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 LABC New Home Warranty;
- **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 6, point 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 LABC New Home Warranty complies with the minimum criteria for New Homes Warranties referred to in Regulations 8(j) and 8(k) of the Home Information Pack Regulations.

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.

LABC New Home Warranty can provide Policyholders with protection in a number of ways as follows. 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 or of 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 the LABC New Home Warranty are the subject of a system of checks and inspections:

- The Developer and the Builder have to comply with Building Regulations and the authorised Local Authority 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 the LABC New Home Warranty’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 the LABC New Home Warranty. 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 by a Local Authority Building Control Inspector on behalf of the Local Authority. Subject to confirmation that:
  - a satisfactory final inspection has been carried out by the Site Audit Surveyor; and
  - the Local Authority Building Control Inspector has confirmed that they are not aware of any circumstances that would restrict their ability to issue a Completion 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 Completion Certificate has been issued by the Local Authority Building Control 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

LABC (Local Authority Building Control) is an independent building control provider. LABC represent local authorities in England, Northern Ireland and Wales which have responsibility for building control.

MD Insurance Services Ltd. has developed this scheme, ‘LABC New Home Warranty’, in conjunction with LABC.

MD Insurance Services Ltd. is the Scheme Administrator for the LABC New Home Warranty.

AmTrust Europe Limited, are the Underwriter for the scheme.

As a Policyholder you have a number of options for making complaints about your LABC New Home Warranty policy. These are listed on page 3. 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 the LABC New Home Warranty 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@labcnhw.co.uk
Telephone: 0845 054 0505

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 Services 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 the LABC New Home Warranty. 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@labcnhw.co.uk
Telephone: 0845 054 0505

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 the LABC New Home Warranty 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@labcnhw.co.uk
Telephone: 0845 054 0505

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 LABC New Home Warranty 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 Pages 2 and 3 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 consumer;
• a micro-enterprise 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 LABC New Home Warranty. If you wish to cancel the cover you must do so within 14 days starting on the day after you receive the LABC New Home Warranty policy documents. Your cancellation must reach the Scheme Administrator by letter or email. Contact details are:

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

Email: customerservices@labcnhw.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

i) 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.

ii) If you have completed a proposal form and paid the premium you may be entitled to a 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.
2. DEFINITIONS

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

1. BUILDER

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

2. 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.

3. 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.

4. CERTIFICATE OF APPROVAL

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

5. 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.

6. 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.

7. COMPLETION CERTIFICATE

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

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:

i) two years after such date;

ii) 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 the LABC New Home Warranty and has registered the New Development and

i) 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) 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. FRAUD

“Fraud” shall have the meaning set out in section 1 of the Fraud Act 2006.

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 Completion Certificate for each Housing Unit.

16. INSOLVENCY

“Insolvency” shall mean that:

- An order is made or a resolution is passed for the winding-up, administration or bankruptcy of the Developer (except for the purposes of solvent amalgamation or reconstruction previously approved by the Underwriter in writing); or

- A liquidator, trustee, administrator, administrative receiver, receiver, manager, trustee in bankruptcy or similar official is appointed over the whole or any part of the assets of the Developer or the Developer or the directors of the Developer request any person to appoint any of the same; or

- A notice of appointment or a notice of intention to appoint an administrator under Schedule B1 to the Insolvency Act 1986 is issued by the Developer or its directors.

17. LABC NEW HOME WARRANTY

The policy containing the insurance cover provided by the Underwriter.

18. 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 6, point 5 of the Policy.

19. LOCAL AUTHORITY BUILDING CONTROL INSPECTOR

The officer(s) of the Local Authority Building Control Department appointed to carry out the Building Control function.
20. **MAJOR DAMAGE**

i) Destruction of or physical damage to any portion of the Housing Unit for which a Certificate of Insurance has been issued by the Underwriter;

ii) 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.

21. **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.

22. **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 lessee excluding the Developer, Builder, any relatives or associated companies or anyone having an interest in the construction or sale of the Housing Unit.

23. **SCHEME ADMINISTRATOR**

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

24. **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.

25. **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.

26. **STRUCTURAL INSURANCE PERIOD**

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

27. **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.

28. **UNDERWRITER**

AmTrust Europe Limited.

29. **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:

i) pay the additional cost required to complete the Housing Unit;

or

ii) 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

• 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.

• 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.

• 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.

• The Policyholder cannot recover under this Section in respect of any registration fee, administration fee or booking fee paid to the Developer.

• 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:

• 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 Conciliation Service; and/or

• 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

• the Developer has not effected the repairs or works determined by a binding legal process;

and/or

• 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:

i) on notification by the Policyholder of any Defect to effect repair replacement or rectification of such Defect as soon as practicable thereafter;

ii) 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:

• external landscaping or garden features;
• adjustment of doors following the fitting of carpets or flooring;
• drawing of chimneys;
• contractual disputes between the Developer and the Policyholder or issues regarding specification of items;
• dampness, condensation or shrinkage not caused by a Defect;
• chips or scratches to fittings i.e. in the kitchen, bathroom or bedroom;
• minor blemishes that are subjective in degree i.e. brush marks, decoration etc.;
• items that have been subsequently changed or altered on behalf of the Policyholder at their request such as fitting of wardrobes, fittings etc;
• 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:

i) 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;

ii) 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 i) to ii) 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:

• Unless otherwise agreed by the Scheme Administrator this part of the cover only applies if a Local Authority Building Control Inspector has:
  i) carried out the Building Control function;
  ii) provided the Scheme Administrator with confirmation that he/she is not aware of any circumstances that would restrict his her ability to issue a Completion Certificate.

The Certificate of Insurance will show if cover is applicable. It only applies in England, Northern Ireland and Wales.

• 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.

• 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:

i) purchased by the initial Policyholder with the Housing Unit at the same time as the Building Contract was entered into or completed; and/or

ii) 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:

• death, bodily injury, sickness, disease or psychiatric damage or shock suffered by any person;

• damage and/or expenses to any property and/or any costs associated with the remediation of land which is not owned by the Policyholder;

• any diminution of the value of the Housing Unit due to the existence or former existence (whether actual or alleged) of contamination;

• contamination which first occurs after the date of the original sale of the Housing Unit by the Developer to the initial Policyholder;

• 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;

• consequential loss of any description and howsoever arising except as expressly provided for in this Policy.

SECTION 3.5

ADDITIONAL COVER FOR LOCAL AUTHORITY 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

• This section of the cover only applies if a Local Authority Building Control Inspector has:

  i) carried out the Building Control function;

  ii) provided the Scheme Administrator with confirmation that he/she is not aware of any circumstances that would restrict his her ability to issue a Completion Certificate.

  The Certificate of Insurance will show if cover is applicable. It only applies in England, Northern Ireland and Wales.

• 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

• Anything which the Underwriter would pay for under another Section of this policy.

• 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:

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.

ALTERNATIVE ACCOMMODATION COSTS

All reasonable additional costs and expenses that are necessarily incurred by the Policyholder in respect of removal, storage and alternative accommodation whilst the Housing Unit is uninhabitable.

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.

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 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.

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:

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, 3.4 and 3.5;

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 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, 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 from inception 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 or £100,000 whichever is the lesser.

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:

i) £1,000,000 for any newly constructed Housing Unit;

ii) £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.

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:

i) £1,000,000 for any newly constructed Housing Unit;

ii) £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.
SECTION 3.5 - ADDITIONAL COVER FOR LOCAL AUTHORITY 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 Local Authority Building Control Inspector’s Building Control Completion 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 6, point 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: claims@labcnhw.co.uk
Telephone: 0845 054 0505

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.

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 LABC New Home Warranty 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

The LABC New Home Warranty 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 A 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.