



XSSR

Excess Liability Insurance (B) Policy
Regional with endorsements

Underwritten by





Underwritten by QBE Insurance (Europe) Limited



This policy has been exclusively arranged by:

SUTTON SPECIALIST RISKS LTD

Bull Wharf,
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Bristol
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Authorised and regulated by the Financial Conduct Authority
Registration Number 306946

This policy has been issued through Sutton Specialist Risks Limited
and any claims or underwriting queries should be forwarded
to them at the above address.

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1 Our agreement in general

1.1 Parties to this agreement

This **policy** is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

1.2 Words in bold

Words in bold typeface used in this **policy** document, other than in the headings, have specific meanings attached to them as set out in the General definitions and interpretation.

1.3 Primary purpose of the policy

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

1.3.1 indemnify the **insured** for the amount of **ultimate net sum** in excess of the total **underlying insurance limit of indemnity** that the **insured** shall become legally liable to pay as damages, including claimant costs recoverable from the **insured** as a result of an **insured loss**; and

1.3.2 pay **costs and expenses**, some of which **costs and expenses** are expressly stated to be in addition to the **limit of indemnity**;

to the extent more fully described in the **insured section** set out in clause 2 below.

1.4 Policy structure

1.4.1 Each **insured section** sets out the scope of the main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided by each **insured section** is only operative if stated as 'insured' in the **schedule**. Where any **schedule** heading or sub-heading states 'n/a', 'not applicable' or 'not insured' then no cover applies for that item.

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

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

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

1.5 Policy period and premium

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

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

1.5.3 If any premium (including a premium instalment) is not paid and accepted by the **insurer** on or before its payment date shown in the **schedule** the **insurer** 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. Cancellation will be

prevented from taking effect and the **policy** will continue if the late premium instalment and any other remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3rd) day after being posted if sent by pre-paid letter post properly addressed.

1.6 Signature

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

A handwritten signature in black ink, appearing to read "R. W. By", with a stylized flourish at the end.

2 Insured section – Excess liability insurance (B)

2.1 Excess liability cover

2.1.1 The **insurer** agrees to indemnify the **insured** for the amount of the **ultimate net sum** in excess of the total **underlying insurance limit of indemnity** that the **insured** shall become legally liable to pay as damages, including claimant costs recoverable from the **insured** as a result of an **insured loss**, provided that:

- a) the insurers of the **underlying insurance** have paid or been held liable to pay or have admitted liability to pay the full amount of the total **limit of indemnity** of the **underlying insurance**;
- b) the **insurer's** liability under this **policy** shall not exceed the **limit of indemnity** of this **policy**;
- c) this **policy** is subject to the same terms, limitations, exclusions, conditions and definitions as the **underlying insurance** but in the event of any conflict between the provisions of the **underlying insurance** and this **policy**, the provisions of this **policy** shall apply.

2.2 Additional excess liability costs and expenses

The **insurer** agrees to:

2.2.1 contribute to **costs and expenses** incurred in the investigation, settlement or defence of an **insured loss** that may give rise to a claim in excess of the total **limit of indemnity** of the **underlying insurance** in the ratio that this **policy's** share of damages payable, including claimant costs recoverable from **insured**, as finally settled bears to the total amount of damages payable, including claimant costs recoverable from **insured**;

2.2.2 pay **costs and expenses** not recoverable from the insurers of the **underlying insurance** as a result of the insurers of the **underlying insurance** paying or offering to pay the total **limit of indemnity** of the **underlying insurance**, provided that:

- a) the **insurer** has exercised the **insurer's** right to assume charge of and conduct in the name of the **insured** the defence or settlement of an **insured loss**;
- b) the **insurer** shall not pay any **costs and expenses** incurred by the insurers of the **underlying insurance** prior to their payment of or offer to pay the total **limit of indemnity** of the **underlying insurance** or for which they would otherwise be liable;
- c) the **insurer** shall have the right to appeal a judgment for an amount in excess of the total **limit of indemnity** of the **underlying insurance** if the **insured** or the insurers of the **underlying insurance** have a right of appeal but elect not to exercise such right. The **insurer** shall be liable for all **costs and expenses** incurred with respect to such appeal, subject to the **limit of indemnity** of this **policy**.

2.3 Excess liability extensions

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

- a) such **other insured party** is indemnified by the **underlying insurance**;
- b) the **insured** would have been entitled to indemnity by this insurance had the claim or **suit** been made against the **insured**;
- c) the **other insured party** is not indemnified under any other insurance or in any other way;

- d) the **insurer** has the sole conduct and control of any claim;
- e) the **other insured party** agrees it will be bound by this **policy** (other than in respect of premium) as if it were the **insured**.

2.3.2 Where the **limit of indemnity** of the **underlying insurance** is reduced or exhausted by:

- a) an **insured loss** for which this **policy** provides an indemnity and or to which an aggregate limit applies in the **underlying insurance** this **policy** shall apply in excess of such reduced or exhausted amounts but not in respect of any reduced inner aggregate limits;
- b) settlement of a claim or claims in breach of the terms, limitations, exhausted or definitions of the **underlying insurance**, this **policy** shall only apply in excess of the reduced or exhausted amounts if the **insurer** gives its written consent to such reduction or exhaustion;

on exhaustion of the total **limit of indemnity** of the **underlying insurance** this **policy** shall continue in force as if the **underlying insurance** subject to the terms, limitations, exclusions, conditions and definitions of this **policy** and the deductibles applicable to the primary policy specified in the **schedule**.

2.4 Excess liability limitations and exclusions

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

2.4.1 Asbestos

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

2.4.2 Costs and expenses

costs and expenses incurred by the **insured** or the insurers of the **underlying insurance** without the **insurer's** prior written consent with respect to any **insured loss** that is settled for less than the total **limit of indemnity** of the **underlying insurance**;

2.4.3 Damages arising from a deliberate act

liabilities arising in connection with bodily injury or damage either expected or intended by the **insured** but this exclusion shall not apply to bodily injury resulting from the use of reasonable force to protect persons or property;

2.4.4 Design and specification

liabilities arising from or contributed to by designs, plans, specifications, formulae, surveys, directions or advice prepared or given by the **insured** for a fee other than in connection with the **insured's** products (as defined in the **underlying insurance**);

2.4.5 Destruction, distortion, etc. of data

liability directly or indirectly arising from:

- a) the total or partial destruction, distortion, erasure, corruption, alteration, misinterpretation, or misappropriation of electronic data; or
- b) errors in creating, amending, entering, deleting or using electronic data; or

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- c) the total or partial inability or failure to receive, send, access or use electronic data for any time at all;

2.4.6 Fines, penalties or multiplication of compensatory damages

liabilities for fines, penalties, punitive damages, exemplary damages, aggravated damages, treble damages, or any other increase in damages resulting from the multiplication of compensatory damages;

2.4.7 Intentional disregard of reasonable precautions;

any claim directly or indirectly arising from the **insured's** conscious or intentional disregard of the need to take all reasonable precautions to prevent an **insured loss**;

2.4.8 Liability for employment

liabilities arising in connection with bodily injury to any employees;

2.4.9 Mould or fungi

liabilities directly or indirectly arising from the existence of mould and/or fungi or its spores bacteria yeasts mildew algae mycotoxins or any other metabolic products enzymes or protein secreted by the above whether toxic or otherwise;

2.4.10 North America

liability in respect of any judgment, award, payment, **costs and expenses** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **costs and expenses** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**; but that this exclusion shall not apply in respect of non-manual visits to **North America** except that in respect of liability arising from such visits:

- a) the **insurers** will not be liable to indemnify any entity based in, operating in or domiciled in **North America**; and
- b) the indemnity by this **policy** excludes liability arising under any agreement or contract that would not arise in the absence of any agreement or contract; and
- c) **costs and expenses** are payable as part of and not additional to the **limit of indemnity**;

2.4.11 Nuclear hazards

liabilities directly or indirectly caused by or contributed to or arising from **nuclear hazards**;

2.4.12 Pollution

liabilities directly or indirectly arising from pollution:

- a) within **North America**;
- b) of or on 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**;
- c) from premises owned, leased, hired or tenanted by the **insured** outside **North America** unless the pollution is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety during the **period of insurance** at a specific moment in time and place during the **period of insurance**;

2.4.13 War or terrorism

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

2.5 Other excess liability terms and conditions

2.5.1 Inclusive costs and expenses

Where the terms of the **underlying policy** provide that **costs and expenses** reduce the **limit of indemnity** of the **underlying insurance**, then any such **costs and expenses** incurred or paid under this **policy** shall reduce the **limit of indemnity** of this **policy**.

2.5.2 Exclusive costs and expenses

Where the terms of the **underlying policy** provide that **costs and expenses** do not reduce the **limit of indemnity** of the **underlying insurance**, then any such **costs and expenses** incurred or paid under this **policy** shall not reduce the **limit of indemnity** of this **policy**.

3 Duties in the event of a claim or potential claim

The due observance and fulfilment of the provisions of clause 3 is a condition precedent to the **insurer's** liability for any claim under this **policy**. The Observance clause 4.21 sets out consequences of a failure to comply with conditions precedent or **policy** provisions such as clause 3.

3.1 Claim notification

3.1.1 The **insured** shall give notice in writing, or by an agreed electronic medium, to the **insurer** as soon as practicable and in any event within seven (7) days of receipt of any claim, **suit** or becoming aware of circumstances that could give rise to a claim under this **policy** or potentially result in the total **limit of indemnity** of the **underlying insurance** being reduced by twenty five percent (25%) or more, whether or not by way of settlement or claim reserve or otherwise.

3.1.2 Notice to the **insurer** must be given in writing to the claims notification addresses specified in the **schedule**.

3.2 Insured's duties

3.2.1 The **insured** and any person acting on behalf of the **insured** must:

- a) 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;
- b) 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;
- c) not make any admission, offer, promise or payment in connection with any occurrence or claim that could give rise to liability under this **policy**, without the prior written consent of the **insurer**;
- d) produce for examination, at any time and at a place designated by the **insurer** or the **insurer's** representatives, any and all such documentation as may be reasonably required which relate to any matter arising out of the **policy**. The **insured** will allow extracts and copies to be taken without charge and will take reasonable steps to obtain such documents that are in the possession or control of third parties;
- 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**.

3.3 Claim procedure

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

3.3.1 immediately send the **insurer** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an insured event as soon as received by the **insured**. In addition the **insured** must co-operate with the **insurer** or their appointed agents to allow them to comply with such relevant practice directions and pre-action protocols as may be issued and approved from time to time by the head of civil justice;

3.3.2 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;

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- 3.3.3 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.

3.4 Insurer's rights

- 3.4.1 The **insurer** has the right but not the duty to assume charge of and conduct in name of the **insured** and / or to associate in the investigation of any **insured loss** and / or the defence and / or settlement of any claim or **suit** brought against the **insured** that the **insurer** considers could give rise to liability under this **policy** as the **insurer** consider appropriate.
- 3.4.2 The **insurer** shall have no duty to investigate any potential or actual **insured loss** or to defend any claim or **suit** on behalf of the **insured** to which this **policy** does not apply.
- 3.4.3 The **insurer** shall have no obligation to investigate any **insured loss** or defend or settle any claim or **suit** or incur any **costs and expenses** once the **limit of indemnity** of this **policy** has been exhausted by payment of judgments, settlements or claimant costs recoverable from **insured**.
- 3.4.4 The **insurer** is under no obligation to automatically follow settlements in discharge of the liability of the insurers of the **underlying insurance**.
- 3.4.5 The **insurer** may at any time pay the **limit of indemnity** of this **policy** (less any amounts already paid or incurred) or any lesser amount for which at the **insurer's** absolute discretion all claims arising out of an insured loss can be settled. The **insurer** will then relinquish control of such claims and be under no further liability in respect thereof.

3.5 Subrogation

- 3.5.1 For each and every claim the **insured**, any **other insured party** and any person acting on their behalf must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or **suit** that may give rise to a claim under this insurance.
- 3.5.2 Before settlement of any claim under the **policy**, the **insured** shall at the request of the **insurer** transfer to the **insurer** all rights and remedies, indemnities or advantages held by or available to the **insured** whether from the insured debtor or from other parties for the purpose of recovering or reducing an **insured loss** in respect of which a claim has been paid, with the intention that the **insurer** will be fully subrogated to all such rights, remedies, indemnities and advantages. Should the **insurer** agree to pay the claim the **insured** has a continuing duty to perform these obligations. Expenses necessary to the recovery of any such amounts will be apportioned between the parties, in the ratio of their respective recoveries as finally settled from the corresponding reimbursement or recovery.

3.6 Currency

In the event of a claim occurring in a currency other than the **policy currency**, the amount claimed and any other amounts relevant to the claim shall be converted into the **policy currency** by reference to the Financial Times closing mid point exchange rate on the date of the **insured loss**.

3.7 Set off

The **insurer** shall be entitled where an **insured loss** has occurred and a claim has been agreed, to set off any outstanding premiums or charges owing to the **insurer** under this or any other **policy**.

4 General terms and conditions

4.1 Adjustment of Premium

Where the premium in whole or part is provisionally based on estimates provided by the **insured**, the **insured** shall 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 shall 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.

4.2 Applicable law

This **policy** will be governed by and interpreted in accordance with the laws of England and subject to the exclusive jurisdiction of the High Court, London.

4.3 Assignment

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

4.4 Basis of contract

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

4.5 Cancellation

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

4.6 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.

4.7 Contribution

If at the time of any claim under this insurance there is any other valid and collectible insurance, not stated as **underlying** insurance, that covers any **insured loss** in whole or in part, 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 **insurer** for the insurance, then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance.

4.8 Document management

The **insurer** may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document

will be admissible in evidence to the same extent as, and carry the same weight as, the original.

4.9 Dispute resolution

4.9.1 All matters in dispute between the parties 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 agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.

4.9.2 The parties agree 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.

4.9.3 If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be referred by either party to be determined and be subject to the exclusive jurisdiction of the High Court, London.

4.10 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.

4.11 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 reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$.

4.12 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 reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$; or
 - iii) would not have reduced the premium by as much as it did or at all, the **insurer** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **insurer** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/reduced total premium}) \times 100$.

4.13 Fraudulent claims

4.13.1 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.

4.13.2 These remedies shall not be available against any other entity insured under this **policy** that was not implicated in the fraud.

4.14 Insolvency

The insolvency bankruptcy receivership or any other refusal or inability to pay by the **insured** and/or any insurer shall not operate to:

- 4.14.1 reduce or exhaust the **limit of indemnity** of the **underlying insurance**;
- 4.14.2 increase the liability of the **insurer** under this **policy**.

4.15 Inspection and audit

The **insurer**, or such representative as the **insurer** may designate, will be permitted but not obligated to inspect the **insured's** property and operations at any time. 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.

4.16 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).

4.17 Legal action against the insurer

4.17.1 In respect of liabilities covered by this insurance, no one may bring a legal action against the **insurer** until the amount of the **insured's** or any **other insured party's** liability has finally been determined or agreed.

4.17.2 No one has the right under this **policy** to bring the **insurer** into an action to determine the **insured's** liability.

4.18 Maintenance of underlying insurance

4.18.1 The **underlying insurance** shall be maintained in full force and effect during the currency of this **policy** except for any reduction of any aggregate limits contained therein solely by payment of claims thereunder and shall not be cancelled or otherwise allowed to lapse without prior notice to **insurer**.

4.18.2 No amendments to the **underlying insurance** shall form part of this **policy** until agreed in writing or by electronic medium by the **insurer**.

4.19 Material changes during the policy period

4.19.1 The **insured** must notify the **insurer** within thirty (30) days 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.

4.19.2 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.

4.20 Minimisation of risk

The **insured** must use due diligence to do all things reasonable and practicable to avoid or diminish any **insured loss** and shall act in accordance with any reasonable instructions given by the **insurer**. 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**.

4.21 Observance

4.21.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not already conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent **insurer** from relying on such term or condition or condition precedent in the future.

4.22 Privacy and the Data Protection Act 1998

4.22.1 All personal information (including sensitive personal data such as health details or criminal convictions) provided in connection with this **policy** will be processed in accordance with the Data Protection Act 1998. The **insured** consents to all personal information so provided being used for the purposes and being disclosed to the parties set out below.

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- 4.22.2 Where personal information is provided about another person, the **insured** is required to inform that person of the **insurers'** identity, and why their personal information will be processed and disclosed. The insured is also required to obtain their written consent to the processing of their personal information in this way and provide, on request, such consent to the **insurer**.
- 4.22.3 Personal information is used:
- a) to administer the **policy**, including underwriting, renewal information, validation of claims history and claims handling;
 - b) for research, analysis, statistic creation, and customer profiling;
 - c) for fraud prevention and debt recovery.
- 4.22.4 Personal information may be disclosed to:
- a) other members of the QBE Insurance Group;
 - b) other insurance entities interested in the risk written under this **policy**;
 - c) agents and service providers appointed by the **insurer** to carry out activities in connection with the **policy**;
 - d) credit reference and fraud databases;
 - e) law enforcement and other statutory bodies;
 - f) potential purchasers of the whole or part of the our business.
- 4.22.5 If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the fraud databases.
- 4.22.6 Personal information may be transferred to third parties in countries outside the European Economic Area which may not have the same standards of protection for personal information as the United Kingdom. The **insurer** will ensure that such transfers comply with the data protection law and the personal information is kept securely and protected from unauthorised access.
- 4.22.7 The **insurer** maintains protections and procedures in the storage and disclosure of personal information to keep it secure and prevent unauthorised access to or loss of such information.
- 4.22.8 The **insurer** may monitor and record all communications with you for compliance and training purposes.
- 4.22.9 Should the **insured** wish to see the information held, have any queries in relation to the way such information is used or discover any inaccuracies, the **insured** should write to the Data Protection Officer at QBE Insurance (Europe) Limited, Plantation Place, 30 Fenchurch Street, London EC3M 3BD.

4.23 Representation

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

4.24 Subscribing insurer

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

5 General definitions and interpretation

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

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

5.1 Business

The activities of the **insured** as stated in the **schedule**

5.2 Costs and expenses

Costs and expenses means all costs and expenses defined in the **underlying insurance**.

5.3 Insured

Insured means:

- 5.3.1 the company or other organisation including any subsidiary companies of the insured that are in existence at the inception date of the insurance and have been declared to the **insurer** until such time as they may be sold or otherwise disposed, and;
- 5.3.2 the person or people shown as insured in the **schedule**;
- 5.3.3 the legal or personal representatives of the insured in respect of any claim under this **policy** incurred on behalf of the insured.

5.4 Insured loss

Insured loss means a loss indemnified in accordance with the terms, limitations, exclusions, conditions and definitions of the **underlying insurance**.

5.5 Insured section

Insured section means clause 2.

5.6 Insurer

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

5.7 Limit of indemnity

- 5.7.1 As regards the **underlying insurance**, limit of indemnity means:
 - a) the same as is defined in the **underlying insurance**; and
 - b) no more than the total limit specified therein.
- 5.7.2 As regards this **policy**, limit of indemnity means the amount stated in the **schedule** which is the maximum amount payable by the **insurer** regardless of the number of:
 - a) **other insured parties**; or
 - b) claims or **suits** brought; or

-
- c) persons or organisations bringing claims or **suits**.
- 5.7.3 Where a **limit of Indemnity** is stated in the **schedule** as in the aggregate, that aggregate is the most the **insurer** will pay for all insured events during the **period of insurance**.
- 5.8 North America**
- North America means the United States of America or its territories or possessions or Canada.
- 5.9 Nuclear hazards**
- Nuclear hazards means:
- 5.9.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 5.9.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 5.10 Other insured party**
- Other insured party means any of the following parties:
- 5.10.1 any director, official or employee of the **insured**;
- 5.10.2 any other person or entity specified as an **other insured party** in this **policy**, provided that such person or entity is included as an **insured** in the **underlying insurance**.
- 5.11 Period of insurance**
- Period of insurance means the period shown as such on the **schedule**, which time is taken as Greenwich Mean Time unless otherwise stated.
- 5.12 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.
- 5.13 Policy currency**
- Policy currency means the currency specified in the **schedule**.
- 5.14 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.
- 5.15 Schedule**
- Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this standard **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the insured. Schedules may be re-issued from time to time where each successor overrides the earlier document.

5.16 Suit

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

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

5.17 Terrorism

5.17.1 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 a threat thereof; and appears to be intended to:

- a) intimidate or coerce a civilian population; or
- b) disrupt any segment of the economy of a government de jure or de facto, state, or country; or
- c) overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion; or
- d) affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

5.18 Ultimate net sum

Ultimate net sum means the sum actually paid in the settlement of an **insured loss** for which the **insured** are liable after making proper deductions for all recoveries, salvages and other insurances, other than the **underlying insurance**, whether recovered or not but excluding **costs and expenses** where **costs and expenses** do not reduce the **limit of indemnity** of the **underlying insurance**.

5.19 Underlying insurance

Underlying insurance means the primary policy and those policies specified in the **schedule** as underlying insurance.

5.20 United Kingdom

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

5.21 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**.

6 Policy Endorsements

The terms, exclusions or conditions of this insurance may be varied by any endorsement specified under “Operative Endorsements” in the **schedule**.

Each endorsement will override any conflicting term in the **policy** and each is subject otherwise to the **policy** exclusions, terms, conditions and definitions.

6.1 LRXA01 – Products liability exclusion

This **policy** excludes and does not cover any liability arising out of the **insured’s** Products.

The term Products means any property (including packaging containers and labels) 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** which shall include any structure or contract works and/or materials for incorporation therein.

6.2 LRXA02 – Use of heat, cutting, burning of debris conditions

It is a condition precedent to the **insurer’s** liability under this insurance that the **insured** shall take all reasonable steps to ensure the undernoted precautions are complied with on each occasion the **insured** or persons acting on behalf of the **insured** is using any of the following away from the **insured’s** own premises.

6.2.1 Electric oxyacetylene or similar welding equipment, blow lamps, blow torches electrical paint strippers, heat guns or cutting/grinding equipment:

- a) the immediate area in which the operation is to be carried out must be segregated to the greatest practicable extent by the use of screens made of metal and/or fire retardant material;
- b) the whole of this segregated area must be adequately cleared and freed from combustible material before operations commence;
- c) combustible floors/substances in or surrounding this segregated area must be liberally covered with sand or protected by overlapping sheets of incombustible material;
- d) where work is being carried out in an enclosed area an additional employee (of the **insured**) or an employee of the occupier shall be present at all times to guard against an outbreak of fire;
- e) no work shall be carried out unless specifically authorised and signed for by the occupier who shall also be asked to approve the safety arrangements;
- f) the following must be kept in readiness for immediate use at the scene of operations:
 - i) suitable fire extinguishers; and/or
 - ii) hoses connected up in readiness for immediate use and tested prior to the commencement of the work;
- g) the lighting of all blow lamps, blow torches and welding and cutting equipment shall be carried out strictly in accordance with the manufacturer's instructions and no piece of lighted equipment shall be left unattended at any time;
- h) where any equipment involves the use of gas cylinders those not required for immediate use shall be kept outside the building in which the work is taking place

and in any event not less than fifteen (15) metres from the point of application of heat;

- i) before 'burning off' metal work built into or projecting through walls or partitions a thorough examination shall be made, including the area on the other side of any walls or partitions, to ensure that no combustible material is in danger of ignition either directly or by conducted heat;
- j) a continuous examination for one (1) hour shall be made of the area within a radius of six (6) metres from where the heat has been applied to ensure that there is no risk of fire.

6.2.2 Asphalt Bitumen and Tar Heaters:

- a) all heating of asphalt bitumen tar or pitch shall be carried out in a suitable vessel in the open at ground level using bottled gas;
- b) no such vessel shall be left unattended while the heating source is lit.

6.2.3 Furthermore, where the **insured** or persons acting on behalf of the **insured** burns debris away from the **insured's** premises, it is a condition precedent to the **insurer's** liability under this insurance that the following precautions must be taken on each occasion:

- a) fires shall be in a cleared area and at a distance of at least ten (10) metres from any property;
- b) fires shall not be left unattended at any time;
- c) a suitable fire extinguisher shall be kept available for immediate use;
- d) fires shall be extinguished at least one (1) hour prior to leaving the site at the end of each working day.

6.3 LRXA03 – Inefficacy clause products

This **policy** excludes and does not cover any liability arising out of the failure of the **insured's** products, as more specifically defined in the primary policy, to correctly fulfil their intended use or function or to meet the level of performance, quality, fitness or durability warranted or represented.

6.4 LRXA04 – North American jurisdiction clause

Notwithstanding anything contained herein to the contrary in clause 2.4.10, this **policy** is amended to apply in respect of any judgment, award payment, **costs and expenses** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **costs and expenses** or settlement either in whole or part).

6.4.1 Provided always that

- a) the **insurers** will not be liable to indemnify any entity based in, operating in or domiciled in **North America**; and
- b) the indemnity by this **policy** excludes liability arising under any agreement or contract that would not arise in the absence of any agreement or contract; and
- c) **costs and expenses** are payable as part of and not additional to the **limit of indemnity**;
- d) the indemnity by this **policy** excludes bodily injury or damage or financial economic or consequential loss directly or indirectly caused by pollution or contamination including the cost of remaking, nullifying and cleaning up such pollution or contaminating substances.

6.5 LRXA05 – Aircraft products exclusion

This **policy** excludes and does not cover any liability arising out of any product (as more specifically defined in the Primary Policy) which at the time of the contract of sale is knowingly sold or supplied for use in any aircraft, spacecraft or other aerial device.

6.6 LRXA06 – Heated asphalt/bitumen exclusion

This **policy** excludes and does not cover any liability arising from the use by or on behalf of the **insured** of any vessel for the heating of asphalt or bitumen away from the **insured's** premises.

6.7 LRXA07 - Excluding heat/cutting

This **policy** excludes and does not cover any liability arising from the use by or on behalf of the **insured** of blow lamps, blow torches, hot air guns or oxyacetylene or electric welding or cutting/grinding equipment away from the **insured's** premises.

6.8 LRXA08 – Excluding burning of debris

This **policy** excludes and does not cover any liability arising from the burning of debris by or on behalf of the **insured** away from the **insured's** premises.

6.9 LRXA09 – Explosives exclusion

This **policy** excludes and does not cover any liability arising out of the use of explosives by or on behalf of the **insured**.

6.10 LRXA10 – ‘One drop’ demolition exclusion

This **policy** excludes and does not cover any liability arising from the demolition of any structure (or part thereof) by a method designed and/or intended to demolish the structure (or part thereof) in one sudden and uninterrupted process without the use of explosives.

6.11 LRXA11 – ‘Ball and chain’ demolition exclusion

This **policy** excludes and does not cover any liability arising from ball and chain demolition.

6.12 LRXA12 – Spectator stands exclusion

This **policy** excludes and does not cover any liability arising from the sale, supply, hire and/or erection and/or modification of spectator stands.

6.13 LRXA13 – Absolute pollution exclusion

Notwithstanding Exclusion 2.4.12 this **policy** excludes and does not cover any liability

- a) directly or indirectly relating to pollution or contamination;
- b) for the costs of removing nullifying or cleaning-up polluting or contaminating substances;
- c) for fines penalties punitive or exemplary damages relating to items a) and b) above.

7 Complaints

7.1 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) write to the complaints address shown in the **schedule**; or
- b) 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.

Please note that Lloyd's will consider a complaint only if the **insured** is considered to be an 'eligible complainant' by the Financial Ombudsman Service – see below.

In each case, the **insured** should quote the **policy** or claim reference.

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

7.2 The Financial Ombudsman Service (FOS)

If the **insured** feels that its complaint has not been satisfactorily resolved, the **insured** may contact the 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 charity with an annual income of less than GBP1million; or
- d) a trustee of a trust with net assets of less than GBP1million.

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

The **insured** must refer its complaint to the 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 FOS provides impartial advice free of charge and contacting them will not affect the **insured's** legal rights.

7.3 Financial Services Compensation Scheme (FSCS)

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.

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