net profit or loss, before taxes, including rental income from tenants, that would have been earned had there been no **business interruption**;
- 10.3.2 the **named insured's** continuing normal operating and payroll expense (excluding payroll expense of officers, executives, department managers and employees under contract);
- 10.3.3 costs the **named insured** is required to pay as rent for temporary premises when a portion of an **insured premises** becomes untenable. Such costs cannot exceed the fair rental value of that part of the **insured premises**, which is untenable.

10.4 Business interruption

Business interruption means necessary partial or complete suspension of the **named insured's** operations at an **insured premises** as a result of a **pollution condition** covered under the **policy**.

10.5 Business interruption costs

Business interruption costs means:

- a) **business income** and **extra expense** or;
- b) **delay expense**;

incurred by the **named insured** during the **period of interruption** as a result of a **pollution condition** covered under this **policy**. If **business interruption costs** can be reduced by the full or partial resumption of the **named insured's** operations at the **insured premises**, or by utilising alternative tangible property at the **insured premises** or elsewhere, any such reductions will be reflected in the calculation of **business interruption costs**.

10.6 Canada

Canada means the Dominion of Canada including all its territories and provinces.

10.7 Cargo

Cargo means goods, products or waste, which are subject to **transportation**.

10.8 Claim

Claim means a written demand, notice or other written communication received by the **named insured** asserting a liability or responsibility on the **named insured** for **clean-up costs** or **loss**.

10.9 Clean-up costs

Clean-up costs means

- a) reasonable expenses incurred in the investigation, quantification monitoring, abatement, remediation, removal, disposal, treatment neutralisation, or immobilisation of **pollution conditions** to the extent required by **environmental law** including those incurred by a **regulator** acting in accordance with **environmental law**;
- b) **emergency expenditure**;
- c) **restoration costs**.

10.10 Conveyance

Conveyance means:

- a) any aerospace device or any airborne or waterborne craft or vessel
- b) any mechanically propelled vehicle or trailer attached thereto.

10.11 Costs and expenses

Costs and expenses means reasonable and necessary costs, charges and expenses incurred in the investigation, defence settlement or adjustment of a **claim** covered under this **policy**, including those in connection with **clean-up costs**, **loss** or **business interruption**. **Costs and expenses** are included within the **limit of liability** and the **excess**.

10.12 Covered known condition

Covered known condition means any **known pollution condition** included in a covered known condition endorsement to the **policy**.

10.13 Covered underground storage tank

Covered underground storage tank means any **underground storage tank** included in a covered underground storage tank endorsement to the **policy**.

10.14 Delay expense

Delay expense means the following additional costs incurred by the **named insured** where a **pollution condition** causes a delay in completion of an **insured project** at an **insured premises**:

- a) additional interest on money borrowed by the **named insured** to finance the **insured project**;
- b) additional advertising or promotional expense;
- c) additional expenses incurred in renegotiation of leases or sale of the **insured premises**;
- d) additional engineering, architectural and consulting fees.

10.15 Emergency expenditure

Emergency expenditure means reasonable and necessary costs incurred by the **named insured** to prevent significant harm to human health or the environment where there is an imminent threat thereof following a **pollution condition**, which may be covered by this **policy**. Such **emergency expenditure** shall be incurred with the **insurer's** express permission other than where it is not reasonably practicable to obtain such permission.

10.16 Employee

Employee means any person whilst:

- 10.16.1 engaged under a contract of service or apprenticeship with the **named insured**;
- 10.16.2 acting in the capacity of non executive director of the **named insured**;
- 10.16.3 not under a contract of service or apprenticeship who is, at the requirement of the **named insured**, supplied to, hired or borrowed by the **named insured** in the course of business and under the control of the **named insured**, including but not limited to:
 - a) persons on secondment from another company that is not an insured under this **policy**;
 - b) labour masters or persons supplied by them;
 - c) labour only subcontractors;
 - d) self-employed persons;
 - e) drivers or operators of hired-in plant;
 - f) persons engaged under work experience, training, study, exchange or similar schemes;
 - g) any officer, member or voluntary helper of the organisations or services stated in the business;
 - h) voluntary workers, helpers and instructors;
 - i) employee(s) elected on any industry users committee;
 - j) outworkers or homeworkers employed under contracts to personally execute any work in connection with business while they are engaged in that work;
 - k) prospective employees who are being assessed by the **named insured** as to their suitability for employment;
 - l) any person a Court of Law in the **Canada** deems to be an employee;provided that the **named insured** can always request that any such person is not treated as an employee.

10.17 Environmental damage

Environmental damage means injury to, damage sustained by or destruction or loss of land, air, water, groundwater, drinking water supplies and fish, wildlife, biota and their habitats for which the **named insured** is liable under **environmental law**. **Environmental damage** does not include **property damage**.

10.18 Environmental law

Environmental law means any laws, including, but not limited to, statutes, regulations, subordinate legislation, common law, judgments, statutory guidance and all amendments thereto, governing the liability of the **named insured** with respect to any **pollution condition**.

10.19 Excess

Excess means the amount expressed as such in the **schedule**, which is to be borne by the **named insured** for each and every **pollution condition**. The **limit of liability** is additional to this **excess**.

10.20 Excess period

Excess period means the number of days expressed as such in the **schedule**, during which all **business interruption costs** are to be borne by the **named insured** for any **business interruption** arising out of each and every **pollution condition**.

10.21 Extended reporting period

Extended reporting period shall mean any additional period of time as specified in this **policy** within which the **named insured** is entitled to notify a **claim** to the **insurer** arising from a **pollution condition** that commenced before the end of the **period of insurance**.

10.22 Extra expense

Extra expense means costs incurred by the **named insured** that would not have been incurred if no **business interruption** had occurred. Such costs must be reasonable and necessary to avoid or mitigate any **business interruption** and incurred to minimise any **business income** otherwise payable under the **policy** as part of **business interruption costs**.

10.23 Insured contract

Insured contract means any contract listed as such in an insured contracts endorsement to this **policy**.

10.24 Insured premises

Insured premises mean any premises shown as such in the **schedule** to the **policy**.

10.25 Insured project

Insured project means the construction, development or remediation project detailed in the **schedule** to the **policy**.

10.26 Insured section

Insured section means clauses 2 - 5.

10.27 Insurer

Insurer means the party specified as insurer in the **schedule** and any other subscribing insurers.

10.28 Limit each pollution condition

Limit each pollution condition means subject to the **policy limit of liability**, the maximum the **insurer** will pay for all **clean-up costs**, **loss**, **business interruption costs** and **costs and expenses** arising from the same, continuous repeated or related **pollution condition** and is the **limit each pollution condition** detailed in the **schedule** to this **policy**.

If the **policy limit of liability** has been reduced by payment of **clean-up costs**, **loss**, **business interruption costs** or **costs and expenses** to an amount less than the **limit each pollution condition** detailed in the **schedule** to this **policy**, the remaining **policy limit of liability** is the maximum the **insurer** will pay for any further **clean-up costs**, **loss**, **business interruption costs** and **costs and expenses** arising out of any subsequent **pollution condition**.

10.29 Limit of liability

Limit of liability means:

- a) **policy limit of liability**;
- b) **limit each pollution condition**;

10.30 Jurisdiction

Jurisdiction means the claims jurisdiction specified in the **schedule**.

10.31 Loss

Loss means any and all sums which the named **insured** becomes legally liable to pay as damages under **environmental law** resulting from **bodily injury**, **property damage**, **clean-up costs** incurred by a third party, or **trespass or nuisance**.

10.32 Microbial matter

Microbial matter means mould, mildew or any other fungi or bacterial matter, including any mycotoxins, spores, scents or other by products produced or released thereby.

10.33 Named insured

Named insured means the party(ies) specified as named insured in the **schedule** including any past or present director, officer, partner or **employee** of the **named insured**.

10.34 Period of insurance

Period of insurance means the period stated in the **schedule** or any subsequent period for which the **named insured** shall have paid and the **insurer** shall have accepted a renewal premium or a shorter period resulting from:

- a) cancellation of the **policy**
- b) with respect to a particular **insured premises**, the deletion of such **insured premises** from the **policy** by the **insurer** at the first **named insured's** written request, but solely with respect to that **insured premises**.

10.35 Period of interruption

Period of interruption means the period of time during which operations are suspended at an **insured premises** as a result of a **pollution condition** and which is reasonably necessary for the **named insured** to resume normal operations at that **insured premises** or an alternative premises on a permanent basis.

10.36 Policy

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

10.37 Policy limit of liability

Policy limit of liability means the policy limit of liability as detailed in the **schedule** to this **policy** and will be the maximum the **insurer** will pay in respect of all **clean-up costs, loss, business interruption costs** and **costs and expenses** in any one **period of insurance**.

10.38 Pollution condition

Pollution condition means the discharge, dispersal, escape, migration, release or seepage of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant including smoke, soot, vapours, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials or waste materials in or on land, any structures on land, the atmosphere or any surface water or groundwater.

10.39 Property damage

Property damage means physical loss, destruction or damage of tangible property including the loss of use thereof and the diminishment of third-party property value. **Property damage** does not include **clean-up costs**.

10.40 Proposal

Proposal means any information supplied by or on behalf of the **named insured** in written or electronic format, deemed to be a completed proposal form, application form, including in each case attachments thereto and other relevant information that the **insurer** may require.

10.41 Regulator

Regulator means any legal body, authority, agency or other person and/or any court of law or tribunal in each case having authority under **environmental law**.

10.42 Responsible insured

Responsible insured means any **employee** of the **named insured** who is or was responsible for environmental matters, control or compliance at an **insured premises** or any officer director or partner of the **named insured**.

10.43 Restoration costs

Restoration costs means expenses necessarily incurred in the repair or replacement of tangible property of the **named insured** due to damage sustained in the course of responding to a **pollution condition** other than expenses incurred in respect of any improvements or betterments.

10.44 Retroactive date

Retroactive date means the dates stated in the **schedule**.

10.45 Schedule

Schedule means the document titled schedule that includes the name and address of the **named insured**, the premium and other variables to this **policy** (including endorsements) and is incorporated in this **policy** and accepted by the **named insured**. **Schedules** may be re-issued from time to time where each successor overrides the earlier document.

10.46 Territorial limits

Territorial limits means the territory specified in the **schedule**.

10.47 Terrorism

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

10.48 Transportation

Transportation means the movement of **cargo** by or on behalf of the **named insured** until such **cargo** arrives at its final destination. **Transportation** includes the loading and unloading of **cargo**.

10.49 Trespass or nuisance

Trespass or nuisance means trespass, nuisance or obstruction or interference with any easement right of air light water or way.

10.50 Underground storage tank

Underground storage tank means any tank and associated piping and appurtenance which tank has more than 10% of its volume below ground.

10.51 War

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law.

11 Complaints

11.1 What the insured should do?

If the **named insured** has any complaint with any aspect of this **policy**:

- 11.1.1 The **named insured** may contact the broker/agent who arranged the policy. Should the **named insured** be dissatisfied with the outcome of the broker's resolution, please submit a written complaint to:

Lloyd's Canada Inc.
Tel: 1-877-4LLOYDS
Broker Management Services
Fax: (514) 861-0470
1155 rue Metcalfe, Suite 1540
E-mail: lineage@lloyds.ca
Montreal, Quebec H3B 2V6

- 11.1.2 Any written complaint will be forwarded to Lloyd's Policyholder and Market Assistance Department in London which ensures that Lloyd's Underwriters and their representatives' deal with claims and complaints in an acceptable manner. It acts as an impartial mediator. When undertaking a review this Department takes account of general legal principles, good insurance practice, and whether all events surrounding a given case have been considered fairly.
- 11.1.3 If you are dissatisfied with Lloyd's Policyholder and Market Assistance Department's final letter from London, you may ask the General Insurance OmbudService (GIO) to arrange for mediation. Mediation is not available until Lloyd's has issued its final letter of position on your complaint.

11.2 About the General Insurance Ombudsman Service (GIO)

- 11.2.1 The **named insured** may contact the General Insurance OmbudService (GIO) who will contact Lloyd's on your behalf. However, the **named insured** must first have tried to resolve any problem with the **insurer** first.

- 11.2.2 The GIO can be reached across Canada at its national toll-free number: 1-877-225-0446

For more information or to submit the facts of any insurance-related dispute, please visit the GIO website at www.gio-scad.org.

- 11.2.3 In Québec, the **named insured** may also avail themselves of the services of Autorité des marchés financiers (l'Autorité). Should they be dissatisfied with Lloyd's Policyholder and Market Assistance Department's final letter from London, the **named insured** may request Lloyd's Canada Inc. to send the complaint to l'Autorité who will study the file and may recommend mediation, if it deems this action appropriate and if both parties agree to it. L'Autorité can be reached at:

Autorité des marchés financiers (l'Autorité)
Québec City (418) 525-0311
Montréal (514) 395-0311
Toll-free: 1-866-526-0311

11.3 Lloyd's Underwriters Code of Consumer Rights & Responsibilities

Lloyd's Underwriters are committed to safeguarding your rights when you shop for insurance and when you submit a claim following a loss. Your rights include the right to be informed fully, to be treated fairly, to timely complaint resolution, and to privacy. These rights are grounded in the contract between you and your underwriters and the insurance laws of your province/territory. With rights, however, come responsibilities including, for example, the expectation that you will provide complete and accurate information to the underwriters with whom insurance is being negotiated. Your policy outlines other important responsibilities. Underwriters and intermediaries acting on your behalf, and governments also have important roles to play in ensuring that your rights are protected.

11.3.1 **Right to Be Informed**

In dealing with Lloyd's Underwriters, you will be represented by an intermediary, such as a broker acting as your agent, and they may deal with other intermediaries. From the intermediary with whom you deal, you can expect to access clear information about your policy, your coverage, and the claims settlement process. You have the right to an easy-to-understand explanation of how insurance works and how it will meet your needs. You also have a right to know how premiums are calculated based on relevant facts.

A policy issued by Lloyd's Underwriters will expire on the day specified in the policy. If you wish to renew the policy, the intermediary with whom you deal will have to approach the Underwriters participating in it, often through another intermediary. If Lloyd's Underwriters are given the information they require to determine renewal terms for the policy at least 45 days prior to its expiry, under normal circumstances, they will advise the intermediary who approaches them of any changes to the policy terms at least 30 days prior to the expiration of the policy. Terms may subsequently change if there is a change in material facts prior to the expiration date.

Intermediaries may receive payments from Lloyd's Underwriters in a variety of ways, which may include the payment of commissions. Lloyd's strongly supports the disclosure and transparency of these commission arrangements. You have the right to ask the intermediary with whom you deal for details of how and by whom the intermediary is being paid.

Lloyd's Underwriters accept business as members of syndicates each of which is managed by a 'managing agent'. Lloyd's has risk management procedures in place in respect of the relationship between Lloyd's managing agents and any related companies that act as intermediaries. This is to ensure that the managing agent makes proper disclosures of any such arrangements. A policyholder may ask the intermediary whom he is dealing to disclose if it is a related company to a Lloyd's managing agent.

11.3.2 **Responsibility to Ask Questions and Share Information**

To safeguard your right to purchase appropriate coverage at a competitive price, you should ask questions about your policy so that you understand what it covers and what your obligations are under it. You can access information through brochures and websites, as well as through one-on-one meetings with the intermediary with whom you deal. You have the option to shop the marketplace for the combination of coverages and service levels that best suits your insurance needs. To maintain your protection against loss, you must promptly inform your underwriters of any change in your circumstances through the intermediary with whom you deal. The Underwriters with whom renewal is being negotiated must be given information required to determine renewal terms of your policy, via the intermediary whom you are dealing with, at least 45 days prior to the expiration of the policy.

11.3.3 **Right to Complaint Resolution**

Lloyd's Underwriters are committed to high standards of customer service. If you have a complaint about the service you have received, you have a right to access the Lloyd's complaint resolution process for Canada. The intermediary with whom you deal can provide you with information about how you can ensure that your complaint is heard and promptly handled. Disputes involving claims settlement matters may be handled by the independent General Insurance OmbudService www.gio-scad.org where your complaint may be referred to an independent mediator.

11.3.4 **Responsibility to Resolve Disputes**

You should always enter into the dispute resolution process in good faith, provide required information in a timely manner, and remain open to recommendations made by independent observers as part of that process.

11.3.5 **Right to Professional Service**

You have the right to deal with insurance professionals who exhibit a high ethical standard, which includes acting with honesty, integrity, fairness and skill. Brokers and agents must exhibit extensive knowledge of the product, its coverages and its limitations in order to best serve you.

11.3.6 **Right to Privacy**

Because it is important for you to disclose any and all information required by underwriters with whom insurance is being negotiated on your behalf to provide the insurance coverage that best suits you, you have the right to know from the intermediary with whom you deal the purposes for which Lloyd's Underwriters will use your personal information. This information will not be disclosed to anyone except as permitted by law. You should know that Lloyd's Underwriters are subject to Canada's privacy laws with respect to their business in Canada.

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