

# **Burns & Wilcox**

## **Miscellaneous 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.

Please refer to your Policy Schedule for claim contact details

## **Who we are**

Burns & Wilcox Limited is authorised and regulated by the Financial Conduct Authority under reference number 467933, and is registered in England No. 6185834 at Upper Ground Floor, 1 Minster Court, Mincing Lane, London. EC3R 7AA.

## 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:

Stuart Kilpatrick,  
Burns & Wilcox Limited  
1 Minster Court, Mincing Lane  
London, EC3R 7AA  
T: +44 (0)20 7398 0440  
E-mail: [Complaints@burnsandwilcox.co.uk](mailto:Complaints@burnsandwilcox.co.uk)

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](mailto:complaints@lloyds.com)  
Website: [www.lloyds.com/complaints](http://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](http://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](mailto: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](http://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.fscs.org.uk](http://www.fscs.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 H.W. Kaufman Group London, 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 also have the right to withdraw your consent to marketing at any time. 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 us using the details below:

Contact: Ben Williams  
Phone: 0207 481 1683  
Address: One Minster Court, Mincing Lane, London. EC3R 7AA  
Email: [compliance@burnsandwilcox.co.uk](mailto:compliance@burnsandwilcox.co.uk)

To read our data privacy policy in full and for more information about your data protection rights, please visit our website at: <https://www.burnsandwilcox.co.uk/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

The liability of an insurer under this contract is several and not joint with other insurers party to this contract. An insurer is liable only for the proportion of liability it has underwritten. 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 this contract.

In the case of 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 member's proportion. A member is not jointly liable for any other member's proportion. Nor is any member otherwise 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 Lloyd's syndicate and their respective proportion may be obtained by writing to Market Services, Lloyd's, at the above address.

Although reference is made at various points in this clause to "this contract" in the singular, where the 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 Civil Liability**

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 in respect of any civil liability which arises in consequence of the conduct of Professional Business carried on by, or on behalf 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. Such Defence Costs shall be payable in addition to the limit of indemnity.

In the event that a settlement is made with any party in excess of the limit of indemnity, the Company's liability in respect of Defence Costs shall be in the same proportion that the limit of indemnity bears to the sum which would be payable by the Company but for the limit of indemnity.



## 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 on-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. Self Employed Persons

The Insured is indemnified for any Claim for any legal liability for breach of professional duty first made against the Insured and notified to the Company during the Period of Insurance which the Insured may become legally liable to pay arising out of the use of self employed or contract hire persons in the conduct of Professional Business.

### 2.3. 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.

### 2.4. 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.

**2.5. 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 2.5 shall not exceed GBP25,000 in all during any one Period of Insurance. No Excess shall apply to Extension 2.5.

**2.6. Fidelity**

The Company will indemnify the Insured:

2.6.1 up to GBP100,000 in the aggregate during any one Period of Insurance against loss of Money Securities or Property owned or leased by the Insured directly resulting from a Fraudulent Act first discovered and notified to the Company during the Period of Insurance and committed in connection with the conduct of Professional Business.

Provided that:

- a. no indemnity shall be given:
  - (i) to any person committing or condoning a Fraudulent Act and the sum payable shall be only the amount of liability in excess of the amount (if any) recovered from such Employee;
  - (ii) in respect of a Fraudulent Act committed by an Employee subsequent to the discovery of a Fraudulent Act committed by the same Employee;
  - (iii) for loss of interest, penalties, fines or business interruption losses of any kind;
  - (iv) for any unexplained shortages;
  - (v) where proof of existence of Property or the amount of any loss is dependent solely upon an inventory computation or a profit and loss computation;
  - (vi) in respect of a director of the Insured who controls more than 5% of the issued share capital of the Insured company or any subsidiary of the Insured company; and
  - (vii) in respect of any loss discovered more than 6 months after the termination of:
    - a) the insurance in respect of the subject Employee specified by name or position
    - b) the employment of the subject Employee
- b. The Insured undertakes to have in place and to operate at all times the following Minimum Standards of Control:
  - (i) all manually prepared cheques or other bank instruments drawn for more than GBP25,000 shall require two manually applied signatures to be added after the amount has been inserted
  - (ii) in respect of computer or machine prepared cheques or other bank instruments for more than GBP25,000 supporting documentation shall be examined and authorised before requisition is input and shall also require one manually applied signature to be added after the cheque or instrument is prepared

Should the Insured fail to have in place and to operate at all times the Minimum Standards of Control, the Company shall be under no liability to provide indemnity under this section.

2.6.2 up to GBP15,000 in respect of Investigation Expenses necessarily incurred with the Company's prior written consent to substantiate the amount of such loss as defined

in 2.6.1 above provided that the Insured has established a valid claim under this insurance.

An Excess of GBP2,500 shall apply to clause 2.6.1 of this Extension. No Excess shall apply to clause 2.6.2 of this Extension.

## **2.7 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 2.7 shall not exceed GBP25,000 in the aggregate during the Period of Insurance.

## **2.8 Fees Recovery**

The Company shall indemnify the Insured for the payment of the Insured's fee (or balance of the outstanding fee at the time the circumstances outlined within Extension 2.8 arise and are submitted to the Company for consideration) in circumstances where a client has expressed dissatisfaction with the work undertaken by the Insured and demonstrates reasonable grounds for such dissatisfaction and subsequent refusal to pay such fees (including amounts the Insured are legally obligated to pay subcontractors at the time of the refusal to pay such fees) and threatens to bring a Claim against the Insured for a sum greater than the outstanding fee but agrees not to pursue such Claim if the Insured agrees not to press for their outstanding fee. The Company's payment of the outstanding fee to the Insured shall only be made if the Company reasonably believes that this shall avoid a Claim for a greater amount and approval to settle the Claim in these circumstances has been received by the Insured from the Company in writing.

If all attempts to avoid a Claim as described in circumstances outlined in Extension 2.8 fail and a valid Claim is received it is agreed that the total amount payable by the Company (including any amount already paid) shall not exceed the Limit of Indemnity.

Provided that:

- a. the Insured shall pay the Company any amount that is finally recovered from the client less the Insured's reasonable expenses.
- b. if the Company makes any payment in accordance with Extension 2.8 it is agreed that any right of recovery available to the Insured shall be assigned to the Company.

## **2.9 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 2.9 shall not exceed GBP250,000 in the aggregate during any one Period of Insurance.

## 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.

Please refer to your Policy Schedule for claim contact details.

### 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 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 accorded 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 service 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 accorded 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 Burns & Wilcox Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Burns & Wilcox 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) Burns & Wilcox 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 Burns & Wilcox 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 Burns & Wilcox 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 Burns & Wilcox Limited on the date(s) specified in the cover/debit note and/or Schedule. For this purpose alone Burns & Wilcox 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 Burns & Wilcox 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) Burns & Wilcox 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 Burns & Wilcox 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 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 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 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 accorded 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 accorded 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 accorded 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.

## 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 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.

### 5.2 Bodily Injury

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.

### 5.3 Contractual Liability

any Claim arising out of the Insured's contractual liability unless such liability would have existed in the absence of such a contract or agreement.

### 5.4 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.

### 5.5 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.

### 5.6 Directors' and Officers' Liability

any Claim against any Insured in their capacity as a Director, officer or trustee in respect of the performance or nonperformance of their duties as a Director, officer or trustee.

### 5.7 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.

### 5.8 Employment Liability

5.8.1 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

5.8.2 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.

### 5.9 Failure to Arrange Insurance and/or Finance

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

**5.10 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.

**5.11 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.

**5.12 Insured versus Insured**

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

**5.13 Liquidated Damages**

any Claim in respect of liquidated damages or penalties due to liability assumed by the Insured under any contract or agreement where such liability would not have existed in the absence of such contract or agreement.

**5.14 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.

**5.15 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 elected.

**5.16 Pollution**

a 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.

**5.17 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.

**5.18 Retroactive Date**

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

**5.19 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.

**5.20 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.

**5.21 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.

**5.22 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.

**5.23 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.

**5.24 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.

**5.25 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

**5.26 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.

**5.27 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 the conduct of 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 “Fraudulent Act”**

shall mean any act of fraud or dishonesty committed by any Employee acting alone or acting in collusion committed with the principal intent of obtaining an improper personal financial gain for themselves or for any other person or organization intended by such Employee to receive such gain. “Improper personal financial gain” shall not include salary, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other emoluments or benefits earned in the normal course of employment.

**6.13 “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;
- f. Any company or limited liability partnership named as the Insured the Schedule.

**6.14 “Investigation Expenses”**

shall mean expenses incurred solely to substantiate the amount of a loss but does not mean expenses paid by the Insured to its own staff or salaries wages or similar expenses.

**6.15 “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.

**6.16 “Money”**

shall mean currency coins and bullion or monetary balances held at a financial institution to the credit of the Insured.

**6.17 “Period of Insurance”**

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

**6.18 “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.

**6.19 “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.

**6.20 “Professional Business”**

shall mean the business activities which are listed in the Schedule.

**6.21 “Property”**

shall mean tangible property other than Money or Securities.

**6.22 “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 is hereby agreed is relied upon by the Company.

**6.23 “Schedule”**

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

**6.24 “Securities”**

shall mean negotiable and non-negotiable instruments representing either Money or Property but not including Money or Property.

**6.25 “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.

**6.26 “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.