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## HEALTHCARE FACILITY PUBLIC LIABILITY AND MEDICAL MALPRACTICE CLAIMS MADE POLICY

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## INTRODUCTION

### HEALTHCARE FACILITY PUBLIC LIABILITY AND MEDICAL MALPRACTICE CLAIMS MADE POLICY

THIS IS A "CLAIMS-MADE" POLICY PROVIDING COVER ONLY FOR CLAIMS WHICH ARISE FROM INCIDENTS OCCURRING SUBSEQUENT TO THE RETROACTIVE DATE STATED IN THE SCHEDULE AND WHICH ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY WHILE THE POLICY IS IN FORCE.

THE POLICY INCLUDES IMPORTANT EXCLUSIONS AND CONDITIONS. THE COMPANY ENCOURAGES THE INSURED TO READ IT CAREFULLY AND TO CONTACT THE BROKER OR THE COMPANY IF ANY CLARIFICATION IS NEEDED.

In consideration of the Insured having paid or agreed to pay the premium,

Allianz Ireland plc., (hereinafter called the Company) will indemnify the Insured in the manner and to the extent described within this Policy on the terms set out and subjects to its Definitions, Extensions, Exclusions, Conditions and any Endorsements.

The proposal and declaration in respect of this insurance made to the Company by or on behalf of the Insured whether in writing or otherwise shall be the basis of this contract.

This Policy comprising the Introduction, Schedule, Definitions, Insuring Clause, Extensions, Exclusions, Conditions and any Endorsements shall be read as one contract and any word or expression to which a specific meaning has been attached therein shall bear such specific meaning wherever it may appear.

Signed on behalf of the Company

Authorised Signatory

## SCHEDULE

## **DEFINITIONS**

1. **Insured** means any person(s), company, firm or other legal entity named as the Insured in the Schedule.
  
2. **Business** means the Insured's business as described in the Schedule and includes
  - (a) the ownership repair, maintenance and decoration of premises occupied by the Insured and used for the purposes of the Business but not construction, reconstruction, structural alteration or demolition of such premises
  - (b) the repair and maintenance of vehicles or plant used in the course of the Business and owned by the Insured
  - (c) the provision and management of canteen, social, sports, health and welfare safety and education organisations or services for the benefit of Employees and their families
  - (d) the provision in the course of the Business of first aid, medical and dental services and the provision of ambulance, fire and security services and safety organisations
  - (e) private work undertaken with the prior consent of the Insured by an Employee for the Insured or any director, trustee, board member or senior official of the Insured provided such work is not in pursuit of any trade or business
  - (f) fundraising events or activities organised by the Insured but excluding waterborne and airborne activities, carnivals, equestrian events, music concerts or any events requiring crowd control measures.
  
3. **Bodily Injury** means bodily injury and includes death, disease and illness.
  
4. **Period of Insurance** means the period specified in the Schedule.
  
5. **Territorial Limits** means
  - (a) Republic of Ireland, Northern Ireland, Great Britain, Isle of Man and the Channel Islands
  - (b) anywhere in the World in respect of visits not involving manual work by directors board members Employees or other persons representing the Insured normally resident within and travelling from the countries specified in sub-paragraph (a) above.

## DEFINITIONS Continued

6. **Employee** means any
- (a) person under a contract of service or apprenticeship with the Insured
  - (b) person engaged under any training, educational or work experience programme
  - (c) labour master or labour only sub-contractor or any person employed or supplied by them
  - (d) self-employed person
  - (e) person hired to or borrowed by the Insured
  - (f) voluntary worker approved and/or authorised by the Insured in advance of carrying out any work for the Insured.
- whilst working for the Insured in the course of the Business.
7. **Product** means any commodity article thing or any part thereof (including containers labelling and packaging provided in connection therewith) manufactured constructed erected installed altered repaired serviced processed treated sold leased supplied or distributed by or on behalf of the Insured in the course of the Business and not in the custody or control of the Insured
8. **Medical Practitioner** means medical doctors, consultants, dentists, radiologists and all other qualified medical personnel but excludes nursing staff and personnel listed as Health & Social Care Professionals Grades in the consolidated Salary Scales of the Department of Health and Children.
9. **Pollution or Contamination** means
- (a) all pollution or contamination of buildings or other structures or of water or land or the atmosphere
  - (b) all Bodily Injury Nuisance or loss of or damage to material property directly or indirectly caused by such pollution or contamination.
10. **Nuisance** means nuisance, trespass or interference with any easement right of air, light, water or way.

## **INSURING CLAUSE**

The Company will pay, subject to the Limit of Indemnity specified in the Schedule

1. all sums for which the Insured shall become legally liable as a result of
  - (a) Bodily Injury to any person
  - (b) Nuisance
  - (c) loss of or damage to material property
2. all costs and expenses of litigation incurred by any claimant and for which the Insured shall become legally liable in respect of any claim to which the indemnity afforded by this Policy applies
3. all costs and expenses incurred by the Insured with the written consent of the Company in respect of any claim to which the indemnity afforded by this Policy applies

in respect of a claim or claims first made against the Insured and notified to the Company during the Period of Insurance or during any extended reporting period as provided for, arising from an event or circumstance occurring in the course of the Insured's Business within the Territorial Limits on or after the Retroactive Date stated in the Schedule.

### **Provided always that**

1. Where the liability of the Insured arises out of any error, omission or negligence in rendering or failure to render professional services, advice or treatment or in the sale, supply or administration of Products, the maximum sum payable by the Company in respect of the Period of Insurance shall, regardless of the number of claims made, not exceed the Limit of Indemnity specified in the Schedule.
2. All claims arising from an event or circumstance or all events or circumstances of a series, consequent or attributable to one source or original source, shall be deemed to be one claim and be considered first made during the Period of Insurance in which the earliest of such claims was first made and the Limit of Indemnity in effect at that time shall prevail.
3. Where the first event or circumstance in a series of events or circumstances, consequent or attributable to one source or original source, occurred prior to the Retroactive Date stated in the Schedule, then irrespective of their actual date of occurrence, all subsequent events or circumstances in such series, shall be deemed to have also occurred prior to the Retroactive Date stated in the Schedule, notwithstanding that a claim in respect of any such event or circumstance is first made during the Period of Insurance.
4. Any claim arising as a consequence of any event or circumstance which has been notified to the Company in compliance with Condition 5, shall be deemed to have been first made on the date on which the event or circumstance was so notified to the Company.
5. Regardless of the number of succeeding policies of a like nature issued by the Company, the liability of the Company shall not be cumulative in amounts from one Period of Insurance to another Period of Insurance.
6. Cover shall only apply to claims first made and notified by the Insured in accordance with the terms of Condition 5 during the Period of Insurance or within 30 days thereafter in the event of the cancellation of this Policy or its expiry not immediately followed by the issue of a further Policy by the Company.

**INSURING CLAUSE**  
**Continued**

7. The Company will not be liable for any claim or claims arising from any event or circumstance of which the Insured had actual knowledge prior to the inception of this Policy or for any claim or claims notified to a previous insurer or which should have been notified under the terms and conditions of a policy issued by a previous insurer.

## EXTENSIONS

The Policy Extensions listed below shall not, either alone or in the aggregate increase the total liability of the Company beyond the Limit of Indemnity specified in the Schedule.

### 1. Indemnity to Other Persons

The Company will at the request of the Insured, indemnify any

- (a) director, board member, trustee, administrator or any Employee of the Insured in respect of legal liability for which the Insured would have been entitled to indemnity under this Policy if the claim had been made against the Insured
- (b) officer or member of the Insured's canteen, social, sports or welfare organisations, first aid or fire services in respect of legal liability for which the Insured would have been entitled to indemnity under this Policy if the claim had been made against the Insured
- (c) fundraising or voluntary group, committee or corporate body acting on behalf and under control of the Insured in respect of legal liability for which the Insured would have been entitled to indemnity under this Policy if the claim had been made against the Insured

arising after such request, for any claims first made against the such person or persons and notified to the Company during the Period of Insurance or during any extended reporting period as provided for, arising from an event or circumstance occurring in the course of the Insured's Business within the Territorial Limits on or after the Retroactive Date stated in the Schedule.

#### Provided always that

- (a) such person or persons are not entitled to indemnity under any other policy and shall as though they were the Insured, observe, fulfil and be subject to the Definitions, Exclusions, Conditions and other provisions of this Policy.
- (b) the Company shall not be liable to indemnify any Medical Practitioner for any act, error, omission or negligence in rendering or failure to render professional services, advice or treatment.

### 2. Damage to Material Property

Notwithstanding Exclusion 5 the Company will, subject to the Sub-Limit of Indemnity specified in the Schedule, indemnify the Insured for claims arising from loss of or damage to

- (a) the property of any Employee, visitor or patient held in trust by or in the custody or control of the Insured.
- (b) buildings (together with the contents thereof) temporarily occupied by or on behalf of the Insured for the purposes of carrying out work in the course of the Business.
- (c) buildings (including their fixtures and fittings) leased or rented by the Insured but excluding liability assumed under terms of any tenancy agreement which would not have attached in the absence of such agreement.

### 3. Court Attendance Costs

In the event that any Employee of the Insured attends court as a witness at the request of the Company in connection with a claim the Company will pay compensation to the Insured at the rate per day subject to the Sub-Limit of Indemnity specified in the Schedule.

## **EXTENSIONS Continued**

### **4. Indemnity to Principal**

#### **Definition**

**Principal** means any person, company, firm, public, local or statutory authority

- (a) for whom the Insured is carrying out work under contract or agreement in connection with the Business
- (b) whose premises are occupied or used by the Insured in connection with the Business

#### **Cover**

The Company will at the request of the Insured, indemnify any Principal against legal liability, arising after such request, in respect of a claim or claims first made against the Principal and notified to the Company during the Period of Insurance or during any extended reporting period as provided for, arising from an event or circumstance occurring in the course of the Insured's Business within the Territorial Limits on or after the Retroactive Date stated in the Schedule.

#### **Provided always that**

- (a) the Insured would have been entitled to indemnity under this Policy had the claim been made against the Insured.
- (b) the Principal is not entitled to indemnity under any other policy.
- (c) the Principal shall, as though the Principal were the Insured, observe, fulfil and be subject to the Conditions, Exclusions and other provisions of this Policy.
- (d) the Company shall not be liable to indemnify the Principal in respect of the Principal's negligence or default or the negligence or default of any person or other legal entity in the service of or providing service to or on behalf of the Principal.

### **5. Motor Contingency**

The Company will indemnify the Insured in respect of legal liability of the Insured arising out of the use in the course of the Business of a motor vehicle not the property of, or driven by, or provided by the Insured

#### **Provided always that**

- (a) the Insured shall take all reasonable precautions to ensure that every vehicle is adequately insured by a policy of motor insurance.
- (b) the Company shall not be liable for
  - i. liability of or to the drivers or owners of the vehicle
  - ii. loss of or damage to the vehicle or to property conveyed in or on the vehicle
  - iii. any vehicle owned or driven by a person who to the knowledge of the Insured or his/her representative does not hold a licence to drive and has not motor insurance as required by law.

## **EXTENSIONS**

### **Continued**

- (c) the liability of the Company shall not in the aggregate exceed the Sub-Limit of Indemnity specified in the Schedule during the Period of Insurance.

**NOTE** This extension is not intended to and does not satisfy the requirements of the Road Traffic Act(s).

#### **6. Clinical Trials / Ethics Committee**

At the request of the Insured the definition "Business" includes clinical or drug trials and the definition "Insured" includes any member of the Insured's Ethics Committee.

The Company will indemnify the Insured in respect of liability of the Ethics Committee arising under Section 10 of the Control of Clinical Trials Act 1987, after such request has been made by the Insured.

##### **Provided always that**

- (a) the Company shall not be liable to indemnify any Medical Practitioner for any act, error, omission or negligence in rendering or failure to render professional services, advice or treatment.
- (b) all clinical or drug trials must have been approved, before commencement, by the Ethics Committee.
- (c) all clinical or drug trials must be conducted in accordance with the provisions of the Control of Clinical Trials Acts 1987 or any amending legislation insofar as such legislation applies and subject to strict compliance with the guidelines published by the Department of Health and Children.
- (d) the Company shall only be liable for compensation arising through the fault, error, omission or negligence of the Insured.
- (e) the Insured or any member of the Insured's Ethics Committee is not entitled to indemnity under any other policy and each member of the Insured's Ethics Committee shall, as though he/she were the Insured, observe, fulfil and be subject to the terms, conditions and exclusions of this Policy.

#### **7. Data Protection Act 1988**

The Company will indemnify the Insured in respect of damages, defence costs and expenses and claimants costs and expenses, for which the Insured is legally liable under sections 7, 21 and 22 of the Data Protection Act 1988, resulting from any claim or claims first made against the Insured and notified to the Company during the Period of Insurance or during any extended reporting period as provided for, arising from an event or circumstance occurring in the course of the Insured's Business within the Territorial Limits on or after the Retroactive Date stated in the Schedule.

##### **Provided always that**

- (a) the Insured is registered in accordance with the terms of the Data Protection Act, 1988.
- (b) the liability of the Company shall not exceed the Sub-Limit of Indemnity specified in the Schedule in respect of any one event or circumstance.

## **EXTENSIONS Continued**

- (c) the Company shall not be liable for
  - i. any claim caused by a deliberate act or omission and which could reasonably have been expected having regard to the nature and circumstances of such act or omission
  - ii. any claim resulting from fraud or dishonesty
  - iii. any costs or expenses of rectifying, rewriting or erasing data
  - iv. any fines or penalties
  - v. any claim arising from the recording, processing or provision of data for reward or to determine the financial status of any person.

### **8. Wrongful arrest, Libel, Slander and Patient's Financial loss**

The Company will indemnify the Insured in respect of all sums for which the Insured is legally liable arising out of

- (a) the false arrest, detention or malicious prosecution of any person.
- (b) libel or slander committed in good faith
- (c) financial loss suffered by any patient and/or his/her dependant/s as defined in the Civil Liability (Amendment) Act, 1996 or guardian/s resulting from
  - i. advice given by any Employee
  - ii. breach of confidentiality
  - iii. information illegally acquired from the Insured's records
  - iv. Nuisance or alleged Nuisance

#### **Provided always that**

- (a) the Company shall not be liable to indemnify the perpetrator of any malicious or criminal act or omission.
- (b) the liability of the Company shall not exceed the Sub-Limit of Indemnity specified in the Schedule in respect of any one event or circumstance.
- (c) the Company will not be liable for any Nuisance or alleged Nuisance which continues subsequent to the Insured becoming aware of same.

### **9. Cross Liabilities**

If more than one party is named as the Insured the Company will treat each party as if a separate Policy had been issued to each

Provided that nothing in this Extension will operate to increase the liability of the Company to pay any amount exceeding the Limit of Indemnity regardless of the number of persons claiming to be indemnified.

## EXCLUSIONS

### **This Policy does not cover**

1. indemnity to any person, otherwise indemnified under this Policy, who commits, participates in, condones, instigates or knowingly allows
  - (a) any dishonest, fraudulent, criminal or malicious act or omission
  - (b) any actual or attempted conduct or contact of a sexual nature including but not limited to, conduct or contact involving sexual gratification, discrimination, coercion, harassment or pressure of any kind.
  
2. indemnity to the Insured in respect of liability of the Insured arising out of any act, omission, conduct or contact described in sub paragraphs 2(a)-(b). above committed by any person after
  - (a) the Insured had actual knowledge that, or had reasonable grounds for believing that such person had been involved in any such act, omission, conduct or contact
  - (b) failure by the Insured to fully investigate and/or act upon any allegation that such person had been involved in any such act, omission, conduct or contact.
  
3. indemnity to any Medical Practitioner for any act, error, omission or negligence in rendering or failure to render professional services, advice or treatment.

### **The Company will not indemnify the Insured in respect of any liability**

4. of whatsoever nature directly or indirectly caused by or contributed to by or arising from
  - (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
  - (b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or component thereof.
  
5. arising from loss of or damage to material property belonging to or held in trust by or in the custody or control of the Insured.
  
6. for any act, error, omission or negligence of any Medical Practitioner in rendering or failure to render professional services, advice or treatment where, in respect of such Medical Practitioner, the Insured has not complied with Condition 3 (b).

## **EXCLUSIONS**

### **Continued**

7. caused by or arising from the ownership, possession or use by or on behalf of the Insured of any
  - (a) mechanically propelled vehicle other than
    - i. the use of plant as a tool of trade at the Insured's premises or any site at which the Insured is working in connection with the business
    - ii. the loading or unloading of such vehicle or the delivery or collection of goods to or from such vehicle  

except where indemnity is provided by any other insurance and where compulsory insurance or security for such vehicle is required under Road Traffic Act legislation
  - (b) passenger lift or escalator or any steam pressure vessel that is not the subject of an engineering inspection contract
  - (c) aircraft, hovercraft, helicopter or watercraft other than hand propelled watercraft not exceeding eight metres in length.
  - (d) aircraft runway or helicopter landing area which is the subject of compulsory insurance under the terms of the Air Navigation and Transport Act 1988 or amending legislation.
8. arising from or in respect of
  - (a) Products knowingly obtained on terms which prevent the Insured exercising their rights of recovery against the supplier or any other party
  - (b) Products sold or supplied to or in the U.S.A. or Canada other than by way of retail sale or supply by the Insured in the Republic of Ireland
  - (c) the cost of removing, repairing, recalling, replacing or reinstating any Products sold or supplied by or on behalf of the Insured.
9. arising from Bodily Injury to any Employee in the course of his/her employment by the Insured.
10. assumed by the Insured under any contract, agreement, warranty or guarantee which would not otherwise have attached.
11. arising from claims brought against the Insured in any court of law outside the Territorial Limits or outside any territory covered by the Jurisdiction of Courts and Enforcement of Judgements (European Communities) Act, 1988, including any legal action or litigation to enforce a judgement brought in a court of law from outside these territories whether by way of reciprocal agreement or otherwise
12. arising from any award of punitive, aggravated or exemplary damages whether as fines penalties multiplication of compensatory awards or damages or in any other form whatsoever.

## **EXCLUSIONS**

### **Continued**

13. for Pollution or Contamination unless caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific place and time and notified to the Company during the Period of Insurance

**provided always that**

- (a) all Pollution or Contamination which arises out of such incident shall be deemed to have occurred at the time such incident takes place.
- (b) the liability of the Company for all damages payable in respect of such Pollution or Contamination which is deemed to have occurred during any one Period of Insurance shall not exceed in the aggregate the amount stated in the Schedule as the Limit of Indemnity.

14. caused by or arising from any of the following regardless of any other occurrence contributing concurrently or in any other sequence

- (a) war invasion acts-of-foreign-enemies hostilities or warlike-operations (whether war be declared or not) civil-war rebellion revolution insurrection or military or usurped power or civil commotion assuming the proportions of or amounting to an uprising
- (b) any Act of Terrorism

For the purpose of this Exclusion Act of Terrorism means any act including but not limited to the use of force or violence and/or the threat thereof of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political religious ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear

This Policy additionally excludes any liability directly or indirectly caused by or arising from or in connection with any action taken in controlling preventing or suppressing or in anyway relating to (a) and/or (b) above

If the Company alleges that by reason of this Exclusion any liability is not indemnifiable under this Policy then the burden of proving the contrary shall be upon the Insured

In the event that any portion of this Exclusion is found to be invalid or unenforceable the remainder shall remain in full force and effect

15. caused by or arising from the loss or alteration of or damage to or a reduction in the functionality availability or operation of a computer-system hardware programme software data information-repository microchip integrated-circuit or similar device in computer-equipment or non-computer-equipment that results from the malicious or negligent transfer (electronic or otherwise) of a computer-programme that contains any malicious or damaging code including but not limited to computer-virus worm logic-bomb or trojan-horse

16. directly or indirectly caused by arising from in consequence of or in any way involving asbestos

But this Exclusion shall not apply to Bodily Injury or loss of or damage to material property caused by any commodity article or thing containing asbestos where the presence of asbestos is not in itself a direct or indirect cause of such Bodily Injury or loss of or damage to material property

## CONDITIONS

### 1. Due Observance

The observance and fulfilment of the terms, Conditions and Endorsements of this Policy by the Insured and any person indemnified under this Policy, in so far as they relate to anything to be done or complied with by them shall be conditions precedent to any liability of the Company.

### 2. Alterations in Risk

If at any time anything shall occur or be done materially affecting or varying any aspects of the subject matter of this insurance the Insured shall give immediate notice in writing to the Company.

### 3. Reasonable Precautions

- a) The Insured shall at all times exercise reasonable care that only appropriate and competent Employees are employed and shall take all reasonable precautions to prevent Bodily Injury to any person and/or loss of or damage to material property. The Insured shall maintain accurate descriptive records of all professional services which records shall be available for inspection and use by the Company insofar as they relate to any claim hereunder. The Insured shall observe and comply with all statutory enactments or local authority by-laws, regulations, obligations and requirements.
- b) The Insured shall obtain satisfactory evidence that, independently of this Policy, all Medical Practitioners permitted to practice on or to utilise the Insured's premises and/or facilities, at all times, are members of their appropriate professional body and are indemnified under a contract of insurance, protection or indemnity in respect of any event or circumstance in rendering or failure to render professional services, advice or treatment.
- c) Where appropriate the Insured shall be able to demonstrate adherence to the procedures set out in the National Guidelines for the Protection and Welfare of Children (Children First) first published in 1999 or in any subsequent update(s).

### 4. Other Insurance

If any insurance under this Policy is also the subject (in whole or in part) of any other policy the liability of the Company shall apply in excess of and not as contributory with such other policy.

## **CONDITIONS**

### **Continued**

#### **5. Claims**

- (a) The Insured shall give immediate written notice to the Company of
  - i. any claim made against the Insured or any person indemnified under this Policy
  - ii. the receipt of notice from any person of an intention to hold the Insured or any person indemnified under this Policy responsible for Bodily Injury, loss of or damage to material property
  - iii. any event or circumstance during the Period of Insurance which according to the Insured's reasonable professional view will or will most likely give rise to a claim
- (b) Every claim and/or event or circumstance required to be notified to the Company in accordance with 5 (a)-(c) above must be individually recorded by completing and signing the appropriate Incident Report Form, provided by the Company.
- (c) Every letter, claim, writ, summons, and process shall be forwarded to the Company upon receipt.
- (d) Written notice shall be given to the Company immediately the Insured shall have knowledge of any prosecution or inquest in connection with any event for which there may be indemnity under this Policy.
- (e) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured or any person indemnified under this Policy, without the written consent of the Company.
- (f) The Company shall be entitled to take over and conduct in the name of the Insured or any person indemnified under this Policy, for its own benefit any claim and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.
- (g) The Insured or any person indemnified under this Policy, shall authorise the Company to obtain records or other information and give such assistance as the Company may require.
- (h) The Company may at any time at its sole discretion pay to the Insured or any person indemnified under this Policy, the Limit of Indemnity under this Policy (less any costs and expenses already incurred) in respect of any event or any lesser sums for which the claim or claims arising from such event can be settled and the Company shall not be under any further liability in respect of that event.

#### **6. Risk Management Consultation**

The Insured agrees to allow authorised representatives of the Company to inspect and survey the Insured's facilities, operations and pertinent records for the purpose of risk management consultation. This inspection shall occur at reasonable times, as agreed to by the Insured and the Company.

A risk management consultation does not warrant that the Insured are in compliance with any applicable statutes, rules or regulations or professional standards or that the Insured's operation is free from exposure to a legal proceeding nor that the Insured are in compliance with the terms and conditions of this Policy.

## **CONDITIONS**

### **Continued**

#### **7. Premium Adjustment**

If the Premium for this Policy has been calculated on the basis of an estimate supplied by the Insured of wages salaries and other earnings and/or turnover

- (a) the Insured shall maintain an accurate record of such wages salaries and other earnings and/or turnover and the Company or its representatives may at any time examine such record
- (b) the Insured shall within 90 days of the expiry of each Period of Insurance supply to the Company an auditors' certificate of such wages salaries and other earnings and/or turnover for that Period of Insurance and in this regard time is of the essence

and

- (i) if the amount of such wages salaries and other earnings and/or turnover shall differ from the estimate on which the Premium has been calculated the difference in Premium shall be paid by or allowed to the Insured as the case may be subject to retention of the Minimum Premium stated in the schedule or as advised to the Insured
- (ii) should the Insured fail to supply such auditors' certificate in accordance with this Condition then the Company will not provide any indemnity for any Bodily Injury Nuisance or loss of or damage to material property which might otherwise be the subject of indemnity under this Policy in the Period of Insurance for which the auditors' certificate remains outstanding

#### **8. Non-Disclosure**

This Policy will be voidable if there has been misrepresentation, misdescription or non-disclosure of any material fact.

#### **9. Arbitration**

All differences arising out of this Policy shall be referred to an Arbitrator to be appointed by the parties or failing agreement by the President for the time being of the Incorporated Law Society of Ireland. Where any difference is referred to arbitration the making of an award shall be a condition precedent to any right of action against the Company. Claims not referred to arbitration within 12 calendar months from the date of disclaimer of the liability shall be deemed to have been abandoned.

#### **10. Cancellation**

This Policy may be cancelled at any time by the Company, giving seven days notice by Registered Post to the Insured at the Insured's last known address. In such event the Insured shall become entitled to a return of premium of the unexpired portion of the Period of Insurance subject to the Company's right to retain any amount specified in the Policy and Schedule as a minimum premium.

#### **11. Insurance Act 1936**

In accordance with Section 93 of the Insurance Act, 1936, it is understood and agreed that all monies which become or may become due and payable by the Company under this Policy shall be payable and paid in the Republic of Ireland.