

CATLIN INSURANCE COMPANY (UK) LIMITED

SURVEYORS

ERRORS AND OMISSIONS INSURANCE

ANY ONE CLAIM

(DEFENCE COSTS IN ADDITION)

Specimen

TABLE OF CONTENTS

	<u>Page</u>
1 SCHEDULE	3
2 INSURING CLAUSES	5
3 DEFINITIONS	7
4 LIMIT OF INDEMNITY	9
5 DEDUCTIBLE	10
6 EXCLUSIONS	11
7 CONDITIONS	17
8 INTERPRETATION	22
9 GOVERNING LAW AND DISPUTES	23
10 POLICYHOLDER COMPLAINTS	24

Specimen

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

1 SCHEDULE

Policy Number:

1) **Insured:**

2) **Insured's Address:**

3) **Insured's Business:**

Fees: £

4) **Period of Insurance:**

From:

To:

both days at 00:01 am

5) **Limit of Indemnity:**

£

any one **Claim** (with defence costs and expenses in addition) under insuring clauses 2.1 and 2.2(b) and

- (a) £250,000 in the aggregate for any and all Clause 2.1 Cyber Liability **Claims** (listed in Clause 4.1(b))
- (b) £50,000 in the aggregate under Clause 2.2(a) (Loss of Documents) (c) £ 50,000 in the aggregate under Clause 2.3 (Data Protection)
- (d) £25,000 in the aggregate under Clause 2.4 (Ombudsman Awards)
- (e) £10,000 in the aggregate under Clause 2.6 (Witness Attendance)
- (f) £100,000 in the aggregate under Clause 2.7 (Estate Agents and Health and Safety Legislation)
- (g) £10,000 in the aggregate under Clause 2.8 (Legal Representation Cost)
- (h) £250,000 in the aggregate (including defence costs and expenses) under Clause 6.8

6) **Deductible:**

£

each and every **Claim**, excluding defence costs and expenses where applicable, except for

- (a) Clause 2.2(a) – Loss of Documents £ 1,000
- (b) Clause 2.3 – Data Protection £ 1,000
- (c) Clause 2.4 – Ombudsman Awards £ 1,000 all each and every **Claim**.

7) **Premium:**

£

Plus IPT:

£

Insurance **Premium Tax**

Total:

£

- 8) (a) Jurisdiction: United Kingdom
(b) Territorial Limits: Worldwide excluding United States of America and Canada
- 9) Retroactive Date:
- 10) **Proposal:** Statements of Fact or completed Proposal Form attached
- 11) **Endorsements:**

Signed for and on behalf of Catlin Insurance Company (UK) Limited

Date:

Specimen

2 INSURING CLAUSES

2.1 Civil Liability

The **Insurer** shall indemnify the **Insured** in respect of any civil liability whatsoever (including claimant's costs) arising from any **Claim** first made against the **Insured** and **Notified** during the **Period of Insurance** and which arises out of the conduct of the **Insured's Business** by the **Insured** and/or by others acting for and/or on behalf of the **Insured**.

2.2 Loss of Documents

The **Insurer** shall indemnify the **Insured** for:

- (a) reasonable and necessary costs, incurred with the **Insurer's** prior written consent, of repair, replacement or reconstitution of, and
- (b) any settlement, damages, interest and claimant's costs arising from a **Claim** involving any **Document** which has been unintentionally destroyed, damaged, lost or mislaid during the **Period of Insurance** (and which after diligent search cannot be found) the occurrence of which has been **Notified** during the **Period of Insurance**.

2.3 Data Protection

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

2.4 Ombudsman Awards

The **Insurer** shall indemnify the **Insured** against any award made by an Ombudsman in respect of any case accepted by the Ombudsman for review in his position as Ombudsman under any recognised scheme and first notified by the Ombudsman to the **Insured** during the **Period of Insurance**.

2.5 Defence Costs and Expenses

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

- (a) the defence, investigation or settlement of any **Claim** which falls to be dealt with under insuring clause 2.1, 2.2(b), 2.4 or clause 6.8, or
- (b) the investigation of any circumstance **Notified** to the **Insurer** under condition 7.2 which may give rise to a **Claim**, incurred by or on behalf of the **Insured** with the prior written and continuing consent of the **Insurer** (such consent not to be unreasonably withheld or withdrawn) but not including the **Insured's** own costs and expenses or any value attributable to the time spent by the **Insured** or any **Employee** in dealing with a **Claim** or a circumstance.

2.6 Witness Attendance

Insurers will pay to or reimburse the **Insured** the cost of attendance at any Court, Arbitration or Adjudication hearing by the **Insured**, including any **Employee** or any other relevant party (but not including expert witnesses) in the event that the legal advisers acting on behalf of the **Insured** require such attendance, provided that the **Insurer** has given its prior written consent to such attendance, as a witness of fact in connection with a **Claim** made against the **Insured** for which cover is afforded under this policy at the following rates for each day or part thereof on which such attendance is required:

- (a) Any principal, partner, member or director of the **Insured** £ 200.00
- (b) Any **Employee** £ 100.00
- (c) Any other relevant party up to £ 200.00

2.7 Estate Agents and Health and Safety Legislation

The **Insurer** will pay on behalf of the **Insured** 80% of any reasonable costs and expenses incurred with the prior consent of the **Insurer** for the defence of any proceedings first brought against the **Insured** during the **Period of Insurance** and notified to the **Insurer** during the **Period of Insurance** under:

- (a) The Property Misdescriptions Act 1991, and/or
- (b) The Estate Agents Act 1979, and/or
- (c) The Health and Safety at Work Act 1974, and/or
- (d) The Health and Safety at Work (Northern Ireland) Order 1978, and/or
- (e) The Construction (Design and Management) Regulations 1994, and/or
- (f) Similar or successor legislation to any of the above

provided always, that such indemnity will only be provided where the **Insurer** believes that defending such proceedings could protect the **Insured** against any concurrent or subsequent **Claim** arising from the **Insured's Business** as undertaken by the **Insured**, and provided that such indemnity does not extend to any criminal penalties or fines.

2.8 Legal Representation Cost

The **Insurer** will pay on behalf of the **Insured** 80% of any costs and expenses incurred by the **Insured** during the **Period of Insurance** with the prior written consent of the **Insurer** for representation at properly constituted hearings, tribunals or proceedings arising out of any **Claim** first made during the **Period of Insurance** in respect of the conduct of the **Insured's Business** by the **Insured** which may be or may become the subject of indemnity under this policy which are otherwise not indemnified under insuring clause 2.5 (Defence Costs and Expenses).

3 DEFINITIONS

- 3.1 "**Claim**" means any demand made of, or assertion of a right against, the **Insured** which is communicated to the **Insured** in writing, or costs under clauses 2.2(a) or 2.3 and shall include:-
- (a) any decision by an Adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or an adjudication clause or rules contained in a contract, and
 - (b) any award by an Arbitrator or a tribunal of Arbitrators (whether under the Surveyor's and Valuer's Arbitration Scheme or otherwise) and,
 - (c) any award by Ombudsman for which indemnity is given under insuring clause 2.4.
- 3.2 "**Computer System**" means any computer, data processing equipment media or part thereof, or system of data storage and retrieval, or communications systems, network, protocol or part thereof, or storage device, microchip, integrated circuit, real time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers) firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communication system, world-wide web site, **Internet** site, **Intranet** site, **Extranet** site, or web address(es).
- 3.3 "**Document**" means all and any records arising from the **Insured's Business**, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which the **Insured** is legally responsible, whilst in the custody of the **Insured**, or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by the **Insured** in the ordinary course of the **Insured's Business**.
- 3.4 "**Employee**" means any person, other than a partner, principal, director or member of the **Insured**, who has been, is or shall be under a contract of service or apprenticeship, supplied to, hired, or borrowed by the **Insured**, or under any work experience or similar scheme, whilst employed or engaged by and under the control of the **Insured** in connection with the **Insured's Business**.
- 3.5 "**Extranet**" means a restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.6 "**Insured**" means any firm, company or limited liability partnership named in part 1 of the **Schedule**, including such predecessor(s) in business to the **Insured** as are disclosed to the **Insurer** in the proposal form, and shall also include:
- (a) former partners and/or former directors and/or former members of the **Insured** in respect of **Claims** first made against the **Insured** during the **Period of Insurance** arising out of the conduct of the **Insured's Business**,
 - (b) those persons named as consultants or former consultants in the proposal form to this policy, in respect of the **Insured's Business** undertaken on behalf of the **Insured** only.
 - (c) any retired partner, director or member of the **Insured** remaining as a consultant to the **Insured**,
 - (d) any **Employee** and/or former **Employee** of the **Insured** and any self-employed person, in respect of **Insured's Business** undertaken on behalf of the **Insured** only,
 - (e) the estate, heirs and executors and/or legal/personal representatives of those parties listed above, in the event of their death, incapacity, insolvency or bankruptcy.

- 3.7 "**Insured's Business**" means the professional services performed or the advice given by the **Insured** in relation to those activities declared in the **Proposal**, and as described in the **Schedule** and shall comprise those services or advice given which are normally undertaken by members of the Royal Institution of Chartered Surveyors or which have otherwise been declared to the **Insurer** and which are performed by or on behalf of the **Insured** within the Territorial Limits set out in paragraph 8 (b) of the **Schedule**, and also, services performed or advice given by the **Insured** whilst holding an individual appointment in respect of work directly or indirectly connected with the **Insured** where those services are normally undertaken by members of the Royal Institution of Chartered Surveyors or have otherwise been declared to the **Insurer** and, if a fee was charged, the fee with respect to such services or advice is taken into account in ascertaining the income of the **Insured** and has been disclosed to the **Insurer**.
- 3.8 "**Insurer**" means Catlin Insurance Company (UK) Limited.
- 3.9 "**Internet**" means the worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.10 "**Intranet**" means one or more inter-connected networks with restricted access to the **Insured** via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.11 "**Notified**" means that notice is sent in writing by the **Insured** (or its insurance agent) to, and received by the **Insurer**. For the avoidance of doubt, notice is not valid if given by any third party (other than the **Insured's** insurance agent).
- 3.12 "**Period of Insurance**" means the period stated in part 4 of the **Schedule**.
- 3.13 "**Premium**" means the amount stated in part 7 of the **Schedule**.
- 3.14 "**Proposal**" means the written information bearing the date stated in part 10 of the **Schedule** and containing particulars and statements together with any other information and documents supplied to the **Insurer** by or on behalf of the **Insured**.
- 3.15 "**Schedule**" means the document entitled "**Schedule**" that relates to and forms part of this policy.
- 3.16 "**Terrorist Action**" means the actual or threatened:
- (a) use of force or violence against persons or property, or
 - (b) commission of an act dangerous to human life or property, or
 - (c) commission of an act that interferes with or disrupts an electronic or communications system undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government, power, authority, or military force, when any of the following applies:
 - (i) the apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy, or

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

4 LIMIT OF INDEMNITY

4.1 The limit of indemnity of this policy is the maximum amount the **Insurer** shall be called upon to pay under this policy in respect of:

- (a) any one **Claim** under clauses 2.1 (subject to sub-clause (b) below) and 2.2(b), with defence costs and expenses under clause 2.5 in addition, and
- (b) the aggregate of all **Claims** during the **Period of Insurance** in respect of the following types of cyber liability **Claim**, collectively, under clause 2.1:
 - (i) defamation;
 - (ii) malicious falsehood (including slander of title and slander of goods);
 - (iii) unintentional false attribution of authorship or passing off;
 - (iv) unintentional infringement of intellectual property rights (including copyright, trademark, service mark, moral rights, patent rights, registered design), breach of confidence or infringement of any rights of privacy;
 - (v) unintentional misuse of any information which is either confidential or subject to statutory restrictions on its use;
 - (vi) misuse by any **Employee** of the **Insured's** electronic signature or external email and arising out of the **Insured's Business** transacted via the **Internet, Extranet** and/or via the **Insured's** own web site, **Internet** site, web address(es) and/or via the transmission of electronic mail or documents by electronic means;

with any defence costs and expenses under clause 2.5 in addition, and

- (c) the aggregate of all **Claims** during the **Period of Insurance** under clauses 2.2 (a), 2.3, 2.4, 2.6, 2.7, 2.8 and 6.8, INCLUDING any defence costs and expenses under clause 2.5.

The limits of indemnity available under sub-paragraphs (b) and (c) above are not in addition to the limit of indemnity available under sub-paragraph (a).

4.2 The limit of indemnity in respect of any **Claim** shall be the amount stated in part 5 of the **Schedule**. In respect of indemnity under clauses 2.2(a), 2.3, 2.4, 2.6, 2.7, 2.8, 6.8 AND **Claims** set out at sub-clauses 4.1(b) (i-vi) above an aggregate limit of indemnity in the amount stated in parts 5(a) to 5(h) inclusive of the **Schedule** shall apply.

- 4.3 All payments made by the **Insurer** by way of indemnity under clauses 2.1, 2.2, 2.3, 2.4, 2.6, 2.7, 2.8 and 6.8 or any endorsement or otherwise (except for the payment under clause 2.5 of defence costs and expenses for **Claims** under clauses 2.1 and 2.2(b) where such costs and expenses are payable in addition to the limit of indemnity) relating to the same **Claim** (as ascertained under clause 4.5 below) shall erode the limit of indemnity in respect of any one **Claim** under this policy.
- 4.4 It is agreed by the **Insured** that if a payment is required or made in settlement of any **Claim** or circumstance which exceeds the limit of indemnity available under this policy, the **Insurer's** liability for defence costs and expenses shall be limited to such proportion as the amount of the limit of indemnity available in respect of such **Claim** or circumstance bears to the amount required or paid in settlement and the **Insured** hereby agrees to make any consequent repayment due to the **Insurer** immediately upon demand, failing which the **Insurer** will be entitled to deduct the amount of repayment from any **Claim** settlement monies due from them under this policy.
- 4.5 All **Claims** (including costs sought under insuring clauses 2.2(a) or 2.3) whether made against or sought by one or more **Insureds**, wholly or substantially arising from or having any connection with or relation to:
- (a) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause, or
 - (b) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause, or
 - (c) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated,

shall be deemed to be one **Claim** or single application for costs under insuring clause 2.2(a) or 2.3 for the purposes of deciding the applicable limit of indemnity and the application of the deductible under this policy. The **Insurer** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim** or application for costs.

- 4.6 All the **Insurer's** limits of indemnity and all applicable deductibles shall apply to all the **Insureds** jointly.

5 DEDUCTIBLE

- 5.1 A separate deductible being the first part of any **Claim** (excluding defence costs and expenses under clause 2.5 if payable) which is payable by the **Insured** before the **Insurer** shall have any liability to indemnify under this policy shall apply to each and every **Claim**. Payment of the deductible by the **Insured** is a condition precedent to the **Insured** being indemnified by the **Insurer**. The obligations under this clause apply to all **Insureds** jointly and not severally.
- 5.2 The deductible in respect of any **Claim** shall be in the amount stated in part 6 of the **Schedule**.

6. EXCLUSIONS

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

6.1 Known Claim or Circumstance

any **Claim** or circumstance which may give rise to a **Claim** which:

- (a) was or ought to have been known to the **Insured** prior to the **Period of Insurance**, or,
- (b) has been notified to and accepted by any insurers pursuant to any other policy of insurance attaching prior to the inception of this policy, or,
- (c) was disclosed as a material fact to the **Insurer** and which formed the basis of this policy,

For the avoidance of doubt, this exclusion clause shall not reduce the rights of the **Insured** under (or otherwise affect the application of) Special Institution Condition 7.11 of this policy;

6.2 Death or Bodily Injury

bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any **Employee** whilst in the course of their employment for or on behalf of the **Insured**;

6.3 Property Damage

any damage to or destruction or loss of any property, except as provided under insuring clause 2.2(a), including loss of use, unless caused directly by the negligent act, negligent error, negligent omission or breach of professional duty in the course of the **Insured's Business**;

6.4 Trading Losses

any trading losses or trading liabilities incurred by the **Insured** or any business managed by or carried on by or on behalf the **Insured** including any loss of client account or custom;

6.5 Fines and Penalties

any regulatory or disciplinary investigations or proceedings (apart from the indemnity provided under insuring clauses 2.3, 2.7 or 2.8) or any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages;

6.6 Director and Officer

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

6.7 Nuclear and War

any of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;

- (b) insurrection, rebellion, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (c) discharge, explosion, or use of a weapon of mass destruction, whether or not employing nuclear fission or fusion, or chemical, biological, radioactive or similar agents, by any party at any time for any reason;

6.8 Asbestos

any actual or alleged liability whatsoever directly or indirectly arising out of, resulting from or in consequence of, or in any way involving or connected with asbestos, or any materials containing asbestos in whatever form or quantity, EXCEPT THAT this policy will provide indemnity to the **Insured**, notwithstanding the above, where any **Claim** or circumstance arises as a direct result of a negligent act, negligent error or negligent omission committed or alleged to have been committed by the **Insured** in the conduct of the **Insured's Business**, but limited to:

- (a) the cost of re-performance of the **Insured's** work and/or rectification and/or remediation;
- (b) made in respect of any diminution in value of buildings and/or structures (or any part of either or both of them) arising out of a survey and/or valuation of the **Insured** undertaken in accordance with RICS Practice Statements or standard market procedures relating to survey and valuations, but provided always that:
- (c) no indemnity shall be granted in respect of any damage to property other than that part of the building and/or structure which requires re-performance of the **Insured's** work and/or rectification and/or remediation;
- (d) no indemnity shall be granted in respect of or arising out of any bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or death;
- (e) the indemnity available in respect of this extension of cover will be limited to the amount stated in part 5(h) of the **Schedule** any one **Claim** and in the aggregate of all such **Claims** within the **Period of Insurance** of this policy, including defence costs and expenses under insuring clause 2.5 of this policy. This indemnity is not in addition to the limit of indemnity otherwise available under this policy and is subject to all other policy terms and conditions;

6.9 Toxic Mould

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

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

6.10 Terrorist Action

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

6.11 Pollution and Contamination

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, excluding asbestos (which for policy indemnity purposes shall be dealt with solely under clause 6.8 above) and including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including but not limited to material to be recycled, reconditioned or reclaimed) or contamination of any kind, except that, notwithstanding the above, where such **Claim** arises from the **Insured's** negligent structural design or specification or failure to report a structural defect in a property, this policy will indemnify the **Insured** but only for that part of any **Claim** which relates to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure and excluding the cost of remedying and/or rectifying any loss of or damage to the land and/or environment or any loss of value;

6.12 Radioactive Contamination and Explosive Nuclear Assemblies

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

6.13 Land and Vehicles

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

6.14 Jurisdiction and Territorial Limits

any:

- (a) legal proceedings brought in a court of law outside the jurisdictions stated in part 8(a) of the **Schedule** or brought in a court of law within the stated jurisdictions to enforce a judgement or order made in any court of law outside those jurisdictions, or
- (b) any liability arising from the **Insured's Business** undertaken outside the territorial limits shown in part 8 (b) of the **Schedule**;

6.15 Warranties and Guarantees

any:

- 6.15.1 contractual liability incurred by the **Insured** in the course of the **Insured's Business** arising from:
 - (a) the **Insured's** acceptance or guarantee of, in any express contractual term, of fitness for purpose, or

- (b) any express guarantee given by the **Insured** including as to the period of any project, or
- (c) any express contractual penalty made between the **Insured** and a third party, or
- (d) the **Insured's** acceptance of liability for liquidated damages.

HOWEVER Clause 6.15.1 shall not apply where:

- (i) the **Insurer** has expressly approved the contractual terms giving rise to the liability, or
- (ii) the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording has been used;

In addition, sub-clause 6.15.1(a) shall not apply if the liability of the **Insured's** would have existed to the same extent in the absence of any such contractual term or clause.

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

Sub-clause 6.15.2 is only applicable to contractual liabilities entered into on or after 01/10/2001 and shall not apply where:

- (i) the **Insurer** has expressly approved the contractual terms giving rise to the liability, or
- (ii) the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording has been used;

6.16 Related Companies

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

6.17 Joint Venture

any association or joint venture conducted with any third party other than in respect of any **Claim** or circumstance arising from the **Insured's Business**, provided that such **Claim** or circumstance emanates from a wholly independent third party;

6.18 Other Insurance

any matter in respect of which the **Insured** is (or but for the existence of this policy would be) entitled to indemnity under any other contract of insurance, except either where such other insurance is written as specific excess insurance to this policy, or to the extent of such part of the limit of indemnity of this policy as exceeds the limit of the other policy had this policy not been effected;

6.19 Employers Liability

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

6.20 Goods and Services

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

6.21 Products

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

6.22 Adjudications

any of the following:

- (a) any decision by an adjudicator against the **Insured** who was not independent of the parties to the dispute,
- (b) any **Claim** concerning an adjudication arising from an adjudication clause in a contract which contains timetable provisions for adjudication which are more onerous to the **Insured** than those contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996,
- (c) any arbitration award (whether made under the Surveyor's and Valuer's Arbitration Scheme or otherwise) made in respect of any **Claim** or counterclaim where the seat of the arbitration was located outside England, Scotland, Wales or Northern Ireland except where that seat was agreed to beforehand by the **Insurer**,
- (d) any costs or expenses associated with the investigation, conduct or settlement of any case(s) accepted by an ombudsman for review in his position as ombudsman;

6.23 Retroactive Date

any act error or omission committed, or any loss suffered, or costs incurred, or liability arising prior to the Retroactive Date specified in part 9 of the **Schedule**;

6.24 Computer Virus

the transmission or receipt of:

- (a) any virus and/or program, and/or
- (b) a code that causes loss or damage to any documents and/or **Computer System** and/or prevents or impairs any **Computer System** from its proper function or performance;

6.25 Market Fluctuations

any financial return, depreciation or loss of investment when such financial return, depreciation or loss arises from normal or abnormal fluctuations in any financial stock or commodity or other markets, which are outside the influence or control of the **Insured** and any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments, or in connection with any investment advice given or services performed which have not been authorised where such authorisation is required under any statutory regulation by an appropriate statutory authority, EXCEPT THAT this exclusion will not apply to the survey and/or valuation of any tangible property undertaken as part of the **Insured's Business** for the purpose of any actual or proposed sale or purchase, or insurance or stock valuation;

6.26 Information Technology

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

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

6.27 Financial Services

any **Claim** arising out of any activities which are regulated by the Financial Services Authority and which relate to investments of the kind formerly described in Part 1 of Schedule 1 to the Financial Services Act 1986, except that this exclusion will not apply to investments which were not previously included in Part 1 of Schedule 1 to the Financial services Act 1986 but which are included in any legislation which replaces or succeeds that Act or any statutory successor thereto for any activity carried out prior to any such change;

6.28 Surveys and Valuations

any **Claim** arising out of a survey or valuation unless it was undertaken by:

- (a) A Fellow or Professional Member of the Royal Institution of Chartered Surveyors (RICS) or a Fellow or Associate of:
 - (i) the Incorporated Society of Valuers and Auctioneers (ISVA), or
 - (ii) the Architects and Surveyors Institute (ASI), or
 - (iii) the Faculty of Architects and Surveyors (FFAS), or
 - (iv) the Royal Institute of British Architects (RIBA), or
 - (v) the Royal Incorporation of Architects in Scotland (RIAS),

- (b) anyone who has not less than five years experience of such work,
- (c) any other person delegated by the **Insured** to execute such work as part of their training, provided that either:
 - (i) such delegated person is supervised by a person falling within the requirements of either of sub-paragraphs (a) or (b) above, or,
 - (ii) the **Insurer** has agreed in writing prior to cover being granted to the delegated person undertaking such work.

B The **Insurer** shall not have any liability under this policy:

6.29 Fraud and Dishonesty

for or in anyway connected with any **Claim** or circumstance solely and directly arising from or connected with the actual or alleged dishonest or fraudulent act or omission of any former or present partner, principal, director, member, consultant or sub- contractor (whether committed alone or in collusion with others) of the **Insured** and which caused any client of the **Insured** to suffer a loss PROVIDED ALWAYS:

- (a) no indemnity shall be afforded in respect of any **Claim** arising out of such dishonesty or fraud on the part of any person after discovery by the **Insured** in relation to that person of reasonable cause for suspicion of fraud or dishonesty;
- (b) any dishonesty and/or fraud committed by a person or persons acting in concert shall for the purposes of this policy be treated as one **Claim**;
- (c) the annual accounts and client accounts where applicable of the **Insured** have been prepared and/or certified by an independent properly qualified accountant or auditor;

6.30 Insolvency

arising solely out of the insolvency or bankruptcy of the **Insured**. However this exclusion shall not apply to:

- (a) any **Claim** in respect of monies held on behalf of third parties, and/or
- (b) any **Claim** in respect of which, but for the insolvency or bankruptcy of the **Insured**, indemnity would be available under this policy.

7 CONDITIONS

7.1 Contracts (Rights of Third Parties) Act

Under the contract of insurance comprised by this policy there is no intention to confer any rights on any party except the **Insurer** and those named or defined as **Insureds** herein, and no third party shall acquire any rights under or in relation to this policy nor be entitled to the benefit of any of its terms by operation of the Contracts (Rights of Third Parties) Act 1999 or any re-enactment of or amendment to it. In any proceedings by a third party against the **Insurer** for the enforcement of a term of this policy the **Insurer** shall have available to it by way of defence or set-off any matter which would have been available to it if the proceedings had been brought by the **Insured**.

7.2 Notification

As a condition precedent to the right to be indemnified under this policy the **Insurer** must be **Notified** in writing to the Notification Address set out below as soon as practicable during the **Period of Insurance**:

- (a) of any **Claim** (or within fourteen working days of receipt, whichever is the earlier);
- (b) regardless of any previous notice, of receipt of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- (c) of any circumstance of which the **Insured** shall become aware which might give rise to a **Claim** and in any event before the expiry of the **Period of Insurance**;
- (d) of any circumstance of which the **Insured** shall become aware which might give rise to an entitlement to be indemnified under this policy and in any event before the expiry of the **Period of Insurance**;
- (e) of any reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner, director, member, **Employee** or consultant of the **Insured** which might give rise to a **Claim** under this policy and in any event before the expiry of the **Period of Insurance**;
- (f) of an occurrence that may require representation at a properly constituted tribunal or proceeding, which might give rise to a **Claim** under this policy and in any event before the expiry of the **Period of Insurance**.

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

With respect to the right of indemnity for any ombudsman's award under insuring clause 2.4, as a condition precedent to any such right, the **Insured** shall as soon as it becomes aware that a case directly affecting the **Insured** is being reviewed by any ombudsman, give immediate notice of this in writing to the **Insurer** at the Notification Address below.

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

Notification Address:

The Claims Department
Angel Underwriting
Little Tey Road
Feering, Colchester
Essex
CO5 9RS

7.3 Duty to Cooperate

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

7.4 No Admission of Liability

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

7.5 Adjudication and Decisions

7.5.1 The **Insured** agrees that it will not in any circumstances, except with the prior consent (such consent not to be unreasonably withheld) of the **Insurer**, accept the decision of any Adjudicator as being final in the determination of the dispute under adjudication.

7.5.2 The **Insured** agrees that if requested by the **Insurer** it will permit the **Insurer** to pursue legal, arbitration or other proceedings in the name of and on behalf of the **Insured** to challenge, appeal, open up or amend any decision, direction, award or the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the Adjudicator. The **Insured** agrees it will give all assistance requested of them by the **Insurer** in relation to any such actions.

7.6 Dishonest or Fraudulent Claim Recovery

Where a **Claim** or circumstance against the **Insured** involves the dishonest or fraudulent act or omission of any **Employee** of the **Insured**:

- (a) the **Insured** shall at the request and expense of the **Insurer** take all reasonable steps to obtain reimbursement from such person;
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from the **Insured** or any monies of such persons held by the **Insured** shall not be repaid;
- (c) nothing in this policy shall preclude the **Insurer** from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;
- (d) no payment shall be made by the **Insurer** under this policy until after the final ascertainment of the amount of any recovery from the dishonest or fraudulent person or persons or their estates or legal representatives.

7.7 Discharge of Policy Liability

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

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

and thereafter the **Insurer** will (except in respect of defence costs and expenses under insuring clause 2.5 incurred prior to any such payment with their prior and continuing consent) cease to have any further liability under this policy.

7.8 Conduct of Claim

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

7.9 Subrogation

7.9.1 Upon operation of this policy in relation to any **Claim** or circumstance, the **Insurer** shall be subrogated to all the rights of recovery of the **Insured** against any third party provided always that the **Insurer** shall not exercise any such rights against the **Insured** (unless liability has resulted in whole or in part from any act or omission on the part of any **Insured** who is dishonest, fraudulent, criminal or malicious) or any **Employee** or former **Employee** unless the loss in respect of which indemnity is provided under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**.

7.9.2 Notwithstanding the above, waiver of subrogation rights will not operate in respect of any consultant or former consultant where a separate and valid Professional Indemnity policy is maintained on behalf of any such consultant.

7.9.3 The **Insured** shall, without charge, provide such assistance as the **Insurer** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which the **Insurer** would become subrogated under this policy. The **Insured** agrees that at the option of the **Insurer**, the **Insurer** may have the conduct of any proceedings to recover monies paid or payable by the **Insurer**, whether or not the **Insured** has an interest in such proceedings by reason of any uninsured losses.

7.10 Dishonest and Fraudulent Policy Claims

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

7.11 Special Institution Condition

7.11.1 Where there has been non-disclosure or misrepresentation of facts or untrue statements in the proposal form and there has been no intention to deceive or mislead the **Insurer**, the **Insurer** will not exercise its right to avoid this policy. However, where such non-disclosure or misrepresentation has prejudiced the **Insurer's** consideration of terms under this policy, the **Insurer** shall be entitled to charge a reasonable additional premium in the light of such prejudice.

7.11.2 However, in the case of a **Claim** first made against the **Insured** during the **Period of Insurance** where:

- (a) the **Insured** had previous knowledge of the circumstance which might give rise to such **Claim**, and
- (b) the **Insured** should have notified the circumstance under any preceding policy,

then, where the indemnity or cover under this policy is greater or wider in scope than that to which the **Insured** would have been entitled under any such preceding policy (whether with other insurers or not) the **Insurer** shall only be liable to afford indemnity in such amount and to such extent as would have been afforded to the **Insured** by such preceding policy.

The provisions of this sub-clause (7.11.2) shall not apply to any **Claim** where the **Claim** itself was known to the **Insured** prior to the inception of this policy, nor shall they apply to insuring clause 2.4 in any event.

7.11.3 Where the **Insured's** breach of or non-compliance with any provision in clauses 7.2, 7.3, 7.4, 7.6 or 7.9 of this policy has resulted in prejudice to the handling or settlement of any **Claim**, the **Insurer** shall be entitled to reduce the indemnity afforded by this policy in respect of such **Claim** (including defence costs and expenses) to such sum as in the **Insurer's** reasonable opinion would have been payable by them in the absence of such prejudice.

7.12 Cancellation

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

- (a) the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over the **Insured** or the making of any court order to that effect;
- (b) the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver, or administrator over any of the **Insured's** assets;

- (c) the suspension by the **Insured** of payment of its debts or any threat by the **Insured** to do so or the entering into of a voluntary arrangement or other scheme of composition with its creditors by the **Insured**;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which the **Insured** may be domiciled or any territory within the territorial limits. For the purpose of this condition alone the **Insured** shall mean only the firm or company named in part 1 of the **Schedule**.

7.13 Data Protection Act 1998

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

7.14 Premium Payment

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

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

7.14.3 It is agreed that the **Insurer** shall give not less than 15 days prior notice of cancellation to the **Insured** via the broker. If **Premium** due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically be revoked, if not, this policy shall automatically terminate at the end of the notice period.

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

7.15 Difference in Conditions

In relation to any dispute concerning the terms of this policy, it is agreed between the **Insurer** and the **Insured** that the relevant term(s) of the minimum insurance requirements of the Royal Institution of Chartered Surveyors extant at the inception of this policy shall take precedence over any term(s) of this policy which are less favourable to the **Insured**.

8 INTERPRETATION

In this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;

- (b) if any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- (c) the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

9. GOVERNING LAW AND DISPUTES

9.1 This policy shall be governed by and construed in accordance with the law of England and Wales or Scotland, at the choice of the **Insured** and, save as set out below, the Courts of England and Wales shall have exclusive jurisdiction for hearing and determining any dispute arising out of or in connection with this policy.

9.2 Any dispute arising between the **Insurer** and the **Insured**;

- (a) as to the correct interpretation of the definition of **Insured's Business** under this policy or
- (b) regarding the application of the Special Institution Condition (clause 7.11) or
- (c) as to whether a survey or valuation was carried out in accordance with RICS Practice Statements or standard market procedures for the purpose of the application of exclusion 6.29

shall be referred by either party for arbitration in accordance with English law, under ARIAS arbitration rules and procedure to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors, whose decision shall be binding on both parties.

9.3 Notwithstanding the provisions as to arbitration set out above, if the **Insured** and the **Insurer** cannot agree on a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution) the dispute will be resolved by reference to Queen's Counsel of the English Bar, for the time being, to be mutually agreed between the **Insurer** and the **Insured** whose decision shall be binding. In the event of disagreement on the choice of Queen's Counsel the appointment shall be made by the Chairman for the time being of the Bar Council. The costs of the dispute reference shall be allocated by the agreed or appointed Queen's Counsel on a fair and equitable basis.

10 POLICYHOLDER COMPLAINTS

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

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

Complaints Department
Catlin Insurance Company (UK) Limited
3 Minster Court
London
EC3R 7DD
Tel No: 020 7626 0486
Fax No: 020 7623 9101

Complaints that cannot be resolved by the Complaints Department may be referred to the Financial Ombudsman Service at:

South Quay Plaza
183 Marsh Wall
London
E14 9SR
Tel No: 0845 080 1800
e-mail: complaint.info@financial-ombudsman.org.uk