

Environmental &
Pollution Liability
Insurance for
Service Industries
(Claims Made)

**SERVICE INDUSTRIES
ENVIRONMENTAL & POLLUTION LIABILITY INSURANCE
POLICY – CLAIMS MADE**

TABLE OF CONTENTS

Contents

SECTION I – COVERAGES.....	3
SECTION II – EXCLUSIONS	5
SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLE.....	9
SECTION IV – CONDITIONS	9
SECTION V – DEFINITIONS	15

SERVICE INDUSTRIES ENVIRONMENTAL & POLLUTION LIABILITY INSURANCE POLICY – CLAIMS MADE

This is a claims made and notified policy, which means the Policy requires a **claim** to be made against the **insured** and reported to **us** during the **policy period**, or extended reporting period if applicable. Various provisions in this Policy restrict coverage. Please read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy the words “you” and “your” refer to the Named Insured(s) shown in the Schedule, and any other person or organisation qualifying as a **named insured** under this Policy. The words “we”, “us” and “our” refer to the Insurer providing this insurance.

Defined terms, other than headings, appear in bold face type. Refer to **SECTION V - DEFINITIONS**.

In consideration of the payment of the premium and in reliance upon the statements and information in the Application we agree to provide coverage as follows:

SECTION I – COVERAGES

1. Insuring Agreement

- a. We will pay those sums that the **insured** becomes legally obligated to pay as damages because of a **claim** for **bodily injury, property damage, or environmental damage** to which this insurance applies arising out of a **pollution incident** caused by **your work**, but only if:
 - (1) The **pollution incident** is caused by an **occurrence** that takes place in the **coverage territory**; and
 - (2) The **occurrence** takes place wholly or in part during the **policy period**; and
 - (3) The **claim** is first made against the **insured** and reported to us, in writing, during the **policy period** or Extended Reporting Period, if applicable; and
 - (4) **Your work**, which resulted in such **claim**, first commenced on or after the **retroactive date**, if any, shown in Item 3. of the Schedule, and before the end of the **policy period**. If no **retroactive date** is shown in the Schedule, **your work** must have first commenced during the **policy period**.
- b. We will pay **emergency response expense** incurred by the **insured** to which this insurance applies arising out of a **pollution incident** caused by **your work**, but only if:
 - (1) The **pollution incident** is caused by an **occurrence** that takes place in the **coverage territory**; and
 - (2) The **occurrence** takes place during the **policy period**; and
 - (3) **Your work** that results in an **emergency response expense** first commenced on or after the **retroactive date**, if any shown in Item 3. of the Schedule, and before the end of the **policy period**. If no **retroactive date** is shown in the Schedule, **your work** must have first commenced during the **policy period**.
- c. We will have the right but not the duty to defend the **insured** against any **claim** seeking damages for **bodily injury, property damage, environmental damage** to which this insurance applies.

However, we will have no duty to defend the insured against any **claim** seeking damages to which this insurance does not apply. We may, at our discretion, investigate any **occurrence** and settle any **claim** that may result, but:

- (1) The amount we will pay for damages is limited as described in SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLE of this policy; and
- (2) Our right and duty to defend end when we have used up the applicable limits of insurance in the payment of judgments, settlements, **clean-up costs** or **emergency response expense**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Paragraph 2. Supplementary Payments of SECTION I – COVERAGES of this policy.

2. Supplementary Payments

- a. We will pay, with respect to any **claim** against an insured we investigate, defend, or settle under Paragraph 1.a. of SECTION I – COVERAGES of this policy:

- (1) **Defence Costs.**
- (2) All court costs ordered against the insured in the **claim**. However, these payments do not include lawyers' fees or lawyers' expenses ordered against the **insured**.
- (3) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- (4) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the Limits of Insurance shown in item 4 C. of the Schedule.

- b. If we defend an **insured** against a **claim** and an indemnitee of the **insured** is also named as a party to the **claim**, we will defend that indemnitee if all of the following conditions are met:
 - (1) The **claim** against the indemnitee seeks damages for which the **insured** has assumed the liability of the indemnitee in a contract or agreement that is an **insured contract**;
 - (2) This insurance applies to such liability assumed by the **insured**;
 - (3) The obligation to defend, or the cost of the defense of, that indemnitee has also been assumed by the **insured** in the same **insured contract**;
 - (4) The allegations in the **claim** and the information we know about the **occurrence** are such that no conflict appears to exist between the interests of the **insured** and the interests of the indemnitee;
 - (5) The indemnitee and the **insured** ask us to conduct and control the defense of the indemnitee against such **claim** and agree that we can assign the same counsel to defend the **insured** and the indemnitee; and
 - (6) The indemnitee:

- (a) Agrees in writing to:
 - i. Cooperate with us in the investigation, settlement or defense of the **claim**;
 - ii. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
 - iii. Notify any other insurer whose coverage is available to the indemnitee; and
 - iv. Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (b) Provides us with written authorisation to:
 - i. Obtain records and other information related to the **claim**; and
 - ii. Conduct and control the defense of the indemnitee in such **claim**.

So long as the above conditions are met, lawyers' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid by us as Supplementary Payments as provided under Paragraph 2. Supplementary Payments of SECTION I – COVERAGES of this policy. Notwithstanding the provisions of Paragraph 1. Contractual Liability of SECTION II – EXCLUSIONS of this policy, such payments will not be deemed to be damages for **bodily injury** and **property damage, environmental damage** and **emergency response expense** and will reduce the applicable limits of insurance.

Our obligation to defend an **insured's** indemnitee and to pay for lawyers' fees and necessary litigation expenses as Supplementary Payments, as provided under Paragraph 2. Supplementary Payments of SECTION I – COVERAGES of this policy, ends when we have used up the applicable limit of insurance in the payment of judgments or settlements; or the conditions set forth above, or the terms of the agreement described in paragraph (6) above, are no longer met.

SECTION II – EXCLUSIONS

This insurance does not apply to:

1. Contractual Liability

Bodily injury, property damage, environmental damage or **emergency response expense** for which the **insured** is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a. That the **insured** would have in the absence of the contract or agreement; or
- b. Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury, property damage, environmental damage** or **emergency response expense** occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an **insured contract**, reasonable lawyers' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of **bodily injury, property damage, environmental damage** or **emergency response expense**, provided:

- (1) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and
- (2) Such lawyers' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

2. **Damage to Conveyance**

Property damage to any **conveyance** utilised during **transportation**. This exclusion does not apply to **claims** made by third party carriers for such **property damage** arising from the insured's negligence.

3. **Damage to Property**

Property damage or **environmental damage** to:

- a. Property you own, rent, or occupy including any costs or expenses incurred by you, or any other person, organisation or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- b. Premises you sell, give away, abandon or relinquish title to, if the **property damage** or **environmental damage** arises out of any part of those premises; or
- c. Property loaned to you.

4. **Damage to Your Product**

Property damage or **environmental damage** to **your product** or any part of it.

5. **Damage to Your Work**

Property damage or **environmental damage** to **your work** or any part of it.

6. **Employer's Liability**

Bodily injury to:

- a. An **employee** of the **insured**, arising out of and in the course of:
 - (1) Employment by the **insured**; or
 - (2) Performing duties related to the conduct of the **insured's** business; or
- b. The spouse, child, parent, brother or sister of that **employee** as a consequence of Paragraph (1) above.

This exclusion applies whether the **insured** may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the **insured** under an **insured contract**.

7. **Expected or Intended Injury or Damage**

Bodily injury, property damage, environmental damage or emergency response expense which could have been expected, intended or foreseen by a **responsible manager**.

8. **Criminal Fines, Penalties and Assessments**

Any criminal fines, criminal penalties, criminal assessments or reparation orders.

9. **Insured's Locations**

Bodily injury, property damage, environmental damage, or emergency response expense arising from a **pollution incident** on, at, under or migrating from any **location** which is owned or occupied by, or rented or loaned to any insured.

This exclusion does not apply if:

- a. The **bodily injury, property damage, environmental damage or emergency response expense** is caused by an **occurrence** that takes place in the **coverage territory**; and
- b. The **bodily injury, property damage, environmental damage or emergency response expense** takes place during the **policy period**; and
- c. The insured discovers the **pollution incident** no later than ten (10) calendar days after its commencement; and
- d. The **pollution incident** is reported to us in writing no later than thirty (30) business days after its commencement.

10 **Intentional Non-Compliance**

Bodily injury, property damage, environmental damage or emergency response expense that results from any **responsible manager's** intentional disregard of or deliberate willful or dishonest non-compliance with any **environmental law** or any other statute, regulation, ordinance, order, administrative complaint, notice of violation, notice letter, or instruction by or on behalf of any government agency or representative or other federal, state, local or other applicable legal requirement.

11. **Known Injury or Damage**

Bodily injury, property damage, environmental damage or emergency response expense that occurred in whole or in part prior to the **policy period** and was known prior to the **policy period** by a **responsible manager**. Any continuation, change or resumption of such **bodily injury, property damage or environmental damage** will be deemed to have been known by a **responsible manager** prior to the **policy period**.

12. **Prior Pollution Incident**

A **pollution incident** resulting from **your work**, if such **pollution incident** was known by a **responsible manager**, or should have been known by a **responsible manager** by reason of the information available to him in the role of a **responsible manager** within the organisation, prior to the inception of the **policy period** and not disclosed to us.

13. Products

Bodily injury, property damage, environmental damage or emergency response expense arising from **your product**, except if installed as part of **your work**.

14. Underground Storage Tank

A **pollution incident** resulting from an **underground storage tank** at a **location**, but only if the existence of the **underground storage tank** is known by a **responsible manager** prior to the **policy period**. This exclusion does not apply to an **underground storage tank** scheduled on the policy by endorsement.

15. War and Terrorism

Bodily injury, property damage or environmental damage, caused directly, in whole or in part, as a result of or in connection with war, whether declared or not, or any act or condition incident to war or act of Terrorism. War includes:

- a. Civil war;
- b. Armed conflict between two or more nations, armed conflict between military forces of any origin, or warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

Bodily injury, property damage or environmental damage, caused directly, in whole or in part, as a result of or in connection with Terrorism, whether declared or not, or any act or condition incident to Terrorism.

Terrorism includes any act, including but not limited to the use of force or violence and / or 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 in fear.

16. Workers' Compensation and Similar Laws

- a. Any obligation of the **insured** under a workers' compensation, employee compensation, disability benefits or unemployment compensation law, or any similar laws; or
- b. Any liability, loss, cost or expense arising in whole, or in part, out of the wrongful dismissal, unfair dismissal or redundancy of an employee or any other employment practices of any **insured**.

18. Cyber Liability

Bodily injury, property damage or environmental damage caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.

SECTION III – LIMITS OF INSURANCE AND DEDUCTIBLE

1. The Limits of Insurance shown in Item 4. of the Schedule and the rules below fix the most we will pay regardless of the number of:
 - a. **Insureds**;
 - b. **Claims** made;
 - c. Persons or organisations making **claims** or bringing legal proceedings; or
 - d. **Pollution incidents**.
2. The Policy Limit is the most we will pay for the sum of all damages under Paragraph 1. Insuring Agreement of this policy.
3. Any payment of damages under this Policy shall reduce and may exhaust the Policy Limit set forth in the Schedule. If the Policy Limit is exhausted by the payment of damages, we will have no further obligations of any kind with respect to this Policy, including any obligation to pay any further **Defence Costs**, and the Premium set forth in Item 6. of the Schedule will be fully earned.
4. **Defence Costs** are not part of, and are in addition to, the Policy Limit and any Sublimit of Liability of this Policy. Payment by Us of **Defence Costs** shall not reduce any such Limit of Liability or Sublimit of Liability.
5. Subject to Paragraph 2. above, the Each Occurrence Limit stated in Item 4. A. of the Schedule is the most we will pay for the sum of all damages and supplementary payments because of all **bodily injury, property damage, environmental damage and emergency response expense** arising out of any one **occurrence**.
6. The Limits of Insurance of this policy apply in excess of the Deductible amounts shown in Item 5. of the Schedule. The deductible amount applies to the sum of all damages and supplementary payments because of **bodily injury, property damage, environmental damage or emergency response expense** arising out of any one **occurrence**.
7. We may pay any part or all of the deductible amount to effect settlement of any **claim**, or to pay **clean-up costs or emergency response expense** which may be covered under this policy, and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.
8. The Limits of Insurance of this policy apply to the entire **policy period**. If the **policy period** is extended after issuance for an additional period, the additional period will be deemed part of the last preceding period for the purposes of determining the Limits of Insurance.

SECTION IV – CONDITIONS

1. **Assignment**

This policy may not be assigned without our prior written consent. Assignment of interest under this policy shall not bind us until our consent is endorsed thereon.

2. **Bankruptcy**

Bankruptcy or insolvency of the **insured** or of the **insured's** estate will not relieve us of our obligations.

3. Cancellation

- a. The first **Named Insured** shown in the Schedule may cancel this policy by sending by registered mail or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first **Named Insured** written notice of cancellation at least ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium.
- c. We will mail or deliver our notice to the first **Named Insured's** last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The **policy period** will end on that date.
- e. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first **Named Insured** shown in the Schedule is authorised to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

5. Currency

All reimbursement shall be made in New Zealand Dollars (NZD\$) at the rate of exchange prevailing on:

- a. The date of judgment if judgment is rendered;
- b. The date of settlement if settlement is agreed upon with our written consent; or
- c. The date legal expenses are paid.

6. Duties in the Event of Pollution Incident or Claim

- a. You must see to it that we are notified as soon as practicable of a **pollution incident** which may result in a **claim** under this policy. To the extent possible, notice should include:
 - (1) How, when and where the **pollution incident** took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the **pollution incident**.
- b. If a **claim** is made or brought against any **insured**, you must:
 - (1) Immediately record the specifics of the **claim** and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the **claim** soon as practicable. Written notice should be mailed, delivered or emailed to us at the addresses designated in the Schedule.

- c. You and any other involved **insured** must:
- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
 - (2) Authorise us to obtain records and other information in relation to the circumstances giving rise to the **pollution incident**;
 - (3) Cooperate with us in the investigation or settlement or defence of the **claim**; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organisation which may be liable to the **insured** because of injury or damage to which this policy may also apply.
- d. No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent. However, this provision does not apply to **emergency response expense**.
- e. When any **insured** become legally obligated to pay **clean-up costs** to which this policy applies, the **insured** must:
1. Submit, for our approval, all proposed work plans prior to submittal to any regulatory agency or authority.
 2. Submit, for our approval, all bids and contracts for **clean-up costs** prior to execution or issuance.
 3. Forward progress submittals regarding clean-up costs at reasonable intervals and always prior to submittal to any regulatory agency or authority that is authorised to review and approve such submittals.

We shall have the right, but not the duty to assume direct control of such **clean-up costs**. Any **clean-up costs** incurred by us shall be applied against the applicable deductible and limit of insurance shown in the Schedule of this policy.

- f. You must see to it that we are notified as soon as practicable of a **pollution incident** which may result in an **emergency response expense** under this policy. When **emergency response expenses** have been incurred, the **insured** shall forward to us within seven (7) days of the commencement of the **pollution incident** for which the **emergency response expenses** have been incurred all information including but not limited to: the cause and location of the **pollution incident**, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such **emergency response expenses**.
- g. If we are prohibited under applicable law from investigating, defending or settling any such **claim**, the **insured** shall, under our supervision, arrange for such investigation and defense thereof as is reasonably necessary, and subject to our prior authorisation, shall effect such settlement thereof.

7. Extended Reporting Period

The **Named Insured** shall be entitled to an Automatic Extended Reporting Period, and (with certain exceptions as described in Paragraph b. of this section) be entitled to purchase an Optional Extended Reporting Period for SECTION I., INSURING AGREEMENTS upon termination of coverage as defined in Paragraph b.(3) of this section. Neither the Automatic nor the Optional Extended Reporting Period shall reinstate or increase any of the limits of liability of this policy.

a. **Automatic Extended Reporting Period**

Provided that the **Named Insured** has not purchased any other insurance to replace this insurance and the **claim** is otherwise covered hereunder, the **Named Insured** shall have the right to the following: a period of sixty (60) days following the effective date of such termination of coverage in which to provide written notice to the Company of **claims** first made and reported within the Automatic Extended Reporting Period. A **claim** first made and reported within the Automatic Extended Reporting Period will be deemed to have been made on the last day of the **policy period**, provided that the **claim** arises from a **pollution incident** that commenced before the end of the **policy period** and is otherwise covered by this policy. No part of the Automatic Extended Reporting Period shall apply if the Optional Extended Reporting Period is purchased.

b. **Optional Extended Reporting Period**

The **Named Insured** shall be entitled to purchase an Optional Extended Reporting Period upon termination of coverage as defined herein (except in the event of nonpayment of premium), as follows:

- (1) A **claim** first made and reported within the Optional Extended Reporting Period, if purchased in accordance with the provisions contained in Paragraph 2. below, will be deemed to have been made on the last day of the **policy period**, provided that the **claim** arises from a **pollution incident** that commenced before the end of the **policy period** and is otherwise covered by this policy.
- (2) The Company shall issue an endorsement providing an Optional Extended Reporting Period of up to thirty-six (36) months from termination of coverage hereunder, provided that the **Named Insured**:
 - a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and
 - b) pays the additional premium when due. If that additional premium is paid when due, the Extended Reporting Period may not be cancelled, provided that all other terms and conditions of the policy are met.
- (3) Termination of coverage occurs at the time of cancellation or nonrenewal of this policy by the **Named Insured** or by the Company.
- (4) The Optional Extended Reporting Period is available to the **Named Insured** for not more than 200% of the full policy premium stated in the Schedule.

8. **Economic and Trade Sanctions**

If coverage for a **claim** under this policy is in violation of any economic or trade sanctions imposed by the United States of America, the United Nations (UN), the European Union (EU)/European Economic Area (EEA) or any other applicable national economic or trade sanction law or regulations, then coverage for that **claim** will be null and void.

9. **Headings**

The descriptions in the headings and sub-headings of this policy are inserted solely for convenience and do not constitute any part of the terms or conditions on this policy.

10. **Independent Counsel**

In the event the **insured** is entitled by law to select independent counsel to oversee our defense

of a **claim** at our expense, the lawyers' fees and all other litigation expenses we must pay to that counsel are limited to the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar **claims** in the community where the **claim** arose or is being defended.

Additionally, we may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency including experience in defending **claims** similar to the one pending against the **insured** and to require such counsel have errors and omissions insurance coverage. As respects any such counsel, the **insured** agrees that counsel will timely respond to our requests for information regarding the **claim**.

Furthermore, the **insured** may at any time, by the **insured's** signed consent, freely and fully waive these rights to select independent counsel.

11. Inspections and Surveys

a. We have the right to:

- (1) Make inspections, carry out surveys and audits at any time of books, records, services, properties and activities as far as they relate to the subject matter of this policy;
- (2) Give you reports on the conditions we find; and
- (3) Recommend changes.

b. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organisation to provide for the health or safety of workers or the public. We do not warrant that conditions:

- (1) Are safe or and provide a healthy environment for workers or the public; or
- (2) Comply with laws, regulatory, codes and standards set in the **territory** where coverage is provided under this policy.

This applies not only to us, but also to any rating, advisory, rate service or similar organisation which makes insurance inspections, surveys, reports or recommendations.

12. Legal Action Against Us

No person or organisation has a right under this policy:

- a. To join us as a party or otherwise bring us into a claim asking for damages from an **insured**;
or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organisation may sue us to recover on an agreed settlement or on a final judgment against an **insured**; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

13. Other Insurance

If other valid and collectible insurance is available to the **insured** for a loss we cover under this

policy, this policy shall apply excess over any such other valid and collectible insurance. If no such valid and collectible insurance exists, this policy shall act as primary insurance.

14. Premiums and Deductible

The first **Named Insured** shown in the Schedule:

- a. Is responsible for the payment of all premiums;
- b. Will be the payee for any return premiums we pay; and
- c. Is responsible for the payment of all deductibles.

15. Representations

By accepting this policy, you agree:

- a. The statements and information in any Application and/or Questionnaire and other supplemental materials submitted to us are accurate and complete and are material to our underwriting of this policy;
- b. Those statements and the information provided are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Misrepresentation, concealment, breach of a term or condition, or violation of any duty under this policy by one **insured** shall not prejudice the interest of coverage for another **insured** under this policy. Provided, however, that this condition shall not apply to any **insured** who is a parent, subsidiary or affiliate of the first **Named Insured**.

16. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first **Named Insured**, this insurance applies:

- a. As if each **Named Insured** were the only **Named Insured**; and
- b. Separately to each **insured** against whom **claim** is made or brought.

17. Service of Suit

It is agreed that in the event of failure by us to pay any amount claimed to be due hereunder, we, at the request of the **Insured**, will submit to the courts of New Zealand. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in the courts of New Zealand, to remove an action to such a Court, or to seek a transfer of a case to another court as permitted by law. It is further agreed that service of process in such suit may be made upon the Claims Manager, Delta Insurance New Zealand Limited, Level 3, 57 Fort Street, Auckland 1010, or his or her representative, and that in any suit instituted against us with respect to this contract, we will abide by the final decision of such court or of any appellate court in the event of any appeal. The parties will submit to the Courts of New Zealand.

18. Complaints Procedure

Any enquiry or complaint relating to this Policy should be referred to Delta Insurance New Zealand Limited in the first instance. If this does not resolve the matter or the Insured is not satisfied with the way the enquiry or complaint has been dealt with, the Insured should write to:

Lloyd's General Representative in New Zealand
C/O Hazelton Law
Level 3
101 Molesworth Street
P O Box 5639
Wellington New Zealand

19. Transfer Of Rights Of Recovery Against Others To Us

If the **insured** has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The **insured** must do nothing after loss to impair them. At our request, the **insured** will bring suit or transfer those rights to us and help us enforce them.

However, we waive our right(s) of recovery against any person or organization if and to the extent you have agreed to waive your right(s) of recovery against such person or organization in a written contract signed by you prior to the first commencement of a **pollution incident** out of which the claim or request for **emergency response expense** arises under Section I – Coverages, 1. Insuring Agreement.

Any recovery as a result of subrogation proceedings arising out of the payment of loss covered under this policy shall accrue first to us to the extent of our payment under the policy, and then to you to the extent of your deductible. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery

20. Transfer of Your Rights and Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent, which shall not be unreasonably withheld, except in the case of death of an individual **Named Insured**.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

SECTION V – DEFINITIONS

1. **Auto** means
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment.
 - b. Any other land vehicle where it is compulsory for the vehicle and / or its driver to be insured in the jurisdiction where it is licensed and principally garaged.However, **auto** does not include **mobile equipment**.
2. **Bodily injury** means **bodily injury**, physical injury, sickness, building-related illness, mental anguish, shock or emotional distress or disease sustained by a person, including death resulting from any of these at any time.
3. **Claim** means the receipt of a written demand seeking a remedy and alleging liability or responsibility on the part of the **insured**, including any original legal or arbitral process, cross

claim, third party notice made during the **policy period** alleging a **pollution incident**.

4. **Clean-up cost means** reasonable and necessary expenses, including **restoration costs** and legal expenses incurred with our written consent, which consent shall not be unreasonably withheld or delayed, to investigate, abate, contain, treat, remove, remediate, monitor, or dispose of soil, surfacewater, groundwater or other contaminated media but only:
 - a. To the extent required by **environmental laws**;
 - b. For those costs that have been incurred by the government or any political subdivision within the **coverage territory** or by third parties; or
 - c. In the absence of a. above, to the extent recommended by an **environmental professional**.

Clean-up costs do not include:

- a. Costs, charges or expenses incurred by the **insured** for materials supplied or services performed by the **insured**, unless such costs, charges or expenses are incurred with our prior written approval.
 - b. **Property damage**.
5. **Conveyance** means any **auto**, railcar, train, watercraft or aircraft. **Conveyance** does not include pipelines.
 6. **Coverage territory** means New Zealand.
 7. **Defence costs** means reasonable fees, costs and expenses incurred by or on behalf of the **Insured**, with Our prior written consent, in the investigation, defence, adjustment, settlement or appeal of any **Claim** for which the **Insured** is legally liable.

Defence costs shall not include internal or overhead expenses of the **Insured** or the cost of any **Insured's** time.

8. **Emergency response expense** means reasonable and necessary cost, charges or expense incurred by you to abate or respond to an imminent and substantial threat to human health or the environment.
9. **Employee** includes a **leased worker** and a **temporary worker**.
10. **Environmental damage** means physical damage to soil, any water course or body of water including groundwater, atmosphere, or plant or animal life, buildings or other structures giving rise to **clean-up costs**. **Environmental damage** does not include **property damage** and **emergency response expense**.
11. **Environmental laws** means any federal, state, provincial, municipal or other local laws, statutes, ordinances, rules, guidance documents, regulations, administrative orders and directives and all amendments thereto, including state voluntary clean-up or risk-based corrective action guidance.
12. **Executive officer** means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
13. **Environmental professional** means an individual or entity approved by us in writing that is licensed and certified to provide environmental services. We shall consult with you in conjunction with the selection of the **environmental professional**.

14. **Fungi** means any of numerous eukaryotic organisms of the kingdom Fungi, which lack chlorophyll and vascular tissue and range in form from a single cell to a body mass of branched filamentous hyphae that produce specialized fruiting bodies.
14. **Insured** means each **named insured** and any past or present director, officer, partner, member or **employee** of such **named insured**, but only while acting in the course and scope of his or her duties as such with respect to the conduct of such **named insured's** business. If a **named insured** is a limited liability company, then **insured** also means your managers, but only with respect to their duties as your managers. **Insured** also means any person or entity expressly designated as an additional **insured** in an endorsement, if any, attached to this policy. Any such additional **insured** shall maintain only those rights to coverage under this policy as specified by the endorsement.

Insured shall also include any person or organisation with whom you agree to include as an **insured** in a written contract or written agreement, but only with respect to **bodily injury, property damage, environmental damage or emergency response expense** arising solely out of **your work**.

15. **Insured contract** means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises in excess of thirty (30) consecutive days that indemnifies any person or organisation for damage by fire, lightning or explosion to premises while rented to you or temporarily occupied by you with permission of the owner is not an **insured contract**;
- b. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- c. That part of any other contract or agreement pertaining to **your work** (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for **bodily injury, property damage or environmental damage** to a third person or organisation. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph c. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (2) Under which the **insured**, if an architect, engineer or surveyor, assumes liability for any injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1)(a) and (b) above and supervisory, inspection, architectural or engineering services.

16. **Leased worker** means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. **Leased worker** does not include a **temporary worker**.

17. **Location** means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

18. **Microbial matter** means **fungi**, mold and mildew, whether or not such **microbial matter** is living.

19. **Misdelivery** means the delivery of any liquid product into a wrong receptacle or to a wrong address or the erroneous delivery of one liquid product for another.
20. **Mobile equipment** means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c., or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c., or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:

- (1) Equipment designed primarily for snow removal, road maintenance (but not construction or resurfacing) or street cleaning;
- (2) Cherry pickers and similar devices mounted on **auto** or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However **mobile equipment** does not include any land vehicles where it is compulsory for the vehicle and / or its driver to be insured in the jurisdiction where it is licensed and principally garaged. Land vehicles where it is compulsory for the vehicle and/or its driver to be insured in the jurisdiction where it is licensed and principally garaged are considered as **autos**.

21. **Named insured** means the first **Named insured** and any other person or entity that is designated as such in an endorsement, if any, attached to this Policy.
22. **Natural resource damage** means physical injury to or destruction of, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the government agency or department where the **pollution incident** occurred or

where the **pollution incident** migrated to.

23. **Non-owned site** means any **location** which:

- a. Was not at any time owned or occupied by, or rented or loaned to any **insured**; and
- b. Is a **location(s)** where waste generated from work or operations performed by you or on your behalf is sent for treatment, storage, processing, recycling or disposal ~~;-or~~

Non-owned site does not include any **location** which is not licensed by the appropriate state or federal authority to perform storage, disposal, processing or treatment of waste from your operations or **your work** in compliance with **environmental law**.

23. **Occurrence** means a **Pollution Incident** caused by an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

24. **Policy Period** means the period of time as shown in Item 2. of the Schedule, however, if the policy is cancelled in accordance with Paragraph 3. Cancellation of SECTION V – CONDITIONS of this policy, the policy period ends on the effective date of such cancellation.

25. **Pollution incident** means the discharge, emission, seepage, migration, dispersal, **misdelivery**, release or escape of:

- a. any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals, hazardous substances, petroleum hydrocarbons, medical, infectious and pathological waste;
- b. low level radioactive waste;
- c. **microbial matter**;
- d. legionella pneumophila;
- e. medical waste; and
- f. waste materials; and,
- g. electromagnetic fields;

into or upon land, or any structure on land, the atmosphere or any watercourse or body of water including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered.

26. **Property damage** means:

- a. Physical injury to or destruction of tangible property, including all resulting loss of use and diminished value of that property.
- b. Loss of use of tangible property that is not physically injured or destroyed arising out of physical injury to or destruction of other tangible property.
- c. **Natural resource damage**

Property damage does not include **clean-up costs** or **environmental damage**.

For the purpose of this insurance, electronic data is not tangible property. As used in this

definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

27. **Responsible manager** means you, your manager or supervisor responsible for environmental affairs, control or compliance or any other **employee** authorised by you to give or receive notice of an **occurrence** or **claim**.

28. **Restoration costs** means reasonable and necessary expenses incurred by you with our written consent to repair or replace damaged real or personal property when such damage occurs because of clean up costs to which this insurance applies. **Restoration costs** shall not exceed the replacement cost of such real or personal property. If repair or replacement results in kind or quality exceeding that of the real or personal property before it was damaged, whether at your option or not, we will not pay for the amount of the betterment.

29. **Retroactive date** means the date entered in Item 3. of the Schedule.

30. **Temporary worker** means a person who is furnished to you to substitute for a permanent worker on leave or to meet seasonal or short-term workload conditions.

31. **Transportation** means the movement of goods, product, merchandise, supplies or waste in a **conveyance** by the insured or a third party carrier properly licensed to transport such goods, products, merchandise, supplies or waste from the time of movement from the point of origin until delivery to the final destination. **Transportation** includes the movement of goods, products, merchandise, supplies or waste into, onto or from a **conveyance**.

32. **Underground storage tank** means any tank that has at least ten percent (10%) of its volume below ground at inception of the **policy period**, or installed thereafter including associated underground piping connected to the tank.

33. **Volunteer worker** means a person who is not your **employee**, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

34. **Your product** means:

a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed by:

(1) You;

(2) Others trading under your name; or

(3) A person or organisation whose business or assets you have acquired; and

b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

Your product includes:

a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of your product; and

b. The providing of or failure to provide warnings or instructions.

35. **Your work** means:

- a. Work or operations performed by you or on your behalf; or
- b. Materials, parts or equipment furnished in connection with such work or operations, or
- c. **Transportation** arising out of work or operations performed by you or on your behalf, or
- d. Use of a **non-owned site** required by work or operations performed by you or on your behalf.

<< END >>