



**DESIGN & CONSTRUCT
PROFESSIONAL INDEMNITY
INSURANCE POLICY DOCUMENT (ROI)**

N|B|S
Ireland

CONTENTS

DEFINITIONS	4
INSURING CLAUSES	7
LIMIT OF LIABILITY	10
EXCLUSIONS	11
CLAIMS	15
GENERAL CONDITIONS	18
USEFUL INFORMATION	21

Your policy is administered by **NBS Ireland** and underwritten by **Accelerant Insurance Europe SA**, Bastion Tower, Level 20, Place du Champ de Mars 5, 1050 Brussels.

Accelerant Insurance Europe SA is a company registered in Belgium (Company number 0758.632.842) with registered office at Bastion Tower, Level 20, Place du Champ de Mars 5, 1050 Brussels

Accelerant Insurance Europe SA is an insurance company authorised by the National Bank of Belgium and regulated by the Financial Services and Markets Authority (FSMA) (Ref. 3193).

The Policy the Schedule and any endorsements shall be read together as one contract and this is the contract of Insurance between the **Insured** and the **Insurer**.

NBS Ireland is a trading style of **NBS Commercial Limited**. Registered in Ireland No. 677098. Registered Office: 13-18 City Quay, Dublin 2, D02 ED70. NBS Commercial Ltd is authorised and regulated by the Central Bank of Ireland – C441712

1 - Definitions

1.1 **Adjudication Contract** means the Construction Contracts Act 2013 applies or any contract containing an adjudication clause.

1.2 **Circumstance** means an event or occurrence which could reasonably result in a **Claim** being made.

1.3 **Claim** means any written demand for compensation in respect of a **Wrongful Act** of an **Insured** which arises out of the Insured's **Professional Services**.

1.4 **Damages** means any amount that an **Insured** shall be legally liable to pay to a **Third Party** in respect of judgments or arbitral awards rendered against an **Insured**, or for settlements negotiated by the **Insurer** with the consent of the **Insured**.

1.5 **Defence Costs** means reasonable fees, costs and expenses incurred by or on behalf of an **Insured**, with the prior written consent of the **Insurer**, in the investigation, defence, adjustment, settlement or appeal of any **Claim**. It shall not include any element of an **Insured**'s own time costs or lost profits incurred in dealing with a **Claim**.

1.6 **Deductible** means the amount specified as such in the Schedule.

1.7 **Documents** means all **Documents** of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

1.8 **Employee** means any natural person who is, has been or during the **Policy Period** becomes expressly engaged under a contract of employment with the **Insured**. **Employee** shall not include any principal, partner, or director of any **Insured** in their capacity as such.

1.9 **Fraud/Dishonesty** means fraudulent or dishonest conduct:

- (i) not condoned, expressly or implicitly by any principal, partner or director of the **Insured**; and
- (ii) that results in liability of the **Insured** to any **Third Party**.

1.10 **Insured** means

- (i) the company, partnership, sole principal or unincorporated association named in the schedule and contracting with the Insurer for this policy
- (ii) any director or former director; each partner at the commencement of and from time to time during the **Policy Period** and any former partner; sole principal and any former sole principal, members and officers;
- (iii) any **Employee**
- (iv) the estates or heirs and/or legal representatives of any person constituted an **Insured** under subparagraphs (i), (ii), (iii) above in the event of their bankruptcy, insolvency, incapacity or death.

1.11 **Insurer** means Accelerant Insurance Europe SA

1.12 **Legal Panel** means the firms of solicitors appointed from time to time by the **Insurer** to provide representation on behalf of an **Insured** under this policy.

1.13 **Limit of Liability** means the amount specified as such in the Schedule.

1.14 **Loss** means **Damages** or **Defence Costs**, however **Loss** shall not include and this policy does not cover:

- (i) taxes;
- (ii) liquidated, punitive, or exemplary Damages;
- (iii) fines or penalties unless insurable by law;
- (iv) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- (v) benefits, overheads, charges or expenses incurred by any Insured including but not limited to the cost of any Insured's time;
- (vi) any matters which may be deemed uninsurable under the law governing this policy or the jurisdiction in which a Claim is brought;

1.15 **Notice of Intention to Adjudicate** means a notice of intention to refer a dispute to adjudicate pursuant to an Adjudication Contract.

1.16 **Policy Period** means the period of time specified in the Schedule.

1.17 **Pollution** means the discharge, disposal, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to, smoke, vapours, soot, dust, fibres, viruses, bacteria, fumes, acids, alkalis, chemicals and waste (including, but not limited to material to be recycled, reconditioned or reclaimed).

1.18 **Professional Services** means the services performed by any **Insured** under a contract for any professional

- (i) design or specification
- (ii) supervision of construction
- (iii) feasibility studies
- (iv) technical information calculation
- (v) surveying

provided that they are undertaken 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.

For the avoidance of doubt **Professional Services** shall not include supervision by an **Insured** of its own or its subcontractors workmanship where such supervision is no different from that which would be expected of an **Insured** if it only had a workmanship and/or management obligation.

Professional Services will include the duty to warn of defects in professional activities of others.

1.19 **Property Damage** means damage to or loss of or destruction of tangible property or loss of use thereof.

1.20 **Related Claim** means any **Claims** alleging, arising out of, based upon or attributable to the same facts or alleged facts, or **Circumstance** or the same **Wrongful Act**, or a continuous repeated or related **Wrongful Act**.

1.21 **Retroactive Date** means the date specified as such in the Schedule.

1.22 **Settlement Value** means in respect of any **Claim** covered under this policy:

- (i) the full amount Claimed; or
- (ii) any settlement offer from the Claimant(s) which is capable of acceptance.

Where the Claimant(s)' costs, if applicable, are not quantified by the Claimant, the **Insurer** will also pay a reasonable sum to an **Insured** to represent these costs.

1.23 **Sub Consultant** means any specialist **Sub Consultant** acting on behalf of the **Insured**, under a written agreement with the **Insured** and for whom the **Insured** is legally liable, provided always that any such **Sub Consultant** is appropriately qualified to perform the service.

1.24 **Submission** means each and every signed proposal form, renewal declaration, statement of fact and any supplemental material supplied to the **Insurer** by or on behalf of the **Insured**

1.25 **Subsidiary** means any entity in which the **Insured**, either directly or indirectly through one or more entities;

- (i) controls the composition of the board of directors;
- (ii) controls more than half of the voting power; or
- (iii) holds more than half of the issued share capital;

on or before the inception date of this policy.

For any **Subsidiary** or any **Insured** thereof, cover under this policy shall only apply to **Wrongful Acts** committed while such entity is a **Subsidiary** of the **Insured**.

1.26 **Terrorism** means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

1.27 **Third Party** means any entity or natural person except (i) any **Insured**; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the **Insured** or any **Subsidiary**.

1.28 **Transaction** means any one of the following events:

- (i) the **Insured** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
- (ii) an administrator, liquidator or receiver is appointed to the **Insured**.

1.29 **Wrongful Act** means any actual or alleged act, error or omission committed solely in the performance of or failure to perform **Professional Services**.

2. Insuring Clauses

2.1 Civil Liability

The **Insurer** will pay on behalf of an **Insured** all **Loss** resulting from any **Claim** first made against an **Insured** and notified to the **Insurer** during the **Policy Period** for a civil liability arising from an **Insured's Professional Services**.

2.2 Collateral Warranties

The **Insurer** will pay on behalf of any **Insured** all **Loss** resulting from any **Claim** first made against the **Insured** and notified to the **Insurer** during the Policy Period for any **Wrongful Act** of an **Insured** arising from any collateral warranties, duty of care or similar agreements provided by an **Insured**.

Provided always that the **Insurer** shall not be liable for any **Claim** arising from

- (i) any warranty or agreement under which the **Insured** assumes a standard of care greater than the standard of reasonable skill and care normally expected in the **Insured's** profession unless the specific written agreement of the **Insurer** is obtained and endorsed on the policy;
- (ii) any warranty or agreement which provides greater or longer lasting benefit than that given to the party with whom the **Insured** originally contracted.

2.3 Court Attendance

For any person described below who are required to attend court or an arbitration or an adjudication hearing as a witness in connection with a **Claim** notified under and covered by this policy, **Insurers** will pay the following daily rates:

- (i) for any principal, partner, or director of an **Insured**: €250
- (ii) for any **Employee**: €150

No **Deductible** shall apply to this clause.

The Insurers liability will not exceed €10,000 in the aggregate during the policy period and this limit will form part of and not be in addition to the **Limit of Liability** stated in the schedule.

2.4 Fraud and Dishonesty

The **Insurer** will pay on behalf of any **Insured** all **Loss** arising from any **Claim** for **Fraud/Dishonesty** of any **Employee** notified to the **Insurer** during the **Policy Period**. Provided always that:

- (i) no person committing or condoning such **Fraud/Dishonesty** shall be entitled to indemnity;
- (ii) no indemnity shall be provided for **Loss** directly or indirectly arising from any **Claim** in respect of **Fraud/Dishonesty** committed by any **Employee** after discovery by any principal, partner, or director of an **Insured** of reasonable cause of suspicion of **Fraud/ Dishonesty** on the part of the Employee.
- (iii) no indemnity shall be provided for **Loss** directly or indirectly arising from any **Claim** in respect **Fraud/Dishonesty** committed by any present or former partner, director, or sole principal of the **Insured**.

2.5 Joint Ventures

The **Insurer** will pay on behalf of any **Insured** all **Loss** resulting from any **Claim** where liability results directly from a **Wrongful Act** of an **Insured** arising out of the **Professional Services** carried out by an **Insured** for and in the name of any joint venture of which an **Insured** forms part, provided always that

- (i) the existence of any such activity and relevant fees or turnover have been declared in the **Submission** and agreed by the **Insurer**,
- (ii) the **Insured** has not, unless with the prior consent of the **Insurer**, waived either by original agreement or subsequently any right of recovery or entitlement to contribution they would otherwise have against any other party to the joint venture or consortium,
- (iii) the **Insurer** remains at all times entitled to exercise its rights of subrogation,
- (iv) no liability shall arise under this policy in respect of any **Claim** by any other party to the joint venture or consortium,
- (v) The liability of the Insurer shall be proportionate to the percentage of the share capital of the joint venture owned by an **Insured**;

This clause shall provide cover to an **Insured** only. No other participant in such joint venture, and no other **Third Party**, shall have any rights under this policy, and neither shall the **Insurer** be liable to pay a contribution to any **Insurer** of any other participant in such joint venture.

2.6 Libel & Slander

The **Insurer** shall indemnify the **Insured** against all **Loss** directly arising from any **Claim** first made against the **Insured** and notified to the **Insurer** during the **Policy Period** in respect of libel or slander committed in good faith by reason of words, written or spoken by the **Insured** in the performance of **Professional Services**.

The maximum amount payable for all **Claims** in the aggregate during the **Policy Period** under this clause shall not exceed €250,000 unless otherwise set out in the Schedule, and a **Deductible** of €1,000 shall be applicable to each such **Claim**.

2.7 Lost Documents

The **Insurer** shall indemnify the **Insured** for costs and expenses which are reasonably incurred with the **Insurer's** prior written consent in replacing or restoring **Documents** which are either the property of or entrusted to, lodged or deposited with the **Insured** in the ordinary course of their **Professional Services**; which have first been discovered by the **Insured** and notified to the **Insurer** during the **Policy Period** as having been destroyed, damaged, lost or mislaid and which after a diligent search cannot be found. Provided always that the **Insurer** shall not be liable for any **Claim** arising out of wear and tear, gradual degradation, moth or vermin.

This cover will be subject to a sub-limit of liability of €100,000 in the annual aggregate during the **Policy Period**.

A **Deductible** of €250 each and every **Claim** shall apply to this cover.

2.8 Mitigation Costs

The **Insurer** will pay on behalf an **Insured** the reasonable costs and expenses (excluding any element of the **Insured's** own profit), with the **Insurer's** prior written and continuing consent in respect of any action taken solely to mitigate a **Loss** or potential **Loss** that would otherwise become the subject of a **Claim** or **Circumstance** notification under the policy.

2.9 Safety, Health and Welfare at Work (Construction) Regulations

The **Insurer** will pay on behalf of any **Insured** all reasonable costs and expenses incurred with the prior written consent of the **Insurer** for defence of any proceedings first brought by any regulatory body or similar body against an **Insured** under the Safety, Health and Welfare at Work (Construction) Regulations 2006 and any re-enactment thereof, where in the **Insurer's** opinion defending such proceedings could prevent a concurrent or subsequent **Claim**.

The **Insurer** shall not be liable to pay such reasonable costs and expenses:

- (i) unless the proceedings shall have arisen from a **Wrongful Act** committed by an **Insured** in the performance of **Professional Services**; or
- (ii) where there is a subsequent plea of or finding of guilt on the part of an **Insured**; or
- (iii) where in the **Insurer's** opinion on the balance of probabilities the proceedings are unlikely to be defended successfully.

This Extension will be subject to a sub-limit of liability of 80% of the Defence costs **incurred** up to a maximum amount of €250,000 in the annual aggregate during the **Policy Period**.

2.10 Sub Consultant

The **Insurer** will pay on behalf of an **Insured** all **Loss** resulting from any **Claim** for any **Wrongful Act** of a **Sub Consultant**, Specialist Designer or sub-contractors of an **Insured** who are engaged in the performance of an **Insured's Professional Services**.

The **Insurer** will only pay **Loss** to the extent that an **Insured** has not waived or otherwise impaired any rights of recourse against such **Sub Consultant** specialist designers, or sub-contractors.

3. Limit of Liability

3.1 Limit of Liability

- (i) The total amount payable by the **Insurer** under this policy for all **Claims** in the aggregate during the **Policy Period** shall not exceed the **Limit of Liability**.
- (ii) Sub-limits of liability, Extensions and **Defence Costs** are part of that amount and are not payable in addition to the **Limit of Liability**.
- (iii) Each sub-limit of liability set forth in the policy is the most the **Insurer** will pay in the aggregate under this policy as **Loss** in respect of any insurance cover or extension to which it applies
- (iv) The inclusion of more than one **Insured** under this policy does not operate to increase the total amount payable by the **Insurer** under this policy.
- (v) Any sum paid by the **Insurer** under this policy shall erode the **Limit of Liability**.

4. Exclusions

This policy shall not cover **Loss** in connection with any **Claim**:

4.1 Asbestos

arising out of, based upon, directly or indirectly caused by, or attributable to any asbestos, asbestos fibres or any derivatives of asbestos including any product containing any asbestos fibres or derivatives.

This exclusion will not apply to any **Loss** arising directly from a **Wrongful Act** by the **Insured** in the performance of their **Professional Services** provided always that:

- (i) The **Insurer** shall not cover **Loss** in connection with any **Claim** directly or indirectly resulting from Asbestos Inspections or Surveys carried out by the **Insured**; and/ or
- (ii) the **Insurer** shall not cover **Loss** arising out , based upon or attributable to death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person resulting from the presence or release or possible release of asbestos or asbestos containing materials in whatever form or quantity
- (iii) the maximum amount payable by the **Insurer** in respect of all such **Claims** shall not exceed €250,000 in the annual aggregate during the **Policy Period**.

4.2 Bodily Injury/ Property Damage

arising out of, based upon or attributable to

- (i) death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising from Libel & Slander.
- (ii) loss of or damage to property
- (iii) unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**.

4.3 Conduct

arising out of, based upon or attributable to any actual or alleged dishonest, fraudulent or criminal conduct of an **Insured**.

This exclusion shall not apply to the Fraud and Dishonesty cover under Insuring Clause 2.4.

4.4 Contractual Liability

arising out of, based upon or attributable to any liability assumed or accepted by an **Insured** under any contract, agreement, warranty or guarantee.

This exclusion does not apply to the extent liability would have attached to an **Insured** in the absence of such contract, agreement, warranty or guarantee.

4.5 Controlling Interest

arising out of, based upon or attributable to advice given or Professional Services performed for:

- (i) any company, firm, organisation, or group in which the **Insured** or any present or former partner, director or sole principal of the **Insured** exercises or has exercised a controlling financial or executive interest;

- (ii) any parent or **Subsidiary** company of the Insured or company having the same parent company as the **Insured**;

provided that this exclusion shall not apply to any such **Claim** originating from an independent third party.

4.6 Cost Estimates

arising out of, based upon or attributable to any failure by any **Insured** or other party acting for an **Insured** to make an accurate pre-assessment of the cost of performing **Professional Services**.

4.7 Directors' and Officers' Liability

arising out of, based upon or attributable to any **Claim** made against an **Insured** in their capacity as a director, officer, trustee or partner of the **Insured** in respect of the performance or non-performance of their duties as a director, officer, trustee or partner of the **Insured**.

4.8 Employers Liability

arising out of, based upon or attributable to death, bodily Injury, sickness, disease, mental anguish or shock sustained by any person whilst under a contract of service or apprenticeship with an **Insured** or for any breach of any obligation owed by an **Insured** as an employer.

4.9 Employment Practice Liability

for the wrongful or unfair dismissal, termination, repudiation or breach of contract of employment, discrimination or harassment sustained by any person who is or has been under a contract of service with the **Insured** or any person who has made an application for employment under a contract of service with the **Insured**.

4.10 Failure to Effect or Maintain Insurance

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

4.11 Financial Investment

arising out of, based upon or attributable to any activities regulated by the Irish Financial Services Regulatory Authority or any advice or services relating to the financing or investment for any project, scheme or venture

4.12 Fitness for Purpose

arising out of any fitness for purpose obligation

4.13 Infrastructure

arising out of, based upon or attributable to:

- (i) software or mechanical failure;
- (ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or
- (iii) telecommunications or satellite systems failure;

outside the direct control of an **Insured**.

4.14 Insolvency

arising out of, based upon or attributable to the insolvency, liquidation, administration or receivership of the **Insured**.

4.15 Nuclear

arising out of, based upon, directly or indirectly caused by, or attributable to any;

- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (ii) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

4.16 Pollution

arising out of, based upon or attributable to **Pollution** in any form.

4.17 Prior Claims and circumstances

made prior to the inception of this policy including any **Related Claims** thereto, or arising out of, based upon or attributable to a **Circumstance** which has been properly notified under any other policy or certificate of insurance attaching prior to the inception of this policy including any **Related Claims** thereto.

4.18 Products and Manufacturing

arising out of, based upon or attributable to:

- (i) supply, repair, alteration, manufacture, installation or maintenance of goods, materials or products
- (ii) construction, repair, installation, erection, removal or demolition of buildings, building works or physical structures by an **Insured**, a subcontractor or **Sub Consultant** or any **Related Entity** unless such **Claim** is the direct consequence of any negligent act, error or omission arising out of the performance of **Professional Services**.
- (iii) defective materials or goods or equipment or products an **Insured**, subcontractor, **Sub Consultant** or a third party have supplied, manufactured, sold or distributed.

4.19 Retroactive Date

arising out of based upon, attributable to or in any way involving any **Wrongful Act** which first takes place before the **Retroactive Date**.

4.20 Surveys and Valuations

arising out of, based upon or attributable to any survey or valuation unless it was undertaken by, or under the direct supervision of a qualified surveyor having relevant professional qualifications or with a minimum of five years relevant experience.

4.21 Trade Debts

arising out of, based upon or attributable to any trading or personal debt of any **Insured**, or breach of any guarantee given by an **Insured** for a debt.

4.22 U.S.A./Canada

made or pending within or to enforce a judgment obtained in the United States of America, Canada, or any of their territories or possessions.

4.23 War/Terrorism

arising out of, based upon or attributable to any war (declared or otherwise), **Terrorism**, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

5. Claims

5.1 Adjudication Provisions

The **Insurer** shall have no liability under this policy to make any payment in respect of any **Loss** incurred in connection with any dispute or matter being referred to adjudication except liabilities of an **Insured** incurred in connection with their **Professional Services** for **Loss** arising from the adjudication of an **Adjudication Contract**. Provided always that it is a condition precedent to the **Insurer's** liability hereunder that every element of this Adjudication Provision (i) and (ii) are complied with:

- (i) The **Adjudication Contract** must:
 - (a) provide that the adjudicator must be independent of the parties to the dispute;
 - (b) not allow for the adjudicator's decision to finally determine the dispute;
 - (c) not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial consideration; and
 - (d) not place any conditions upon the timing of commencement of legal or arbitration proceedings (for the avoidance of doubt, this does not apply to the adjudication proceedings).
- (ii) An **Insured** must:
 - (a) ensure the **Insurer** receives notification in writing to:

Leeson Claims Services Limited
68 Merrion Square South
Dublin 2

Or by email to

PIClaims@LCSI.ie

- 1) within 48 hours or two working days of receipt by an **Insured** of any **Notice of Intention to Adjudicate**;
- or
- 2) at least 30 calendar days before service by an **Insured** of any **Notice of Intention to Adjudicate** in circumstances which will or may lead to a **Claim** being dealt with as part of the adjudication;
- (b) as soon as reasonably practical, supply to the **Insurer** all details relating to any reference to adjudication, including copies of all documentation made available to an **Insured**, or subsequently by an **Insured** to the adjudicator;
- (c) allow the **Insurer** to appoint advisers from the **Legal Panel** and to have conduct of the adjudication as they deem appropriate and to co-operate with the **Insurer** in the conduct of the adjudication; any appointments made by the **Insurer** shall be at an **Insured's** expense, save always that they shall also constitute **Defence Costs** under this policy;
- (d) meet any request, direction or timetable of the adjudicator;

(e) satisfy the **Insurer** that any liability or costs incurred or awarded pursuant to the adjudication proceedings for which indemnity is being sought, is as a direct result of a **Wrongful Act** of an **Insured** solely in the performance of an **Insured's Professional Services**;

(f) institute legal proceedings or arbitration in accordance with the terms of the **Adjudication Contract** to challenge or reopen or stay of the enforcement of the adjudicator's decision if reasonably requested to do by the **Insurer** and allow the **Insurer** to appoint appropriate advisers as they may deem necessary to have conduct of such proceedings if appropriate. However, any such steps taken by an **Insured** shall be at the **Insurer's** expense, but subject always to the application of the **Deductible**; and

(g) not agree to accept the decision of the adjudicator as finally determining the dispute without the prior consent of the **Insurer**.

5.2 Allocation

In the event that any **Claim** involves both covered matters and matters or persons not covered under this policy, a fair and proper allocation of any cost of defence, **Damages**, judgments and/or settlements shall be made between the **Insurer** and each **Insured** taking into account the financial and legal exposures attributable to covered matters and matters not covered under this policy.

5.3 Circumstance

It is a condition precedent to the **Insurer's** liability that the **Insured** shall as soon as reasonably practicable during the **Policy Period** notify the **Insurer** at the address listed in the **Claims** Notifications clause below of any **Circumstance** of which any **Insured** becomes aware during the **Policy Period** which is reasonably expected to give rise to a **Claim**.

Any subsequent **Claim** arising out of such notified **Circumstance** (and any **Related Claims**) shall be deemed to be made at the date when the **Circumstance** was first notified to the **Insurer**.

5.4 Claim Notifications

It is a condition precedent to the **Insurer's** liability that the **Insured** shall give written notice to the **Insurer** of any **Claim** first made against an **Insured** as soon as practicable and during the **Policy Period**. All notifications must be in writing to

Leeson Claims Services Limited
68 Merrion Square South
Dublin 2

Or by email to

PIClaims@LCSI.ie

5.5 Deductible

The **Insurer** shall only pay for the amount of any **Loss** which is in excess of the **Deductible**. For the avoidance of doubt, the **Deductible** also applies to **Defence Costs**. The **Deductible** is to be borne by the **Insured** and shall remain uninsured. A single **Deductible** shall apply to **Loss** arising from all **Claims** alleging the same **Wrongful Act**.

5.6 Defence

The **Insurer** does not assume any duty to defend, and an **Insured** shall defend and contest any **Claim** made against them unless the **Insurer**, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any **Claim**. If the **Insurer** does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably

likely to involve the **Insurer**. In the event that the **Insurer** decides that representation by a solicitor is necessary (such decision to be at the sole discretion of the **Insurer**) then an **Insured** shall select one of the **Legal Panel** to provide such legal representation.

5.7 Duty to Cooperate

It is a condition precedent to the **Insurer's** liability that the **Insured** shall cooperate with the **Insurer** in the defence of any **Claim** and provide all relevant documentation and other information to enable the **Insurer** to investigate any **Loss** or determine the **Insurer's** liability under this policy

5.8 Insured's Consent

The **Insurer** may make any settlement it deems expedient of any **Claim** against any **Insured**, subject to such **Insured's** written consent. Where an **Insured** does not consent the **Insurer** may elect to pay to an **Insured** the **Settlement Value** less the applicable **Deductible** that the **Insurer** wishes to accept. Upon such payment being made there is no further cover available under the policy for that **Claim**.

5.9 Insurer's Consent

It is a condition precedent to the **Insurer's** liability under this Policy that the **Insured** shall not, without the prior written consent of the **Insurer**, admit any liability for, settle or make any offer or payment in respect of any **Claim**, assume any obligation or incur any expense without the prior written consent of the **Insurer**.

5.10 Fraudulent Claims

If any **Insured** shall give notice of any **Claim** for any **Loss** under this policy knowing such notice or **Claim** to be false or fraudulent as regards amounts or otherwise, this policy shall become void and all **Claims** and payments hereunder shall be forfeited.

5.11 Payment of Defence Costs

The **Insurer** shall pay **Defence Costs** covered by this policy promptly after sufficiently detailed invoices for those costs are received by the **Insurer**. The **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this policy.

5.12 Related Claims

If during the **Policy Period** a **Claim** is made or a **Circumstance** is notified in accordance with the requirements of this policy any **Related Claim** made after expiry of the **Policy Period** will be accepted by the **Insurer** as having been:

- (i) made at the same time as the notified **Claim** was made or the relevant **Circumstance** was notified, and
- (ii) notified at the same time as the notified **Claim** or **Circumstance**.

All **Related Claims** shall be deemed to be one single **Claim** and deemed to be made at the date of the first **Claim** of the series or at the first **Circumstance** notified, whichever is first.

6. General Conditions

6.1 Arbitration

Any dispute or difference arising between the **Insured** and the **Insurer** shall be referred to arbitration before a sole arbitrator having no less than ten years relevant insurance industry experience as a lawyer or otherwise who shall be mutually agreed between the **Insurer** and the **Insured** or, in the event of disagreement, chosen by the Chairman of the Chartered Institute of Arbitrators

6.2 Assignment

This Policy cannot be assigned or transferred without the prior written consent of the **Insurer**.

6.3 Cancellation and Premium Payment

It is a condition precedent to liability under this Policy that:

- a) the premium for the Policy or any endorsement attaching to the Policy shall be paid when due
- b) if the premium for the Policy or endorsement is payable by instalments then
 - (i) each instalment shall be paid when due or
 - (ii) where a notice has been issued requiring the outstanding amount must be paid by a specific date then such payment is made by that date

Cancellation by the **Insurer** –

(i) Non-payment of Premium

If the **Insurer** has not received the premium in accordance with this condition, the **Insurer** will cancel the Policy by giving 7 days' notice in writing by letter to the **Insured** at the **Insured's** last known address or to the **Insured's** Broker, Intermediary or Agent.

The insurance will be cancelled immediately once the 7 days' notice runs out.

If the **Insured** has just incepted the Policy or renewed the Policy with the **Insurer** and the premium is unpaid then the **Insurer** will cancel the insurance from the inception or renewal date.

(ii) Cancellation for any other reason

The **Insurer** may cancel the Policy or any section or endorsement by giving 14 days' notice in writing by letter to the **Insured** at the **Insured's** last known address or to the **Insured's** Broker, Intermediary or Agent. The **Insurer** does not have to give a reason for the cancellation although valid reasons for doing so may include but are not limited to the following:

- the **Insured** has not provided to the Broker, Intermediary or Agent the information or documents the **Insurer** has requested as part of the terms and conditions in providing the insurance
- the **Insured** has not met the terms and conditions contained in this document of insurance including those shown on the **Schedule**
- where there has been a change to the **Insured's** business activities or circumstances and the **Insurer** is no longer able to continue with this policy
- the **Insured** has behaved in a manner that makes it inappropriate for the **Insurer** to continue the insurance, e.g., the **Insured** harassing or showing abusive or threatening behaviour towards the **Insurer's** staff or the **Insurer's** appointed representatives

The insurance will end immediately the 14 days' notice runs out.

If the **Insured** has just incepted the Policy or renewed the Policy with the **Insurer** and the premium is unpaid then the **Insurer** will cancel the insurance from the inception or renewal date.

The **Insurer** will provide a proportionate return of premium (less any admin fee charged) in respect of the unexpired **Period of Insurance** of the Policy or Section other than in the circumstances listed below:

- a) where the **Insurer** identifies fraudulent conduct or intent to deceive

b) where a claim has been made or incident advised that could give rise to a claim

6.4 Change of Control

The **Insurer** shall not be liable to make any payment or to provide any services in connection with any **Claim** arising out of, based upon or attributable to a **Wrongful Act** committed after the occurrence of a **Transaction**.

If during the **Policy Period** an administrator, liquidator or receiver is appointed to a **Subsidiary**, then the cover provided under this policy with respect to such **Subsidiary** is amended to apply only to **Wrongful Acts** committed prior to the date of such appointment.

6.5 Governing Law

Any interpretation of this policy relating to its construction, validity or operation shall be made exclusively in accordance with the laws of Republic of Ireland. The Courts of the Republic of Ireland shall have exclusive jurisdiction to hear and determine any dispute or difference arising in respect of this policy

6.6 Innocent Non-Disclosure

In the event of any alleged non disclosure or misrepresentation of facts or alleged untrue statements in the **Submission** or in any other information which the **Insured** and/or its agent(s) may have supplied to the **Insurer**, the **Insurer** will not exercise its right to avoid this policy or be discharged from any liability hereunder provided that:

- (i) the **Insured** shall establish to the **Insurer's** satisfaction that any such non disclosure, misrepresentation of facts or untrue statement was innocent and free of any fraudulent conduct or intent to deceive; and
- (ii) b) the **Insurer** shall be entitled to adjust the premium and terms to those which would have applied had such circumstances been disclosed; and
- (iii) in the case of a **Claim** first made against the **Insured** during the **Policy Period** where the **Insured** had previous knowledge of the **Circumstance(s)** relating to such **Claim** and the **Insured** should have notified the same under a preceding policy (whether with other insurers or not), 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 such preceding policy, the **Insured** shall only be liable to afford indemnity to such amount and extent as would have been applicable during such preceding policy.

6.7 Insurance Act 1936

All monies which become or may become due under this policy shall in accordance with Section 93 of the Insurance Act 1936 be payable and paid in the Republic of Ireland.

6.8 Other Insurance / Indemnification

Unless otherwise required by law, cover under this policy is provided only as excess over any self-insurance or other valid and applicable insurance, unless such other insurance is written only as specific excess insurance over the **Limit of Liability**. This policy shall not cover **Defence Costs** of any **Claim** where another insurance policy imposes upon another **Insurer** a duty to defend such **Claim**.

6.9 Rights of Third Parties

This policy is not intended to confer any directly enforceable benefit upon any Third Party other than an **Insured**

6.10 Sanctions

No **Insurer** shall be deemed to provide cover and no **Insurer** shall be liable to pay any **Loss** or **Claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **Loss** or **Claim** or provision of such benefit would expose that **Insurer** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

6.11 Stamp Duty

The appropriate stamp duty has been or will be paid in accordance with the provisions of Section 113 of the Finance Act 1990.

6.12 Subrogation

If any payment is made under this policy in respect of a Claim, 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 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.

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.

6.13 Territorial Limits

Worldwide excluding United States of America and Canada or any territories under their jurisdiction unless otherwise stated in the schedule.

Useful Information

How to make a Claim

All notifications must be in writing to:

Leeson Claims Services Limited
68 Merrion Square South
Dublin 2

Or by email to

PIClaims@LCSI.ie

How to Complain

Should you wish to make a complaint regarding your claim please contact:

Leeson Claims Services Ireland
68 Merrion Square South, Dublin 2
E-mail: PICTclaims@LCSI.ie

Should you wish to make a complaint about the policy or the service we offer please contact:

NBS Ireland (NBS Ireland is a trading style of NBS Commercial Ltd)
13-18 City Quay, Dublin 2, D02 ED70
E-mail: info@nbsireland.com

If you remain dissatisfied after the senior member of staff has considered your complaint, or you have not received a final decision within eight (8) weeks, you may be eligible to refer your complaint to the Financial Services and Pensions Ombudsman

Financial Services and Pensions Ombudsman
3rd Floor, Lincoln House
Lincoln Place
Dublin 2
D02 VH29

Tel: (+353) 15 677 000
Fax: (+353) 16 620 890
Email: info@fspo.ie
www.fspo.ie

Making a complaint does not affect your right to take legal action.



E: info@nbsireland.com
W: www.nbsireland.com

Registered Office: 13-18 City Quay, Dublin 2, D02 ED70.

NBS Commercial Ltd T/As NBS Ireland is regulated by the Central Bank of Ireland
Registration No. C441712.

