

Policy Document

New Homes | Version 5



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 Premier Guarantee for New Homes;
- **DEFINITIONS** detailing all definitions applicable to the Policy;
- **INSURING AGREEMENT** giving precise details of the cover, as applicable, 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.

The insurance cover provided by **Premier Guarantee for New Homes** complies with:

- 1) The minimum criteria for New Homes Warranties referred to in Regulations 8(h) and 8(i) of the Home Information Pack Regulations 2006

and
- 2) The Warranty Link Rule designation criteria as stated in Annex E of Circular CI 46/2/46 September 2005 issued by the Office of the Deputy Prime Minister.

The Policy 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**.

Premier Guarantee for New Homes can provide **Policyholders** with protection in a number of ways as detailed below. It should however be noted that all sections of the Policy may not necessarily be applicable for each **Housing Unit**. The **Initial Certificate** and **Certificate of Insurance** will detail the exact cover provided.

- 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 **Certificate of Insurance** 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** may be insured for a period of 8 years from expiry of the **Defects Insurance Period** against:
 - the risk of **Major Damage** and a danger to health and safety caused by a **Defect** in chimneys or flues. See Section 3.3 for details.
 - the cost of any repair, replacement or rectification cost as a result of a present or imminent danger to the physical health and safety of the occupants of the **Housing Unit** because the **Housing Unit** does not comply with Building Regulations that applied to the work at the time of construction, conversion, refurbishment or renovation works carried out under the **Building Contract**. See Section 3.5 for details.
- The **Land** owned by the **Policyholder** may be 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 **Premier Guarantee for New Homes** 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 **Certificate of Insurance** was issued. Such inspections are carried out to satisfy the **Underwriter** that the **Housing Unit** represents a normal risk for insurance under **Premier Guarantee for New Homes**. 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

- The Building Control function will have been undertaken either by Local Authority Building Control (LABC) or an **Approved Inspector**.
- If LABC has carried out Building Control and 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, 3.4, (as applicable) is in effect.
- If Building Control has been undertaken by an **Approved Inspector** and
 - a satisfactory final inspection has been carried out by the **Site Audit Surveyor** and
 - the **Approved Inspector** has confirmed that they are not aware of any circumstances that would restrict their ability to issue a **Final Certificate**

then a Cover Note will be issued, if requested, for each **Housing Unit** confirming that cover under Sections 3.2, 3.3, 3.4, 3.5 (as applicable) is in effect.

- A **Certificate of Insurance** will be issued in the name of the **Policyholder** after issue of the Cover Note provided that a **Certificate of Approval** has been issued by the **Site Audit Surveyor** and, if applicable, a **Final Certificate** has been issued by the **Approved Inspector**. The **Certificate of Insurance** should be filed with the Policy.
- 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.
- 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 New Homes** 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 **Certificate of Insurance** should be quoted.

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

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

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

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

MD Insurance Services Ltd is authorised and regulated by the UK Financial Conduct Authority.

A copy of the MD 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) MD Insurance Services Ltd also acts as the **Scheme Administrator** for **Premier Guarantee for New Homes**. If you have any complaint about the way in which MD Insurance Services Ltd has performed the duties as the **Scheme Administrator** please contact:

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

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

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

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

MD Insurance Services Ltd,
2 Shore Lines Building
Shore Road, Birkenhead
Wirral, CH41 1AU

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

or

The Complaints Department
AmTrust Europe Limited
Market Square House
St James's Street
Nottingham
NG1 6FG

AmTrust Europe Limited is authorised and regulated by the UK Financial Conduct Authority.

- 4) It is a requirement of **Premier Guarantee for New Homes** 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

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

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

Note

- A. If after following the procedures set out in points 1 to 3 above, 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: complaint.info@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 £1,000,000;
- A charity with an annual income of less than £1,000,000;
- A trustee of a trust with a net asset value of less than £1,000,000.

- 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

do so within 14 days starting on the day after you receive **Premier Guarantee for New Homes** policy documents. Your cancellation must reach the **Scheme Administrator**, contact details are:

Scheme Administrator,
MD Insurance Services Ltd,
2 Shore Lines Building
Shore Road, Birkenhead
Wirral, CH41 1AU

Email: enquiries@premierguarantee.co.uk

You should make any request for the cancellation of a policy in writing and any relevant **Certificate of Insurance** should be returned to us or to the insurer concerned. In the event of cancellation, charges for our services will apply as follows:

Cancellation prior to Certificate of Insurance being issued

As construction contracts can be of varying duration and there is always a technical audit, our fees will vary depending on the stage at which notice of cancellation is given. If insolvency cover is applicable for the contract period, this will also be taken into account when calculating any refund.

Cancellation following Certificate of Insurance being issued

- 1) If a third party has completed the proposal form or paid the premium, you will not be entitled to a refund of premium or any other monies. The premium or any other monies can only be paid back to the party who originally paid the premium or any other monies and who still has an insurable interest in the property.
- 2) If you have completed a proposal form and paid the premium you may be entitled to refund. This will take into account the period where cover has been in force, plus an administration fee.

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.

YOUR RIGHT TO CANCEL

You have the right to cancel cover under **Premier Guarantee for New Homes**. If you wish to cancel the cover you must

2. DEFINITIONS

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

1. APPROVED INSPECTOR

Any person, sole trader, partnership or company authorised by the Construction Industry Council who carries out Building Control for the **New Development** and who is registered with **Premier Guarantee**.

2. BUILDER

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

3. 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**.

4. 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**.

5. CERTIFICATE OF APPROVAL

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

6. CERTIFICATE OF INSURANCE

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**.

7. 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.

8. CONCILIATION SERVICE

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

9. 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.

10. DEFECTS INSURANCE PERIOD

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

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

11. DEVELOPER

Any person, sole trader, partnership or company who is registered with **Premier Guarantee for New Homes** and has registered the **New Development** and

- with whom the **Policyholder** has entered into an agreement or contract to purchase the **Housing Unit** on either a Freehold or Leasehold basis.

or

- 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.

12. EXCESS

As noted on the **Initial Certificate** and **Certificate of Insurance** 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.

13. FINAL CERTIFICATE

The Certificate issued by the **Approved Inspector** following completion of Building Control for a **Housing Unit** or the **New Development**.

14. HOUSING UNIT

The property described in the **Certificate of Insurance** 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 within the perimeter of such property;
- 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**.

15. 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** and a **Final Certificate** for each **Housing Unit**.

16. 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 **Certificate of Insurance** 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.

17. MAJOR DAMAGE

- Destruction of or physical damage to any portion of the **Housing Unit** for which a **Certificate of Insurance** has been issued by the **Underwriter**.
- 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 Insurance** has been issued by the **Underwriter**.

in either case caused by a defect in the design, workmanship, materials or components of:

- the **Structure**; or
- the waterproofing elements of the **Waterproof Envelope**

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 to the **Housing Unit** 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**.

18. 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 **Certificate of Insurance** 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**.

19. POLICYHOLDER

For Section 3.1: A third party having paid a Registration Fee/ and/or Deposit for the **Housing Unit** to the **Developer**.

For Sections 3.2,3.3,3.4 and 3.5: The owner acquiring a freehold or leasehold interest, or their successors in title, or any mortgagee in possession or lessor excluding the **Developer, Builder**, any relatives or associated companies or anyone having an interest in the construction or sale of the **Housing Unit**

20. PREMIER GUARANTEE FOR NEW HOMES

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

21. SCHEME ADMINISTRATOR

MD Insurance Services Ltd,
2 Shore Lines Building
Shore Road, Birkenhead
Wirral, CH41 1AU

22. 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 **Certificate of Insurance** for each **Housing Unit** issues a **Certificate of Approval**.

23. STRUCTURE

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

- foundations;
- load-bearing parts of ceilings, floors, staircases and associated guard rails, walls and roofs, together with load-bearing retaining walls necessary for stability;
- non-load bearing partition walls;
- chimneys and flues;
- 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;
- wet applied plaster;
- double or triple glazed panes to external windows and doors;
- underground drainage that the **Policyholder** is responsible for maintaining.

24. STRUCTURAL INSURANCE PERIOD

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

25. TECHNICAL MANUAL

The functional requirements and performance standards issued to the **Developer** by the **Scheme Administrator** 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**.

The **Technical Manual** can be downloaded from the Premier Guarantee website – www.premierguarantee.co.uk

26. UNDERWRITER

AmTrust Europe Limited

27. WATERPROOF ENVELOPE

Waterproof Envelope shall mean the basement, ground floors, external walls, roofs, skylights, windows and doors of a **Housing Unit**.

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** or £100,000 whichever is the lesser.

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.
- 4) 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

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)
 - the **Developer** has refused to respond to the claim within a reasonable time period; and/or
 - the **Developer** has withheld consent to resolve the dispute by using the **Cconciliation Service**; and/or
 - the **Developer** has accepted the decision of a building surveyor after using the **Cconciliation 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) external landscaping or garden features;
- 2) adjustment of doors following the fitting of carpets or flooring;
- 3) drawing of chimneys;
- 4) contractual disputes between the **Developer** and the **Policyholder** or issues regarding specification of items;
- 5) dampness, condensation or shrinkage not caused by a **Defect**;
- 6) chips or scratches to fittings i.e. in the kitchen, bathroom or bedroom;
- 7) minor blemishes that are subjective in degree i.e. brush marks, decoration etc;
- 8) items that have been subsequently changed or altered on behalf of the **Policyholder** at their request such as fitting of wardrobes, fittings etc;
- 9) deterioration caused by neglect or failure to carry out normal maintenance.

SECTION 3.3 STRUCTURAL INSURANCE

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 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** shall be as specified in the **Initial Certificate/ Certificate of Insurance**.

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 2 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) Unless otherwise agreed by the **Scheme Administrator** this part of the cover only applies if **Approved Inspector** has carried out the Building Control function. The **Certificate of Insurance** will show if cover is applicable. It only applies in England and Wales.
- 2) 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 **Certificate of Insurance**.
- 3) 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.

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 associated 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.

SECTION 3.5 ADDITIONAL COVER FOR APPROVED INSPECTOR BUILDING CONTROL FUNCTION

The **Underwriter** will indemnify the **Policyholder** during the **Structural Insurance Period** against the cost of repairing, replacing or rectifying the **Housing Unit** where such repair, replacement or rectification cost is the result of a present or imminent danger to the physical health and safety of the occupants of the **Housing Unit** because the **Housing Unit** does not comply with Building Regulations that applied to the work at the time of construction, conversion or refurbishment in relation to the following:

- Structure
- Fire Safety
- Site preparation and resistance to moisture
- Hygiene
- Drainage and waste disposal
- Heat-producing appliances
- Protection from falling, collision and impact
- Glazing – safety in relation to impact opening and cleaning.

Notes

- 1) This section of the cover only applies if an **Approved Inspector** has carried out the Building Control function. The **Certificate of Insurance** will show if cover is applicable. It only applies in England and Wales.
- 2) For claims that were referred to the **Developer** in the first two years, please see Section 3.2 of the Policy.

EXCLUSIONS TO SECTION 3.5

- 1) Anything which the **Underwriter** would pay for under another Section of this Policy.

- 2) Any claim in respect of site preparation and resistance to moisture, relating to ground that is outside the foundations of the **Housing Unit**.

4 ADDITIONAL EXTENSIONS

In addition, in the event of a valid claim under Sections 3.2, 3.3, 3.4 or 3.5, 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** in respect of removal, storage and alternative accommodation relating to a claim 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:

- removal of debris; and/or
- dismantling or demolishing; and/or
- 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 **Certificate of Insurance** unless the **Underwriter** has been informed, the Policy 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. GLAZED PANES

Loss or damage to any existing double or triple glazing panes in any **Housing Unit** that has been converted, refurbished or renovated unless such double or triple glazing panes were newly installed at the time of such conversion, refurbishment or renovation.

5. HUMIDITY

Loss or damage caused by or consequent upon humidity in a **Housing Unit** that is not the direct result of a **Defect**.

6. MAINTENANCE AND USE

Inadequate maintenance 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 Policy endorsed and any applicable additional premium paid to the **Underwriter**.

7. PERSONAL INJURY

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

8. 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.

9. 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.

10. 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:

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

- any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
- 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.
- any chemical, biological, bio-chemical, or electromagnetic weapon.

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

- wear and tear.
- normal dampness, condensation or shrinkage.
- 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 or 3.5 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:

- 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, 3.4 and 3.5;
- 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:

- there is, or would but for the existence of this insurance, be any other insurance applicable; or
- 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** and **Excess** referred to within the **Certificate of Insurance** will be increased in line with the RICS House Re-Building Index or 10% per annum compound, whichever is the lesser, on each anniversary of the commencement of the period of insurance for Sections 3.2, 3.3, 3.4 and 3.5 of this Policy. For the purpose of settlement of any claim hereunder the **Limit of Indemnity** and **Excess**, as adjusted in accordance with the foregoing provisions, shall be regarded as the **Limit of Indemnity** and **Excess** 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:

A. Section 3.1 Cover during the Construction Period

A maximum of 10% of the original purchase price for the **Housing Unit** or £100,000 whichever is the lesser.

**B. Section 3.2 Defects Insurance
Section 3.3 Structural Insurance**

The maximum the **Underwriter** will pay for all claims relating to a **Housing Unit** under Sections 3.2 and 3.3 of the Policy is:

- £1,000,000 for any newly constructed **Housing Unit**.
- £500,000 for any converted or refurbished **Housing Unit**.

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

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

- For all claims relating to all newly constructed **Housing Units** under Sections 3.2 and 3.3 of the Policy £25,000,000.
- For all claims relating to all converted or refurbished **Housing Units** under Sections 3.2 and 3.3 of the Policy £5,000,000.

C. Section 3.4 Contaminated Land

The maximum the **Underwriter** will pay for all claims relating to a **Housing Unit** under Sections 3.4 of the Policy is:

- £1,000,000 for any newly constructed **Housing Unit**.
- £500,000 for any converted or refurbished **Housing Unit**.

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

The Financial Limit under Section 3.4 for any one **New Development** is £20,000,000.

D. Section 3.5 Additional Cover for Approved Inspector Building Control Function

The Financial Limit for a claim under this Section of the Policy is the original cost of the work covered by the appointed **Approved Inspector's Building Control Final Certificate**.

INDEXATION

The Financial Limits for Sections 3.2, 3.3, 3.4 and 3.5 of the Policy 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 **Excess** as detailed in the **Initial** and **Certificate of Insurance**.

8. CLAIMS PROCEDURE

Before making a claim under the Policy please check your Certificate of Insurance to see the sections of cover that are provided for each Housing Unit.

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:

MD Insurance Services Ltd,
2 Shore Lines Building
Shore Road, Birkenhead
Wirral, CH41 1AU

Email: enquiries@premierguarantee.co.uk
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 **Certificate of Insurance** 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**.

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 **Premier Guarantee**

for **New Homes** 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 **Excess** for Section 3.2 shall be as specified in the **Initial Certificate/Certificate of Insurance**. If the value of the dispute is for an amount less than the **Excess** 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 or 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

Premier Guarantee for New Homes 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 below-ground drainage for which the **Policyholder** is responsible;
- a **Defect** in any of the elements of the **Waterproof Envelope** causing ingress of water.

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.

This section of the Policy also provides cover for a defect in newly constructed chimneys or flues causing an imminent danger to health and safety.

Cover for this section of the Policy commences from the date set out on the **Certificate of Insurance** for a period of 8 years, unless stated otherwise in the **Initial** and/or the **Certificate of Insurance**.

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 **Certificate of Insurance** for a period of 8 years, unless stated otherwise in the **Initial** and/or the **Certificate of Insurance**.

8.5 Notification of an Approved Inspector Building Control Function claim under Section 3.5 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.



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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