

FACULTATIVE AGREEMENT

between

THE REINSURED:

BOTSWANA INSURANCE COMPANY LIMITED
2/9/88 LICENCE NUMBER:

FACULTATIVE REINSURER:

CENTRIQ INSURANCE COMPANY LIMITED
FSP NUMBER:3417

herein represented by

ENVIROSURE UNDERWRITING MANAGERS (PTY) LTD
FSP NUMBER:38594

1. DEFINITIONS AND INTERPRETATIONS

- 1.1. In this agreement, unless inconsistent with or otherwise indicated by the context –
- 1.1.1. “the/this Agreement” means this agreement and any annexures and supporting documentation and addendums thereto;
 - 1.1.2. “Business day / days” means any day other than a Saturday, Sunday, or official South African public holiday;
 - 1.1.3. “Confidential Information” means all material and information which has or will come into a party’s possession or knowledge in connection with this Agreement, or the performance hereof, consists of confidential and proprietary data, whose disclosure to or use by third parties will be damaging to the other of them;
 - 1.1.4. “Facultative Reinsurer” means **CENTRIQ INSURANCE COMPANY LIMITED** a licensed non-life insurer, incorporated according to the laws of the Republic of South Africa under registration number **1998/007558/06** herein represented by its Underwriting Manager, **ENVIROSURE UNDERWRITING MANAGERS (PTY) LTD**, a company duly incorporated according to the laws of the Republic of South Africa under registration number **2007/022622/07**;
 - 1.1.5. “Original Insured” means a person or entity having taken out a policy with the Reinsured;
 - 1.1.6. “Original Policy” mean the policy issued by the Reinsured to the Original Insured in respect of Environmental Impairment Liability cover reinsured in terms of this Agreement.
 - 1.1.7. “Reinsured” means **BOTSWANA INSURANCE COMPANY LIMITED**, a public company registered in terms of the laws of Botswana with Registration Number: **BW00000868164**
 - 1.1.8. “Parties / Party” mean the Reinsured, the Facultative Reinsurer;
 - 1.1.9. “Personal Data” means information relating to an identified or identifiable individual, which individual can be identified directly or indirectly, in particular by reference to an identification number, or to one or more factors specific to the individual’s physical, physiological, mental, economic, cultural or social identity; and “data” shall be construed accordingly;
 - 1.1.10. “Agreed Policy Wording” means the EnviroSure Transport Clean-Up and the Site Clean-Up policy wordings attached to this agreement in **Annexures A & B**;
 - 1.1.11. Risk(s) means environmental impairment liability cover required by an Original Insured as per the Agreed Policy Wordings;
 - 1.1.12. all amounts are excluding VAT and commission;
 - 1.1.13. any reference to natural persons includes legal persons and vice versa;
 - 1.1.14. any reference to a gender includes the other genders;
- 1.2. The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation;
- 1.3. This agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

2. APPOINTMENT

The Reinsured hereby appoints the Facultative Reinsurer, who accepts such appointment, to act as a facultative reinsurer, in terms of the provisions of this Agreement.

3. BASIS OF FACULTATIVE REINSURANCE AGREEMENT

- 3.1. This Agreement reinsures the Reinsured's interest in payment to be made within the terms and conditions of the Original Policy in terms of environmental impairment liability cover. In the event of inconsistencies between the Original Policy and this Agreement, this Agreement shall prevail.
- 3.2. The Reinsured is ceding 90% of the environmental impairment liability risk to the Facultative Reinsurer.
- 3.3. The Reinsured is retaining net for its own account 10% of the environmental impairment liability risk.
- 3.4. This Agreement is applicable only to reinsurance of Risks directly written by the Reinsured in terms of their Agreed Policy Wordings.
- 3.5. The Reinsured shall provide full disclosure of all material facts regarding the Risks covered by this Agreement. Material facts are those which are material to the terms and conditions of this Agreement and is of such a nature that it would affect the decision of the Facultative Reinsurer as to whether to accept or decline the Risk or to accept on alternative terms and conditions. This Agreement shall apply to Risks situated in the Republic of South Africa.
- 3.6. Currency Fluctuation South African Rand (ZAR) to Botswana Pula (BWP)
 - 3.6.1. All cessions under this Agreement shall be in BWP and any loss payment by the Facultative Reinsurer to the Reinsured will be paid in BWP, subject to 3.6.2 and 3.6.3 below.
 - 3.6.2. If the value of the ZAR as measured against the BWP has deteriorated beyond 1.6ZAR to 1BWP at the time of a loss payment, then the BWP value of the claim amount shall be limited to such amount as will be arrived at if the value of the ZAR has only deteriorated to a maximum of 1.6ZAR to 1 BWP.
 - 3.6.3. A certificate from the Facultative Reinsurer's bankers, certifying the appropriate ZAR to BWP exchange rate as at the loss settlement date, shall be final and binding on the parties.

4. AMENDMENTS AND ALTERATIONS CLAUSE

This Agreement may at any time be altered by agreement between the parties. Such alterations or additions as may be agreed upon, shall be expressed in Addenda or correspondence which shall be attached to and form an integral part of this Agreement.

5. TERM

- 5.1. This Agreement shall commence on **01 NOVEMBER 2022** and shall endure for a period of 3 (Three) years, unless otherwise cancelled or terminated in terms of this Agreement ("the Term").

6. DUTIES OF THE PARTIES

- 6.1. The Reinsured will originate the Risk and the Facultative Reinsurer will underwrite and accept the Risk.
- 6.2. Any risks that are not within the stipulated underwriting criteria must be referred by the Reinsured to the Facultative Reinsurer.
- 6.3. The Facultative Reinsurer reinsures any environmental impairment liability as per the Agreed Policy Wordings, in respect of business that has been originated by the Reinsured and accepted by the Facultative Reinsurer.

7. REGULATORY COMPLIANCE

- 7.1. The Parties warrant that they shall, at all relevant times, comply with all relevant legislation and regulatory prescripts.

8. QUOTATIONS

- 8.1. The Facultative Reinsurer will provide a quote to the Reinsured based on available information to be provided to the Facultative Reinsurer in the form of a proposal; and
- 8.2. The Reinsured will provide confirmation of the acceptance of the risk, including inception- and policy details in a format suitable to both Parties.

9. PLACING

- 9.1. The Reinsured may cede said Risks to the Facultative Reinsurer, who in turn may accept such risk with the understanding that the Facultative Reinsurer is not obliged to accept the risk.
- 9.2. The Facultative Reinsurer will not be on risk until they have received the electronic instruction of the acceptance of their quote and have provided the Reinsured in return with a cover confirmation.

10. SURVEYS

The Facultative Reinsurer will conduct surveys, if required.

11. REPORTING

- 11.1. Reporting in terms of **Premium** and / or **Claims** shall be forwarded by the Reinsured to the Facultative Reinsurer, in format suitable to both Parties, via E-mail; and
- 11.2. Details of the responsible person(s) and E-mail addresses to be provided by the Facultative Reinsurer to the Reinsured.

12. RENEWALS

- 12.1. A bordereau prepared by the Reinsured containing all the risk information, in a format suitable to both Parties, to be circulated to the Facultative Reinsurer within 8 (eight) weeks prior to the renewal date.
- 12.2. Any changes to the facultative Risk's terms will be communicated to the Reinsured by the Facultative Reinsurer within 8 (eight) weeks prior to the renewal date.

13. ERRORS AND OMISSIONS

Any inadvertent delay, error, or omission on the part of either the Reinsured or the Facultative Reinsurer shall not relieve the other party from any liability which would have attached to this Agreement, provided that such delay, error, or omission is rectified immediately upon discovery and shall not impose any greater liability on the Reinsured or the Facultative Reinsurer than would have attached had the delay, error or omission not occurred.

14. INSPECTION OF RECORDS

The Facultative Reinsurer or their duly appointed representatives may at any time during normal office hours inspect and take copies of such of the Reinsured's records and documents relating to the business covered under this Agreement.

The Facultative Reinsurer shall have this right to information for the duration of the agreement unless either party has a claim against the other arising out of this Agreement.

15. EXCLUSIONS

As detailed in the Agreed Policy Wordings attached in **Annexures A & B**.

16. PREMIUMS

16.1. Premiums will be paid on receipted original policy premiums in arrears, on a monthly basis by the 15th day of the following month, in a format suitable to both Parties. The aforementioned reporting to provide details of all original policy premiums received for a specified period including net of unpaid premiums and refunds.

16.2. The Facultative Reinsurer is to be informed of any original policy unpaid premiums immediately.

16.3. If the premium due has not been so paid to the Facultative Reinsurer by the payment date from the inception of the risk, the Facultative Reinsurer shall have the right to cancel the risk by notifying the Insurer in writing.

16.4. The Facultative Reinsurer elects the following account for premium deposits:

BANK: ABSA
BRANCH CODE: 632005
ACCOUNT NUMBER: 4095037898
ACCOUNT HOLDER'S NAME: CENTRIQ / ENVIROSURE

16.5. If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

17. UNDERWRITING & CLAIMS CONTROL CLAUSE

It is a condition precedent to any liability under this Agreement that:

17.1. no amendment to the terms or conditions of, or additions to or deletions from the Agreed Policy Wordings shall be binding upon the Facultative Reinsurer unless prior agreement has been obtained from the Facultative Reinsurer;

- 17.2. the Reinsured shall upon knowledge of any loss or losses which may give rise to a claim under this Agreement, advise the Facultative Reinsurer immediately on the Hazcall 24 line at +27604402810;
- 17.3. the Reinsured shall furnish the Facultative Reinsurer with all information available respecting such loss or losses, and the Facultative Reinsurer shall have full claims control and have the sole right to appoint spillage Clean-up specialist, experts, adjusters, assessors, and/or lawyers and to control all negotiations, adjustments, and settlements in connection with such loss or losses.

18. CLAIMS CO-OPERATION CLAUSE

18.1. Notwithstanding anything to the contrary contained in this Agreement:

- 18.1.1. The Reinsured shall give to the Facultative Reinsurer(s) notice as stipulated in 17.2 above, of any claim made against the Reinsured in respect of the business reinsured hereby or of its being notified of any circumstances which could give rise to such a claim.
- 18.1.2. The Reinsured shall furnish the Facultative Reinsurer(s) with all information known to the Reinsured in respect of claims or possible claims notified in accordance with (18.1.1) above.
- 18.1.3. The Reinsured shall co-operate with the Facultative Reinsurer(s) and any other person or persons designated by the Facultative Reinsurers in the investigation, adjustment and settlement of such claim notified to the Facultative Reinsurer(s) as aforesaid.

19. CONFIDENTIALITY

The Facultative Reinsurer undertakes that it shall protect the confidentiality and privacy of the information submitted to it by the Reinsured and shall not disclose such information to any third party or make use thereof for the furtherance of its own business.

Ownership of clients - the Facultative Reinsurer hereby acknowledges that the Original Insured is a client of the Reinsured and shall not be approached by the Facultative Reinsurer. Should the potential policyholder currently be a client of the Facultative Reinsurer, the Facultative Reinsurer shall inform the Reinsured. The Facultative Reinsurer may in this instance elect not to quote on the risk or present the existing term.

The Parties undertake to regard the transactions hereunder, this Agreement and all information provided by the Parties that is not already in the public domain as strictly confidential and further declare and agree that they or their representatives will not at any time make use either directly or indirectly of the information as may be received by a Party from the other Party pursuant to this agreement.

Notwithstanding the above, it is noted and agreed that there may be occasions when information may be required to be passed to third parties, for example, legal counsel, arbitrators, auditors, governing bodies and regulatory bodies and either Party shall not be precluded from doing so, where required.

20. DATA PROTECTION

- 20.1. The Facultative Reinsurer acknowledges that in providing the services to the Reinsured, the Facultative Reinsurer may be exposed to the Data of the Reinsured's employees, customers, and clients.

- 20.2. The Parties specifically record that all Data provided by the Reinsured to the Facultative Reinsurer, or to which the Facultative Reinsurer may be exposed, shall constitute Confidential Information and where applicable, intellectual property belonging to the Reinsured.
- 20.3. The Facultative Reinsurer hereby warrants in favour of the Reinsured that it shall at all times strictly comply with all applicable legislation and with all the provisions and requirements of any of the Reinsured data protection policies and procedures which may be in force from time to time.
- 20.4. The Facultative Reinsurer hereby warrants and undertakes that it shall not, at any time, copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use Data for any purpose other than to the extent necessary to provide the reinsurance cover in terms of this Agreement to the Reinsured. The Reinsured acknowledges that the Facultative Reinsurer may distribute Data to service providers, subcontractors, agents, reinsurers, court of law, governmental bodies or the regulator and may use the Data for actuarial analyses purposes.
- 20.5. The Facultative Reinsurer further warrants that it shall ensure that all its systems and operations which it uses to provide the services, including all systems on which Data is copied, compiled, collated, processed, transmitted, stored, collected, mined, altered or deleted or otherwise used as part of providing the services, shall at all times be of a minimum standard required by law and be of a standard no less than the standards which are in compliance with the international best practice for the protection, control and use of Data.
- 20.6. The Facultative Reinsurer's obligations under this clause 20 will survive the termination of this Agreement for any reason.

21. RESERVATION OF RIGHTS

Nothing in this Agreement shall be construed as creating a relationship of agency between the Reinsured on the one hand and the Facultative Reinsurer on the other.

22. CANCELLATION

This agreement may be cancelled by either party by giving 90 (Ninety) days written notification thereof to the other party.

23. TERMINATION AND CONSEQUENCES OF TERMINATION

- 23.1. Any of the Parties shall be entitled to terminate this agreement forthwith if:
 - 23.1.1. the performance of the agreement is rendered impossible de jure or de facto reasons, not due to the fault of either party; or
 - 23.1.2. the other Party has become unable to pay its debts or becomes insolvent or commits any act of insolvency or goes into liquidation or has lost the whole or part of its paid-up capital; or
 - 23.1.3. the other Party has failed to fulfil its obligations under this Agreement to the extent that such failure amounts to a material breach of this Agreement, which includes non-compliance with the relevant legislation.
- 23.2. In the event that termination of this Agreement is made by the Reinsured, cancellation of all current policies with the Facultative Reinsurer shall only become effective upon notification.

23.3. In the event that any of the Parties to this Agreement is indebted to the other Party on the termination of this Agreement, such indebtedness shall be made good forthwith and all amounts shall be deemed to be immediately due and payable.

24. NOTICES AND DOMICILIUM

24.1. The Parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the Parties.

24.2. For purposes of this agreement the Parties' respective addresses shall be:

24.2.1. as regards the Reinsured at: BIC House, Plot 50372, Gaborone Business Park

24.2.2. Attention: Chief Executive Officer
Email: newton.jazire@bic.co.bw

24.2.3. Cc: Head of Legal and Compliance
Email: thato.molalapata@bic.co.bw

24.2.4. as regards the Facultative Reinsurer at: The Oval, Second Floor, West Wing, Wanderers Office Park, 52 Corlett Drive, Illovo

24.2.5. Attention: Legal and Claims Department
Email: mdavids@centriq.co.za

or at such other address in the Republic, not being a post office box or poste restante, of which the party concerned may notify the others in writing.

24.3. Any notice given in terms of this Agreement shall be in writing and shall –

24.3.1. be delivered by hand or transmitted by E-mail;

24.3.2. if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

24.3.3. if transmitted by E-mail be deemed to have been received by the addressee 1 (one) day after dispatch.

24.4. Notwithstanding anything to the contrary contained in this agreement, a written notice or communication received by one of the Parties from another shall be adequate written notice or communication to such party.

25. DISPUTE RESOLUTION

25.1. A dispute in terms of this clause 26 shall include, but shall not be limited to the following:

25.1.1. Any dispute regarding the interpretation or rectification or implementation of this Agreement (including this clause); or

- 25.1.2. Any dispute regarding the termination of this Agreement, and the consequences of any such termination or purported termination; or
 - 25.1.3. Any dispute regarding the voidness or voidability of this Agreement; or
 - 25.1.4. A counter claim on any matter for which provision is made in, or arising out of, this Agreement.
- 25.2. Prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute by means of informal dispute resolution procedures as described in the section entitled “Informal dispute resolution” of this agreement, failing which they shall attempt to resolve it by means of arbitration procedures described in clause entitled “arbitration”.
- 25.2.1. Informal dispute resolution:
 - 25.2.2. Upon the written request of a Party, any dispute that arises between the Parties shall be referred to the Managing Director (or his nominee) of the Parties who shall meet as often as the Parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. Senior management as aforesaid shall discuss the problem and attempt to resolve the dispute in good faith without the necessity of any formal proceeding. The specific format for the discussion shall be left to the discretion of such senior management;
 - 25.2.3. In the event that the Parties fail to resolve the dispute within 30 (thirty) days of the date of the written notice referred to in clause (26.2.1.1) above, the dispute shall be referred to the Executive Officers of each Party, or their nominees, who shall follow a dispute resolution process similar to the process described in clause (26.2.1.1) above. In the event that the Parties fail to resolve the dispute in terms of this clause (26.2.1.1) above within 30 (thirty) days’ notice of its referral to the Executive Officers of each Party, or their nominees, the dispute shall be referred to arbitration.
 - 25.2.4. Proceedings in terms of this clause (26.2.1.2) above shall not prevent a Party from instituting formal proceedings earlier to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to creditors.

26. ARBITRATION

- 26.1. If the Parties are unable to resolve any dispute in the manner described in the section titled, “Informal dispute resolution”, such dispute shall, on written demand by either Party to the dispute be submitted to arbitration in the Johannesburg/ Sandton area in accordance with the rules of the Arbitration Foundation of South Africa by an arbitrator or arbitrators appointed by the Arbitration Foundation of South Africa and agreed by the Parties:
 - 26.1.1. The Parties shall request that the arbitrator/s appointed by the Arbitration Foundation of South Africa commence the arbitration with 21 (twenty-one) days and proceed as if time is of the essence in the arbitration proceeding. The Parties shall request that the arbitrator render his or her decision within 14 (fourteen) days following the conclusion of the hearing. Recognising the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator shall limit or allow the Parties to expand the scope of discovery as may be reasonable under the circumstances.

- 26.1.2. Should the Parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated at the request of any Party to the dispute by the Arbitration Foundation of South Africa.
- 26.1.3. The Parties irrevocably agree that the submission to arbitration is subject to the Parties' rights of appeal. Any Party may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party to the arbitration. The appeal shall be dealt with in accordance with the rules of the Arbitration Foundation of South Africa by a panel of 3 (three) arbitrators appointed by the Arbitration Foundation of South Africa.
- 26.1.4. The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party. A decision, which becomes final and binding in terms of this clause 25, may be made an order of court at the instance of any Party to the arbitration.
- 26.1.5. This clause 25 shall not preclude a Party from seeking urgent relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
- 26.1.6. Each Party agrees to continue performing its obligations under this Agreement while busy resolving a dispute except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).

26.2. The Parties shall use reasonable efforts to resolve disputes arising under this Agreement as rapidly as possible.

27. WHOLE AGREEMENT

This Agreement constitutes the whole agreement between the Parties as to the subject-matter hereof and no agreements, representations, or warranties between the Parties other than those set out herein are binding on the Parties.

28. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement, or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

29. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any party to any other party in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or estop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

The Reinsured and Facultative Reinsurer hereby agrees to the terms and conditions of the reinsurance as contained in this Agreement.

Signed at _____ On _____

Witnesses:

1. _____

For:

BOTSWANA INSURANCE COMPANY LIMITED

2. _____

Duly Authorised:

Signed at _____ On _____

Witnesses:

1. _____

For:

CENTRIQ INSURANCE COMPANY LIMITED

2. _____

Duly Authorised:

Signed at _____ On _____

Witnesses:

1. _____

For:

ENVIROSURE UNDERWRITING MANAGERS (PTY) LTD

2. _____

Duly Authorised:

ANNEXURE A

ENVIROSURE TRANSPORT CLEAN-UP POLICY WORDING

Attached



THE TRANSPORT CLEAN UP POLICY ENVIRONMENTAL IMPAIRMENT POLLUTION WORDING

1. OPERATIVE CLAUSE

In consideration of the prior payment of the premium by the Insured named in the Policy Schedule and the receipt thereof by the Insurer, the Insurer agrees to indemnify the Insured for the Defined Event which occurred within the Territorial Limits and on or after the retroactive date shown in the Policy Schedule and which results in a claim first being made against the Insured during the period of insurance subject to:

- a) reliance upon the Insured's accurate and complete representations and statements made to the Insurer or in the Proposal Form;
- b) the limits of indemnity as stated in the Policy Schedule;
- c) the Deductibles as stated in the Policy Schedule;
- d) the Terms, Exclusions and Conditions of this Policy.

It is declared and agreed that the Proposal Form, Policy Schedule, this Policy Wording and 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. Transport Solution – (If stated in the Policy Schedule)

The Costs and Expenses reasonably incurred by the Insured, and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident, arising from and as a direct consequence of the Transportation of Dangerous Goods, and or potential Pollutants, in or on any Insured Vehicle, 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 Policy Schedule.

2.3 Sub-Contractor Solution – (If stated in the Policy Schedule)

The Costs and Expenses reasonably incurred by any contractor or sub-contractor appointed by the Insured, and listed on the Policy Schedule to be insured, for an Environmental Incident arising in the course of the Business of the Insured, and for which the Insured is legally liable to pay in terms of Law, and arising from and as a direct consequence of the Transportation of Dangerous Goods by such contractor or sub-contractor, and caused by or through or in connection with any vehicle not the property of nor provided by the Insured, subject thereto that such contractor or sub-contractor shall observe, fulfil and be subject to the Terms, Exclusions and Conditions of this Policy as though they were the Insured.



The Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) an Environmental Incident where insurance exists with any other insurers covering the Insured against the Environmental Incident (unless specifically agreed with the Insurer and noted on the Policy Schedule).
- b) an Environmental Incident where the transporting of the goods have been further sub-contracted out by the contractor or sub-contractor.
- c) an Environmental Incident for goods transported that is not owned by nor contracted to the Insured to transport.
- d) an Environmental Incident where the contractor or sub-contractor has not accepted liability, prior to the load transportation, by way of a written agreement with the Insured, for an Environmental Incident whilst the goods are under the custody and control of the contractor or subcontractor.
- e) 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 or the contractor or sub-contractor 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;
- f) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

2.5 Dry Non-Haz Solution – (If stated in the Policy Schedule)

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of Law in respect of an Environmental Incident arising from and as a direct consequence of the Transportation of Dry Non-Hazardous Goods that are deemed to be potential Pollutants, in or on any Insured Vehicle 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 Policy Schedule;
- c) rehabilitation, restoration, and liability;
- d) any vehicles transporting any UN Listed products;
- e) any vehicles transporting any liquid non-hazardous products.

For the purpose of this cover the following terms shall be defined as:

- i. **“Dry Non-Hazardous Goods”** means products or substances that:
 - a. are classified as solid i.e., powders, flakes, granules, and kibbles;
 - b. do not have a UN number;
 - c. are not listed in the dangerous goods listing in the ICS 13.300
- ii. **“UN Listed product”** means the United Nations (UN) number, a serial number that consists of four digits, that is assigned to dangerous goods by the United Nations' Committee of Experts on the Transport of Dangerous Goods and the numerical list of dangerous goods, which provides the information required for their identification and classification.



2.6 Side Tank Solution – Petrol/Diesel Tank of the Vehicle (If stated in the Policy 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 a direct consequence of the leakage or loss of fuel from the vehicle's own fuel tank (which is used to propel the vehicle) and not in respect the load of any Insured Vehicle,

The Insurer shall however 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 which is known by the Insured to have occurred prior to the 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 Policy Schedule.

2.7 Contingency Solution – (If stated in the Policy Schedule)

The Costs and Expenses reasonably incurred by any contractor or sub-contractor appointed by the Insured and listed on the Policy Schedule to be insured, for an Environmental Incident arising in the course of the Business of the Insured, and for which the Insured is legally liable to pay in terms of Law, and arising from and as a direct consequence of the Transportation of Dangerous Goods by such contractor or sub-contractor, and caused by or through or in connection with any vehicle not the property of nor provided by the Insured, subject thereto that:

- a) cover is limited to incidents where such contractor or sub-contractors underlying environmental insurance policy has not responded as a result of the non-payment of premium.
- b) such contractor or sub-contractor shall observe, fulfil and be subject to the Terms, Exclusions and Conditions of this Policy as though they were the Insured.
- c) the Insured obtained written confirmation of details of the contractor or subcontractor's own insurance cover, before any load transportation is subcontracted to that subcontractor.
- d) the Insured shall notify the Insurer within 90 days of any non-payment of premium to the contractor or subcontractor's insurance cover.
- e) within a period not exceeding 90 days from the date of loss the Insured must inform Botswana Insurance Company of any claims or potential claims that contractors or subcontractors may have incurred. The Insured has 31 days to submit the claim to Botswana Insurance Company once they have become aware of the claim or potential claim.

The Insurer shall not be liable for Costs and Expenses incurred in respect of:

- a) an Environmental Incident where insurance exists with any other insurers covering the Insured against the Environmental Incident (unless specifically agreed with the Insurer and noted on the Policy Schedule).
- b) an Environmental Incident where the transporting of the goods have been further sub-contracted out by the contractor or sub-contractor.
- c) an Environmental Incident for goods transported by the contractor or sub-contractor that is not owned by nor contracted to the Insured to transport.

- d) an Environmental Incident where the contractor or sub-contractor has not accepted liability, prior to the load transportation, by way of a written agreement with the Insured, for an Environmental Incident whilst the goods are under the custody and control of the contractor or subcontractor.
- e) 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 or the contractor or sub-contractor 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;
- f) any circumstance, matter or thing which occurred prior to the Retroactive Date stated in the Policy Schedule.

3. DEFINITIONS

- 3.1 “Annual Aggregate Limit”** means the Insurer’s total liability under this Policy shall not exceed the Annual Aggregate limit shown in the Policy Schedule. This means a limitation of the amount of coverage available to the Insured over a stipulated 12-month policy period.
- 3.2 “Business”** means the business of the Insured as described in the Policy Schedule.
- 3.3 “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.
- 3.4 “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 of 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.
- 3.5 **“Decanting”** means to pour or transfer, tap, drain, draw out, draw off or let flow from one container into another suitable container.
- 3.6 **“Dangerous Goods”** means goods, substances, products or waste as specified in the standard specifications in the relevant International Classification Standard CODE and carried on or within a vehicle that is properly licensed to carry such goods, products or waste excluding asbestos, lead, and creosote.
- 3.7 **“Deductible/First Amount Payable”** means the first amount stated as such in the Policy 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).
- 3.8 **“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.
- 3.9 **“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.
- 3.10 **“Environmental Incident”** means the sudden, unintended and unforeseen discharge, dispersal, migration, including, but not limited to vapours, fumes, alkalis, toxic chemicals, medical waste and waste material into and upon land or any water course or body of water including groundwater, provided such conditions are not naturally present in the environments in the amounts or concentrations discovered.
- 3.11 **“Environmental Impairment”** means damage to the environment in respect of which the Insured is held legally liable under the Environmental Assessment Act, 2011 as amended from time to time.
- 3.12 **“Hazcall24”** means Botswana Insurance Company’s 24-hour call centre, who will immediately authorise and mobilise response units to the incident scene. The call centre number is +27 604 402 810.
- 3.13 **“Hazchem Certificate”** means drivers of the Insured vehicle need to complete an accredited HAZCHEM training course that is in accordance with the road traffic act cap 69:01, as amended, at a recognised Transport Education and Training Authority (TETA). Drivers need to be in possession of a valid HAZCHEM certificate within the expiry date, serving as a driving permit that is in accordance with the Road Traffic Act (CAP 69:01).
- 3.14 **“Inception Date”** means the first date stated in the Policy Schedule to the Policy.
- 3.15 **“Insured”** means the person or persons named in the Policy Schedule and or their duly authorised and properly trained employees.
- 3.16 **“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 Policy Schedule.

- 3.17 “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.
- 3.18 “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 “Nuclear Explosives”** means an explosive involving the release of energy by nuclear fission or fusion or both.
- 3.21 “Nuclear Fission”** means a nuclear reaction in which a heavy nucleus splits spontaneously or on impact with another particle with the release of energy.
- 3.22 “Nuclear Fuels”** means a substance that will sustain a fission chain reaction so that it can be used as a source of nuclear energy.
- 3.23 “Nuclear Fusion”** means a nuclear reaction in which atomic nuclei of low atomic number fuse to form a heavier nucleus with the release of energy.
- 3.24 “Nuclear Material”** means nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a Nuclear Reactor, either alone or in combination with some other material
- 3.25 “Nuclear Radiation”** means the absorption of the electro-magnetic radiation by a nucleus having a magnetic moment when in an external magnetic field.
- 3.26 “Nuclear Waste”** means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to the production or utilisation of nuclear fuel but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial, or industrial purpose.
- 3.27 “Nuclear Weapon”** means a nuclear device designed, used, or usable for inflicting bodily harm or property damage
- 3.19 “Period of Insurance”** means the period set out in the Policy Schedule, or any shorter period arising as a result of cancellation of this Policy.
- 3.20 “Policy Schedule”** means the Policy Schedule attached to and forming part of this policy.
- 3.21 “Pollutants”** means 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 “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.



- 3.22 “Restoration Costs”** means reasonable and necessary costs incurred by the Insured with the Insurer’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 be the cost of replacing or reinstating on the same site property of the same kind or type but not superior to or more extensive than the property when new provided that the Insurer’s limit of indemnity shall not exceed P37,750 per Environmental Incident.
- 3.23 “Rehabilitation”** means the rehabilitation of Environmental Impairment arising from the occurrence of an Environmental Incident.
- 3.25 “Territorial Limits”** means Africa, south of the Equator.
- 3.26 “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 offloading by the Insured onto or from the Insured Vehicle that is properly licensed to convey such goods.

4. GENERAL CONDITIONS

4.1 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.

4.2 Limit of Indemnity

- 4.2.1** Insurer’s total liability to pay damages and the claimant’s costs and expenses shall not exceed the sum stated in the Policy 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. The limits of indemnity are in excess of the deductible.
- 4.2.2** 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.
- 4.2.3** 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 P75 000 any one incident in respect of the reasonable and necessary expenses incurred by the Municipal and Governmental or Statutory Body or agency for the investigation, removal and remediation and associated monitoring of the Environmental Incident. The Insured accepts liability for any amount claimed by the Municipality, Governmental or Statutory Body or agency in excess of the aforementioned amount. Costs need to be as a direct result of an accident spillage or release into the environment, for which the Insured is liable for.

4.3 Indemnity to Others

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



4.3.1. officials of the Insured in their business capacity arising out of the conduct of the Business;

4.3.2. the personal representatives of any person indemnified by reason of this Clause 4 in respect of liability incurred by such person;

4.4 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.

4.5 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 an environmental incident reveal that any aspect of the vehicle was not in a fully operational 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 (CAP 69:01) and/or by any other appropriate authority in accordance with current legislation of the territory in which such vehicles are operating.

4.6 Premiums

The premium is payable annually, quarterly, as stated in the Policy Schedule, and 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), failing which, 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.

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. The Insurer will have sole discretion in the reinstatement of the Policy and/or acceptance of the claim arising from the Defined Event and if so accepted, will require the Insured to pay all outstanding premiums.



The Insurer is not obliged to accept premium tendered after cancellation due to non-payment and will not be liable for any claim arising from a Defined Event occurring during the period of non-payment.

4.7 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.

4.8 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 Policy Schedule. The amount payable under this Policy for each and every loss, damage or liability shall be reduced by the amount of the Deductible.

4.9 Jurisdiction and Governing Law

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

4.10 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 Botswana Insurance Company (Pty) Ltd.

Botswana Insurance Company (Pty) Ltd

BIC House, Plot 50372
Gaborone Showgrounds

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

4.11 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) give notice to the Insurer regardless of whether the claim would exceed the Deductible amount stated in the Policy Schedule, following an Environmental Incident;
- c) immediately call the Hazcall24 call centre on +27 60 440 2810 for assistance, who in return will appoint an Insurer approved spillage Clean-up specialist, irrespective of the Deductible/First Amounts payable applicable; Failing to do so may result in an additional Deductible payable of 10% of the claim;

- d) as soon as reasonably practicable after the event, but not for a period exceeding 7 (seven) calendar days, submit to the Insurer full details in writing of any claim;
- e) give the Insurer such proof, information and sworn declarations as the Insurer may require within 7 (seven) calendar days of issue of the claim number.
- f) furnish the Insurer with all technical reports, service and or maintenance reports, proof of repairs following a maintenance failure, 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) furnish 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 or cancellation of the policy.
- 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.
- n) If the Insurer rejects any claim, or disputes the quantum of a claim, the Insured has ninety (90) days to make representation to the Insurer, challenging this decision. If the Insurer persist in rejecting the claim or disputing the quantum, the Insured has to have summons issued and served on the Insurer, within six (6) months (180 days) after the expiry of the ninety (90) days period; failing which, the Insured will forfeit his claim and the Insurer will have no further claim in terms of this Policy.

4.12 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.
- d) The Insurer reserves the right to make a full recovery against the Insured for the costs incurred by authorising the claim in good faith, should the claim be rejected in terms of the Policy.

4.13 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 b) 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 insurer's share is based on the ratio of its applicable limit of insurance to the total of applicable limits of insurance of all insurers.

4.14 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.

4.15 Misrepresentation and Non-Disclosure

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

4.16 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.



4.17 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.

4.18 Cancellation

This policy or any section may be cancelled at any time by the company giving 30 days' notice in writing (or such other period as may be mutually agreed) or by the insured giving immediate notice. On cancellation by the insured, the company shall be entitled to retain the customary short period or minimum premium for the period the policy or section has been in force. On cancellation by the company, the insured shall be entitled to claim a pro-rata proportion of the premium for the remainder of the period of insurance from the date of cancellation,

4.19 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.

4.20 Changes

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

4.21 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.

4.22 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.



4.23 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 the Insurer's liability in aggregate shall not exceed the limit of indemnity stated in the Policy Schedule for any one Defined Event;

4.24 Special Provision

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

Botswana Insurance Company (Pty) Ltd

BIC House, Plot 50372
Gaborone Showgrounds

Telephone No: (267) 3600500
Email: Moagi.Mogobe@bic.co.bw

P O Box 715
Gaborone

4.25 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.

4.26 Assignment

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

5. EXTENSIONS

5.1 Excess Solution Botswana– (If stated in the Policy Schedule)

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the Deductible payable by the Insured for an incident occurring within the Republic of Botswana subject to the following:

- a) Cover in respect of minor leakages, drips and spillages from the vehicle, load and/or mechanical enhancements to the vehicle such as hydraulic pumps and lifts will be covered under this extension, provided that the claim does not exceed P37,750 per incident and forms part of the Annual Aggregate limit listed on the Policy Schedule.
- b) Cover will extend to include load transfers related to claim prevention and must be authorized by the insurer.
- c) Cover will only be applicable for claims occurring within Botswana borders.



5.2 Excess Solution Cross Border – (If stated in the Policy Schedule)

In return for an additional premium as stated in the Policy Schedule, the Policy is extended to cover the cross border Deductible payable by the Insured. Cover in respect of 5.2 a) and b) above is not covered in terms of this Cross Border Excess extension.

5.3 Excess Solutions Transfer Assist – (If stated in the Policy Schedule)

In return for an additional premium as stated in the Policy Schedule, the Policy is extended to cover load transfers not related to claim prevention.

The transfers must be authorized by the Insurer and will be limited to the incident and annual aggregate limits listed in the Policy Schedule. Cover will only be applicable to transfers occurring within Botswana borders. Transfer will be limited to vehicles listed on the Policy Schedule and will not apply to other receiving receptacles already off loaded into.

5.5 Riot & Strike Solution – (If stated in the Policy Schedule)

This Riot & Strike Solution offering is in no way affiliated to Sasria, nor Nasria nor does it follow the Sasria/Nasria policy wording. The terms and conditions of the Riot & Strike Solution are detailed below.

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the insured against environmental impairment caused by a release of environmental contaminates from a vehicle listed in the Policy Schedule directly related to or caused by:

- a) Any Riot, Strike or any act or activity which is calculated or directed to bring about a Riot, Strike or Civil Commotion;
- b) Any attempt to perform any act referred to in clause a) above;
- c) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause a) or b). above;

provided that this extension does not cover:

- i. claims occurring outside of Botswana.
- ii. Public Disorder.

For the purpose of this extension the following terms shall be defined as:

- i. "Civil Commotion" means an outbreak of lawlessness of a fairly considerable scale amongst the citizens of a state which is something between a Riot and total insurrection and is deemed to include labour disturbances or Lockouts.
- ii. "Lockouts" means a situation when an employer refuses to allow workers into their place of work until they agree to various conditions.
- iii. "Public Disorder" means an outbreak of lawlessness of a fairly considerable scale amongst citizens of a state, and is something of a greater degree than riot and of a lesser degree than anarchy.
- iv. "Riot" means a violent disturbance of the peace involving three or more persons which includes protests in furtherance of a political aim, objective, or cause.
- v. "Strike" means a period of time when an organized group of employees of a company stops working because of a disagreement over pay or working conditions.



6. EXCLUSIONS

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

6.1 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.

6.2 Material Change in Use

a material change of use arising from material change in the 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.
- c) A change in the declared commodities transported as per information provided by the Insured and listed on the Policy Schedule.

6.3 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.

6.4 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 Road Traffic Act (CAP 69:01) 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. or 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 Road Traffic Act (CAP 69:01) 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.

6.5 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 been 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 72 hours in total at any one time; 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.

6.6 Historic Contamination

any claim arising from an Environmental Incident to the receiving environment, where the Environmental Incident occurred or commenced prior to the date of inception of this policy.

6.7 Pre-existing Contamination

any claim arising from a Pre-existing contamination incident prior to the occurrence of the Environmental Incident.

6.8 Gradual Pollution

any claim directly or indirectly arising from seepage, pollution, or contamination provided that this exclusion shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended, and unforeseen Environmental Incident.

6.9 Reasonable Precautions

any Environmental Incident arising from the gross negligence or 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.

6.10 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.

6.11 Expected or Intended Loss



any Environmental Incident that is expected or intended from the standpoint of the Insured, as well as the failure of the Insured to:

- a) remedy any defect or danger or take such additional precautions as may be required as soon as possible after the discovery of an Environmental Incident;
- b) take reasonable steps to use, maintain and upgrade their facility operations;

6.12 Wilful Actions

any Environmental Incident that is as a result of the wilful and intended actions of the insured.

6.13 Wear and Tear

any Environmental Incident arising, originating or resulting from wear and tear or gradual maintenance deterioration of the vehicle or tanker/trailer but not limited to the equipment's parts or components as a result of rust, oxidization, corrosion, decay or deterioration over time.

6.14 Costs of the Halting of Business Operations

any costs or loss of revenue resulting from the halting of the business operations of the Insured during the period of Rehabilitation, if required after the occurrence of an Environmental Incident.

6.15 Property Damage Exclusions

any physical damage or destruction of any tangible property owned, occupied, leased or third-party property, including any result in loss of use and diminution in value of the property other than as provided for under Restoration Costs.

6.16 On-site Exclusion

any Clean-Up Costs on, in or under property owned, leased, or rented by the Insured or in the Insured's care, custody or control unless as a direct result of spillage from vehicles listed on the Policy Schedule during loading and offloading.

6.17 Consequential Loss

consequential loss from any cause whatsoever, depreciation of any nature which shall also mean diminution in value howsoever arising of the insured property consequent upon its having sustained damage insured against the continuing of the repair of such damage wear and tear and mechanical or electrical breakdown failure or breakage.

6.18 Confiscation and Dispossession

loss or damage occasioned by permanent or temporary dispossession resulting from confiscation commandeering or requisitioning by any lawful constituted authority.

6.19 Bodily Injury

any bodily injury, death, illness, or disease of or to any person.

6.20 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) where 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) where 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) where the cargo is being transported and or handled outside of the legislative requirements relating to transportation of such cargo;
- f) where 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.

6.22 Sub-contractors – specifically excluded unless included on the Policy Schedule

6.23 Fines & Penalties

any fines, penalties, punitive, multiple, vindictive, or exemplary damages.

6.24 Ransom

any ransom requests payable due to the surrender of property as a result of a threat of harm to the named insured or an employee of the insured.

6.25 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.

6.26 Territorial Limits

any claim that arises outside the Territorial Limits as defined.

6.27 Insured vs. Insured

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

6.28 Employers 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.

6.29 Microbial Matter

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

6.30 Sasria/Nasria

loss of or damage directly related to or caused by:

- a) any riot, strike, public disorder, civil commotion, labour disturbances or lockouts or any act or activity which is calculated or directed to bring about any of the aforesaid;
- b) 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;
- c) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State or government, or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public, or any section thereof;
- d) any attempt to perform any act referred to in clause a), b) or c) above;
- e) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause a), b), c) or d) above.

6.31 Terrorism

any liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in sequence to the loss, damage or expense.

For the purpose of this exclusion, terrorism means an act of violence or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

In any action suit or other proceedings where the Insurer allege that by reason of this definition a loss, damage or expense is not covered by this Policy, the burden of proving that such loss, damage or expense is covered shall be upon the Insured.

6.32 War

any loss or damage occasioned by or through or in consequence directly or indirectly of any of the following occurrences namely:

- a) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, civil commotion, mutiny, military or popular rising, insurrection, rebellion, revolution, military or usurped power;
- b) Any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of any government de jure or de facto or to the influencing of it by terrorism or violence;
- c) Martial law or state of siege or any events or causes which determine the proclamation or maintenance of martial law or state of siege;
- d) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clauses a), b) and c) are excluded from the protection of this Policy.

If the Insurer alleges that, by reason of a), b), c) or d) of this exclusion, loss or damage is not covered by this Policy, the burden of proving the contrary shall rest on the Insured.

6.33 War Fund

which a fund has been established in terms of any war damage insurance and compensation legislation.



6.34 Nuclear

any legal liability, loss (including consequential loss), damage, cost or expense caused directly or indirectly by any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

Nuclear Material, Nuclear Fission or Fusion, Nuclear Radiation, Nuclear Waste from the use of Nuclear Fuels or Nuclear Explosives or any Nuclear Weapon.

6.35 Nuclear/chemical/biological terrorism

loss(es), regardless of any contributory cause(s), in any way caused or contributed to by an act of terrorism involving the use or release or the threat thereof any nuclear weapon or device or chemical or biological agent.

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

If it is alleged that by reason of this exclusion any loss(es) is not covered by this extension the burden of providing the contrary shall be upon the insured.

6.36 Sanction Limitation and Exclusion Clause

No Insurer shall be deemed to provide cover and no Insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, or United States of America.

6.37 Communicable Diseases Exclusion

6.37.1 Notwithstanding any provision to the contrary within this Policy, this Policy excludes all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount incurred by or accruing to the Insured, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

6.37.2 As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

- a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
- b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
- c) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress or damage to human health, human welfare, or property damage.

6.38 Cyber Exclusion Clause

- 6.38.1** Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, this Policy excludes any Cyber Loss regardless of any other cause or event contributing concurrently or in any other sequence thereto.
- 6.38.2** Any loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any Data, including any amount pertaining to the value of such Data shall not be recoverable hereunder, nor be considered as physical loss or damage for the purposes of this exclusion or any other part of this Policy.
- 6.38.3** If the Insurer allege that by reason of this exclusion any Cyber Loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall fall to the Insured.

For the purpose of this exclusion, the following terms shall be defined as:

- i. **“Cyber Loss”** means any loss, damage, liability, claim, cost, or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing, or remediating any Cyber Act or Cyber Incident.
- ii. **“Cyber Act”** means an unauthorised, malicious, or criminal act or series of related unauthorised, malicious, or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.
- iii. **“Cyber Incident”** means:
 - a. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
 - b. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
- iv. **“Computer System”** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Data storage device, networking equipment or back up facility.
- v. **“Data”** means information, facts, concepts, code, or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted, or stored by a Computer System.

ANNEXURE B

ENVIROSURE SITE CLEAN-UP POLICY WORDING

Attached



THE SITE CLEAN-UP POLICY ENVIRONMENTAL IMPAIRMENT POLLUTION WORDING

1. OPERATIVE CLAUSE

In consideration of the prior payment of the premium by the Insured named in the Policy Schedule and the receipt thereof by the Insurer, the Insurer agrees to indemnify the Insured for the Defined Event which occurred within the Territorial Limits and on or after the retroactive date shown in the Policy Schedule and which results in a claim first being made against the Insured during the period of insurance subject to:

- a) reliance upon the Insured's accurate and complete representations and statements made to the Insurer or in the Proposal Form;
- b) the limits of indemnity as stated in the Proposal Schedule;
- c) the Deductibles as stated in the Policy Schedule;
- d) the Terms, Exclusions and Conditions of this Policy.

It is declared and agreed that the Proposal Form, Policy Schedule, this Policy Wording and 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 On-Site Solution – (If stated in the Policy Schedule)

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of Law, in respect of an Environmental Incident arising from and as a direct consequence of the spillage or leakage of any Dangerous Goods or Pollutants stored or used on a premises, as listed in the Policy Schedule, but excluding Underground Storage Tanks. This applies to the storage of Dangerous Goods and Pollutants in Above Ground Storage Tanks, Warehouses, and other means of on-site storage, provided that such storage meets the requirements as contained in the applicable ICS Code, as well as the loading and off-loading of such products on the premises listed in the Policy Schedule.

2.2 Underground Storage Solution – (If stated in the Policy Schedule)

The Costs and Expenses reasonably incurred by the Insured and for which the Insured is legally liable to pay in terms of Law, in respect of an Environmental Incident arising from and as a direct consequence of the spillage or leakage of any Dangerous Goods or Pollutants arising from storage in any Underground Storage Tanks, or the associated underground piping reticulation network, on any premises, as listed in the Policy Schedule.

3. DEFINITIONS

3.1 “Abandoned Property” means any risk address owned or leased by the Insured and specified in the Policy schedule, which has been abandoned, sold, given away or has had the operational control of the property relinquished by the Insured.

3.2 “Annual Aggregate Limit” means the Insurer's total liability under this Policy shall not exceed the Annual Aggregate limit shown in the Policy Schedule. This means a



limitation of the amount of coverage available to the Insured over a stipulated 12-month policy period.

- 3.3 “Above Ground Storage Tank”** means any one or a combination of tanks or vessels for the storage of dangerous goods or pollutants that are located totally or substantially (>90%) above the surface of the ground. This includes the vessels themselves and the associated reticulation network, provided that such Above Ground Storage Tanks are eminently suitable for the purpose of storage of the Pollutants/Dangerous Goods contained therein and meets with the requirements of applicable ICS Code.
- 3.4 “Baseline Condition”** means the environmental condition found immediately prior to an Environmental Incident, including impact to natural resources and services, which would have existed in the absence of such an Environmental Incident based upon the best available information.
- 3.5 “Business”** means the business of the Insured as described in the Policy Schedule.
- 3.6 “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.
- 3.7 “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 of 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.

- 3.8 “Covered Business Activities”** mean business activities undertaken by or on behalf of the Insured at third party locations.
- 3.9 “Decanting”** means to pour or transfer, tap, drain, draw out, draw off or let flow from one container into another suitable container.

- 3.10 "Dangerous Goods"** means goods, substances, products or waste as specified in the International Classification Standard Code 13.300 specifications that are being stored or used as goods products or waste, excluding asbestos, lead, and creosote.
- 3.11 "Deductible/First Amount Payable"** means the first amount stated as such in the Policy 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).
- 3.12 "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.
- 3.13 "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.
- 3.14 "Environmental Incident"** means the sudden, unintended and unforeseen discharge, dispersal, migration, including, but not limited to vapours, fumes, alkalis, toxic chemicals, medical waste and waste material into and upon land, or any water course or body of water including groundwater, provided such conditions are not naturally present in the environments in the amounts or concentrations discovered.
- 3.15 "Hazcall24"** means Botswana Insurance Company's 24-hour call centre, who will immediately authorise and mobilise response units to the incident scene. The call centre number is +27 604 402 810.
- 3.16 "Inception Date"** means the first date stated in the Policy Schedule to the Policy.
- 3.17 "Insured"** means the person or persons named in the Policy Schedule and or their duly authorised and properly trained employees.
- 3.18 "Inefficacy"** means the failure or the whole of any part of any product to fulfil its purpose or to perform its function.
- 3.19 "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.
- 3.20 "Loading and Off-loading"** as it applies to dangerous and hazardous goods means removal of the said goods or pollutants from one containment vessel into another within the premises listed in the Policy Schedule and shall include the conveyance of the Dangerous Goods or Pollutants within pipework associated with Above Ground Storage Tanks.
- 3.21 "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.
- 3.22 "Period of Insurance"** means the period set out in the Policy Schedule, or any shorter period arising as a result of cancellation of this Policy.
- 3.23 "Policy Schedule"** means the Policy Schedule attached to and forming part of this Policy.



- 3.24 “Pollutants”** means 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.
- 3.25 “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.
- 3.26 “Restoration Costs”** means reasonable and necessary costs incurred by the Insured with the Insurer’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 be the cost of replacing or reinstating on the same site property of the same kind or type but not superior to or more extensive than the property when new provided that the Insurer’s limit of indemnity shall not exceed P37 750 per Environmental Incident.
- 3.27 “Rehabilitation”** means the rehabilitation of Environmental Impairment arising from the occurrence of an Environmental Incident.
- 3.28 “Territorial Limits”** means Africa, south of the Equator.
- 3.29 “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 and meets with the requirements of the applicable ICS Code.
- 3.30 “Warehouse”** means any building, structure or area fully under cover, and properly ventilated, owned or operated by the Insured and designed, intended or used for, or to facilitate, the storage, loading, off-loading and decanting of Dangerous Goods or Pollutants provided that such Warehouse shall be suitable for the purposes of storage, loading, off-loading or decanting of such Dangerous Goods or potential Pollutants and meets with the requirements of the applicable ICS Code.
- 3.31 “Workmanship”** means the physical act of treating, installing, servicing, altering, repairing or working on any tangible property.

4. GENERAL CONDITIONS

4.1 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.

4.2 Limit of Indemnity

- 4.2.1** Insurer’s total liability to pay damages and the claimant’s costs and expenses shall not exceed the sum stated in the Policy 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. The limits of indemnity are in excess of the deductible.

4.2.2 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.

4.2.3 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 P75 000 for any one incident in respect of the reasonable and necessary expenses incurred by the Municipal and Governmental or Statutory Body or agency for the investigation, removal and remediation and associated monitoring of the Environmental Incident. The Insured accepts liability for any amount claimed by the Municipality, Governmental or Statutory Body or agency in excess of the aforementioned amount. Costs need to be as a direct result of an Environmental Incident for which the Insured is liable for.

4.3 Indemnity to Others

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

4.3.1 officials of the Insured in their business capacity arising out of the conduct of the Business;

4.3.2 the personal representatives of any person indemnified by reason of this Clause 4.3 in respect of liability incurred by such person;

4.4 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.

4.5 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.

4.6 Premiums

The premium is payable annually or quarterly, as stated in the Policy Schedule, and 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), failing which, 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.

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.



The Insurer will have sole discretion in the reinstatement of the Policy and/or acceptance of the claim arising from the Defined Event and if so accepted, will require the Insured to pay all outstanding premiums.

The Insurer is not obliged to accept premium tendered after cancellation due to non-payment and will not be liable for any claim arising from a Defined Event occurring during the period of non-payment.

4.7 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.

4.8 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 Policy Schedule. The amount payable under this Policy for each and every loss, damage or liability shall be reduced by the amount of the Deductible.

4.9 Jurisdiction and Governing Law

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

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 Botswana.

4.10 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 Botswana Insurance Company (Pty) Ltd.

Botswana Insurance Company (Pty) Ltd

BIC House, Plot 50372
Gaborone Showgrounds

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

4.11 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) give notice to the Insurer regardless of whether the claim would exceed the Deductible amount stated in the Policy Schedule, following an Environmental Incident;

- c) immediately call the Hazcall24 call centre on 0860 44 44 11 / +27 60 440 2810 for assistance, who in return will appoint an Insurer approved spillage Clean-up specialist, irrespective of the Deductible/First Amounts payable applicable; Failing to do so may result in an additional Deductible payable of 10% of the claim;
- d) as soon as reasonably practicable after the event, but not for a period exceeding 7 (seven) calendar days, submit to the Insurer full details in writing of any claim;
- e) give the Insurer such proof, information and sworn declarations as the Insurer may require within 7 (seven) calendar days of issue of the claim number.
- f) furnish the Insurer with all technical reports, service and or maintenance reports, proof of repairs following a maintenance failure, 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) furnish 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 or cancellation of the policy.
- 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.
- n) If the Insurer rejects any claim, or disputes the quantum of a claim, the Insured has ninety (90) days to make representation to the Insurer, challenging this decision. If the Insurer persist in rejecting the claim or disputing the quantum, the Insured has to have summons issued and served on the Insurer, within six (6) months (180 days) after the expiry of the ninety (90) days period; failing which, the Insured will forfeit his claim and the Insurer will have no further claim in terms of this Policy.

4.12 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.
- d) The Insurer reserves the right to make a full recovery against the Insured for the costs incurred by authorising the claim in good faith, should the claim be rejected in terms of the Policy.

4.13 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 b) 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.

4.14 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.

4.15 Misrepresentation and Non-Disclosure

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

4.16 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.

4.17 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.

4.18 Cancellation

This policy or any section may be cancelled at any time by the company giving 30 days' notice in writing (or such other period as may be mutually agreed) or by the insured giving immediate notice. On cancellation by the insured, the company shall be entitled to retain the customary short period or minimum premium for the period the policy or section has been in force. On cancellation by the company, the insured shall be entitled to claim a pro-rata proportion of the premium for the remainder of the period of insurance from the date of cancellation,

4.19 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.

4.20 Changes

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

4.21 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.

4.22 Inspection and Audit

The Insurer shall have the right but not the duty to inspect any property under the ownership or control of or leased to the Insured for the purposes of the Insured Business and to take samples if deemed necessary, the resultant findings of which will not imply that such a property is safe or in compliance with any law.

4.23 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.

4.24 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 the Insurer's liability in aggregate shall not exceed the limit of indemnity stated in the Policy Schedule for any one Defined Event;

4.25 Special Provision

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

Botswana Insurance Company (Pty) Ltd

BIC House, Plot 50372
Gaborone Show Grounds

Telephone No: (267) 3600500
Email: Moagi.Mogobe@bic.co.bw

P.O Box 715
Gaborone

4.26 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.

4.27 Assignment

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

5. EXTENSIONS

5.1 Excess Solution – (If stated in the Policy Schedule)

In return for an additional premium as stated in the Policy Schedule, the policy is extended to cover the Deductible payable by the Insured.

5.2 Riot & Strike Solution – (If stated in the Policy Schedule)

This Riot & Strike Solution offering is in no way affiliated to Sasria, nor Nasria nor does it follow the Sasria/Nasria policy wording. The terms and conditions of the Riot & Strike Solution is detailed below.

In return for an additional premium as stated in the Policy Schedule, this Policy is extended to cover the insured against environmental impairment caused by a release of environmental contaminates from a property listed in the Policy Schedule directly related to or caused by:

- a) Any Riot, Strike or any act or activity which is calculated or directed to bring about a Riot, Strike or Civil Commotion;



- b) Any attempt to perform any act referred to in clause a) above;
- c) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause a) or b). above;

provided that this extension does not cover:

- i. claims occurring outside of Botswana.
- ii. Public Disorder.

For the purpose of this extension the following terms shall be defined as:

- i. "Civil Commotion" means an outbreak of lawlessness of a fairly considerable scale amongst the citizens of a state which is something between a Riot and total insurrection and is deemed to include labour disturbances or Lockouts.
- ii. "Lockouts" means a situation when an employer refuses to allow workers into their place of work until they agree to various conditions.
- iii. "Public Disorder" means an outbreak of lawlessness of a fairly considerable scale amongst citizens of a state, and is something of a greater degree than riot and of a lesser degree than anarchy.
- iv. "Riot" means a violent disturbance of the peace involving three or more persons which includes protests in furtherance of a political aim, objective or cause.
- v. "Strike" means a period of time when an organized group of employees of a company stops working because of a disagreement over pay or working conditions.

6. EXCLUSIONS

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

6.1 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.

6.2 Material Change in Risk

a material change in risk due to a material change in the 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.
- c) A change in the declared commodities stored as per information provided by the Insured and listed on the Policy Schedule.

6.3 Pre-existing or Known Pollution Conditions

any claim arising from an Environmental Incident to the receiving environment, where:

- a) the pollution conditions occurred or commenced prior to the date of inception of this policy;
- b) the Insured was aware of the pollution condition, or of any circumstance or event which may give rise to a claim against such a condition, prior to the date of inception of the policy;



- c) pollution conditions are present that should have been reported to the authorities or any area of land identified as an investigation area or registered as contaminated land under the terms of the Waste Management Act

6.4 Origin of Environmental Impairment

any claim arising from an Environmental Incident occurring under the On-site Environmental Impairment or Underground Storage Tank Risk policies, where the initial point of product release does not occur within the property boundary of a premises, as defined in the Policy Schedule.

6.5 Costs of the Halting of Business Operations

any costs or loss of revenue resulting from the halting of the business operations of the Insured during the period of Rehabilitation, if required after the occurrence of an Environmental Incident.

6.6 Upgrade and Maintenance Activities

any claim arising from an Environmental Incident under the On-site Environmental Impairment or Underground Storage Tank Risk policies that originates from wear and tear, routine maintenance, or upgrade activities, including repair, replacement or reconstruction including incorrect fitment and insulation by contractors and/or sub-contractors.

6.7 Wear and Tear and/or Gradual Deterioration

any claim arising from an Environmental Incident under the On-site Environmental Impairment or Underground Storage Tank Risk Policies that may arise, originate or become aggravated by the Insured's failure to take reasonable precautions for the maintenance, safety of the property insured and for the minimisation of any damage that may arise out of wear and tear or gradual deterioration of the underground storage tanks and or storage vessels or containers. This does not apply to the iron oxidation of certain Underground Storage Tanks if stated to apply in the Policy Schedule.

6.8 Product Inefficacy

Product Inefficacy for any product which relates to:

- a) a product defect which was known by the Insured prior to the date of policy inception,
- b) the costs to repair, recondition, modify or replace the whole or part of a product which is defective or is alleged to be defective, as well as the loss of use of the product,
- c) recalling the whole or part of a product.

6.9 Workmanship

any Workmanship performed by the Insured which relates to rectifying or recalling the Workmanship, failure of the Workmanship to perform as expected or as required.

6.10 Gradual Pollution

any claim directly or indirectly arising from seepage, pollution, or contamination provided that this exclusion shall not apply where such seepage, pollution or contamination is caused by a sudden, unintended, and unforeseen Environmental Incident.



6.11 Asbestos Exclusion

It is hereby understood and agreed that this Policy shall not apply to, and does not cover, any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly caused by, arising out of, resulting from, in consequence of, in any way involving, or to the extent contributed to by, the hazardous nature of asbestos in whatever form or quantity.

6.12 Reasonable Precautions

any Environmental Incident arising from the gross negligence or 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.

6.13 Expected or Intended Loss

any Environmental Incident that is expected or intended from the standpoint of the Insured, as well as the failure of the Insured to:

- a) remedy any defect or danger or take such additional precautions as may be required as soon as possible after the discovery of an Environmental Incident;
- b) take reasonable steps to use, maintain and upgrade their facility operations;

6.14 Wilful Actions

any Environmental Incident that is as a result of the wilful and intended actions of the insured.

6.15 Fires & Explosions

any claim for damage arising from a fire or explosion.

6.16 Abandoned Property

any Environmental Incident which occurs at or after the time during which a covered risk address has become Abandoned Property.

6.17 Property Damage Exclusions

any physical damage or destruction of any tangible property owned, occupied, leased or third party property, including any result in loss of use and diminution in value of the property other than as provided for under Restoration Costs.

6.18 Consequential Loss

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

6.19 Bodily Injury

any bodily injury, death, illness or disease of or to any person.

6.20 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.



6.21 Naturally Occurring Substances

any naturally occurring substance in its unaltered form or altered solely through naturally occurring processes or phenomena. However, this does not apply in instances where it has been shown that the naturally occurring substance exceeds the amounts or concentrations naturally present and/or was the consequence of a discharge, dispersal, release or escape of such a naturally occurring substance.

6.22 Advice and Professional Services

any rendering or failure to render any professional service or advice, regardless of whether or not that advice is ordinary to the Business or not and regardless of whether a Claim is made or brought by any other person or organisation.

6.23 Fines & Penalties

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

6.24 Ransom

any ransom requests payable due to the surrender of property as a result of a threat of harm to the named insured or an employee of the insured.

6.25 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.

6.26 Territorial Limits

any claim that arises outside the Territorial Limits as defined.

6.27 Insured vs. Insured

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

6.28 Employers 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.

6.29 Microbial Matter

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

6.30 Sasria/Nasria

loss of or damage directly related to or caused by:

- a) any riot, strike, public disorder, civil commotion, labour disturbances or lockouts or any act or activity which is calculated or directed to bring about any of the aforesaid;
- b) 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;
- c) any act which is calculated or directed to bring about loss or damage in order to further any political aim, objective or cause, or to bring about any social or economic change, or in protest against any State or government, or any provincial, local or tribal authority, or for the purpose of inspiring fear in the public, or any section thereof;
- d) any attempt to perform any act referred to in clause a), b) or c) above;
- e) the act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clause a), b), c) or d) above.

6.31 Terrorism

any liability, loss, damage or expense of whatsoever nature directly or indirectly caused by, resulting from, happening through or in connection with any act of terrorism, regardless of any other cause contributing concurrently or in sequence to the loss, damage or expense.

For the purpose of this exclusion, terrorism means an act of violence or an act dangerous to human life, tangible or intangible property or infrastructure with the intention or effect to influence any government or to put the public or any section of the public in fear.

In any action suit or other proceedings where the Insurer alleges that by reason of this definition a loss, damage or expense is not covered by this Policy, the burden of proving that such loss, damage or expense is covered shall be upon the Insured.

6.32 War

any loss or damage occasioned by or through or in consequence directly or indirectly of any of the following occurrences namely:

- a) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, civil commotion, mutiny, military or popular rising, insurrection, rebellion, revolution, military or usurped power;
- b) Any act of any person acting on behalf of or in connection with any organisation with activities directed towards the overthrow by force of any government de jure or de facto or to the influencing of it by terrorism or violence;
- c) Martial law or state of siege or any events or causes which determine the proclamation or maintenance of martial law or state of siege;
- d) The act of any lawfully established authority in controlling, preventing, suppressing or in any other way dealing with any occurrence referred to in clauses a), b) and c) are excluded from the protection of this Policy.

If the Insurer alleges that, by reason of a), b), c) or d) of this exclusion, loss or damage is not covered by this Policy, the burden of proving the contrary shall rest on the Insured.

6.33 War Fund

which a fund has been established in terms of any war damage insurance and compensation legislation.

6.34 Nuclear

any legal liability, loss (including consequential loss), damage, cost or expense caused directly or indirectly by any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:



Nuclear Material, Nuclear Fission or Fusion, Nuclear Radiation, Nuclear Waste from the use of Nuclear Fuels or Nuclear Explosives or any Nuclear Weapon.

6.35 Nuclear/chemical/biological terrorism

loss(es), regardless of any contributory cause(s), in any way caused or contributed to by an act of terrorism involving the use or release or the threat thereof any nuclear weapon or device or chemical or biological agent.

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

If it is alleged that by reason of this exclusion any loss(es) is not covered by this extension the burden of providing the contrary shall be upon the insured.

6.36 Sanction Limitation and Exclusion Clause

No Insurer shall be deemed to provide cover and no Insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom, or United States of America.

6.37 Communicable Disease Exclusion

6.37.1 Notwithstanding any provision to the contrary within this Policy, this Policy excludes all actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount incurred by or accruing to the Insured, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.

6.37.2 As used herein, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:

6.37.2.1 the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and

6.37.2.2 the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and

6.37.2.3 the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress or damage to human health, human welfare, or property damage.

6.38 Cyber Exclusion Clause

6.38.1 Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, this Policy excludes any Cyber Loss regardless of any other cause or event contributing concurrently or in any other sequence thereto.

6.38.2 Any loss, damage, liability, claim, cost, expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection



with any loss of use, reduction in functionality, repair, replacement, restoration or reproduction of any Data, including any amount pertaining to the value of such Data shall not be recoverable hereunder, nor be considered as physical loss or damage for the purposes of this exclusion or any other part of this Policy.

6.38.3 If the Insurer allege that by reason of this exclusion any Cyber Loss sustained by the Insured is not covered by this Policy, the burden of proving the contrary shall fall to the Insured.

For the purpose of this exclusion, the following terms shall be defined as:

- i. **“Cyber Loss”** means any loss, damage, liability, claim, cost, or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with any Cyber Act or Cyber Incident including, but not limited to, any action taken in controlling, preventing, suppressing, or remediating any Cyber Act or Cyber Incident.
- ii. **“Cyber Act”** means an unauthorised, malicious, or criminal act or series of related unauthorised, malicious, or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any Computer System.
- iii. **“Cyber Incident”** means:
 - a. any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any Computer System; or
 - b. any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any Computer System.
- iv. **“Computer System”** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, Data storage device, networking equipment or back up facility.
- v. **“Data”** means information, facts, concepts, code, or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted, or stored by a Computer System.