

# **SURVEYORS**

**Professional Indemnity Insurance Policy**

## **SURVEYORS' PROFESSIONAL INDEMNITY INSURANCE POLICY**

- A. The Insured has submitted to the Insurer a proposal form or forms and, where requested, a declaration form containing particulars and statements which are the basis of this Policy and are incorporated herein.
- B. This Policy, any endorsements to the Policy and the Schedule hereto shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the Policy, its endorsements, if any, or the Schedule shall bear the same meaning wherever it may appear.
- C. Certain words in this Policy have been defined in Section 2 and bear the meaning defined in that section.
- D. In consideration of the Insured having agreed to pay the Total Premium to the Insurer it is agreed that:-

### **SECTION 1 - INSURING CLAUSES**

#### **1.1. Civil Liability (including Cyber Liability Claims)**

1.1.1. The Insurer will indemnify the Insured against any Claim or Claims:

- (a) first made against the Insured; and/or
- (b) arising out of any Circumstance which the Insured shall first notify,

during the Period of Insurance in respect of any civil liability, including Cyber Liability Claims, which arise in consequence of the conduct of Professional Business by the Insured and/or by others acting for and/or on behalf of the Insured.

1.1.2. The foregoing indemnity extends to include liability which the Insured may incur in respect of any Claim or Claims first made against the Insured during the Period of Insurance for claimant's costs and expenses as a result of:-

- (a) any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or an adjudication clause or rules contained in a contract; or
- (b) any award by an arbitrator or tribunal of arbitrators, whether under the Surveyors' and Valuers' Arbitration Scheme 1998 or otherwise.

1.1.3. The maximum amount payable by the Insurer under this Clause in respect of each Claim or any Series of Claims shall, save as provided elsewhere in this Policy, not exceed the Limit of Indemnity.

1.1.4. The maximum amount payable by the Insurer under this Clause in respect of each Cyber Liability Claim or any Series Of Claims shall not exceed £250,000 during the Period of Insurance. This sum is not additional to and shall not increase the Limit of Indemnity.

#### **1.2. Awards by Ombudsman**

1.2.1. The Insurer will indemnify the Insured against any award made by an ombudsman in respect of any case accepted by the ombudsman for review in his position as ombudsman under any recognised scheme where the Claim:

- (a) is first made against the Insured; and/or
- (b) arises out of any Circumstance which the Insured shall first notify,

during the Period of Insurance together with all legal costs and expenses incurred with the prior written and continuing consent of the Insurer, such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn, in the investigation of such Circumstance and the investigation, conduct or settlement of any such Claim.

1.2.2. The maximum amount payable by the Insurer under this Clause in respect of:

- (a) any single award made by any ombudsman; or
  - (b) any series of awards by any ombudsmen attributable to the same originating cause,
- shall not exceed £25,000.

1.2.3. Where an ombudsman makes an award which is rejected by the claimant who then pursues the matter through the Courts, both the complaint to the ombudsman and all subsequent Court proceedings shall be treated as a single Claim made at the date of the first Claim against the Insured.

### **1.3. Defence Costs**

1.3.1. The Insurer will indemnify the Insured for Defence Costs in connection with a Claim or Circumstance provided that in the event that a settlement or other payment has to be made to dispose of a Claim which exceeds the amount of the Limit of Indemnity, the Insurer's liability in respect of Defence Costs shall be limited to the same proportion that the Limit of Indemnity bears to the amount of such settlement or other payment.

1.3.2. Save as set out at Insuring Clauses 1.4, 1.5 and 1.6 and Exclusion 7.3, Defence Costs are not subject to the Limit of Indemnity.

### **1.4. Court Attendance Compensation**

1.4.1. The Insurer will provide compensation to the Practice, with the prior written consent of the Insurer, in the event that the legal advisers acting on behalf of the Insured require any of the Insured, any Employees or any other relevant party, not including expert witnesses, to attend Court or any arbitration or adjudication hearing as a witness of fact in connection with a Claim made against the Insured for which cover is afforded under this Policy at the following rates for each day or part thereof on which attendance is required:

- (a) any principal partner, member or director of the Insured £200
- (b) any Employee £100
- (c) other relevant party £200

1.4.2. The maximum amount payable by the Insurer under this Clause shall not exceed £10,000 in the aggregate during the Period of Insurance. This sum is not additional to and shall not increase the Limit of Indemnity.

### **1.5. Estate Agents' and Health and Safety Legislation**

1.5.1. The Insurer will pay on behalf of the Insured 80% of any reasonable costs and expenses incurred with the prior consent of the Insurer for the defence of any proceedings first brought against the Insured during the Period of Insurance and notified to the Insurer during the Period of Insurance, under the:

- (a) Property Misdescriptions Act 1991; or
- (b) Estate Agents Act 1979; or
- (c) Health and Safety at Work etc Act 1974; or
- (d) Health and Safety at Work (Northern Ireland) Order 1978; or
- (e) Construction (Design and Management) Regulations 1994; or
- (f) similar or successor legislation to that detailed in (a) to (e) above,

but only where, in the Insurer's reasonable opinion, defending such proceedings could protect the Insured against any Claim or potential Claim arising from Professional Business undertaken by the Insured.

- 1.5.2. The maximum amount payable by the Insurer under this Clause shall not exceed £100,000 in the aggregate during the Period of Insurance. This sum is not additional to and shall not increase the Limit of Indemnity.

## **1.6. Legal Representation Costs**

- 1.6.1. The Insurer will pay on behalf of the Insured 80% of any costs and expenses:

- (a) which are incurred by the Insured during the Period of Insurance with the prior written consent of the Insurer for representation at properly constituted hearings, tribunals or proceedings arising out of any:
  - (i) Claim first made; and/or
  - (ii) Circumstances which the Insured shall first notify,

during the Period of Insurance in respect of the conduct of Professional Business by the Insured which may be or may become the subject of indemnity under this Policy; and

- (b) which are not indemnified as Defence Costs pursuant to Insuring Clause 1.3.

- 1.6.2. The maximum amount payable by the Insurer under this Clause shall not exceed £10,000 in the aggregate during the Period of Insurance. This sum is not additional to and shall not increase the Limit of Indemnity.

## **1.7. Fidelity**

- 1.7.1. The Insurer will indemnify the Insured for any financial loss or losses sustained by the Insured in respect of loss of money or other property in consequence of the conduct of Professional Business by the Insured and first discovered and notified to the Insurer during the Period of Insurance by reason of and solely and directly caused by the dishonest or fraudulent act or acts of any past or present partner, director, member, Employee or consultant of the Practice or any of them whether committed alone or in collusion with others provided always that:

- (a) no indemnity shall be afforded to any person committing or condoning such dishonesty or fraud; and
- (b) no indemnity shall be afforded in respect of any loss or losses arising out of such dishonesty or fraud on the part of any person after discovery by the Insured of reasonable cause for suspicion of dishonesty or fraud; and

- (c) any loss or losses sustained by the Insured as a consequence of dishonesty or fraud committed by a person or persons acting in concert shall for the purposes for this Policy be treated as one loss; and
- (d) the annual accounts and the client accounts of the Insured have been prepared or certified by an independent and properly qualified and registered accountant or auditor; and
- (e) on discovery of any loss the Insured immediately gives notice to the Insurer and takes all reasonable steps to prevent further loss; and
- (f) if the Insurer so requests, the Insured shall take all reasonable steps to effect recovery from the person or persons committing or condoning such dishonest or fraudulent act or from the personal representatives of such person or persons; and
- (g) the following will be deducted from any amount payable under this Policy:
  - (i) any monies which but for such dishonest or fraudulent act would be due from the Insured to the person committing or condoning such act; and
  - (ii) any monies held by the Insured and belonging to such person; and
  - (iii) any monies recovered following action as described in (f) above.

1.7.2. In addition, the Insurer will indemnify the Insured in respect of the reasonable fees charged by accountants or other professional advisers incurred, with the prior written consent of the Insurer, directly in consequence of investigating and determining loss or losses, up to a maximum sum of £50,000.

1.7.3. It is a condition precedent to the Insurer's liability under this clause that the Insured will require and obtain the signatures of at least two properly authorised officers or partners of the Insured as authorisation of any monetary transactions with a value greater than £1,000.

1.7.4. Any Circumstance notified to the Insurer during the Period of Insurance which subsequently gives rise to a loss after expiry of this Policy shall be deemed to be a loss sustained by the Insured during the Period of Insurance.

1.7.5. The maximum amount payable by the Insurer under this Clause in respect of each loss or series of losses that arise directly or indirectly from the same cause or event shall not exceed the Limit of Indemnity. This sum is not additional to and shall not increase the Limit of Indemnity.

## **1.8. Loss of or Damage to Documents**

1.8.1. The Insurer will indemnify the Insured for any financial loss or losses sustained by the Insured in respect of reasonable and necessary costs and expenses incurred by the Insured, with the prior written consent of the Insurer, in replacing, restoring or reconstituting any Documents which are the property of the Insured in consequence of the conduct of Professional Business by the Insured in the event of physical loss of or damage to such Documents suffered and first discovered by the Insured and notified to the Insurer during the Period of Insurance.

1.8.2. If during the Period of Insurance the Insured becomes aware of any Circumstance that might give rise to a loss, the Insured shall give notice to the Insurer of such Circumstance as soon as practicable. All Circumstances must in any event be notified prior to the expiry of the Period of Insurance.

1.8.3. Any Circumstance notified to the Insurer during the Period of Insurance which subsequently gives rise to a loss under this clause after expiry of this Policy shall be deemed to be a loss sustained by the Insured during the Period of Insurance.

- 1.8.4. The Insurer will not indemnify the Insured in respect of costs and expenses arising from or connected with the physical loss or damage to Documents which are stored on magnetic or electrical media unless such Documents are duplicated on magnetic or electrical media with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status.
- 1.8.5. The maximum amount payable by the Insurer under this Clause shall not exceed £50,000 for each loss or any series of losses arising directly or indirectly from the same cause or event and £150,000 in the aggregate during the Period of Insurance. This sum is not additional to and shall not increase the Limit of Indemnity.

### **1.9. Infringement of Copyright or Patents**

- 1.9.1. The Insurer will indemnify the Insured in respect of any reasonable costs and expenses incurred by the Insured, with the prior written consent of the Insurer, in prosecuting any claim for an injunction or for damages for infringement of patent, design or copyright vested in the Insured in consequence of the conduct of Professional Business by the Insured which is discovered and notified to the Insurer during the Period of Insurance.
- 1.9.2. The Insurer will not indemnify the Insured against costs and expenses that may be awarded against the Insured.
- 1.9.3. If during the Period of Insurance the Insured becomes aware of any Circumstance that might give rise to a claim under this clause, the Insured shall give notice to the Insurer of such Circumstance as soon as practicable. All Circumstances must in any event be notified prior to the expiry of the Period of Insurance.
- 1.9.4. Any Circumstance notified to the Insurer during the Period of Insurance which subsequently gives rise to a claim under this clause after expiry of this Policy shall be deemed to be a Claim first made during the Period of Insurance.
- 1.9.5. The maximum payable by the Insurer under this Clause shall not exceed £100,000 in the aggregate during the Period of Insurance. This sum is not additional to and shall not increase the Limit of Indemnity.

### **1.10. Appointed Representative**

The Insured is, for the purposes of the Financial Services and Markets Act 2000, an Appointed Representative of the principals, if any, named in the proposal form for the purposes stated in the proposal form. Notwithstanding Exclusion 7.9, the Insurer will, indemnify the Insured in respect of any negligent act, negligent error or negligent omission incurred in connection with such appointments, provided that there should be no indemnity for any liability assumed by the Insured under any express warranty, agreement or guarantee unless such liability would have attached to the Insured notwithstanding such express warranty, agreement or guarantee.

## **SECTION 2 - DEFINITIONS AND INTERPRETATIONS**

In this Policy, headings and notes are for information purposes only and are not to be construed as part of the Policy.

The following words and phrases are used in this Policy and in certain instances the words may be used in the plural or singular form. Wherever they appear they are deemed to have the meaning set out below.

### **2.1. "Asbestos Inspection"**

Shall mean Type 1, 2 or 3 inspections as set out in MDHS 100 published by the Health and Safety Executive in connection with regulation 4 of the Control of Asbestos at Work Regulations 2002

(CAWR), or any other comparable inspection, whether of commercial or residential land or property.

**2.2. “Bodily Injury”**

Shall include death and injury, illness or disease whether bodily or mental.

**2.3. “Circumstance”**

Shall mean an incident, occurrence, fact, matter, act or omission that might give rise to a Claim.

**2.4. “Claim”**

Shall mean:

- 2.4.1. any demand for damages or compensation from, or the assertion of a right against, the Insured; or
- 2.4.2. any notice of intention, whether orally or in writing, to commence legal proceedings against the Insured; or
- 2.4.3. any communication with the Insured in whatsoever form invoking any Pre-Action Protocols as may be issued and approved from time to time.

**2.5. “Collateral Warranty Or Duty Of Care Agreement”**

Shall mean any written agreement signed by the contracting parties that creates a duty of care by the Insured to any party other than the Insured’s direct client.

**2.6. “Computer System”**

Shall mean any 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, or any electronic documents utilised in the ownership, security and management of the Insured’s electronic communication system, world-wide web site, internet site, intranet site, extranet site, or web addresses.

**2.7. “Cyber Liability Claim”**

Shall mean a Claim relating to:

- 2.7.1. defamation; or
- 2.7.2. malicious falsehood, including slander of title and slander of goods; or
- 2.7.3. unintentional false attribution of authorship or passing off; or
- 2.7.4. unintentional infringement of intellectual property rights, including copyright, trademark, service mark, moral rights, patent rights, registered design, breach of confidence or infringement of any rights or privacy; or
- 2.7.5. unintentional misuse of any information which is either confidential or subject to statutory restrictions on its use; or
- 2.7.6. misuse by any employee of the Insured’s electronic signature or external email,

and arising in consequence of the conduct of Professional Business transacted via the internet, extranet or via the Insured’s own web site, internet site, web addresses or via the transmission of electronic mail or documents by electronic means.

**2.8. “Defence Costs”**

Shall mean all legal costs and expenses incurred with the prior written and continuing consent of the Insurer, not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn, in the investigation, defence or settlement of any Claim and/or Circumstance. It does not include the Insured’s own costs and expenses.

**2.9. “Documents”**

2.9.1. Shall mean project models or displays, deeds, wills, agreements, maps, plans, records, photographs or negatives, written or printed books, letters, certificates or written or printed documents or forms of any nature whatsoever and shall include computer software and systems records. Electronic data shall be deemed to be physical property for the purposes of this definition.

2.9.2. This definition shall not include bearer bonds, evidence of share ownership, whether in electronic or other form, coupons, bank or currency notes and other negotiable paper.

**2.10. “Employee”**

Shall mean any person acting under a contract of service with the Insured in respect of the conduct of Professional Business by the Insured.

**2.11. “Excess”**

Shall mean any excess stated in the Schedule.

**2.12. “Finance Provider”**

Shall mean a third party who enters into an agreement with the Insured to enable the Insured to pay the Total Premium by instalments.

**2.13. “Insured”**

Shall mean each of the following, each of whom shall be separately insured hereunder:

2.13.1. the Practice; and

2.13.2. the partners, directors and members of the Practice during the Period of Insurance; and

2.13.3. former partners, former directors and former members of the Practice; and

2.13.4. in respect of Professional Business undertaken on behalf of the Practice only, those persons named as consultants or former consultants in the proposal form; and

2.13.5. any retired partner, director or member of the Practice remaining as a consultant to the Practice; and

2.13.6. in respect of Professional Business undertaken on behalf of the Practice only, any employee, former employee of the Practice and any self-employed person; and

2.13.7. the estate, heirs and executors and legal/personal representatives of those parties mentioned in 2.13.1 to 2.13. 6 above in the event of their death, incapacity, insolvency or bankruptcy.

**2.14. “Insurer”**

Shall mean the insurance company stated in the Schedule.

**2.15. “Limit of Indemnity”**

Shall mean the limit of indemnity stated in the Schedule.

**2.16. “Period of Insurance”**

Shall mean the period stated in the Schedule unless this Policy is terminated.

**2.17. “Pollution”**

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

**2.18. “Practice”**

Shall mean the practice or practices stated in the Schedule and such predecessors of that practice or those practices and any other practice which are disclosed to the Insurer in the proposal form.

**2.19. “Professional Business”**

Shall mean:

2.19.1. those services, including the giving of advice, which are normally undertaken by members of the Royal Institution of Chartered Surveyors, or have otherwise been declared to the Insurer, and which are performed by or on behalf of the Practice within the Territorial Limits; or

2.19.2. services performed, including advice given, by any Insured whilst holding an individual appointment in respect of work directly or indirectly connected with the Practice where:

- (a) those services are undertaken by members of the Royal Institution of Chartered Surveyors or have otherwise been declared to the Insurer; and
- (b) if a fee was charged, the fee with respect to such services or advice is taken into account in ascertaining the income of the Practice and has been disclosed to the Insurer.

**2.20. “Retroactive Date”**

Shall mean the retroactive date, if any, stated in the Schedule.

**2.21. “Series of Claims”**

Shall mean a number of Claims, whether made against or involving one or more persons or entities comprising the Insured and whether made by the same or different claimants and whether falling under one or more insuring clauses of this Policy, that arise directly or indirectly from the same originating cause.

**2.22. “Territorial Limits”**

Shall mean the United Kingdom, including the Channel Islands and the Isle of Man, and the Republic of Ireland.

**2.23. “Total Premium”**

Shall mean the amount stated in the Schedule payable by the Insured to the Insurer.

## **SECTION 3 - EXCESS**

### **3.1. Civil Liability**

Subject to the terms of this Policy the Insurer shall be liable under Insuring Clauses 1.1 and 1.10 only for that part of each Claim or any Series of Claims, including Cyber Liability Claims, which exceeds the Excess.

### **3.2. Awards by Ombudsman**

- 3.2.1. The Insurer shall be liable under Insuring Clause 1.2 only for that part of:
- 3.2.2. any single award made by any ombudsman; or
- 3.2.3. any series of awards by any ombudsman attributable to the same originating cause, which exceeds £1,000.

## **SECTION 4 - CLAIMS CONDITIONS**

### **4.1. Notification of a Claim or Circumstance**

- 4.1.1. If during the Period of Insurance the Insured shall receive any Claim, or any notice of an intention to make a Claim, the Insured shall give written notice to the Insurer as soon as reasonably practicable. All Claims must in any event be notified within 10 working days after the expiry of the Period of Insurance.
- 4.1.2. If during the Period of Insurance the Insured becomes aware of any Circumstance the Insured shall give written notice to the Insurer of such Circumstance as soon as reasonably practicable with such notice supplying full particulars of the relevant circumstance including, where possible:
  - (a) the name of the potential claimant; and
  - (b) the date of the incident, occurrence, fact, matter, act or omission which has given rise to the Circumstance; and
  - (c) the name of the individual involved in the Circumstance;
  - (d) the date of the Insured's first awareness or discovery of such Circumstance;
  - (e) the estimated amount of any potential Claim which may arise thereafter.

The Insured shall provide such further information as Insurer may reasonably require.

All Circumstances must in any event be notified prior to the expiry of the Period of Insurance.

- 4.1.3. Any Circumstance notified to the Insurer during the Period of Insurance which subsequently gives rise to a Claim after expiry of the Period of Insurance shall be deemed to be a Claim first made during the Period of Insurance.
- 4.1.4. If during the Period of Insurance the Insured shall discover:
  - (a) a reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner, director, member, Employee or consultant of the Practice; or
  - (b) an occurrence that may require representation at a properly constituted hearing, tribunal or proceeding,

which might give rise to a Claim, the Insured shall give written notice to the Insurer of such discovery as soon as reasonably practicable, but in any event prior to the expiry of the Period of Insurance.

- 4.1.5. Such a discovery notified to the Insurer during the Period of Insurance which subsequently gives rise to a Claim after the expiry of the Period of Insurance shall be deemed to be a Claim first made during the Period of Insurance.

#### **4.2. Adjudication**

The Insured shall as a condition precedent to its right to indemnity in respect of any adjudication for which indemnity is available under Insuring Clause 1.1:

- 4.2.1. notify the Insurer within two working days of receipt of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract; and
- 4.2.2. not serve any of the notices referred to above without the prior written consent of the Insurer unless, in the Insured's reasonable opinion, service of those notices will not give rise to a Claim.

#### **4.3. Ombudsman**

The Insured shall as a condition precedent to its right to indemnity under Insuring Clause 1.2 give written notice to the Insurer as soon as reasonably practicable after becoming aware that a case directly affecting the Insured is being reviewed by any ombudsman.

#### **4.4. No Admission of Liability**

In the event of a Claim or the discovery of a Circumstance, the Insured shall not admit liability, incur any costs or make any offers of settlement in connection therewith or otherwise prejudice the conduct or the defence or settlement of such Claim or Circumstance without the prior written consent of the Insurer not to be unreasonably withheld or unreasonably delayed regardless of;

- 4.4.1. the provisions of any complaints handling procedure; or
- 4.4.2. whether the amount of the dispute is less than the Excess.

#### **4.5. Conduct of Claims**

Following notification of a Claim or notification of any Circumstance, the Insurer shall be entitled if it so desires to take over and conduct in the name of the Insured the investigation, defence or settlement of any such matter. The Insured shall co-operate with the Insurer and shall give such information and assistance, as set out at Claims Condition 4.6, as the Insurer may reasonably require.

#### **4.6. Claims Control and Co-Operation**

- 4.6.1. The Insured shall give to the Insurer all such information and assistance as the Insurer may reasonably require and is in the Insured's power to provide.
- 4.6.2. The Insured shall co-operate with the Insurer and its appointed representatives:
- (a) by providing all such information, assistance, signed statements or depositions as may be required to facilitate compliance with all and any Civil Procedure Rules, Practice Directions and Pre-Action Protocols as may be issued; and
  - (b) by assisting the Insurer to present the best possible defence of a Claim; and
  - (c) by ensuring access to all and any information that the Insurer or its representatives may require in the defence of a Claim or in the investigation of any Circumstance, whether or not privileged; and

- (d) by making payment on demand of the Excess in order to comply with the terms of any settlement agreed by the Insurer; and
- (e) by providing all such information, assistance, signed statements or depositions as may reasonably be required to permit the Insurer to exercise rights of subrogation; and
- (f) by ensuring that all documents relevant to a Claim and any Circumstance are preserved in their entirety.

#### **4.7. False or Fraudulent Claims**

If the Insured shall make any claim under this Policy knowing the same to be false or fraudulent as regards the amount or otherwise this Policy shall become void ab initio and the Insured shall forfeit all benefit hereunder and, if the Insurer so requires, all previous payments by the Insurer shall be refunded by the Insured.

### **SECTION 5 - GENERAL CONDITIONS**

The following General Conditions apply to this Policy:

#### **5.1. Payment of Total Premium**

- 5.1.1. Unless otherwise agreed in writing between the Insurer and the Insured, it is a condition precedent to the Insurer's liability under this Policy that the Insured shall pay the Total Premium to the Insurer within 14 days of inception of the Policy and that time is of the essence. If the Total Premium is not paid to the Insurer within 14 days of inception, the Policy is terminated immediately with effect from inception and the Insurer will have no liability under the Policy.
- 5.1.2. Where the Insurer and the Insured have agreed in writing that a Finance Provider will pay the Total Premium on behalf of the Insured to the Insurer it is a condition precedent to the Insurer's liability under this Policy that the Insured shall pay to the Finance Provider each of the instalments due to the Finance Provider on the dates that they are due and that time is of the essence and that the Insured shall not breach any of the terms and conditions of the agreement between the Finance Provider and the Insured. Unless all of the instalments are paid by the due date, the Policy is terminated:
  - (a) with effect from inception and the Insurer will have no liability under the Policy if no instalment has been paid; or
  - (b) with effect from the date of the last payment of an instalment and the Insurer will have no liability under the Policy after the date of that payment if one or more instalments have been paid.
- 5.1.3. It is also a condition precedent to the Insurer's liability under the Policy that the Finance Provider does not, pursuant to the agreement between the Finance Provider and the Insured, instruct the Insurer to cancel the Policy. If the Finance Provider instructs the Insurer to cancel the Policy it is terminated in accordance with General Condition 5.1.2 (a) or (b) above or, in any other circumstances, with effect from the date of the instruction from the Finance Provider to the Insurer.

#### **5.2. Discharge of Liability**

The Insurer may at any time pay to the Insured in connection with each Claim or any Series Of Claims the Limit of Indemnity, less any sums already paid, or any lesser sum for which such Claims can be

settled and upon such payment the Insurer shall not be under any further liability in respect of such Claims except for Defence Costs incurred prior to such payment and with the Insurer's prior consent.

### **5.3. Joint Insured**

The Limit of Indemnity and the Excess apply to all the Insured jointly.

### **5.4. Combined Claims**

5.4.1. Where the same originating cause gives rise to an entitlement on the part of the Insured to indemnity under Insuring Clause 1.1 and all or any of Insuring Clauses 1.2, 1.4, 1.5, 1.6, 1.7, 1.8, 1.9 or 1.10, the maximum amount payable by the Insurer under Insuring Clause 1.1 and such other Insuring Clause or Clauses apart from Insuring Clause 1.3 as may entitle the Insured to indemnity shall not exceed the Limit of Indemnity.

5.4.2. Where a Claim is brought against more than one Insured it shall be deemed to be one Claim and the Insurer's liability shall be the same as if the claim had been brought against one Insured only.

### **5.5. Retroactive Date**

Where a Retroactive Date is specified in the Schedule, this Policy shall not indemnify the Insured for any Claim, loss or other claim under the Policy notified under the terms of this Policy that arises out of the conduct of Professional Business prior to the said Retroactive Date.

### **5.6. Subrogation**

Immediately on the notification of a Claim or Circumstance the Insured grants to the Insurer all rights of recovery against any parties from whom a recovery may be made, and the Insured will take all reasonable steps to preserve such rights and will co-operate with the Insurer in accordance with Claims Condition 4.6. However, the Insurer agrees to waive any rights of recovery against the Insured unless liability has resulted in whole or part from any act or omission on the part of such persons which is dishonest, fraudulent, criminal or malicious.

### **5.7. Adjudication**

The Insured agrees:

5.7.1. subject to a reasonable request by the Insurer for permission, to permit the Insurer 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 the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the adjudicator. The Insured will give all such assistance as the Insurer may reasonably require in relation to such proceedings; and

5.7.2. not to accept the decision of any adjudicator as finally determining the related dispute without the prior written consent of the Insurer not to be unreasonably delayed or unreasonably withheld.

### **5.8. Contracts (Rights of Third Parties) Act 1999**

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

### **5.9. Choice of Law, Disputes and Jurisdiction**

5.9.1. This Policy shall be governed by and construed in accordance with the laws of England and Wales.

5.9.2. Any dispute between the Insurer and the Insured:

- (a) as to the correct interpretation of the definition of Professional Business under this Policy; or
- (b) regarding the application of the Special Institution Condition,

shall be referred by either party for arbitration in accordance with the law and procedure of England and Wales to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors, whose decision shall be binding on both parties.

5.9.3. If the Insured and the Insurer cannot agree a common course of action with regard to the contesting of any legal proceedings, whether defence or prosecution, the dispute will be resolved by reference to Queen's Counsel of the English Bar, to be mutually agreed between the Insurer and the Insured whose decision shall be binding. In resolving the dispute, the Queen's Counsel shall have regard to the interests of both the Insured and the Insurer. In the event of disagreement regarding the appointment of Queen's Counsel, the Queen's Counsel shall be appointed by the Chairman for the time being of the Bar Council. The costs of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.

5.9.4. Save as aforesaid, the Courts of England and Wales are to have exclusive jurisdiction for hearing and determining any dispute arising out of or in connection with this Policy.

5.9.5. This Policy provides the minimum insurance requirements of the Royal Institution of Chartered Surveyors. However, for the avoidance of doubt, in any dispute or difference between the Insured and the Insurer arising from this Policy, the minimum insurance requirements as set out in the Royal Institution of Chartered Surveyors' Rules shall take precedence over any term of this Policy which is less favourable to the Insured.

#### **5.10. Practice to act as Agent**

All persons falling within the definition of the Insured agree that the Practice is their agent for all purposes in connection with this Policy which may be varied or rescinded by agreement between the Insurers and the Practice without the consent of any other person falling within the definition of the Insured or otherwise.

### **SECTION 6 - SPECIAL INSTITUTION CONDITION**

#### **6.1. Non-disclosure or Misrepresentation**

6.1.1. Where there has been non-disclosure or misrepresentation of facts or untrue statements in the proposal form or in any other information or statements provided to or made to or warranted to the Insurer and there has been no intention to deceive or mislead the Insurer, the Insurer will not exercise its right to avoid this Policy nor will the Insurer be discharged from any liability under this Policy provided that;

6.1.2. where such non-disclosure or misrepresentation has prejudiced the Insurer's consideration of terms under this Policy, the Insurer shall be entitled to charge a reasonable additional premium in light of such prejudice.

6.1.3. However in the case of a Claim first made against the Insured during the period of Insurance where:

- (a) the Insured had previous knowledge of any Circumstance relating to such Claim; and
- (b) where the Insured should have notified under any proceeding policy either a Claim or any Circumstance

then where the indemnity or cover under this Policy is greater or wider in scope than that to which the Insured would have been entitled under such preceding policy, whether with other insurers or not, the Insurer shall only be liable to afford indemnity to such amount and extent as would have been afforded to the Insured by such preceding policy.

## **6.2. Prejudice**

Where the Insured's breach of or non-compliance with any provision in Claims Conditions 4.1, 4.4, 4.5 or 4.6 has resulted in prejudice to the handling or settlement of any Claim, the Insurer shall be entitled to reduce the indemnity afforded by this Policy in respect of such Claim, including Defence Costs, to such sum as in the Insurer's reasonable opinion would have been payable by it in the absence of such prejudice.

## **6.3. Awards by Ombudsman**

Clause 6.2 of this Special Institution Condition shall not apply to Insuring Clause 1.2.

## **SECTION 7 - EXCLUSIONS**

The Insurer shall not be liable under this Policy for:

### **7.1. Adjudication**

- 7.1.1. Any decision made against the Insured by an adjudicator who was not independent of the parties to the dispute.
- 7.1.2. Any Claim arising out of or related to any adjudication arising from an adjudication clause in a contract which contains timetable provisions for adjudication which are more onerous to the Insured than those contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996.

### **7.2. Arbitration**

Any arbitration award, whether made under the Surveyors' and Valuers' Arbitration Scheme 1998 or otherwise, made in respect of any Claim, loss or counterclaim where the seat of the arbitration was located outside England, Wales, Scotland or Northern Ireland unless that seat was agreed to by the Insurer.

### **7.3. Asbestos**

Any Claim directly or indirectly resulting from the presence or release or possible presence or possible release of asbestos or asbestos containing materials in whatever form or quantity.

Subject to the provisos below, this exclusion shall not apply to any such Claim caused by a negligent act, negligent error or negligent omission in the conduct of Professional Business.

Provided always that:

7.3.1. such Claim is:

- (a) first made against the Insured; and/or
- (b) arises out of any Circumstance which the Insured shall first notify during the Period of Insurance; and

7.3.2. the Insurer shall not be liable for any such Claim:

- (a) directly or indirectly resulting from Asbestos Inspections carried out by the Insured; or
  - (b) arising out of or in any way involving Bodily Injury or fear of suffering Bodily Injury; and
- 7.3.3. the maximum amount payable in the aggregate in the Period of Insurance by the Insurer in respect of any Claim, any claimant's costs and any Defence Costs directly or indirectly resulting from Asbestos Risks shall not exceed the £250,000 in the aggregate during the Period of Insurance. This sum is not additional to and shall not increase the Limit of Indemnity.

#### **7.4. Contractual Liability**

- 7.4.1. Any contractual liability incurred by the Insured in the conduct of Professional Business carried on by the Insured as a result of:
- (a) the acceptance by the Insured of an obligation or the guarantee by the Insured of fitness for purpose where this appears as an express term; or
  - (b) any express guarantee given by the Insured including any relating to the period of a project; or
  - (c) any express penalty contained in a contract between the Insured and a third party; or
  - (d) any express acceptance by the Insured of liability for liquidated damages.
- 7.4.2. Any liability that arises in consequence of any assignment of a Collateral Warranty Or Duty Of Care Agreement to more than one party except in the case of a Collateral Warranty Or Duty Of Care Agreement given to a financier or funding party, not a purchaser or tenant, where a total of two assignments is permissible. This clause is only applicable to contractual liabilities entered into on or after 1 October 2001.
- 7.4.3. This exclusion shall not apply if liability would have attached to the Insured in the absence of any such express agreement or if:
- (a) the Insurer has expressly approved the contractual terms giving rise to the said liability; or
  - (b) in the case of a Collateral Warranty Or Duty Of Care Agreement, the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording is used.

#### **7.5. Controlling Interest**

Any Claim brought about by either:

- 7.5.1. any entity in which the Insured exercises a controlling interest; or
- 7.5.2. any entity exercising a controlling interest over the Insured by virtue of it having a financial or executive interest in the operation of the Insured,

unless such Claim is made against the Insured for an indemnity or contribution in respect of a Claim made by an independent third party.

#### **7.6. Director's and Officer's or Trustee's Liability**

Any Claim against any Insured in their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.

## **7.7. Dishonesty or Fraud**

Any Claim or loss arising out of any dishonesty or fraud of any Insured save to the extent that the Claim or loss arises by reason of and was solely and directly caused by the, actual or allegedly, dishonest or fraudulent acts of any past or present partner, director, member, consultant or Employee of the Practice or any of them, whether committed alone or in collusion with others, which cause any client of the Insured to suffer loss and provided always that:

- 7.7.1. no indemnity shall be afforded in respect of any Claim or loss arising out of such dishonesty or fraud on the part of any person after discovery by the Insured, in relation to that person of reasonable cause for suspicion of fraud or dishonesty; and
- 7.7.2. any dishonesty or fraud committed by a person or persons acting in concert shall for the purposes of this Policy be treated as one Claim or loss; and
- 7.7.3. the annual accounts of the Insured have been and where applicable are being prepared and/or or certified by an independent and properly qualified and registered accountant or auditor in accordance with the RICS Rules of Conduct and the client accounts of the Insured, where applicable, have been kept in accordance with those Rules.

This exclusion shall not apply to Insuring Clause 1.7.

## **7.8. Electronic Date Recognition**

Any Claim or loss either caused by or contributed to by or arising from or in connection with the performance or functionality of any Computer System being affected by any changes, prior to, during or after, the change of year, date or time in particular where such a Claim or loss arises because of any failure to ensure that:

- 7.8.1. no value for current date will cause or give rise to any interruption in the operation of the Computer System; and
- 7.8.2. date based functionality and performance behaves consistently for dates, prior to during or after, the change of year, date or time; and
- 7.8.3. in all interfaces and data storage, the century in any date is specified either explicitly or by unambiguous algorithms or inferencing rules; and
- 7.8.4. the Computer System recognises a leap year.

## **7.9. Financial Services**

Any Claim arising out of any Regulated Activities as defined by the Financial Services and Markets Act 2000 as amended from time to time. This exclusion will not apply to mortgage mediation activity and insurance mediation activity relating to general insurance contracts only for which the Practice has permission pursuant to Part IV of the Financial Services and Markets Act 2000.

## **7.10. Fines, Penalties, Punitive, Multiple or Exemplary Damages**

Any fines, penalties or punitive, multiple or exemplary damages where such have been identified separately within any award of any Court or tribunal.

## **7.11. Insolvency of the Insured**

Any Claim arising out of or relating solely to the insolvency or bankruptcy of the Insured. This exclusion, however, shall not apply to:

- 7.11.1. any Claims in respect of monies held on behalf of third parties; or

7.11.2. any Claim that otherwise would be indemnified by this Policy but for the insolvency or bankruptcy of the Insured.

#### **7.12. Jurisdiction**

Any Claim instituted or pursued in the United States of America, its territories and possessions or Canada, whether for the enforcement of a judgment or finding of a Court or tribunal of another jurisdiction or otherwise, or in which it is contended that the laws of the United States of America, its territories and/or possessions or Canada should or do apply or which involves the enforcement or attempted enforcement of a judgment or finding of a Court or tribunal of the United States of America, its territories and/or possessions or Canada.

#### **7.13. Liability arising out of Bodily Injury**

Any Claim arising out of Bodily Injury of any employee whilst in the course of their employment for or on behalf of the Insured.

#### **7.14. Liability arising out of Employment**

Any Claim arising from any liability to any employee, former employee or prospective employee in respect of employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.

#### **7.15. Liability involving Transport or Property owned, Possessed or Used by the Insured**

Any Claim arising out of:

7.15.1. the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft, hovercraft, motor vehicle or trailer; or

7.15.2. the ownership or possession by or on behalf of the Insured of any buildings, structures, premises, land or property, mobile or immobile, or that part of any building leased, occupied or rented by the Insured.

#### **7.16. Market Fluctuation**

Any Claim relating to the financial return of any investment or the depreciation or loss of investments when such financial return, depreciation or loss is as a result of normal or abnormal fluctuations in any financial, stock, commodity or other markets, which are outside the influence or control of the Insured.

This exclusion will not apply to Professional Business of the Insured in connection with the following:

7.16.1. survey or valuation of any tangible property for the purpose of any sale, proposed sale, purchase, proposed purchase; or

7.16.2. survey or valuation of any tangible property for insurance or stock valuation purposes.

#### **7.17. Nuclear Risks**

Any Claim or loss whether directly or indirectly caused by, contributed to by, or arising from loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

7.17.1. ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

7.17.2. the radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **7.18. Award by Ombudsman**

Any ombudsman's award except to the extent covered under Insuring Clause 1.2.

### **7.19. Other Policies**

Any Claim or loss where the Insured is entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy had this Policy not been effected.

### **7.20. Pollution**

Any Claim or loss arising directly or indirectly from Pollution. This exclusion shall not apply where any such Claim arises from the Insured's negligent structural design or specification or failure to report a structural defect in a property but cover shall nevertheless only extend to that part of any Claim which relates to the cost of re-designing, re-specifying, remedying or rectifying the defective structure but shall not include the cost of remedying or rectifying any loss of or damage to the land and environment or any loss of value. For the purposes of this exclusion only asbestos is not deemed to be a contaminant.

### **7.21. Previous Claims**

Any Claim or Circumstance or loss the Insured was or should have been aware of prior to the inception of this Policy provided that this clause shall not reduce the rights of the Insured under, or otherwise affect the application of, the Special Institution Conditions.

### **7.22. Supply of Goods**

Any Claim or loss arising out of the supply of any goods by the Insured or products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by the Insured. This exclusion shall not apply to project models or displays.

### **7.23. Surveys and Valuations (Qualifications and Experience)**

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

7.23.1. anyone who is;

- (a) a Fellow or Professional Member of the Royal Institution of Chartered Surveyors (RICS); or
- (b) a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA); or
- (c) a Fellow or Associate of the Architects and Surveyors Institute (ASI); or
- (d) a Fellow or Associate of the Faculty of Architects and Surveyors (FFAS); or
- (e) a Fellow or Associate of the Royal Institute of British Architects (RIBA); or
- (f) a Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS); or

7.23.2. anyone who has not less than five years' experience of such work; or

7.23.3. any other person delegated by the Insured to execute such work subject always to:

- (a) supervision of such work by a person qualified in accordance with Exclusions 7.23.1 and 7.23.2 above; or

- (b) agreement in writing having been obtained from the Insurer prior to cover being granted.

#### **7.24. Trading Losses**

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

#### **7.25. Viruses**

Any Claim or loss arising directly or indirectly out of the transmission or receipt of:

7.25.1. a virus; or

7.25.2. a program; or

7.25.3. a code,

that causes loss of or damage to any documents or Computer System or prevents or impairs any Computer System from performing or functioning accurately or properly.

#### **7.26. War or Terrorism Risks**

7.26.1. Any Claim or loss of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the Claim or loss; war, invasion, acts of foreign enemies, hostilities or warlike operations, whether war be declared or not, civil war, rebellion, revolution, insurrection, riot, civil commotion, assuming the proportions of or amounting to an uprising, military or usurped power or any act of terrorism.

7.26.2. For the purpose of this exclusion an act of terrorism means an act, including but not limited to the use of force or violence or threat thereof, of any person or groups of persons, whether acting alone or on behalf of or in connection with any organisations or governments committed for political or religious or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

7.26.3. This exclusion also excludes any Claim, loss, costs or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any of the above.

7.26.4. If the Insurer alleges that by reason of this exclusion, any Claim, loss, cost or expense is not covered by this Policy the burden of proving the contrary shall be upon the Insured.