



**Aspen Primary Policy Wording  
Professional Liability Insurance  
Design & Construction - UK Aggregate costs inclusive**

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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

## Insuring Clauses

1) Now therefore, We, the Underwriters, hereby agree to indemnify the Insured for any sum or sums which the Insured may become legally liable to pay arising from any claim or claims first made against them and notified to the Underwriters during the Policy period as a direct result of negligent act error or omission on the part of the Insured in the conduct and execution of the professional activities and duties as herein defined.

Further, it is understood and agreed that the liability of the Underwriters for all damages and defence costs and expenses incurred with the Underwriters' written consent in the investigation, defence and/or settlement of any claim shall not exceed in the aggregate during any one Policy Period the amount specified in the Schedule.

### 2) PROSECUTION DEFENCE COSTS

Underwriters will meet the legal costs and expenses up to but not exceeding the sum stated in the Schedule incurred with their prior written consent, of defending criminal prosecutions brought against the Insured which:

- (i) are notified to Underwriters during the Policy Period; and
- (ii) relate to the conduct of the Insured's business described in the Schedule; and
- (iii) should in the Underwriters' opinion be defended in order to benefit their position or that of the Insured in any actual or potential civil action.

### 3) INDEMNITY TO EMPLOYEES

In the event of a claim being made against any employee of the Insured or former employee of the Insured whilst acting within the scope of his employment with the Insured which, if it had been made against the Insured, would have been the subject of indemnity under this Policy, Underwriters agree to indemnify such employee in a like manner to the Insured.

### 4) DISHONESTY OF EMPLOYEES

Notwithstanding anything herein contained to the contrary it is noted and agreed that this Policy and all other applicable endorsements are extended to indemnify the Insured for any claim brought about, or contributed to, by the fraudulent, criminal or malicious act or omission of any person at any time employed by the Insured.

### 5) LOSS OF DOCUMENTS

Subject to an Excess of GBP 100 each and every claim or loss, this Policy will also cover the Insured up to a maximum of GBP 100,000 for any reasonable costs and expenses incurred with Underwriters' consent in replacing or restoring any Document which is lost, damaged or destroyed during the Policy Period. Underwriters will not pay for any loss brought about or contributed to by the dishonesty of the Insured's Partners, Directors or other Employees.

### 6) LIBEL AND SLANDER

Notwithstanding anything contained herein to the contrary, it is understood and agreed that this Policy is extended to indemnify the Insured for all sums which the Insured may become legally liable to pay in respect of claims made upon them in direct consequence of any Libel or Slander committed by the Insured in their professional capacity as stated in the Schedule.

### 7) BREACH OF CONFIDENTIALITY

Underwriters agree subject otherwise to the terms, conditions and exclusions of this Policy to indemnify the Insured for claims made during the Policy period arising from the unintentional breach of confidentiality.

## 8) INFRINGEMENT OF COPYRIGHT

It is understood and agreed that this Policy is extended to indemnify the Insured in respect of actions or claims brought against them arising out of inadvertent breach of confidential information, copyrights or the unauthorised use of or infringement of the systems or designs of others whether negligence is proved or not.

It is further understood and agreed this Policy is extended to afford cover in respect of costs incurred (subject to the Insured bearing the first GBP 50 of each and every claim hereunder and for the purpose of this extension Underwriters costs shall be deemed to be part of such claim falling under this extension) in prosecuting any claim for an injunction and/or for damages arising out of those circumstances referred to in the above paragraph notified to Underwriters during the Policy Period stated in the Schedule provided always that Underwriters shall not be required to incur any or further obligation to meet such costs under this extension where the Insured's course of action is not one which it would be in all circumstances reasonable to pursue. In the event of any dispute arising between Underwriters and the Insured as to the reasonableness of pursuing any such course of action the opinion of a Queen's Counsel to be mutually agreed between the Insured and Underwriters shall be obtained and his decision shall be binding.

## 9) COLLATERAL WARRANTIES

It is understood and agreed that the indemnity provided by this Policy shall apply to claims made against the Insured within the Policy period as a direct result of negligence on the part of the Insured in performing their obligations accepted under Collateral Warranties, Duty of Care Agreements or similar Agreements but only in so far as the benefits of such Warranties or Agreements are not greater or longer lasting than those given to the party with whom the Insured originally contracted and subject to the following Exceptions, unless specifically agreed by Underwriters:-

- i. acceptance of or guarantee of fitness for purpose where this or similar appears as an express term;
- ii. any express guarantee including any relating to performance and/or the period of a project;
- iii. any express contractual penalty;
- iv. any acceptance of liability for liquidated damages;
- v. any assignment of a Collateral Warranty, Duty of Care Agreement or similar Agreement to more than four parties in respect of assignments to Funders, Financiers and Bankers, purchasers and tenants;
- vi. any Collateral Warranty, Duty of Care Agreements or similar Agreements given by the Insured for Contracts where they are not performing any of the activities and duties covered by this Policy.

Furthermore Underwriters may extend this Policy to include increased liability assumed by the Insured under any Warranty or Agreement which goes beyond the above exclusions, subject to any additional information as may be required and at terms and conditions to be agreed by Underwriters. Nevertheless in the event that the Insured gives a Warranty or Agreement beyond the above exclusions indemnity hereunder shall be limited by the extent and application of such exclusions.

None of the foregoing limitations or exclusions shall apply to liability which would have attached to the Insured in the absence of any such Warranties or Agreements.

It is however agreed by Underwriters that where Terms of Appointment/Engagement, Collateral Warranties or Duty of Care Agreements have been advised to Underwriters of any previous period, providing such Underwriters have not rejected such documents and providing any requirements by those Underwriters have been complied with by the Insured, Underwriters agree to accept that provisos (i-vi) above shall not apply to restrict liability which arises out of these contracts.

It is agreed that Underwriters will treat Terms of Appointment/Engagement, Collateral Warranties or Duty of Care Agreements as herein before provided whether or not the same are executed under hand or in a Deed, whether sealed or not.

# Housing Grants Construction and Regeneration Act Endorsement

It is understood and agreed that this Policy shall not indemnify the Insured in respect of any claim, loss, liability or costs and expenses incurred in connection with any dispute or matter being referred to adjudication.

Notwithstanding the above, it is understood and agreed that the Indemnity provided by this Policy shall apply to cover the liability of the Insured arising under a decision of an adjudicator relating to claims made against the Insured referred to adjudication in accordance with an adjudication clause contained in a contract ("the Contract") to comply with the Housing Grants, Construction & Regeneration Act 1996 or other similar adjudication clause.

Provided always that as a condition precedent to coverage being afforded hereunder the Insured undertakes additionally to comply with both A and B as follows:

## **A. CONDITIONS**

It is a condition precedent to underwriters' liability under this Policy that the Insured agrees:

- (i) to immediately notify Underwriters within 48 hours of receipt of any "notice of intention to adjudicate" or of the service by the Insured of any "notice of intention to adjudicate" in circumstances which will lead to or are likely to lead to a claim against the Insured being dealt with as a part of the adjudication.
- (ii) to promptly supply Underwriters with all details relating to any reference to adjudication, including copies of all documentation made available to the Insured, or subsequently by the Insured to the adjudicator;
- (iii) to allow Underwriters to appoint advisers and to have conduct of the adjudication as they deem appropriate and to co-operate with Underwriters in the conduct of the adjudication; any appointments made by Underwriters shall be at the Underwriters' expense, but subject always to the application of the excess;
- (iv) to meet any request, direction or timetable of the adjudicator;
- (v) to satisfy Underwriters that any liability incurred under an adjudicator's decision for which indemnity is being sought, is as a direct result of negligence by the Insured in the conduct of their professional activities;
- (vi) not to disclose to anyone the existence of this Policy without Underwriters' prior written consent.
- (vii) to institute legal proceedings or arbitration in accordance with the terms of the original contract to challenge or reopen or stay the enforcement of such adjudicator's decision if reasonably requested so to do by Underwriters and to allow Underwriters to appoint appropriate advisers as they may deem necessary to have conduct of such proceedings if appropriate, any such steps made by the Insured shall be at the Insurer's expense, but subject always to the application of the excess;
- (viii) not to agree to accept the decision of the adjudicator as finally determining the dispute without the prior consent in writing of Underwriters.

## **B. CONDITIONS RELATING TO THE CONTRACT**

- (i) The adjudication provisions in the Contract shall:
  - (a) provide that the adjudicator must be independent of the parties to the dispute;
  - (b) not allow for the adjudicator's decision to finally determine the dispute;
  - (c) not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial considerations.
- (ii) The Contract must not place any conditions upon the timing of commencement of legal or arbitration proceedings (for the sake of clarity, this does not apply to adjudication proceedings).

Any dispute or difference arising hereunder between the Insured and Underwriters shall be referred to the arbitration of a Queen's Counsel to be agreed upon by both parties or in the absence of agreement by a

QC nominated by the Chairman of the Bar Council. The Underwriters agree to pay the costs of such referral except in instances where Indemnity has been denied and the QC upholds such decision. Where Indemnity applies, coverage will also include the Insured's liability for the adjudicator's fee.

## Predecessors in Business

It is hereby understood and agreed that cover is extended to include any predecessors in business of the Insured disclosed in writing to Underwriters prior to the inception of this Policy. This shall be deemed to include Partners, Directors and Principals of those firms. However, such cover will not apply in respect of any work undertaken prior to the Retroactive Date shown in the Schedule (refer Condition 2 of this Policy).

## 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 4 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 will be the same as for Insuring Clause 1.
- 7 In respect of Insuring Clause 7 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 The sub-limits in 2, 4, 6, 7 and 8 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.

## Excesses

Provided always that the Underwriters shall be liable only, in respect of each and every claim hereunder, for the part of the claim (which for the purpose of this clause shall be deemed to include all defence costs

and expenses incurred by Underwriters in investigating and defending the claim) which exceeds that amount stated as 'the Excess' in the Schedule. It being understood and agreed that if any expenditure is incurred by the Underwriters which, by virtue of this clause, is the responsibility of the Insured, then such amount shall be reimbursed to the Underwriters by the Insured forthwith on demand.

- 1 In respect of all Insuring Clauses apart from 2 and 5 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 GBP2,500. A separate Excess shall apply to each and every separate Claim Notified
- 3 In respect of Insuring Clause 5, the Excess shall be GBP250. A separate Excess shall apply to each and every separate Claim Notified.
- 4 Payment of the Excess by the Insured is a condition precedent to the Insured being indemnified by Underwriters.

## Policy Exclusions

This Policy does not cover any liability whatsoever arising out of:-

1. **GOODS OR PRODUCTS:** any goods or products manufactured, constructed, altered, repaired, serviced, treated, sold, supplied or distributed by the Insured or from any other business or occupation even though the same may be carried on by the Insured in conjunction with their business as stated in the Schedule.
2. **BODILY INJURY:** Bodily Injury, Sickness (including Mental Stress), Disease or Death sustained by any person arising out of and in the course of their employment by the Insured under a contract of service or apprenticeship with the Insured.
3. **DISHONESTY:** any claim made against the Insured as a result of any dishonest, malicious or illegal acts of any present or previous director principal or partner of the Insured.
4. **MOBILE/IMMOBILE PROPERTY:** the ownership, use, occupation or leasing of property, mobile and/or immobile, by, to or on behalf of the Insured.
5. **TERRITORIAL LIMITS:** work in connection with contracts carried out in the United States of America or Canada.
6. **JURISDICTION LIMITS:** actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the Courts of the United States of America or Canada.
7. **NUCLEAR/WAR:** any claim or loss whether directly or indirectly caused by, or contributed to by, or arising from;
  - i) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof: or
  - ii) war invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

8. **POLLUTION:**
- (i) personal Injury, Bodily Injury, Sickness (including Mental Stress), or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph (i) shall not apply to liability for Personal Injury, Bodily Injury, Sickness (including Mental Stress), loss of, physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Policy Period.
  - (ii) the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Policy Period.
9. **PRIOR CLAIMS OR CIRCUMSTANCES:** any claim or circumstance known to the Insured prior to the inception of this Policy and which the Insured at such time knew or should have reasonably assumed might result in a claim against the Insured.
10. **FINES:** In respect of Fines, prosecution costs or penalties of any kind or punitive or exemplary damages.
11. **CONTROLLING INTEREST:** or brought by a firm company or organisation in which any Partners(s)/Director(s) have a controlling interest unless such claim or claims are brought against the Insured by an independent third party source.
12. **OTHER INSURANCE:** if at the time any claim arises under this Policy the Insured is or would but for the existence of this Policy be entitled to indemnity under any other Policy or Policies, the Underwriters shall not be liable except in respect of any excess beyond the amount which would have been payable under such other Policy or Policies had this Policy not been effected.
13. **FINANCIAL MATTERS:** any negligence on the part of the Insured in connection with the effecting or maintenance of insurance and/or in connection with the provision of finance or advice on financial matters
14. **INSOLVENCY:** the insolvency of the Insured or any Insurer, Underwriter, Building Society, Bank or other providers of finance.
15. **ESTIMATE OF CONSTRUCTION:** any negligence on the part of the Insured in connection with the estimate of construction except where such estimates are compiled by professionally qualified Quantity Surveyors
16. **TERRORISM:** any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.
- 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 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) or government(s), committed for political, religious, ideological 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 Policy also excludes loss, damage, cost 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 act of terrorism.
- If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Insurance the burden of proving the contrary shall be upon the Insured.
- In the event any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.
17. **ASBESTOS & TOXIC MOULD:** any loss arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:-



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

18. **PATENT:** actual or alleged infringement of patent or misappropriation of trade secret

19. **CONTRACTUAL/LIQUIDATED DAMAGES:** any liability assumed by the Insured under contracts or agreements which would not otherwise have attached in the absence of such contract or agreement.

20. **SUB-CONTRACTORS:** liability from work undertaken by any Sub-contractors engaged in the performance of the Professional Activities and Duties defined herein, unless otherwise agreed by Underwriters.

#### 21 **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

#### 22 **INVESTMENT ADVICE**

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

#### 23 **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).

#### 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 **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.

#### 26 **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)

## 27 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

## 28 PFI/PPP PROJECTS

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

## 29 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.

## 30 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).

### 31 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.

- 32 **SANCTION LIMITATION AND EXCLUSION CLAUSE:** Underwriters shall not be deemed to provide cover and shall not 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 Underwriters 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.

## Conditions

The Claims Conditions are all Conditions precedent to Underwriters' liability. Underwriters will not make any payment under this Policy unless the Insured complies with all requirements of the Claims Conditions.

1. **INSURED'S DUTIES IN THE EVENT OF CLAIM OR CIRCUMSTANCE** : It is a condition precedent to Underwriters' liability under this Policy that:-

- (a) (i) The Insured shall give to Underwriters, unless another person is so nominated in the Schedule for such purpose, notice in writing as soon as practicable or within 14 days of expiry of the Policy;
  - (a) of the receipt of any claim made against them or any of them
  - (b) of the receipt of notice whether written or oral of the intention of any person or body to make a claim against them
  - (c) of the receipt of any allegation which may give rise to a claim against them
  - (d) of the discovery of any loss suffered by them or any of them
  - (e) of the discovery of reasonable cause for suspicion of dishonesty or fraud on the part of any former or present Partner, Director or Employee of the Insured
  - (f) of the discovery of any matter which may be the subject of indemnity under the terms, conditions or extensions of this policy

always provided that such notification is made during the Policy Period, and furthermore the Insured shall provide all information in respect of the matter so notified as is in their possession at the time of notification.

- (ii) If during the Policy Period the Insured shall become aware of any circumstance which may subsequently give rise to a claim against them or loss sustained by them the Insured shall give notice of the circumstance in writing to Underwriters, or such person nominated in the Schedule for such purpose, as soon as practicable and in any event within 14 days of their becoming aware of the circumstance. Such notice having been given, any subsequent claim made against the Insured or loss sustained by them arising out of that circumstance shall be deemed to have been first made or sustained during the Policy Period.

NOTE: The Civil Procedure Rules enable the Court to impose severe costs sanctions on litigants who act unreasonably either before or after the commencement of proceedings whether or not the litigant in question is successful in its case. Pre-action Protocols will set standards by which the reasonableness of the litigant's conduct will be judged. In order to try to ensure that the requirements of the rules in any Protocol are met notifications must be made to Underwriters immediately that a claim is made and before a response is given to the claimant. As this is a condition precedent to Underwriters liability under the Policy non-compliance with it entitles Underwriters to refuse to provide indemnity in respect of the relevant claim.

- (b) (i) The Insured shall not admit liability for or settle or make or promise any payment in respect of any claim which may be the subject of indemnity hereunder or incur any costs or expenses in connection therewith without the written consent of the Underwriters who if they so wish shall be entitled to take over and conduct in the name of the Insured the defence and/or settlement of any such claim. In doing so Underwriters may conduct the defence and/or settlement as they, in their absolute discretion, think fit. This right will include, but is not limited to, the right to commit the Insured's excess to any settlement and to make admissions in respect of the whole claim, or any part of the claim, or in respect of any issue on which the claim, or part of it depends.
- (ii) The Insured shall at all times give to Underwriters and/or their duly appointed representatives all such information, co-operation and assistance as Underwriters may reasonably require. Insofar as the claim is subject to the Civil Procedure Rules such assistance will extend, but is not limited to the provision of 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 and approved from time to time by the Head of Civil Justice. By way of example, and without limitation, the Insured's obligations will include inter-alia:-

- (a) The provision of full and prompt information, instructions, and or assistance to Underwriters or their duly appointed representatives;
- (b) The undertaking, by an appropriate representative of the Insured, of a reasonable search for documents required to be disclosed in any litigation, together with the provision of a signed disclosure statement in terms advised by legal representatives appointed by Underwriters;
- (c) The provision, by an appropriate representative of the Insured, of a signed statement verifying that he or she believes the facts stated in the defence, statement of case, responses to other parties requests for information or witness statements to be true.

2. **RETROACTIVE DATE:** Where a retroactive date is specified in the Schedule this Policy will not respond in respect of any claim or loss otherwise falling for indemnity under this Policy where the cause of such claim or loss occurred or was alleged to have occurred prior to the said retroactive date.

3. **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.

4. **AGREEMENT TO PAY CLAIMS:** Underwriters agree to pay claims which may arise under this Policy without requiring the Insured to dispute any claim unless a Queen's Counsel or lawyer of comparable standing in the territory concerned (to be mutually agreed upon by Underwriters and the Insured) advise that the same could be contested with a reasonable prospect of success by the Insured and the Insured consents to such claim being contested, but such consent is not to be unreasonably withheld. In the event of any dispute arising between the Insured and the Underwriters as to what constitutes an unreasonable refusal to contest a claim at Law, the President for the time being of the Professional Body of which the Insured is a member shall nominate a referee to decide this point (only) and the decision of such referee shall be binding on both parties. In the event of the Insured not being a member of a Professional Body, the President for the time being of the Chartered Institute of Arbitrators shall nominate a referee to adjudicate as aforementioned.

5. **SUBROGATION:** If any payment is made under this Policy in respect of a claim hereunder Underwriters are thereupon subrogated to all the Insured's rights of recovery thereto however Underwriters shall not exercise any such rights against any employee or former employee of the Insured unless the claim has been brought about or contributed to by any dishonest fraudulent criminal or malicious act of the employee, it being understood that Underwriters shall at all times retain all the Insured's rights of recovery against any person or party who is not an employee of the Insured or former employee of the Insured.

6. **FRAUDULENT CLAIMS:** If the Insured makes a fraudulent claim under this Policy, Underwriters shall not be liable to pay the Insured any sums in respect of the fraudulent claim. Underwriters may recover from the Insured any sums that Underwriters have already paid to the Insured in respect of the fraudulent claim. Underwriters may by notice to the Insured treat this Policy as terminated with effect from the date of the Insured's fraudulent act and need not return any of the premium paid.

7. **UNDERWRITERS' REMEDIES FOR THE INSURED'S BREACH OF THE DUTY OF FAIR PRESENTATION:** If, prior to entering into this Policy, the Insured shall breach the duty of fair presentation, the remedies available to Underwriters are set out below.

If the Insured's breach of the duty of fair presentation is deliberate or reckless, Underwriters may avoid the contract, and refuse to pay all claims; and need not return any of the premiums paid.

If the Insured's breach of the duty of fair presentation is not deliberate or reckless, Underwriters remedy shall depend upon what Underwriters would have done if the Insured had complied with the duty of fair presentation:

- (a) If Underwriters would not have entered into the contract at all, Underwriters may avoid the contract and refuse all claims, but must return the premiums paid.
- (b) If Underwriters would have entered into the contract, but on different terms (other than terms relating to the premium), the contract is to be treated as if it had been entered into on those different terms from the outset, if Underwriters so require.

In addition, if Underwriters would have entered into the contract, but would have charged a higher premium, Underwriters may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In those circumstances, Underwriters shall pay only X% of what it would otherwise have been required to pay, where  $X = (\text{premium actually charged/higher premium}) \times 100$ .

- 8. **INTERPRETATION CLAUSE:** Notwithstanding the Jurisdiction Limits contained herein, any dispute in respect of the interpretation or application of this Policy, or its terms, conditions and exclusions, will be subject to the law of England and Wales and subject to the exclusive jurisdiction of the courts of England and Wales.
- 9. **THIRD PARTY ACT 1999 PROVISIONS CLAUSE:** It is hereby noted and agreed that the terms of this Policy will only be enforceable by the named Insured(s). A person who is not a named Insured has no rights under the Contract (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 apart from that act.
- 10. **OBSERVANCE OF POLICY PROVISIONS:** Without limiting the scope of any of the specific conditions of this Policy it shall be a condition precedent to Underwriter's liability that the Insured duly observe and fulfil the terms, conditions and endorsements of the Policy in so far as they relate to anything required to be done.
- 11. **DUTY OF THE INSURED:** Commencing with the Insured's Proposal for this Policy and throughout the Policy period the Insured is under a continuing duty to disclose as soon as reasonably practicable all material changes in information supplied to Underwriters as part of the proposal for this Policy.
- 12. **TAX:** The Insured will pay any tax due on the premium in accordance with current legislation.
- 13. **PREMIUM PAYMENT:** The Insured undertakes that premium will be paid in full to Underwriters 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 Underwriters 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) 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 to Underwriters 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 Underwriters 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 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.

Unless otherwise agreed, the leading Underwriter (and Agreement Parties if appropriate) are authorised to exercise rights under this clause on their own behalf and on behalf of all Underwriters 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 Underwriters will be deemed to occur on the day of delivery of a premium advice note to the Bureau.

## Definitions

**"THE PROFESSIONAL ACTIVITIES AND DUTIES"** in respect of which cover is granted by this Policy shall mean the performance by the Insured of any professional:-

design or specification  
supervision of construction  
feasibility study  
technical information calculation  
surveying

undertaken only by or under the direction and direct control of a properly qualified Architect or Engineer or Surveyor.

For the avoidance of doubt Professional Activities and Duties do not include supervision by the Insured of its own or its Sub-Contractors work where such supervision is undertaken in its capacity as Building or Engineering Contractor

**"CLAIM"** shall mean claim or series of claims (whether by one or more than one claimant) arising from or in connection with or attributable to any one act, error, omission or originating cause or source or the dishonesty of any person or group of persons acting together and any such series of claims shall be deemed to be one claim for all purposes under this insurance.

**"CIRCUMSTANCE"** is understood to include but not restricted to the following

- i. An intimation of an intention to claim against the Insured
- ii. Any known direct or indirect criticism or dispute whether expressed or implied relating to performance of the Insured (whether justified or not) which might give rise to third party loss or damage
- iii. Any known direct or indirect criticism or dispute whether expressed or implied relating to performance (whether justified or not) of a party for whom and for which the Insured is responsible which might give rise to third party loss or damage
- iv. Any awareness of the Insured of a failing or real doubt of the efficacy of their own performance or of the performance of a party for whom and for which the Insured is responsible which might give rise to third party loss or damage
- v. Any awareness of the Insured, that materials goods, services or actions or actions specified, designed or recommended by the Insured or by a party for whom and for which the Insured is responsible have failed to meet the standard required and which might result in some third party loss or damage

which may be the subject of indemnity under this Policy.

**"DOCUMENTS"** shall mean deeds wills agreements maps plans records books letters Polycys Computer System Records forms and documents of whatsoever nature whether written printed or reproduced by any other method (other than bearer bonds coupons bank notes currency notes and negotiable instruments).

**"INSURED"** means the person or persons or partnership or Company named in the Schedule, which term shall include his/their executors or personal representatives.

## Additional Extensions

1. The Underwriters will subject to the terms exclusions conditions and endorsements of this Policy indemnify the Insured against costs and expenses necessarily incurred in respect of any action taken prior to hand-over of the contract to mitigate a loss or potential loss that otherwise would be the subject of a claim under this Policy. The onus of proving a claim under this Extension shall be upon the Insured who will be obliged to give prior written notice to Underwriters during the Period of Insurance of the intention to take action that will incur such loss
  
2. The Underwriters will subject to the terms exclusions conditions and endorsements of this Policy indemnify the Insured in respect of liability arising out of any act of negligence by specialist designers consultants or sub contractors of the Insured and engaged in the performance of the Professional Activities and Duties defined herein provided that the Insured has rights of recourse against such specialist designers consultants or sub contractors are not waived or otherwise impaired



# 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:

<b>Computer System</b>	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.
<b>Cyber Act</b>	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 <b>Computer System</b> .
<b>Data</b>	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 <b>Computer System</b> .
<b>Data Protection Law</b>	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).

IUA 04-017 27.11.2020

**All other terms, conditions and exclusions of this insurance remain the same.**