

Real Estate Owners' Insurance Policy - Ireland



QBE

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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 Primary purpose of the policy

By this **policy**, the **insurer** agrees, subject to the **policy's** terms, limitations, exclusions and conditions, to:

1.4 Policy structure

- 1.4.1 Each **insured section** sets out the scope of the main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided by each **insured section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.
- 1.4.2 Additional clauses set out terms, exclusions or limitations that may apply to more than one **insured section**.
- 1.4.3 The following general terms apply to all **insured sections**, clauses and endorsements:
 - a) Duties in event of a claim or potential claim;
 - b) General terms and conditions;
 - c) General definitions and interpretation; and
 - d) Complaints.

1.5 Policy period and premium

- 1.5.1 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.
- 1.5.2 The premium is deemed paid and accepted on receipt by the **insurer** or the broker appointed to place this insurance with the **insurer**.
- 1.5.3 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** may give written notice to cancel the **policy** ten (10) days after the notice is posted to the **insured's** address shown on the **schedule**. This will have the effect of cancelling all cover from the inception of the policy. However if the **insurer** or broker receives the full payment due before the ten (10) days have elapsed, the **policy** will continue in force.

1.6 Cooling off period

- 1.6.1 Where the **insured** is a private individual or sole trader, including a partnership, then the **insured** has a right to cancel **insured section C** during a period of fourteen (14) days either from the day of purchase of the insurance, or the day on which policy documentation was received, whichever is the later. This right will be deemed to be irrevocably waived by the **insured** in the event that the **insured** makes or notifies the **insurer** of a claim or potential claim under this insurance within the applicable fourteen (14) day period.
- 1.6.2 The **insured** must give notice of cancellation under clause 1.6.1 by writing to the **insurer's** address or telephoning the number shown on the schedule under the Claim Notification. If this right is not exercised the insurance will continue for the full term but the **insurer** may cancel this insurance in accordance with the cancellation provisions above and at clause 13.4.
- 1.6.3 Alternatively, and where the **insured** is not an individual or sole trader then this **policy** may be cancelled only in accordance with the cancellation provisions above and at clauses 2.4.14 (Conditions precedent for property: Reasonable precautions), and 13.4 (General terms and conditions: Cancellation).

2 Insured section – Property

2.1 Property cover

The **insurer** will indemnify the **insured** in accordance with the Basis of Settlement clause for accidental **damage** to the **property insured** provided that:

- a) **damage** occurs during the **period of insurance** and arises from an **insured peril**;
- b) the **property insured** is located at the **premises** within the **territorial limits**;
- c) the liability of the **insurer** under this **insured section** will not exceed the **sum(s) insured** or any applicable **sub-limit**;
- d) unless expressly stated to the contrary cover granted by extension clauses to this Insured section-Property do not increase the **sums insured**. Any **sub-limits** stated form part of and are not additional to the **sums insured**.

2.1.2 Architects', surveyors', consulting engineers' and other fees

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for an amount for legal and other fees of architects, surveyors and consulting engineers, for estimates, plans, specifications, quantities, tenders and supervision necessarily incurred in the **reinstatement** of loss in the event of **damage** by any **insured peril** except that the **insurer** will not be liable for such fees incurred in preparing any claim made under this **policy**.

Provided that no liability will be incurred by the **insurer** for such fees unless the **insured** has obtained the **insurer's** prior written consent to the appointment of such architects, surveyors and consulting engineers and the fees incurred.

2.1.3 Arson, theft and criminal acts reward costs

In the event of **damage** that is insured by this **insured section** the **insurer** will, subject to its prior consent (such consent will not be unreasonably withheld), indemnify the **insured** for reasonable expenses that the **insured** incurs in paying rewards for information leading to a successful conviction or for information where the police believe that such information will secure a conviction following **damage** except that the **insurer's** liability for such expenses will not exceed the **sub-limit** shown in the **schedule** in respect of this clause.

2.1.4 Bailors' Goods

This **insured section** is extended to cover the **insured** for **damage** to bailors' goods for which the **insured** is responsible in connection with the **business** provided that:

- a) the **insurers** will only indemnify the **insured** in respect of **damage** where:
 - i) the goods are stored in a secure building anywhere within the **territorial limits**; and
 - ii) an inventory signed by the **insured** has been issued to the tenant as soon as the bailors' goods are taken into the **insured's** custody; and
 - iii) the bailors' goods are inspected at least every seven (7) days;
- b) this insurance excludes and does not cover:
 - i) theft or attempted theft not involving entry into or exit from the **building**, where the bailors' goods are being stored, by forcible and violent means;
 - ii) payment under the **reinstatement** conditions herein;
 - iii) **damage** in respect of:
 - I) audio and visual equipment;
 - II) cigarettes, cigars, tobacco, wines and spirits;
- iv) any payment by the terms of this clause in excess of the **sub-limit** shown in the **schedule**.

2.1.5 Buildings in course of construction or alteration

As regards works carried out at the **premises** which are subject to clause 22(c) of the Joint Contracts Tribunal (JCT) or any similar conditions, all parties named in the contract shall be deemed to be joint insureds under this insurance, and the indemnity provided by this **insured section** extends to include:

- a) materials in connection with such work from the time they are delivered to the site at the **premises**;
- b) existing building or structure at the **premises** specified in the contract as affected by the works;

but only to the extent and for the **insured perils** for which the **insured** has accepted responsibility under such contract, provided always that the **insurer's** liability under this clause shall not exceed the **sub-limit** shown in the **schedule**.

2.1.6 Capital additions

This **insured section** is extended to provide indemnity to the **insured** in respect of **damage** to:

- a) alterations, additions, extensions and/or improvements to the **buildings** insured (but not appreciation in value thereof);
- b) newly acquired and/or newly erected **buildings** provided they are not otherwise insured anywhere within the **territorial limits**;

provided that:

- a) the **insurer's** liability under this clause will be in addition to the **sums insured** and the **insurer's** total liability under this capital additions clause will not exceed the **sub-limit(s)** for this clause as shown in the **schedule**;
- b) such property is not otherwise insured;
- c) the **insured** undertakes to give particulars of such property as soon as possible and in any event every six (6) months and to retrospectively insure the newly acquired property to the date of the commencement of the **insurer's** liability; and
- d) the **insurers** shall be entitled to charge an appropriate additional premium pro rata from the date of alterations, additions, extensions and/or improvements or acquisition of the newly acquired property and may vary the terms of this **policy**.

2.1.7 Computer control systems –incompatibility of equipment or records

In the event of **damage** that is covered by this **insured section** the **insurer** will indemnify the **insured** for the costs of:

- a) modification of the **computer control systems**; or
 - b) replacement of **computer records** together with **reinstatement** of programs and/or information thereon, whichever is the lesser amount to achieve compatibility in the event that the loss of **computer control systems** has resulted in undamaged **computer records** being incompatible with the replacement **computer control systems**;
- arising out of the incompatibility of **computer records**, provided that:
- i) the replacement **computer control systems** is the nearest equivalent to that lost or **damaged**; and
 - ii) the **insurer's** liability shall not exceed the **sub-limit** shown in the **schedule** for any one (1) **period of insurance**.

2.1.8 Debris removal

In the event of **damage** that is insured by this **insured section** the **insurer** will, with its prior consent which consent will not be unreasonably withheld, indemnify the **insured** for the costs necessarily incurred by the **insured** in:

- a) removing debris from the damaged property site and the area within two hundred and fifty metres (250m) of the perimeter of the damaged property site;
- b) cleaning or clearing the drains, the sewers and/or the gutters of the damaged property site and the area within two hundred and fifty metres (250m) of the perimeter of the damaged property site;
- c) removing extraneous materials from machinery, plant and/or equipment, whether or not such machinery, plant and/or equipment has been **damaged**;

- d) removing the debris of property not belonging to the **insured** as a result of the **damage** subject to the **sub-limit** in respect of Debris removal- Tenants' property shown in the schedule;
- e) dismantling and/or demolishing of, or shoring up, propping and/or fencing the portion(s) of the **property insured** that has been damaged by an **insured peril**.

Except that the **insurer** will not be liable for any cost and expenses:

- i) arising from pollution or contamination of property not insured by this **policy**;
- ii) of temporary boarding up of windows as part of a claim for breakage of glass if this insurance includes glass **damage**;

and provided that if at the time of **damage** any **buildings** are awaiting demolition, the **insurer's** maximum liability in respect of such property shall not exceed the additional costs of removing debris which are incurred by the **insured** solely as a result of **damage**.

2.1.9 Discharge of gas flooding systems

The insurance provided by this **insured section** - property is extended to include the cost of recharging gas cylinders installed solely for the protection of the **property insured** following accidental discharge. The **insurers** shall not be liable for discharge arising:

- a) during repairs or alterations to the building in which the cylinders are situated;
- b) during installation, repair, removal, alteration, extension or testing of all or part of the gas flooding system;
- c) during the operation of the gas flooding system with the intention of preventing or extinguishing fire.

Subject to the maximum liability of the **insurers** not exceeding the **sub-limit** stated in the schedule.

2.1.10 Documents removal

If the **schedule** states that **contents** are insured by this **insured section**, the **insurer** will indemnify the **insured** for the costs and expenses of reinstating **documents** to the extent possible, in the event that **documents** are **damaged** while temporarily removed away from the **premises**, or in transit by road, rail or inland waterway, except that the **insurer** will not be liable for:

- a) **damage** that occurs during temporary removal or transit outside the European Union;
- b) **damage** that is recoverable under any other insurance or in any other way;
- c) **damage** caused by theft or attempted theft, but this exclusion will not apply where the theft or attempted theft takes place from a building or a motor vehicle and the theft or attempt theft meets the following conditions:
 - i) if the theft or attempted theft takes place from a building, the theft or attempted theft must involve entry to or exit from the building by violent and forcible means or must arise from robbery or attempted robbery; or
 - ii) if the theft or attempted theft takes place from a motor vehicle belonging to or under the control of the **insured**, the vehicle must be:
 - I) occupied by the **insured** or **employee** of the **insured**; or
 - II) if unattended, all doors, windows and other means of entry must be closed and locked and all keys must be removed to a place of safety; and
 - III) if left unattended between the hours of 9pm and 6am, parked in a securely locked building or garage or in a security compound that is permanently manned and protected by a controlled security barrier or the vehicle must be fitted with an immobiliser approved by the **insurer** and brought into operation;
- d) for any amount in excess of the **sub-limit** shown in the **schedule**.

2.1.11 Public authorities' clause

In respect of **buildings, machinery, plant and all other contents** and **office contents**, the additional cost of reinstatement of the **damaged property insured** as may be incurred solely by reason of the necessity to comply with building or other regulations under or framed in pursuance of any Act of the Oireachtas or with bye-laws of any public authority except that the amount recoverable under this clause will not include:

- a) the cost incurred in complying with any such regulations, bye-laws or directive:
 - i) in respect of **damage** occurring prior to inception;
 - ii) in respect of **damage** not insured by this **insured section A**;
 - iii) under which notice has been served upon the **insured** prior to the happening of the **damage**;
 - iv) excluding any regulations or acts or byelaws of any public authority where compliance was a requirement at practical completion, except without prior written agreement of the **insurers**.
 - v) in respect of undamaged **property insured** or undamaged portions of **property insured** other than foundations (unless foundations are specifically excluded from the insurance by this **insured section**) of that portion of the property **damaged**;
- b) the additional cost that would have been required to make good the property **damaged** to a condition equal to its condition when new had the necessity to comply with any of the aforesaid regulations or byelaws not arisen.
- c) the amount of any rate, tax, duty, development or other charge or assessment arising out of capital appreciation which may be payable in respect of the property or by the owner thereof by reason of compliance with any of the aforesaid regulations, bye-laws or directives;
- d) if the liability of the **insurer** in respect of any item of **property insured** apart from this clause is reduced by the application of any of the terms and conditions of this insurance or this clause then the liability of the **insurer** under this clause in respect of any such **property insured** will be reduced in like proportion;
- e) the **insurer** will have no liability under this clause unless the work of reinstatement is commenced and carried out with reasonable despatch (which may be carried out upon another site and in any manner suitable to the requirements of the **insured** subject to the liability of the **insurer** not being thereby increased);
- f) the total amount recoverable under this clause in respect of any item of **property insured** will not exceed:
 - i) in respect of undamaged portions of **property insured** other than foundations, fifteen per cent (15%) of the total amount which the insurer would have been liable had the **building**, items or contents been totally destroyed; and
 - ii) in respect of damaged portions of **property insured**, the applicable **sum insured** or **limit of liability**.

2.1.12 Eviction of squatters

The **insurer** will, subject to its prior consent which consent will not be unreasonably withheld, indemnify the **insured** for reasonable expenses that the **insured** incurs in paying the legal costs and expenses payable to a lawyer or other suitably qualified person who has been appointed to act for the **insured** in any civil action to evict anyone in the **insured's premises** who does not have the **insured's** permission to be there. All legal proceedings will be subject to the law and jurisdiction of a court or other acceptable dispute resolution body, situate within the **territorial limits**.

Except that the **insurer** will not pay costs and expenses:

- a) for any dispute where the cause of the action arises within 90 (ninety) days of the inception date of this policy;
- b) for any dispute where the cause of the action involves the **insured's** tenant;
- c) for any dispute which is recoverable under the **insured section** Property owners' liability or the **insured section** - Legal expenses sections to this **policy** or otherwise more specifically insured elsewhere;
- d) in excess of the **sub-limit** shown in the **schedule** which shall be the **insurer's** maximum liability during any one **period of Insurance**.

2.1.13 Failure of third party insurances

This **insured section** extends to include **buildings** at the **premises** defined below for the amount of such **damage** to such **buildings** but only to the extent that the lessee or freeholder is unable to recover such an amount equivalent to that which could be payable under this **policy** if the lessee or freeholder were the **insured** as a result of:

- a) the lessee or freeholder having failed to arrange or maintain insurance to comply with the terms of the lease;
- b) the lessee or freeholder having failed to insure for an adequate amount whether the amount insured had been approved by the **insured** or not;

but excluding any payments:

- i) in respect of **damage** that the **insured** recovers from any other party;
- ii) arising from the operation of any **excess** or **deductible** under any more specific insurance;
- iii) where the lessee or freeholder's policy fails due to the breach of any condition or warranty contained within the lessee or freeholder's policy as a result of the action of the **insured**;
- iv) arising from the failure of the lessee or freeholder to make or pursue a legitimate insurance claim;
- v) arising from the failure of the **insured** to carry out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- vi) unless the **insurer** is the sole provider of loss of rent insurance in respect of all of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance.

Provided that the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit** as shown in the **schedule**.

Premises

For the purpose of this clause **premises** shall mean all properties of the **insured** anywhere in the **territorial limits** which are leased to or by them but not specifically insured or referred to elsewhere under this **policy** and where the lessee or freeholder is responsible for arranging insurance under the terms of a lease with the **insured**.

2.1.14 Fire extinguishment expenses and emergency services damage

In the event of **damage** that is insured by this **insured section**, the **insurer** will cover the **insured** for:

- a) extinguishment expenses necessarily incurred by the **insured** in order to minimise **damage**;
- b) expenses incurred in recharging or repairing **damage** to any gas or sprinkler fire extinguishment system;
- c) **damage** to lawns, gardens, playing surfaces and landscaped areas, car parks, private roads and pathways at the premises caused by emergency service vehicles while attending an incident involving **damage** for which the **insurer** has accepted a claim under this **insured section**;

- d) fire brigade charges;
- e) costs and expenses reasonably incurred by the **insured** to upgrade or improve any gas or sprinkler fire extinguishment rendered necessary to comply with any regulations introduced after the installation of the original system following an incident involving **damage** for which the **insurer** has accepted a claim under this **insured section**.

Except that the **insurer's** liability shall not exceed the **sub-limit** shown in the **schedule** in respect of this clause.

2.1.15 Fly tipping

The insurance by this **insured section** extends to include the reasonable costs of clearing and removing any property illegally deposited in or around the **premises** provided that the **insurer's** maximum liability shall not exceed the **sub-limit** shown in the **schedule**.

2.1.16 Frustrated Legal Costs

The insurance by this **insured section** extends to include the **insured's** legal costs and expenses for the prospective sale of any **property insured** and the amount payable shall be such sums as the **insured** shall be legally liable to pay and shall pay solely as a consequence of the cancellation of the sale as a result of **damage**, provided that the liability of the **insurer** in respect of the cover granted by this clause shall not exceed the **sub-limit** shown in the **schedule** during the **period of insurance**.

2.1.17 Gardening equipment

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for **damage** to gardening equipment, owned by the **insured** and used in connection with the **business** at the **premises** provided that the liability of the **insurer** in respect of this clause shall not exceed the **sub-limit** shown in the **schedule**.

2.1.18 Inadvertent omission to insure

The insurance by this **insured section** extends to include **buildings** anywhere in the **territorial limits** whereby the **insured** has an obligation to insure whether the **buildings** are owned by or on lease to them or in which they are interested as mortgagees but which have inadvertently been left uninsured provided always that:

- a) the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** total liability for such amount payable under this clause will not exceed the **sub-limit** as shown in the **schedule**;
- b) the **insured** will give notice in writing to the **insurer** immediately they become aware of an omission to insure and will pay the appropriate premium from the date upon which the insurance of the property became the **insured's** responsibility;
- c) the **insured** will carry out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- d) the **insurer** is the sole provider of loss of rent insurance in respect of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance.

2.1.19 Insect nests removal

The insurance by this **insured section** extends to include costs incurred by the **insured** as a result of removing the nests of wasps, bees or hornets and other insects harmful to humans from the **premises**. The **insurer** will not pay:

- a) the costs of removing such nests that were already in the **building** prior to the inception of this **policy**;
- b) any amount in excess of the **sub-limit** shown in the **schedule**.

2.1.20 Insurance premiums

In the event of **damage** that is covered by this **insured section** the **insurer** will pay the cost of any insurance premiums, or in respect of inherent defects policies, any technical agents' fees, necessarily and reasonably incurred by the **insured** in arranging contract works

policies with the **insurer** or in continuing with any pre-existing inherent defects policies. The liability of the **insurer** under this clause shall not exceed the **sub-limit** shown in the **schedule** during the **period of insurance**.

2.1.21 Landscaped gardens

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for **damage** (including accidental **damage** by employees) to landscaping and gardens, plants, trees and/or ornamental features, provided that:

- a) the **insurer's** liability under this clause shall not exceed the **sub-limit** shown in the **schedule** any one claim and in the aggregate in any one **period of insurance**;
- b) the **insurer** will not be liable for:
 - i) the cost of moving soil other than as necessary for surface preparation;
 - ii) the failure of trees, shrubs, plants or turf to become established following replanting or relaying;
 - iii) the failure of seeds to germinate;
 - iv) damage caused by disease, infection or application of chemicals.

2.1.22 Local authority rates

In the event of **damage** that is insured by this **insured section** the **insurer** will indemnify the **insured** for money paid or payable by the **insured** to the local authority in respect of local authority or business charges levied in respect of the **premises** that the **insured** becomes liable for as a result of the lessee being able to determine or frustrate the lease following **damage** except that this insurance excludes and the **insurer** will not be liable:

- a) in respect of any portion or portions of the **premises** which were untenanted at the date of the **damage**;
- b) where the **insured** elects not to reinstate the **premises**;
- c) where the **premises** are unfit for occupation as a result of an act or omission by the **insured** or someone acting on their behalf, which has resulted in a valuation officer reinstating the **premises** on the rating list;
- d) for any amount in excess of the **sub-limit** shown in the **schedule** which is the **insurer's** maximum liability under this clause.

2.1.23 Lock replacement

The insurance by this **insured section** extends to indemnify the **insured** for the reasonable cost of replacing external locks or safe or strong room locks at the **premises** following theft of keys from the **premises**, the **insured person's** home, or following a hold-up while the keys are in the **insured's** personal custody or that of any authorised employee, except that the **insurer** will not be liable for any amount in excess of the **sub-limit** shown in the **schedule**.

2.1.24 Metered water, gas, oil or electricity

The **insurer** will indemnify the **insured** for any charges for which the **insured** is legally responsible and unable to recover from any other party, in respect of loss of metered water, gas, oil or electricity provided that:

- a) loss of water, gas, oil or electricity is due to **damage** at the **premises** which is covered under this **insured section**;
- b) the lost water, gas, oil or electricity is measured by the utility meter;
- c) the **insured** maintains a record of readings from the utility meter at intervals of not more than ninety (90) days;
- d) the **insurer's** liability in respect of any one (1) insured **premises** is limited to such excess water or gas charges demanded by the utility undertaking in consequence of **damage** and will not exceed the **sub-limit** shown in the **schedule**;
- e) the insurance by this extension clause shall not apply to **unoccupied** buildings.

2.1.25 Reinstatement to match

The insurance by this **insured section** extends to include the cost of replacement or modification of undamaged parts of the **buildings** that form part of a suite, common design or function where the **damage** is restricted to a clearly identifiable area or to a specific part. Provided always that the **insurer's** liability will in no case exceed the **sub-limit** shown in the **schedule** or the amount that would have been payable had the suite, common design or function been wholly destroyed, whichever is the lesser.

2.1.26 Rent for residential buildings

In the event of **damage** to any **premises** occupied totally or partially for residential purposes that renders them unfit to live in or access to them is denied, the **insurers** will indemnify the **insured** in respect of any:

- a) loss of rent receivable; or
- b) expenditure necessarily and reasonably incurred in the provision of comparable accommodation for the benefit of any lessee to comply with the requirements of the lease;

until the **premises** are fit again for habitation or for a period of thirty six (36) months from the date of **damage** whichever is the shorter, including the costs of:

- i) temporary storage of residents' furniture;
- ii) kennelling or boarding domestic pets if they are not allowed in the alternative accommodation.

The **insurers'** liability under this clause shall not exceed twenty five percent (25%) of the **sum insured** applicable to the residential portion of the **building**.

2.1.27 Temporary protection and expediting expenses

In the event of **damage** that is insured by this **insured section** the **insurer** will, with its prior consent which consent will not be unreasonably withheld, indemnify the **insured** for the reasonable and necessary costs incurred to:

- a) temporarily protect or preserve **property insured**, including the provision of temporary buildings, in order to avoid or prevent immediately impending **damage** covered under this **policy**; and
- b) expedite permanent or temporary repairs to or replacement of **property insured** following **damage** covered under this **policy**.

Temporary protection and expediting expenses excludes and does not cover:

- i) expense payable elsewhere in the **policy**; or
- ii) the cost of permanent repair or replacement;

The liability of the **insurer** under this clause and the **policy** shall not exceed the **sub-limits** shown in the **schedule**.

2.1.28 Temporary removal

The insurance by this **insured section** extends to indemnify the **insured** for **damage** to **property insured** whilst temporarily removed to any location within the **territorial limits** for storage, cleaning, renovation, repair or similar purpose. The **insurer** will not be liable for:

- a) **damage** that is recoverable under any other insurance or in any other way;
- b) **damage** caused by theft or attempted theft, but this exclusion will not apply where the theft or attempted theft takes place from a building and the theft or attempted theft involves entry to or exit from the building by violent and forcible means or arises from robbery or attempted robbery;
- c) property of others held by the **insured** in trust;
- d) any **property insured** at exhibitions or trade fairs;
- e) **damage to documents**;
- f) **damage** that occurs when the **property insured** being temporarily removed is in transit;
- g) for any amount in excess of the **sub-limit** shown in the **schedule**.

2.1.29 Trace and access

In the event of **damage** that is insured by this **insured section** the **insurer** will cover the costs necessarily and reasonably incurred in locating the source of any escape of water or fuel oil from any fixed services or heating installation, including the repair to walls, floors or ceilings necessary as a direct result of the location work, except that the **insurer** will not be liable:

- a) for the cost of repairs to any fixed services or heating installation; or
- b) for any amount in excess of the **sub-limit** shown in the **schedule**.

2.1.30 Tree felling or lopping

The **insurer** will indemnify the **insured** for costs and expenses necessarily and reasonably incurred in felling, lopping and removing trees for which the **insured** is legally responsible and which are an immediate threat to the safety of life or property. Provided always that the **insurers** will not be liable for:

- a) legal or local authority costs involved in removing trees;
- b) costs incurred solely to comply with a Preservation Order;
- c) costs incurred in respect of routine maintenance;
- d) any amount in excess of the **sub-limit** shown in the **schedule**.

2.1.31 Tree removal

The **insurer** will indemnify the **insured** for costs and expenses necessarily and reasonably incurred in removing fallen trees and branches from the **premises** resulting from **damage** insured hereby. Provided always that the **insurers** will not be liable for any amount in excess of the **sub-limit** shown in the **schedule**.

2.1.32 Unauthorised use of electricity gas or water

The **insurer** will indemnify the **insured** for the cost of metered electricity, gas or water for which the **insured** are legally responsible arising from its unauthorised use by persons taking possession of or occupying **premises** without the authority of the **insured** provided that:

- i) the **insured** takes all reasonable steps to terminate such unauthorised use as soon as it is discovered; and
- ii) the **insurer** will not be liable for any amount in excess of the **sub-limit** shown in the **schedule** any one occurrence.

2.1.33 Undamaged tenants' improvements

Where a lease is terminated as a direct result of **damage**, this **policy** is extended to include the cost of reimbursing the **insured's** tenants for their undamaged improvements which are no longer available to such tenants, provided that the **insurer** shall not be liable for any amount in excess of the **sub-limit** shown in the **schedule**.

2.2 Property limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** under Exclusions to **insured sections** – Property & Loss of rent receivable the following are excluded from and not covered by the insurance under this **insured section**:

2.2.1 Consequential loss

any form of indirect or consequential loss except as specifically included with this **insured section**;

2.2.2 Excluded property

- a) **Damage** to or in connection with the following property unless specified to the contrary in the **schedule**:
 - i) livestock, bloodstock, fishstock, growing crops or trees;
 - ii) watercraft or aircraft or other aerial or spatial devices or missiles or satellites;
 - iii) motor vehicles or their contents, accessories, caravans or trailers except for such property that is not licensed for road use;

- iv) **money**, bullion, foreign coins counterfeit or substitute **money**;
- v) land, piers, jetties, bridges, culverts or excavations;
- vi) property in the course of erection or installation;
- vii) property in transit;
- viii) property owned by the **insured's** tenants, or property of others held in trust by or in the care custody or control of the **insured's** tenants,
- ix) explosives;
- x) sculptures, other than mass produced sculptures that form part of a landscaping design;
- b) moveable property (including gardening equipment) in the open, gates or fences, unless the **damage** is caused by fire, lightning, aircraft, explosion, earthquake, riot, civil commotion, malicious persons or impact;
- c) electricity, gas, water or telecommunications transmission lines or pipes except that this exclusion shall not apply to such property for which the **insured** is responsible that is located on, under, or over the **insured's premises**.

2.2.3 Property insured elsewhere

damage to, or costs and expenses in respect of any **property insured** which is otherwise more specifically insured by or on behalf of the **insured** or the **insured's** tenants except to the extent provided by the Failure of third party insurances clause.

2.2.4 Valuables and Business Records

damage of or to jewellery, clocks, watches, precious stones, bullion, furs or curiosities, precious metals, works of art or rare books, tobacco and tobacco products, alcohol, music players, video equipment, audio, video or computer disks (whether blank or encoded with content) cameras, computer games equipment, televisions, or **documents**, manuscripts, computer systems records, **electronic data** or business books.

2.3 Other property terms and conditions

2.3.1 Buildings awaiting demolition

Notwithstanding anything contained herein to the contrary, it is hereby understood and agreed that, if at the time of **damage** any **buildings** are awaiting demolition, the maximum liability of the **insurer** shall not exceed the additional costs of removing debris, in accordance with the Debris removal clause, which are incurred by the **insured** solely as a result of **damage**.

2.3.2 Basis of settlement

In the event of **damage** to **property insured** under this **insured section** the basis of reinstatement shall be as follows:

- a) On **employees'**, directors' or visitors' property, the cost of repairing or replacing the item(s) as new, whichever is the lesser;
- b) on landscaped gardens the cost of seeding or replacement plantings, plus the labour incurred in restoration;
- c) On all other **property insured**:
 - i) where the **property insured** is destroyed, the rebuilding of the property if a building, or, in the case of other property, its replacement by similar property, in either case in a condition equal to but not better or more extensive than its condition when new;
 - ii) where the **property insured** is damaged, the repair of the damage and the restoration of the damaged portion of the property to a condition substantially the same as but not better or more extensive than its condition when new.

2.3.3 Basis of settlement conditions

- a) If the **insured** elects and the **insurer** agrees not to repair or reinstate any **property insured**, then the **insurer's** liability shall be limited to the **actual value** of the **damaged**

property insured, however settlement on this basis shall be at the sole discretion of the **insurer**.

- b) If the **insurer** elects or becomes bound to reinstate or replace any **property insured**, the **insured** will, at its own expense, produce and give to the **insurer** all such plans, documents, books and information as the **insurer** may require.
- c) The **insurer** will not be bound to reinstate exactly or completely but only as circumstances permit, and in a reasonably sufficient manner, and will not in any case be bound to expend in respect of any item of the **property insured** more than the **sum insured** or **sub-limit** thereon.
- d) If at the time of any **damage** to any **property insured**, such property is covered by any other insurance effected by or on behalf of the **insured** but is not on the identical basis of **reinstatement** to the terms of this clause, then this **policy** excludes and does not cover payment of any amount in excess of the amount that would have been payable if this condition had not been incorporated.
- e) The work of **reinstatement** must be commenced and carried out with reasonable despatch, otherwise no payment will be made beyond the amount which would have been payable under this **insured section** if this condition had not been incorporated.
- f) The **insurer** will have no liability to pay any amount beyond the amount that would have been payable under this **insured section** if this condition had not been incorporated until such time as the cost of **reinstatement** has actually been incurred.

2.3.4 Buildings awaiting renovation, redevelopment or refurbishment

It is hereby understood and agreed that, if at the time of **damage** any **buildings** are awaiting renovation, redevelopment or refurbishment, the **insurer** shall not be liable for any costs, which would have been incurred by the **insured** in the absence of such **damage**.

2.3.5 Day one (1) basis – non adjustable

- a) For each item of **property insured** specified as 'Day one (1) operative' in the **schedule**, the **insurer** agrees to calculate the premium upon the **declared value** provided that, at inception of this **policy** and the commencement of each subsequent **period of insurance**, the **insured** notifies the **insurer** of the **declared value** of each such item (in the absence of such a notification, the last amount declared by the **insured** will be taken as the **declared value** for the ensuing **period of insurance**).
- b) Where by reason of any provision of the 'Basis of settlement conditions' no payment is to be made beyond the amount that would have been payable if those conditions had not been incorporated, the rights and liabilities of the **insured** in respect of the **damage** shall be subject to the terms, conditions, limitations and exclusions of this **policy** (including the applicable underinsurance provision) as if this condition had not been incorporated, except that the **sum insured** shall be limited to one hundred and five percent (105%) of the pertinent **declared value** stated in the **schedule**.

2.3.6 Under-insurance

Each item of **property insured** covered is, to the extent specified in the **schedule** as being covered on a **sum insured** basis, subject to the following conditions of average:

- a) Eighty five percent (85%) average

If at the time of **reinstatement** the sum representing eighty five per cent (85%) of the cost that would have been incurred in **reinstatement**, if the whole of the item of **property insured** had been destroyed, exceeds the **sum insured** thereon at the commencement of any **damage** to such **property insured** by any **insured peril**, then the **insured** will be considered as being its own insurer for the difference between the **sum insured** and the sum representing the cost of reinstatement of the whole of the **property insured** and will bear a rateable proportion of the loss accordingly;

- b) Day one (1) basis average

Where **property insured** is specified as insured on a day one (1) basis then if at the time of loss the **declared value** of the **property insured** is less than the cost of **reinstatement** at inception of the **period of insurance**, then the **insurer's** liability for any loss hereby insured

will be limited to that proportion thereof which the **declared value** bears to the cost of **reinstatement**;

c) Standard underinsurance condition

For **property insured** that has the **actual value** applied, then each item of property is covered on a **sum insured** basis and is declared to be separately subject to the of average, that is if at the commencement of any **damage** by any **insured peril**, the value of **property insured** is collectively of greater value than the **sum insured**, then the **insured** will be considered as being its own insurer for the difference and will bear a rateable proportion of the loss accordingly.

2.3.7 Claim discharge

The **insured's** or the **insured's** personal representatives' receipt of the final adjusted claim settlement will discharge the **insurer**.

2.3.8 Contracting purchaser

If at the time of **damage** to any **building** insured under this **insured section** the **insured** has contracted to sell its interest in such **building** and the purchase has not been but is thereafter completed, the purchaser will be entitled (on completion of the purchase, and then only so far as the property is not otherwise insured by or on behalf of the purchaser against such **damage**) to the benefit of this **insured section** insofar as it relates to such **damage**, without prejudice to the rights and liabilities of the **insured** or the **insurer** under this **insured section** up to the date of completion.

2.3.9 Designation

For the purpose of determining where necessary the heading under which any property is insured, it is agreed to accept the designation under which such property has been entered in the **insured's** books.

2.3.10 Involuntary betterment

Where **property insured** is **damaged** and requires replacement and similar property is not obtainable, the **insurer** agrees:

- a) to accept, without deduction for betterment, replacement property which is as similar as possible and which is capable of performing the same function; and
- b) to pay the cost of purchasing and installing technologically current equipment which is necessitated by incompatibility between:
 - i) the equipment installed to replace damaged equipment; and
 - ii) undamaged existing equipment at the same or interdependent location.

The **insurer** shall not be liable to pay more than the amount sufficient to enable the **insured** to resume operations in substantially the same manner as before the **damage**.

2.3.11 Loss of market value

It is understood that:

- a) if the **insured** elects not to repair or rebuild the **buildings**, the **insurer** will pay to the **insured** the reduction in the market value of the **buildings** immediately following the **damage** but not exceeding the amount which would have been payable had the **buildings** been repaired or rebuilt; or
- b) if as a result of **damage** insured hereby the **insured** are required to rebuild or reinstate the **buildings** in a manner different from that immediately before the **damage** solely to comply with the European union and public authorities clause and as a result there is reduction in market value thereof the **insurer** agrees to pay:
 - i) the cost of repairing or reinstating the **buildings**; and
 - ii) a cash settlement representing the reduction in market value;provided that the total payment made:

- i) is no greater than the amount that would have been payable had the **buildings** been repaired or reinstated in an identical manner to their condition immediately before the **damage**, and;
- iii) does not exceed the **sum insured** under any individual item under this **insured section**.

2.3.12 **Mortgagees and lessors**

It is agreed that any increase in the risk of **damage** resulting from any act or neglect of any mortgagor, leaseholder, lessee or occupier of any **buildings** insured by this **policy** will not prejudice the interest of any mortgagee, freeholder or lessor provided such increase in risk is without their prior knowledge or authority and that the **insurers** are notified immediately they become aware of such increase in risk and pay an appropriate additional premium if required.

2.3.13 **Non-invalidation**

If the risk of **damage** is increased by any inadvertent act or omission or by any alteration not otherwise subject to any policy exclusion that occurs without the **insured's** knowledge, such material change will not invalidate this insurance, provided that the **insured** immediately on such act, omission or alteration coming to its knowledge, gives notice thereof to the **insurer** and pays such extra premium as the **insurer** may require.

However, this provision shall not apply to set aside any exclusion which would but for this clause be applicable and it is agreed that any such **policy** exclusion shall prevail over this clause in the event of any conflict.

2.3.14 **Other parties**

The interest of such other parties including, as the case may be, lessors, mortgagees, banks and hire purchase companies is noted in this insurance but only to the extent of their financial interest in the **property insured**.

In the event of any claim, the:

- a) **insured** will immediately declare to the **insurer** the names of such interested parties; and
- b) **insurer** will consult with such declared interested parties as regards the manner and method of any indemnity so as to protect the direct financial interests of such parties.

2.3.15 **Reinstatement of sum insured following loss**

In consideration of this insurance not being reduced by the amount of any loss under this **Insured section** - Property, the **insured** will pay such additional premium to the **insurer** as may be required.

2.3.16 **Seventy two (72) hours clause**

The word occurrence shall mean any one (1) loss or series of losses arising out of and directly occasioned by one (1) event or one (1) original cause. However, the duration and extent of any one (1) occurrence shall be limited to seventy-two (72) consecutive hours as regards earthquake, flood, or windstorm.

The **insured** may choose when any of the periods commence and if the event or common cause is of greater duration than the above periods, the **insured** may decide to divide that event or common cause into two (2) or more occurrences provided that no two (2) periods overlap.

Should any such period extend beyond the expiry or cancellation date, the **insurer** shall be liable as if such period had fallen entirely within the **period of insurance** of the **policy**.

2.3.17 **Subrogation waiver**

In the event of a claim arising under this **insured section** the **insurer** agrees to waive any rights, remedies or relief to which they might become entitled by subrogation, following **damage** covered by this **insured section A**, against:

- a) any company standing in the relation of parent to subsidiary (or subsidiary to parent) to the **insured** as defined in section 155 of the Companies Act 1963, as appropriate, current at the time of the loss; and

- b) any company that is a subsidiary of a parent company of which the **insured** are themselves a subsidiary, in each case within the meaning of section 155 of the Companies Act 1963, as appropriate, current at the time of the loss.
- c) Any tenant of the premises provided that
 - i) the damage did not result from a criminal, fraudulent or malicious act of the tenant;
 - ii) the tenant contributes to the cost of insuring the property insured against the event which caused damage but excluding damage arising out of the tenant's or lessee's gross negligence

2.3.18 **Unoccupied or vacant buildings**

- a) The **insured** will give notice to the **insurer** forthwith if a **building** becomes **unoccupied** and if an **unoccupied building** or portion thereof is again occupied. The **insurer** shall have the right to impose additional conditions, exclusions and charge a suitable additional premium as the **insurer** may require in consideration for the continuance in force of this insurance.
- b) Further it is agreed as a condition of this insurance in respect of **buildings** that become **unoccupied** that:
 - i) the mains supply services are switched off and the water system is drained other than:
 - I) the circuit(s) of the electricity supply which is/are needed to maintain any fire detection system, closed circuit television system or intruder alarm system in operation;
 - II) mains services which are needed to maintain any sprinkler systems in full working order and in these circumstances heating must be maintained in the **building** at a minimum temperature of five (5) degrees centigrade;
 - ii) the **premises** are inspected thoroughly both internally and externally at least once every fourteen (14) consecutive days, unless otherwise notified in writing by the **insurers**, by the **insured**, employees of the **insured** or the authorised representatives of the **insured** and:
 - I) a record is maintained of such inspections;
 - II) all defects in maintenance and security are rectified immediately;
 - III) accumulations of combustible materials, such as all loose combustible items, including furniture, pallets, waste, refuse, junk mail, flyers and gas bottles, in and around the **premises** are removed during inspection;
 - iii) all external doors are locked securely and all windows are closed and secured;
 - iv) all letter boxes are sealed to prevent insertion of any materials or liquids;
 - v) the perimeter fences, walls and gates are maintained in good repair;
 - vi) there is no refurbishment, renovation or alteration work carried out unless agreed by the **insurers**;

throughout the **period of insurance** unless otherwise agreed by the **insurers**.

- c) Notwithstanding compliance with the terms of sub clause a) and b) above, the insurance in respect of the **unoccupied buildings** remains subject to the Exclusions to **insured section** – Property, Loss of rent receivable, Failure of building services and Terrorism and specifically to the exclusion of Disused, unoccupied or vacant buildings contained in therein.

2.3.19 **Workmen**

Workmen may be employed to carry out new erections or alterations, repair, decoration, plant installation, general maintenance and the like at the **premises** without prejudice to the insurance hereby.

2.4 Conditions precedent for property

2.4.1 The duties imposed by the following clauses apply from the time the **insured** acquires knowledge of non-compliance and only to those areas of the **premises** that operate under the **insured's** direct control.

2.4.2 Automatic sprinkler installations

In relation to **property insured** being protected by an automatic sprinkler installation in accordance with details declared to the **insurer** at inception of each **period of insurance**, it is agreed as a condition precedent to the **insurer's** liability under this **insured section** that the **insured** will ensure that the following work is carried out:

- a) the said installation will be maintained in full working order during the currency of this insurance;
- b) a test will be made every week for the purpose of ascertaining that the alarm is in working order and that the stop valves controlling the water supplies of the installation are fully open;
- c) if required by the **insurer**, quarterly or half yearly tests will be made for the purpose of ascertaining that each water supply is in order and the particulars of each test will be recorded;
- d) any defect whether revealed by such tests or otherwise will be remedied promptly;
- e) the **insured** will notify the **insurer** immediately should the water supplies be turned off or the sprinkler installation be rendered inoperative from any cause.

Cover provided by this **insured section** will not be invalidated by any defect in the said systems due to circumstances beyond the control of the **insured**.

2.4.3 Sprinkler leakage

In respect of cover provided by this **insured section** in respect of **damage** caused by sprinkler leakage, it is agreed as a condition precedent to the **insurer's** liability under this **insured section** that the following additional conditions shall apply:

- a) the **insured** will at all times take reasonable steps to prevent frost and other **damage** to the automatic sprinkler installation in so far as his responsibility extends to maintaining the installation and will maintain the automatic external alarm signal in efficient working order;
- b) in the event of any discharge or leakage the **insured** will do and permit to be done all things practicable, whether by removal or otherwise, to save and protect the **property insured**;
- c) whenever it is the intention to make any changes, repairs or alterations to the installation, the **insured** will give written notice to the **insurer** and obtain its permission in writing;
- d) the **insured** will arrange for the **insurer** to have access to the **premises** at all reasonable times for the purposes of inspection and if the **insurer** notifies the **insured** of any defects in the condition of the installation, the **insurer** may at its option suspend sprinkler leakage cover until the defects have been remedied and approved by the **insurer**.

2.4.4 Hot work permit

Hot work means work involving use of a naked flame or other heat source or oxyacetylene, electric arc or similar welding, cutting, grinding or other spark emitting equipment by any person (whether a third party contractor, an employee or other) at the **premises** (other than as an integral part of the **insured's** trade processes).

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

- a) a hot work permit in the form set out in Loss Prevention Recommendation RC7 published by the Fire Protection Association (FPA) or the QBE Hot Work Permit or such similar permit or documentation, is completed jointly by the person responsible for carrying out the work and the **insured's** safety officer (or nominated person) before any **hot work** commences; and

- b) the precautions and systems of work shown on the designated hot work permit are complied with at each stage of the **hot work**.

3 Insured section – Loss of rent receivable

3.1 Loss of rent receivable cover

3.1.1 If there is **damage** to the **property insured** used by the **insured** at the **premises** during the **period of insurance** and in consequence the **business** carried on by the **insured** at the **premises** is interrupted or interfered with, then the **insurer** will indemnify the **insured** for loss of **rent receivable** resulting from such interruption or interference provided that:

- a) at the time the **damage** occurs there is in force either:
 - i) cover under the **insured section**-property and/or the **insured section**-failure of building services; or
 - ii) an insurance **policy** covering the interest of the **insured** in the property at the **premises** against such **damage** and such property is of a type and kind not excluded by this **insured section**;
- b) at the time the **damage** occurs the **insured** has claimed under the policy referred in a) above and the relevant insurer has paid such claim in full or admitted liability for such claim or would have done so but for the operation of a proviso in such insurance **policy** excluding liability for losses below a specified amount; and
- c) the liability of the **insurer** under this **insured section** shall not exceed the **sum insured(s)** for loss of **rent receivable** stated in the **schedule** or any applicable **sub limit**.

3.1.2 Rent receivable

The **insurer's** liability in respect of **rent receivable** is limited to loss of **rent receivable** and additional expenditure and the amount payable under this **insured section** will be:

- a) in respect of loss of **rent receivable**: the amount by which, in consequence of the **damage**, the **rent receivable** during the **indemnity period** falls short of the **standard rent receivable**;
- b) in respect of additional expenditure: the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the loss of **rent receivable** which but for that expenditure would have taken place during the **indemnity period** in consequence of the **damage**, but not exceeding the amount of the reduction in **rent receivable** thereby avoided;
- c) minus any sum saved during the **indemnity period** in respect of such of the expenses and charges payable out of **rent receivable** as may cease or be reduced in consequence of the **damage**;

except that if the **sum insured** in respect of **rent receivable** is less than the **annual rent receivable** (or a proportionately increased multiple thereof where the **maximum indemnity period** exceeds twelve (12) months), the **insurer's** liability will be proportionately reduced.

3.1.3 Rent receivable (Capital Additions)

This **insured section** is extended to include loss of **rent receivable**, which, but for the **damage** would have been derived from:

- a) alterations, additions, extensions and/or improvements to the **buildings** insured;
- b) newly acquired and/or newly erected **buildings** provided they are not otherwise insured anywhere within the **territorial limits**;

provided that:

- i) the **insured** shall advise the **insurer**:
 - I) every six (6) months in respect of any such alterations, additions, extensions and improvements together with a forecast of the **rent receivable** derived from such alterations, additions, extensions and improvements;
 - II) as soon as practicable and in any event within six (6) months of any such newly acquired and/or newly erected property together with a forecast of the **rent receivable** derived from such newly acquired and/or newly erected property.

- ii) the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit(s)** as shown in the **schedule**;
- iii) the **insured** will pay the appropriate additional premium required from inception of such additional cover and amounts so declared shall be added by endorsement to the **sum insured** by the relevant item;
- iv) at any one **premises** the cover by this clause shall not exceed the **sub-limit(s)** shown in the **schedule**;
- v) no amount shall be paid beyond the **indemnity period** shown in the **schedule**.

3.1.4 Contracting purchaser

If at the time of any **damage** to the **buildings** insured by **insured section** – property the **insured** has contracted to sell their interest in the **buildings**, the purchaser will be entitled to the benefits of this **insured section** provided that:

- a) **damage** takes place during the period from exchange to completion; and
- b) the completion is finalised; and
- c) the purchaser's prospective rental income is not otherwise insured; and
- d) the amount of indemnity provided to the purchaser shall not exceed the amount that would have been paid to the **insured** had the contracted sale not been agreed.

3.1.5 Cost of re-letting buildings

The **insurer** will indemnify the **insured** for costs incurred with the written consent of the **insurer** in re-letting the **buildings** including legal fees in connection with the said re-letting solely as a result of **damage** provided that the sum of the amount payable under this extension and the amount otherwise payable under this **insured section** will in no case exceed the **sum insured** or exceed the **maximum indemnity period** in respect of **rent receivable**.

3.1.6 Denial of access

The **insurer** will indemnify the **insured** for loss resulting from interruption of or interference with the **business** in consequence of **damage** by an **insured peril** covered under **insured section** – property to property within two hundred and fifty metres (250m) of the **premises** which prevents or hinders the use of the **premises** or access thereto, whether the **premises** or **property insured** therein shall be **damaged** or not, except that the **insurer's** liability for such loss will not exceed the **sub-limit** shown in the **schedule**.

3.1.7 Denial of access (non damage)

The **insurer** will indemnify the **insured** for loss of **rent receivable** in consequence of:

- a) action by the Police Authority following danger or disturbance within 250 metres of the **premises** which shall prevent or hinder use of the **premises** or access thereto, unless:
 - i) such danger or disturbance arises from any cause within the control of the **insured**;
 - ii) the loss of **rent receivable** is a result of **damage** to property;
 - iii) such denial of access is the direct result of repairs or maintenance being carried out to property as a result of inherent defect, or wear and tear or general upkeep; or
- b) the said **premises** containing or being thought to contain a harmful device provided that the Police Authority are informed immediately of the presence or suspected presence of the harmful device;

provided always that the **insurer** shall not be liable in respect of loss resulting from the first number of hours specified in the **schedule** each and every such interruption or interference, the maximum indemnity period shall not exceed the period as stated in the **schedule** and the **insurer's** liability will not exceed the sub limit as stated in the **schedule**.

This extension shall not cover **damage** or loss resulting from incidents of disease, epidemic or pandemic, including but not limited to:

1. notifiable diseases under the Health Protection (Notification) Regulations 2010;
2. any coronavirus (or similar or equivalent virus in the future);
3. any mutation or variation of 2. above;
4. any coronavirus disease (or similar or equivalent disease in the future);
5. any epidemic or pandemic which poses a threat to human health or human welfare whether officially declared an epidemic or pandemic or not; or
6. any fear or threat of 2, 3, 4 or 5 above.

3.1.8 Failure of third party insurances

The **insurer** will indemnify the **insured** for loss of **rent receivable** at the premises (defined below) but only to the extent that the lessee or freeholder is unable to recover such an amount equivalent to that which could be payable under this **policy** if the lessee or freeholder were the **insured** as a result of:

- a) the lessee or freeholder having failed to arrange or maintain insurance to comply with the terms of the lease;
- b) the lessee or freeholder having failed to insure for an adequate amount whether the amount insured had been approved by the **insured** or not;

but excluding any loss:

- i) or payment in respect of loss of **rent receivable** that the **insured** recovers from any other party;
- ii) or claim due to the operation of any **excess** or **deductible** under any more specific insurance;
- iii) or claim where the lessee or freeholder's policy fails due to the breach of any condition or warranty contained within the lessee or freeholder's policy as a result of the action of the **insured**;
- iv) as a result of the failure of the lessee or freeholder to make or pursue a legitimate insurance claim;
- v) or claim under this clause unless the **insured** carries out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- vi) unless the **insurer** is the sole provider of loss of rent insurance in respect of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance;
- vii) in excess of the **maximum indemnity period** stated in the **schedule**.

Provided that the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit** as shown in the **schedule**.

Premises

For the purpose of this clause **premises** shall mean all properties of the **insured** anywhere in the **territorial limits** which are leased to or by them but not specifically insured or referred to elsewhere under this **policy** and where the lessee or freeholder is responsible for arranging insurance under the terms of a lease with the **insured**.

3.1.9 Inadvertent omission to Insure (rent receivable)

The insurance by this **insured section** extends to include the loss of **rent receivable** from **buildings** anywhere in the **territorial limits** which have inadvertently been left uninsured provided always that:

- a) this clause shall only apply to **rent receivable** from **buildings** which the **insured** has an obligation to insure, irrespective of whether the **buildings** are owned by or on lease to them or in which they are interested as mortgagees;

- b) the **insurer's** liability under this clause will be in addition to the **sums insured**, but the **insurer's** liability under this clause will not exceed the **sub-limit** as shown in the **schedule**;
- c) the **insured** will give notice in writing to the **insurer** immediately they become aware of an omission to insure and will pay the appropriate premium from the date upon which the insurance of the property became the **insured's** responsibility;
- d) the **insured** will carry out at not less than annual intervals a check of all properties owned by them or leased by them and for which they are responsible to ensure that effective insurance is in force for such properties;
- e) the **insurer** is the sole provider of loss of rent insurance in respect of the **insured's** properties owned in connection with the **business** and where the **insured** has an obligation to arrange such insurance.

3.1.10 Loss of attraction

The **insurer** will indemnify the **insured** for loss of **rent receivable** resulting from interruption of or interference with the **business** in consequence of diminution of attraction to the **premises** following **damage** to property by any **insured peril** covered under **insured section** - property occurring at any other premises within a two hundred and fifty metres (250m) radius of any of the **premises**, provided that:

- a) the **insurer** shall not be liable for loss relating to the first number of hours specified in the **schedule** of each and every interruption or interference; and
- b) the **insurer's** liability under this clause in respect of any one (1) occurrence shall not exceed the **sub-limit** shown in the **schedule**.

3.1.11 Loss of investment income on late payment of rent

If as a result of **damage**, the **insurer** indemnifies the **insured** in respect of loss of **rent receivable** and the payment by the **insurer** to the **insured** is made later than the date upon which the **insured** would normally have expected to receive such **rent receivable** from a lessee, the **insurer** will pay a further sum representing the investment interest lost to the **insured** during the period of delay.

3.1.12 Managing agents

The insurance under this **insured section** extends to include interruption of or interference with the **business** in consequence of **damage** to property at the premises of any managing agents employed or engaged to collect **rent receivable**, provided that:

- a) such **rent receivable** is not received by the **insured** as a direct result of the **damage**;
- b) the **rent receivable** is not outstanding for one hundred and twenty (120) days in excess of its due date prior to the **damage** at the managing agents' premises;
- c) all reasonable steps to recover the **rent receivable** are taken;
- d) such **rent receivable** is not recoverable under any other policy;
- e) the **insurer** shall not be liable for any claim in excess of twenty percent (20%) of the **sum insured** on **rent receivable** under this **insured section**.

3.1.13 Notifiable disease, murder or suicide, food or drink or poisoning

The **insurer** will indemnify the **insured** for loss resulting from interruption of or interference with the **business** in consequence of any of the following events:

- a) an **occurrence** of a **notifiable disease**:
 - i) at the **premises**; or
 - ii) attributable to food or drink supplied from the **premises**;
- b) the discovery of any organism at the **premises** likely to result in the **occurrence** of a **notifiable disease**;
- c) the discovery of vermin or pests at the **premises**;
- d) an accident causing defects in the drains or other sanitary arrangements at the **premises**; and

- e) an **occurrence** of murder or suicide at the **premises**;

provided that:

1. the **insurer** will only be liable for loss arising at those **premises** which are directly subject to the events;
2. the **insurer** will only be liable for loss where the event causes restrictions on the use of the **premises** on the order or advice of a Local or Government Authority;
3. the insurer will not be liable for any costs incurred in cleaning, repair, replacement, recall or checking of property except as stated above; and
4. the **insurer's** liability will not exceed the sub limit as stated in the **schedule**.

This extension shall not cover loss resulting from 24 hours of each and every such interruption or interference at the premises.

Definitions:

Notifiable disease

means any diseases sustained by a person notifiable under the Health Protection (Notification) Regulations 2010, but excluding:

- a) Avian Influenza and/or Influenza A (H5N1);
- b) Swine Influenza and/or Influenza A (H1N1);
- c) Severe Acute Respiratory Syndrome (SARS);
- d) any coronavirus (or similar or equivalent virus in the future);
- e) any mutation or variation of d) above;
- f) any coronavirus disease (or similar or equivalent disease in the future);
- g) any epidemic or pandemic which poses a threat to human health or human welfare whether officially declared an epidemic or pandemic or not; or
- h) any fear or threat of a) to g) above.

3.1.14 Prevention of access by unauthorised persons

In the event that access by tenants to **buildings** be hindered or prevented due to the **buildings** or property in the vicinity being:

- a) occupied by terrorists or persons thought to be terrorists;
- b) unlawfully occupied except in the course of a dispute between any employer and employee(s) or other group of workers;

then the **insurer** will indemnify the **insured** for loss of **rent receivable** or, if the responsibility of the **insured**, the reasonable cost of comparable alternative accommodation incurred by the **insured's** tenants provided always that:

- i) the police are immediately informed; and
- ii) the maximum amount payable in respect of any one occurrence under this clause will not exceed the **sub-limit** shown in the **schedule** in the aggregate for any one (1) **period of insurance**.

3.1.15 Supply utilities

- a) The **insurer** will indemnify the **insured** for loss of **rent receivable** in consequence of:

- i) **damage** by an **insured peril** to property at any:
 - I) generating station or sub-station of the electricity supply undertaking;
 - II) land-based premises of the gas supply undertaking or of any natural gas producer linked directly therewith;
 - III) water works or pumping station of the water supply undertaking; or
 - IV) land-based premises of the telecommunications undertaking;from which the **insured** obtains electricity, gas, water or telecommunication services.
- ii) accidental failure at the **premises** of:

- I) the terminal ends of the electricity supply utility service feeders;
 - II) the supply of gas at the supply utility meters;
 - III) the supply of water at the supply utility main stopcock; or
 - IV) the supply of telecommunication services at the incoming line terminal or receivers. For the avoidance of doubt, **damage** to any satellite or interruption in the supply of any telecommunication following **damage** to any satellite is excluded from and not insured by this **policy**;
- b) The maximum amount payable in respect of any one (1) occurrence under this clause will not exceed the **sub-limit** shown in the **schedule**;
 - c) The **insurer** will not be liable under this clause or elsewhere under this insurance for Loss of **rent receivable** caused by **damage** resulting from:
 - i) the deliberate act of any supply utility undertaking or the exercise by any such utility undertaking of its power to withhold or restrict supply or services;
 - ii) strikes or any labour or trade dispute;
 - iii) drought;
 - iv) any other atmospheric or weather conditions, but not excluding accidental failure due to damage to supply utility equipment caused by such conditions;
 - v) for the first period of interruption or interference specified in the **schedule** as the **excess**.

3.2 Loss of rent receivable limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** under Exclusions to **Insured sections** Property, Loss of rent receivable, Failure of building services and Terrorism, the following are excluded from and not covered by the insurance under this **insured section**:

3.2.1 Limit of liability

The liability of the **insurer** under this **insured section** will not exceed the lesser of:

- a) the whole of the total **sums insured**;
- b) in respect of any item of settlement specification, its **sum insured** at the time of the **damage**;
- c) any other **limit of liability** stated in the **schedule** at the time of the **damage**;
- d) the **sum insured** (or **limit of liability**) remaining after deduction for any other interruption or interference consequent upon **damage** occurring during the same **period of insurance**, unless the **insurer** has agreed to reinstate any such **sum insured** (or **limit of liability**).

3.2.2 Excluded property

indemnity for loss of **rent receivable** following any interruption or interruption with the **insured's business** caused by or resulting from **damage**, to in connection with:

- a) the following property unless specified to the contrary in the **schedule**:
 - i) livestock, bloodstock, fishstock, growing crops or trees;
 - ii) watercraft or aircraft or other aerial devices or missiles or satellites;
 - iii) motor vehicles or their contents, accessories, caravans or trailers except for such property that is not licensed for road use;
 - iv) **money**, bullion, foreign coins counterfeit or substitute **money**; and
 - v) land, piers, jetties, bridges, culverts or excavations;
 - vi) property in the course of erection or installation;
 - vii) property in transit;
 - viii) explosives;
 - ix) gold, silver, jewellery, precious stones, works of art, rare books, sculptures, curios and collections;

- b) moveable property in the open, gates or fences, unless the **damage** is caused by fire, lightning, aircraft, explosion, earthquake, riot, civil commotion, malicious persons or impact;
- c) electricity, gas, water or telecommunications transmission lines or pipes except that this exclusion shall not apply to such property for which the **insured** is responsible that is located on or over the **insured's premises**.

3.3 Other loss of rent receivable terms and conditions

3.3.1 Automatic reinstatement

In consideration of the insurance hereby not being reduced by the amount of any loss under this **insured section**, the **insured** will pay such additional premium as may be required.

3.3.2 Basis of claims settlement

The amount payable shall be the actual amount of the reduction in **rent receivable** incurred during the **indemnity period** in consequence of the **damage**. Where under the terms of the lease or leases, rent reviews would have taken place during the **indemnity period** the basis of claims settlement shall take into account such rent reviews, provided that the **insurers'** total liability shall not exceed two hundred percent (200%) of the **sum insured** on loss of **rent receivable**.

3.3.3 Buildings awaiting sale

In respect of **buildings** forming part of the **property insured** by **insured section** - property that the **insured** has contracted to sell or has accepted an offer in writing to purchase the interest in subject to contract, where that sale is cancelled or delayed solely due to **damage**, the **insurer** will indemnify the **insured** in respect of:

- a) interest payable by the **insured** on capital borrowed which, but for the loss, destruction or damage, would be available, from the proceeds of the sale, for investment in the **business**;
- b) the additional interest payable by the **insured** on amounts borrowed;
- c) the investment interest lost by the **insured** on any proceeds of the sale (after the deduction of any capital borrowed as detailed in a) above);

Provided that:

- i) the insurance by this clause excludes all loss unless the **insured** has made all reasonable efforts to complete the sale as soon as possible following the **damage**;
- ii) the **insurer's** liability will not exceed the **sub-limit** specified in the **schedule**;
- iii) the **indemnity period** will not exceed the period during which the **business** is affected due to the **damage**, beginning with the date on which, but for the **damage**, the **building** would have been sold and ending with the 'date of completion' or the expiry of the **maximum indemnity period** specified in the **schedule** if earlier.

3.3.4 Cessation of Business

This **insured section** shall be avoided if the business is wound up or carried on by a liquidator, receiver or administrator or permanently discontinued unless continuance of cover is agreed in writing by the **insurer**.

3.3.5 Rent receivable premium adjustment

- a) Where **rent receivable** premium adjustment is shown as applicable in the **schedule**, the premium paid in respect of this **insured section** may be adjusted upon receipt by the **insurer** of a declaration of **rent receivable** earned during the financial year most nearly concurrent with the **period of insurance**, as reported by the **insured's** auditors. If **damage** gives rise to a loss of **rent receivable**, the above mentioned declaration shall be increased for the purpose of premium adjustment by the amount by which the **rent receivable** is reduced during financial year solely in consequence of the **damage**.
- b) If the declaration (adjusted as provided for above and proportionally increased where the **maximum indemnity period** exceeds twelve (12) months) is less than the **sum insured** for **rent receivable** shown in the **schedule** for the **period of insurance**, the **insurer**

shall allow a pro-rata return premium not exceeding fifty percent (50%) of the premium paid for the cover under this **insured section**.

3.3.6 **Payments on account**

Where liability under this **policy** is admitted, the **insured** shall be entitled to receive payment(s) as agreed between the **insured** and the **insurer** in advance of final settlement provided always that:

- a) the aggregate amount of such payments shall not exceed the **sum insured** under the item for which the claim is being paid hereunder; and
- b) if the total adjusted loss under this **insured section** differs from the quantum of the payments made under this clause then the **insurer** and the **insured** mutually agree to pay or return the difference accordingly

In the event of a claim arising under this **insured section** the **insurer** agrees to waive any rights, remedies or relief to which they might become entitled by subrogation, following **damage** covered by this **insured section Property** against:

- c) any company standing in the relation of parent to subsidiary (or subsidiary to parent) to the **insured** as defined in section 155 of the Companies Act 1963, as appropriate, current at the time of the loss; and
- d)

3.3.7 **Subrogation waiver**

In the event of a claim arising under this insured section, the insurer agrees to waive any rights, remedies or relief to which it might become entitled by subrogation against:

- a) a) any company standing in the relation of parent to subsidiary (or subsidiary to parent) to the insured as defined in section 155 of the Companies Act 1963, as appropriate, current at the time of the loss; and
- b) b) any company that is a subsidiary of a parent company of which the insured is itself a subsidiary, in each case within the meaning of section 155 of the Companies Act 1963, as appropriate, current at the time of the loss;
- c) any tenant of the premises provided that:
 - i) the tenant contributes to the cost of insuring the property insured against the event which caused damage but excluding damage arising out of the tenant's or lessee's gross negligence.
 - ii) the damage did not result from a criminal, fraudulent or malicious act of the tenant

4 Exclusions to Insured sections – Property & Loss of rent receivable

This **policy** excludes and does not cover:

4.1 Aircraft travelling at supersonic speeds

damage, or loss or interruption or interference caused by or consisting of, pressure waves caused by aircraft, other aerial or spatial device travelling at sonic or supersonic speeds but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.2 Boiler explosion and failure

4.2.1 **damage**, or loss or interruption or interference caused by explosion, failure or collapse of a boiler (but not a boiler or economiser used for domestic purposes only) economiser or other vessel, machine, apparatus or pipe work at the **premises** in which internal pressure is due to steam only belonging to, or under the control of, the **insured**;

4.2.2 **damage**, or loss or interruption or interference caused by joint leakage failure of welds, cracking, fracturing, collapse or overheating of boilers, economisers, superheaters, pressure vessels of any range of steam, and feed piping in connection therewith;

but this clause will not apply to loss covered under the **insured section**- loss of rent receivable or the **insured section**-failure of building services if stated as being 'insured' in the **schedule**, and shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.3 Communicable Disease

Regardless of any provision to the contrary, the **policy** excludes any amount for which the **insurer** would otherwise be liable directly or indirectly caused by, resulting from, arising out of, in connection with, attributable to, or occurring concurrently or in any sequence with:

- a) a **communicable disease**;
- b) the fear or threat (whether actual or perceived) of a **communicable disease**;
- c) the costs to clean-up, detoxify, remove, monitor or test for the actual, alleged, perceived or suspected presence of a **communicable disease**; or
- d) the **insured's** actual or alleged non-compliance with any advice, guidance, regulation, order, decree or law issued by a **public authority** in response to a **communicable disease**.

This exclusion shall not apply in respect of and to the extent of the indemnity provided by the 'Notifiable disease, murder or suicide, food or drink poisoning' extension of the **policy**.

For the purpose of this exclusion, the following definitions apply:

Communicable disease

Communicable disease means any disease which can be transmitted by means of any substance or agent where:

- a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation or mutation thereof, whether deemed living or not;

- b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms; and
- c) the disease, substance or agent can cause or threaten damage to human health or human welfare or can cause or threaten damage to, deterioration of, loss of value of, marketability of or loss of use of property insured;

regardless of the frequency or severity of an outbreak, or the size of the geographic area in which an outbreak is observed.

Public authority

Public Authority means any national, regional, local or municipal government or any national or international organisation with the responsibility to promote and protect public health.

4.4 Deductible or excess

the amount of the **deductible** or **excess** as stated in the **schedule**. Where any amount is specified as the non ranking **deductible** or **excess** then this sum is also excluded from this insurance.

4.5 Defective design

damage, or loss or interruption or interference caused by defective design, latent defect, the use of defective materials, the misapplication of tools or other defective workmanship but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.6 Disused, unoccupied or vacant buildings

damage, or loss or interruption or interference caused by:

- a) escaping water from any pipe, tank, water system or automatic sprinkler installation;
- b) riot, civil commotion, malicious **damage** or vandalism; or
- c) theft or theft damage;

in respect of any **building** which is **unoccupied**.

4.7 Electronic risks

damage, or loss or interruption or interference caused by or contributed to by, directly or indirectly, distortion, erasure, corruption, or alteration of **electronic data** from any cause whatsoever (including, but not limited to, **virus or similar mechanism, hacking or denial of service attack**) or loss of use, reduced functionality, cost, expense of whatsoever nature resulting therefrom regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

4.8 Electrical or mechanical breakdown

damage, or loss or interruption or interference caused by electrical or mechanical breakdown or failure or derangement including but not limited to overrunning, overheating or short-circuiting, but not excluding any other **damage** resulting from such breakdown, failure or derangement;

but this exclusion will not apply to property expressly covered by **insured section**- Failure of building services if stated as being 'insured' in the **schedule**, and shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.9 Fines or penalties

fines or damages for breach of contract or any penalties of whatsoever nature.

4.10 Frost

damage, or loss or interruption or interference caused by frost or freezing but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.11 Gradual change

damage, or loss or interruption or interference caused by corrosion, gradual change or deterioration, change of temperature, change of colour, texture or finish or inherent vice, rust, shrinkage, infestation, insects or vermin but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.12 Ionising radiation

damage, or loss or interruption or interference caused directly or indirectly by or contributed to by or in connection with **nuclear hazards** but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.13 Marine impact

damage, or loss or interruption or interference caused by impact with any **property insured** by any waterborne vessel or craft.

4.14 Marine insurance cover

damage, or loss or interruption or interference caused by **damage** regarding import shipments until fully discharged or until marine insurance has ceased to cover, whichever last occurs.

4.15 Micro-organism

damage, or loss or interruption or interference caused by mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health except that this exclusion does not apply in respect of the insurance provide by the Notifiable disease, murder or suicide, food or drink poisoning clause under **Insured section** – Loss of rent receivable.

This exclusion applies regardless whether there is any:

- a) **damage to property insured**;
- b) **insured peril** or cause, whether or not contributing concurrently or in any sequence;
- c) loss of use, occupancy, or functionality; or
- d) action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

4.16 Non-specific loss or damage

damage, or loss or interruption or interference:

- a) caused by or resulting from disappearance or which is not identifiable by the **insured** with a specific occurrence or which is unexplained and which has not been notified under the terms of the claims notification clause;
- b) revealed only during an inventory or stocktaking;
- c) caused by or arising from misfiling or misplacing of property, information or data.

4.17 Pollution

damage, or loss or interruption or interference caused by pollution or contamination but this exclusion shall not apply to **damage**, or loss or interruption or interference caused by:

- a) pollution or contamination which itself results from a defined peril;
- b) a defined peril which itself results from pollution or contamination;

and for the purpose of this exclusion, defined peril means fire, lightning, explosion, earthquake, aircraft or other aerial device or satellite or missile or articles dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances,

malicious persons other than thieves, windstorm, flood, escape of water or oil from any tank or pipe sprinkler leakage, theft or impact by any vehicle or animal provided that such defined perils are included under the **insured section**- property.

4.18 Processing

damage, or loss or interruption or interference caused by the **property insured**:

- 4.18.1 undergoing any process including but not limited to, cleaning, repairing, restoring, renovating, testing, commissioning or packaging;
- 4.18.2 itself undergoing any heating process or any process involving the application of heat

but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

4.19 Subsidence or collapse

in respect of **buildings**:

- 4.19.1 subsidence or collapse caused by the bedding down of new structures, by settlement;
- 4.19.2 subsidence or collapse caused by coastal or river erosion;
- 4.19.3 subsidence or collapse of buildings or any part thereof whilst in the course of erection or undergoing demolition, structural alterations or structural repairs;
- 4.19.4 **damage** caused by subsidence or collapse which commenced and of which the **insured** was aware prior to the acceptance of this insurance by the **insurer** ;
- 4.19.5 subsidence or collapse caused by the movement of reclaimed or made up ground or of any building erected on a mining site;
- 4.19.6 **damage** caused by the **buildings'** own collapse or cracking however the **insurer** will indemnify the **insured** in respect of such **damage** if it results from a cause which is not otherwise excluded;

but this exclusion of subsidence and collapse shall not apply to subsidence caused by fire, explosion, earthquake or the escape of water from any tank, apparatus or pipe.

4.20 Theft and fraud

- 4.20.1 **damage**, or loss or interruption or interference caused by:
 - a) theft or attempted theft by any person lawfully on the **premises** unless involving entry to or exit from buildings at the **premises** by forcible and violent means or by violence or threat of violence provided that this exclusion will not apply to **damage** to the **buildings**;
 - b) dishonesty of the **insured's employees**;
 - c) any fraudulent or dishonest accessing, extraction, distortion, misappropriation or corruption of information or data contained in any computer or **electronic data** equipment or system.

4.21 War and terrorism

- 4.21.1 **damage**, or loss or interruption or interference caused by or contributed to, by or in connection with, in whatever form, directly or indirectly, any act of **war** or **terrorism**, regardless of any other cause or event contributing concurrently or in any other sequence to the loss nor will the **insurer** have any liability for loss, **damage**, costs and expenses directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with any action controlling, preventing, suppressing, retaliating against or responding to any act of **war** or **terrorism**.

4.21.2 In any action, suit or other proceedings where the **insurer** alleges that by reason of this exclusion any loss, destruction, **damage**, cost, expense, consequential loss or injury is not covered by this **policy**, the burden of proving that such loss is covered shall be upon the **insured**.

Except that this exclusion will not apply to **terrorism** as specifically covered by the **insured section terrorism** if this is stated as being 'insured' in the **schedule**.

4.22 Water table level

damage, or loss or interruption or interference caused by change in water table level but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded. For the purpose of this exclusion water table level means the vertical distance from the surface of the earth to underground water being the surface at which the soil or rocks are permanently saturated with water.

4.23 Wear and tear

damage, or loss or interruption or interference caused by wear and tear, marring or scratching but this shall not exclude subsequent loss resulting from an ensuing cause which is not otherwise excluded.

5 Insured section - Employers' liability

5.1 Employers' liability cover

5.1.1 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** except that where such employment is undertaken temporarily outside the Republic of Ireland or the United Kingdom the **employee** must be:

- a) ordinarily resident within the Republic of Ireland or the United Kingdom at the time the **bodily injury** is caused; and
- b) intending to return to the Republic of Ireland or the United Kingdom following completion of the temporary overseas employment, and the temporary overseas employment is not intended or planned to exceed twelve (12) months duration.

5.2 Additional employers' liability costs and expenses

5.2.1 Following any event which is or may be the subject of indemnity under clause 5.1.1. 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**.

5.3 Employers' liability extensions

5.3.1 Contractual liability

Where any contract or agreement entered into by the **insured** so requires the **insurer** will:

- a) indemnify the **insured** against liability arising in connection with and assumed by the **insured** by virtue of such contract or agreement but only so far as concerns liability as defined in this **insured section** to **employees** of the **insured**; and
- b) waive rights of subrogation against any party specified in the contract or agreement;

provided that the **insured** shall arrange for such other parties as may be indemnified by any such contract or agreement, to observe and fulfil the terms and conditions of this insurance so far as they can apply.

5.3.2 Cross liabilities

For each legal entity comprising the **insured**, the **insurer** will separately indemnify each party under this **insured section** as 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**.

5.3.3 Indemnity to other parties

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

- a) **insured** would have been entitled to indemnity by this 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**.

5.3.4 **Medical treatment**

This insurance extends to indemnify the **insured** and any medical doctor or dentist employed by the **insured** in respect of liability to any person under a contract of service or apprenticeship with the **insured** resulting from treatment given provided that any such doctor or dentist shall as though they were the **insured** be subject to the terms of this **policy** so far as they can apply.

5.3.5 **Offshore activities**

The insurance under this section will cover liability to an **employee** for **bodily injury** caused by visits, work or activities undertaken **offshore** provided that the **limit of indemnity** under this clause will not exceed EUR 6,500,000 in respect of:

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

arising out of one occurrence.

5.3.6 **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.

5.3.7 **Defence costs**

The **insurer** will, with its prior consent which consent will not be unreasonably withheld, indemnify the **insured** and at the request of the **insured** any **other insured party**, in respect of legal **costs and expenses** incurred in defending:

- a) any alleged breach of statutory duty (including any prosecution brought under the Safety, Health and Welfare at Work Act 2005 or similar safety legislation of the Republic of Ireland) or criminal proceedings brought; and / or
- b) allegations of manslaughter made against the **insured** or any **other insured party**;
provided that the prosecution or proceedings relate to:
 - i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**;
 - ii) **bodily injury** to, or potential **bodily injury** to **employees** including their health, safety and welfare;

and, the **insurer** will also pay to the **insured**:

- iii) **costs and expenses** of appeal including appeal against improvement and prohibition notices incurred with its written consent which consent will not be unreasonably withheld;
- iv) prosecution costs awarded against the **insured**;

but the indemnity by this clause excludes and does not cover:

- v) circumstances where the **insured** or any **other insured party** is entitled to indemnity by any other legal expenses, motor or employment protection policy;

- vi) in respect of allegations of manslaughter, any amount in excess of a **limit of indemnity** of EUR1,300,000 any one claim or series of claims arising out of the same prosecution or proceedings.

5.3.8 **Unsatisfied court judgments**

In the event of a judgment for damages being obtained:

- a) by any **employee**, or the personal representatives of any **employee**, in respect of **bodily injury** to such **employee** that arises out of and in the course of his employment by the **insured** in the **business**, against any person operating from premises in the European Economic Area; and
- b) which remains unsatisfied in whole or in part six (6) months after the date of such judgment;
- c) in any court of law except a court operating under the laws of **North America**;

then at the **insured's** request, the **insurer** will pay the amount of damages or costs awarded to the **employee** or the personal representatives of the **employee** to the extent that they remain unsatisfied provided that:

- i) there is no appeal outstanding; and
- ii) the judgment relates to **bodily injury** which would otherwise be indemnified by this **insured section**; and
- iii) the **insurer** will be entitled to take over and prosecute for its own benefit any claim against any other person and the **insured**, the **employee** or the personal representatives of the **employee** will give the **insurer** all the information and assistance the **insurer** may require.

5.4 **Employers' liability limitations and exclusions**

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

5.4.1 **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;

5.4.2 **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;

5.4.3 **Fines and penalties**

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

5.4.4 **Limit of indemnity**

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

5.4.5 **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**;

5.4.6 **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**;

5.4.7 **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;

5.4.8 **War and terrorism**

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

5.4.9 **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.

5.5 Other employers' liability terms and conditions

5.5.1 **Conflict of interest**

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

5.5.2 **United Kingdom compliance conditions**

It is agreed between the **insurer** and the **insured** that solely as regards bodily injury to an **employee** under contract of employment or otherwise employed by a firm or organisation registered, established or domiciled in the United Kingdom that the following conditions will apply to all claims under this **insured section D**

a) Employers' Liability (Compulsory Insurance) Act 1969

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

b) Recovery of benefits

In the event that the **insured's** liability in damages is reduced because benefits and/or charges included in the damages are to be paid under statute to the Compensation

Recovery Unit or its successor, the **insured's** liability in damages for the purposes of this insurance will be deemed to include such benefits and charges.

c) Excess and restrictive terms

The **excess** is as shown in the **schedule**

d) War and terrorism

Notwithstanding clause 5.4.8 the insurance under this section will cover liability to an **employee** arising from or caused by an act of **war** or **terrorism** provided that the **limit of indemnity** under this clause will not exceed:

- a) EUR 6,500,000 anywhere in the world except in travel to, travel in, travel from or working in a hostile territory; or
- b) EUR 1,000,000 arising directly or indirectly whilst in travel to, travel in, travel from or working in a hostile territory;

in respect of:

- c) any one claim against the insured or series of claims against the **insured**; and
- d) any claim or series of claims made by the **insured** under this **insured section**;

arising out of one occurrence.

But where an **employee** is already working in a territory that is subsequently declared to be a hostile territory the **limit of indemnity** will remain at EUR6,500,000 provided the **insured** takes all reasonable steps immediately following the declaration to repatriate the **employee** or to remove the **employee** to a safe location as determined by the local peace force or the Foreign & Commonwealth Office.

For the purpose of this clause hostile territory means a territory designated by the Foreign and Commonwealth Office as one

- e) to which personnel are 'advised against all travel to';
- f) that personnel should leave having designated the territory 'advised against all travel to'.

e) Health and Welfare at Work, etc. Act 1974

Clauses 5.3.6a) is amended to include any alleged breach of statutory duty including any prosecution brought under Health and Welfare at Work, etc. Act 1974 or similar safety legislation of the **United Kingdom**.

f) Claim notification

The following clause is added at 12.3.2

For the avoidance of doubt where **bodily injury** arises from and in the course of **business** with the **insured**, the **insured** will give notice by an agreed electronic medium, to the **insurer** not later than forty eight (48) hours from, the **insured's** notification to the authorities of any Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) incident.

g) Currency

Any reference in this **policy** to the currency EUR is amended to GBP equivalent at the time of any claim in relation to any indemnity by way of the Employers Liability (Compulsory Insurance) Regulations 1998.

h) Tax

As regards the proportion of the premium allocated to the **United Kingdom** entity the **insured** agrees to pay Insurance Premium Tax at the prevailing rate and as advised by the **insurer**.

i) Certificate of insurance

In order to comply with the Employers Liability (Compulsory Insurance) Regulations 1998 the **insured** must display an Employers Liability Insurance Certificate at each place of work in the **United Kingdom** or ensure that each relevant employee has reasonable access to it in electronic format. Please ask your intermediary or contact the **insurer** if you do not have a copy of the necessary Employers' Liability Insurance Certificate.

6 Insured section – Property owners liability

6.1 Property owners' liability cover

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

6.2 Property owners' liability defence costs

6.2.1 North American jurisdiction

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

6.2.2 All other jurisdictions

a) For claims not involving **North American jurisdiction**, the **insurer** agrees to indemnify the **insured** for **defence costs** but the said **defence costs** are payable in addition to and do not count towards the **limit of indemnity**.

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

6.3 Property owners' liability extensions

6.3.1 Data Protection Act 1998

The **insurer** will indemnify the **insured** and, if the **insured** so requires, any director, partner or **employee** in respect of their liability under the Data Protection Act 1998 ('DPA') to pay:

a) compensation in respect of damage or distress under section 13 of Part II of the DPA including **defence costs** ;

b) **defence costs** in relation to a prosecution brought under section 21 of Part III of the DPA; in relation to claims made by persons other than directors, partners or **employees** during the **period of insurance**, provided that:

a) the **insured** has registered in accordance with the terms of the DPA;

c) the claim arises from damage or distress occurring or prosecution commenced during the **period of insurance**;

d) this extension will not apply in respect of:

i) the cost of replacing, reinstating, rectifying or erasing any personal data;

ii) liability caused by or arising from a deliberate or intentional act by or omission of any party entitled to indemnity by this insurance the effect of which will knowingly result in liability under the DPA;

iii) claims which arise out of circumstances notified to any previous insurer or known to the **insured** at inception of this **insured section**;

iv) liability for which indemnity is provided under any other insurance.

6.3.2 Defective Premises Act 1972

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

6.3.3 Run off cover for legionella claims made basis

a) In the event and to the extent that any policy of insurance in force immediately prior to this policy expressly provided cover for legionella on the basis of an indemnity for claims made during the period of insurance (claims made basis); and

b) In the event that a claim first made against the insured during the period of insurance in respect of legionella (meaning any discharge, release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like)

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

i) the discharge, release or escape of legionella occurred prior to the inception of this policy but after the retroactive date stated in any prior policy or if no such date is stated then after 1st January 2010

ii) the insured will give notice in writing to the insurer of any claim or any notice of an intention to make a claim as soon as reasonably practicable but in any event not later than twenty eight (28) days from receipt of the claim or notice.

6.3.4 Temporary business trips overseas

At the request of the insured, this insured section is extended to indemnify the insured and any employee or director of the insured (including their family or persons normally resident with them) against legal liability as described in Property owners' liability cover above but incurred whilst outside the United Kingdom provided that:

a) legal liability is incurred in a personal capacity whilst undertaking a business trip;

b) such temporary business trip outside the United Kingdom does not exceed twelve (12) months;

c) such liability does not arise out of the ownership or occupation of land or buildings.

6.4 Property owners' liability limitations and exclusions

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

6.4.1 Materials prior to installation

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

6.4.2 **Pollution and products**

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

a) brought about by or contributed to by **pollution**;

b) in connection with a **product**;

6.4.3 **Rectification of defective work**

a) **damage** to; or

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

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

7 Insured section - Products liability

7.1 Products liability cover

- 7.1.1 The insurer agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured** as a result of **bodily injury, damage or denial of access** that occurs during the **period of insurance** and arising out of or from or in connection with the **insured's products**.

7.2 Additional products liability costs and expenses

- 7.2.1 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**,
- a) which are inclusive and form part of the **limit of indemnity** 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); or
 - b) which are payable in addition to the **limit of indemnity** in respect of liability incurred under any other jurisdiction.
- 7.2.2 Except where the **limit of indemnity** is inclusive of **costs and expenses**, if payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability to pay all **costs and expenses** shall be limited to such proportion of the said **costs and expenses** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

7.3 Product liability extensions

Not applicable to this **insured section** 7.

7.4 Products liability limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** in clause 11, this **insured section** excludes and does not cover:

7.4.1 Aircraft

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, other aerial device or satellite;

7.4.2 North America

liability within **North America**;

7.4.3 Pollution

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

8 Insured section - Pollution liability

8.1 Pollution liability

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

8.2 Additional pollution liability costs and expenses

- 8.2.1 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 inclusive and form part of the **limit of indemnity** 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); or
 - which are payable in addition to the **limit of indemnity** in respect of liability incurred under any other jurisdiction.
- 8.2.2 Except where the **limit of indemnity** is inclusive of **costs and expenses**, if payment exceeding the **limit of indemnity** has to be made to dispose of a claim, the **insurer's** liability to pay all **costs and expenses** shall be limited to such proportion of the said **costs and expenses** as the **limit of indemnity** bears to the total amount paid to dispose of the claim.

8.3 Pollution liability extensions

8.3.1 Legionella

Notwithstanding exclusion 11.14, the **insurer** will indemnify the **insured** and any **other insured party** for all sums (including claimants' costs and expenses) which the **insured** becomes legally liable to pay in respect of any claim(s) first made against the **insured** and notified to the **insurer** during the **period of insurance** resulting from **legionella** causing **bodily injury, damage or denial of access** except that the **insurer** shall not be liable for:

- any amount in excess of the sub-limit of **indemnity** any one occurrence and in the aggregate as specified in the **schedule**;
- any claims which arise out of any circumstances notified to previous insurers or known to the **insured** at the inception of this **policy**;
- any claims for **bodily injury** arising from employment;
- any claims made against the **insured** for **legionella** where the occurrence giving rise to the claim happened prior to the inception date (From: date) stated in the **schedule**.

8.3.2 Environmental statutory liability

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

- liability arises from **pollution** occurring during the course of **business** and is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance**;

- b) the insurance by this extension excludes and does not cover any sum incurred:
- i) in respect of **preventative costs** for prevention of imminent threat of environmental damage to the **insured's** land, premises, watercourse or body of water whether owned, leased, hired, tenanted or otherwise in the **insured's** care, custody or control; or
 - ii) in respect of primary, complementary or compensatory remediation for damage to the **insured's** land, premises, watercourse or body of water whether owned, leased, hired, tenanted or otherwise in the **insured's** care, custody or control; or
 - iii) in respect of the removal of any significant risk of an adverse effect on human health on the **insured's** land, premises, watercourse or body of water whether owned, leased, hired, tenanted or otherwise in the **insured's** care, custody or control; or
 - iv) in achieving any improvement or alteration in the condition of the land the atmosphere or any watercourse or body of water beyond that required under any relevant and applicable law or statutory enactment at the time remediation commences; or
 - v) in respect of **preventative costs** for prevention of imminent threat of environmental damage where such sums are incurred without there being any actual occurrence of **pollution, damage** or harm to human health; or
 - vi) in excess of the sub **limit of indemnity** of EUR1,300,000 for any one occurrence which sum shall be the maximum the **insurer** will pay, inclusive of all **costs and expenses**, in the aggregate during any one **period of insurance**.

8.4 Pollution liability limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** in clause 11, this **insured section** excludes and does not cover:

8.4.1 North America

liability in respect of or arising from **pollution** within **North America**;

8.4.2 Owned or previously owned premises

liability for **damage** or **denial of access** 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.

9 Insured section – Coverage extensions to Property owners', Products and Pollution liability

9.1 Asbestos accidental discovery

Notwithstanding the Asbestos exclusion contained in the Exclusions to Property owners', Products and Pollution liability, the **insurer** agrees to indemnify the **insured** in respect of liability arising following the accidental discovery of asbestos and/or asbestos containing materials on or after the retroactive date but only in respect of claims first made against the **insured** and notified to the **insurer** during the **period of insurance** in accordance with the terms of the **policy**.

Provided always that:

- a) no indemnity is provided in respect of any subsequent activities related or connected to dealing with the asbestos and/or asbestos containing materials once discovered, which shall be carried out by qualified licensed sub-contractors on terms which indemnify the **insured** for liability arising out of such work;
- b) the **insurer** agrees that any circumstance(s) notified to it during the **period of insurance** which subsequently gives rise to a claim after expiry of the **period of insurance** shall be deemed to be a claim first made during the **period of insurance**;
- c) the **insurer** will not indemnify the **insured** for any claims arising from the existence of or exposure to asbestos and/or asbestos containing materials where the **insured** were aware of the circumstance or event which gave rise to the claim before the inception date of this **policy**;
- d) the **insurer** will not indemnify the **insured** for any claims in respect of the diminution in the value of property or loss of or potential loss of rental income or any other consequential losses (including business interruption) howsoever arising;
- e) the **insurer's** liability to pay damages, including claimant costs recoverable from the **insured** and **defence costs** shall not exceed the **sub-limit of indemnity** stated in the **schedule** for any one (1) claim which sum shall be the maximum the **insurer** will pay in the aggregate during any one **period of insurance**;
- f) the **excess** applicable to this clause shall be EUR 6,500 each and every claimant;
- g) the retroactive date in respect of this clause is the inception date of this **policy** unless endorsed otherwise.

9.2 Contractual liability

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

9.3 Cross liabilities

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

9.4 Financial loss including products

- 9.4.1 Notwithstanding the exclusion of financial loss, the insurance provided by the **insured sections** - Property owners' and Products liability is extended to include the **insured's** liability for a claim or claims first made against the **insured** and notified in writing to the **insurer** during the **period of insurance** for liability arising out of and in connection with the **business** or the **insured's products** for financial loss incurred by others caused by:

- a) accidental escape or discharge of any substance or gas from any **premises** owned or occupied by the **insured**;
- b) accidental obstruction or loss of amenities; or
- c) an occurrence that is not a deliberate or intentional act by or omission of any party entitled to indemnity by this **insured section** the purpose of which whether wholly or in part, is to cause financial loss.

9.4.2 The insurance by this clause excludes and does not cover:

- a) financial loss incurred in respect of or in consequence of **personal injury, damage, nuisance or denial of access**;
- a) financial loss incurred in respect of any recall of any **product** or in the replacing or making good any **product** or workmanship performed by or on behalf of the **insured**;
- b) financial loss incurred in respect of any designing or redesigning, engineering or re-engineering any of the **insured's products**;
- c) fines, penalties, multiplied or liquidated damages;
- d) liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement;
- e) liability resulting from conspiracy, conversion, deceit, inducement of breach of contract, injurious falsehood or infringement of patent, copyright, trademark or name;
- f) claims brought in the United States of America arising out of any breach or alleged breach of antitrust laws or similar;
- g) claims which arise out of circumstances notified to previous insurers or known to the **insured** at inception of this policy;
- h) liability arising from any advice, instruction or design;
- i) given for a fee by or on behalf of the **insured** unless relating to any **product** for which indemnity is provided by this **insured section**;
- j) given without a fee and for which indemnity is provided by other insurance;
- k) liability arising from or caused by the publication or utterance by or on behalf of the insured of a libel or slander;
- l) liability arising out of or in connection with any strikes or labour disturbances;
- m) financial loss caused by or arising from any delay or non-completion of any **product** or workmanship by the **insured** unless such financial loss arises directly as an unavoidable consequence, after exhaustion of reasonable endeavours by the **insured** to avoid and mitigate any such financial loss and which arises as a direct consequence of an insured event;
- n) diminution in values of real property;
- o) financial default as a result of or inconsequence of bankruptcy or insolvency.

9.4.3 The insurance by this clause excludes and does not cover any claim for liability where the event giving rise to financial loss occurs prior to the retroactive date being the inception of this insurance.

9.4.4 The **limit of indemnity** under this extension clause shall not exceed the **sub-limit of indemnity** stated in the **schedule** in respect of any one claim and in the aggregate during any one **period of insurance** which shall be the maximum amount payable by the **insurer** including all **defence costs**.

9.5 Indemnity to other parties

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

- a) **insured** would have been entitled to indemnity by this policy had the claim or suit been made against the **insured**;
- b) **insurer** has the sole conduct and control of any claim;

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

9.6 Local Democracy, Economic Development and Construction Act 2009

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

9.7 Managing agents clause

It is agreed that in respect of liability arising in connection with any buildings owned but not occupied by the **insured**, if the **insured** so requests, this **policy** will extend to indemnify the managing agents as declared to the **insurer** in the same manner and to the same extent as if a separate policy had been issued to them, provided that:

- a) the managing agent shall as if they were the **insured** be subject to the terms and conditions of **policy** in so far as they can apply;
- b) the total amount payable under this clause and this **insured section** shall not exceed the **limit of indemnity** stated in the **schedule** regardless of the number of persons claiming to be indemnified.

9.8 Motor liability

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

- a) the use or movement of any mechanically propelled **vehicle** as a tool or plant;
- b) the loading or unloading of any mechanically propelled **vehicle** or trailer when carried out beyond the limits of any carriageway or thoroughfare but this extension shall not apply to **damage** to any property being loaded or unloaded;
- c) the movement of any mechanically propelled **vehicle** not owned, hired or borrowed by or leased to the **insured** or any **other insured party** on or under any **premises** occupied by the **insured** where such **vehicle** is causing an obstruction and interfering with the performance of the **business**;
- d) **damage** to visitors' or **employees'** mechanically propelled vehicle (including contents and/or accessories) while parked within any car park for which the **insured** is responsible or on any **premises** occupied by the **insured** provided that:
 - i) such vehicle is not lent or hired to the **insured**;
- i) the damage to an **employee's** vehicle does not arise out of the maintenance, operation or use of a vehicle by that **employee**;
- e) the unauthorised use of any mechanically propelled **vehicle** by any person in the employment of the **insured** provided that the **insured** shall have taken all reasonable precautions to ensure that its **employees** are made aware of and comply with restrictions applicable to the use of the **vehicle**;

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

- i) for which indemnity is provided by any motor insurance or fleet insurance policy held in the name of the **insured**; or
- ii) for which insurance is necessary to comply with the Road Traffic Act 1988 as amended by The Motor Vehicles (Compulsory Insurance) Regulations 1992 or any alteration to such regulations or any similar legislation applying to Northern Ireland, the Isle of Man or the

Channel Islands or to any other territory consequent on the Third Council Directive 90/232/EEC of 14/05/1990 relating to insurance against civil liability in respect of the use of motor vehicles or similar legislation in any country outside the European Union.

9.9 Motor contingent liability

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

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

9.10 Principals

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

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

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

9.11 Property in the insured's care, custody and control

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

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

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

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

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

provided that the prosecution or proceedings relate to:

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

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

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

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

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

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

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

9.13 Waiver of subrogation

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

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

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

10 Conditions precedent to Property owners', Products and Pollution liability

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

10.1 Bona fide subcontractors insurance check

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

- 10.1.1 covers the work to be undertaken by the bona fide subcontractor;
- 10.1.2 is subject to a **limit of indemnity** of not less than EUR 6,500,000;
- 10.1.3 includes an 'indemnity to principals' clause, and such evidence is revalidated every twelve (12) months throughout the duration of their contract with the **insured**.

11 Exclusions to insured sections 6, 7, 8 & 9

Insured sections 6, 7, 8 and 9 exclude and do not cover:

11.1 Advertising injury

advertising injury arising out of:

- 11.1.1 breach of contract (other than liability for unauthorised misappropriation of advertising ideas based upon breach or alleged breach of an implied contract);
- 11.1.2 infringement of registered trademarks, patents, registered designs, service marks or trade names (other than infringement of titles or slogans);
- 11.1.3 the failure of goods, products or services to conform with advertised quality or performance;
- 11.1.4 incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
- 11.1.5 advertising activities undertaken on behalf of another party by any **insured** engaged in the business of advertising, or undertaken for a fee;
- 11.1.6 the oral, broadcast, telecast or written publication of material whose first publication took place before the inception of the **period of insurance**;
- 11.1.7 an offence committed by the **insured** or **other insured party** whose business is advertising, broadcasting, publishing or telecasting.

11.2 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 but this shall not exclude such liability arising in conjunction with **products** supplied;

11.3 Aircraft and watercraft

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

- 11.3.1 motor barges not exceeding seventy five (75) ton capacity on inland waterways;
- 11.3.2 hand-propelled craft, sailing vessels and motor launches not exceeding fifteen (15) metres in length and only when operated in inland waterways;
- 11.3.3 watercraft not belonging to or chartered by the **insured** but used by them for business entertainment provided that:
 - a) such watercraft is primarily owned and operated as a river cruise vessel;
 - b) such watercraft is insured by the owner or charterer under a policy of marine insurance;
 - c) 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;

11.4 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;

11.5 Costs and expenses arising from a deliberate act

costs and expenses incurred in proceedings 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;

11.6 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;

11.7 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;

11.8 Electronic data

11.8.1 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;

11.8.2 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;

11.9 Employment practices dispute

liability which arises out of:

a dispute between an employer / prospective employer and **employee** / prospective **employee** referred or capable of being referred to the Employment Appeals Tribunal including such appeal courts.

11.10 Excess

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

11.11 Financial loss

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

11.12 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;

11.13 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;

11.14 Legionella

bodily injury, damage or denial of access arising out of, alleging or attributable to the existence of **legionella** except as stated as insured in clause 8.3.1;

11.15 Liability from employment

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

11.16 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 clauses 5.2.1, 6.2.1 and 7.2.1;

11.17 Liquidated damages

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

11.18 North American jurisdiction

liability 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) unless otherwise stipulated in the **schedule**;

but that this exclusion shall not apply to the insurance provided in respect of non-manual visits under clause 5.4.1 always providing that:

- a) the **insurers** will not be liable to indemnify any entity based in, operating in or domiciled in **North America**; and
- b) the indemnity provided by 11.18.1 a) excludes liability arising under any agreement or contract that would not arise in the absence of any agreement or contract.

11.19 Nuclear risks

11.19.1 loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;

11.19.2 any legal liability of whatsoever nature;

11.19.3 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 11.19.3 above, attributable to **nuclear hazards**.

11.20 Overseas domiciled operations

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

11.21 Ownership or use of mechanically propelled vehicles

bodily injury, damage or denial of access arising out of or from the ownership, maintenance, operation or use of any mechanically propelled vehicle by or on behalf of the **insured** or any **other insured party**;

11.22 Personal injury

liability for **personal injury**;

11.23 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;

11.24 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;

11.25 War or terrorism

bodily injury, personal 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**.

12 Duties in the event of a claim or potential claim

The due observance and fulfilment of the provisions of Section 12 is a condition precedent to the **insurer's** liability for any claim under this **policy**. Clause 13.15 sets out consequences of a failure to comply with conditions precedent or **policy** provision such as Section 12.

12.1 Claim notification – Property & Loss of Rent

- 12.1.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurer**:
- a) as soon as practical but in any event within thirty (30) days of the event giving rise to the claim in respect of **damage** caused by any **insured peril**; and
 - b) as soon as practical but in any event within thirty (30) days of the event giving rise to any other claim.
- 12.1.2 In respect of **damage** caused by theft or malicious persons the **insured** will give immediate notice to the police authority, and take all practical steps to discover any guilty person or persons and recover the property lost.
- 12.1.3 Notice to the **insurer** must be given to the claims notification addresses specified in the **schedule**.

12.2 Claim notification – Employers , Property Owners, Products & Pollution Liability

- 12.2.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurer**:
- a) immediately on but in any event within three (3) working days from
 - i) receipt of notice of any impending inquest, prosecution or other legal proceedings that includes alleged **bodily injury**;
 - ii) coming into possession of actual knowledge that a claim has been submitted to the InjuriesBoard.ie for alleged **bodily injury** or **personal injury**;
 - iii) 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;
 - b) as soon as practical but in any event within thirty (30) days after any other accident, event or the coming in possession of actual knowledge of **bodily injury, personal injury** or **damage**, including circumstances estimated to be within the **excess**, with full particulars thereof;

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

The **insured** must fully co-operate with the **insurer** or their appointed agents to enable the **insurers** comply with all obligations placed upon the **insured** pursuant to the provisions of the InjuriesBoard.ie and Civil Liability and Courts Act 2004 including but not limited to the immediate furnishing of all notices and communications received from the InjuriesBoard.ie in regard to the bringing of a claim by any party to the InjuriesBoard.ie the making of an assessment by the InjuriesBoard.ie and the **insured's** acceptance or rejection of such an assessment.

All such notices and correspondence emanating from the InjuriesBoard.ie must be furnished forthwith and without delay to the **insurer**.

12.2.2 The **insured** will give notice by an agreed electronic medium, to the **insurer** not later than forty eight (48) hours from, the **insured's** notification to the authorities of any incident.

12.2.3 Notice to the **insurer** or nominated claims handler must be given to the claims notification addresses specified in the **schedule**.

12.3 Insured's duties

12.3.1 For each and every claim or incident, the **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) on the happening of any **damage** in consequence of which a claim is or may be made under **insured section Loss of Rent** the **insured** will with due diligence do and concur in doing and permit to be done all things which may be reasonably practicable to minimise or check any interruption of or interference with the **business** or to avoid or diminish the loss;
- d) 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;
- e) 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;
- f) 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;
- g) 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**;

12.4 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:

12.4.1 For **insured sections Property & Loss of Rent**, within thirty (30) days after **damage** (or expiry of the **indemnity period** in the case of **business** interruption) or such further time as the **insurer** may in writing allow, at the **insured's** own expense, deliver to the **insurer** a claim in writing, containing as particular an account as may be reasonably practical of the several articles or portions of property damaged and the amount of the **damage** thereto respectively, having regard to their value at the time of the **damage** together with any details of any other insurance on any **property insured** 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;

12.4.2 For **insured sections Employers , Property Owners, Products & Pollution Liability**

- a) as soon as practicable, but in any event within seven (7) working days, of receipt by the **insured** send the **insurer** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an insured event. In addition the **insured** shall provide full details concerning the claim and provide such co-operation and assistance as the **insurer**, its legal representatives or appointed agents may reasonably require;

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**;

12.4.3 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.

12.5 Insurer's rights

12.5.1 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 opponent's costs and with such liberty to bind the **insurer** by compromise as the **insurer** may in its absolute discretion determine.

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

12.6 Disputed defence or appeal

If any dispute arises between the **insured** and the **insurer** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to Senior Counsel of the Irish Bar appointed jointly by the **insurer** and the **insured** or, failing agreement, appointed by the Chairman of the Bar Council of Ireland, whose decision shall be final. In the event of conflict between any **other insured party** separate representation will be arranged for each party.

12.7 Excess

12.7.1 If the insured event forms the subject of indemnity under more than one of **insured sections Employers , Property Owners, Products & Pollution Liability** the **insured's** maximum liability for the **excess** will be the highest applicable **excess**.

12.7.2 If settlement of an insured event investigated or defended by the **insurer** under **insured sections Employers , Property Owners, Products & Pollution Liability** does not exceed the amount of the applicable **excess (damage only)** or the **excess**, the **insured** shall be liable for payment of the **excess** before the **insurer** shall be liable to make any payment under this **policy**.

Provided always that the **insurer** shall refund to the **insured** any amount of the **excess** in full or in part should any claim be ultimately settled for any amount less than such **excess**;

12.8 Subrogation

12.8.1 Except as provided by clauses 5.3.1 and 10.1, for each and every claim the **insured**, any **other insured party** and any person acting on their behalf 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.

12.8.2 The **insured** or any **other insured party** 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 or of obtaining relief or indemnity from other parties to which the **insurer** will be or would become entitled or subrogated upon its paying an indemnity under this **policy**, whether such

acts and things will be or become necessary or required before or after their indemnification by the **insurer**.

- 12.8.3 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.

- 12.8.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) that 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.
- 12.8.5 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.

13 General terms and conditions

13.1 Adjustment of premium

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

13.2 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.

13.3 Assignment

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

13.4 Cancellation

The **insurer** may at any time during the **period of insurance** serve written notice on the **insured** at the address shown on the **schedule** cancelling the **policy** with effect from the thirtieth (30th) day after service of the notice. Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon demand the **insurer** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy**. Without prejudice to any other forms of service, the notice of cancellation is deemed to be served on the third (3rd) day after being posted if sent by pre-paid letter post properly addressed.

13.5 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.

13.6 Contribution

- 13.6.1 If at the time of any claim under **insured sections Property & Loss of Rent** there will be any other insurance covering the same risk or any part thereof the **insurer** will not be liable for more than its rateable proportion. Nothing herein will be construed to make the insurance by this section subject to the terms, limitations, conditions and definitions of any other insurance except that if any other insurance will be subject to any condition of average, then the insurance by any **insured section** if not already subject to a condition of average will be subject to average in like manner.
- 13.6.2 If at the time of any claim under **insured sections Employers , Property Owners, Products & Pollution Liability** 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

13.7 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.

13.8 Dispute resolution

- 13.8.1 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.
- 13.8.2 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.
- 13.8.3 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 and be subject to the exclusive jurisdiction of the High Court of Ireland.

13.9 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.

13.10 Insurance Act 1936 and Stamp Duties Consolidation Act 1999

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 5 of the Stamp Duties Consolidation Act 1999.

13.11 Language

This **policy** and all communications between the **insured** and the **insurer** shall be in English.

13.12 Legal action against the insurer

- 13.12.1 In respect of liabilities covered by this insurance, no one may bring a legal action against the **insurer** until the amount of the **insured's** or **other insured party's** liability has finally been determined or agreed.
- 13.12.2 No one has the right under this **policy** to bring the **insurer** into an action to determine the **insured's** liability.

13.13 Material inaccuracy

13.13.1 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.

13.13.1 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**.

13.13.2 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.

13.13.3 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.

13.13.4 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**.

13.14 Minimisation of risk

13.14.1 The **insured** will take all reasonable steps at its own expense to prevent an insured event:

- a) arising (not applicable to **insured section Employers Liability**); or
- b) continuing.

13.14.2 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**.

13.15 Observance

- 13.15.1 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.
- 13.15.2 Further where an indemnity is provided to an **other 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 12 (Duties in the event of a claim or potential claim).
- 13.15.3 In the event of a breach of any provision in the **policy**, and without prejudice to any other rights of the **insurer**, the **insurer** may reject or reduce claims connected with the breach, providing the **insurer** can demonstrate some prejudice, and continue the **policy** on such terms as it 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**.

13.16 Data Privacy Notice

Any personal data provided to the **insurer** will be processed in compliance with all applicable laws and regulations and in accordance with the privacy notice which can be found at <https://qbeeurope.com/privacy-policy/>.

Alternatively the **insured** may contact the **insurer's** Data Protection Officer to request a copy of the full privacy notice by email: dpo@uk.qbe.com or by writing to the: Data Protection Officer, QBE European Operations, 30 Fenchurch Street, London EC3M 3BD

13.17 Records

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

13.18 Recovery of benefits

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

13.19 Representation

Where more than one entity is designated as 'insured' the first named **insured** will act on behalf of all **insureds** and other parties covered under this **policy** with respect to the giving and receiving of any notices from the **insurer** or their representatives including any notice of

cancellation. The payment to the first named **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to any other party covered by this insurance.

13.20 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.

13.21 Severability

13.2.1 The proposal shall be construed as a separate application for insurance under this policy by each insured. No statements in the proposal or knowledge possessed by any one (1) insured shall be imputed to any other insured.

13.2.2 For the purpose of determining the applicability of the policy exclusions and limitations, the act or knowledge of any one insured shall not be imputed to any other insured.

13.22 Subscribing insurer

The insurer's obligations under this policy are severable 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.

14 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**.

For **insured section Loss of Rent** the words and expressions used in the **insured's** books and accounts will have the meaning attached to them herein. Any adjustments implemented in current cost accounting will be disregarded. Further to the extent that the **insured** are accountable to the tax authorities for value added tax all terms in **insured section B** will be exclusive of such tax,

14.1 Accident

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

14.2 Accumulation limit

Accumulation limit means the maximum amount of **benefits** payable by the **insurer** irrespective of the number of **insureds** and/or **insured persons** claiming where a single event, or series of events in a twenty kilometres radius originating from the same proximate cause, occurs and where:

- 14.2.1 within twenty-four (24) consecutive hours of the event; or
- 14.2.2 within twenty-four (24) consecutive hours of the first event in the series of events causes death, **injury** and/or **sickness** to more than one **insured person**.

14.3 Advertising injury

Advertising injury means:

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

14.4 All other contents

All other contents means and is deemed to include:

- 14.4.1 **documents**, but only for the value of the materials together with the cost of clerical labour and/or computer time expended in reproducing such records (excluding any expenses in connection with the production of information to be recorded therein) and not for the value to the insured of the information contained therein, for an amount not exceeding EUR50,000;
- 14.4.2 patterns, models, moulds, plans and designs for an amount not exceeding the cost of the labour and materials expended in reinstatement;

- 14.4.3 and so far as the same are not otherwise insured, personal property of principals, **employees**, partners or directors of the **insured** or visitors for an amount not exceeding EUR1,300 in respect of the property of any one person.

14.5 Annual gross revenue

Annual gross revenue means the **gross revenue, trend adjusted**, during the twelve months immediately before the date of the **damage**.

14.6 Annual rent receivable

Annual rent receivable means the **rent receivable, trend adjusted**, during the twelve months immediately before the date of the **damage**.

14.7 Annual turnover

Annual turnover means the **turnover** excluding VAT, **trend adjusted**, during the twelve months immediately before the date of the **damage**.

14.8 Assault

Assault means **injury** occurring to an **insured person** directly due to theft or attempted theft of **money**.

14.9 Beneficiary

Beneficiary means the person or entity specified in the **schedule** who will be entitled to payment of **benefits** covered under **insured section Employers Liability**.

14.10 Benefits

Benefits means the sums stated in the schedule of compensation in the **schedule** being the maximum amount payable by the **insurer**.

14.11 Biological

Biological means any pathogenic (disease producing) micro-organism(s) and / or biologically produced toxin(s) (including genetically modified organisms and chemically synthesised toxins) which cause illness and / or death in humans, animals or plants.

14.12 Bodily injury

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

14.13 Buildings

Buildings mean the fixed permanent structures at the **premises** including:

- 14.13.1 landlord's fixtures and fittings therein and thereon;
- 14.13.2 outbuildings and annexes together with extensions and canopies adjoining to or communicating therewith;
- 14.13.3 foundations;
- 14.13.4 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;
- 14.13.5 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**;

- 14.13.6 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**;
- 14.13.7 underground storage tanks; but excluding property more specifically insured.

14.14 Business

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

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

14.15 Business hours

Business hours means the period during which the **premises** is open for **business** or is otherwise occupied for **business** purposes by the **insured** or an authorised **employee**.

14.16 Change of temperature

Change of temperature means the rise or fall in temperatures as a result of

- 14.16.1 the breaking, distortion or burning out of any part of the unit (excluding its own wiring termination including the plug and fuse) arising from mechanical or electrical defects in the unit occurring while the unit is being used under normal working conditions;
- 14.16.2 non-operation of the thermostatic or automatic controlling devices forming part of the unit;
- 14.16.3 accidental failure of the public electricity supply not occasioned by the deliberate act of any utility undertaking.

14.17 Chemical

Chemical means any compound which, when suitably disseminated, produces incapacitating, damaging or lethal effects on people, animals, plants or material property.

14.18 Claim payment

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

14.19 Combined single limit

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

14.20 Computer(s)

Computer means all parts of the **electronic data** processing installation including tapes cards disks and disk packs and any other data carrying media owned by or for which the **insured** is responsible situated anywhere in the world, notified to the **insurer** and described in the **schedule**.

14.21 Contents

Contents means:

- a) Contents of common parts, including fitted carpets, furniture, furnishings, potted plants and their containers, fixtures and fittings, contents of fixed fuel tanks, refuse disposal bins and skips; or
- b) Contents of residential accommodation, including furniture, furnishings, carpets, audio visual equipment and other household goods in any self-contained flat or other private dwelling at the **premises**, the property of the **insured** or for which the **insured** is responsible;

the property of the **insured** or for which the **insured** is responsible, whilst contained in or about the **buildings** at the **premises**

14.22 Costs and expenses

Costs and expenses means

- 14.22.1 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;
- 14.22.2 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;
- 14.22.3 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**;
- 14.22.4 the cost of attendance in court as a witness at the **insurer's** request, payable at the following rates per day on which attendance is required:
 - a) any principal director or partner of the **insured** – EUR500
 - b) any **other insured party** - EUR250

- 14.22.5 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**.

14.23 Criminal act

Criminal act means committing a burglary armed with a weapon; threat or perception of unlawful force; assault or battery; causing actual bodily harm; application of unlawful force; demand with menaces; entry to building as trespasser with intent to commit theft, grievous bodily harm, rape or criminal damage; entry to building as trespasser and attempting to steal; unlawfully destroying / damaging another's property and/or endangering life; causing death by careless driving while unfit through drink or drugs; causing death by dangerous driving; deception; receiving / handling / disposing of stolen goods for the benefit of another; murder, manslaughter or causing recklessly the death of a human being; making off without payment for goods or services; inflicting grievous bodily harm or wounding; dishonestly appropriating property belong to another.

14.24 Damage

Damage means

- 14.24.1 loss of, destruction of or damage to tangible property;
- 14.24.2 and/or for **insured sections Property Owners, Products & Pollution Liability** loss of use of tangible property that has been lost, destroyed or damaged.

14.25 Declared value

Declared value means the **insured's** assessment of the cost of reinstatement of the **property insured** arrived at in accordance with clause 2.3.5 of **insured section Property** at the level of costs applying at inception of the **period of insurance** (ignoring inflationary factors which may operate subsequently) together with due allowance for the additional costs of reinstatement to comply with public authority requirements, professional fees and debris removal costs.

14.26 Denial of access

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

14.27 Denial of service attack

Denial of service attack means any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network services, network connectivity or information systems. Denial of service attacks include, but are not limited to the generation of excess traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

14.28 Disablement

Disablement means **permanent total disablement** and **temporary total disablement**.

14.29 Documents

Documents means business books and records, deeds, documents (including stamps thereon), manuscripts, plans and writings of every description, books (written or printed) including computer systems, computer tapes and records.

14.30 Electronic data

Electronic data means facts, concepts and information converted to a form useable for communication, display, distribution, interpretation or processing by electronic and electromechanical processing or electronically controlled equipment, including programmes, software and other coded instructions for such equipment.

14.31 Elimination period

Elimination period means the number of consecutive days as stated in the **schedule** from the date the **insured person** suffers **temporary total disablement** during which no **benefits** are payable. The sum of money represented by such periods will not contribute towards any claim for **benefits** under this insurance.

14.32 Employee

Employee means any person whilst:

- 14.32.1 engaged under a contract of service or apprenticeship with the **insured**;
- 14.32.2 acting in the capacity of non executive director of the **insured**;
- 14.32.3 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 European Union deems to be an employee;provided that the **insured** can always request that any such person is not treated as an employee.

14.33 Estimated gross profit

Estimated gross profit means the amount declared by the **insured** to the **insurer** as representing not less than the **gross profit** which it is anticipated will be earned by the **business** during the financial year most nearly concurrent with the **period of insurance** (or a proportionately increased multiple thereof where the **maximum indemnity period** exceeds twelve months).

14.34 Estimated gross revenue

Estimated gross revenue means the amount declared by the **insured** to the **insurer** as representing not less than the **gross revenue** which it is anticipated will be earned by the **business** during the financial year most nearly concurrent with the **period of insurance** (or a proportionately increased multiple thereof where the **maximum indemnity period** exceeds twelve months).

14.35 Excess

14.35.1 For **insured sections Property and Loss of Rent**: the **limit of liability** or **sum insured**, as applicable, is additional to the excess and excess means the first amount payable by the **insured** in respect of each and every claim or potential claim to be applied to each and every **premises** as ascertained after the application of all other terms and conditions of this insurance. .

14.35.2 For **insured sections Employers , Property Owners, Products & Pollution Liability** the **limit of indemnity** is additional to the excess and excess means

- a) the first amount payable by the **insured** in respect of damages, **costs and expenses**, claimant's costs, fees and expenses and loss adjuster's fees for 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)**.

14.36 Excess (damage only)

Excess (damage only) means the amount, if any, specified in the **schedule** as excess (damage only) which if so specified is the first amount payable by the **insured** in respect of damages, **costs and expenses**, claimant's costs, fees and expenses and loss adjuster's fees for each and every **damage** claim or potential **damage** claim as ascertained after the application of all other terms and conditions of this insurance.

14.37 Goods

Goods means **stock and materials in trade** and any other property specified in the **schedule**, belonging to the **insured** or for which the **insured** are responsible and connected with the **business**.

14.38 Gross profit

Gross profit means the amount by which the sum of the amount of the **turnover** and the amounts of the closing stock and work in progress will exceed the sum of the amounts of the opening stock and work in progress and the amount of the **specified working expenses**.

14.39 Gross revenue

Gross revenue means the **money** paid or payable to the **insured** for services rendered in the course of the **business** at the **premises**.

14.40 Hacking

Hacking means unauthorised access to any computer or other equipment or component or system or item which processes stores or retrieves data, whether the property of the **insured** or not.

14.41 Healthcare practitioner

Healthcare practitioner means a qualified licensed member of the medical profession as approved by the governing medical association of the country in which the healthcare practitioner resides who is not an **insured person**, a member of the **insured person's** family or an **employee** of the **insured**.

14.42 Indemnity period

Indemnity period means the period beginning with the occurrence of the **damage** and ending not later than the **maximum indemnity period** thereafter during which the results of the **business** will be affected in consequence of the **damage**.

14.43 Injury

Injury will mean a specific injury which

- 14.43.1 is sustained by the **insured person** during the **period of insurance**, and is caused by an **accident**, and
- 14.43.2 solely and independently of any other cause, causes death or disablement of the **insured person**.

14.44 Insured

Insured means:

- 14.44.1 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;
- 14.44.2 the person or people shown as insured in the **schedule**;
- 14.44.3 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.

14.45 Insured peril

Insured peril means any cause not otherwise excluded.

14.46 Insured person

Insured person means:

- 14.46.1 the **insured** or any principal, director, partner or **employee** of the **insured**; or
- 14.46.2 any person acting on behalf of the **insured** other than an **employee** of a security company or organisation not being over seventy (70) years of age nor being under sixteen (16) years of age;

14.47 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**.

14.48 Insurer

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

14.49 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.

14.50 Limit of indemnity

Limit of indemnity means:

- 14.50.1 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**;

- 14.50.2 for **insured sections Employers , Property Owners, Products & Pollution Liability** the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability arising out of one 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**;
- 14.50.3 where two (2) or more **insured sections** are subject to a **combined single limit**, then the **combined single limit** is the maximum the **insurer** will pay for any insured event to which such **insured sections** apply in combination, and;
- 14.50.4 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**.

14.51 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.

14.52 Machinery, plant and all other contents

Machinery, plant and all other contents means machinery, plant, tenants' improvements and alterations, above ground storage tanks, **office contents** and **all other contents** at the **premises** which are the property of the **insured** or held by them in trust for which they are responsible but excluding;

- 14.52.1 landlord's fixtures and fittings therein and thereon;
- 14.52.2 **stock and materials in trade, money**; and
- 14.52.3 property more specifically insured;

14.53 Manifest

Manifest will mean the date when a **sickness** is reasonably capable of diagnosis by a **health care practitioner**.

14.54 Matches/tournament

Matches/tournament will mean competitive games played according to the laws of the game and the regulations of the governing organisation where the **insured person** participates.

14.55 Maximum indemnity period

Maximum indemnity period means the period stated in the **schedule**.

14.56 Money

Money means both negotiable money and non-negotiable money.

14.57 Negotiable money

Negotiable money means cash bank and currency notes uncrossed cheques giro cheques including pre-authenticated giro cheques uncrossed warrants uncrossed postal and money orders current postage and revenue stamps National Savings stamps and certificates holiday with pay stamps and gift tokens National Insurance stamps (whether affixed to cards or not) debit card sales vouchers trading stamps luncheon vouchers and bills of exchange securities for money travel warrants and authenticated travel tickets phonecards and mobile phone vouchers for use by the **insured** or any partner director or **employee** or the **insured** in connection with the **insured's business** consumer redemption vouchers and company

sales vouchers and unexpired units in franking machines all belonging to the **insured** or for which the **insured** has accepted responsibility.

14.58 Non-negotiable money

Negotiable money means crossed warrants crossed cheques crossed giro drafts crossed postal and money orders crossed bankers' drafts crossed National Girobank cash cheques premium bonds savings bonds stamped National Insurance cards National Savings Certificates VAT purchase invoices and credit card sales vouchers all belonging to the **insured** or for which the **insured** has accepted responsibility.

14.59 Non-ferrous metals

Non-ferrous metals means **stock and materials in trade** consisting of non-ferrous metals other than aluminium.

14.60 North America

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

14.61 Notifiable disease

Notifiable disease means illness sustained by any person resulting from:

14.61.1 food or drink poisoning, or

14.61.2 any human infectious or human contagious disease, an outbreak of which the competent local authority has stipulated shall be notified to them excluding Acquired Immune Deficiency Syndrome (AIDS), an AIDS related condition or avian influenza

14.62 Nuclear hazards

Nuclear hazards means:

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

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

14.63 Occupation

Occupation means the occupation of the **insured person** as stated in the **schedule (insured section C)**.

14.64 Office contents

Office Contents means office contents the property of the **insured** or held by them in trust for which they are responsible including

14.64.1 fixtures, fittings, furniture and

14.64.2 office equipment, tenants' improvements and alterations,

14.64.3 telephone, telex, facsimile, computer and ancillary equipment and computer installations.

14.65 Offshore

Offshore means:

14.65.1 work in or on any offshore rig or platform or support or accommodation vessel for any offshore rig or platform;

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

14.66 Other insured party

Other insured party means any of the following parties:

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

14.67 Outstanding debit balances

Outstanding debit balances means the **money** owed to the **insured** by their customers at the date of the **damage** but adjusted to take account of bad debts, owed amounts not passed through the books during the period between the last record and the date of the **damage**, and abnormal trading conditions affecting the **business** the **insured's** last record of amounts owed by customers.

14.68 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.

14.69 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**:

- 14.69.1 false arrest;
- 14.69.2 detention or imprisonment;
- 14.69.3 malicious prosecution;
- 14.69.4 wrongful entry into, or eviction of a person from a room, dwelling or premises that the person occupies;
- 14.69.5 invasion of the right of privacy;
- 14.69.6 libel, slander or defamation.

14.70 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.

14.71 Policy operative time

Policy operative time shall mean whilst the **insured person** is undertaking his/her occupation at his/her normal place of business, coverage granted is twenty four (24) hours

whilst the **insured person** is working on behalf of the **insured** away from his/her normal place of business.

14.72 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.

14.73 Pollution

Pollution means:

- 14.73.1 the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time;
- 14.73.2 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**.

14.74 Premises

For **insured sections Property & Loss of Rent** premises means the land occupied by the **insured** for the purpose of the **business** at (an) address(es) specified in the **schedule**.

For **insured sections Property Owners, Products & Pollution 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**.

14.75 Preventative costs

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

14.76 Product

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

14.77 Property insured

Property insured means tangible property described in the **schedule** to this **policy** that includes a specific **sum insured** or **limited of liability** against each or all of them and more specifically defined herein.

14.78 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.

14.79 Rate of gross profit

Rate of gross profit means the rate of gross profit earned, **trend adjusted**, on the **turnover** during the financial year immediately before the date of the **damage**.

14.80 Recovery

Recovery will mean the **insured person** having made a recovery when he is able to **participate** in his regular **occupation**, and perform the major duties thereof, even if he chooses not to.

14.81 Rent

Rent means the **money** paid or payable to the **insured** for rent and other charges and for services rendered in the course of the **business** at the **premises**.

14.82 Rent receivable

Rent receivable means the amount of the rent received or receivable from the letting of the property at the **premises**.

14.83 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.

14.84 Specified working expenses

Specified working expenses means:

- 14.84.1 purchases (less discounts received);
- 14.84.2 discounts allowed;
- 14.84.3 carriage, packing and freight.

14.85 Standard gross revenue

Standard gross revenue means the **gross revenue, trend adjusted**, during that period in the twelve (12) months immediately before the date of the **damage** which corresponds with the **indemnity period**.

14.86 Standard rent receivable

Standard gross revenue means the **rent receivable, trend adjusted**, during the period in the twelve (12) months immediately before the date of the **damage** which corresponds with the **indemnity period**.

14.87 Standard turnover

Standard turnover means the **turnover** excluding VAT, **trend adjusted**, during that period in the twelve (12) months immediately before the date of the **damage** which corresponds with the **indemnity period**.

14.88 Stock and materials in trade

Stock and materials in trade means stock and materials in trade including work in progress and contents of storage tanks at the **premises** the property of the **insured** or held by them in trust or on commission for which they are responsible, excluding property more specifically insured.

14.89 Stock debris removal

Stock debris removal means costs and expenses necessarily incurred by the **insured**, with the consent of the **insurer**, in removing debris of the **stock and materials in trade damaged** by any **insured peril**. The **insurer** will not pay for any costs or expenses incurred

- 14.89.1 in removing debris except from the site of such **damage** and the area immediately adjacent to such site,

14.89.2 arising from **pollution** or contamination of property not insured by this policy.

14.90 Suit

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

14.90.1 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

14.90.2 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.

14.91 Sum insured

Sum insured means the sum specified as the sum insured in the **schedule**.

14.92 Tobacco, cigars, cigarettes

Tobacco, cigars and cigarettes means that part of **stock and materials in trade** consisting of tobacco, cigars and cigarettes.

14.93 Temporary total disablement

Temporary total disablement means the **insured person** being totally disabled and prevented from attending to the whole of his business or **occupation** as a result of **injury** not being **permanent total disablement**, loss of limbs or sight as otherwise defined in the scale of compensation or table of **benefits** as applicable.

14.94 Transit

Transit means being carried to its destination, but outside the **premises**, by any vehicle including trailers and containers and whether the **insured's** vehicle or by road haulage and or post or parcel post or rail including:

14.94.1 conveyance by canal craft, sea going vessel and aircraft,

14.94.2 loading and unloading, and

14.94.3 while temporarily housed in the course of being carried to its destination.

14.95 Territorial limits

Territorial limits means the Republic of Ireland.

14.96 Terrorism

An act of terrorism includes any act, or preparation in respect of action, or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof, or in pursuit of political, religious, ideological, or similar purposes to intimidate the public or a section of the public of any nation by any person or group (s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s) de jure or de facto, and which:

a) endangers life other than that of the person committing the action; or

b) involves violence against one or more persons; or

c) involves **damage** to property; or

d) creates a risk to health or safety of the public or a section of the public; or

e) is designed to interfere with or to disrupt an electronic system.

14.97 Trend adjusted

Trend adjusted means adjustments will be made to figures as may be necessary to provide for the trend of the **business** and for variations in or circumstances affecting the **business**

either before or after the **damage** or which would have affected the **business** had the **damage** not occurred, so that the figures thus adjusted will represent as nearly as may be reasonable practicable the results which but for the **damage** would have been obtained during the relative period after the **damage**.

14.98 Turnover

Turnover means the money paid or payable to the **insured** for goods sold and delivered and for services rendered in the course of the **business** at the **premises**.

14.99 Unoccupied

Unoccupied means any building that is owned or used by the insured in the course of the business and has become vacant, disused or unfurnished and empty for a period in excess of thirty (30) days.

14.100 Virus or similar mechanism

Virus or similar mechanism means program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, whether involving self-replication or not. The definition of virus or similar mechanism includes but is not limited to trojan horses worms and logic bombs.

14.101 War

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power, 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**.

14.102 Wines and spirits

Wines and spirits means **Stock and materials in trade** consisting of wines, spirits, beer and other alcoholic liquids.

14.103 Work away

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

15 Complaints

15.1 How the insured can complain

The insured can complain about this policy by first contacting the broker. If the insured wishes to contact the insurer directly the insured should contact:

QBE Europe SA/NV write to Customer Relations, QBE Europe SA/NV, Regentlaan 37 Boulevard du Régent, 1000 Brussels, Belgium, e-mail: complaints@qbe.com, telephone: +32 2 504 82 11 or fax: +32 2 504 82 00;

15.1 What QBE will do if you complain

Upon receipt of your written notification of complaint, the **insurer** will acknowledge your complaint, in writing, within five (5) business days of the complaint being made. The **insurer** will also inform you of the name of one or more individuals that will be the point of contact regarding your complaint until the complaint is resolved or cannot be progressed any further.

The **insurer** will provide you with an update on the progress of the investigation of your complaint, in writing, within twenty (20) business days of the complaint being made.

The insurer will aim to provide you with its decision on your complaint, in writing, within forty (40) business days of the complaint being made.

Should you remain dissatisfied with the final response from the above or if you have not received a final response within forty (40) business days of the complaint being made, you may be eligible to refer the complaint to the Financial Services Ombudsman (FSO). The contact details are as follows:

Financial Services Ombudsman, 3rd Floor, Lincoln House, Lincoln Place, Dublin 2, Ireland

Lo Call: 1 890 882090, Tel: 01 662 0899, Fax: 01 662 0890

E-mail: enquiries@financialombudsman.ie

The complaints handling arrangements above are without prejudice to your rights in law.

15.2 About the Financial Services Ombudsman's Bureau (FSOB)

Eligible complainants are a private policyholder, charity or trust, or limited companies with a turnover of less than EUR3m.

The FSOB will only consider a complaint from you if you are an eligible complainant and if:

- the insurer has been given an opportunity to resolve it and
- the **insurer** has sent you a final response letter and you have referred your complaint to the FSO within six (6) months of the **insurer's** final response letter or
- the insurer has not responded to your complaint with a decision within forty (40) days.

QBE European Operations
QBE Europe SA/NV
Regentlaan 37 Boulevard du Régent
1000 Brussels
Belgium
Tel +32 2 504 82 11
+32 2 504 82 00
enquiries@qbe.com
www.QBEurope.com



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