

# Architects' and Engineers' Professional Liability Policy

Underwriter  
(herein called "the Company")

Policy Number:

Declarations

Item 1. Policyholder:  
Address:

Item 2. (A) Limit of Liability:	£
(B) Limit for Criminal Defence Costs:	£100,000
(C) Limit for Non-excluded Pollution Claims:	£250,000
(D) Limit for Formal Investigation Expenses:	£50,000
(E) Limit for Document replacement:	£100,000
(F) Court Attendance and Staff Disruption Limit:	£50,000

Item 3. Contribution for Claims brought and maintained entirely outside the U.S.A.: £

Contribution for Claims brought or maintained in whole or in part in the U.S.A.: \$

Item 4. Insured Organisations at start of Policy Period:

The Policyholder

Item 5. Policy Period: From: To: both days inclusive  
Local time at the address shown in Item 1

Item 6. Retrodate:

Item 7. Endorsements effective at inception:

THIS POLICY IS WRITTEN ON A CLAIMS-MADE BASIS.  
EXCEPT AS OTHERWISE PROVIDED, IT COVERS ONLY  
CLAIMS FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD.

\_\_\_\_\_  
For and on behalf of

\_\_\_\_\_  
Date

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Endorsements issued at inception are attached after page 16.

In consideration of payment of the premium and subject to the terms of this Policy, the Company and the Policyholder agree as follows:

#### Insuring Clause 1: Civil Liability

1. The Company shall pay, on behalf of each Insured, Loss on account of a Civil Claim first made during the Policy Period alleging civil liability on the part of that Insured arising from the conduct of the Business Activity by:

- (a) that Insured;
- (b) any person, partnership, firm or company acting on behalf of an Insured Organisation;
- or
- (c) any predecessor in business of an Insured Organisation.

#### Insuring Clause 2: Criminal Defence Costs

2. The Company shall pay, on behalf of each Insured, Defence Costs incurred with the prior written consent of the Company (not to be unreasonably withheld) in defending a Criminal Proceeding first made during the Policy Period where the Company is satisfied that defending such Criminal Proceeding would protect the Insured against a Civil Claim or potential Civil Claim, Loss on account of which would be covered by Insuring Clause 1.

#### Insuring Clause 3: Formal Investigation Expenses

3. The Company shall pay, on behalf of each Insured, Formal Investigation Expenses.

#### Insuring Clause 4: Document Replacement Costs

4. The Company shall pay, on behalf of each Insured, the reasonable costs and expenses of replacing or restoring Documents whose loss, damage or destruction is first discovered by that Insured during the Policy Period.

#### Insuring Clause 5: Compensation for Court Attendance and Staff Disruption

5. With regard to each Civil Claim or Criminal Proceeding, Loss on account of which is covered by this Policy:

- (a) the Company shall, if a principal, partner, director or Employee of an Insured Organisation attends a court or arbitration hearing as a witness, compensate for that person being so occupied, by paying £250 for each day on which that person attends as a witness;
- (b) the Company shall, if a principal, partner, director or Employee of an Insured Organisation is interviewed by the lawyers conducting the defence of the Civil Claim or Criminal Proceeding for the purpose of composing a witness statement, compensate for that person being so occupied, by paying £50 per hour in respect of the time certified by the lawyers as time being interviewed;
- (c) the Company shall, if a principal, partner, director or Employee of an Insured Organisation is reasonably needed to attend a Conference or Consultation with Counsel (as that expression is used by the Bar of England And Wales), compensate for that person being so occupied, by paying £50 per hour in respect of the time certified by the lawyers conducting the defence of the Civil Claim or Criminal Proceeding as time spent in such Conference or Consultation;
- (d) the Company shall, if a principal, partner, director or Employee of an Insured Organisation attends a court or arbitration hearing as observer, compensate for that person being so occupied, by paying £50 for each day on which that person attends as observer, provided that the Company shall only be liable to compensate for the occupation of one

observer for all Insured Organisations together per day.

Compensation payable by the Company pursuant to this Section shall be paid to the Insured Organisation against which the Civil Claim or Criminal Proceeding is made, or, if there is more than one such Insured Organisation, to whichever of such Insured Organisations as the Company shall choose. If the Civil Claim or Criminal Proceeding is not made against an Insured Organisation, the Company shall pay the compensation to an Insured Organisation of the Company's choice.

Compensation provided for by this Section in respect of a person's attendance shall only be payable where that attendance is in connection with defending, not prosecuting, a Civil Claim or Criminal Proceeding.

## Definitions

6. In this Policy the word 'person(s)', wherever it appears, means legal or natural person(s) or partnership unless otherwise specified. When used in bold type in this Policy:

**Adjudication Loss** means the amount which, in an award, an Adjudicator requires to be paid by an Insured.

**Adjudication Notice** means a notice of intention to adjudicate, notice of adjudication or referral notice.

**Adjudicator** means an adjudicator appointed to resolve a dispute in accordance with:

(a) the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996; or

(b) an adjudication clause or rules contained in a contract.

**Business Activity** means the provision of advice or services, as part of an Insured Organisation's activities described in the proposal form submitted to the Company when applying for this Policy.

**Civil Claim** means:

(a) a written demand, whether or not containing a demand for monetary compensation; or

(b) a civil proceeding,

made against an Insured by a Third Party and arising from Business Activity.

**Claim** means:

(a) for the purposes of Insuring Clause 1, a Civil Claim;

(b) for the purposes of Insuring Clause 2, a Criminal Proceeding; and

(c) for the purposes of Insuring Clause 3, a Formal Investigation.

**Collateral Warranty Agreement** means a written agreement that creates a duty of care by an Insured to any party other than a direct client of an Insured.

**Collateral Warranty Specific Provision** means any of the following in a Collateral Warranty Agreement:

(a) a promise of fitness for purpose;

- (b) a penalty or liquidated damages provision;
- (c) a guarantee of performance or of the time period of a project;
- (d) an acceptance of a greater standard of care than that normally expected in the profession of the Insured which has entered into the Collateral Warranty Agreement; or
- (e) a provision which creates a greater liability to a beneficiary of the Collateral Warranty Agreement than to the Insured's direct client.

Criminal Legislation means legislation described in the definition of Criminal Proceeding.

Criminal Proceeding means a criminal prosecution against an Insured arising from Business Activity and alleging manslaughter on the grounds of gross negligence or an offence under:

- (a) the Property Misdescriptions Act 1991;
- (b) the Estate Agents' Act 1979;
- (c) the Corporate Manslaughter and Corporate Homicide Act 2007;
- (d) the Health and Safety at Work etc Act 1974;
- (e) the Health and Safety at Work (Northern Ireland) Order 1978;
- (f) the Construction (Design and Management) Regulations 1994;
- (g) the Planning (Hazardous Substances) Act 1990; or
- (h) any similar or successor legislation to any legislation described in (a) to (g) immediately above.

Defence Costs means that part of Loss consisting of reasonable and necessary costs, expenses, charges and fees (including but not limited to lawyers' and experts' fees) incurred in defending or investigating a Civil Claim or Criminal Proceeding first made during the Policy Period (other than internal expenses of an Insured Organisation).

Documents means documents (other than bearer bonds, coupons, shares, bank notes, currency notes, stamps and other negotiable instruments) whether in physical or electronic format for which an Insured is, in connection with Business Activity, legally responsible to a Third Party.

Employee means a natural person under a contract of service with an Insured Organisation.

Formal Investigation means a formal investigative inquiry brought and maintained entirely outside the U.S.A. into an Insured's conduct of Business Activity by a regulatory or professional body with powers to investigate that Insured.

Formal Investigation Expenses means that part of Loss which consists of reasonable and necessary legal fees and related professional charges which an Insured incurs in that Insured's representation at a Formal Investigation:

- (a) which is first instituted during the Policy Period; and
- (b) at which that Insured's attendance is required by the body which instituted the Formal Investigation, but which are only incurred after that Insured has been notified in writing by that body that it is looking into whether or not that Insured is culpable of misconduct.

Insured means a person who is an Insured Organisation or an Insured Person.

Insured Organisation means an organisation or sole practitioner which is:

(a) the Policyholder;

(b) an organisation listed in Item 4 of the Declarations; or

(c) subject to Section 15 below, an organisation which becomes an Insured pursuant to Section 15 below.

Insured Person means a natural person who has been, now is, or shall become a principal, partner, director or Employee of an Insured Organisation, provided that such person shall only be covered under this Policy in respect of Wrongful Acts committed while that person is such principal, partner, director or Employee. Solely for such Wrongful Acts of such person, Insured Person includes such person's:

(a) lawful spouse, civil partner (as defined in the Civil Partnership Act 2004) or domestic partner, if named as co-defendant solely because of their spousal relationship or relationship as civil partner or domestic partner; or

(b) estate, heirs, legal representatives or assigns if such person is deceased or declared incompetent, insolvent or bankrupt.

Loss means the amount which an Insured is legally and personally liable to pay on account of a Claim first made or instituted during the Policy Period, including:

(a) Defence Costs;

(b) Formal Investigation Expenses;

(c) awards of damages, judgements, awards of claimant's costs and sums payable pursuant to settlements; and

(d) Adjudication Loss.

Non-excluded Pollution Claim means a Civil Claim for Pollution which arises from breach of duty through a negligent act, error or omission in the course of Business Activity.

Personal Injury means bodily injury, mental illness, emotional distress, sickness, disease or death of any natural person.

Property Damage means physical damage to or destruction or loss of use of any tangible property.

Policyholder means the organisation or sole practitioner stated in Item 1 of the Declarations.

Policy Period means the period of time stated in Item 5 of the Declarations but subject to prior termination when cover terminates in accordance with Section 24 below.

Pollutants means any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products and any noise.

Pollution means:

(a) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any Pollutants;

(b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any Pollutants, or any action taken in contemplation or anticipation of any such regulation, order, direction or request; or

(c) any actual or alleged breach of duty in any way connected to any Pollutants.

Subsidiary means a company which an Insured Organisation either directly or indirectly controls through:

(a) holding a majority of the voting rights;

(b) the right to appoint or remove a majority of its board of directors; or

(c) controlling alone, pursuant to a written agreement with other shareholders, a majority of the voting rights therein.

Third Party means any person other than an Insured.

U.S.A. means the United States of America, its territories and possessions and any state or political subdivision thereof.

Wrongful Act means:

(a) any actual or alleged conduct or omission by:

(i) an Insured;

(ii) a person, partnership, firm or company acting on behalf of an Insured Organisation; or

(iii) a predecessor in business of an Insured Organisation

and which gives rise, or is alleged to give rise, to civil liability on the part of an Insured;

(b) any actual or alleged offence under Criminal Legislation; or

(c) any actual or alleged loss, damage or destruction of Documents.

Exclusions

7. The Company shall not be liable for Loss, costs or expenses on account of any Claim, or on account of any loss, damage or destruction of Documents:

(a) based upon, arising from or in consequence of any fact or Wrongful Act forming part of circumstances or of a Claim of which written notice has been given under any policy which this Policy renews, replaces or follows in whole or in part;

(b) based upon, arising from, or in consequence of any Wrongful Act prior to the date stated in Item 6 of the Declarations;

(c) to the extent that that Loss consists of fines or penalties or the multiple portion of any multiplied damages award;

(d) to the extent that that Loss consists of punitive, exemplary or aggravated damages other than damages awarded for libel, slander or defamation;

(e) based upon, arising from or in consequence of a Wrongful Act:

(i) of, or in respect of, an organisation listed in Item 4 of the Declarations; or

- ii) of, or in respect of, an Insured Person of such an organisation,  
prior to the date stated against that organisation in Item 4 of the Declarations;
- (f) based upon, arising from or in consequence of any actual or alleged Personal Injury of an Insured Person;
- (g) for Personal Injury which does not arise from breach of duty through a negligent act, error or omission by an Insured in the course of Business Activity;
- (h) for Property Damage which does not arise from breach of duty through a negligent act, error or omission by an Insured in the course of Business Activity;
- (i) based upon, arising from or in consequence of Pollution (but this exclusion shall not apply to Non-excluded Pollution Claims, Criminal Proceedings or Formal Investigations);
- (j) based upon, arising from or in consequence of:
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (k) based upon, arising from or in consequence of the ownership, occupation, possession or use by or on behalf of an Insured of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;
- (l) based upon, arising from or in consequence of the manufacture, construction, alteration, repair, servicing or treatment of any goods or products sold, supplied or distributed by an Insured;
- (m) where the Loss is an Insured Person's and the Claim is based upon, arises from or is in consequence of any dishonest or fraudulent act or omission or any intentional breach of law committed or condoned by that Insured Person;
- (n) based upon, arising from or in consequence of any dishonest or fraudulent act or omission or any intentional breach of law by any principal, partner or director of an Insured Organisation;
- (o) for breach of, or alleging liability under, any warranty, guarantee or contractual term, except for such amount of Loss as the Insured would be legally and personally liable to pay in the absence of such warranty, guarantee or term (but this exclusion shall not apply to a Claim for breach of, or alleging liability under, a Collateral Warranty Agreement);
- (p) for breach of, or alleging liability under any Collateral Warranty Specific Provision, except for such amount of Loss as the Insured would be legally and personally liable to pay in the absence of such Collateral Warranty Specific Provision and of all other Collateral Warranty Specific Provisions to which the Insured is party;
- (q) based upon, arising from or in consequence of any Insured acting as a director or officer of any organisation;
- (r) by or on behalf of a parent, Subsidiary, affiliate or associate of an Insured Organisation except a Claim for contribution or indemnity which results solely from a claim against such parent, Subsidiary, affiliate or associate by a Third Party;
- (s) to the extent that that Loss consists of sums relating to any trading losses or trading liabilities incurred in connection with any business managed or carried on by an Insured on behalf of a client;

(t) based upon, arising from or in consequence of the insolvency of any Insured;

(u) based upon, arising from or in consequence of any libel, slander or other form of defamation which any Insured commits intentionally or recklessly;

(v) based upon, arising from or in consequence of any actual or alleged failure to perform, or any actual or alleged act or omission in the performance of, any construction activity for or on behalf of an Insured;

(w) if that Loss is Adjudication Loss and the appointment of the Adjudicator is made under an adjudication clause or rules contained in a contract which sets a more onerous timetable for the adjudication than the timetable contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996;

## Limits of Liability

8. (a) On account of any one Civil Claim, other than a Formal Investigation, brought and maintained entirely outside the U.S.A.:

(i) the Company's maximum liability for Loss other than Defence Costs, whether the Civil Claim involves one or any number of Insureds, shall not exceed the Limit of Liability stated in Item 2(A) of the Declarations; and

(ii) the Company's liability for Defence Costs shall be in addition to the Limit of Liability stated in Item 2(A) of the Declarations, but the Company shall only be liable for Defence Costs in proportion to the amount which the Limit of Liability in Item 2(A) of the Declarations bears to the total amount of Loss, other than Defence Costs, on account of that Civil Claim.

(b) The Company's maximum aggregate liability for all Loss on account of all Civil Claims brought or maintained in whole or in part in the U.S.A. and first made or instituted during the Policy Period, whether involving one or any number of Insureds, shall not exceed the Limit of Liability stated in Item 2(A) of the Declarations.

(c) The Company's maximum aggregate liability for all Defence Costs on account of all Criminal Proceedings first made during the Policy Period, whether involving one or any number of Insureds, shall not exceed the Limit for Criminal Defence Costs stated in Item 2(B) of the Declarations.

(d) The Company's maximum aggregate liability for all Loss on account of all Non-excluded Pollution Claims first made during the Policy Period, whether involving one or any number of Insureds, shall not exceed the Limit for Non-excluded Pollution Claims stated in Item 2(C) of the Declarations, which Limit is part of and not in addition to the maximum liabilities of the Company referred to in Sections 8(a) and 8(b) above.

(e) The Company's liability for Formal Investigation Expenses shall be in addition to the Limit of Liability stated in Item 2(A) of the Declarations. However, the Company's maximum aggregate liability for all Formal Investigation Expenses on account of all Formal Investigations first instituted during the Policy Period, whether involving one or any number of Insureds, shall not exceed the Limit for Formal Investigation Expenses stated in Item 2(D) of the Declarations.

(f) The Company's liability for costs and expenses of replacing or restoring Documents shall be in addition to the Limit of Liability stated in Item 2(A) of the Declarations. However, the Company's maximum aggregate liability for all such costs and expenses on account of all occasions of loss, damage or destruction first discovered during the Policy Period, whether involving one or any number of Insureds, shall not exceed the Limit for Document replacement stated in Item 2(E) of the Declarations.

(g) The Company's liability for compensation provided for by Insuring Clause 5 shall be in addition to the Limit of Liability stated in Item 2(A) of the Declarations. However, the Company's maximum aggregate liability for all such compensation on account of all Claims first made during the Policy Period, whether involving one or any number of Insureds, shall not exceed the Court Attendance and Staff Disruption Limit stated in Item 2(F) of the Declarations.

(h) Amounts stated for Limits and Sublimits are maximum liabilities of the Company for all Insureds together, not maximum liabilities per Insured.

### Contributions

9. With regard to each and every Claim which is not a Formal Investigation, the Company shall only be liable for that part of Loss which is in excess of the applicable Contribution stated in Item 3 of the Declarations.

Any Defence Costs within the Contribution which would otherwise be covered and which are funded by an Insured on account of a Claim shall be reimbursed by the Company, if a final adjudication exonerates all Insureds in such Claim from liability.

### Causal Connection

10. All Claims arising out of the same Wrongful Act or conduct and/or arising out of causally-connected Wrongful Acts and/or conduct, whether by one or any number of Insureds, shall be deemed to be a single Claim first made or instituted on:

(a) the date when the first of such Claims was first made or instituted;

(b) the earliest date one of such Claims is deemed first made or instituted by this Policy or any policy which this Policy renews, replaces or follows in whole or in part (if that earliest date is earlier than the date referred to in (a) immediately above), regardless of whether that date is before or during the Policy Period.

### Reporting and Notice

11. It is a condition precedent to the Company's liability under this Policy for Loss on account of a Claim that the Company is given written notice as soon as practicable of such Claim. Further, it is a condition precedent to the Company's liability under this Policy for Adjudication Loss that the Company is given written notice of the Adjudication Notice within 2 working days of the Adjudication Notice first being received by an Insured.

If this Policy is not renewed, the Company shall not be liable for any Claim of which it is not given written notice within 30 days of the end of the Policy Period.

If, during the Policy Period, any Insured becomes aware of circumstances which could give rise to a Claim, the Company must, as a condition precedent to its liability for Loss on account of Claims arising out of those circumstances, be given written notice of those circumstances as soon as practicable. If this condition precedent is fulfilled and also the written notice is given to the Company during the Policy Period, any Claims subsequently arising from those circumstances shall be deemed to have been first made or instituted during the Policy Period. Circumstances shall not be regarded as notified unless the written notice expressly identifies the Wrongful Act and the date it was committed, the potential damage, the potential claimants and defendants and the manner in which the Insured first became aware of the circumstances.

Each Insured shall, as a condition precedent to the Company's liability under this Policy for Loss on account of a Claim, give to the Company such information and co-operation as

the Company may reasonably require, including but not limited to a description of the Claim, the nature of the alleged Wrongful Act and the date it was committed, the nature of the alleged damage, the names of the actual or potential claimants and defendants and the manner in which the Insured first became aware of the Claim.

Each Insured shall, as a condition precedent to the Company's liability under this Policy for costs and expenses of replacing or restoring Documents, give the Company written notice as soon as practicable of the Documents' loss, damage or destruction and give to the Company such information and cooperation as the Company may reasonably require.

Notice to the Company under this Policy shall be given in writing.  
Notice shall be effective on the date of receipt by the Company.

### Reporting and Notice: Special Conditions

12. Where a condition precedent in Section 11 above has not been fulfilled, the Company shall not rely on that non-fulfillment to deny liability for any Loss, costs or expenses, provided that it is established to the Company's satisfaction that such non-fulfillment was innocent and free of fraudulent conduct and intention to deceive. However, if such non-fulfillment results in prejudice to the handling or settlement of any Claim or event, the Company's liability in respect of such Claim or event shall be reduced to such amount as in the Company's opinion would have been payable by it in the absence of such prejudice.

### Defence and Settlement

13. The Company shall have the right, but not the duty, to take over and conduct at any time the defence of Claims, including to appoint lawyers or other representatives or advisers for that purpose.

With respect to any Claim, the Company may at any time pay to the Insured the amount of the Limit of Liability stated in Item 2(A) of the Declarations which remains uneroded, the amount of any applicable sublimit which remains uneroded or the amount for which the Claim can be settled whichever is the lowest. Such payment shall immediately discharge all liability of the Company in respect of the Claim including liability for further Defence Costs and liability for further compensation under Insuring Clause 5.

Each Insured agrees not to settle or offer to settle any Claim, incur any Defence Costs or Formal Investigation Expenses, or otherwise assume any contractual obligation or admit any liability with respect to any Claim, without the Company's prior written consent which shall not be unreasonably withheld. The Company shall not be liable for any settlement, Defence Costs, Formal Investigation Expenses, assumed obligation or admission to which it has not consented in writing.

Each Insured agrees not to accept the decision of an Adjudicator as finally determining a dispute without the Company's prior written consent which shall not be unreasonably withheld. In the event of acceptance of an Adjudicator's decision in breach of the provisions of the previous sentence, the Company shall not be liable for any Adjudication Loss awarded in that decision.

If the Company and an Insured disagree on whether a Claim against that Insured should be defended, then:

(a) if the Claim is brought in England or Wales, they shall refer the question to a Queen's Counsel, or barrister of at least ten years' call, of the Bar of England and Wales to be mutually agreed between them (or, if they cannot agree on the Queen's Counsel or barrister, to be appointed by the Chairman for the time being of the Bar Council); or

(b) if the Claim is brought in another jurisdiction, they shall refer the question to a lawyer qualified in the law of that jurisdiction of equivalent standing to a Queen's Counsel or barrister of ten years' call (or, if they cannot agree on the lawyer, to be appointed by such procedure in that jurisdiction as is similar to appointment by the Chairman of the Bar Council),

and such Queen's Counsel's, barrister's or lawyer's decision that the Claim should be defended or that it should be settled shall be implemented by the Company and that Insured. The fees charged by the Queen's Counsel, barrister or lawyer shall be deemed to be Defence Costs. The Queen's Counsel, barrister or other lawyer shall act as expert not arbitrator.

Each Insured undertakes not to prejudice the Company's interests or its potential or actual rights of recovery and to give to the Company such information and co-operation as the Company may require.

#### Other Insurance

14. If Loss (or loss, damage or destruction of Documents) is insured under any other valid policy, then this Policy shall cover such Loss (or loss, damage or destruction of Documents) subject to its terms, only to the extent that the amount of such Loss (or of the costs and expenses of replacing or restoring the Documents) is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this Policy (or, in the case of Documents, written only as specific excess insurance over the Company's maximum liability for the Policy Period for costs and expenses of replacing or restoring Documents).

#### Acquisition or Creation of Another Organisation

15. If, during the Policy Period, an Insured Organisation:

(a) acquires securities or voting rights in another organisation or creates another organisation which as a result of such acquisition or creation becomes a Subsidiary; or

(b) acquires any organisation by merger into or consolidation with an Insured Organisation,

then the organisation and its Insured Persons shall automatically become Insureds under this Policy with effect from the date of such acquisition or creation, but only with respect to Wrongful Acts after, and (as concerns Formal Investigations) conduct after, such acquisition or creation.

However, if such acquired or created organisation:

(i) has annual fee income or turnover which is greater than 10% of the Insured Organisations' annual fee income last declared to the Company prior to the Policy Period;

(ii) has assets in the U.S.A.;

(iii) provides advice or services as part of activities which are not activities listed in the definition of Business Activity;

(iv) has ever been fined in an amount of £10,000 or more or has ever been found guilty of an offence by its regulator; or

(v) has ever, with regard to any given twelve month period, incurred (through judgement or settlement) total losses equaling or exceeding £10,000 on account of the claims made against it in that period,

the Policyholder shall give written notice of such acquisition or creation to the Company as soon as practicable and also such information as the Company may require. The Company shall have the right to amend the terms of this Policy including charging an additional premium. The giving of that written notice and the payment of any additional premium charged shall be conditions precedent to the Company's liability under this Policy for Loss, costs and expenses which would not be covered by this Policy if the acquisition or creation had not taken place.

#### Misrepresentation and Non-Disclosure: Special Conditions

16. Where, in proposing for the insurance provided by this Policy, any Insured has committed a nondisclosure or misrepresentation, the Company will not exercise its right to avoid this Policy for that non-disclosure or misrepresentation nor will that non-disclosure or misrepresentation discharge the Company from any liability under this Policy, provided that it is established to the Company's satisfaction that such non-disclosure or misrepresentation was innocent and free of fraudulent conduct and intention to deceive. However:

(a) the Company shall be entitled to amend the terms of, and premium for, this Policy to such terms and premium as it would have provided and required if the non-disclosure or misrepresentation had not been committed; and

(b) in the case of a Claim or event covered by this Policy in respect of which an Insured had knowledge, prior to the Policy Period, of a circumstance which could give rise to such Claim or event and should have, or could have, given notice of that circumstance under any preceding policy, if the cover under this Policy is greater in amount or scope than that to which the Insureds would have been entitled under such preceding policy (whether with other insurers or not), the Company shall not be liable to pay more than the amount which would have been payable under such preceding policy.

#### Disagreement on Special Conditions

17. In the event of any disagreement between the Company and an Insured regarding the application of any provision in Section 12 or 16 above, such disagreement shall be referred to a person nominated by the President for the time being of the Royal Institute of British Architects (or, if the Insured is not a member of that Institute, nominated through the equivalent process of the Insured's professional body) for consideration by that person. That person may, if he feels it warranted, intercede on the Insured's behalf and the Company shall give due and proper consideration to such intercession.

#### Territory

18. Unless otherwise provided in any Section, cover under this Policy shall extend worldwide.

#### Valuation and Foreign Currency

19. Loss, costs or expenses incurred not in the currency stated in Item 2(A) of the Declarations of this Policy or any endorsements thereto shall be converted to and paid in the currency of this Policy or any endorsements thereto based upon the rate of exchange published in The Financial Times on the date the final judgement is reached, the amount of the settlement is agreed upon, Defence Costs or any other element of Loss is due or the costs or expenses are incurred, respectively.

## Subrogation

20. The Company shall be subrogated to the extent of any payment under this Policy to each Insured's rights of recovery, and each Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights and to enable the Company to bring proceedings in the name of that Insured.

The Company shall not exercise an Insured's rights of recovery against an Employee unless a dishonest, fraudulent or malicious act or omission by the Employee or an intentional breach of law by the Employee is a cause of the Claim in respect of which the Company seeks to exercise those rights of recovery or is a cause of Loss on account of that Claim.

## Authorisation

21. The Policyholder hereby agrees to act on behalf of all Insureds with respect to the giving and receiving of notice of Claims or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy, and the Insureds agree that the Policyholder shall so act on their behalf.

## Alteration and Assignment

22. No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy duly executed on behalf of the Company.

## Contracting Parties and Rights of Action

23. No person shall have any rights under or in connection with this Policy by virtue of the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof. The Policyholder may not assign to any other person any right or cause of action against the Company under or in connection with this Policy.

## Termination

24. Cover under this Policy shall terminate at the earliest of the following times:

- (a) seven days after the receipt by the Policyholder of a written notice of termination from the Company for non-payment of premium;
- (b) expiration of the Policy Period;
- (c) such other time as may be agreed upon by the Company and the Policyholder in writing.

## Choice of Law and Forum

25. The construction of the terms, and the validity and effect, of this Policy are governed by English law. Any dispute or difference arising under or in respect of this Policy shall be subject to and determined within the exclusive jurisdiction of the courts of England and Wales.