

Contractors Design and Professional Services Professional Indemnity Insurance

Policy Wording

**Aggregate
Defence Costs and Expenses Inclusive**

Specimen

1 Schedule

The **Insured** has submitted to the **Insurer** the **Proposal** and declarations which it is agreed shall be the basis of, and be incorporated into, this policy and in consideration of the **Premium** paid or to be paid by the **Insured**, the **Insurer** will indemnify the **Insured**, subject to the terms, conditions, exclusions, exceptions and limitations of this policy.

1.1 **Policy Number:**

1.2 **Insured:**

1.3 **Insured's Address:**

1.4 **Insured's Business:**

1.5 **Period of Insurance:**

From:
To:
both days inclusive

1.6 **Limit of Indemnity:**

GBP
each and every **Claim** and in the aggregate (including defence costs and expenses) which limit includes the following aggregate sub-limits:

- (a) GBP 250,000.00 in the aggregate under Clause 2.4 (CDM)
- (b) GBP 250,000.00 in the aggregate under Clause 2.5 (Criminal Prosecution)
- (c) GBP 250,000.00 in the aggregate under Clause 2.6 (Data Protection)
- (d) GBP 250,000.00 in the aggregate under Clause 6.9 (Asbestos)
- (e) GBP 250,000.00 in the aggregate under Clause 6.10 (Toxic Mould)

1.7 **Deductible:**

GBP
each and every **Claim**, except for

(a) Clause 2.4 – CDM	GBP 1,000.00
(b) Clause 2.5 – Criminal Prosecution	GBP 1,000.00
(c) Clause 2.6 – Data Protection	GBP 1,000.00
(d) Clause 6.9 – Asbestos	GBP 1,000.00
(e) Clause 6.10 – Toxic Mould	GBP 1,000.00

all each and every **Claim**
Applicable to defence costs and expenses

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- 1.8 **Premium:** GBP plus GBP Insurance Premium Tax
- Total:** GBP
- 1.9 **(a) Jurisdiction:**
- (b) Territorial Limits:**
- 1.10 **Retroactive Date:**
- 1.11 **Date of Proposal:**
- 1.12 **Endorsements:**

Signed:
On behalf of Catlin Insurance Company (UK) Ltd.

Intl:

Date:

LEGAL HELPLINE:

Available Monday to Friday from 9.15am to 5.15pm for general English legal advice on matters potentially giving rise to a liability under this policy on the part of the **Insured**.

Telephone: Beachcroft LLP 0117 918 2002

Advice on the Helpline is at no charge for the first 30 minutes only and is not otherwise recoverable from the **Insurer**. Advice given will not include whether or not there might be a notifiable circumstance or **Claim** under the policy, any issues concerning the validity of the policy, or any policy coverage issues. Calls to the Helpline do not and cannot compromise any form of notification to the **Insurer** such as may be required under this policy.

2 Insuring Clauses

2.1 Legal Liability

2.1.1 The **Insurer** shall indemnify the **Insured** in respect of any settlement, damages, interest and claimant's costs arising from any **Claim** first made against the **Insured** and **Notified** during the **Period of Insurance** and which arises out of the conduct of the **Insured's Business** by reason of:

- (a) a **Wrongful Act** committed by the **Insured** or by any **Employee** or any consultants, sub-contractors, specialist designers or others directly appointed by and acting for or on behalf of the **Insured** (provided that at all times the rights of recourse against such consultants, sub-contractors and specialist designers are not waived or otherwise impaired);
- (b) any unintentional breach of confidentiality committed by the **Insured** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**.

2.1.2 The indemnity herein shall apply in respect of legal liability arising out of the conduct of the **Insured's Business** whilst a member of any joint venture or consortium but provided always that:

- (a) the existence of any such activity and relevant fees or turnover have been declared to the **Insurer**,
- (b) the **Insured** has not, unless with the prior consent of the **Insurer**, waived either by original agreement or subsequently any right of recovery or entitlement to contribution they would otherwise have against any other party to the joint venture or consortium,
- (c) the **Insurer** remains at all times entitled to exercise its rights of subrogation,
- (d) no liability shall arise under this policy in respect of any **Claim** by any other party to the joint venture or consortium, unless such **Claim** emanates from a completely independent third party, and
- (e) the indemnity under this policy shall be limited to the liability of the **Insured** for loss or damages arising directly from any **Wrongful Act** by the **Insured**, irrespective of their liability as a member of the joint venture or consortium, but shall in any event be no greater than any contractually agreed share of liability in the joint venture or consortium agreement, or in the absence of any such provision to such proportion as the **Value** of the **Insured's** contribution to the joint venture or consortium in money and/or services bears to the total value of such contributions by all the participating parties in the joint venture or consortium. "**Value**" in this clause shall mean the actual money contributed or the financial cost to the participating parties of the services provided. Where such cost is unknown a reasonable estimate shall be made.

2.1.3 The indemnity herein shall, subject to the policy conditions appearing at clauses 7.2 and 7.5 of this policy, include liability arising under the decision of an adjudicator against the **Insured** in accordance with the Scheme for Construction Contracts as contained in the Housing Grants, Construction and Regeneration Act 1996 ("the Act") or a contract containing an adjudication clause or rules in compliance with the Act.

2.2 Defence Costs and Expenses

The **Insurer** shall indemnify the **Insured** for all defence costs and expenses in:

- (a) the defence, investigation or settlement of any **Claim** which falls to be dealt with under insuring clause 2.1, or
- (b) the investigation of any circumstance **Notified** to the **Insurer** under condition 7.2 which may give rise to a **Claim**,

incurred by or on behalf of the **Insured** with the prior written and continuing consent of the **Insurer** (such consent not to be unreasonably withheld) but not including the **Insured's** own costs and expenses or any value attributable to the time spent by the **Insured** or any **Employee** in dealing with a **Claim** or a circumstance.

2.3 Mitigation Costs

The **Insurer** shall indemnify the **Insured** in respect of any costs and expenses (excluding any element of the **Insured's** own profit) necessarily incurred, prior to hand-over of any contract works, with the **Insurer's** prior written and continuing consent in respect of any action taken solely to mitigate a loss or potential loss that would otherwise become the subject of a **Claim** or circumstance notification under clause 2.1. Such action taken to mitigate must be notified during the **Period of Insurance**. The onus of proving coverage under this clause shall be upon the **Insured**.

2.4 Construction (Design and Management) Regulations (CDM)

The **Insurer** will indemnify the **Insured** for defence costs and expenses incurred during the **Period of Insurance** with the prior written consent of the **Insurer** in the defence of any proceedings brought under the Construction (Design and Management) Regulations made under the Health and Safety at Work Act 1974, but only where the **Insurer** believes that defending such proceedings would be of benefit against any subsequent or concurrent civil action that is likely to be the subject of a **Claim** under this policy

2.5 Criminal Prosecution

The **Insurer** will indemnify the **Insured** for defence costs and expenses incurred during the **Period of Insurance** with the prior written consent of the **Insurer** in the defence of any criminal proceedings against the **Insured** or any of its **Employees** which arises from the alleged breach of any statutory regulation in any legal jurisdiction stated in part 8(a) of the **Schedule** where such alleged breach arises out of the conduct of the **Insured's Business**.

Provided always that:

- i) the proceedings are likely to give rise to a **Claim** against the **Insured** that would be indemnifiable under this policy,
- ii) in the reasonable belief of the **Insurer** 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 policy,

- iii) any subsequent or concurrent **Claim** that would be indemnifiable under this policy and that arises out of any proceedings notified under this insuring clause, shall be subject to the notification obligations of condition 7.2,
- iv) any appeal against the outcome of any initial proceedings shall be deemed to be "proceedings" for the purpose of this insuring clause.

2.6 Data Protection

The **Insurer** shall indemnify the **Insured** for defence costs and expenses resulting from any prosecution first brought against the **Insured** and/or any **Employee** and **Notified** during the **Period of Insurance** which arises out of the conduct of the **Insured's Business** in respect of any offences or alleged offences under sections 21(1), 21(2), 22(6) or 47(1) of the Data Protection Act 1998.

3 Definitions

- 3.1 "**Claim**" means any demand made of, or assertion of a right against, the **Insured** which is communicated to the **Insured** in writing, or means costs under clauses 2.3, 2.4, 2.5 or 2.6 and shall include any decision by an Adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or an adjudication clause or rules contained in a contract.
- 3.2 "**Document or Data**" means all and any records arising from the **Insured's Business**, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which the **Insured** is legally responsible, whilst in the custody of the **Insured**, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Insured's Business**.
- 3.3 "**Employee**" means any person, other than a partner, principal, director or member of the **Insured**, who has been, is or shall be under a contract of service or apprenticeship, supplied to, hired, or borrowed by the **Insured**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **Insured** in connection with the **Insured's Business**.
- 3.4 "**Extranet**" means a restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.5 "**Insured**" means any firm, company or limited liability partnership named in part 1.2 of the **Schedule**, including any of their predecessors in business; its principals, partners, directors or members (including any former partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death.
- 3.6 "**Insured's Business**" means the performance of and/or professional assistance with the following professional services in respect of activities for which they are qualified or technically experienced by **Professional Staff** on behalf of the **Insured**:
 - 3.6.1 design, specification, inspection, supervision of construction, feasibility study, surveying, and/or the provision of advice or technical information calculation, and/or

3.6.2 such additional services as declared to and agreed by the **Insurer**.

For the avoidance of doubt **Insured's Business** does not include:

- (a) inspection and/or supervision by the **Insured** of its own or its sub-contractors' work where such supervision is undertaken in its capacity as building or engineering contractor, or
- (b) the services of a clerk of works or similar person carrying out inspection and/or supervision of construction

3.7 "**Insurer**" means Catlin Insurance Company (UK) Ltd.

3.8 "**Internet**" means the worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

3.9 "**Intranet**" means one or more inter-connected networks with restricted access to the **Insured** via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

3.10 "**Notified**" means that notice is sent in writing by the **Insured** (or its insurance agent) to, and received by, the **Insurer**. For the avoidance of doubt, notice is not valid if given by any third party (other than the **Insured's** insurance agent).

3.11 "**Period of Insurance**" means the period stated in part 1.5 of the **Schedule**.

3.12 "**Premium**" means the amount stated in part 1.8 of the **Schedule**.

3.13 "**Professional Staff**" means those persons either qualified as architects, engineers, surveyors or quantity surveyors, or having other professional qualifications appropriate to the **Insured's Business**, or having a minimum level of experience of five years in undertaking such work.

3.14 "**Proposal**" means the written information bearing the date stated in part 1.11 of the **Schedule** and containing particulars and statements together with any other information and documents supplied to the **Insurer** by or on behalf of the **Insured**. This does not include any information contained within or linked to the **Insured's** website unless such information is specifically supplied to the **Insurer** by or on behalf of the **Insured** in written form.

3.15 "**Schedule**" means the document entitled "**Schedule**" that relates to and forms part of this policy.

3.16 "**Terrorist Action**" means the actual or threatened:

- (a) use of force or violence against persons or property, or
- (b) commission of an act dangerous to human life or property, or
- (c) commission of an act that interferes with or disrupts an electronic or communications system

undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority, or military force, when any of the following applies:

- (i) the apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy; or
- (ii) the apparent intent or effect is to cause alarm, fright, fear of danger, or apprehension of public safety in one or more distinct segments of the general public, or to intimidate or coerce one or more such segments; or
- (iii) the reasonably apparent intent or effect is to further political, ideological, religious, ethnic, racial or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion, ethnic or racial group, or culture.

3.17 "**Wrongful Act**" means any negligent act, negligent error, negligent omission or negligent breach of duty.

4 Limit of Indemnity

4.1 The limit of indemnity of this policy is the maximum amount the **Insurer** shall be called upon to pay under this policy irrespective of the number of **Claims**, claimants, losses or number of **Insureds**, including all defence costs and expenses under insuring clause 2.2.

4.2 The limit of indemnity shall be the amount stated in part 1.6 of the **Schedule**. In respect of insuring clauses 2.4, 2.5 and 2.6 and clauses 6.9 and 6.10 an aggregate sub-limit of indemnity in the amount stated in parts 1.6 (a), (b), (c), (d) and (e) of the **Schedule** shall apply, including all defence costs and expenses under insuring clause 2.2.

4.3 All payments made by the **Insurer** in respect of any insuring clause, or any endorsement or otherwise, shall erode the limit of indemnity for all **Claims** in the aggregate under this policy.

4.4 All **Claims** (including costs sought under insuring clauses 2.3, 2.4, 2.5 and 2.6) whether made against or sought by one or more **Insured**, wholly or substantially arising from or having any connection with or relation to:

- (a) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause, or
- (b) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause, or
- (c) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated,

shall be deemed to be one **Claim** or single application for costs under insuring clause 2.3, 2.4, 2.5 or 2.6 for the purposes of deciding the applicable limit of indemnity and the application of the deductible under this policy. The **Insurer** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim** or application for costs.

5 Deductible

- 5.1 A separate deductible being the first part of any **Claim** which is payable by the **Insured** before the **Insurer** shall have any liability to indemnify under this policy shall apply to each and every **Claim**. Payment of the deductible by the **Insured** is a condition precedent to the **Insured** being indemnified by the **Insurer**.
- 5.2 The deductible in respect of any **Claim** shall be in the amount stated in part 1.7 of the **Schedule**, and shall be applicable to defence costs and expenses.

6 Exclusions

The **Insurer** shall not have any liability under this policy for, or directly or indirectly arising out of, or in any way connected with:

6.1 Known Claim or Circumstance

any **Claim** or circumstance which may give rise to a **Claim** which was or ought to have been known to the **Insured** prior to the **Period of Insurance**;

6.2 Death or Bodily Injury

bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or the death of any person, unless caused directly by a **Wrongful Act**;

6.3 Property Damage

any damage to or destruction or loss of any property including loss of use, unless caused directly by a **Wrongful Act**;

6.4 Trading Losses

any trading losses or trading liabilities incurred by the **Insured** or any business managed by or carried on by or on behalf of the **Insured**;

6.5 Fines and Penalties

any regulatory or disciplinary investigations or proceedings (apart from the indemnity provided under insuring clause 2.4) or any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages (including any additional damages under S.97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that Act), or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages;

6.6 Fraud and Dishonesty

any **Claim** or circumstance arising from or connected with the dishonest or fraudulent act or omission of any former or present partner, principal, director, member, **Employee**, consultant or sub-contractor of the **Insured**;

6.7 Director and Officer

any liability of the **Insured** as a director, officer and/or trustee in their respective capacities as a director, officer and/or trustee;

6.8 Nuclear and War

any of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (c) discharge, explosion, or use of a weapon of mass destruction (whether or not employing nuclear fission or fusion), or chemical, biological, radioactive or similar agents, by any party at any time for any reason;

6.9 Asbestos

any actual or alleged liability whatsoever arising directly or indirectly out of, resulting from or in consequence of, or in any way involving or connected with asbestos, or any materials containing asbestos in whatever form or quantity.

However, notwithstanding the above, where any **Claim** or circumstance arises as a direct result of a negligent act, negligent error or negligent omission committed or alleged to have been committed by the **Insured** in the conduct of the **Insured's Business**, this policy will provide an indemnity to the **Insured** but limited to:

- (a) the cost of re-performance of the **Insured's** work and/or rectification and/or remediation;
- (b) made in respect of any diminution in value of buildings and/or structures (or any part of either or both of them) arising out of a survey and/or valuation of the **Insured** undertaken in accordance with RICS Practice Statements or standard market procedures relating to survey and valuations,

but provided always that:

- (i) no indemnity shall be granted in respect of any damage to property other than that part of the building and/or structure which requires re-performance of the **Insured's** work and/or rectification and/or remediation;
- (ii) no indemnity shall be granted in respect of or arising out of any bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or death;
- (iii) the maximum limit of indemnity available will be as stated in part 1.6(d) of the **Schedule**, with defence costs and expenses as referred to in insuring clause 2.2 of the policy included within the limit of indemnity.

If the **Insurer** alleges that by reason of this exclusion any **Claim** or circumstance is not covered by this policy the burden of proving the contrary shall be upon the **Insured**.

6.10 **Toxic Mould**

any actual or alleged liability whatsoever arising directly or indirectly out of or resulting from or in consequence of or in any way involving:-

- (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- (c) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins;

However, notwithstanding the above, where such liability arises directly from the **Insured's** negligent act, negligent error or negligent omission and/or those of others acting on behalf of the **Insured** and which arises out of the conduct of the **Insured's Business**, this policy will indemnify the **Insured** up to a maximum limit of indemnity stated in part 1.6(e) of the **Schedule**, with defence costs and expenses as referred to in insuring clause 2.2 of the policy included within the limit of indemnity;

6.11 **Terrorist Action**

any **Terrorist Action** (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing **Terrorist Action**. If the **Insurer** alleges that by reason of this exclusion any **Claim** or circumstance is not covered by this policy the burden of proving the contrary shall be upon the **Insured**;

6.12 **Pollution and Contamination**

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind;

6.13 **Radioactive Contamination and Explosive Nuclear Assembly**

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

6.14 Land and Vehicles

the ownership, possession or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land or any property (mobile or immobile) or that part of any building leased, occupied or rented by the **Insured**;

6.15 Jurisdiction and Territorial Limits

any:

- (a) legal proceedings brought in a court of law outside the jurisdictions stated in part 1.9(a) of the **Schedule** or brought in a court of law within the stated jurisdictions to enforce a judgement or order made in any court of law outside those jurisdictions; or
- (b) liability arising from the **Insured's Business** undertaken outside the territorial limits shown in part 1.9(b) of the **Schedule**;

6.16 Warranties and Guarantees

any:

- 6.16.1 contractual liability incurred by the **Insured** in the course of the **Insured's Business** arising from:
- (a) the **Insured's** acceptance or guarantee of, in any express contractual term, of fitness for purpose, or
 - (b) any express guarantee given by the **Insured** including as to the period of any project, or
 - (c) any express contractual penalty made between the **Insured** and a third party, or
 - (d) the **Insured's** acceptance of liability for liquidated damages

except where the liability of the **Insured** in respect of any of the above would have existed to the same extent in the absence of any such contractual term, or the **Insurer** has given its prior express approval to the contractual term out of which the liability arises.

- 6.16.2 liability that arises in consequence of any assignment of a collateral warranty or duty of care agreement to more than two parties EXCEPT in the case of a collateral warranty or duty of care agreement given to a financier or funding party (not a purchaser or tenant) where a total of three assignments is permissible.

6.17 Related Companies

any circumstance concerning, or **Claim** brought by or on behalf of, the **Insured** or any parent or subsidiary company of the **Insured**, or any person having a financial, executive or controlling interest in the **Insured** (unless either the financial interest is less than 5%, or the **Claim** made against the **Insured** for an indemnity or contribution is in respect of a **Claim** made by an independent third party), or by or on behalf of any entity controlled or managed by the **Insured** or where the **Insured** has greater than a 5% financial interest, or where the **Insured** has accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred;

6.18 **Other Insurance**

any matter in respect of which the **Insured** is (or but for the existence of this policy would be) entitled to indemnity under any other contract of insurance, except where such other insurance is written as specific excess insurance to this policy; in any event this policy shall only apply to the extent of such part of the limit of indemnity as exceeds the limit of the other policy;

6.19 **Employers Liability**

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

6.20 **Copyright**

any passing-off or infringement of copyright, design right, registered design, trademark, trade name, patent, or any other intellectual property rights;

6.21 **Goods and Services**

any contract for the provision of goods or services to the **Insured**;

6.22 **Products**

any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by or on behalf of the **Insured**, unless such **Claim** or circumstance is a direct result of the negligent design and/or negligent specification of the **Insured** or any **Employee** or any other person, firm or company directly appointed by and acting for or on behalf of the **Insured**;

6.23 **Retroactive Date**

any act, error or omission committed, or any loss suffered, or costs incurred, or any liability arising prior to the Retroactive Date specified in part 1.10 of the **Schedule**;

6.24 **Insolvency**

the insolvency or bankruptcy of the **Insured**;

6.25 **Information Technology**

any of the following:

- (a) the failure of any computer or other electronic processing device or of any program, instruction or data for use in any computer or other electronic processing device, equipment or system to function in the way expected or intended;
- (b) the transmission or receipt of any virus, program or code that causes loss or damage to any computer system and/or prevents or impairs its proper function or performance; or

- (c) business conducted and/or transacted via the **Internet, Intranet, Extranet** and/or via the **Insured's** own website, **Internet** site, web-address and/or via the transmission of electronic mail or documents by electronic means. This exclusion shall not apply if the liability to the **Insured** would have attached in the absence of the fact that the business was conducted and/or transacted via the **Internet, Intranet, Extranet** and/or via the **Insured's** own website, **Internet** site, web-address and/or via the transmission of electronic mail or documents by electronic means, the burden of so proving being upon the **Insured**;

6.26 **Market Fluctuation**

any depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets, and any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments, or in connection with any investment advice given or services performed which have not been authorised where such authorisation is required under any statutory regulation by an appropriate statutory authority;

6.27 **Documents or Data**

any repair, replacement or reconstruction cost of any **Document or Data** which has been lost, mislaid or destroyed;

6.28 **Date Recognition**

any **Claim** concerning or connected with the performance or functionality of any computer system being affected by any changes, prior to, during and/or after the change of year, date or time in particular where such a **Claim** arises because of any failure to ensure that:

- (a) no value for current date will cause or give rise to any interruption in the operation of the computer system,
- (b) date based functionality and performance behaves consistently for dates prior to, during and/or after the change of year, date or time,
- (c) in all interfaces and data storage, the century in any date is specified either explicitly or by unambiguous algorithms or inferencing rules,
- (d) the computer system recognises a leap year;

6.29 **Insurance and Finance**

the failure of the **Insured** in connection with the effecting or maintenance of insurance and/or in connection with the provision of finance or advice on financial matters;

6.30 **Tenders**

the deliberate decision by the **Insured** to tender for a contract at less than economic terms for commercial or goodwill reasons;

6.31 **Estimates**

any estimate of probable design and/or construction costs being exceeded except where such estimate is compiled by a qualified 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;

6.32 **Design Activities**

any claim arising from the **Insured's** activities where it is, has been or would be declared as material facts that the **Insured** has no responsibilities for design or other professionally-related activities;

6.33 **Defective Workmanship**

any defective workmanship or materials relating to physical works of construction;

6.34 **Libel, Slander or Defamation**

libel, slander or defamation;

6.35 **Work Performed on Load Bearing Walls**

work performed on or relating to load bearing walls unless supervised by a qualified architect or structural engineer;

6.36 **Single Projects**

any services provided by the **Insured** in the ordinary course of the **Insured's Business** in connection with any project where the **Insured** has procured a professional liability insurance purporting to apply to such specific project.

7 Conditions

7.1 **Contracts (Rights of Third Parties) Act**

Under the contract of insurance comprised by this policy there is no intention to confer any rights on any party except the **Insurer** and those named or defined as **Insureds** herein, and no third party shall acquire any rights under or in relation to this policy nor be entitled to the benefit of any of its terms by operation of the Contracts (Rights of Third Parties) Act 1999 or any re-enactment of or amendment to it.

7.2 **Notification**

As a condition precedent to the right to be indemnified under this policy the **Insurer** must be **Notified** in writing to the Notification Address set out below within twenty-eight days, provided always that such notification is received by the **Insurer** during the **Period of Insurance**:

- (a) of any **Claim**;
- (b) regardless of any previous notice, of receipt of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;

- (c) of any circumstance of which the **Insured** shall become aware which may give rise to a **Claim** and in any event before the expiry of the **Period of Insurance**;
- (d) of any circumstance of which the **Insured** shall become aware which may give rise to an entitlement to be indemnified under this policy and in any event before the expiry of the **Period of Insurance**;
- (e) of an occurrence that may require representation at a properly constituted tribunal or proceeding, which might give rise to a **Claim** under this policy and in any event before the expiry of the **Period of Insurance**.

However, with respect to any adjudication, including under the provisions of the Housing Grants Construction and Regeneration Act 1996 the **Insured** shall as a condition precedent to any right to be indemnified in respect thereof under insuring clause 2.1 notify the **Insurer** at the Notification Address below within two working days of receipt of any notice of intention to adjudicate, referral notice or any adjudication notice pursuant to contract and, further, shall not themselves serve any such notices without the prior written consent of the **Insurer** unless, in the **Insured's** reasonable opinion service of any such notice(s) will not give rise to a **Claim** against the **Insured**.

In the event that the **Insurer** is **Notified** during the **Period of Insurance** of any circumstance which in the **Insurer's** reasonable opinion may give rise to a **Claim** then any subsequent **Claim** which arises directly from the circumstance so **Notified** shall be deemed to have been made during the **Period of Insurance**.

Notification Address:

Angel Risk Management Limited
3rd Floor
1 Legg Street
Chelmsford
Essex
CM1 1JS

Tel No: 01245 343630

Email: claims@angelriskmanagement.com

7.3 **Duty to Cooperate**

As a condition precedent to the right to be indemnified under this policy the **Insured** must promptly provide to the **Insurer** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where the **Insured** has requested to be indemnified under this policy and provide such co-operation and assistance as the **Insurer** and its representatives, legal advisers or agents may reasonably require. It is a condition precedent to the right to be indemnified under this policy that the **Insured** and any **Employee** (or any person, firm or company acting for or on behalf of the **Insured**) shall ensure that all documents relevant to any **Claim** and any circumstance which may give rise to a **Claim** shall not be destroyed or otherwise disposed of.

7.4 **No Admission of Liability**

As a condition precedent to the right to be indemnified under this policy the **Insured** (or any **Employee** or any person, firm or company acting for or on behalf of the **Insured**) shall not, without the prior written approval of the **Insurer**; admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any circumstance likely to give rise to a **Claim** or any circumstance where the **Insured** has requested to be indemnified under this policy.

7.5 Adjudication and Decisions

- 7.5.1 The **Insured** agrees that it will not in any circumstances, except with the prior consent (such consent not to be unreasonably withheld) of the **Insurer**, accept the decision of any Adjudicator as being final in the determination of the dispute under adjudication.
- 7.5.2 The **Insured** agrees that if requested by the **Insurer** it will permit the **Insurer** to pursue legal, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, open up or amend any decision, direction, award or the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the Adjudicator. The **Insured** agrees it will give all assistance requested of them by the **Insurer** in relation to any such actions.
- 7.5.3 In respect of adjudication under the provisions of the Housing Grants Construction and Regeneration Act 1996 or under a contract containing an adjudication clause or rules, if the **Insured** and the **Insurer** cannot agree on a common course of action with regard to the pursuit of any legal proceedings (whether defence or prosecution) the dispute will be resolved by reference to Queen's Counsel of the English Bar, for the time being, to be mutually agreed between the **Insurer** and the **Insured** whose decision shall be binding. In the event of disagreement on the choice of Queen's Counsel the appointment shall be made by the Chairman for the time being of the Bar Council. The costs of the dispute reference shall be allocated by the agreed or appointed Queen's Counsel on a fair and equitable basis.

7.6 Discharge of Policy Liability

The **Insurer** may in its absolute discretion, at any time, after deduction of such sums as they may already have paid, agreed to pay or be responsible for, in respect of any settlement, damages, interest and claimant's costs or costs for which the **Insured** is liable in respect of any **Claim** or circumstance, tender to the **Insured**:

- (a) the remaining amount of the limit of indemnity available under this policy, or
- (b) such lesser amount for which the **Insurer** believes the **Claim** or circumstance can be settled (to include claimants' costs and interest)

and thereafter the **Insurer** will cease to have any further liability under this policy.

7.7 Conduct of Claim

The **Insurer** shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance likely to give rise to a **Claim** and any circumstance where the **Insured** has requested to be indemnified under this policy. The **Insurer** shall have full discretion in the handling thereof (notwithstanding that a dispute may have arisen between the **Insurer** and the **Insured**) provided always that the **Insured** shall not be obliged to defend any legal proceedings unless a Queen's Counsel (to be mutually decided upon by the **Insurer** and the **Insured**) shall advise that such proceedings can be contested with a reasonable prospect of success.

7.8 Subrogation

Upon operation of this policy in relation to any **Claim** or circumstance, the **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party provided always that the **Insurer** shall not exercise any such rights against any **Employee** or former **Employee** unless the loss in respect of which indemnity is provided under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. The **Insured** shall, without charge, provide such assistance as the **Insurer** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which the **Insurer** would become subrogated under this policy. The **Insured** agrees that at the option of the **Insurer**, the **Insurer** may have the conduct of any proceedings to recover monies paid or payable by the **Insurer**, whether or not the **Insured** has an interest in such proceedings by reason of any uninsured losses.

7.9 Dishonest and Fraudulent Policy Claims

If the **Insured** shall make any **Claim** or report any circumstance knowing it to be in whole or in part false or fraudulent, then the policy shall immediately become void from inception and all policy rights shall be forfeit and any payments already made under the policy shall be immediately repayable. Alternatively, and at its sole option, the **Insurer** may choose to reinstate the policy but refuse indemnity for the false or fraudulent **Claim** or circumstance.

7.10 Avoidance by Insurer

If the **Insurer** is entitled, for any reason, to avoid this policy from inception, the **Insurer** may at its absolute discretion elect instead to give notice to the **Insured** that it regards this policy as being in full force and effect, except that no indemnity will be given under this policy that arises from or is related to the grounds that entitled the **Insurer** to avoid this policy.

7.11 Cancellation

This policy will immediately and automatically be cancelled in the event of any of the following:

- (a) the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over the **Insured** or the making of any court order to that effect;
- (b) the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver, or administrator over any of the **Insured's** assets;
- (c) the suspension by the **Insured** of payment of its debts or any threat by the **Insured** to do so or the entering into of a voluntary arrangement or other scheme of composition with its creditors by the **Insured**;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which the **Insured** may be domiciled or any territory within the territorial limits. For the purpose of this condition alone the **Insured** shall mean only the firm or company named in part 1.2 of the **Schedule**.

7.12 Data Protection Act 1998

It is agreed by the **Insured** on behalf of itself, its partners, principals, directors, members and **Employees** that any information provided to the **Insurer** regarding the **Insured** will be processed by the **Insurer**, in compliance with the provisions of the Data Protection Act 1998, for the purpose of providing insurance and handling **Claims**, if any, which may necessitate providing such information to third parties.

7.13 Premium Payment

7.13.1 The **Insured** undertakes that **Premium** will be paid in full to the **Insurer** within sixty days of inception of this policy (or, in respect of instalment **Premiums**, when due).

7.13.2 If the **Premium** has not been so paid to the **Insurer** by the sixtieth day from the inception of this policy (and, in respect of instalment **Premiums**, by the date they are due) the **Insurer** shall have the right to cancel this policy by notifying the **Insured** via the broker in writing. In the event of cancellation, **Premium** is due to the **Insurer** on a pro rata basis for the period that the **Insurer** is on risk but the full policy **Premium** shall be payable to the **Insurer** in the event of a notification prior to the date of termination which gives rise to a **Claim** under this policy, and the **Premium** shall be added to and form part of the deductible amount in the event of its non-payment.

7.13.3 It is agreed that the **Insurer** shall give not less than fifteen days prior notice of cancellation to the **Insured** via the broker. If **Premium** due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically be revoked, if not, this policy shall automatically terminate at the end of the notice period.

7.13.4 Where the **Premium** is to be paid through a London Market Bureau, payment to the **Insurer** will be deemed to occur on the day of delivery of a **Premium** advice note to the Bureau.

8 Interpretation

In this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- (b) 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;
- (c) the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

9 Governing Law and Disputes

9.1 This policy shall be governed by and construed in accordance with the law of England and Wales.

9.2 Any dispute or difference arising under or in respect of this policy shall be subject to the exclusive jurisdiction of the courts of England and Wales.

10 Policyholder Complaints

Catlin Insurance Company (UK) Ltd. is dedicated to providing a high quality service and wants to ensure that it maintains this at all times. If the **Insured** feels that Catlin has not offered a first class service or if the **Insured** has any questions or concerns about the policy or the handling of a **Claim** the **Insured** should, in the first instance, contact its broker through whom this insurance was placed.

If the **Insured** is unable to resolve the situation and wishes to make a complaint, the **Insured** can do so at any time by referring the matter to:

Compliance Officer
Catlin Insurance Company (UK) Ltd.
20 Gracechurch Street
London
EC3V 0BG

Tel No: 020 7743 8487
E-mail: xlcatlinukcomplaints@xlcatlin.com

Complaints that cannot be resolved by the Compliance Officer may in certain circumstances be referred to the Financial Ombudsman Service at:

South Quay Plaza
183 Marsh Wall
London
E14 9SR

Tel No: 0845 080 1800
E-mail: complaint.info@financial-ombudsman.org.uk

Further details will be provided on request and at the appropriate stage of the complaints process.