

# Waste and Environmental Contractors (including Asbestos) Liability Insurance Policy



**QBE**

# Contents

- 1 Our agreement in general .....3
- 2 Insured section - Employers' liability .....5
- 3 Insured section - Public liability .....11
- 4 Insured section - Products liability.....15
- 5 Insured section - Pollution liability .....16
- 6 Insured section – Coverage extensions to Public Products and Pollution liability .....18
- 7 Exclusions to Public Products and Pollution liability .....22
- 8 Conditions precedent to Public Products and Pollution liability .....26
- 9 Duties in the event of a claim or potential claim .....30
- 10 General terms and conditions .....33
- 11 General definitions and interpretation .....38
- 12 How to complain .....45

# 1 Our agreement in general

## 1.1 Parties to this agreement

This **policy** is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

## 1.2 Words in bold

Words in bold typeface used in this **policy** document, other than in the headings, have specific meanings attached to them as set out in the General definitions and interpretation.

## 1.3 Policy structure

1.3.1 Each **insured section** sets out the scope of the main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided by each **insured section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.

1.3.2 Additional clauses set out terms, exclusions or limitations that may apply to more than one **insured section**.

1.3.3 The following general terms apply to all **insured sections**, clauses and endorsements:

- Duties in event of a claim or potential claim;
- General terms and conditions;
- General definitions and interpretation; and
- Complaints.

## 1.4 Policy period and premium

1.4.1 The **policy** will provide insurance as described herein for the **period of insurance** provided the premium(s) and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

1.4.2 The premium is deemed paid and accepted on receipt by the **insurer** or the broker appointed to place this insurance with the **insurer**.

1.4.3 If any premium (including a premium instalment) is not paid and accepted by the **insurer** on or before its payment date shown in the **schedule** the **insurer** can give written notice to the **insured** at its address shown on the **schedule**, cancelling the **policy** with effect from the seventh (7<sup>th</sup>) day after the notice has been served. Cancellation will be prevented from taking effect and the **policy** will continue if the late premium instalment and any other remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.

## 1.5 Minimisation of risk

1.5.1 It is agreed as a condition precedent to the **insurer's** liability under this **policy** that when the **insured** is engaged in any activity involving the handling, removal, transportation or disposal of asbestos and/or any asbestos containing materials, the **insured** undertakes to adopt the following risk control procedures:

- all work must be carried out in accordance with the Control of Asbestos Regulations 2012;
- that all applicable provisions and recommendations in the Approved Code of Practice and guidance L127 entitled 'The management of asbestos in non-domestic premises'

and in the Approved Code of Practice and guidance L143 entitled 'Work with materials containing asbestos' both issued by the Health and Safety Commission are followed;

- c) that the guidance in 'Asbestos: The licensed contractors' guide' HSG247 issued by the Health & Safety Commission be followed where applicable;
- d) where no specific guidelines exist health records shall be maintained and medical surveillance shall be carried out in respect of any **employee** in accordance with the Approved Codes of Practice and guidance as detailed in b) above;
- e) that Respiratory Protective Equipment (RPE) is only used that is marked with a CE symbol and that any respirator not so marked is not used;
- f) that the selection use and maintenance of RPE follows both the manufacturer's recommendations and Health and Safety Executive Guidance Note HSG53 where applicable;
- g) that the **insured** will observe any other existing replacing or subsequent legislation or guidance or Codes of Practice applicable to their activities involving asbestos and/or asbestos containing materials.

1.5.2 In the event that any of the above risk control procedures are not adopted;

- a) the **insurer** shall be under no liability to pay any claim and all indemnity hereby is forfeit; and
- b) the **insured** shall be liable to refund to the **insurer** any sum which the **insurer** has paid to and any costs associated with such payment.

## 1.6 Signature

In evidence of the **insurer's** intention to be bound by this insurance, it prints the signature of its Chief Executive Officer.



## 2 Insured section - Employers' liability

### 2.1 Employers' liability cover

- 2.1.1 The **insurer** agrees to indemnify the **insured** for all sums that the **insured** will become legally liable to pay as damages or compensation, including claimant costs recoverable from the **insured**, in respect of **bodily injury** caused during the **period of insurance** and sustained by an **employee** arising out of and in the course of employment by the **insured** in the **business** except that where such employment is undertaken temporarily outside the **United Kingdom**:
- the **employee** must be intending to return to the **United Kingdom** following completion of the temporary overseas employment; and
  - the temporary overseas employment outside the **United Kingdom** is not intended or planned to exceed twelve (12) months duration; and
  - any temporary overseas employment undertaken in **North America** applies only to clerical, promotional, sales conference attendance and other similar non-manual work.
- 2.1.2 Unless expressly stated to the contrary, cover granted by any clause or any endorsement to this **policy** does not increase the **limit of indemnity**. Any **sub-limit of indemnity** stated forms part of and is not additional to the **limit of indemnity**.

### 2.2 Employers' liability defence costs

Following any event which is or may be the subject of indemnity under the Employers' liability cover clause above whether or not **bodily injury** has occurred the **insurer** agrees to indemnify the **insured** for **defence costs** but such defence costs form part of the **limit of indemnity** and do not increase the **limit of indemnity** or any **sub-limit of indemnity**.

### 2.3 Employers' liability extensions

#### 2.3.1 Contractual liability

Where any contract or agreement entered into by the **insured** so requires the **insurer** will indemnify the **insured** against liability arising in connection with and assumed by the **insured** by virtue of such contract or agreement but only so far as concerns liability as defined in this **insured section to employees** of the **insured** provided that the terms and conditions of this insurance will apply as far as may be practicable.

#### 2.3.2 Cross liabilities

For each legal entity constituting the **insured**, the **insurer** will separately indemnify each party as if a separate **policy** had been issued to each. Where claims are made against any such **insured** by any other **insured**, the **insurer's** total liability to all parties will not exceed the **limit of indemnity** or any applicable **sub-limit of indemnity**.

#### 2.3.3 Data Protection

The **insurer** will indemnify the **insured** and, if the **insured** so requires, any **employee** in respect of their liability to pay:

- any valid compensation, including any associated **defence costs**, in respect of:
  - damage or distress under section 13 of Part II of the Data Protection Act 1998 ('DPA'), or any equivalent provision under any subsequent amending or replacement legislation; or
  - material or non-material damage under Article 82 of the General Data Protection Regulation ('GDPR'), first occurring during the **period of insurance** and resulting in a claim or claims brought by any **employee** and notified to the **insurer** during the **period of insurance**; and
- defence costs** in relation to a prosecution commenced during the **period of insurance** under the DPA, any subsequent amending or replacement legislation or the GDPR and incurred with the prior written consent of the **insurer**.

This extension shall not apply in respect of:

- a) the cost of replacing, reinstating, rectifying or erasing any personal data;
- b) any cost relating to the investigation of a data breach, or any obligation to report a data breach to the Information Commissioner's Office or any other supervisory authority or other regulator or to data subjects;
- c) liability caused by or arising from a deliberate act by or omission of any party entitled to indemnity under this **policy**, the effect of which would knowingly result in liability under the DPA, or any subsequent amending or replacement legislation, or the GDPR;
- d) claims which arise out of circumstances that are notified to any previous insurer or known to the **insured** at inception of this **policy**;
- e) liability for which indemnity is provided under any other insurance; or
- f) claims or prosecutions brought against the **insured** outside the Courts of the **United Kingdom**.

#### 2.3.4 **Indemnity to other parties**

At the request of the **insured**, the **insurer** will separately indemnify each **other insured party** provided that the:

- a) **insured** would have been entitled to indemnity by this **policy** had the claim or suit been made against the **insured**;
- b) **insurer** has the sole conduct and control of any claim as far as may be practical;
- c) **other insured party** shall, as though he were the **insured**, observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply;
- d) **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**.

#### 2.3.5 **Medical treatment**

This insurance extends to indemnify the **insured** and any qualified medical practitioner or health care practitioner employed by the **insured** in respect of liability to any person under a contract of service or apprenticeship with the **insured** resulting from treatment given provided that:

- a) any such qualified medical practitioner or health care practitioner shall, as though they were the **insured**, be subject to the terms of this **policy** in so far as they can apply; and
- b) the indemnity granted by this clause shall not apply where there is any other valid or collectible insurance available to the **insured**, the qualified medical practitioner or health care practitioner nor shall this insurance contribute to any other valid or collectible insurance.

#### 2.3.6 **Offshore activities**

The insurance by this **insured section** is extended to cover liability to an **employee** for **bodily injury** caused by visits, work or activities undertaken **offshore** except that the **insurer** shall not be liable to pay any amount in excess of a **sub-limit of indemnity** stated in the **schedule** in respect of:

- a) any one claim against the **insured** or series of claims against the **insured**; and
  - b) any claim or series of claims made by the **insured** under this **insured section**;
- arising out of one occurrence.

#### 2.3.7 **Principals**

The **insurer** will indemnify any party including any principal whom under contract or agreement the **insured** has agreed to indemnify and/or insure but only to the extent required by such contract or agreement and only to the extent that liability arises solely out of the work performed for the principal by or on behalf of the **insured** and provided that:

- a) such party shall, as though they were the **insured**, observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**;

and, for the avoidance of doubt, to the extent only of the indemnity provided by this **insured section**.

### 2.3.8 **Statutory defence costs including Health and Safety At Work, etc. Act 1974**

- a) The **insurer** agrees to indemnify the **insured** and at the request of the **insured**, any **other insured party**, in respect of **defence costs** reasonably incurred with the prior consent of the **insurer** in defending:
- i) any alleged breach of statutory duty (including any prosecution brought under sections 2 to 8 of the Health and Safety at Work, etc. Act 1974, Health and Safety at Work (Northern Ireland) Order 1978 or similar legislation in the Isle of Man or the Channel Islands) or criminal proceedings brought; and/or
  - ii) any alleged breach of statutory duty under the Protection from Harassment Act 1997; and/or
  - iii) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against the **insured** or any **other insured party**;
- provided that the prosecution or proceedings relate to:
- i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**; and
  - iv) **bodily injury** to or potential insured claim for **bodily injury** to **employees** including their health, safety and welfare.
- b) The **insurer** will also indemnify the **insured** for:
- i) **defence costs** of appeal including appeal against improvement and prohibition notices incurred with the prior consent of the **insurer**
  - ii) prosecution costs awarded against the **insured**.
- c) The indemnity by this clause excludes and does not cover any amount:
- i) in respect of allegations provided by this clause (Statutory defence costs) but not those relating to prosecution costs (clause iii) below) or manslaughter, corporate manslaughter or corporate homicide (clause ii) below), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;
  - ii) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide including prosecution costs relating to this item ii) (manslaughter defence costs), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;
  - iii) in respect of prosecution costs other than such costs relating to item ii) above (prosecution costs) in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings.

### 2.3.9 **Unsatisfied court judgments**

In the event of a judgment for damages being obtained during the **period of insurance**:

- a) by any **employee** or the personal representatives of any **employee** in respect of **bodily injury** to such **employee** that arises out of and in the course of his employment by the **insured** in the **business**, against any person operating from premises in the European Economic Area; and
  - b) which remains unsatisfied in whole or in part six (6) months after the date of such judgment; and
  - c) in any court of law except a court operating under the laws of **North America**;
- then at the **insured's** request, the **insurer** will pay the amount of damages or costs awarded to the **employee** or the personal representatives of the **employee** to the extent that they remain unsatisfied provided that:
- i) there is no appeal outstanding; and

- ii) the judgment relates to **bodily injury** which would otherwise be indemnified by this **insured section**; and
- iii) the **insurer** will be entitled to take over and prosecute for its own benefit any claim against any other person and the **insured**, the **employee** or the personal representatives of the **employee** will give the **insurer** all the information and assistance the **insurer** may require.

#### 2.3.10 **War and terrorism**

The insurance by this **insured section** is extended to cover liability to an **employee** arising from or caused by an act of **war** or **terrorism** except that the **insurer** shall not be liable to pay any amount in excess of a **sub-limit of indemnity** for **war** and **terrorism** stated in the **schedule** in respect of:

- a) any one claim against the **insured** or series of claims against the **insured**; and
- b) any claim or series of claims made by the **insured** under this **insured section**; arising out of one occurrence.

#### 2.3.11 **Waiver of subrogation**

In respect of contracts or agreements which impose upon the **insured** conditions waiving the rights of the **insured** to recover from any other party, the **insurer** agrees to the extent required by such contract or agreement to waive any rights of subrogation to which they might otherwise have been entitled in such circumstances in respect of any payments which they may make under this **policy**.

Further, where requested by the **insured**, the **insurer** will waive all rights of subrogation against a subsidiary of the **insured** or from a subsidiary against the parent.

For the purpose of this clause, subrogation means the right of the **insurer** who has granted indemnity to take over any recovery rights the **insured** may have against third parties liable for the same loss.

## 2.4 **Employers' liability limitations and exclusions**

This **insured section** excludes and does not cover:

#### 2.4.1 **Data Protection liabilities**

Liability which arises under the Data Protection Act 1998 ('DPA'), any subsequent amending legislation or the General Data Protection Regulation other than as provided for by the 'Data Protection' extension clause.

#### 2.4.2 **Employment practices dispute**

liability which arises out of employment practice disputes directly or indirectly related to employment or prospective employment of any person or persons by the **insured** including but not limited to:

- a) wrongful unfair or constructive dismissal;
- b) denial of natural justice, defamation, misleading representation or advertising;
- c) refusal to employ a suitably qualified applicant or failure to promote;
- d) coercion, demotion, evaluation, relocation, punishment, slander, humiliation, harassment, bullying or discrimination

but this exclusion shall not apply in respect of compensatory damages for **bodily injury** required by the Employers' Liability (Compulsory insurance) Regulations 1998.

#### 2.4.3 **Exposure outside the period of insurance**

- a) liability for **bodily injury** caused, contributed to, originating or occurring before **cover inception date**, or caused or contributed to by, or originating in or arising from, any occurrence or circumstance taking place before that date (and, for the purpose of this clause 'occurrence' and 'occur' shall be given a wide interpretation that is not delineated by any specific time, manner or situation). Where **bodily injury** has been caused or contributed to by, or originates in or arises from, the handling of or exposure to asbestos or the handling of or exposure to any substance, material, product or compound containing asbestos, this insurance does not cover any liability of a **guilty period of**

**exposure** occurring in its entirety before **cover inception date**, nor does it cover any part occurring before **cover inception date**, of a **guilty period of exposure** starting before that date and ending after it;

- b) liability for **bodily injury** caused, contributed to, originating or occurring after **cover expiry date**, or caused or contributed to by, or originating in or arising from, any occurrence or circumstance taking place after that date;
- c) Where **bodily injury** has been caused or contributed to by or originates in or arises from, the handling of or exposure to asbestos or the handling of or exposure to any product or compound containing asbestos, this insurance does not cover any liability relating to a **guilty period of exposure** occurring in its entirety after **cover expiry date**, nor does it cover any part occurring after **cover expiry date** of a **guilty period of exposure** starting before that date and ending after it;
- d) Further and in any event, the **insured** undertakes to indemnify the **insurer**, to the extent of the **insured's** pro-rata share of liability, calculated after a **time apportionment**, against any and all sums for which the **insurer** may be or become liable, or which may be paid by the **insurer**, in respect of any claim by any person in respect of liability (whether or not on the part of the **insured**) relating to any **guilty period of exposure** occurring in whole or part before **cover inception date** or after **cover expiry date**, whether or not the **employee** to whom liability has been incurred was employed by the **insured**;
- e) This insurance does not cover any proportion of any liability in respect of an **employee** attributable, on a **time apportionment**, to that **employee's** periods of employment with other employers which are or have been **guilty periods of exposure** or any part of one or more of them;
- f) The **insured** accepts this limitation on coverage and further undertakes to indemnify the **insurer** on the same basis as in the preceding paragraph against any and all sums for which the **insurer** may be or become liable or which may be paid by the **insurer** in respect of any claim by any person in respect of any liability (whether or not on the part of the **insured**) in relation to such periods;
- g) Where the **insured** is entitled to claim against more than one insurance policy, where such policies are successive in time, with or without intervals between them, in respect of its liability in relation to any one **guilty period of exposure**, this insurance shall only contribute that proportion of such liability produced by a **time apportionment**. Further, in any case of double insurance, this insurance shall in any event contribute no more in respect of the period of double insurance than its due proportion of any liability for that period calculated in accordance with this clause.

#### 2.4.4 **Fees for intervention**

any payments raised under the Health and Safety (Fees) Regulations 2012 relating to 'fees for intervention'.

#### 2.4.5 **Fines and penalties**

liability for payment of any fines or penalties imposed or ordered to be paid.

#### 2.4.6 **Hazardous work**

liability for any loss arising in connection with any work:

- a) of pile driving;
- b) of tunnelling;
- c) of quarrying; or
- d) involving the use of explosives for any purpose.

#### 2.4.7 **Limit of indemnity**

liability in excess of the **limit of indemnity** stated in the **schedule**.

#### 2.4.8 **North American jurisdiction**

liability for payment of any judgment, award, payment or settlement made (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part) within countries which operate under the laws of **North America** to:

- a) any party incorporated, domiciled or resident in **North America**;
- b) pay any sum in excess of a **limit of indemnity** which sum shall be the maximum amount payable including any **defence costs** recoverable hereunder;
- c) pay punitive, multiple or exemplary damages.

#### 2.4.9 **Nuclear hazards**

liability that attaches by or arising from the terms of any contract (other than contracts of employment between the **insured** and its employees) or agreement for **bodily injury** caused by **nuclear hazards**.

#### 2.4.10 **Offshore**

liability which arises directly or indirectly out of or caused by visits, work or activities undertaken **offshore** except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by the Offshore activities clause.

#### 2.4.11 **Road traffic legislation**

liability for **bodily injury** sustained by an **employee** when the **employee** is

- a) being carried in or upon a vehicle; or
- b) entering or getting onto or alighting from a vehicle

in circumstances where insurance or security is required to be effected by the **insured** to comply with the Road Traffic Act 1988 as amended by The Motor Vehicles (Compulsory Insurance) Regulations 1992 or any alteration to such regulations or any similar legislation applying to Northern Ireland, the Isle of Man or the Channel Islands or to any other territory consequent on the Third Council Directive 90/232/EEC of 14/05/1990 or consequent on any other legislation relating to compulsory insurance against civil liability in respect of the use of motor vehicles.

#### 2.4.12 **Statutory defence costs**

liability for **defence costs** arising out of or in respect of any alleged breach of statutory duty or any allegation of manslaughter, corporate manslaughter or corporate homicide except as stated as insured in the clause entitled 'Statutory defence costs including Health and Safety at Work, etc. Act 1974' under the Employers' liability insured section.

#### 2.4.13 **War or terrorism**

liability which arises directly or indirectly out of or caused by **war** or **terrorism** except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by the War and terrorism clause.

#### 2.4.14 **Workman's compensation or social security payment**

any obligation for which the **insured** or **insurer** may be held liable under any workers' compensation law, legislation, regulation or policies or obligation to maintain healthcare, social security or similar funding but this exclusion will not apply to payments required to be made to the Compensation Recovery Unit or its successor.

### 2.5 **Other employers' liability terms and conditions**

#### 2.5.1 **Conflict of interest**

In the event of a conflict of interest between the **insured** and any **other insured party** indemnified by this insurance, separate representation will be arranged for each party.

## 3 Insured section - Public liability

### 3.1 Public liability cover

The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages or compensation, including claimant costs recoverable from the **insured**, arising from **personal injury, damage, denial of access** or nuisance that occurs during the **period of insurance** and arises out of and in connection with the **business**.

### 3.2 Public liability defence costs

#### 3.2.1 North American jurisdiction

Where any clause or endorsement to this **policy** extends cover to apply to **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** count towards and are not additional to the **limit of indemnity**.

#### 3.2.2 All other jurisdictions

- a) For claims not involving **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** are payable in addition to and do not count towards the **limit of indemnity**.
- b) Where payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability for **defence costs** shall be limited to such proportion of the said **defence costs** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

### 3.3 Public liability extensions

#### 3.3.1 Data Protection

The **insurer** will indemnify the **insured** and, if the **insured** so requires, any director, partner or **employee** in respect of their liability to pay:

- a) any valid compensation, including any associated **defence costs**, in respect of:
  - i. damage or distress under section 13 of Part II of the Data Protection Act 1998 ('DPA'), or any equivalent provision under any subsequent amending or replacement legislation; or
  - ii. material or non-material damage under Article 82 of the General Data Protection Regulation ('GDPR'),

first occurring during the **period of insurance** and resulting in a claim or claims brought by any person not being a director, partner or **employee** and notified to the **insurer** during the **period of insurance**; and

- b) **defence costs** in relation to a prosecution commenced during the **period of insurance** under the DPA, any subsequent amending or replacement legislation or the GDPR and incurred with the prior written consent of the **insurer**.

This extension shall not apply in respect of:

- a) the cost of replacing, reinstating, rectifying or erasing any personal data;
- b) any cost relating to the investigation of a data breach, or any obligation to report a data breach to the Information Commissioner's Office or any other supervisory authority or other regulator or to data subjects;
- c) liability caused by or arising from a deliberate act by or omission of any party entitled to indemnity under this **policy**, the effect of which would knowingly result in liability under the DPA, or any subsequent amending or replacement legislation, or the GDPR;
- d) claims which arise out of circumstances that are notified to any previous insurer or known to the **insured** at inception of this **policy**;
- e) liability for which indemnity is provided under any other insurance; or
- f) claims or prosecutions brought against the **insured** outside the Courts of the **United Kingdom**.

The **insurer's** maximum liability during the **period of insurance** in respect of all claims under this extension shall not exceed the **sub-limit** of £1,000,000, which amount shall be inclusive of all **defence costs** and shall be part of and not in addition to the **limit of indemnity** specified in the **schedule**.

### 3.3.2 **Defective Premises Act 1972**

The insurance provided by this **insured section** is extended to indemnify the **insured** against any liability incurred by the insured by virtue of Section 3 of the Defective Premises Act, 1972 or Section 5 of the Defective Premises Act (Northern Ireland) Order 1975 or any amendment thereto in connection with premises that have been disposed of by the **insured**, except that the **insurer** will not be liable to provide an indemnity for the cost of remedying any defect or alleged defect in such premises.

### 3.3.3 **Financial loss insurance**

The insurance by this **insured section** is extended to indemnify the **insured** against legally liability for or arising out of financial loss sustained by any third party providing that:

- a) any such claim is first made against the **insured** in writing during the **period of insurance**; and
- b) insurance granted by this extension excludes and does not cover liability directly or indirectly:
  - i) arising from **bodily injury** caused to any person;
  - ii) arising from **damage** to tangible property;
  - iii) arising in respect of nuisance, trespass, loss of amenities, obstruction or interference with any easement, right of light, air, water or way;
  - iv) caused by or alleged to be caused by or contributed to on whole or in part by or arising from the existence of or exposure to **asbestos**;
  - v) arising from any obligation to defend any claims or suit against the **insured** alleging liability nor for any liability for defence costs arising from therefrom;
  - vi) arising under any contract or agreement unless liability would have attached in the absence of such contract or agreement;
  - vii) arising from delay in completion of any contract, liquidated damages, penalty clauses or performance warranties;
  - viii) arising which is inevitable having regard to the circumstances and nature of the work undertaken or the product supplied;
  - ix) arising from conspiracy, conversion, deceit, defamation, inducement of breach of contract, injurious, falsehood, intimidation, malicious, prosecution, infringement of patent, breach of copywrite, breach of trademark or trade name;
  - x) arising out of any act of fraud or dishonesty or any insolvency or financial default;
  - xi) arising out of any strike, lock out or labour disturbance in which the **insured** or an **employee** is involved;
  - xii) arising out of the diminution in the value of property or loss of or potential loss of rental income or any other consequential loss (including business interruption) howsoever arising but as a result of the **insured's** involvement with asbestos and/or asbestos containing materials;
  - xiii) arising out of any act or omission that is deliberately intended to cause a third party to suffer financial loss;
  - xiv) arising out of any circumstance which the **insured** was aware of or should have been aware of happening prior to the inception date of cover shown in the schedule;
  - xv) arising out of any circumstance happening prior to the **retroactive date** shown in the schedule;
- c) the **insurers** liability arising under this clause shall not exceed the **sub-limit of indemnity** specified on the **schedule** which sum shall be in the aggregate during any one **period of insurance**, exclusive of **defence costs** which is or may be the subject of indemnity under this clause which are payable in addition to this **sub-limit of indemnity**.

### 3.3.4 Run off cover for legionella claims made basis

- a) In the event and to the extent that any policy of insurance in force immediately prior to this **policy** expressly provided cover for legionella on the basis of an indemnity for claims made during the **period of insurance** (claims made basis); and
- b) In the event that a claim first made against the **insured** during the **period of insurance** in respect of legionella (meaning any discharge, release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like)

then the insurance by this **insured section** is extended to indemnify the **insured** in respect of liability for **bodily injury** arising from legionella provided that:

- i) the discharge, release or escape of legionella occurred prior to the inception of this **policy** but after the retroactive date stated in any prior policy or if no such date is stated then after 1<sup>st</sup> January 2010
- ii) the **insured** will give notice in writing to the **insurer** of any claim or any notice of an intention to make a claim as soon as reasonably practicable but in any event not later than twenty eight (28) days from receipt of the claim or notice.

### 3.3.5 Temporary business trips overseas

3.3.6 At the request of the **insured**, this **insured section** is extended to indemnify the **insured** and any director, partner or **employee** of the **insured** (including their family or persons normally resident with them) against legal liability as described in Public liability cover above but incurred whilst outside their country of domicile provided that:

- a) legal liability is incurred in a personal capacity whilst undertaking a **business** trip;
- b) such a temporary **business** trip outside their country of domicile does not exceed twelve (12) months;
- c) such liability does not arise out of the ownership or occupation of land or buildings.

If such director, partner or **employee** has more than one domicile, "domicile" shall be interpreted as being the country where the person is liable to pay income tax and/or social security fund payments (or similar such tax/payments).

## 3.4 Public liability limitations and exclusions

In addition to the exclusions set out in 'Exclusions to Public Products and Pollution liability', this **insured section** excludes and does not cover:

### 3.4.1 Asbestos

liability arising from or caused by **asbestos**;

### 3.4.2 Data Protection liabilities

Liability which arises under the Data Protection Act 1998 ('DPA'), any subsequent amending legislation or the General Data Protection Regulation other than as provided for by the 'Data Protection' extension clause.

### 3.4.3 Materials prior to installation

**damage** to materials, parts or equipment furnished in connection with performance of the **work away** but this limitation shall not be applied to **products** previously supplied under any previous contract;

### 3.4.4 Pollution and products

liability arising from **personal injury, damage, denial of access** or nuisance arising out of or from or:

- a) brought about by or contributed to by **pollution**;
- b) in connection with a **product**;

### 3.4.5 Rectification of defective work

- a) **damage** to; or
- b) any expenditure incurred by the **insured** for the removal, repair, adjustment, alteration, reinstatement, withdrawal, inspection or disposal of

any property (including any part of the property) furnished in connection with performance of **work away** as a result of any defect (suspected or known) therein or any unsuitability for its intended purpose.

## 4 Insured section - Products liability

### 4.1 Products liability cover

The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages or compensation, including claimant costs recoverable from the **insured** arising from **personal injury, damage, denial of access** or nuisance that occurs during the **period of insurance** and arising out of or arising from or in connection with a **product**.

### 4.2 Products liability defence costs

#### 4.2.1 North American jurisdiction

Where any clause or endorsement to this **policy** extends cover to apply to **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** count towards and are not additional to the **limit of indemnity**.

#### 4.2.2 All other jurisdictions

- a) For claims not involving **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** are payable in addition to and do not count towards the **limit of indemnity**.
- b) Where payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability for **defence costs** shall be limited to such proportion of the said **defence costs** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

### 4.3 Products liability extensions

Not applicable to this **insured section**.

### 4.4 Products liability limitations and exclusions

In addition to the exclusions set out in 'Exclusions to Public Products and Pollution liability', this **insured section** excludes and does not cover:

#### 4.4.1 Asbestos

liability arising from or caused by **asbestos**;

#### 4.4.2 Aircraft

liability arising from any **product** or part thereof which, with the **insured's** knowledge, is intended to be incorporated into the structure, machinery or controls of any aircraft or other aerial device or satellite; and is related to the flight safety of the aircraft.

#### 4.4.3 Pollution

liability arising out of or from or brought about by or contributed to by **pollution**.

## 5 Insured section - Pollution liability

### 5.1 Pollution liability

The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured** in respect of any claim(s) first made against the **insured** and notified to the **insurer** during the **period of insurance** as a result of **bodily injury, personal injury, damage or denial of access**, arising out of or from **pollution** provided that the **pollution** is caused directly by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance** and arising solely out of the **business** specified in the **schedule**.

### 5.2 Pollution liability defence costs

5.2.1 Except for any matter relating to **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** which are payable in addition to and do not count towards the **limit of indemnity**.

5.2.2 Where payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability for **defence costs** shall be limited to such proportion of the said **defence costs** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

### 5.3 Pollution liability extensions

#### 5.3.1 Environmental statutory liability

The insurance provided by this **insured section** is extended to indemnify the **insured** for all sums, including statutory debts, that the **insured** is legally liable to pay or legally obliged to incur for remediation in respect of environmental damage where such liability arises under an environmental protection directive, statute or statutory instrument, provided that:

- a) liability arises from **pollution** occurring during the course of **business**, within a state of the European Union and is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance**;
- b) the insurance by this extension excludes and does not cover any sum incurred in respect of:
  - i) **preventative costs** for prevention of imminent threat of environmental damage;
  - ii) primary, complementary or compensatory remediation for damage;
  - iii) the removal of any significant risk of an adverse effect on human health; to or on the **insured's** land, premises, watercourse or body of water whether owned, leased, hired, tenanted or otherwise in the **insured's** care, custody or control;
- c) the insurance by this extension excludes and does not cover any sum incurred in achieving any improvement or alteration in the condition of the land, the atmosphere or any watercourse or body of water beyond that required under any relevant and applicable law or statutory enactment at the time remediation commences; and
- d) the total amount payable by the **insurer** inclusive of all **defence costs** for any one occurrence or in the aggregate during any one **period of insurance** shall not exceed the **sub-limit of indemnity** as stated in the **schedule**;

and provided also that the exclusion in proviso b) i) above shall not apply to **preventative costs** that are incurred with the **insurer's** written consent that must be obtained prior to each claim, where a **pollution** event is taking place or has occurred and such **preventative costs** relate solely to halt or limit further **pollution** to third party property except that nothing in this clause shall imply that the **insurer** will indemnify the **insured** for **preventative costs** relating to the **insured's** own land, premises or watercourse or body of water.

## 5.4 Pollution liability limitations and exclusions

In addition to the exclusions set out in 'Exclusions to Public Products and Pollution liability' this **insured section** excludes and does not cover:

### 5.4.1 Contractual obligations

liability:

- a) arising under any contract or agreement unless such liability would have attached in the absence of such contract or agreement;
- b) arising from delay on completion of any contract, liquidated damages, penalty clauses or performance warranties;
- c) arising under section 21.2.1 of the J.C.T. Conditions or similar cause;

### 5.4.2 Known circumstances

liability arising out of any circumstance which the **insured** was aware of or should have been aware of happening prior to the inception date of cover shown in the **schedule**;

### 5.4.3 Owned or previously owned premises

liability for **damage, denial of access** or nuisance to land or **premises** (including land or water within or below the boundaries of such land or **premises**) that are presently or were at any time previously owned, leased, hired or tenanted by the **insured** or otherwise in the **insured's** care, custody or control.

### 5.4.4 Retroactive date

liability arising directly or indirectly out of **personal injury, damage, denial of access** or nuisance occurring or alleged to have occurred prior to the **retroactive date**;

## 6 Insured section – Coverage extensions to Public Products and Pollution liability

### 6.1 Contractual liability

Subject always to the exclusions 'North American jurisdiction' and 'North American territory', where any contract or agreement entered into by the **insured** so requires the **insurer** will indemnify the **insured** against liability arising from obligations undertaken by the **insured** by virtue of such contract or agreement but only to the extent of the indemnity defined in these **insured sections** provided that the terms and conditions of this insurance will apply as far as may be practicable.

### 6.2 Cross liabilities

For each legal entity constituting the **insured**, the **insurer** will separately indemnify each party as if a separate **policy** had been issued to each. Where claims are made against any such **insured** by any other **insured**, the **insurer's** total liability to all parties will not exceed the **limit of indemnity** or any applicable **sub-limit of indemnity**.

### 6.3 Indemnity to other parties

At the request of the **insured**, the **insurer** will separately indemnify each **other insured party** provided that the:

- a) **insured** would have been entitled to indemnity by this policy had the claim or suit been made against the **insured**;
- b) **insurer** has the sole conduct and control of any claim;
- c) **other insured party** shall as though he were the **insured** observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply;
- d) **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**

### 6.4 Local Democracy, Economic Development and Construction Act 2009

The **insurer** will indemnify the **insured** and any **other insured party** in respect of liability which the **insured** may incur in respect of any claim(s) first made against the **insured** during the **period of insurance** for claimants' costs and expenses arising from any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Local Democracy, Economic Development and Construction Act 2009 (formerly Housing Grants, Construction and Regeneration Act 1996) or an adjudication clause or rules contained in a contract.

### 6.5 Motor liability

6.5.1 Notwithstanding the exclusion 'Ownership or use of mechanically propelled vehicles', the **insurer** agrees to indemnify the **insured** and any **other insured party** in respect of liability arising out of or from:

- a) the use or movement of any mechanically propelled vehicle as a tool or plant;
- b) the loading or unloading of any mechanically propelled vehicle or trailer when carried out beyond the limits of any carriageway or thoroughfare but this extension shall not apply to **damage** to any property being loaded or unloaded;
- c) the movement of any mechanically propelled vehicle not owned, hired or borrowed by or leased to the **insured** or any **other insured party** on or under any **premises** occupied by the **insured** where such vehicle is causing an obstruction and interfering with the performance of the **business**;
- d) **damage** to visitors' or **employees'** mechanically propelled vehicle (including **contents** and/or accessories) while parked within any car park for which the **insured** is responsible or on any **premises** occupied by the **insured** provided that:
  - i) such vehicle is not lent or hired to the **insured**;

- ii) the **damage** to an **employee's** vehicle does not arise out of the maintenance, operation or use of a vehicle by that **employee**;
- e) the unauthorised use of any mechanically propelled vehicle by any person in the employment of the **insured** provided that the **insured** shall have taken all reasonable precautions to ensure that its **employees** are made aware of and comply with restrictions applicable to the use of the vehicle;
- f) **damage** to any bridge, weighbridge, road or anything beneath caused by the weight of any mechanically propelled vehicle or trailer or of the load carried thereon;

6.5.2 except always that the indemnity provided by this clause excludes liability:

- a) for which indemnity is provided by any motor insurance or fleet insurance policy held in the name of the **insured**; or
- b) for which insurance is necessary to comply with the Road Traffic Act 1988 as amended by The Motor Vehicles (Compulsory Insurance) Regulations 1992 or any alteration to such regulations or any similar legislation applying to Northern Ireland, the Isle of Man or the Channel Islands or to any other territory consequent on the Third Council Directive 90/232/EEC of 14/05/1990 relating to insurance against civil liability in respect of the use of motor vehicles or similar legislation in any country outside the European Union.

## 6.6 Motor contingent liability

Notwithstanding the exclusion 'Ownership or use of mechanically propelled vehicles', the **insurer** agrees to indemnify the **insured** in respect of liability arising out of or from the operation or use of any mechanically propelled vehicle not owned, hired or borrowed by or leased to the **insured** which is used in the course of **business** provided that this clause excludes and the **insurer** will not be liable for:

- a) **damage** to such vehicle or to property conveyed therein or thereon,
- b) **bodily injury** or **damage** arising while such **vehicle** is being driven by;
  - i) any **other insured party** other than an **employee**; or
  - ii) any person who to the **insured's** knowledge or the knowledge of any director, officer or manager of the **insured**, does not hold a licence to drive such **vehicle**;
- c) **bodily injury** or **damage** caused or arising while such **vehicle** is:
  - i) engaged in racing, pace-making, reliability trials or speed testing;
  - ii) being used outside the European Union;
- d) **bodily injury** or **damage** in respect of which the **insured** or any **other insured party** is entitled to indemnity under any other insurance.

## 6.7 Principals

The **insurer** will indemnify any party including any principal whom, under contract or agreement, the **insured** has agreed to indemnify and/or insure but only to the extent required by such contract or agreement and only to the extent that liability arises solely out of the work performed for the principal by or on behalf of the **insured** and provided that:

- a) such party shall, as though they were the **insured**, observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity** or any applicable **sub-limit of indemnity**;

and, for the avoidance of doubt, to the extent only of the indemnity provided by this **insured section**.

## 6.8 Property in the insured's care, custody and control

Notwithstanding the exclusion of 'Property in the insured's care, custody and control' but subject always to the exclusion 'Owned or previously owned premises' under 'Pollution liability', the **insurer** agrees to extend coverage under the Public, Products and Pollution liability **insured sections** to indemnify the **insured** in respect of liability arising out of or from:

- a) **damage** to personal effects (including vehicles and their contents) of **employees** or the **insured's** directors, officials, visitors or guests;
- b) **damage** to **premises** including landlord's contents, fixtures and fittings not owned by the **insured** but leased or rented by them in the course of **business** but always excluding liability:
  - i) which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement; or
  - ii) for which indemnity to the **insured** is provided under any other insurance or in any other way;
- c) **damage** to premises or their contents thereof not belonging to or leased to or rented to the **insured** or otherwise in the **insured's** custody or control but temporarily occupied by the **insured** for **work away** therein but no indemnity is provided by this clause for **damage** to that part of the property on which the **insured** is working and which arises out of such **work away**.

## 6.9 Statutory defence costs including Health and Safety At Work, etc. Act 1974

6.9.1 The **insurer** agrees to indemnify the **insured** and at the request of the **insured**, any **other insured party**, in respect of **defence costs** incurred with the prior consent of the **insurer** in defending:

- a) any alleged breach of statutory duty (including any prosecution brought under sections 2 to 8 of the Health and Safety at Work, etc. Act 1974, Health and Safety at Work (Northern Ireland) Order 1978 or similar legislation in the Isle of Man or the Channel Islands) or criminal proceedings brought; and / or
- b) any alleged breach of statutory duty under the Protection from Harassment Act 1997; and/or
- c) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against the **insured** or any **other insured party**;

provided that the prosecution or proceedings relate to:

- i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**; and
- ii) **bodily injury** or potential insured claim for **bodily injury** to persons other than **employees** including their health, safety and welfare.

6.9.2 The **insurer** will also indemnify the **insured** for:

- a) **defence costs** of appeal including appeal against improvement and prohibition notices incurred with the prior consent of the **insurer**;
- b) prosecution costs awarded against the **insured**.

6.9.3 But the indemnity by this clause excludes and does not cover any amount:

- a) in respect of allegations provided by this clause (statutory defence costs) but not those relating to prosecution costs (clause c) below) or manslaughter, corporate manslaughter or corporate homicide (clause b) below), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;

- b) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide including prosecution costs relating to this item b) (manslaughter defence costs), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings;
- c) in respect of prosecution costs other than such costs relating to item b) above (prosecution costs), in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same prosecution or proceedings.

6.9.4 For the avoidance of doubt the following statutes, whilst not exhaustive, are included within the statutes or regulations contemplated for which **defence costs** are insured by this clause:

- a) Health and Safety at Work, etc. Act 1974, but only sections 2 to 8,
- b) Health and Safety at Work (Northern Ireland) Order 1978,
- c) The Trade Description Act 1968
- d) Part II of the Consumer Protection Act 1987
- e) Part II of the Food Safety Act 1990.
- f) Corporate Manslaughter Act 2007

## 6.10 Waiver of subrogation

In respect of contracts or agreements which impose upon the **insured** conditions waiving the rights of the **insured** to recover from any other party, the **insurer** agrees to the extent required by such contract or agreement to waive any rights of subrogation to which it might otherwise have been entitled in such circumstances in respect of any payments which it may make under this **policy**.

Further, where requested by the **insured**, the **insurer** will waive all rights of subrogation against a subsidiary of the **insured** or from a subsidiary against the parent.

For the purpose of this clause, subrogation means the right of the **insurer** who has granted indemnity to take over any recovery rights the **insured** may have against third parties liable for the same loss.

## 7 Exclusions to Public Products and Pollution liability

Public, Products and Pollution liability **insured sections** exclude and do not cover:

### 7.1 Advertising injury

liability arising out of **advertising injury**.

### 7.2 Advice, design or plans provided for a fee

liability arising out of or from advice, design, plans, specifications, formulae, surveys or directions prepared or given by the **insured** or **other insured party** for a fee but this shall not exclude such liability arising in conjunction with **products** supplied.

### 7.3 Aircraft and watercraft

any loss arising out of or from the ownership, possession or use of any aircraft, other aerial device, satellite, railborne vehicle or any watercraft.

### 7.4 Costs of recall or guarantee

expenditure, whether incurred by the **insured** or others, for the withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement of any **product** or part thereof (or any other product or part thereof of which the **insured's product** forms, or is intended to form, a part or ingredient) and/or financial loss consequent upon the necessity for such withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement.

### 7.5 Deliberate acts

7.5.1 damages or compensation, including claimant costs and any associated **defence costs**, which result from **personal injury, damage, denial of access** or nuisance either expected or intended by the **insured** or **other insured party** but this exclusion does not apply to **personal injury** resulting from the use of reasonable force to protect persons or property.

7.5.2 other **defence costs** incurred in proceedings other than in respect of manslaughter, corporate manslaughter or corporate homicide consequent upon any deliberate act or omission by or on behalf of the **insured** or **other insured party**, if the result of such act or omission could reasonably have been expected to constitute an offence under any legislation.

7.5.3 however this exclusion shall not apply to any individual person or company if the **personal injury, damage, denial of access** or nuisance is not expected or intended by that party.

### 7.6 Electronic data

liability arising from:

- a) loss, alteration or impairment of or damage to information and/or data in electronic form;
- b) malicious acts of any person carried out by electronic means;
- c) defamation or harassment carried out by electronic means;

but this exclusion shall not apply in respect of:

- a) liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded; or
- b) liability which arises under the Data Protection Act 1998 ('DPA'), any subsequent amending legislation or the General Data Protection Regulation ('GDPR').

### 7.7 Employment practices dispute

liability which arises out of employment practice disputes directly or indirectly related to employment or prospective employment of any person or persons by the **insured** including but not limited to:

7.7.1 wrongful unfair or constructive dismissal;

- 7.7.2 denial of natural justice, defamation, misleading representation or advertising;
- 7.7.3 refusal to employ a suitably qualified applicant or failure to promote;
- 7.7.4 coercion, demotion, evaluation, relocation, punishment, slander, humiliation, harassment or discrimination.  
but this exclusion shall not apply in respect of compensatory damages for bodily injury required by the Employers' Liability (Compulsory insurance) Regulations 1998.

## **7.8 Excess or deductible**

the amount of the **excess** or **deductible** as applicable and stated in the **schedule**.

## **7.9 Fees for intervention**

any payments raised under the Health and Safety (Fees) Regulations 2012 relating to 'fees for intervention'.

## **7.10 Financial loss**

liability for pure economic loss not consequent upon **bodily injury** or **damage**, but this exclusion shall not apply to:

- 7.10.1 **personal injury**;
- 7.10.2 **denial of access**, nuisance; or
- 7.10.3 cover as provided by 'Data Protection' extension clause.

## **7.11 Fines, penalties or multiplication of compensatory damages**

any fines, penalties, punitive damages, exemplary damages, aggravated damages, treble damages or any other increase in damages resulting from the multiplication of compensatory damages.

## **7.12 Hazardous work**

liability for any loss arising in connection with any work:

- 7.12.1 of pile driving;
- 7.12.2 of tunnelling;
- 7.12.3 of quarrying; or
- 7.12.4 involving the use of explosives for any purpose;

## **7.13 Inevitable or unavoidable consequence of performance**

liability which is the inevitable or unavoidable consequence of the performance of a contract.

## **7.14 JCT 21(2)(1) contracts or comparable**

liability which arises as a result of any requirement under Section 21(2)(1) of the JCT Standard Form of Building Contract (all editions) or any comparable condition of a similar effect in any other contract or agreement.

## **7.15 Liability from employment**

**bodily injury** caused to or sustained by any **employee** arising out of or in the course of employment by the **insured** in the **business**.

## **7.16 Limit of indemnity**

liability in excess of the **limit of indemnity** stated in the **schedule** except for payment of **defence costs** as provided for by the Public, Products and Pollution liability.

## 7.17 Liquidated damages

any loss arising out of or from any liquidated damages clauses or penalty clauses or performance warranties in any contract or agreement which the **insured** or **other insured party** has entered into unless it is proven that, and then only to the extent that, liability would have attached in the absence of such clauses or warranties.

## 7.18 Loss or damage to property manufactured designed sold supplied repaired or installed

7.18.1 for **products** that are not being sold or supplied as part of a contract for construction, building, erection or installation; liability for **damage** to the **product** or any part thereof arising from defect or unsuitability thereof and pure financial loss arising therefrom;

7.18.2 for **products** that are sold or supplied as part of a contract for construction, building, erection, or installation; loss of, destruction of or **damage** to **products**, designed, sold, supplied, repaired or installed by the **insured** or any structure or contract works (including materials for incorporation therein):

- a) prior to certified completion or handover by the **insured**;
- b) after certified completion or handover by the **insured** where such loss, destruction or damage arises out of the defective condition of any part of such property, structure or contract works.

## 7.19 North American jurisdiction

7.19.1 liability in respect of any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**;

7.19.2 but this exclusion shall not apply to visits to **North America** in the course of **business** to undertake non-manual work including but not limited to clerical work, sales and promotional activities and conference attendance providing that, in such circumstances:

- a) the **insurer** will not be liable to indemnify any entity based in, operating in or domiciled in **North America**; and
- b) the **insurer** will not be liable to indemnify for any liability that arises under any agreement or contract that would not arise in the absence of any agreement or contract;
- c) the **insurer** will not be liable to indemnify for liability arising directly or indirectly from the ownership, maintenance, operation or use of any mechanically propelled vehicle or watercraft;
- d) the **insurer** will not be liable to indemnify for liability arising directly or indirectly from **pollution**;
- e) **defence costs** are inclusive and form part of the **limit of indemnity**.

## 7.20 North American territory

7.20.1 liability in respect of **personal injury**, **damage**, **denial of access** or nuisance occurring within **North America** but this exclusion shall not apply to temporary non-manual visits to **North America** as specified in 'North American jurisdiction' above.

7.20.2 liability in respect of or arising from **pollution** occurring within **North America**.

## 7.21 Nuclear risks

- a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- b) any legal liability of whatsoever nature;
- c) any sum which the **insured** becomes legally liable to pay or any loss or expense;

directly or indirectly caused by or contributed to by or arising from or, in the case of item c) above, attributable to **nuclear hazards**.

## 7.22 Overseas domiciled operations

the **insured's** subsidiary companies, branch offices or representatives with power of attorney that are domiciled outside of the **United Kingdom**.

## 7.23 Ownership or use of mechanically propelled vehicles

**personal injury, damage, denial of access** or nuisance arising out of or from the ownership, maintenance, operation or use of any mechanically propelled vehicle by or on behalf of the **insured** or any **other insured party** except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by any expressly stated coverage extensions herein.

## 7.24 Property in the insured's care, custody and control

**damage** to property owned, leased, hired or held in trust by the **insured** or under hire, purchase or on loan to the **insured** or held otherwise in the **insured's** care, custody or control except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by any expressly stated coverage extensions herein.

## 7.25 Statutory defence costs

liability for **defence costs** arising out of or in respect of any alleged breach of statutory duty or any allegation of manslaughter, corporate manslaughter or corporate homicide except as stated as insured in the clause entitled 'Statutory defence costs including Health and Safety at Work, etc. Act 1974' under the Coverage extensions to Public, Products and Pollution liability **insured sections**.

## 7.26 The product itself

liability for **damage** to the **insured's product** or any part thereof arising from a defect or unsuitability thereof and economic loss or other loss of any kind arising therefrom.

## 7.27 Underground services

for loss of, destruction of or damage to cables, pipes or other services located underground unless the **insured** has:

7.27.1 taken or caused to be taken all reasonable measures to identify the location of such cables, pipes and services before any work is commenced which may involve a risk of damage thereto (reasonable measures include contacting the appropriate authorities where it is possible cables, pipes or services are under the site);

7.27.2 retained a written record of the measures which were taken to locate such cables, pipes or other services;

7.27.3 conveyed the location of such cables, pipes and services to **employees** or others who are carrying out such work on behalf of the **insured**;

## 7.28 War or terrorism

**personal injury, damage, denial of access** or nuisance directly or indirectly caused by or contributed to by or arising from **war** or any act of **terrorism**.

## 8 Conditions precedent to Public Products and Pollution liability

The due observance and fulfilment of the provisions of this clause is a condition precedent to the **insurer's** liability for any claim under this **policy**. The 'Observance' clause sets out the consequences of a failure to comply with conditions precedent or **policy**.

### 8.1 Bona fide subcontractors insurance check

It is a condition precedent to the **insurer's** liability under this insurance that whenever work is undertaken on behalf of the **insured** by bona fide subcontractors, the **insured** will establish and maintain an administrative procedure for obtaining evidence that bona fide subcontractors effect public liability insurance that:

- 8.1.1 covers the work to be undertaken by the bona fide subcontractor;
- 8.1.2 is subject to a **limit of indemnity** of not less than GBP5,000,000;
- 8.1.3 includes an 'indemnity to principals' clause, and such evidence is revalidated every twelve (12) months throughout the duration of their contract with the **insured**.

### 8.2 Contractors Plant Hire Association/Scottish Plant Operators Association Conditions

It is a condition precedent to the **insurer's** liability under this insurance that that the **insured** shall only hire out plant in accordance with the Construction Plant Hire Association Conditions or Scottish Plant Operators Association Conditions or equivalent.

### 8.3 Fork lift truck conditions

It is a condition precedent to the **insurer's** liability under this insurance that:

- 8.3.1 all drivers must be at least eighteen (18) years of age;
- 8.3.2 all drivers must:
  - a) complete a training course in the safe use of fork lift trucks through an Accredited Training Provider belonging to one of the five accrediting bodies as recognised by the Health & Safety Executive,
  - b) complete a refresher course within five (5) years of the initial training programme, and the **insured** must retain appropriate documentation verifying completion thereof;
- 8.3.3 whenever a fork lift truck is unattended
  - a) the ignition keys must be removed, or
  - b) the vehicle otherwise immobilised,to prevent unauthorised use. For the purpose of this clause, unattended means that the fork lift truck is out of sight of the driver and / or more than one (1) minute's walking distance from the driver to prevent unauthorised use;
- 8.3.4 the carriage of passengers, unauthorised use or application as a tool in excess of the design capabilities of the vehicle is prohibited at all times;
- 8.3.5 all drivers must engage all operational safety systems in accordance with the manufacturers' recommendations.

### 8.4 Heat away from premises

- 8.4.1 It is a condition precedent to the **insurer's** liability under this insurance that, when using a naked flame or other heat source including but not limited to:
  - a) oxyacetylene;
  - b) electric arc or similar welding, cutting, grinding or other spark emitting equipment;
  - c) blow lamps;

d) otherwise applying heat;

away from the **insured's** premises, the **insured** and its **employees** shall take all reasonable precautions to prevent damage.

8.4.2 Where the use of heat away from the insured's premises involves

- a) oxyacetylene;
- b) electric arc or similar welding, cutting, grinding or other spark emitting equipment;
- c) blow lamps;
- d) otherwise applying heat;

and the work is subcontracted; then the **insured** shall require the subcontractor to also take all reasonable precautions to prevent **damage**.

8.4.3 The term 'reasonable precautions' shall include but not be limited to the following:

a) Before Starting Work:

- i) a person shall be made responsible for fire safety and for ensuring that reasonable precautions are taken;
- ii) all persons shall be made aware of the location of the site's fire alarms and fire fighting equipment;
- iii) the responsible person shall examine all property within a radius of six (6) metres from where the heat is being applied and where possible, remove all combustible materials or otherwise cover and protect by overlapping sheets or screens of non-combustible material.

b) During the Process of Work

- i) a person shall work alongside the operator of the equipment to look out for an outbreak of fire and there shall be available for immediate use a hose connected to the nearest hydrant with water turned on and controllable at the nozzle of the hose. If water is not available or unsuitable or provision of such a hose is not practical, then two (2) fully charged fire extinguishers must be available and if used during the process, the heat work must cease until two (2) fully charged fire extinguishers are made available,
- ii) the lighting of equipment shall be in accordance with manufacturer's instructions and no piece of lighted equipment shall be left unattended,
- iii) gas cylinders not required for immediate use shall be kept at least six (6) metres from where the heat is being applied.

c) After Ceasing Work

- i) a continuous examination for one (1) hour shall be made of the area within a radius of six (6) metres from where the heat has been applied to ensure that there is no risk of fire.

8.4.4 Furthermore where the **insured** or persons acting on behalf of the **insured** burns debris away from their **premises**, it is a condition precedent to the **insurer's** liability under this insurance that the following precautions must be taken on each occasion:

- a) fires to be in a cleared area and at a distance of at least ten (10) metres from any property;
- b) fire not to be left unattended at any time;
- c) a suitable fire extinguisher to be kept available for immediate use;
- d) fires to be extinguished at least one (1) hour prior to leaving site at the end of each working day.

## 8.5 Local Democracy, Economic Development and Construction Act 2009

As regards liability or alleged liability arising from any claim arising from a decision of an adjudicator relating to claims made against the **insured** referred to adjudication in accordance with an adjudication clause contained in a contract ('the Contract') to comply with the Local Democracy, Economic Development and Construction Act 2009, it is a condition precedent to the **insurer's** liability under this insurance that the **insured** shall:

- 8.5.1 notify the **insurer** within two (2) business days of receipt of any 'notice of intention to adjudicate' or of the service by the **insured** of any 'notice of intention to adjudicate' in circumstances which will lead to or are likely to lead to a claim against the **insured** being dealt with as a part of the adjudication;
- 8.5.2 promptly supply the **insurer** with all details relating to any reference to adjudication, including copies of all documentation made available to the **insured** or subsequently by the **insured** to the adjudicator;
- 8.5.3 allow the **insurer** to appoint advisers and to have conduct of the adjudication as they deem appropriate and to co-operate with the **insurer** in the conduct of the adjudication; any appointments made by the **insurer** shall be at the **insurer's** expense but subject always to the application of the **excess** or **deductible** as applicable;
- 8.5.4 meet any request, direction or timetable of the adjudicator;
- 8.5.5 satisfy the **insurer** that any liability incurred under an adjudicator's decision for which indemnity is being sought is as a direct result of negligence by the **insured** in the conduct of their professional activities;
- 8.5.6 not to disclose to anyone the existence of this policy without the **insurer's** consent;
- 8.5.7 institute legal proceedings or arbitration in accordance with the terms of the original contract to challenge or reopen or stay the enforcement of such adjudicator's decision if reasonably requested to do so by the **insurer** and to allow the **insurer** to appoint appropriate advisers as they may deem necessary to have conduct of such proceedings and, if appropriate, any such steps taken by the **insured** shall be at the **insurer's** expense but subject always to the application of the **excess** or **deductible** as applicable;
- 8.5.8 not agree to accept the decision of the adjudicator as finally determining the dispute without the prior consent in writing of the **insurer**;
- 8.5.9 ensure that the adjudication provisions in the contract shall:
- provide that the adjudicator must be independent of the parties to the dispute;
  - not allow for the adjudicator's decision to finally determine the dispute;
  - not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial considerations;
- 8.5.10 ensure that the Contract does not place any conditions upon the timing of commencement of legal or arbitration proceedings (for the sake of clarity, this does not apply to adjudication proceedings).

## 8.6 Reasonable precautions

It is a condition precedent to the **insurer's** liability under this insurance that the **insured's** the risk manager or senior management shall take all reasonable precautions to prevent an insured event or loss arising or continuing and will act in a manner so as not to promote a loss arising or of or continuing from the deliberate, conscious or intentional disregard by the **insured** of the need to take reasonable care.

## 8.7 Retroactive date

liability arising directly or indirectly out of **personal injury, damage, denial of access** or nuisance occurring or alleged to have occurred prior to the **retroactive date**.

## 8.8 Skip hire conditions

It is a condition precedent to the **insurer's** liability under this insurance that:

- 8.8.1 in connection with the use, ownership or hiring out of skips, the **insured** must at all times observe and comply with the requirements of the Roads (Scotland) Act 1984 or the Highways Act 1980 or any other statutes, regulations or local bye-laws and must ensure that:
- each skip is marked with fluorescent markings which must be kept clean;
  - each skip deposited on a highway is equipped to be properly lit during the hours of darkness;

c) no skip is left at or outside any customer's premises or on any working site without delivery being accepted by or on behalf of the customer.

8.8.2 skips must be hired out under the conditions of hire as advised to the **insurer** and a copy of these conditions must be given to the customer and the contents thereof drawn to the customer's attention prior to or at the time of delivery of the skip.

## **8.9 Tar boiler conditions**

It is a condition precedent to the **insurer's** liability under this insurance that whenever tar boilers are used that:

8.9.1 a regulation spill tray is provided,

8.9.2 suitable and approved fire extinguishers are kept on hand for immediate use,

8.9.3 the equipment and work is not left unattended,

8.9.4 a thorough examination must be made in the vicinity of the work at regular intervals up to one (1) hour after the completion of the work.

## 9 Duties in the event of a claim or potential claim

Other than the cover by 'Insured section – Employers liability' the due observance and fulfilment of the provisions of 'Claim notification, Insured's duties and Claim procedure' are a condition precedent to the **insurer's** liability for any claim under this **policy**. The Observance clause sets out the consequences of a failure to comply with conditions precedent or **policy** provisions.

### 9.1 Claim notification

- 9.1.1 The **insured** will give notice in writing or by an agreed electronic medium to the **insurer**:
- a) immediately on but in any event within three (3) business days from:
    - i) receipt of notice of any impending inquest, fatal accident inquiry, prosecution or other legal proceedings that include alleged **personal injury**;
    - ii) coming into possession of actual knowledge that notice of an Industrial Tribunal hearing includes alleged **personal injury**;
    - iii) the **insured's** actual knowledge of any death or **personal injury** to any person involving a stay in hospital in excess of three (3) business days;
  - b) as soon as practical but in any event within thirty (30) days after any other accident, event or the coming into possession of actual knowledge of **personal injury** or **damage**, with full particulars thereof;
- which may be the subject of indemnity under this **policy**.

- 9.1.2 The **insured** will give notice to the **insurer** immediately on but in any event within three (3) business days from, the **insured's** actual knowledge of any **RIDDOR** incident involving any person.

- 9.1.3 Such notice to the **insurer** must be given in writing or by an agreed electronic format to the claims notification addresses specified in the **schedule**.

### 9.2 Insured's duties

- 9.2.1 For each and every claim or **RIDDOR** incident, the **insured** and any person acting on behalf of the **insured** must:
- a) comply with any reporting obligations provided for under the General Data Protection Regulation ('GDPR');
  - b) not admit responsibility, liability, make an offer or promise, nor offer payment or indemnity without the written consent of the **insurer**;
  - c) not incur any expense without the consent of the **insurer** except at the **insured's** own cost;
  - d) give all such information, assistance and forward all documents to enable the **insurer** to investigate, settle or resist any claim as the **insurer** may require;
  - e) provide such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith;
  - f) not destroy evidence or supporting information or documentation without the **insurer's** prior consent; nor destroy any plant or other property relating to an occurrence, loss or suit that may give rise to a claim under this **policy**.

### 9.3 Claim procedure

Unless stated otherwise, all claims will be handled and overseen by the **insurer** but day to day handling may be managed by a third party claim management company or loss adjuster. For each and every claim, the **insured** and any person acting on behalf of the **insured** must:

- 9.3.1 Upon receiving any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an insured event immediately and in any event within three (3) business days provide copies of these to the **insurer**. In addition where

reasonably practical the **insured** must co-operate with the **insurer** or their appointed agents to allow them to comply with such relevant practice directions and pre-action protocols as may be issued and approved from time to time by the head of civil justice;

9.3.2 authorise the **insurer** to obtain medical records or other pertinent information upon request but only where legally permitted to do so in the event of an insured event involving **bodily injury**;

9.3.3 prove, if it is alleged that an event is not covered or that the indemnity is otherwise limited, being riot, civil commotion, **war** or an act of **terrorism**, that the said exclusion or **limit of indemnity** does not apply, it being understood and agreed that any portion of an exclusion or limit of indemnity being found invalid, inapplicable or unenforceable will not in any way render the remainder of the exclusion or limit invalid, inapplicable or unenforceable.

## 9.4 Disputed defence or appeal

If any dispute arises between the **insured** and the **insurer** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a Queen's Counsel (or Solicitor with at least 20 years experience in the field of insurance law) to be mutually agreed between the parties (or in default of agreement to be nominated by the President of the Law Society) whose decision will be final. In the event of conflict between any **other insured party** separate representation will be arranged for each party.

## 9.5 Insurer's rights

9.5.1 The insurer's preferred intention is to investigate any potential claim and to undertake the conduct of any proceedings in connection with such claims on behalf of the **insured**. It is one of the services offered and provided by this **policy**. However, there may be occasions, for example, in relation to potential proceedings in **North America**, when this is not appropriate.

9.5.2 Therefore, it is agreed that the **insurer** has the right not to, and shall be under no obligation to, investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims but will be free to leave the conduct of such proceedings wholly with the **insured**.

9.5.3 In such cases, the **insurer** will transfer the conduct of proceedings to the **insured** and will clearly set out the conditions as regards the payment of costs and the **insured's** freedom to commit the **insurer** to any settlement by compromise or otherwise. Provided that any settlement or compromise is made within these conditions, this **policy** will provide an indemnity as otherwise stated.

9.5.4 Further, the **insurer** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability except (where payable under the relevant **insured section**) for payment of **defence costs** incurred prior to the date of payment.

## 9.6 Multiple deductibles or excesses

9.6.1 Where any **deductible** or **excess** is described as 'non ranking' then this amount is excluded from and forms no part of the indemnity provided by this insurance

9.6.2 If the insured event forms the subject of indemnity under more than one of the **insured sections** relating to Public liability, Products liability and Pollution liability, the **insured's** maximum liability for the **deductible** or **excess** will be the highest applicable **excess**.

9.6.3 If settlement of an insured event investigated or defended by the **insurer** under the **insured sections** relating to Public liability, Products liability and Pollution liability, does not exceed the amount of the applicable **deductible** or **excess**, the **insured** will pay, or reimburse the **insurer** for, as applicable, any **defence costs** and paid damages including claimant costs recoverable from the **insured** and incurred in connection with such insured event.

## 9.7 Subrogation

- 9.7.1 Except as expressly provided by any 'Waiver of subrogation' clause, for each and every claim, the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or suit that may give rise to a claim under this insurance.
- 9.7.2 The **insured** or any other party insured by this **policy** will, at the request and expense of the **insurer**, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **insurer** for the purpose of enforcing any rights and remedies, whether such acts and things will be or become necessary or required before or after their indemnification by the **insurer**.
- 9.7.3 In the event of any payment under this insurance, the **insurer** will act in concert with all other interested persons (including the **insured**) concerned in the exercise of any rights of recovery.
- 9.7.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) who will have paid an amount over and above any payment hereunder will first be reimbursed up to the amount paid by them; the **insurer** is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including the **insured**) to whom this coverage is in excess shall be entitled to claim the residue, if any.
- 9.7.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned in the ratio of their respective recoveries as finally settled.

## 10 General terms and conditions

### 10.1 Applicable law

The law allows the parties to this contract of insurance to select the law and jurisdiction to be applied to this **policy**. Unless it is agreed otherwise, the law that applies to this contract is the law of that part of the **United Kingdom** where the head office of the **insured** is located.

It is agreed that any legal proceedings between the **insured** and the **insurer** in connection with this contract will only take place in the courts of that part of the **United Kingdom** where the head office of the **insured** is located and they are subject to the exclusive jurisdiction of that court.

### 10.2 Assignment

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

### 10.3 Basis of contract

Any reference to 'basis of the contract' in this **policy** or in the proposal form (if any) is of no effect.

### 10.4 Cancellation

The **insurer** may at any time during the **period of insurance** serve written notice on the **insured** at the address shown on the **schedule** cancelling the policy with effect from the thirtieth (30<sup>th</sup>) day after service of the notice.

Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon demand and subject to no claims having been notified under this **policy**, the **insurer** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy**.

Without prejudice to any other forms of service, the notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.

### 10.5 Contract (Rights of Third Parties) Act 1999

This insurance does not confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 or any amending or subsequent legislation by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party. However, this will not preclude rights enforceable under the Third Parties (Rights against Insurers) Act 2010.

### 10.6 Data Privacy Notice

Any personal data provided to the **insurer** will be processed in compliance with all applicable laws and regulations and in accordance with the privacy notice which can be found at <https://qbeeurope.com/privacy-policy/>. Alternatively the **insured** may contact the **insurer's** Data Protection Officer to request a copy of the full privacy notice by email: [dpo@uk.qbe.com](mailto:dpo@uk.qbe.com) or by writing to the: Data Protection Officer, QBE European Operations, Plantation Place, 30 Fenchurch Street, London EC3M 3BD.

### 10.7 Dispute resolution

All matters in dispute between the **insured**, any other party covered by this insurance and the **insurer** arising out of or in connection with the construction or formation of this insurance will be referred to a mediator to be agreed by the parties within fourteen (14) working days of a written notice served on one party by the other requesting such an agreement. If a mediator is not agreed, then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties shall share equally the

costs of CEDR and of the mediator and the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.

The parties shall continue to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.

If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take, the dispute will be referred by either party to courts, subject to the law and jurisdiction set down in the Applicable law clause above.

## 10.8 Duty of fair presentation

The **insured** must make a fair presentation of the risk (as set out in the Insurance Act 2015 or successor or amending legislation) in proposing for, or proposing to vary, this insurance.

## 10.9 Duty of fair presentation - remedies for breach – proposing for this insurance

If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation then the **insurer's** remedies shall be as follows:

- a) if such breach is deliberate or reckless, the **insurer** may:
  - i) treat this **policy** as having been terminated from its inception; and
  - ii) retain the premium;
- b) if such breach is not deliberate or reckless and the **insurer** would not have entered into this **policy** but for the breach, the **insurer** may by notice to the **insured** treat this **policy** as having been terminated from its inception in which case the **insurer** shall return the premium; and
- c) in all other cases if, but for the said breach, the **insurer** would have entered into this **policy** but:
  - i) on different terms (other than terms relating to the premium), the **insurer** may require that this **policy** is treated as if it had been entered into on those different terms from the outset; or
  - ii) would have charged a higher premium, the **insurer** may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ .

## 10.10 Duty of fair presentation - remedies for breach – variation

If the **insured** or anyone acting on its behalf breaches the **insured's** duty of fair presentation in relation to a variation of this **policy**, the **insurer's** remedies shall be as follows:

- a) if such breach is deliberate or reckless, the **insurer** may:
  - i) by notice to the **insured** treat this **policy** as having been terminated from the time when the variation was concluded; and
  - ii) retain the premium;
- b) if such breach is not deliberate or reckless, and the **insurer** would not have entered into the variation but for the breach, the **insurer** may treat this **policy** as if the variation was never made, in which case the **insurer** shall return any additional premium relating to the variation; and
- c) in all other cases if, but for the said breach, the **insurer** would have entered into the variation but:

- i) on different terms (other than terms relating to the premium), the **insurer** may require that the variation is treated as if it had been entered into on those different terms;
- ii) would have increased the premium by more than it did or at all, the **insurer** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ ; or
- iii) would not have reduced the premium by as much as it did or at all, the **insurer** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/reduced total premium}) \times 100$ .

### 10.11 Employers' Liability (Compulsory Insurance) Act 1969

The indemnity granted by the Insured section - Employers' liability is deemed to be in accordance with the provisions of the Employers' Liability (Compulsory Insurance) Act 1969 and the Employers Liability (Compulsory Insurance) Regulations 1998 or any subsequent amendment or re-enactment or similar legislation in Northern Ireland, the Isle of Man and the Channel Islands. Where any condition precedent, exclusion, term or condition of this **policy** is deemed prohibited by the act or regulations, then the **insurer** will provide an indemnity to the **employee** under the terms of the Insured section - Employers' liability but the **insured** will repay to the **insurer** that part of the **insurer's** indemnity for which it would not otherwise have been liable under this **policy** by reason of any such breach of condition precedent, term, condition or exclusion.

### 10.12 Fraudulent claims

10.12.1 If the **insured** or anyone acting on its behalf makes a fraudulent claim under this **policy**, the **insurer**:

- a) is not liable to pay the claim;
- b) may recover any part of the claim already paid from the relevant **insured**; and
- c) may by notice to the **insured** treat this **policy** as having been terminated with effect from the time of the first fraudulent act, in which case the **insurer** is not liable to that **insured** in respect of a relevant event occurring after that time and may retain any premium.

10.12.2 These remedies shall not be available against any other entity insured under this **policy** that was not implicated in the fraud.

### 10.13 Inspection and audit

The **insurer**, or such representative as the **insurer** may designate, will be permitted but not obligated to inspect the **insured's** property and operations at any time given reasonable notice. Neither the **insurer's** right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of the **insured** or others to determine or warrant that such property or operations are safe.

### 10.14 Late payment of claims

The **insurer** shall, pursuant to section 13A of the Insurance Act 2015, pay any sum due in respect of a valid claim within a reasonable time (which includes a reasonable time to investigate and assess the claim).

### 10.15 Material changes during the policy period

10.15.1 The **insured** must notify the **insurer** within thirty (30) days of any material change to the **insured**, its **business** or the risks insured if indemnity under this insurance is sought in relation to any such change.

10.15.2 The **insurer** shall not indemnify the **insured** for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless the **insurer** has provided valid confirmation of cover, whether by an express term of this **policy**, endorsement, written confirmation or otherwise.

## 10.16 Minimisation of risk

10.16.1 The **insured** will take all reasonable steps at its own expense to prevent an insured event arising or continuing.

10.16.2 Upon the happening of an insured event and at all times thereafter, the **insured** shall act as a prudent uninsured and take all reasonable measures as are appropriate to avoid or minimise any claims which arise or may arise from that insured event. Any failure by the **insured** to take such steps shall reduce or extinguish the **insurer's** liability to indemnify the **insured** under the **policy** to the extent that such failure has increased the claim under the **policy**.

## 10.17 Non Contribution

If at the time of any claim under this **policy** there is any other valid and collectible insurance available to the **insured** or any other party covered by this insurance, other than insurance that is specifically stated to be in excess of this **policy** and names the **insured** or any other party covered by this insurance for the insurance, then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance.

## 10.18 Observance

10.18.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not described in the **policy** as conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.

10.18.2 Further, where an indemnity is provided to any other party, the **insured** will arrange for each party to comply with the terms, conditions and conditions precedent of this insurance so far as they can apply provided always that the other party complies with the terms of 'Duties in the event of a claim or potential claim'.

10.18.3 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach providing the **insurer** can demonstrate some prejudice.

10.18.4 In the event of a breach of any condition precedent in the **policy** and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach and continue the **policy** on such terms as the **insurer** may determine and, if any payment on account of any such **claim** has already been made, the **insured** will repay forthwith all payments on account to the **insurer**.

## 10.19 Premium adjustment

Where the premium in whole or part is provisionally based on estimates provided by the **insured**, the **insured** will keep accurate records and declare such information as the **insurer** requires within three (3) months of the expiry of the **period of insurance**. The premium will then be adjusted and any difference paid by or allowed to the insured as the case may be but subject to any minimum premium that may apply. The **insurer** reserves the right to request that the **insured** supplies an auditor's certificate with such calculations as are subject to adjustment attesting the accuracy thereof.

## 10.20 Records

The **insurer** may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

## 10.21 Recovery of benefits

In the event that the **insured's** liability in damages is reduced because benefits and/or charges included in the damages are to be paid under statute to the Compensation Recovery Unit or its successor, the **insured's** liability in damages for the purposes of this insurance will be deemed to include such benefits and charges.

## 10.22 Representation

Where more than one entity is designated as 'insured' the first named **insured** will act on behalf of all **insureds** and other parties covered under this **policy** with respect to the giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the first named **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to any other party covered by this insurance.

## 10.23 Sanction limitation and exclusion

The **insurer** shall not provide cover nor 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 the **insurer** or any member of the **insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

## 10.24 Subscribing insurer

The **insurer's** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reason does not satisfy all or part of its obligations.

## 10.25 Timing of bodily injury or damage

Where it is not possible to ascertain the timing of **bodily injury** or **damage**, then for the purpose of determining the indemnity granted by this **policy**

- 10.25.1 **bodily injury** will be deemed to have occurred when the claimant first consulted a qualified medical practitioner regarding such **bodily injury**, whether or not it was correctly diagnosed at that time. If no consultation took place, then the **bodily injury** will be deemed to have occurred when the **insured** first received written notice of the **bodily injury**; **damage** will be deemed to have occurred when the claimant first became aware of such **damage**, even if the cause was unknown.

## 10.26 Tracing office database

Where the **insurer** provides an indemnity under the Employers' Liability (Compulsory Insurance) Regulations 1998, the **insurer** is required by regulation to maintain a database of all the companies and subsidiary companies covered by such insurance. The **insurer** supports and will add details of all company names to the Employers' Liability Tracing Office database.

Accordingly, it is a condition of this insurance that the **insured** undertakes to supply full details (as required by the Employers' Liability Tracing Office) of the company and all subsidiary companies to the **insurer** at inception of this **policy** and promptly thereafter following acquisition or disposal of any subsidiary company.

## 11 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership or any other legal entity. References to a statute, regulation, EU Directive or trade terms of contract will be construed to include all its amendments or replacements. All headings within the policy are included for convenience only and will not form part of this **policy**.

### 11.1 Advertising injury

Advertising injury means:

- 11.1.1 misappropriation of advertising ideas or style of doing business;
- 11.1.2 infringement of copyrighted advertising materials, titles or slogans; in the course of advertising the **insured's** goods, **products** or services.

### 11.2 Asbestos

Asbestos means any work involving the manufacture, mining, processing, use, installation, storage, removal, stripping out, demolition, disposal, distribution, inspection or testing of or exposure to asbestos, asbestos fibres, asbestos dust, or asbestos containing materials.

### 11.3 Bodily injury

Bodily injury means death, disease, illness, physical and mental injury of or to an individual.

### 11.4 Business

The activities of the **insured** as stated in the **schedule** and including

- 11.4.1 provision and management of canteens, sports, social and welfare and medical organisations for the benefit of **employees** and/or the **insured's** pensioners, sponsorships, medical, dental, nursing, first aid, fire, rescue and ambulance services, principally in connection with but not limited to the operations of the **insured**;
- 11.4.2 provision of security services for the benefit of the **insured**;
- 11.4.3 provision of nursery, crèche or child care facilities where incidental to the business;
- 11.4.4 provision of educational facilities;
- 11.4.5 property owners, lessors and lessees including repair, refurbishment and maintenance of such property;
- 11.4.6 organisation of and participation in exhibitions, trade fairs, conferences and the like,
- 11.4.7 private work undertaken by any **employee** for any fellow principal **employee**, director or partner or executive of the **insured**;
- 11.4.8 employment of subcontractors for performance of work on behalf of the **insured**;
- 11.4.9 the organisation of charitable events or similar fund raising activities;
- 11.4.10 sponsorship of events, organisations, entities and individuals;
- 11.4.11 repair, maintenance and servicing of own mechanically propelled vehicles sale or disposal of own property and goods, including owned mechanically propelled vehicles;
- 11.4.12 provision of gifts and promotional material incidental to the **business**.

## 11.5 Cover expiry date

Cover expiry date means the date stated in the **schedule**.

## 11.6 Cover inception date

Cover inception date means the date stated in the **schedule**.

## 11.7 Damage/damaged

Damage/damaged means:

11.7.1 loss of, destruction of or damage to tangible property; and/or

11.7.2 for Public, Products and Pollution liability, loss of use of tangible property that has been lost, destroyed or damaged but not pure economic loss.

## 11.8 Deductible

The deductible forms part of the **limit of indemnity** or **sub-limit of indemnity** and deductible means the first amount payable by the **insured** in respect of each and every claim or any one occurrence (as stated in the **schedule**), potential claim or potential occurrence and/or **defence costs** (but not adjusters' fees), as ascertained after the application of all other terms and conditions of this insurance.

Where more than one deductible could be applied to any one claim or occurrence only the one deductible, the highest deductible, will be applied.

## 11.9 Defence costs

Defence costs means

11.9.1 costs (other than claimant costs recoverable from the **insured** or any **other insured party**) incurred at the request of the **insured**, with the prior consent of the **insurer** in the investigation, adjustment, appraisal, defence or settlement of an insured event, including expert, legal, appeal and defence costs;

11.9.2 costs and expenses incurred by the **insured** in pre-trial and case reviews;

11.9.3 pre-judgment interest awarded against the **insured** on that part of any judgment covered under this **policy** but where the **insurer** offers to pay the **limit of indemnity** in settlement of a claim or suit, the **insurer** will not pay any pre-judgment interest imposed or accruing after the date of such offer;

11.9.4 all interest accruing on that part of any judgment within the **limit of indemnity** after entry of the judgment and before **insurer** has paid, offered to pay or deposited in court that part of any judgment that is within the applicable **limit of indemnity**;

11.9.5 the cost of attendance in court as a witness at the **insurer's** request, payable at the following rates per day on which attendance is required:

a) any principal director or partner of the **insured** - GBP500;

b) any **other insured party** - GBP250;

11.9.6 costs incurred at the request of the **insured**, with the prior consent of the **insurer** of legal representation at any coroner's inquest or inquiry in respect of any death which may be the subject of indemnity under this **policy**.

## 11.10 Denial of access

Denial of access means trespass or interference with any easement, right of air, light, water or way.

## 11.11 Employee

Employee means any person whilst:

- 11.11.1 engaged under a contract of service or apprenticeship with the **insured**;
- 11.11.2 acting in the capacity of non-executive director of the **insured**;
- 11.11.3 not under a contract of service or apprenticeship who is, at the requirement of the **insured**, supplied to, hired or borrowed by the **insured** in the course of **business** and under the control of the **insured** including but not limited to:
  - a) persons on secondment from another company that is not an insured under this **policy**;
  - b) labour masters or persons supplied by them;
  - c) labour-only subcontractors;
  - d) self-employed persons;
  - e) drivers or operators of hired-in plant;
  - f) persons engaged under work experience, training, study, exchange or similar schemes;
  - g) any officer, member or voluntary helper of the organisations or services stated in the **business**;
  - h) voluntary workers, helpers and instructors;
  - i) persons working under the Community Offenders Act 1978, the Community Offenders (Scotland) Act 1978 or similar legislation;
  - j) employee(s) elected on any industry users' committee;
  - k) outworkers or homeworkers employed under contracts to personally execute any work in connection with business while they are engaged in that work;
  - l) any other person defined under Sections 32.-(1), 35.-(2) and 54.-(3)(b) of the National Minimum Wage Act 1998;
  - m) prospective employees who are being assessed by the **insured** as to their suitability for employment;
  - n) any person a Court of Law in the **United Kingdom** deems to be an employee;
 provided that the **insured** can always request that any such person is not treated as an employee.

## 11.12 Excess

The **limit of indemnity** is additional to the excess and excess means the first amount payable by the **insured** in respect of each and every claim or any one occurrence (as stated in the **schedule**), potential claim or potential occurrence and/or **defence costs** (but not adjusters' fees), as ascertained after the application of all other terms and conditions of this insurance.

Where more than one excess could be applied to one claim or occurrence, only the one excess, the highest excess, will be applied.

## 11.13 Excess (damage only)

The **limit of indemnity** is additional to the excess (damage only) and excess (damage only) means the first amount payable by the **insured** in respect of each and every **damage** claim or occurrence (as stated in the **schedule**), potential **damage** claim, potential occurrence and/or related **defence costs** (but not adjusters' fees), or any one occurrence as ascertained after the application of all other terms and conditions of this insurance.

Where more than one excess could be applied to any one claim or occurrence only the one excess, the highest excess, will be applied.

## 11.14 Guilty period of exposure

Guilty period of exposure means the period or aggregate periods of employment when an **employee** is or has been, or may be or may have been, handling or exposed to asbestos or handling or exposed to substances, materials, products or compounds containing asbestos in the course of his or her employment.

## 11.15 Insured/insured's/insureds

Insured / insured's / insureds means:

- 11.15.1 the company or other organisation shown as insured in the **schedule** including any **subsidiary companies** of the insured that are in existence at the inception date of the insurance and have been declared to the **insurer** until such time as they may be sold or otherwise disposed of (but not excluding any liabilities incurred prior to disposal), and
- 11.15.2 the person or people shown as insured in the **schedule**;
- 11.15.3 including in either case the legal or personal representatives of the **insured** in respect of any claim under this **policy** incurred on behalf of the **insured**.

### 11.16 Insured section

Insured section means a section of this **policy** that forms part of the insurance contract but only if stated as 'insured' in the **policy schedule**.

### 11.17 Insurer

Insurer means the party specified as insurer in the **schedule** and any other subscribing insurers.

### 11.18 Limit of indemnity

Limit of indemnity means:

- 11.18.1 for the **insured section** Employers' liability the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability arising out of one (1) occurrence regardless of the number of:
- insureds or other insured parties**; or
  - persons or organisations bringing claims or suits; or
  - claims against the insured or series of claims against the insured, or claims or series of claims made by the insured;
- 11.18.2 for the **insured sections** Public, Products and Pollution liability (and extensions thereto) the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability arising out of one (1) occurrence or series of occurrences arising out of one originating cause regardless of the number of:
- insureds or other insured parties**; or
  - persons or organisations bringing claims or suits; or
  - claims against the **insured** or series of claims against the **insured**, or claims or series of claims made by the **insured**;
- 11.18.3 where two (2) or more **insured sections** are subject to a combined single limit, then the combined single limit is the maximum the **insurer** will pay for any insured event to which such **insured sections** apply in combination, and;
- 11.18.4 for the purposes of this clause 11.18.3 and the operation of the combined single limit any claim made under 5.1 shall be deemed to be an occurrence for any insured event to which two (2) or more **insured sections** apply in combination;
- 11.18.5 where a limit of indemnity is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**.

### 11.19 North America

North America means the United States of America or its territories or possessions or Canada.

### 11.20 North American jurisdiction

North American jurisdiction means any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which form part of **North America** or which operate under the laws of such countries or any states, provinces or territories forming part of them (or to any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part) then following any event which is or may be the subject of indemnity under the laws of **North America**.

## 11.21 Nuclear hazards

Nuclear hazards means:

- 11.21.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 11.21.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

## 11.22 Offshore

Offshore means:

- 11.22.1 work in or on any offshore rig or platform or support or accommodation vessel for any offshore rig or platform;
- 11.22.2 in transit to and from or between any offshore rig or platform or support or accommodation vessel from the time of embarkation onto a conveyance at the point of final departure to an offshore rig or platform until disembarkation from the conveyance onto land upon return from an offshore rig or platform.

## 11.23 Other insured party

Other insured party means any of the following parties:

- 11.23.1 any director, partner, **employee** or a former **employee** of the **insured**;
- 11.23.2 any officers, members' committee and/or **employee** and voluntary helpers of the **insured's** canteen and welfare organisations, nursery, crèche or child care facilities, sports and social organisations, in their respective capacities as such;
- 11.23.3 any officers and members of the **insured's** security, rescue, first aid or fire and ambulance services or medical organisation other than any qualified medical practitioner while working in a professional capacity in their respective capacities as such;
- 11.23.4 any director or partner or executive of the **insured** in respect of private work undertaken by any **employee** for a director, partner or executive of the **insured**;
- 11.23.5 any officers or trustees of the **insured's** pension scheme(s).

## 11.24 Period of insurance

Period of insurance means the period shown as such on the **schedule**, which times are taken as Greenwich Mean Time unless otherwise stated.

## 11.25 Personal injury

Personal injury means **bodily injury** and/or harm arising out of one or more of the following offences committed in the course of the **business**:

- 11.25.1 false arrest;
- 11.25.2 detention or imprisonment;
- 11.25.3 malicious prosecution;
- 11.25.4 wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies;
- 11.25.5 invasion of the right of privacy;
- 11.25.6 libel, slander and defamation.

## 11.26 Policy

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

### **11.27 Pollutant**

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, dust, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed.

### **11.28 Pollution**

Pollution means:

11.28.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time other than any discharge release or escape of legionella or other airborne or waterborne pathogens from water tanks, water systems, air conditioning plants, cooling towers and the like;

11.28.2 any cost, expense, claim or suit arising out of any request, demand or order arising from actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time that the **insured** or any **other insured party** test for, monitor, clean up, remove, contain, treat, detoxify or neutralise or in any way respond to or assess the effects of **pollutants**.

### **11.29 Premises**

Premises means the buildings or land that are owned, leased, hired or tenanted by or on loan to the **insured** for the purpose of the **business**.

### **11.30 Preventative costs**

Preventative costs means sums that the **insured** is liable to pay for prevention of imminent threat of environmental damage as provided for in any **United Kingdom** law implementing the EU Environmental Liability Directive.

### **11.31 Product**

Product means any property (including integral software, packaging, containers, labels and instructions for use) after it has left the custody or control of the **insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **insured**.

### **11.32 Proposal**

Proposal means any information supplied by or on behalf of the **insured**, deemed to be a completed proposal form and medical questionnaire and other relevant information that the **insurer** may require.

### **11.33 Retroactive date**

Retroactive date means the date stated in the **schedule**.

### **11.34 RIDDOR**

RIDDOR means the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

### **11.35 Schedule**

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the **insured**. Schedules may be re-issued from time to time where each successor overrides the earlier document.

### **11.36 Sub-limit of liability /Sub-limit of indemnity /Sub-limit**

Sub-limit of liability/ Sub-limit of indemnity/ Sub-limit means the maximum liability of the **insurer** under a specified section, clause or other part of this **policy** and is the amount stated in the **schedule**.

### 11.37 Terrorism

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure or a threat thereof; and appears to be intended to

- a) intimidate or coerce a civilian population, or
- b) disrupt any segment of the economy of a government de jure or de facto, state, or country, or
- c) overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or
- d) affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

### 11.38 Time Apportionment

Time apportionment means a process of division in which the 365 days comprising the period of coverage afforded by this insurance, or such lesser number of days of any **guilty period of exposure** as occur during the period of coverage afforded by it, are divided by the number of days comprising the whole of such **guilty period of exposure**. The resulting proportion, when multiplied by the **insured's** liability in respect of the whole of such **guilty period of exposure**, is the **insurer's** maximum liability to any person under or in respect of this insurance, subject to its other terms and conditions. The **insured's** obligation to indemnify under this clause is in respect of any and all sums for which the **insurer** may be or become liable in excess of the sum calculated in accordance with the preceding sentences of this paragraph. Where reference is made in this insurance to a **time apportionment**, that process (and no other) shall be used by the **insured** and the **insurer** to determine the quantum of their respective obligations.

### 11.39 United Kingdom

United Kingdom means Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

### 11.40 War

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

### 11.41 Work away

Work away means work, operations, installation or services performed by or on behalf of the **insured** but not on its **premises**.

## 12 How to complain

### 12.1 Complaints to QBE

The **insured** can complain about this **policy** by contacting its broker or where the **insured's** policy is insured by QBE Europe SA/NV (UK Branch), QBE UK Limited or the insurer is or includes a Lloyd's syndicate write to:

Customer Relations, QBE European Operations, Plantation Place, 30 Fenchurch Street, London EC3M 3BD

Email: [CustomerRelations@uk.qbe.com](mailto:CustomerRelations@uk.qbe.com)

Telephone: 020 7105 5988

### 12.2 The UK Financial Ombudsman Service (UK FOS)

If the **insured** feels that its complaint has not been satisfactorily resolved, the **insured** may be eligible to contact the UK FOS to review the complaint. Information about the eligibility criteria is available on the UK FOS website:

<http://www.financialombudsman.org.uk/consumer/complaints.htm>.

The **insured** can contact the UK FOS via its website, or write to Exchange Tower, London E14 9SR, Tel: +44 (0)800 023 4567.

### 12.3 Financial Services Compensation Scheme (FSCS)

The **insured** may be entitled to compensation from the FSCS if the **insurer** is unable to meet its obligations under the policy. Further information is available from [www.fscs.org.uk](http://www.fscs.org.uk), or the **insured** can write to the Financial Services Compensation Scheme, PO Box 300, Mitcheldean, GL17 1DY

## QBE European Operations



QBE European Operations is a trading name of QBE Europe SA/NV, VAT BE 0690.537.456, RPM/RPR Brussels, IBAN No. BE53949007944353 and SWIFT/BIC No. HSCBEBB, ('QBE Europe'), and of (1) QBE UK Limited, no. 01761561 ('QBE UK'), (2) QBE Underwriting Limited, no. 01035198 ('QUL'), (3) QBE Management Services (UK) Limited, no. 03153567 ('QMSUK') and (4) QBE Underwriting Services (UK) Limited, no. 02262145 ('QSUK'), all four companies having their registered offices at Plantation Place, 30 Fenchurch Street, London, EC3M 3BD, and being incorporated in England and Wales. QBE Europe is authorised by the National Bank of Belgium under licence number 3093. QBE UK and QUL are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. QUL is a Lloyd's managing agent. QMSUK and QSUK are both Appointed Representatives of QBE Europe and QUL..