

Professional Liability - Construction - Policy Wording

Cover

All cover under this policy is afforded solely with respect to *Claims* first made against an *Insured* during the *Policy Period* and reported to the *Insurer* as required by this policy

1.1 Professional Liability

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* for any *Breach of Duty* by the *Insured*, except any *Loss* relating to **Fraud/Dishonesty, Asbestos Services, Joint Ventures and Sudden and Accidental Pollution** which must be brought under the applicable coverage clause and coverage will be provided under the terms of that applicable coverage clause only.

1.2 Intellectual Property

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* for any *Infringement* by an *Insured*.

1.3 Defamation

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* for libel or slander committed unintentionally by an *Insured*.

1.4 Fraud/Dishonesty

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* for *Fraud/Dishonesty* of any *Employee* up to the date of discovery by the *Insured* of reasonable cause of suspicion of *Fraud/Dishonesty*. The *Insurer* shall not be liable to make any payment under this insurance cover 1.4 or under any other section of the policy where the *Insured* is the person or entity who committed the *Fraud/Dishonesty*.

1.5 Collateral Warranty

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* for any *Wrongful Act* of an *Insured* arising from any collateral warranties, duty of care or similar agreements (including by way of novation) provided by an *Insured*, such agreements being subject to the Contractual Liability Exclusion.

1.6 Fitness for Purpose

The *Insurer* will pay on behalf of any *Insured* all *Loss* arising out of any implied fitness for purpose warranty solely in respect of *Construction Professional Services* in relation to any *Build*, provided always that:

- 1 the contract defines the intended purpose of the *Build* prior to the commencement of the *Build*;
- 2 the *Insurer's* liability shall be limited to that which would have existed had the contract contained the right to defend a *Claim* on the basis that the *Construction Professional Services* were in accordance with the practice conventionally accepted as appropriate at the time of execution of the *Build* with specific regard to its size, scope and complexity.

There shall be no cover under this extension for *Loss*, arising out of, based upon or attributable to any:

- 1 unforeseen ground conditions; or
- 2 process engineering unless arising out of, based upon or attributable to the structural integrity of the *Build*.

1.7 Asbestos Services

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* for any *Breach of Duty* by the *Insured* in the performance of *Asbestos Services* .

Cover under this Insurance cover 1.7 shall only extend to:

- 1 cost of re-performance, rectification or remediation of the *Insured's* work; and/or
- 2 Any permanent diminution in value in any affected building.

The *Insurer's* liability under this insurance cover 1.7 will be subject to a sub-limit of liability of GBP 250,000 in the annual aggregate.

1.8 Duty to Warn

The *Insurer* will pay on behalf of any *Insured* all *Loss* arising out of, based upon or attributable to the failure to bring to the attention of any client(s) any deficiency, alleged or otherwise in the professional services of others provided always that the turnover where the *Insured* has no contractual obligation to provide *Construction Professional Services* has been declared to the *Insurer* in the submission.

1.9 Estate Agents and Health & Safety / Construction Design Management Legislation

The *Insurer* will pay on behalf of any *Insured* all *Defence Costs* incurred with the prior written consent of the *Insurer* for the defence of any proceedings first brought against the *Insured* under the *Estate Agents Health & Safety Legislation* by any regulatory body or similar body where in the *Insurer's* opinion defending such proceedings could prevent a concurrent or subsequent *Claim*.

The *Insurer* shall not be liable to pay such *Defence Costs*:

- (a) unless the proceedings shall have arisen from a *Wrongful Act* committed by the *Insured* in the performance of *Construction Professional Services*; or
- (b) where there is a subsequent plea of finding of guilt on the part of the *Insured*; or
- (c) where in the *Insurer's* opinion on the balance of probabilities the proceedings are unlikely to be defended successfully.

The *Insurer's* liability under this insurance cover 1.9 will be subject to a sub-limit of liability of *Defence Costs* incurred up to a maximum of GBP 250,000 in the annual aggregate.

1.10 Specialist Designers

The *Insurer* will pay on behalf of the *Insured* all *Loss* resulting from any *Claim* for any *Breach of Duty* of specialist designers, consultants or sub-contractors of the *Insured* who are engaged in the performance of the *Insured's Construction Professional Services*.

The *Insurer* will only pay *Loss* to the extent that the *Insured* has not waived or otherwise impaired any rights of recourse against such specialist designers, consultants or sub-

contractors.

1.11 Joint Ventures

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* where the *Insured's* liability results directly from a *Wrongful Act* of an *Insured* arising out of *Construction Professional Services* performed in the name of the *Joint Venture* of which an *Insured* forms part, provided that as a condition precedent to cover under this insurance cover 1.11 all fees/turnover from any *Joint Venture* has been declared and accepted by the *Insurer*.

Cover under this insuring provision shall extend only to an *Insured* . No other participant in the *Joint Venture*, and no other third party, shall have any rights under this policy, and the *Insurer* shall have no liability to pay a contribution to any insurer of any other participant in the *Joint Venture*.

1.12 Sudden and Accidental Pollution

The *Insurer* will pay on behalf of any *Insured* all *Loss* resulting from any *Claim* for a *Breach of Duty* by the *Insured* arising out of (i) the actual, alleged or threatened sudden or accidental presence, discharge, dispersal, release, migration or escape of *Pollutants* other than nuclear or radioactive material of any sort, but only where such sudden or accidental presence, discharge, dispersal, release, migration or escape of *Pollutants* occurs whilst the *Insured* is performing *Construction Professional Services*.

For the purpose of this insurance cover 1.12 the *Insurer* shall not be liable to pay *Loss* resulting from any *Claims* for *Breach of Duty* by the *Insured* arising out of, based upon or attributable to any direction, request or effort to (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*; or (b) respond to or assess the effects of *Pollutants* where such direction, request or efforts occurs whilst the *Insured* is performing *Construction Professional Services*.

The *Insurer's* liability under this insurance cover 1.12 will be subject to a sub-limit of liability of GBP 1,000,000 in the annual aggregate.

Extensions

Automatic Acquisition Clause

This policy is automatically extended to indemnify any entity acquired by the *Insured* during the *Policy Period* provided that:

- a) in the 12 month period immediately preceding an acquired entity's acquisition its revenue did not exceed 10% of the total annual revenue of the *Policyholder*;
- b) in the five year period immediately preceding the acquired entity's acquisition, it has had no *Losses*, whether paid or reserved in excess of GBP 25,000 in the aggregate and is not aware of circumstances which may give rise to *Claim* or *Loss* in excess of GBP 5,000;
- c) the *Insured* has undertaken due diligence prior to any such acquisition and that the due diligence exercise has not identified any potential liabilities which could result in a *Claim* under this policy;
- d) the acquired entity is incorporated, domiciled and provides all its *Construction Professional Services* within the UK and Ireland;
- e) the *Construction Professional Services* performed by the acquired entity are similar to that of the *Insured*.

Except for that referred to in d), any entity acquired by the *Insured* which does not satisfy the above conditions shall be automatically extended for a period of 30 days but only for those acts committed after the date of acquisition. Beyond the 30 days the *Insurer* may, but has no obligation to, extend cover provided by the policy to cover the entity acquired. Such extension may be subject to such terms and conditions and additional premium as the *Insurer*, in its absolute discretion, shall deem appropriate. In the event that the *Insurer* does not extend cover, or any terms and conditions or any additional premium charged by the *Insurer* under this clause are not acceptable to the *Insured*, the *Insured* may at its sole option, cancel this policy in its entirety from the date of the merger or acquisition. In the event of such cancellation, providing that no *Claim* has been made or circumstance notified, the *Insured* will receive a return premium calculated at pro-rata of the annual premium in respect of the period remaining to the expiry of the policy.

Court Attendance

For any person described in (i) and (ii) below who actually attends court as a witness in connection with a *Claim* notified under and covered by this policy, *Defence Costs* will include the following rates per day for each day on which attendance in court has been required:

- (i) for any principal, partner, director or *Member* of the *Insured*: GBP 300
- (ii) for any *Employee*: GBP 150

No *Retention* shall apply to this Extension.

Lost Documents

With respect to a *Third Party's Documents*:

- (i) for which an *Insured* is legally responsible, and
- (ii) which, during the *Policy Period*, have been destroyed, damaged, lost, distorted, erased or mislaid solely in the performance of or failure to perform *Construction Professional Services*.

Damages shall also include costs and expenses reasonably incurred by the *Insured* in replacing or restoring such *Documents* provided that:

- (a) such loss or damage is sustained while the *Documents* are either: (1) in transit; or (2) in the custody of the *Insured* or of any person to whom the *Insured* has entrusted them in the ordinary course of their *Construction Professional Services*;
- (b) the lost or mislaid *Documents* have been the subject of a diligent search by or on behalf of the *Insured*;
- (c) the amount of any *Claim* for such costs and expenses shall be supported by evidence of expenditure that shall be subject to approval by a competent person to be nominated by the *Insurer* with the consent of the *Insured*; and
- (d) the *Insurer* shall not be liable for any *Claim* arising out of wear, tear and/or gradual deterioration, moth and vermin.

The *Insurer's* liability under this extension will be subject to a sub-limit of liability of GBP 100,000 in the aggregate. A *Retention* of GBP 1,000 each and every claim shall apply to this Extension.

Mitigation of Loss

Loss shall also include the reasonable and direct cost to the *Insured* of any *Mitigation*.

Definitions

Adjudication Contract

means a contract to which Part II of the Housing Grants, Construction and Regeneration Act 1996 applies or any contract containing an adjudication clause.

Asbestos Services

means any *Construction Professional Services* provided by the *Insured* in connection with the presence or release of asbestos in any form or any material containing asbestos. *Asbestos Services* shall not mean and this policy shall not cover any (i) Type 1, 2 or 3 inspections as set out in MDHS (Methods for determination of Hazardous Substances) 100 published by the Health and Safety Executive, or any other comparable inspection of this nature or any similar inspections required as a result of revised guidance published by the Health and Safety Executive (ii) asbestos removal.

Bodily Injury

means physical injury, sickness, disease or death; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

Breach of Duty

means any actual or alleged negligent: (i) breach of duty, (ii) act, (iii) error, (iv) omission, (v) misstatement, (vi) misleading statement, including an inadvertent breach of contract occasioned by the same in the performance of *Construction Professional Services*.

Build

means:

- (i) any permanent works to be completed or constructed; or
- (ii) any temporary works required for the completion and construction associated with any contract undertaken by the *Insured*.

Claim

means any: (i) written demand seeking a remedy for *Breach of Duty*; (ii) civil or administrative proceeding arising from *Construction Professional Services* that seeks *Damages* for a *Wrongful Act*; (iii) proceedings brought under the *Estate Agents Health & Safety Legislation*.

Construction Professional Services

means the services performed by any *Insured* under a contract for any professional design or specification, supervision of construction, project management, feasibility study, technical information, calculation or survey where the performance takes place under the active direction and control of a *Properly Qualified Person* in the relevant field. *Construction Professional Services* shall not include supervision by the *Insured* of its own or its subcontractors' workmanship where such supervision is no different from that which would be expected of the *Insured* if it only had a workmanship obligation.

Damages

means any amount that an *Insured* shall be legally liable to pay to a *Third Party* in respect of judgments or arbitral awards rendered against an *Insured*, or for settlements negotiated by the *Insurer*.

Defence Costs

means reasonable fees, costs and expenses incurred by or on behalf of the *Insured* in the investigation, defence, adjustment, settlement or appeal of any *Claim*. *Defence Costs* shall not include any internal or overhead expenses of any *Insured* or the cost of any *Insured's* time.

Documents

means all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

Employee

means any natural person who is or has been expressly engaged as an employee under a contract of employment with the *Policyholder* or any *Subsidiary*. *Employee* shall not mean any: (i) principal, partner, director or *Member*; or (ii) temporary contract labour, self-employed person or labour-only sub-contractor.

Estate Agents and Health & Safety Legislation

means:

- (i) Property Misdescriptions Act 1991
- (ii) Estate Agents Act 1979
- (iii) The Health & Safety at Work Act 1974
- (iv) The Health & Safety at Work (Northern Ireland Order) 1978
- (v) The Construction (Design and Management) Regulations 2007

or any re-enactment thereof.

Fraud/Dishonesty

means fraudulent or dishonest conduct of an *Employee*:

- (i) not condoned, expressly or implicitly by; and
- (ii) that results in liability of, the *Policyholder* or any *Subsidiary*.

Infringement

means an unintentional infringement of any intellectual property right of any *Third Party*, other than patents and *Trade Secrets*.

Insured

means:

- (1) the *Policyholder* or any *Subsidiary* (including any predecessor business);
- (2) any natural person, who is or has been a principal, partner, director or *Member* of the *Policyholder* or any *Subsidiary*;
- (3) any *Employee*; or
- (4) any temporary contract labour, self-employed persons, labour-only sub-contractors, solely under contract with, and under the direction and direct supervision of the *Policyholder* or any *Subsidiary*;

but only when providing *Construction Professional Services* in the foregoing capacities.

Insured also includes any estate or legal representative of any *Insured* described in (2) and (3) of this definition for *Loss* arising from a *Claim* against that *Insured* for a *Wrongful Act* committed when providing *Construction Professional Services*.

Joint Venture

means any limited liability company, limited liability partnership, partnership or contractual co-operation arrangement formed by the *Insured* and another party under the terms of a written and signed joint venture agreement.

Legal Panel

means the firms of solicitors appointed from time to time by the *Insurer* to provide representation for its Construction Professional Liability *Policyholders*.

Limited Liability Partnership

means a partnership as determined by the Limited Liability Partnerships Act 2000 and any subsequent amendments thereto.

Limit of Liability

means the amount specified as such in the Schedule.

Loss

means *Damages* and *Defence Costs*. *Loss* shall not mean and this policy shall not cover any (1) taxes; (2) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; (3) fines or penalties; (4) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; (5) compensation, benefits or overheads of, or charges or expenses incurred by any *Insured*; or (6) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a *Claim* is brought.

The *Insurer* is under no obligation to pay *Loss*, unless the *Wrongful Act*: (i) first takes place on or after the *Retroactive Date*; and (ii) is committed solely in the performance of or failure to perform *Construction Professional Services*.

Member

means a member of a *Limited Liability Partnership* .

Mitigation

means work done or step taken to rectify or mitigate the consequences of any *Wrongful Act* of an *Insured*, provided that it shall be a condition precedent to the *Insurer's* liability that:

- (i) the *Insurer* shall during the *Policy Period* have been informed in writing of the *Wrongful Act* by the *Insured* and the work that is required to rectify it or mitigate its consequences (the "**Mitigation Work**");
- (ii) the *Insurer* shall be reasonably satisfied that:
 - (a) such costs are necessary to prevent or reduce the amount of a *Claim* that would otherwise be covered under this policy; and
 - (b) the amount of *Damages* prevented or reduced would be greater than the cost of the work;
- (iii) such costs are supported by evidence of expenditure which shall be subject to approval by a competent person to be nominated by the *Insured* with the consent of the *Insurer*;
- (iv) such costs shall not include any element of profit or loss of profit, nor any element of overheads, staff remuneration, standing idle time or management time of the *Insured*; and
- (v) the *Insurer* has consented in writing to the payment of such costs before the *Mitigation Work* is carried out, such consent not to be unreasonably withheld.

Notice of Intention to Adjudicate

means a notice of intention to refer a dispute to adjudication pursuant to an *Adjudication Contract*.

Policy Period

means the period of time specified in the Schedule unless the policy is cancelled in which event the *Policy Period* will end on the effective date of the cancellation.

Policyholder

means the entity or natural person specified as such in the Schedule.

Pollutants

means, but is not limited to, any solid, liquid, biological, radiological, gaseous or thermal irritant or contaminant whether occurring naturally or otherwise, including smoke, vapour, soot, fibres, mould, spores, fungus, germs, fumes, acids, alkalis, nuclear or radioactive material of any sort, chemicals or waste. "Waste" includes, but is not limited to, material to be recycled, reconditioned or reclaimed.

Premium

means the amount specified as such in the Schedule and any premium adjustment reflected in an endorsement to this policy.

Properly Qualified Person

means any *Insured* with a minimum of five years relevant experience or a person recognised as a Fellow or Associate of the following bodies: the Royal Institute of British Architects, Royal Incorporation of Architects in Scotland, Royal Society of Ulster Architects, Royal Institute of Chartered Surveyors, Royal Town Planning Institute, Chartered Institution of Building Services Engineers, Institution of Civil Engineering Surveyors or Institution of Structural Engineers and who is a current member of one of these bodies. .

Property Damage

means damage to or loss of or destruction of tangible property or loss of use thereof.

Retention

means the amount specified as such in the Schedule.

Retroactive Date

means the date specified as such in the Schedule.

Subsidiary

means entities in which the *Policyholder*, either directly or indirectly through one or more of its entities;

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital.

For any *Subsidiary* or any *Insured* thereof, cover under this policy shall only apply to *Wrongful Acts* committed by the *Insured* while such entity is a *Subsidiary* of the *Policyholder*.

Third Party

means any entity or natural person except (i) any *Insured*; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the *Policyholder* or any *Subsidiary*.

Trade Secret

means information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

Wrongful Act

means any *Breach of Duty*, *Infringement*, libel, slander, or *Fraud/Dishonesty*.

Exclusions

This policy shall not cover *Loss* in connection with any *Claim*:

Antitrust

arising out of, based upon or attributable to any actual or alleged antitrust violation, restraint of trade or unfair competition.

Asbestos

arising out of, based upon or attributable to: (i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of asbestos, or (ii) any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise asbestos, or (b) respond to or assess the effects of asbestos.

This exclusion does not apply to cover provided under insurance cover 1.7

Bodily Injury/Property Damage

arising out of, based upon or attributable to *Bodily Injury* or *Property Damage* unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing *Construction Professional Services*.

Contractual Liability

arising out of, based upon or attributable to any:

- (i) contractual liability or other obligation assumed, that goes beyond the duty to use such reasonable skill and care as is ordinarily applied within the profession of the *Properly Qualified Persons* providing, directing or controlling the *Insured's Construction Professional Services*;
- (ii) performance warranty, guarantee, penalty clause or liquidated damages clause unless liability would have existed in the absence of such warranty, guarantee or clause; or
- (iii) delay in performing, failing to perform or failing to complete any *Construction Professional Services*, unless such delay or failure arises from a *Wrongful Act* by an *Insured*.

Costs Assessment

arising out of, based upon or attributable to the failure of the *Insured* or other party acting for the *Insured* to make an accurate pre-assessment of the cost of performing *Construction Professional Services*.

Discrimination

arising out of, based upon or attributable to any: (i) actual or alleged employment-related practices, harassment or discrimination; or (ii) intentional or systemic harassment or discrimination.

Employers Liability

by any person for bodily injury, sickness, disease or death incurred, contracted or occurring whilst under a contract of service or apprenticeship with the *Insured* or for any breach of any obligation owed by the *Insured* as an employer.

Government/ Regulatory Action

arising out of, based upon or attributable to any government, regulatory, licensing or commission action or investigation; unless relating solely to the performance of or failure to perform *Construction Professional Services* for such entities.

Infrastructure

arising out of, based upon or attributable to:

- (i) mechanical failure outside the control of the *Insured*;
- (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or
- (ii) telecommunications or satellite systems failure

unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing *Construction Professional Services*.

Insolvency

arising out of, based upon or attributable to the insolvency, administration or receivership of the *Insured*.

Misdeeds

arising out of, based upon or attributable to any act which a judge, jury or other official tribunal or panel finds, or which an *Insured* admits, to be a criminal, dishonest or fraudulent act; and in such event, the *Insurer* shall be reimbursed for all *Loss* paid in connection with such *Claim*; provided, however, that this exclusion shall not apply to cover provided under insurance cover 1.4.

Patent/Trade Secret

arising out of, based upon or attributable to the breach of licences concerning, infringement of or misappropriation of patents or *Trade Secrets*.

Prior Claims/Circumstance

- (i) made prior to or pending at the inception of this policy; or
- (ii) arising out of, based upon or attributable to any circumstance that, as of the inception of this policy, may reasonably have been expected by any *Insured* to give rise to a *Claim*.

Pollution

arising out of, based upon or attributable to: (i) the actual, alleged or threatened presence, discharge, dispersal, release, migration or escape of *Pollutants*, or (ii) any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*, or (b) respond to or assess the effects of *Pollutants*.

This exclusion does not apply to cover provided under insurance cover 1.12

Trade Debts

arising out of, based upon or attributable to any: (i) trading debt incurred by an *Insured* or (ii) guarantee given by an *Insured* for a debt.

U.S.A./Canada

made or pending within; or to enforce a judgment obtained in, the United States of America, Canada, or any of their territories or possessions.

War/Terrorism

arising out of, based upon or attributable to any war (declared or otherwise), terrorism, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

Workmanship/Manufacturing exclusion

arising out of, based upon or attributable to any; (i) defective workmanship by, or on behalf of the *Insured*, and/or (ii) defective materials, workmanship or production techniques used in the actual manufacture of any product.

Claims

Claim Notification

Other than in respect of a *Notice of Intention to Adjudicate* (refer to Adjudication Provisions) the *Insured* shall, as a condition precedent to the obligations of the *Insurer* under this policy, give written notice to the *Insurer* of any *Claim* first made against the *Insured* as soon as practicable and during the *Policy Period*. All notifications must be in writing to:

If posted, the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

Adjudication Provisions

The *Insurer* shall have no liability under this policy to make any payment in respect of any *Loss* incurred in connection with any dispute or matter being referred to adjudication except liabilities of the *Insured* incurred in connection with *Construction Professional Services* for *Loss* arising from the adjudication of an *Adjudication Contract*. Provided always that it is a condition precedent to the *Insurer's* liability hereunder that every element of this Adjudication Provision (i) and (ii) are complied with:

- (i) The *Adjudication Contract* must:
 - (a) provide that the adjudicator must be independent of the parties to the dispute;
 - (b) not allow for the adjudicator's decision to finally determine the dispute;
 - (c) not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial consideration; and
 - (d) not place any conditions upon the timing of commencement of legal or arbitration proceedings (for the avoidance of doubt, this does not apply to the adjudication proceedings).
- (ii) The *Insured* must:
 - (a) ensure the *Insurer* receives notification in writing to:
 - 1) within 48 hours or two working days of receipt by the *Insured* of any *Notice of Intention to Adjudicate*; or

- 2) at least 30 days before service by the *Insured* of any *Notice of Intention to Adjudicate* in circumstances which will or may lead to a *Claim* being dealt with as part of the adjudication;
- (b) as soon as reasonably practical, supply to the *Insurer* all details relating to any reference to adjudication, including copies of all documentation made available to the *Insured*, or subsequently by the *Insured* to the adjudicator;
- (c) allow the *Insurer* to appoint advisers from the *Legal Panel* and to have conduct of the adjudication as they deem appropriate and to co-operate with the *Insurer* in the conduct of the adjudication; any appointments made by the *Insurer* shall be at the *Insured's* expense, save always that they shall also constitute *Defence Costs* under this policy;
- (d) meet any request, direction or timetable of the adjudicator;
- (e) satisfy the *Insurer* that any liability or costs incurred or awarded pursuant to the adjudication proceedings for which indemnity is being sought, is as a direct result of a *Wrongful Act* of the *Insured* solely in the performance of the *Insured's Construction Professional Services*;
- (f) institute legal proceedings or arbitration in accordance with the terms of the *Adjudication Contract* to challenge or reopen or stay of the enforcement of the adjudicator's decision if reasonably requested to do by the *Insurer* and allow the *Insurer* to appoint appropriate advisers as they may deem necessary to have conduct of such proceedings if appropriate. However, any such steps taken by the *Insured* shall be at the *Insurer's* expense, but subject always to the application of the *Retention*; and
- (g) not agree to accept the decision of the adjudicator as finally determining the dispute without the prior consent of the *Insurer*.

Related Claims

If notice of a *Claim* against an *Insured* is given to the *Insurer* pursuant to the terms and conditions of this policy, then: (i) any subsequent *Claim* alleging, arising out of, based upon or attributable to the facts alleged in that previously notified *Claim*; and (ii) any subsequent *Claim* alleging any *Wrongful Act* which is the same as or related to any *Wrongful Act* alleged in that previously notified *Claim*, shall be considered made against the *Insured* and reported to the *Insurer* at the time notice was first given. Any *Claim* or *Claims* arising out of, based upon or attributable to (i) the same cause, or (ii) a single *Wrongful Act*, or (iii) a series of continuous, repeated or related *Wrongful Acts*, shall be considered a single *Claim* for the purposes of this policy.

Circumstances

During the *Policy Period*, an *Insured* may become aware of circumstances which may reasonably be expected to give rise to a *Claim*. In such event, an *Insured* shall during the *Policy Period* report the circumstances in writing to the *Insurer*. If in doing so, the *Insured* provides: (i) the reasons for anticipating the *Claim*, and (ii) full particulars as to dates, acts and persons involved; then any *Claim* which is subsequently made against an *Insured* and reported in writing to the *Insurer* alleging, arising out of, based upon or attributable to such circumstances, or alleging any *Wrongful Act* which is the same as or related to any *Wrongful Act* alleged or described in the previously notified circumstances, shall be considered first made against the *Insured* and reported to the *Insurer* at the time the facts or circumstances were first reported, if accepted by the *Insurer*.

Defence/Settlement

The *Insurer* does not assume any duty to defend, and the *Insured* shall defend and contest any *Claim* made against them unless the *Insurer*, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any *Claim*. If the *Insurer* does not so elect, it

shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the *Insurer*. In the event that the *Insurer* decides that representation by a solicitor is necessary (such decision to be at the sole discretion of the *Insurer*) then the *Insured* shall select one of the *Legal Panel* to provide such legal representation. The *Insurer* has the right at any time after notification of a *Claim* to make a payment to the *Insured* of the unpaid balance of the *Limit of Liability*, and upon making such payment, all obligations of the *Insurer* to the *Insured* under this policy, including, if any, those relating to defence, shall cease.

Insurer's Consent

As a condition precedent to cover under this policy, no *Insured* shall admit or assume any liability, enter into any settlement agreement, consent to any judgment, or incur any *Defence Costs* without the prior written consent of the *Insurer*. Only those settlements, judgments and *Defence Costs* consented to by the *Insurer*, and judgments resulting from *Claims* defended in accordance with this policy, shall be recoverable as *Loss* under this policy. The *Insurer's* consent shall not be unreasonably withheld, provided that the *Insurer* shall be entitled to exercise all of its rights under the policy.

Insured's Consent

The *Insurer* may make any settlement of any *Claim* it deems expedient with respect to any *Insured*, subject to such *Insured's* written consent. If any *Insured* withholds consent to such settlement, the *Insurer's* liability for all *Loss* on account of such *Claim* shall not exceed the amount for which the *Insurer* could have settled such *Claim*, plus *Defence Costs* incurred as of the date such settlement was proposed in writing by the *Insurer*, less coinsurance (if any) and the applicable *Retention*.

Cooperation

The *Insured* will at their own cost: (i) render all reasonable assistance to the *Insurer* and cooperate in the defence of any *Claim* and the assertion of indemnification and contribution rights; (ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any *Loss* under this policy; (iii) give such information and assistance to the *Insurer* as the *Insurer* may reasonably require to enable it to investigate any *Loss* or determine the *Insurer's* liability under this policy.

Allocation

In the event that any *Claim* involves both covered matters and matters not covered under this policy, a fair and proper allocation of any cost of defence, damages, judgments and/or settlements shall be made between each *Insured* and the *Insurer* taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

Fraudulent Claims

If any *Insured* shall give any notice or claim cover for any *Loss* under this policy knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such *Loss* shall be excluded from cover under the policy, and the *Insurer* shall have the right, in its sole and absolute discretion, to avoid its obligations under or void this policy in its entirety, and in such case, all cover for *Loss* under the policy shall be forfeited and all *Premium* deemed fully earned and non-refundable.

Purchase and Administration

Innocent non disclosure

In granting cover to the *Insured*, the *Insurer* has relied upon the material statements and particulars in the proposal together with its attachments and other information supplied. These statements, attachments and information are the basis of cover and shall be considered incorporated into and constitute part of this policy.

The *Insurer* will not exercise its right to avoid this policy on the grounds of any alleged non-disclosure or misrepresentation of facts or alleged untrue statements in any information supplied to it, provided that the *Insured* shall establish to the *Insurer's* reasonable satisfaction that such alleged non-disclosure, misrepresentation or untrue statement was free of any fraudulent conduct or intent to deceive. Where such non-disclosure, misrepresentation or untrue statement has prejudiced the *Insurer's* consideration of terms under this policy, the *Insurer* shall be entitled to charge a reasonable additional premium in light of such prejudice.

However, if the *Insured* failed to inform the *Insurer* before inception of this policy or increase in cover or other variation of its terms, of any *Claim* or circumstance of which the *Insured* was aware which might give rise to a *Claim* or payment of *Loss* hereunder; the *Insurer's* liability under this policy shall not extend beyond that which would have been owed pursuant to the earliest such previous insurance under which the circumstance could have been notified or that which was available prior to any increase in cover or variation of terms.

Administration

The *Policyholder* shall act on behalf each and every *Insured* with respect to: (1) negotiating the terms and conditions of and binding cover; (2) the exercise of all rights of *Insureds* under this policy; (3) all notices; (4) premiums; (5) endorsements to this policy; (6) the appointment of a member of the *Legal Panel* to defend a *Claim*; (7) dispute resolution; and (8) the receipt of all amounts payable to an *Insured* by the *Insurer* under this policy.

Limit and Retention

Limit of Liability

The total amount payable by the *Insurer* under this policy for all *Claims* in the aggregate during the *Policy Period* shall not exceed the *Limit of Liability*. Sub-limits of liability, Extensions and *Defence Costs* are part of that amount and are not payable in addition to the *Limit of Liability*. The inclusion of more than one *Insured* under this policy does not operate to increase the total amount payable by the *Insurer* under this policy.

The *Limit of Liability* is the total sum payable by the *Insurer*. Any sum paid by the *Insurer* under this policy shall erode the *Limit of Liability*. In no circumstances shall the liability of the *Insurer* exceed the *Limit of Liability*.

Retention

The *Insurer* shall only pay for the amount of any *Loss* which is in excess of the *Retention*. For the avoidance of doubt, the *Retention* also applies to *Defence Costs*. The *Retention* is to be borne by the *Insured* and shall remain uninsured. A single *Retention* shall apply to *Loss* arising from all *Claims* alleging the same *Wrongful Act*. The *Insurer* may, in its sole and absolute discretion, advance all or part of the *Retention*, and, in that event, such amounts shall be reimbursed to the *Insurer* by the *Insureds* forthwith.

Other Insurance/ Indemnification

Unless otherwise required by law, cover under this policy is provided only as excess over any self-insurance or other valid and applicable insurance, unless such other insurance is written only as specific excess insurance over the *Limit of Liability*. This policy shall not cover *Defence Costs* of any *Claim* where another insurance policy imposes upon another insurer a duty to defend such *Claim*.

General Provisions

Assignment

This policy and any rights under or in respect of it cannot be assigned without the prior written consent of the *Insurer*.

Cancellation

by *Policyholder*

This policy may be cancelled by the *Policyholder* at any time only by mailing written prior notice to *Insurer* or by surrender of this policy to the *Insurer* or its authorised agent. In such cases, if no *Claim* has been made and no circumstance has been notified prior to such cancellation the *Insurer* shall retain the customary short rate proportion (expired portion of *Premium* plus handling charges) of the *Premium*. Otherwise the *Premium* shall not be returnable and shall be deemed fully earned at cancellation.

by *Insurer*

In the event of non-payment of *Premium*, this policy will be cancelled by the *Insurer* as if the policy has never been in existence upon the *Insurer* delivering to the *Policyholder* by registered, certified, other first class mail or other reasonable delivery method, at the address of the *Policyholder* set forth in the Schedule, written notice stating when, not less than ten (10) days thereafter, the cancellation shall be effective. Proof of mailing or delivery of such notice shall be sufficient proof of notice and this policy shall be deemed cancelled as to all *Insureds* at the date and hour specified in such notice.

The Financial Ombudsman Service may not be able to consider a complaint if the complainant:

- has not provided us with the opportunity to resolve the complaint, or
- is a business with more than 10 employees and a group annual turnover of more than €2 million; or
- is a trustee of a trust with a net asset value of more than £1 million or;
- is a charity with an annual income of more than £1 million.

Following this complaint procedure does not affect your right to take legal action.

Contract Rights

Nothing in this policy is intended to confer a directly enforceable benefit on any third party other than the *Insured*, whether pursuant to the Contract (Rights of Third Parties) Act 1999 or otherwise.

Dispute Resolution

All disputes or differences concerning the construction or interpretation of the provisions of this policy, whether arising before or after termination of this policy, shall be submitted to arbitration in London before the London Court of International Arbitration (LCIA) according to its then prevailing arbitration rules. The language to be used in the arbitration proceedings shall be English. The arbitration shall be conducted by a panel of three arbitrators having knowledge of the legal and insurance issues relevant to matters in dispute. The *Insurer* and the *Insured* shall each name one arbitrator and the third shall be appointed by the LCIA. The decision of the arbitrators shall be final and binding and provided to both parties, and the arbitrators shall not be asked to, and shall not award attorneys' fees or other costs. The costs of the arbitrators and any arbitration fees will be borne equally by the *Insurer* and the relevant *Insureds*. Otherwise, each party shall bear its own costs of the arbitration. In the event that separate disputes arise between the *Insurer* and several *Insureds* on related matters, these shall be resolved together or consecutively as the arbitrators shall consider appropriate.

Insolvency

Insolvency, receivership or bankruptcy of any *Insured* shall not relieve the Insurer of any of its obligations hereunder.

Plurals, Headings and Titles

The descriptions in the headings and titles of this policy are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this policy, words in italic typeface have special meaning and are defined. Words that are not specifically defined in this policy have the meaning normally attributed to them.

Sanctions

The *Insurer* has no liability to make any payment and no other liability or other obligation under any provision or Extension of this policy in respect of:

- (1) any risk located in a territory the laws or regulations of which prohibit the *Insurer* from providing, or which make it illegal for the *Insurer* to provide, insurance under this policy; and
- (2) any *Insured* or any beneficiary under the policy who or which is a citizen or instrumentality of the government of any country against which any laws or regulations governing this policy or the *Insurer*, its parent company or its ultimate controlling entity have established an embargo or other form of economic sanction which prohibit the *Insurer* from providing, or which make it illegal for the *Insurer* to provide, insurance coverage for, transacting business with or otherwise offering economic benefits to the *Insured* or any other beneficiary under the policy.

No benefit or payment will be made under this policy to any *Insured* or beneficiary who is declared unable to receive an economic benefit under the laws or regulations governing this policy or the *Insurer*, its parent company or its ultimate controlling entity.

Scope, Jurisdiction and Governing Law

Where legally permissible and subject to the U.S.A/Canada Exclusion, this policy shall apply to any *Claim* made against any *Insured* anywhere in the world. Any interpretation of this policy relating to its construction, validity or operation shall be made in accordance with the laws of England and Wales and in accordance with the English text as it appears in this policy.

Subrogation

If any payment is to be made under this policy in respect of a *Claim*, the *Insurer* shall be subrogated to all rights of recovery of the *Insured* whether or not payment has in fact been made and whether or not the *Insured* has been fully compensated for its actual loss. The *Insurer* shall be entitled to pursue and enforce such rights in the name of the *Insured*, who shall provide the *Insurer* with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. The *Insured* shall do nothing to prejudice these rights. Any amount recovered in excess of the *Insurer's* total payment shall be restored to the *Insured* less the cost to the *Insurer* of such recovery. The *Insurer* agrees not to exercise any such rights of recovery against any *Employee* unless the *Claim* is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of the *Employee*. In its sole discretion, the *Insurer* may, in writing, waive any of its rights set forth in this Subrogation Clause.