



PROFESSIONAL INDEMNITY

Insurance Policy Document (ROI)

Design & Construct Professional Indemnity





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Design & Construct Professional Indemnity Policy Wording

This **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 with the **Submission** as one contract and this is the contract of insurance between the **Insured** and the **Insurer**. If there is any conflict between the **Policy** and the **Schedule**, the **Schedule** shall prevail.

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 regulated by the Central Bank of Ireland – C441712



Section A - Definitions

Adjudication Contract

means any contract where the Construction Contracts Act 2013 applies or any contract containing an adjudication clause.

Circumstance

means any event, occurrence, incident, fact, matter, complaint, act or omission which might give rise to a **Claim**.

Claim

means any request or demand for or intimation of an intention to seek civil compensation in respect of a **Wrongful Act** of the **Insured**.

Claimant

means a person of entity that has made or may make a **Claim**.

Damages

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

Defence Costs

means reasonable legal fees, costs and expenses incurred by or on behalf of the **Insured**, with the prior written consent of the **Insurer** (which consent not to be unreasonably withheld), in the investigation, defence, adjustment, settlement or appeal of any **Claim**. It does not include any element of the **Insured**'s own time costs or lost profits incurred in dealing with a **Claim**.

Deductible

means the amount specified as such in the **Schedule** and is the amount that the **Insured** is required to pay to the **Claimant** in the event of a **Claim**.

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.

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 the **Insured** in their capacity as such.

Fraud/Dishonesty

means fraudulent or dishonest conduct.



Section A - Definitions - continued

Insured

Means:

- a. the company, partnership, sole principal or unincorporated association named in the **Schedule** and contracting with the Insurer for this **Policy**
- b. 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.
- c. any **Employee**
- d. the estates or heirs and/or legal representatives of any person constituted the **Insured** under subparagraphs (a), (b), (c) above in the event of their bankruptcy, insolvency, incapacity or death.
- e. any **Subsidiary** named in the **Schedule** and contracting with the Insurer for this **Policy**

Insurer

Means Accelerant Insurance Europe SA

Legal Panel

means the firms of solicitors appointed from time to time by the **Insurer** to provide representation on behalf of the **Insured** under this **Policy**.

Limit of Liability

means the amount insured and specified as such in the **Schedule** and set out in Section C below.

Loss

means **Damages** and/or **Defence Costs**, however **Loss** shall not include and this **Policy** shall not cover any:

- a. taxes;
- b. non-compensatory **Damages**, including punitive, multiple, exemplary or liquidated **Damages**;
- c. fines or penalties unless insurable by law;
- d. the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- e. benefits or overheads of, or charges or expenses incurred by the **Insured** including but not limited to the cost of the **Insured's** time;
- f. fees or commissions, for any **Professional Services** rendered or required to be rendered by the **Insured** or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation; or
- g. any matters which may be deemed uninsurable under the law governing this **Policy** or the jurisdiction in which a **Claim** is brought.



Section A - Definitions - continued

Notice of Intention to Adjudicate

means a notice of intention to refer a dispute to adjudicate pursuant to an **Adjudication Contract**.

Parent Company

means a company that owns a controlling or majority interest in the **Insured** on or before the inception date of this **Policy**.

Policy

means the contract of professional indemnity insurance made between the **Insurer** and the **Insured** which comprises this **Policy** wording, the **Schedule**, and any endorsements attaching to this **Policy** wording or the **Schedule** either at the commencement of or during the **Policy Period**.

Policy Period

means the period of time specified in the **Schedule**.

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).

Professional Services

means the services performed by the **Insured** in relation to those activities declared in the **Submission** under a contract for any professional:

- a. Design, specification, and planning
- b. Supervision, management, and coordination
- c. Inspection, certification, and compliance
- d. Consulting, feasibility studies, and technical advice
- e. Project management, cost estimation, and valuation services
- f. Surveying and assessment
- g. Energy efficiency, sustainability consulting, and building performance evaluation.

provided that these services are undertaken by or under the direction, supervision, and direct control of a qualified architect, engineer, or surveyor, or other person holding relevant academic qualifications, professional membership or five years' relevant experience.

For the avoidance of doubt, **Professional Services** does not include inspection and/or supervision by the **Insured** of its own or its subcontractors' work where such supervision is undertaken in its capacity as a building or engineering contractor.

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



Section A - Definitions - continued

Property Damage

means damage to or loss of or destruction of tangible property or loss of use thereof.

Related Claim

means two or more **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**.

Retroactive Date

means the date specified as such in the **Schedule**.

Schedule

means the **Schedule** attached to and forming part of this **Policy**.

Settlement Value

means in respect of any **Claim** covered under this **Policy**:

- a. the full amount claimed to include **Claimant's** costs; or
- b. any settlement offer from the **Claimant(s)** to include **Claimant's** costs 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 the **Insured** to represent these costs.

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.

Sub Contractor

means a person or company that has sub-contracted to carry out **Professional Services** on behalf of the **Insured**.

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**.

Subsidiary

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

- a. controls the composition of the board of directors;
- b. controls more than half of the voting power; or
- c. holds more than half of the issued share capital;

on or before the inception date of this **Policy**.



Section A - Definitions - continued

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.

Third Party

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

Transaction

means any one of the following events:

- a. 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;
- b. an administrator, liquidator or receiver is appointed to the **Insured** which results in a change in control of the **Insured**.

Wrongful Act

means any actual or alleged breach of duty, breach of contract, negligent act, negligent error or negligent omission by the **Insured** committed solely in the performance of or failure to perform **Professional Services**.



Section B - Insuring Clauses

1. Civil Liability

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

2. Collateral Warranties

The **Insurer** will pay on behalf of the **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** arising from any collateral warranties, duty of care or similar agreements provided by the **Insured**.

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

- a. any collateral 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 prior specific written agreement of the **Insurer** is obtained and endorsed on the **Policy**;
- b. any collateral warranty or agreement which provides greater or longer lasting benefit than that given to the party with whom the **Insured** originally contracted.

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**, The **Insurer** will pay the following daily rates:

- a. for any principal, partner, or director of the **Insured**: €250
- b. for any **Employee**: €150

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

The Insurer's 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**.



Section B - Insuring Clauses - continued

4. Fraud and Dishonesty

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

- a. no person committing, condoning or colluding in such **Fraud/Dishonesty** shall be entitled to indemnity;
- b. 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 of such fraud/dishonesty by any principal, partner, or director of the **Insured** of their being reasonable cause of suspicion on the part of any principal, partner, or director of the **Insured** of such **Fraud/ Dishonesty** on the part of the Employee.
- c. 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**.

5. Joint Ventures

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

- a. the existence of any such activity and relevant fees or turnover have been declared in the **Submission** and agreed in writing by the **Insurer**
- b. the **Insured** has not, unless with the prior written agreement 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,
- c. the **Insurer** remains at all times entitled to exercise its rights of subrogation at its absolute discretion,
- d. no liability shall arise under this **Policy** in respect of any **Claim** by any other party to the joint venture or consortium,
- e. The liability of the Insurer shall be proportionate to the percentage of the share capital of the joint venture owned by the **Insured**;

This clause shall provide cover to the **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.



Section B - Insuring Clauses - continued

6. Defamation

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 defamation 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 inclusive of **Defence Costs** unless otherwise set out in the **Schedule**.

A **Deductible** of €1,000 shall be applicable to each and every defamation **Claim**.

7. Lost Documents

The **Insurer** shall indemnify the **Insured** for costs and expenses which are reasonably incurred with the **Insurer's** prior written consent (such consent not to be unreasonably withheld) 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, stolen, 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.

The maximum amount payable for all **Claims** in the aggregate during the **Policy Period** under this clause shall not exceed €100,000 inclusive of **Defence Costs** unless otherwise set out in the **Schedule**

A **Deductible** of €250 shall be applicable to each and every **Claim** for lost documents.

8. Mitigation Costs

The **Insurer** will pay on behalf the **Insured** the reasonable costs and expenses incurred (excluding any element of the **Insured's** own profit), with the **Insurer's** prior written and continuing consent (such consent not to be unreasonably withheld) 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**.

9. Safety, Health and Welfare at Work (Construction) Regulations

The **Insurer** will pay on behalf of the **Insured** all reasonable costs and expenses incurred with the prior written consent of the **Insurer** (such consent not to be unreasonably withheld) for response to and the defence of any proceedings / prosecutions first brought by any regulatory body or similar body against the **Insured** under the Safety, Health and Welfare at Work (Construction) regulations 2013 and any re-enactment thereof, where in the **Insurer's** opinion defending such proceedings could prevent a concurrent or subsequent **Claim**.



Section B - Insuring Clauses - continued

9. Safety, Health and Welfare at Work (Construction) Regulations - continued

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

- a. unless the proceedings / prosecutions shall have arisen from a **Wrongful Act**; or
- b. where there is a subsequent plea of or finding of guilt on the part of the **Insured**; or
- c. where in the **Insurer's** opinion on the balance of probabilities the proceedings / prosecutions are unlikely to be defended successfully;
- d. once the concurrent or connected **Claim** is settled.

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**.

10. Sub Consultant/ Sub Contractor

The **Insurer** will pay on behalf of the **Insured** all **Loss** resulting from any **Claim** for any **Wrongful Act** of a **Sub Consultant**, Specialist Designer or **Sub-Contractor** of the **Insured** who is engaged by/or on behalf of the **Insured** to provide **Professional Services**.

It is a condition precedent to cover that the **Sub Consultant**, specialist designer or **Sub-Contractor** of the **Insured** has its own insurance cover in place and that the **Insured** has evidence of the insurance cover.

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



Section C - Limit of Liability

1. 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**.
2. Sub-limits of liability, Extensions and **Defence Costs** are part of that amount and are not payable in addition to the **Limit of Liability**.
3. 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
4. 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**.
5. The **Limit of Liability** is the total sum payable by the **Insurer**. Any sum paid by the **Insurer** under this **Policy** shall erode the **Limit of Liability**. In no circumstances shall the liability of the **Insurer** exceed the **Limit of Liability**.



Section D - Exclusions

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

1. Asbestos

arising out of, based upon or attributable in any way to asbestos or any materials containing asbestos in any form or quantity.

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:

- a. The **Insurer** shall not cover **Loss** in connection with any **Claim** directly or indirectly resulting from either Asbestos Inspections or Surveys carried out by the **Insured**; and/ or
- b. 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

the maximum amount payable by the **Insurer** in respect of all such **Claims** shall not exceed €250,000 to include defence costs in the annual aggregate during the **Policy Period**.

2. Bodily Injury/ Property Damage

arising out of, based upon or attributable to

- a. death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising from defamation.
- b. loss of or damage to property
- c. unless arising from a **Wrongful Act**.

3. Conduct

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

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

4. Contractual Liability

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

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



Section D - Exclusions - continued

5. Controlling Interest

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

- a. 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;
- b. any **Parent Company** 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 a **Third Party**.

6. Costs Estimates

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

7. Cyber Exclusion

arising out of:

- a. **Computer Viruses**;
- b. **Security Breaches**;
- c. **Cyber Extortion**;
- d. **Cyber Terrorism**;
- e. Loss or damage of or to computer software or computer hardware or any **Digital Assets**;
- f. A **Denial of Service Attack**

For the purpose of this exclusion the following definitions are applicable:

Computer System

means interconnected electronic, wireless, web or similar systems used to process and store electronic data.

Computer Viruses

shall include (but not be limited to) a virus, malicious code or worm which either damages the **Insured's** Network or allows unauthorised use of or access to any **Digital Asset**.

Cyber Extortion

shall mean any threat, including a demand for funds, directed to the Insured to avoid corruption, damage or introduction of a **Computer Virus** or a **Denial of Service Attack**.



Section D - Exclusions - continued

7. Cyber Exclusion - continued

Cyber Terrorism

shall mean an act or series of acts of any natural person or group(s) of persons, whether acting alone or on behalf of or in connection with any third party organisations, committed for political, religious, personal or ideological purposes including but not limited to the intention to influence any government and/or put the general public in fear for such purposes by using activities perpetrated electronically or otherwise that are directed towards the destruction, disruption or subversion of communications and information systems, infrastructure computers, **Digital Assets**, the internet, telecommunications or electronic networks and/or its content or sabotage and/or threat there from.

Denial of Service Attack

shall mean any unlawful attempt by a party to temporarily or indefinitely interrupt or suspend service to a **Digital Asset**.

Digital Assets

shall mean any of the Insured's computer or mobile devices or other electronic data processing device, equipment or system, any hardware, software, programme, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing. **Digital Assets** shall also include the Insured's Computer System.

Security Breaches

shall mean any unauthorised access or unauthorised use of **Digital Assets**.

8. Directors' and Officers' Liability

arising out of, based upon or attributable to any **Claim** made against the **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**.

9. 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, apprenticeship, or any other form of employment or engagement with the **Insured**, including but not limited to employees, temporary workers, independent contractors, trainees, apprentices, and any other person working under the control or direction of the **Insured**, or for any breach of any obligation owed by an **Insured** as an employer, principal, or other party responsible for the welfare of such persons.



Section D - Exclusions - continued

10. Employment Practice Liability

for any wrongful or unfair dismissal, termination, repudiation or breach of contract of employment, discrimination, harassment or any other employment-related claims sustained by any person who is or has been under a contract of service, apprenticeship, or any other form of engagement with the **Insured**, including but not limited to employees, temporary workers, independent contractors, trainees, apprentices, and any other person working under the control or direction of the **Insured** or any person who has made an application for employment, or entered into negotiations, for any contract of service with the **Insured**.

11. 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

12. 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

13. Fitness for Purpose

arising out of any fitness for purpose guarantee.

14. Infrastructure

arising out of, based upon or attributable to:

- a. software or mechanical failure;
- b. electrical failure, including any electrical power interruption, surge, brown out or black out; or
- c. telecommunications or satellite systems failure;

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

15. Insolvency

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



Section D - Exclusions - continued

16. Nuclear

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

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

17. Pollution

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

18. Prior Claims

made prior to the inception of this **Policy** including any **Related Claims**.

19. Prior Circumstances

that arises out of, relates to, is based upon or is attributable to a **Circumstance** which has been notified to a prior **Policy** or certificate of insurance, including any **Related Claims**.

20. Products, Manufacturing and Defective Workmanship

arising out of, based upon or attributable to:

- a. supply, repair, alteration, manufacture, installation or maintenance of goods, materials or products by the **Insured**, a subcontractor or **Sub Consultant** or any **Related Entity**
- b. defective workmanship, including but not limited to any work performed by the Insured, their subcontractors, sub-consultants, or any third party under their direction or supervision that does not meet required quality, standards, or specifications, or fails to conform to applicable design specifications, building codes, or regulations.
- c. construction, repair, installation, erection, removal or demolition of buildings, building works or physical structures by the **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**.



Section D - Exclusions - continued

21. Perfluoroalkyl And Polyfluoroalkyl Substances

- a. "bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged, threatened or suspected inhalation, ingestion, absorption, consumption, discharge, dispersal, seepage, migration, release or escape of, contact with, exposure to, existence of, or presence of, any "perfluoroalkyl or polyfluoroalkyl substances".
- b. any loss, cost or expense arising, in whole or in part, out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to or assessing the effects of, "perfluoroalkyl or polyfluoroalkyl substances", by the insured or by any other person or entity.

For the purpose of this exclusion the following definitions are applicable:

Perfluoroalkyl or polyfluoroalkyl substances

- i. Chemical or substance that contains one or more alkyl carbons on which hydrogen atoms have been partially or completely replaced by fluorine atoms, including but not limited to:
 - a. Polymer, oligomer, monomer or nonpolymer chemicals and their homologues, isomers, telomers, salts, derivatives, precursor chemicals, degradation products or by-products;
 - b. Perfluoroalkyl acids (PFAA), such as perfluorooctanoic acid (PFOA) and its salts, or perfluorooctane sulfonic acid (PFOS) and its salts;
 - c. Perfluoropolyethers (PFPE);
 - d. Fluorotelomer-based substances; or
 - e. Side-chain fluorinated polymers; or
- ii. Good or product, including containers, materials, parts or equipment furnished in connection with such goods or products, that consists of or contains any chemical or substance described in Paragraph (i) above.

22. Pyrite & Mica Exclusion

arising from any loss, cost or expense directly or indirectly arising out of, resulting as a consequence of, or related to the use, specification, testing, remediation, removal or exposure to Pyrite or Mica or materials or products containing Pyrite or Mica whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss.

23. 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**.



Section D - Exclusions - continued

24. Subsidiaries

arising from or related to any **Wrongful Act** committed by a **Subsidiary** (or any director, former director, partner, former partner, principal, former principal, member, officer, or employee of a Subsidiary), unless such entity was a **Subsidiary** of the Insured at the time the **Wrongful Act** occurred.

25. 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. a Fellow, or Associate of the Society of Chartered Surveyors or a Fellow or Professional Member or Technical Member or an Associate Member of the Royal Institution of Chartered Surveyors (RICS); or
- b. a Fellow or Associate of the Irish Auctioneers and Valuers Institute (IAVI) or a Fellow or Associate of the Institute of the Professional Auctioneers and Valuers (IPAV) or a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA); or
- c. a Fellow or Associate of the Architects and Surveyors Institute (ASI); or
- d. a Fellow or Associate of the Faculty of Architects and Surveyors (FFAS); or
- e. a Fellow or Associate of the Royal Institute of Architects of Ireland (RIAI); or
- f. a Fellow or Associate of the Royal Institute of British Architects (RIBA); or
- g. a Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS) or
- h. a Chartered Engineer; or
- i. anyone who has not less than five years' relevant experience.

26. Trade Debts

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

27. U.S./Canada

made or pending in the United States of America, Canada, their territories or possessions, or any country which operates under the Laws of the United States of America or Canada or any order, judgment, arbitration, award, settlement, defence costs or payment which is delivered, made or incurred within the United States of America, Canada, their territories or possession or any country which operates under the Laws of the United States of America or Canada ;any order or judgment to enforce such order, judgment, arbitration, award, settlement, defence costs or payment



Section D - Exclusions - continued

28. 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.



Section E - Claims

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 the **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. the **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 the **Insured** of any **Notice of Intention to Adjudicate**; or
 - 2) at least 30 calendar days before service by the **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 the **Insured**, or subsequently by the **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 the **Insured's** expense, save always that they shall also constitute **Defence Costs** under this **Policy**;



Section E - Claims - continued

1. Adjudication Provisions - continued

- ii. The insured must:
 - 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 the **Insured** solely in the performance of the **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 from the **Legal Panel** as they may deem necessary to have conduct of such proceedings if appropriate. However, any such steps taken by the **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 written agreement of the **Insurer**.

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** on a pro rata basis taking into account the financial and legal exposures attributable to covered matters and matters not covered under this **Policy**.

3. Circumstance

It is a condition precedent to cover that the **Insured** shall immediately and during the **Policy Period** give written notice to the **Insurer** at the address listed in the **Claims Notifications** clause below of any **Circumstance** of which the **Insured** becomes aware during the **Policy Period**.

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

If the **Insured** fails to notify the **Insurer** of a **Circumstance** as set out above and the **Insurer** is prejudiced as a result, the **Insurer** shall be entitled to refuse to indemnify the **Insured** in respect of that **Circumstance**.



Section E - Claims - continued

4. Claim Notifications

It is a condition precedent to cover that the **Insured** shall immediately and during the **Policy Period** give written notice to the **Insurer** of any **Claim** first made against the **Insured**. All notifications must be in writing to:

Leeson Claims Services Limited
68 Merrion Square South
Dublin 2

Or by email to

PIClaims@LCSI.ie

If the **Insured** fails notify the **Insurer** of a **Claim** as set out above and the **Insurer** is prejudiced as a result, the **Insurer** shall be entitled to refuse to indemnify the **Insured** in respect of that **Claim**.

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** or **Related Claims** alleging the same **Wrongful Act**.

6. Defence

The **Insurer** does not assume any duty to defend, and the **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 the **Insured** shall select one of the **Legal Panel** to provide such legal representation.

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**



Section E - Claims - continued

8. Insured's Consent

The **Insurer** may make any settlement it deems expedient of any **Claim** against the **Insured**, subject to such **Insured's** written consent. Where the **Insured** does not consent the **Insurer** may elect to pay to the **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**.

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**, or assume any obligation or incur any expense without the prior written consent of the **Insurer**.

10. Fraudulent Claims

If the **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.

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 **Insured** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this **Policy**.

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.



Section F - General Conditions

1. Arbitration

Any dispute or difference between the **Insured** and the **Insurer** arising under or in connection with this **Policy** shall be referred to arbitration by the Insured within 12 months of the dispute or difference arising 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 (Irish Branch).

Every or any such reference shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010 or any act or statutory provision amending same and shall be an arbitration conducted in Dublin, Ireland in the English language and governed by the Arbitration Act 2010.

If the dispute or difference is not referred to arbitration by the Insured within 12 months of the dispute or difference arising, it will be treated as abandoned.

2. Assignment

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

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 expires. 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.



Section F - General Conditions - continued

3. Cancellation and Premium Payment - continued

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.

Reasons for the cancellation 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** or **Circumstance** has been notified.

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** or **Parent Company**, then the cover provided under this **Policy** with respect to such **Subsidiary** or **Parent Company** is amended to apply only to **Wrongful Acts** committed prior to the date of such appointment.

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 the 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**.



Section F - General Conditions - continued

6. Innocent Non-Disclosure / Misrepresentation

The **Insured** has a pre-contractual duty to provide true and accurate responses to any questions asked by the **Insurer**. In the event of innocent non-disclosure or misrepresentation or fact or untrue statements in the **Submission** or in any other information which the **Insured** and/or the broker or agent(s) has supplied to the **Insurer**, the **Insurer** shall not be entitled to avoid the **Policy** on the grounds that there was innocent non-disclosure or misrepresentation.

7. Negligent Non-Disclosure / Misrepresentation

The **Insured** has a pre-contractual duty to provide true and accurate responses to any questions asked by the **Insurer**. In the event of negligent non-disclosure or misrepresentation of facts or untrue statements in the **Submission** or in any other information in which the **Insured** and/or its broker or agent(s) has supplied to the **Insured**, the **Insurer** shall:

- a. if the **Insurer** would not have entered into the **Policy** on any terms, be entitled to avoid the **Policy** and refuse all **Claims** but shall return the premium paid
- b. if the **Insurer** would have entered into **Policy** but on different terms (excluding terms relating to the premium), be entitled to treat the **Policy** as if it had been entered into on those different terms
- c. if the **Insurer** would have entered into the **Policy** (whether the terms relating to the matters would other than the premium would have been the same or different) but would have charged a higher premium, be entitled to reduce proportionally the amount to be paid on a **Claim**.

8. Fraudulent Non-Disclosure and Misrepresentation

The **Insured** has a pre-contractual duty to provide true and accurate responses to any questions asked by the **Insurer**. In the event of a fraudulent non-disclosure or misrepresentation of facts or untrue statements in the **Submission** or in any other information which the **Insured** and/or its broker or agent(s) has supplied to the **Insurer**, the **Insurer** shall be entitled to avoid the **Policy**.

For the purposes of this clause, fraudulent non-disclosure or misrepresentation means a non-disclosure or misrepresentation that is false or misleading in any material respect and which the **Insured** either:

- a. knows to be false or misleading, or
- b. consciously disregards whether it is false or misleading.

"Fraudulent" or "fraud" shall be construed accordingly.

9. 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.



Section F - General Conditions - continued

10. 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**.

11. Rights of Third Parties

This **Policy** does not confer any directly enforceable benefit upon any third party other than the **Insured**, save to be the extent provided in the Consumer Insurance Contract Act, 2019.

12. Sanctions

The **Insurer** shall not be deemed to provide cover and the **Insurer** shall not 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.

13. 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.

14. 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.

15. 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: PIClaims@LCSI.ie
Telephone: 14 852 980

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)
Suite 307, The Victorians, 15-18 Earlsfort Terrace, Saint Kevin's, Dublin 2
E-mail: info@nbsireland.com
Telephone: 1800 856 090

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
DO2 VH29

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

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



PROFESSIONAL INDEMNITY



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