LEADER TEAM
part of THE LONDONGATE GROUP

Environmental Liability Insurance Policy

ENVEU032017

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1 Our agreement in general

1.1 Parties to this agreement

This **policy** is between the **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

Each **insured section** sets out the scope of the main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided 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.

Additional clauses set out terms, exclusions or limitations that may apply to more than one **insured section**.

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

a) Duties in event of a claim or potential claim;

b) General terms and conditions;

c) General definitions and interpretation; and

d) Complaints.

1.4 Policy period and premium

The **policy** will provide insurance as described herein for the **period of insurance** provided the premium(s) 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.

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 Executive Officer.

2 Insured sections

The **insurer** will pay

a) **clean-up costs;**

b) **environmental damage costs;**

c) **emergency expenses;**

d) **pre-incident costs;**

providing such **clean-up costs**, **environmental damage costs**, **emergency expenses**, or **pre-incident costs** are the result of a **claim** against the **insured** by a **regulator** in accordance with **environmental law**;

e) **loss** incurred by a third party in accordance with **environmental law**;

arising from:

2.1 Historical environmental liability

any **pollution condition** or **environmental damage** as applicable that first occurred before the **retroactive date** resulting from the **insured's premises** providing the **claim** is made against the **insured** during the **period of insurance** or any applicable **extended reporting period**.

The **insurer** will also pay **defence costs** in respect of any such **clean-up costs**, **environmental damage costs**, **emergency expenses** or **loss** or **claim**.

2.2 Operational environmental liability

any **pollution condition** or **environmental damage** as applicable that first occurs on or after the **retroactive date** and before the expiry of the **period of insurance** resulting from the **insured's premises** providing the **claim** is made against the **insured** during the **period of insurance** or any applicable **extended reporting period**.

The **insurer** will also pay **defence costs** in respect of any such **clean-up costs**, **environmental damage costs**, **emergency expenses** or **loss** or **claim**.

2.3 Transportation environmental liability

any **pollution condition** or **environmental damage** as applicable that first occurs on or after the **retroactive date** and before the expiry of the **period of insurance** resulting from **transportation** providing the **claim** is made against the **insured** during the **period of insurance** or any applicable **extended reporting period**.

The **insurer** will also pay **defence costs** in respect of any such **clean-up costs**, **environmental damage costs**, **emergency expenses** or **loss** or **claim**.

2.4 Contracted operations environmental liability

any **pollution condition** or **environmental damage** as applicable that first occurs on or after the **retroactive date** and before the expiry of the **period of insurance** caused by **covered operations** providing the **claim** is made against the **insured** during the **period of insurance** or any applicable **extended reporting period**.

The **insurer** will also pay **defence costs** in respect of any such **clean-up costs**, **environmental damage costs**, **emergency expenses** or **loss** or **claim**.

In addition, the **insurer** will pay

2.5 Associated business interruption

for **business interruption costs** incurred by the **insured** as a result of **business interruption** providing such **business interruption** arises during the **period of insurance**.

3 General extensions to all insured sections

3.1 Extended reporting period

In the event that this **policy** expires or is cancelled in accordance with the 'Cancellation' condition 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 **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 **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**.

3.2 Indemnity to additional insureds

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 **each incident limit**.

3.3 Notification

In accordance with the claims notification provisions set out in 'Duties in the event of a claim'**,** all **claims** made against the **insured** during the **period of insurance** and any **business interruption** must be notified to the **insurer during the** same **period of insurance** or any applicable **extended reporting period**.

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4 General exclusions to all insured sections

This **policy** excludes and does not cover:

4.1 Asbestos and lead

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** 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:

a) **clean-up costs** in respect of soil and groundwater; and

b) the inadvertent disturbance of asbestos-containing materials or lead-based paint during the course of performing **covered operations**.

4.2 Capital expenditure

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.

4.3 Contractual liability

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** 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**;

c) such liability arises from **covered operations** performed by subcontractors of the **insured** and the **insured** has assumed the liability under a contract or agreement with the client and the **claim** arises subsequent to the execution of such contract or agreement.

4.4 Conveyance

arising from or caused by the ownership possession control or use by or on behalf of the **insured** beyond the boundaries of the **insured's premises** of any **conveyance** provided that this exclusion does not apply to **clean-up costs, loss, environmental damage costs** or **defence costs** which result from an **incident** caused by the release, escape, migration, leak, disturbance, emission or loss of **cargo** during **transportation**.

4.5 Custody or control

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

a) **clean-up costs**

b) liability for damage to premises leased or rented to the **insured** for the purpose of performing **covered operations.**

4.6 Damage to conveyance

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** 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**.

4.7 Employee injury

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** in respect of **bodily injury** sustained by any **employee** arising out of and in the course of employment by the **insured**.

4.8 Fines and penalties

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

4.9 Internal expenses

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

4.10 Known incidents

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising from any **incident** 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 incident** in a covered known incident endorsement to the **policy**.

4.11 Microbial matter

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising out of any **microbial matter**.

4.12 Naturally occurring materials

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising from the presence or required removal of naturally occurring materials other than where such materials are identified at any of the **insured's premises** in concentrations in excess of their natural concentration at those premises.

4.13 Non-compliance

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising from the intentional, knowing, wilful or deliberate non-compliance with any European Union, 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.

4.14 Professional Services

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising from the rendering or failing to render any professional service or advice. This exclusion will not apply to to the improper or adequate supervision of any subcontractors performing **covered operations**.

4.15 Radioactive contamination

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** 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.

4.16 Road Traffic Act

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** in respect of any **claim** for which insurance is necessary to comply with the Road Traffic Act 1988 as amended by The Motor Vehicles (Compulsory Insurance) Regulations 1992 or any alteration to such regulations or any similar legislation applying to Northern Ireland, the Isle of Man or the Channel Islands or to any other

territory consequent on the Third Council Directive 90/232/EEC of 14/05/1990 relating to insurance against civil liability in respect of the use of motor vehicles or similar legislation in any country outside the European Union.

4.17 Terrorism

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** 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, environmental 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 **insured**.

4.18 Transported cargo

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising from **cargo** once such **cargo** is no longer in the control of the **insured** or the carrier undertaking **transportation** on behalf of the **insured** or such **cargo** has been finally surrendered to a third party.

4.19 Underground storage tanks

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising from an **incident**, 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**.

4.20 War

all **clean-up costs**, **loss**, **environmental damage costs** or **defence costs** arising directly or indirectly as a result of **war**.

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5 Duties in the event of a claim

5.1 Claims notification

It is a condition precedent to any liability of the **insurer** under this **policy** that the **insured** shall notify the **insurer** of any **incident** 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 **incident** 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 **incident**;

d) date the **claim** was received;

e) any response or actions taken by the **insured**.

The **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.

5.2 Notifications

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

5.3 Legal defence and expenses

The **insurer** shall have the right but not the duty to defend the **insured** against a **claim** to which this **policy** applies. The **insurer's** right to defend and continue defending and to pay for any **clean-up costs**, **loss**, **environmental damage costs**, **business interruption costs** and **defence costs** shall cease once the **limit of liability** is exhausted. **Defence costs** are included within the **limit of liability** and shall erode such **limit of liability**. **Defence costs** are also included within any **excess** applicable.

The **insurer** shall have the right at any time to take over and conduct in the name of the **insured**, the investigation, adjustment and settlement of any **claim** to which this **policy** applies. The **insurer** will have total discretion in the conduct of any such proceedings and settlement of any **claim**.

5.4 Duty to mitigate and remediate

In the event of an **incident**, the **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 **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 **insured** fails to do so. All costs incurred by the **insurer** in following such course of action shall be considered incurred by the **insured** and will reduce the applicable **limit of liability** under this **policy**.

5.5 Disputed defence or appeal

If any dispute arises between the first named **insured** and the **insurer** as to whether a civil or criminal action should be defended or an appeal made, such dispute will be referred to a Queen's Counsel (or equivalent) to be mutually agreed between the

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parties (or in default of agreement to be nominated by the President of the Law Society) whose decision will be final.

5.6 Subrogation

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

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6 General terms and conditions

6.1 Applicable law

The law allows the parties to this contract of insurance to select the law and jurisdiction to be applied to this **policy**. The law that applies to this contract is the law as specified in the **schedule**.

It is agreed that any legal proceedings between the **insured** and the **insurer** in connection with this contract will only take place in the courts as specified in the **schedule** and are subject to the exclusive jurisdiction of that court.

6.2 Assignment

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

6.3 Basis of contract

Any reference to 'basis of the contract' in this **policy** or in the proposal form (if any) is of no effect.

6.4 Cancellation

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

Other than the **insurers** rights of cancellation under the Duty of Fair Presentation and Material Changes During the Policy Period conditions, the **insurer** may cancel this policy for non payment of premium.

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.

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

6.5 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**.

6.6 Confidentiality

The **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.

6.7 Contracts (Rights of Third Parties) Act 1999

This **policy** does not confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 or any amending or subsequent legislation, by any person who is not a **insured** and both the **insurer** and **insured** may amend or lapse this **policy** without giving notice to, or requiring the consent of, any other third party. However, this will not preclude rights enforceable under the Third Parties (Rights against Insurers) Act 2010.

6.8 Dispute resolution

This clause shall not restrict prohibit or prevent the **insurer** from applying for injunctive relief against the **insured** prior to any dispute under this **policy** being referred to a mediator.

All matters in dispute between the **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 Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties shall share equally the costs of CEDR and of the mediator and agree that the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.

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.

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 courts subject to the law and jurisdiction set down in the Applicable law clause above.

6.9 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.

6.10 Duty of fair presentation

The **insured** must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this insurance.

6.11 Duty of fair presentation – remedies for breach - proposing for this insurance

If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation then the **insurer's** remedies shall be as follows:

a) if such breach is deliberate or reckless, the **insurer** may:
   i) treat this **policy** as having been terminated from its inception; and
   ii) retain the premium;

b) if such breach is not deliberate or reckless and the **insurer** would not have entered into this **policy** but for the breach, the **insurer** may by notice to the **insured** treat this **policy** as having been terminated from its inception in which case the **insurer** shall return the premium; and

c) in all other cases if, but for the said breach, the **insurer** would have entered into this **policy** but:
   i) on different terms (other than terms relating to the premium), the **insurer** may require that this **policy** is treated as if it had been entered into on those different terms from the outset; or
   ii) would have charged a higher premium, the **insurer** may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where X = (premium actually charged/higher premium) x 100.

6.12 Duty of fair presentation – remedies for breach - variation

If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation in relation to a variation of this **policy**, the **insurer's** remedies shall be as follows:

d) if such breach is deliberate or reckless, the **insurer** may:
   i) by notice to the **insured** treat this **policy** as having been terminated from the time when the variation was concluded; and
   ii) retain the premium;

e) if such breach is not deliberate or reckless, and the **insurer** would not have entered into the variation but for the breach, the **insurer** may treat this **policy** as

if the variation was never made, in which case the **insurer** shall return any additional premium relating to the variation; and

f) in all other cases if, but for the said breach, the **insurer** would have entered into the variation but:

i) on different terms (other than terms relating to the premium), the **insurer** may require that the variation is treated as if it had been entered into on those different terms;

ii) would have increased the premium by more than it did or at all, the **insurer** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where X = (premium actually charged/higher premium) x 100; or

iii) would not have reduced the premium by as much as it did or at all, the **insurer** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where X = (premium actually charged/reduced total premium) x 100.

6.13 Excess

6.13.1 All insured sections except Associated business interruption

Subject to the **limit of liability**, the **insurer** will pay **clean-up costs**, **loss environmental damage costs** and **defence costs** 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**.

6.13.2 Associated business interruption insured section

Subject to the **limit of liability**, the **insurer** will pay **business interruption costs** over and above any **business interruption costs** incurred by the **insured** during the **excess period** as stated in the **schedule** to this **policy**.

6.14 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 **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**.

6.15 Fraudulent claims

If the **insured** or anyone acting on its behalf makes a fraudulent claim under this **policy**, the **insurer**:

a) is not liable to pay the claim;

b) may recover any part of the claim already paid from the relevant **insured**; and

c) may by notice to the **insured** treat this **policy** as having been terminated with effect from the time of the first fraudulent act, in which case the **insurer** is not liable to that **insured** in respect of a relevant event occurring after that time and may retain any premium.

These remedies shall not be available against any other entity insured under this **policy** that was not implicated in the fraud.

6.16 Inspection and audit

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

6.17 Material Changes During the Policy Period

The **insured** must notify the **insurer** within thirty (30) days of any material change to the **insured**, the **insured premises** or **covered operations** or the risks insured if indemnity under this insurance is sought in relation to any such change..

The **insurer** shall not indemnify the **insured** for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless the **insurer** has provided valid confirmation of cover, whether by an express term of this **policy**, endorsement, written confirmation or otherwise.

6.18 Multiple periods of insurance

Where the **insurer** has issued claims-made environmental liability coverage for the **insured's premises** and the **business** or for **covered operations** in one or more **periods of insurance** and a **claim** is first made against the **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 **incident** shall be deemed to have been first made and notified to the **insurer** during the **period of insurance**, provided the **insured** has maintained premises environmental liability cover with the **insurer** on an uninterrupted basis since that first **claim** was made.

6.19 Observance

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 **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.

Further, where an indemnity is provided to any other party, the **insured** will arrange for each party to comply with the terms, conditions and conditions precedent of this insurance so far as they can apply provided always that the other party complies with the terms of 'Duties in the event of a claim or potential claim'.

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 **claims** connected with the breach providing the **insurer** can demonstrate some prejudice.

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 **claims** 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** has already been made, the **insured** will repay forthwith all payments on account to the **insurer**.

6.20 Other Insurance

If there is any other valid and collectable insurance in force, which covers the **insured** for **clean-up costs**, **loss**, **environmental damage** or **business interruption** to which this **policy** applies, the **insured** must provide the **insurer** copies of all such insurance. This **policy** is in excess of the sum **insured** which would be payable under such other insurance were this policy not in force.

6.21 Privacy and the Data Protection Act 1998

All personal information (including sensitive personal data such as health details or criminal convictions) provided in connection with this **policy** will be processed in accordance with the Data Protection Act 1998. The **insured** consents to all personal information so provided being used for the purposes and being disclosed to the parties set out below.

Where personal information is provided about another person, the **insured** is required to inform that person of the **insurers'** identity, and why their personal information will be processed and disclosed. The insured is also required to obtain their written consent to the processing of their personal information in this way and provide, on request, such consent to the **insurer**.

Personal information is used:

a) to administer the **policy**, including underwriting, renewal information, validation of claims history and claims handling;
b) for research, analysis, statistic creation, and customer profiling;
c) for fraud prevention and debt recovery.

Personal information may be disclosed to:

a) other members of the Insurance Group;
b) other insurance entities interested in the risk written under this **policy**;
c) agents and service providers appointed by the **insurer** to carry out activities in connection with the **policy**;
d) credit reference and fraud databases;
e) law enforcement and other statutory bodies;
f) potential purchasers of the whole or part of the our business.

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 fraud databases.

Personal information may be transferred to third parties in countries outside the United Kingdom which may not have the same standards of protection for personal information as the United Kingdom. The **insurer** will ensure that such transfers comply with the data protection law and the personal information is kept securely and protected from unauthorised access.

The **insurer** maintains protections and procedures in the storage and disclosure of personal information to keep it secure and prevent unauthorised access to or loss of such information.

The **insurer** may monitor and record all communications with you for compliance and training purposes.

6.22 Sanction limitation and exclusion

The **insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **insurer** or any member of the **insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

6.23 Shared limits

The **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 **insureds** and any **additional insureds** under the **policy**. Therefore, all **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**.

6.24 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.

6.25 Voluntary payments

Other than with respect to **emergency expenses**, the **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.

7 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**.

7.1 Additional insured

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

7.2 Bodily injury

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

7.3 Business income

Business income means:

a) net profit or loss, before taxes, including rental income from tenants, that would have been earned had there been no **business interruption**;

b) the **insured's** continuing normal operating and payroll expense (excluding payroll expense of officers, executives, department managers and employees under contract);

c) costs the **insured** is required to pay as rent for temporary premises when a portion of an **insured's premises** becomes untenantable. Such costs cannot exceed the fair rental value of that part of the **insureds' premises**, which is untenantable.

7.4 Business interruption

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

7.5 Business interruption costs

Business interruption costs means:

a) **business income** and **extra expense** or;

b) **delay expense**;

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

7.6 Cargo

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

7.7 Claim

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

7.8 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) **restoration costs**.

7.9 Conveyance

Conveyance means:

a) any aerospatial device or any airborne or waterborne craft or vessel;

b) any mechanically propelled vehicle or trailer attached thereto.

7.10 Covered known incident

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

7.11 Covered operations

Covered operation means any activity or operation performed by or on behalf of the **insured** and listed as such in the **schedule** to this **policy**.

7.12 Covered underground storage tank

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

7.13 Defence costs

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, environmental damage** or **business interruption.**

7.14 Delay expense

Delay expense means the following additional costs incurred by the **insured** where an **incident** causes a delay in completion of an **insured project** at an **insured's premises**:

a) additional interest on money borrowed by the **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.

7.15 Each incident limit

Each incident limit means subject to the **policy limit of liability**, the maximum the **insurer** will pay for all **clean-up costs**, **loss**, **environmental damage costs**, **business interruption costs** and **defence costs** arising from the same, continuous repeated or related **incident** is the **each incident limit** as detailed in the **schedule** to this **policy**.

If the **policy limit of liability** has been reduced by payment of **clean-up costs**, **loss**, **environmental damage costs**, **business interruption costs** or **defence costs** to an amount less than the **each incident limit** 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**, **environmental damage costs**, **business interruption costs** and **defence costs** arising out of any subsequent **incident**.

7.16 Emergency expenses

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

7.17 Employee

Employee means any person whilst:

engaged under a contract of service or apprenticeship with the **insured**;

acting in the capacity of non-executive director of the **insured**;

not under a contract of service or apprenticeship who is, at the requirement of the **insured**, supplied to, hired or borrowed by the **insured** in the course of business and under the control of the **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) persons working under the Community Offenders Act 1978, the Community Offenders (Scotland) Act 1978 or similar legislation;

j) employee(s) elected on any industry users committee;

k) outworkers or homeworkers employed under contracts to personally execute any work in connection with business while they are engaged in that work;

l) any other person defined under Sections 32.-(1), 35.-(2) and 54.-(3)(b) of the National Minimum Wage Act 1998;

m) prospective employees who are being assessed by the **insured** as to their suitability for employment;

n) any person a Court of Law in the United Kingdom deems to be an employee;

provided that the **insured** can always request that any such person is not treated as an **employee**.

7.18 Environmental damage

Environmental damage means harm or injury to, damage sustained by or the destruction of land, water, protected species and or natural habitats for which the **insured** is legally liable under the European Union Directive 2004/35/EC on environmental liability and all amendments thereto.

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7.19 Environmental damage costs

Environmental damage costs means reasonable and necessary costs incurred by the **insured** to investigate and undertake primary, complementary or compensatory remediation required as a result of **environmental damage** and **emergency expenses**. Primary, complementary and compensatory remediation are as defined by the European Union Directive 2004/35/EC on environmental liability or any local legislation in a Member State which implements it and as updated and all ammendments thereto.

7.20 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 **insured** with respect to any **incident**.

7.21 Excess

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

7.22 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 **insured** for any **business interruption** arising out of each and every **incident**.

7.23 Extended reporting period

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

7.24 Extra expense

Extra expense means costs incurred by the **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**.

7.25 Incident

Incident means:

a) any **pollution condition**;

b) any **environmental damage**.

7.26 Insurer

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

7.27 Insured contract

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

7.28 Insured's premises

Insured's premises means any premises owned, occupied or controlled by the **insured** (including property leased to the **insured** for the purpose of the **business**) which have been notified to and accepted by the **insurer**.

7.29 Insured project

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

7.30 Insured section

Insured section means a section of this **policy** that forms part of the insurance contract but only if stated as 'insured' in the **policy schedule.**

7.31 Limit of liability

Limit of liability means:

a) **policy limit of liability**;

b) **each incident limit**;

7.32 Jurisdiction

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

7.33 Loss

Loss means any and all sums which the **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**.

7.34 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.

7.35 Insured

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

7.36 Period of insurance

Period of insurance means the period stated in the **schedule** or any subsequent period for which the **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 any of the **insured's premises**, the deletion of such premises from the **policy** by the **insurer** at the first named **insured's** written request, but solely with respect to those premises..

7.37 Period of interruption

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

7.38 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.

7.39 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**, **environmental damage costs**, **business interruption costs** and **defence costs** in any one **period of insurance**.

7.40 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.

7.41 Pre-incident costs

Pre-incident costs means reasonable and necessary costs incurred by the **insured** to prevent or mitigate **environmental damage** during the period of 48 hours following written notification to the competent authority of imminent threat of **environmental damage**, or imminent threat of damage which there are reasonable grounds to believe will become **environmental damage**.

Such imminent threat must:

a) be pursuant to any law or regulation in a Member State which implements European Union Directive 2004/35/EC on "environmental liability with regard to the prevention and remedying of environmental damage" and all amendments thereto;

b) arise suddenly; and

c) not be connected with any breach of **environmental law**.

7.42 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**.

7.43 Proposal

Proposal means any information supplied by or on behalf of the **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.

7.44 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**.

7.45 Responsible insured

Responsible insured means any **employee** of the **insured** who is or was responsible for environmental matters, control or compliance at any of the **insured's premises** or with respect to **covered operations** or any officer director or partner of the **insured**.

7.46 Restoration costs

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

7.47 Retroactive date

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

7.48 Schedule

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this **policy** (including

endorsements) and is incorporated in this **policy** and accepted by the **insured**. **Schedules** may be re-issued from time to time where each successor overrides the earlier document.

7.49 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.

7.50 Transportation

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

7.51 Trespass or nuisance

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

7.52 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.

7.53 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.

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8 Complaints

8.1 What the insured should do

The **insurer** strives to provide an excellent service to all its customers but occasionally things can go wrong. The **insurer** takes all complaints seriously and endeavours to resolve all customers' problems promptly. If the **insured** has a question or complaint about this insurance or the conduct of its broker, they should contact that broker in the first instance.

Alternatively, if the **insured** wishes to contact the **insurer** directly the **insured** should either:

a) write to the complaints address shown in the **schedule**, or

b) where the **insurer** is or includes a Lloyd's syndicate, write to Complaints, Lloyd's, Fidentia House, Walter Burke Way, Chatham Maritime, Kent ME4 4RN, telephone 020 7327 5693, e-mail complaints@lloyds.com,

quoting the policy or claim reference applicable.

If, after making a complaint, the **insured** feels that the matter has not been resolved to its satisfaction, then if the **insured** is an eligible complainant, the **insured** may contact: The Financial Ombudsman Service, South Quay Plaza 2, 183 Marsh Wall, London E14 9SR. Telephone 0300 123 9 123 or 0800 023 4567, Website: http://www.financial-ombudsman.org.uk/consumer/complaints.htm.

Making a complaint to the Financial Ombudsman Service (FOS) does not affect the **insured's** rights under this **policy** but if the **insured** is not an eligible complainant then the informal complaint process ceases.

A summary of the **insurer's** complaint handling procedure is available on request and will also be provided to the **insured** when acknowledging a complaint.

8.2 About the Financial Ombudsman Service (FOS)

8.2.1 Eligible complainants are: a) private individuals; and b) micro-enterprises.

'Micro-enterprises' will be able to bring complaints to the ombudsman as long as they have an annual turnover of under EUR2 million and fewer than ten (10) employees.

c) charities with an annual income of less than GBP1million; or d a trustee of a trust with net assets of less than GBP1million.

8.2.2 The FOS will only consider a complaint if the **insured** is an eligible complainant and if:

a) the **insurer** has been given an opportunity to resolve it and

b) the **insurer** has sent the **insured** a final response letter and the **insured** has referred its complaint to the FOS within six (6) months of the **insurer's** final response letter or

c) the **insurer** has not responded to the **insured's** complaint with a decision within eight (8) weeks.

8.3 Financial Services Compensation Scheme

The Company Market and Lloyd's underwriters are covered by the Financial Services Compensation Scheme. The **insured** may be entitled to compensation from the Scheme if the **insurer** is unable to meet its obligations under this contract.

Entitlement to compensation under the Scheme depends on the type of business and circumstances of the claim. Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme, Exchange Tower, London E14 9SR or from their website (www.fscs.org.uk).