Professional Indemnity Insurance
Policy
Engineers
Claim Notification

Conditions that apply to the policy and in the event of a claim are set out in this policy wording. It is important that you comply with all policy conditions and you should familiarise yourself with any requirements.

Directions for claim notification are included under Claim Conditions. Please be aware that claims and circumstances that might reasonably be expected to produce a claim against you must be notified to us as soon as possible. Further guidance is contained in this policy wording.

Claim Conditions require you to provide us with any reasonable assistance and evidence that we require concerning the cause and value of any claim. Ideally, as part of the initial notification, you will provide:

- Your name, address, and your telephone number
- Policy number
- The date when you became aware of the claim or circumstances
- The cause of the claim
- Details of the claim together with the claim value, if known
- Names and addresses of any other parties involved or responsible for the claim.

This information will enable us to make an initial evaluation of the claim. We may, however, need to request additional information.

Sometimes we, or someone acting on our behalf, may wish to meet with you to discuss the circumstances of the claim, or to undertake further investigations.

Initially a notification of any claim, or any circumstances which might reasonably be expected to produce a claim, should be sent to:

Pinpoint Underwriting Claims Department  
DWF LLP  
20 Fenchurch Street,  
London EC3M 3AG  
Tel : 020 7280 8888  
Fax: 020 7280 8899  
Email: puclaims@dwf.co.uk
Our Regulatory Status

This insurance is underwritten by Allied World Assurance Company Limited. Allied World Assurance Company Limited and Allied World Assurance Company (Reinsurance) Limited are regulated by the Central Bank of Ireland and are incorporated in Ireland as Private Limited Liability Companies having their registered offices at 3rd Floor, Georges Quay Plaza, Georges Quay, Dublin 2, Ireland (Reg. No.’s 361888 & 373702), and having their registered branch offices at 19th Floor, 20 Fenchurch Street, London, EC3M 3BY (Branch Reg. No.’s BR007249 & BR008351).

Allied World Assurance Company Limited is a member of the Financial Services Compensation Scheme (FSCS). Compensation under the scheme for insurance advising and arranging is covered for 100% of the first GBP 2,000 (or an equal amount in the currency applicable to this Policy) and 90% of the remainder of the cost, without any upper limit. However for risks incepting on or after 1st January 2010, compensation under the scheme for insurance advising and arranging is covered for 90% of the claim, without any upper limit.

Further Information about the compensation scheme arrangements is available from the FSCS or by visiting the FSCS website at www.fscs.org.uk.

How to Complain

We intend to provide an excellent service to you, however, we recognise that there may be occasions when you feel that this has not been achieved. If you are unhappy with any aspect of the service that you receive, please contact either your insurance broker or

President
Allied World Assurance Company Ltd
19th Floor, 20 Fenchurch Street
London
EC3M 3BY

Please state the nature of your complaint, the Policy and/or claim number.

Having taken this action, if you feel that your complaint has not been handled satisfactorily, you may seek assistance from The Financial Ombudsman Service

South Quay Plaza, 183 Marsh Wall London E14 9SR
Telephone – 0845 080 1800
Email – enquiries@financial-ombudsman.org.uk
Website – www.financial-ombudsman.org.uk

The Financial Ombudsman Service will become involved if you are an eligible complainant as defined by the rules of the Financial Services Authority.

The existence of this complaints procedure does not affect any right of legal action you may have against Allied World Assurance Company Limited.
ENGINEERS

THIS IS A CLAIMS MADE POLICY OF INSURANCE

Section 1: Preamble

1.1 In consideration of the payment of the Premium, We shall during the Period of Cover and subject to the Policy terms provide the cover described in this Policy.

1.2 There is a premium payment warranty in this Policy at General Condition 7.14.

Section 2: Insuring Clause

2.1 We agree to indemnify You against Your liability for any Claim first made against You and notified to Us during the Period of Cover in accordance with Claim Condition 6.1 in respect of any:

(a) Civil liability;
(b) Unintentional breach of confidentiality or misuse of information; or
(c) Infringement of intellectual property rights which shall include copyright, patent, trademark or acts of passing off,

arising from any act, error or omission by You or any of Your Employees in the conduct of Your Professional Business.

2.2 We also agree to pay Costs either incurred by Us or incurred by You with Our prior written consent.

Section 3: Automatic Extensions

The automatic extensions are subject to all Policy terms.

We agree to cover You:

3.1 Loss of Documents

For expenses reasonably and necessarily incurred by You in replacing or restoring Documents that after a diligent search cannot be located or that have been destroyed or damaged beyond reasonable use and for which You are legally responsible and which were in Your physical custody or control or any other person to whom You entrusted, lodged or deposited such Documents provided:

(a) The loss of the Documents is first discovered during the Period of Cover; and
(b) You notify Us within 30 days and within the Period of Cover of discovery of the loss of the Documents; and
(c) You provide Us with bills and accounts substantiating the expenses incurred by You in replacing or restoring the lost Documents; and
(d) The expenses are not incurred without Our prior written consent and We approve, or a competent person nominated by Us approves, the bills and accounts; and

(e) The replacement or restoration of the Documents is reasonably required.

Our total liability under this extension for any one Claim and in the aggregate from all Claims during the Period of Cover shall not exceed £100,000. Such liability is part of, and not in addition to, the Limit of Indemnity.

3.2 Sub-Consultants

For Your liability in respect of any Claim made against any sub-consultants undertaking work for You as a sub-consultant and whose acts, errors or omissions arise from Your Professional Business provided always that Our rights of subrogation as contained in General Condition 7.19 are not waived or otherwise amended to Our detriment by You. You shall take reasonable steps to ensure that the sub-consultant has and maintains professional indemnity insurance with an appropriate limit of indemnity no lesser of the Limit of Indemnity or £1,000,000, unless agreed otherwise by Us in writing.

3.3 Joint Venture Liability

For Your liability in respect of any Claim made against You where You are engaged in a joint venture but restricted to liability in respect of work performed solely by You arising from the conduct of Your Professional Business.

We will not cover any liability of Your joint venture partner nor any liability arising from work performed by such joint venture partner, unless agreed otherwise by Us in writing.

3.4 Libel and Slander

For Your liability in respect of any Claim made against You arising from You committing libel or slander in the conduct of Your Professional Business.

3.5 Compensation for Attendance

For the cost of attendance at a formal court hearing or formal interview by any of Your principals, partners, members or directors or Employees in connection with a Claim or Circumstance notified to Us where such attendance is considered by Us to be necessary or beneficial to reduce liability which may result in a payment under this Policy. The cover is subject to:

(a) Us having given prior written agreement to such attendance;

(b) indemnity for such costs being restricted to a rate of £500 per principal, partner, member or director per day and £250 per Employee per day; and

(c) a total indemnity payable under this extension of £150,000. Such indemnity being within, and not in addition to, the Limit of Indemnity.

This Automatic Extension 3.5 is not subject to the Excess.
3.6 Adjudication Referrals

For Your liability arising directly from matters covered under this Policy and referred for adjudication under the Housing Grants Construction and Regeneration Act 1996 provided You comply with the following conditions, which are conditions precedent to Our liability to indemnify under this Policy:

(a) You shall give notice to Us in the manner outlined within 5 working days of, either the earlier of the day on which You receive receipt of any notice of intention to adjudicate (Adjudication Notice), or the day on which You have reasonable grounds to believe that an Adjudication Notice may be served upon You provided that in each case the subject matter of the Adjudication Notice (in whole or in part) is likely to give rise to a Claim under this Policy.

(b) You shall give Us full and prompt cooperation and comply with all Our reasonable requests including those relating to response times. Such cooperation shall extend to any subsequent challenge to the adjudicators decision.

(c) We shall be entitled, at Our sole discretion, to appoint solicitors and experts to handle any adjudication on Your behalf and shall have conduct of all matters relating to any such adjudication. We shall pay all Costs in the appointment of such solicitors and experts (after the application of any Costs payable by You as outlined in Section 3.6(e)).

(d) You shall not admit liability, in whole or in part, in respect of the subject matter of the adjudication or agree with any party that adjudication shall finally determine any dispute.

(e) If the adjudication involves both matters that are covered and matters that are not covered by this Policy then We shall only be required to indemnify You in respect of that part which involves matters covered by this Policy and any such Costs incurred in handling the adjudication shall be settled in the same proportion as the covered part bears to the total.

(f) The adjudicator is independent of the parties to the dispute.

3.7 Criminal Proceedings

For Costs necessarily incurred with Our written consent in the defence of criminal proceedings against You arising from any alleged breach of any statute or regulation in the conduct of the Professional Business by You provided that:

(a) the circumstances giving rise to the alleged breach would otherwise give rise to a Claim which would be covered by this Policy.

(b) We believe that the defence of such proceedings have a reasonable chance of success and would assist in the defence of any Claim against You arising from such circumstances.

(c) We will not be liable for any Costs following a plea or finding of guilt on Your part or in the event that a Queen's Counsel advises that there are no reasonable prospects of successfully defending the proceedings unless the Costs are incurred for the sole purpose of making a plea in mitigation before sentencing or incurred in making an appeal if a Queen's Counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable.
Our total liability under this extension for any one Claim and in the aggregate from all Claims during the Period of Cover shall not exceed £250,000. Such liability is part of, and not in addition to, the Limit of Indemnity.

This Automatic Extension 3.7 is not subject to the Excess.

3.8 Construction (Design and Management) Regulations 2007

(a) For Claims brought against You arising out of the Construction (Design and Management) Regulations 2007 insofar as such Claim or Claims are in respect of Your civil liability which would otherwise be the subject of indemnity under this Policy. The maximum Limit of Indemnity from Claims arising by virtue of the extension shall be as specified in the Schedule at item 4; and

(b) For Costs incurred in the defence of any criminal proceedings made against You arising from any alleged breach of the Construction (Design and Management) Regulations 2007, provided such alleged breach arises in the course of Your Professional Business and where We believe that defending such proceedings could protect You against any subsequent or concurrent civil action for which cover is provided hereunder. Any subsequent civil action arising out of proceedings notified hereunder shall be deemed to be notified hereunder.

Proceedings shall mean any actual proceedings including an appeal against the outcome of any actual proceedings where We consider an appeal against proceedings could protect You against any subsequent or concurrent civil action.

Our total liability arising from Claims made by virtue of paragraph (b) of this extension shall not exceed £100,000 in the aggregate. Such liability is part of, and not in addition to, the Limit of Indemnity.

You shall be required to pay the first £1,000 of each and every Claim in respect of Claims covered under this extension.

Notwithstanding this extension of the Policy, We shall not indemnity You against any fines, penalties, punitive multiple or exemplary damages imposed and arising from any actual or alleged breach of the Construction (Design and Management) Regulations 2007.

3.9 Take Over and Mergers

In the event of a sale of the Insured entity described in item 1 of the Schedule or a merger with or acquisition by another entity such that the Insured entity is not the surviving entity and no longer:

(a) controls the composition of the board of directors, or

(b) controls more than half the voting power, or

(c) holds more than half of the issued share capital,

then this Policy shall apply only to any Claim arising from Your Professional Business carried out prior to the effective date of such transaction, unless otherwise agreed in writing by Us.
3.10 Acquisitions

If You acquire another entity, We agree that this Policy will provide cover for any Claim arising from Your Professional Business carried out by the acquired entity after the effective date of the acquisition and once You have taken full control of the entity subject to:

(a) cover only being provided for a maximum period of 30 continuous days starting on the effective date of the acquisition and once You have taken full control of the entity, but not for any period beyond the Period of Cover; and

(b) the employee turnover of the acquired entity, for the period of 12 months prior to the acquisition, being no greater than 15% of Your employee turnover stated in the Proposal Form; and

(c) the entity taken over not being listed on any stock exchange or alternative investment market and not having outside shareholders; and

(d) the acquired practice being previously insured.

We agree to extend the coverage for such acquired entity beyond the 30 day period set forth in (a) above, subject to You: (i) providing Us with full particulars of the acquired entity; and (ii) agreeing to pay any additional premium and accepting any amendment of this Policy as We may require; and (iii) paying any such additional premium.

3.11 Asbestos

In respect of Claims made and notified to Us arising from relating to or involving asbestos in any form which is a direct result of any act, error or omission committed or alleged to have been committed by You or an Employee in the conduct of Your Professional Business.

We shall indemnify You only for the cost of re-performance of Your work and/or rectification and/or remediation and provided always that:

3.11.1 such Claim is

(a) first made against You during the Period of Cover; and/or

(b) arises out of any Circumstance(s) which You shall first notify Us during the Period of Cover.

3.11.2 We shall not be liable for any such Claim

(a) directly or indirectly resulting from Asbestos Inspections carried out by You; or

(b) arising out of or in any way involving any bodily injury or fear of suffering bodily injury; or.

(c) directly or indirectly arising from asbestos or any materials containing asbestos (in any form or quantity) which falls outside of the conduct of Your Professional Business.
Our total liability shall not exceed the lesser of the Limit of Indemnity or £1,000,000 in the aggregate. Such amount shall be included within, and is not in addition to, the Limit of Indemnity.

3.12 Toxic Mould

In respect of Claims made and notified to Us during the Period of Cover arising out of Spores or Fungus which is as a result of direct breach of the professional duty owed by You in connection with Your Professional Business provided always that:

3.12.1 We shall indemnify You only for the cost of re-performance of Your work and/or rectification and/or remediation; and

3.12.2 The maximum amount payable in total shall not exceed £250,000 in the aggregate for the Period of Cover inclusive of all Costs and expenses incurred in the investigation, defence or settlement of any Claim. Such amount shall be included within and not in addition to the Limit of Indemnity available under this Policy.

For the avoidance of doubt, We shall not be liable for any Claim or loss in any way:

(a) involving bodily injury, psychological injury, emotional distress or anguish, shock, sickness, disease or death; or

(b) from any fungus or mycota or any by-product or type of infestation produced by such fungus or mycota, including but not limited to, mould, mildew, mycotoxins, spores, or any biogenic aerosols which falls outside of the conduct of Your Professional Business.

3.13 Pollution

In respect of Claims made and notified to Us arising out of any seepage, Pollution or contamination of any kind caused by a sudden, unintended and unexpected happening during the Period of Cover resulting from Your negligence in the conduct of Professional Business.

Our total liability shall not exceed the lesser of the Limit of Indemnity or £1,000,000 in the aggregate which shall be included within, and not in addition to, the Limit of Indemnity.

For the avoidance of doubt, for the purposes of this Automatic Extension, seepage, Pollution or contamination shall not include asbestos as described in Automatic Extension 3.11 or radiation or contamination as described in Exclusion 5.15.

We shall have no liability under this Policy in respect of any Claim or loss:

(a) directly or indirectly arising out of, or in any way involving bodily injury, mental anguish or emotional distress, sickness, disease or death or damage to, destruction of, or diminution in value of any property including loss of use thereof directly or indirectly arising out of, or in any way involving seepage, Pollution or contamination of any kind; and

(b) for any rectification or clean-up costs relating to any seepage, Pollution or contamination of any kind.
Section 4: Definitions

In the Policy:

4.1 Approved Person means

(1) A Fellow or Professional Member or Technical Member of the Royal Institute of Chartered Surveyors (RICS);

(2) A Member of the Institution of Civil Engineers (MICE);

(3) A Member of the Institution of Structural Engineers (MIStructE);

(4) A Fellow or Associate of the Faculty of Architects and Surveyors;

(5) A Fellow or Associate of the Royal Institute of British Architects (RIBA);

(6) A Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS);

(7) Anyone who is certified or accredited as a Home Inspector or to produce energy performance certificates by a scheme approved by the Secretary of State;

(8) Any person who has at least 5 years experience of such work;

(9) Any other person delegated by You to execute work as part of their training subject always to:

   i. Supervision to be provided by a person qualified in accordance with (1) to (7) above;

   ii. Agreement in writing having been obtained from Us prior to cover being granted.

4.2 Asbestos Inspections means

A management survey or a refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006, or any comparable survey or inspection, whether of commercial or residential land or property.

4.3 Circumstance means

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

4.4 Claim means

(a) Any written or oral demand for monetary damages or other relief including non-pecuniary relief.

(b) Any civil, arbitration or adjudication proceedings including any counterclaim or appeal.

4.5 Collateral Warranty means

A collateral warranty or duty of care agreement between You and a party with whom a contractual relationship would not otherwise exist.
4.6 **Computer System** means

Any computer data processing equipment media, or part thereof, or system or data storage and retrieval or communication 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 compliers) firmware or microcode.

4.7 **Computer Virus** means

A piece of unauthorised executable code which propagates itself through Your Computer System.

4.8 **Costs** means

Any reasonable fees, expenses, costs and disbursements incurred in investigating, adjusting or defending a Claim covered by this Policy including any appeal issued in connection with a Claim and to which We have given Our prior written consent. Any internal or overhead expenses or the cost of any of Your time is not included.

4.9 **Documents** means

Any of the following documents, but only in the event and to the extent that such documents are related to conducting Your Professional Business: Deeds, wills, agreements, maps, plans, books, letters, policies, certificates, forms and documents of any nature, whether printed, written or reproduced by any method including computer records and electronically stored data but does not mean bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.

4.10 **Employee** means

Any person employed by You under a contract of service or apprenticeship during or prior to the commencement of the Period of Cover.

4.11 **Excess** means

The amount specified in the Schedule at item 5.

4.12 **Fungus** means

Any form or type of mould or mushroom or mildew.

4.13 **Knowledge or Detection** means

When You become aware of facts which would cause a reasonable person to assume that a loss covered by this Policy has been or will be incurred, even though the exact amount or details of the loss may not then be known.

4.14 **Limit of Indemnity** means

The amounts specified in the Schedule at item 4.
4.15 **Period of Cover** means
The period specified in the Schedule at item 3.

4.16 **Policy** means
This document containing the policy wording, and also the Schedule and Endorsements which together are one contract.

4.17 **Pollution** means
Any 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.

4.18 **Premium** means
The amounts set out in the Schedule at item 7.

4.19 **Professional Business** means:
The business specified in the Schedule at item 2.

4.20 **Proposal Form** means
The written proposal form submitted by **You** to **Us** together with any other related particulars and statements that have been supplied to **Us** in writing.

4.21 **Retroactive Date** means
The date specified in the Schedule at item 6.

4.22 **Spore** means
Any dormant or reproductive body produced or arising out of any **Fungus**.

4.23 **We/Us/Our** means
The Insurers specified in the Schedule at item 13.

4.24 **You/Your** means
(a) The person, firm, partnership or company or other entity, specified as the Insured in the Schedule at item 1; and

(b) Any person who is or becomes, during the **Period of Cover**, a principal, partner, member or director of the entity specified as the Insured in the Schedule at item 1; and

(c) Any former principals, partners, members or directors of the entity specified as the Insured in the Schedule at item 1; and
(d) In the event of the death or incompetence or bankruptcy of any principal, partner, member or director, of the entity specified as the Insured in the Schedule, such person's estate, heirs, legal representatives or assigns, for legal liabilities incurred due to any act, error or omission of such deceased, incompetent or bankrupt person.

Section 5: Exclusions

This Policy shall not apply in respect of:

5.1 Associates

(a) Any Claim against You brought by or on behalf of the entity specified as the Insured in the Schedule;

(b) Any Claim against You brought by or on behalf of any parent, subsidiary or associated company of the entity specified as the Insured in the Schedule;

(c) Any Claim against You by any other company in which You have a financial interest;

(d) Any Claim against You by any other company in common control with You,

unless such Claim emanates from an independent third-party.

5.2 Assumed Duty or Obligation

Liability directly or indirectly arising out of, or in any way connected to, any duty, obligation or liability incurred, entered into or assumed by You which is not incurred, entered into or assumed in the normal conduct of Your Professional Business.

5.3 Bodily Injury

Liability in respect of any Claim directly or indirectly based upon attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any person; provided that this Exclusion shall not apply to Claims incurred as a result of breach of professional duty in the conduct of Your Professional Business.

5.4 Contract

Any Claim arising out of any express contract, agreement, warranty, indemnity, waiver or guarantee unless:

(a) liability would have attached to You in the absence of such express contract, agreement, warranty, indemnity, waiver or guarantee; or

(b) liability arises from a Collateral Warranty.

However, We shall not indemnify You for any liability which arises from:

(i) Any express guarantee relating to the performance or period of a project; or

(ii) Any express guarantee relating to fitness for purpose or similar; or
(iii) Contractual penalty or liquidated damages; or

(iv) Any liability under any Collateral Warranty providing a greater or longer liability than that given under the original contract and to which such Collateral Warranty is supplemental.

5.5 Computer Viruses

Any Claim arising from the transmission of a Computer Virus including any malicious or inappropriate e-mail.

5.6 Directors and Officers

Any breach by You of a personal duty owed solely in the capacity of a member, director, secretary or officer of a body corporate.

5.7 Estimates and Specifications

Any Claim or loss directly or indirectly arising out of, or in any way involving any:

(a) inadequate or incorrect specification of materials or performance; or

(b) inadequate or incorrect programming or estimate of the period of construction; or

(c) inadequate or incorrect estimate(s) of construction costs or cost advice, except where such estimate or advice is provided by an Approved Person;

However, this Exclusion shall not apply in any such case arising out of an unintentional negligence in the conduct of Your Professional Business by You provided always that You shall establish to Our satisfaction that negligence was unintentional.

5.8 Financial Matters, Insurance and Insolvency

(a) Any failure to obtain or maintain adequate insurance or finance.

(b) Any Claim arising from Your insolvency and/or liquidation and/or administration and/or scheme of arrangement or other financial difficulties.

(c) Any lost profit, mark up or any VAT or similar tax.

5.9 Fines and Penalties

Taxes, fines or penalties, punitive, aggravated, multiple, exemplary or other non-compensatory damages or the consequences of non-payment or any additional damages under Section 97(2) of the Copyright, Design and Patents Act 1988 or any statutory successor to that section or any Claim deemed uninsurable by law.

5.10 Fraud and Dishonesty

(a) Any Claim directly or indirectly arising from or attributable to any actual or alleged act or omission by You, or Your sub-consultants which was in reckless disregard, fraudulent, dishonest, malicious or criminal; or
5.11 Geographical Limits

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

5.12 Jurisdictional Limits

Legal proceedings brought in a Court of Law in the United States of America, Canada and any country, territory or jurisdiction in which American or Canadian law (Federal, State or Provincial) is applicable or in which a judgement based upon such law may be enforceable in connection with such proceeding.

5.13 Land, Buildings, Transport

Liability incurred or alleged to have been incurred, arising directly or indirectly from the ownership, possession or use by You or on Your behalf of any land, buildings, aircraft, vessel or mechanically propelled vehicle.

5.14 Liability to Employees

Liability to Employees in respect of any Claim arising from any employment dispute including any such dispute directly or indirectly based upon attributable to or in consequence of bodily injury, mental injury, sickness, disease or death or any breach of any obligations owed by You as an employer for discrimination, harassment, unfair treatment or unfair dismissal or failure to promote any Employee.

5.15 Nuclear

Any Claim arising from or attributable to:

(a) Loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting from or arising therefrom or any consequential loss; or

(b) Any legal liability of whatsoever nature

directly or indirectly caused by or contributed to by or arising from:

(i) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

(ii) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.16 Partnership Duties

Any actual or alleged breach of Your partnership or shareholder agreement or arrangements, including any equivalent agreement or arrangement where You are a limited liability partnership or a company without share capital.
5.17 Pension and Trust Liability

Any breach by You of a duty owed or arising from the operations or administration of any trust fund, pension or other employee benefit scheme.

5.18 Prior Knowledge

(a) Any Claim first made, threatened or intimated against You prior to the Period of Cover;

(b) Any Claim or loss arising out of any Circumstance of which You were aware of or ought reasonably to have been aware of prior to the Period of Cover;

(c) Any Claim, Circumstance or other matter notified to any insurance policy preceding the Period of Cover.

5.19 Products

Any Claim arising from You or any of Your sub-contractors, agents or consultants having supplied, manufactured, constructed, altered, repaired, treated, sold, recalled, fabricated, distributed, installed or maintained any goods or products.

5.20 Property Damage

Liability incurred from the loss or destruction of, or damage to, any property unless arising from lost or destroyed Documents or design or specification, technical information calculation or survey performed by or on Your behalf in the conduct of Your Professional Business.

5.21 Retroactive Date

Any Claims arising out of the exercise and conduct of Your Professional Business carried out prior to any Retroactive Date.

5.22 Surveys, Inspections and Valuations

Any survey, inspection or valuation unless the report is made in writing and is undertaken by an Approved Person.

5.23 Trading Debts

Any Claim arising from or directly or indirectly attributable to any of Your trading debts or trading losses or any guarantee or undertaking given by You for a debt or performance of any other obligation by a third party.

5.24 War/Terrorism

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

(b) Any act of terrorism.

For the purposes of this Exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This Exclusion also includes any liability for any Claim and/or Costs on account of any Claim 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 (a) and/or (b) above.

If We allege that by reason of this Exclusion, any Claim, Cost, or expense is not covered by this Policy, the burden of proving the contrary shall be upon You.

5.25 Workmanship

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

Section 6: Claim Conditions

6.1 Notification

It is a condition precedent to liability under this Policy that You shall notify Us in writing as soon as practicable and no later than 3 months after Knowledge or Detection and in any event no later than the end of the Period of Cover of any:

(a) Claim made against You;

(b) Circumstance that might give rise to a Claim against You whether or not You believe the Claim that may arise there from has any merit or is valid;

(c) notice of any intention to make a Claim against You;

(d) discovery or reasonable cause for suspicion of dishonesty or fraud on the part of any of Your former or present principals, partners, members, directors, Employees, or sub-consultants whether giving rise to a loss or Claim hereunder or not.

Any subsequent Claim arising out of matters notified under Section 6.1(b) and 6.1(c) shall in each case be deemed to have been a Claim made during the Period of Cover.

Notification is deemed to have been made only when received in writing by Us or the nominee, if any, named in an Endorsement to this Policy.
The notification must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against You, identification of the project and services giving rise to the Claim or potential Claim, the potential quantum if known involved in the Claim and in the case of a Circumstance, the notification should include the reasons for the belief that a Claim is likely to be made.

**Failure to comply with this condition will result in Us declining to provide an indemnity.**

6.2 Co-operation

It is a condition precedent to liability under this Policy that You must:

(a) Following receipt of any Letter of Claim, Pre-Action Protocol Letter, Claim Form, other legal procedural documents, Summons, Arbitration Notice or other such similar correspondence and documents to those described, deliver the correspondence or document to Us as soon as practicable.

(b) Provide Us with all information and assistance that We and/or Our representatives and other appointed by Us may reasonably require.

(c) Use due diligence and ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to or has given rise to a Claim or loss.

**Compliance with this condition will be at Your own cost. Failure to comply with this condition will result in Us declining to provide an indemnity.**

6.3 Legal Defence and Settlement

(a) We will pay Costs on an incurred basis prior to final determination of cover under this Policy or adjudication or up until the time that a Claim is withdrawn. If at any time a Claim is deemed not to be covered under this Policy or is found to be excluded then all such Costs must be returned to Us on demand.

(b) We are entitled but not obliged to assume the legal defence of any Claim covered under this Policy in Your name and We shall have full discretion in managing any negotiation or proceedings as to the resolution of such Claim.

(c) We shall be entitled to nominate lawyers and loss adjusters that will defend and represent You in respect of any Claim.

(d) Subject to General Condition 7.10 below, We shall be entitled to settle a Claim if We so choose.

(e) You agree not to admit liability for or settle any Claim, make any admission, offer payment or assume any obligation in connection with any Claim, or incur any Costs in connection with any Claim, without Our written consent.

(f) We shall not be liable for any settlement, Costs, admission, offer, payment or assumed obligation without Our written consent.
(g) If We are of the opinion that a Claim will not exceed the Excess, We may require You to conduct the defence of the Claim at Your own expense.

(h) We may at any time pay to You the Limit of Indemnity (having deducted any sums already paid) or any lesser amount for which such Claim may be settled and having paid such sum We shall relinquish the control of such Claim and be under no further liability in connection with such Claim except for Costs and expenses for which We may be responsible under this Policy for matters arising prior to the date of such payment.

6.4 Dishonest or Fraudulent Persons

Should You suffer any loss or Claim or incur any liability of the type insured under the Policy by reason of the dishonest or fraudulent act or omission of any of Your former or present principals, partners, members, directors or Employees:

(a) You shall at Our request take all reasonable steps to obtain reimbursement from such person;

(b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from You or any monies of such persons held by You shall be deducted from any amount payable hereunder;

(c) notwithstanding General Condition 7.9 no indemnity in respect of such loss or Claim shall be afforded hereunder to any person committing or condoning such dishonest or fraudulent act or omission;

(d) nothing herein shall preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;

(e) the sums payable hereunder shall be only for the balance of liability in excess of the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives;

(f) You shall bear the burden of providing satisfactory proof to substantiate a loss hereunder (including any Costs incurred in such process) and We will be under no obligation to provide indemnity to You until such time as We are satisfied that such loss has in fact been sustained;

(g) We shall not be liable for any loss sustained in consequence of any act or omission occurring after the date of the discovery of, or of reasonable cause for suspicion of, dishonest or fraudulent conduct on Your part.

Section 7: General Conditions

7.1 Alteration to Risk

You must notify Us in writing as soon as practicable of any material alteration to the risk during the Period of Cover including but not limited to any material change in the nature of or cessation of the Professional Business.

We may not cover You for any Claim if You do not notify Us in writing as soon as practicable of any material alteration to risk.
7.2 Assignment

You must not assign this Policy or any rights under this Policy without Our prior written consent by way of endorsement to this Policy.

7.3 Authorisation

The entity named as the Insured in the Schedule at item 1 shall act as agent on Your behalf with respect to the giving and receiving of notice under this Policy, including the giving of notice of any Claim, the payment of the Premium, and the receipt and acceptance of any endorsements attaching to and forming part of this Policy.

7.4 Confidentiality

You shall not disclose the terms of this Policy or the amount of the Premium paid to any third party:

(a) except to the extent that You are required by law to do so or by any regulatory authority as may be necessary to demonstrate to such regulatory authority that any mandatory insurance requirements of such authority have been satisfied; or

(b) except that the existence of the Policy and the Limits of Indemnity available hereunder may be disclosed to an insurer, to a client or a prospective client, wholesale broker or placing agent where this is necessary to maintain agency facilities, provided that no such disclosure shall be permitted in circumstances where You are aware or ought reasonably to be aware that the person to whom disclosure is going to be made has made or is likely to make a claim against You; or

(c) except to the extent that We consent, in writing, to such disclosure.

7.5 Data Protection

We follow strict security procedures in the storage and disclosure of information provided to prevent unauthorised access or loss of such information. We record and hold data in accordance with the Data Protection Act 1998. We may pass data to other firms or businesses that supply products or services associated with this Policy.

7.6 Document Management

We may hold the Proposal Form (including any attachments thereto) and any documents relating to this Policy and any Claim in electronic form and may destroy the originals. An electronic copy of any such document will be admissible as evidence to the same extent as, and carry the same weight as, the original.

7.7 Fraudulent Claims

If You shall knowingly make any false or fraudulent request in respect of any Claim, as regards amount or otherwise, this Policy shall become void and all entitlements to payment in respect of any Claim shall be forfeited.

7.8 Headings

In this Policy, headings are for descriptive purposes only and do not affect the force or interpretation of the words.
7.9 Indemnity to Employees

If You require, We will indemnify any of Your Employees in like manner to You provided the Employee observes and complies and is subject to the terms of this Policy.

7.10 Insured’s Right to Contest

In the event that We recommend settlement of a Claim and You do not agree to the settlement of the Claim, and You decide to contest the Claim, Our liability shall not exceed the amount for which the Claim could have been settled, or Costs incurred up to the date upon which the Claim could have been settled.

7.11 Interpretation

All Policy documents shall be read together as one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning wherever it may appear.

7.12 Other Insurance

This Policy shall apply only in excess of any other valid and collectible insurance (whether collected or not).

7.13 Our Rights

In the event that We are entitled to avoid or repudiate this Policy ab initio, We may instead at Our election give notice in writing to You that We regard this Policy as of full force and effect save that there shall be excluded from any insurance afforded hereunder any Claim which has arisen or which may arise and which is related to the circumstances which entitle Us to avoid or repudiate this Policy. This Policy shall then continue in full force and effect but shall be deemed to exclude the particular Claim referred to in said notice as if this had been specifically endorsed ab initio.

7.14 Premium Payment Warranty

(a) You undertake that the Premium will be paid in full to Us by payment of the Premium by Your broker(s) by the date set out in the Schedule at item 8.

(b) If the Premium under this Policy has not been paid to Us by the date set out in the Schedule at item 8, We shall have the right to cancel this Policy by notifying You via Your broker(s) in writing. In the event of cancellation, Premium is due to Us on a pro rata basis for the period for which We were on risk, but the full Premium shall be payable to Us in the event that You notify Us of any Claim or Circumstance or any circumstance likely to give rise to a loss which is covered by this Policy.

(c) It is agreed that We shall give You not less than 5 days prior notice of cancellation to You and/or Your broker(s). If the Premium due is paid in full to Us before the notification period expires, notice of cancellation shall automatically terminate at the end of the notice period.

7.15 Senior Counsel

(a) We shall not require You to contest a Claim unless a Senior Counsel (agreed upon by You and Us or failing such agreement to be nominated by the Chairman for the time being of the Bar Council of England and Wales or where appropriate by a similar official of any similar body in any other applicable jurisdiction) advises that the Claim should be contested taking into account all likely Costs, prospects of success and the damages and costs likely to be recovered by the third party claimant.
(b) The cost of Senior Counsel’s advice shall be regarded as part of the Costs.

7.16 Severability

In the event that any portion of the Policy is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

7.17 Several Liability of Insurers

The obligations of the subscribing Insurers where there is more than one Insurer named in the Schedule subscribing to this Policy are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing Insurers are not responsible for the subscription of any co subscribing Insurer who for any reason does not satisfy all or part of its obligations.

7.18 Statute

In this Policy references to any statute shall be to that statute as amended or re-enacted from time to time.

7.19 Subrogation

(a) Where We have paid a Claim under this Policy We become entitled to any rights You have against any party in relation to the Claim to the extent of Our payment.

(b) You must assist Us and provide information as We may reasonably require to exercise Our rights of subrogation, including bringing any action or suit in Your name. This may include providing and signing statements and other documents and the giving of evidence.

(c) Any recovery received shall be applied first against any Claim or Costs insofar as it exceeds the Limit of Indemnity, then against any payment made by Us, and finally against the Excess.

(d) We will not subrogate against any of Your principals, partners, directors or Employees or former Employees under this Policy unless that person is found to have committed or condoned a criminal, fraudulent, malicious or dishonest act or omission.

7.20 Termination/Cancellation

(a) You may cancel this Policy by giving notice in writing to Us at any time. If You cancel this Policy, We will retain the proportion of the Premium calculated pro rata as at the date of cancellation plus fifteen percent (15%) of that amount.

(b) We shall have the right to terminate this Policy cover with 30 days notice should You become insolvent, enter liquidation or administration.

(c) In the absence of (a) or (b) above, this Policy shall terminate at the expiry of the Period of Cover stated in item 3 of the Schedule.
7.21 Third Party Rights

The contract evidenced by this Policy does not, and is not intended to, confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 (or any equivalent or similar statute in any jurisdiction) by any person who is not a party to the contract and the parties to the contract evidence by this Policy reserve the right to amend or rescind the contract without giving notice to, or requiring consent of, any third party.

7.22 Waiver or Amendment

The terms of this Policy shall not be waived or amended except by endorsement issued by Us or intended to be issued by Us to form part of this Policy.

Section 8: Limit of Liability

8.1 Limit of Indemnity

Our total liability under this Policy for any one Claim shall not exceed the Limit of Indemnity.

For the purposes of the Limit of Indemnity the following are regarded as one Claim:

(a) any Claims arising out of or in connection with the same originating cause or source;

(b) any loss or series of related losses for which indemnity is available arising out of or in connection with the same originating cause or source; and

(c) any Claims, loss or losses directly or indirectly arising from fraud or dishonesty.

Our liability for Costs is within the Limit of Indemnity or in addition thereto as described in the Schedule at item 4.

8.2 Excess

A separate Excess shall apply in respect of each and every Claim. You are responsible for each such Excess payment and such payment is a condition precedent to Our liability under this Policy. We are only liable to indemnify You for that part of Your liability for each Claim that is greater than the Excess. Where We have paid on Your behalf part or all of the Excess(es) You shall reimburse Us.

The Schedule states whether the Excess applies to Costs.

Section 9: Disputes Clause

9.1 This Policy shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to determine any disputes which arise under or with respect to this Policy.