

**CONTRACTORS PREMIER AGGREGATE –
Professional Indemnity Insurance Policy Wording**

CONTENTS

1. BASIS OF POLICY	4
2. INSURING CLAUSES	4
2.1. Breach of Professional Duty	4
2.2. Defence Costs and Expenses	4
2.3. Mitigation	4
2.4. Sub-Consultants/Sub-Contractors	4
2.5. Condam	4
2.6. Breach of Copyright	5
2.7. Breach of Warranty of Authority	5
2.8. Collateral Warranty	5
2.9. Compensation for Witness Attendance	5
2.10. Duty to Warn	5
2.11. Implied Fitness for Purpose	5
2.12. Libel and Slander	5
2.13. Loss of Documents	6
2.14. Prosecution Defence Costs	6
3. LIMIT OF INDEMNITY	6
4. EXCESS	6
5. CONDITIONS	7
5.1. Breach of Condition	7
5.2. Cancellation	7
5.3. Contracts (Rights of Third Parties) Act 1999	7
5.4. Data Protection Act 1998	7
5.5. Discharge of liability	7
5.6. Dishonest/Fraudulent Claims	7
5.7. Duty to co-operate	7
5.8. Housing Grants Construction and Regeneration Act 1996	8
5.9. Insurer entitled to defend	8
5.10. Insurer's Rights	8
5.11. No settlement without the Insurer's consent	8
5.12. Claim Notification	8
5.13. Premium Payment	9
5.14. Subrogation	9
6. EXCLUSIONS	9
6.1. Adjudication	9
6.2. Asbestos	9
6.3. Company Secretary, Registrar or Director	9
6.4. Contractual Liability	9
6.5. Cost Estimates	9
6.6. Death or Bodily Injury and Property Damage	9
6.7. Employer Liability	9
6.8. Fines and Penalties	9
6.9. Fraud and Dishonesty / Misdeeds	10
6.10. Goods and Services	10
6.11. Government / Regulatory Action	10
6.12. Information Technology	10
6.13. Insolvency	10
6.14. Insurance and Finance	10
6.15. Insured v Insured	10
6.16. Jurisdiction and Territorial Limits	11
6.17. Known Claims & Circumstances	11
6.18. Land and Vehicles	11
6.19. Loss of Business or Profits	11
6.20. Nuclear and War	11
6.21. Other Insurance	11
6.22. Patent / Trade Secret	11

6.23.	Pollution	11
6.24.	Process Engineering	12
6.25.	Profit	12
6.26.	Retroactive Date	12
6.27.	Sanctions	12
6.28.	Terrorism	12
6.29.	Trading Losses	12
6.30.	Unforeseen Ground Conditions	12
6.31.	Workmanship	12
7.	GOVERNING LAW AND DISPUTES	12
8.	INTERPRETATION	12
9.	SEVERAL LIABILITY	13
10.	DEFINITIONS	13
11.	COMPLAINTS PROCEDURE & REGULATORY INFORMATION	15

1. BASIS OF POLICY

Whereas the **Insured** have provided to the **Insurer** the **Proposal** which it is hereby agreed is the basis of this Policy and is incorporated herein, the **Insurer**, in consideration of the full payment of the **Premium**, agrees to indemnify the **Insured** to the extent and in the manner hereinafter provided, subject to the terms, conditions, exclusions and limitations of this Policy.

2. INSURING CLAUSES

2.1. Breach of Professional Duty

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay that is a direct result of a **Wrongful Act** committed by the **Insured** or by any **Employee** in the **Professional Business** by the **Insured** provided a **Claim** in respect of such sum is first made during the **Period of Insurance**.

2.2. Defence Costs and Expenses

The **Insurer** shall indemnify the **Insured** for all **Defence Costs and Expenses** in:

2.2.1. the defence, investigation and settlement of any **Claim** which is covered by this Policy;

2.2.2. the investigation and settlement of any **Circumstance** which will be covered by this Policy.

2.3. Mitigation

The **Insurer** shall indemnify the **Insured** against costs and expenses necessarily incurred in order to mitigate a loss or potential loss that would otherwise become a **Claim** covered by this Policy. The onus of proving that the costs and expenses were necessarily incurred to mitigate a loss or potential loss that would otherwise have become a **Claim** covered by this Policy shall be upon the **Insured**. As a condition precedent to the **Insurer** indemnifying the **Insured**, the **Insured** must obtain the **Insurer's** prior written consent before incurring any and all costs and expenses.

If a situation arises whereby the **Insured** regards it necessary to take action as a matter of urgency in order to mitigate a loss or potential loss that would otherwise become a **Claim** covered by this policy the **Insured** should contact Caytons Law in writing at 85 Gracechurch Street, London, EC3V 0AA or via e-mail at: claims@caytonslaw.com before incurring any such costs and expenses. Caytons Law are authorised by the **Insurer** to give consent in circumstances where they consider urgent action is required and written consent by Caytons Law will be regarded as consent by the **Insurer**. This clause only applies where urgent action is deemed necessary and all other matters must be notified to the **Insurer** in accordance with the terms and conditions contained in this policy.

2.4. Sub-Consultants/Sub-Contractors

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay that is a direct result of a **Wrongful Act** committed by a specialist designer, consultant or sub-contractor directly appointed by the **Insured** arising from the conduct and execution of the **Professional Business** on behalf of the **Insured** provided a **Claim** in respect of such sum is first made during the **Period of Insurance** and PROVIDED ALWAYS that the **Insured's** rights of recourse against such specialist designer, consultant and/or sub-contractor are not waived or in any way impaired by the **Insured**. As a condition to the **Insurer** indemnifying the **Insured** under this clause, the specialist designer, consultant or sub-contractor must maintain professional indemnity insurance without unusual or onerous conditions or excesses with reputable insurers carrying on business in the EU with a limit of indemnity of £2,000,000 in respect of each and every claim.

2.5. Condam

The **Insurer** shall indemnify the **Insured**:

2.5.1. For **Claims** first made against the **Insured** during the **Period of Insurance** arising out of the Construction (Design and Management) Regulations 1994 insofar as such **Claim** is in respect of liability which would otherwise be the subject of indemnity under this Policy.

2.5.2. Against any costs and expenses incurred in the defence of any criminal proceedings made against the **Insured** arising from any alleged breach of the Construction (Design and Management) Regulations 1994, provided such alleged breach arises in the course of the **Insured's Professional Business** and where the **Insurer** believe that defending such proceedings could protect the **Insured** against any subsequent or concurrent civil action for which cover is provided hereunder.

The maximum amount payable in total under section 2.5.2 of this clause shall not exceed £100,000 in the aggregate which shall form part of and not be in addition to the **Limit of Indemnity**.

The **Insured** shall be required to pay the first £1000 of each and every **Claim** in respect of **Claims** falling to be dealt with under this clause.

2.6. Breach of Copyright

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay that is a direct result of any unintentional breach of copyright, design right, registered design, trademark or patent committed by the **Insured** or by any **Employee** in the course of the **Professional Business** provided that a **Claim** in respect of such sum is first made during the **Period of Insurance**.

2.7. Breach of Warranty of Authority

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay that is a direct result of any breach of warranty of authority committed by the **Insured** or by any **Employee** in the course of the **Professional Business** by the **Insured** provided that a **Claim** in respect of such sum is first made during the **Period of Insurance**.

2.8. Collateral Warranty

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay arising from any collateral warranties, duty of care or similar agreements provided in the **Professional Business** by the **Insured** provided a **Claim** in respect of such sum is first made during the **Period of Insurance**.

2.9. Compensation for Witness Attendance

The **Insurer** shall indemnify the **Insured** 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 PROVIDED ALWAYS that such indemnity shall be limited to:

- (a) £300 per day or part day for any partner, principal, member, director or third party;
- (b) £200 per day or part day for any **Employee** and to £10,000 any one **Claim** and in total.

2.10. Duty to Warn

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay that is a direct result of the failure by the **Insured** or by any **Employee** to advise any client of the **Insured** that a design and/or specification error exists in an ongoing construction project and which relates to the **Professional Business** by the **Insured** provided that a **Claim** in respect of such sum is first made during the **Period of Insurance**.

2.11. Implied Fitness for Purpose

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay that is a direct result of any implied fitness for purpose in any design and/or specification in the conduct and execution of the **Professional Business** provided a **Claim** in respect of such loss is first made during the **Period of Insurance** and PROVIDED ALWAYS that:

- 2.11.1. the **Insured** was informed of the intended purpose before undertaking the design and/or specification and the relevant contract sets out the intended purpose; and
- 2.11.2. the relevant contract provides that the **Insured** shall be permitted to defend such claim on the basis that the design and/or specification is in accordance with practice conventionally accepted as appropriate at the time of the execution of the design and/or specification having regard to the size, scope and complexity of the project; and
- 2.11.3. the **Insured's** right of recourse against any specialist designer, consultant and/or sub-contractor are not waived or in any way impaired by the **Insured**.

2.12. Libel and Slander

The **Insurer** shall indemnify the **Insured** for any sum which the **Insured** shall become legally liable to pay that is a direct result of any actual or alleged libel or slander committed in good faith by the **Insured** or any **Employee** in their

professional capacity but excluding publication made in any book journal magazine and newspaper and by means of radio and television provided that a **Claim** in respect of such sum is first made during the **Period of Insurance**. As a condition precedent to the right to be indemnified hereunder the **Insured** shall issue an apology if required to do so by the **Insurer** in the form and manner so required.

2.13. Loss of Documents

The **Insurer** shall indemnify the **Insured** for reasonable and necessary costs, incurred with the **Insurer's** 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 cannot be found) the occurrence of which has been notified to the **Insurer** 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.

2.14. Prosecution Defence Costs

The **Insurer** shall indemnify the **Insured** for **Defence Costs and Expenses** incurred with the **Insurer's** consent in the investigation and defence of criminal and tribunal proceedings and any inquiry where the subject matter of such proceedings is, in the opinion of the **Insurer**, 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 the **Insurer** to represent the **Insured**. The **Insurer** 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.

3. LIMIT OF INDEMNITY

- 3.1. The **Limit of Indemnity** shall be the amount stated in Part 3 of the **Schedule**.
- 3.2. The **Limit of Indemnity** shall include **Defence Costs and Expenses**.
- 3.3. Any and all payments made by the **Insurer** shall erode the **Limit of Indemnity**.
- 3.4. The **Insurer's** liability under this Policy shall be the liability so specified to include all entities named as an **Insured** in total and for this purpose only this Policy shall be considered a joint policy and the **Limit of Indemnity** shall not be varied or deemed varied by the number or type of **Insured**.

4. EXCESS

- 4.1. A separate **Excess** shall apply to each and every **Claim** and each and every claimant. In addition a separate **Excess** shall apply to each and every claim under insuring clauses 2.13 and 2.14.
- 4.2. The **Excess** unless otherwise stated below shall be the amount stated in item 4(a) of the **Schedule** and shall apply to **Defence Costs and Expenses** and costs incurred to mitigate a potential loss or potential **Claim** under insuring clause 2.3.
- 4.3. The **Excess** in respect of insuring clauses 2.13 and 2.14. shall be the amount stated in the specified section of items 4 (b) and (c) of the **Schedule** respectively.
- 4.4. Payment by the **Insured** of the **Excess** is a condition precedent to the **Insured** being indemnified by the **Insurer** and the **Insured** shall confirm its ability and agreement so to pay if reasonably requested by the **Insurer**.
- 4.5. If any expenditure is incurred by the **Insurer** which is the responsibility of the **Insured** then the **Insured** shall, as a condition precedent to being indemnified under this policy, reimburse the **Insurer** forthwith upon request by the **Insurer**.

5. CONDITIONS

5.1. 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 the **Insurer**:

- 5.1.1. in the handling or settlement of any **Claim**; or
- 5.1.2. in the amount of any loss sustained by the **Insured**; or
- 5.1.3. 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 the **Insurer's** reasonable opinion would have been payable by them in the absence of such prejudice. For the avoidance of doubt this clause shall not reduce or limit or affect in any way the **Insurer's** rights and remedies where there has been a breach of a condition precedent.

5.2. Cancellation

This Policy may be cancelled at any time by or on behalf of the **Insurer** by 30 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.

5.3. Contracts (Rights of Third Parties) Act 1999

A person who is not a party to this Policy has no rights under the Contracts (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.

5.4. Data Protection Act 1998

It is agreed by the **Insured** that any information provided to the **Insurer** regarding the **Insured** will be processed by the **Insurer**, 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.

5.5. Discharge of liability

The **Insurer** can fully and finally discharge all liability to the **Insured** for any claim under this Policy either:

- 5.5.1. by making payment of the applicable **Limit of Indemnity** to the **Insured** less any sums previously paid; or
- 5.5.2. by making payment of a sum less than the applicable **Limit of Indemnity** when any **Claim** or **Claims** can be settled for such a lesser sum. Such payment shall be subject to deduction of the **Excess**.

5.6. Dishonest/Fraudulent Claims

If the **Insured** shall make any claim under this Policy (or has made a claim under any previous policy) which the **Insured** knows or knew or should have known to be false or fraudulent in any way, this Policy shall become void and any entitlement to an indemnity under this Policy shall be forfeited.

5.7. Duty to co-operate

As a condition to the right to be indemnified the **Insured** must provide to the **Insurer** (or the **Insurer's** appointed agent) promptly and in any event within 30 days of any request by the **Insurer** (or the **Insurer's** appointed agent) full details together with any other information requested of any **Claim** and/or any **Circumstance** and/or any circumstance where the **Insured** has requested to be indemnified. As a condition to the right to be indemnified the **Insured** must also provide such cooperation and assistance as the **Insurer** or its legal advisers or appointed agents may require including (but not limited to):

- a) providing all documentation within the time period requested; and
- b) providing detailed comments on any claim document within the time period requested; and
- c) providing detailed signed statements of fact within the time period requested; and
- d) ensuring access to any and all information within the time period requested; and
- e) providing information, assistance and signed statements of fact within the time period requested in respect of any subrogation by the **Insurer**.
- f) providing all other information and assistance within the time period requested.

As a condition to the right to be indemnified the **Insured** and all **Employees** and all persons, firms and companies acting for or on behalf of the **Insured** shall ensure that all documents that may be relevant to any **Claim** and any circumstance that may give rise to a **Claim** shall not be intentionally destroyed or otherwise intentionally disposed of.

5.8. Housing Grants Construction and Regeneration Act 1996

5.8.1. It is a condition precedent to the right to be indemnified hereunder that receipt by the **Insured** of any "Notice of Adjudication" and/or "Referral Notice" pursuant to the Scheme for Construction Contracts Regulations 1997 under The Housing Grants, Construction and Regeneration Act 1996 and/or any Adjudication Notice pursuant to contract is notified immediately in writing so that it is received by Caytons Law at 85 Gracechurch Street, London EC3V 0AA or via email at claims@caytonslaw.com.

5.8.2. The **Insurer** shall be entitled to pursue legal, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, open up or amend any decision, direction, award or exercise of power of any Adjudicator. The **Insured** shall, without charge, give such assistance as the **Insurer** shall reasonably require in relation to such proceedings. This does not in any way limit the **Insurer's** rights of subrogation.

5.9. Insurer entitled to defend

The **Insurer** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any **Circumstance**. The **Insurer** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insured** and the **Insurer**) provided that the **Insured** shall not be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the **Insured** and the **Insurer** or failing agreement to be appointed by the Chairman for the time being of the Bar Council) shall advise that such proceedings can be contested with a reasonable prospect of success.

5.10. Insurer's Rights

If the **Insurer** is entitled to avoid this Policy ab initio, the **Insurer** may instead give notice in writing to the **Insured** that they regard this Policy as in full force and effect save that there shall be excluded from any cover afforded hereunder any **Claim** or loss which has arisen or which may arise and which is related to the circumstances which entitle the **Insurer** to avoid this Policy. This Policy shall then continue in full force and effect but shall be deemed to exclude the particular **Claim** or loss referred to in the said notice (as if the same had been specifically endorsed ab initio).

5.11. No settlement without the Insurer's consent

As a condition to the right to be indemnified the **Insured** (or any **Employee** or any person, firm or company acting for or on behalf of the **Insured**) must not admit liability for, compromise, settle or make any offer or payment in respect of any **Claim** or any circumstance which may give rise to a **Claim** without the prior written consent of the **Insurer**.

5.12. Claim Notification

5.12.1. The **Insured** shall as a condition to their right to be indemnified under this Policy give notice to the **Insurer** as soon as practicable but in any event within 14 days of receipt and during the **Period of Insurance**:

- (a) of any **Claim** made against them or any of them; and
- (b) regardless of any previous notice, of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings; and
- (c) of the receipt of notice from any party of an intention to make a **Claim** against them.

5.12.2. If the **Insured** shall become aware during the **Period of Insurance** of any **Circumstance** or loss the **Insured** shall give notice to the **Insurer** as soon as practicable and during the **Period of Insurance**. Such notice having been received by the **Insurer**:

- (a) any **Claim** subsequently made against the **Insured** arising out of the **Circumstance** shall be deemed to have first been made against the **Insured** during the **Period of Insurance**.

For the avoidance of doubt, notice under this Policy is not valid if given by any third party (other than the **Insured's** insurance agent). Notice to the **Insurer** under this condition or any other provision of this Policy is effective only when received in writing by the **Insurer** or the **Insurer's** appointed agent.

5.12.3. Notification to the **Insurer** to be given under this Policy shall be given to, and deemed to be properly made to the **Insurer**, if received in writing by Caytons Law at 85 Gracechurch Street, London, EC3V 0AA or received via email at claims@caytonslaw.com.

5.13. Premium Payment

- 5.13.1. The **Insured** undertakes that the **Premium** will be paid in full to the **Insurer** by payment of the **Premium** by the **Insured's** broker(s) within 60 days of inception or by the date set out in item 10 of the **Schedule**.
- 5.13.2. If the **Premium** due under this Policy has not been paid to the **Insurer** by the date set out in item 10 of the **Schedule** the **Insurer** shall have the right to cancel this Policy by notifying the **Insured** via their broker in writing. In the event of cancellation, premium is due to the **Insurer** on a pro rata basis for the period for which the **Insurer** is on risk, but the **Premium** shall be payable to the **Insurer** in the event that the **Insured** shall notify the **Insurer** of any **Claim** or any **Circumstance** or any circumstance likely to give rise to a loss which is covered by this Policy.
- 5.13.3. It is agreed that the **Insurer** shall give not less than 5 days prior notice of cancellation to the **Insured** and/or the broker(s). If the **Premium** due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically terminate at the end of the notice period.

5.14. Subrogation

The **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party before and after any indemnity is given under this Policy PROVIDED ALWAYS that the **Insurer** shall not exercise any such rights against any **Employee** or former **Employee** unless the claim in respect of which the indemnity is provided under this Policy was contributed to, or caused, by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. The **Insured** shall, without charge, provide such assistance as the **Insurer** requires in any Subrogation.

6. EXCLUSIONS

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

6.1. Adjudication

Any agreement which specifies the decision of an Adjudicator as finally determining any dispute unless the **Insurer** has given prior written consent. This exclusion shall not apply if and to the extent that the liability of the **Insured** would have existed in the absence of such agreement. The onus shall be on the **Insured** to demonstrate to the **Insurer's** satisfaction that the liability would have existed, and that the liability would have existed to the same extent, in the absence of such agreement.

6.2. Asbestos

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

6.3. Company Secretary, Registrar or Director

Anyone acting as Company Secretary and/or Registrar and/or Director and/or Officer and/or Trustee in their respective capacities.

6.4. Contractual Liability

Any contractual duty or other obligation assumed, that goes beyond a duty to use such reasonable skill and care as is ordinarily applied within the profession of those carrying out the same type of **Professional Business** as the **Insured**.

6.5. Cost Estimates

Any estimate of design and/or construction costs.

6.6. Death or Bodily Injury and Property Damage

Bodily injury, psychological injury, emotional distress or anguish, shock, sickness, disease or death sustained by any person.

Damage to or loss of or destruction of tangible property or loss of use thereof.

6.7. Employer Liability

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

6.8. Fines and Penalties

Any fine or penalty or any multiple damages, exemplary, penal, punitive, restitution, non-compensatory or aggregated or liquidated damages.

6.9. Fraud and Dishonesty / Misdeeds

Any dishonest or fraudulent acts or omissions.

Any act which a judge, jury or other official tribunal or panel finds, or which the **Insured** admits, to be a criminal, dishonest or fraudulent act; and in such event, the **Insurer** shall be reimbursed for all sums paid in connection with such **Claim**; provided, however, that this exclusion shall not apply to cover provided under insuring clause 2.14.

6.10. Goods and Services

Any contract for the provision of goods and/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**, except a **Claim** that is a direct result of negligent design and/or specification by the **Insured** or any **Employee** or any other person company or firm directly appointed by and acting on behalf of the **Insured**.

6.11. Government / Regulatory Action

Any government, regulatory, licensing or commission action or investigation; unless relating solely to the performance of or failure to perform the **Professional Business** by the **Insured** for any government agency or similar public body.

6.12. Information Technology

Any of the following:

6.12.1. The failure of any **Computer System** or other electronic device (except as provided under insuring clause 2.13) 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

6.12.2. 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

6.12.3. 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 means. This exclusion shall not apply if the **Insured** can prove, to the reasonable satisfaction of the **Insurer**, 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.

6.13. Insolvency

The insolvency, administration or receivership of the **Insured**.

6.14. Insurance and Finance

The effecting or maintenance of insurance and/or the provision of finance and/or advice on insurance or financial matters of any kind.

6.15. Insured v Insured

Any **Claim** brought by or on behalf of any **Insured**, or any parent or subsidiary company of the **Insured**, or any person having a financial, executive or controlling interest in the **Insured** (unless the financial interest is less than 5%), or by or on behalf of any entity controlled or managed by any **Insured** or where the **Insured** has greater than a 2.5% interest, or where the **Insured** has accepted a financial interest, irrespective of the amount, in the entity in exchange for fees incurred unless such **Claim** emanates from an independent third party.

Any association, consortium or joint venture unless the **Insurer** has expressly agreed to such cover and said agreement is endorsed on this policy.

6.16. Jurisdiction and Territorial Limits

Any:

6.16.1. legal proceedings brought in a Court of Law outside the Jurisdiction stated in item 7 of the **Schedule** or brought in a Court of Law within the Jurisdiction to enforce a judgment or order made in any Court of Law outside the Jurisdiction; or

6.16.2. **Professional Business** undertaken outside the Territorial Limits shown in item 8 of the **Schedule**.

Regardless of items 7 and 8 of the **Schedule** no indemnity shall be provided under this policy for any liability established or pending within or to enforce a judgment obtained in the United States of America, Canada or any of their territories or possessions.

6.17. Known Claims & Circumstances

Any **Claim** or loss:

(a) made, threatened or intimated against the **Insured** prior to the **Period of Insurance**;

(b) directly or indirectly arising out of, or in any way involving any fact or circumstance:

(i) of which written notice has been given, or ought to reasonably to have been given, under any previous policy (whether insured by the **Insurer** or not); or

(ii) of which the **Insured** first became aware prior to the **Period of Insurance** and which the **Insured** knew or ought reasonably to have known had the potential to give rise to a **Claim** or loss.

6.18. 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).

6.19. Loss of Business or Profits

Any loss of business or profits which the **Insured** may cause.

6.20. Nuclear and War

Ionising radiations 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 from war, invasions, 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.

6.21. Other Insurance

Any matter in respect of which the **Insured** is (or but for the existence of this Policy would be) entitled to indemnity under any other contract of insurance including but not limited to specific project professional indemnity insurance or any more specific annual professional indemnity insurance or any contractors "all risks", public liability, advanced loss of profits, existing structures or non-negligence liability type of policy except in respect of any excess beyond the amount that would have been payable under such insurance had this Policy not been effected.

6.22. Patent / Trade Secret

The breach of licences concerning, infringement of or misappropriation of patents or trade secrets.

6.23. 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, vapours, 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, treatment, containment, cleaning up, neutralising or detoxification thereof.

6.24. Process Engineering

Any process engineering.

6.25. Profit

Any element of any of the **Insured's** own profit in the cost of rectifying any defect.

6.26. Retroactive Date

Any act, error or omission committed prior to the Retroactive Date, if any, specified in item 9 of the **Schedule**.

6.27. Sanctions

All risks afforded coverage under this Policy which do not comply or becomes incompatible with trade restrictions, prohibitions or sanctions of the European Union or United Kingdom shall be excluded from coverage with effect from the date on which such trade restrictions, prohibitions or sanctions become applicable to the cover provided by this Policy.

6.28. Terrorism

Any **Terrorism** (regardless of any other cause or event contributing to the liability) or any action taken in controlling, preventing or suppressing **Terrorism**. If the **Insurer** alleges that by reason of this exclusion any liability is excluded the burden of proving to the contrary shall be on the **Insured**.

6.29. 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.

6.30. Unforeseen Ground Conditions

Any unforeseen ground conditions.

6.31. Workmanship

Any defective workmanship, defective materials, manual labour operations or any defective materials or production techniques used in the manufacture of any product

7. GOVERNING LAW AND DISPUTES

- 7.1.** Any dispute or disagreement between the **Insured** and the **Insurer** 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 **Insurer** 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.
- 7.2.** Furthermore, in the event of any dispute between any **Insurer** concerning this Policy such dispute shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon 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.
- 7.3.** This Policy shall be governed by and construed in accordance with the laws of England and Wales/Scotland/Ireland as applicable.

8. INTERPRETATION

In this Policy:

- 8.1.** 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;
- 8.2.** if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- 8.3.** the headings herein are for reference only and shall not be considered when determining the meaning of this Policy.

9. SEVERAL LIABILITY

The obligations of each insurance company and Lloyd's syndicate shall be several and not joint and shall be solely to the extent of that company's or syndicates individual subscription. No such company or syndicate shall be responsible for the subscription of any other such company or syndicate who for any reason does not satisfy all or part of its obligations hereunder.

10. DEFINITIONS

In this Policy of insurance all terms highlighted shall have the meaning given in this section.

- 10.1. **"CIRCUMSTANCE"** means situation which is likely to give rise to a **Claim**.
- 10.2. **"CLAIM(S)"** mean(s) demand(s) from, or the assertion(s) of a right against, any **Insured** which is (are) communicated to the **Insured**.
- 10.3. **"COMPUTER SYSTEM"** means 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.
- 10.4. **"DEFENCE COSTS AND EXPENSES"** means legal costs and expenses incurred by or on behalf of the **Insured** only with the prior written and continuing consent of the **Insurer**. It does not include the **Insured's** own costs and expenses.
- 10.5. **"DOCUMENT"** means all forms of documents of whatsoever nature including **Computer System** records arising from the **Professional Business** by the **Insured** which belong to the **Insured** or which have been entrusted to the **Insured** in the ordinary course of the **Professional Business** by the **Insured** but excluding stamps, bearer bonds, coupons, bank notes, currency notes and negotiable instruments and the like.
- 10.6. **"EMPLOYEE"** means person, other than a partner, member, principal or director of the **Insured** who is under a contract of service or apprenticeship, supplied to, hired or borrowed by the **Insured**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **Insured** in connection with the **Professional Business** by the **Insured**.
- 10.7. **"EXCESS"** means amount which is to be borne by the **Insured** (the **Insurer** shall only be liable to the extent that any liability exceeds the "Excess").
- 10.8. **"EXTRANET"** means 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.
- 10.9. **"INSURED"** means firm(s) and/or company(ies) and/or limited liability partnership(s) stated in item 1 of the **Schedule**; its (or their) partners, members, principals and directors.
- 10.10. **"INSURER"** means Choice Insurance Agency Limited on behalf of International General Insurance Company (UK) Limited.
- 10.11. **"INTERNET"** means 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.
- 10.12. **"INTRANET"** means one or more inter-connected networks with restricted access to the **Insured** via service providers or online service providers using a dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or other transfer medium.
- 10.13. **"LIMIT OF INDEMNITY"** means maximum amount payable by the **Insurer** under this Policy.
- 10.14. **"PERIOD OF INSURANCE"** means the period stated in item 2 of the **Schedule**

10.15. "PREMIUM" means total amount stated in item 5 of the **Schedule**.

10.16. "PROFESSIONAL BUSINESS" means

- 10.16.1 design
- 10.16.2 specification
- 10.16.3 inspection of construction
- 10.16.4 feasibility and/or other scientific studies
- 10.16.5 technical information calculation
- 10.16.6 surveying (including quantity surveying)
- 10.16.7 procurement
- 10.16.8 quality control
- 10.16.9 materials measurement, testing and certification
- 10.16.10 testing and commissioning
- 10.16.11 safety management
- 10.16.12 general consultancy and giving of advice

provided such activities are undertaken by or under the direction and direct control of a Fellow or Member of the Royal Institution of Chartered Surveyors, or a Fellow of the Royal Institute of British Architects, or a Fellow of the Faculty of Architects and Surveyors, or a Fellow of the Royal Incorporation of Architects in Scotland, or a Fellow of the Institute of Civil Engineers, or a Fellow of the Association of Consulting Engineers, or a person registered with the Engineering Council as a Chartered Engineer, Incorporated Engineer or Engineering Technician, or any other person where specific agreement in writing has been obtained from the **Insurer** prior to inception of this Policy.

For the avoidance of doubt "Professional Business" does not include the day to day supervision or inspection of labour and construction work usually undertaken by building or engineering contractors.

10.18. "PROPOSAL" means written information bearing the date stated in item 6 of the **Schedule** and containing particulars and statements together with any other written information supplied to the **Insurer**.

10.19. "SCHEDULE" means document entitled "Schedule" that relates to this Policy.

10.20. "TERRORISM" means any 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.

10.21. "WRONGFUL ACT" means negligent act, negligent error, or negligent omission

11. COMPLAINTS PROCEDURE & REGULATORY INFORMATION

If you have a Complaint which relates to either Your Policy or to a claim which you have submitted under Your policy then please raise this in the first instance with Your broker who will aim to resolve Your concerns by close of the next business day.

If Your broker is unable to deal with your concerns the matter will be forwarded onto Your Insurer via your Insurance provider, who is:-

Choice Insurance Agency Ltd.
The Gateway Building
10 Elmer Approach
Southend-on-Sea, Essex
SS1 1LW

Or via email at Complaints@ChoiceInsuranceAgency.com

Whilst reviewing your complaint Your Insurer will:

- Acknowledge Your complaint promptly
- Investigate Your complaint quickly and thoroughly
- Keep You informed of the progress of your complaint
- Do everything possible to resolve Your complaint

Your Insurer is obliged to provide You with a written offer of resolution within 8 weeks of the date Your complaint was received.

If You are unhappy with the final decision made by Your Insurer , You may be eligible to refer Your case to the Financial Ombudsman Service (FOS). The FOS is an independent body that arbitrates on complaints.

The FOS can be contacted at the following address:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London E14 9SR

Telephone: 0800 0234567 (for landline users)

Telephone: 0300 1239123 (for mobile users)

Email: complaint.info@financial-ombudsman.org.uk

Website: www.financial-ombudsman.org.uk

You have six months from the date of the final response from Your Insurer to refer Your complaint(s) to the FOS. This does not affect Your right to take legal action, however, the FOS will not adjudicate on any case where litigation has commenced.