



# A&E

**INSURANCE FOR ARCHITECTS & ENGINEERS**

## Policy Document

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CFC Underwriting Limited  
85 Gracechurch Street  
London EC3V 0AA  
United Kingdom  
T: +44 (0) 207 220 8500  
F: +44 (0) 207 220 8501  
E: [enquiries@cfcunderwriting.com](mailto:enquiries@cfcunderwriting.com)  
W: [www.cfcunderwriting.com](http://www.cfcunderwriting.com)

## PREAMBLE

This Policy is a contract of insurance between **you** and **us**. **Your** Policy contains all the details of the cover that **we** provide, subject always to **our** receipt of the Premium. This Policy consists of and must be read together with the Declarations and any Endorsements. This Policy is not complete unless it is signed and a Declarations page is attached.

The Sections of this policy are identified by **BLUE LINES** across the page with **WHITE UPPER CASE PRINT**. Clause headings in **BLUE UPPER CASE PRINT** are for information only and do not form part of the cover given by this Policy. Other terms in **bold lower case print** are defined terms and have a special meaning as set forth in the **DEFINITIONS** section and elsewhere. Words stated in the singular shall include the plural and vice versa.

**IMPORTANT: INSURING CLAUSES 1 and 2** provide cover on a claims made basis. Under these **INSURING CLAUSES** a **claim** must be first made against the company named as the Insured in the Declarations or any **subsidiary** during the **period of the policy** and notified to **us** during the **period of the policy** to be covered.

In consideration of the Premium and in reliance upon the information that **you** have provided to **us** prior to commencement of this insurance and which is deemed to form the basis of this insurance:

## INSURING CLAUSES

### INSURING CLAUSE I: ERRORS & OMISSIONS

#### SECTION A: PROFESSIONAL LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any:

- negligent act, error or omission, negligent misstatement or negligent misrepresentation;
- breach of any contractual term implied by law concerning necessary quality, safety or fitness, or **your** duty to use reasonable care and skill;
- breach of warranty of authority, breach of duty, breach of trust, breach of confidence, misuse of information or breach of privacy;
- libel, slander or defamation;
- other act, error or omission giving rise to civil liability to **your clients** but not any breach of contract save as specified above;

committed by **you** or on **your** behalf in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION B: BREACH OF CONTRACT

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** by a **client** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any **breach of client contract**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION C: INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of **your** infringement of any **intellectual property right** in the course of **your business activities**. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION D: POLLUTION LIABILITY

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us**

during the **period of the policy** arising out of:

- pollution or contamination of the atmosphere, or of any water, land, buildings or other property;
- any enforcement action in connection with the containment, clean-up, removal or treatment of such pollution or contamination.

**We** will also pay **costs and expenses** on **your** behalf.

#### SECTION E: LOSS OF DOCUMENTS

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of destruction of, damage to, loss or mislaying of **your documents** or **documents** in **your** care, custody or control. **We** will also pay **costs and expenses** on **your** behalf.

#### SECTION F: COMPUTER VIRUS AND HACKING ATTACK

**We** agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** as a direct result of:

- any **third parties'** financial losses arising directly from a **hacking attack** or **virus** that has emanated from or passed through **your** computer systems, or
- any **third parties'** financial losses arising directly from their inability to access **your** computer systems in the way in which **you** have authorised them to as a direct result of **your** computer systems' failure or impairment due to a **hacking attack** or **virus**, or
- any **third parties'** financial losses arising directly from the loss or theft of **your** data or data for which **you** are responsible or held to be responsible arising directly from a **hacking attack** or **virus**.

**We** will also pay **costs and expenses** on **your** behalf.

#### SECTION G: LOSS MITIGATION

**We** agree to pay any reasonable costs necessarily incurred by **you** with **our** prior written consent in respect of measures taken by **you** for the sole purpose of avoiding or mitigating a **claim** or potential **claim** for which **you** would be entitled to indemnity under **INSURING CLAUSE I** of this Policy had such measures not been taken.

## SECTION H: PAYMENT OF WITHHELD FEES

We agree to pay **your withheld fees** with **our** prior written consent in the event that **your client** brings or threatens to bring a **claim** against **you** that would be covered under **INSURING CLAUSE I, SECTIONS A or B** for an amount greater than **your withheld fees** if **you** attempt to recover the **withheld fees** from them. Prior to payment of **your withheld fees** **you** must obtain written confirmation from **your client** that they will not bring a **claim** against **you** if **you** agree not to pursue them for **your withheld fees** and provide it to us.

## ALL SECTIONS

We will not make any payment on **your** behalf under any **SECTION** of this **INSURING CLAUSE** in respect of any **claim** arising directly or indirectly out of **injury** or **damage**:

- a) from **products** or **workmanship**; or
- b) that did not occur directly as a result of **your business activities**.

## INSURING CLAUSE 2: EMPLOYEE BENEFITS LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during the **period of the policy** arising out of any negligent act, error or omission committed by **you** or on **your** behalf in the **administration** of **your employee benefit program**. We will also pay **costs and expenses** on **your** behalf.

Furthermore, we agree to pay on **your** behalf any **costs and expenses** necessarily incurred with **our** prior written consent in respect of measures taken by **you** with the object of avoiding or mitigating a **claim** for which **you** would be entitled to indemnity hereunder had such measures not been taken.

## INSURING CLAUSE 3: THIRD PARTY LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **injury** or **damage** occurring during the **period of the policy** in the course of **your business activities**. We will also pay **costs and expenses** on **your** behalf.

However, we will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim**:

- a) which is covered under **INSURING CLAUSE I**, or would be covered under **INSURING CLAUSE I** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE I**;
- b) arising directly or indirectly out of any **product**.

## INSURING CLAUSE 4: PRODUCTS LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **injury** or **damage** occurring during the **period of the policy** in the course of **your business activities** in connection with any **product**. We will also pay **costs and expenses** on **your** behalf.

However, we will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim** which is covered under **INSURING CLAUSE I**, or would be covered under **INSURING CLAUSE I** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE I**.

## INSURING CLAUSE 5: TENANTS' LEGAL LIABILITY

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **damage** to premises leased to, hired by, on loan to or held in trust by **you** or otherwise in **your** care, custody or control occurring during the **period of the**

**policy** in the course of **your business activities**. We will also pay **costs and expenses** on **your** behalf.

However, we will not make any payment on **your** behalf under this **INSURING CLAUSE** in respect of any **claim**:

- a) which is covered under **INSURING CLAUSE I**, or would be covered under **INSURING CLAUSE I** but for the exhaustion of the **limit of liability** or **aggregate limit of liability** of **INSURING CLAUSE I**;
- b) arising directly or indirectly out of any **product**.

## INSURING CLAUSE 6: NON-OWNED AND HIRED AUTOMOBILE LIABILITY

We agree to pay on **your** behalf to the extent the law allows all sums which the company named as the Insured in the Declarations becomes legally obliged to pay (including liability for claimants' cost and expenses) as a result of any **claim** arising out of **injury** or **damage** occurring during the **period of the policy** and caused by the use or operation of any automobile in the course of **your business activities** that is:

- a) not owned in whole or in part by, or licensed in the name of, the company named as the Insured in the Declarations, or
- b) leased or hired in the name of the company named as the Insured in the Declarations.

We will also pay **costs and expenses** on **your** behalf.

## INSURING CLAUSE 7: LIABILITY FOR DAMAGE TO HIRED OR LEASED AUTOMOBILES

We agree to pay on **your** behalf all sums which **you** become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** arising out of accidental **damage** to an automobile leased to or hired by **you** from a **third party** occurring during the **period of the policy** in the course of **your business activities**. We will also pay **costs and expenses** on **your** behalf.

As a precedent to coverage under **INSURING CLAUSES 6 and 7**, **you** agree and warrant that all **employees** will maintain in full force and effect for the **period of the policy** primary automobile liability insurance in an amount equal to or greater than the minimum primary automobile liability limits required in the state of registration of the automobile. If a **claim** is made and the **employee** is determined to have failed the minimum limits required then the coverage under these **INSURING CLAUSES** will respond as excess coverage as though the minimum limits were in full force and effect, whereby **you** agree to pay all sums within and up to the required minimum limit.

## INSURING CLAUSE 8: MEDICAL EXPENSES

We agree to pay **medical expenses** for **injury** caused by an accident occurring during the **period of the policy**:

- a) on premises **you** own or rent;
- b) on ways next to premises **you** own or rent; or
- c) because of **your business activities**;

provided that:

- a) the injured person, at the time of the accident, is not entitled to benefits under any workers compensation or disability benefits law or similar law; and
- b) the **medical expenses** are incurred and notified to **us** within one year of the date of the accident; and
- c) the injured person submits to examination, at **our** expense, by physicians of **our** choice as often as **we** reasonably require.

We will make these payments regardless of fault.

## INSURING CLAUSE 9: COMMERCIAL PROPERTY

We agree to reimburse **you** up to the **amount insured** shown in the Declarations for:

- a) the cost of repairing **damage** occurring during the **period of the policy** to **your office** buildings, including landlord's fixtures

and fittings, walls, gates and fences, yards, car parks and pavements, piping, ducting, cables, wires and associated control gear and accessories on the premises and extending to the public mains but only to the extent of **your** responsibility;

- b) **damage** occurring during the **period of the policy to contents of every description** contained in **your office**;
- c) **damage** occurring during the **period of the policy to contents of every description** kept at the home of **your** directors, officers, partners or **employees** in the course of **your business activities**;
- d) **damage** occurring during the **period of the policy to contents of every description** temporarily elsewhere, including while in transit;
- e) the necessary and reasonable costs **you** incur following **damage** occurring during the **period of the policy** to glass which belongs to **you** or for which **you** are legally responsible for:
  - i) temporary boarding up;
  - ii) repair of window frames or removal or replacement of fixtures and fittings in the course of replacing the glass;
  - iii) replacement lettering or other ornamental work and alarm foil on glass;
- f) **damage** occurring during the **period of the policy to money** held in the course of **your business activities**:
  - i) in the **office** during business hours, in transit or in a Bank Night Safe;
  - ii) in the **office** outside business hours in a locked safe;
  - iii) at the home of **your** directors, officers, partners or **employees**;
- g) **damage** occurring during the **period of the policy** to the personal belongings of **your employees** or visitors to the **office** provided they are not covered under any other insurance;
- h) the reasonable cost of compiling the **documents**, books of account, drawings, card index systems or other records including film, tape, disc, drum, cell or other magnetic recording or storage media for electronic data processing that **you** need to continue **your business activities** if these items have been lost or distorted as a direct result of **damage** covered under this **INSURING CLAUSE**;
- i) the costs **you** incur to replace locks and keys necessary to maintain the security of **your office** or safes following theft of keys involving force and violence occurring during the **period of the policy**;
- j) the amount of any rent for the **office** which **you** are legally obliged to pay for any period during which the **office** or any part

of it is unusable as a result of **damage** covered under this **INSURING CLAUSE**.

**We** also agree to pay:

- a) **costs and expenses** on **your** behalf;
- b) compensation as shown in the Declarations if any of **your** directors, officers, partners or **employees** who are aged between 16 and 70 on the Inception Date shown in the Declarations suffers an **injury** in the course of **your business activities** in a robbery or attempted robbery and suffers:
  - i. death, **permanent total disablement, loss of a limb or loss of sight** as a direct result of the **injury** within one year of the date of its occurrence;
  - ii. **temporary total disablement**. The compensation for **temporary total disablement** will be the amount shown in the Declarations per week, for a maximum of 104 weeks.

However, **we** will not pay compensation under more than one heading in the Declarations for the same **injury**.

## INSURING CLAUSE 10: BUSINESS INTERRUPTION

**We** agree to reimburse **you** up to the **amount insured** shown in the Declarations for **your loss of income, extra expense, loss of research and development expenditure, project delay costs** and **accounts receivable** resulting solely and directly from an interruption to **your business activities** caused by:

- a) **insured damage** to **your office** or **contents of every description** or to any other property used by **you** at **your office**;
- b) **insured damage** to property in the vicinity of **your office** which prevents or hinders **your** access to **your office**;
- c) **insured damage** at the premises of one of **your** suppliers, other than a supplier of water, gas, electricity or telephone services;
- d) failure in the supply of water, gas, electricity, or telephone services to **your office** for more than 24 consecutive hours caused by **insured damage** to any property;
- e) **your** inability to use **your office** due to restrictions imposed by a public authority following:
  - i) a murder or suicide;
  - ii) an occurrence of a notifiable human disease;
  - iii) **injury** traceable to food or drink consumed at **your office**;
  - iv) vermin or pests at **your office**.

## HOW MUCH WE WILL PAY

The maximum amount payable by us for all **claims, losses, damage, costs and expenses** and **medical expenses** shall not exceed the amounts shown in the Declarations in respect of each **INSURING CLAUSE** unless limited below.

Where more than one **claim** or **loss** arises from the same original cause or single source or event all such **claims** or **losses** shall be deemed to be one **claim** or **loss** and only one **limit of liability** shall be payable in respect of the aggregate of all such **claims** or **losses**.

Where cover is provided under multiple **SECTIONS** of **INSURING CLAUSE 1** only one Limit of Liability shall be payable in respect of that **claim**.

In respect of **INSURING CLAUSES 1** to **7** we may at any time pay to **you** in connection with any **claim** the amount of the **aggregate limit of liability** or **limit of liability** (after deduction of any amounts already paid). Upon such payment being made **we** shall relinquish the conduct and control of and be under no further liability in connection with such **claim** except for the payment of **costs and expenses** incurred prior to the date of such payment (unless the

**aggregate limit of liability** or **limit of liability** is stated to be inclusive of **costs and expenses**).

In respect of **INSURING CLAUSE 9** only:

- a) At **our** option, **we** will pay for any **damaged** property on the following basis:
  - i) for the **office**, the cost of rebuilding or replacing the **damaged** property;
  - ii) for **contents of every description**, the cost of repair or replacement as new.
- b) If, at the time the **damage** occurs, the **amount insured** is less than 85% of the total value of the **office** or **contents of every description** insured, the amount **we** will pay will be reduced in the same proportion as the **amount insured** bears to the total value of the **office** or **contents of every description** insured.
- c) The **amount insured** for the **office** and **contents of every description** will be adjusted monthly in line with any increase in nationally published indices. **We** will not reduce the **amount insured** without **your** consent.

In respect of **INSURING CLAUSE 10** the amount **we** will pay will be:



- a) the difference between **your** actual **income** during the **indemnity period** and the **income** it is estimated **you** would have earned during that period or, if this is **your** first trading year, the difference between **your income** during the **indemnity period** and during the period immediately prior to the **loss**, less any savings resulting from the reduced costs and expenses **you** pay out of **your income** during the **indemnity period**; and
- b) any additional **costs and expenses**;
- c) any **project delay costs** during the **indemnity period**,

- including the total value of any milestone payments that were due in the **indemnity period** but will no longer be received by **you** either during the **indemnity period** or at any point in the future due to permanent termination of the project;
- d) any **research and development expenditure** irrevocably lost during the **indemnity period**; and
- e) any **accounts receivable**, provided **you** keep a record of all amounts owed to **you** and keep a copy of the record away from **your office**.

## YOUR DEDUCTIBLE

**We** shall only be liable for that part of each and every **claim, loss or medical expenses** (which for the purpose of this clause shall be deemed to include all **costs and expenses** incurred) which exceeds the amount of the Deductible stated in the Declarations. Where more than one **claim, loss or medical expenses** arises from the same original cause or single source or event all such **claims, losses or medical expenses** shall be deemed to be one **claim, loss or medical expenses** and only one Deductible will apply.

If any expenditure is incurred by **us** which by virtue of this clause is **your** responsibility then **you** shall reimburse such amount to **us** on **our** request or where possible **we** will deduct such amount from any payment **we** make to **you**.

## DEFINITIONS

### 1. "Accounts receivable"

means:

- a) all sums due to **you** from customers, provided **you** are unable to effect collection thereof as the direct result of **insured damage** to records of accounts receivable;
- b) interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such **insured damage**;
- c) collection expense in excess of normal collection cost and made necessary because of **insured damage**.

### 2. "Administration"

means:

- a) counseling **employees**, including their dependants and beneficiaries, with respect to **your employee benefit program**;
- b) handling records in connection with **your employee benefit program**;
- c) effecting enrolment or termination of any **employee's** participation in a plan included in **your employee benefit program**;
- d) interpreting **your employee benefit program**.

### 3. "Aggregate limit of liability"

means the maximum amount payable as stated in the Declarations by **us** in respect of all **claims**, or in respect of all accidents giving rise to **medical expenses**.

### 4. "Amount insured"

means the maximum amount payable by **us** as shown in the Declarations in respect of each of **INSURING CLAUSES 9** and **10**. The amount applies to each incident of **loss or damage** occurring during the **period of the policy** provided always that after the first incident of **loss or damage** **you** comply with **our** recommendations to prevent any further incidents of **loss or damage**.

### 5. "Breach of client contract"

means **your** unintentional breach of a written contract relating to the performance of **your business activities** for a **client**.

### 6. "Business activities"

means:

- a) in respect of **INSURING CLAUSE I**, the business activities as stated in the Declarations.
- b) in respect of all other **INSURING CLAUSES**, the business activities as stated in the Declarations and shall include, for the purpose of those business activities:
  - i) the ownership, repair and maintenance of **your** property;
  - ii) provision and management of canteen, social, sports and welfare organisations for the benefit of **your** directors, officers, partners or **employees** and medical, fire fighting, and security services;
  - iii) attendance at conferences and tradeshow as either an exhibitor or visitor.

### 7. "Claim"

means a demand received by **you** for money or services, including the service of suit or institution of arbitration proceedings. "**Claim**" shall also mean a threat or initiation of a suit seeking injunctive relief (meaning a temporary restraining order or a preliminary or permanent injunction).

### 8. "Client"

means any **third party** with whom **you** have a written or implied contract in place for the supply of **your business activities** in return for a fee.

### 9. "Contents of every description"

means the contents of **your office** used in connection with **your business activities** which are owned by **you** or for which **you** are legally responsible, including:

- a) computer and ancillary equipment (including monitors, keyboards, printers and software), television and video equipment, photographic, photocopying, surveying and telecommunications equipment;
- b) documents, briefs, manuscripts, plans, business books, computers systems records and programs;
- c) goods held in trust, stock and samples;
- d) wines, spirits and tobacco kept for entertainment purposes;
- e) works of art or precious metals;
- f) fixed glass in windows, doors and fanlights, glass showcases, glass shelves, mirrors and sanitary fixtures and fittings;
- g) heating oil for the **office** contained in fixed tanks in the open

at the address shown in the Declarations;

- h) tenant's improvements, decorations, fixtures and fittings including, if attached to the building, external signs, aerials and satellite dishes;
- i) pipes, ducting, cables, wires and associated control equipment at the address shown in the Declarations and extending to the public mains.

**"Contents of every description"** does not include **money** or the personal belongings of **your employees** or visitors to the **office**.

10. **"Costs and expenses"**

means:

- a) in respect of **INSURING CLAUSES I (SECTIONS A to F only) and 2**,
  - i) **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**, and
  - ii) **your** legal costs and expenses in the defence of any criminal claim made against **you**, provided that **we** maintain all rights of subrogation to recover such legal costs and expenses from any director, officer, partner or **employee** if they are found guilty of such a criminal act, and
  - iii) the cost of bonds to release attachments but without any obligation to furnish these bonds, and
  - iv) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**.
- b) in respect of **INSURING CLAUSES 3 to 7**,
  - i) **your** legal costs and expenses in the defence or settlement of any **claim** made against **you**, and
  - ii) the cost of bonds to release attachments but without any obligation to furnish these bonds, and
  - iii) interest on that part of any judgment **we** pay that accrues after entry of the judgment and before **we** have paid, offered to pay, or deposited in court the part of the judgment that is within the **limit of liability**.
- c) in respect of **INSURING CLAUSES 9 and 10**, the costs and expenses incurred by **you** or on **your** behalf in establishing that **you** have sustained a **loss** or **damage** and the quantum of such **loss** or **damage** or the costs and expenses incurred by **you** or on **your** behalf in mitigating any such **loss** or **damage**.
- d) in respect of **INSURING CLAUSE 9** only, the necessary and reasonable costs and expenses **you** incur to remove debris from the premises or the area immediately adjacent, following **damage** covered under this **INSURING CLAUSE**.

Subject to all **costs and expenses** being incurred with the Claims Managers' written consent (such consent not to be unreasonably withheld).

If **costs and expenses** are shown in the Declarations to be in addition to the **aggregate limit of liability** or **limit of liability** in respect of any of **INSURING CLAUSES I to 5**, and if a payment in excess of the amount of indemnity available hereunder has to be made to dispose of any **claim** or number of **claims**, **our** liability for such **costs and expenses** shall be such proportion thereof as the amount of indemnity available hereunder bears to the amount required to dispose of such **claim** or **claims**.

**Costs and expenses** are always included in the **amount insured** in respect of **INSURING CLAUSES 9 and 10**.

11. **"Damage/damaged"**

means direct physical damage to, or destruction of, or loss of possession of, or loss of use of, tangible property. In respect of

**INSURING CLAUSES 1, 3 and 4 damage** does not include damage to or destruction of, or loss of possession of, or loss of use of, or corruption of, data.

12. **"Documents"**

means deeds, wills, agreements, maps, plans, records, books, letters, certificates, forms, computer programmes or information stored, written or punched into card or tape or magnetic discs or tapes or any other data media and documents of any nature whatsoever, whether written, printed or reproduced by any other method (other than bearer bonds, coupons, banks notes, currency notes and negotiable instruments).

13. **"Employee"**

means any person employed by the company named as the Insured in the Declarations, or any **subsidiary**. **Employee** does not include any director, officer or partner of the company named as the Insured in the Declarations, or any **subsidiary**.

14. **"Employee benefit program"** means group automobile insurance, group homeowners insurance, group life insurance, group dental insurance, group health insurance, profit sharing plans, pension plans, early retirement offerings, employee investment subscription plans, Workers' Compensation, Unemployment Insurance, Social Security, Disability Benefit Insurance, travel, savings or vacation plans or any similar benefit programs.

15. **"Extra expense"**

means the necessary and reasonable extra costs and expenses **you** incur in order to continue **your business activities** during the **indemnity period**.

16. **"Hacking attack"**

means any malicious or unauthorised electronic attack including but not limited to any fraudulent electronic signature, brute force attack, phishing, denial of service attack, that has been initiated by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.

17. **"Income"**

means **your** total income from **your business activities**.

18. **"Indemnity period"**

means the period beginning at the date of the **damage**, or the date the restriction is imposed, and lasting for the period during which **your income** or expenditure is affected as a result of such **damage** or restriction, but for no longer than the number of months shown in the Declarations.

19. **"Injury"**

means:

- a) in respect of **INSURING CLAUSE I** death, bodily injury, mental injury, illness or disease;
- b) in respect of all other **INSURING CLAUSES**:
  - i) death, bodily injury, mental injury, illness, disease, shock, mental anguish or humiliation; and
  - ii) false arrest, detention or imprisonment; and
  - iii) malicious prosecution; and
  - iv) wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies.

20. **"Insured damage"**

means **damage** to property provided that:

- a) the **damage** is covered under **INSURING CLAUSE 9**; or
- b) an insurer has paid the claim, or has agreed to pay the claim, under any other insurance covering such **damage**.

21. **“Intellectual property right”**  
means any intellectual property right including but not limited to trademarks, broadcasting rights, domain names, metatags and copyrights but does not include patents.
22. **“Limit of liability”**  
means the maximum amount payable by **us** as stated in the Declarations in respect of each **claim** or **loss**, or in respect of each accident giving rise to **medical expenses**.
23. **“Loss of a limb”**  
means loss by physical separation of a hand at or above the wrist, of a foot at or above the ankle, and includes total and irrecoverable loss of use of a hand, arm or leg.
24. **“Loss of sight”** means total and irrecoverable loss of sight.
25. **“Loss”**  
means direct financial loss sustained by **you**.
26. **“Money”**  
means cash, bank and currency notes, cheques, travellers’ cheques, postal orders, money orders, crossed bankers’ drafts, current postage stamps, savings stamps and certificates, trading stamps, gift tokens, customer redemption vouchers, company sales vouchers, credit card counterfoils, travellers tickets and contents of franking machines, all belonging to **you**.
27. **“Medical expenses”**  
means reasonable expenses for:  
a) first aid administered at the time of an accident;  
b) necessary medical, surgical, x ray and dental services, including prosthetic devices;  
c) necessary ambulance, hospital, professional nursing and funeral services.
28. **“Office”**  
means the office space (including any outbuildings) **you** occupy at the address shown in the Declarations as more fully described in the application form.
29. **“Period of the policy”**  
means the period between the Inception Date shown in the Declarations and the Expiry Date shown in the Declarations or until the Policy is cancelled in accordance with **CONDITION 10** of this Policy.
30. **“Permanent total disablement”**  
means disablement which entirely prevents the **injured** person from attending to his business or occupation for twenty-four calendar months and at the expiry of that period being beyond hope of improvement.
31. **“Project delay costs”**  
means any additional costs and expenses incurred by **you** as a direct result of a delay to a project, including the interest charges incurred from any reasonable loan required as a result of a delayed milestone payment.
32. **“Product”**  
means any tangible property (including containers, packaging, labelling or instructions, but explicitly excluding any software, data, or source code) after it has left **your** custody or control which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered, processed, cleaned, renovated or repaired by **you** or on **your** behalf in the course of **your business activities**.
33. **“Research and development expenditure”**  
means **your** expenditure on research and development less the cost of reusable materials consumed for the purposes of the research and development.
34. **“Subsidiary”**  
means any company which the company named as the Insured in the Declarations controls through:  
a) holding 50% or more of the voting rights, or  
b) having the right to appoint or remove 50% or more of its board of directors; or  
c) controlling alone, pursuant to a written agreement with other shareholders or members, 50% or more of the voting rights therein.
35. **“Temporary total disablement”**  
means disablement which entirely prevents the **injured** person from attending to his business or occupation.
36. **“Third party”**  
means any person or company who is not a director, officer, partner or **employee** of the company named as the Insured in the Declarations, or any **subsidiary**.
37. **“Virus”**  
means any malicious software code including but not limited to any logic bomb, Trojan horse or worm that has been introduced by any **third parties** or by any **employees** and that is designed to damage, destroy, corrupt, overload, circumvent or impair the functionality of computer systems, software and ancillary equipment.
38. **“We/our/us”**  
means the Underwriters named in the Declarations.
39. **“Withheld fees”**  
means any contractually due fee that **your client** refuses to pay **you**, but excludes any part of the fee that represents **your** profit or mark-up or liability for taxes.
40. **“Workmanship”**  
means any physical workmanship in manufacture, fabrication, construction, erection, installation, assembly, alteration, servicing, remediation, repair, demolition or disassembly (including any materials, parts or equipment furnished in connection therewith) by **you**.
41. **“Wrongful act”**  
means any act or event the subject of **INSURING CLAUSE I** of this Policy for which **you** have purchased coverage.
42. **“You/your”**  
means:  
a) the company named as the Insured in the Declarations, or any **subsidiary**, and  
b) any past, present or future **employee**, trainee, director, officer or partner of the company named as the Insured in the Declarations or any **subsidiary**.

## EXCLUSIONS

## We will not

- a) make any payment on **your** behalf for any **claim**, or
- b) incur any **costs and expenses**, or
- c) reimburse **you** for any **loss, damage**, legal expenses, fees or costs sustained by **you**, or
- d) pay any **medical expenses**:

## EXCLUSIONS RELATING TO OTHER INSURANCES:

1. **Marine and aviation**

arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any aircraft, hovercraft, offshore installation, rig, platform or watercraft.

2. **Auto**

arising directly or indirectly from the ownership, possession or use by **you** or on **your** behalf of any motor vehicle or trailer other than **injury** or **damage**:

- a) caused by the use of any tool or plant forming part of or attached to or used in connection with any motor vehicle or trailer;
- b) occurring beyond the limits of any carriageway or thoroughfare and caused by the loading or unloading of any motor vehicle or trailer;
- c) arising out of the use of any motor vehicle or trailer temporarily in **your** custody or control for the purpose of parking;

provided always that **we** will not make any payment on **your** behalf or incur any **costs and expenses** in respect of any legal liability for which compulsory insurance or security is required by legislation or for which a government or other authority has accepted responsibility.

However, this **EXCLUSION** shall not apply in respect of **INSURING CLAUSES 6** and **7**.

3. **Project-specific insurance**

arising out of any projects for which **you** have purchased project specific insurance.

4. **Product guarantee**

for costs incurred in the repair, alteration, reinstatement, inspection, reconditioning or replacement of any **product** or part thereof and any financial loss consequent upon the necessity for such repair, alteration, reinstatement, inspection, reconditioning or replacement, other than in respect of **INSURING CLAUSE I** when **you** are legally obliged to pay these sums to a **client**.

5. **Product recall**

arising directly or indirectly from the recall of any **product** or part thereof except for **claims** made under **INSURING CLAUSE I** where **you** are legally liable for these costs to a **third party** as the direct result of a **wrongful act** committed or alleged to have been committed by **you**.

6. **Employment practices**

arising out of or resulting from any employer-**employee** relations, policies, practices, acts, omissions, any actual or alleged refusal to employ any person, or misconduct with respect to **employees**.

7. **Employers' liability**

arising directly or indirectly out of **injury** to **your** directors, officers, partners or **employees**.

However, this **EXCLUSION** shall not apply to **employees** on whose behalf contributions are required to be made by **you**

under the provisions of any Workers' Compensation Law in respect of whom liability has been denied by any Workers' Compensation authority.

8. **Directors' and Officers'**

arising out of any personal liability incurred by **your** directors or officers when they are acting in that capacity or managing **you**, or arising from any statement, representation or information regarding **your** business contained within any accounts, reports or financial statements.

9. **Double insurance**

for which **you** are entitled to indemnity under any other insurance except for

- a) any additional sum which is payable over and above such other insurance, or
- b) any contribution that **we** are obliged to make by law and that contribution shall be in proportion to the respective **limits of liability** or **amounts insured** of the Policies.

## EXCLUSIONS RELATING TO THE CONDUCT OF YOUR BUSINESS:

10. **Automobile use without owner's consent**

arising out of or relating directly or indirectly to the use by **you** of any automobile or trailer without the consent of the owner.

11. **Benefit laws**

arising directly or indirectly out of **your** failure to comply with the mandatory provisions of any law concerning workers compensation, unemployment insurance, social security, disability benefits or pension benefits.

12. **Circumstances known at inception**

arising out of any circumstances or occurrences which could give rise to a **claim, loss** or **damage** under this Policy or any accidents giving rise to **medical expenses** of which **you** are aware, or ought reasonably to be aware, prior to the Inception Date of this Policy, whether notified under any other insurance or not.

13. **Computer failure**

in respect of **INSURING CLAUSES 9** and **10** only, arising directly or indirectly from loss or distortion of **your** data or **damage** to **your** electrical or mechanical plant resulting from a failure of **your** computer or ancillary equipment (including monitors, keyboards, printers or software), television or video equipment, photographic, photocopying, surveying or telecommunications equipment. However, **we** will reimburse **you** up to the **amount insured** for damage occurring during the **period of the policy** to **your office** computer and ancillary equipment, but only if **your office** computer and ancillary equipment is subject to a manufacturer's guarantee or a maintenance contract providing free parts and labour in the event of a breakdown.

14. **Contractual fines and penalties**

for fines and penalties arising from **your** breach of contract, including any liquidated damages, service credits or associated penalties arising from **your** failure to perform under a service level agreement

15. **Driving while intoxicated or unlicensed**

in respect of **INSURING CLAUSES 6** and **7** only, arising out of or relating directly or indirectly to the use of a vehicle by **you** where:

- a) the driver of that vehicle is driving under the influence of alcohol or other drugs (DUI), driving while intoxicated (DWI), operating while impaired (OWI), or operating the vehicle



under the influence of alcohol or other drugs (OVI); or  
b) the driver of that vehicle does not hold the appropriate license to use the vehicle.

16. **Employee benefit program advice**

arising directly or indirectly from:

- a) advice given to any person to participate or not to participate in any plan included in **your employee benefit program**;
- b) the failure of any investment to perform as represented by **you**.

17. **ERISA**

arising out of or resulting from **your** acts related to any pension, healthcare, welfare, profit sharing, mutual or investment plans, funds or trusts; or any violation of any provision of the Employee Retirement Income Security Act of 1974, or any amendment to the Act or any violation of any regulation, ruling or order issued pursuant to the Act.

18. **Failure to ensure feasibility of contracts**

arising from any contract where before entering into or amending the contract **you** failed to take reasonable steps to ensure that **you** could fulfil all **your** obligations in accordance with the terms of the contract.

19. **Hired or leased vehicles exclusions**

in respect of **INSURING CLAUSE 7** only, arising out of or relating directly or indirectly to:

- a) **damage** to tires or consisting of or caused by mechanical failure or breakdown of any part of an automobile or by rusting, corrosion, wear and tear, freezing or explosion within the combustion chamber;
- b) **damage** to contents of trailers or to rugs or robes;
- c) **damage** occurring after theft by any person residing in the same dwelling premises as **you**;
- d) **damage** caused by any **employee** engaged in the operation, maintenance or repair of the automobile.

20. **Faulty workmanship**

arising from **damage** to **your** property or **office** caused directly or indirectly by misuse, inadequate or inappropriate maintenance, faulty workmanship, defective design, the use of faulty materials or whilst being cleaned, worked on or maintained.

21. **Long term leased vehicles**

arising out of or relating directly or indirectly to any automobile or trailer hired or leased by **you** from a **third party** for a period greater than 30 consecutive days.

22. **Hazardous devices**

arising directly or indirectly from any **product** which with **your** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft, other aerial device, military vehicle, hovercraft, waterborne craft or any medical equipment.

23. **Legal Action**

where action for damages is brought in a court of law outside the territories specified in the Declarations, or where action is brought in a court of law within those territories to enforce a foreign judgement whether by way of reciprocal agreement or otherwise.

24. **Limiting recovery rights**

arising directly or indirectly out of **your** failure to take reasonable steps to ensure that **our** rights of recovery against any **third party** are not unduly restricted or financially limited by a specific term in any contract or agreement.

25. **Patents**

arising out of the actual or alleged infringement of any patent or inducing the infringement of any patent.

26. **Retroactive Date**

in respect of **INSURING CLAUSES 1** and **2** only, arising out of any actual or alleged **wrongful act** or negligent act, error or omission committed before the date specified as the Retroactive Date in the Declarations.

27. **RICO**

for or arising out of any actual or alleged violation of the Organised Crime Control Act of 1970 (commonly known as the Racketeer Influenced and Corrupt Organisation Act or RICO), as amended, or any regulation promulgated thereunder or any similar federal, state or local law, whether such law is statutory, regulatory or common law.

28. **SEC**

for or arising out of the actual or alleged violation of the Securities Act of 1933, the Securities Exchange Act of 1934, or any similar state or federal law, or any amendment to the above laws or any violation of any order, ruling or regulation issued pursuant to the above laws.

29. **Unjust enrichment**

in respect of **INSURING CLAUSE 1** only, for that part of any **claim** that results in **you** being in a better financial position as a direct result of **your wrongful act** than **you** would have been if **you** had not committed the **wrongful act**.

30. **Wilful or dishonest acts**

in respect of **INSURING CLAUSES 1** and **2** only, arising out of any wilful, malicious, reckless or dishonest act or omission committed by **you**.

GENERAL INSURANCE EXCLUSIONS:

31. **Antitrust**

for or arising out of any actual or alleged antitrust violation, restraint of trade, unfair competition, false, deceptive or unfair trade practices, violation of consumer protection laws or false or deceptive advertising unless insurable under the applicable law.

32. **Asbestos**

arising from or contributed to by the manufacturing, mining, use, sale, installation, removal, distribution of or exposure to asbestos, materials or products containing asbestos, or asbestos fibres or dust, unless arising directly from a **wrongful act** committed by **you**:

- a) on or after 1st January 1990, or
- b) on or after the date specified as the Retroactive Date in the Declarations,

whichever is the later, in the course of **your business activities**.

33. **Associated companies**

- a) in respect of any **claim** made by any company firm or partnership in which the company named as the Insured in the Declarations has an executive or financial interest, unless such **claim** emanates from an independent **third party**; or
- b) in respect of any **claim** made by any company firm partnership or individual which has an executive or financial interest in the company named as the Insured in the Declarations or any **subsidiary**, unless such **claim** emanates from an independent **third party**; or
- c) arising out of or resulting from any of **your** activities as a trustee, partner, officer, director or employee of any employee trust, charitable organization, corporation, company or business other than that of the company named as the Insured in the Declarations or any **subsidiary**; or
- d) in respect of any **claim** made by or on behalf of the company named as the Insured in the Declarations or any **subsidiary**.

34. **Earthquake**

in respect of **INSURING CLAUSES 9 and 10** only, caused by earthquake, except for:

- a) ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
- b) ensuing **damage** to **contents of every description** while in transit.

35. **Electromagnetic fields**

directly or indirectly arising out of, resulting from or contributed to by electromagnetic fields, electromagnetic radiation, electromagnetism, radio waves or noise.

36. **Flood**

in respect of **INSURING CLAUSES 9 and 10** only, caused by flood, including waves, tides, tidal waves, or the rising of, the breaking out, or the overflow, of any body of water whether natural or manmade, but this **EXCLUSION** does not apply to:

- a) ensuing **loss** or **damage** which results directly from fire, explosion, smoke or leakage from fire protective equipment; or
- b) ensuing **damage** to **contents of every description** while in transit.

37. **Fines**

for fines, penalties, civil or criminal sanctions and for punitive, multiple or exemplary damages unless insurable under the applicable law.

38. **Insolvency**

arising out of or relating directly or indirectly from **your** insolvency or bankruptcy, or the insolvency or bankruptcy of any **third party**. Furthermore, no coverage is provided under **INSURING CLAUSE 10** if **you** become insolvent or bankrupt.

39. **Land or water**

arising directly or indirectly from **damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by **you** or otherwise in **your** care, custody or control.

40. **Miscellaneous property exclusions**

in respect of **INSURING CLAUSES 9 and 10** only, arising directly or indirectly from:

- a) wear and tear, inherent defect, rot, vermin or infestation, or any gradually operating cause;
- b) dryness or humidity, being exposed to light or extreme temperatures, unless the **damage** is caused by storm or fire;
- c) coastal or river erosion;
- d) theft from an unattended vehicle unless the item is out of sight;
- e) frost, other than **damage** due to water leaking from burst pipes forming part of the permanent internal plumbing provided the **office** is occupied and in use;
- f) arising directly or indirectly from unexplained loss or disappearance or inventory shortage of your property;
- g) a **hacking attack** or **virus**.

41. **Named windstorms**

in respect of **INSURING CLAUSES 9 and 10** only, caused:

- a) directly or indirectly by a windstorm which is given a name by the National Hurricane Center, Miami, FL, regardless of any other cause or event that contributes concurrently or in any sequence to the **loss** or **damage**, or
- b) by rain, snow, sand or dust, whether driven by wind or not, if that **loss** or **damage** would not have occurred but for a windstorm which is given a name by the National Hurricane Center, Miami, FL. But if the windstorm results in a cause of

**loss** or **damage** other than rain, snow, sand or dust, and that resulting cause of **loss** or **damage** is not otherwise excluded under this Policy, **we** will pay for that **loss** or **damage**. For example, if the windstorm damages a heating system and fire results, the **loss** or **damage** attributable to the fire is covered subject to any other applicable policy provisions.

42. **Nuclear**

arising directly or indirectly from or contributed to by :

- 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 explosive nuclear assembly or nuclear component thereof.

43. **Pollution**

arising directly or indirectly out of :

- a) pollution or contamination of the atmosphere, or of any water, land, buildings or other property;
- b) any enforcement action in connection with the containment, clean-up, removal or treatment of such pollution or contamination;

but this **EXCLUSION** shall not apply in respect of :

- i) **INSURING CLAUSE I, SECTION D**; or
- ii) premises leased to, hired by, on loan to or held in trust by **you** or otherwise in **your** care, custody or control in respect of:
  - a) **injury** caused by smoke, fumes, vapor or soot from equipment used to heat the building, or
  - b) **injury** or **damage** arising out of heat, smoke or fumes from a **hostile fire**. For the purpose of this **EXCLUSION** a **hostile fire** means one which becomes uncontrollable or breaks out from where it was intended to be.
- iii) **INSURING CLAUSES 9 and 10** to the backing up of sewers, sumps, septic tanks or drains.

44. **Toxic mould / fungus**

arising directly or indirectly from any loss, **injury**, **damage**, costs or expenses, including, but not limited to, losses, **damage**, costs or expenses related to, arising from or associated with clean-up, remediation, containment, removal or abatement, caused directly or indirectly, in whole or in part, by:

- a) any **fungus**, **mould**, mildew or yeast, or
- b) any **spore** or toxins created or produced by or emanating from such **fungus**, **mould**, mildew or yeast, or
- c) any substance, vapour, gas, or other emission or organic or inorganic body or substance produced by or arising out of any **fungus**, **mould**, mildew or yeast, or
- d) any material, product, building component, building or structure, or any concentration of moisture, water or other liquid within such material, product, building component, building or structure, that contains, harbours, nurtures, or acts as a medium for any **fungus**, **mould**, mildew, yeast or **spore** or toxins emanating therefrom,

regardless of any other cause, event, material, product or building component that contributed concurrently or in any sequence to that loss, **injury**, **damage**, cost or expense.

However, this **EXCLUSION** shall not apply in respect of **INSURING CLAUSE I** where the loss, **injury**, **damage**, costs or expenses arose directly from a **wrongful act** committed by **you** in the course of **your business activities**.

For the purposes of this **EXCLUSION** the following definitions are added to the Policy:

**Fungus** includes, but is not limited to, any plants or organisms

belonging to the major group Fungi, lacking chlorophyll, and including **moulds**, rusts, mildews, smuts and mushrooms.

**Mould** includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and **fungi** that produced moulds.

**Spore** means any dormant or reproductive body produced by or arising from or emanating out of any **fungus, mould, mildew, plants, organisms or microorganisms**.

45. **Trade Debt**  
arising out of or in connection with any trading losses or trading liabilities incurred by any business managed or carried on by **you**, or any loss of **your** profit arising from the loss of any client, account or business.
46. **War and terrorism**  
directly or indirectly 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 **claim, loss, damage, costs and expenses or medical expenses**;  
a) war; invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war; rebellion, insurrection, civil commotion assuming the proportions of or

amounting to an uprising, military or usurped power; or  
b) any **act of terrorism**.

For the purpose of this **EXCLUSION** an **act of terrorism** means an act, including but not limited to the use of force or violence or the threat thereof, of any person or groups of persons, whether acting alone or on behalf of or in connection with any organisations or governments, committed for political, religious, ideological or similar purposes including the intention to influence any government or to put the public, or any section of the public, in fear.

This **EXCLUSION** also excludes **claims, losses, damage, costs and expenses or medical expenses** of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to a) or b) above.

This **EXCLUSION** does not apply to any **claim or loss** arising directly from a **hacking attack or virus**.

## CONDITIONS

1. **What you must do in the event of a claim or loss**  
Should any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** become aware of any **claim, loss or damage** or of any situation that could give rise to a **claim or loss** or should an allegation, complaint or **claim** be made or intimated against **you**, the following obligations must be complied with by **you**:
- a) **You** must not admit liability for or settle or make or promise any payment in respect of any **claim, loss or damage** which may be covered under this Policy. Neither must **you** incur any **costs or expenses** in connection with such a **claim, loss or damage** without **our** written consent.  
However, **you** should arrange for any urgent repairs following **damage** covered under **INSURING CLAUSE 9** to be done immediately. Before any other repair work begins **we** have the right to inspect **your damaged** property. **We** will notify **you** if **we** intend to do this.
- b) The Claims Managers, as specified in the Declarations, must be notified as soon as is reasonably possible and in any event within 75 days if during the **period of the policy**
- i) **you** suffer any **loss or damage** that could be covered by this Policy or any allegation, complaint or **claim** is made or intimated against **you**, whether verbal or made in writing.
- ii) any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** become aware of the intention of any person to make a complaint allegation or **claim** against **you**, whether verbal or in writing. Once notice has been made to **us**, **we** will regard any subsequent **claim** that may arise as notified under this Policy.
- iii) **you** become aware of an action of **yours** that could give rise to a **loss, allegation, complaint or claim** being made or intimated against **you**. Once notice has been made **we** will regard any subsequent **claim** that may arise as notified under this Policy.
- iv) **you** discover reasonable cause for suspicion of fraud or dishonesty whether this could give rise to a claim under this Policy or not and **we** shall not be liable under this Policy for any **claim or loss** sustained in consequence of any fraudulent or dishonest act or omission

committed after the date of such discovery.

**We** have nominated the Claims Managers to accept notice on **our** behalf.

Due to the nature of the coverage offered by this Policy, any unreasonable delay by any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** in notifying the Claims Managers of (i), (ii), (iii) or (iv) above could lead to the size of the **claim, loss or damage** increasing or to **our** rights being restricted. **We** shall not be liable for that portion of any claim that is due to any unreasonable delay in any director, partner, or senior executive officer of the company named as the Insured in the Declarations and any **subsidiary** notifying the Claims Managers of any **claim, loss or damage** in accordance with this **CONDITION**.

- c) **We** will expect **you** to provide **us** with full and accurate information about any matter that **you** notify to **us** under **your** obligations set out above. Once notice has been made **you** must give the Claims Managers all the assistance and information that is reasonably required. **You** must follow their advice and do anything that they reasonably require **you** to do to avoid, minimise, settle or defend any **claim, loss or damage**.

If **you** think a crime has been committed **you** must report it to the appropriate law enforcement authorities. **You** must also permit the Claims Managers and any other parties that are appointed by the Claims Managers to notify the appropriate law enforcement authorities of any **claim, loss or damage** where this action is deemed necessary, and **you** must comply with the advice given by such authorities.

If any of **your** computer or ancillary equipment is lost or stolen while it is temporarily removed from the **office**, **we** will not make any payment unless **you** report the loss to the police within 48 hours after **you** become aware of it.

## 2. Continuous cover

If **you** have neglected, through error or oversight only, to report a **claim** made against **you** during the period of a previous renewal of this Policy issued to **you** by **us**, then provided that **you** have maintained uninterrupted insurance of the same type with **us** since the expiry of that earlier Policy, then, notwithstanding **EXCLUSION 12**, **we** will permit the matter to be reported under this Policy and will indemnify **you**, provided that:

- a) the indemnity will be subject to the applicable **aggregate limit of liability** or **limit of liability** of the earlier Policy under which the matter should have been reported or the **aggregate limit of liability** or **limit of liability** of the current Policy, whichever is the lower;
- b) **we** may reduce the indemnity entitlement by the monetary equivalent of any prejudice which has been suffered as a result of the delayed notification;
- c) the indemnity will be subject in addition, to all of the terms, **CONDITIONS**, **DEFINITIONS** and **EXCLUSIONS**, other than the **aggregate limit of liability** or **limit of liability**, contained in this current Policy.

## 3. Fraudulent claims

If **you** notify us of any claim knowing that claim to be false or fraudulent in any way, **we** shall have no responsibility to pay that claim or any other claims under this insurance and the Policy will be treated as if it had not been effected.

## 4. Agreement to pay claims

**We** have the right and duty to take control of and conduct in **your** name the investigation settlement or defence of any **claim**. **We** shall also pay on **your** behalf **costs and expenses** incurred with **our** prior written consent (subject to the Limits of Liability and applicable Deductible shown in the Declarations) provided that **we** shall not

- a) pay for the **costs and expenses** of any part of a **claim** that is not covered by this Policy.
- b) incur any **costs and expenses** in the defence of any **claim** unless there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defence.

**We** shall always endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and shall pay on **your** behalf the amount so agreed by us and the claimant. If **we** cannot settle by such means, **we** shall pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject always to the Limit of Liability shown in the Declarations.

If **you** refuse to consent to a settlement that **we** recommend and that the claimant will accept, **you** must then defend, investigate or settle the **claim** at **your** own expense. As a consequence of **your** refusal, **our** liability for any **claim** shall not be more than the amount that **we** could have settled the **claim** for had **you** consented, plus any **costs and expenses** incurred prior to the date of such refusal.

## 5. Innocent non-disclosure

**We** will not seek to avoid the Policy or reject any claim on the grounds of non-disclosure or misrepresentation except where the non-disclosure or misrepresentation was reckless or fraudulent or **you** failed to conduct a full inquiry prior to providing the information that forms the basis of this insurance. In the event that **we** seek to avoid the Policy or reject any claim on this basis the burden of proving otherwise rests solely with **you**.

## 6. Your duty to advise us of changes

If **you** become aware that any of the information that **you** have given **us** in the Application Form or elsewhere in connection with **your** application for this insurance has materially changed

then **you** must advise **us** as soon as is practicable. In this event, **we** reserve the right to amend the terms, conditions or premium of the Policy.

## 7. Risk management conditions

If **we** attach any additional conditions to **your** Policy regarding any risk survey or risk management timetable or any other similar conditions then it is **your** responsibility to ensure that these conditions are complied with by the deadlines shown in the conditions.

## 8. Our rights of recovery

If any payment is made under this Policy in respect of a **claim**, **loss** or **damage** and there is available to **us** any of **your** rights of recovery against any other party then **we** maintain all such rights of recovery. **We** shall not exercise these rights against any past, present or future **employee**, director, officer or partner of the company named as the Insured in the Declarations or any **subsidiary**, unless such payment is in respect of any wilful, malicious or dishonest acts or omissions.

**You** must do nothing to impair any rights of recovery. At **our** request **you** will bring proceedings or transfer those rights to **us** and help **us** to enforce them. Any recoveries shall be applied as follows:

- a) first, to **us** up to the amount of **our** payment on your behalf including **costs and expenses**;
- b) then to **you** as recovery of **your** Deductible or other amounts paid as compensation or costs and expenses.

## 9. Waiver of subrogation

Notwithstanding **CONDITION 8** above **we** agree to waive **our** rights of subrogation against a responsible **third party client** of **yours** but only if **you** and **your client** have entered into a contract that contains a provision requiring **us** to do this.

## 10. Cancellation

This Policy may be cancelled:

- a) by **you** at any time on request; or
- b) by **us** if **we** give **you** 30 days written notice, or
- c) by **us** if **we** give **you** 15 days written notice, should any amount in default not be paid within 15 days of the due date shown in the Debit Note that accompanies this Policy.

If **you** give **us** notice of cancellation in accordance with a) above, the earned Premium shall be computed at pro rata to the number of days that the Policy is in effect subject to a minimum amount of 30% of the Premium.

If **we** give **you** notice of cancellation in accordance with b) or c) above, the Premium shall be computed at pro rata to the number of days that the Policy is in effect.

The Policy Administration Fee shall be deemed fully earned upon inception of the Policy.

## 11. Prior subsidiaries

In respect of **INSURING CLAUSE I** only, should an entity cease to be a **subsidiary** after the Inception Date of this Policy, cover in respect of such entity shall continue as if it was still a **subsidiary**, until the termination of this Policy, but only in respect of any **claim** or **loss** that arises out of any act, error or omission committed by that entity prior to the date that it ceased to be a **subsidiary**.

## 12. Mergers and acquisitions

During the **period of the policy**, if the company named as the Insured in the Declarations or any **subsidiary**

- a) purchases assets or acquires liabilities from another entity in



an amount greater than 10% of the assets of the company named as the Insured in the Declarations as listed in its most recent financial statement; or

- b) acquires another entity whose annual revenues are more than 10% of the annual revenues of the company named as the Insured in the Declarations for their last completed financial year;

then **you** shall have no coverage under this Policy for any **claim, loss or damage** that arises directly or indirectly out of the purchased or acquired entity unless the company named as the Insured in the Declarations gives **us** written notice prior to the purchase or acquisition, obtains **our** written consent to extend coverage to such additional entities, assets or exposures, and agrees to pay any additional premium required by **us**.

If during the **period of the policy** the company named as the Insured in the Declarations consolidates or merges with or is acquired by another entity, then all coverage under this Policy shall terminate at the date of the consolidation, merger or acquisition unless **we** have issued an endorsement extending coverage under this Policy, and the company named as the Insured in the Declarations has agreed to any additional premium and terms of coverage required by **us**.

### 13. Extended reporting period

In respect of **INSURING CLAUSES 1 and 2** only, an Extended Reporting Period of 60 days following the Expiry Date as shown in the Declarations shall be automatically granted hereunder at no additional premium. Such Extended Reporting Period shall cover **claims** first made and reported to **us** during this 60 day Extended Reporting Period but only in respect of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy. No **claim** shall be accepted by **us** in this 60 day Extended Reporting Period if **you** are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but for the exhaustion thereof.

### 14. Optional extended reporting period

In respect of **INSURING CLAUSES 1 and 2** only, in the event of:

- a) cancellation or non-renewal of this Policy by **us**, or  
b) cancellation or non-renewal of this Policy by **you** because **you** have ceased to trade as the direct result of the retirement or death of all of **your** directors, officers or partners;

then **you** shall have the right, upon payment of the Optional Extended Reporting Period Premium shown in the Declarations in full and not proportionally or otherwise in part, to have issued an endorsement providing a 365 day Optional Extended Reporting Period from the cancellation or non-renewal date. Such Optional Extended Reporting Period shall cover **claims** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to **us** during this Optional Extended Reporting Period but only in respect of any **claim** arising out of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy.

In order for **you** to invoke the Optional Extended Reporting Period option, the payment of the Optional Extended Reporting Period Premium shown in the Declarations for this Optional Extended Reporting Period must be paid to **us** within 15 days of the date of the non-renewal or cancellation.

At the commencement of this Optional Extended Reporting Period the entire premium shall be deemed earned and in the event that **you** terminate the Optional Extended Reporting Period for any reason prior to its natural expiration, **we** will not be liable to return any premium paid.

The right to the Extended Reporting Period or the Optional Extended Reporting Period shall not be available to **you** where:

- a) Cancellation or non-renewal by **us** is due to non-payment of premium, or  
b) Cancellation or non-renewal by **us** is due to **your** failure to pay such amounts in excess of the applicable Limit of Liability or within the amount of the applicable Deductible as is required by this Policy in the payment of **claims**.

At the renewal of this Policy, **our** quotation of different premium, Deductible or Limit of Liability or changes in policy language shall not constitute non-renewal by **us** for the purposes of granting this Optional Extended Reporting Period.

In no event shall the granting of the Extended Reporting Period or the Optional Extended Reporting Period increase **our** Limit of Liability, including **costs and expenses**, as shown in the Declarations.

### 15. Service of suit

In the event of a dispute between **you** and **us** regarding this Policy **we** agree, at **your** request, to submit to the jurisdiction of a Court of competent jurisdiction within the United States of America.

Nothing in this **CONDITION** constitutes or should be understood to constitute a waiver of **our** rights to commence an action in any Court of competent jurisdiction in the United States of America, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States of America or the laws of any State of the United States of America.

It is further agreed that service of process in such suit may be made upon:

Mendes & Mount LLP  
750 Seventh Avenue  
New York, N.Y. 10019-6829

and that in any suit instituted against **us**, **we** will abide by the final decision of such Court or of any Appellate Court in the event of an appeal. Mendes & Mount LLP are authorized and directed to accept service of process on **our** behalf in any such suit and, at **your** request, to give a written undertaking to **you** that they will enter a general appearance on **our** behalf in the event such a suit is instituted.

Additionally, in accordance with the statute of any state, territory or district of the United States which makes such a provision, **we** hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as **our** true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by **you** arising out of this Policy. Mendes & Mount LLP are hereby designated as the firm to whom the above-mentioned officer is authorized to mail such process or a copy thereof.

# A&E



## INSURANCE FOR ARCHITECTS & ENGINEERS



CFC Underwriting Limited  
85 Gracechurch Street  
London EC3V 0AA  
United Kingdom  
T: +44 (0) 207 220 8500  
F: +44 (0) 207 220 8501  
E: [enquiries@cfcunderwriting.com](mailto:enquiries@cfcunderwriting.com)  
W: [www.cfcunderwriting.com](http://www.cfcunderwriting.com)