

## PROFESSIONAL INDEMNITY

### RICS 2021

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- (1) 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.
- (2) Certain words in this policy are printed in capitals. Those words have been defined in section H of the policy and bear the meaning defined in that section.
- (3) 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 (other than with regard to Section F. Run-off Cover) 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) 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.
  - b) any award by an arbitrator or tribunal of arbitrators (whether under The Royal Institution of Chartered Surveyors Dispute Resolution Service 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.

##### 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 G, 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 GBP 200
  - b) any EMPLOYEE GBP 100
  - c) other relevant party up to GBP 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:
- a) The Consumer Protection from Unfair Trading Regulations 2008; and/or
  - b) The Business Protection from Misleading Marketing Regulations 2008; and/or
  - c) Estate Agents Act 1979, and/or
  - d) The Health and Safety at Work etc Act 1974, and/or
  - e) The Health and Safety at Work (Northern Ireland) Order 1978, and/or
  - f) The Construction (Design and Management) Regulations 2015, and/or
  - g) The Corporate Manslaughter and Corporate Homicide Act 2007 and/or
  - h) The Bribery Act 2010; and/or
  - i) The Data Protection Act 2018; and/or
  - j) similar, prior or successor legislation to that detailed in a. to i. 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:

- a) 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
  - i. CLAIM first made and/or
  - ii. 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
- b) 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

1. 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.
2. 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 address identified in the Schedule.

## **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 under the policy knowing the same to be false or fraudulent, INSURERS:

- a) are not liable to pay that claim; and
- b) may recover from the Insured all previous payments made by INSURERS in respect of that claim; and
- c) may by notice to the INSURED treat the policy as having been terminated with effect from the date of such false or fraudulent claim. INSURERS shall not be liable to the INSURED in respect of CLAIM made or the notification of a CIRCUMSTANCE from the date of the fraudulent act. Such cancellation will not affect any liability the INSURER may have in respect of any CLAIM notified prior to the notification of such false or fraudulent claim. The INSURER will not be obliged to return any premium.

## **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. 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.

#### **5. 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.

#### **6. Adjudication**

The INSURED agrees:

- 6.1. 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.
- 6.2. 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.

#### **7. 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.

#### **8. Choice of law, Disputes and Jurisdiction**

- 8.1. This policy shall be governed by and construed in accordance with the laws of England and Wales.
- 8.2. 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.
- 8.3. 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.

- 8.4. 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.

**9. 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.

**10. Premium Payment**

The INSURED undertakes that premium will be paid in full to INSURERS within 60 days of inception of this Policy (or in respect of instalment premiums, when due).

If the premium due under this Policy has not been so paid to INSURERS by the 60<sup>th</sup> day from the inception of this Policy (and in respect of instalment premiums, by the date they are due) INSURERS shall have the right to cancel this Policy by notifying the INSURED via the broker in writing. In the event of cancellation, premium is due to INSURERS on a pro rata basis for the period that INSURERS are on risk but the full Policy premium shall be payable to INSURERS in the event of a loss or occurrence prior to the date of termination which gives rise to a valid CLAIM under this Policy.

It is agreed that INSURERS shall give not less than 15 days prior notice of cancellation to the Insured via the broker. If the premium due is paid in full to INSURERS before the notice period expires, notice of cancellation shall automatically be revoked. If not, the Policy shall automatically terminate at the end of the notice period.

Unless otherwise agreed, the leading INSURER (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all INSURERS participating in this contract.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not effect the other provisions of this clause which will remain in full force and effect.

Where the premium is to be paid through a London Market Bureau, payment to INSURERS will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

## 11. International Trade Sanctions

The INSURER shall be deemed not to provide cover and shall not be liable to pay any CLAIM or provide any benefit under this policy to the extent that the provision of such cover, payment of such CLAIM or provision of such benefit would expose the INSURER 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, Australia or United States of America.

## SECTION E SPECIAL INSTITUTION CONDITION

The Insurance Act 2015 ("the Act") has introduced a duty on the INSURED that before the INSURED enters into a contract of insurance, the INSURED must make to INSURERS a fair presentation of the risk. This clause varies the terms of the Act in relation to the INSURERS' remedy for a breach of duty of fair presentation.

1. Where there has been a failure by the INSURED to comply with their duty to make a fair presentation of the risk to INSURERS and such failure would entitle the INSURERS to avoid this policy, the INSURERS agree only to exercise their right to avoid this policy if the INSURED has admitted, or INSURERS have established by way of a final adjudication in arbitration proceedings between the INSURERS and the INSURED commenced in accordance with clause 9 of Section D of this policy (including any appeal therefrom), that the INSURED failed to make a fair presentation of the risk with the intention of misleading or deceiving INSURERS. Until such final adjudication (including any appeal therefrom) has been concluded, INSURERS shall continue to honour their obligations, and make payment, under the policy.

Where the INSURERS exercise their right to avoid the policy under this clause the INSURERS may refuse all claims and need not return any of the premium paid by the INSURED.

2. In any case where there has been a failure by the INSURED to comply with their duty to make a fair presentation of the risk to the INSURERS and where clause 1 of this Section E does not apply:

- 2.1 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 but did not do so,

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), the 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; and

- 2.2 regardless of whether or not clause 2.1 applies, where the INSURERS can demonstrate that, by reason of the INSURED'S failure to comply with their duty to make a fair presentation of the risk, the INSURERS would not have written the policy, or would have written the policy but on different terms and conditions, then the INSURERS shall be entitled to charge a just and equitable additional premium in light of the prejudice caused to the INSURERS' interests by such failure to comply with that duty.
  - 2.3 otherwise, save as set out in 2.1 and 2.2 above, the INSURERS shall not be entitled to any remedy by reason of the INSURED's failure to comply with their duty to make a fair presentation of the risk where such failure was neither deliberate or reckless.
3. 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 is just and equitable having regard to the prejudice caused to INSURERS' interests by the breach or non-compliance.



## SECTION F RUN-OFF

In the event that the PRACTICE ceases during the POLICY PERIOD and has not obtained succeeding insurance which complies with the Royal Institution of Chartered Surveyors approved minimum professional indemnity policy wording and Professional Indemnity Requirements Version 4 with effect from 01 April 2019, this policy will extend to indemnify the INSURED for any CLAIM or CLAIMS made against the INSURED by any natural person acting for purposes outside his trade, business or profession and arising from errors or omission of the INSURED prior to the PRACTICE ceasing for an additional period of six years from the day immediately following the expiry date as stated in the schedule (The Run-off Period).

The INDEMNITY LIMIT for Section F. Run-off Cover shall be GBP 1,000,000 any one claim and in the aggregate for the run-off period stated above.

Section F. Run-off can not be cancelled for non-payment of premium.

## SECTION G EXCLUSIONS

Save as expressly provided in this policy, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a COMPUTER SYSTEM

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. Computer Virus**

any CLAIM directly arising from the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured.

#### **5. Contractual Liability**

- 5.1. 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

- 5.2. 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.

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 or
- 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.

- 5.3 any liability incurred where the INSURED has relied upon the EWS 1 form (or as revised) and the valuation report does not exclude liability to the lender or any person deriving title to the mortgage for any losses or potential losses arising directly and solely from the valuation being provided in reliance upon the EWS 1 form.

This exclusion (5.3 above) shall only apply to all valuations undertaken on or after 01 May 2020.

#### **6. Controlling Interest**

Any CLAIM brought by either:

- 6.1. any entity in which the INSURED exercises a controlling interest or
- 6.2. 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.

#### **7. Cyber Act**

any loss, costs or expenses incurred by the INSURED to:

- a) determine the existence, extent and cause of a CYBER ACT;

- b) contain or stop a CYBER ACT (including a privacy breach);
- c) implement remedial action arising from or connected with the CYBER ACT;
- d) comply with any notification obligations, including to regulators, third parties and/or individuals, including to notify and protect (including via credit and identity monitoring services) persons whose personal data was accessed as a result of the CYBER ACT.

**8. 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.

**9. 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:

- 9.1. 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;
- 9.2. 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

**10. 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.

**11. 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. including but not limited to any fines or penalties for a breach of any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or government entity.

**12. Infrastructure**

any CLAIM directly arising from:

- a) the partial or total unavailability of any COMPUTER SYSTEM owned or controlled by the INSURED; or
- b) failure or interruption of service provided:
  - i. to the insured or any other party acting on behalf of the insured by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the INSURED;
  - ii. by any utility provider, but only where such failure or interruption of service impacts a COMPUTER SYSTEM owned or controlled by the insured or any other party acting on behalf of the insured.

This exclusion shall not apply to any CLAIM arising out of the conduct of the PROFESSIONAL BUSINESS.

**13. 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:

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

**14. 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.

**15. 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.

**16. Liability involving transport or property owned by the INSURED**

Any CLAIM arising out of:

- 16.1. the ownership, possession or use by or on behalf of the INSURED of any aircraft, watercraft, hovercraft, motor vehicle or trailer
- 16.2. 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.

**17. 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.

**18. 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:

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

**19. Ombudsman**

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

**20. 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.

## **21. 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

22.1 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.

22.2 INSURERS shall not be liable for any such CLAIM directly or indirectly resulting from ENVIRONMENTAL AUDITS carried out by the INSURED

22.3 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.

22.4 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.

## **23. Previous CLAIMS / CIRCUMSTANCE(S)**

any CLAIM:

- a) the INSURED was or should have been aware of prior to the inception of this policy (including any CLAIM notified under any insurance which was in force prior to the inception of this policy and accepted as notified by the insurer of that policy);
- b) arising out of any CIRCUMSTANCE which has been notified under any insurance which was in force prior to the inception of this policy and the insurers of that policy have accepted that the CIRCUMSTANCE was properly notified to that policy;

provided that this clause 19 of Section G shall not reduce the rights of the INSURED under (or otherwise affect the application of) Section E - the Special Institution Condition.

## **24. Retroactive Date**

any CLAIM notified under the terms of this policy that arises out of the conduct of PROFESSIONAL BUSINESS prior to the said RETROACTIVE DATE.

## **25. 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.

## **26. Surveys and Valuations (qualifications and experience)**

Any CLAIM arising out of a survey or valuation , unless it was undertaken by:

26.1. 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
- g) a RICS Registered Valuer in accordance with the RICS Valuation Standards; or

26.2 anyone who has not less than five years' experience of such work or

26.3 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 22.1 or 22.2 above, or
- b) agreement in writing having been obtained from INSURERS prior to cover being granted

**27. Trading Losses**

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

**28. 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.

**29. War Risks**

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.

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.

## **SECTION H 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 a third party, or the assertion of a right against, the INSURED
- 4.2. any notice of intention, whether orally or in writing, from a third party to commence legal proceedings against the INSURED
- 4.3. any communication from a third party 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**

COMPUTER SYSTEM means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility

### **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 ACT**

CYBER ACT means damage to, or destruction of, computer programs, software or other electronic data stored within a COMPUTER SYSTEM caused by an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any COMPUTER SYSTEM.

**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.

**13. INDEMNITY LIMIT**

- 13.1. INDEMNITY LIMIT FOR CLAIMS shall mean the limit of indemnity stated in the schedule.
- 13.2. INDEMNITY LIMIT FOR ASBESTOS shall mean GBP 250,000 in the aggregate.
- 13.3. INDEMNITY LIMIT FOR COURT ATTENDANCE COMPENSATION shall mean GBP 10,000 in the aggregate.
- 13.4. INDEMNITY LIMIT FOR AWARDS BY OMBUDSMEN shall mean GBP 250,000 for any single award or series of awards attributable to the same originating cause.
- 13.5. INDEMNITY LIMIT FOR STATUTORY LIABILITIES shall mean GBP 100,000 in the aggregate.
- 13.6. INDEMNITY LIMIT FOR LEGAL REPRESENTATION COSTS shall mean GBP 10,000 in the aggregate.
- 13.7. INDEMNITY LIMIT FOR POLLUTION shall mean the limit of indemnity stated in the schedule, but on an aggregate basis only.

**14. INSURED**

Shall mean each of the following

- 14.1. the PRACTICE
- 14.2. the 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 12.1-12.6 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.

**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) provided to a third party, 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 other than the completion of the EWS 1 (or as revised) unless specifically declared to, and agreed by, INSURERS.
- 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) where 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.

**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.