



Design & Professional Services
of Contractors
Professional Indemnity Insurance
Policy Wording

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Introduction

to your Professional Indemnity Policy

This document and its attachments form your Policy and between them set out what is and isn't covered by your Policy. It is important that you read it all carefully, to make sure that the insurance covers you've bought actually provide the level of protection you need. You should bear in mind that your needs can change over time as your Business develops. If they do, it's important that you let your broker, intermediary or agent know so that we can update your Policy.

If you require advice on any aspect of your Policy please speak to your usual insurance adviser.

How to make a claim

Notice to the Company under Clauses 3.1.1 and 3.1.2 shall be deemed to have been properly made if received in writing by:

Barbican Protect Ltd - Claims

King's House
42 King Street West
Manchester
M3 2NU

Telephone: +44 (0)161 838 6998
Out of Hours: +44 (0)161 838 4389
E-mail: claims@barbicanprotect.com

Who we are

Barbican Protect Ltd is authorised and regulated by the Financial Conduct Authority under reference number 467933, and is registered in England No.6185834 at 33 Gracechurch Street, London EC3V 0BT.

Complaints Procedure

We of course aim to provide first class service. However if the Insured feels that the Company's service has fallen short of their expectation the Insured may contact the Company at any time with their complaint.

Complaints will be handled in the following way:

- if you make a complaint we will acknowledge it within 2 working days of having received it
- our objective will be to resolve your complaint within 5 working days.

If you have any questions or concerns about your policy or the handling of a claim or if you wish to make a complaint, you can do so at any time by referring the matter to: William Hall, Barbican Protect Limited, The Hive, 47-51 Lever Street, Manchester M1 1FN T: +44(0)161 235 6540.

In the event that you remain dissatisfied, it may be possible in certain circumstances for you to refer the matter to the Complaints team at Lloyd's.

The address of the Complaints team at Lloyd's is:

Complaints

Lloyd's

One Lime Street
London EC3M 7HA

Tel No: +44 (0)20 7327 5693

Fax No: +44 (0)20 7327 5225

E-mail: complaints@lloyds.com

Website: www.lloyds.com/complaints

Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint - How We Can Help" available at www.lloyds.com/complaints and are also available from the above address.

If you remain dissatisfied after Lloyd's has considered your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service (FOS).

The contact details for the FOS are: The Financial Ombudsman Service, Exchange Tower, London E14 9SR. Telephone 0800 023 4567 (calls to this number are free from "fixed lines" in the UK) or 0300 123 9123 (calls to this number are charged at the same rate as 01 and 02 numbers on mobile phone tariffs in the UK). Email complaint.info@financial-ombudsman.org.uk.

The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. You can find more information on the FOS at www.financial-ombudsman.org.uk.

Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme (FSCS) which means that you may be entitled to compensation from the Scheme in the unlikely event that we cannot meet our obligations to you. This depends upon the type of insurance, size of the business and circumstances of the claim. You can find out more at www.fcsc.org.uk.

Data Protection Notice

Your personal data may be processed and held by us in our capacity as data controllers in order for us to write and administer your policy and to assist in the claims handling process in accordance with applicable data protection laws.

The main purposes for processing your personal data are for the performance of an insurance contract or to allow us to comply with our legal obligations.

This may involve:

- Gathering and holding your personal data where it is necessary for the provision of the services referenced in this policy documentation;
- Disclosing your personal data or details of your insurance cover to companies within the Barbican Insurance Group, service providers or third parties for issuance and maintenance of your insurance policy, for the prevention of fraud or if legally required to do so;
- Obtaining and storing any relevant data to substantiate a claim.

For the reasons set out above, we may share your personal data with our associated companies, insurers or service providers in countries outside of the European Economic Area ("EEA") where data protection laws may not offer the same level of protection as within the EEA. In these circumstances, we have strict contractual terms in place to ensure that your information remains safe and secure.

By purchasing this insurance policy and using our services, you agree to our use of your personal data, including your sensitive data. If your insurance cover involves other individuals and you have provided us with their personal data, then you agree to make them aware of our use of their personal data as per this document and our extended data privacy policy on our website (link provided below).

We will need to keep and process your personal information while you are a customer of ours and afterwards in order to meet our corporate requirements and legal and regulatory obligations.

We will only share your personal data with a third party for marketing purposes if we have obtained your explicit consent to do so. You have the right to withdraw your consent to marketing at any time by contacting the Data Protection Officer using the contact details below.

For any data access requests, if you have any queries or concerns regarding privacy or how we use your personal data, or believe any of the information that we hold on you may be inaccurate, please contact our Data Protection Officer at:

- In writing: 33 Gracechurch Street, London EC3V 0BT
- By email: dataprotectionofficer@barbicaninsurance.com

To read our data privacy policy in full and for more information about your data protection rights, please visit our website at: <https://www.barbicanprotect.com/cookies-privacy-policy/>.

Policy Contract

In consideration of the Insured having paid or agreed to pay the premium stated in the Schedule the Company agrees to indemnify the Insured or otherwise to pay the benefits and compensations stated to the extent and in the manner specified in this Policy.

Provided that

- 1 the Policyholder shall be subject to all the terms, conditions limitations and/or exclusions contained in this Policy or by additional endorsements
- 2 the Company's liability shall not exceed the sums insured or the limits of liability or any other limits expressed herein
- 3 the Schedule, general definitions, general claims conditions, general conditions, general exclusions and active covers shall be read together as part of one contract and any word or expression to which a specific meaning has been attached shall bear the same meaning throughout this Policy
- 4 the information supplied by or on behalf of the Insured is relied upon as to its completeness, correctness and accuracy by the Company. This means that if the information the Insured gives is incomplete, incorrect or inaccurate then the Insured may not be covered for any claim.

If this Policy is in the joint names of more than one Insured, each Insured shall be covered as if it had made its own application for cover and no statement or knowledge of any one Insured shall be considered to be on behalf of any other Insured.

Several Liability

This Policy is underwritten by certain underwriters at Lloyd's and/or other insurance companies (hereinafter called them "Insurers"). The liability of Insurers under this contract is several and not joint. An Insurer is not jointly liable for the proportion of liability underwritten by any other Insurer. Nor is an Insurer otherwise responsible for any liability of any other Insurer that may underwrite this contract.

The proportion of liability under this contract underwritten by an Insurer (or in the case of a Lloyd's syndicate the total of the proportions underwritten by all the members of the syndicate taken together) is shown in the Schedule. Where the insurer is a Lloyd's syndicate each member of the syndicate (rather than the syndicate itself) is an Insurer. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that members proportion. A member is not jointly liable for any other members proportion. Nor is any member responsible for any liability of any other Insurer that may underwrite this contract. The business address of each member is Lloyd's, One Lime Street, London EC3M 7HA. The identity of each member of a Lloyds syndicate and their respective proportion may be obtained by writing to Market Services at the above address.

Although reference is made at various points in this clause to "this contract" in the singular where circumstances so require this should be read as a reference to contracts in the plural.

Interpretation

In this Policy:

- 1** reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception, or subsequent renewal or alteration, of this Policy;
- 2** if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- 3** the headings herein are for reference only and shall not be considered when determining the meaning of this Policy;
- 4** the singular includes the plural and vice versa;
- 5** the male gender includes the female and neutral genders.

Insuring Clauses

In consideration of the payment or the promise of payment to the Company of the premium specified in the Schedule the Company agrees:

1.1 To indemnify the Insured against any Claim first made against the Insured and/or arising out of any Circumstance which the Insured shall first notify during the Period of Insurance for which the Insured is legally liable to pay damages (including Claimant's costs) which arises in consequence of the conduct of Professional Business carried on by, or on behalf of, the Insured in consequence of:

1.1.1 Negligence

- a. any negligent act, error or omission of the Insured;
- b. any negligent act, error or omission of any specialist designers, consultants or sub-contractors of the Insured in the conduct of Professional Business provided that the rights of recourse against such specialist designers, consultants or sub-contractors have not been waived or otherwise impaired.

1.1.2 Dishonesty

any dishonest or fraudulent act or omission on the part of any Employee, or any other person (other than a partner, Member, principal or director of the Insured) firm or company directly appointed by and acting for or on behalf of the Insured.

1.1.3 a. Libel and slander

b. Breach of confidentiality

- c. Infringement of intellectual property rights** including patents copyrights or the unauthorised use of systems or designs

committed by any current or former partner, director, principal, Member or Employee of the Insured.

1.2 Defence Costs

To indemnify the Insured for Defence Costs where such costs have been incurred with the Company's prior written consent.

Limit of indemnity applicable to Insuring Clauses 1.1 and 1.2

The liability of the Company for damages claimant's costs and expenses and Defence Costs arising out of all Claims notified during the Period of Insurance shall not exceed the limit of indemnity specified in the Schedule.

Additional Coverage Extensions

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

2.1 Loss of or Damage to Documents

2.1.1 The Company shall indemnify the Insured against any Claim first made against the Insured during the Period of Insurance in respect of third party liabilities as a consequence of any Document having been destroyed, damaged, lost or mislaid which is either the property of or entrusted, lodged or deposited with the Insured.

2.1.2 The Company shall also indemnify the Insured for reasonable and necessary costs incurred with the Company's prior written consent for the repair, replacement or reconstitution of any Document which has been unintentionally destroyed, damaged, lost or mislaid (and which after diligent search cannot be found) the occurrence of which has been discovered and notified in writing to the Company during the Period of Insurance. Provided that the Insured will not be indemnified in relation to any Document which is kept in magnetic or electronic form unless such Document is duplicated and the duplicate is stored separately as a back-up either off site or in a secure fire proof safe.

An Excess of GBP1,000 each and every Claim (or should the Excess shown in the Schedule be less than GBP1,000 each and every Claim then the Excess shown in the Schedule) shall apply to claims under Extension 2.1.2.

2.2 Indemnity to Employees, Former Employees and/or Consultants

Employees or former Employees of the Insured are indemnified for any Claim for any legal liability for breach of professional duty first made against them and notified to the Company during the Period of Insurance which arises out of the conduct of Professional Business.

Former partners, former directors, former Members or former Employees of the Insured who have continued as consultants to the Insured and any persons who were formerly consultants to the Insured are indemnified for any Claim for any legal liability for breach of professional duty first made against them and notified to the Company during the Period of Insurance which arises out of the conduct of Professional Business.

2.3 Joint Venture/Consortium

The Insured is indemnified for any Claim for any legal liability for breach of professional duty first made against them and notified to the Company during the Period of Insurance which the Insured may become legally liable to pay, whether jointly or severally, which arises out of the conduct of Professional Business, whilst a member of a joint venture or consortium.

2.4 Compensation for Court Attendance

In the event of any partner, principal, director, Member or Employee of the Insured being required by legal advisers acting on behalf of the Insured with the consent of the Company to attend court, mediation or arbitration in connection with any Claim made against the Insured and notified under this Policy, the Company will provide compensation at the rate of GBP500 per partner, principal, director, Member or Employee for each day or part of day on which attendance is required.

Provided that the liability of the Company under Extension 2.4 shall not exceed GBP25,000 in all during any one Period of Insurance. No Excess shall apply to claims under this Extension.

2.5 Mitigation of Losses

2.5.1 The Company shall indemnify the Insured for costs and expenses necessarily incurred prior to handover and during the Period of Insurance in order to mitigate a loss or potential loss that would otherwise become a Claim covered by this policy. The onus of proving that the costs and expenses were necessarily incurred to mitigate a loss or potential loss that would otherwise have become a Claim covered by this policy shall be upon the Insured. As a condition precedent to the right to be indemnified under this Policy the Insured must obtain the Company's prior written and continuing consent before incurring any and all costs and expenses.

2.5.2 If a situation arises whereby the Insured regards it necessary to take action as a matter of urgency in order to mitigate a loss or potential loss that would otherwise become a Claim covered by this policy the Insured should contact Barbican Protect Ltd - Claims, King's House, 42 King Street West, Manchester, M3 2NU or e-mail: claims@barbicanprotect.com or via phone: +44 (0)161 838 6998 before incurring any such costs and expenses. Barbican Protect Ltd are authorised by the Company to give consent in circumstances where they consider urgent action is required and written consent by Barbican Protect Ltd will be regarded as consent by the Company. This clause only applies where urgent action is deemed necessary and all other matters must be notified to the Company in accordance with the terms and conditions contained in this policy.

2.6 Legal Defence Costs

The Company will pay 80 per cent of costs charges and expenses, which are not indemnified as Defence Costs under Insurance Clause 1.2, incurred by the Insured with the prior written consent of the Company and not otherwise covered by this insurance, for representation at properly constituted hearings tribunals or proceedings in respect of any occurrence arising from the conduct of Professional Business first instigated against the Insured and notified to the Company during the Period of Insurance in respect of any occurrence which may be the subject of indemnity under this insurance.

Provided that the liability of the Company under Extension 2.6 shall not exceed GBP25,000 in the aggregate during the Period of Insurance.

2.7 Criminal Prosecution Defence Costs

In addition to the Limit of Indemnity, the Company will indemnify the Insured against the costs and expenses incurred with the prior consent of the Company in the defence of any criminal proceedings against the Insured (or in any appeal against a conviction arising from such proceedings) in respect of a breach of any statute or statutory regulations.

Provided that:

- a.** the proceedings relate to an offence alleged to have been committed in the conduct of Professional Business and first notified to the Company during the Period of Insurance;
- b.** for any subsequent or concurrent civil action arising out of such offence, such notification will be deemed to be notification of a Claim or Circumstance;
- c.** in the reasonable belief of the Company the defence of such proceedings would assist in the defence of any Claims against the Insured arising from such criminal proceedings

provided that the liability of the Company under Extension 2.7 shall not exceed GBP250,000 in the aggregate during any one Period of Insurance.

2.8 Housing Grants, Construction and Regeneration Act

Subject to all other provisions of this Policy and its Endorsements the Company shall indemnify the Insured in respect of any decision given by an Adjudicator against the Insured under a construction contract as defined in Section 104 of the Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time) provided that

- a.** the Insured has complied with the undertakings set out below as clauses 2.8.1 to 2.8.5 inclusive,
and
- b.** the Insured establishes that the third party claim which is the subject matter of a claim under Clause 2.8 is covered by Insuring Clause 1.1 of this Policy

Undertakings applicable to a claim under this section of the policy

- 2.8.1** The Insured shall give immediate notice (and in any event within two working days) directly to the Company's Named Representative of:-
- a.** receipt of a notice that a dispute is being referred to Adjudication in which they are named as respondent;
 - b.** becoming aware that a dispute is likely to be referred to Adjudication in which they are likely to be named as respondent.
- 2.8.2** The Insured shall deliver to the Named Representative, within two working days of receipt or awareness as appropriate, full written details of the matter(s) notified under 2.8.1(a) and/or 2.8.1(b) above, including any subsequent correspondence or notices received.
- 2.8.3** The Insured shall provide full expeditious co-operation to the Company's Named Representative complying with all their reasonable requests, in particular those relating to response times, and such co-operation shall extend to any subsequent challenge to the Adjudicator's decision.
- 2.8.4** Where the sums claimed exceed the amount stated as the Excess and the Company, based on the facts known to them consider the notification is covered in whole or in part by the Policy, the Company will agree to be responsible for the costs and disbursements incurred by the Named Representative in the defence and/or settlement of that part of the notification covered by the Policy and shall then be entitled to take over the defence and/or settlement of the dispute notified under Conditions 2.8.1(a) and/or 2.8.1(b) above.
- No costs and disbursements other than those of the Named Representative shall be paid by the Company without the Company's prior agreement.
- 2.8.5** The Insured shall not without prior written consent of the Company:-
- a.** make any admission in respect of the dispute being referred to Adjudication, or
 - b.** agree to accept the decision of the Adjudicator as finally determining the dispute with no further reference to legal proceedings, arbitration or alternative dispute resolution.

Should the Insured fail to comply with any of the undertakings set out above then the indemnity applicable to a Claim under this section may be declined.

Named Representative

Where a firm is named in this section notification to the said firm is deemed notice to the Company and need only be given to the named firm:-

Barbican Protect Ltd - Claims
King's House,
42 King Street West,
Manchester, M3 2NU

Telephone: +44 (0)161 838 6998
Fax: +44 (0)161 838 4389
Email: claims@barbicanprotect.com

Thereafter the Company can elect to appoint another solicitor or a claims consultant who will become for the purposes of the notification the Named Representative.

2.9 Duty to Warn Extension

The Company agrees to indemnify the Insured for the amount of any Claim, including Claimant's costs and expenses, first made against the Insured and notified to the Company during the Period of Insurance in respect of any legal liability that may devolve upon the Insured for failure in their duty to warn any party of any negligent act, negligent error or negligent omission which arises out of the exercise and conduct of the Professional Business not undertaken by the Insured and declared to the Company as non design work.

Claims Conditions

The following claims conditions apply to this insurance:-

3.1 Notification

3.1.1 The Insured shall give notice to the Company as soon as practicable and during the Period of Insurance:

- a. of any Claim made against them or any of them; and
- b. regardless of any previous notice, of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings; and
- c. of the receipt of notice from any party of an intention to make a Claim against them; and
- d. of any loss suffered by them or any of them; and
- e. of the discovery of reasonable cause for suspicion of dishonesty or fraud on part of any former or present partner, director, Member, Employee, consultant or sub-contractor whether giving rise to a loss or claim hereunder or not.

3.1.2 If the Insured shall become aware during the Period of Insurance of any Circumstance the Insured shall give notice as soon as practical to the Company during the Period of Insurance. Such notice having been received by the Company during the Period of Insurance any Claim subsequently made against the Insured, arising out of the Circumstance, shall be deemed to have first been made against the Insured during the Period of Insurance.

For the avoidance of doubt, notice under this Policy is not valid if given by any third party (other than the Insured's insurance agent acting on the Insured's instructions). Notice to the Company under this Condition or any other provision of this Policy is effective only when received in writing by the entity listed in Clause 3.1.3.

Any notice under this clause must identify:

- a. all potential claimants;
- b. the potential act error or omission;
- c. the date of the potential act error or omission.

3.1.3 Notice to the Company under Clauses 3.1.1 and 3.1.2 shall be deemed to have been properly made if received in writing by:

Barbican Protect Ltd - Claims
King's House,
42 King Street West,
Manchester M3 2NU

Telephone: +44 (0)161 838 6998
Fax: +44 (0)161 838 4389
Email: claims@barbicanprotect.com

3.2 Duty to co-operate

The Insured undertakes to promptly provide to the Company full details concerning any Claim and any Circumstance and provide such co-operation and assistance as the Company and its representatives, legal advisers or agents may reasonably require. The Insured further undertakes that the Insured and all Employees (and all persons, Practices and companies acting for or on behalf of the Insured) undertake that no documents that may be relevant to all Claims and all Circumstances that may give rise to a Claim shall be intentionally destroyed or otherwise intentionally disposed of.

Should the Insured fail to abide by these undertakings with the result that the Company suffers prejudice then the amount that is paid in settlement of a Claim (including Defence Costs) will be reduced by an amount which reflects the loss or cost or the additional loss or cost to the Company occasioned by such prejudice.

3.3 No settlement without the Company's consent

The Insured (or any Employee or any person, Practice or company acting for or on behalf of the Insured) undertakes not to admit liability for, compromise, settle or make any offer or payment in respect of any Claim or any Circumstance which may give rise to a Claim without the prior written consent of the Company.

Should the Insured fail to abide by these undertakings with the result that the Company suffers prejudice then the amount that is paid in settlement of a claim will be reduced by an amount which reflect the loss or cost to the Company occasioned by such prejudice.

3.4 Company entitled to defend

The Company shall be entitled, but not obliged, to take over the investigation, defence and settlement of any Claim and any Circumstance. The Company shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the Insured and the Company) provided that, if the Insured and Company 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 the operation of Clause 4.4.

3.5 Discharge of liability

The Company reserves its right to fully and finally discharge all liability to the Insured for any Claim under this Policy either:

- 3.5.1** by making payment of the applicable Limit of Indemnity to the Insured less any sums previously paid; or
- 3.5.2** by making payment of a sum less than the applicable Limit of Indemnity when any Claim can be settled for such a lesser sum.

3.6 Subrogation

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

3.7 Dishonest/Fraudulent Claims

- 3.7.1** Where a loss or Claim against the Insured involves the dishonest or fraudulent act or omission of any former or present partner, director, Member, Employee, consultant or sub-contractor
 - a.** the Insured shall at the request and expense of the Company 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 the Insured or any monies of such persons held by the Insured shall be deducted from any amount payable hereunder;
 - c.** 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 the Company from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission.
- 3.7.2** If the Insured shall proffer any loss or Claim knowing the same to be false or fraudulent as regards amount or otherwise, the Company shall be entitled to serve Notice on the Insured terminating this Policy and all Claims and requests for indemnity which arise from events that occur subsequent to the false or fraudulent act shall be forfeited.
- 3.7.3** Should the Insured suffer any loss or incur any liability of the type insured under this Policy by reason of the dishonest or fraudulent act or omission of any former or present partner, director, Member or Employee, consultant or sub-contractor, no indemnity shall be afforded hereunder in respect of such loss or liability to any person committing or condoning such dishonest or fraudulent act or omission, and 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.

General Conditions

The following general conditions apply to this insurance:-

4.1 **Premium Payment Condition**

4.1.1 Premiums payable in full:

In consequence of the Insured having agreed to pay the Premiums due under this Policy in full, it is hereby agreed and declared that:-

- a. The Premium for this insurance is to be paid to Barbican Protect Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Barbican Protect Limited shall be deemed to be the Company's agent.
- b. In the event of the Premium, in full or in part, remaining outstanding for more than 30 days after the due date (whether demanded or not) Barbican Protect Limited may at their sole discretion, without being liable to the Insured or to the Company for any loss arising out of the exercise of that discretion, give notice to the Insured, or their insurance adviser if applicable, of cancellation and all cover under this Policy shall automatically lapse from the date of cancellation. Thereafter the Policy shall not provide any indemnity in respect of any Claim or Circumstance notified after the Policy has automatically lapsed.
- c. Upon the lapsing of the Policy under paragraph (b) above, the Insured shall forthwith deliver up to Barbican Protect Limited any certificate of insurance, cover note, Policy document or any other such document or evidence concerning the existence of this Policy for amendment and shall forthwith communicate the lapsing of the Policy to any person who had been notified of its existence.
- d. The late acceptance of Premium after the 30 days specified in paragraph (b) above shall not reinstate the Policy unless expressly agreed by Barbican Protect Limited in writing and then only on such terms as shall be determined by the Company.

4.1.2 Premiums payable by instalments:

In consequence of the Insured having applied for the facility to pay the Premiums due under this Policy by instalments, it is hereby agreed and declared that:-

- a. The Premium for this insurance is to be paid to Barbican Protect Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Barbican Protect Limited shall be deemed to be the Company's agent.
- b. Each instalment or Premium will be paid under this Policy in full and the Insured shall not be entitled to deduct therefrom any sums which may be or may be alleged to be owing to the Insured by the Company and/or Barbican Protect Limited, whether in respect of this insurance or otherwise.
- c. In the event of an instalment remaining outstanding for more than 30 days after the due date (whether demanded or not) Barbican Protect Limited may at their sole discretion, without being liable to the Insured or to the Company for any loss arising out of the exercise of that discretion, give notice to the Insured, or their insurance adviser if applicable, of cancellation and all cover under this Policy shall automatically lapse from the date of cancellation. Thereafter the Policy shall not provide any indemnity in respect of any Claim or Circumstance notified after the Policy has automatically lapsed.
- d. Upon the lapsing of the Policy under paragraph (c) above, the Insured shall forthwith deliver up to Barbican Protect Limited any certificate of insurance, cover note, Policy document or any other such document or evidence concerning the existence of this Policy for amendment and shall forthwith communicate the lapsing of the Policy to any person who had been notified of its existence.
- e. The late acceptance of Premium after the 30 days specified in paragraph (c) above shall not reinstate the Policy unless expressly agreed by the Company in writing and then only on such terms as shall be determined by the Company.

For the purposes of this endorsement it shall be deemed that credit facilities may be provided to the Insured by Barbican Protect Limited or a finance company or a bank.

4.2 Contracts (Rights of Third Parties) Act 1999

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

4.3 Limit of Indemnity

The limit of indemnity stated in the Schedule is the Company's monetary limit and applies to any one Claim.

All Claims against any one or more of the Insured arising from any of the following:

- a. one act or omission
- b. one series of related acts or omissions
- c. the same act or omission in a series of related matters or transactions
- d. similar acts or omissions in a series of related matters or transactions
- e. one matter or transaction

will be regarded as one Claim. All such Claims will be considered first made on the date upon which the earliest Claim is first made.

4.4 Policy Disputes and Governing Law

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

4.4.2 The Courts of England and Wales shall have exclusive jurisdiction to hear and determine any suits, actions, proceedings and to settle any disputes that may arise out of or in connection with this Policy.

4.4.3 Any dispute or difference between the Insured and the Company arising from this Policy shall be referred to Queen's Counsel, or in the Republic of Ireland a Senior Counsel, to be mutually agreed between the Company and the Insured or any other party as may be mutually agreed. In the event of disagreement regarding the appointment, the Chairman of the Bar Council or the Dean of the Faculty of Advocates, or the Chairman of the Bar Council of Ireland (as appropriate), shall appoint a suitable party.

The findings of the agreed or appointed party shall be binding on the Company and the Insured, and the costs of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.

4.4.4 In respect of Conditions 4.5 and 4.6, if the Company and the Insured cannot agree on the amount payable in consequence of any alleged prejudice then the sum payable shall be determined by a party to be nominated by the President of The Chartered Institute of Arbitrators from time to time whose opinion shall be final and binding upon both parties. The role of the nominated party shall be to state his opinion as to the amount payable as the indemnity based upon and within the parameters of the written submission of each of the parties and their representatives. The nominated party shall have no authority to nominate an amount that is lower or higher than the amounts put forward by the parties.

4.5 Inadvertent Breach of the Duty of Fair Presentation Prior to Policy Inception.

4.5.1 Notwithstanding the conditions contained within Section 3 of this Policy, the Company will not exercise their right to avoid this Policy or decline any claim hereunder where there has been or it is alleged that there has been:

- a.** breach of the duty of fair presentation or misrepresentation of facts and/or
- b.** incorrect particulars or statements and/or
- c.** failure to disclose matters which are likely to give rise to a Claim

prior to inception of this Policy and provided always that the Insured shall establish to the Company's satisfaction that such breach, incorrect particulars or failure referred to above was innocent and free of any fraudulent conduct or intent to deceive.

4.5.2 In any case where the Insured could have notified under any preceding insurance information likely to give rise to a Claim and the indemnity or cover available under this Policy is greater or wider in scope than the indemnity to which the Insured would have been entitled under any such preceding insurance (whether with the Company participating on this Policy or not) then the Company participating on this Policy shall only be liable to indemnify the Insured to the extent of the indemnity which would have been afforded by such preceding insurance.

4.5.3 Where the breach, incorrect particulars or failure has resulted in prejudice to the handling or settlement of any Claim the indemnity afforded by this Policy in respect of such Claim (including Defence Costs) shall be reduced to such sum which, in the Company's reasonable opinion, would have been payable by them in the absence of such prejudice.

4.6 Inadvertent Breach of Policy Conditions After Policy Inception/Renewal

4.6.1 The Company will not exercise their right to avoid this Policy or decline any Claim hereunder where, after inception, or subsequent renewal or alteration, of this Policy, there has been or it is alleged that there has been:

- a.** breach of any policy conditions; and/or
- b.** breach of the duty of fair presentation; and/or
- c.** misrepresentation of facts; and/or
- d.** the giving of incorrect particulars or statements

provided always that the Insured shall establish to the Company's satisfaction that such breach, misrepresentation or incorrect particulars or statements referred to above was innocent and free of any fraudulent conduct or intent to deceive.

4.6.2 Where the Insured's inadvertent breach of or non-compliance with any condition of this Policy has resulted in prejudice to the handling or settlement of any Claim, the indemnity afforded by this Policy in respect of such Claim (including Defence Costs) shall be reduced to such sum which, in the Company's reasonable opinion, would have been payable by them in the absence of such prejudice.

4.7 Sub-consultants Professional Indemnity Insurance

It is understood and agreed that:

- i) the Insured undertakes to ensure that any consultants sub-consultants or sub-contractors, who may perform any of the Professional Business on behalf of the Insured, will have in force a Professional Indemnity Insurance policy up to a minimum limit of indemnity of GBP1,000,000, or if lower than GBP1,000,000 the limit of indemnity shown in the Schedule, at the time they are appointed by the Insured.
- ii) the Insured undertakes to use reasonable endeavours to check that any consultants, sub-consultants or sub-contractors, who may perform any of the Professional Business on behalf of the Insured, will continue to renew the Professional Indemnity Insurance policy at the limit of indemnity they have in force at the time they are appointed by the Insured.

Should the Insured fail to comply with any of the undertakings set out above then the indemnity applicable to a Claim under this section may be declined.

Exclusions

The Company shall not have any liability under this Policy for, or directly or indirectly arising out of, or in any way involving:

5.1 Adjudication

5.1.1 any decision made against the Insured by an adjudicator who was not independent of the parties to the dispute.

5.1.2 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.

5.2 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.

5.3 Bodily Injury

arising directly or indirectly from bodily injury, psychological injury, emotional distress or anguish, shock, sickness, disease or death sustained by any person (not being a person who is or has been under a contract of service with the Practice or any Member) unless such Claim arises directly out of any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business.

5.4 Contractual Liability for Express Guarantees, Liquidated Damages or Penalties

any contractual liability incurred by the Insured in the conduct of the Professional Business 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
- b. any express guarantee given by the Insured relating to the satisfaction of performance and/or specification and/or the period of a project
- c. any express penalty contained in a contract between the Insured and a third party
- d. any express acceptance by the Insured of liability for liquidated damages

This exclusion shall not apply if liability would have attached to the Insured in the absence of any such express agreement, or if the Company have expressly approved the contractual terms giving rise to the said liability.

For the avoidance of doubt any contractual documents that include a clause imposing a duty upon the Insured to act with reasonable skill care and diligence and/or include a level of competence equivalent to a prudent, properly qualified and competent member of the Insured's profession experienced in undertaking projects of a similar size, scope and complexity, shall be deemed to fall outside this Exclusion in the event that any liability to pay damages is established based solely upon those phrases.

5.5 Controlling Interest

any Claim brought by or on behalf of

- a. the Insured, or any parent or subsidiary company of the Insured, or any entity or person having a financial, executive or controlling interest in the Insured; or
- b. any entity in which the Insured has a financial, executive or controlling interest

unless such Claim emanates from a wholly independent third party.

5.6 Damage to Property

the loss of or damage to property (except as provided under Additional Coverage Extension 2.1) unless such Claim arises directly out of any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business.

5.7 Defective workmanship

any Claim arising out of defective workmanship or defective materials or the failure to supervise or inspect work carried out.

5.8 Directors' and Officers' 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.

5.9 Dishonesty

any dishonest or fraudulent acts or omissions committed by any person after discovery of reasonable cause for suspicion of fraud or dishonesty on the part of that person.

5.10 Employment Liability

5.10.1 bodily injury, psychological injury, emotional distress or anguish, shock, sickness, disease or death sustained by any person who is or has been under a contract of service with the Practice or any Member arising out of or in the course of his or her employment

5.10.2 any dispute between the Practice or any Member as an employer or potential employer and any Employee or former Employee or any person who has made an application for employment with the Practice or any Member.

5.11 Estimates

any Claim arising in connection with the estimate of construction costs where such estimates are undertaken in the Insured's capacity as building or engineering contractor

5.12 Fines, Penalties, Punitive, Multiple or Exemplary Damages

any fine or penalty or any multiple damages, exemplary or punitive damages or aggravated damages, save that this exclusion will not apply to any Claim relating to any actual or alleged defamation arising out of the conduct of Professional Business carried on by, or on behalf of the Insured.

5.13 Insolvency of the Insured

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

- a. any Claims in respect of monies held on behalf of third parties; and /or
- b. any Claim that otherwise would be indemnified by this Policy but for the insolvency or bankruptcy of the Insured.

5.14 Insured versus Insured

save in respect of condition 3.7.1, by any person comprising the Insured against any other person comprising the Insured.

5.15 Nuclear Risks

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

5.16 Other Insurance

any Claim in respect of which the Insured are entitled to indemnity under any other insurance except in respect of any excess beyond the amount which would have been payable under such insurance had this Policy not been effected.

5.17 Pollution

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 and all loss damage or injury directly or indirectly caused by such pollution or contamination.

However to the extent that the proximate cause of a claim arising from such pollution was a specific act error or omission by the Insured and/or by others acting on behalf of the Insured in the conduct of Professional Business and provided always that such pollution was not caused by an intentional act of the Insured, this exclusion shall not apply.

Notwithstanding anything contained to the contrary elsewhere in this Policy in respect of any Claim or loss arising from this clause only, the Limit of Indemnity is amended to "each claim and in the aggregate" and not as shown in the Schedule. Furthermore for the purposes of this clause only, Defence Costs as referred to in Insuring Clause 1.2 shall not be in addition to but included within the Limit of Indemnity available under this Policy and such Defence Costs shall be subject to the Excess shown in the Schedule.

5.18 Previous Claims and Circumstances

any Claim or Circumstance which has been notified under any other policy or certificate of insurance attaching prior to the inception of this insurance.

5.19 Retroactive Date

as a consequence of the conduct of Professional Business prior to the retroactive date specified the Schedule.

5.20 Supply of Goods or Products

goods sold, supplied, repaired, altered, manufactured, constructed, installed or maintained by the Insured or by any person, acting for or on behalf of the Insured unless such Claim arises directly out of any actual or alleged breach of duty in the performance of (or failure to perform) Professional Business.

5.21 Surveys

any survey or Home Condition Report unless it was undertaken by:

- a. a Fellow or Professional Member of the Royal Institution of Chartered Surveyors, or a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers, or a Fellow or Associate of the Architects and Surveyors Institute, or a Fellow or Associate of the Faculty of Architects and Surveyors, or a Fellow or Associate of the Royal Institute of British Architects, or a Fellow or Associate of the Royal Incorporation of Architects in Scotland; Fellow of the Central Association of Agricultural Valuers; or (in the case of a Home Condition Report alone) a qualified and accredited Home Inspector; or
- b. anyone who has not less than five years' experience of such work; or
- c. any other person delegated by the Insured to execute such work as part of their training subject always to supervision of such work by a person qualified in accordance with (a) or (b) above, or agreement in writing having been obtained from the Company prior to cover being granted.

5.22 Terrorism

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

5.23 Toxic Mould

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.

5.24 Trading Losses

any trading losses or trading liabilities incurred by any business managed by or carried on by the Insured, including (but not limited to) loss of any business or custom.

5.25 Transport or Property owned by the Insured

the ownership, possession or use by or on behalf of the Insured of any aircraft, watercraft, hovercraft, motor vehicle or trailer or any buildings, structures, premises or land or that part of any building leased, occupied or rented by the Insured or any property of the Insured.

5.26 USA/Canada

any Claim which is brought in the United States of America or Canada or which arises from the conduct of Professional Business carried out from any office or other premises situated in the United States of America or Canada.

5.27 Viruses

any Claim arising directly or indirectly out of the transmission or receipt of:

- a. a virus; and/or
- b. a program; and/or
- c. a code

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

5.28 War

any war, invasions, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

5.29 Sanctions Limitation

The Company shall not be deemed to provide cover and the Company shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Company to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America

General Definitions

The following General Definitions shall apply to this Policy and that wherever these words appear within the wording starting with a capital letter shall bear the same meaning throughout the Policy other than where specifically stated.

6.1 “Bodily Injury”

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

6.2 “Circumstance(s)”

shall mean a situation which may give rise to a Claim.

6.3 “Claim(s)”

shall mean(s) demand(s) (including Claimants’ costs) by a Claimant for compensation or damages from, or the assertion(s) of a civil right or rights against, any Insured and shall be deemed to include any complaint(s) or reference(s) to any ombudsman which arises out of the conduct of Professional Business carried on by, or on behalf of, the Insured.

6.4 “Claimant”

shall mean any person or entity making a Claim and is deemed to include a complainant to any ombudsman.

6.5 “Company”

shall mean the insurance company or insurance companies and/or Lloyd’s syndicates subscribing to this Policy and named in the Schedule for their indicated proportion.

6.6 “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), practiceware 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 address(es).

6.7 “Defence Costs”

shall mean legal costs and expenses incurred by or on behalf of the Insured only with the prior written and continuing consent of the Company. It does not include the Insured’s own costs and expenses.

6.8 “Director”

shall have the meaning given by section 741(1) of the Companies Act 1985, article 9 of the Companies (Northern Ireland) Order 1986, section 2 of the Companies Act 1960 1963 of the Republic of Ireland or section 27 of the Companies Act 1990 of the Republic of Ireland as appropriate or any amendment or re-enactment thereof.

6.9 “Documents”

shall mean all forms of documents of whatsoever nature including computer system records, but excluding bearer bonds, coupons, bank notes, currency notes and negotiable instruments.

6.10 “Employee(s)”

shall mean person(s), other than a partner, Member, principal or director of the Insured who is under a contract of service or apprenticeship, supplied to, hired or borrowed by the Insured, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the Insured in connection with Professional Business by the Insured.

6.11 “Excess”

shall mean amount which is to be borne by the Insured (the Company shall only be liable to the extent that any liability exceeds the Excess).

6.12 “Insured”

shall mean each and all of the following persons, each of whom shall be severally insured hereunder:

- a. Those persons named in the Proposal as partners or directors or Members of the Practice (or named as the principal where the Practice is a sole practitioner) and any other person who may at any time during the Period of Insurance become a partner or director or Member in the Practice;
- b. Any former partner or director or Member of the Practice including any such former partner or director or Member whilst acting as a consultant to the Practice;
- c. Any person who is or has been under a contract of service with the Practice;
- d. Any person who is or has been under a contract of service with a Member save that such person shall only be an Insured for the purpose of this Policy if and insofar as any Claim arises out of Professional Business carried on by such person for or on behalf of the Practice named in the Schedule;
- e. The estates and/or legal representatives of any Insured Person noted under (a), (b), (c) or (d) hereof in the event of death, incapacity, insolvency or bankruptcy;

Any company or limited liability partnership named as the Insured in the Schedule.

6.13 “Member(s)”

shall mean any member of a limited liability partnership, including, without limitation, a designated member, save that such a Member shall only be an Insured for the purposes of this Policy if and insofar as any Claim arises out the conduct of Professional Business carried on by the Member for or on behalf of the Practice named in the Schedule.

6.14 “Period of Insurance”

shall mean period stated in the Schedule (and for such other period as may be mutually agreed).

6.15 “Practice”

shall mean the practice or practices named as the Insured in the Schedule and their predecessors and any other practices which are disclosed to the Company in the Proposal.

6.16 “Premium”

shall mean total amount stated in the Schedule plus Insurance Premium Tax (or other appropriate tax) at the rate from time to time in force.

6.17 “Professional Business”

shall mean the business activities which are listed in the Schedule, but restricted to:

- a. design
- b. specification
- c. inspection of construction
- d. feasibility and/or other scientific studies
- e. technical information calculation
- f. surveying (including quantity surveying)
- g. procurement
- h. quality control
- i. materials measurement, testing and certification
- j. testing and commissioning
- k. safety management
- l. general consultancy and giving of advice to third parties

provided such activities are undertaken by or under the direction and direct control of a person who has attained the appropriate professional qualification from a recognised body, or a person having not less than five years technical experience, relevant to the particular activity, or any other person where specific agreement in writing has been obtained from the Company for that person to undertake the particular activity.

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

6.18 “Proposal”

shall mean all the information supplied to the Company (whether by written, electronic or any other means) the material completeness, correctness and accuracy of which it is hereby agreed is relied upon by the Company.

6.19 “Schedule”

shall mean document entitled “Schedule” that relates to this Policy.

6.20 “Terrorism”

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

6.21 “United States of America and Canada”

shall mean the United States of America and Canada and in each case its territories and possessions and any state or political sub-division thereof.