



## PROFESSIONAL INDEMNITY

### Design & Construct Aggregate including Costs and Expenses

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#### PROFESSIONAL INDEMNITY INSURANCE POLICY DESIGN AND CONSTRUCT

IN CONSIDERATION of the **INSURED** hereto having paid to **INSURERS** the premium set forth in the Schedule, **INSURERS** HEREBY AGREE to provide the insurance described in this Policy of Insurance for the **POLICY PERIOD** subject to all the terms and conditions contained herein or endorsed hereon.

#### PROVIDED THAT:

- a) the total liability of **INSURERS** shall not exceed the **LIMIT OF INDEMNITY** or such other limits of indemnity as may be substituted therefor by memorandum hereon or attached hereto
- b) this Policy, the Schedule (including any Schedule issued in substitution) and any Memoranda shall be considered one document and any word or expression to which a specific meaning has been attached shall bear such meaning wherever it appears
- c) where there is more than one insurer, insurers' obligations under this Policy are several and not joint and are limited solely to the extent of their individual subscriptions. 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.

#### INSURING CLAUSES

#### INSURERS agree:

##### 1. LIABILITY

To indemnify the **INSURED** against any **LOSS** arising from a **CLAIM** first made against them during the **PERIOD OF INSURANCE** which arises in the course of any **PROFESSIONAL BUSINESS** by reason of any:

- a) negligent advice, design, specification or omission to perform a professional duty;
- b) libel or slander
- c) breach of confidentiality
- d) infringement of intellectual property rights including patents copyrights or the unauthorised use of systems or designs
- e) civil liability under The Data Protection Act 1998 or similar or successor legislation

- f) civil liability as a result of 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.

## 2. DEFENCE COSTS AND EXPENSES

To indemnify the **INSURED** in respect of all reasonable costs and expenses incurred with the prior written consent of **INSURERS** in the defence or settlement of any **CLAIM** which falls to be dealt with under Insuring Clause 1 of this Policy.

## 3. LOSS OF DOCUMENTS

To indemnify the **INSURED** against reasonable costs and expenses necessarily incurred by the **INSURED** with the prior written approval of **INSURERS** in replacing or restoring **DOCUMENTS** either the property of or entrusted to or lodged or deposited with the **INSURED** named in the Schedule, having been discovered during the **PERIOD OF INSURANCE** to have been destroyed, damaged, lost or mislaid and which after diligent search by the **INSURED** cannot be found provided that:

- a) in respect of any computer systems records a back- up copy has been made and stored separately off site
- b) the liability of **INSURERS** for such costs and expenses shall not exceed GBP 50,000 for any one claim and GBP 150,000 in the aggregate during the **PERIOD OF INSURANCE** which shall be included and not in addition to the **LIMIT OF INDEMNITY**.

## 4. DATA PROTECTION PROSECUTION DEFENCE COSTS

To indemnify the **INSURED** in respect of costs and expenses incurred with the prior written consent of **INSURERS** in the defence of any criminal proceedings brought against the **INSURED** during the **PERIOD OF INSURANCE** arising out of any alleged offence under The Data Protection Act 1998 and the General Data Protection Regulation (GDPR) (EU) 2016/679 or similar or successor legislation provided that:

- a) such alleged offence arises out of the course of **PROFESSIONAL BUSINESS** and
- b) the liability of **INSURERS** for any such costs and expenses shall not exceed GBP 100,000 in the aggregate in any **PERIOD OF INSURANCE** which shall be included and not in addition to the **LIMIT OF INDEMNITY**.

## 5. PROSECUTION DEFENCE COSTS (INCLUDING UNDER THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015)

To indemnify the **INSURED** in respect of costs and expenses incurred with the prior written consent of **INSURERS** in the defence of any criminal proceedings brought against the **INSURED** and notified to **INSURERS** during the **PERIOD OF INSURANCE** arising out of any alleged breach of any statutory regulation relating to building or construction works provided that:

- a) such alleged breach arises out of the course of **PROFESSIONAL BUSINESS** carried on by or on behalf of the **INSURED** and
- b) **INSURERS** reasonably believe that representation could protect the **INSURED** against a **CLAIM** or loss or assist the **INSURED** in the defence of any subsequent or concurrent **CLAIM** which would otherwise be covered under the Policy and
- c) the liability of **INSURERS** for any such costs and expenses shall not exceed GBP 100,000 in the aggregate in any **PERIOD OF INSURANCE** which shall be included and not in addition to the **LIMIT OF INDEMNITY**.

## 6. LEGAL REPRESENTATION COSTS

To indemnify the **INSURED** in respect of costs and expenses incurred with the prior written consent of **INSURERS**, which are not otherwise indemnified as costs and expenses under Insuring Clause 2, for representation at any properly constituted hearing, tribunal or proceeding having the power to compel the attendance of the **INSURED** notified to **INSURERS** during the **PERIOD OF INSURANCE** provided that :

- a) **INSURERS** reasonably believe that representation could protect the **INSURED** against a **CLAIM** or loss or assist the **INSURED** in the defence of any subsequent or concurrent **CLAIM**, which would otherwise be covered under the Policy and
- b) the liability of **INSURERS** for any such costs and expenses shall not exceed GBP 100,000 in the aggregate in any **PERIOD OF INSURANCE** which shall be included and not in addition to the **LIMIT OF INDEMNITY**

## 7. COMPENSATION FOR COURT ATTENDANCE

To compensate the **INSURED** in the event of:

- a) the legal advisers acting on behalf of the **INSURED** with the consent of **INSURERS** requiring any director partner or principal of the **INSURED** or **EMPLOYEE** to attend any court tribunal arbitration adjudication mediation or other hearing as a witness or
- b) **INSURERS** requesting the attendance of any director partner or principal of the **INSURED** or **EMPLOYEE** as an interested party at any mediation in connection with a **CLAIM** made against the **INSURED** and notified under this Policy

**INSURERS** will provide compensation to the **INSURED** at the following rates for each day on which attendance is required:

- a) Directors, partners or principals of the **INSURED** GBP 250
- b) **EMPLOYEES** GBP 100

## EXTENSIONS

The following extensions automatically operate:

### MITIGATION OF LOSS

1. **INSURERS** agree to indemnify the **INSURED** against costs and expenses reasonably and necessarily incurred in respect of any action taken to mitigate a loss or potential loss that otherwise would be the subject of a **CLAIM** under Clause 1 of this Policy. The onus of proving that this extension is applicable shall be upon the **INSURED** who will be obliged to give prior written notice to **INSURERS** during the **PERIOD OF INSURANCE** of the intention to take action that will incur such costs and expenses. Any costs and expenses incurred without the prior written approval of **INSURERS** will not be indemnified.

### DUTY TO WARN

2. **INSURERS** agree to indemnify the **INSURED** against any **LOSS** arising from a **CLAIM** first made against the **INSURED** during the **PERIOD OF INSURANCE** as a direct result of a failure by the **INSURED** to warn any client of the **INSURED** of any inadequacy or deficiency (alleged or otherwise) in any design, specification, or formula supplied by that client or those clients to the **INSURED** in the conduct and execution of any **PROFESSIONAL BUSINESS** carried on by the **INSURED**.

## EXCESS CLAUSE

- a) **INSURERS** shall only be liable for that part of each and every claim made under the Policy which exceeds the **EXCESS**.

It is understood and agreed that if any payment is incurred by **INSURERS** which is the responsibility of the **INSURED**, then such amount shall be reimbursed to **INSURERS** by the **INSURED** forthwith on demand.

- b) The **EXCESS** shall be as specified in the Schedule for Insuring Clause 1. The Excess shall apply to each and every **LOSS** arising from a **CLAIM** made against the **INSURED** in respect of Insuring Clause 1.
- c) The **EXCESS** shall be applicable to costs and expenses payable under Insuring Clause 2
- d) In respect of Insuring Clauses 3, 4, 5 and 6 the **EXCESS** shall be GBP 1000 which shall apply to each and every loss under Insuring Clause 4, each and every prosecution under Insuring Clauses 5 and 6 and each and every hearing, tribunal or proceeding under Insuring Clause 6.
- e) In respect of Insuring Clause 7 the **EXCESS** shall be nil.

## SPECIAL CONDITIONS

### FAILURE TO MAKE A FAIR PRESENTATION

Notwithstanding the statutory remedies available to **INSURERS** in the event of a qualifying breach of the duty of **FAIR PRESENTATION**, **INSURERS** will not rely on any qualifying breach to avoid the Policy provided that:

- a) where the qualifying breach was neither deliberate nor reckless; and
- b) the **INSURED** agrees to (i) pay additional Premium requested by the **INSURERS**, if any, and (ii) any additional policy terms; and
- c) where the **INSURED** should have notified a **CLAIM** or **CIRCUMSTANCE** or loss to:
- i. the insurer on risk during any period of insurance prior to this **PERIOD OF INSURANCE**, or
  - ii. **INSURERS** during this **PERIOD OF INSURANCE** prior to obtaining an increase in the limit of indemnity, or other variation of terms,

**INSURERS** will indemnify the **INSURED** only to the extent the **INSURED** would have been indemnified under any more restrictive terms that would have been applied by either that insurer on risk prior to this **PERIOD OF INSURANCE**, or by **INSURERS** during this **PERIOD OF INSURANCE** prior to obtaining the increase in the limit of indemnity or variation of other terms.

In the case of ci) above, where there was no insurer on risk during a period of insurance prior to the **PERIOD OF INSURANCE**, no cover will be afforded under this Policy.

## EXCLUSIONS

The Policy shall not indemnify the **INSURED** against:

### 1. Other Insurance

- a) any **CLAIM** or loss where the **INSURED** is entitled to indemnity under any other Insurance(s) (except in respect of any excess beyond the amount which would have been payable under such Insurance had this Policy not been effected), or
- b) any claim which should be indemnified by a more specific policy of insurance

## 2. Prior Awareness

- a) any **CLAIM** or **CIRCUMSTANCE** or loss which has been notified under any policy of insurance attaching prior to the inception of this Policy, or
- b) any **CLAIM** or **CIRCUMSTANCE** or loss which was known to the **INSURED** or which should have been known to the **INSURED** at the inception of this Policy

## 3. Employment

- a) any **CLAIM** or loss arising out of any dispute between the **INSURED** and any present or former **EMPLOYEE** or any person who has been offered employment with the **INSURED**, in connection with such employment,
- b) any **CLAIM** or loss arising out of the death of or bodily injury to or disease of or psychological injury to or emotional distress or anguish or shock or sickness of any **EMPLOYEE**

## 4. Death or Bodily Injury

any **CLAIM** or loss arising out of the death, disease, illness or bodily or mental injury (other than emotional distress arising from any libel or slander), of any person, unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **PROFESSIONAL BUSINESS** carried on by the **INSURED**.

## 5. Property

- a) any **CLAIM** or loss arising out of the ownership, occupation, and/or control by the **INSURED** of any buildings, premises or land or that part of any building owned, leased, occupied or rented by the **INSURED**
- b) any **CLAIM** or loss arising out of loss of or damage to property, unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **PROFESSIONAL BUSINESS** carried on by the **INSURED**

## 6. Controlling Interest

any **CLAIM** brought by or on behalf of

- a) the **INSURED** or
- b) a firm, company or organisation controlling the **INSURED** or of which any director, partner or principal of the **INSURED** have control

unless such **CLAIM** originates from an independent third party.

## 7. Joint Venture

- a) any **CLAIM** or loss arising from any joint venture conducted with any third party other than in respect of any **CLAIM** or loss arising from **PROFESSIONAL BUSINESS**
- b) any **CLAIM** made by the other party to the joint venture unless such **CLAIM** originates from an independent third party

## 8. Vehicles

any **CLAIM** or loss arising out of the use of any motor vehicles, aircraft, watercraft or hovercraft by the **INSURED**, or any party acting for or on behalf of the **INSURED**

## 9. Dishonesty &/or Fraud

any **CLAIM** or loss arising out of any dishonesty &/or fraud of any person

**10. Trading Losses**

any **CLAIM** or loss arising out of any trading losses or trading liabilities incurred by any business managed or carried on by the **INSURED** including loss of any client account or business

**11. Contractual Liability and Collateral Warranties**

any **CLAIM** or loss arising out of liability assumed by the **INSURED** under any contractual agreement unless :

- a) the liability assumed by the **INSURED** does not exceed the amount of the **INSURED's** liability in the absence of such agreement; or
- b) the liability arises from a collateral warranty or duty of care agreement except that the Policy shall not indemnify the **INSURED** against:
  - i) any warranty or agreement under which the **INSURED** assumes a standard of care greater than the standard of reasonable skill and care normally expected in the **INSURED'S** profession
  - ii) any acceptance or guarantee of fitness for purpose
  - iii) any warranty or agreement which provides greater or longer lasting benefit than that given to the party with whom the **INSURED** originally contracted
  - iv) any express guarantee contractual penalty or liquidated damages

Notwithstanding this Exclusion **INSURERS** will indemnify the **INSURED** in respect of **CLAIMS** or costs and expenses payable under Insuring Clause 2 arising out of liability assumed under the standard Warranty Agreements published by the British Property Federation the Construction Industry Council or the Scottish Building Contract Committee

**12. Pollution**

any **CLAIM** or loss (including loss of value) arising directly or indirectly from **POLLUTION**. This Exclusion shall not apply where such **POLLUTION** is caused by a sudden, unintended and unexpected happening during the **PERIOD OF INSURANCE** and the **CLAIM** or loss arises directly from negligent advice, design, specification or omission to perform a professional duty in the course of any **PROFESSIONAL BUSINESS** carried on by or on behalf of the **INSURED**.

**13. Territorial Limits**

any **CLAIM** or loss arising out of work in connection with contracts carried out in the United States of America or Canada or their territories or possessions

**14. Legal Jurisdiction (CLAIMS)**

any legal proceedings brought against the **INSURED**:

- a) in the United States of America or Canada or their territories or possessions (whether for enforcement of judgement brought in another jurisdiction or otherwise) or in which it is contended that the laws of any country state or political sub-division of the United States of America or Canada or their territories and possessions Canada should apply; or
- b) outside the United States of America or Canada or their territories or possessions for the enforcement of judgement brought in the United States of America or Canada or their territories or possessions

**15. Radiation**

any **CLAIM** or loss whether directly or indirectly caused by, or contributed to, or arising from:

- a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

- b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof

#### 16. Retroactive Date

any **CLAIM** or loss where the cause of such **CLAIM** or loss occurred or was alleged to have occurred prior to the Retroactive Date specified in the Schedule,

#### 17. Asbestos and Mould

liability arising directly or indirectly from

- a) Asbestos, or any materials containing asbestos in whatever form or quantity; or
- b) The actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- c) Any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- d) Any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins.

This exclusion shall not apply where such **CLAIM** or loss arises from a negligent act, negligent error or negligent omission in the conduct of **PROFESSIONAL BUSINESS** carried on by or on behalf of the **INSURED**, provided that:

the **CLAIM** is:-

- a) for the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure; and/or
- b) made in respect of any diminution in value of structures arising out of a survey and/or valuation by the **INSURED** undertaken in accordance with RICS Practice Statements or standard market procedures relating to surveys and valuations

provided that:

- a) **INSURERS** shall only be liable for that part of any **CLAIM** which relates to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure and shall not include the cost of remedying and/or rectifying any loss or damage to the land from resulting pollution
- b) **INSURERS** shall not be liable for any such **CLAIM** arising out of or in any way involving death, bodily injury, disease, psychological injury, emotional distress, anguish, shock or sickness or fear of suffering death, bodily injury, disease, psychological injury, emotional distress, anguish, shock or sickness.
- c) the maximum amount payable in the aggregate in the **POLICY PERIOD** by **INSURERS** in respect of any such **CLAIMS** or losses shall not exceed GBP 250,000 which shall be included and not in addition to the **LIMIT OF INDEMNITY**

#### 18. Terrorism and War

liability arising directly or indirectly from Terrorism or War Risks

For the purposes of this exclusion:

- a) Terrorism means an act of any person acting on behalf of or in connection with any individual or organisation which carries out activities directed towards the overthrowing or influencing by force or violence of Her Majesty's government in the United Kingdom or any government de jure or de facto
- b) War Risks means war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military or usurped power

**19. Deliberate Act**

any **CLAIM** or loss arising from a deliberate act of the **INSURED**, or any party acting for or on behalf of the **INSURED**

**20. Market Fluctuation/Investment/Insurance/Financial Services Work**

any **CLAIM** or loss:

- a) relating to the financial return of any investment or the depreciation or loss of investments when such financial return depreciation or loss is as a result of normal or abnormal fluctuations in any financial stock commodity or other markets,
- b) relating to any warranty or guarantee relating to the financial return of any investment,
- c) directly or indirectly arising out of any investment of, or direct advice on the investment of, third party funds,
- d) the effecting or maintenance of insurance and/or in connection with the provision of finance and/or advice on financial matters, or any arrangement fee(s), interest, or finance charges of whatsoever nature, that the **INSURED** may be obligated or liable to pay in connection with any bank loans, overdrafts, mortgages, or financial arrangements obtained by the **INSURED** for whatever reason,
- e) directly or indirectly arising out of, or in way involving **FINANCIAL SERVICES WORK**

**21. Insolvency**

any **CLAIM** or loss arising from or in any way connected with the insolvency of the **INSURED**

**22. Fines Penalties and Punitive Damages**

any taxes fines penalties punitive exemplary or aggravated damages where such damages have been identified separately within any award of a court or the multiple portion of any **CLAIM**

**23. Goods and Products**

any **CLAIM** or loss arising out of the supply of any goods by or on behalf of the **INSURED** or products manufactured constructed altered repaired treated sold supplied or distributed by or on behalf of the **INSURED**,

**24. Directors and Officers and Trustees 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

**25. Virus Transmission**

any **CLAIM** or loss arising out of the transmission, receipt or impact of any computer virus

**26. Construction Cost Estimate**



any **CLAIM** or loss arising out of the estimate of construction cost(s), unless undertaken by a properly qualified quantity surveyor acting on behalf of the **INSURED** in the performance of the **PROFESSIONAL BUSINESS**.

**27. Defective workmanship/Materials**

any **CLAIM** or loss arising out of any defective workmanship or materials in construction works

**28. Patents and Trade Secrets**

any **CLAIM** or loss arising out of the infringement of any patent and/or use of any trade secret

**29. Unauthorised Use of Personal Data**

any **CLAIM** or loss arising out of any actual or alleged failure to obtain explicit agreement from any private individual before collecting, storing or sharing any of their personal information

**30. Specialist Sub-contractors/Consultants**

any **CLAIM** or loss arising out of any actual or alleged failure on the part of the **INSURED** to

- a) ensure that rights of recourse against specialist designers consultants or sub-contractors are not waived or otherwise impaired; and
- b) use reasonable endeavours to ensure that the specialist designers consultants or sub-contractors have in place Professional Indemnity Insurance cover to a limit of indemnity of at least a level equivalent to the **LIMIT OF INDEMNITY**.

## CONDITIONS

### The following conditions 1-5 are Conditions Precedent to Indemnity

**1. Admission of Liability**

The **INSURED** shall not admit liability for, or settle, any **CLAIM** or **CIRCUMSTANCE**, or incur any costs or expenses in connection therewith, without the prior written consent of **INSURERS** who shall be entitled at any time to take over and conduct in the name of the **INSURED** the defence settlement or investigation of any such **CLAIM** or **CIRCUMSTANCE**.

Nevertheless neither the **INSURED** nor **INSURERS** shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the **INSURED** and **INSURERS**) shall advise that such proceedings should be contested with the probability of success.

**2. Notification**

**2.1** The **INSURED** shall give to **INSURERS** as soon as reasonably practicable and in any event not later than 30 days after the end of the **PERIOD OF INSURANCE** details in writing of:

- a) any **CLAIM**, writ, summons and/or process relating to any **CLAIM** or previously notified **CIRCUMSTANCE** served upon them or made against them and/or
- b) the discovery of any loss to them which is likely to be the subject of indemnity hereunder.

**2.2** The **INSURED** shall give to **INSURERS** notice in writing as soon as reasonably practicable and in any event not later than 30 days after the end of the **PERIOD OF INSURANCE** of:

- a) any **CIRCUMSTANCE** of which the **INSURED** shall first become aware during the **PERIOD OF INSURANCE** or a loss,

- b) the discovery of a reasonable cause for suspicion of dishonesty or fraud on the part of a present or past director, partner or principal of the **INSURED** or **EMPLOYEE** whether potentially giving rise to a **CLAIM** or loss under this Policy or not,
- c) the receipt by the **INSURED** of notice of the intention to institute proceedings (including, but not limited to, legal proceedings, dispute resolution proceedings or disciplinary proceedings) against the **INSURED** or requiring the **INSURED** to attend any hearing, tribunal or proceedings.

Notice should be given to the address listed in the Schedule.

Provided notice has been given in accordance with this Condition then any subsequent **CLAIM** made against the **INSURED** or any subsequent loss discovered by the **INSURED** shall be deemed to have been made or discovered during the **POLICY PERIOD**.

### **3. Housing Grants, Construction and Regeneration Act 1996 ("the Act")**

#### **3.1 Special provisions relating to Notification and Conduct**

- a) The **INSURED** shall, in the manner appearing below, within one working day of any of the following:
  - (i) the receipt by the **INSURED** of any notice or intention to adjudicate ("**Adjudication Notice**");
  - (ii) the service by the **INSURED** of any **Adjudication Notice** on any other party;
  - (iii) upon the **INSURED** having reasonable grounds to believe that an **Adjudication Notice** may be served on them;

provided that, in each such case, the subject matter of the **Adjudication Notice** (or any part thereof) may, or does, give rise to a **CLAIM** against the **INSURED** which is likely to be indemnified under this Policy.

Notification pursuant to (i) above shall be effected only by notifying **INSURERS** within the specified timeframe.

b) **INSURERS** shall be entitled to appoint solicitors and/or experts to handle any adjudication on behalf of the **INSURED** and **INSURERS** shall have the conduct of all indemnifiable matters relating to any such adjudication. Subject to the provisions of Condition 3.2 below and the application of any costs-inclusive **EXCESS** payable by the **INSURED**, **INSURERS** shall pay all costs and expenses incurred in the appointment of such solicitors and/or experts.

c) The **INSURED** shall cooperate fully with **INSURERS** in relation to all matters that are required to be performed or done to comply with the requirements of the adjudicator and to respond to the matters referred to in the **Adjudication Notice**. The **INSURED** shall permit **INSURERS** and/or their appointed solicitors and/or experts immediate and unfettered access to all documents in the possession of the **INSURED** which are relevant to the subject matter of the **Adjudication Notice**. Without prejudice to the foregoing, the **INSURED** shall immediately provide to **INSURERS** the **Adjudication Notice**, the Referral Notice and all documents served thereunder.

d) The **INSURED** shall not at any time without the written consent of **INSURERS** agree with any other party that an adjudication shall finally determine any dispute.

e) The **INSURED** shall cooperate with **INSURERS** and take all practicable steps to assist **INSURERS** to pursue legal or arbitration or any other necessary proceedings to determine finally the matters referred to in the **Adjudication Notice** (or any part thereof) and/or to challenge the validity of any adjudicator's decision and/or to provide for any stay of proceedings in relation thereto.

f) **INSURERS'** acceptance of any notification by the **INSURED** under these provisions and the instruction of solicitors and/or experts to handle any adjudication on the **INSURED's** behalf shall in all cases be without prejudice to the Policy Terms and shall not be construed as a waiver by **INSURERS** of their rights to refuse indemnity to the

**INSURED** in respect of any part of an adjudicator's decision which does not fall within the scope of the Insuring Clauses of this Policy.

### 3.2 Mixed Awards

a) For the purposes of the Policy:

- (i) "the **AWARD**" means the sum which the **INSURED** become liable to pay by reason of any adjudicator's decision; and
- (ii) "the **INSURED PART**" means that part of the Award which is covered under the Policy Terms and for which **INSURERS** are required to indemnify the **INSURED**.

b) If only part of the **AWARD** is covered under the Policy Terms **INSURERS** shall only be required to indemnify the **INSURED** in respect of the **INSURED PART**.

c) If the **INSURED PART** exceeds 50% of the **AWARD** **INSURERS** will pay all costs and expenses incurred in handling the adjudication.

d) If the **INSURED PART** equals or is less than 50% of the **AWARD** **INSURERS** will pay only a rateable part of the costs and expenses incurred in handling the adjudication, to be calculated in the same proportion as the **INSURED PART** bears to the total amount of the **AWARD**.

### 3.3 Jurisdiction

Cover shall apply only to adjudications which take place pursuant to construction contracts entered into in the United Kingdom and which are subject to the appropriate United Kingdom law.

### 4. Co-operation

The **INSURED** shall give such full co-operation to **INSURERS** as they shall reasonably require.

### 5. Dishonesty and Fraud

5.1 the **INSURED** shall at the request and expense of **INSURERS** take all reasonable steps to obtain reimbursement from any person committing or condoning any dishonest or fraudulent act or omission or from their estates or legal representatives;

5.2 If the **INSURED** shall make any claim under this Policy fraudulently or knowing the same to be fraudulent as regards amount or otherwise, **INSURERS** may recover from the **INSURED** any sums that **INSURERS** have already paid to the **INSURED** in respect of the fraudulent claim. **INSURERS** may by notice to the **INSURED** treat this Policy as terminated with effect from the date of the **INSURED'S** fraudulent act and need not return any of the premium paid

### B. The following conditions are General Conditions

### 6. Subrogation

If any payment is made under this Policy in respect of a claim and **INSURERS** are thereupon subrogated to the **INSURED'S** rights of recovery in relation thereto it is agreed that **INSURERS** shall not exercise such rights against any **EMPLOYEE** unless such claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or dishonest, fraudulent, criminal or malicious omission of the **EMPLOYEE**.

## 7. Series Clause

Where a series of **CLAIMS** or losses arise from a breach of or repeated breaches of a single duty or identical duties owed and arising from a single cause all **CLAIMS** and losses within that series shall for the purpose of the **LIMIT OF INDEMNITY** and the **EXCESS** under this Policy be treated as a single claim.

## 8. Legal Jurisdiction (Policy)

The proper law for the interpretation of this Policy is English Law. The Courts of England and Wales alone shall have jurisdiction for hearing and determining any litigation arising out of or in connection with the interpretation of this Policy and any arbitration proceedings shall be heard and determined solely in England and in accordance with English Law and procedure.

## 9. Arbitration Clause

Any dispute or difference arising under the terms of this Policy of Insurance between the **INSURED** and **INSURERS** shall be referred to a Queen's Counsel for the purposes of arbitration whose decision will be final and binding such Queen's Counsel to be agreed upon by both parties or, in the absence of agreement, to be nominated by the Chairman of the Bar Council from time to time. **INSURERS** agree to pay the costs of such referral except in those instances where indemnity has been denied and the Queen's Counsel upholds **INSURERS'** decision.

## 10. Contracts (Rights of Third Parties) Act 1999

With regard to the Contracts (Rights of Third Parties) Act 1999 the **INSURED** and **INSURERS** agree and acknowledge that:

- a) this Policy does not, and is not intended to, confer any enforceable rights upon any Third Party, notwithstanding that **INSURERS** may, or may not, have acknowledged the interest of any Third Party,
- b) the parties to this Policy are, subject to agreement between **INSURERS** and the **INSURED** at their sole discretion, entitled to alter, amend, or cancel this Policy without reference to, or seeking the consent of, any Third Party, notwithstanding that **INSURERS** may, or may not, have acknowledged the interest of any Third Party,
- c) in the event that any Third Party seeks to enforce the provisions of this Policy in proceedings, **INSURERS** will have available to them the same defences or right of set-off as though such proceedings had been brought by the **INSURED**.

## 11. Relinquish Control by Payment of Claim

In connection with any **CLAIM**, **INSURERS** may at any time pay to the **INSURED** the **LIMIT OF INDEMNITY** less any sums already paid or any less amount for which such **CLAIM(S)** can be settled and thereupon **INSURERS** shall relinquish control of such **CLAIM(S)** and be under no further liability in connection therewith except for costs and expenses for which **INSURERS** may be responsible under this Policy in respect of matters prior to the date of such payment.

## 12. Premium Payment

The **INSURED** undertakes that the premium will be paid in full to **INSURERS** within 60 days of the inception date shown in the Schedule. If the premium due under this Policy has not been so paid to **INSURERS**, then **INSURERS** shall have the right to cancel this Policy ab initio.

It is agreed that **INSURERS** shall give not less than 14 days prior notice of cancellation to the **INSURED** in writing, via their broker, where applicable. If the premium due is paid in full to **INSURERS** before the notice period expires, notice of cancellation shall automatically be revoked

### 13. Entity to act as Agent

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

### 14. Sanctions

**INSURERS** shall not be deemed to provide cover or be liable to pay any **CLAIM** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **CLAIM** or provision of such benefit would expose **INSURERS** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

#### DEFINITIONS:

For the purpose of this Policy the following definitions are to apply:

#### 1. CIRCUMSTANCE:

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

#### 2. CLAIM:

shall mean a written communication asserting a legal liability on the part of the **INSURED**

#### 3. DOCUMENTS:

shall mean deeds, wills, agreements, maps, plans, records, books, letters, policies, computer system records, forms and documents of whatsoever nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, bank notes, currency notes and negotiable instruments).

#### 4. EMPLOYEE:

shall mean any person, including any trainee or consultant, other than a director partner or principal in the **INSURED** named in the Schedule, who is or has been under a contract of service or apprenticeship with the **INSURED** named in the Schedule, whilst employed by and under the control of the **INSURED** in connection with the **PROFESSIONAL BUSINESS**.

#### 5. EXCESS:

shall mean the amount for which the **INSURED** is responsible under this Policy.

#### 6. FAIR PRESENTATION:

shall have the same meaning as found in s.3(3) Insurance Act 2015 or similar or successor legislation.

#### 7. FINANCIAL SERVICES WORK:

shall mean regulated activities as more fully described in the Financial Services and Markets Act 2000 or the Central Bank and Financial Services Authority of Ireland Act 2004 or similar or successor legislation and regulations made thereunder.

#### 8. INSURED:

shall mean any of the following:

- a) the **INSURED(s)** named in the Schedule and the predecessors in business of the said entity as disclosed to **INSURERS**
- b) those persons named in the last completed **PROPOSAL** and any other person or persons who have subsequently become director(s)/partner(s)/principal(s) in the **INSURED(s)** named in the Schedule ) prior to the expiry of the **POLICY PERIOD**,
- c) any former director(s)/partner(s)/principal(s) of the **INSURED(s)** named in the Schedule ) for services performed for and on behalf of the **INSURED(s)** named in the Schedule including director(s)/partner(s)/principal(s) remaining as consultants to the **INSURED(s)** named in the Schedule,
- d) any **EMPLOYEE**
- e) the estates and/or legal representatives of any of the persons noted under b), c) or d) hereof in the event of their death, incapacity, insolvency, or bankruptcy,

**9. INSURERS:**

shall mean Arch Insurance (UK) Ltd

**10. LIMIT OF INDEMNITY:**

shall mean the amount specified in the Schedule being the maximum amount payable (including costs and expenses payable under Insuring Clause 2) by **INSURERS** in the aggregate in any **PERIOD OF INSURANCE** irrespective of the number of claimants or number of **INSUREDs**

**11. LOSS:**

shall mean any and all damages, compensation and interest, including claimants' costs and expenses, payable by an **INSURED** whether by judgement, arbitration award or otherwise or agreed in any settlement.

**12. POLICY PERIOD:**

shall mean the Period of Insurance specified in the Schedule.

**13. POLLUTION:**

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

**14. PROFESSIONAL BUSINESS:**

shall mean:

- a) design or specification,
- b) supervision of construction,
- c) Inspection of construction
- d) feasibility study,
- e) technical information calculation, or
- f) surveying

undertaken only by or on behalf of the **INSURED** and under the direction and direct control of **PROFESSIONAL STAFF**

For the avoidance of doubt **PROFESSIONAL BUSINESS** does not include supervision by the **INSURED**, or by its own specialist designers, consultants or sub-contractors of its own or its subcontractors' work where such supervision is undertaken in its capacity as a building or an engineering contractor.

**15. PROFESSIONAL STAFF:**

Qualified Architects, Engineers, Surveyors or other persons with professional qualification appropriate to the **PROFESSIONAL BUSINESS** or persons having not less than 5 years' experience in carrying out the **PROFESSIONAL BUSINESS** or any other person where specific agreement in writing has been obtained from **INSURERS** prior to cover being granted

**16. PROPOSAL:**

shall mean all the written information supplied by the **INSURED** in whatever format to **INSURERS** and/or any **STATEMENT OF FACT** document.

**17. STATEMENT OF FACT:**

shall mean the document which provides details of the **INSURED** and all material information relevant to this Policy and assumptions made by **INSURERS** about material information which the **INSURED** is required to correct with **INSURERS** as soon as possible if incorrect.

## PRIVACY NOTICE

### Personal information

Your insurance cover may include cover for individuals who are either insureds or beneficiaries under the policy ("*individual insureds*"). We and other insurance market participants collect and use relevant information about individual insureds to provide you with your insurance cover and to meet our legal obligations.

### Your Obligations

To enable us to use individual insureds' details in accordance with applicable data protection laws, we need you to provide those individuals with certain information about how we will use their details in connection with your insurance cover.

You agree to provide to each individual insured our personal information notice, which we have provided to you below, on or before the date that the individual becomes an individual insured under your insurance cover or, if earlier, the date that you first provide information about the individual to us.

You must promptly notify us if an individual insured contacts you about how we use their personal details in relation to your insurance cover so that we can deal with their queries.

### Minimisation and notification

We are committed to using only the personal information we need to provide you with your insurance cover. To help us achieve this, you should only provide to us information about individual insureds that we ask for from time to time.

### Personal information notice

#### ***The basics:***

We collect and use relevant information about you, to provide the insurance cover that benefits you and to meet our legal obligations. This information includes details such as your name, address and contact details and any other information that we collect about you in connection with the insurance cover from which you benefit.

In certain circumstances, we may need your consent to process certain categories of information about you (including sensitive details such as information about your health and any criminal convictions you may have). Where we need your consent, we will ask you for it separately. You do not have to give your consent and you may withdraw your consent at any time. However, if you do not give your consent, or you withdraw your consent, this may affect our ability to provide the insurance cover from which you benefit and may prevent us from providing cover for you or handling your claims.

The way insurance works means that your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjusters, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose such information in connection with the insurance cover that we provide and to the extent required or permitted by law.

Depending on the circumstances, the use of your personal information may involve a transfer of data outside the UK and the European Economic Area to countries that have less robust data protection laws. We will endeavour to ensure that any such transfer is made with appropriate contractual safeguards in place.

We will not keep your information for longer than necessary. Under normal circumstances, this will be for no longer than seven years after the insurance cover that benefits you ends, though for some types of insurance, we may be required to retain data for longer due to our legal or regulatory obligations

#### ***Other people's details you provide to us:***

Where you are providing us with personal information about a person other than yourself, you must provide this notice to them.

#### ***Where to find more details, contacting us and your rights:***

You have rights in relation to the information we hold about you, including the right to access a copy of your information (and have this transferred to a third party) or request rectification of your information if it is inaccurate or incomplete. If you wish to exercise your rights or would like more details about how we use your personal information please see our full privacy notice, which is available online at [www.archcapgroup.com](http://www.archcapgroup.com) or contact us using the details provided.