

Making

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Policy Document



Housing | Version 1

1. INFORMATION

The **Policyholder** is requested to read the Policy and Certificates. These are important documents. If any information is not clear please contact the **Scheme Administrator**.

This Policy consists of:

- **INFORMATION** on the **Premier Guarantee for Housing**;
- **DEFINITIONS** detailing all Definitions applicable to the Policy;
- **INSURING AGREEMENT** giving precise details of the cover, subject to variation by Endorsement;
- **ADDITIONAL EXTENSIONS** detailing automatic extensions in cover to the Policy;
- **EXCLUSIONS** detailing exclusions that apply to the whole Policy;
- **CONDITIONS** defining the terms that apply to the whole Policy;
- **FINANCIAL LIMITS** detailing the maximum the **Underwriter** will pay in the event of a claim under the Policy, subject to the Indexation Clause detailed in Condition 5 of the Policy;
- **CLAIMS NOTIFICATION PROCEDURES** detailing the procedures that should be followed when notifying a claim under any of the sections of the Policy.

This Policy sets out the insurance cover provided by the **Premier Guarantee for Housing** and the **Developer's** obligations for the **Policyholder's** newly built or converted **Housing Unit**.

This insurance cover is subject to a number of definitions, conditions, exclusions and financial limits as detailed in the Policy.

It is a Policy of indemnity and does not provide any cover for any legal liabilities that the **Policyholder** may have to third parties arising out of the use or ownership of the **Housing Unit**.

Unless otherwise stated on the **Initial** and **Final Certificates** the **Premier Guarantee for Housing** provides **Policyholders** with protection in the following ways:

- During construction by insuring any deposit paid or additional costs incurred in the event of insolvency of or fraud by the **Developer**. See Section 3.1 for details.
- During the first two years from the date of completion or the date specified in the **Final Certificate** the **Developer** is responsible for remedying **Defects** in the **Housing Unit**. Should the **Developer** unjustifiably refuse to remedy the **Defect** after the **Conciliation Service** has been used and/or following receipt of a legally binding decision and/or fails to do so because of insolvency then the **Underwriter** will meet valid claims under the Policy. See Sections 3.2 and 8 for details.

- The **Housing Unit** is insured for a period of 8 years from expiry of the **Defects Insurance Period** against the risk of **Major Damage**, ingress of water through the **Waterproof Envelope**, a defect in the drains or a danger to health and safety caused by a defect in chimneys or flues. See Section 3.3 for details.
- The **Land** owned by the **Policyholder** is insured for a period of 8 years from expiry of the **Defects Insurance Period** against **Remediation Expenses**. See Section 3.4 for details.

Law applicable to this Policy

The parties to a contract covering a risk in the United Kingdom are free to choose the law applicable to that contract. In the absence of any written agreement to the contrary the law applicable to this contract shall be the law of England and Wales.

Interpretation

Where any word or expression is given a specific meaning then such word or expression shall, unless the context otherwise requires, have the same meaning wherever it appears.

The Quality of Your Housing Unit

All **Housing Units** insured by the **Premier Guarantee for Housing** are the subject of a system of checks and inspections:

- The **Developer** and the **Builder** have to comply with Building Regulations and the authorised Building Control Body involved inspects their work. These Regulations are statutory requirements and are concerned mainly with health and safety, access for the disabled and conservation of fuel and power issues.
- The **Developer** has been issued with **Premier Guarantee's Technical Manual**. This sets out the functional requirements the **Developer** and/or the **Builder** has to comply with when constructing a **Housing Unit**.
- **Site Audit Surveyors** will have completed inspections before the **Final Certificate** was issued. Such inspections are carried out to satisfy the **Underwriter** that the **Housing Unit** represents a normal risk for insurance under the **Premier Guarantee for Housing**. It should not be inferred that the inspections are for any other purpose.

It is the **Policyholder's** responsibility to ensure that a thorough inspection of the **Housing Unit** is carried out prior to hand-over. If the inspection identifies any defects they should be reported to the **Developer** and remedied prior to completing the purchase

NOTES

- 1) After a satisfactory final inspection has been carried out by the **Site Audit Surveyor** a Cover Note will be issued, if requested, for each **Housing Unit** confirming that cover under Sections 3.2, 3.3 and 3.4 (as applicable) is in effect.
- 2) A **Final Certificate** will be issued in the name of the **Policyholder** within 10 days of the Cover Note provided that a **Certificate of Approval** has been

issued by the **Site Audit Surveyor**. The **Final Certificate** should be filed with the Policy.

- 3) Extensions in cover at the time of issue of the Policy and subsequent alterations will be confirmed by separate Endorsements, which should be filed with the Policy. The **Policyholder** should refer to these Endorsements and the Policy to ascertain the precise cover in force at any time.
- 4) This Policy is transferable to future owners of the **Housing Unit** provided that such owners contact the **Scheme Administrator** to notify their details.

NOTICE TO THE POLICYHOLDER

As a **Policyholder** you have a number of options for making complaints about your **Premier Guarantee for Housing** policy. These are listed below. Before making any enquiry or complaint please consider carefully the most suitable option to address your concern.

In all cases the Policy/Certificate number appearing in the **Final Certificate** should be quoted.

- 1) You may have received advice on the cover provided by the **Premier Guarantee for Housing** prior to taking out the policy. This advice may have been given by M.D. Insurance Services Ltd or another Financial Conduct Authority authorised and approved intermediary.

If the advice was given by M.D. Insurance Services Ltd and you wish to make a complaint please contact:

The Complaints Officer
M.D. Insurance Services Ltd
2 Shore Lines Building
Shore Road, Birkenhead,
Wirral CH41 1AU

Email: enquiries@premierguarantee.co.uk
Tel 0151 650 4343

A copy of the M.D. Insurance Services Ltd Complaints Procedure will be provided on request.

If advice was given by any other Financial Conduct Authority authorised or approved intermediary you should address your complaint directly to them.

- 2) M.D. Insurance Services Ltd also acts as the **Scheme Administrator** for the **Premier Guarantee for Housing**. If you have any complaint about the way in which M.D. Insurance Services Ltd has performed the duties as the **Scheme Administrator** please contact:

The Complaints Officer,
M.D. Insurance Services Ltd,
2 Shore Lines Building
Shore Road, Birkenhead,
Wirral CH41 1AU

Email: enquiries@premierguarantee.co.uk
Tel 0151 650 4343

A copy of the M.D. Insurance Services Ltd Complaints Procedure will be provided on request.

- 3) If you have any enquiry or complaint about the insurance provided by the **Premier Guarantee for Housing** this should in the first instance be addressed to:

M. D. Insurance Services Ltd,
(as disclosed agents of Liberty Syndicate 4472 at Lloyd's), 2 Shore Lines Building, Shore Road, Birkenhead, Wirral CH41 1AU

Email: enquiries@premierguarantee.co.uk
Tel 0151 650 4343

or

Liberty Syndicate 4472 at Lloyd's,
Fifth Floor, One, Minster Court,
London EC3R 7AA.

If you are not satisfied with the way a complaint has been dealt with you may ask the Complaints Department at Lloyd's to review your case without prejudice to your rights in law.

The address is:-

Complaints Department, Lloyd's, One Lime Street, London, EC3M 7HA

- 4) It is a requirement of the **Premier Guarantee for Housing** that a **Site Audit Surveyor** carries out inspections to satisfy the **Underwriter** that each **Housing Unit** represents a normal risk for insurance. It should not be inferred that the inspections are for any other purpose.

If you wish to make a complaint against the **Site Audit Surveyor** regarding the way in which they have performed their role you should contact them directly.

Details of the **Site Audit Surveyor** and their Complaints Procedure will be provided by the **Scheme Administrator** on request.

Note:

- A. If after following the procedures set out in 1 to 3 on Page 2 of this Policy, your complaint has not been resolved to your satisfaction, and you are an eligible complainant you have the right to refer the matter to the Financial Ombudsman, at the following address:-

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall,
London E14 9SR

Email: enquiries@financial-ombudsman.org.uk

The Financial Conduct Authority definition of an eligible complainant is:

- A private individual;
- A business which has a group turnover of less than £1 million;
- A charity with an annual income of less than £1 million;
- A trustee of a trust with a net asset value of less than £1 million.

B. Any Financial Services authorised and regulated intermediary, the **Underwriter** and the **Scheme Administrator** are covered by the Financial Services Compensation Scheme. As a **Policyholder** you may be entitled to compensation from the Financial Services Compensation Scheme if any of these parties are unable to meet their obligations.

Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme. Their address is:

Financial Services Compensation Scheme
7th Floor Lloyds Chambers
Portsoken Street
London E1 8BN

YOUR RIGHT TO CANCEL

You have the right to cancel cover under the **Premier Guarantee for Housing**. If you wish to cancel the cover you must do so within 14 days starting on the day after you receive the **Premier Guarantee for Housing** policy documents. Your cancellation must reach the **Scheme Administrator** by letter or email. Contact details are:

- Scheme Administrator
M.D. Insurance Services Ltd
2 Shore Lines Building
Shore Road, Birkenhead,
Wirral CH41 1AU

Email: enquiries@premierguarantee.co.uk

Please quote your **Premier Guarantee for Housing** policy number when cancelling. You should be aware that if you choose to cancel the policy, no refund of premium will be paid.

All **Premier Guarantee for Housing** policy documents should be returned to the **Scheme Administrator** with the cancellation request.

Before cancelling the cover please check with your mortgage lender because they may require you to have this cover or its equivalent as a condition of the loan. Please remember also that if you sell the **Housing Unit** within the period of cover, a purchaser (and any lender at that time) will usually require the cover.

If your **Housing Unit** includes **Common Parts** for which you are jointly responsible with owners of other **Housing Units**, your cancellation will apply to both the cover on your individual **Housing Unit** and the cover for your share of the cost of any claim relating to the **Common Parts**. So if you cancel your cover, you will be obliged under your lease or title to contribute to the cost of repairs along with your neighbours.

2. DEFINITIONS

Wherever any of the following words appear in bold in the Policy wording they will have the undermentioned meaning.

A BUILDER

Any person, sole trader, partnership or company who constructs the **Housing Unit(s)** at the **New Development**.

B BUILDING CONTRACT

The contract or agreement between the **Developer** and the **Policyholder** in respect of the construction, conversion, refurbishment or renovation of the **Housing Unit(s)** at the **New Development**.

C BUILDING PERIOD

The period for each **New Development** or each **Housing Unit** commencing on the date specified in the **Initial Certificate** issued by the **Underwriter** and ending on the date of completion noted on the **Certificate of Approval** for the final **Housing Unit** to be completed at the **New Development**.

D CERTIFICATE OF APPROVAL

The Certificate issued by the **Site Audit Surveyor** to the **Underwriter** on or following satisfactory completion of each **Housing Unit**.

E COMMON PARTS

Those parts of a multi-ownership building (of which each **Housing Unit** is part), for a common or general use, for which the **Policyholder** has joint ownership and/or legal responsibility.

F CONCILIATION SERVICE

A consensual process whereby a building surveyor appointed by the **Scheme Administrator** attempts to resolve a dispute between the **Developer** and **Policyholder**.

G DEFECT

A failure to comply with a functional requirement in the **Technical Manual** in respect of the construction of the **Housing Unit**.

Failure to follow the performance standards or guidance supporting the functional requirements does not in itself amount to a **Defect**, as it may be possible to achieve the recommended performance in other ways.

For any contract insured under this policy relating to the conversion, refurbishment or renovation of a **New Development** the Definition of **Defect** shall only be deemed to include any of the works constructed or installed by the **Builder** as part of the conversion, refurbishment or renovation.

H. DEFECTS INSURANCE PERIOD

The period commencing on the date specified in the **Final Certificate** and ending:

- i) two years after such date;
- ii) for **Common Parts** the period commencing on the earliest date specified on a **Final Certificate** issued for a **Housing Unit** that shares the **Common Parts** and ending either three years from the earliest date specified on a **Final Certificate** or two years from the latest date specified on a **Final Certificate** for a **Housing Unit** sharing the **Common Parts**, whichever is the earlier.

I. DEVELOPER

- i) Any person, sole trader, partnership or company with whom the **Policyholder** has entered into an agreement or contract to purchase the **Housing Unit** on either a Freehold or Leasehold basis.

or
- ii) Any person, sole trader, partnership or company who constructs the **Housing Unit** and with whom the **Policyholder** has entered into an agreement or contract to purchase the **Housing Unit** on either a Freehold or Leasehold basis.

J. EXCESS

As noted on the **Initial** and **Final Certificates** the **Underwriter** shall not be liable for the first part of any payment made in respect of a valid claim under the Policy for a **Housing Unit**.

A separate **Excess** shall apply to each separately identifiable cause of loss or damage for which a payment is made under the Policy by the **Underwriter**, regardless of whether more than one cause of loss is notified at the same time.

K. FINAL CERTIFICATE

The Certificate issued by the **Underwriter** to signify acceptance of each **Housing Unit** for insurance hereunder following issue of the **Certificate of Approval** by the **Site Audit Surveyor**.

L. HOUSING UNIT

The property described in the **Final Certificate** comprising:

- the **Structure**;
- all non-load bearing elements and fixtures and fittings for which the **Policyholder** is responsible;
- any **Common Parts** retaining or boundary walls forming part of or providing support to the **Structure**;
- any path or roadway providing access for the disabled;
- the drainage system within the perimeter of such property for which the **Policyholder** is responsible;
- any garage or other permanent out-building.

Housing Unit does not include any swimming pool, temporary structure, free-standing household appliance, fence, retaining

or boundary wall not forming part of or providing support to the **Structure**, any path or roadway not providing access for the disabled.

M. INITIAL CERTIFICATE

The Certificate issued by the **Underwriter** signifying their agreement to the provision of the insurance cover set out in this Policy subject to receipt of a **Certificate of Approval** for each **Housing Unit**.

N. LIMIT OF INDEMNITY

The liability of the **Underwriter** shall not exceed during the **Defects Insurance Period** and/or the **Structural Insurance Period** the amount shown as the Sum Insured on the **Final Certificate** or the relevant limit in the Financial Limit section of this policy, whichever is the lesser. The **Limit of Indemnity** is index linked in accordance with Condition 5 of the Policy.

O. MAJOR DAMAGE

- a. Destruction of or physical damage to any portion of the **Housing Unit** for which a **Certificate of Approval** has been received by the **Underwriter**
- b. a condition requiring immediate remedial action to prevent actual destruction of or physical damage to any portion of the **Housing Unit** for which a **Certificate of Approval** has been received by the **Underwriter**

in either case caused by a defect in the design, workmanship, materials or components of the **Structure** which is first discovered during the **Structural Insurance Period**.

For the purpose of this Policy the definition of **Major Damage** is deemed to include any physical loss, destruction or damage caused by contamination or pollution as a direct consequence of a defect in the design, workmanship materials or components of the **Structure** of the **Housing Unit**.

P. MINIMUM CLAIM VALUE

The amount relating to each and every loss in respect of each **Housing Unit** below which the **Underwriter** has no liability under this Policy. If the loss is greater than the **Minimum Claim Value** the **Underwriter** will be responsible for the full amount of the **Policyholder's** claim covered by this Policy.

A separate **Minimum Claim Value** shall apply to each separately identifiable cause of loss or damage for which a claim is made under the Policy.

Q. NEW DEVELOPMENT

A **Housing Unit** or group of **Housing Units** located at the site noted on the **Initial Certificate** for the **New Development** and for which an individual **Final Certificate** is issued for each **Housing Unit**.

For the purpose of this definition **New Development** is not deemed to include any building works other than the **Housing Unit(s)** detailed in the **Initial Certificate**.

R. POLICYHOLDER

The owner of the property which is the subject of this insurance acquiring a freehold or leasehold interest in a **Housing Unit** within the **New Development** or their successor in title, or any mortgagee or lessor whose interest has been noted under the policy.

S. PREMIER GUARANTEE

The policy containing the insurance cover provided by the **Underwriter**.

T. SCHEME ADMINISTRATOR

M. D. Insurance Services Ltd,
2 Shore Lines Building
Shore Road, Birkenhead,
Wirral CH41 1AU

U. SITE AUDIT SURVEYOR

The surveyor appointed by the **Underwriter** who carries out checks and inspections solely on behalf of the **Underwriter** and who prior to the issue of the **Final Certificate** for each **Housing Unit** issues a **Certificate of Approval**.

V. STRUCTURE

The following elements shall comprise the **Structure** of a **Housing Unit**:

- foundations;
- load-bearing parts of floors, staircases and associated guard rails, walls and roofs, together with load-bearing retaining walls necessary for stability;
- roof covering;
- any external finishing surface (including rendering) necessary for the water-tightness of the external envelope;
- floor decking and screeds, where these fail to support normal loads.

W. STRUCTURAL INSURANCE PERIOD

The period specified in the **Final Certificate** for each **Housing Unit**.

X. TECHNICAL MANUAL

The functional requirements and performance standards issued to the **Developer** by **Premier Guarantee for Housing** and in force at the time when technical information relating to the **New Development** is first submitted to the **Site Audit Surveyor**.

The **Site Audit Surveyor** may agree to amendments to the performance standards. Such amendments shall form part of the **Technical Manual** provided they have been agreed in writing by the **Scheme Administrator**.

Y. UNDERWRITER

Liberty Syndicate 4472 at Lloyd's

Z. WATERPROOF ENVELOPE

Waterproof Envelope shall mean the ground floors, external walls, roofs, skylights, windows and doors of a **Housing Unit** but excluding those parts below ground floor slab level.

3. THE INSURING AGREEMENT

SECTION 3.1 INSOLVENCY OF DEVELOPER DURING THE BUILDING PERIOD

If due to insolvency or fraud the **Developer** does not commence work on a **Housing Unit** the **Underwriter** will refund the deposit paid by the **Policyholder**.

If due to insolvency or fraud the **Developer** fails to complete the **Housing Unit** after work has commenced the **Underwriter** will at its sole option:

- (a) pay the additional cost required to complete the **Housing Unit**;
- or
- (b) refund the loss of money paid by the **Policyholder** to the **Developer** as a deposit for the construction of the **Housing Unit**;

Provided that the **Underwriter** is only liable under this Section in respect of monies paid by the **Policyholder** to the **Developer** subject to a maximum of 10% of the original purchase price for the **Housing Unit**.

SPECIAL CONDITIONS APPLICABLE TO SECTION 3.1

1. If the **Policyholder** withholds, retains or receives back any part of the deposit for the **Housing Unit** the **Underwriter** will be entitled to deduct such amount from monies they would otherwise be obliged to pay under this Section
 2. The **Underwriter** is only liable under this Section in respect of the original contract price, as declared, and not in respect of any extras agreed subsequent to the contract.
 3. The **Policyholder** cannot recover under this Section if they are entitled to make a claim under contract against the **Developer** in respect of liquidated damages or financial penalties of any kind.
1. For the purpose of this Section only the Definition of **Developer** shall only include the **Builder** if the **Developer** and **Builder** are one and the same legal entity for the **New Development**. For any avoidance of doubt the definition of **Developer** does not include any sub-contractor or sub-consultant employed at the **New Development**.

SECTION 3.2 DEFECTS INSURANCE PERIOD

The **Underwriter** will indemnify the **Policyholder** during the **Defects Insurance Period** against the cost of repairing, replacing or rectifying any **Defect** in the **Housing Unit** for which the **Developer** is responsible and which is discovered and notified to the **Developer** during the **Defects Insurance Period** and which is notified to the **Underwriter** within 6 months of the expiry of the **Defects Insurance Period**.

The **Underwriter** shall have no liability unless:

- a) i) the **Developer** has refused to respond to the claim within a reasonable time period and/or;
- ii) the **Developer** has withheld consent to resolve the dispute by using the **Conciliation Service** and/or;
- iii) the **Developer** has accepted the decision of a building surveyor after using the **Conciliation Service** but has failed to carry out the works or repairs recommended in the surveyor's report within the time stipulated.

and/or

- b) the **Developer** has not effected the repairs or works determined by a binding legal process;

and/or

- c) the **Developer** has failed to carry out such repair, replacement or rectification work due to its Insolvency.

In the event of a claim under this Section the **Underwriter** has the option either of paying the cost of repairing, replacing or rectifying any **Defect** or itself arranging to have such damage corrected.

During the **Defects Insurance Period** the **Developer** should comply with the following obligations:

- a) on notification by the **Policyholder** of any **Defect** to effect repair replacement or rectification of such **Defect** as soon as practicable thereafter;
- b) reimburse the **Policyholder** for all necessary and reasonable costs including lifting and refitting carpets, storage and alternative temporary accommodation should the nature of any repair, replacement or rectification be such that the **Policyholder** needs to vacate the **Housing Unit** whilst such repair replacement or rectification is carried out.

SPECIAL CONDITION

If the **Policyholder** receives back, either in part or whole, any payments in respect of a claim under this Section which has already been paid by the **Underwriter** then the **Policyholder** shall reimburse the **Underwriter** in full for the amount of such payment.

EXCLUSIONS TO SECTION 3.2:

The **Underwriter** shall not be liable to the **Policyholder** for any:

1. **Defect** to the central heating system(s) and associated pipework, fitted appliances or plumbing works;
2. external landscaping or garden features;
3. adjustment of doors following the fitting of carpets or flooring;
4. drawing of chimneys;
5. contractual disputes between the **Developer** and the

Policyholder or issues regarding specification of items;

6. dampness, condensation or shrinkage not caused by a **Defect**;
7. chips or scratches to fittings i.e. in the kitchen, bathroom or bedroom;
8. minor blemishes that are subjective in degree i.e. brush marks, decoration etc;
9. items that have been subsequently changed or altered on behalf of the **Policyholder** at their request such as fitting of wardrobes, fittings etc;
10. deterioration caused by neglect or failure to carry out normal maintenance.

SECTION 3.3 STRUCTURAL INSURANCE PERIOD.

The **Underwriter** will indemnify the **Policyholder** against all claims discovered and notified to the **Underwriter** during the **Structural Insurance Period** in respect of:

1. The cost of complete or partial rebuilding or rectifying work to the **Housing Unit** which has been affected by **Major Damage** provided always that the liability of the **Underwriter** does not exceed the reasonable cost of rebuilding each **Housing Unit** to its original specification;
2. The cost of making good any defect in the design, workmanship, materials or components in the drainage system which was newly constructed by the **Developer** in connection with the **Housing Unit** and for which the **Policyholder** is responsible;
3. The reasonable costs incurred in repairing, replacing or rectifying any part of the **Waterproof Envelope** within each **Housing Unit** which was newly constructed by the **Developer** as a result of ingress of water caused by a defect in the design, workmanship, materials or components of the waterproofing elements of the **Waterproof Envelope** of each **Housing Unit**;
4. The cost of repairing or making good any defects in the chimneys and flues of each **Housing Unit** which was newly constructed by the **Developer** causing an imminent danger to the health and safety of occupants.

The **Excess** and **Minimum Claim Value** shall be as specified in the **Initial/Final Certificates**.

In the event of a claim under this Section the **Underwriter** has the option either of paying the cost of repairing, replacing or rectifying any damage resulting from items 1 to 4 above or itself arranging to have such damage corrected.

SECTION 3.4 CONTAMINATED LAND

The **Underwriter** will indemnify the **Policyholder** against all claims discovered and notified to the **Underwriter** during the **Structural Insurance Period** in respect of **Remediation Expenses** incurred in treating or isolating or removing any substance from the **Policyholder's Land** in a controlled manner in accordance with the requirements of any **Statutory Notice**.

- **Notes:**

1. The **Underwriter** shall only be liable for any claims under this Section that are first discovered and reported by the **Policyholder** to the **Underwriter** during the period specified in the **Final Certificate**;
2. In the event of a claim under this Section the **Underwriter** has the option either to pay the **Remediation Expenses** or itself have any work necessary for remediation of contamination of **Land** carried out at its own expense;
3. The liability of the **Underwriter** under this Section shall not exceed £50,000 for each **Housing Unit**. An aggregate limit of £250,000 for each **New Development** shall apply.

DEFINITIONS APPLICABLE TO SECTION 3.4

- **Land**

The ground that surrounds and supports the **Housing Unit** and which was:

- a) purchased by the initial **Policyholder** with the **Housing Unit** at the same time as the **Building Contract** was entered into or completed;

and/or

- b) owned by the initial **Policyholder** when a **Building Contract** was entered into;

together with any land for which the **Policyholder** has a legal responsibility under the terms of the **Building Contract**.

- **Remediation Expenses**

Reasonable expenses incurred for the investigation, removal or treatment of contamination to the extent required by any **Statutory Notice**.

- **Statutory Notice**

A notice served on the **Policyholder** by a Statutory Authority under the provisions of legislation that requires the **Policyholder** to carry out remediation of contamination.

EXCLUSIONS TO SECTION 3.4

The **Underwriter** shall not be liable to the **Policyholder** for any:

- a) Death, bodily injury, sickness, disease or psychiatric damage or shock suffered by any person;
- b) Damage and or expenses to any property and/or any costs

association with the remediation of land which is not owned by the **Policyholder**;

- c) Any diminution of the value of the **Housing Unit** due to the existence or former existence (whether actual or alleged) of contamination;
- d) Contamination which first occurs after the date of the original sale of the **Housing Unit** by the **Developer** to the initial **Policyholder**;
- e) Any damages payable to third parties, compensation or criminal expenses arising out of or in connection with contamination in, or under the **Policyholder's Land**;
- f) Consequential loss of any description and howsoever arising except as expressly provided for in this Policy.

4. ADDITIONAL EXTENSIONS

In addition, in the event of a valid claim under Sections 3.2, 3.3, or 3.4 only, the **Underwriter** will pay within the Limit of Indemnity:

A. ADDITIONAL COSTS

Such additional costs and expenses as are necessarily incurred by the **Policyholder** solely in order to comply with Building Regulations or Local Authority or other Statutory Provisions, provided that the **Underwriter** shall not be liable for those costs that would have been payable by the **Policyholder** in the absence of the discovery of a valid claim under the Policy.

B. ALTERNATIVE ACCOMMODATION COSTS

All reasonable additional costs and expenses that are necessarily incurred by the **Policyholder** for a period not exceeding 26 weeks in respect of removal, storage and alternative accommodation whilst the **Housing Unit** is uninhabitable.

C. FEES

Such Architects', Surveyors', Legal, Consulting Engineers' and other fees as are necessarily and reasonably incurred, by the **Policyholder** in relation to the complete or partial rebuilding or rectifying work to the **Housing Unit** but shall not include costs or fees incurred by the **Policyholder** in investigating and/or preparing a claim.

D. REMOVAL OF DEBRIS

For each **Housing Unit** the costs and expenses incurred by the **Policyholder** in respect of:

- a) removal of debris and/or;
- b) dismantling or demolishing and/or ;
- c) shoring up.

the **Housing Unit**

5. EXCLUSIONS (Applicable to all Sections)

The Underwriter shall not be liable to the Policyholder for any:

1. ALTERATIONS

Loss or damage due to or arising from any alteration, modification or addition to a **Housing Unit** after the issue of the **Final Certificate** unless the **Underwriter** has been informed, the **Final Certificate** endorsed, and any applicable additional premium paid to the **Underwriter**.

2. CHANGE IN COLOUR

Any change in colour, texture, opacity or staining or other ageing process to any element of the **Housing Unit**.

3. CONSEQUENTIAL LOSS

Consequential loss of any description except as expressly provided for in this Policy.

4. HUMIDITY

Loss or damage caused by or consequent upon humidity in a **Housing Unit** that is not the direct result of the ingress of water caused by a defect in the design, workmanship, materials or components of the waterproofing elements of the **Waterproof Envelope** of the **Housing Unit**.

5. MAINTENANCE AND USE

Inadequate maintenance of or abnormal use of a **Housing Unit** or the imposition of any load greater than that for which the **Housing Unit** was designed or the use of a **Housing Unit** for any purpose other than that for which it was designed unless the **Underwriter** has been informed, the **Final Certificate** endorsed and any applicable additional premium paid to the **Underwriter**.

6. PERSONAL INJURY

Any costs, losses, expenses or damages for death, bodily injury, disease illness or injury to mental health

7. PRIOR KNOWLEDGE

Anything which would constitute a valid claim under the Policy and about which the **Policyholder** was aware prior to purchasing the **Housing Unit** and as a consequence agreed a reduction in the purchase price for the **Housing Unit** or other contractual remedy.

8. REASONABLENESS

In the event of a valid claim under the Policy the **Underwriter** shall only be responsible for costs and expenses that a reasonable person would incur if spending their own money. Whenever possible if items can be found to match existing items at a reasonable cost the **Underwriter** will endeavour to facilitate this. However the **Underwriter** will have no liability and will not be responsible for any additional costs if a similar match is not possible at a reasonable cost.

9. RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS

In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from

- i. ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
- ii. the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
- iii. any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- iv. the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes.
- v. any chemical, biological, bio-chemical, or electromagnetic weapon.

10. SEEPAGE

Loss or damage caused by seepage of water into a **Housing Unit** below ground floor slab level.

11. SETTLEMENT

Loss or damage caused by or consequent upon normal settlement or bedding down of a **Housing Unit**.

12. SONIC BANGS

Loss or damage directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

13. SPECIAL PERILS

Loss or damage caused by or consequent upon fire, lightning, explosion, typhoon, hurricane, cyclone, volcanic eruption, earthquake, storm, tempest, flood, subterranean fire or other convulsion of nature, aircraft or other aerial devices or articles therefrom, escapes of water from tanks, apparatus or pipes, malicious persons, theft, attempted theft, impact or any accidental cause.

14. SUBSIDENCE

Loss or damage caused by or consequent upon subsidence, heave or landslip unless such loss or damage is as a result of a defect in the design, workmanship, materials or components of the **Structure** of a **Housing Unit**.

15. TOXIC MOULD

Loss, damage or bodily injury arising out of any pathogenic organisms regardless of any other cause or event that contributed concurrently or in any sequence to that liability.

Pathogenic organisms means any bacteria, yeasts, mildew, viruses, fungi, mould or their spores, mycotoxins or other metabolic products

16. VERMIN

Loss or damage caused by or consequent upon the actions of rodents, vermin or insect infestation

17. WAR RISKS

Notwithstanding anything to the contrary contained herein this Policy does not cover loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

18. WATER TABLE

Loss or damage resulting solely from a change in the water table level. This exclusion shall not however apply to any seasonal change in the water table level.

19. WEAR AND TEAR

- a) wear and tear.
- b) normal dampness, condensation or shrinkage.
- c) normal deterioration whether caused by neglect or otherwise.

20. WILFUL ACTS

Any wilful neglect or criminal act of the **Policyholder** or any other party

6. CONDITIONS

1. ARBITRATION

If any difference shall arise as to the amount to be paid under Sections 3.1, 3.3, 3.4 of this Policy (liability being otherwise admitted) such difference shall be referred to an arbitrator to be appointed by the parties in accordance with the statutory provisions then in force.

2. REINSTATEMENT OF LIMIT OF INDEMNITY

In consideration of the **Limit of Indemnity** not being reduced by the amount of any loss, the **Policyholder** agrees if required by the **Underwriter** to pay:

- i) the pro-rata additional premium on the amount of such loss from the date of notification of claim to the date of expiry of the period of insurance for Sections 3.2, 3.3 and 3.4;

- ii) any **Site Audit Surveyor** fee for the checking of the design and the inspection of any work for the repair or rebuilding of any **Housing Unit** which has been the subject of a claim under this Policy. The **Limit of Indemnity** shall not be reinstated unless a **Certificate of Approval** in respect of such repair or rebuilding work has been issued by the **Site Audit Surveyor**.

3. CONTRIBUTION

If at any time of any occurrence giving rise to a claim under this Policy:

- i) there is, or would but for the existence of this insurance, be any other insurance applicable, or;
- ii) the **Policyholder** has entitlement to any statutory damages or compensation;

this Policy shall be limited to any amount in excess of such insurance, damages or compensation and shall not be called into contribution.

4. FRAUD

If any claim under this Policy shall be in any respect fraudulent, or if any fraudulent means or devices are used by the **Policyholder**, or anyone acting on its behalf, to obtain benefit under this insurance, all benefit hereunder shall be forfeited.

5. INDEXATION

The **Limit of Indemnity**, **Excess** and **Minimum Claim Value** referred to within the **Final Certificate** will be increased in line with the RICS House Re-Building Index or 12% per annum compound, whichever is the lesser, on each anniversary of the commencement of the period of insurance for Sections 3.2, 3.3 and 3.4 of this Policy. For the purpose of settlement of any claim hereunder the **Limit of Indemnity**, as adjusted in accordance with the foregoing provisions, shall be regarded as the **Limit of Indemnity** at the time of discovery by the **Policyholder** of such claim

6. UNDERWRITER'S RIGHTS

In the event of any occurrence which may give rise to a claim under this Policy, the **Underwriter** and its agents shall, with the permission of the **Policyholder**, be entitled to enter the **Housing Unit** in order to carry out rectification works or the complete or partial rebuilding of the property. If such permission is unreasonably withheld the **Policyholder** shall be responsible for any additional costs caused by the delay in carrying out such works.

7. MISREPRESENTATION

This Policy will be voidable ab initio in the event of misrepresentation, misdescription, error, omission or non-disclosure by the **Policyholder** with intention to defraud.

8. RECOVERIES FROM THIRD PARTIES

The **Underwriter** is entitled and the **Policyholder** gives consent to the **Underwriter** to control and settle any claim

and to take proceedings at its own expense in the name of the **Policyholder** to secure compensation from any third party in respect of any loss or damage covered by this Policy.

9. THIRD PARTY RIGHTS

A person who is not a party to this Policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Policy but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

7. FINANCIAL LIMITS

The maximum the **Underwriter** will pay for any claim under the various Sections of the Policy is:

Section 3.1 Cover during the Construction Period

A maximum of 10% of the original purchase price for the **Housing Unit**.

Section 3.2 Defects Insurance Period

- i) £750,000 for any one **Housing Unit**
- ii) £350,000 for any **Housing Unit** that has been converted or refurbished

or the Sum Insured for the **Housing Unit**, whichever is the lesser.

The Financial Limit for all **Housing Units** in one continuous structure is:

- £5,000,000 for **Housing Units** that have been newly constructed;
- £1,250,000 for **Housing Units** that have been converted or refurbished.

Section 3.3 Structural Insurance Period

- i) £750,000 for any one **Housing Unit**
- ii) £350,000 for any **Housing Unit** that has been converted or refurbished

or the Sum Insured for the **Housing Unit**, whichever is the lesser.

The Financial Limit for all **Housing Units** in one continuous structure is:

- £5,000,000 for **Housing Units** that have been newly constructed;
- £1,250,000 for **Housing Units** that have been converted or refurbished.

Section 3.4 Contaminated Land

- i) £50,000 for any one **Housing Unit**
- ii) £250,000 for all **Housing Units** situated at any one **New Development**

The Financial Limits for Sections 3.2, 3.3 and 3.4 are index linked in accordance with Condition 5 of the Policy

COMMON PARTS

The maximum the **Underwriter** will pay for any claim relating to **Common Parts** will be the amount that the **Policyholder** has a legal liability to contribute towards the cost of repairs, rectification or rebuilding works. Claims are subject to the financial limits for the individual sections detailed above and the **Minimum Claim Value** and/or **Excess** as detailed in the **Initial** and **Final Certificates**.

8. CLAIMS PROCEDURE

8.1 Notification of Developer Insolvency under Section 3.1 of the Policy

Should the **Developer** fail to complete the **Housing Unit** because of insolvency or fraud the **Policyholder** should immediately notify the **Scheme Administrator** at the address set out below.

M. D. Insurance Services Ltd
2 Shore Lines Building
Shore Road, Birkenhead,
Wirral CH41 1AU

Tel: 0151 650 4343

8.2 Notification of a claim after the Housing Unit is complete under Section 3.2 of the Policy.

Before making a claim the **Policyholder** should check the cover available under this Policy. The period of insurance is stated on the **Final Certificate** enclosed with the Policy document.

The **Policyholder** should consider the nature of the claim and whether the circumstance falls into the definition of **Defect**. If a **Policyholder** is not sure of the nature of the damage or defect they should contact the **Scheme Administrator**.

A Guidance Note setting out examples of what is covered under each section of the Policy is available on request.

What is a Defect?

A **Defect** exists when the **Developer** has failed to comply with a functional requirement of the **Technical Manual**. The duties of the **Developer** in respect of a **Defect** are set out in Section 3.2 of this Policy together with the Exclusions relevant to this section.

The Developer's Responsibility during the Defects Insurance Period

The **Developer** is responsible for **Defects** that arise during the **Defects Insurance Period**. The **Policyholder** should notify their concerns to the **Developer** in writing as soon as possible after discovering the problem. The **Policyholder** should keep a copy of all correspondence for their records.

It is a condition precedent to payment of claims under this

section of the Policy that concerns must be notified to the **Developer** in writing before the expiry of the **Defects Insurance Period** and if the **Developer** does not respond the **Defects** must be notified to the **Scheme Administrator** in writing within 6 months of the expiry of the **Defects Insurance Period**. The **Underwriter** will have no liability if all matters are not notified within these time frames.

If the **Developer** fails to remedy any **Defect** notified to him or the **Policyholder** is not satisfied with his response they may use the **Conciliation Service** offered by the **Premier Guarantee for Housing** as detailed below. Following notification in writing by the **Policyholder** to the **Scheme Administrator** the **Scheme Administrator** will arrange for a building surveyor to investigate each dispute referred to the **Conciliation Service**. Using the **Conciliation Service** does not affect a **Policyholder's** legal rights or remedies against the **Developer** in any way. The **Policyholder** should seek independent legal advice before using the **Conciliation Service**.

The **Conciliation Service** will attempt to bring the two parties together, investigate the dispute and make recommendations based on the building surveyor's technical expertise and experience. If the **Developer** does not carry out the work within the time stipulated by the **Conciliation Service** the **Underwriter** will, at their option, arrange for the work specified in the surveyor's report to be carried out or meet the reasonable costs of carrying out the work.

The **Conciliation Service** will not be suitable for all disputes. The surveyor is only qualified to advise upon technical issues and in particular whether the **Developer** has complied with the functional requirements in the **Technical Manual**. The surveyor is not qualified to advise on financial disputes, contractual issues or items that do not involve a breach of the functional requirements of the **Technical Manual**.

The **Minimum Claim Value** for Section 3.2 shall be as specified in the **Initial /Final Certificates**. If the value of the dispute is for an amount less than the **Minimum Claim Value** the **Conciliation Service** is not appropriate

The Conciliation Service

After a dispute is referred to the **Conciliation Service** a building surveyor will be appointed by the **Scheme Administrator** to investigate the concerns and produce a report. The alternatives are:

- i) that both the **Policyholder** and the **Developer** accept the report's findings and if any works are necessary the **Developer** carries them out within an agreed period of time
- ii) that both the **Policyholder** and the **Developer** accept the report's findings but the **Developer** fails to carry out any necessary works within an agreed period of time. In such circumstances the **Policyholder** should advise the **Scheme Administrator** who will attempt to ensure that the works are carried out.

- iii) one or both parties do not accept the report's findings. If this is the case, either party shall be entitled to refer the matter to a different dispute resolution forum.

Neither the **Scheme Administrator** nor the **Underwriter** shall have any liability to the **Policyholder** for any damages, loss, costs or expenses arising out of any negligent act, omission, default of the surveyor in performing his duties under the **Conciliation Service**.

Options to resolve a dispute other than the Conciliation Service

Should the parties refer a dispute relating to a **Defect** to conciliation but the **Conciliation Service** does not resolve the dispute either party can nevertheless opt for one of the forms of dispute resolution set out below.

Independent Expert or Arbitration

The **Premier Guarantee for Housing** has agreed with the Royal Institution of Chartered Surveyors (RICS) that disputes referred to an Independent Expert or Arbitrator may be resolved with fixed maximum costs. The Arbitrator or Independent Expert will be appointed by the President for the time being of the Royal Institution of Chartered Surveyors if either of these options is sought

Costs of an Independent Expert or Arbitrator

The costs of using an Independent Expert or Arbitrator will be borne by the parties to the dispute and not the **Underwriter**.

The main differences between Independent Expert determination and Arbitration are explained below for information purposes only

- An Arbitrator is governed by Statute namely the Arbitration Act 1996. The process is relatively formal. The Arbitrator bases his decision solely upon the evidence and arguments submitted to him by the parties (although he is able to draw their attention to matters of which they might not be aware). He is expected to use his expertise in assessing the relevance and the quality of the evidence and arguments submitted to him. An Arbitrator is therefore only as good as the evidence submitted to him.
- An Independent Expert, whilst able to receive submissions from both sides, is not bound by them, and must make his own investigations to discover the facts. It is therefore possible for an expert to make a decision without submissions from either side, which can save costs.
- The decision of an Arbitrator is final and binding, subject to very limited rights of appeal to the High Court
- The decision of an Independent Expert is final and binding
- An Arbitrator must give a reasoned award explaining his decision unless both parties agree otherwise
- An Independent Expert will give an explanation of his decision
- An Arbitrator has the power to award fees and costs against the losing party, who may therefore end up paying the Arbitrator's fees as well as the costs of the other side
- If an Independent Expert is appointed, each party would be expected to pay their own costs and half the Independent Expert's fee.

Alternative Forms of Dispute Resolution

As well as referring a dispute to an Independent Expert or Arbitrator there are now several different alternative forms of Dispute Resolution and information can be obtained from the Citizens Advice Bureau, County Court, Sheriffs Clerks Office or a solicitor. Two of the options are set out below:

Small Claims Court

The small claims court may be suitable for resolving contractual or financial disputes as well as small disputes regarding standards of workmanship.

Other Courts

Depending on the size of the dispute these may be suitable for resolving claims involving financial and contractual disputes and larger claims regarding standards of workmanship.

For the avoidance of doubt, the **Underwriter** does not recommend any form of dispute resolution process and the **Policyholder** should take legal advice as to the most appropriate forum for each particular dispute and the manner in which that dispute should be progressed.

8.3 Notification of a claim after the Housing Unit is complete under Section 3.3 of the Policy.

On discovery of any occurrence or circumstance that is likely to give rise to a claim under this section of the Policy the **Policyholder** shall as soon as reasonably possible:

- (i) give written notice to the **Scheme Administrator**;
- (ii) take all responsible steps to prevent further loss or damage;
- (iii) submit in writing full details of the claim and supply all correspondence, reports, plans, certificates, specifications, quantities, information and assistance as may be required.

Major Damage is:

- a defect in a load bearing element of the **Housing Unit** causing damage;
- a defect in newly constructed drains;
- a defect in newly constructed elements of the **Waterproof Envelope** causing the ingress of water;
- a defect in newly constructed chimneys or flues causing an imminent danger to health and safety.

The scope of cover for **Major Damage** is set out in Section 3.3 of the Policy and should be read together with the Exclusions and Conditions of the Policy.

Cover for **Major Damage** commences from the date set out on the **Final Certificate** for a period of 8 years, unless stated otherwise in the **Initial** and/or the **Final Certificates**.

8.4 Notification of a Remediation Expenses claim under Section 3.4 of the Policy

On discovery of any occurrence or circumstance that is likely to give rise to a claim under this section of the Policy the **Policyholder** shall as soon as reasonably possible:

- (i) give written notice to the **Scheme Administrator**;
- (ii) take all responsible steps to prevent further loss or damage;
- (iii) submit in writing full details of the claim and supply all correspondence, reports, plans, certificates, specifications, quantities, information and assistance as may be required.

The scope of cover for **Contaminated Land** is set out in Section 3.4 of the Policy and should be read together with the Exclusions and Conditions of the Policy.

Cover for **Contaminated Land** commences from the date set out in the **Final Certificate** for a period of 8 years, unless stated otherwise in the **Initial** and/or the **Final Certificates**.



2 Shore Lines Building | Shore Road | Birkenhead | Wirral | CH41 1AU

T 08444 120 888 | **F** 08444 120 333 | **E** info@premierguarantee.co.uk | **W** www.premierguarantee.co.uk

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