



## **ENVIRONMENTAL IMPAIRMENT POLLUTION POLICY**

### **1. OPERATIVE CLAUSE**

In consideration of the prior payment of the premium by the Insured named in the Schedule and the receipt thereof by the Insurer, the Insurer agrees to indemnify the Insured for the Defined Event occurring within the Territorial Limits and during the period of insurance unless otherwise stated, subject to :

- 1.1.1 and in reliance upon the Insured's accurate and complete representations and statements made to the Insurer or in the Proposal Form;
- 1.1.2 the limits of indemnity as stated in the Schedule;
- 1.1.3 the Deductibles as stated in the Schedule;
- 1.1.4 the Terms, Exclusions and Conditions of this Policy.

It is declared and agreed that the Proposal Form, Schedule, this Policy Wording, any statements made to the Insurer shall all form the basis of this contract of insurance (hereinafter referred to as this Policy). Notwithstanding anything contained to the contrary in this policy it is declared and agreed that nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made or events known to the Insured likely to give rise to a claim.

### **2. DEFINED EVENTS**

#### **2.1. TRANSPORTATION (If Stated to apply in the Schedule)**

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of any Law in respect of an:

Environmental Incident arising from and as a direct consequence of the Transportation of Dangerous Goods, in or on any Insured Vehicle, and in respect of which claims are first made during the Period of Insurance provided that the Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a. any circumstance, matter or thing which may reasonably be expected to give rise to a claim against the Insured and which is known by the Insured to have occurred prior to inception of this Policy. Nothing herein shall be interpreted as releasing the Insured from its obligation to reveal as material fact all details of claims made or events known to the Insured likely to give rise to a claim;

- b. any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Schedule

## **2.2. SIDE TANK COVER – PETROL/DIESEL TANK OF THE VEHICLE (if stated to apply in the Schedule)**

The Clean Up costs reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of any Law, in respect of an Environmental Incident arising from a direct consequence of the leakage or loss of petrol or diesel from the petrol or diesel containers of any Insured Vehicle.

## **2.3. PREMISES RISK (If stated to apply in the Schedule)**

The Costs and Expenses incurred by the Insured and for which the Insured is legally liable to pay in terms of any Law, in respect of an Environmental Incident arising from the spillage or leakage from any Insured Vehicle of any Dangerous Goods or Pollutants occurring on any property owned, leased, rented or occupied by the Insured and identified in the Schedule.

## **2.4. WAREHOUSE RISK (If stated to apply in the Schedule)**

The Costs and Expenses incurred by the Insured and for which the Insured is legally liable to pay in terms of any Law, in respect of an Environmental Incident arising from the spillage or leakage any Dangerous Goods or Pollutants contained in the Warehouse.

## **2.5. STATIC RISK (If stated to apply in the Schedule)**

Damages including Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of any Law, in respect of an Environmental Incident arising as a direct consequence of the spillage of any Dangerous Goods or Pollutants from any Above Ground Tanks or any Underground Tanks on any Property as identified in the Schedule occurring on or after the Retroactive Date and resulting in a claim or claims first made against the Insured in writing during the period of insurance.

## **2.6 COMPLIANCE ASSIST**

This is a service given by the Insurer to ensure transporters are compliant when it comes to their drivers having their valid PRDP “D”. The Insurer will give the transporter a reminder two months prior to “D” PRDP being renewable. If the PRDP “D” has not been renewed on time EnviroSure Underwriting Managers (Pty) Ltd will advise the transporter that the driver is now non-compliant and will not be legally able to drive a HAZCHEM load, and the cover in terms of this Policy will cease.

## **3. DEFINITIONS**

3.1 **“Aggregate Limit”** means the insurer’s total liability under this Policy shall not exceed the aggregate shown in the Policy Schedule. Means a limitation of the amount of coverage available to the insured over a stipulated period. Such limitation is specified under the Policy Schedule.

3.2 “**Bodily Injury**” means death, bodily injury, illness or disease of or to any person.

3.3 “**Business**” means the business of the Insured as described in the Schedule.

3.4 “**Clean-up**” means deactivation, removal, neutralisation, nullification and/or remediation of soil, surface water, groundwater, or any other pollution or contamination resulting from an Environmental Incident.

“Clean up” also includes the reasonable costs and expenses of rehabilitating any property or amenity damaged, impaired or interfered with by the Insured and which is protected by law.

3.5 “**Costs and Expenses**” means all reasonable costs and expenses, incurred by the Insured with the Insurer’s consent in respect of:

- a.) Clean-up;
- b.) Rehabilitation;
- c.) The investigation and/or monitoring costs, containment and/or maintenance costs and all legal costs associated therewith including reasonable and necessary legal fees, costs and expenses incurred by or on behalf of the Insured, with the prior written consent on the Insurer in the investigation, defence, adjustment, settlement or appeal of any claim or legal proceeding (other than the Insured’s internal expenses)
- d.) Fees charged by any specialists as designated by the Insurer in the investigation of any incident which may give rise to indemnity in terms of this Policy;
- e.) Representation at any Inquest or Accident Inquiry in respect of an Environmental Incident, which may form part of the subject of indemnity by this Policy and/or defending any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of indemnity by this Policy;

Provided such expenses:

- i.) are specifically mandated by any government or statutory body, agency or entity duly acting under the authority of the Environmental Laws; or
- ii.) have actually been incurred by a government or statutory body, agency or entity or by a third party.

but excluding:

- i.) the salaries of the Insured’s employees; and
- ii.) costs, charges or other expenses incurred by the Insured for goods supplied or services performed by or on behalf of the staff or salaried employees of the Insured, or its parent, subsidiary or affiliate.

3.6 “**Damages**” means accidental Bodily Injury to any person, loss of or physical damage to tangible property including the resultant loss of use of tangible property that has not been destroyed subject to the damage or loss of use being caused by an Environmental Incident.

3.7 “**Dangerous Goods**” means goods, substances, products or waste as specified in the standard specifications of South African Bureau of Standards SABS 0228 Codes (“The identification and classification of dangerous substances and goods”) and carried on or within a vehicle that is properly licensed to carry such goods, products or waste excluding asbestos, lead, and creosote.

- 3.8 **“Deductible/First Amount Payable”** means the first amount stated as such in the Schedule for which the Insurer is not liable to indemnify the Insured in respect of each claim (or series of claims arising out of one originating cause).
- 3.9 **“Employee”** means any person employed under a contract of service or apprenticeship with the Insured while working for the Insured in connection with the Business.
- 3.10 **“Environmental Laws”** means any stated, statutory instrument, by law, regulation, guidance of standard having the force of law, or any notice, ruling, judgment, order or instructions of any governmental or statutory body or agency or court concerning health and safety or environmental matters that are applicable to the Environmental Incident.
- 3.11 **“Environmental Incident”** shall mean actual physical injury to or destruction of water, land or protected species or natural habitats that give rise to remediation costs by cargo meaning goods, products or waste transported for delivery by or on behalf of the Insured, who shall be properly licensed to transport such goods, products or waste.
- “Environmental Incident” shall also be extended to include the discharge, dispersal, migration, including, but not limited to smoke, vapours, soot, fumes, acids, alkaline, toxic chemicals, medical waste and waste material into and upon land, or any structure on land, atmosphere or any water course or body of water including ground water, provided such conditions are naturally present in the environments in the amounts or concentrations discovered.
- 3.12 **“Environmental Impairment”** means damage to the environment in respect of which the Insured is held legally liable under the National Environmental Management Act 107 of 1998 (N.E.M.A.), as amended from time to time.
- 3.13 **“Hazcall24”** means EnviroSure’s 24 hour toll free call centre with qualified operators who will immediately mobilise their preferred response units to the incident scene. A national and cross border network of clean-up agents have been recognised to deliver a prompt and professional service to Insured transporters.
- 3.14 **“Hazchem Certificate”** Drivers of the insured vehicle need to complete an accredited HAZCHEM training course that is in accordance with the National Road Traffic Act 93/1996, as amended, at a recognised Transport Education and Training Authority (TETA). Drivers need to be in possession of a HAZCHEM certificate serving as a driving permit that is in accordance with the National Road Traffic Act.
- 3.15 **“Inception Date”** means the first date stated in the Schedule to the Policy.
- 3.16 **“Insured”** means the person or persons named in the Schedule.
- 3.17 **“Insured Vehicle”** means a self-propelled land motor vehicle, trailer or semitrailer (including any machinery or apparatus attached thereto) licensed to travel on public roads, owned, hired, leased or in the control of the Insured and as stated on the Schedule.
- 3.18 **“Law”** means any environmental law, national or local statute, statutory instrument, proclamation by-law, regulation or subordinate legislation with which the Insured is legally required to comply in respect of an Environmental Incident.

3.19 **“Microbial Matter”** means fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including but not limited to, mould, mildew and viruses, whether or not such Microbial Matter is living.

3.20 **“Period of Insurance”** means the period set out in the Schedule, or any shorter period arising as a result of cancellation of this Policy.

3.21. **“Pollutants”** mean solid, liquid, gaseous or thermal contaminants or irritants, including vapours, smell, odours, humidity, fumes, smoke, soot or other airborne particulates, acids, alkalis, chemicals, effluent or other noxious substances including medical, infectious and pathological waste.

3.22. **“Property Damage”** means physical damage, destruction of any third party’s tangible property, including any result in loss of use and diminution in value of the property.

Property Damage shall not include any diminution in value of a third party’s tangible property that was at any time leased, rented, occupied or loaned to the Insured.

Property Damage does not include Clean-Up costs.

3.23. **“Remediation Costs”** mean reasonable and necessary expenses for the investigation, removal and restoration of damage in complying with primary, compensatory and complimentary remediation:

- a.) To the extent required by Environmental Laws; or,
- b.) That have been actually incurred by any Governmental or Statutory Body or agency

3.24. **“Restoration Costs”** mean reasonable and necessary costs incurred by the Insured with the Insured’s written consent, which consent shall not be unreasonably withheld or delayed, to repair, replace or restore real or personal property to substantially the same condition it was prior to it being damaged during work performed in the course of incurring Clean-Up costs.

Such Restoration Costs shall not exceed the nett present value of such property prior to incurring Clean-Up costs.

Restoration Costs do not include costs associated with improvements or betterments.

3.25. **“Rehabilitation”** means the rehabilitation of Environmental Impairment arising from the occurrence of an Environmental Incident including the restoration of the tangible property to the state prior to the Environmental Incident.

3.26. **“Schedule”** means the Schedule to this Policy.

3.27. **“Territorial Limits”** means Africa, south of the Equator.

3.28. **“Terrorism”** means the use or threatened use of force or violence against person or property, or commission of an act dangerous to human life or property, or commission of an act that interferes with or disrupts an electronic or communication system, undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority or military force, when the effect is to intimidate or coerce a government, the civilian population or any segment thereof, or to disrupt any segment of the

economy. Terrorism shall also include any act which is verified or recognised by the Republic of South Africa's Government as an act of terrorism.

3.29. "**Transportation**" means the conveyance of the Dangerous Goods and/or any other goods that may cause an Environmental Incident by an Insured Vehicle from the place where they are first received by the Insured to their final destination, and includes the handling, loading and unloading by the Insured onto or from the Insured Vehicle that is properly licensed to convey such goods.

3.30. "**Underground Storage Tanks**" means any one or a combination of tanks or vessels that have 10% or more of their volume below the surface of the ground in which they are installed and includes the tanks or vessels themselves, connected underground piping, underground ancillary equipment and containment system.

3.31. "**Warehouse**" shall mean any warehouse owned or operated by the Insured and as stated in the Schedule.

#### **4. INDEMNITY TO OTHERS**

The Indemnity granted by this policy shall extend at the Insured's option to:

- 4.1. Officials of the Insured in their business capacity arising out of the conduct of the Business;
- 4.2. The personal representatives of any person indemnified by reason of this Clause 4 in respect of liability incurred by such person;
- 4.3. any partner, director, member or official who has the authority to second or direct Employees of the Insured to perform work for himself in a personal or private capacity, if liability arises out of or in connection with such work; provided and warranted that such person or parties;
  - a.) are not entitled to Indemnity under any other insurance; and
  - b.) shall observe, fulfil and be subject to the Terms, Exclusions and Conditions of this Policy as though they were the Insured.

#### **5. CROSS LIABILITIES**

When the Insured comprises more than one legal entity then each legal entity indemnified shall be indemnified separately in respect of claims made against any of them as if a separate policy has been issued to each and the Insurer waives all rights of subrogation or action it may have or acquire arising from this special extension provided that:

- a.) the Insurer's liability in aggregate shall not exceed the limit of indemnity stated in the schedule for any one Defined Event;
- b.) the Insurer shall not indemnify the Insured for any liability which is or would be, but for the existence of this insurance, insured under any employer's liability insurance.

## **6. LIMITS OF INDEMNITY**

6.1 Insurer's total liability to pay damages and the claimant's costs and expenses shall not exceed the sum stated in the Schedule under Limit of Indemnity for each section in respect of any one of the current claims as stated in each section of the Policy and, where stated, in the annual aggregate section. The limits of indemnity are in excess of the deductible.

6.2 Should any limit of indemnity in respect of any section of the policy be altered during the period of insurance, then the previous limit of indemnity shall apply to all claims made or deemed to have been made or arising out of any claims prior to the date such alteration.

6.3 Insurer's liability to pay damages, costs or expenses to Municipalities or any Governmental or Statutory Body or agency shall be limited to the sum of R 50 000 for any one incident including the reasonable and necessary expenses for the investigation, removal and remediation and associated monitoring incurred by the Municipal and Governmental or Statutory Body or agency. The Insured accepts liability for any amount claimed by the Municipality, Governmental or Statutory Body or agency in excess of the aforementioned amount.

6.4 To the extent that the Insured is accountable to the tax authority for valued added tax (VAT) in respect of any payment in terms of this Policy, the Insurers will include the amount of such tax in the final settlement of any claim under this Policy in addition to the limit of indemnity.

## **7. EXCLUSIONS**

The Insurer shall not be liable to indemnify the Insured for:

### **7.1. Fines & Penalties**

Any fines, penalties, punitive, multiple, vindictive or exemplary damages

### **7.2. Contractual Liability**

Any claim arising from liability assumed under any contractual agreement, unless such liability would have attached to the Insured notwithstanding such contractual agreement or as specifically insured in terms of this Policy.

### **7.3. Territorial Limits**

Any claim that arises outside the Territorial Limits as defined.

### **7.4. Insured vs. Insured**

Any Insured against any other person or entity who is also an Insured under this Policy.

### **7.5. Employer Liability**

Any claim by:

- a.) an Employee of the Insured in respect of injury to and/or loss of life of the Employee, arising out of and in the course of employment by the Insured; or
- b.) the spouse, child, parent, brother or sister of that employee as a consequence of paragraph a.) above; or

- c.) any fellow Employee of the Insured arising out of and in the course of the fellow Employee's employment.

#### **7.6. Prior Knowledge**

Any claim arising from an Environmental Incident existing prior to the Inception Date of this Policy and not disclosed in the application for this Policy, if any, and/or which the Insured knew or could reasonably have been expected to know, that such Environmental Incident could give rise to a claim under this Policy.

#### **7.7. Material Change in Use**

A material change of use arising from material change in Business during the policy period. A change in use is considered material if amongst other things:

- a.) It results in more stringent remediation standards than those imposed on the Insured as at the Inception Date;
- b.) Such information would have materially altered the terms and conditions applied by the Insurer prior to the Inception Date.

#### **7.8. Microbial Matter**

Any claim alleged to be caused by Microbial Matter unless such has been used in the Clean Up and Rehabilitation process.

#### **7.9. Terrorism**

Any claim arising directly or indirectly as a result of or in connection with Terrorism including, but not limited to, any loss, damage or injury caused by fire, looting or theft.

#### **7.10. War**

Any claim arising from an Environmental Incident directly or indirectly caused by, related to or in consequence of:

- a.) civil commotion, labour disturbance, riot, strike, lock out or public disorder or any act or activity which is calculated or directed to bring about any of the a foregoing;
- b.) war, invasion, act of foreign enemy hostilities or war like operations (whether war be declared or not) or civil war;
- c.) mutiny, military rising, military or usurped power, martial law or state of siege or any other event or cause which determines the proclamation or maintenance of martial law or state of siege, insurrection, rebellion or resolution;
- d.) insurrection, rebellion or resolution;
- e.) any act (whether on behalf of any organisation, body or person or group of persons) calculated or directed to overthrow or influence any state or government or any provincial, local or tribal authority with force or by means of fear, terrorism or violence;
- f.) any act which is calculated or directed to bring about loss or damage in order to further any against any state or government or any provincial, local or tribal authority for the purpose of inspiring fear in the public or any section thereof;
- g.) any attempt to perform any act referred to in clause e.) or f.) above;
- h.) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause 10 a.) to 10 f.) above. If the Insurer alleges that by reason of the provisions of the exception, such claim is not covered by this Policy then the burden of proving the contrary shall rest on the Insured.



### **7.11. Nuclear**

Any legal liability of whatsoever nature, directly or indirectly caused by or as a consequence of the use of nuclear weapons or material, or by ionizing radiations or contamination by radio activity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.

### **7.12. Vehicles**

An Environmental Incident arising from any accident, loss, damage or liability to any Insured Vehicle:

- a.) while the Insured Vehicle is being used in contravention of the provisions of the National Road Traffic Act 93 of 1996 as amended, the National Road Traffic Regulations 2000 and/or any other applicable or subsequent legislation and/or regulations providing for the use of motor vehicles on a public roadway;
- b.) incurred while the Insured Vehicle is being driven by the Insured or any Employee of the Insured:
  - i.) while under the influence of intoxicating liquor or drugs (unless administered by or prescribed by and taken in accordance with the instructions of a member of the medical profession other than himself) or while not licensed to drive such vehicle;
  - ii.) any other person with the general consent of the Insured who to the Insured's knowledge is under the influence of intoxicating liquor or drugs (unless administered by or prescribed by and taken in accordance with the instructions of a member of the medical profession other than himself) or is not licensed to drive such Insured Vehicle or the vehicle specifications or the driver thereof does not comply with the provisions of the National Road Traffic Act 193 of 1996 as amended, the National Road Traffic Regulations 2000 and/or any other applicable or subsequent legislation and/or regulations providing for the use of motor vehicles on a public roadway; provided that any driver shall be deemed to be licensed to drive the Insured Vehicle if he is complying with the licensing laws relating to any of the territories referred to in the Territorial Limits or if a non-compliance with any licensing law is solely because of a failure to renew any licence subject to periodic renewal or if a licence is not required by law or while such driver is learning to drive and is complying with the laws relating to learner drivers.
- c.) while the Insured Vehicle is used in any professional or organised racing or demolition contest or stunting activity, or while practicing for such contest or activity or Insured Vehicles being prepared for such a contest or activity.

### **7.13 Injury, Damage, Claims, Expenses or Clean Up costs;**

- a) Where the Insured is entitled to indemnity under any other insurance policy;
- b) Whilst the State or other Governmental Authority has accepted responsibility;
- c) The Insured Vehicles are driven by or in the control of any person not in possession of a valid, legitimate and suitable licence and/or driving permit as may be required by law for that type of vehicle and/or load at that time of loss;
- d) The Insured Vehicle is carrying any load, the weight or volume of which is in excess of that which is legally permissible for a vehicle of that type in accordance with current legislation at the time of loss;
- e) The cargo is being transported and or handled outside of the legislative requirements relating to transportation of such cargo;

- f) The Insured Vehicle is not in compliance with current legislation regarding road worthiness or does not have a valid certificate of fitness issued by an appropriate authority in accordance with current legislation of the territory in which the Insured Vehicle is operating.

#### **7.14. Non-Compliance**

Any claim that arises from any Environmental Incident, directly or indirectly caused by the deliberate instructions of the Insured, or any liability for loss, injury or damage arising from the Insured's intentional, wilful or deliberate non-compliance with any laws, statutory instruments, by-laws, regulations, guidelines or standards having the force of law and which apply to such Environmental Incident and/or the handling, storage or dealing, in any manner, with Dangerous Goods.

#### **7.15. Property Exclusions**

- a.) Damage to the Insured Vehicle/s as stated in the Schedule; (Own Damage)
- b.) Damage to or loss of property transported by the Insured or in the Insured's care, custody or control (Goods in Transit).
- c.) Clean-Up Costs on, in or under property owned by the Insured or in the Insured's care, custody or control (Premises Risk) unless specifically insured in Defined event 2.3, 2.4 and 2.5
- d.) Damage to third party vehicles arising out of or as a result of an accident (Third Party Damage)
- e.) Damage to property owned occupied or leased by the Insured

#### **7.16. Wrongful Delivery**

Any claim resulting from Injury, Damage or Environmental Impairment arising out of wrongful delivery of goods, products or wastes into an incorrect receptacle, to the wrong address or incorrect goods or products delivered.

#### **7.17. Non-Conveyance – At Rest Cargo**

Any claim arising from a pollution condition or environmental impairment that commences:-

- a.) After the cargo is considered to have reached its final destination; or,
- b.) While the cargo is in storage having being off loaded from the vehicle that was transporting it; or
- c.) While the cargo is unsecured and at rest (including but not limited to any rests or stops) in excess of 6 hours; or
- d.) Is no longer in the control of the Insured or the entity conducting the transportation of the cargo on the Insured's behalf or has been relinquished to a third party whom for the purpose of this policy, shall mean any person other than the Insured.

#### **7.18. Reasonable Precautions**

Any Environmental Incident arising from the deliberate, conscious and intentional disregard by the Insured's technical or administrative management of the need to take reasonable precautions to prevent any event of circumstance which may give rise to a claim.

#### **7.19. Consequential Loss**

Any other consequential loss not specifically insured in terms of the Defined Events.

## **7.20. Bodily Injury**

Any Bodily Injury to the Insured or any person engaged in or upon the service of the Insured under a contract of service or apprenticeship and arising from an Environmental Incident

## **8. EXTENSIONS**

### **8.1. Excess Solution (if stated in the Schedule)**

In return for an additional premium as stated in the Schedule the Policy is extended to cover the Deductible payable by the Insured subject to the following:

- a.) In respect of any Environmental Incident in the Republic of South Africa, the deductible is reduced to Nil
- b.) In respect of any Environmental Incident outside of the Republic of South Africa, the deductible is reduced to R50 000.

### **8.2. Contingency Cover (If stated in the Schedule)**

It is declared and agreed that the cover in terms is extended to indemnify any contractor or sub-contractor of the Insured for an Environmental Incident arising in the course of the Business of the Insured and caused by or through or in connection with any vehicle not the property of or provided by the Insured provided that such contractor or sub-contractor:

- a.) shall observe, fulfil and be subject to the Terms, Exclusions and Conditions of this Policy as though they were the Insured;
- b.) has an insurance policy which has not responded as a result of the non-payment of premium.

### **8.3 Non-Contribution**

The Insurer agrees that in the event of any person, who is driving or using any Insured Vehicle on the Insured's order or with the Insured's permission, being entitled to indemnity in terms of this Policy and a motor policy issued in his own name, such policy issued in his own name will not be called into contribution, unless the Insured so requests.

## **GENERAL CONDITIONS**

### **1. Entire Policy**

This Policy and the Schedule/s shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the Schedule/s shall bear such specific meaning wherever it may appear. These general conditions apply to the entire Policy.

### **2. Jurisdiction and Governing Law**

This Policy shall be governed and interpreted in accordance with the laws of the Republic of South Africa.

Any dispute or difference arising under or in respect of this Policy shall be subject to and determined within the explicit jurisdiction of the courts of the Republic of South Africa.

### **3. Address**

Any summons, Notice or process to be served upon the Insurer for the purpose of instituting any legal proceedings against them in connection with this insurance may be served upon EnviroSure Underwriting Managers (Pty) Ltd.

ENVIROSURE UNDERWRITING MANAGERS  
5-7 HAMPDEN ROAD  
MORNINGSIDE  
DURBAN  
4001

And all process, notices and documents shall be served upon the Insured at its last known address recorded in the Schedule.

### **4. Claims**

Upon the occurrence of any event giving rise to a claim in terms of this Policy, the Insured shall:

- a.) Give notice to the Insurer immediately and within 24 (twenty four) hours of the Environmental Incident taking place. Such notice having been given, any claim arising out of any such circumstance matter or thing shall be deemed to have been made during the Period of Insurance;
- b.) The Insured shall give notice to the Insurer regardless of whether the claim would exceed the Deductible amount stated in the Schedule, following an Environmental Incident;
- c.) The Insured shall immediately call the Hazcall24 call centre on 0860 44 44 11 for assistance, who in return will appoint an Insurer approved spillage Clean-up specialist; Failing to do so will result in an additional Deductible payable of 10% of the claim payable;
- d.) As soon as reasonably practicable after the event submit to the Insurer full details in writing of any claim;
- e.) Give the Insurer such proofs, information and sworn declarations as the Insurer may require;
- f.) Furnish the Insurer with all technical reports, laboratory data, field notes or any other documents generated by persons hired by the Insured to investigate the claim and all expert reports, investigations and data collected by experts retained by the Insured, whether or not the Insured intends to use the material for any purpose;
- g.) Furnish the Insurer with any other information developed or discovered by the Insured pertaining to the claim, whether or not deemed by the Insured to be relevant to the claim;
- h.) Furnish the Insurer with all demands, summons, notices or other legal process or papers filed with a court of law, administrative agency or investigative body which may be issued or commenced against the Insured in connection with the event giving rise to the claim; and
- i.) All and any other information and documentation that the Insurer may require.
- j.) The Insurer shall not pay nor be liable for any claim:-
  - i.) unless the Insured complies with the above conditions; and
  - ii.) which is made after the expiry of 18 months from the happening of the event unless the claim is the subject of pending legal action or is a claim in respect of the Insured's legal liability to a third party.

- k.) No Insured shall admit or assume any liability, enter into any settlement agreement, consent to any judgment or incur any defence costs without the prior written consent of the Insurer. Only those settlements, judgments, and defence costs consented to by the Insurer and judgments resulting from claims defended in accordance with this Policy, shall be recoverable under this Policy.
- l.) The Insurer's consent shall not be unreasonably withheld provided that the Insurer shall be entitled to exercise all of its rights in this Policy.
- m.) The Insurer may make any settlement of any claim or loss subject to such Insured's written consent. If any Insured withholds consent to such settlement, the Insurer's liability for all loss on account for such claim or loss shall not exceed the amount for which the Insurer could have settled such claim or loss incurred as at the date such settlement was first proposed in writing by the Insurer, less the applicable Deductible.

## **5. Insurer's rights after an event**

- a.) On the happening of any event in respect of which a claim is or may be made under this Policy the Insurer and every person authorised by the Insurer may, without thereby incurring any liability and without diminishing the right of the Insurer to rely upon any conditions of this Policy, take over and conduct in the name of the Insured the defence or settlement of any claim and prosecute in the name of the Insured for their own benefit any claim for indemnity or damages or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim. No admission, statement, offer, promise, payment or indemnity shall be made by the Insured without prior written consent of the Insurer.
- b.) The Insured shall, at the expense of the Insurer, do and permit to be done all such things as may be necessary or reasonably required by the Insurer for the purpose of enforcing any rights to which the Insurer shall be or would become subrogated upon indemnification of the Insured whether such things shall be required before or after such indemnification.
- c.) The Insurer may in the case of any event pay to the Insured the Limit of Indemnity provided in respect of such event or any lesser sum for which the claim or claims arising from such event can be settled and the Insured shall thereafter not be under further liability in respect of such event.

## **6. Other Insurance**

Where other insurance may be available for claims and loss covered under this Policy, the Insured shall promptly upon request of the Insurer provide the Insurer with copies of all such policies. If other valid or collectable insurance, self-insured programme or any equivalent policy irrespective of the amount thereof is available to the Insured for claims or loss covered by this Policy, the Insurer's obligations are limited as follows:

- a.) This Policy is primary and the Insurer's obligations are not reflected unless any of the other insurance is also primary. In that case, the Insurer will share with all such insurance by the method described in paragraph 2 below;
- b.) If all of the other insurance permits contribution by equal shares, the Insurer will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, the Insurer will contribute by limits. Under this method, each insurers share is based on the ratio of its applicable limit of insurance to the total of applicable limits of insurance of all insurers.

## **7. Observance of Policy Terms**

The Insurer will only provide the insurance offered under this Policy if:

- a.) any person claiming indemnity has complied with the Terms, Exclusions and Conditions thereof;
- b.) the information given in the proposal form, application and declaration is to the best of the Insured's knowledge and belief complete and correct.

## **8. Misrepresentation and Non-Disclosure**

Misrepresentation, misdescription or non-disclosure of any material particular shall render this Policy voidable at the sole discretion of the Insurer.

## **9. Fraud**

If any claim under this Policy is in any respect:-

- a.) fraudulent; or
- b.) if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this Policy; or
- c.) if any loss, destruction, damage or liability is occasioned by any wilful act on the part of the Insured or with the Insured's connivance; or
- d.) if material information in connection with the claim provided by the Insured is not true, then all benefits under this Policy shall be forfeited and the Insured shall be obliged to refund to the Insurer any amount paid to the Insured or any other person prior to the discovery of the fraudulent event in respect of the specific claim. The Insurer shall not be obliged to pay any claim lodged after such fraudulent event.

## **10. Fraudulent Claims**

If the Insured has given notice of claims under this Policy knowing such notice to be false or fraudulent as regard to amounts otherwise, such claims or loss shall be excluded from cover under the Policy and the Insurer shall have the right at its sole and absolute discretion to avoid its obligation or void the Policy in its entirety and in such case, all cover for loss and claims under the Policy shall be forfeited and all premium redeemed fully earned shall be refundable.

## **11. Change of Risk**

The Insured must inform the Insurer if there are any changes to the circumstances affecting any subject matter Insured by this Policy as soon as practicable and until accepted in writing by the Insurer no increased liability will attach to the Insurer and the Insurer reserves the right to withdraw the cover provided under this Policy with effect from the date on which the change in the circumstances occurred.

## **12. Cancellation**

This Policy or any section thereof may be cancelled immediately by the Insured at any time or by the Insurer on giving 30 days' notice of cancellation in writing to the Insured at the address stated in the Schedule.

If the Insured gives notice of cancellation the Insurer shall refund the pro-rata proportion of the premium for the unexpired Period of Insurance.

If this Policy is cancelled the onus shall be on the Insured to immediately cancel any automatic means of payment that may have been used to pay the premium prior to cancellation.

The Insurer may cancel this Policy for the following reasons:-

- a.) Material mis-representation by the Insured;
- b.) The Insured's failure to comply with the material Terms, Exclusions and Conditions or contractual obligations under this Policy, including failure to pay any premium or Deductible when due;
- c.) The effective date of cancellation stated in the notice shall become the end of the policy period.

### **13. Adjustment to Premium**

The Insurer reserves the right to adjust premiums mid-term provided that 30 days' notice of the intention to do so has been afforded to the Insured. Any such premium adjustment shall be effected after midnight on the day on which such notice expires. In the event of a claim becoming payable, the Insurer reserves the right to off-set any outstanding premium payable for the Period of Insurance against claims payable.

### **14. Prevention of Loss**

- a.) The Insured shall at all times take all reasonable precautions to prevent any circumstance, matter or thing which may give rise to a claim under this Policy and further shall not do, suffer or permit anything whereby the risk of the Insurer shall be increased.
- b.) The Insured shall give notice to the Insurer as soon as reasonably practicable of any circumstance, matter or thing which occurred subsequent to the inception date and which the Insured may reasonably be expected to suppose may give rise to claim against the Insurer. Such notice having been given, any claim arising out of any such circumstance, matter or thing shall be deemed to have been made during the Period of Insurance.
- c.) The Insured shall take all reasonable steps to properly maintain any Insured Vehicle in its fleet.
- d.) Should investigations after and environmental incident reveal that any aspect of the vehicle was not in the fully operations condition or contributed to the cause of the incident for which indemnity is claimed, the insurer is entitled to reject the claim on the basis of the vehicle not being in a road worthy state.
- e.) The insured has a duty to have such insured vehicle assessed by competent private assessors at their own expense.
- f.) The insured shall notify the insurer of all actions and measures taken in respect of vehicles and to supply the insurer with assessment reports and road worthy certificates.
- g.) Vehicles are to be in compliance with current legislation regard road worthiness and must have valid road worthiness certificate (COR) issued in terms of the provisions of the Road Traffic Act of 93 of 1996 as amended and/or by any other appropriate authority in accordance with current legislation of the territory in which such vehicles is operating.

### **15. Deductible**

The Insurer shall not be liable in respect of any claim under this Policy unless and until the Insured has paid the Deductible set out in the Schedule. The amount payable under this Policy for each and every loss, damage or liability shall be reduced by the amount of the Deductible.

## **16. Premiums**

If the premium is payable annually, quarterly or half yearly the full premium as stated in the Schedule is payable by the Insured to the Insurer strictly in advance on or before the Inception Date or renewal date for each period (the due date). If for any reason the premium payment is not made to the Insurer on or before the due date, and subject to any applicable provisions of the Policyholder Protection Rules (the grace period), this Policy shall be cancelled and all cover under this Policy shall cease as from midnight on the last day of the period for which the Insurer received payment.

If the premium is payable monthly it is a material term of this Policy that the premium to be paid by the Insured is received by the Insurer or by any person permitted to receive the premium on the Insurer's behalf on or before the due date (for the purposes of monthly policies the due date is the 1st day of every month) provided that premiums due with effect from the second month of the currency of the policy will be accepted if paid within 15 days of the due date (the grace period). EnviroSure Underwriting Managers (Pty) Ltd on behalf of the Insurer may in its sole discretion reinstate a cancelled policy and may do so at its own.

In the event of a policy being cancelled due to non-payment, the Insurer shall not be liable for any Defined Event that may have occurred during the period of non-payment of premium and the Insurer will have sole discretion in the reinstatement of the Policy and the acceptance of the claim arising from the Defined Event and will require the Insured to pay all outstanding premiums. The Insurer is not obliged to accept premium tendered after the grace period and may reinstate the Policy from the date of the receipt of the premium and will not be liable for any claim arising from a Defined Event occurring during the period of non-payment. The Insurer shall however be liable for all valid claims occurring after the date of the reinstatement.

## **17. Subrogation**

In the event of any payment under this Policy, the Insurer shall be subrogated to all the Insured's rights of recovery therefore against any person or organisation and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing to prejudice the Insurer's rights of subrogation. Any recovery in excess of the Insurer's total payment shall be restored to the Insured less the costs of such recovery.

## **18. Changes**

This Policy can be changed only by written endorsement that the Insurer makes to the Policy.

## **19. Access to Information**

The Insured agrees to provide the Insurer with access to any information produced and / or discovered by the Insured relating to Claims or Loss covered under this Policy, whether or not deemed by the Insured to be relevant to such loss.

## **20. Action against the Insured**

No action shall lie against the Insurer, unless as a condition precedent thereto there shall have been full compliance with all of the terms of this Policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant and the Insurer. Any person or organisation or the legal representative thereof who has secured such judgment or



written agreement shall thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organisation shall have any right under this Policy to join the Insurer as a party to any action against the Insured to determine the Insured's liability, nor shall the Insurer be impleaded by the Insured or his/her legal representative.

## **21. Arbitration**

Any dispute arising from or in connection with this contract shall be finally resolved in accordance with the Rule of Arbitration of Southern Africa (AFSA) by an arbitrator appointed by the foundation.

Should any dispute, disagreement or claim arise between the parties, (called hereafter "the dispute") concerning this agreement, the parties shall try to resolve this dispute by negotiation. This entails that the one party invites the other in writing to meet within 7 (seven) days from the date of the written invitation.

If the dispute has not been resolved by such negotiation, the parties shall submit the dispute to AFSA administered mediation, upon the terms set by the AFSA Secretariat. Failing such a resolution, the dispute, if arbitral in law, shall be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.

## **22. Special Provision**

Wherever this Policy provides that notice be given to the insurers, such notice shall be given to:-

ENVIROSURE UNDERWRITING MANAGERS (Pty) Ltd  
5-7 HAMPDEN ROAD  
MORNINGSIDE  
DURBAN  
4001

Telephone No: (031) 205 4918  
Fax No: (031) 205 9228  
Email: Sjanine@envirosure.co.za  
P O BOX 16055  
BRIGHTON BEACH DURBAN  
4036

## **23. Separation of Insureds**

Misrepresentation, concealment, breach of any term or condition, or violation of any duty under this Policy by one named Insured shall not prejudice the interest of coverage for another named Insured under this Policy.

## **24. Assignment**

This Policy may not be assigned without the Insurer's prior written consent.

**25. Specific exceptions to Legal Assist policy (if stated to apply to the policy schedule)**

The Insurer will not provide indemnity against any claim or claims:

- a.) Brought about or contributed to by any deliberate act or omission by or on behalf of the Insured if the result thereof could reasonably have been expected by the Insured having regard to the nature and circumstances of such act or omission;
- b.) To the extent that indemnity is provided by any other insurance;
- c.) Any claim where the event giving rise to such claim occurred or is alleged to have occurred prior to the Inception Date of the Policy as stated in the Policy Schedule.

**Underwritten by Compass Insurance Company Limited**

**Registration number: 1994/003010/06**

**FSP 12148**

