

Contract Works & Contractors Plant Insurance Policy Wording

2014





CONTRACT WISE

Contract Works and Contractors Plant Insurance

IMPORTANT NOTICE TO THE INSURED

This is a contract of insurance. Please read it carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Insurance Broker or Intermediary who arranged this insurance should be contacted immediately if any correction is necessary. Your attention is particularly drawn to the notice that appears overleaf.

W.R. Berkley Insurance (Europe), Limited

Registered Office: 40 Lime Street, London EC3M 7AW
Registered in England & Wales 4681277

Registered Office: 2nd Floor, 40 Lime Street, London, EC3M 7AW
Registered in England & Wales 4681277

NOTICE TO THE INSURED – complaints procedure

It is always our intention to provide a first class standard of service. However, if you have any cause for complaint or wish to make any enquiry regarding this insurance you should, in the first instance, contact the Insurance Broker or Intermediary who arranged this insurance for you.

Alternatively you may contact us at the following address:

The Compliance Officer
W.R. Berkley Insurance (Europe), Limited
2nd Floor
40 Lime Street
London
EC3M 7AW
E-mail : wrbiel_enquiries@wrberkley.com

If you are not satisfied with the way a complaint has been dealt with, you have the right to request that the Financial Ombudsman Service (“FOS”) review your case. Their address is:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR
Telephone Helpline: 0845 080 1800
www.financial-ombudsman.org.uk

There are, however, some circumstances in which the FOS is not empowered to consider complaints. If you contact the FOS in respect of any complaints, this will not affect any rights you have in law.

Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our financial obligations. This depends on the type of business and the circumstances of the claim. Further information about compensation scheme arrangements is available from the FSCS:

Financial Services Compensation Scheme
10th Floor Beaufort House
15 St. Botolph Street
London EC3A 7QU
Telephone: 0800 678 1100 or 020 7741 4100
Email through web-site:
www.fscs.org.uk/contact-us

Data Protection

Any personal data provided by you regarding yourself, your employees or your agents shall be processed by us, in compliance with the provisions of the Data Protection Act 1998 and any subsequent or amending legislation, for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.

We will keep such information secure at all times. In certain circumstances, for example for systems administration purposes, we may have to transfer information to another country, which may be a country outside the European Economic Area (EEA). By proceeding with this insurance we assume that you are agreeable to us transferring information to a country outside the EEA.

Should you wish to obtain details of the information that we hold on you please contact:

The Compliance Officer
W.R. Berkley Insurance (Europe), Limited
2nd Floor
40 Lime Street
London
EC3M 7AW

Claims Procedure

If any incident occurs which may result in a claim you must immediately contact the *Company* via your Insurance Broker or Intermediary who will be able to advise you.

You should refer to **General Conditions and Claims Conditions** towards the end of the Policy for full details of the claims procedure and conditions.

CONTRACT WORKS ANNUAL POLICY

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POLICY INFORMATION *(for information purposes only, does not form part of the Policy)*

This Policy has been prepared in accordance with your instructions. Please read it carefully to ensure that it meets your requirements.

This Policy consists of

- (a) the **Insuring Clause**, which explains the basis on which the cover is provided;
- (b) the **Schedule**, which shows who is the **Insured**, the **Business** being covered and other Policy particulars such as the **Period of Insurance**, the **Limits of Liability** and certain amounts for which the **Insured** may be responsible;
- (c) the **Definitions**;
- (d) the **Insurance Sections** of the Policy, which give precise details of the cover being provided;
- (e) the **Limits of Liability** which explain how the monetary limits under the Policy apply;
- (f) the **Extensions**, which extend the cover provided by the Policy;
- (g) the **Exclusions**, **Conditions** and **Claims Conditions**, which incorporate terms that apply to the Policy;
- (h) any **Endorsement(s)** which might apply to the Policy or individual **Sections** and which incorporate cover amendments, extensions, limitations and such like.

Immediate notice should be given to the **Company** via your Insurance Broker or Intermediary of any changes which may affect the insurance provided by this Policy.

Alterations in the cover required, after issue of the Policy, will be confirmed by separate **Endorsement(s)** which you should file with the Policy. You should refer to these **Endorsement(s)** and the Policy to ascertain precise details of cover currently in force. Your Insurance Broker or Intermediary will be able to provide any help or information that you might require.

INSURING CLAUSE

In consideration of the payment of the Premium, the *Company* will indemnify the *Insured* against the events set out in the operative Sections of this Policy (as shown in the *Schedule*) and occurring during the *Period of Insurance*.

The *Proposal* shall be the basis of the contract of insurance between the *Insured* and the *Company*.

The indemnity provided by the *Company* will be subject to the terms, limits, conditions, clauses and exclusions of this Policy and also of the relevant Section applicable to the event concerned.

Each Section of the Policy, the *Schedule* and any *Endorsement(s)* and the *Definitions*, *Conditions*, *Exclusions*, and *Claims Conditions* shall be read as one document.

Any word or expression which appears in the policy in italics shall have the meaning given in the *Definitions*. Any other word or expression given a specific meaning in

- (a) the *Schedule*, any *Policy Endorsement(s)*, or the *Exclusions*, *Conditions*, and *Claims Conditions*, or this *Insuring Clause*, and beginning with a capital letter, shall have the same meaning throughout the Policy;
- (b) an individual Section, or any Section *Endorsement(s)*, and beginning with a capital letter, shall have only the same meaning throughout such Section or Section *Endorsement(s)*.

References in this Policy to any

- (a) statute, statutory provision, or European Union Directive, or
- (b) order, regulation, instrument, directive or code having the effect of and authorised by law

shall also apply to any amendment, substitution, replacement or consolidation of such laws, or to any laws promulgated thereunder.

DEFINITIONS

Business

means the *Insured's* business as described in the *Schedule*.

Commissioning

means operational testing, commencing either with the introduction to the permanent works of feedstock, or other materials for processing or handling, or when supply to a system commences. Commissioning does not include any process involving chemical action or reaction, unless the prior agreement of the *Company* has been obtained.

Company

means W. R. Berkley Insurance (Europe), Limited, who are authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (FRN: 223981).

Contract

means the agreement under which the *Contract Works* are undertaken.

Contract Price

means the original awarded value of the *Contract Works*, including the value of *Free Issue Materials* and all other costs associated with the completion of the *Contract*.

Contract Site

means the site which is the subject of the *Contract* and upon which the *Contract Works* are undertaken.

Contract Works

means the permanent and temporary works executed, within the *Territorial Limits*, in performance of the *Contract* (including materials for use in connection therewith) and limited, for the purposes of this insurance, to the work specified within the Description of *Contracts* in the *Schedule*.

Contractor

means the party undertaking the *Contract Works* on behalf of the *Employer*.

Contractors Plant and Equipment means

- a) mechanical, electrical or manually powered implements, materials containment, preparation or handling equipment, but not tunnel boring machines or mining exploration or oil or gas well drilling rigs;

- b) scaffolding, staging ladders and similar equipment;
- c) site huts, cabins or similar temporary buildings and permanent fixtures and fittings included therein;

all being for temporary site usage.

Damage

means sudden and unforeseen physical loss, destruction or damage.

Data Processing Equipment

means any computer or data processing equipment or data storage media (whether electronic or electromechanical), or microchip, or integrated circuit, or any similar device, or any computer software or computer firmware.

Deferred Purchase

means an arrangement whereby the *Insured* enters into an agreement, which entitles the *Insured* to defer payment for property for a period in excess of usual trade credit.

Defined Peril

means fire, lightning, explosion, aircraft or other aerial devices dropped therefrom, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons, theft or attempted theft, earthquake, subterranean fire, storm, tempest, flood, escape of water from any tank apparatus or pipe, or impact.

Electronic Data

means facts, concepts and information, converted to a form useable for communications, interpretation, or processing, by *Data Processing Equipment*, or electronically controlled equipment, and includes programmes, software and other coded instructions for the processing and manipulation of such equipment.

Employee means

- a) any person under a contract of service or apprenticeship with the *Insured*;
- b) any labour master or labour only subcontractor, or persons supplied by any of them;
- c) any person hired or borrowed by the *Insured*, working for the *Insured* in connection with the *Business*.

Employees Tools

means personal tools and effects the property of an *Employee*, other than motor vehicles; precious metals, precious stones or articles made therefrom; or money.

Employer

means the party on whose behalf the *Contract Works* are undertaken.

Excess

means the amount, as specified in the *Schedule*, which is to be borne by the *Insured* and deducted, after the application of all relevant terms and conditions of the Policy, from each and every claim in respect of each and every occurrence of *Damage* for which the *Insured* is indemnified by this Policy, before the *Company* shall be liable to make any payment.

All *Damage* caused by earthquake, storm, tempest or flood occurring in any one period of 72 consecutive hours, shall be deemed to be a single event and to constitute one occurrence. The commencement of any such period shall be decided by the *Insured*. If there is more than one such period selected during the *Period of Insurance*, they must not overlap and the *Excess* shall apply separately to each selected period.

Free Issue Materials

means materials supplied by the *Employer*, or their agents or principal, for which the *Insured* is responsible under the terms of the *Contract* and for which the value has been declared to the *Company*.

Insured

means the person(s) or corporate body(ies) named as such in the *Schedule* of this Policy.

Limit of Liability

means the limit as specified in the *Schedule* and which shall apply in respect of each and every occurrence of *Damage* except where stated otherwise. All *Damage* arising out of any one event, or all events of a series consequent upon, or attributable to one source or original cause, shall constitute one occurrence.

Nuclear Material means

- a) nuclear fuel (other than natural uranium and depleted uranium) capable of producing energy by a self-sustaining chain process of nuclear fission outside of a nuclear reactor, either alone or in combination with some other material;
- b) radioactive products or waste produced in, or any material made radioactive by,

exposure to the radiation incidental to the *Production, Use or Storage* of nuclear fuel, not including radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical agricultural, commercial or industrial purpose.

Period of Insurance

means the period shown in the *Schedule* and any subsequent period granted by the *Company* for which the *Insured* agrees to pay the premium required by the *Company*.

Pollution or Contamination

means the discharge, dispersal, release or escape of smoke, vapours, soot, fumes, acids, alkalis, toxic or hazardous chemicals, liquids or gases, or waste materials, or other irritants, contaminants or pollutants, into or upon buildings, structures, land, water or the atmosphere

Principal

means any person, employer, firm, company, ministry or authority for whom the *Contract Works* are being undertaken.

Production, Use or Storage of Nuclear Material

means the production, manufacture, enrichment, reprocessing, use, storage, handling or disposal of *Nuclear Material*.

Proposal

means any information provided by the *Insured* in the proposal form, or in connection with this Policy, and any declaration made in connection therewith.

Reinstatement means

a) where any item of property insured by this Policy suffers *Damage* to the extent that it cannot be economically repaired

(i) replacement by new property of equal performance and/or capacity, or

(ii) if such be impossible, replacement by new property having the nearest higher performance and/or capacity

to the property which has suffered *Damage*;

b) where any item of property insured by this Policy otherwise suffers *Damage*, the repair of the *Damage* and the restoration of the portion of property suffering *Damage*, to a working condition substantially the same as, but not better or more extensive than, its condition when new.

Schedule

means the Schedule attaching to and forming part of this Policy.

Territorial Limits

means the United Kingdom, the Republic of Ireland, the Channel Islands or the Isle of Man.

Terrorism

means the actual or threatened

a) use of force or violence against persons or property, or

b) commission of an act dangerous to human life or property, or

c) commission of an act that interferes with or disrupts an electronic or communication system

undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government power, authority or military force, when any of the following applies

d) the reasonably apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy, or

e) the reasonably apparent intent or effect is to cause alarm, fright, fear of danger or apprehension of public safety in one or more distinct segments of the general public, or to intimidate or coerce one or more such segments, or

f) the reasonably apparent intent or effect is to further political, ideological, religious or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion or culture.

Testing

means the actual operation of machinery, or parts of machinery, for the sole purpose of proving it mechanically or electrically.

Testing and Commissioning Period

means the period shown in the *Schedule*, which begins from the first time that *Testing* of the machinery takes place or, where there is no *Testing*, from the commencement of *Commissioning* in respect of that machinery.

INSURANCE SECTIONS

Section 1 – Contract Works

The insurance provided by this Section is in respect of *Damage* to the *Contract Works*

Contract Site

whilst on or adjacent to the *Contract Site* and occurring

- (i) before practical completion or the issue of a certificate of completion, or before the *Contract Works* are taken over by the *Employer*, or
- (ii) within fourteen days thereafter, where the *Insured* is required to insure for such additional period under the terms of the *Contract*;

Transit

occurring whilst in transit within the *Territorial Limits* to or from the *Contract Site* (including loading or unloading in connection with such transit);

Maintenance

occurring during the period of maintenance or defects liability specified in the *Contract* (not exceeding twelve months) and arising from

- a) a defect originating on the *Contract Site* prior to the commencement of such period, or
- b) work carried out by the *Contractor* on the *Contract Site* for the purpose of remedying any defects, or for otherwise complying with the obligations under the maintenance or defects liability clause in the *Contract*

provided that such *Damage* is first revealed during the period of maintenance or defects liability and is the responsibility of the *Contractor* under the terms of the *Contract*.

Section 2 – Employees Tools

The insurance provided by this Section is in respect of *Damage* to *Employees Tools* whilst on or adjacent to the site of the *Contract Works*.

Section 3 – Contractors Plant and Equipment

The insurance provided by this Section is in respect of *Damage* to *Contractors Plant and*

Equipment, owned by or on *Deferred Purchase* or lease to the *Insured*, whilst situated or in transit anywhere within the *Territorial Limits*.

If, at the time of such *Damage*, the item of *Contractors Plant and Equipment* concerned

- a) is less than, or equal to, 18 months old from the date of purchase by the *Insured* as new, the amount payable by the *Company* shall be *Reinstatement*;
- b) otherwise the *Company* will pay to the *Insured* the value of the item at the time of the *Damage*, or the cost of repair of the *Damage* to a condition substantially the same as, but not better or more extensive than, the condition at the time of the *Damage*, or at its option, reinstate or replace the item.

Where the basis of payment is to be *Reinstatement*

- a) no payment shall be made by the *Company*
 - (i) unless *Reinstatement* commences and proceeds without unreasonable delay; and
 - (ii) until *Reinstatement* has been carried out;
- b) in the event that the *Insured* consists of more than one party or legal entity, the total liability of the *Company* shall not exceed the amount for which the *Company* would have been liable, had such *Damage* been sustained by any one of the insured parties or legal entities.

Section 4 – Hired In Property

The insurance provided by this Section is in respect of *Damage* to *Contractors Plant and Equipment* hired in by the *Insured*, whilst situated or in transit anywhere within the *Territorial Limits*.

The indemnity provided by the *Company* to the *Insured* under this Section will be in respect of all sums which the *Insured* shall be legally liable to pay for

- a) such *Damage*, and
- b) for continuing hiring charges levied upon the *Insured* in consequence of such *Damage*.

LIMIT OF LIABILITY

The liability of the *Company* under this Policy shall not, in addition to the amounts stated in the Extensions, exceed

Section 1 – Contract Works

the lesser of

a) the *Contract Price* and the cost of any additions, amendments or variations, or

b) the *Limit of Liability*

however, these amounts shall be increased proportionately by not more than twenty five per cent, should an increase occur to the original *Contract Price* plus the value of any additions, amendments or variations;

Section 2 – Employees Tools

a) in respect of any one item of *Employees Tools* the market value of the item at the time of the *Damage*;

b) the *Limit of Liability*;

Section 3 – Contractors Plant and Equipment

the *Limit of Liability*;

Section 4 – Hired In Property

the *Limit of Liability*.

THE EXCESS

The *Company* shall not indemnify the *Insured* for the amount of the *Excess* specified in the *Schedule* in respect of each applicable Section.

EXTENSIONS

The following Extensions are subject otherwise to all other applicable terms, limits, conditions and exceptions specific to the Section concerned and to the Policy as a whole.

Extensions applicable only to Section 1 – Contract Works

The insurance provided by Section 1 is extended to provide cover as set out below.

1. Offsite Storage

Damage to materials, equipment and goods in store at any situation in the *Territorial*

Limits, whilst not on the site of the *Contract Works* but intended for incorporation therein, provided that

a) their total value at any one store does not exceed £50,000 without the prior consent of the *Company* being obtained ;

b) the *Insured* is responsible for such *Damage* under the terms of the *Contract*.

2. Speculative Building

The Definition of *Contract Works* shall be extended to include property being built or erected by the *Insured*, within the *Territorial Limits*, for the purpose of sale and not under *Contract*, provided that this Extension shall cease to apply

a) from the date such property is sold or let, or

b) three months after the date of Completion

whichever is the earlier.

Completion shall mean when the building or erection of the property is complete, apart from any choice of decoration or final fitments by prospective purchasers or tenants.

3. JCT Contract Conditions

Where the *Insured* have undertaken a *Contract* under a JCT Standard Form of Building Contract 1998 (or the equivalent thereof) and there has been *Damage* caused by any of the specified perils defined in that contract, the *Company* agree, so far as is required by the terms of any sub-contract, not to pursue any rights of subrogation, in respect of such *Damage*, against sub-contractors directly engaged by the *Insured*.

4. Expediting Expenses

Costs and expenses, necessarily and reasonably incurred by the *Insured*, in making temporary repairs and expediting permanent repair, including overtime working and the use of rapid transport, as a consequence of *Damage* to the *Contract Works*, provided that the liability of the *Company* shall not exceed twenty five per cent of the cost of repair had such costs not been incurred.

5. Debris Removal

Costs and expenses, necessarily and reasonably incurred by the *Insured* with the consent of the *Company*, in

- a) removing debris;
- b) dismantling or demolishing;
- c) shoring up, propping and fencing off;
- d) repairing or cleaning drains, sewers, service mains and the like, or dewatering;
- e) temporary boarding up of windows following breakage of glass

following *Damage* to the *Contract Works*, provided that the liability of the *Company* shall not exceed ten per cent of either the *Limit of Liability* applicable to Section 1 or the *Contract Price*, whichever is the lesser.

6. Professional Fees

Architects, surveyors, consulting engineers and other professional fees, necessarily and reasonably incurred in the re-instatement of *Damage* to the *Contract Works* and not being fees for preparing any claim, provided that the amount payable shall not exceed two and half per cent of the *Contract Price*.

7. Plans

The costs and expenses (including overtime working), necessarily and reasonably incurred by the *Insured*, for the reinstatement, re-writing, re-drawing or re-creating of plans, drawings, documents and *Electronic Data* pertaining to the *Contract*, provided that the liability of the *Company* shall not exceed £50,000, or two and half per cent of the *Contract Price* whichever is the lesser.

8. Public Authorities Clause

The additional cost of re-instatement, following *Damage* to the *Contract Works*, solely to comply with any regulations arising out of any Act of Parliament, the stipulations of any European Union directive, or with the bye-laws of any Municipal or Local Authority, provided that

- a) re-instatement (which may be carried out upon another site, subject to the liability

of the *Company* not being increased) is carried out without delay;

- b) this Extension does not cover
 - (i) the costs incurred in complying with regulations, stipulations or bye-laws intimated to the *Insured* prior to the happening of the *Damage*;
 - (ii) any costs incurred in respect of undamaged property;
 - (iii) the amount of any rate, tax, duty, development or other charge which may become payable following compliance with such regulations or bye-laws;
- c) the liability of the *Company* shall not exceed five per cent of the *Contract Price*.

9. Showhouses

Damage to buildings (but not contents therein) temporarily used as showhouses, showflats and the like for a maximum period of 90 days beyond the date of completion of the last building on the site of the *Contract Works*, or development phase.

10. Showhouse Contents

Damage to contents of showhouses or showflats and the like at the site of the *Contract Works* until sold, provided that

- a) cover shall cease not later than 90 days from the date that the last building on the site is substantially complete;
- b) the liability of the *Company* shall not exceed £25,000 in respect of any one showhouse or showflat;
- c) during the period from 1st December to 1st March an efficient heating system shall be left on at all times, or the water system drained;
- d) cover in respect of *Damage* due to theft or malicious damage is restricted to that following forcible and violent entry or exit only.

11. Testing and Commissioning

Damage to new and unused machinery forming part of the *Contract Works*, through

its own electrical or mechanical breakdown, failure or explosion during the course of *Testing* or *Commissioning*, provided that this Extension shall not apply

- a) beyond the *Testing and Commissioning Period*, or
- b) to unproven, prototype or experimental machinery.

Exclusion 8 - Breakdown - does not apply to this Extension.

12. Re-testing Following Damage

If, as a result of

- a) *Damage* to the *Contract Works*, or
- b) *Damage* for which cover is provided by the *Testing and Commissioning Extension* above

it is necessary to repeat any *Testing* or *Commissioning*, the *Company* will pay the costs incurred in respect of that part of the *Testing* or *Commissioning* which has to be repeated.

The cover provided by the *Testing and Commissioning Extension* shall apply to the repeated *Testing* or *Commissioning* as if the original *Testing and Commissioning Period* had never begun.

Extensions applicable only to Sections 3 and 4 – Contractors Plant and Equipment & Hired In Property

The insurance provided by Sections 3 and 4 is extended to provide cover as set out below.

13. Hiring out

Damage to *Contractors Plant and Equipment* whilst hired out, provided that

- a) for the purposes of Section 3, the terms of hire are no less onerous than the recognised standard hire conditions in the territory concerned;
- b) for the purposes of Section 4, the terms are no less onerous than those terms under which the *Contractors Plant and Equipment* was hired in by the *Insured*.

14. Immobilised Property

Costs necessarily and reasonably incurred to recover *Contractors Plant and Equipment* which has become accidentally immobilised during normal operations, other than by its own explosion, mechanical or electrical breakdown, failure, breakage or derangement (including, but not limited to *Damage* caused by any failure to maintain the *Contractors Plant and Equipment* in accordance with the manufacturers recommendations, but not including *Damage* caused by the error or omission of the driver(s) or operator(s) of the *Contractors Plant and Equipment*, other than in respect of failure to maintain), provided that

- a) the liability of the *Company* shall not exceed £25,000 in respect of all recoveries during any *Period of Insurance*;
- b) such costs do not exceed the sum which would otherwise have been payable, under the terms of this Policy, had such costs not been incurred;
- c) this Extension does not cover *Damage* caused in order to effect recovery of such *Contractors Plant and Equipment*.

15. Contents of Site Huts

Damage to the contents of site huts and cabins provided that

- a) this Extension does not cover
 - (i) computers or computer peripheral devices;
 - (ii) any item otherwise excluded by this Policy;
- b) the liability of the *Company* shall not exceed £5,000 in respect of any one site hut or cabin.

16. Damage to Security Devices

Damage to any immobiliser, locating, tracking or other security device (approved by Thatcham Research or the *Company*) caused by theft or attempted theft of *Contractors Plant and Equipment*, provided that

- a) the liability of the *Company* shall not exceed £2,500 in respect of any one item of *Contractors Plant and Equipment*;
- b) the *Excess* shall be £50 in respect of each and every item of *Contractors Plant and Equipment*.

17. Loss of Keys

Replacement costs and expenses incurred as a result of the loss or theft of the key to any item of *Contractors Plant and Equipment*, or any immobiliser or other security device (approved by Thatcham Research or the *Company*), provided that

- a) the liability of the *Company* shall not exceed £1,000 in respect of each and every item or device;
- b) the *Excess* shall be £50 in respect of each and every item or device.

18. Repair Investigations and Tests

Costs and expenses reasonably and necessarily incurred, with the prior consent of the *Company*, for repair investigations and tests by a consultant engineer, or other professionally recognised and qualified expert, in order to determine the most appropriate means of repair or reinstatement of *Damage* following the occurrence of an indemnifiable event under Section 3 of this Policy, provided that

- a) the cover provided by this Extension does not apply to any costs or expenses incurred in preparing a claim under this Policy;
- b) the liability of the *Company* shall not exceed £100,000 in the aggregate in respect of the costs and expenses incurred in connection with all *Damage* occurring during the *Period of Insurance*.

Extensions applicable only to Section 4

The insurance provided by Section 4 is extended to provide cover as set out below.

19. Plant and Equipment Borrowed or Supplied for Demonstration

Damage to *Contractors Plant and Equipment* supplied to the *Insured* on a free loan basis or for the purposes of demonstration, provided that

- a) the *Insured* are legally liable for such *Damage*, and
- b) the liability of the *Company* shall not exceed £25,000 in respect of any one item.

20. Legal Proceedings

Legal costs and expenses incurred in the defence of proceedings against the *Insured*, provided that the written consent of the *Company* must be obtained before any costs are incurred and the *Company* shall be entitled to nominate a solicitor to represent the *Insured*.

Extensions applicable to all Sections

The insurance provided by all Sections is extended to provide cover as set out below.

21. Indemnity to Principal and Other Parties

The *Company* will indemnify any

- a) *Principal*, to the extent required by the conditions of the *Contract*;
- b) purchaser, financier, main contractor, property owner or any other party, to the extent required by the conditions of contract in force between the *Insured* and such party(ies) in regard to the *Contract Works* or *Contractors Plant and Equipment*;

in like manner to the *Insured*, provided they shall act as if they were the *Insured* and observe, fulfil and be subject to the terms, exclusions and conditions of this Policy.

22. Customs, Excise and Other Duties

The indemnity provided by the *Company* for *Damage* shall include unrecoverable customs taxes, excise and other duties which the *Insured* is liable to pay in respect of materials or *Contractors Plant and Equipment* imported by the *Insured*.

23. Fire Brigade Charges

Costs and expenses reasonably and necessarily incurred by the *Insured* for fire brigade charges arising out of *Damage*, provided that the liability of the *Company* shall not exceed £25,000.

EXCLUSIONS

Exclusions applicable only to Section 1 – Contract Works

The insurance provided by Section 1 does not cover any of the events set out below.

1. Existing Structures

Damage to any property forming, or which has formed part of any existing structure prior to the commencement of the Contract.

2. Limited Defective Condition Exclusion (DE3)

The cost and expenses of repairing, replacing or rectifying any

- a) part of the *Contract Works* which is in a defective condition due to a defect in the design, plan, specification, materials or workmanship of such works or any part thereof;
- b) part of the *Contract Works* lost or damaged to enable the repair, replacement or rectification of the *Contract Works* excluded by a) above.

Part a) above shall not apply to any other part of the *Contract Works* which is free of the defective condition, but has been directly damaged as a consequence of the defect.

For the purposes of this Policy, and not merely this Exclusion, the *Contract Works* shall not be regarded as lost or damaged solely by virtue of the existence of any defect in the design, plan, specification, materials or workmanship of the *Contract Works* or any part thereof.

3. Relief Under Contract

Damage for which the *Insured* is relieved of responsibility by the conditions of the *Contract*.

4. Non-Ferrous Metals

Theft of unfixed non-ferrous metals of any description, unless at the time of the theft

- a) an authorised *Employee* or agent or the *Insured* is actually on site, or
- b) such property is contained in a securely locked storage container, hut or building

5. Permanent Works

- a) *Damage* to the permanent works, or any part thereof, after such works have been handed over to, or taken over or taken into use (whichever is the earlier) by the *Employer, Principal* or purchaser, other than as provided for under Section 1 Maintenance.
- b) *Damage* due to the use or occupancy, other than as dwellings or offices, of any portion of the permanent works by any owner, tenant or occupier, other than as otherwise provided for by this insurance.

6. Improvements

Any costs or expenses incurred in connection with, or in consequence of improvements, overhauls or alterations to the *Contract Works* following any kind of damage to property which is not part of the *Contract Works*.

7. Piling

In connection with foundation piles, pile casings or sheet pile constructions

- a) the costs and expenses of repairing, replacing, rectifying or removing
 - (i) any such piles, casings or constructions which are
 - a) misplaced or mis-aligned
 - b) lost or damaged during driving or extraction
 - c) the subject of individual or block disconnection or declutching;
 - (ii) any such piles, casings or constructions as a consequence of any leakage, or infiltration of liquid or material, at seams joints, connections or beneath sheet pile constructions, or into casings;
 - (iii) any abandoned piling work, unless such abandonment is a direct consequence of other *Damage* for which indemnity is provided by this Policy;
 - (iv) any piles which have failed to pass a load test, or to reach the required bearing load, unless such failure is

a direct consequence of other *Damage* for which indemnity is provided by this Policy;

- b) *Damage* arising from any dependence on revealed sub-standard installation work, unless the design has been appropriately re-worked to suit.

For the purpose of this Policy, any *Damage* to foundation piles, pile casings or sheet pile constructions shall be deemed to have occurred during driving, extraction, disconnection or declutching unless the *Insured* can produce satisfactory evidence to demonstrate otherwise.

Exclusions applicable only to Sections 1 and 3 – Contract Works and Contractors Plant and Equipment

The insurance provided by Sections 1 and 3 do not cover any of the events set out below.

8. Breakdown

Damage to any item of machinery or plant, or *Contractors Plant and Equipment*, caused by its own explosion, mechanical or electrical breakdown, failure, breakage or derangement. This Exclusion shall not apply to any resultant *Damage* to the *Contract Works*, or to *Contractors Plant and Equipment*, arising as a consequence.

Exclusions applicable only to Section 3 – Contractors Plant and Equipment

The insurance provided by Section 3 does not cover the event set out below.

9. Hydraulic Fluids

Damage arising from fire caused by the combustion of fuel, or of hydraulic fluids, escaping as a result of damage to, or deterioration of pipes, hoses or similar lines, unless they have been regularly inspected and maintained in accordance with the manufacturers recommended service and maintenance intervals and standards, and a record of such has been kept by the *Insured*.

The onus of proving that inspections and maintenance have been carried out accordingly shall be upon the *Insured*.

Exclusions applicable only to Sections 3 and 4 – Contractors Plant and Equipment and Hired In Plant

The insurance provided by Sections 3 and 4 do not cover any of the events set out below.

10. Tyres

Damage to tyres by the application of brakes or by punctures, cuts or bursts.

11. Underground Damage and Recovery

- a) *Damage* to *Contractors Plant and Equipment* occurring underground, unless it can be repaired underground, or brought back to the surface at the *Insured's* own expense; or
- b) any costs and expenses incurred in connection with the abandonment, for any reason whatsoever, of any *Contractors Plant and Equipment* underground.

12. Materials Treated or Processed and Foreign Bodies

Damage caused by or arising out of materials treated or processed by the *Contractors Plant and Equipment*, or by foreign bodies entering such plant or equipment.

Exclusions applicable to all Sections

The insurance provided by all Sections of his Policy does not cover any of the events set out below.

13. Airborne and Waterborne Craft

Damage to any airborne or waterborne vessel or craft, marine rig, or platform, or to any property situated thereon, but this Exclusion shall not apply to materials or *Contractors Plant and Equipment* in the course of transit by inland waterway.

14. Pollution or Contamination

- a) *Damage* caused by *Pollution or Contamination*, or
- b) any costs and expenses incurred in removing, nullifying or cleaning up any seeping, polluting or contaminating substances

unless arising from *Pollution or Contamination* which is caused by a sudden, identifiable, unintended and unexpected incident, which takes place in its entirety at a specific time and place during the *Period of Insurance* and provided that all *Pollution or Contamination*, which arises out of such incident, shall be deemed to have occurred at the time such incident takes place.

15. Transit by Sea or Air

Damage occurring during the course of transit by sea or air.

16. Corrosion or Erosion

Damage consisting of, or caused by any form of corrosion or erosion (unless caused subsequent to and arising out of any other cause not otherwise excluded by this Policy), but this Exclusion shall not apply to consequent *Damage* to any other part of the *Contract Works* or the *Contractors Plant and Equipment*, free from such corrosion or erosion.

17. Wear and Tear

Damage consisting of, or caused by gradually occurring wear and tear or deterioration, which is both predictable and inevitable from the normal operation or usage of the *Contract Works* or the *Contractors Plant and Equipment*, but this Exclusion shall not apply to consequent *Damage* to any other part of such property which is free from any such condition.

18. Atmospheric Conditions

Damage caused by atmospheric conditions, including but not limited to rust or oxidization, or by scratching of painted or polished surfaces, unless caused subsequent to and arising out of any other cause not otherwise excluded by this Policy.

19. Financial or Consequential Loss

Financial loss of any kind, including, but not limited to loss of profits or loss due to delay; or any consequential loss not specifically covered by this Policy; or any payment, obligation or charges imposed upon the *Insured* in respect of liquidated damages, penalties for delay, non-completion or detention, or in connection with guarantees of performance or efficiency.

20. Radioactive Contamination and Explosive Nuclear Assemblies or Weapons

Any *Damage*, loss, cost, charges or expense whatsoever, or any consequential loss 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;
- c) any weapon employing atomic or nuclear fission, or fusion, or other like reaction, or radioactive force or matter.

21. Nuclear Site Risks

Damage to any

- a) *Nuclear Material*
- b) property in the high radioactivity zone of a nuclear reactor, or in any area where the level of radioactivity requires the provision of a biological shield;
- c) *Contract Works*, not being property described by b) above, for construction, erection, installation, repair, maintenance or decommissioning of, or in or on, any building or plant which has been used, is being used, or is designated to be used for the *Production, Use or Storage of Nuclear Material*.

22. Multiple Lifting

Damage arising out of the undertaking of lifting operations in which a single load is shared between more than one item of lifting equipment at the same time, unless such operation complies fully with the requirements of BS7121, or any British or international standard replacing or amending BS7121.

23. War, Civil Unrest and Political Risks

Any *Damage*, loss, cost, charges or expense whatsoever, or any consequential loss directly or indirectly, caused by or contributed to by, or arising from

- a) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power, or confiscation, nationalisation, requisition, or destruction of or damage to property by, or under the order of any government or public authority (whether 'dejure' or 'defacto');
- b) mutiny, acts of persons operating on behalf of or in connections with any political organisation, military or popular rising, rebellion, revolution, martial law or state of siege, or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege, or any of the events or causes which determine the proclamation or maintenance of material law or state of siege;

Any *Damage* happening during the existence of any of the events described above (whether physical or otherwise) shall be deemed to be *Damage* which is not covered by this insurance, except to the extent that the *Insured* prove that such *Damage* happened independently of the existence of such events and is covered and not otherwise excluded by this Policy.

24. Terrorism

Any *Damage*, loss, cost, charges or expense whatsoever, or any consequential loss directly or indirectly, caused by or contributed to by, or arising from

- a) any act of *Terrorism*, regardless of whether there is another cause which may have contributed concurrently or in any sequence;
- b) any action taken in controlling, preventing, suppressing or in any way relating to any act of *Terrorism*.

If the *Company* alleges that by reason of this Exclusion any loss, damage, injury, cost, expense or consequential loss is not covered by this insurance, the burden of proving the contrary shall be upon the *Insured*.

25. Date Related Performance and Functionality

- a) *Damage*;
- b) consequential loss, additional expenditure or extra expenses;

- c) fees, costs, expenses, charges, disbursements, or awards of any kind;

directly or indirectly caused by, or contributed to by, consisting of, or arising in whole or in part from

- a) the way in which any *Data Processing* system responds to, or deals with, or fails to respond to, or fails to deal with any true calendar date;
- b) any *Data Processing* system responding to, or dealing in any way with
 - (i) any data denoting a calendar date, or dates, as if such data did not denote a calendar date or dates;
 - (ii) any data not denoting a calendar date, or dates, as if such data denoted a calendar date or dates;

whether such data processing system is the property of the *Insured* or not and whether operating before during or after the Year 2000.

This Exclusion shall not apply to subsequent *Damage* consequential loss, additional expenditure or extra expenses (not otherwise excluded) which itself results from a *Defined Peril* otherwise covered by this policy.

26. Normal Upkeep

Any costs and expenses incurred in respect of normal upkeep or normal making good.

27. Wilful Act

Damage caused by the wilful act or wilful neglect of the *Insured*.

28. Water Table Level

Damage attributable solely to a change in the water table level.

29. Money

Damage to deeds, bonds, bills of exchange, promissory notes, cash, bank notes, cheques, securities for money, vouchers, documents of any kind (except as otherwise provided for by Extension 7) or stamps.

30. Inventory Losses

Any loss of property by its disappearance or by shortage, if such disappearance or shortage is only revealed when an inventory is made; or any loss of property stolen or otherwise missing, unless such loss is identifiable by the *Insured* with a specific occurrence, which has been the subject of notification in accordance with Claims Condition 1.

31. Sonic Waves

Damage occasioned by pressure waves caused by aircraft, or other aerial devices travelling at sonic or supersonic speeds.

32. Northern Ireland

Damage directly or indirectly occasioned by, happening through, or in consequence of riot or civil commotion in Northern Ireland.

CONDITIONS

Conditions applicable only to Section 1 – Contract Works

1. Stoppage of Work

The *Insured* shall notify the *Company* immediately in the event of any stoppage of work by the *Insured* on any *Contract Site* from any cause for a period exceeding one month. Cover shall be suspended from that time, unless its continuance is agreed in writing by the *Company*. In the event of such total or partial cessation of work the *Insured* shall use due diligence and do all things reasonably practicable to protect the *Contract Works*.

2. Series Defects

In the event of the development or discovery of a defect in any part of the *Contract Works*, which indicates or suggests that similar defects exist in other parts of the *Contract Works*, the *Insured* shall immediately investigate and, if necessary, rectify the defects in such other parts at his own expense, or alternatively bear all losses arising out of such defects.

3. Joint Code of Practice

The *Insured* shall comply with the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by

Construction Industry Publications and the Fire Protection Association and dated June 2012, or any subsequent amendment to, or revised edition current at inception (or subsequent renewal if applicable) of this Policy.

In the event of the *Company* becoming aware of a breach of such Joint Code, they may inform the main or management contractor's site management of the nature of the breach, specifying the remedial measures required by them (the remedial measures) and the period within which these must be completed.

Where the *Company* considers such a breach is of sufficient importance, they may confirm the same by notice in writing (the notice) to the *Employer* and the main or management contractor, and also the first named party forming the *Insured* when this is neither of the afore named parties, at their respective addresses as nominated by the *Insured* at the inception of cover, or as subsequently amended. Under the terms of this or any subsequent notice, the *Company* may suspend or cancel all cover at the *Contract Site* concerned from the date named in the notice, not being a date earlier than the date named for completion of the remedial measures, it being understood that, upon suspension, such cover shall be reinstated when the *Company* is satisfied that the remedial measures have been completed. Such notice shall be given by special or recorded delivery post, by facsimile transmission or by hand.

This Condition shall not in itself be considered a condition precedent to liability, but its inclusion shall not prejudice, waive or remove the rights of the *Company* under the terms of this Policy

Conditions applicable only to Sections 3 and 4 – Contractors Plant and Equipment and Hired In Plant

4. Cranes

The *Insured* shall ensure that

- a) all crane operations are undertaken only on firm and level ground and that such items are in a blocked or stabilised position when performing such operations;

- b) all cranes are fitted with overload alarm systems and wind speed indicators, and that such systems and indicators are monitored in an operational working condition.

5. Operators

The *Insured* shall ensure that appropriate licenses are held, in accordance with statutory regulations, by any operator using *Contractors Plant and Equipment*. In areas where there is no statutory requirement, the operators must have completed the *Insured's* internal training programme and in all cases have sufficient practical experience, proof of which will be available to the *Company* immediately upon request.

Conditions applicable to all Sections

6. Observance of Policy Terms

Observance of the terms, limitations and conditions of the Policy shall, as far as the nature of them respectively will permit, be precedent to any liability of the *Company*.

7. Right to Examine

The *Company* shall have the right to examine the *Contract Works* and *Contractors Plant and Equipment* at any reasonable time.

8. Cancellation

This Policy may be cancelled at any time at the request of the *Insured*, in which case the *Insured* shall then be entitled to a rebate of premium for the unexpired *Period of Insurance*, provided that no claim has been made on this insurance during that same period.

The *Company* shall not be bound to invite or accept renewal of this Policy and may, by thirty days notice in writing to the *Insured* by recorded delivery, cancel this Policy at any time. The *Insured* shall then be entitled to a rebate of premium for the unexpired *Period of Insurance*.

9. Declaration Adjustment

The Premium payable under this Policy is provisional and subject to adjustment.

The provisional Premium will be based upon the following estimates or values supplied by the *Insured*

- a) the annual turnover, including the total value of any *Free Issue Materials* in respect of Section 1;
- b) the total value of all *Contractors Plant and Equipment* to which Section 3 applies;
- c) hiring charges paid or due in respect of *Contractors Plant and Equipment* to which Section 4 applies;
- d) any other values or amounts agreed as a basis for the calculation of premium.

The *Insured* agrees to keep accurate records of all relevant information which will be made available to the *Company*.

At the end of each *Period of Insurance* the *Insured* shall, where applicable, declare to the *Company* the actual values and amounts for the relevant categories a) through to d) as listed above.

The actual premium shall be calculated at the rates applicable on the amounts declared.

If the actual premium calculated upon declaration differs from the deposit premium, the *Insured* shall pay or the *Company* shall refund 100% of the difference in respect of Sections 1 and 4, and 50% of the difference in respect of Section 3, subject to a retention by the *Company* of any minimum retained premium as may have been agreed at the outset, or 75% of the provisional premium whichever is the greater.

10. Misrepresentation or Non-Disclosure

This Policy shall be avoidable in the event of misrepresentation, misdescription or non-disclosure in any material particular.

11. Reasonable Precautions

The *Insured* shall ensure that

- a) all reasonable precautions are taken to prevent accidents and to safeguard any property insured by this Policy against *Damage*;
- b) any property insured by this Policy is maintained in an efficient condition and fit for its purpose, and shall ensure that any inspection or test under any statute, order or regulation shall be undertaken;

- c) the manufacturer's recommendations, regarding the operation and maintenance of any *Contractors Plant and Equipment*, are observed at all times.

12. Alteration of Risk

This Policy shall be avoided if after the commencement of the *Period of Insurance*

- a) there has been any material change to the risk insured which has increased the risk of *Damage* occurring, whether temporarily or permanently, or
- b) the interest of the *Insured* ceases except by will or operation of law

unless such alteration has been accepted by the *Company* in writing.

13. Cross Liability

Each of the parties comprising the *Insured* shall be considered as separate and distinct entities and the indemnity provided by the *Company* to each *Insured* shall apply in the same manner and to the same extent as if a separate Policy has been issued to each of them.

Nothing in this Condition shall increase the liability of the *Company* to pay any amount exceeding the *Limit of Liability* under each Section, regardless of the number of parties claiming to be indemnified.

14. Subrogation Waiver

The *Company* agrees to waive any rights, remedies or relief to which it may become entitled by subrogation against any *Insured* under this Policy. This waiver extends to include all directors, officers or employees of any *Insured*.

15. Valuation of Electronic Data

Should any *Electronic Data* suffer *Damage* insured by this Policy, then the basis of valuation shall be the cost of the blank media upon which the data was kept, plus the costs of copying such data from back-up, or from originals of a previous generation. These costs shall not include research and engineering, or any costs of recreating, gathering or assembling such data. If the data processing media is not repaired, replaced or restored, the basis of valuation shall be the cost of the blank media. This Policy does not provide an indemnity for any amount pertaining to the value of such

data to the *Insured*, or any other party, even if the data cannot be recreated, gathered or assembled.

16. Law and Jurisdiction

Unless otherwise agreed by the *Company* and the *Insured*, this Policy shall be subject to and construed solely in accordance with the relevant law applicable to, and jurisdiction operating at, the registered address, or principal place of business, of the *Insured*.

Any dispute between the parties concerning this insurance, or the interpretation of the terms of this Policy, shall be resolved by the courts of that same jurisdiction..

If there is any dispute as to which law applies, it will be the law of England and Wales.

CLAIMS CONDITIONS

1. Claims Notification and Procedure

If any event occurs which may give rise to a claim under this Policy, the *Insured* shall

- a) immediately notify the *Company* via the Insurance Broker or Intermediary who arranged this insurance
- b) at their own expense, supply such proofs of claim as may be reasonably be required by the *Company*, along with any evidence and information that may be reasonably required by the *Company* for the purposes of investigating or verifying the claim, including details of all other insurances covering the event or any part of it and, if requested, a sworn declaration of truth of the claim and any connected matters;
- c) preserve any damaged or defective property which might prove necessary as evidence for examination by the *Company*;
- d) in the case of *Damage* due to theft or malicious act, the Police must be informed immediately and the *Insured* shall take all practicable steps to discover any guilty person and to trace and recover the missing property;
- e) take action to minimise and prevent further *Damage*.

No settlement, admission of liability, payment, or promise of payment shall be made to a third party without the written consent of the *Company*.

Notice of an occurrence of a claim, or of an event or circumstances which may lead to a claim, by any one *Insured*, or their agent, shall be accepted by the *Company* as notice of that occurrence by all of the insured parties.

No claim shall be payable unless the terms of this Condition have been complied with and, in the event of non-compliance, any payment on account of the claim already made shall be repaid to the *Company* forthwith.

2. Other Insurance – Non-contribution

If, at the time of any event to which this Policy applies, there is, or but for the existence of this Policy there would be, any other insurance in respect of the same *Damage*, the *Company* shall not be liable under this Policy, except in respect of any excess beyond the amount which would be payable under such other insurance, had this Policy not been effected.

3. Fraudulent Claims

If any claim is made by, or on behalf of the *Insured*, which is in any respect unfounded, fraudulent or intentionally exaggerated, or if any false declaration or statement is made in support of a claim, then no indemnity shall be paid under this Policy in respect of that claim.

4. Rights of the Company

The *Company* shall be entitled, if it so desires, to take over the defence or settlement of any claim made upon the *Insured* in respect of which the indemnity provided by this Policy applies. The *Company* shall have full discretion in the conduct of any proceedings and in the settlement of any claim against the *Insured* (including compliance with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved by the Lord Chief Justice) and the *Insured* shall give all such information and assistance as the *Company* may require.

5. Subrogation

Any claimant under this Policy shall, at the request and expense of the *Company* and in the name of the *Insured*, take and permit to be taken all necessary steps for enforcing rights and remedies against, or of obtaining relief or indemnity from, any other party, regardless of whether such steps are, or become necessary, before or after any payment is made by the *Insurer*.

6. Options For Claims Settlement

The *Company* may at its option repair, reinstate or replace any of the property insured by this Policy which has sustained *Damage*, or alternatively agree a cash settlement.

The *Company* shall not be responsible for temporary repairs carried out without their consent (unless such temporary repairs are made in accordance with the Expediting Expenses Extension) or any consequences arising from such repairs, nor for the cost of any alterations, additions, improvements or overhauls carried out on the occasion of a repair.

Where *Damage* is confined to a part of a machine or structure, the *Company* shall indemnify only the value of that part, plus the cost of any necessary dismantling and erection for which the *Insured* is responsible.

The *Insured* shall not be entitled to abandon any property to the *Company*, whether taken into possession by the *Company* or not.

7. Supplementary Claims Charges

In connection with any claim for *Damage*, the *Insured* is entitled to recover supplementary charges such as custom dues, packing, freight, profit and the like only if, and so far as, such charges have been provided for in selecting and determining the appropriate *Limit of Liability*.

8. Right to Challenge or Appeal Legal or Arbitration Proceedings

The *Insured* agrees

- a) to permit the *Company*, at its own expense and in the name of and on behalf of the *Insured*, to make any challenge or appeal, or request a review, or to make any application to stay

enforcement in regard to a judgement, decision, direction, award, or the exercise of any legal or arbitrary power, whether through court or arbitration proceedings and the *Insured* will give all such assistance as the *Company* may reasonably require in relation to such proceedings;

- b) not to accept the decision of any judgement or adjudication as finally determining the related dispute without the prior consent (not to be unreasonably withheld) of the *Company*.

9. Payment on Account

At the discretion of the *Company* payments on account may be made to the Insured following indemnifiable *Damage* under this Policy, but in no case shall any payment exceed the liability of the *Company* in respect of such *Damage*.

10. Discharge of Liability

The *Company* may at any time pay to the *Insured*, in connection with any claim or series of claims, the amount of the *Limit of Liability* (after deduction of sums already paid in respect of such claim(s), or any lesser amount for which such claim(s) can be settled, and upon such payment being made the *Company*, shall relinquish the conduct and control of and be under no further liability in connection with such claim(s) or other than the payment of costs and expenses incurred prior to the time of such payment.

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