
W.R. Berkley Insurance (Europe), Limited

**DESIGN AND PROFESSIONAL SERVICES OF CONTRACTORS
PROFESSIONAL INDEMNITY INSURANCE**

IMPORTANT NOTICE TO THE INSURED

This insurance is a legal contract. Please read it carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Insurance Broker or other intermediary who arranged this insurance should be contacted immediately if any correction is necessary. Your attention is particularly drawn to the notice that appears overleaf.

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NOTICE TO THE INSURED

It is always our intention to provide a first class standard of service. However, if you have any cause for complaint or you wish to make any enquiry regarding this insurance you should, in the first instance, contact the Insurance Broker or other intermediary who arranged this insurance for you.

Alternatively you may contact ourselves at the following address:

Compliance Officer,
W.R. Berkley Insurance (Europe), Limited
6th Floor
40 Lime Street
London
EC3M 7AW

If you are not satisfied with the way a complaint has been dealt with you have the right to request that the Financial Ombudsman Service ("FOS") review your case. Their address is:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR
Telephone: 0845 080 1800
www.financial-ombudsman.org.uk

There are, however, some circumstances in which the FOS is not empowered to consider complaints.

You may also contact the Customer Information Department of the Association of British Insurers ("ABI") at 51 Gresham Street, London EC2V 7HQ, telephone 020 7600 3333 or one of its regional offices, details of which can be found in local telephone directories.

If you contact the FOS or ABI in respect of any complaints, this will not affect any rights you have in law.

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DESIGN AND PROFESSIONAL SERVICES OF CONTRACTORS

PROFESSIONAL INDEMNITY INSURANCE

“THIS IS A CLAIMS MADE AND CIRCUMSTANCE NOTIFIED INSURANCE”

The INSURED having made a written proposal to INSURERS bearing the date shown in the SCHEDULE containing particulars and statements which it is hereby agreed are the basis of this insurance and are to be considered as incorporated herein, and in consideration of the INSURED having agreed to pay the premium shown in the SCHEDULE, INSURERS agree to indemnify the INSURED, subject to the terms, conditions, exclusions and limitations of this insurance.

1.1 Insuring Clause

INSURERS shall indemnify the INSURED, up to the INDEMNITY LIMIT, for the amount of any claim including claimant's costs and expenses first made against the INSURED and notified to INSURERS during the POLICY PERIOD in respect of any legal liability for any negligent act, negligent error or negligent omission which arises out of the exercise and conduct of the ACTIVITIES AND DUTIES by the INSURED and/or CONSULTANTS.

1.2 Costs and Expenses Incurred in Mitigating a Claim or Potential Claim

INSURERS shall also indemnify the INSURED for all costs and expenses necessarily incurred prior to hand-over of the contract works in taking any necessary action for the sole purpose of mitigating a claim brought under insuring clause 1.1 or in seeking to avoid or mitigate such a claim arising out of any CIRCUMSTANCE discovered during the POLICY PERIOD.

1.3 Defence Costs

INSURERS shall also indemnify the INSURED for DEFENCE COSTS where such costs have been incurred with INSURERS' prior written consent. Such DEFENCE COSTS shall not be in addition to the INDEMNITY LIMIT.

EXTENSIONS

The following extensions are granted as part of this insurance, subject to the terms, conditions, exclusions and limitations of this insurance.

2.1 Infringement of Copyright or Patents

The INSURED is indemnified for reasonable DEFENCE COSTS incurred during the POLICY PERIOD with INSURERS' prior written consent (not to be unreasonably withheld) in the defence of any injunction and/or proceedings in respect of infringement or alleged infringement of any copyright or patents or other intellectual property rights vested in or otherwise enjoyed by the INSURED.

The maximum amount payable by INSURERS shall be £50,000 in the aggregate. An EXCESS of £5,000 each and every claim shall apply. Should the EXCESS shown in the SCHEDULE be less than £5,000 each and every claim then the EXCESS shown in the SCHEDULE shall apply.

2.2 Joint Venture/Consortium

The INSURED is indemnified for any claim for any negligent act, negligent error or negligent omission first made against the INSURED and notified to INSURERS during the POLICY PERIOD which the INSURED may become legally liable to pay, whether jointly or severally, which arises out of the exercise and conduct of the ACTIVITIES AND DUTIES whilst a member of a joint venture or consortium where such joint venture or consortium together with the turnover/fees of the joint venture or consortium (not just the INSURED's proportion) has been declared to INSURERS, whether or not the joint venture or consortium is conducted through a separate legal entity.

Provided always that:-

- 2.2.1 the indemnity shall be limited to the INSURED's share of the total liability of the joint venture or consortium
- 2.2.2 the INSURED shall not, without the express agreement of INSURERS, waive any right of recovery against any joint venture or consortium partner or any claim for contribution against such partner
- 2.2.3 INSURERS retain all rights against the INSURED's joint venture or consortium partners to which they may become subrogated.

2.3 Self Employed Persons

The INSURED is indemnified for any claim for any negligent act, negligent error or negligent omission first made against the INSURED and notified to INSURERS during the POLICY PERIOD which the INSURED may become legally liable to pay, arising out of the use of self employed or contract hire persons in the exercise and conduct of the ACTIVITIES AND DUTIES, provided that details of payments to such persons have been declared to INSURERS prior to commencement of this insurance.

2.4 Prosecution Defence Costs

The INSURED is indemnified for any DEFENCE COSTS incurred during the POLICY PERIOD with the prior written consent of the INSURERS in the defence of any criminal proceedings ("proceedings") against the INSURED, or any of its employees, arising from alleged breach of any United Kingdom statutory regulation relating to building or construction works where such alleged breach arises out of the exercise and conduct of the ACTIVITIES AND DUTIES in the United Kingdom.

This extension (only) is subject to the following:-

- 2.4.1 the proceedings could otherwise give rise to a claim against the INSURED that is (or would be) indemnifiable under this insurance
- 2.4.2 in the reasonable belief of INSURERS the defence of such proceedings would assist in the defence of any claim against the INSURED arising from such proceedings that would be indemnifiable under this insurance
- 2.4.3 any subsequent or concurrent claim that is indemnifiable under this insurance and that arises out of any proceedings notified under this extension shall be deemed to be a CIRCUMSTANCE and shall be subject to the claims conditions (see 3.2)

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- 2.4.4 any appeal against the outcome of any initial proceedings shall be deemed to be “proceedings” for the purpose of this extension
- 2.4.5 the maximum amount payable by INSURERS shall be £50,000 in the aggregate
- 2.4.6 INSURERS shall not be liable for the first £5,000 of DEFENCE COSTS incurred in respect of each prosecution.

2.5 Vicarious Liability

The INSURED is indemnified for any claim first made against the INSURED and notified to INSURERS during the POLICY PERIOD which the INSURED may become legally liable to pay as a result of any negligent act, negligent error or negligent omission by CONSULTANTS or any other person or party for whom the INSURED is responsible arising out of the exercise and conduct of the ACTIVITIES AND DUTIES.

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CLAIMS CONDITIONS

The following claims conditions apply to this insurance:-

3.1 Conditions Precedent to Liability

All conditions set out below (3.2 – 3.5 inclusive) are deemed to be conditions precedent to INSURERS' liability under this insurance.

3.2 Discovery of a Claim or Circumstance

3.2.1 If during the POLICY PERIOD the INSURED receives notice of any claim other than any claim provided for in 3.2.2, the INSURED shall give notice (see 3.3) to INSURERS as soon as practicable

3.2.2 If during the POLICY PERIOD the INSURED receives a LETTER OF CLAIM, the INSURED shall give early notice (see 3.3) to INSURERS, but in any event within 7 working days from receipt of such LETTER OF CLAIM and not later than expiry of the POLICY PERIOD

3.2.3 If during the POLICY PERIOD the INSURED becomes aware of any CIRCUMSTANCE, the INSURED shall give notice (see 3.3) to INSURERS of such CIRCUMSTANCE as soon as practicable

INSURERS agree that any such CIRCUMSTANCE notified to them during the POLICY PERIOD and which subsequently gives rise to a claim after expiry of this insurance shall be deemed to be a claim first made during the POLICY PERIOD

3.2.4 The INSURED shall not incur any costs and/or expenses in connection with the indemnity provided under insuring clause 1.2 without the prior written consent of INSURERS which shall not be unreasonably withheld. The onus of proving that a claim is indemnifiable under insuring clause 1.2 shall be upon the INSURED.

3.3 Notice

Notice to INSURERS under condition 3.2 shall not be valid unless it has been received in writing by the persons shown in the SCHEDULE.

3.4 Admission of Liability

In the event of any claim or CIRCUMSTANCE, the INSURED shall not admit liability and no admission, offer, promise or payment shall be made by the INSURED without INSURERS' prior written consent.

3.5 Conduct of Claims

Following notification of any claim or CIRCUMSTANCE, INSURERS shall be entitled 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 and give all such assistance as INSURERS may reasonably require.

If the INSURED and INSURERS cannot agree a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution), the dispute shall be resolved by the operation of condition 4.3.

GENERAL CONDITIONS

The following general conditions apply to this insurance:-

4.1 Retroactive Date

Where a retroactive date is specified in the SCHEDULE, this insurance shall not indemnify the INSURED for any claim notified to INSURERS and arising out of the exercise and conduct of the ACTIVITIES AND DUTIES prior to the said retroactive date.

4.2 Subrogation

If any payment is made by INSURERS, the INSURED grants to INSURERS all rights of recovery against any parties from whom a recovery may be made and the INSURED shall take all reasonable steps to preserve such rights. However, INSURERS agree to waive any rights of recovery against any present or former employee of 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.

4.3 Insurance Disputes

This insurance is governed by the laws of England and Wales. Any dispute or difference between the INSURED and INSURERS arising from this insurance shall be referred for determination to Senior Counsel of the English Bar, to be mutually agreed between INSURERS and the INSURED, or any other person as may be mutually agreed. In the event of disagreement regarding the appointment, the Chairman of the Bar Council shall appoint a suitable person. The findings of the agreed or appointed person shall be binding on INSURERS and the INSURED, and the cost of such referral shall be allocated by the agreed or appointed person on a fair and equitable basis.

4.4 Claim Settlements

INSURERS may at any time pay to the INSURED in connection with any claim or claims the INDEMNITY LIMIT (less any sums already paid including DEFENCE COSTS) or any lesser sum for which such claim or claims can be settled and upon such payment INSURERS shall not be under any further liability in respect of such claim or claims.

4.5 Contracts (Rights Of Third Parties) Act 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999, and for the avoidance of doubt:

- 4.5.1 this insurance is not intended to confer any enforceable rights upon any third party, whether or not an interest of such third party is acknowledged by INSURERS
- 4.5.2 the parties to this insurance shall be entitled to rescind or vary this insurance without the consent of any third party, whether or not an interest of such third party is acknowledged by INSURERS
- 4.5.3 in the event of proceedings by a third party against INSURERS for the enforcement of any provision of this insurance, INSURERS shall have available to them any defence or set off which would have been available if the proceedings had been brought by the INSURED.

4.6 Several Liability Notice

The subscribing INSURERS' obligations under insurances to which they subscribe 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 whatsoever does not satisfy all or part of its obligations.

4.7 Disclaimer of Liability by Insurers

In the event of INSURERS at any time being entitled to avoid this insurance *ab initio* by reason of any materially inaccurate or misleading information given to INSURERS in the written proposal or at any time during the negotiations leading to the inception of this insurance or as a result of failure to disclose material facts before the inception of this insurance or for any other reason at law, INSURERS may at their election instead of avoiding this insurance *ab initio* give notice to the INSURED that they regard this insurance as being of full force and effect except that there shall be excluded from the indemnity provided hereunder any claim which has arisen or which may arise out of any CIRCUMSTANCE which

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ought to have been disclosed to INSURERS in the written proposal or which arises out of materially inaccurate or misleading information given to INSURERS.

4.8 Imputation and Attribution

4.8.1 Save as specifically provided in 4.8.2, no presumption shall arise under this insurance that knowledge possessed or attained by any person (natural or legal) or any act or omission of any such person is imputable or attributable to the first mentioned corporate body named as the INSURED in the SCHEDULE.

4.8.2 However, any such knowledge, act or omission shall be regarded for all purposes of this insurance as imputable or attributable to the said first-mentioned corporate body if known to any member of the management of the corporate body or of any subsidiary or associated company or department or division engaged in connection with the ACTIVITIES AND DUTIES.

4.9 Data Protection Act 1998

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

4.10 Cancellation

This insurance may be cancelled at any time by or on behalf of INSURERS by 60 days' notice given in writing to the INSURED at the INSURED's last known address or registered office (if a company) and the premium shall be adjusted on a pro rata basis.

4.11 Aggregate Limit

Any entitlement on the part of the INSURED to indemnity under insuring clauses 1.1, 1.2 and 1.3 any extension(s) under this insurance shall not in the aggregate exceed the INDEMNITY LIMIT.

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EXCLUSIONS

This insurance shall not indemnify the INSURED in respect of any liability for, or directly or indirectly arising out of, or in any way involving:-

5.1 EXCESS

The EXCESS. DEFENCE COSTS referred to in insuring clause 1.3 shall be subject to the EXCESS.

5.2 Liability involving Vehicles or Property owned or occupied by the INSURED

5.2.1 The ownership, possession or use by or on behalf of the INSURED of any aircraft, watercraft, hovercraft, motor vehicle or trailer or

5.2.2 the ownership possession or use by or on behalf of the INSURED of any buildings, structures, premises or land or that part of any building leased, occupied or rented by the INSURED or any other property of the INSURED or in the INSURED's care, custody or control.

This exclusion shall not apply to any property or item which is owned, used or occupied by or in the possession of the INSURED for the sole or dominant purpose of performing its obligations to any customer, client or third party or which forms part of any permanent or temporary works of any construction contract in which the INSURED is involved.

5.3 Liability for Bodily Injury/arising out of Employment

Injury, disease, illness (including mental stress) or death of:-

5.3.1 Any employee under a contract of service with the INSURED or any claim arising out of any dispute between the INSURED and any present or former employee or any person who has been offered employment with the INSURED

5.3.2 any other person except to the extent that any liability on the part of the INSURED was due to any negligent act, negligent error or negligent omission by the INSURED and/or others acting on behalf of the INSURED in the conduct and exercise of the ACTIVITIES AND DUTIES.

5.4 Fraud, Dishonesty or Criminal Act

Any act, error or omission of any partner or director of the INSURED which is dishonest, fraudulent, criminal or malicious, or any claim where any person has committed a dishonest, fraudulent, criminal or malicious act after discovery by the INSURED of reasonable cause for suspicion that such act has been committed.

However, this exclusion shall not apply in respect of any civil claim arising out of any breach of any United Kingdom statutory regulation relating to building or construction works, subject to the act, error or omission not being deliberate on the part of the INSURED.

5.5 Controlling Interest

Any claim made against the INSURED by either:-

5.5.1 any entity in which the INSURED exercises a controlling interest, or

5.5.2 any entity exercising a controlling interest over the INSURED by virtue of 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 party against the said entities detailed in 5.5.1 or 5.5.2 and arises out of the exercise and conduct of the ACTIVITIES AND DUTIES.

5.6 Contractual Liability for Performance Warranties, Penalty Clauses, COLLATERAL WARRANTIES, DUTY OF CARE AGREEMENTS

Any contractual liability of the INSURED arising from the following:-

5.6.1 any acceptance of or guarantee of fitness for purpose where this appears as an express term

5.6.2 any express guarantee including in relation to the period of a project

5.6.3 any express penalty

5.6.4 any acceptance of liability for liquidated damages

5.6.5 any assignment by the INSURED of a COLLATERAL WARRANTY or DUTY OF CARE AGREEMENT to more than two parties

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provided that this exclusion shall not apply where the liability of the INSURED would have existed in the absence of any of the above or where INSURERS have expressly approved the relevant terms of the particular contract.

5.7 **Nuclear Risks**

Any of the following:-

- 5.7.1 ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- 5.7.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.8 **War and Terrorism**

Any of the following:-

- 5.8.1 war, invasion, acts of foreign enemies, hostilities (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 confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority
- 5.8.2 any act or acts of terrorism, force or violence for political, religious or other ends directed towards the overthrowing or influencing of the government, or for the purpose of putting the public in fear, by any person or persons acting alone or on behalf of or in connection with any organisation
- 5.8.3 any action taken in controlling, preventing, suppressing or in any way relating to 5.8.1 and/or 5.8.2 above.

This exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 5.8.1 and/or 5.8.2 above.

The burden of proving that a claim does not fall within this exclusion shall be upon the INSURED.

5.9 **Area of Activities**

Any ACTIVITIES AND DUTIES undertaken by the INSURED outside the GEOGRAPHICAL LIMITS.

5.10 **Jurisdiction**

Any claim brought (or the enforcement of any judgement or award entered against the INSURED) outside the courts of the United Kingdom, the Channel Islands, the Isle of Man and Member States of the European Union.

5.11 **Fines, Penalties, Punitive, Multiple or Exemplary Damages**

Fines, penalties, punitive, multiple or exemplary damages.

5.12 **POLLUTION**

POLLUTION unless it was caused by a negligent act, negligent error or negligent omission by the INSURED and/or by others acting on behalf of the INSURED, provided that such POLLUTION was not caused by an intentional act of the INSURED.

In respect of any claim arising from POLLUTION the INDEMNITY LIMIT shall be amended to "GBP500,000 each and every claim and in the aggregate" and not as shown in the SCHEDULE.

5.13 **Directors' and Officers' Liability**

Any claim arising from being a director, officer or trustee of the INSURED (as opposed to those duties and functions carried out in furtherance of the ACTIVITIES AND DUTIES) or from the acceptance of any directorship or trusteeship in any other company not forming part of the INSURED.

5.14 **Other Insurance**

Any claim where the INSURED is entitled to indemnity under any other insurance(s) except in respect of any amount for which the INSURED would otherwise be entitled to indemnity under this insurance beyond the amount for which the INSURED is entitled to indemnity under such other insurance.

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5.15 Previous Claims and Circumstances

Any claim or circumstance that may give rise to a claim which has been notified and accepted by insurers in respect of any other insurance attaching prior to the inception of this insurance or as disclosed as a material fact to INSURERS which formed the basis of this insurance or any claim or circumstance that may give rise to a claim of which the INSURED was or should have been aware prior to the inception of this insurance.

5.16 Trading Losses

Any trading losses or trading liabilities incurred by any business managed or carried on by the INSURED including loss of any client account or business.

5.17 Failure to Arrange Insurance and/or Finance

Any consequential loss arising from the failure of the INSURED to arrange and/or maintain insurance and/or finance.

5.18 Asbestos

Any claim involving asbestos.

5.19 Electronic Data Recognition

Any claim:-

5.19.1 caused or contributed to by or arising from or in connection with any COMPUTER SYSTEM, whether or not the property of the INSURED, not being YEAR 2000 COMPLIANT, or

5.19.2 caused or contributed to by or arising from or in connection with any or any attempted correction, conversion, renovation, rewriting or replacement of any COMPUTER SYSTEM, related to YEAR 2000 COMPLIANCE.

5.20 Tender at Less than Economic Terms

The deliberate decision by the INSURED to tender for a contract at less than economic terms for commercial or goodwill reasons.

5.21 Construction Costs

Any estimate of probable design and/or construction costs, being exceeded provided that this exclusion shall not apply to any claim arising directly from negligence of a quantity surveyor employed by or appointed on behalf of the INSURED to carry out those activities normally undertaken by a quantity surveyor in private practice.

5.22 Turnover Declared as Non-Design Related

Any claim arising from the INSURED's activities where it is, has been or would be declared as material facts that the INSURED and/or its CONSULTANTS or subcontractors have no responsibilities for design or other professionally-related activities.

5.23 Defective Workmanship or Materials

Any defective workmanship or materials relating to physical works of construction.

DEFINITIONS AND INTERPRETATIONS

Headings and notes are for information purposes only and are not to be construed as part of this insurance. Various words and phrases are used in this insurance and wherever they appear, whether they are used in the plural or singular form, they are deemed to have the meaning set out below:-

6.1 INSURED

Shall mean the corporate body or bodies named as the INSURED in the SCHEDULE including:-

6.1.1 Any predecessors in business

6.1.2 Any business for which the INSURED is legally liable in consequence of the INSURED's acquisition of such business (whether partial or otherwise) prior to inception of this insurance provided INSURERS have been notified in writing of the existence of such other business and have not refused to insure it

6.1.3 Any office or division of the INSURED as specified above unless expressly stated otherwise.

6.2 INSURERS

Shall mean the insurance companies or Lloyd's syndicates subscribing to this insurance.

6.3 SCHEDULE

Shall mean the document entitled "Schedule" that relates to this insurance.

6.4 INDEMNITY LIMIT

Shall mean the sum shown in the SCHEDULE which is available to indemnify the INSURED in respect of each claim provided that all claims payable under this insurance including any DEFENCE COSTS shall not exceed in the aggregate the limit shown in the SCHEDULE.

6.5 POLICY PERIOD

Shall mean the period shown in the SCHEDULE plus any extensions to the period which may be granted by INSURERS.

6.6 ACTIVITIES AND DUTIES

6.6.1 Shall mean the performance of and/or professional assistance with the following services by PROFESSIONAL STAFF on behalf of the INSURED:-

6.6.1.1 design, specification, inspection, supervision, feasibility study, surveying, procurement and/or the provision of advice or technical information

6.6.1.2 such additional services as declared to and agreed by INSURERS.

6.6.2 This definition shall not include:-

6.6.2.1 inspection and/or supervision by the INSURED of its own or its sub-contractors' work where such inspection and/or supervision is undertaken in its capacity as building or engineering contractor

6.6.2.2 the services of a clerk of works or similar person carrying out inspection and/or supervision of construction.

6.7 PROFESSIONAL STAFF

Shall mean those persons either qualified as architects, engineers or surveyors or having other professional qualifications appropriate to the ACTIVITIES AND DUTIES or having a minimum level of experience of five years in undertaking the ACTIVITIES AND DUTIES.

6.8 CONSULTANTS

Shall mean consultants, contractors, specialist designers or others appointed by the INSURED in connection with the ACTIVITIES AND DUTIES.

6.9 CIRCUMSTANCE

Shall mean information or facts or matters of which the INSURED is aware which is likely to give rise to a claim against the INSURED which the INSURED could become legally liable to pay and which arises out of the exercise and conduct of the ACTIVITIES AND DUTIES.

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6.10 DEFENCE COSTS

Shall mean all costs and expenses incurred in the investigation, defence or settlement of any claim or CIRCUMSTANCE notified under the terms of this insurance and/or the cost of representation at any enquiry or other proceedings which have a direct or indirect relevance to the investigation, defence or settlement of any matter notified under the terms of this insurance. This definition shall not include the costs and expenses incurred by the INSURED in preparing and presenting any claim under this insurance or providing INSURERS with the necessary information to defend or mitigate any claim.

6.11 EXCESS

Shall mean the sum shown in the SCHEDULE unless otherwise stated in this insurance and shall be the first amount of each claim which is payable by the INSURED. Where, however, more than one claim is made during the POLICY PERIOD which arises from the same original cause or single source or event then only a single EXCESS shall apply in respect of such claims.

6.12 LETTER OF CLAIM

Shall mean the Letter of Claim as detailed in any applicable Pre-Action Protocol.

6.13 CO-OPERATE

Shall mean that the INSURED

6.13.1 assists INSURERS and their duly appointed representatives to put forward the best possible defence of a claim within the time constraints available

6.13.2 shall have adequate internal systems in place, which will allow ready access to material information

6.13.3 shall at all times and at its own cost give to INSURERS or their duly appointed representatives all such information, assistance, signed statements or depositions as may properly be required to facilitate compliance with all applicable Civil Procedure Rules, Practice Directions and Pre-Action Protocols and recoveries.

6.13.4 shall pay the EXCESS on demand of INSURERS or their duly appointed representatives to comply with any settlement agreed by INSURERS.

6.14 COLLATERAL WARRANTIES, DUTY OF CARE AGREEMENTS

Shall mean any agreement which acknowledges or accepts that the INSURED owes a duty of care to or is responsible for the losses of any party other than the INSURED'S direct client to whom ACTIVITIES AND DUTIES are being provided.

6.15 GEOGRAPHICAL LIMITS

Shall mean anywhere in the world excluding the United States of America and/or Canada or their Dominions or Protectorates or as varied in the SCHEDULE.

6.16 POLLUTION

Shall mean any one or a combination of a release, emission, discharge, dispersal, disposal or escape of any substances, which are capable of causing HARM to any person or any living organism, into or onto any water, land or air.

6.17 HARM

Shall mean any harm to the health of any living organism or interference with ecological systems of which they form part and, in the case of a person, includes offence caused to any of their senses.

6.18 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.

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6.19 YEAR 2000 COMPLIANT/COMPLIANCE

Shall mean that neither performance nor functionality of the COMPUTER SYSTEM is affected by any changes prior to, during and/or after, the Year 2000. In particular:-

- 6.19.1 No value for current date will cause or give rise to any interruption in the operation of the COMPUTER SYSTEM
- 6.19.2 Date based functionality and performance must behave consistently for dates prior to, during and/or after, the Year 2000
- 6.19.3 In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules
- 6.19.4 The Year 2000 must be recognised as a leap year.

MEMORANDUM 1 ADJUDICATION

This memorandum is granted as part of this insurance, subject to the terms, conditions, exclusions and limitations of this insurance.

INSURERS agree to indemnify awards made against the INSURED 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 ("the Act") or an adjudication clause or rules contained in a contract provided that, as a condition precedent to indemnity being provided hereunder, the INSURED

1. shall ensure that the timetable provisions in any contract are no more onerous to the INSURED than those contained in the Scheme for Construction Contracts referred to in the Act
2. shall notify Mills & Reeve within 2 working days of receipt of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract
3. shall not serve any of the notices referred to in 2 above without the prior written consent of INSURERS, unless in the INSURED's reasonable opinion this will not give rise to a claim under this insurance
4. agrees that INSURERS shall be entitled if they reasonably request 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 the adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the adjudicator. The INSURED shall give all such assistance as INSURERS may reasonably require in relation to such proceedings
5. shall not accept the decision of the adjudicator as finally determining the dispute without the prior consent in writing of INSURERS
6. must satisfy INSURERS that any liability incurred under an adjudicator's decision for which indemnity is being sought would otherwise be the subject of indemnity under this insurance.

For the avoidance of doubt:

- (a) notification of a "notice of intention to adjudicate" and/or "notice of adjudication" and/or "referral notice", and/or "any adjudication notice pursuant to contract" shall be considered to be a notification under the terms of this insurance subject to all other terms, conditions, exclusions and limitations of this insurance which are not in conflict with this memorandum
- (b) the provisions of any Inadvertent Non Disclosure Extension, Special Institution Conditions or similar clause (if applicable) shall not apply to this memorandum
- (c) the adjudicator in any contract must be independent of the parties to the dispute
- (d) this memorandum does not in any way limit INSURERS' rights of subrogation.

N.B. Mills & Reeve Solicitors, Bankside House, 107-112 Leadenhall Street, London EC3A 4AH. E-Mail geoff.barrett@mills-reeve.com Telephone number 020 7648 9230 or 07788 977018 Facsimile number 020 7648 9221

SPECIMEN

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