



Land Based Underwriters

Farmers and Growers Environmental Liability Policy

www.lbunderwriters.co.uk



XL INSURANCE COMPANY LIMITED
(Herein called "the Company")

XL Insurance Company Limited is regulated by the Financial Services Authority

UK Environmental Liability Agricultural Policy

Administered by Farm & General Insurance Consultants Ltd trading as Land Based Underwriters

THIS IS A "CLAIMS MADE AND REPORTED" POLICY. THIS POLICY REQUIRES THAT A CLAIM BE MADE UPON THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD OR WITHIN NINETY DAYS AFTER ITS EXPIRATION. IN ADDITION, THIS POLICY MAY HAVE PROVISIONS OR REQUIREMENTS DIFFERENT FROM OTHER POLICIES YOU MAY HAVE PURCHASED. PLEASE READ THIS POLICY CAREFULLY.

In consideration for the payment of the Policy Premium set forth in Item 5. of the Schedule and in reliance upon the statements contained in the Application and any other supplemental material and written information submitted to the Company, all of which the INSURED warrants is true and complete and subject to all the terms and conditions of this Policy, the LIMITS OF LIABILITY and the RETENTION AMOUNTS, the Company and the INSURED agree as follows:

I. INSURING AGREEMENT

The Company will pay on behalf of the INSURED for:

- a. LOSS the INSURED has become legally liable to pay resulting from any POLLUTION CONDITION:
 - i. in, on, at, under or migrating from any COVERED LOCATION; or
 - ii. arising out of any AGRICULTURAL CONTRACTING; or
 - iii. arising during TRANSPORTATION; and/or
- b. ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY the INSURED has become legally liable to pay resulting from any NATURAL RESOURCE DAMAGE:
 - i. in, on, at or under any COVERED LOCATION; or
 - ii. which is caused beyond the legal boundary of any COVERED LOCATION by an activity that is actually carried out by the INSURED at any COVERED LOCATION; or
 - iii. arising out of any AGRICULTURAL CONTRACTING; or
 - iv. arising during TRANSPORTATION; and
- c. POLLUTION RESPONSE COSTS connected with any such LOSS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY; and
- d. LEGAL EXPENSE connected with any such LOSS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY

as a result of a CLAIM first made against the INSURED during the POLICY PERIOD provided that the INSURED reports the CLAIM to the Company, in writing, during the POLICY PERIOD or within ninety (90) days after the expiration of the POLICY PERIOD.

The Company has the right and duty to defend the INSURED against any such CLAIM. The Company will have no duty to defend the INSURED against any CLAIM to which this Policy does not apply. The Company's right and duty to defend any CLAIM ends when the Company has paid the applicable LIMIT OF LIABILITY under this Policy.

II. DEFINITIONS

A. ABOVE GROUND FUEL STORAGE TANK(S) means any stationary container or vessel, including the associated piping connected thereto, which is less than ten per cent (10%) beneath the surface of the ground and is: (i) constructed primarily of non-earthen materials; and (ii) designed to contain any substance.

B. AGRICAL means Agrical Limited whose UK Operations Centre is located at The Old Estate Office, 56 Leeds Road, Tadcaster, North Yorkshire LS24 9HB; company registration No 4315284; www.agrical.com

24-hour hotline: 08447 704 205.

The scope of AGRICAL's authority as an agent of the Company is strictly limited to the authority specified in Sections IV(A), IV(B), and IV(C) of this Policy.

For the avoidance of doubt, AGRICAL is not the Company's agent for any other activity including but not limited to POLLUTION RESPONSE and/or the recommendation of any consultant(s) or contractor(s) to the INSURED.

C. AGRICULTURE means:

1. dairy farming: or
2. the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried out for profit or not); or
3. the use of land as grazing meadow or pasture land or osier land or woodland or for market gardens or nursery

and associated activities:

1. Leisure activities – camping, caravan, bed & breakfast
2. Livestock activities – horse livery, cattery/dog kennel, shooting, fishing
3. Retail – farm shop, open farm
4. AGRICULTURAL CONTRACTING
5. Property ownership – commercial, residential, retail, warehousing

D. AGRICULTURAL CONTRACTING means the provision of services by or on behalf of the INSURED for the production of crops and livestock, agricultural engineering work, groundwork, landscape contracting, agricultural haulage or agricultural produce storage provided that such AGRICULTURAL CONTRACTING does not represent more than fifty per cent (50%) of the INSURED's income derived from AGRICULTURE during the POLICY PERIOD.

- E. BODILY INJURY** means physical injury, sickness, or disease, and any accompanying mental anguish or emotional distress sustained by any person, including death resulting therefrom, caused by any POLLUTION CONDITION or NATURAL RESOURCE DAMAGE.
- F. CLAIM** means a demand, notice or assertion of a legal right alleging liability or responsibility on the part of the INSURED and includes any legal proceedings against the INSURED, arising out of any POLLUTION CONDITION or NATURAL RESOURCE DAMAGE.
- G. CLEANUP COSTS** means costs incurred by or on behalf of the INSURED or by the INSURED pursuant to a CLAIM by a governmental authority to investigate, assess, remove, dispose of, treat, abate, contain or neutralise any POLLUTION CONDITION provided that payment of such costs is required by law enacted to impose liability for such POLLUTION CONDITION in the jurisdiction of any COVERED LOCATION or AGRICULTURAL CONTRACTING at issue, including any amendment to any such law.

CLEANUP COSTS also includes costs necessarily incurred by the INSURED to repair or replace real or personal property damaged while incurring CLEANUP COSTS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY to the condition it was in prior to being damaged during the course of incurring CLEANUP COSTS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY to a COVERED LOCATION or arising from AGRICULTURAL CONTRACTING provided such costs do not exceed the actual cash value of the real or personal property immediately before the damage and further provided that the costs are not incurred in respect of any improvements or betterments.

- H. COVERED LOCATION** means the principal farm address and total acreage used by the Insured as stated in Item 1. of the Schedule provided that the location is used predominantly for AGRICULTURE (with other permitted activities as accepted and listed in Item 1 of the Schedule) and is within the United Kingdom of Great Britain and Northern Ireland, and further provided that the POLLUTION CONDITION or NATURAL RESOURCE DAMAGE commenced prior to the time such COVERED LOCATION was sold, given away, abandoned by the INSURED or divested involuntarily.

The Policy allows for any additional acreage purchased, leased or lent to the INSURED during the POLICY PERIOD to be a COVERED LOCATION provided that any such additional acreage is used by the INSURED for the primary purpose of AGRICULTURE and is no greater than fifty per cent (50%) of the total acreage as set forth in Item 1. of the Schedule and, if the Policy is renewed, further provided that the additional acreage is fully declared at the next renewal of the Policy.

- I. EMERGENCY COSTS** means reasonable and necessary CLEANUP COSTS incurred by the INSURED on an emergency basis where any delay on the part of the INSURED would cause BODILY INJURY, PROPERTY DAMAGE or trespass, nuisance or obstruction or a significant increase in the cost of responding to a CLAIM.
- J. ENVIRONMENTAL LIABILITY DIRECTIVE** means Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage and/or legislation enacted to transpose Directive 2004/35/CE into the domestic law of the United Kingdom of Great Britain and Northern Ireland, including any amendments to such domestic legislation, provided that the domestic legislation has the force of law.
- K. ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY** means costs incurred by or on behalf of the INSURED for NATURAL RESOURCE DAMAGE which the INSURED is legally liable for:

1. in order to comply with the ENVIRONMENTAL LIABILITY DIRECTIVE in the jurisdiction of any COVERED LOCATION or AGRICULTURAL CONTRACTING at issue; or

2. to reimburse a governmental authority acting pursuant to the ENVIRONMENTAL LIABILITY DIRECTIVE for the reimbursement of costs,

including but not limited to preventive measures, primary, complementary and compensatory remediation and any other measures to remedy environmental damage as described in Annex II of the ENVIRONMENTAL LIABILITY DIRECTIVE.

- L. FLYTIPPING** means the abandonment by anyone other than the INSURED, and without the knowledge or consent of the INSURED, of POLLUTANTS, or any drums, tanks, or similar containers holding such POLLUTANTS, in, on, at or under any COVERED LOCATION.
- M. GENETICALLY MODIFIED ORGANISM** means an organism or microorganism or the organisms or microorganisms from which they have been derived in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination.
- N. INSURED** means the person or entity stated in Item 1. of the Schedule.
- O. LEGAL EXPENSE** means legal fees, costs, charges and expenses in the investigation, adjustment or defence of a CLAIM with the prior written approval of the Company, which approval will not be unreasonably withheld or delayed.

LEGAL EXPENSE includes any reasonable and necessary fees paid to legal, technical or other experts.

LEGAL EXPENSE does not include POLLUTION RESPONSE COSTS or time and expense incurred by the INSURED in assisting in the investigation or resolution of a CLAIM or in connection with CLEANUP COSTS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY including but not limited to the costs of the INSURED's in-house lawyers, salaries or charges of regular employees or officials of the INSURED, fees and expenses of supervisory legal advisers retained by the INSURED.

- P. LIMITS OF LIABILITY** means the amounts stated in Item 3. of the Schedule.
- Q. LOSS** means:
- a. a monetary judgment, award or settlement of compensatory damages arising from BODILY INJURY, PROPERTY DAMAGE, and/or trespass, nuisance or obstruction; and/or
 - b. CLEANUP COSTS.
- R. NATURAL RESOURCE DAMAGE** means physical injury to, including the destruction of, protected species and natural habitats, water or land.
- S. POLICY PERIOD** means the period stated in Item 2. of the Schedule or any shorter period arising as a result of cancellation.
- T. POLLUTANTS** means any solid, liquid, gaseous or thermal pollutant, irritant or contaminant or poisonous, noxious or polluting matter, including but not limited to smoke, vapours, odours, soot, fumes, acids, alkalis, toxic chemicals, hazardous materials, electromagnetic fields, and waste materials, including medical, infectious and pathological waste, and low level radioactive waste.
- U. POLLUTION CONDITION** means the discharge, dispersal, release, seepage, migration, or escape of POLLUTANTS into or upon land, or structures thereupon, the atmosphere, or any watercourse or body of water including groundwater or FLYTIPPING.

V. POLLUTION RESPONSE means the INSURED's appointment of AGRICAL to assist the INSURED in responding to a POLLUTION CONDITION or NATURAL RESOURCE DAMAGE for which the INSURED may be, or is, legally liable for LOSS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY at a COVERED LOCATION or AGRICULTURAL CONTRACTING.

W. POLLUTION RESPONSE COSTS means fees, costs and expenses incurred by an INSURED for POLLUTION RESPONSE.

POLLUTION RESPONSE COSTS do not include LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY or LEGAL EXPENSE whether or not such LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY or LEGAL EXPENSE is incurred by the INSURED pursuant to the recommendation of a consultant, contractor or any other person by AGRICAL.

X. PROPERTY DAMAGE means:

1. physical injury to or destruction of tangible property, including the resulting loss of use thereof, and including the personal property of third parties, or
2. loss of use of such property that has not been physically injured or destroyed

provided that such physical injury or destruction of tangible property or loss of use is caused by a POLLUTION CONDITION or NATURAL RESOURCE DAMAGE.

PROPERTY DAMAGE does not include CLEANUP COSTS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY.

Y. REMEDIAL ACTION COSTS means reasonable and necessary ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY incurred by the INSURED on an emergency basis where any delay on the part of the INSURED would subject the INSURED to potential sanctions as a result of not having carried out preventive measures or remedial measures, including emergency remedial actions, as required by articles 5(1) and 6(1)(a) of the ENVIRONMENTAL LIABILITY DIRECTIVE.

Z. RETENTION AMOUNTS means the amounts stated in Item 4. of the Schedule.

AA. TERRORISM means the commission or threat of:

1. an act of force or violence; or
2. an act otherwise dangerous to any person, property, animals or the environment, including but not limited to the use of or the discharge, dispersal, release, seepage, migration or escape of any POLLUTANTS into or upon land or structures thereupon, the atmosphere, or any watercourse or body of water or groundwater; or
3. an act which disrupts or interferes with any public or private system including but not limited to communication, electronic, information, mechanical, delivery or transportation,

where the stated or implied purpose or effect of any such act or threat is to cause chaos; to intimidate, coerce or disrupt a government, the military or civilian population or any portion thereof, or any segment of business, industry or the economy; to further political, ideological, religious, social or economic objectives; or to express (or express opposition to) a philosophy or ideology.

- BB. TRANSPORTATION** means the carriage including loading and unloading of property owned by the INSURED on public or private roads within the United Kingdom of Great Britain and Northern Ireland only by the INSURED or employees of the INSURED engaged in the business of transporting such property.
- CC. UNDERGROUND STORAGE TANK(S)** means any stationary container or vessel, including the associated piping connected thereto, which is at least ten per cent (10%) or more beneath the surface of the ground and is: (i) constructed primarily of non-earthen materials; and (ii) designed to contain any substance.

III. EXCLUSIONS

This Policy does not apply to **LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS or LEGAL EXPENSE:**

- A. Capital Improvement Costs**
based upon or arising out of:
- a. the replacement, repair, restoration, improvement or adding to, any equipment or facility, whose defectiveness or inefficiency gives rise to any POLLUTION CONDITION or NATURAL RESOURCE DAMAGE or breach of any law, ENVIRONMENTAL LIABILITY DIRECTIVE, permit, notice, letter, order or other approval or any written instruction from any governmental authority or representative; or
 - b. any POLLUTION CONDITION or NATURAL RESOURCE DAMAGE arising out of a deliberate act or omission, wilful misconduct or gross negligence on the part of the INSURED with regard to the maintenance, replacement, repair, restoration, monitoring, improvement or upgrading of any equipment or facility.
- B. Contractual Liability**
based upon or arising out of the INSURED's assumption of liability in a written contract or written agreement or a breach of contract or agreement to which the INSURED is a party. This exclusion does not apply to liability that an INSURED would have in the absence of the contract or agreement.
- C. Employer's Liability**
based upon or arising out of injury to any employee, director, officer, partner, temporary worker or leased worker of an INSURED or under any employer's liability, unemployment compensation or disability benefits law or similar law.
- D. Fines/Penalties**
based upon or arising out of criminal, civil or administrative fines, penalties, exemplary or aggravated damages.
- E. Genetically Modified Organism**
based upon or arising out of any Genetically Modified Organism.
- F. Hostile Acts and Terrorism**
based upon or arising out of any consequence, whether direct or indirect, of war, invasion, act of foreign enemy, hostilities (including but not limited to TERRORISM, and whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, strike, riot, or civil commotion.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS or LEGAL EXPENSE.

G. Insured's Property/Bailee Liability

with respect to PROPERTY DAMAGE only, to real property owned, leased or operated by the INSURED, or personal property in the care, custody or control of the INSURED even if such property damage is incurred to avoid or mitigate LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS or LEGAL EXPENSE or to respond in any way to POLLUTANTS, any POLLUTION CONDITION or NATURAL RESOURCE DAMAGE.

H. Intentional Non-Compliance

arising from any POLLUTION CONDITION or NATURAL RESOURCE DAMAGE that result from the intentional disregard of, or the deliberate, wilful or dishonest non-compliance by any INSURED with, any law, the ENVIRONMENTAL LIABILITY DIRECTIVE, permit, notice, letter, order or other approval or any written instruction from any governmental authority or representative.

I. Lead Based Paint, Lead Pipes and Asbestos in Buildings, Fixtures and Structures

based upon or arising out of the existence, removal or abatement of any of the following:

- a. lead based paint in, on or applied to any fixture, building or other structure, or pipes containing lead or painted with lead based paint; or
- b. asbestos in any form, including but not limited to products containing asbestos, asbestos fibres, asbestos dust, and asbestos containing materials in, on or applied to any fixture, building or other structure.

This exclusion does not apply to CLEANUP COSTS with respect to soil, groundwater and surface water.

J. Material Change in Use or Operations

based upon or arising out of a material change in the use of any COVERED LOCATION, from that set forth by the INSURED in the Application or other supplemental materials submitted to the Company as of the inception date of this Policy.

K. Prior Condition(s)

based upon or arising out of any POLLUTION CONDITION or NATURAL RESOURCE DAMAGE that commenced prior to the inception date of this Policy or prior to the COVERED LOCATION being endorsed onto this policy or, if the INSURED has purchased two or more consecutive UK Environmental Liability Agricultural Policies the inception date of the first such policy.

L. Products Liability

based upon or arising out of goods, materials or products manufactured, sold, handled, distributed, supplied, altered or repaired by or on behalf of the INSURED. This includes any container thereof, or any reliance upon a representation or warranty made at any time with respect thereto, but only if the POLLUTION CONDITION or NATURAL RESOURCE DAMAGE occurs away from a COVERED LOCATION or after physical possession of such has been relinquished to others.

M. Radioactive / Nuclear Material:

based upon or arising out of:

- a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

- b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

N. Retroactive Date

based upon or arising out of any POLLUTION CONDITION that commenced prior to the Retroactive Date stated in Item 7. of the Schedule which includes any dispersal, migration or further movement of the aforementioned POLLUTION CONDITION on or after the Retroactive Date stated in Item 7. of the Schedule.

O. Underground Storage Tank(s)

based upon or arising out of the existence of any UNDERGROUND STORAGE TANK on, at or under any COVERED LOCATION the existence of which UNDERGROUND STORAGE TANK was known to the INSURED at the inception date of the Policy.

This exclusion does not apply to an UNDERGROUND STORAGE TANK which is:

- a. an in-ground treatment process tank open to the atmosphere; or
- b. a flow through process tank, storm-water or waste water collection system, pit or septic tank.

IV. POLLUTION RESPONSE

- A.** The Company agrees that if the INSURED incurs POLLUTION RESPONSE COSTS, the INSURED shall not be required to seek prior approval from the Company for any fees, costs and expenses incurred by the INSURED prior to the appointment of any consultant(s) or contractor(s) whose appointment is recommended to the INSURED by AGRICAL.
- B.** If the Company concludes that the INSURED is not covered for LOSS and/or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY under the Policy, the Company's liability for POLLUTION RESPONSE COSTS and any fees, costs and expenses incurred by the INSURED in the appointment of any consultant(s) or contractor(s) whose appointment is recommended by AGRICAL to the INSURED shall cease immediately following the receipt by the INSURED of the Company's written conclusion(s).

For the avoidance of doubt, the Company shall continue to be liable to the INSURED for the payment of

- (i) POLLUTION RESPONSE COSTS, and
- (ii) any fees, costs and expenses payable by the INSURED to any consultant(s) or contractor(s) appointed by the INSURED on the recommendation of AGRICAL

prior to the INSURED's receipt of the Company's written conclusion(s) that the Company is not liable under the Policy. The Company shall not, however, be liable for any other liability which the Company concludes is not covered by this Policy regardless of the time at which the Company makes that conclusion.

- C.** The Company has not authorised AGRICAL to advise on, or to agree to, any matter relating to the Company's liability, rights or obligations under the Policy. The scope of AGRICAL's authority is set out in Section II(B) of this Policy.
- D.** The Company's payment of any POLLUTION RESPONSE COSTS does not constitute an acceptance of liability for LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY or LEGAL EXPENSE under this Policy.

V. LIMITS OF LIABILITY AND RETENTION

- A.** The Company will pay one hundred per cent (100%) of all covered LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS or LEGAL EXPENSE in excess of the applicable RETENTION AMOUNT and subject to the LIMITS OF LIABILITY and the other terms and conditions of this Policy.
- B.** All LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS and LEGAL EXPENSE arising out of the same or related POLLUTION CONDITION or NATURAL RESOURCE DAMAGE at any one COVERED LOCATION or one AGRICULTURAL CONTRACTING operation will be considered a single LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS and LEGAL EXPENSE. The LIMITS OF LIABILITY and the applicable RETENTION AMOUNT will apply.
- C.** The Company's total liability for all LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS and LEGAL EXPENSE in the aggregate during the POLICY PERIOD will not exceed the total LIMITS OF LIABILITY.
- D.** Any LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS and LEGAL EXPENSE incurred and reported by the INSURED to the Company, in writing, over more than one POLICY PERIOD and resulting from the same or related POLLUTION CONDITION or NATURAL RESOURCE DAMAGE will be considered a single LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS and LEGAL EXPENSE. The LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS and LEGAL EXPENSE will be subject to the same Limits of Liability and Retention Amount(s) in effect at the time of the first reported LOSS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY.
- E.** The Company's right and duty to defend any CLAIM ends when the Company's applicable LIMITS OF LIABILITY have been exhausted by payment of LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS and/or LEGAL EXPENSE.

VI. REPORTING, DEFENCE, SETTLEMENT AND CO-OPERATION

- A.** In the event any CLAIM is made against the INSURED for LOSS or ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, the INSURED will give to AGRICAL, whether orally or in writing, notice of the particulars with respect to the time, place and circumstances thereof, along with the names and addresses of the injured and of available witnesses as soon as practicable. In the event of oral notice, the INSURED agrees to furnish a written report to AGRICAL as soon as practicable.
- B.** The INSURED shall forward to AGRICAL every demand, notice, summons, order or other process including but not limited to written communications from a governmental authority received by the INSURED or the INSURED's representative as soon as practicable.

- C.** No costs, charges or expenses will be incurred, nor payments made, obligations assumed or remediation, preventive measures or remedial measures commenced without the Company's or AGRICAL's prior written consent which will not be unreasonably withheld or delayed. This provision does not apply to EMERGENCY COSTS, REMEDIAL ACTION COSTS or POLLUTION RESPONSE COSTS incurred by the INSURED. The INSURED will notify AGRICAL as soon as practicable after its initial response to the emergency that has resulted in any such EMERGENCY COSTS or REMEDIAL ACTION COSTS being incurred.
- D.** The INSURED will not admit liability or settle any CLAIM without the Company's prior written consent. The INSURED will not do or omit to do anything to prejudice the Company's rights under this Policy. If the Company recommends a settlement of a CLAIM:
1. for an amount within the applicable RETENTION AMOUNT and the INSURED refuses such settlement, the Company will not be liable for any LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS or LEGAL EXPENSE in excess of that RETENTION AMOUNT; or
 2. for a total amount in excess of the applicable RETENTION AMOUNT and the INSURED refuses such settlement, the Company's liability for LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY, POLLUTION RESPONSE COSTS or LEGAL EXPENSE will be limited to that portion of the recommended settlement and the costs, charges and expenses as of the INSURED's refusal which exceed the applicable RETENTION AMOUNT and fall within the LIMITS OF LIABILITY.
- E.** The Company will have the right and the duty to assume the investigation, adjustment and defence of any CLAIM including but not limited to the right to designate lawyers for the investigation, adjustment and defence of any CLAIM. In the case of the exercise of this right, the INSURED, on the demand of the Company, will promptly reimburse the Company for any element of LOSS, ENVIRONMENTAL LIABILITY DIRECTIVE LIABILITY or LEGAL EXPENSE falling within the applicable RETENTION AMOUNT.
- F.** The INSURED will assist and co-operate with the Company. The INSURED's agreement to co-operate with the Company will continue notwithstanding the cancellation or expiration of this Policy.

VII. CONDITIONS AND GENERAL PROVISIONS

- A. Action Against Company** – No action will lie against the Company unless, as a condition precedent thereto: the INSURED has fully complied with all of the terms of this Policy; and the amount the INSURED is obligated to pay has been finally determined either by judgment against the INSURED after actual trial or by written agreement of the INSURED, the claimant and the Company.

Any person or organisation or the legal representative thereof who has secured such judgment or written agreement will thereafter be entitled to recover under this Policy to the extent of the insurance afforded by this Policy. No person or organisation will have any right under this Policy to join the Company as a party to any action against the INSURED to determine the INSURED's liability, nor will the Company be brought into such action by the INSURED or its legal representative.

- B. Assignment** – This Policy cannot be assigned without the prior written consent of the Company.
- C. Cancellation** – The INSURED and the Company agree to the following with regard to cancellation:

1. **Cancellation by the INSURED:** This Policy may be cancelled by the INSURED by mailing to the Company or any of its authorised agents written notice stating when thereafter the cancellation will be effective. The mailing of such written notice will be the end of the POLICY PERIOD.

The Minimum Earned Premium for this Policy will be the percentage stated in Item 6. of the Schedule. This means that the amount of the total premium for this Policy is fully earned by the Company on the inception date of this Policy. The INSURED is not entitled to any return of the Minimum Earned Premium upon cancellation by the INSURED.

2. **Cancellation by the Company:** This Policy may be cancelled by the Company by mailing to the INSURED at the address shown in the Schedule, written notice stating when not less than sixty (60) days thereafter [ten (10) days for non-payment of premium] such cancellation will be effective. The mailing of such notice will be sufficient proof of notice of cancellation. The effective date and time of cancellation stated in the notice will be the end of the POLICY PERIOD. Hand delivery of such written notice by the Company will be equivalent to mailing.

If the Company cancels this Policy, then the amount of premium returnable to the INSURED will be computed pro rata and the Minimum Earned Premium will not apply. However, if a CLAIM is made against the INSURED and coverage is requested from the Company by the INSURED during this POLICY PERIOD, then the premium will be considered one hundred per cent (100%) minimum earned, and the INSURED is not entitled to any return of premium upon cancellation.

- D. Changes** -- Notice to any agent or knowledge possessed by any agent or by any other person will not effect a waiver or a change in any part of this Policy or stop the Company from asserting any right under the terms of this Policy. The terms and conditions of this Policy cannot be waived or changed, except by endorsement issued by the Company to form a part of this Policy.
- E. Choice of Law** -- All matters arising hereunder including questions related to the failure of the Company to pay any amount claimed to be due hereunder or any dispute on the validity, interpretation or operation of any term, condition, definition or provision of this Policy or any other matter concerning this Policy, including but not limited to the performance and enforcement of this Policy, are governed by the laws of England.
- F. Complaints** -- If you have any questions or concerns about this Policy or the handling of a CLAIM, you should, in the first instance, contact the Underwriter in charge of your account.

While the Company aims to provide the INSURED with a first-class policy and unrivalled service, there may be times when you feel that we have not done so.

In the event you are dissatisfied and wish to make a complaint, you can do so by directing your concerns to:

The Compliance Officer
XL Insurance Company Limited
XL House
70 Gracechurch Street
London
United Kingdom
EC3Y 0XL

Telephone: +44 (0) 20 7933 7000
Fax: +44 (0) 20 7469 1000

Copies of the Company's complaints procedures are also available from this address.

- G. Declarations and Representations** -- By acceptance of this Policy, the INSURED agrees that the statements and information contained in the Application and other supplemental materials submitted to the Company are: (i) true and correct; (ii) such statements and information are material to the Company's underwriting of this Policy; and (iii) that this Policy has been issued by the Company in reliance upon the truth and correctness of such statements and information.
- H. Headings** -- The descriptions in the headings of this Policy are solely for convenience and form no part of the Policy terms and conditions.
- I. Inspection and Audit** -- The Company will be permitted but not obliged to inspect, sample and monitor the INSURED's property and operations and any COVERED LOCATION or AGRICULTURAL CONTRACTING at any time, as far as they relate to the subject matter of this Policy. Neither the Company's right to make inspections, collect samples and monitor or the actual undertaking thereof, or any report thereon neither constitutes an undertaking to determine or warrant that property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, the ENVIRONMENTAL LIABILITY DIRECTIVE, rule, regulation, code of practice or guidance.
- J. Jurisdiction and Venue** -- In the event of the failure of the Company to pay any amount claimed to be due hereunder or any dispute on the validity, interpretation or operation of any term, condition, definition or provision of this Policy or any other matter concerning this Policy, including but not limited to the performance and enforcement of this Policy, the Company and the INSURED will submit to the exclusive jurisdiction of the High Court in London, England and will comply with all the requirements necessary to give such court jurisdiction.
- K. Other Insurance** -- This insurance will be in excess of the applicable RETENTION AMOUNT and any other valid and collectible insurance available to the INSURED, whether such other insurance is stated to be primary, pro rata, contributory, excess, umbrella, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the LIMITS OF LIABILITY provided in this Policy.
- L. Subrogation** -- In the event of any payment under this Policy, the Company will be subrogated to all the INSURED's rights of recovery against any person or organisation and the INSURED will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The INSURED will do nothing at any time to prejudice the Company's subrogation rights.

IN WITNESS WHEREOF the Company has caused this Policy and Schedule to be signed by a duly authorised agent of the Company.

Signed for and on behalf of the Company:



XL INSURANCE COMPANY LIMITED