

**CHOICE  
INSURANCE**



 **Aspen**

**Aspen Primary Policy Wording**  
**Professional Liability Insurance**  
A&E wording – UK AOC costs exclusive

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## Important Information about your Policy

### Underwriters

Aspen Syndicate 4711 at Lloyds of London (company No.06459521) is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority (register number 478192). Registered office: 30 Fenchurch Street, London, EC3M 3BD, United Kingdom.

### Complaints

Our aim is to ensure that all aspects of your insurance are dealt with promptly, efficiently and fairly. At all times we are committed to providing you with the highest standard of service. If you are unhappy in any way, please contact your broker in the first instance.

If you wish to make a complaint directly, you can do so at any time by referring the matter to either Aspen Managing Agency or the Complaints team at Lloyd's.

The contact details for Aspen Managing Agency is:

Address: The Complaints Department  
Aspen Managing Agency  
30 Fenchurch Street  
London  
EC3M 3BD

Email: [complaints@aspen-insurance.com](mailto:complaints@aspen-insurance.com)  
Telephone: +44 (0)20 7184 8841

The address of the Complaints team at Lloyd's is:

Complaints  
Lloyd's  
One Lime Street  
London EC3M 7HA

Telephone: 020 7327 5693  
Fax: 020 7327 5225  
E-mail: [complaints@lloyds.com](mailto:complaints@lloyds.com)  
Website: [www.lloyds.com/complaints](http://www.lloyds.com/complaints)

Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint - How We Can Help" available at [www.lloyds.com/complaints](http://www.lloyds.com/complaints) and are also available from the above address.

If you remain dissatisfied after Lloyd's has considered your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service (FOS).

The contact details for the FOS are: The Financial Ombudsman Service, Exchange Tower, London E14 9SR. Telephone 0800 023 4567 (calls to this number are free from "fixed lines" in the UK) or 0300 123 9123 (calls to this number are charged at the same rate as 01 and 02 numbers on mobile phone tariffs in the UK). Email [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk).

The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. You can find more information on the FOS at [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

If you have purchased your policy online you can also make a complaint via the EU's online dispute resolution (ODR) platform. The website for the ODR platform is: <http://ec.europa.eu/odr>

LMA9123 20 May 2016

## Policy

This Policy is a contract of insurance between the **Insured** and **Underwriters**. The Policy contains all the details of the cover that **Underwriters** provide. This Policy consists of and must be read together with any Endorsements that are applicable. This Policy is not complete unless it is signed and agreed by Underwriters.

## Insurance Act 2015

The Insurance Act 2015 ('the Act') applies to this policy and the terms of this policy will in most cases be no less advantageous to the **insured** than the Act would otherwise provide; in the event of any apparent conflict between the terms of this policy and the Act, the Act will prevail. There are, however, certain terms which, while capable of being more advantageous to the **insured** than the Act would otherwise provide, may in certain cases be less advantageous to the **insured** than the Act would provide.

## Series Clause

Where a series of **claims** or losses arises 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**.

## Interpretation

- a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this Policy;
- b) if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall remain in full force and effect;
- c) the headings herein are for reference only and shall not be considered when determining the meaning of this Policy.

## Governing Law and Disputes

Any dispute or disagreement between the **Insured** and the **Underwriters** arising out of or in connection with this Policy shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon by the **Insured** and the **Underwriters** or failing agreement to be appointed by the Chairman for the time being of the Bar Council) whose decision shall be final and binding on both parties.

This Policy shall be governed by and construed according to the laws of England and Wales. The courts of England and Wales shall have exclusive jurisdiction of the parties hereto on all matters relating to this Policy.

## Definitions

In this Policy of insurance all terms in bold print shall have the meaning given in this section

<b>Circumstance</b>	A situation which is likely to give rise to a <b>Claim</b> , including but not limited to all situations where the <b>Insured</b> has received any communication, written or oral, showing that any other person or party intends to make a <b>Claim</b> .
<b>Claim(s)</b>	Any demand(s) from, or the assertion(s) of any right(s) against, any <b>Insured</b> which is (are) communicated to the <b>Insured</b> .
<b>Computer System</b>	Computer data processing equipment media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode.
<b>Defence Costs and Expenses</b>	Legal costs and expenses reasonably incurred by or on behalf of the <b>Insured</b> with the prior written and continuing consent of <b>Underwriters</b> . It does not include the <b>Insured</b> 's own costs and expenses or the costs and expenses of any work done by any director or <b>Employee</b> of the <b>Insured</b> .
<b>Dishonesty</b>	Any actual or alleged dishonest or fraudulent act, dishonest or fraudulent error or dishonest or fraudulent omission.
<b>Document</b>	<b>Document</b> of whatsoever nature including <b>Computer System</b> records arising from the <b>Professional Business</b> of the <b>Insured</b> which belong to the <b>Insured</b> or which have been entrusted to the <b>Insured</b> in the ordinary course of the <b>Professional Business</b> by the <b>Insured</b> , but excluding stamps, bearer bonds, coupons, bank notes, currency note, negotiable instruments and the like.
<b>Employee</b>	Person, other than a partner, member, principal or director of the <b>Insured</b> who is or has been under a contract of service or apprenticeship, supplied to, hired, or borrowed by the <b>Insured</b> , or under any work experience or similar scheme, whilst employed or engaged by and under the control of the <b>Insured</b> in connection with the <b>Professional Business</b> of the <b>Insured</b> .
<b>Excess</b>	The amount which is to be borne by <b>Insured</b> (the <b>Underwriters</b> shall only be liable to the extent that any liability exceeds the <b>Excess</b> ) as stated in the Policy <b>Schedule</b> .
<b>Extranet</b>	A restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or other transfer medium.
<b>Insured</b>	Firm(s) and/or company(ies) and/or limited liability partnership(s) stated in of the <b>Schedule</b> ; its (or their) partners, members, principal(s) and directors.
<b>Internet</b>	The worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or other transfer medium.
<b>Intranet</b>	One or more inter-connected networks with restricted access to the <b>Insured</b> via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or other transfer medium.

<b>Limit of indemnity</b>	The amount payable by <b>Underwriters</b> under this Policy as stated in the Policy <b>Schedule</b> , in respect of each <b>Claim</b> provided always that where more than one <b>Claim</b> arises from the same original cause or single source or event, all such <b>Claims</b> shall be deemed to be one <b>Claim</b> and only one <b>Limit of Indemnity</b> shall be payable in respect of the aggregate of all such <b>Claims</b> for the <b>Period of Insurance</b> .
<b>Negligent act</b>	A negligent error or negligent omission.
<b>Period of insurance</b>	The period stated in the Policy <b>Schedule</b>
<b>Pollution</b>	Any actual, alleged or threatened <b>Pollution</b> , seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to, smoke, vapour, soot, dust, fibres, bacteria, fumes, acids, alkalis, chemicals and waste or any actual or alleged advice given or services performed in relation to any irritant or contaminant, including but not limited to testing, monitoring, removal, treatment, containment, cleaning up, neutralising or detoxification thereof.
<b>Premium</b>	Total amount stated in the Policy <b>Schedule</b>
<b>Professional Business</b>	Professional services performed or the advice given (in relation to those activities declared in the <b>Proposal</b> )
<b>Proposal</b>	The form bearing the date stated in Item 2 of the <b>Schedule</b> and/or other means of application for this Insurance and any information supplied in support thereof.
<b>Schedule</b>	The document entitled " <b>Schedule</b> " that relates to this Policy.
<b>Terrorism</b>	An act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or business and/or to put the public, or any section of the public, in fear.
<b>Underwriter(s)</b>	Aspen Syndicate 4711 and any other participating Lloyd's syndicates and/or Insurance companies. Where reference is made to Insurer(s) within this Policy it is deemed to mean <b>Underwriter(s)</b> .

## Basis of Insurance

On payment of the **Premium** stated in the **Schedule** by the **Insured** to the **Underwriter**, the **Underwriter** will, subject to the provisions of this Policy, indemnify the **Insured** as provided for within the Insuring Clauses section of this Policy.

The **Proposal** shall form the basis of this insurance contract and is incorporated herein.

## Insuring Clauses

1 **Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** against all sums which the **Insured** shall become legally liable to pay as a result of any **Claim** first made against the **Insured** and notified during the **Period of Insurance** in respect of any Civil Liability caused by the conduct of the **Insured** in the execution of their **Professional business**.

### 2 Loss of Documents

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** for reasonable and necessary costs, incurred with **Underwriters** prior written and continuing consent, of repair, replacement or reconstitution of any **Document** which has been unintentionally destroyed, damaged, lost or mislaid, during the **Period of Insurance** (and which after diligent search can not be found) the occurrence of which has been notified to **Underwriters** during the **Period of Insurance**. However, the **Insured** will not be indemnified in relation to any **Document** which is kept in magnetic or electronic form unless such **Document** is duplicated and the duplicate is stored separately off site as a back-up.

### 3 Dishonesty of Employees

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** against all sums which the **Insured** shall become legally liable to pay as a result of any **Claim** first made against the **Insured** and notified during the **Period of Insurance** in respect of any **Dishonesty** on the part of any **Employee** (other than any director, principal or partner).

### 4 Defence Costs and Expenses

**Underwriters** shall indemnify the **Insured** for all **Defence Costs and Expenses** in addition to the **Limit of Indemnity** stated in the Policy **Schedule** with **Insurers** prior written consent in:

- a) the defence, investigation and settlement of any **Claim** which is covered by this Policy;
- b) the investigation of any **Circumstance** which is covered by this Policy;

However, if a payment in excess of the amount of indemnity available under this Policy has to be made to dispose of a Claim made against the Insured the Underwriters' liability in respect of such costs and expenses shall be such proportion of the total costs and expenses incurred as the amount of the indemnity available under this Policy bears to the total amount required to dispose of the Claim.

### 5 Prosecution Defence Costs

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** for **Defence Costs and Expenses** incurred with the **Underwriters'** prior written consent in the investigation and defence of criminal and/or tribunal proceedings and any inquiry where the subject matter of such proceedings is, in the opinion of **Underwriters**, the same as a **Claim**, or potential **Claim** which is covered by this Policy subject to the **Insured** accepting the solicitor and barrister nominated by **Underwriters** to represent the **Insured**.

**Underwriters** shall immediately cease to indemnify the **Insured** for **Defence Costs and Expenses** covered by this clause if the interrelated **Claim** or potential **Claim** covered by this Policy is resolved;

## 6 Compensation for Witness Attendance

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** for the cost of attendance at any Court, Arbitration or Adjudication hearing by any partner, principal, member, director, **Employee** or third party as a witness where such attendance is required by the **Insured's** legal advisers and arises out of a **Claim** which is covered by this Policy.

## 7 Construction (Design and Management)

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** :

- 7.1 For **Claims** brought against the **Insured** arising out of the Construction (Design and Management) Regulations 1994 and/or 2007 insofar as such **Claim** is in respect of liability which would otherwise be the subject of indemnity under this Policy.
- 7.2 Against any costs and expenses incurred in the defence of any criminal proceedings brought against the **Insured** arising from any alleged breach of the Construction (Design and Management) Regulations 1994 and/or 2007, provided such alleged breach arises in the course of the **Insured's Professional Business** and where **Underwriters** believe that defending such proceedings could protect the **Insured** against any subsequent or concurrent civil action for which cover is provided hereunder.

## 8 Breach of Confidentiality

**Underwriters** shall indemnify the **Insured** subject to **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** for any unintentional breach of confidentiality by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**.

## 9 Libel & Slander

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** for libel and slander arising from written or verbal communication made in good faith by the **Insured** or by any **Employee**.

## 10 Infringement of Copyright

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** for any unintentional infringement of copyright, design right, registered design, trademark, or patent committed by the **Insured** or by any **Employee** or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**.

## 11 Joint Venture Liability

**Underwriters** shall indemnify the **Insured** subject to the **Limit of Indemnity** and **Excess** stated in the Policy **Schedule** for any association or joint venture arrangement by reason of **Negligent Act** committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured** other than their joint venture partner(s). **Underwriters** shall not be liable to pay any **Claim** made by any associated party within the association or joint venture unless such **Claim** emanates in its entirety from a wholly independent third party.

This coverage shall sit excess of any specific joint venture or project specific policies purchased by the **Insured**.



## Limit of Indemnity

- 1 In respect of Insuring Clause 1 the **Limit of Indemnity** shall be the amount stated in the **Schedule** in respect of each **Claim** provided always that where more than one **Claim** arises from the same original cause or single source or event, all such **Claims** shall be deemed to be one **Claim** and only one **Limit of Indemnity** shall be payable in respect of the aggregate of all such **Claims** for the **Period of Insurance**.
- 2 All **Claims** arising out of
  - a) the same originating cause or source, or
  - b) the same act, error or omission, or series of acts, errors or omissions that are in any way similar or relatedare deemed to be one **Claim** for the purposes of the **Limit of Indemnity** only PROVIDED ALWAYS that this clause does not operate to provide cover under this Policy for any **Claim** that would not be covered by this Policy but for this clause.
- 3 In respect of Insuring Clause 2 the maximum amount payable by **Underwriters** under this Policy shall be GBP100,000.
- 4 In respect of Insuring Clause 3 the maximum amount payable by **Underwriters** under this Policy shall not exceed GBP250,000 in the aggregate.
- 5 In respect of Insuring Clause 5 the maximum amount payable by **Underwriters** under this Policy shall be GBP100,000.
- 6 In respect of Insuring Clause 6 the maximum amount payable by **Underwriters** under this Policy shall be GBP 10,000 any one **Claim** in the aggregate at the rates of a) GBP 300 per day or part day for any partner, principal, member, director or third party; and b) GBP 200 per day or part day for any **Employee**.
- 7 In respect of Insuring Clause 7.2 the maximum amount payable by **Underwriters** under this Policy shall be GBP 100,000.
- 8 In respect of Insuring Clause 8 the maximum amount payable by **Underwriters** under this Policy shall be GBP 100,000.
- 9 In respect of Insuring Clause 10 the maximum amount payable by **Underwriters** under this Policy shall be GBP 100,000.
- 10 In respect of Insuring Clauses 7.1, 9 and 11 the maximum amount payable by **Underwriters** will be the same as for Insuring Clause 1.
- 11 The sub-limits in 3, 4, 5, 6, 7, 8, 9 and 10 above and any further sub-limits provided by endorsement to the Policy shall be part of and not in addition to the **Limit of Indemnity**.

## Excess

- 1 In respect of all Insuring Clauses apart from 2, 5, 6 and 7.2 the **Excess** shall be the amount stated in the **Schedule**. A separate **Excess** shall apply to each and every **Claim**.
- 2 In respect of Insuring Clause 2, the **Excess** shall be GBP250. A separate **Excess** shall apply to each and every separate **Claim** Notified.
- 3 In respect of Insuring Clause 5, the **Excess** shall be GBP2,500. A separate **Excess** shall apply to each and every separate **Claim** Notified
- 4 In respect of Insuring clause 6, the **Excess** shall be Nil.
- 6 In respect of Insuring Clause 7.2, the **Excess** shall be GBP1,000. A separate **Excess** shall apply to each and every separate **Claim** Notified
- 7 Payment of the **Excess** by the **Insured** is a condition precedent to the **Insured** being indemnified by **Underwriters**. If **Underwriters** at their election make any payment which is the responsibility of the **Insured** under this Clause 4, then the **Insured** shall forthwith repay such sum to **Underwriters** and, if the **Insured** fails to repay such sum, **Underwriters** shall have the right to set off such sum against any other monies due from **Underwriters** to the **Insured** under this policy.

# Notification and Claims Conditions

## 1 Notification

The **Insured** shall as a condition precedent to their right to be indemnified under this Policy give notice to **Underwriters** as soon as practicable and in any event within 14 (fourteen) days of receipt and during the **Period of Insurance** of:

- a) any **Claim** made against the **Insured**; or
- b) any **Circumstance**; or
- c) receipt of a notice that a dispute is being referred to adjudication or on becoming aware that a dispute is likely to be referred to adjudication under the Housing Grants Construction and Regeneration Act 1996, or any amendment thereto or re-enactment thereof, in which the **Insured** is named or likely to be named as respondent; or
- d) receipt, or awareness as appropriate, of full written details of the matters notified under c) above, including any subsequent correspondence or notices received.

(Notwithstanding anything to the contrary receipt of notice by the **Insured**'s intermediary will not be treated as notice to **Underwriters**).

Provided that such notice as required in 1 b) and c) has been given during the **Period of Insurance**, any resultant **Claim** arising from such matters notified, shall be deemed to have been given during the **Period of Insurance**, provided however that this deeming provision shall only have effect if the **Insured** complies within a reasonable time and at their own expense with:

- i) the **Underwriters**' standard requirement that the notification should state precisely why a **Claim** is likely and, if so, from whom and
- ii) any reasonable request by **Underwriters** for further information in relation to the matters notified and
- iii) any request by **Underwriters** for steps to be taken to reduce or avert the said risk.

For the avoidance of doubt, no other Condition of this Policy shall have the effect of limiting the **Underwriters**' right to refuse to give effect to this deeming provision in the event of a failure by the **Insured** to comply with a request under 1 i), ii) and iii) above.

## 2 Circumstance

All **Claims** arising out of

- a) the same originating cause or source, or
- b) the same act, error or omission, or series of acts, errors or omissions that are in any way similar or related

are deemed to be one **Claim** for the purposes of the **Limit of Indemnity** only PROVIDED ALWAYS that this clause does not operate to provide cover under this Policy for any **Claim** that would not be covered by this Policy but for this clause.

## 3 Excess

Payment of the **Excess** by the **Insured** is a condition precedent to the **Insured** being indemnified by **Underwriters**. If **Underwriters** at their election make any payment which is the responsibility of the **Insured**, then the **Insured** shall forthwith repay such sum to **Underwriters** and, if the **Insured** fails to repay such sum, **Underwriters** shall have the right to set off such sum against any other monies due from **Underwriters** to the **Insured** under this policy.

## 4 How to submit a Claim

If you need to make a **Claim**, or you need to inform us of an incident or **Circumstance** that may constitute a **Claim**, in the first instance please contact your insurance broker who arranged the policy for you. your insurance broker will be able to supply you with the relevant **Claim** form and will inform us, and we will deal with your **Claim** in a fair and impartial way and as quickly as possible.

# General Conditions

## 1 Co-operation

- a) Following notification of a Claim or Circumstance, the Insured shall at their own expense give all information and assistance within timescales reasonably required by Underwriters.
- b) Following notification that a dispute is being referred or is likely to be referred to adjudication under the Housing Grants Construction and Regeneration Act 1996, or any amendment thereto or re-enactment thereof, the Insured shall:
  - i) provide full and prompt co-operation to **Underwriters**, complying with all reasonable requests, particularly those relating to response times, and such co-operation shall extend to any subsequent challenge to the adjudicator's decision;
  - ii) not, without the prior written consent of **Underwriters**, make any admission in respect of the dispute being referred to adjudication or agree to accept the decision of the adjudicator as finally determining the dispute with no reference to legal proceedings, arbitration or alternative dispute resolution.

## 2 Underwriters Entitlement to Defend and No Admission of Liability

- a) **Underwriters** shall take over the investigation, defence and settlement of any **Claim**, any **Circumstance(s)** and any matter(s) where the **Insured** has requested to be indemnified under this Policy. If the **Insured** do not agree with any proposals by **Underwriters** to settle any **Claim**, then **Underwriters'** liability for such **Claim** shall be limited (subject always to the **Limit of Indemnity**) to the amount for which, in **Underwriters'** reasonable opinion, the **Claim** could have been settled. **Underwriters'** liability for **Defence Costs and Expenses** shall be limited to **Defence Costs and Expenses** incurred up to the date at which the **Claim** could have been settled in **Underwriters'** reasonable opinion.
- b) As a condition precedent to the right to be indemnified under this Policy the **Insured** (or any **Employee** or any person, firm, company acting for or on behalf of the **Insured**) shall not, without the prior written approval of **Underwriters**, admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any **Circumstance(s)** likely to give rise to a **Claim**.
- c) The **Insurer** shall not be obliged to defend any legal proceedings unless a Queen's Counsel or Counsel of not less than 15 years' standing (to be mutually decided upon by **Underwriters** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

## 3 Subrogation

**Underwriters** shall be subrogated to all the rights of recovery of the **Insured** against any third party before or after any indemnity is given under this Policy provided always that **Underwriters** shall not exercise any such rights against any **Employee** or former **Employee** unless the loss in respect of which indemnity is provided under this Policy was caused or contributed to by **Dishonesty** or by a malicious act, error or omission by the **Employee** or former **Employee**. The **Insured** shall, without charge, provide such assistance as **Underwriters** may reasonably require in any subrogation. It is a condition precedent to the right to be indemnified under the Policy that the **Insured** (or any **Employee** or any person, firm, company acting for or on behalf of the **Insured**) shall not, without the prior written approval of **Underwriters** take any action which would terminate, restrict, compromise or diminish an rights of recovery the **Insured** may have against any third party in respect of any liability or loss indemnifiable under this Policy.

#### 4 Fraudulent **Claims**

If the **Insured** makes any **Claim** under this Policy (or has made a **Claim** under any previous Policy) which the **Insured** knows or ought to know to be false or fraudulent in any way, this Policy shall be cancelled *ab initio* and all rights of the **Insured** under this Policy shall be forfeited.

#### 5 Breach of Condition

Where the **Insured**'s breach of or non-compliance with any condition of this Policy, other than a condition precedent, has resulted in prejudice to **Underwriters**:

- a) in the handling or settlement of any **Claim**; or
- b) in the amount of any loss sustained by the **Insured**; or
- c) in the obtaining of reimbursement from any dishonest or fraudulent person;

the indemnity afforded under this Policy (including liability for claimants' costs) shall be reduced to such sum as in **Underwriters**' reasonable opinion would have been payable by them in the absence of such prejudice. This clause shall not reduce or limit or affect in any way the **Underwriters**' rights and remedies where there has been a breach of the condition precedent.

#### 6 Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Policy has no rights under the Contract (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof to enforce any term of this Policy. This condition does not affect any right or remedy of a third party which exists or is available other than by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### 7 Consortia or Joint Venture

Cover for the **Insured** whilst in Consortia or Joint Venture with others is limited to that of the work undertaken by the **Insured** and not such Liability assumed under contract within Consortia or Joint Venture.

#### 8 Data Protection Act 1998

It is agreed by the **Insured** that any information provided to the **Underwriter** regarding the **Insured** will be processed by the **Underwriter**, in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling **Claims**, if any, which may necessitate providing such information to third parties.

#### 9 Cancellation

This Policy may be cancelled at any time by or on behalf of the **Underwriters** by 30 (thirty) days notice given in writing to the **Insured** at their last known address or registered office (if a company) and the **Premium** shall be adjusted on a pro rata basis.

This Policy may be cancelled at any time by the **Insured** by giving 30 days notice in writing to **Underwriters** at the address listed within the **Policy** schedule and the **Premium** shall be adjusted as per the Short Rate Cancellation Table.

#### 10 Premium Payment

Notwithstanding any provision to the contrary within this Policy or any endorsement hereto, in respect of non payment of **Premium** only the following clause will apply.

The **Insured** undertakes that **Premium** will be paid in full to **Underwriters** within 60 (sixty) 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 **Underwriters** by the 60th (sixtieth) day from the inception of this Policy (and, in respect of instalment **Premiums**, by the date they are due **Underwriters** 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 **Underwriters** on a pro rata basis for the period that **Underwriters** are on risk but the full Policy **Premium** shall be payable **Underwriters** in the event of a loss or occurrence prior to the date of termination which gives rise to a valid **Claim** under this contract.

Where **Underwriters** have a right to cancel this Policy for non-payment of **Premium** they shall give not less than 15 (fifteen) days prior written notice to the **Insured and** notice to the Insured's broker shall be sufficient notice for this purpose. If **Premium** due is paid in full to **Underwriters** 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.

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 affect the other provisions of this clause which will remain in full force and effect.

## Policy Exclusions

**Underwriters** shall not have any liability for, or directly or indirectly arising out of, or in any way involving:

### 1 Adjudications – Final Awards

Any contract which specifies the decision of an Adjudicator as finally determining any dispute unless **Underwriters** have given prior written consent. However, this exclusion shall not apply where the **Insured** can establish to **Underwriters'** reasonable satisfaction that the liability of the **Insured** would have existed to the same extent in the absence of such specification.

### 2 Asbestos

Asbestos or any materials containing asbestos (in any form or quantity).

### 3 Associated Companies

Any **Claim** brought by or on behalf of:

- a) The **Insured**;
- b) Any parent or subsidiary company of the **Insured**;
- c) Any person or entity having an executive, financial or controlling interest in the **Insured**;
- d) Any person or entity having a financial ownership of the **Insured** (unless such financial ownership is less than 5%);
- e) Any entity where the **Insured** has accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred.

### 4 Contracting

Any contract where the **Insured** act as a Building Contractor or Engineering Contractor whether in conjunction with the professional activities stated in the **Schedule** or not.

### 5 Bodily Injury and Property Damage

- a) Bodily injury, psychological injury, emotional distress, anguish, shock, sickness, disease or death sustained by any person; and/or
- b) Any damage to or destruction or loss of any property (except as provided under Insuring Clause 2.2) including but not limited to loss of use;

unless directly arising from **Negligent Act** committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and for or on behalf of the **Insured**.

### 6 Directors and Officers

Any liability incurred as an actual or *de facto* director or officer of the **Insured** or as an actual *de facto* director, officer or trustee of any other company or trust in their capacity as such

### 7 Employee Liability

Any breach of any obligation owed by the **Insured** as an employer to any **Employee** or former **Employee** or applicant for employment.

## 8 Fines and Penalties

Any disciplinary investigations or proceedings, and/or any fines, penalties, or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages.

## 9 Goods and Services

Any contract for the provision of goods or services to the **Insured**; or any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on behalf of the **Insured**, unless such **Claim** is a direct result of the negligent design and/or negligent specification of the **Insured** or any **Employee** or any other person firm or company directly appointed by and acting for or on behalf of the **Insured**.

## 10 Information Technology

Any of the following:

- a) The failure of any **Computer System** or other electronic device (except as provided under Insuring clause 2.2) or of any program, instruction or data for use in any **Computer System** or other electronic processing device, equipment or system to function in the way expected or intended; or
- b) The transmission or receipt of any virus, program or code that causes loss or damage to any **Computer System** and/or prevents or impairs its proper function or performance; or
- c) Business conducted and/or transacted via the **Internet, Intranet, Extranet** and/or via the **Insured's** own website, **Internet** site, web-address and/or via the transmission of electronic mail or **Documents** by electronic mail or **Documents** by electronic means. This exclusion shall not apply if the **Insured** can prove, to the reasonable satisfaction of **Underwriters**, that the liability would have attached in the absence of the fact that the business was conducted and/or transacted via the **Internet, Intranet, Extranet** and/or via the **Insured's** own website, **Internet** site, web-address and/or the transmission of electronic mail or **Documents** by electronic means.

## 11 Investment Advice

Any express or implied warranty or guarantee relating to the financial performance of any investment or portfolio of investments.

## 12 Jurisdiction and Territorial Limits

Any:

- a) legal proceedings brought in a Court of Law in the United States of America, Canada and any country, territory or jurisdiction in which American or Canadian law (State or Federal) is applicable or in which a judgement based upon such law may be enforceable in connection with such work;  
or
- b) **Professional Business** undertaken within the United States of America, Canada and any country, territory or jurisdiction in which American or Canadian law (State or Federal) is applicable or in which a judgement based upon such law may be enforceable in connection with such work.

## 13 Land and Vehicles

The ownership, possession or use by the **Insured** of land, buildings, aircraft, watercraft, vessels or by mechanically propelled vehicles or property (mobile or immobile).



#### 14 Market Fluctuation

Any depreciation or loss of investment, which arises from fluctuations in any financial stock or commodity or other markets.

#### 15 War, Nuclear, Radiation and Terrorism

Any of the following:

- a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against any actual or expected attack;
- b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any government or martial authority in hindering or defending against any of these;
- c) discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason;
- d) Ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel; or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- e) Any **Terrorism** (regardless of any other cause or event contributing to the liability) or any action taken in controlling, preventing or suppressing **Terrorism**.

#### 16 Other Insurance

Any matter in respect of which the **Insured** are (or but for the existence of this Policy would be) entitled to indemnity under any other contract of insurance except in respect of any excess beyond the amount that would have been payable under such insurance had this Policy not been effected.

#### 17 Prior Cover

Any **Circumstance** or occurrence which has been notified under any other Policy of Insurance attaching prior to the inception of this Policy or as disclosed as a material fact to any **Underwriter** prior to the inception of this Policy

#### 18 Pollution

Any actual, alleged or threatened pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous, or thermal irritant or contaminant including, but not limited to, smoke, vapour, soot, dust, fibres, bacteria, fumes, acids, alkalis, chemicals and waste or any actual or alleged advice given or services performed in relation to any irritant or contaminant, including but not limited to testing, monitoring, removal, treatment, containment, cleaning up, neutralising or detoxification thereof.

#### 19 Retroactive Date

Any actual or alleged act, error, omission, and/or event committed or occurring prior to the Retroactive Date (if any) specified in Item 11 of the **Schedule**, including but not limited to any ongoing duty to warn or otherwise advise in respect of an actual or alleged act, error, omission and/or event committed or occurring prior to the Retroactive Date (if any) specified in Item 11 of the **Schedule**.

## 20 Survey and Valuation

Any survey or valuation carried out by and/or on behalf of the **Insured**, unless the survey and/or valuation is made:

- a) in writing as a report which clearly includes the terms conditions and limitations that the survey is subject to; and
- b) by a partner, director, member or principal of the **Insured** or by any **Employee** who is a Member of the Institution of Structural Engineers or a Chartered Engineer or a fellow of the Royal Institute of British Architects or of the Royal Institution of Chartered Surveyors or any **Employee** who has not less than 5 (five) years experience in undertaking surveys and/or valuations and such experience is related to the subject matter of the report.

## 21 Toxic Mould

Any fungus or mycota or any by-product or type of infestation produced by such fungus or mycota, including but not limited to, mould, mildew, mycotoxins, spores, or any biogenic aerosols

## 22 Trading Losses

Any trading losses or trading liabilities incurred by any business managed by or carried on by the **Insured**, including but not limited to loss of client account and/or custom.

## 23 Warranties and Guarantees

Any performance warranty, indemnity, guarantee, penalty clause, liquidated damages clause or similar provision unless the liability of the **Insured** would have existed to the same extent in the absence of such warranty, indemnity, guarantee, penalty clause, liquidated damages clause or similar provision.

## 24 Financial Estimates

Any errors in any financial estimates of probable construction or other costs but this exclusion shall not apply to any liability arising out of cost advice and cost planning services and other cost advice provided to independent third parties by professionally qualified personnel as disclosed in the **Proposal**.

## 25 Workmanship

- a) Any defective workmanship unless directly arising from a **Negligent Act** committed by the **Insured** or by any **Employee**, or by other person, firm, company directly appointed by and acting for or on behalf of the **Insured**; and/or
- b) Any defective materials unless directly arising from a **Negligent Act** committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**.

## 26 Sanction Limitation and Exclusion Clause

No insurer shall be deemed to provide cover and no insurer shall 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 that 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 or United States of America.

## 27 Controlling Interest

Any **Claim** brought by or on behalf of:

- a) the **Insured**, or any parent or subsidiary company of the Insured, or any entity or person having a financial, executive or controlling interest in the Insured, or
- b) any entity in which the Insured has a financial, executive or controlling interest unless such **Claim** emanates from a wholly independent third party.

## 28 Insolvency

any **claim** arising from or in any way connected with the insolvency of the **insured**.

## 29 EWS1

Notwithstanding anything contained within the policy wording to the contrary the **Insurer** shall not afford any indemnity in respect of any **Claim** or for any loss, costs or expenses arising out of, in connection with or in any way involving:

- a) the Insured's reliance upon any EWS1 form (and/or any revision thereof), or
- b) the Insured's completion of any EWS1 form (and/or any revision thereof)

## 30 Manufacture and Transit

The Insurers shall not be liable to indemnify the **Insured** for any liability, loss, cost or expense for any **claim** in connection with, arising out of, or resulting from

- (a) delay in manufacture or failure to manufacture of any pre-engineered units, components, or any other products ordered to be delivered as a result of:
  - i) enforced shut down of the manufacturing operations; or
  - ii) governmental restrictions imposed on the manufacturing operations; or
  - iii) lack of availability of manufacturing capacity, materials, workforce or other resources,
- (b) delay or failure of any shipping, delivery, supply via watercraft, aircraft, motor vehicle, mobile equipment or rolling stock of any pre-engineered units, components, or any other products ordered to be delivered as a result of:
  - i) lack of storage or warehousing; or
  - ii) failure to comply with customs or other regulatory requirements; or
  - iii) lack of capacity for transfer of shipments, including loading and unloading facilities at any point of transshipment; or
  - iv) the transport itself and its availability.

This exclusion shall only apply where the manufacturing or transport as set out in (a) and (b) above is undertaken by a third party

## 31 PFI/PPP Projects

Arising from original connection with any private finance initiative (PFI), public-private partnership (PPP) or alliance contract.

## 32 Conduct

The Underwriters will not indemnify any **Insured** in respect of any liability or costs and expenses incurred in connection with any actual or alleged:

- a) sexual, workplace, disability or racial harassment of any kind (including the creation of a workplace environment in which harassment occurs);
- b) bullying or humiliation;

- c) discrimination (including but not limited to discrimination based upon age, gender, race, colour, national origin, religion, sexual orientation or preference, pregnancy or disability); or
- d) any failure to provide or maintain adequate employee policies and procedures by any Assured.

### 33 Communicable Disease

- a) Despite any provision to the contrary within this insurance, this insurance does not insure any loss, damage, liability, **claim**, cost, expense or other sum caused by a Communicable Disease or the fear or threat (whether actual or perceived) of a Communicable Disease.
- b) For the purposes of this exclusion, loss, damage, liability, **claim**, cost, expense or other sum, includes, as an example, any cost to clean-up, detoxify, remove, monitor or test:
  - i) for a Communicable Disease, or
  - ii) any property that is affected by such Communicable Disease.
- c) As used in this exclusion, a Communicable Disease means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
  - i) the substance or agent includes, as an example, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
  - ii) the method of transmission includes, as an example, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms.
- d) This exclusion applies to all coverage, coverage extensions, additional coverages, exceptions to any exclusion and other coverage grant(s).

### 34 Fire Safety

- 1. the combustibility, fire safety requirements or fire protection performance of any façade materials, cladding, core, filler, signage, glazing, balconies, doors, composite, insulation, decorative panels, external wall system and/or internal wall system of any building or structure; including but not limited to any component or material used for the external cladding or façades of buildings, insulation, and signage, and the manufacture, assembly, fixing or construction thereof;
- 2. any aspect of fire safety or fire performance of a building or structure; including but not limited to warning of fire, escape from the building or structure in the event of fire, fire spread, structural integrity, the provision of access and facilities to the emergency services and/or the provision of premises not fit for habitation;
- 3. any aspect of fire safety or fire performance of a building or structure not falling within 1. or 2. above.

## Additional Endorsement Clauses

### Professional Indemnity Cyber and Data Protection Law Endorsement

- 1) This endorsement takes priority over any other provision in this contract.
- 2) Save as expressly provided in this endorsement, or by other restrictions in this contract specifically relating to the use of, or inability to use, a **Computer System**, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a **Computer System**.
- 3) This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:
  - a) a **Cyber Act**; or
  - b) any partial or total unavailability or failure of any **Computer System**;  
  
provided the **Computer System** is owned or controlled by the insured or any other party acting on behalf of the insured in either case; or
  - c) the receipt or transmission of malware, malicious code or similar by the insured or any other party acting on behalf of the insured.
- 4) This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:
  - a) 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;
  - b) by any utility provider, but only where such failure of interruption of service impacts a **Computer System** owned or controlled by the insured or any other party acting on behalf of the insured.
- 5) This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount for actual or alleged breach of **Data Protection Law** by the insured or any other party acting on behalf of the insured.
- 6) Any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the insured or any other party acting on behalf of the insured in this contract shall not apply to **Data**.

For the purposes of this endorsement the following definitions apply:

**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.

**Cyber Act** means 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**.

**Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

**Data Protection Law** means 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 authority from time to time (all as amended, updated or re-enacted from time to time).

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