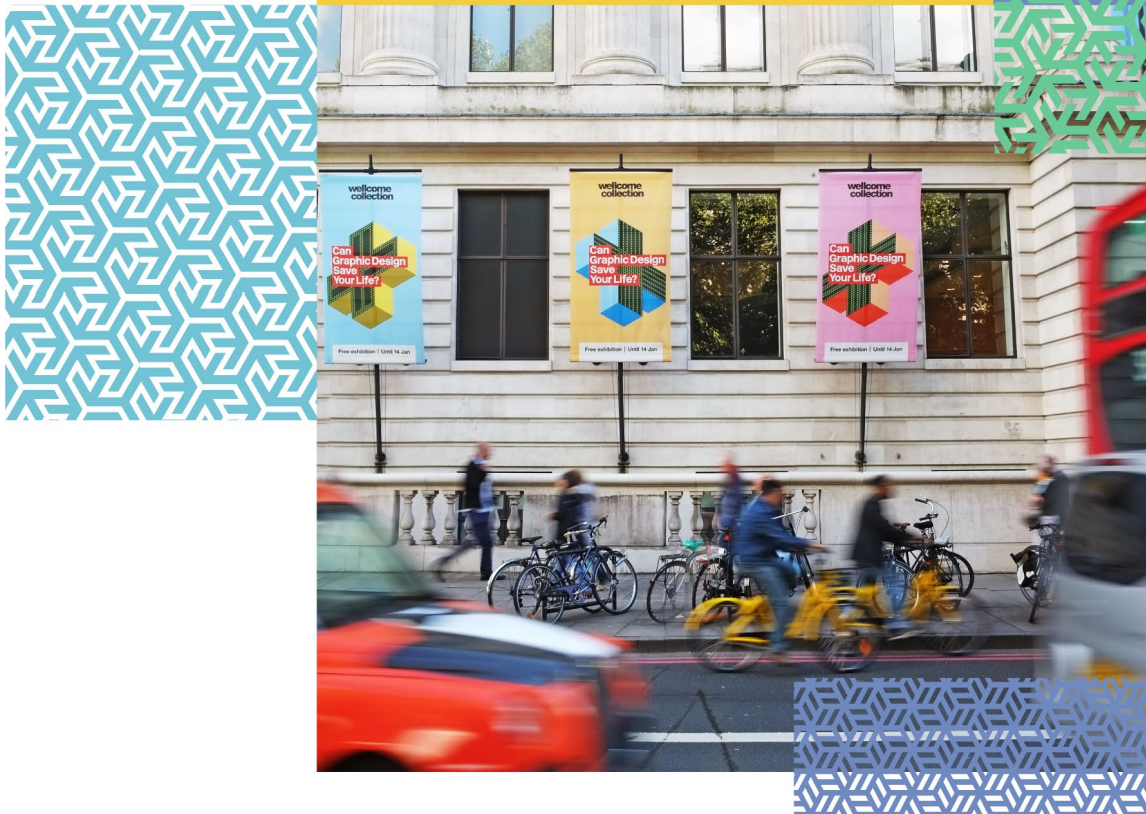




PPBL010419
Public Authority Combined
Liability Insurance Policy
Underwritten by QBE

Exclusive



This policy is available to the public and education sector exclusively through RMP.

As your insurance partner we regularly review cover available in the market to ensure that you are suitably protected.

Public Authority Combined Liability Insurance (UK) Policy



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 Policy structure

1.3.1 The **insured sections** set out the scope of 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. The cover by each **insured section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.

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

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

- a) claims handling terms and conditions;
- b) general terms and conditions;
- c) general definitions and interpretations; and
- d) complaints.

1.4 Period of insurance and premium

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

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

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

1.5 Signature

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



2 Insured section A - Employers' liability

2.1 Employers' liability cover

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

2.2 Employers' liability defence costs

- 2.2.1 Following any event which is or may be the subject of indemnity under the 'Employers' liability cover' clause above whether or not **bodily injury** has occurred the **insurer** agrees to indemnify the **insured** for **defence costs** but such **defence costs** form part of the **limit of indemnity** and do not increase the **limit of indemnity** or any **sub-limit of indemnity**.
- 2.2.2 This indemnity is subject to the exclusion 'Defence costs incurred without the **insurer's** consent'.

2.3 Employers' liability extensions

2.3.1 Contractual liability

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

2.3.2 Cross liabilities

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

2.3.3 Data Protection

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

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

first occurring during the **period of insurance** and resulting in a claim or claims brought by any **employee** and notified to the **insurer** during the **period of insurance**; and

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

This extension shall not apply in respect of:

- a) the cost of replacing, reinstating, rectifying or erasing any personal data;
- b) any cost relating to the investigation of a data breach, or any obligation to report a data breach to the Information Commissioner's Office or any other supervisory authority or other regulator or to data subjects;
- c) liability caused by or arising from a deliberate act by or omission of any party entitled to indemnity under this **policy**, the effect of which would knowingly result in liability under the DPA, or any subsequent amending or replacement legislation, or the GDPR but this exclusion shall not apply to the liability of the **public authority** in respect of a deliberate or intentional act by or omission of any **employee** or any other individual person;
- d) claims which arise out of circumstances that are notified to any previous insurer or known to the **insured** at inception of this **policy**;
- e) liability for which indemnity is provided under any other insurance; or
- f) claims or prosecutions brought against the **insured** outside the Courts of the **United Kingdom**.

2.3.4 Indemnity to other parties

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

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

2.3.5 Medical treatment

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

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

2.3.6 Offshore activities

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

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

2.3.7 Principals

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

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

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

2.3.8 **Schools governing bodies**

For the purposes of this extension the definition of **insured** is amended to include the governing body for the time being of any school that is specifically listed in the **schedule**, provided that:

- a) if at the time of any claim under this **policy** there is any other valid and collectible insurance available to the governing body (other than any insurance that is specifically stated to be in excess of this **policy**) then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance. If the other insurance is provided by the **insurer** or by another company/entity within the QBE group, then the total **limit of indemnity** available from this **policy** shall be reduced by the **limit of indemnity** of the other insurance.
- b) the amount of the **retention** shall be paid by the **insurer** but the **public authority** shall upon request from the **insurer** promptly but in any event within thirty (30) days reimburse the **insurer** for any amounts so paid in respect of the **retention**.

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

The **insurer** agrees to indemnify the **public authority** and at the request of the **public authority**, any **other insured party**, in respect of legal **defence costs** reasonably incurred 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**;
- ii) **bodily injury** to or potential **bodily injury** to **employees** including their health, safety and welfare;
- d) The **insurer** will also pay to the **insured**:
 - i) **defence costs** of appeal including appeal against improvement and prohibition notices incurred with the prior consent of the **insurer**;
 - ii) prosecution costs awarded against the **insured**.
- e) The indemnity by this clause excludes and does not cover any amount (including **defence costs**):
 - i) for which the **public authority** or any **other insured party** is entitled to indemnity by any other legal expenses, motor or employment protection **policy**;
 - ii) any amount in excess of the amount shown in the **schedule** as the **limit of indemnity** for this **insured section**, for any one claim or series of claims arising out of the same prosecution or proceedings, provided that any amounts paid under this extension count towards and are not additional to the **limit of indemnity** for this **insured section**.

2.3.10 **Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) liability**

The **insurer** agrees to indemnify the **insured** for liability incurred by virtue of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in respect of **bodily injury** caused after 6th April 2006 but prior to the date on which:

- a) any subsidiary is included and forms part of the **insured**; or
- b) there is a relevant transfer of any economic entity as defined by the legislation;

for which a claim is first made in writing to the **insured** during the **period of insurance**. The indemnity provided by this extension

- i) shall only apply in so far as the **insured** is unable to obtain indemnity under any previous policy of insurance in respect of such **bodily injury**;
- ii) shall only apply to any **business** undertaken by the **insured** or their predecessors in business;
- iii) is conditional upon any claim notified under this clause being treated as having occurred in the year of notification;
- iv) shall only apply on condition that before making a claim the **insured** (or **another insured party**) agrees to be bound by this **policy** (other than premium in respect of the **other insured party**) as if it were the **insured**.
- v) excludes and does not provide an indemnity from the date of sale or disposal in the event of the sale or disposal of any subsidiary company or economic unit which constitutes a relevant transfer under the legislation.

2.3.11 **Unsatisfied court judgments**

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

- a) by any **employee** or the personal representatives of any **employee** in respect of **bodily injury** to such **employee** that arises out of and in the course of his employment by the **public authority** 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.

2.3.12 **War and terrorism**

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

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

2.3.13 **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 they

might otherwise have been entitled in such circumstances in respect of any payments which they may make under this **policy**.

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

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

2.4 Employers' liability limitations and exclusions

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

2.4.1 Data Protection liabilities

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

2.4.2 Defence costs incurred without the insurer's consent

any **defence costs** for which the **insurer's** prior written consent has not been obtained (as provided for in the definition of **defence costs**).

2.4.3 Employment practices dispute

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

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

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

2.4.4 Fees for intervention

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

2.4.5 Fines and penalties

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

2.4.6 Limit of indemnity

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

2.4.7 North American jurisdiction

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

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

2.4.8 Nuclear hazards

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

2.4.9 **Offshore**

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

2.4.10 **Road traffic legislation**

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

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

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

2.4.11 **War or terrorism**

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

2.4.12 **Workman's compensation or social security payment**

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

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

2.5.1 **Conflict of interest**

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

3 Insured section B - Public liability

3.1 Public liability cover

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

3.2 Public liability defence costs

3.2.1 North American jurisdiction

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

3.2.2 All other jurisdictions

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

3.2.3 All jurisdictions

This indemnity is subject to the exclusion 'Defence costs incurred without the **insurer's** consent'.

3.3 Public liability extensions

3.3.1 Data Protection

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

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

first occurring during the **period of insurance** and resulting in a claim or claims brought by any person not being a director, partner or **employee** and notified to the **insurer** during the **period of insurance**; and
- b) **defence costs** in relation to a prosecution commenced during the **period of insurance** under the DPA, any subsequent amending or replacement legislation or the GDPR and incurred with the prior written consent of the **insurer**.

This extension shall not apply in respect of:

- a) the cost of replacing, reinstating, rectifying or erasing any personal data;
- b) any cost relating to the investigation of a data breach, or any obligation to report a data breach to the Information Commissioner's Office or any other supervisory authority or other regulator or to data subjects;
- c) liability caused by or arising from a deliberate act by or omission of any party entitled to indemnity under this **policy**, the effect of which would knowingly result in liability under the DPA, or any subsequent amending or replacement legislation, or the GDPR but this

- exclusion shall not apply to the liability of the **public authority** in respect of a deliberate or intentional act by or omission of any **employee** or any other individual person;
- d) claims which arise out of circumstances that are notified to any previous insurer or known to the **insured** at inception of this **policy**;
 - e) liability for which indemnity is provided under any other insurance; or
 - f) claims or prosecutions brought against the **insured** outside the Courts of the **United Kingdom**.

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

3.3.2 Defective Premises Act 1972

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

3.3.3 Libel and slander

The **insurer** will indemnify the **insured** against legal liability arising from any claim or claims first made against the **insured** and reported to the **insurer** during the **period of insurance** stated in the **schedule** or within 28 days of the expiry of the **period of insurance** in respect of libel or slander (or in Scotland defamation) committed by:

- a) the **insured**;
 - b) any person at any time employed by the **insured**;
- provided that
- c) such libel, slander or defamation has been committed in the conduct of the **business** as stated in the **schedule**;
 - d) this extension excludes libel or slander (or defamation)
 - i) made by or at the direction of the **public authority** or any person with knowledge of the defamatory nature of the acts or omissions giving rise to a claim of libel, slander or defamation;
 - ii) made by any person acting outside the scope of their authority;
 - e) this extension excludes any amount in respect of liquidated damages or penalties which attach solely because of a contract or agreement, or fines; and
 - f) the **insurer** shall not be liable to pay any amount in excess of a **sub-limit of indemnity** stated in the **schedule**, any one claim or series of claims arising out of the same libellous, slanderous or defamatory statement and in the aggregate for all claims during the **period of insurance**.

3.3.4 Temporary business trips overseas

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

3.4 Public liability limitations and exclusions

In addition to the limitations and exclusions in the 'Exclusions to insured sections B, C, D and E' clause, this **insured section** excludes and does not cover:

3.4.1 **Libel and slander**

liability arising from any claim or claims in respect of libel, slander or defamation except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by the Libel and slander extension;

3.4.2 **Materials prior to installation**

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

3.4.3 **Pollution and products**

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

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

3.4.4 **Rectification of defective work**

- a) **damage** to; or
 - b) any **expenditure** incurred by the **insured** for the removal, repair, adjustment, alteration, reinstatement, withdrawal, inspection or disposal of
- any property (including any part of the property) furnished in connection with performance of **work away** as a result of any defect (suspected or known) therein or any unsuitability for its intended purpose.

4 Insured section C - Products liability

4.1 Products liability cover

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

4.2 Products liability defence costs

4.2.1 North American jurisdiction

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

4.2.2 All other jurisdictions

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

4.2.3 All jurisdictions

This indemnity is subject to the exclusion 'Defence costs incurred without the **insurer's** consent'.

4.3 Products liability extensions

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

4.4 Products liability limitations and exclusions

In addition to the limitations and exclusions applicable in the 'Exclusions to insured sections B, C, D and E' clause, this **insured section** excludes and does not cover:

4.4.1 Aircraft

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

4.4.2 Pollution

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

5 Insured section D - Pollution liability

5.1 Pollution liability

The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages or compensation, including claimant costs recoverable from the **insured** arising from **personal injury, damage, denial of access** or nuisance occurring in its entirety during the **period of insurance** arising out of or from **pollution**, provided that such **pollution**:

- a) arises solely out of the course of the **business**; and
- b) is the direct result of a sudden, specific and identifiable event occurring during the **period of insurance**.

5.2 Pollution liability defence costs

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

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

5.2.3 This indemnity is subject to the exclusion 'Defence costs incurred without the **insurer's** consent'.

5.3 Pollution liability extensions

5.3.1 Environmental statutory liability

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

- a) liability arises from **pollution** occurring during the course of **business**, within a state of the European Union and is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance**;
- b) the insurance by this extension excludes and does not cover any sum incurred in respect of:
 - i) **preventative costs** for prevention of imminent threat of environmental damage;
 - ii) primary, complementary or compensatory remediation for damage;
 - iii) the removal of any significant risk of an adverse effect on human health; to or on the **insured's** land, premises, watercourse or body of water whether owned, leased, hired, tenanted or otherwise in the **insured's** care, custody or control;
- c) the insurance by this extension excludes and does not cover any sum incurred in achieving any improvement or alteration in the condition of the land, the atmosphere or any watercourse or body of water beyond that required under any relevant and applicable law or statutory enactment at the time remediation commences; and
- d) the total amount payable by the **insurer** inclusive of all **defence costs** for any one occurrence or in the aggregate during any one **period of insurance** shall not exceed the **sub-limit of indemnity** as stated in the **schedule** (but if no **sub-limit** is shown in the **schedule** the amount of the **sub-limit** shall be GBP 5,000,000);

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

5.3.2 **Legionella**

Notwithstanding exclusion 'Legionella', 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, personal injury, damage or denial of access** except that the **insurer** shall not be liable for:

- a) any claims which arise out of any circumstances notified to previous insurers or known to the **insured** at the inception of this **policy**;
- b) any claims for **bodily injury** or **personal injury** arising from employment;
- c) any claims made against the **insured** for **legionella** where the **insured event** giving rise to the claim happened prior to the inception date stated in the **schedule**.

5.4 **Pollution liability limitations and exclusions**

In addition to the limitations and exclusions applicable to this **insured section** in the 'Exclusions to insured sections B, C, D and E' clause, this **insured section** excludes and does not cover:

5.4.1 **Owned or previously owned premises**

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

6 Insured section E – Coverage extensions to insured sections B, C and D

6.1 Asbestos accidental discovery

1. The **insurer** will indemnify the **insured** against legal liability to pay damages or compensation including claimants' costs recoverable from the **insured** arising from any claim first made against the **insured** during the **period of insurance** for **personal injury, damage** or nuisance, caused at any time after the inception date of the **period of insurance**, following the accidental discovery of asbestos or asbestos containing materials.
2. The **insurer** agrees that any circumstance notified to the **insurer** 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**.
3. The insurance by this extension excludes and does not cover:
 - a) **personal injury, damage or nuisance** arising from 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) **personal injury, damage or nuisance** caused by the exposure to asbestos or asbestos containing materials occurred on or before the inception date of the **period of insurance**;
 - c) any claim arising directly or indirectly out of a circumstance or event of which the **insured** was aware before the effective date of this Asbestos accidental discovery clause; or
 - d) any claim arising directly or indirectly out of the diminution in the value of property or loss of or potential loss of rental income or any other consequential loss (including business interruption) whatever and howsoever arising.
4. Any claim for damages or compensation including claimant costs recoverable from the **insured** and **defence costs** in excess of the **sub-limit of indemnity** of GBP 1,000,000 which sum shall be the maximum the **insurer** will pay in the aggregate during any one **period of insurance**.

6.2 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 from obligations undertaken by the **insured** by virtue of such contract or agreement but only to the extent of the indemnity defined in these **insured sections** provided that the terms and conditions of this insurance will apply as far as may be practicable.

6.3 Cross liabilities

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

6.4 Hirers' liability

- 6.4.1 At the request of the **public authority** the **insurer** will indemnify any **hirer** as an **other insured party** in respect of liability arising out of or from:
 - a) **personal injury** to any person (other than **personal injury** to an **employee** of the **hirer** arising out of and in the course of employment by the **hirer**);
 - b) **damage** to the **premises** (including contents therein) hired from the **public authority**;
 - c) **damage** to any other property not belonging to the **hirer** nor in the care, custody or control of the **hirer** or any person in the **hirer's** service;

occurring during the **period of insurance** at the **premises** hired from the **public authority** arising out of the activities of the **hirer** for which such **premises** were hired provided that

- d) the **insurer** shall not be liable to pay any amount for which indemnity to the **hirer** is provided under any other insurance or in any other way;
- e) the **insurer** shall not be liable to pay any amount in excess of a **sub-limit of indemnity** stated in the **schedule** in respect of any one claim against the **hirer** or series of claims against the **hirer** arising out of one occurrence;
- f) liability for which indemnity to the principal is provided under any other insurance or in any other way is excluded;
- g) the **retention** applicable to such indemnity is as stated in the **schedule** and all of this **retention** shall be a non-ranking excess;
- h) any claim for **personal injury** or **damage** arising out of the use of the **premises** for any of the following activities or purposes is excluded:
 - i) for meetings organised by political parties;
 - ii) for professional entertainment purposes;
 - iii) for commercial or **business** functions which involve bringing into the **premises** equipment which operates by means of the application of heat;
 - iv) for martial arts activities; or
 - v) for any sporting activity but only in respect of **personal injury** or **damage** suffered by one participant that was caused by another participant.
- i) any claim for **personal injury** or **damage** arising out of the use of or caused by use of any aircraft or other aerial device or satellite or vehicle or any watercraft is excluded.

6.5 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**.

6.6 Local Authority National Type Approval Confederation (LANTAC)

The **insurer** will indemnify the **public authority** in respect of liability which the **insured** shall become legally liable to pay by virtue of any indemnity provided in respect of the **insured's** participation in the Local Authority National Type Approval Confederation.

6.7 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 as a result of any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Local Democracy, Economic Development and Construction Act 2009 (formerly Housing Grants, Construction and Regeneration Act 1996) or an adjudication clause or rules contained in a contract.

6.8 Motor liability

- 6.8.1 Notwithstanding the exclusion 'Ownership or use of mechanically propelled vehicles', the **insurer** agrees to indemnify the **public authority** 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 **public authority** or any **other insured party** on or under any **premises** occupied by the **public authority** 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 **public authority** is responsible or on any **premises** occupied by the **public authority** provided that:
 - i) such vehicle is not lent or hired to the **public authority**;
 - ii) the **damage** to an **employee's** vehicle does not arise out of the maintenance, operation or use of a vehicle by that **employee**;
- e) the unauthorised use of any mechanically propelled vehicle by any person in the employment of the **public authority** provided that the **public authority** shall have taken all reasonable precautions to ensure that its **employees** are made aware of and comply with restrictions applicable to the use of the vehicle;
- f) the servicing, maintenance and testing of Hackney Carriages or other mechanically propelled vehicles used for private hire, but excluding any expenditure incurred for any repair, adjustment, alteration, reinstatement, withdrawal or replacement required as a result of any defect in the work.

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

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

6.9 Motor contingent liability

Notwithstanding the exclusion 'Ownership or use of mechanically propelled vehicles', the **insurer** agrees to indemnify the **public authority** 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 person other than an **employee** or member; or
 - ii) any person who to the **insured's** knowledge or the knowledge of any member, 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** is entitled to indemnity under any other insurance.

6.10 Motor trade liability

The **insurer** will indemnify the **public authority** in respect of liability arising out of or from the servicing, repair, maintenance and testing of motor vehicles not belonging to or

hired, leased or loaned to the **public authority** in the course of the **business** provided that this clause excludes and the **insurer** will not be liable for the cost of repairing, reinstating, replacing or rectifying any original work giving rise to the liability of the **public authority**.

6.11 Principals

The **insurer** will indemnify any party including any principal whom, under contract or agreement, the **public authority** 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 **public authority** and provided that:

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

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

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

6.12.1 Notwithstanding the **pollution** exclusions under **insured section B** and **C** and the exclusion of 'Property in the insured's care, custody and control' but subject always to the exclusion 'Owned or previously owned premises' under **insured section D**, the **insurer** agrees to extend coverage under **insured sections B, C** and **D** to indemnify the **public authority** in respect of liability arising out of or from:

- a) **damage** to personal effects (including vehicles and their contents) of **employees** or members, officials, visitors or guests;
- b) **damage to premises** including landlord's contents, fixtures and fittings not owned by the **public authority** 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 **public authority** 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 **public authority** or otherwise in the **public authority's** custody or control but temporarily occupied by the **public authority** for **work away** therein but no indemnity is provided by this clause for **damage** to that part of the property on which the **public authority** is working and which arises out of such **work away**.
- d) **damage** to property held by the **public authority** which has been the subject of a legal dispute or illegal distraint;
- e) **damage** to vehicles, trailers and their contents removed under the powers granted to the **public authority** by any statute or bye-law.
- f) **damage** to motor vehicles or their contents not belonging to or hired, leased or loaned to the **public authority** which are undergoing service or repair by the **public authority** in accordance with the terms of the 'Motor trade liability' extension clause.

6.13 Reputational damage - mitigation costs

Following an **insured event**, then where required the **insurer** will pay all reasonable costs incurred by the **public authority** with the **insurer's** prior written consent to mitigate damage to the reputation of the **public authority**, as a result of adverse publicity or adverse media coverage (whether by radio or television in the press), provided that

- a) this extension shall only apply to an **insured event** for which the total amount of such costs has exceeded, or in the opinion of the **insurer** is likely to exceed, the limit for this extension stated in the **schedule** (or if no limit is shown, a limit of GBP1,000,000 for any one occurrence); and

- b) **the insurer** shall not be liable to pay any amount in excess of GBP50,000 under the terms of this extension for any one occurrence and in the aggregate in respect of all **insured events** during the **period of insurance**); and
- c) **the insured** shall at all times observe and fulfil and the provisions contained in the 'Duties in the event of a claim or potential claim' section this **policy**.

6.14 Schools governing bodies

For the purposes of this extension the definition of **insured** is amended to include the governing body for the time being of any local authority maintained school within the **public authority's** area provided that:

- a) if at the time of any claim under this **policy** there is any other valid and collectible insurance available to the governing body (other than any insurance that is specifically stated to be in excess of this **policy**) then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance. If the other insurance is provided by the **insurer** or by another company/entity within the QBE group, then the total **limit of indemnity** available from this **policy** shall be reduced by the **limit of indemnity** of the other insurance.
- b) the amount of the **retention** shall be paid by the **insurer** but the **public authority** shall upon request from the **insurer** promptly but in any event within thirty (30) days reimburse the **insurer** for any amounts so paid in respect of the **retention**.

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

6.15.1 The **insurer** agrees subject to its prior written consent having been obtained to indemnify the **public authority** and at the request of the **public authority**, any **other insured party**, in respect of legal **defence costs** reasonably incurred 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 **public authority** 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 persons other than **employees** including their health, safety and welfare.

and, the **insurer** will also pay to the **public authority**:

- iii) **defence costs** of appeal including appeal against improvement and prohibition notices;
- iv) prosecution costs awarded against the **insured**;

but the indemnity by this clause excludes and does not cover any amount (including **defence costs**):

- v) for which the **public authority** or any **other insured party** is entitled to indemnity by any other legal expenses, motor or employment protection **policy**;
- vi) in excess of the amount shown in the **schedule** as the **limit of indemnity** for this **insured section**, for any one claim or series of claims arising out of the same prosecution or proceedings, provided that any amounts paid under this extension count towards and are not additional to the **limit of indemnity** for this **insured section**.

6.15.2 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 and Corporate Homicide Act 2007.

6.16 Waiver of subrogation

In respect of contracts or agreements which impose upon the **public authority** conditions waiving the rights of the **public authority** 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 **public authority**, the **insurer** will waive all rights of subrogation against a subsidiary of the **public authority** 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 **public authority** may have against third parties liable for the same loss.

7 Exclusions to insured sections B, C, D and E

Insured sections B, C, D and E exclude and do not cover:

7.1 Advertising injury

liability arising out of advertising injury.

7.2 Advice, design or plans provided for a fee

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

7.3 Aircraft and watercraft

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

- 7.3.1 motor barges not exceeding seventy five (75) ton capacity on inland waterways;
- 7.3.2 hand-propelled craft, sailing vessels and motor launches not exceeding fifteen (15) metres in length;
- 7.3.3 watercraft not belonging to or chartered by the **insured** but used by it 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; and
 - 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.

7.4 Airports

liability arising out of flying operations and activities incidental to such operations in respect of any airport owned or operated by the **insured**.

7.5 Asbestos

liability arising from or caused by any work involving the manufacture, mining, processing, use, installation, storage, removal, stripping out, demolition, disposal, distribution, inspection or testing of or exposure to asbestos, asbestos fibres, asbestos dust or asbestos-containing materials.

7.6 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 financial loss consequent upon the necessity for such withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement.

7.7 Data Protection

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

7.8 Defence costs incurred without the insurer's consent

any **defence costs** for which the **insurer's** prior written consent has not been obtained (as provided for in the definition of **defence costs**).

7.9 Deliberate acts

- 7.9.1 damages or compensation, including claimant costs and any associated **defence costs**, which result from **personal injury, damage, denial of access** or nuisance either expected or intended by the **insured** or **other insured party** but this exclusion does not apply to **personal injury** resulting from the use of reasonable force to protect persons or property.
- 7.9.2 other **defence costs** incurred in proceedings other than in respect of manslaughter, corporate manslaughter or corporate homicide consequent upon any deliberate act or omission by or on behalf of the **insured** or **other insured party**, if the result of such act or omission could reasonably have been expected to constitute an offence under any legislation.

7.10 Electronic data

liability arising from:

- a) loss, alteration or impairment of or **damage** to information and/or data in electronic form;
 - b) malicious acts of any person carried out by electronic means;
- but this exclusion shall not apply in respect of ;
- a) liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded; or
 - b) liability which arises under the Data Protection Act 1998, any subsequent amending legislation or the General Data Protection Regulation.

7.11 Employment practices dispute

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

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

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

7.12 Financial loss

liability for economic loss not consequent upon **bodily injury** or **damage** except for nuisance, and the cover provided by the 'Data Protection' and 'Libel and slander' extension clauses under **insured section B**.

7.13 Fines, penalties or multiplication of compensatory damages

- 7.13.1 any fines or penalties;
- 7.13.2 any punitive damages, exemplary damages, aggravated damages, treble damages or any other increase in damages resulting from the multiplication of compensatory **damages** but this exclusion shall not apply in respect of such damages incurred within the jurisdiction of the **United Kingdom**.

7.14 Legionella

bodily injury, personal injury, damage or **denial of access** arising out of, alleging or attributable to the existence of **legionella** except as stated as insured in the 'Legionella' extension clause under **insured section D**;

7.15 Liability from employment

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

7.16 Limit of indemnity

liability in excess of the **limit of indemnity** stated in the **schedule** except for payment of **defence costs** where **defence costs** are stated to be payable in addition to the **limit of indemnity**.

7.17 Liquidated damages

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

7.18 Medical malpractice

Liability arising in whole or in part from:

- 7.18.1 the provision of services by:
 - a) a hospital or clinic;
 - b) a physician, medical doctor, osteopath, chiropractor, resident, extern or intern;
 - c) a psychiatrist;
 - d) a pharmacist;
 - e) a dentist, orthodontist or periodontist;
- 7.18.2 the prescribing of any drugs or medicines;
- 7.18.3 the use of equipment for diagnostic purposes;
- 7.18.4 the rendering or failure of any other medical or paramedical services other than in respect of:
 - a) emergency and/or first aid medical services;
 - b) the administering of drugs or medicines or procedures pre-prescribed by a medical practitioner and subject to any written guidelines by an **employee** of the **public authority** in connection with the **business** of the **public authority** provided that no indemnity is available from any other source.

7.19 North American jurisdiction

- 7.19.1 liability in respect of any judgment, award, payment, **defence costs** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or any order made anywhere in the world to enforce such judgment, award, payment, **defence costs** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**;
- 7.19.2 but this exclusion shall not apply to visits to **North America** in the course of **business** to undertake non-manual work including but not limited to clerical work, sales and promotional activities and conference attendance providing that, in such circumstances:
 - a) the **insurer** will not be liable to indemnify any entity based in, operating in or domiciled in **North America**; and
 - b) the **insurer** will not be liable to indemnify for any liability that arises under any agreement or contract that would not arise in the absence of any agreement or contract;
 - c) the **insurer** will not be liable to indemnify for liability arising directly or indirectly from the ownership, maintenance, operation or use of any mechanically propelled vehicle or watercraft;
 - d) the **insurer** will not be liable to indemnify for liability arising directly or indirectly from **pollution**;
 - e) **defence costs** are inclusive and form part of the **limit of indemnity**.

7.20 North American territory

- 7.20.1 liability in respect of **personal injury**, **damage**, **denial of access** or nuisance occurring within **North America** but this exclusion shall not apply to temporary non-manual visits to **North America** as provided for in the 'North American jurisdiction' clause in this **insured section**;

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

7.21 Nuclear risks

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

7.21.2 any legal liability of whatsoever nature;

7.21.3 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 clause 7.21.3 above, attributable to **nuclear hazard**.

7.22 Overseas domiciled operations

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

7.23 Ownership or use of mechanically propelled vehicles

personal injury, damage, denial of access or nuisance arising out of or from the ownership, maintenance, operation or use of any mechanically propelled vehicle by or on behalf of the **insured** or any **other insured party** except that this exclusion shall not apply in respect of and to the extent of the indemnity provided by the 'Motor liability' and 'Motor contingent liability' clauses under **insured section E**.

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

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

7.25 Property modification

7.25.1 costs or liability incurred by any **insured** to modify any building property or facility to make their said building property or facility more accessible or accommodating to any disabled person.

7.26 Retention

the amount of the **retention** as applicable and stated in the **schedule**.

7.27 Riot

7.27.1 liability directly or indirectly arising out of a payment or an entitlement to payment of compensation in respect of **damage** occasioned by riot as provided under the terms of
a) the Riot Compensation Act of 2016 or
b) the Riotous Assemblies (Scotland) Act 1882 or
c) the Criminal Damage (Compensation) (Northern Ireland) Order 1977
or any amending or subsequent legislation.

7.28 Statutory defence costs

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

7.29 The product itself

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

7.30 War

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

8 Insured section F - Premises environmental liability

8.1 Premises environmental liability cover

8.1.1 Own clean-up costs cover

The **insurer** will pay **clean-up costs** beyond the boundaries of an **insured premises** arising from a **pollution condition** which has migrated beyond the boundaries of the **insured premises** providing such **clean-up costs** are the result of a **claim** against the **insured** by a **regulator**.

All **claims** made against the **insured** during the **period of insurance** must be notified to the **insurer** during the same **period of insurance**. The **insurer** will also pay **defence costs** in respect of any clean-up costs.

8.1.2 Premises environmental liability cover

The **insurer** will pay loss resulting from:

- a) **bodily injury**;
- b) **property damage**;
- c) **clean-up costs** incurred by a third party in accordance with environmental law;

beyond the boundaries of an **insured premises**, which arises from any **pollution condition** which has migrated beyond the boundaries of an **insured premises** providing the claim for such loss is made against the **insured** during the **period of insurance**.

All claims made against the **insured** during the **period of insurance** must be notified to the **insurer** during the same **period of insurance**. The **insurer** will also pay **defence costs** in respect of any loss.

8.2 Premises environmental liability extensions

8.2.1 Indemnity to other insured parties

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

- a) **public authority** would have been entitled to indemnity by this **policy** had the claim or suit been made against the **public authority**;
- b) **insurer** has the sole conduct and control of any claim;
- c) **other insured party** shall, as though he were the **public authority**, 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 **aggregate environmental limit of liability** or limit each **pollution condition**.

8.3 Premises environmental liability limitations and exclusions

This policy does not apply to:

8.3.1 Abandoned premises

clean-up costs, loss or **defence costs** arising from any **premises** owned or leased by the **insured** subsequent to the time when such **premises** is abandoned, sold, given away or operational control is relinquished.

8.3.2 Aboveground storage

arising from any storage container (excluding underground storage tanks) with volume greater than 200 litres containing oils, chemicals or other liquids hazardous to human health or the environment unless such storage container is subject to secondary containment with sufficient capacity to contain spills or releases from the storage containers therein. The secondary containment is not deemed to have sufficient capacity unless it has at least 110% of the capacity of the storage container.

- 8.3.3 **Asbestos and lead**
clean-up costs, loss or **defence costs** arising out of or related in any way to asbestos, asbestos fibres, asbestos dust or asbestos-containing materials or lead-based paint installed or applied in on or to any structure or building;
provided that this exclusion does not apply to **clean-up costs** in respect of soil and groundwater.
- 8.3.4 **Capital expenditure**
expenditure, costs or any other liability of any nature in relation to reinstatement, upgrade, maintenance, improvement or supplementation of any equipment, plant, foundations, building or any above or below ground structure.
- 8.3.5 **Construction and maintenance activities**
clean-up costs, loss or **defence costs** arising out of construction or maintenance activities undertaken by the **insured**
- 8.3.6 **Contractual liability**
liability for **clean-up costs**, loss or **defence costs** assumed under any contract or agreement.
- 8.3.7 **Conveyance**
clean-up costs, loss or **defence costs** arising from or caused by the ownership, possession, control, maintenance, operation, use, loading or unloading beyond the boundaries of **insured premises** of any **conveyance**.
- 8.3.8 **Custody or control**
loss of, **damage** to, loss of use of or diminishment in value of property belonging to the **insured** or in the custody or control of the **insured** or any **employee** or agent of the **insured** other than in respect of **clean-up costs**.
- 8.3.9 **Employee injury**
bodily injury sustained by any **employee** arising out of and in the course of employment by the **insured**.
- 8.3.10 **Fines and penalties**
criminal, civil or administrative fines, penalties liquidated damages punitive or exemplary damages or contractual penalties.
- 8.3.11 **Housing stock**
clean-up costs, loss or **defence costs** arising out of owned or formerly owned housing stock properties.
- 8.3.12 **Internal Expenses**
costs incurred by the **insured** for services performed by any **employee** of the **insured**.
- 8.3.13 **Known conditions**
clean-up costs, loss or **defence costs** arising from any **pollution condition** which was in existence prior to the inception of this **policy** and was known or should have been known to any **responsible insured**.
- 8.3.14 **Microbial matter**
clean-up costs, loss or **defence costs** arising out of any microbial matter.
- 8.3.15 **Naturally occurring materials**
clean-up costs, loss or **defence costs** arising from the presence or required removal of naturally occurring materials other than where such materials are identified at an **insured premises** in concentrations in excess of their natural concentration at that **insured premises**.
- 8.3.16 **Non-compliance**
clean-up costs, loss or **defence costs** arising from the intentional, knowing, wilful or deliberate non-compliance with any European Union, national or local statute, regulation or

bye-law or instruction, notice or order of any national or local governmental or statutory authority, agency or body.

8.3.17 **Products**

clean-up costs, loss or **defence costs** arising from goods or **products** which are provided manufactured sold supplied or distributed by or on behalf of the **insured**

8.3.18 **Radioactive contamination**

clean-up costs, loss or defence costs of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

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

8.3.19 **Redevelopment**

clean-up costs, loss or **defence costs** arising from the excavation or movement of any ground material as part of any redevelopment, refurbishment or construction on or at any **insured premises**.

8.3.20 **Retroactive coverage**

clean-up costs, loss or **defence costs** arising from a **pollution condition** which first commences prior to the retroactive dates stated in the **schedule** to this **policy**.

8.3.21 **Terrorism**

clean-up costs, loss or **defence costs** arising directly or indirectly as a result of or in connection with **terrorism**, including, but not limited to any contemporaneous or ensuing liability, **clean-up costs** or loss caused by fire looting or theft.

If the **insurer** alleges that by reason of this exclusion any liability is not covered by this **insured section F**, the onus of proving to the contrary shall be upon the **insured**.

8.3.22 **Underground storage tanks**

arising from a **pollution condition**, which emanates from an underground storage tank the presence of which was known to or should have been known to a **responsible insured** prior to the inception of this **policy**.

8.3.23 **Voluntary site investigation**

clean-up costs, loss or **defence costs** arising from any site investigation not required by environmental law, including but not limited to intrusive investigations undertaken at an **insured premises** for the purposes of soil and water sampling and testing.

8.3.24 **War**

arising directly or indirectly as a result of **war**.

8.3.25 **Waste operations**

Clean-up costs, loss or **defence costs** arising out of any **insured premises** utilised for waste operations.

9 Duties in the event of a claim or potential claim

The due observance and fulfilment of Claim notification, Insured's duties and Claim procedure is a condition precedent to the **insurer's** liability for any claim under this **policy**. The 'Compliance with policy terms' clause sets out the consequences of a failure to comply with conditions precedent or **policy** provisions such as the said clauses.

9.1 Claim notification – insured sections A-E

9.1.1 In respect of **insured sections A, B, C, D and E**, the **insured** will give notice in writing or by an agreed electronic medium to the **insurer**:

- a) immediately on but in any event within fourteen (14) days from:
 - i) receipt of notice of any impending inquest, fatal accident inquiry, prosecution or other legal proceedings that include alleged **personal injury**;
 - ii) coming into possession of actual knowledge that notice of an Industrial Tribunal hearing includes alleged **personal injury**;
 - iii) the **insured's** actual knowledge of any death or **personal injury** to any person involving a stay in hospital in excess of three (3) **business** days;
- b) as soon as practicable after any other accident, event or the coming into possession of actual knowledge of **personal injury** or **damage**, with full particulars thereof; which may be the subject of indemnity under this **policy**.

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

9.2 Claim notification – insured section F

In respect of **insured section F**, the **insured** shall notify the **insurer** of any claim as soon as possible but in any event within fourteen (14) days of becoming aware of an actual or alleged **pollution condition** and always prior to the end of the **period of insurance**. Wherever possible, such notification must include the following information:

- a) how, when and where the **pollution condition** took place;
- b) names and addresses of any injured parties or witnesses;
- c) nature and location of any injury or **damage** that has or could arise out of such **pollution condition**;
- d) date the claim was received;
- e) any response or actions taken by the **insured**.

9.2.2 The **insured** must immediately provide to the **insurer** copies of all written communications, demands, writs, summonses, remediation notices, statements, declarations or similar, instructions, notices, orders, documents or other papers filed in any court of law or by any regulator.

9.2.3 Any notifications should be made to the insurer at the address stated in the **schedule**.

9.3 Legal defence and expenses – insured section F only

The **insurer** shall have the right but not the duty to defend the insured against a claim to which this **policy** applies. The **insurer's** right to defend and continue defending and to pay for any **clean-up costs**, loss, and **defence costs** shall cease once the limit of liability is exhausted. **Defence costs** are included within the limit of liability under this section F and shall erode such limit of liability under this **section F**. **Defence costs** are also included within any **retention** applicable.

The **insurer** shall have the right at any time to take over and conduct in the name of the **insured**, the investigation, adjustment and settlement of any claim to which this **policy** applies. The **insurer** will have total discretion in the conduct of any such proceedings and settlement of any claim.

9.4 Duty to mitigate and remediate – insured section F only

In the event of a **pollution condition**, the **insured** must take all necessary actions to mitigate or avoid a claim and to comply with environmental law, including, with respect to **clean-up costs**, the **retention** of competent professionals and contractors. The **insurer** has the right to review and approve all such actions of the **insured**. The **insurer** also has the right but not the duty to participate in decisions regarding the mitigation and avoidance of a claim and **clean-up costs** in order to comply with environmental law if the **insured** fails to do so. All costs incurred by the **insurer** in following such course of action shall be considered incurred by the **insured** and will reduce the applicable limit of liability under this **insured section F**.

9.5 Insured's duties - Insured sections A - E

9.5.1 For each and every claim or **RIDDOR** incident, the insured and any person acting on behalf of the **insured** must:

- a) not admit responsibility or 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) 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;
- d) 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;
- e) 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**;
- f) comply with any reporting obligations provided for under the General Data Protection Regulation.

9.6 Claim procedure - Insured sections A - E

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

- 9.6.1 immediately, but not later than fourteen (14) **business** days, send the **insurer** copies of any request, demand, order, notice, summons legal paper and all documents relating thereto in connection with an **insured event** as soon as received by the **insured**. In addition, the **insured** must co-operate with the **insurer** or their appointed agents to allow them to comply with such relevant practice directions and pre-action protocols as may be issued and approved from time to time by the head of civil justice;
- 9.6.2 authorise the **insurer** to obtain medical records or other pertinent information upon request but only where legally permitted to do so in the event of an **insured event** involving **bodily injury**;
- 9.6.3 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.

9.7 Insurer's rights

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

- 9.7.2 Therefore, it is agreed that the **insurer** has the right not to, and shall be under no obligation to, investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims but will be free to leave the conduct of such proceedings wholly with the **insured**.
- 9.7.3 In such cases, the **insurer** will transfer the conduct of proceedings to the **insured** and will clearly set out the conditions as regards the payment of costs and the **insured's** freedom to commit the **insurer** to any settlement by compromise or otherwise. Provided that any settlement or compromise is made within these conditions, this **policy** will provide an indemnity as otherwise stated.
- 9.7.4 Further, the **insurer** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability except (where payable under the relevant **insured section**) for payment of **defence costs** incurred prior to the date of payment.

9.8 Disputed defence or appeal

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

9.9 Retention

- 9.9.1 If the **insured event** forms the subject of indemnity under more than one of the **insured sections** to this **policy**, the **insured's** maximum liability for the **retention** will be the highest applicable **retention**.
- 9.9.2 If settlement of an **insured event** investigated or defended by the **insurer** under this **policy** does not exceed the amount of the applicable **retention**, the **insured** will pay, or reimburse the **insurer** for, as applicable, any **defence costs** and paid damages including claimant costs recoverable from the **insured** and incurred in connection with such **insured event**.

9.10 Subrogation

- 9.10.1 Except as provided by the 'Waiver of subrogation' clause under **insured section A** and the 'Statutory defence costs including Health and Safety At Work, etc. Act 1974' clause under **insured section E**, for each and every claim, the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or suit that may give rise to a claim under this insurance.
- 9.10.2 The **insured** or any other party **insured** by this **policy** will, at the request and expense of the **insurer**, do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **insurer** for the purpose of enforcing any rights and remedies, whether such acts and things will be or become necessary or required before or after their indemnification by the **insurer**.
- 9.10.3 In the event of any payment under this insurance, the **insurer** will act in concert with all other interested persons (including the **insured**) concerned in the exercise of any rights of recovery.
- 9.10.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) who will have paid an amount over and above any payment hereunder will first be reimbursed up to the amount paid by them; the **insurer** is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including the **insured**) to whom this coverage is in excess shall be entitled to claim the residue, if any.
- 9.10.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned in the ratio of their respective recoveries as finally settled.

10 General terms and conditions

10.1 Applicable law

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

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

10.2 Assignment

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

10.3 Basis of contract

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

10.4 Cancellation

The **insurer** may at any time during the **period of insurance** serve written notice on the **insured** at the address shown on the **schedule** cancelling the **policy** with effect from the thirtieth (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 and subject to no claims having been notified under this **policy**, the **insurer** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy**.

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

10.5 Changes to policy

Any changes to this **policy** will only be by written endorsement thereto issued by the **insurer**. Such endorsement must be signed by an authorised representative of the **insurer**.

10.6 Compliance with policy terms

- 10.6.1 The **insured** and anyone acting on its behalf must each comply with every applicable provision of the **policy**.
- 10.6.2 To the extent this insurance provides a benefit to any other party, the **insured** shall arrange for each **insured** party to comply with every applicable provision of this **policy**.
- 10.6.3 If the **insured** or anyone acting on its behalf breaches any provision of the policy, the **insurer** may, without prejudice to any of the **insurer's** other rights, reject or reduce sums payable to the extent that the **insurer's** liability under the **policy** has been incurred or increased by reason of the breach.
- 10.6.4 If the **insurer** has paid any sums to the **insured** or anyone acting on its behalf for which the **insurer** was not liable (whether by reason of breach of any provision of the **policy** by the **insured** or anyone acting on its behalf or for any other reason) the **insured** shall promptly repay such sums to the **insurer**.
- 10.6.5 To the extent the **insurer** waives all or some of its rights in relation to any obligation on the **insured**, this shall not prevent the **insurer** from relying on any provisions in the future and any delay in reliance or any partial reliance by the **insurer** shall not prevent the **insurer** from relying on any such provisions, in whole or in part, in the future.

10.7 Contract (Rights of Third Parties) Act 1999

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

10.8 Dispute resolution

- 10.8.1 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 Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties shall share equally the costs of CEDR and of the mediator and the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.
- 10.8.2 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.
- 10.8.3 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 courts, subject to the law and jurisdiction set down in the Applicable law clause above.

10.9 Duty of fair presentation

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

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

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

- a) if such breach is deliberate or reckless, the **insurer** may:
 - i) treat this **policy** as having been terminated from its inception; and
 - ii) retain the premium;
- b) if such breach is not deliberate or reckless and the **insurer** would not have entered into this **policy** but for the breach, the **insurer** may by notice to the **insured** treat this **policy** as having been terminated from its inception in which case the **insurer** shall return the premium; and
- c) in all other cases if, but for the said breach, the **insurer** would have entered into this **policy** but:
 - i) on different terms (other than terms relating to the premium), the **insurer** may require that this **policy** is treated as if it had been entered into on those different terms from the outset; or
 - ii) would have charged a higher premium, the **insurer** may charge such higher premium, effective from inception, and the **insured** shall pay such higher premium no later than fourteen (14) days after receiving the **insurer's** written notice that such higher premium is payable.

10.11 Duty of fair presentation - remedies for breach – variation

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

- a) if such breach is deliberate or reckless, the **insurer** may:
 - i) by notice to the **insured** treat this **policy** as having been terminated from the time when the variation was concluded; and

- ii) retain the premium;
- b) if such breach is not deliberate or reckless, and the **insurer** would not have entered into the variation but for the breach, the **insurer** may treat this **policy** as if the variation was never made, in which case the **insurer** shall return any additional premium relating to the variation; and
- c) in all other cases if, but for the said breach, the **insurer** would have entered into the variation but:
 - i) on different terms (other than terms relating to the premium), the **insurer** may require that the variation is treated as if it had been entered into on those different terms;
 - ii) would have increased the premium by more than it did or at all, the **insurer** may charge such higher premium, effective from the effective date of the variation, and the **insured** shall pay such higher premium no later than fourteen (14) days after receiving the **insurer's** written notice that such higher premium is payable; or
 - iii) would not have reduced the premium by as much as it did or at all, the **insurer** may require the **insured** to reimburse to the **insurer** a sum equal to any reduction in premium no later than fourteen (14) days after receiving the **insurer's** written notice that such amount is payable.

10.12 Employers' Liability (Compulsory Insurance) Act 1969

The indemnity granted by **insured section A** clause 2 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 clause 2 but the **insured** will repay to the **insurer** that part of the **insurer's** indemnity for which it would not otherwise have been liable under this policy by reason of any such breach of condition precedent, term, condition or exclusion.

10.13 Fraudulent claims

- 10.13.1 If the **insured** or anyone acting on its behalf makes a fraudulent claim under this **policy**, the **insurer**:
- a) is not liable to pay the claim;
 - b) may recover any part of the claim already paid from the relevant **insured**; and
 - c) may by notice to the **insured** treat this **policy** as having been terminated with effect from the time of the first fraudulent act, in which case the **insurer** is not liable to that **insured** in respect of a relevant event occurring after that time and may retain any premium.
- 10.13.2 These remedies shall not be available against any other entity **insured** under this **policy** that was not implicated in the fraud.

10.14 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 and any **insured premises** 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 or that any **insured premises** is in compliance with any environmental law.

10.15 Late payment of claims

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

10.16 Material changes during the policy period

- 10.16.1 The **insured** must notify the **insurer** as soon as reasonable of any material change to the **insured**, its **business** or the risks insured if indemnity under this insurance is sought in relation to any such change.
- 10.16.2 The **insurer** shall not indemnify the **insured** for any liability arising out of a material change for which indemnity would otherwise have been available under this insurance unless the **insurer** has provided valid confirmation of cover, whether by an express term of this **policy**, endorsement, written confirmation or otherwise.

10.17 Minimisation of risk

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

10.18 Multiple periods of insurance – insured section F

Where the **insurer** has issued claims-made premises environmental liability coverage for the **insured premises** in one or more periods of insurance and a claim is first made against the **insured** and reported to the **insurer** in writing in accordance with the terms and conditions of this **policy**, all claims arising out of the same, continuous, repeated or related **pollution condition** shall be deemed to have been first made and notified to the **insurer** during the **period of insurance**, provided the **insured** has maintained premises environmental liability cover with the **insurer** on an uninterrupted basis since that first claim was made.

10.19 Other Insurance

- 10.19.1 If at the time of any claim under **insured sections A to E** 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** or **other insured party** for the insurance, then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance.
- 10.19.2 If at the time of any claim under **insured section F** there is any other valid and collectible insurance in force, which covers the **insured** for **clean-up costs**, loss or **defence costs** to which this **insured section F** applies, this **insured section F** is primary and will operate as if such other insurance were not in force other than with respect to any insurance available under **insured sections A to E** of this **policy** where **insured section F** will be excess thereof.

10.20 Premium adjustment – Insured sections A - E

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

10.21 Records

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

10.22 Recovery of benefits

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

10.23 Representation

The **public authority** will act on behalf of the **insured** and other **insured parties** under this **policy** with respect to the giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the **public authority** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium to any **other insured party**.

10.24 Sanction limitation and exclusion

The **insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **insurer** or any member of the **insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country.

10.25 Shared limits - insured section F

The **insured** understand, agree and acknowledge that **insured section F** of this **policy** is subject to an **aggregate environmental limit of liability**, which is applicable to and will be shared by the **insured** and any **other insured party** under the **policy**. Therefore, the **insured** and any **other insured party** agree that such **aggregate environmental limit of liability** may be exhausted or reduced by prior payments for other claims under **insured section F**.

10.26 Subscribing insurer

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

10.27 Terms not relevant to the actual loss

Where:

- i) the **insured** has failed to comply with any express or implied term of this **policy**, other than a term that defines the risk as a whole; and
- ii) compliance with such term would tend to reduce the risk of loss of a particular kind, at a particular location and/or at a particular time,

the **insurer** cannot rely on the failure to comply to exclude, limit or discharge the **insurer's** liability if the **insured** shows that the failure to comply could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

10.28 Tracing office database

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

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

10.29 Voluntary payments – insured section F

Other than with respect to **emergency expenditure**, the **insured** is not permitted to voluntarily enter into settlement or make any payment or assume any obligation without the **insurer's** prior written consent, not to be unreasonably withheld.

11 General definitions and interpretation

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

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

11.1 Advertising injury

Advertising injury means:

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

11.2 Aggregate environmental limit of liability

Aggregate environmental limit of liability means the aggregate environmental limit of liability as detailed in the **schedule** to this **policy** and will be the maximum the **insurer** will pay in respect of all **clean-up costs**, loss, and **defence costs** in any one **period of insurance** under **insured section F**.

11.3 Bodily injury

Bodily injury means death, disease, illness, physical and mental injury of or to an individual. However, **bodily injury** does not extend to mental injury and/or anguish caused by defamation.

11.4 Business

Business means the official activities of the **public authority** in accordance with the powers granted under the Local Government Act 1972, Local Government (Scotland) Act 1973 or any other Local Government Act in the **United Kingdom** or any subsequent legislation amending or replacing it, including:

- 11.4.1 catering, social, sport, first aid, health, safety, educational, fire, medical, dental, welfare, ambulance, and security activities for the benefit of **employees** and/or others;
- 11.4.2 the activities of nominated representatives but only where the **public authority** is legally entitled to approve such activities and indemnify the **employee** or member in respect of such activities for any not-for-profit entity meaning an entity registered under the Charities Act 1993 (**United Kingdom**) or organisation existing for any educational, research promotional, training or similar non-profit making purpose or similar entity organised under the laws of any other jurisdiction;
- 11.4.3 activities in connection with the conduct of running any **elections**;
- 11.4.4 private work undertaken with the consent of the **public authority** by any **employee** for any fellow **employee**, member, director or senior official of the **public authority**;
- 11.4.5 activities of the **insured** as stated in the **schedule**.

11.5 Claim - insured section F

Claim means a written demand, notice or other written communication received by the **insured** asserting a liability or responsibility on the **insured** for **clean-up costs** or loss.

11.6 Clean-up costs - insured section F

Clean-up costs means

- a) reasonable expenses incurred in the investigation, quantification monitoring, abatement, remediation, removal, disposal, treatment neutralisation, or immobilisation of **pollution**

conditions to the extent required by environmental law including those incurred by a regulator acting in accordance with environmental law;

b) **emergency expenditure**.

11.7 Compensatory remediation – insured section F

Compensatory remediation means any action taken to compensate for interim losses of natural resources and/or services to other natural resources that arise from the date of **damage** occurring until primary remediation has achieved its full effect.

11.8 Complementary remediation – insured section F

Complementary remediation means any remedial measure taken in relation to natural resources and/or services to compensate for the fact that primary remediation does not result in fully restoring the **damaged** natural resource and/or services.

11.9 Conveyance – insured section F

Conveyance means:

- a) any aerospatial device or any airborne or waterborne craft or vessel;
- b) any mechanically propelled vehicle or trailer attached thereto.

11.10 Damage

Damage means:

- 11.10.1 loss of, destruction of or **damage** to tangible property; and/or
- 11.10.2 loss of use of tangible property that has been lost, destroyed or **damaged** but not economic loss.

11.11 Data protection law

Data protection law means the Data Protection Act 1998 and any applicable subordinate, amending or successor legislation or regulation in force from time to time.

11.12 Defence costs

Defence costs means

- 11.12.1 costs (other than claimant costs recoverable from the **insured** or any **other insured party**) incurred at the request of the **insured**, with the **insurer's** written consent that must be obtained prior to each claim, and in the investigation, adjustment, appraisal, defence or settlement of an **insured event** or claim in connection with **clean-up costs** or loss, including expert, legal, appeal and **defence costs**;
- 11.12.2 costs and expenses incurred by the **insured** in pre-trial and case reviews;
- 11.12.3 pre-judgment interest awarded against the **insured** on that part of any judgment covered under this **policy** but where the **insurer** offers to pay the **limit of indemnity** in settlement of a claim or suit, the **insurer** will not pay any pre-judgment interest imposed or accruing after the date of such offer;
- 11.12.4 all interest accruing on that part of any judgment within the **limit of indemnity** after entry of the judgment and before **insurer** has paid, offered to pay or deposited in court that part of any judgment that is within the applicable **limit of indemnity**;
- 11.12.5 the cost of attendance in court as a witness at the **insurer's** request, payable at the rate of GBP250 per **employee** or member or governor per day;
- 11.12.6 costs incurred at the request of the **insured**, with the **insurer's** written consent that must be obtained prior to each claim, of legal representation at any coroner's inquest or inquiry in respect of any death which may be the subject of indemnity under this **policy**;
- 11.12.7 In respect of **insured section F Defence costs** are included within the limit of liability and the **retention**.

11.13 Denial of access

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

11.14 Election

Election means.

11.14.1 National Referenda; or

11.14.2 Local Government, London Assembly, Welsh Assembly, Mayoral, United Kingdom Parliamentary and European Assembly and Police and Crime Commissioner elections.

11.15 Election official

Election official means any Returning Officer, Acting Returning Officer, Counting Officer or Acting Counting Officer, Police Area Returning Officer who is at the time of appointment to such position either:

11.15.1 a lawfully elected or appointed member of the **public authority**; or

11.15.2 employed under a contract of service with the **public authority**, or

11.15.3 a deputy of such persons and all persons engaged by them in the performance of official duties as a Returning Officer or Acting Returning Officer, or a Counting Officer or Acting Counting Officer.

11.16 Emergency expenditure – insured section F

Emergency expenditure means reasonable and necessary costs incurred by the **insured** to prevent significant harm to human health or the environment where there is an imminent threat thereof following a **pollution condition**, which may be covered by **insured section F**. Such emergency expenditure shall be incurred with the **insurer's** express permission other than where it is not reasonably practicable to obtain such permission.

11.17 Employee

Employee means any person whilst:

11.17.1 engaged under a contract of service or apprenticeship with the **public authority**;

11.17.2 acting in the capacity of non-executive director of the **public authority** ;

11.17.3 not under a contract of service or apprenticeship who is, at the requirement of the **public authority**, supplied to, hired or borrowed by the **public authority** in the course of business and under the control of the **public authority** 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, or voluntary helper of the organisations or services stated in the **business**;
- h) voluntary workers, helpers and instructors;
- i) persons working under the Community Offenders Act 1978, the Community Offenders (Scotland) Act 1978, Crime and Disorder Act 1998 or similar legislation;
- j) outworkers or homeworkers employed under contracts to personally execute any work in connection with **business** while they are engaged in that work;
- k) any other person defined under Sections 32.-(1), 35.-(2) and 54.-(3)(b) of the National Minimum Wage Act 1998;
- l) prospective employees who are being assessed by the **public authority** as to their suitability for employment;
- m) any **election official** participating at any **election**;

- n) any member of an Education Appeals Panel established under the Schools Standards and Framework Act 1998 and any subsequent legislation;
 - o) any member of a joint management committee scheme formed to assist in the business of the **public authority**;
 - p) any person co-opted, seconded or appointed to assist the **public authority** in their **business**
 - q) any teacher in the employment of the **public authority** while participating in voluntary activities
 - r) any person a Court of Law in the **United Kingdom** deems to be an **employee**;
- provided that the **public authority** can always request that any such person is not treated as an **employee**.

11.18 Environmental damage – insured section F

Environmental damage means harm or injury to, **damage** sustained by or the destruction of land, water, protected species and or natural habitats for which the **insured** is legally liable under European Union Directive 2004/35/EC on environmental liability or any local legislation in a Member State which implements it.

For the avoidance of doubt environmental **damage** includes primary remediation, complementary remediation and compensatory remediation.

11.19 Environmental law

Environmental law means any laws, including, but not limited to, statutes, regulations, subordinate legislation, common law, judgments, statutory guidance and all amendments thereto, (including for the avoidance of doubt any law or regulation in a Member State which implements the European Union Directive 2004/35/EC on environmental liability and all amendments thereto) governing the liability of the **insured** with respect to any **pollution condition**.

11.20 Hirer

Hirer means any individual or organisation (including any committee for the time being of any association, club, society or charity) hiring **premises** from the **public authority**.

11.21 Insured

Insured means:

- 11.21.1 the **public authority** shown as **insured** in the **schedule**;
- 11.21.2 **other insured party**, in accordance with the 'Indemnity to other parties' extension;
- 11.21.3 including in either case the legal or personal representatives of the **insured** in respect of any claim under this **policy** incurred on behalf of the **insured**.

11.22 Insured event

Insured event means an occurrence of **personal injury**, **damage**, **denial of access**, nuisance or other loss which is **insured** under this **policy**. In respect of clause 'Duties in the event of a claim or potential claim' and clause 'Minimisation of risk' only, it also includes such an occurrence which it is reasonable to expect may be **insured** under this **policy**.

11.23 Insured premises – insured section F

Insured premises mean any **premises** owned, leased, rented or controlled by the **insured**.

11.24 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**.

11.25 Insurer

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

11.26 Interim losses - insured section F

Interim losses means losses which result from the fact that the **damaged** natural resources and/or services are not able to perform their ecological functions or provide services to other natural resources or to the public until the primary or complementary measures have taken effect. It does not consist of financial compensation to members of the public.

11.27 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.

11.28 Limit each pollution condition – insured section F

Limit each pollution condition means subject to the **aggregate environmental limit of liability**, the maximum the **insurer** will pay for all **clean-up costs**, loss and **defence costs** arising from the same, continuous repeated or related **pollution condition** and is the limit each **pollution condition** as detailed in the **schedule** to this **policy**.

If the **aggregate environmental limit of liability** has been reduced by payment of **clean-up costs**, loss or **defence costs** to an amount less than the limit each **pollution condition** detailed in the **schedule** to this **policy**, the remaining **aggregate environmental limit of liability** is the maximum the **insurer** will pay for any further **clean-up costs**, loss and **defence costs** arising out of any subsequent **pollution condition**.

11.29 Limit of indemnity - insured sections A - E

Limit of indemnity means:

- 11.29.1 the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability for any one (1) occurrence regardless of the number of:
 - a) **insureds** or **other insured parties**;
 - 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**;
- 11.29.2 where a **limit of indemnity** is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all **insured events** during the **period of insurance**;
- 11.29.3 any **sub-limit of indemnity** stated in the **schedule** applies as if it was the **limit of indemnity** for the claims specified in the **schedule** for that **sub-limit of indemnity** and is deemed to be part of and not in addition to the **limit of indemnity** specified in the **schedule** unless expressly stated otherwise;
- 11.29.4 where indemnity may be provided under two (2) or more **insured sections** of this **policy**, then the combined single limit stated in the **schedule** is the maximum the **insurer** will pay for any **insured event** to which such **insured sections** apply in combination.

11.30 Limit of Liability – insured section F

Limit of liability means:

- 11.30.1 **aggregate environmental limit of liability**;
- 11.30.2 limit each **pollution condition**.

11.31 Loss – insured section F

Loss means any and all sums which the **insured** becomes legally liable to pay as damages under environmental law resulting from **bodily injury**, **property damage**, or **clean-up costs** incurred by a third party.

11.32 Member

Member means any person elected to serve as an official of the **public authority** or any person co-opted or appointed to serve on any committees of the **public authority**.

11.33 Microbial matter – insured section F

Microbial matter means mould, mildew or any other fungi or bacterial matter, including any mycotoxins, spores, scents or other by **products** produced or released thereby.

11.34 Nominated representative

Nominated representative means any **employee** or member acting at the request or direction of the **public authority** as a director, officer or trustee of or in any managerial or supervisory capacity of any outside entity.

11.35 North America

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

11.36 North American jurisdiction

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

11.37 Nuclear hazards

Nuclear hazards means:

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

11.38 Offshore

Offshore means:

- 11.38.1 work in or on (and any other visits made in the course of the **business** to) any offshore rig or platform or support or accommodation vessel for any offshore rig or platform or other offshore structure;
- 11.38.2 in transit to and from or between any offshore rig or platform or support or accommodation vessel from the time of embarkation onto a **conveyance** at the point of final departure to an offshore rig or platform until disembarkation from the **conveyance** onto land upon return from an offshore rig or platform.

11.39 Other insured party

Other insured party means any of the following parties:

- 11.39.1 any director, partner, member, **employee** or a former **employee** of the **insured**;
- 11.39.2 any officers, members' committee and/or **employee** and voluntary helpers of the **insured's** canteen and welfare organisations, nursery, crèche or child care facilities, sports and social organisations, in their respective capacities as such;
- 11.39.3 any officers and members of the **insured's** security, rescue, first aid or fire and ambulance services or medical organisation other than any qualified medical practitioner while working in a professional capacity in their respective capacities as such;
- 11.39.4 any director or partner, member or executive of the **insured** in respect of private work undertaken by any **employee** for a director, partner member or executive of the **insured**;
- 11.39.5 any officers or trustees of the **insured's** pension scheme(s);
- 11.39.6 or specified in the **schedule** under 'Indemnity to other persons'.

11.40 Period of insurance

Period of insurance means the period stated in the **schedule** or any subsequent period for which the **insured** shall have paid and the **insurer** shall have accepted a renewal premium or a shorter period resulting from cancellation of the **policy**.

11.41 Personal injury

Personal injury means

11.41.1 **bodily injury** and/or

11.41.2 harm arising out of one or more of the following offences committed in the course of the **business**:

- a) false arrest;
- b) detention or imprisonment;
- c) malicious prosecution;
- d) wrongful entry into or eviction of a person from a room, dwelling or premises that the person occupies;
- e) invasion of the right of privacy, but only to the extent that such right of privacy is not also a breach or an alleged breach of the Data Protection Act 2018, the General Data Protection Regulation or other similar data protection legislation.

11.42 Policy

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

11.43 Pollutant - insured sections A - E

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

11.44 Pollution - insured sections A - E

Pollution means:

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

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

11.45 Pollution condition - insured section F

Pollution condition means the discharge, dispersal, escape, migration, release or seepage of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant including smoke, soot, dust, vapours, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials or waste materials in or on land, any structures on land, the atmosphere or any surface water or groundwater.

11.46 Premises

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

11.47 Primary remediation – insured section F

Primary remediation means any remedial measure, which returns the damaged natural resources and/or impaired services to, or towards, baseline condition.

11.48 Product

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

11.49 Property damage – insured section F

Property damage means

11.49.1 physical loss, destruction or **damage** of tangible property;

11.49.2 loss of use thereof and the diminishment of third-party property value.

11.49.3 Environmental **damage**

Property damage does not include **clean-up costs**.

11.50 Proposal

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

11.51 Public authority

Public authority means the municipality, governmental body, department or unit shown as the **public authority** in the **schedule**.

11.52 Regulator – insured section F

Regulator means any legal body, authority, agency or other person and/or any court of law or tribunal in each case having authority under environmental law.

11.53 Responsible insured – insured section F

Responsible insured means any **employee** of the **insured** who is or was responsible for environmental matters, control or compliance at an **insured premises** or any officer director or partner of the **insured**.

11.54 Retention (or excess or deductible)

In respect of **insured sections A to E** the **retention** means the first amount payable by the **insured** in respect of each and every claim, potential claim and/or related **defence costs** (but not adjusters' fees), as ascertained after the application of all other terms and conditions of this insurance. The **limit of indemnity** will be reduced by the **retention**.

Where the **retention** is described in the **schedule** as applying to any one claim, it will apply to the first amount payable by the **insured** in respect of each and every claim or series of claims as ascertained after the application of all other terms and conditions of this insurance.

In respect of **insured section F** only **retention** means the amount expressed as such in the **schedule**, which is to be borne by the **insured** for each and every **pollution condition**. The limit of liability is additional to this **retention**.

11.55 Retroactive date - insured section F

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

11.56 RIDDOR

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

11.57 Schedule

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

11.58 Series of claims

Series of claims means a number of claims under any one **insured section** (whether made against or involving one or more persons or entities comprising the **insured** and whether made by the same or different claimants) that arise directly or indirectly from the same originating cause.

11.59 Sub-limit of indemnity

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

11.60 Terrorism

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

11.60.1 intimidate or coerce a civilian population, or

11.60.2 disrupt any segment of the economy of a government de jure or de facto, state, or country, or

11.60.3 overthrow, influence, or affect the conduct or **policy** of any government de jure or de facto by intimidation or coercion, or

11.60.4 affect the conduct or **policy** of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

11.61 Underground storage tank – insured section F

Underground storage tank means any tank and associated piping and appurtenance which tank has more than 10% of its volume below ground.

11.62 United Kingdom

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

11.63 War

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

11.64 Work away - insured sections A - E

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

12 Complaints

12.1 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** can:

- a) where the **insurer** is QBE Europe SA/NV write to Customer Relations, QBE Europe SA/NV, Regentlaan 37 Boulevard du Régent, 1000 Brussels, Belgium, e-mail: complaints@be.qbe.com, telephone: +32 2 504 82 11 or fax: +32 2 504 82 00;
- b) where the **insurer** is QBE UK Limited write to Customer Relations, QBE European Operations, Plantation Place, 30 Fenchurch Street, London EC3M 3BD; email: CustomerRelations@uk.qbe.com, telephone 020 7105 5988; or
- c) where the **insurer** is or includes a Lloyd's syndicate, e-mail: complaints@lloyds.com, write to Lloyd's Complaints, Fidentia House, Walter Burke Way, Chatham Maritime, Kent ME4 4RN, or telephone 020 7327 5693.

12.2 The UK Financial Ombudsman Service (UK FOS)

If the **insured** feels that its complaint has not been satisfactorily resolved, the **insured** may be eligible to contact the UK FOS to review the complaint.

To be an eligible complainant, the **insured** must be:

- a) a consumer;
- b) a micro-enterprise – a business that has an annual turnover of under EUR2million employing fewer than ten (10) employees;
- c) a small business - a business with an annual turnover below GBP6.5million and:
 - i) fewer than 50 employees; or
 - ii) an annual balance sheet below GBP5million; or
- d) a charity with an annual income of less than GBP6.5million; or
- e) a trustee of a trust with net assets of less than GBP5million; or
- f) a guarantor.

If eligible, the **insured** can contact the UK FOS via its website: <http://www.financial-ombudsman.org.uk/consumer/complaints.htm>, write to the UK FOS, Exchange Tower, London E14 9SR, or telephone 0300 123 9 123 or 0800 023 4567.

Where applicable the **insured** must refer its complaint to the UK FOS (a) within six (6) months of the **insurer's** final response letter or (b) when the **insurer** has failed to resolve the issue within eight (8) weeks.

The UK FOS provides impartial advice free of charge and contacting them will not affect the **insured's** legal rights

12.3 Financial Services Compensation Scheme (FSCS)

Where the **insurer** is QBE UK Ltd the **insured** may be entitled to compensation from the FSCS if the **insurer** is unable to meet its obligations under this **policy**.

Entitlement to FSCS compensation depends on the type of business insured and the circumstances of the claim. Further information is available from www.fscs.org.uk, or the **insured** can write to the Financial Services Compensation Scheme, PO Box 300, Mitcheldean, GL17 1DY.

QBE European Operations



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Our work with brokers as well as their local government, education and emergency service clients has helped to shape best practice and advance their risk management practices.

We work with a panel of highly-rated insurers to source policies that we believe best meet the needs of public and education sector risk managers.

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