
Company Certificate of Insurance

Effected through:

Willis Limited
51 Lime Street
London
EC3M 7DQ

This is to Certify that in accordance with the authorisation granted under Contract No. B080113216P23 to the undersigned by HCC International Insurance Company Plc (hereinafter referred to as "Insurers") and in consideration of the payment of the premium specified herein, the said Insurers are hereby bound to insure in accordance with the terms and conditions contained herein or endorsed hereon.

Signed for and on behalf of the Underwriter



Authorised Signatory, FINEX Global,
Willis Limited



Authorised Signatory, FINEX Global,
Willis Limited

on behalf of Willis Limited
A Lloyd's Broker, authorised and regulated by the Financial Conduct Authority
Registered office 51 Lime Street,
London EC3M 7DQ
Registered number 181116 England and Wales

Dated: 13 March 2024

SCHEDULE

	Policy Number:	50948P24
Item 1	Policyholder:	ASE Corporate Eyecare Limited
	Insured:	ASE Corporate Eyecare Limited
	Principal Address of Policyholder:	14 Quarry Farm Bodiam East Sussex TN32 5RA
Item 2	Policy Period:	From: 28 March 2024 To: 27 March 2025
		Both days inclusive Local Standard Time at the Principal Address stated in Item 1
Item 3	Limit of Liability:	GBP 5,000,000
		As more fully set out under Option A of Definition 5.12 herein
Item 4	Sub-Limits of Item 3:	
	(i) Seepage and Pollution:	GBP 1,000,000 in the aggregate including Defence Costs and Investigation Costs
	(ii) Asbestos:	GBP 5,000,000 in the aggregate including Defence Costs and Investigation Costs
	(iii) Toxic Mould:	GBP 5,000,000 in the aggregate including Defence Costs and Investigation Costs
	(iv) Claims Preparation Costs:	No Cover Given
Item 5	Accountants Charges Additional Limit:	No Cover Given
Item 6	Excess:	
		(a) GBP 1,000 each and every Claim , not applicable to Defence Costs
		(b) GBP 1,000 each and every Claim , applicable to Defence Costs and Investigation Costs in respect of all Claims arising from seepage, pollution and contamination, asbestos and Toxic Mould , as more fully provided for in the caveats to Exclusions 3.11 Seepage and Pollution, 3.12 Asbestos and 3.13 Toxic Mould

And as more fully set out herein.

Item 7	Retroactive Date:	28 March 2022	
Item 8	Territorial Limits:	Worldwide excluding United States of America and Canada	
Item 9	Jurisdiction Limits:	Worldwide excluding United States of America and Canada	
Item 10	Premium:	GBP 3,500.00 plus taxes as applicable	
Item 11	Insurers:	HCC International Insurance Company Plc	
Item 12	Responsible Person:	Directors, Partners and Principals	
Item 13	Claim Notification:	To Insurers via:	
		Willis Limited FINEX Global Claims Operative Centre CRB Friars Street, Ipswich, Suffolk, IP1 1TA United Kingdom E-mail: Finexnationalclaims@wtwco.com	
Item 14	Notice of Cancellation:	Willis Limited via the applicable address previously set out under Notice herein.	
Item 15	Applicable Law:	English Law	
Item 16	Difference in Conditions:	Expiring Policy Number:	Not Applicable
		Lead Insurer:	Not Applicable

Amendatory Endorsement

It is noted and agreed that this **Policy** is amended as follows:

1. **Insurers** maximum liability in respect of Extension 2.6 Investigation Costs shall not exceed GBP 250,000 in the aggregate, in the **Policy Period**.
2. Extensions 2.11 Claims Preparation Costs, 2.12 Accountants Charges, 2.14 Run-off for Retired Directors and 2.16 Liability Imposed under Contract are deleted and of no effect.
3. Extension 2.15 New Entities, Mergers and Acquisitions is deleted and replaced as follows:

2.15 **New Entities, Mergers and Acquisitions**

If during the **Policy Period** an entity is created, merged into, or acquired by an **Insured** this **Policy** shall automatically include such entity as an **Insured Entity** provided such entity doesnot:

- a) have annual revenues for its last complete financial year, or in the case of a created entity, estimated annual revenues for its first complete financial year, that exceed twenty percent (20%) of the total of all **Insured Entities** annual revenues for their last complete financial year (or where an **Insured Entity** is in its first financial year, estimated annual revenues for their first complete financial year) at the date of such creation, merger or acquisition; and
- b) offer any material deviation to the **Insured's** declared **Professional Business**.

If the created, merged or acquired entity fails to meet the above criteria:

- (i) this **Policy** will automatically extend to include such entity as an **Insured Entity** for a period of forty five (45) days;
- (ii) during such forty five (45) day period, the **Policyholder** may request an extension of this **Policy** for such created, merged or acquired entity for a further period of time and provide sufficient details to permit **Insurers** to assess and evaluate their potential increase in exposure. In exercising their discretion in relation to this request **Insurers** must act reasonably;
- (iii) cover for such created, merged or acquired entity shall cease at the end of such forty five (45) day period or further agreed period unless **Insurers** have agreed to continue cover for the created, merged or acquired entity and the **Insured** has accepted such terms and paid such additional premium as **Insurers** may reasonably require in consideration of such continued cover.

The Retroactive Date applicable to any such created, merged or acquired entity shall be the date of the creation, merger or acquisition, unless **Insurers** agree, in respect of a merger or acquisition, to an earlier date requested by the **Policyholder**.

4. The Following Exclusions are added to Section Three – Exclusions

3.19 Dishonest and Fraudulent Acts

as a result of any dishonest or fraudulent acts or omissions committed by any person after discovery of such person's fraud or dishonesty or of reasonable cause for suspicion by the **Insured** of fraud or dishonesty on the part of that person, nor shall this **Policy** indemnify any person committing or condoning any dishonest or fraudulent act or omission.

3.20 Associated Companies

arising from a **Claim** by any:

- (a) parent or subsidiary company or associated company of the **Insured**;
- (b) company in which the **Insured** has a financial majority;
- (c) company in common ownership with the **Insured**;
- (d) shareholder of the **Insured** or shareholder of any parent or subsidiary company or associated company of the **Insured** where such **Claim** is in relation to the shareholding value of the **Insured** company or any parent or subsidiary company or associated company of the **Insured**

unless in respect of (a), (b) or (c) such **Claim** emanates from an independent third party.

5. (c) of Condition 4.15 Innocent Non-Disclosure or Breach is deleted and of no effect.
6. Schedule Item 16 Difference in Conditions and Conditions 4.16 Non-Imputation and 4.20 Difference in Conditions are deleted and of no effect.
7. (c) of Definition 5.7 **Insured Entity** is deleted and replaced as follows:
- (c) any **Associated Company**, provided that the **Insured's** interest in such **Associated Company** has been declared to and accepted by **Insurers** as covered by this **Policy**. Such acceptance by **Insurers** shall not be unreasonably withheld or delayed.

8. PROFESSIONAL INDEMNITY CYBER AND DATA PROTECTION LAW ENDORSEMENT

- 1) This endorsement takes priority over any other provision in this contract.
- 2) Save as expressly provided in this endorsement, or by other restrictions in this contract specifically relating to the use of, or inability to use, a **Computer System**, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a **Computer System**.

- 3) This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:
- a) a **Cyber Act**; or
 - b) any partial or total unavailability or failure of any **Computer System**;

provided the **Computer System** is owned or controlled by the **Insured** or any other party acting on behalf of the **Insured** in either case; or
 - c) the receipt or transmission of malware, malicious code or similar by the **Insured** or any other party acting on behalf of the **Insured**.
- 4) This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:
- a) to the **Insured** or any other party acting on behalf of the **Insured** by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the **Insured**;
 - b) by any utility provider, but only where such failure or interruption of service impacts a **Computer System** owned or controlled by the **Insured** or any other party acting on behalf of the **Insured**.
- 5) This contract excludes any loss, damage, liability, claim, costs, expense, fines, penalties, mitigation costs or any other amount for actual or alleged breach of **Data Protection Law** by the **Insured** or any other party acting on behalf of the **Insured**.
- 6) Any cover for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the **Insured** or any other party acting on behalf of the **Insured** in this contract shall not apply to **Data**.

For the purposes of this endorsement the following definitions apply:

Computer System means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.

Cyber Act means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any **Computer System**.

Data means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.

Data Protection Law means any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

IUA 04-017 27.11.2020 (amended)

09. SEVERAL LIABILITY CLAUSE

PLEASE NOTE –This notice contains important information. PLEASE READ CAREFULLY

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.

LMA5096 (Combined Certificate)

7 March 2008

10) HCC 549 (WTW) Additional Legal Entity

This endorsement amends the **Policy** to the extent set out herein.

Any risks insured under this **Policy** located in:

any territory in the European Economic Area are insured by Tokio Marine Europe S.A. Irish Branch; and any other territory (as applicable) including the United Kingdom, are insured by HCC International Insurance Company PLC, and the definition of **Insurers** under this **Policy** shall be construed accordingly.

Notwithstanding any other provision of this **Policy**, this **Policy**, this endorsement and all terms and conditions set out therein constitute a single contract of insurance and, for the avoidance of doubt:

All terms and conditions including but not limited to those relating to premium, limits and excesses shall apply, in the aggregate, across both HCC International Insurance Company PLC and Tokio Marine Europe S.A. Irish Branch; and the rights, obligations and liability for performance of such obligations, of HCC International Insurance Company PLC and Tokio Marine Europe S.A. Irish Branch are separate and not joint. Each of HCC International Insurance Company PLC and Tokio Marine Europe S.A. Irish Branch is liable only for the risk it has insured in accordance with the division of territories specified above and its obligations under this **Policy** in connection with that risk.

Premium shall be paid to each of HCC International Insurance Company PLC and Tokio Marine Europe S.A. Irish Branch.

Notification by the **Insured** in accordance with the terms of this **Policy** shall be deemed notification to both HCC International Insurance Company PLC and Tokio Marine Europe S.A. Irish Branch. Tokio Marine Europe S.A. Irish Branch is part of Tokio Marine Europe S.A. which has its own complaints provisions in addition to the complaints provisions in the **Policy**. If you feel that you have not been offered a first class service please write and tell us and we will do our best to resolve the problem. If you have any questions or concerns about your **Policy** or the handling of a **Claim** you should in the first instance contact:

*The Head of Compliance
Tokio Marine Europe S.A.26,
Avenue de la Liberté,
L-1930
Luxembourg*

Should the **Insurer** be unable to resolve any difficulty directly with you to your satisfaction, you may be entitled to refer the dispute to the Insurance Ombudsman at the ACA or to the Insurance Supervisory Authority In Luxembourg (Commissariat Aux Assurances – CAA) who will review your case and who may be contacted at:

ACA
Service Mediation 12, rue Erasme
L-1468 Luxembourg Website: www.aca.lu
or
CAA
7, boulevard Joseph III L-1840 Luxembourg
Email: commassu@commassu.lu
Website: www.caa.lu
Outsourcing

The Policyholder acknowledges and expressly accepts that Tokio Marine Europe S.A. Irish Branch may outsource certain services, activities or tasks to external providers (which may or may not be (a) regulated; or (b) located in Ireland) (the “Service Providers”).

In this context, the Policyholder expressly accepts that any data which it has provided to Tokio Marine Europe S.A. Irish Branch, including data which may directly or indirectly identify the Insured, or a beneficial owner or an authorized representative of the Insured, may be communicated to Service Providers. The transfer and/or disclosure of information to Service Providers may continue as long as the Policyholder maintains its insurance relationship with Tokio Marine Europe S.A. Irish Branch.

Tokio Marine HCC is a trading name of Tokio Marine Europe S.A., which is a member of the Tokio Marine HCC Group of Companies. Tokio Marine Europe S.A. is authorised by the Luxembourg Minister of Finance and regulated by the Commissariat aux Assurances (CAA). Registered with the “Registre de commerce et des sociétés, Luxembourg” under No. B221975 and with registered office at 26, Avenue de la Liberté, L-1930 Luxembourg. Operating through its Irish branch, registered as Tokio Marine Europe S.A. Irish branch with the Irish Companies Registration Office under the number 909016 with its registered office at Summit House, Embassy Office Park, Kill, County Kildare, W91 VK0T, Ireland. Tokio Marine Europe S.A. Irish branch is regulated by the Central Bank of Ireland for conduct of business rules.

All other terms, conditions, exclusions and limitations remain unaltered.

Willis Limited

FINEX Global

Miscellaneous Professional Liability Policy

WTW Miscellaneous 01.05.2020

Notice

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COMPLAINTS

Insurers aim to provide a high standard at all times but if the **Policyholder** is not satisfied with the service provided it should contact Willis Limited who will provide on request details of the relevant persons.

In the event that the **Policyholder** remains dissatisfied, it may be possible for the **Policyholder's** complaint to be referred to the Financial Ombudsman Service who may review the matter.

The Financial Ombudsman Service address is:

Financial Ombudsman Service
Exchange Tower
London
E14 9SR

Telephone Number: 0800 023 4 567

Email: complaint.info@financial-ombudsman.org.uk

Website: www.financial-ombudsman.org.uk

NOTICE

This **Policy** has been prepared by Willis Limited in its capacity as the broker who placed this contract. Willis Limited is not an insurer or reinsurer of this contract.

The **Policyholder** is requested to read this **Policy** and, if it is incorrect, to contact Willis Limited using one of the options applicable to your local contact as shown below.

Willis Limited
FINEX Global
Friars Street
Ipswich, Suffolk, IP1 1TA
United Kingdom

Tel: +44 (0)1473 223 000

Willis Limited
FINEX Global
6th Floor, 8 First Street
Manchester, M15 4RP
United Kingdom

Tel: +44 (0)161 839 1600

In all communications the Policy Number specified in the Schedule should be quoted.

POLICY INTERPRETATION

Any interpretation of this **Policy** or issue relating to its construction, validity or operation shall be made in accordance with the Applicable Law specified in Item 15 of the Schedule and in accordance with the English text as it appears in this **Policy**.

Within this **Policy** unless the context otherwise requires:

- (a) headings are descriptive only, not an aid to interpretation;
- (b) words and expressions in the singular include the plural and vice versa;
- (c) the male includes the female and neuter;
- (d) words and expressions in bold font have special meaning and are defined. Words that are not specifically defined in this **Policy** have the meaning normally attributed to them;
- (e) all references to specific legislation include amendments to, re-enactments of, or replacements of such legislation;
- (f) references to positions, offices or titles include their equivalents in any jurisdiction.

Nothing in this **Policy** is a condition precedent or a warranty unless expressly stated to be one in this **Policy**.

PROFESSIONAL LIABILITY

Insurers agree, subject to the terms, conditions and exclusions of this **Policy**, to cover the **Insured** asset forth herein.

SECTION ONE – INSURING CLAUSE

Insurers agree to pay **Loss** on behalf of the **Insured** arising from any **Claim** made against any **Insured** during the **Policy Period** in the conduct of the **Professional Business** which gives rise to a civil liability.

For the avoidance of doubt civil liability shall include but not be limited to:

- (a) dishonest, fraudulent, criminal or malicious act or omission;
- (b) libel, slander, defamation and injurious falsehood;
- (c) breach of duty, including a duty of confidentiality;
- (d) tortious act, error or omission;
- (e) breach of trust (including breach of constructive trust), breach of fiduciary duty, breach of professional duty and misrepresentation;
- (f) breach of contract;
- (g) unintentional infringement of copyright, trademark, registered designs and patents and plagiarism.

The **Excess** shall not apply to (b) libel, slander, defamation and injurious falsehood.

SECTION TWO - EXTENSIONS

The following Extensions shall be subject to the terms, conditions and exclusions of this **Policy**, except where varied by the Extension. The total of all payments made under these Extensions shall be part of, and not in addition to, the **Limit of Liability** unless otherwise specified.

2.1 Principals' Prior Business

Insurers agree to pay **Loss** on behalf of the **Insured** arising from any **Claim** made against any **Insured Person** (as defined in definition 5.8 (a) to (d), (f) and (g) only) or **Insured Entity** during the **Policy Period** for any civil liability on the part of such person in the conduct of their prior business provided that such business has been previously disclosed to **Insurers**.

2.2 Joint Ventures

Insurers agree to pay **Loss** on behalf of the **Insured** arising from any **Claim** made against any **Insured** during the **Policy Period** and other losses as may be covered under this **Policy** resulting from any joint venture of which an **Insured** is a member or participant, but such cover shall be limited to:

- a) the **Insured's** liability, costs and expenses arising from their own duties and responsibilities in the conduct of the **Professional Business**, but when an equity sharepercentage is agreed under any joint venture entered into by an **Insured** which increases the **Insured's** liabilities, costs or expenses that will be the basis on which cover will apply;
- b) the **Insured's** liability, costs and expenses incurred as a result of work undertaken by any other member of or participant in a joint venture where such member or participant is unable to pay their due proportion of any liability, costs and expenses.

Upon the **Policyholder's** written request, **Insurers** shall consider, after assessment and evaluation of the increased exposure, granting cover for the entire joint venture. If granted, such cover shall be promptly confirmed in writing by **Insurers** to the **Insured**.

2.3 Ombudsman Awards

Insurers agree to pay on behalf of the **Insured** awards made against an **Insured** by any Ombudsman, provided that such award is associated with a **Claim** made against an **Insured** during the **Policy Period** and such **Claim** arises in the conduct of the **Professional Business**.

The **Excess** shall not apply to this Extension.

2.4 Loss of Documents

Insurers agree to pay on behalf of the **Insured** costs and expenses incurred in replacing or restoring **Documents** either owned by, or the responsibility of, or in the custody of an **Insured** in the conduct of the **Professional Business** which are discovered during the **Policy Period** to be damaged, destroyed, lost or mislaid and which after diligent search cannot be found.

The **Excess** shall not apply to this Extension.

2.5 Criminal Proceedings

Insurers agree to pay on behalf of the **Insured** all sums, including but not limited to the costs and expenses of legal representation, which the **Insured** shall incur arising from criminal proceedings, provided always that:

- a) this Extension will only apply to proceedings arising out of work performed by or on behalf of an **Insured** in the conduct of the **Professional Business**;
- b) **Insurers** will not be liable to pay any penalty, fine or award of costs imposed on an **Insured** arising from such proceedings unless compensatory in nature and payable to a third party;
- c) no costs and expenses other than those incurred with the written consent of the **Insurers** (which shall not be unreasonably delayed, denied, withheld or withdrawn) shall be payable hereunder.

For these purposes "proceedings" include any appeal against the outcome of any initial proceeding.

The **Excess** shall not apply to this Extension .

2.6 Investigation Costs

Insurers agree to pay on behalf of the **Insured**, **Investigation Costs** incurred in connection with an **Investigation** reported to **Insurers** during the **Policy Period**.

Cover under this Extension shall not apply in connection with any legal proceedings arising from circumstances likely to give rise to an **Investigation** known to a **Responsible Person** prior to the **Policy Period**.

The **Excess** shall not apply to this Extension other than in respect of **Claims** arising from seepage, pollution, contamination, asbestos and **Toxic Mould**.

2.7 Compensation for Court Attendance

Insurers shall pay the following rates of compensation per day for each day on which any person described in (a), (b) or (c) below has been required to and has attended court or arbitration or adjudication hearing as a witness in connection with a **Claim** notified under and covered by this **Policy**:

- | | | |
|-----|--|---------|
| (a) | any principal, director, member or partner of an Insured Entity : | GBP 500 |
| (b) | any other Insured Person : | GBP 350 |
| (c) | any other relevant party: | GBP 500 |

The **Excess** shall not apply to this Extension.

2.8 Public Relations Costs

Insurers agree to pay on behalf of the **Insured** all reasonable costs and expenses in the employment of public relations consultants to mitigate or avert material damage to the reputation of an **Insured**. This Extension shall only apply where such material damage results from events which have led or could lead to a **Claim** being notified to **Insurers** during the **Policy Period**.

The **Excess** shall not apply to this Extension.

2.9 Mitigation Costs

Notwithstanding anything contained within the conditions to the contrary, **Insurers** agree to indemnify the **Insured** for costs and expenses incurred by or on behalf of the **Insured** with **Insurers** prior written consent (which shall not be unreasonably delayed, denied, withheld or withdrawn) in taking action to prevent, limit or mitigate the effect of any **Claim**.

If **Insurers** prior written consent cannot reasonably be obtained before such costs and expenses are incurred, and a **Responsible Person** deems it appropriate, **Insurers** will give retrospective approval for such costs and expenses up to an amount of ten percent (10%) of the **Limit of Liability**.

Any payment as set out in this Extension shall be in addition to the **Limit of Liability**.

The **Excess** shall not apply to this Extension

2.10 Contractually Agreed Fees

If an **Insured's** client refuses to pay any contractually agreed fees (including any amount an **Insured** is legally liable to pay a sub-contractor at the date such **Insured's** client first refuses to pay) and the **Insured** satisfies **Insurers** that:

- (a) the **Insured** does not have reasonable grounds to legally compel payment of the amount owed; and
- (b) there is written evidence from the **Insured's** client that they intend to make a legitimate **Claim** against the **Insured** for an amount covered by this **Policy** that is greater than the amount the **Insured** is owed;

then **Insurers** will pay the amount the **Insured** is owed (excluding any amount for the **Insured's** lost profit, mark-up and liability for taxes or its equivalent) if the **Insured** satisfies **Insurers** that such payment is reasonably likely to fully and finally resolve all known **Claims** by that client.

If subsequently a **Claim** is still made against the **Insured** following **Insurers** payment of such outstanding fees then such payment will be deducted from the amount **Insurers** will pay toward resolution of that **Claim** as well as the remaining **Limit of Liability** available for that **Claim**.

The **Excess** shall not apply to this Extension.

2.11 Claims Preparation Costs

To the extent that such costs and expenses are not more specifically insured hereunder **Insurers** will indemnify the **Insured** in respect of costs and expenses reasonably incurred by the **Insured**, including utilisation by the **Insured** of external consultants, but excluding legal advisors, for preparing, presenting, certification, verification, advocacy of a non-legal nature and negotiating details of a **Claim** under this **Policy**. **Insurers** liability in respect of such costs and expenses shall not exceed the amount specified in Item 4 (iv) of the Schedule in respect of any one **Claim**.

The **Excess** shall not apply to this Extension.

2.12 Accountants Charges

Any particulars or details contained in the **Insured's** books of account or other business books or

documents which may be required by **Insurers** for the purpose of investigating or verifying any **Claim** hereunder may be produced or certified by the **Insured's** auditors and their certificate shall be prima facie evidence of the particulars and details of which such certificate relates.

Insurers will, in addition to the **Limit of Liability**, pay professional accountants charges incurred by the **Insured** in producing business accounts, and other such information, as maybe required by **Insurers** for the purpose of investigating or verifying any **Claim** under this **Policy**.

Provided that the professional accountants are those who were regularly acting on behalf of the **Insured** at the time and that **Insurers** liability under this Extension shall not exceed the amount specified in Item 5 of the Schedule in respect of any one **Claim**.

The **Excess** shall not apply to this Extension.

2.13 **Run-off Cover**

In the event an **Insured** ceases to exist or operate, or is consolidated with, merged into or acquired by any other entity, **Insurers** agree to continue to pay **Loss** and other amounts covered under this **Policy** on the same basis as before such event, provided such **Loss** or other amount is incurred in relation to an act, error, omission or other occurrence as may be covered under this **Policy** in the conduct of the **Professional Business** prior to the date that such **Insured** ceased to exist or operate, or was consolidated with, merged with or into or acquired by another entity.

Insurers further agree an additional period of cover for such **Insured** of twelve (12) months or further period from the expiration date of this **Policy** at an additional premium to be agreed.

2.14 **Run-off for Retired Directors**

In the event of an **Insured Person** becoming a **Retired Director** such **Retired Director** shall have the right to an Extended Reporting Period of thirty six (36) months at nil additional premium, immediately following their date of retirement, during which the **Insured** shall be able to notify **Insurers** of any **Claim** first made against an **Insured** during any such Extended Reporting Period, for an act, error or omission committed prior to the **Insured Person** becoming a **Retired Director**.

2.15 **New Entities, Mergers and Acquisitions**

If during the **Policy Period** an entity is created, merged into, or acquired by an **Insured** this **Policy** shall automatically include such entity as an **Insured Entity** provided such entity does not:

- (a) have annual revenues for its last complete financial year, or in the case of a created entity, estimated annual revenues for its first complete financial year, that exceed twenty percent (20%) of the total of all **Insured Entities** annual revenues for their last complete financial year (or where an **Insured Entity** is in its first financial year, estimated annual revenues for their first complete financial year) at the date of such creation, merger or acquisition; and
- (b) offer any material deviation to the **Insured's** declared **Professional Business**.

If the created, merged or acquired entity fails to meet the above criteria:

- (i) this **Policy** will automatically extend to include such entity as an **Insured Entity** for a period of ninety (90) days;
- (ii) during such ninety (90) day period, the **Policyholder** may request an extension of this **Policy** for such created, merged or acquired entity for a further period of time and provide sufficient details to permit **Insurers** to assess and evaluate their potential increase in exposure. In exercising their discretion in relation to this request **Insurers** must act reasonably;

- (iii) cover for such created, merged or acquired entity shall cease at the end of such ninety (90) day period or further agreed period unless **Insurers** have agreed to continue cover for the created, merged or acquired entity and the **Insured** has accepted such terms and paid such additional premium as **Insurers** may reasonably require in consideration of such continued cover.

The Retroactive Date applicable to any such created, merged or acquired entity shall be the date of the creation, merger or acquisition, unless **Insurers** agree, in respect of a merger or acquisition, to an earlier date requested by the **Policyholder**.

2.16 **Liability Imposed under Contract**

Insurers agree to pay **Loss** on behalf of the **Insured** arising from any **Claim** made against an **Insured** during the **Policy Period** where an **Insured** has entered into a contract for which professional activities and duties of a type covered as **Professional Business** have been provided independently of an **Insured** by another party under a separate contract or contracts with a client/employer who by the said contract imposes liability for such professional services on an **Insured**.

2.17 **Adjudications**

Insurers agree to pay **Loss** on behalf of the **Insured** arising from a decision given by an adjudicator under a construction contract as defined in Section 104 of the Housing Grants Construction and Regeneration Act 1996 (“the Act”) provided:

- (a) the **Insured** gives notice directly to **Insurers** within three (3) working days of:
 - (i) their receipt of any notice of an intention to adjudicate (“Adjudication Notice”);
 - (ii) any reasonable grounds to believe that an Adjudication Notice may be served upon them

and in each such case the subject matter of the actual or anticipated Adjudication Notice (or any part thereof) is likely to give rise to a Claim under this Policy;

- (b) the **Insured** cooperate as far as reasonably practicable with **Insurers** in complying with all their reasonable requests, including those relating to response times, and such cooperation shall extend to any subsequent challenge to the adjudicator’s decision;
- (c) **Insurers** shall be entitled at their discretion to appoint solicitors and experts to handle any adjudication on behalf of the **Insured** and **Insurers** shall have the conduct of all matters relating to any such adjudication. Subject to the provisions of (e) of this clause and the application of any costs inclusive Excess payable by the **Insured**, **Insurers** shall pay all costs and expenses incurred in the appointment of such solicitors and experts;
- (d) the **Insured** shall not at any time, without the prior written consent of **Insurers**, make any admission in respect of the dispute being referred to adjudication, or agree with any other party that adjudication shall finally determine any dispute;
- (e) if only part of the award is covered within the Policy terms and conditions, **Insurers** shall only cover the **Insured** for that part and will only pay costs and expenses incurred in handling the adjudication in the same proportion as the **insured** part bears to the total amount of the award.

2.18 **Liability of Principals**

Insurers agree, where required by an agreement entered into by an **Insured** or anyone acting on behalf of an **Insured**, to pay **Loss** on behalf of any Principal (which term includes any employer, client or owner) in connection with the **Professional Business** undertaken by or on behalf of an **Insured** for that Principal, subject to all of the **Policy** terms, exclusions and conditions and provided that:

- (a) any **Claim** is such that if made upon the **Insured**, the **Insured** would be entitled to indemnity under this **Policy**;
- (b) **Insurers** shall have the conduct and control of all **Claims** for which the Principal seeks indemnity hereunder from the **Insured**;
- (c) this **Policy** shall not extend to provide cover in respect of the Principals own acts, errors or omissions or other contingencies covered by this **Policy**.

SECTION THREE - EXCLUSIONS

Insurers shall not be liable to make payment under this **Policy** for any **Loss**, cost or expense:

3.1 Contractual Liability

due to any liability assumed by the **Insured** under contract which is not assumed in the ordinary course of the **Professional Business** and which would not otherwise attach to the **Insured** in the absence of such contract.

Notwithstanding the foregoing, cover is extended to include liability assumed by the **Insured** under any collateral warranty, duty of care agreement or similar agreements (including by way of novation) subject to the following exclusions:

- (a) fitness for purpose where this appears as an express term;
- (b) performance warranty or guarantee;
- (c) penalty clause or liquidated damages clause

None of the foregoing limitations or exclusions shall apply to liability which would have attached to the **Insured** in the absence of any such warranties or agreements.

For the avoidance of doubt this exclusion does not apply to liabilities assumed by the **Insured** because of, and to the extent required by, any applicable professional design standard such as, but not limited to, the Eurocodes or British Standards series or to a warranty if the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording is used.

3.2 Circumstances Known at Inception

arising from any:

- (a) circumstance of which a **Responsible Person** was aware, prior to the inception of this **Policy**, which in the reasonable opinion of such **Responsible Person** was likely to give rise to a **Claim** under this **Policy**; or
- (b) circumstance notified to, and accepted under, any other insurance prior to the inception of this **Policy**.

3.3 Employers Liability

for bodily injury, sickness, disease or death sustained by any person arising out of and in the course

of their employment by an **Insured Entity** under any contract of service or apprenticeship.

3.4 **Insolvency/Bankruptcy of Insured Entity**

arising from the insolvency or bankruptcy of an **Insured Entity**, however this Exclusion shall not apply to any **Claim** or loss not directly related to the insolvency or bankruptcy of such **Insured Entity** but whilst such **Insured Entity** was being:

- (a) adjudicated or declared bankrupt;
- (b) wound up or having a liquidator or provisional liquidator appointed;
- (c) the subject of a voluntary arrangement or compromise with creditors generally or a class thereof;
- (d) the subject of an administrative or other receivership or suffering the appointment of an administrative or other receiver over all or part of their assets;
- (e) placed into administration;
- (f) deemed to be insolvent or unable to pay their debts under any applicable law;
- (g) subject to any event that is similar or analogous to any of the foregoing under the laws of any jurisdiction

and whilst the **Policy** was in force at the time such **Claim** was made.

3.5 **Bodily Injury/Property Damage**

for bodily injury, sickness, disease or death sustained by any person, or any loss, damage or destruction of property, unless arising from the conduct of the **Professional Business**.

3.6 **War and Terrorism**

caused by, resulting from, or in connection with any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the **Loss**, cost or expense:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) **Terrorism.**

Provided, however, that this exclusion:

- (i) shall only apply with respect to that part of any Insuring Clause, Extension or Endorsement hereto which afford coverage for the physical loss of, or damage to, physical property; and
- (ii) shall not apply to loss of or damage to physical property resulting directly from theft, larceny, hold-up, robbery or burglary, or similar act, or any attempt thereat, by any natural person, acting alone or in collusion, who is actually or allegedly a member of or connected with, directly or indirectly, any organisation which is or has been, actually or allegedly, linked to, involved with or in any way connected to **Terrorism**.
- (iii) shall not apply if such **Loss**, costs or expenses would otherwise be covered by this **Policy** in the absence of (a) and/or (b) above.

3.7 **Other Insurance**

for which an **Insured** is entitled to payment under any other more specific, valid and collectible insurance. This exclusion shall not apply to the amount by which any **Loss**, or covered cost or expense exceeds the greater of:

- (a) the limit of insurers' liability under such other insurance policy and any deductible/excess/retention applicable under such other insurance; or

(b) the **Excess**.

If (a) above is applicable by virtue of this provision, the **Excess** shall not apply.

3.8 **Radioactive Contamination and Explosive Nuclear Assemblies**

caused by, or contributed to by, or arising from:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (b) the radioactive, toxic, explosive or other hazardous properties of any explosivenuclear assembly or nuclear component thereof.

3.9 **Retroactive Date**

arising out of any act, error or omission committed or alleged to have been committed prior to any Retroactive Date specified in Item 7 of the Schedule.

3.10 **Fines and Penalties**

for fines, penalties and the non-compensatory portion of punitive or exemplary damages, other than:

- (a) to the extent insurable at law;
- (b) in respect of **Defence Costs** incurred in relation thereto.

3.11 **Seepage and Pollution**

for seepage, pollution or contamination provided always that:

- (a) this exclusion shall not apply to any **Claim** or loss where such seepage, pollution or contamination emanates from negligence or a breach of duty owed by an **Insured**;
- (b) **Insurers** maximum liability in respect of (a) above shall not exceed the sub-limit specified in Item 4 (i) of the Schedule and shall be in the aggregate, including **Defence Costs** and **Investigation Costs**, in the **Policy Period**;
- (c) the **Excess** in respect of (a) above shall be as specified in Item 6 (b) of the Schedule.

3.12 **Asbestos**

arising out of, or in connection with, asbestos provided always that:

- (a) this exclusion shall not apply to any **Claim** or loss arising as a direct result of the negligence or a breach of duty owed by an **Insured** or any person or entity acting on behalf of an **Insured** in the conduct of the **Professional Business** to the extent that such **Claim** or loss arises from:
 - (i) the cost of:
 1. re-performance of their work;
 2. rectification;
 3. remediation
 - (ii) any diminution in the value of buildings and/or structures (or any parts thereof) arising out of a survey or valuation undertaken in accordance with Royal Institution of Chartered Surveyors (RICS) or other commonly recognised standard procedures related to the **Professional Business**.

(b) **Insurers** maximum liability in respect of (a) above shall not exceed the sub-limit specified in Item 4 (ii) of the Schedule and shall be in the aggregate, including **Defence Costs** and **Investigation Costs**, in the **Policy Period**.

(c) the **Excess** in respect of (a) above shall be as specified in Item 6 (b) of the Schedule.

3.13 **Toxic Mould**

arising out of, or in connection with, **Toxic Mould** provided always that:

(a) this exclusion shall not apply to any **Claim** or loss arising as a direct result of the negligence or a breach of duty owed by an **Insured** or any person or entity acting on behalf of an **Insured** in the conduct of the **Professional Business** to the extent that such **Claim** or loss arises from:

(i) the cost of:

1. re-performance of their work;
2. rectification;
3. remediation

(ii) any diminution in the value of buildings and/or structures (or any parts thereof) arising out of a survey or valuation undertaken in accordance with Royal Institution of Chartered Surveyors (RICS) or other commonly recognised standard procedures related to the **Professional Business**.

(b) **Insurers** maximum liability in respect of (a) above shall not exceed the sub-limit specified in Item 4 (iii) of the Schedule and shall be in the aggregate, including **Defence Costs** and **Investigation Costs**, in the **Policy Period**;

(c) the **Excess** in respect of (a) above shall be as specified in Item 6 (b) of the Schedule.

3.14 **Land and Buildings**

arising from the ownership, possession or use by or on behalf of the **Insured Entity** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

3.15 **Products Liability**

arising out of or relating to goods or products sold, supplied, repaired, altered, manufactured, installed or maintained by an **Insured Entity** or any related company or by sub-contractors of such **Insured Entity**, unless such **Claim** emanates from negligence or a breach of duty owed by an **Insured**.

3.16 **Directors and Officers Liability**

arising from any **Claim** made against the **Insured** in their capacity as a director, officer, manager, partner, member, principal or trustee of any **Insured Entity** in respect of the performance of or failure to perform their duties as a director, officer, manager, partner, member, principal or trustee of any **Insured Entity**.

This Exclusion shall not apply to any director, officer, manager, partner, member, principal or trustee of any **Insured Entity** when they are named in any **Claim** together with the **Insured Entity**, in the conduct of the **Professional Business**.

3.17 **Territorial Limits**

arising from **Professional Business** conducted outside the Territorial Limits specified in Item 8 of

the Schedule.

3.18 **Jurisdiction Limits**

where action for damages is brought in a court of law outside the Jurisdiction Limits specified in Item 9 of the Schedule.

SECTION FOUR - CONDITIONS

4.1 **Claims Notification**

The **Responsible Person** shall give to **Insurers** notice in writing of any **Claim** made as per (a), (b) or (c) of the definition of **Claim**, or circumstance discovered as per (d) of such definition during the **Policy Period** as soon as reasonably practicable, but no later than thirty (30) days after the expiration of the **Policy Period**. Such notice shall be delivered to those persons specified in Item 13 of the Schedule, which shall be deemed notice to all **Insurers**.

Any **Claim** as per (a), (b) or (c) of the definition of **Claim**, subsequently arising from or related to a circumstance as per (d) of such definition shall be deemed to have been made during the **Policy Period** and notified to **Insurers** at the same time as such circumstance.

4.2 **Claims Cooperation**

The **Policyholder** shall give **Insurers** such information and cooperation as **Insurers** may reasonably require and shall not disclose to anyone the existence of this **Policy** (other than the issuance of certificates of insurance for verification purposes) without **Insurers** consent (which shall not be unreasonably delayed, denied, withheld or withdrawn) unless such disclosure is required by law or regulation.

4.3 **Non-Admission of Liability**

Other than as stated in Condition 4.4 (c) below, the **Policyholder** shall not admit liability for or settle any **Claim** or incur any **Defence Costs** in connection therewith without the written consent of **Insurers** (which shall not be unreasonably delayed, denied, withheld or withdrawn).

Nevertheless, an **Insured** shall not be required to contest any legal proceedings unless a Queen's Counsel or lawyer of equivalent standing to be mutually agreed upon by the **Policyholder** and **Insurers** (or if not so agreed, as determined in the manner set out in Condition 4.4 (c) below in relation to the selection of Counsel), shall advise that such proceedings should be contested.

4.4 **Defence and Settlement of Claims**

- (a) **Insurers** have a duty to conduct in the name of the **Insured** the investigation, defence, compromise or settlement of any **Claim**.
- (b) If the **Policyholder** wishes to propose a settlement offer to a claimant in respect of a **Claim**, **Insurers** and the **Policyholder** shall discuss that settlement opportunity and its potential terms and shall adhere to the provisions of Condition 4.4 (c) below.
- (c) In the event of the **Policyholder** and **Insurers** being unable to agree: (1) to any proposed settlement; and/or (2) to the admission of liability, then (at the election of either party) the dispute shall be referred to a Queen's Counsel or lawyer of equivalent standing (to be mutually agreed upon or, in the absence of agreement within seven (7) days, to be appointed by the Chairman of the Bar Council of England and Wales) who shall decide the

issue of whether consent is being unreasonably withheld and his decision shall be binding on **Insurers** and the **Insured**.

4.5 **Policy Disputes**

Other than as stated in Conditions 4.3 and 4.4 (c) above, in the event of a dispute arising between the **Policyholder** and **Insurers** regarding any aspect of this **Policy** or any matter relating to cover thereunder, such dispute shall be referred to and resolved by the exclusive jurisdiction of the courts of England and Wales.

4.6 **Regulatory Compliance**

Compliance by an **Insured** with any rules, requirements, directions or guidance of any regulatory body will not constitute a breach of any condition of this insurance.

4.7 **Advancement of Defence Costs**

Insurers agree to pay **Defence Costs** within thirty (30) days after invoices for those **Defence Costs** are received by **Insurers**.

4.8 **Excess**

Insurers shall only be liable for that part of each and every **Claim** which exceeds the amount of the **Excess** (where applicable). The **Excess** does not apply to **Defence Costs** and **Investigation Costs** unless otherwise specified.

Payment of the **Excess** is not a condition of any payment by **Insurers** under this **Policy**.

4.9 **Related Claims**

Claims arising out of, based upon or attributable to, or which are otherwise causally connected with a single act, error, omission or occurrence or a related series (or one of a series) of acts, errors, omissions or occurrences attributable to one source or originating cause or similar circumstance shall for the purpose of the **Limit of Liability** and the **Excess** be treated as a single **Claim**.

4.10 **Waiver of Subrogation**

If any payment is made under this **Policy** and **Insurers** are thereupon subrogated to the **Insured's** rights of recovery in relation thereto, **Insurers** agree not to exercise any such rights against any person defined within (a) to (d), (f) and (g) of **Insured Person** except where it is established by final un-appealable adjudication or judgment that such **Insured Person** committed a dishonest, fraudulent, criminal or malicious act or omission in relation to the **Claim** for which payment is sought.

In respect of contracts or agreements which impose upon the **Insured** conditions waiving the rights of the **Insured** to recover from other parties, upon the **Policyholder's** written request, **Insurers** shall consider agreeing, to the extent required by such contract or agreement, to waive any rights of subrogation to which they might otherwise have been entitled in such circumstances in respect of any payments which they may make under this **Policy**.

If granted, such waiver shall be promptly confirmed in writing by **Insurers** to the **Insured**.

4.11 **Foreign Exchange Currency Conversion**

If an agreement of loss is signed by an **Insured** in currencies other than GBP, for the purpose of agreeing amounts under this **Policy**, which shall not exceed the **Limit of Liability**, such loss will be converted to GBP calculated at the exchange rate that prevails as published in The Financial Times newspaper, London at the date the broker receives the drawn agreement of loss/release from

Insurers.

4.12 **Single Policy**

The cover afforded under the terms of this **Policy** is provided jointly to all parties constituting the **Insured** and for all purposes this **Policy** shall be considered as a joint policy with a single **Limit of Liability**.

4.13 **Representation**

Where more than one entity or person is insured by this **Policy**, the first **Policyholder** specified in Item 1 of the Schedule will act on behalf of any other party insured by this **Policy** with respect to the giving and receiving of any notices from **Insurers** or their representatives including any notice of cancellation. The payment to the first named **Policyholder** of any return premium that may be payable under this **Policy** will satisfy **Insurers** obligations to return premium to any other party covered by this **Policy**.

4.14 **Contracts (Rights of Third Parties) Act 1999**

Nothing in this **Policy** is intended to confer a directly enforceable benefit on any third party other than the **Insured**, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

4.15 **Innocent Non-Disclosure or Breach**

The rights and obligations applying to any **Insured** shall be interpreted in accordance with the provisions of the United Kingdom Insurance Act 2015, except for any remedies shown within this condition that are more favourable to the **Insured**, in which case the remedies set out within the United Kingdom Insurance Act 2015 shall be superseded. In particular:

- (a) any breach of the duty of fair presentation, non-disclosure, misrepresentation or breach of any terms or conditions of this **Policy** by any **Insured Person** shall not prejudice the rights of any other **Insured** to cover;
- (b) **Insurers** will not avoid or repudiate this **Policy** as to an **Insured** where it is alleged there has been such a breach, non-disclosure or misrepresentation provided always that such **Insured** shall establish to **Insurers** reasonable satisfaction that such alleged breach, non-disclosure or misrepresentation was free of any fraudulent conduct or intent to deceive;
- (c) if an **Insured** notifies any **Claim**, or claims any loss, knowing the same to be false or fraudulent as regards amount or otherwise, this **Policy** shall only be terminated in respect of those natural persons who committed or condoned such fraudulent act.

4.16 **Non-Imputation**

For the purpose of determining cover under this **Policy**, the conduct of one **Insured** shall not be imputed to another **Insured**, provided that cover is only provided to an **Insured** who is innocent and has no knowledge of such conduct.

4.17 **Cancellation by Insured**

The **Policyholder** may cancel this **Policy** at any time by giving written notice to **Insurers** via the entity specified in Item 14 of the Schedule, such cancellation being effective ten (10) business days after such notice is received by **Insurers**. In such case, **Insurers** shall refund any unearned premium, calculated at pro-rata rate of the annual premium, except in the event of a **Claim** having been notified to and accepted by **Insurers** as a valid notification prior to the date of cancellation whereby no refund shall be due unless agreed otherwise by **Insurers**.

4.18 **Cancellation by Insurer**

Insurers shall only be entitled to cancel this **Policy** for non-payment of premium and then only by giving notice of cancellation in writing, addressed to the Principal Address of the **Policyholder** via registered post, such cancellation being effective fifteen (15) business days after such notice is received by the **Policyholder**.

4.19 **Minimum Terms and Conditions Prevail**

This **Policy** is intended to meet the minimum professional liability insurance requirements of any association, or regulatory or professional body to which an **Insured** belongs, subscribes, or is governed or regulated by.

For the avoidance of doubt, in the event of any dispute in connection with any provision of this **Policy**, it is understood and agreed that the minimum professional liability wording requirements of such association, or regulatory or professional body (as applicable at the start of the **Policy Period**) will take precedence over any provision of this **Policy** which is less favourable to the **Insured**.

4.20 **Difference in Conditions**

If **Insurers** are not liable for **Loss**, cost or expense under this **Policy**, but cover for the same **Loss**, cost or expense would have been available to the **Insured** based upon the terms, conditions, exclusions and limitations of the prior professional liability policy as specified in Item 16 of the Schedule (and provided details of such prior policy have been provided to **Insurers** and a copy of such policy has been made available by the **Insured** in the event of any **Loss**, cost or expense notified hereunder), then this **Policy** shall provide cover in accordance with the terms, conditions, exclusions and limitations of such prior policy insofar as such are more favourable to the **Insured**.

In no way shall this condition serve to increase the **Limit of Liability**, amend the **Excess** or amend the Premium specified in Item 10 of the Schedule of this **Policy**.

4.21 **Euro Contract Continuity Condition**

1. The occurrence of an event associated with economic and monetary union in the European Union shall not have the effect of:
 - (a) terminating; or
 - (b) altering or invalidating any term of, or discharging or excusing performance under; or
 - (c) giving either party a unilateral right to alter or terminate; this **Policy**.

2. For the purposes of this **Policy** an “event associated with economic and monetary union in the European Union” includes without limitation each (and any combination) of the following events:
 - (a) the withdrawal from legal tender of the Euro;
 - (b) the withdrawal from the European Union and/or from the Euro by one or more members of the European Union (Member States);
 - (c) the replacement of the Euro by any alternative single or unified currency by two or more Member States (whether or not they remain members of the European Union) or the introduction of a new currency by a Member State (whether or not it remains a member of the European Union).

4.22 **Sanctions**

1. Subject to sub-clause 2 below, where:
 - (a) it would be illegal under applicable laws or sanctions for **Insurers** to provide the cover specified in this **Policy** or any part of this **Policy**, or any other service or benefit, then **Insurers** shall only be obliged to provide cover, services or benefit to the extent that, and for such period as, it is or becomes legally permissible for **Insurers** to do so or to have done so, and more specifically;
 - (b) any **Claim**, premium, additional or return premium or other sum falls due from or to **Insurers** under this **Policy** and it would be illegal under applicable laws or sanctions for the payment or any part of it to be made (in cash transfer or any other form of transfer of other economic asset) at the time it falls due, then the paying party shall only be obliged to make payment to the extent that, and at such time as it is, or becomes, legally permissible for the paying party to do so.
2. In circumstances where sub-clause 1. (a) or 1. (b) would otherwise apply, but the relevant laws or sanctions allow **Insurers** to seek authorisation to provide the affected cover, service or benefit and/or to make or receive the affected payment, then **Insurers** will take all reasonable steps to obtain the necessary authorisation required to enable them to make such payment or provide such cover, service or benefit.

4.23 **Conformity to Statute**

Terms of this **Policy** which are in conflict with any applicable statutes of the country wherein this **Policy** applies are hereby amended to conform to such statutes.

SECTION FIVE - DEFINITIONS

- 5.1 **Associated Company** means any entity of which the **Policyholder** owns or owned on or before the inception of the **Policy** more than twenty percent (20%) but less than or equal to fifty percent (50%) of the issued and outstanding voting shares either directly or indirectly through one or more of its subsidiaries or any entity in which the **Policyholder** or any of its subsidiaries retains management control.
- 5.2 **Claim** means:
- (a) receipt by an **Insured** of any writ, summons or other legal process, written communication, demand or other application of any description whatsoever or cross-claim or counterclaim issued against, served upon or communicated to an **Insured** containing a request for, or seeking a remedy;
 - (b) a criminal prosecution of an **Insured**;
 - (c) an **Investigation**;
 - (d) a circumstance which in the reasonable opinion of a **Responsible Person** may reasonably be expected to give rise to (a), (b) or (c) above.
- 5.3 **Defence Costs** means all costs and expenses incurred in the investigation, defence, adjustment, discharge, dismissal, settlement or appeal of any **Claim**.
- 5.4 **Document** means documents of whatsoever nature, whether written, printed or reproduced by any other method, including but not limited to any data, but excluding negotiable instruments.
- 5.5 **Excess** means the applicable amount specified as such in Item 6 of the Schedule.
- 5.6 **Insured** means:
- (a) any **Insured Entity**;
 - (b) any **Insured Person**.
- 5.7 **Insured Entity** means:
- (a) the **Policyholder**;
 - (b) any entity or person named as an Insured in Item 1 of the Schedule;
 - (c) any **Associated Company**;
 - (d) any entity which is either directly or indirectly a subsidiary of either (a) or (b) above on or before the inception date of this **Policy** or during the **Policy Period** in accordance with Extension 2.15;
 - (e) any predecessor of (a), (b) or (d).
- 5.8 **Insured Person** means any past, present or future:
- (a) principals, directors, members or partners of **Insured Entities**;
 - (b) officers, clerks, servants, employees and other full-time, part-time, or temporary staff of **Insured Entities**;
 - (c) guest students, volunteers or work experience participants pursuing studies or duties in any of the premises of the **Insured Entities**;

- (d) persons on secondment to **Insured Entities** from their employer to perform employee duties for **Insured Entities** under an **Insured Entity's** supervision
- (e) consultants, contractors, agents or any other persons

in the conduct of the **Professional Business** of the **Insured Entities**. **Insured Person** shall include

(but not be limited to):

- (f) the lawful spouse or domestic partner of a person defined in (a) to (e) as a result of any **Claim** made against the lawful spouse or domestic partner solely because of an act, error or omission of a person defined in (a) to (e) in connection with the **Professional Business** of the **Insured Entities**;
- (g) the estate, heirs or legal personal representatives of a deceased, incompetent, insolvent or bankrupt person defined in (a) to (e) as a result of any **Claim** in connection with the **Professional Business** of the **Insured Entities** made against the estate, heirs or legal personal representatives, solely because of such status.

5.9 **Insurers** means those insurance companies or Lloyd's syndicates subscribing to this **Policy** as specified in Item 11 of the Schedule.

5.10 **Investigation** means any official hearing, investigation, examination, inquiry or other proceedings ordered or commissioned by an official body or institution in relation to the **Professional Business**.

5.11 **Investigation Costs** means the reasonable fees, expenses and other disbursements incurred by a solicitor, firm of solicitors or appropriately qualified person to act for the **Insured** in relation to any **Investigation**.

5.12 **Limit of Liability** means the Limit of Liability specified in Item 3 of the Schedule applying on the following basis:

- (a) Where Option A has been elected:

The maximum total liability for any one **Claim** under this **Policy** up to the amount specified in Item 3 of the Schedule or as may be specifically agreed by **Insurers** and endorsed to this **Policy**. **Defence Costs** and **Investigation Costs** shall be payable in addition to this amount unless otherwise specified.

- (b) Where Option B has been elected:

The maximum total liability for any one **Claim** under this **Policy** up to the amount specified in Item 3 of the Schedule or as may be specifically agreed by **Insurers** and endorsed to this **Policy**. **Defence Costs** and **Investigation Costs** shall be payable as part of this amount unless otherwise specified.

- (c) Where Option C has been elected:

The maximum total liability for all **Claims** under this **Policy** up to the amount specified in Item 3 of the Schedule or as may be specifically agreed by **Insurers** and endorsed to this **Policy**. **Defence Costs** and **Investigation Costs** shall be payable in addition to this amount unless otherwise specified.

- (d) Where Option D has been elected:

The maximum total liability for all **Claims** under this **Policy** up to the amount specified in Item 3 of the Schedule or as may be specifically agreed by **Insurers** and endorsed to this **Policy**. **Defence Costs** and **Investigation Costs** shall be payable as part of this amount unless otherwise specified.

Further:

- (a) Where **Defence Costs** and/or **Investigation Costs** are payable in addition to the **Limit of Liability**, in the event that the **Limit of Liability** is insufficient to cover the amount paid by or on behalf of the **Insured** to dispose of a **Claim** (exclusive of such **Defence Costs** and/or **Investigation Costs**), then this **Policy** shall only cover the same proportion of such **Defence Costs** and/or **Investigation Costs** as the **Limit of Liability** bears to the total amount paid to dispose of the **Claim** (exclusive of such **Defence Costs** and/or **Investigation Costs**).
- (b) All sub-limits shall be part of and not in addition to the **Limit of Liability** unless otherwise specified.

5.13 **Loss** means:

- (a) the legal liability of the **Insured** to pay damages, costs and expenses (including but not limited to any liability for claimant's costs) awarded against the **Insured**;
- (b) any settlement agreed by **Insurers**;
- (c) any amount the **Insured** is required to pay arising from a **Restitution Order** or an award;
- (d) **Defence Costs**.

5.14 **Policy** means the contents of this document, including the Schedule (and any Schedule issued in substitution thereof) and all endorsements and memoranda that may be issued from time to time by **Insurers** for attachment to this **Policy**, all of which shall be considered one document.

5.15 **Policyholder** means any entity or person specified as such in Item 1 of the Schedule.

5.16 **Policy Period** means the period specified as such in Item 2 of the Schedule, or any amendment to such period as may be permitted herein or specifically agreed by **Insurers** and endorsed to this **Policy**.

5.17 **Professional Business** means the performance or non-performance, whether for a fee or not, of professional activities and duties by an **Insured** or any person or entity acting on behalf of an **Insured** or for whom the **Insured** are legally liable. Such professional activities and duties shall include but not be limited to:

- (i) those services described in the submission, its attachments and all other information submitted to **Insurers**;
- (ii) any other services which are not materially different from those services of the **Insured Entity**;
- (iii) the **Insured Entity's** ownership and management of its own worldwide websites, internet sites, extranets, intranet and web addresses, including the transmission of mail or documents by electronic means.

5.18 **Responsible Person** means a Responsible Person as specified in Item 12 of the Schedule.

5.19 **Restitution Order** means an order made by a court or regulatory authority pursuant to which the **Insured** is required to pay to such court or regulatory authority (or any successor body) or to a third party compensation to the extent of the financial loss suffered by such third party arising from the acts or omissions of the **Insured** or any person or entity acting on behalf of the **Insured**, provided always that:

- (a) it is the third party who has suffered the financial loss; and
- (b) if any amount is required to be paid to the court or regulatory authority (or any successor

body) such court or regulatory authority is required to pay the said amount to such third party.

Restitution Order does not mean an order pursuant to which the **Insured** is required to pay to any party any profits, fees, commissions or other charges which have accrued or been paid (or are owing or payable) to the **Insured**.

- 5.20 **Retired Director** means any former partner, director, principal or member of the **Insured** (including any former partner, director, principal or member of the **Insured** acting as a consultant to the **Insured**) who retired or ceased acting as a consultant to the **Insured** during the **Policy Period**.
- 5.21 **Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 5.22 **Toxic Mould** means:
- (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 (a), or any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to (a) including investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.
- 5.23 **United States of America and Canada** means the United States of America ("USA") and Canada, the territories and protectorates of the USA and Canada, any other jurisdiction to which the law of the USA or Canada applies and the enforcement anywhere in the world of any judgment, order or award obtained under the laws of the USA or Canada or in any court or arbitration in the USA or Canada.