

Section Two – Environmental Damage

The schedule will show if this section applies and the cover is in force

Note (not forming part of the policy)

It is important that as soon as **you** become aware of any **Claim** being made against **you** or any **Incident** or any circumstances that might reasonably be expected to bring about a **Claim** or **Incident**, **you** notify us in writing or call the Environmental Damage Claims telephone number highlighted in the Claims Conditions part of this section.

This insurance is provided on a 'Costs Inclusive' basis. This means that legal costs are included within the limit of indemnity specified in the schedule.

If **we** agree to include additional **Insureds** to the policy, please refer to the revised terms which will apply to this section. **We** will provide **you** with these revised terms at the relevant time.

Definitions

Each time any of the following words or phrases appear in this section in bold type (or in capital letters in the schedule) they will take the meaning shown below or if not defined below in the General Definitions.

Where words or phrases are not highlighted in this manner the everyday meaning will apply

1. **Biological contaminants** means mould, mildew, fungi or bacterial matter including any substance produced by, emanating from, or arising out of any such biological contaminants.
2. **Bodily injury** means physical injury, sickness, disease, mental anguish or emotional distress including death resulting therefrom.
3. **Business activity** means the day to day business as described in the schedule and as undertaken throughout the European Economic Area, which shall include, but not be limited to:
 - (a) **Your** day to day activities on property **you** own, or lease;
 - (b) **Your** day to day activities at or on third party premises;
 - (c) transportation by **you** or on **your** behalf and associated with **your Business activity**.
4. **Claim(s)** means a written demand from someone who is not an **Insured** (including but not limited to a body designated by a member state as responsible for enforcing obligations provided for in the European Union Directive 2004/35/EC on environmental liability and/or any equivalent local legislation that implements it) seeking a remedy or asserting liability against **you** for **Loss**.
5. **Clean-up costs** means costs, charges and expenses, including reasonable and necessary legal expense incurred with **our** written consent (such consent not to be unreasonably withheld or delayed), to investigate, neutralise, remove, remediate, monitor and dispose of **Pollutants** to the extent required by **Environmental laws**, or that have actually been incurred by any governmental entity duly acting under the authority of **Environmental laws**, or that have actually been incurred by third parties where required by **Environmental laws**.

Clean-up costs shall also include:

 - (a) **restoration costs**; or
 - (b) **mitigation expenses**

Clean-up costs shall not include **Defence expense** or **Environmental damage expense**.
6. **Deductible** means the amount stated in the schedule as applicable to the Environmental Damage Section of the Policy applied in accordance with the 'Limits and deductibles' part of this section.
7. **Defence expense** means reasonable and necessary legal fees and all other charges costs and expenses that **you** have to pay resulting from the investigation, adjustment, defence and appeal of a **Claim**. **Defence expense** shall include any settlement or cost order or demand for claimants or government entity costs arising out of any **Claim**. **Defence expense** shall not include **your** internal expenses or the salaries of **your** employees.
8. **Emergency situation** means an unplanned and unexpected event following which **you** have a legal duty to take immediate action to reduce, mitigate, remediate or prevent any further **Incident**, **Claim** or further **Loss** under this policy.
9. **Environmental damage** means the measurable
 - (a) adverse change to water, land, protected species or natural habitats; or
 - (b) impairment of a natural resource service caused by an emission, event, incident or activity; andfor which **you** are legally responsible under European Union Directive 2004/35/EC on environmental liability and/or any local legislation that implements it.

10. **Environmental damage expense** means reasonable and necessary costs, charges and expenses to investigate and/or undertake Primary, Compensatory or Complementary Remediation required pursuant to the European Union Directive 2004/35/EC on environmental liability and/or any local legislation that implements it.
- Primary Compensatory or Complementary Remediation are as defined by the European Union Directive 2004/35/EC on environmental liability and/or any local legislation that implements it.
11. **Environmental laws** means any applicable European Community directive, regulation or decision, any national statute, statutory instrument, regulation, by-law, rule, regulation, ordinance, circular or guidance provided that they have the force of law, or any permit, consent, licence, notice, order or instruction of any national or local governmental or statutory authority, agency, court or like entity.
12. **Extended reporting period** means the period as stated in the schedule.
13. **Genetically modified product** means a genetically modified item, animal and/or crop (including materials, parts, equipment, containers, labelling and packaging relating to such item, animal and/or crop).
14. **Imminent threat** means a reasonable likelihood that **Environmental damage** or a **Pollution condition** will occur if a fault within a facility, structure or piece of equipment is not repaired or remediated within 72 hours from when the fault is first identified, provided that such a fault has:
- suddenly arisen; and
 - not been allowed to arise through a failure to maintain property, equipment and all other assets related to **your Business activity** in good repair.
15. **Incident** means
- any **Pollution condition**;
 - any actual or potential **Environmental damage**; or
 - any identified **Imminent threat** or **Emergency situation**.
16. **Loss** means as applicable
- Environmental damage expense**; or
 - Clean-up costs**; or
 - Defence expense**; or
 - Third party damages expense**.
17. **Mitigation expense** means reasonable and necessary costs incurred to mitigate a **Pollution condition** constituting an **Emergency situation** whereby in the absence of such mitigation:
- Bodily injury** or **Property damage** to third parties will occur; or
 - Environmental damage** will occur; or
 - pursuant to **Environmental laws**, **clean-up costs** will be incurred.
- Mitigation expense** does not include costs associated with capital improvements, betterment, or routine maintenance.
18. **Nuisance** includes statutory public or private nuisance arising from a **Pollution condition**.
19. **Policy period** means the period of insurance as stated in the schedule to this policy or any shorter period arising as a result of cancellation.
20. **Pollutants** means any solid, liquid, gaseous or thermal irritant or contaminant, including but not limited to smoke, vapour, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled reconditioned or reclaimed.
21. **Pollution condition** means the emission, discharge, dispersal, migration, release or escape of **Pollutants** provided such are not naturally occurring. The entirety of any such **Pollution condition** or any series of interrelated, associated, repeated or continuous **Pollution condition** shall be deemed to be one **Pollution condition**.
22. **Property damage** means
- Physical injury to or destruction of tangible property including all resulting loss of use and diminution in value of that property; or
 - Loss of use, but not diminution in value, of tangible property that is not physically injured. For the avoidance of doubt this includes loss of, or interference with, amenity or enjoyment of property.
23. **Responsible insured** means any officer, director, partner, manager or supervisor of the **Insured**.
24. **Restoration costs** means reasonable and necessary costs incurred by the **insured** with **our** consent, which shall not be unreasonably withheld or delayed, to restore, repair or replace real or personal property to substantially the same condition it was in prior to being damaged during work performed in the course of incurring **clean-up costs**.

Restoration Costs shall also include the reasonable and necessary costs that **you** incur with our approval, which **we** will not unreasonably withhold or delay, to restore, repair or replace **your** buildings or facilities damaged during work performed in the course of incurring **clean-up costs**, to a standard which aims to reduce their impact upon the environment, and the costs of such environmental works shall not to exceed 15% of the total **Restoration Costs** for any one occurrence but in any event costs of such environmental works shall not exceed £1,000,000 in the aggregate, such limit to be within and part of the **Policy Aggregate Limit**. Such environmental works may include but are not limited to:

- (i) using sustainable construction materials;
- (ii) modifying design and/or materials in order to reduce atmospheric emissions or improve energy efficiency.

Restoration Costs shall not include:

- (a) any cost associated with the regular maintenance, betterment, or upgrade or improvement of **your** own or leased equipment structures or facilities (but excluding any environmental works outlined above);
- (b) the replacement of any equipment, buildings or facilities that were not damaged by the work performed in the course of incurring **clean-up costs**;
- (c) restoration, repair or replacement costs exceeding the net present value of **your** equipment structures or facilities immediately prior to incurring **clean-up costs**;
- (d) **Defence Expense**.

25. **Retroactive date** means the date set out as such in the schedule.

26. **Section limit** means the applicable limit of liability attaching to this section (Environmental Damage) as stated in the schedule.

27. **Third party damages expense** means monetary awards or settlements of compensatory damages arising out of **Bodily injury, Property damage** or **Nuisance** to a third party and where allowable by law, aggravated, exemplary or multiple damages for such **Bodily injury, Nuisance** and **Property damage**.

28. **Underground storage tank system** means a tank or tanks used to contain petroleum or chemical products which has at least ten (10) percent of its volume beneath the surface of the ground including any connected underground piping underground ancillary equipment and containment system.

Cover

We will pay on **your** behalf all **Loss** described below arising from an unexpected and unintended **Claim Incident** or legal obligation to pay **Environmental damage expense** and it is a condition precedent to **our** liability under this section that any such

- (i) awareness of **your** legal obligation to pay **Loss** first occurs; or
- (ii) **Claim** is first made against **you**; or
- (iii) an **Incident** first occurs

during the **Policy period** and is reported to **us** in accordance with the 'Claims conditions' part of this section.

A. Defence expense

Defence expense in response to **Claims** otherwise covered by this section.

B. Environmental damage

Environmental damage expense that **you** become legally obligated to pay as a result of **Environmental damage** or an **Imminent threat** associated with **Environmental damage** on or after the **Retroactive date** arising solely as a consequence of **your Business activity**.

C. Business activity

Clean-up costs that **you** become legally obligated to pay as a result of:

- (a) **Claims** arising from a **Pollution condition**; or
- (b) an **Emergency situation**;

on or after the **Retroactive date** arising solely as a consequence of **your Business activity**.

Conditions

1. Reasonable care

You must take all reasonable care to prevent **Claims** or **Loss** and to maintain property, equipment and all other assets related to **your Business activity** in good repair and to comply with all environmental licences and permits statutory obligations and regulations.

2. Extended reporting period

If **you** do not renew this section **you** have the right to the period of time stated in the schedule following the date of expiration in which to give notice of any covered **Loss**.

3. Assignment

You may not assign this section or any rights contained within it without **our** prior written consent which **we** will not unreasonably withhold or delay.

4. Inspections surveys & audits

We or **our** appointed representatives have the right but are not obligated to make inspections surveys or audits of **your Business activity** at **our** expense and at reasonable notice to **you** but during the **Policy period**. Any inspections, surveys or audits **we** undertake relate only to the insurability of the risk and the premiums to be charged.

5. Dispute resolution

If any dispute arises in relation to this section the parties will initially try to settle it by mediation in accordance with the Centre for Dispute Resolution Model Mediation Procedure.

If the dispute cannot be resolved by mediation within a period of 3 months from the commencement of mediation the dispute shall be referred to arbitration in London by a tribunal of three arbitrators under the provisions (both mandatory and non-mandatory) of the Arbitration Act 1996. Within 28 days of the failure of mediation each party will select a separate arbitrator with the third selected by the two party appointed arbitrators. If the two arbitrators cannot agree then the third arbitrator will be appointed by the President for the time being of the Chartered Institute of Arbitrators.

Each arbitrator will be suitably qualified and be from either the environmental insurance or legal professions.

The decision of this tribunal will be final and binding on all parties. The cost for the tribunal will be shared equally between all parties irrespective of its outcome.

Claims Conditions

In the event of an **Incident, Loss** or **Claim**

1. When to notify – Condition precedent

- a. It is a condition precedent to **our** liability under this section that **you** shall notify **us** in writing, or by using the Environmental Damage Claims telephone number highlighted below, as soon as practicable, but in no event later than the end of the **Policy period** in which the **Incident** is identified, the **Claim** is received or the awareness of **your** legal obligation to pay **Environmental damage expense** occurs, of any **Incident, Claim** or **Loss**.

Environmental Damage Claims telephone number: 01872 277151

To the extent possible such notification should include:

- i) How when and where the **Incident** took place;
- ii) The names and addresses of any injured persons and witnesses; and
- iii) The nature and location of any injury or damage that has or could arise out of the **Incident**.

Any **Incident** reported to **us** in accordance with this provision shall be subject to paragraph 2 'Extended Reporting Period' in the 'Conditions' part of this section.

Notice of an **Incident** is not notice of a **Claim**.

- b. If **you** or a **Responsible Insured** receive a **Claim** for **Loss** covered by this section **you** must:
 - i) record the specifics of the **Claim** and the date received;
 - ii) ensure that **we** receive written notice of the **Claim** as soon as practicable, but in no event later than the end of this **Policy period**;
 - iii) send **us** copies of any demands, notices, summonses or legal papers received in connection with the **Claim**;
 - iv) authorise **us** (such authorisation not to be unreasonably withheld or delayed) to obtain records and other information;
 - v) cooperate with **us** in the investigation, settlement or defence of the **Claim**; and
 - vi) assist **us**, upon **our** request, in the enforcement of any right against any person or organisation which may be liable to the **you** because of injury or damage to which this insurance may also apply.

2. After an incident has been identified

- a. **You** shall have the duty to, where practicably possible, reduce, mitigate, remediate or prevent any **Incident, Claim** or further **Loss** under this section.
- b. **You** shall have the duty to clean up **Pollutants**, remediate **Environmental damage** and remediate or prevent an **Imminent threat** to the extent required by **Environmental laws**. We shall have the right but not the duty to review and approve all such actions.

In accordance with the above paragraph **you** shall retain competent professional(s) or contractor(s) mutually acceptable to **us**. **We** shall have the right but not the duty to review and approve all such parties.

You shall notify **us** of actions and measures taken pursuant to this paragraph as soon as practicable. Where such clean up is undertaken by **you** on **our** behalf all rates will be limited to rates **we** would actually pay to competent professional(s) or contractor(s) that **we** would retain to undertake such clean up or remediation works. Any such expenses incurred by **you** or on **our** behalf shall be subject to the **Deductible** and shall reduce the **Section limit**.

3. Voluntary payments

Except for when there is an **Imminent threat** or an **Emergency situation** **you** will not make any payments, assume any obligation or incur any expense, without **our** consent (such consent not to be unreasonably withheld or delayed).

4. Our rights – Following an incident

We shall have the right but not the duty to clean-up, remediate or mitigate an **Incident** upon receiving notice as directed in item 1 above. Any sums expended by **us** will be deemed incurred or expended by **you**, shall be subject to the **Deductible** and shall reduce the **Section limit**.

5. Legal defence investigation and settlement

a. We will have the right and the duty to defend **you** against any **Claim** seeking those sums to which this insurance applies. We may at **our** discretion investigate any **Pollution condition** regardless of whether any **Claim** has been made. With respect to any **Claim** we defend, subject to the **Section limit**, we will pay **Defence expense** for the investigation, defence or appeal of the **Claim**. In the event that the **Section limit** has been exhausted, then **our** right and duty to defend any **Claim** will cease. Any payment of **Defence expense** will be subject to the **Deductible** and shall reduce the **Section limit**.

b. We shall not settle any **Claim**, without the consent of the **Insured** against whom the **Claim** is made. If however **you** refuse to consent to any settlement recommended by **us** and elect to contest the **Claim** or continue any legal proceedings in connection with such **Claim**, subject to the **Section limit**, **our** liability for **Loss** shall not exceed the amount for which the **Claim** could have been settled plus **Defence expense** incurred up to the date of such refusal, less the **Deductible** or the outstanding balance of the **Deductible**. Any payment of **Defence expense** will erode the **Section limit**.

c. If, by mutual agreement or by law, **you** are entitled to select defence counsel to defend any **Claim** at **our** expense, the legal fees and all other litigation expenses we must pay to that counsel are limited to the rates we would actually pay to counsel that we retain in the ordinary course of business in the defence of similar **Claims** in the community where the **Claim** arose or is being defended. We will have the right to require that such counsel have certain minimum qualifications with respect to competency, including experience in defending claims similar to the one pending against **you**, and to require such counsel to have errors and omissions insurance coverage. **You** agree that such independent counsel will timely respond to **our** requests for information regarding any **Claim**.

6. Subrogation

In the event of any payment under this section, we shall be subrogated to all of **your** rights of recovery against any third party and **you** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. **You** shall do nothing to prejudice **our** rights under this paragraph. Any recovery as a result of subrogation proceedings shall accrue first to **you** to the extent of any payments in excess of the **Section limit**; then to **us** to the extent of **our** payment under this section; and then to **you** to the extent of **your Deductible** or coinsurance. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

Limits and deductibles

The **Section limit** and the rules below fix the most **we** will pay regardless of the number of **Insureds Incidents** or **Claims** subject to the applicable **Deductible**.

The **Section limit** applies to the entire **Policy period**. If the **Policy period** is extended after policy issuance the additional period will be deemed part of the last preceding period for the purposes of determining the **Section limit**.

1. Multiple policy periods and claims

- a. When **we** issue claims made pollution liability coverage for **your Business activity** in one or more policy periods and a **Claim** is first made against **you** and reported to **us** in accordance with the terms and conditions of this section, or **Loss** is incurred during this **Policy period**, then all **Claims** or **Loss** arising out of the same, related or continuous **Incident** shall be deemed to have been first made and reported or incurred during this **Policy period**. This is provided that **you** have maintained claims made pollution liability coverage with **us** on a continuous uninterrupted basis since the first such **Loss** had been incurred or a **Claim** was first made against **you**, and reported to **us**. All such **Claims** or **Loss** will be subject to the terms, conditions and **Section limit**.
- b. All **Claims** first made against **you** and reported to **us** during the **Policy period** or all **Loss** incurred by **you** during the **Policy period** and arising out of the same, continuous, repeated or related **Incident** shall be deemed to be a single **Claim** and shall be deemed to have been made at the time the first of those **Claims** is made or **Loss** is incurred.

2. Deductible

Our obligation to make payments under this section for **Loss** is excess of the applicable **Deductible** stated in the schedule.

If the same related or continuous **Incident** result in cover under one or more coverages, only the highest **Deductible** amount stated in the schedule amongst all coverage sections applicable to the **Claim** for **Loss** will apply.

This section operates in excess of the **Deductible**, however **we** may, without any obligation whatsoever, advance payment of part or all of the **Deductible** and, upon notification of such payment made **you** will promptly reimburse **us** within thirty (30) days. Payment of any **Loss** or amounts within the **Deductible** will not create any obligations or be construed as a waiver of **our** rights under this section.

Exclusions

We shall have no liability under this section for any **Loss** or **Claim** arising directly or indirectly from:

1. Known prior incidents

an **Incident** that occurred and of which **you** or the **Responsible insured** were aware prior to the **Policy period**. This exclusion will not apply to any **Incident** that is listed in an endorsement to this section.

2. Identified underground storage tank system

any **Underground storage tank system** that is located at a property that **you** own or lease and that **you** or any **Responsible insured** as of the start of the **Policy Period** knew to be present.

This exclusion does not apply to an **Underground storage tank system** that is:

- a. less than 10 years old as at the **Retroactive date**; or
- b. double skinned or has been relined within 10 years before the start of the **Policy Period** by a reputable servicer of **Underground storage tank systems**.

3. Deliberate acts or omissions

a deliberate or wilful act or omission by **you** or a **Responsible insured** where **you** or a **responsible insured** either intends to cause **Environmental damage, Bodily injury, Property damage** or **Nuisance** or is reckless as to whether **Environmental damage, Bodily injury, Property damage** or **Nuisance** is caused.

4. Asbestos or lead based paint in buildings & structures

the actual or alleged presence of or exposure to

- a. lead based paint; or
- b. asbestos, asbestos-containing material, asbestos-based products, asbestos fibres, asbestos dust or asbestos waste;

present, installed, stored or applied in or upon any building or structure. For the avoidance of doubt, this exclusion does not apply to lead based paint or asbestos, asbestos-containing material, asbestos-based products, asbestos fibres, asbestos dust or asbestos waste buried in the soil, or in groundwater.

5. Biological contaminants in buildings & structures

the actual or alleged presence of or exposure to **Biological contaminants** present in or upon any building or structure, unless caused by the processing or treatment of waste as part of the **Business activity**. For the avoidance of doubt, this exclusion does not apply to biological contaminants in the soil, or in groundwater.

6. Upgrades and improvements

the cost of upgrades improvements or maintenance of any equipment, structures or facilities associated with **your Business activity**, whether or not such work is:

- a. in compliance with any permit or licence requirements; or
- b. directed by any government entity; or
- c. undertaken in response to an **Imminent threat** or **Emergency situation**.

7. Material change in business activity or use of covered location

a material change in:

- a. use at a property that **you** own or lease; or
- b. **Your Business activity**

as declared in the proposal form or as modified by endorsement during the **Policy period**.

8. Sale or abandonment

properties that **you** no longer own operate or control.

9. Contractual liability

Your assumption of liability in a contract or agreement unless **you** would have this liability in the absence of such contract or agreement or assumed in a contract that is listed in an endorsement to this section.

10. Products

any item that **you** sell, supply, manufacture, construct, assemble, alter, repair, service, treat, handle, distribute or dispose of including materials, parts, equipment, containers, packaging or labelling, once such item has ceased to be in **your** possession or control. This exclusion also applies to warranties or representations that **you** make, or are made on **your** behalf, in relation to the fitness, quality, durability, performance or use of such item.

11. Professional services

the performance of or failure to perform professional services by or on behalf of the **Insured**. Professional services will include but not be limited to recommendations, opinions, advice or strategies rendered by or on behalf of the **Insured** for a fee.

This exclusion does not apply to improper or inadequate supervision of any entity for which the **Insured** is legally liable when operating at third party properties.

12. Cargo at rest or wrongly delivered

cargo that is either no longer under the control of **you** or the entity transporting cargo on **your** behalf, has been relinquished to a third party, or has been delivered to the wrong address or receptacle.

This exclusion applies, but is not limited to **Incidents** that occur:

- a. after cargo is finally delivered; 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 in excess of forty eight (48) hours.

13. Property damage to cargo or vehicles

Property damage to cargo or any vehicle.

14. Fines and penalties

criminal fines, criminal penalties, punitive or liquidated damages or contractual penalties.

15. Employer's liability

Bodily injury to:

- a. **Your** employees while performing their duties as part of **your Business activity**; or
- b. any person whose right to assert a **Claim** against **you** arises by reason of any employment, blood, marital or other relationship with **your** employees.

This exclusion applies to any liability imposed by the provisions of any Employers Liability legislation.

16. Territory and sanctions

an **Incident** or **Claim** where cover under this section would be prohibited by any applicable law or regulation including economic or trade sanctions. **We** shall have no liability to pay any claim or provide any benefit under the section where to do so would be a breach of any applicable economic or trade sanctions or other law or regulation. If payment of an otherwise valid and collectible claim under the section would be in breach of applicable economic or trade sanctions or other law or regulation, such payment will only be due if an appropriate licence permitting such payment is obtained. For any such time as it is reasonably likely that such a licence will be obtained, such payment funds will be held in escrow for the benefit of the **Insured** or claimant as applicable until the requisite licence is obtained.

17. Public & products liability

any **Claim** which is covered under Section 1 (Public and Products Liability).

18. Genetically modified products and organisms

- a. in connection with the **Business Activity**, the production, manufacture, distribution, handling, repair, alteration, treatment, supply of or presence (on the premises only) of any **Genetically modified product** where **your** liability may be attributed directly or indirectly to the genetic characteristics of such product; or
- b. the spread, the fear of spread, the threat of spread or the fear of threat of spread of genetically modified organism characteristics into the environment or any change to the environment arising from research into testing of or production of genetically modified organisms.

19. Landfills

material or items which are landfilled or landraised on property that **you** own lease or control.

20. Redevelopment

Any **Loss** arising from a **Pollution condition** or **Environmental damage** first discovered by the excavation or movement of any ground material (including but not limited to surface soils and subsurface soils) by a redevelopment, refurbishment or voluntary site investigation completed at the premises. For the avoidance of doubt this exclusion does not apply to below ground works required to install maintain or repair below-ground services on the premises.



Cornish Mutual

Head office: CMA House, Newham Road, Newham, Truro, Cornwall TR1 2SU

Tel: 01872 277151 **Fax:** 01872 223053

email: askus@cornishmutual.co.uk www.cornishmutual.co.uk



Company Registration Number: 00078768

Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority

COM ED Nov 2019