



POLICY WORDING

DESIGN AND CONSTRUCT POLICY



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1. ABOUT YOUR POLICY

This Policy has been produced by Pen Underwriting Limited a Managing General Agent of the Insurer). The Insurer have delegated authority to Pen Underwriting Limited to underwrite Insurance for You on their behalf.

Your Policy is made up of Sections prepared from a proposal form or declaration or statement of fact provided by You or from Your instructions or any information in connection with this insurance provided to Pen Underwriting or the Insurer or Your insurance adviser.

This policy wording explains the insurance provided under this contract.

Each Section may include terms Definitions Conditions and Exclusions unique to the Section which should to be read in conjunction with the Policy Definitions, Conditions and Exclusions.

An Endorsement forms an addition to the Section and varies the insurance provided by the Section.

The Schedule or Appendix and any Endorsement should be read together for precise details of Your insurance protection.

Please take care to review all documentation carefully to ensure that the information provided accurately reflects Your circumstances and that the cover provided suits Your requirements.

You should pay particular attention to any terms conditions limits and exclusions including endorsements which may require You to take action.

Duty of Fair Presentation

This Policy is a contract between You and the Insurer.

Please read the whole document carefully. It is arranged in different sections. It is important that

- **You** are clear which sections You have requested and want to be included;
- **You** understand what each section covers and does not cover;
- **You** understand Your own duties under each section and under the insurance as a whole.

Please contact Your broker immediately if this Document is not correct or if You would like to ask any questions.

Important Notice: The Insured is required to make a fair presentation of the risk to Insurers.

If the Insured breaches its duty to provide a fair presentation and any such breach was deliberate or reckless, Insurers may regard the Policy as void and are not required to return any paid Premium to the Insured.

If the breach was not deliberate or reckless, Insurers' remedy shall depend upon what Insurers would have done if the Insured had complied with the duty of fair presentation:

1. Insurers may regard the Policy as void if Insurers would not have entered into the Policy on any terms in the absence of the breach. In this case, the Insurers must return the premium paid.
2. If the Insurers would have entered into the Policy, but on different terms (other than terms relating to premium) the Policy is to be treated as if those different terms applied from the outset, if the Insurer so requires.
3. If the Insurers would have entered into the Policy but would have charged a higher premium the Insurers may reduce proportionately the amount to be paid on a Claim (and, if applicable, the amount already paid on prior claims).

Where: (i) there has been a failure to comply with a term (express or implied) of this Policy, other than a term which defines the risk as a whole; and (ii) compliance with such term would tend to reduce the risk of loss of a particular kind and/or loss at a particular location and/or loss at a particular time, the Insurer cannot rely on the breach of such term to exclude, limit or discharge its liability if You show that the failure to comply with such term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred

If You breach any warranty in this Policy, the Insurer's liability under the Policy shall be suspended from the time of the breach until the time when the breach is remedied (if it is capable of being remedied). The Insurer will have no liability to You for any loss which occurs, or which is attributable to something happening, during the period when the Insurer's liability is suspended.

Authorised Signatory
Jonathan Turner



Complaints

At Pen Underwriting, it is always our intention to provide a first class standard of service. However, it is appreciated that occasionally things go wrong. In a majority of cases the agent who arranged the insurance will be able to resolve any concerns and You should contact them directly in the first instance.

Alternatively You can complain by contacting Pen Underwriting Limited (as per the contact details below) quoting Your Policy and/or Claim number. We will investigate Your concerns and provide a response as soon as possible.

Address:
Pen Underwriting Limited Complaints
7th Floor Spectrum Building
55 Blythswood Street
Glasgow
G2 7AT

Telephone: 0141 285 3539
Email: pencomplaints@penunderwriting.com

You can also contact Your Insurer, contact details can be found in the Schedule.

Should You remain dissatisfied having received a Final Response to Your complaint and You fit the definition of an 'eligible complainant', You may then be able to refer Your complaint to the Financial Ombudsman Service (FOS). Please note that the FOS allow 6 months from the date of the Final Response to escalate Your complaint to them. Further details on eligibility and the referral process can be found on the FOS Website.

Address
The Financial Ombudsman Service
Exchange Tower
London
E14 9SR

Telephone: 0800 0234567 (for landline users)
Telephone: 0300 1239123 (for mobile users)
Email: complaint.info@financial-ombudsman.org.uk
Website: www.financial-ombudsman.org.uk

Compensation Scheme

The providers of this insurance as defined in this Policy are covered by the Financial Services Compensation Scheme (FSCS). If they cannot meet their obligations You may be entitled to compensation under this scheme depending on the type of insurance and the circumstances of the Claim

You are covered for 90 per cent of the Claim without any upper limit. However, for compulsory classes of insurance You are covered for 100 per cent of the Claim without any upper limit.

How To Make A Claim

At Pen Underwriting, we understand that claims form a critical component of our offering the moment the Policy becomes tangible and we are relied upon to deliver upon our commitment to You.

Pen Underwriting have assembled an experienced team who embody our three key principles of:

1. **Partnership** – working together to achieve the optimum outcome to the Claim
2. **Expertise** – we employ staff and engage service providers who are experts in their field
3. **No-nonsense** – we apply a flexible and proactive approach to the claims process

For details on how to notify Your Claim, please refer to Your Schedule.

The Law That Governs This Policy

Unless the parties have agreed otherwise in writing any dispute concerning the interpretation of this Policy shall be governed and construed in accordance with English law and shall be resolved within the exclusive jurisdiction of the courts of England and Wales.

Data Protection

Pen Underwriting Limited are the data controller of any personal information you provide to us or personal information that has been provided to us by a third party. We collect and process information about you in order to arrange insurance policies and to process claims. Your information is also used for business purposes such as fraud prevention and detection and financial management. This may involve sharing your information with third parties such as insurers, brokers, reinsurers, claims handlers, loss adjusters, credit reference agencies, service providers, professional advisors, our regulators, police and government agencies or fraud prevention agencies.

We may record telephone calls to help us monitor and improve the service we provide. For further information on how your information is used and your rights in relation to your information please see our Privacy Policy - <https://www.penunderwriting.co.uk/Privacy-and-Cookies>. If you are providing personal data of another individual to us, you must tell them you are providing their information to us and show them a copy of this notice.

2. DEFINITIONS

Certain words in this policy have special meanings. These meanings are given below and apply where the words appear in bold.

Asbestos Surveys

A management survey or a refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006 or any comparable survey or inspection whether of commercial or residential land or property.

Business partner

Any person in business with **you** under the terms of a partnership agreement whether express or implied under legislation.

Circumstance

Incident, occurrence, fact, matter, act or omission that may give rise to a **claim**.

Claim

Demand for or an assertion of a right to civil compensation or civil damages or an intimation of an intention to seek such compensation or damages.

Defence costs

Reasonable costs and expenses necessarily incurred with **our** written consent in the investigation, defence or settlement of any **claim** or investigation into any **circumstance** which may be the subject of indemnity under this policy.

Employee

Any natural person who is:

- a) under a contract of service or apprenticeship with **you**
- b) labour master or labour only subcontractor or persons supplied by any of them
- c) self-employed
- d) under a work experience or similar scheme
- e) hired or borrowed by **you** from another **employer**

and working for **you** in connection with the **provision of professional services** while under **your** direct control or supervision.

Environmental Audit

Any investigation specifically intended to assess whether there is actual **pollution or contamination** present.

Excess

The amount stated in this policy, the schedule or any endorsement in respect of each and every **claim** for which **you** will be responsible.

Insured

Firm, partnership, unincorporated organisation or the company stated in the schedule as the insured and **your** predecessors including:

- a) any current or former **business partner**, director, **member** or principal or any person who becomes a **business partner**, director, **member** or principal during the period of insurance
- b) any current or former **employee** or any person who becomes an **employee** during the period of insurance
- c) the personal representative of any **business partner**, director, **member**, principal or **employee** in the event of their death, incapacity, insolvency or bankruptcy
- d) any retired **business partner**, retired director or retired **member** whilst acting as a consultant to the insured.

Member

A member of **your** limited liability partnership as defined in the Limited Liability Partnerships Act 2000.

Nuclear Installation

Any installation of such class or description as may be prescribed by regulations made by the relevant Secretary of State from time to time by statutory instrument being an installation designed or adapted for:

- a) the production or use of atomic energy
- b) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation
- c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter being matter which has been produced or irradiated in the production or use of nuclear fuel.

Nuclear Reactor

Any plant including any machinery, equipment or appliance whether affixed to land or not designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

Pollution or Contamination

Pollution or contamination of buildings or other structures or of water or land or the atmosphere.

Related entity

Any individual or entity or its subcontractors or assignees:

- a) which wholly or partially own, operate or manage **you**
- b) in which **you** have an ownership interest in **excess** of 20%
- c) which is controlled, operated or managed by **you**.

Professional Services

The performance by the **insured** of any:

- i) design or specification
- ii) coordination of design and or integration of design
- iii) feasibility studies including work in relation to applications for planning consent
- iv) technical information calculation
- v) surveying
- iv) Principal designer role as defined under the Construction (Design and Management) Regulations 2015
- iiiv) duty to warn of defects in the professional services of others

Provided always that they are undertaken only by or under the direction and direct control of a qualified architect, engineer or surveyor or other person having other relevant professional qualifications or five years experience appropriate to the work undertaken.

Territorial Limits

Worldwide excluding:

- a) the United States of America
- b) Canada

and any territories under their jurisdiction.

We, Us, Our or Ours

The participating insurance company shown in the schedule

You, Your, Yours or Yourselves

The person, people (either acting in partnership or on behalf of an unincorporated organisation) or the company stated in the schedule as the **insured** including **your** predecessors

3. THE COVER

We will indemnify any **insured** in respect of any **claim** first made against any **insured** and notified to **us** during the period of insurance including liability for claimants' costs and expenses arising out of the conduct of the **professional services** within the territorial limits for:

- a) any breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed by any **insured** or by any specialist designers, consultants or subcontractors directly appointed by and acting on behalf of any **insured**. Provided always that any rights of recourse against any specialist designer, consultant or sub contractor directly appointed by and acting on behalf of any **insured** have not been waived or otherwise impaired any breach of professional duty due to any negligent act, error or omission of any specialist designer, consultant or sub contractor in the provision of any **professional services** for whom the **insured** has assumed liability under a novation agreement

Provided always that

- i) **we** will only indemnify the **insured** if their rights of recourse against any specialist designer, consultant or sub contractor have not been waived or otherwise impaired
- ii) no indemnity will be provided in relation to any **claim** arising out of any circumstances which the **insured** knew or in **our** reasonable opinion ought to have been reasonably aware of at the time such liability was assumed
- b) any act of libel or slander committed or uttered in good faith by any **insured**
- c) unintentional infringement of any intellectual property right, design right, registered design, trademark or patent committed by any **insured**
- d) unintentional breach of confidence by any **insured**
- e) the consequence of any loss of or damage to records associated with the provision of **professional services** including computer systems records held by **you** or for which **you** are legally responsible but excluding negotiable instruments of whatsoever nature. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **us** and such backed up records are held at a separate location.

The limit of indemnity will include **defence costs**.

Defence costs and any payment under clauses 3.3, 3.4, 3.5, 3.7 and 3.8 will not be subject to any **excess**.

3.1 Adjudication

We will also indemnify any **insured** in respect of 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

the Scheme for Construction Contracts Regulations (NI) 1997 which may otherwise be the subject of indemnity under this policy. Provided always that the adjudication provisions in the contract:

- a) provide that the adjudicator must be independent of the parties to the dispute; and
- b) does not allow for the adjudicator's decision to finally determine the dispute; and
- c) does not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial or other considerations; and
- d) does not place any conditions upon the timing of commencement of legal or arbitration proceedings excluding adjudication proceedings.

It is a condition precedent to **our** liability under this clause that **you**:

- i) notify **us** within 2 working days and during the period of insurance of:
 - 1) the receipt of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract; and
 - 2) any matters of which **you** become aware which might reasonably be expected to give rise to a **claim** against **you** being referred to an adjudicator; and
- ii) promptly supply **us** with all details relating to any reference to adjudication including copies of all documentation made available to **you** or subsequently by **you** to the adjudicator; and
- iii) allow **us** to appoint advisers; and
- iv) co-operate with **us** and any advisers **we** may appoint in the conduct of the adjudication; and
- v) meet any request, direction or timetable of the adjudicator; and
- vi) must not agree to accept the decision of the adjudicator as finally determining the dispute without our prior written consent.

We will be entitled to pursue legal proceedings, arbitration or other proceedings in the name of and on behalf of **you** to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the adjudicator or to stay the enforcement of any such decision, direction, award or exercise of power. **You** will give all such assistance as **we** may reasonably require in relation to such proceedings or arbitration.

3.2 Costs of Criminal Proceedings

We will also indemnify **you** against reasonable legal costs and expenses necessarily incurred with **our** prior consent in the defence of any criminal proceedings first made against **you** and notified to **us** during the period of insurance under:

- a) the Bribery Act 2010
- b) the Construction (Design and Management) Regulations 2015
- c) the Corporate Manslaughter and Corporate Homicide Act 2007
- d) the Health and Safety at Work etc Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978
- e) any statutory or secondary legislation implementing the Council Directive 92/57/EEC or similar legislation enacted elsewhere in the world.

Provided always that:

- i) the proceedings arise out of the provision of **professional services**; and
- ii) the **circumstances** giving rise to such criminal proceedings may otherwise give rise to an indemnity under this policy; and
- iii) in **our** reasonable belief the defence of such criminal proceedings would assist in the defence of any **claim** against any **Insured**.

Any subsequent or concurrent civil action arising out of criminal proceedings notified hereunder will be deemed to be notified in accordance with condition 3.

For the purpose of this clause the **excess** will be £2,500 or the **excess** stated in the schedule whichever is the lesser.

Our liability will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.3 Court Attendance Costs

We will also pay **you** the daily rates stated below if any of these people are required to attend **court** as a witness at **our** request:

- a) any **business partner**, director, **member** or principal £500
- b) any **employee** £250
- c) any other relevant party excluding any expert witness £250

Our liability will not exceed £25,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.4 First Party Copyright Infringement

We will also pay any reasonable costs and expenses necessarily incurred in the issue of any proceedings notified to **us** during the period of insurance for any injunction or for damages for infringement of any copyright vested in **you** provided always that **we** will not be required to incur any obligation to meet such costs where **your** cause of action is not one that is reasonable to pursue. In the event of any dispute arising between **you** and **us** as to the reasonableness of pursuing any such cause of action the opinion of a Queen's Counsel the appointment of whom will be mutually agreed between **you** and **us** will be obtained and their decision will be binding.

If **you** and **us** cannot agree on the appointment of a Queen's Counsel the chairman of the Bar Council will appoint one.

Our liability will not exceed £35,000 in the aggregate during the period of insurance.

3.5 Loss of Documents

We will also pay reasonable costs necessarily incurred by **you** with **our** prior consent for the restoration or replacement of records associated with the provision of **professional services** including computer systems records which have been accidentally lost or damaged. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **us** and such backed up records are held at a separate location. This clause does not apply to negotiable instruments of whatsoever nature.

Our liability will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.6 Mitigation Costs

We will also indemnify **you** with **our** prior written consent against any reasonable costs and expenses necessarily incurred in respect of rectifying prior to practical completion, takeover certificate or defects period any part of the works constructed by the **insured**. Provided always that the onus is upon the **insured** to prove that the need for such rectification is due to the negligent act, error or omission in the provision of **professional services** that would otherwise be the subject of a **claim** under this policy.

3.7 Representation Costs

We will also pay reasonable costs and expenses necessarily incurred by **you** with **our** written consent for representation at any official examination,

inquiry, investigation or other proceedings ordered or commissioned by a body legally empowered to investigate **your** affairs that is first instigated against **you** and notified to **us** during the period of insurance and which may give rise to a **claim** under this policy.

Our liability will not exceed £35,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

3.8 Reputation Rebuild Protection

We will also cover any reasonable costs and expenses incurred with **our** written consent to employ a public relations consultancy to avert or mitigate any damage to **your** reputation. This cover will only apply where damage to **your** reputation arises out of an act error or omission which results in a **circumstance** or **claim** which is notified to **us** during the period of insurance and for which cover is provided under this policy.

Our liability will not exceed £10,000 in the aggregate during the period of insurance.

4. EXCLUSIONS

This policy does not cover:

1. Asbestos

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of any asbestos, asbestos fibres or any derivatives of asbestos including any product containing any asbestos fibres or derivatives unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed in the provision of the professional services.

Provided always that:

- a) this policy will not cover liability for:
 - i) **asbestos surveys**
 - ii) death, bodily injury, mental injury, sickness, disease, mental anguish, shock or the fear of suffering thereof sustained by any person

our liability including **defence costs** will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule

2. Bodily Injury and Property Damage

liability for:

- a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising from libel or slander
- b) loss of or damage to property

unless arising out of a breach of professional duty from the provision of **professional services** due to any negligent act, error or omission committed or alleged to have been committed by any **insured** or on **your** behalf

3. Claims by Related Entities

any **claim** brought by any **insured** or any **related entity** unless such **claim** emanates from an independent third party

4. Collateral Warranty and Contractual Liability

liability arising from any express warranty, guarantee, contractual promise, indemnity, waiver or express agreement given by **you** or any express acceptance by **you** of liability for liquidated damages unless:

- a) **you** would have been liable even if there had not been any such express warranty, guarantee, contractual promise, indemnity, waiver, express agreement or any express acceptance by **you** of liability for liquidated damages

- b) the liability arises from a collateral warranty or duty of care agreement in which case **we** will not indemnify **you** for liability arising from:

- i) any fitness for purpose guarantee
- ii) any greater or longer lasting benefit than that given to the party with whom **you** originally contracted
- iii) any express guarantee including any relating to performance or the period of a project
- iv) **your** agreement to exercise a standard of care greater than would normally be implied by common law or statute

5. Cost Estimates

liability arising out of any estimate provided for construction or design costs unless provided by a chartered quantity surveyor

6. Courts Jurisdiction

any **claim** made or brought:

- a) in the United States of America or Canada or territories under their jurisdiction
- b) under or in consequence of any judgment or order in or under the laws of the United States of America or Canada or territories under their jurisdiction

7. Criminal or Malicious Acts

liability arising out of any criminal, dishonest, fraudulent or malicious act, error or omission committed by any **insured** or on the direction of any **business partner**, director, **member** or principal

8. Directors' and Officers' and Trustee Liability

liability while any **insured** is carrying out the duties of:

- a) a director or officer of **you** or any other body corporate
- b) a trustee of any pension fund or any other employee benefit scheme

9. Employment

liability arising out of:

- a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock of any **business partner**, director, **member**, principal or **employee** while in the course of their employment with **you**
- b) any obligation owed by **you** as an employer or potential employer to any director or **employee** or applicant for employment

- c) any express or implied terms of a partnership agreement or membership agreement

10. Failure to Effect or Maintain Insurance

liability arising out of the advising, requiring, obtaining or maintaining of any form of insurance, suretyship or bond or the failure to do so

11. Financial Investment

liability arising out of any activities regulated by the Financial Conduct Authority or any advice or services relating to the financing or investment for any project, scheme or venture

12. Insolvency

liability arising out of **your** insolvency or bankruptcy or awareness of financial difficulties or that of any

of **your** subcontractors. However this exclusion will not apply to any **circumstance** or **claim** that may be covered under this policy but for the insolvency, bankruptcy or awareness of financial difficulties of **you** or **your** subcontractors

13. Joint Ventures

liability arising out of **your** involvement in any joint venture, consortium or other profit sharing scheme unless a **claim** emanates from **your** acts or omissions provided always that **we** will not be liable for any **claim** made by any associated party within the joint venture, consortium or other profit sharing scheme unless such **claim** emanates from an independent third party

14. Market Fluctuation

liability arising out of any:

- a) depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets
- b) express or implied warranty or guarantee relating to the financial return of any investment

15. Nuclear and War Risks, Government or Public Authority Order and Sonic Bangs

death, injury, disablement or loss or damage to any property or any loss or expense resulting or arising therefrom or any consequential loss or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:

- a) ionising radiations from 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 or contaminating properties of any **nuclear installation, nuclear reactor** or other nuclear assembly or nuclear component thereof

- c) any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

- d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter but this exclusion d) will not apply to radioactive isotopes other than nuclear fuel when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other peaceful purposes

- e)
 - i) war, invasion, act of foreign enemy, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power
 - ii) nationalisation, confiscation, requisition, seizure or destruction by any government or public authority
- f) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds

16. Pollution or Contamination

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of

- a) **pollution or contamination** unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed in the provision of **professional services**
- b) any **environmental audit**

Our liability including **defence costs** will not exceed the limit of indemnity in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule

17. Prior Circumstances and Claims

liability arising from:

- a) any **circumstance** that:
 - i) **you** knew or that in **our** reasonable opinion **you** ought to have known prior to inception of this policy which may give rise to a **claim** against any **insured**
 - ii) was notified by **you** under any other insurance policy prior to inception of this policy
 - iii) was disclosed or in **our** reasonable opinion ought to have been disclosed on **your** latest proposal to **us**
- b) any **claim** made against any **insured** prior to inception of this policy

18. Products and Buildings

liability arising out of any:

- a) supply, repair, alteration, manufacture, installation or maintenance of goods, materials or products
- b) construction, repair, installation, erection, removal or demolition of buildings, building works or physical structures

by any **insured, your** subcontractor or any **related entity** unless such **claim** is the direct consequence of any negligent act, error or omission arising out of the provision of **professional services**

- c) defective materials or goods or equipment or products any **insured, your** subcontractor or a third party have supplied, manufactured, sold or distributed

19. Project Specific Insurance

liability arising out of any project that is insured under a project specific insurance policy provided always that this exclusion will not apply where cover has been provided with **our** prior written consent and **your** liability is in excess of the limit of indemnity under such project specific insurance

20. Property and Transport

liability arising out of the ownership, possession or use by **you** or on **your** behalf of any land, building, aircraft, watercraft, mechanically propelled vehicle or trailer

21. Punitive Damages or Fines

any amount in respect of

- a) penalties or fines
- b) punitive or exemplary damages unless arising out of libel or slander committed or uttered in good faith

22. Retroactive Date

liability for any **claim** arising from the provision of the **professional services** prior to the retroactive date stated in the schedule

23. Supervision of Construction Work

liability arising out of any supervision by any **insured** of their own work, **your** subcontractors' work or the work of any **related entity** where such supervision is undertaken in their capacity as building or engineering contractor

24. Terrorism

loss, damage, consequential loss, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act or preparation in respect of action or threat of action designed to influence the

government de jure or de facto of any nation or any political division thereof or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto and which:

- i) involves violence against one or more persons
- ii) involves damage to property
- iii) endangers life other than that of the person committing the action
- iv) creates a risk to health or safety of the public or a section of the public
- v) is designed to interfere with or to disrupt an electronic system

- b) any action in controlling, preventing, suppressing, retaliating against or responding to any act or preparation in respect of action or threat of action described in a) above.

In any action or suit or other proceedings where **we** allege that by reason of this exclusion cover is not provided under this policy the burden of proving that cover is provided under this policy will be upon **you**

25. Valuation Reports

any valuation report prepared by any **insured** or by any other person, firm or company directly appointed by and acting on behalf of any **insured** unless for the purpose of measuring quantities or certifying payments due to contractors

26. Virus or Similar Mechanism, Hacking or Denial of Service Attack

liability arising out of:

- a) program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations whether involving self-replication or not including but not limited to Trojan horses, worms and logic bombs
- b) unauthorised access to any computer or other equipment or component or system or item which processes, stores, transmits, retrieves or receives data
- c) any actions or instructions constructed or generated with the ability to damage, interfere with or otherwise affect the availability of networks, network services, network connectivity or information systems including but not limited to the generation of excess network traffic into network addresses, the exploitation of system or network weaknesses and the generation of excess or non-genuine traffic between and amongst networks.

5. PROVISIONS

1. Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this policy is not enforceable by any third party.

Other third parties Pen deals with, such as financial institutions, may also apply their own policies or restrictions. Pen reserves the right to take steps to comply with Sanctions and we will not be liable to you for this or for similar steps taken by third parties.

2. Discharge of Liability

We may at any time pay in connection with any **claim** the maximum amount payable under this policy after deduction of any sum already paid during the period of insurance or any lower amount for which the **claim** can be settled and then relinquish the conduct and control and be under no further liability in respect of the **claim**.

3. Joint Liabilities

If the **insured** comprises more than one party we will indemnify each party as though a separate policy had been issued to each of them provided always that the total amount of indemnity to all such parties will not exceed the amount payable if the **insured** comprised only one party and in any event will not exceed the limit of indemnity stated in the schedule.

4. Limit of Indemnity

The limit of indemnity stated in the schedule is **our** monetary limit and applies in the aggregate to all **claims** including **defence costs** made or any other payments made or agreed to be made under the policy in any one period of insurance.

5. Queen's Counsel

You will not be required to contest any legal proceedings unless a Queen's Counsel or similar authority agreed upon by **you** and **us** advises that on the facts of the case such **claim** may be contested with a reasonable prospect of success.

If **you** and **us** cannot agree on the appointment of a Queen's Counsel the chairman of the Bar Council will appoint one.

6. Sanctions

Pen Underwriting Limited (Pen) is committed to complying with financial and trade sanctions legislation and export controls (Sanctions) in the United Kingdom, the European Union, United Nations and United States of America as well as the applicable Sanctions laws and regulations in the jurisdictions in which we operate. This requirement is also extended to any brokers and coverholders who undertake any insurance intermediation activity in relation to this policy.

To comply with Sanctions, Pen cannot place, provide insurance cover or make any payment in circumstances where it would be considered a breach of Sanctions. We may be required to take actions such as freezing the funds of parties subject to Sanctions, not performing claims handling activities, and making licence applications or notifications to relevant regulators.

6. CONDITIONS

1. Arbitration

If **we** admit liability for a **claim** but there is a dispute as to the amount to be paid the dispute will be referred to an arbitrator. The arbitrator will be appointed jointly by **you** and **us** in accordance with the law at the time. **You** may not take any legal action against **us** over the dispute before the arbitrator has reached a decision.

2. Cancellation

We may cancel this policy by giving 30 days notice in writing by special delivery mail to **you** at **your** last known address and in such event **you** will be entitled to a return of premium in respect of the unexpired portion of the period of insurance.

3. Claims Procedures

a) Your Responsibilities

It is agreed that:

- i) on the happening of any **circumstance** or on receiving verbal or written notice of any **claim** **you** will:
 - 1) as soon as reasonably possible give notice to us; and
 - 2) as soon as reasonably possible forward to **us** any **claim**, writ or summons issued against any **insured** and any notice of prosecution, inquest or fatal inquiry; and
 - 3) at **your** own expense and as soon as reasonably possible supply full details of the **claim** in writing to **us** together with any evidence and information that may be reasonably required by **us** for the purpose of investigating or verifying the **claim** and keep **us** up to date with any future evidence and information received by **you** or reasonably required by **us**
 - 4) in the case of notification of a **circumstance** supply full particulars including all material facts, dates and persons involved and the reasons for anticipating that it is by definition a **circumstance**
- ii) no settlement, admission of liability, payment or promise of payment will be made to a third party without **our** written consent.

b) Our Rights

We will:

- i) be entitled to conduct the defence or settlement of any **claim** made against any **insured** and they will give all assistance as

may be reasonably required by **us**; and

- ii) be entitled to appoint legal counsel; and
- iii) be entitled to take the benefit of any rights of any **insured** against any other party before or after any **insured** has received indemnification under this policy and they will give all assistance as may be reasonably required by **us**; and
- iv) treat any **circumstance** notified during the period of insurance which subsequently gives rise to a **claim** after the period of insurance as a **claim** first made during the period of insurance.

c) Prejudice

Where in **our** opinion any **insured** has prejudiced the handling of or the settlement of any **claim** the amount payable in respect of such **claim** including **defence costs** will be reduced to such an amount as in **our** opinion would have been payable in the absence of such prejudice.

4. Contractual Right of Renewal (Tacit)

If **you** pay the premium using **our** direct debit instalment scheme **we** will have the right which **we** may choose not to exercise to renew this policy each year and continue to collect premiums using this method. **We** may vary the terms and conditions of this policy including the premium at renewal. If **you** do not wish to renew this policy **you** or **your** insurance intermediary must notify **us** prior to the next renewal date.

5. Fraudulent claims

If **you** or anyone acting on **your** behalf:

- a) Makes a fraudulent or exaggerated claim under this policy; or
- b) Uses fraudulent means or devices including the submission of false or forged documents in support of a claim whether or not the claim itself is genuine; or
- c) Makes a false statement in support of a claim whether or not the claim is itself genuine; or
- d) Submits a claim under this policy for loss or damage which **you** or anyone acting on **your** behalf or in connivance with **you** deliberately caused; or
- e) Realises after submitting what **you** reasonably believed was a genuine claim under this policy and then fails to tell **us** that **you** have not suffered any loss or damage; or
- f) Suppresses information which **you** know would

otherwise enable **us** to refuse to pay a claim under this policy

We will be entitled to refuse to pay the whole of the claim and recover any sums that **we** have already paid in respect of the claim.

We may also notify **you** that **we** will be treating this policy as having terminated with effect from the date of any of the acts or omissions

If **we** terminate this policy under this condition **you** will have no cover under this policy from the date of the termination and not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of an **insured** and not on behalf of **you** this condition should be read as if it applies only to that **insured's** claim and references to this policy should be read as if they were references to the cover effected for that person alone and not to the policy as a whole.

6. Other Insurances

If at the time of any occurrence giving rise to a **circumstance** or **claim** there is any other insurance effected by or on any **insured's** behalf providing an indemnity in respect of such **circumstance** or **claim** **our** liability will be limited to its rateable proportion. If any other insurance is subject to any provision whereby it is excluded from ranking concurrently with this policy in whole or in part or from contributing proportionally **our** liability under this policy will be limited to any excess beyond the amount which would be payable under such other insurance had this policy not been effected.

7. Payment by Instalments

Reference to the payment of premium includes payment by monthly instalments. If **you** pay by this method this policy remains an annual contract and the date of the payment and the amount of instalments are governed by the terms of the credit agreement. If an instalment is not received by the due date then subject to the Consumer Credit Act 1974 if applicable the credit agreement and this policy will be cancelled immediately.

8. Professional Indemnity Requirements of Subcontractors

As a condition precedent to **our** liability where **you** have engaged any person, firm or company to provide **professional services** **you** will ensure that at the time of engagement such person, firm or company has taken out and agrees to maintain in force for a period of 6 years from completion of the relevant project their own professional indemnity insurance policy with a minimum limit of indemnity as stated in the schedule or as agreed by **us**.

9. Sole Agent

It is agreed that:

- a) if the **insured** comprises more than one party the person, company or entity set out as **you** in the schedule will act for itself and be deemed to act as the sole agent for the **insured**. All parties comprising the **insured** are deemed to have consented and agreed that rights of action under this policy are not assignable except with **our** prior written consent
- b) **you** have the sole right to file notice or proof of loss or make a **claim**
- c) **you** have the sole right to bring legal proceedings arising under or in connection with this policy
- d) knowledge possessed or discovery made by any person, company or entity forming part of **you** or by any **business partner**, director, **member**, principal or officer, departmental head or other senior manager or the equivalent thereof will be deemed to constitute knowledge possessed or discovery made by all other persons, companies or other entities forming part of **you**.

7. HELPLINE SERVICES

To provide ongoing assistance to **your business** we have arranged five specialist helplines with DAS Legal Expenses Insurance Company Limited (DAS).

These DAS helplines provide confidential professional advice to **your business** 24 hours a day*.

Health and Medical Information Service – 0344 893 0858

DAS will provide information on general health issues and advice on a wide variety of medical matters such as lifestyle changes, medication and travel health.

Between the hours of 7pm and 9am DAS will take a recorded message and a health and medical adviser will contact any **business partner**, director, **member**, principal or **employee** the next day or at an agreed time.

Unfortunately no explanations about diagnosis or prescription can be offered.

Legal Advice – 0344 893 0858

The DAS legal advice team give clear, practical and helpful advice on any legal matter affecting **your business** under the laws of the **members** of the EU, the Isle of Man, the Channel Islands, Switzerland and Norway. Advice typically includes **your** legal rights and the course of action available to **you**.

While unusual or particularly complex issues can be researched equally the team will advise if it is necessary for **you** to instruct a lawyer.

If DAS deems further legal advice necessary or advises that **you** should instruct a lawyer these costs will be **your** responsibility.

Tax Advice – 0344 893 0858

Confidential advice on any tax matters affecting **your business** under the laws of the England and Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands.

If DAS deems further advice necessary outside of that provided by this advice line any costs incurred will be **your** responsibility.

Counselling Service – 0344 893 9028

Confidential counselling for any **business partner**, director, **member**, principal or **employee** and **members** of their immediate families who permanently reside with them including where appropriate onward referral to relevant voluntary or professional services. DAS counsellors will help clarify the problem, explore available options and offer support.

All calls to this helpline are treated in the strictest confidence and are not recorded.

Business Assistance – 0344 893 0858

In the event of any unexpected damage or emergency that affects **your business** premises, this national helpline gives **you** access to a list of vetted repairers and contractors.

All costs of assistance provided by the repairers and contractors will be **your** responsibility.

These helplines are provided by DAS. If **you** have a complaint about the service or about the way **you** have been treated, please write to: DAS Customer Relations Department at: DAS House, Quay Side, Temple Back, Bristol BS1 6NH.

Alternatively **you** can contact DAS by telephone on: 0117 934 0066, or email: customerrelations@das.co.uk.

To help check and improve service standards calls are recorded other than calls to the Counselling Service.

*Helplines will be available during the period of insurance. We accept no responsibility for the availability of the helplines or any advice given in relation to the helplines. By using these services you and others using the services are agreeing to calls being recorded other than calls to the Counselling Service



Pen
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