

PROFESSIONAL INDEMNITY INSURANCE

- (1) The INSURED has made a written proposal to INSURERS bearing the date shown in the schedule hereto containing particulars and statements which it is hereby agreed are the basis of this policy and are to be considered as incorporated herein.
- (2) This policy, any endorsements to the policy and the schedule hereto shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the policy, its endorsement(s) (if any) or the schedule shall bear the same meaning wherever it may appear.
- (3) Certain words in this policy are printed in capitals. Those words have been defined in section G of the policy and bear the meaning defined in that section.
- (4) Any general or specific reference to statute(s) or statutory provisions, to include any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions made thereunder and any conditions attaching thereto, shall be construed as including a reference to any amendment, consolidation or re-enactment thereof for the time being in force.

SECTION A INSURING CLAUSES

In consideration of the INSURED having agreed to pay the premium shown in the schedule, INSURERS agree, subject to the terms of this policy:

1. Civil Liability

- 1.1. To indemnify the INSURED against any CLAIM or CLAIMS
 - a. first made against the INSURED and/or
 - b. arising out of any CIRCUMSTANCE(S) which the INSURED shall first notify during the POLICY PERIOD in respect of any civil liability which arises in consequence of the conduct of PROFESSIONAL BUSINESS by the INSURED and/or by others acting for and/or on behalf of the INSURED.
- 1.2. The foregoing indemnity includes liability which the INSURED may incur in respect of any CLAIM or CLAIMS first made against the INSURED during the POLICY PERIOD:
 - a. for claimants' costs and expenses
 - b. as a result of:
 - i. any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or an adjudication clause or rules contained in a contract.
 - ii. any award by an arbitrator or tribunal of arbitrators (whether under the Surveyors and Valuers Arbitration Scheme 1998 or otherwise).
- 1.3. The maximum indemnity available to the INSURED under clause 1.1 of this Section in respect of each CLAIM or any SERIES OF CLAIMS shall (save as provided elsewhere in this policy) not exceed the INDEMNITY LIMIT FOR CLAIMS.
- 1.4. The maximum indemnity available to the INSURED in the aggregate in the POLICY PERIOD in respect of all CYBER LIABILITY CLAIMS shall not exceed the INDEMNITY LIMIT FOR CYBER LIABILITY. The INDEMNITY LIMIT FOR CYBER LIABILITY is not additional to and shall not increase the INDEMNITY LIMIT FOR CLAIMS.

2. Awards by Ombudsmen

- 2.1. To indemnify the INSURED against any award made by an ombudsman in respect of any case accepted by the ombudsman for review in his position as ombudsman under any recognised scheme where the CLAIM
 - a. is first made against the INSURED and/or
 - b. arises out of any CIRCUMSTANCE(S) which the INSURED shall first notify during the POLICY PERIOD together with all legal costs and expenses incurred with the prior written and continuing consent of the INSURERS (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation of such CIRCUMSTANCE(S) and the investigation, conduct or settlement of any such CLAIM.
- 2.2. The maximum amount payable by INSURERS under clause 2.1 of this Section in respect of:
 - a. any single award made by any ombudsman or
 - b. any series of awards by any ombudsmen attributable to the same originating cause
 shall not exceed the INDEMNITY LIMIT FOR AWARDS BY OMBUDSMEN.
- 2.3. Where an ombudsman makes an award which is rejected by the claimant who then pursues the matter through the courts, both the complaint to the ombudsman and all subsequent court proceedings shall be treated as a single CLAIM made at the date of the first CLAIM against the INSURED.

3. DEFENCE COSTS

- 3.1. To indemnify the INSURED for DEFENCE COSTS in connection with a CLAIM or CIRCUMSTANCE(S) provided that in the event that a settlement or other payment has to be made to dispose of a CLAIM which exceeds the amount of the INDEMNITY LIMIT FOR CLAIMS, INSURERS' liability in respect of DEFENCE COSTS shall be limited to the same proportion that the INDEMNITY LIMIT FOR CLAIMS bears to the amount of such settlement or other payment.
- 3.2. Save as set out at clauses 4, 5, 6 of this Section and clause 3 of Section F, DEFENCE COSTS are not subject to any INDEMNITY LIMIT.

4. Court Attendance Compensation

- 4.1. To provide compensation to the INSURED, with the prior written consent of the INSURERS, in the event that the legal advisers acting on behalf of the INSURED require any of the INSURED, any EMPLOYEES or any other relevant party (not including expert witnesses), to attend Court or any arbitration or adjudication hearing as a witness of fact in connection with a CLAIM made against the INSURED for which cover is afforded under this policy at the following rates for each day or part thereof on which attendance is required:
- | | | |
|----|--|-------------|
| a. | any principal partner, member or director of the INSURED | £200 |
| b. | any EMPLOYEE | £100 |
| c. | other relevant party | up to £200. |
- 4.2. The maximum amount payable by INSURERS under clause 4.1 of this Section shall not exceed the INDEMNITY LIMIT FOR COURT ATTENDANCE COMPENSATION in the aggregate in the POLICY PERIOD.

5. Statutory Liabilities

- 5.1. To pay on behalf of the INSURED 80% of any reasonable costs and expenses incurred with the prior written consent of INSURERS for the defence of any proceedings first brought against the INSURED during the POLICY PERIOD and notified to INSURERS during the POLICY PERIOD, under the:
- Property Misdescriptions Act 1991, and/or
 - Estate Agents Act 1979, and/or
 - The Health and Safety at Work etc Act 1974, and/or
 - The Health and Safety at Work (Northern Ireland) Order 1978, and/or
 - The Construction (Design and Management) Regulations 2007, and/or
 - The Corporate Manslaughter and Corporate Homicide Act 2007 and/or
 - The Bribery Act 2010; and/or
 - The Data Protection Act 1998; and/or
 - similar or successor legislation to that detailed in a. to h. above

but only where, in INSURERS' reasonable opinion, defending such proceedings could protect the INSURED against any CLAIM or potential CLAIM arising from PROFESSIONAL BUSINESS undertaken by the INSURED.

- 5.2. The maximum indemnity available to the INSURED under clause 5.1 of this Section shall not exceed the INDEMNITY LIMIT FOR STATUTORY LIABILITIES in the aggregate in the POLICY PERIOD.

6. Legal Representation Costs

- 6.1. To pay on behalf of the INSURED 80% of any costs and expenses:
- which are incurred by the INSURED with the prior written consent of INSURERS for representation at properly constituted hearings, tribunals or proceedings arising out of any
 - CLAIM first made and/or
 - CIRCUMSTANCE(S) which the INSURED shall first notify
 during the POLICY PERIOD in respect of the conduct of PROFESSIONAL BUSINESS by the INSURED which may be or may become the subject of indemnity under this policy and
 - which are not indemnified as DEFENCE COSTS pursuant to clause 3 above.
- 6.2. The maximum amount payable by INSURERS under clause 6.1 of this Section shall not exceed the INDEMNITY LIMIT FOR LEGAL REPRESENTATION COSTS in the aggregate in the POLICY PERIOD.

SECTION B EXCESS Subject to the terms of this policy

- INSURERS shall be liable under clause 1 of Section A of this policy only for that part of the loss arising from each and every CLAIM or SERIES OF CLAIMS which exceeds the EXCESS FOR CLAIMS.
- INSURERS shall be liable under clause 2 of Section A of this policy only for that part of

- a. any single award made by any ombudsman or
 - b. any series of awards by any ombudsman attributable to the same originating cause
- which exceeds the EXCESS FOR CLAIMS.

3. The EXCESS shall not apply to DEFENCE COSTS.

SECTION C CLAIMS CONDITIONS

1. Notification of a CLAIM or CIRCUMSTANCE(S)

- 1.1. If during the POLICY PERIOD the INSURED shall receive any CLAIM, or any notice of an intention to make a CLAIM, the INSURED shall give written notice to INSURERS as soon as reasonably practicable. All CLAIMS must in any event be notified within 10 working days after the expiry of the POLICY PERIOD.
- 1.2. If during the POLICY PERIOD the INSURED becomes aware of any CIRCUMSTANCE(S), the INSURED shall give written notice to INSURERS of such CIRCUMSTANCE(S) as soon as reasonably practicable with such notice supplying full particulars of the relevant CIRCUMSTANCE(S) including (where possible):
- a. the name(s) of the potential claimant
 - b. the date of the incident, occurrence, fact, matter, act or omission which has given rise to the CIRCUMSTANCE(S)
 - c. the name(s) of the individual(s) involved in the CIRCUMSTANCE(S)
 - d. the date of the INSURED'S first awareness or discovery of such CIRCUMSTANCE(S)
 - e. the estimated amount of any potential CLAIM which may arise thereafter.

In addition, the INSURED shall provide such further information as INSURERS may reasonably require.

All CIRCUMSTANCE(S) must in any event be notified prior to the expiry of the POLICY PERIOD.

INSURERS agree that any CIRCUMSTANCE(S) notified to them during the POLICY PERIOD which subsequently gives rise to a CLAIM after expiry of the POLICY PERIOD shall be deemed to be a CLAIM first made during the POLICY PERIOD.

- 1.3. If during the POLICY PERIOD the INSURED shall discover
- a. a reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner, director, member, EMPLOYEE or CONSULTANT of the PRACTICE or
 - b. an occurrence that may require representation at a properly constituted hearing, tribunal or proceeding
- which might give rise to a CLAIM, the INSURED shall give written notice to INSURERS of such discovery as soon as reasonably practicable but in any event prior to the expiry of the POLICY PERIOD.

INSURERS agree that any such discovery notified to them during the POLICY PERIOD which subsequently gives rise to a CLAIM after expiry of the POLICY PERIOD shall be deemed to be a CLAIM first made during the POLICY PERIOD.

- 1.4. Notification will be deemed to have been made to INSURERS if and when made to the person identified in the Details for Notification of Claims.

2. Adjudication

The INSURED shall as a condition precedent to its right to indemnity in respect of any adjudication for which indemnity is available under clause 1 of Section A:

- 2.1. notify INSURERS within 2 working days of receipt of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract.
- 2.2. not serve any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract without the prior written consent of INSURERS unless, in the INSURED'S reasonable opinion, service of those notices will not give rise to a CLAIM.

3. Ombudsman

The INSURED shall as a condition precedent to its right to indemnity under clause 2 of Section A give written notice to INSURERS as soon as reasonably practicable after becoming aware that a case directly affecting the INSURED is being reviewed by any ombudsman.

4. No Admission of Liability

In the event of a CLAIM or the discovery of CIRCUMSTANCE(S), the INSURED shall not admit liability, incur any costs or make any offers of settlement in connection therewith or otherwise prejudice the conduct or the defence or settlement of such CLAIM or CIRCUMSTANCE(S) without INSURERS' prior written consent (such consent not to be unreasonably withheld or unreasonably delayed), regardless of

- 4.1. the provisions of any complaints handling procedure or
- 4.2. whether the amount in dispute is less than the EXCESS.

5. Conduct of CLAIMS

Following notification of a CLAIM or notification of any CIRCUMSTANCE(S), INSURERS shall be entitled if they so desire to take over and conduct in the name of the INSURED the investigation, defence or settlement of any such matter. The INSURED shall co-operate with INSURERS and shall give such information and assistance (as set out at clause 6 of this Section below) as INSURERS may reasonably require.

6. CLAIMS Control & Co-operation

- 6.1.** The INSURED shall give to INSURERS all such information and assistance as INSURERS may reasonably require and is in the INSURED's power to provide.
- 6.2.** The INSURED shall co-operate with INSURERS and their appointed representatives:
- a. by providing all such information, assistance, signed statements or depositions as may be required to facilitate compliance with all and any Civil Procedure Rules, Practice Directions and Pre-Action Protocols as may be issued
 - b. by assisting them to present the best possible defence of a CLAIM
 - c. by ensuring access to all and any information that INSURERS or their representatives may require in the defence of a CLAIM or in the investigation of any CIRCUMSTANCE(S), whether or not privileged
 - d. by making payment on demand of the EXCESS in order to comply with the terms of any settlement agreed by INSURERS
 - e. by providing all such information, assistance, signed statements or depositions as may reasonably be required to permit INSURERS to exercise rights of subrogation
 - f. by ensuring that all documents of any description (whether kept in paper, magnetic or electronic form) relevant to any CLAIM and any CIRCUMSTANCE(S) are preserved in their entirety.

7. Fraudulent CLAIMS

If the INSURED shall make any claim knowing the same to be false or fraudulent as regards the amount or otherwise this policy shall become void ab initio and the INSURED shall forfeit all benefit hereunder and if INSURERS so require, all previous payments by INSURERS shall be refunded by the INSURED.

SECTION D GENERAL CONDITIONS

The following General Conditions apply to this policy:

1. Discharge of Liability

INSURERS may at any time pay to the INSURED in connection with any CLAIM or SERIES OF CLAIMS under this policy the INDEMNITY LIMIT (less any sums already paid) or any lesser sum for which such CLAIMS can be settled and upon such payment INSURERS shall not be under any further liability in respect of such CLAIMS except for DEFENCE COSTS incurred prior to such payment and with INSURERS' prior written consent.

2. INDEMNITY LIMIT and EXCESS

The INDEMNITY LIMIT and the EXCESS apply to all the INSUREDS jointly.

3. Combined CLAIMS

- 3.1** Where the same originating cause gives rise to an entitlement on the part of the INSURED to indemnity under clause 1 and all or any of clauses 2, 4, 5 and/or 6 of Section A of this policy, the maximum amount payable by INSURERS under clause 1 and such other clause or clauses of Section A (apart from clause 3) as may entitle the INSURED to indemnity shall not exceed the INDEMNITY LIMIT FOR CLAIMS.
- 3.2.** Where a CLAIM is brought against more than one INSURED it shall be deemed to be one CLAIM and INSURERS' liability shall be the same as if the CLAIM had been brought against one INSURED only.

4. RETROACTIVE DATE

Where a RETROACTIVE DATE is specified in the schedule, this policy shall not indemnify the INSURED for any CLAIM notified under the terms of this policy that arises out of the conduct of PROFESSIONAL BUSINESS prior to the said RETROACTIVE DATE.

5. Several Liability Notice

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

6. Rights of Recovery

Immediately on the notification of a CLAIM or CIRCUMSTANCE(S), the INSURED grants to INSURERS all rights of recovery against any parties from whom a recovery may be made, and the INSURED will take all reasonable steps to preserve such rights and will cooperate with INSURERS in accordance with clause 6 of Section C. However, INSURERS agree to waive any rights of recovery against the INSURED unless liability has resulted in whole or part from any act or omission on the part of such persons which is dishonest, fraudulent, criminal or malicious.

7. Adjudication

The INSURED agrees:

- 7.1. subject to a reasonable request by INSURERS for permission, to permit INSURERS to pursue legal, arbitration or other proceedings in the name of and on behalf of the INSURED to challenge, appeal or amend any decision, direction, award or the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the adjudicator. The INSURED will give all such assistance as INSURERS may reasonably require in relation to such proceedings.
- 7.2. not to accept the decision of any adjudicator as finally determining the related dispute without the prior written consent (not to be unreasonably delayed or unreasonably withheld) of INSURERS.

8. Contracts (Rights of Third Parties) Act 1999

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 other than by virtue of the Act.

9. Choice of law, Disputes and Jurisdiction

- 9.1. This policy shall be governed by and construed in accordance with the laws of England and Wales.
- 9.2. Any dispute between INSURERS and the INSURED:
 - a. as to the correct interpretation of the definition of PROFESSIONAL BUSINESS under this policy, or
 - b. regarding the application of the Special Institution Condition (Section E)
 shall be referred by either party for arbitration in accordance with the law and procedure of England and Wales to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors, whose decision shall be binding on both parties.
- 9.3. If the INSURED and INSURERS cannot agree a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution), the dispute will be resolved by reference to Queen's Counsel of the English Bar to be mutually agreed between INSURERS and the INSURED whose decision shall be binding. In resolving the dispute, the Queen's Counsel shall have due regard to the interests of both the INSURED and INSURERS. In the event of disagreement regarding the appointment of Queen's Counsel, the Queen's Counsel shall be appointed by the Chairman for the time being of the Bar Council. The costs of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.
- 9.4. Save as aforesaid, the Courts of England and Wales are to have exclusive jurisdiction for hearing and determining any dispute arising out of or in connection with this policy.

10. PRACTICE to act as Agent

All persons falling within the definition of the INSURED agree that the PRACTICE is their agent for all purposes in connection with this policy. This policy may be varied or rescinded by agreement between INSURERS and the PRACTICE without the consent of any other person falling within the definition of the INSURED or otherwise.

SECTION E SPECIAL INSTITUTION CONDITION

1. Where there has been non-disclosure or misrepresentation of facts or untrue statements in the proposal form or in any other information or statements provided to or made to or warranted to INSURERS and there has been no intention to deceive or mislead INSURERS, INSURERS will not exercise their right to avoid this policy nor will INSURERS be discharged from any liability under this policy provided that
 - 1.1. where such non-disclosure or misrepresentation has prejudiced the INSURERS' consideration of terms under this policy, INSURERS shall be entitled to charge a reasonable additional premium in light of such prejudice.
 - 1.2. However, in the case of a CLAIM first made against the INSURED during the POLICY PERIOD where:
 - a. the INSURED had previous knowledge of the CIRCUMSTANCE(S) relating to such CLAIM and
 - b. the INSURED should have notified the same under any preceding policy,
 then, where the indemnity or cover under this policy is greater or wider in scope than that to which the INSURED would have been entitled under such preceding policy (whether with other insurers or not), INSURERS shall only be liable to afford indemnity to such amount and extent as would have been afforded to the INSURED by such preceding policy.
2. Where the INSURED'S breach of or non-compliance with any provision in clauses 1, 4, 5 or 6 of Section C of this policy has resulted in prejudice to the handling or settlement of any CLAIM, INSURERS shall be entitled to reduce the indemnity afforded by this policy in respect of such CLAIM (including DEFENCE COSTS) to such sum as in INSURERS' reasonable opinion would have been payable by them in the absence of such prejudice.
3. Clause 2 of this Section shall not apply to clause 2 of Section A of this policy.

SECTION F EXCLUSIONS

INSURERS shall not be liable under this policy for:

1. Adjudication

- 1.1. Any decision made against the INSURED by an adjudicator who was not independent of the parties to the dispute.
- 1.2. Any CLAIM arising out of or related to any adjudication arising from an adjudication clause in a contract which contains timetable provisions for adjudication which are more onerous to the INSURED than those contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996.

2. Arbitration

Any arbitration award (whether made under the Surveyors' and Valuers' Arbitration Scheme 1998 or otherwise) made in respect of any CLAIM or counterclaim where the seat of the arbitration was located outside England, Wales, Scotland or Northern Ireland unless that seat was agreed to by INSURERS.

3. Asbestos

Any CLAIM directly or indirectly resulting from the presence or release or possible presence or possible release of asbestos or asbestos containing materials in whatever form or quantity. Subject to the provisos below, this exclusion shall not apply to any such CLAIM caused by a negligent act, negligent error or negligent omission in the conduct of PROFESSIONAL BUSINESS.

Provided always that

- 3.1. such CLAIM is
 - a. first made against the INSURED and/or
 - b. arises out of any CIRCUMSTANCE(S) which the INSURED shall first notify during the POLICY PERIOD.
 - 3.2. INSURERS shall not be liable for any such CLAIM
 - a. directly or indirectly resulting from ASBESTOS SURVEYS carried out by the INSURED
 - b. arising out of or in any way involving any BODILY INJURY or fear of suffering BODILY INJURY.
 - 3.3. The maximum amount payable in the aggregate in the POLICY PERIOD by INSURERS in respect of any such CLAIMS, any claimant's costs and any DEFENCE COSTS shall not exceed the INDEMNITY LIMIT FOR ASBESTOS. The INDEMNITY LIMIT FOR ASBESTOS is not additional to and shall not increase the INDEMNITY LIMIT FOR CLAIMS.
- ### 4. Contractual Liability
- 4.1. Any contractual liability incurred by the INSURED in the conduct of PROFESSIONAL BUSINESS carried on by the INSURED as a result of:
 - a. the acceptance by the INSURED of an obligation, or the guarantee by the INSURED, of fitness for purpose where this appears as an express term
 - b. any express guarantee given by the INSURED including any relating to the period of a project
 - c. any express penalty contained in a contract between the INSURED and a third party
 - d. any express acceptance by the INSURED of liability for liquidated damages
 - 4.2. Any liability that arises in consequence of any assignment of a COLLATERAL WARRANTY OR DUTY OF CARE AGREEMENT to more than one party except in the case of a COLLATERAL WARRANTY OR DUTY OF CARE AGREEMENT given to a financier or funding party (not a purchaser or tenant) where a total of two assignments is permissible. This sub-clause is only applicable to contractual liabilities entered into on or after 1 October 2001.
 - 4.3. This exclusion shall not apply if liability would have attached to the INSURED in the absence of any such express agreement, or if
 - a. INSURERS have expressly approved the contractual terms giving rise to the said liability
 - b. in the case of a COLLATERAL WARRANTY OR DUTY OF CARE AGREEMENT, the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording is used.

5. Controlling Interest

Any CLAIM brought by either:

- 5.1. any entity in which the INSURED exercises a controlling interest or
- 5.2. any entity exercising a controlling interest over the INSURED by virtue of their having a financial or executive interest in the operation of the INSURED

unless such CLAIM is made against the INSURED for an indemnity or contribution in respect of a CLAIM made by an independent third party.

6. Directors' and Officers' Liability

Any CLAIM against any INSURED in their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.

7. Dishonesty or Fraud

Any CLAIM arising out of any dishonesty or fraud of any INSURED save to the extent that the CLAIM arises by reason of and was solely and directly caused by the (actual or allegedly) dishonest and/or fraudulent act(s) of any past or present partner, director, member, CONSULTANT or EMPLOYEE of the PRACTICE (whether committed alone or in collusion with others) which cause any client of the INSURED to suffer loss and provided always that:

- 7.1. no indemnity shall be afforded in respect of any CLAIM arising out of such dishonesty or fraud on the part of any person after discovery by the INSURED, in relation to that person, of reasonable cause for suspicion of fraud or dishonesty
- 7.2. any dishonesty and/or fraud committed by a person or persons acting in concert shall for the purposes of this policy be treated as one CLAIM
- 7.3. the annual accounts of the INSURED have been (and where applicable are being) prepared and/or certified by an independent and properly qualified accountant or auditor in accordance with the RICS Rules of Conduct, and the client accounts of the INSURED, where applicable, have been kept in accordance with those Rules.

8. Financial Services

Any CLAIM arising out of any Regulated Activities as defined in the Financial Services and Markets Act 2000 as amended from time to time. This exclusion will not apply to mortgage mediation activity and insurance mediation activity relating to general insurance contracts only for which the PRACTICE has permission pursuant to Part IV of the Financial Services and Markets Act 2000.

It is hereby noted and agreed that the INSURED is, for the purposes of the Act, an Appointed Representative of the principals (if any) named in the Schedule for the purposes stated in the Schedule. Notwithstanding this exclusion, the Policy will subject to all its terms, conditions and other exclusions, indemnify the INSURED in respect of any negligent act, negligent error or negligent omission in connection with such appointment(s), provided that there shall be no indemnity for any liability assumed by the INSURED under any express warranty, agreement or guarantee unless such liability would have attached to the INSURED notwithstanding such express warranty, agreement or guarantee.

9. Fines, Penalties, Punitive, Multiple or Exemplary Damages

Any fines, penalties or punitive, multiple or exemplary damages where such have been identified separately within any award of any court or tribunal.

10. Insolvency of the INSURED

Any CLAIM arising out of or relating solely to the insolvency or bankruptcy of the INSURED. This exclusion, however, shall not apply to:

- 10.1. any CLAIMS in respect of monies held on behalf of third parties and/or
- 10.2. any CLAIM that otherwise would be indemnified by this policy but for the insolvency or

bankruptcy of the INSURED.

11. Liability arising out of BODILY INJURY

Any CLAIM arising out of BODILY INJURY of any EMPLOYEE whilst in the course of their employment for or on behalf of the INSURED.

12. Liability arising out of employment

Any CLAIM arising from any liability to any EMPLOYEE, former EMPLOYEE or prospective EMPLOYEE in respect of employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.

13. Liability involving transport or property owned by the INSURED Any CLAIM arising out of:

- 13.1. the ownership, possession or use by or on behalf of the INSURED of any aircraft, watercraft, hovercraft, motor vehicle or trailer
- 13.2. the ownership or possession by or on behalf of the INSURED of any buildings, structures, premises, land or property (mobile or immobile) or that part of any building leased, occupied or rented by the INSURED.

14. Market Fluctuation Clause

Any CLAIM relating to the financial return of any investment or the depreciation or loss of investments when such financial return, depreciation or loss is caused by normal or abnormal fluctuations in any financial, stock, commodity or other markets which are outside the influence or control of the INSURED. It is understood and agreed that this exclusion will not apply to PROFESSIONAL BUSINESS of the INSURED in connection with the survey or valuation of any tangible property.

15. Nuclear Risks

Any CLAIM whether directly or indirectly caused by, contributed to by or arising from loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- 15.1.** ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- 15.2.** the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

16. Ombudsman

Any ombudsman's award except to the extent covered under clause 2 of Section A.

17. Other Policies

Any CLAIM where the INSURED is entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy had this policy not been effected.

18. POLLUTION

Any CLAIM arising directly or indirectly from POLLUTION. Subject to the provisos below, this exclusion shall not apply to any such CLAIM caused by a negligent act, negligent error or negligent omission in the conduct of PROFESSIONAL BUSINESS.

Provided always that

- 18.1.** such CLAIM is
- a. first made against the INSURED and/or
 - b. arises out of any CIRCUMSTANCE(S) which the INSURED shall first notify during the POLICY PERIOD.
- 18.2.** INSURERS shall not be liable for any such CLAIM directly or indirectly resulting from ENVIRONMENTAL AUDITS carried out by the INSURED
- 18.3.** Save as set out at clause 18.4 of this Section, the maximum amount payable in the aggregate in the POLICY PERIOD by INSURERS in respect of any such CLAIMS, any claimant's costs and any DEFENCE COSTS shall not exceed the INDEMNITY LIMIT FOR POLLUTION. The INDEMNITY LIMIT FOR POLLUTION is not additional to and shall not increase the INDEMNITY LIMIT FOR CLAIMS.
- 18.4.** Where such CLAIM arises from the INSURED'S negligent structural design or specification or failure to report a structural defect in a property and relates solely to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure then the maximum indemnity available to the INSURED in respect of each CLAIM or any SERIES OF CLAIMS shall not exceed the INDEMNITY LIMIT FOR CLAIMS.

For the purposes of this exclusion only asbestos is deemed not to be a contaminant or a pollutant.

19. Previous CLAIMS / CIRCUMSTANCE(S)

Any CLAIM or CIRCUMSTANCE(S) the INSURED was or should have been aware of prior to the inception of this policy, provided that this clause 19 of Section F shall not reduce the rights of the INSURED under (or otherwise affect the application of) Section E - the Special Institution Condition .

20. Supply of Goods

Any CLAIM arising out of the supply of any goods by the INSURED or products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by the INSURED. This exclusion shall not apply to project models or displays.

21. Surveys and Valuations (qualifications and experience)

Any CLAIM arising out of

- 21.1.** a survey, unless it was undertaken by:
- 21.1.1 Anyone who is:
 - a. A Fellow, a Professional Member, a Technical Member or an Associate Member of the Royal Institution of Chartered Surveyors (RICS); or
 - b. A Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA); or
 - c. A Fellow or Associate of the Architects and Surveyors Institute (ASI); or
 - d. A Fellow or Associate of the Faculty of Architects and Surveyors (FFAS); or
 - e. A Fellow or Associate of the Royal Institute of British Architects (RIBA); or
 - f. A Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS) or
 - 21.1.2. Anyone who has not less than five years' experience of such work or
 - 21.1.3. Any other person delegated by the INSURED to execute such work subject always to
 - a. supervision of such work by a person qualified in accordance with clause 21.1.1 or 21.1.2. above, or
 - b. agreement in writing having been obtained from INSURERS prior to cover being granted.

- 21.2.** a survey undertaken in connection with the production of an Energy Performance Certificate, unless it was undertaken by an energy assessor accredited by any organisation approved by the Department for Communities and Local Government to provide such accreditation.
- 21.3.** a survey undertaken in connection with the production of a Home Condition report, unless it was undertaken by anyone who has a Diploma in Home Inspection from the Award Body of the Built Environment.
- 21.4.** a valuation produced prior to 30 April 2011, unless it was undertaken by a person qualified in accordance with clause 21.1.1, 21.1.2 or 21.1.3 above.
- 21.5.** a valuation produced after 30 April 2011:
- 21.5.1 unless it was undertaken or supervised by a RICS Registered Valuer and in accordance with RICS Valuation Standards PS 1; or
- 21.5.2 where the RICS Valuation Standards do not apply, unless it was undertaken by a person qualified in accordance with clause 21.1.1, 21.1.2 or 21.1.3 above.

2.2. Trading Losses

Any CLAIM arising out of any trading losses or trading liabilities incurred by the INSURED including loss of any business or custom.

2.3. USA and Canada

Any CLAIM instituted or pursued in the United States of America, its territories and possessions or Canada (whether for the enforcement of a judgment or finding of a Court or tribunal of another jurisdiction or otherwise) or in which it is contended that the laws of the United States of America, its territories and/or possessions or Canada should or do apply or which involves the enforcement or attempted enforcement of a judgment or finding of a Court or tribunal of the United States of America, its territories and/or possessions or Canada.

2.4. Viruses

Any CLAIM arising directly or indirectly out of the transmission or receipt of:

- 24.1.** a virus, and/or
- 24.2.** a program and/or
- 24.3.** a code

that causes loss of or damage to any documents and/or COMPUTER SYSTEM and/or prevents or impairs any COMPUTER SYSTEM from performing and/or functioning accurately or properly.

2.5. War Risks

- 25.1.** Any CLAIM of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the CLAIM:

War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or any act of terrorism.

For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence and / or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political or religious or similar purposes including the intention to influence any government and / or to put the public, or any section of the public, in fear.

- 25.2.** This exclusion also excludes any CLAIM, costs or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any of the above.

If INSURERS allege that by reason of this exclusion, any CLAIM, cost or expense is not covered by this policy the burden of proving the contrary shall be upon the INSURED.

SECTION G DEFINITIONS AND INTERPRETATIONS

In this policy, headings and notes are for information purposes only and are not to be construed as part of the policy.

The following words and phrases are used in this policy and in certain instances the words may be used in the plural or singular form. Wherever they appear they are deemed to have the meaning set out below.

1. ASBESTOS SURVEYS

Shall mean either a management survey or a refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006, or any comparable survey or inspection, whether of commercial or residential land or property.

2. BODILY INJURY

Shall include death and injury, illness or disease whether bodily or mental.

3. CIRCUMSTANCE(S)

Shall mean an incident, occurrence, fact, matter, act or omission that might give rise to a CLAIM.

4. CLAIM

Shall mean:

- 4.1. any demand for damages or compensation from, or the assertion of a right against, the INSURED
- 4.2. any notice of intention, whether orally or in writing, to commence legal proceedings against the INSURED
- 4.3. any communication with the INSURED in whatsoever form invoking any Pre-Action Protocols as may be issued and approved from time to time.

5. COLLATERAL WARRANTY OR DUTY OF CARE AGREEMENT

Shall mean any written agreement that creates a duty of care by the INSURED to any party other than the INSURED'S direct client.

6. COMPUTER SYSTEM

Shall mean any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip integrated circuit, real-time clock system or similar device, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode, or any electronic documents utilised in the ownership, security and management of the INSURED'S electronic communication system, world-wide web site, internet site, intranet site, extranet site, or web address(es).

7. CONSULTANTS

Shall mean any person undertaking business on behalf of the INSURED and shall include any person, whether or not expressly described as a CONSULTANT, whose name and designation appear on any business stationery of the INSURED, or in business communications or material of any nature issued on behalf of the INSURED, or who is employed by the INSURED in offering surveying services to the public.

8. CYBER LIABILITY CLAIMS

Shall mean CLAIMS relating to:

- 8.1. defamation
- 8.2. malicious falsehood (including slander of title and slander of goods)
- 8.3. unintentional false attribution of authorship or passing off
- 8.4. unintentional infringement of intellectual property rights (including copyright, trademark, service mark, moral rights, patent rights, registered design), breach of confidence or infringement of any rights of privacy
- 8.5. unintentional misuse of any information which is either confidential or subject to statutory restrictions on its use
- 8.6. misuse by any EMPLOYEE of the INSURED'S electronic signature or external email

and arising in consequence of the conduct of PROFESSIONAL BUSINESS transacted via the internet, extranet and/or via the INSURED'S own web site, internet site, web address(es) and/or via the transmission of electronic mail or documents by electronic means.

9. DEFENCE COSTS

Shall mean all legal costs and expenses incurred with the prior written and continuing consent of the INSURERS (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation, defence or settlement of any CLAIM and/or CIRCUMSTANCE(S). It does not include the INSURED'S own costs and expenses.

10. EMPLOYEE

Shall mean any person acting under a contract of service with the INSURED, whether contracting directly with the INSURED or through an agency, in respect of the conduct of PROFESSIONAL BUSINESS by the INSURED.

11. ENVIRONMENTAL AUDIT

Shall mean an investigation which is specifically intended to assess whether there is actual POLLUTION present.

12. EXCESS

Shall mean the sum (if any) stated in the schedule at item 3.

13. INDEMNITY LIMIT

- 13.1. INDEMNITY LIMIT FOR CLAIMS shall mean the limit of indemnity stated in the schedule at item 4.a.
- 13.2. INDEMNITY LIMIT FOR CYBER LIABILITY shall mean the limit of indemnity stated in the schedule at item 4.b.
- 13.3. INDEMNITY LIMIT FOR ASBESTOS shall mean the limit of indemnity stated in the schedule at item 4.c.
- 13.4. INDEMNITY LIMIT FOR COURT ATTENDANCE COMPENSATION shall mean the limit of indemnity stated in the schedule at item 4.d.

- 13.5.** INDEMNITY LIMIT FOR AWARDS BY OMBUDSMEN shall mean the limit of indemnity stated in the schedule at item 4.e.
- 13.6.** INDEMNITY LIMIT FOR STATUTORY LIABILITIES shall mean the limit of indemnity stated in the schedule at item 4.f.
- 13.7.** INDEMNITY LIMIT FOR LEGAL REPRESENTATION COSTS shall mean the limit of indemnity stated in the schedule at item 4.g.
- 13.8.** INDEMNITY LIMIT FOR POLLUTION shall mean the limit of indemnity stated in the schedule at item 4.h.

14. INSURED

Shall mean each of the following

- 14.1.** the PRACTICE
- 14.2.** he partners and/or directors and/or members of the PRACTICE during the POLICY PERIOD
- 14.3.** former partners and/or former directors and/or former members of the PRACTICE
- 14.4.** (in respect of PROFESSIONAL BUSINESS undertaken on behalf of the PRACTICE only) those persons named as CONSULTANTS or former CONSULTANTS in the proposal form
- 14.5.** any retired partner, director or member of the PRACTICE remaining as a CONSULTANT to the PRACTICE
- 14.6.** (in respect of PROFESSIONAL BUSINESS undertaken on behalf of the PRACTICE only) any EMPLOYEE and/or former EMPLOYEE of the PRACTICE and any self-employed person
- 14.7.** the estate, heirs and executors and/or legal/personal representatives of those parties mentioned in 14.1 - 14.6 above in the event of their death, incapacity, insolvency or bankruptcy.

15. INSURERS

Shall mean the insurance company or insurance companies and/or Lloyd's syndicates subscribing to this policy and named in the Insurer Details.

16. POLICY PERIOD

Shall mean the period stated in the schedule.

17. POLLUTION

Shall mean POLLUTION or contamination by naturally occurring or man-made substances, forces or organisms or any combination of them whether permanent or transitory and however occurring.

18. PRACTICE

The practice or practices named in the schedule and their predecessors and any other practices which are disclosed to INSURERS in the proposal form.

19. PROFESSIONAL BUSINESS

Shall mean:

- 19.1.** those services (including the giving of advice) which are undertaken by members of the Royal Institution of Chartered Surveyors (or have otherwise been declared to INSURERS) and which are performed by or on behalf of the PRACTICE within the TERRITORIAL LIMITS
- 19.2.** services performed (including advice given) within the TERRITORIAL LIMITS by any INSURED whilst holding an individual appointment in respect of work connected with the PRACTICE where
- a. those services are undertaken by members of the Royal Institution of Chartered Surveyors or have otherwise been declared to INSURERS and
 - b. (if a fee was charged) the fee with respect to such services or advice is taken into account in ascertaining the income of the PRACTICE and has been disclosed to INSURERS.

20. RETROACTIVE DATE

Shall mean the date (if any) stated in the schedule at item 7.

21. SERIES OF CLAIMS

Shall mean a number of CLAIMS (whether made against or involving one or more persons or entities comprising the INSURED and whether made by the same or different claimants and whether falling under one or more insuring clauses of this policy) that arise directly or indirectly from the same originating cause.

22. TERRITORIAL LIMITS

Shall mean the United Kingdom (including the Channel Islands and the Isle of Man) and/or the Republic of Ireland or such other territorial limits as stated in the Schedule at item 5.