

# Property Owners Liability Insurance Policy



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# 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 The **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, the **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided by the **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 The following general terms apply to the **insured section**, clauses and endorsements:

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

## 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.

## 2 Complaints

### 2.1 What the insured should do

The **insurer** strives to provide an excellent service to all its customers but occasionally things can go wrong. The **insurer** takes all complaints seriously and endeavours to resolve all customers' problems promptly. If the **insured** has a question or complaint about this insurance or the conduct of its broker, they should contact that broker in the first instance at the following address:

Securus Insurance Limited, Suite 3, Stafford House, Strand Road, Portmarnock, Co. Dublin.

[www.securus.ie](http://www.securus.ie)

Phone +353 1 8464512

Alternatively, if the **insured** wishes to contact the **insurer** directly the **insured** should write to the following address:

QBE Europe SA/NV write to Customer Relations, QBE Europe SA/NV, Regentlaan 37 Boulevard du Régent, 1000 Brussels, Belgium,

e-mail: [complaints@be.qbe.com](mailto:complaints@be.qbe.com),

Telephone: +32 2 504 82 11

quoting the policy or claim reference applicable.

If, after making a complaint, the **insured** feels that the matter has not been resolved to its satisfaction, then if the **insured** is an eligible complainant, the **insured** may contact:

The Financial Services and Pensions Ombudsman, 3rd Floor, Lincoln House, Lincoln Place, Dublin 2, Tel: 01 5677000 Website <https://fspo.ie>

\_or

Making a complaint to the Financial Services and Pensions Ombudsman does not affect your rights under this policy, but if you are not an eligible complainant then the informal complaint process ceases.

A summary of the **insurer's** complaint handling procedure is available on request and will also be provided to the **insured** when acknowledging a complaint.

### 2.2 About the Financial Services and Pensions Ombudsman' (FSPO)

You can submit a complaint to the FSPO if you are a consumer, which means:

1. a private individual - eg a personal policy holder/account holder

or, subject to certain turnover limitations:

2. a limited company
3. a Sole Trader
4. a Trust
5. a Club
6. a Charity
7. a Partnership

and you are:

- a customer of the financial service provider,
- a person to whom the provider has offered the service, or
- a person who has sought a financial service from the provider

You can also make a complaint if you are:

- a surviving dependant of a consumer
- a legal personal representative of a deceased consumer
- a widow, widower or surviving spouse or civil partner of a deceased consumer
- any person who is contractually entitled to benefit from a long-term financial service
- an employee or a former employee entitled to benefit from an income continuance plan
- a consumer who was, in relation to a credit agreement, a customer of the financial service provider in a case where a credit servicing firm undertakes credit servicing in respect of the credit agreement concerned

### 3. Insured section - Employers' liability

#### 3.1 Employers' liability cover

The **insurer** agrees to indemnify the **insured** for all sums that the **insured** will become legally liable to pay as damages, including claimant costs recoverable from the **insured**, arising out of **bodily injury** caused during the **period of insurance** and sustained by an **employee** in the course of employment by the **insured** in the **business**.

#### 3.2 Additional employers' liability costs and expenses

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

#### 3.3 Employers' liability extensions

##### 3.3.1 Cross liabilities

For each legal entity comprising the **insured**, the **insurer** will separately indemnify each party under this 'Insured section – Employers liability' if a separate **policy** had been issued to each provided that in respect of claims made or **suits** brought against any of them by any other person the **insurer's** total liability to all parties, will not exceed the **limit of indemnity**.

##### 3.3.2 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 insurance had the claim or **suit** been made against the **insured**;
- b) **other insured party** is not indemnified under any other insurance or in any other way;
- c) **insurer** has the sole conduct and control of any claim;
- d) **other insured party** agrees it will be bound by this **policy** (other than in respect of premium) as if it were the **insured**.

##### 3.3.3 Principals

The **insurer** will indemnify any principal of the **insured**, where requested by the **insured**, but 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) the principal 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; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity**;
- c) the principal is not indemnified under any other insurance or in any other way.

#### 3.4 Employers' liability limitations and exclusions

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

##### 3.4.1 Asbestos

liability arising from or caused by 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;

#### 3.5 Coronavirus, epidemic and/or pandemic

Regardless of any provision to the contrary, the **policy** excludes any **damage** or loss or interruption or interference directly or indirectly caused by or resulting from, arising out of or in connection with or attributable to:

- a) any Coronavirus including but not limited to; i) COVID-19; ii) Severe Acute Respiratory Syndrome (SARS); or iii) MERS-CoV;
- b) any epidemic or pandemic which poses a threat to human health whether officially declared an epidemic or pandemic or not; or

c) any mutation, variation, fear or threat of a) or b) above,  
or similar or equivalent in the future.

#### **3.5.1 Deliberate actions by employees**

**bodily injury** and any associated **costs and expenses**, either expected or intended by the **employee** other than the use of reasonable force to protect persons or property, but this exclusion does not apply to liability incurred as a direct or indirect result of such **employees** actions by any **insured** or **other insured party**, provided such party was unaware of or unable to prevent the **employee's** intentions and did not condone such action.

#### **3.5.2 Electronic data**

Liability:

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

but this exclusion shall not apply in respect of liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded;

#### **3.5.3 Employment practices dispute**

liability which arises out of:

- a) a dispute between an employer / prospective employer and **employee** / prospective **employee** referred or capable of being referred to a Rights Commissioner or the

Employment Appeals Tribunal including such appeal courts or tribunals;

- b) a settlement or adjudication of or under the auspices of a Rights Commissioner or the Employment Appeals Tribunal;

and which is or is capable of being insured under a generally available Employment Practices Liability Insurance Policy;

#### **3.5.4 Excess**

the excess stated in the **schedule**;

#### **3.5.5 Fines and penalties**

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

#### **3.5.6 Limit of indemnity**

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

#### **3.5.7 North American jurisdiction**

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

#### **3.5.8 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**;

#### **3.5.9 Vehicles**

liability for which insurance is required by any road traffic legislation or any alteration to such regulations or any similar legislation applying in any 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;

#### **3.5.10 Pyrites**

any liability directly or indirectly caused by or alleged to be caused by or contributed to in whole or in part by pyrite, bravoite, cattierite or vaesite.

#### **3.5.11 War and terrorism**

liability which arises directly or indirectly out of or caused by **war** or **terrorism**;

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

liability for any claims arising out of **bodily injury** that are payable by reason of any

workman's compensation scheme, social security scheme or similar insurance scheme arising in connection with, from or due to employment.

**3.5.13 In connection with the Business of Property Owner**

liability caused by or arising from the development of any land by or on behalf of the Insured, or liability caused by or arising from the demolition, addition, extension, refurbishment or structural alteration of any property owned or managed by the Insured.

## 4 Insured section - Property owners liability

### 4.1 Property owners liability cover

The **insurer** agrees to indemnify the **insured** by the terms of this 'Insured section - Property owners liability' against legal liability to pay damages, including claimant costs recoverable from the **insured**, as a result of:

4.1.1 **bodily injury, damage or denial of access** that happens during the **period of insurance** and arises out of and in connection with the **business**;

4.1.2 **bodily injury, damage or denial of access**, arising out of or from **pollution** occurring during the course of **business** provided that the **pollution** 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**.

### 4.2 Additional Property owners liability costs and expenses

In addition, following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses**, which are payable in addition to the **limit of indemnity**, incurred in respect to any insured event under this **insured section**.

### 4.3 Property owners liability extensions

#### 4.3.1 Cross liabilities

For each legal entity comprising the **insured**, the **insurer** will separately indemnify each party under this 'Insured section - Property owners liability' if a separate **policy** had been issued to each but in respect of claims made or **suits** brought against any of them but the **insurer's** total liability to all parties, will not exceed the **limit of indemnity**. 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 (the **insured**).

#### 4.3.2 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 insurance had the claim or **suit** been made against the **insured**;
- b) **other insured party** is not indemnified under any other insurance or in any other way;
- c) **insurer** has the sole conduct and control of any claim;
- d) **other insured party** agrees it will be bound by this **policy** (other than in respect of premium) as if it were the **insured**.

#### 4.3.3 Principals

The **insurer** will indemnify any principal of the **insured**, where requested by the **insured**, but 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) the principal 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; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity**; and
- c) the principal is not indemnified under any other insurance or in any other way.

#### **4.4 Property owners liability limitations and exclusions**

This **insured section** – ‘Property owners’ liability’ excludes and does not cover:

##### **4.4.1 Advertising injury**

any loss or liability arising from **advertising injury**;

##### **4.4.2 Advice, design or plans provided for a fee**

any loss 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;

##### **4.4.3 Aircraft products**

any loss or liability arising out of 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;

##### **4.4.4 Aircraft and watercraft**

any loss or liability arising out of or from the ownership, possession or use of any aircraft, or other aerial device or satellite, or any watercraft other than:

- a) motor barges not exceeding seventy five (75) ton capacity on inland waterways;
- b) hand-propelled craft, sailing vessels and motor launches not exceeding fifteen (15) metres in length and only when operated in inland waterways;
- c) watercraft not belonging to or chartered by the **insured** but used by them for business entertainment provided that:
  - i) such watercraft is primarily owned and operated as a river cruise vessel;
  - ii) such watercraft is insured by the owner or charterer under a policy of marine insurance;
  - iii) the **insurer** will not indemnify the **insured** in respect of liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement;

##### **4.4.5 Asbestos**

liability arising from or caused by 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;

#### **4.5 Coronavirus, epidemic and/or pandemic**

Regardless of any provision to the contrary, the **policy** excludes any **damage** or loss or interruption or interference directly or indirectly caused by or resulting from, arising out of or in connection with or attributable to:

- a) any Coronavirus including but not limited to; i) COVID-19;  
ii) Severe Acute Respiratory Syndrome (SARS); or  
iii) MERS-CoV;
- b) any epidemic or pandemic which poses a threat to human health whether officially declared an epidemic  
or pandemic or not; or
- c) any mutation, variation, fear or threat of a) or b) above,  
or similar or equivalent in the future.

##### **4.5.1 Costs and expenses arising from a deliberate act**

**costs and expenses** 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;

##### **4.5.2 Costs of recall or guarantee**

expenditure, whether incurred by the **insured** or others, for the withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement, reinstatement of any **product** or part thereof and/or from financial loss consequent upon the necessity for such withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement;

##### **4.5.3 Damages arising from a deliberate act**

**bodily injury, damage or denial of access**, and any associated **costs and expenses**, either expected or intended by the **insured** or **other insured party** but this exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property;

#### 4.5.4 **Electronic data**

Liability:

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

but this exclusion shall not apply in respect of liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded;

#### 4.5.5 **Employment practices dispute**

liability which arises out of:

- a) a dispute between an employer / prospective employer and **employee** / prospective **employee** referred or capable of being referred to an Employment Tribunal including such appeal courts or tribunals as are available from an Employment Tribunal; or
- b) a settlement or adjudication of or under the auspices of an Employment Tribunal or ACAS;

and liability by clause a) or b) above which is capable of being insured under a generally available Employment Practices Liability Insurance Policy;

#### 4.5.6 **Excess**

the amount of the **excess** as applicable and stated in the **schedule**;

#### 4.5.7 **Financial loss**

liability for pure financial loss that is not consequent upon **bodily injury** or **damage**;

#### 4.5.8 **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;

#### 4.5.9 **Intentional disregard of reasonable precautions**

any insured event or loss arising or arising out of or continuing from the **insured's** deliberate, conscious or intentional disregard of the need to take all reasonable precautions to prevent an insured event or loss arising or continuing;

#### 4.5.10 **Legionella**

**bodily injury, damage or denial of access** arising out of, alleging or attributable to the existence of **legionella**;

#### 4.5.11 **Liability from employment**

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

#### 4.5.12 **Limit of indemnity**

liability in excess of the **limit of indemnity** stated in the **schedule** except for payment of **costs and expenses** as provided for by clause 4.2

#### 4.5.13 **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;

#### 4.5.14 **North America risks**

- a) loss or liability arising from **bodily injury, damage** occurring or **denial of access** within **North America**;
- b) liability arising out of or from or brought about by or contributed to by **pollution** within **North America**;

**4.5.15 North American jurisdiction**

liabilities in respect of any judgment, award, payment, **costs and expenses** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **costs and expenses** or settlement either in whole or in part);

**4.5.16 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 c) above, attributable to **nuclear hazards**.

**4.5.17 Overseas domiciled operations**

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

**4.5.18 Owned or previously owned premises**

loss or liability for **damage** or **denial of access** caused by or arising from **pollution** 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;

**4.5.19 Ownership or use of mechanically propelled vehicles**

liability for which insurance is required by any road traffic legislation or any alteration to such regulations or any similar legislation applying in any 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;

**4.5.20 Personal injury**

loss or liability arising from **personal injury**;

**4.5.21 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;

**4.5.22 The product itself**

liability for **damage** to the **insured's product** or any part thereof arising from a defect or unsuitability thereof and pure financial loss arising therefrom;

**4.5.23 War or terrorism**

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

**4.5.24 Work away**

loss or liability for **bodily injury** or **damage** arising from **work away**.

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

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.

### 5.1 Claim notification – Insured sections Employers liability and Property owners liability

5.1.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurer**:

- a) immediately on or not later than forty eight (48) hours from, receipt of notice of any impending inquest, fatal **accident** inquiry, prosecution or other legal proceedings that includes alleged **bodily injury**;
- b) as soon as practical but in any event within seventy two (72) hours from coming in possession of actual knowledge that notice of an Industrial Tribunal hearing includes alleged **bodily injury** or **personal injury**;
- c) immediately on, or not later than seventy two (72) hours from, the **insured's** actual knowledge of any death or **bodily injury** to any **employee** involving a stay in hospital in excess of three (3) days;
- d) as soon as practical but in any event within thirty days (30) days after any other accident, event or the coming in possession of actual knowledge of **bodily injury**, **personal injury** or **damage**, with full particulars thereof;

which may be the subject of indemnity under this **policy**.

5.1.2 Notice to the **insurer** must be given to the claims notification addresses specified below:

30 Fenchurch Street, London, EC3M3BD

Tel: + 44 (0) 20 7105 4000

Fax: + 44 (0) 20 7105 4019

### 5.2 Insured's duties

5.2.1 For each and every claim **insured** and any person acting on behalf of the **insured** must:

- a) not admit responsibility, liability, make an offer or promise, nor offer payment or indemnity without the written consent of the **insurer**;
- b) not incur any expense without the consent of the **insurer** except at the **insured's** own cost;
- c) always act honestly, there being no rights to any form of payment or indemnity under the **policy** in the event that any claim is made fraudulently;
- 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**;

### 5.3 Claim Procedure

Unless stated otherwise all claims will be handled and overseen by the **insurer**. For each and every claim the **insured** and any person acting on behalf of the **insured** must:

5.3.1 For **Insured sections - Employers liability and Property owners liability**,

- a) immediately send the **insurer** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an insured event as soon as received by the **insured**. In addition 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;
- b) 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**;

5.3.2 prove, if it is alleged that an event is not covered or that the indemnity is otherwise

limited being **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.

#### **5.4 Insurer's rights**

5.4.1 The **insurer** will be under no obligation to investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims and will be at liberty in all cases to leave the conduct of such proceedings wholly to the **insured** upon such conditions as regards the payment of costs and with such liberty to bind the **insurer** by compromise as the **insurer** may in its absolute discretion determine.

5.4.2 The **insurer** may at any time pay the **limit of indemnity** 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 **costs and expenses** incurred prior to the date of payment.

#### **5.5 Disputed defence or appeal**

If any dispute arises between the **insured** and the **insurer** as to whether a claim should be defended or judgement appealed such dispute will be referred to an arbitrator appointed jointly by the **insurer** and the **insured** in agreement or failing agreement, appointed by the President for the time being of the Incorporated Law Society of Ireland, whose decision will be final. In the event of conflict between any **other insured party** separate representation will be arranged for each party.

#### **5.6 Subrogation**

5.6.1 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.

5.6.2 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**.

5.6.3 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.

5.6.4 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.

5.6.5 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.

## 6 General terms and conditions

### 6.1 Applicable law

Under European law the **insured** and **insurer** may choose which law will apply to this contract. Irish law and jurisdiction will apply unless both parties agree otherwise.

### 6.2 Assignment

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

### 6.3 Cancellation and Cooling Off Period

#### Your Right to Cancel during the Cooling-Off Period

**You** are entitled to cancel this **policy** by notifying **us** in writing within fourteen (14) days of either:

- (i) the date **you** receive this **policy**; or
- (ii) the start of **your period of insurance**;

whichever is the later.

A full refund of any premium paid will be made unless **you** have made a claim in which case the full annual premium is due.

#### (a) Your Right to Cancel after the Cooling-Off Period

**You** are entitled to cancel this **policy** after the cooling-off period by notifying **us** in writing. Any return of premium due to **you** will be calculated at a proportional daily rate depending on how long the **policy** has been in force unless **you** have made a claim in which case the full annual premium is due.

#### (b) Our Right to Cancel

**We** are entitled to cancel this **policy**, if there is a valid reason to do so (including, but not limited to, any failure by **you** to pay the premium), by giving **you** fourteen (14) days' notice in writing. Any return of premium due to **you** will be calculated at a proportional daily rate depending on how long the **policy** has been in force unless **you** have made a claim in which case the full annual premium is due.

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

### 6.4 Contract rights of third parties

This insurance does not confer or create any right 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.

### 6.5 Contribution

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

### 6.6 Document management

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.

### 6.7 Dispute resolution

- 6.7.1 All matters in dispute between the **insured**, **other insured parties** and the **insurer** arising out of or in connection with 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 Irish Commercial Mediation Association ('ICMA') for the appointment of a mediator. The parties shall share equally the costs of ICMA and of the

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

6.7.2 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 be determined by a sole arbitrator to be appointed in default of agreement between the parties by the President for the time being of the Incorporated Law Society of Ireland whose determination will be made as an arbitrator and be binding upon the parties.

6.7.3 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.

6.7.4 If any such dispute is not resolved by arbitration or the parties cannot agree upon the appointment of an arbitrator the dispute will be referred by either party to be determined and be subject to the exclusive jurisdiction of the High Court of Ireland.

## 6.8 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.

## 6.9 Insurance Act 1936 and Finance Act, 1990

All monies which become or may become due or payable by the **insurer** under this **policy** shall in accordance with Section 93 of the Insurance Act 1936 be payable and paid in the Republic of Ireland. Further, the appropriate stamp duty has been or will be paid in accordance with the provisions of Section 113 of the Finance Act, 1990.

## 6.10 Material alteration

This insurance will be voidable if after the commencement of this insurance the risk of **damage, bodily injury, personal injury** nuisance or **denial of access** or liability is increased by any act or omission of the **insured** unless such change of circumstances has been expressly acknowledged and accepted in writing or by electronic medium for and on behalf of the **insurer**.

## 6.11 Material inaccuracy

6.11.1 The information provided by or on behalf of the **insured** in connection with this insurance (whether at inception or otherwise) shall be materially accurate and not omit material information which is known by the **insured's** board members or equivalent and/or the **insured's** risk manager or ought to have been known by them following their reasonable enquiry.

6.11.2 Breach by fraud or dishonesty

If the **insured** or anyone acting on its behalf breaches this condition (whether at inception or otherwise) by fraud or dishonest act or omission, the **insurer** may:

- a) avoid this **policy** from inception; or
- b) impose such terms, conditions and/or additional premium as the **insurer** may in its sole discretion determine; and

any benefit which the **insured** has received under this **policy** which resulted from any such fraud or dishonest act or omission shall immediately be repaid to the **insurer**.

6.11.3 Breach by non-disclosure, misrepresentation (other than fraudulent or dishonest)

If the **insured** or anyone acting on its behalf breaches this condition (other than by fraudulent or dishonest means), the **insurer** may:

- a) impose such terms and conditions (effective at inception or otherwise) as the **insurer** would have imposed in the absence of such breach; and/or
- b) charge such additional premium (effective at inception or otherwise) as the **insurer** would have required in the absence of the breach; and
- c) apply such applicable additional premium, amended terms and conditions or both to any notified **claim** or potential **claim**; and

the **insurer** will promptly give the **insured** written notice of any applicable additional premium, amended terms and conditions or both.

- 6.11.4 Within fourteen (14) days of receipt of such notice, the **insured** will give the **insurer** written confirmation of:
- a) acceptance of and a promise to pay the applicable additional premium in accordance with the terms of trade applying to this insurance; or
  - b) the **insured's** acceptance of the amended terms and conditions; or
  - c) both as applicable.
- 6.11.5 If the **insurer** can show to the **insured's** reasonable satisfaction that the **insurer** would have declined to enter into this insurance at inception or to accept the proposed amendment to this insurance during the **period of insurance** on any terms, the **insurer** may avoid this **policy** from inception and, if no claims have been paid or accepted under this **policy**, the **insurer** shall promptly return to the **insured** all premiums received by the **insurer** at the date of breach; and, if the **insurer** has paid claim monies under this **policy**, the **insured** shall promptly repay all such claim monies to the **insurer**.
- ## 6.12 Minimisation of risk
- 6.12.1 The **insured** will take all reasonable steps at its own expense to prevent an insured event:
- a) arising; or
  - b) continuing.
- 6.12.2 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**.
- ## 6.13 Observance
- 6.13.1 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**, or are already 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.
- 6.13.2 Further where an indemnity is provided to another **insured 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 providing always that the **other insured party** complies with the terms of Section 5 (Duties in the event of a claim or potential claim).
- 6.13.3 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.
- 6.13.4 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**.
- ## 6.14 Privacy and the Data Protection
- 6.14.1 All personal information (including sensitive personal data such as health details or criminal convictions) provided in connection with this **policy** will be processed in accordance with the Data Protection Act, 2018. The **insured** consents to all personal information so provided being used for the purposes and being disclosed to the parties set out below.
- 6.14.2 Where personal information is provided about another person, the **insured** is required to inform that person of the **insurers'** identity, and why their personal information will be processed and disclosed. The **insured** is also required to obtain their written consent to the processing of their personal information in this way and provide, on request, such consent to the **insurer**.
- 6.14.3 Personal information is used:
- a) to administer the **policy**, including underwriting, renewal information, validation of claims history and claims handling;
  - b) for research, analysis, statistic creation, and customer profiling;

- c) for fraud prevention and debt recovery.
- 6.14.4 Personal information may be disclosed to:
  - a) other members of the QBE Insurance Group;
  - b) other insurance entities interested in the risk written under this **policy**;
  - c) agents and service providers appointed by the **insurer** to carry out activities in connection with the **policy**;
  - d) credit reference and fraud databases;
  - e) law enforcement and other statutory bodies;
  - f) potential purchasers of the whole or part of the our business.
- 6.14.5 If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the fraud databases.
- 6.14.6 Personal information may be transferred to third parties in countries outside the European Economic Area which may not have the same standards of protection for personal information as the United Kingdom or the Republic of Ireland. The **insurer** will ensure that such transfers comply with the data protection law and the personal information is kept securely and protected from unauthorised access.
- 6.14.7 The **insurer** maintains protections and procedures in the storage and disclosure of personal information to keep it secure and prevent unauthorised access to or loss of such information.
- 6.14.8 The **insurer** may monitor and record all communications with you for compliance and training purposes.
- 6.14.9 Should the **insured** wish to see the information held, have any queries in relation to the way such information is used or discover any inaccuracies, the **insured** should write to the Data Protection Officer at QBE European Operations, 30 Fenchurch Street, London EC3M 3BD.

## 6.15 Representation

The **insured** will act on behalf of all **other insured parties** 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 **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to any **other insured party**.

## 6.16 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.

## 6.17 Subscribing insurer

The **insurers'** 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.

## 7 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 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**.

### 7.1 Accident

Accident will mean a single and unexpected event, which occurs at an identifiable time and place.

### 7.2 Advertising injury

Advertising injury means:

- 7.2.1 oral, broadcast, telecast or written publication of material that slanders or libels a person or disparages a person's goods or services;
- 7.2.2 oral, broadcast, telecast or written publication of material that violates an individual's right of privacy;
- 7.2.3 misappropriation of advertising ideas or style of doing business;
- 7.2.4 infringement of copyrighted advertising materials, titles or slogans; in the course of advertising the **insured's** goods or services.

### 7.3 Bodily injury

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

### 7.4 Buildings

Buildings means the fixed permanent structures at the **premises** including

- a) landlord's fixtures and fittings therein and thereon;
- b) outbuildings, annexes, extensions, canopies, conveniences;
- c) foundations;
- d) walls, gates and fences and the adjoining gangways, yards, roadways or pavements constructed of concrete or asphalt around and pertaining thereto drains, sewers and gutters;
- e) security lighting, security cameras and other security or fire protection devices, affixed signs, television, radio, satellite receiving aerials, communication aerials, their fittings and masts affixed to the buildings walls gates fences fixed poles or fixed pylons at the **premises**;
- f) pedestrian malls, associated lampposts and street furniture where the responsibility of the **insured**;
- g) telephone, gas, water and electricity meters, piping, ducting, trunking, cables, wires and associated control gear, instruments and accessories and the like, including such property for which the **insured** are responsible but which is in or under adjoining yards or roadways extending to the public mains and which partly or wholly serves to supply the **premises**;
- h) underground storage tanks;
- i) tenants' improvements where the responsibility of the **insured** and property comprising fixtures and fittings (but excluding moveable contents) formerly the property of tenants but relinquished to the **insured** at the time of the surrender of the lease;
- j) **machinery and plant**;

but excluding property more specifically insured.

### 7.5 Business

The ownership by the **insured** of land and **buildings** at the **premises**.

### 7.6 Claim payment

Claim payment will mean the amount the **insurer** agrees to pay to the **insured** for any one claim.

### 7.7 Combined single limit

Combined single limit means the maximum the **insurer** will pay by this **policy** in the event that two or more insuring clauses, to which the combined single limit applies, provide coverage for an insured event.

### 7.8 Costs and expenses

Costs and expenses means

- 7.8.1 costs and expenses (other than claimant costs recoverable from the **insured** or any **other insured party**)

incurred in the investigation, adjustment, appraisal, defence or settlement of an insured event, including expert, legal, appeal and defence costs;

7.8.2 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 earned after the date of such offer;

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

7.8.4 costs and expenses 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**.

## 7.9 Damage

Damage means:

a) loss of use of tangible property that has been lost, destroyed or damaged.

## 7.10 Denial of access

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

## 7.11 Employee

Employee means any person whilst:

7.11.1 engaged under a contract of service or apprenticeship with the **insured**;

7.11.2 acting in the capacity of non executive director of the **insured**;

7.11.3 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) employee(s) elected on any industry users committee;

j) outworkers or homeworkers employed under contracts to personally execute any work in connection with business while they are engaged in that work;

k) prospective employees who are being assessed by the **insured** as to their suitability for employment;

l) any person a Court of Law in the Republic of Ireland deems to be an employee;

provided that the **insured** can always request that any such person is not treated as an employee.

## 7.12 Excess

7.12.1 For insured sections Employers' liability or Property owners liability: the **limit of indemnity** is additional to the excess and excess means

a) the first amount payable by the **insured** in respect of each and every claim or potential claim as ascertained after the application of all other terms and conditions of this insurance or

b) in the case of a claim or potential claim that involves **damage**, and if specified in the **schedule** and applicable, the **excess (damage only)**.

## 7.13 Insured

Insured means:

7.13.1 the company or other organisation 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 (but not excluding any liabilities incurred prior to disposal), and;

7.13.2 the person or people shown as insured in the **schedule**;

7.13.3 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.

## 7.14 Insured section

Insured section means all or any individually lettered sections of this **policy** that forms part of the insurance contract but only if stated as 'insured' in the **schedule**.

## 7.15 Insurer

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

## 7.16 Legionella

Legionella means any discharge release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like.

## 7.17 Limit of indemnity

Limit of indemnity means:

7.17.1 for 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:

- a) **other insured parties**; or
- b) persons or organisations bringing claims or **suits**; or
- c) claims against the **insured** or series of claims against the **insured**, or claims or series of claims made by the **insured**;

7.17.2 for insured section – Property owners liability 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 (1) originating cause regardless of the number of:

- a) **other insured parties**; or
- b) persons or organisations bringing claims or **suits**; or
- c) claims against the **insured** or series of claims against the **insured**, or claims or series of claims made by the **insured**;

7.17.3 where two (2) or more insuring clauses 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 insuring clauses apply in combination, and;

7.17.4 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**.

## 7.18 Limit of liability

Limit of liability means the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability for any one event regardless of the number of persons claiming an indemnity.

## 7.19 North America

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

## 7.20 Nuclear hazards

Nuclear hazards means:

7.20.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;

7.20.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;

## 7.21 Other insured party

Other insured party means any of the following parties:

7.21.1 any director, partner, **employee** or a former **employee** of the **insured**;

7.21.2 any officers or trustees of the **insured's** pension scheme(s).

## 7.22 Period of insurance

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

## 7.23 Personal injury

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

- 7.23.1 false arrest;
- 7.23.2 detention or imprisonment;
- 7.23.3 malicious prosecution;
- 7.23.4 wrongful entry into, or eviction of a person from a room, dwelling or premises that the person occupies;
- 7.23.5 invasion of the right of privacy;
- 7.23.6 libel, slander or defamation.

## 7.24 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.

## 7.25 Pollutant

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed. Legionella bacteria are deemed not to be pollutants for the purpose of this insurance.

## 7.26 Pollution

Pollution means:

- ii. the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;
- iii. any cost, expense, claim or **suit** arising out of any request, demand or order as a result of 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**.

## 7.27 Premises

For insured sections Employers' liability or Property owners liability; 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**.

## 7.28 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.

## 7.29 Schedule

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this standard **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.

## 7.30 Suit

Suit means a civil proceeding in which damages to which this insurance applies are alleged, including

- 7.30.1 an arbitration proceeding in which such damages are claimed and to which an **other insured party** must submit or does submit with the **insurer's** consent; or
- 7.30.2 any other alternative dispute resolution proceeding in which such damages are claimed and to which an **other insured party** submits with the **insurer's** consent.

## 7.31 Territorial limits

Territorial limits means the Republic of Ireland.

## 7.32 War

For **insured sections** 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, nationalisation, requisition, sequestration or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

For insured sections Employers' liability or Property owners liability 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**.



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