



optio

Design & Construct Professional Indemnity

(Aggregate Costs Inclusive)

In consideration of the **insured** named in the schedule hereto having paid to **insurers** the premium set forth in the schedule, **insurers** hereby agree to provide the insurance described in this policy of insurance for the period of insurance (“**policy period**”) shown in the schedule subject to all the terms and conditions contained herein or endorsed hereon.

PROVIDED THAT:

- a) the total liability of **insurers** shall not exceed the **limit of indemnity** or such other limits of indemnity shown herein or as may be substituted therefor by memorandum hereon or attached hereto
- b) this policy the schedule (including any schedule issued in substitution) and any memoranda shall be considered one document and any word or expression to which a specific meaning has been attached shall bear such meaning wherever it appears
- c) where there is more than one **insurer**, **insurers’** obligations under this policy are several and not joint and are limited solely to the extent of their individual subscriptions. **Insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reason does not satisfy all or part of its obligations hereunder.

The **proposal** shall be relied on by **insurers** in deciding whether or not to enter into the policy and on what terms including premium.

Insurance Act 2015

The Insurance Act 2015 (‘the Act’) applies to this policy and the terms of this policy will in most cases be no less advantageous to the **insured** than the Act would otherwise provide; in the event of any apparent conflict between the terms of this policy and the Act, the Act will prevail. There are, however, certain terms which, while capable of being more advantageous to the **insured** than the Act would otherwise provide, may in certain cases be less advantageous to the **insured** than the Act would provide. For ease of reference, these terms can be found at;

- page 6 Special Condition – Fair Presentation of Risk
- page 7 Exclusion B(b) – Prior Awareness

I. WHAT WE COVER: INSURING CLAUSES

INSURERS to the extent and in the manner hereinafter provided hereby agree:

INSURING CLAUSE 1: (CIVIL LIABILITY)

To indemnify the **insured** against any **loss** arising from a **claim** first made against them during the **policy period** which arises in the performance of its **professional business** by reason of any:

- a) negligent advice, design, specification or omission to perform a professional duty;
- b) libel or slander
- c) breach of confidentiality
- d) infringement of intellectual property rights including patents copyrights or the unauthorised use of systems or designs
- e) civil liability under The Data Protection Act 1998 or similar or successor legislation
- f) dishonesty or fraud of any present or past **employee** of the **named insured(s)**
- g) civil liability as a result of any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or an adjudication clause or rules contained in a contract.

INSURING CLAUSE 2: (DEFENCE COSTS AND EXPENSES)

To indemnify the **insured** in respect of all reasonable costs and expenses incurred with the prior written consent of **insurers** in the investigation, defence or settlement of any **claim** which falls to be dealt with under Insuring Clause 1 of this policy, which costs and expenses shall be included within and not in addition to the **limit of indemnity**.

INSURING CLAUSE 3: (FIDELITY)

To indemnify the **insured** against their own direct financial loss which, during the **policy period**, they shall discover they have sustained by reason of any dishonesty or fraud of any present or past director, partner, principal or **employee** of the **named insured(s)** provided always that:

- a) such dishonest or fraudulent act(s) are carried out by the person(s) concerned with the manifest intent to cause such **claim** to the **insured** or to obtain improper personal gain either for themselves or in collusion with, and for the gain of, others,
- b) any acts of dishonesty or fraud committed by one person or persons acting in concert shall for the purposes of this policy be treated as giving rise to one **claim** and one **claim**,
- c) such **claim** or **claims** shall include indemnity for accountants' fees incurred as a result of such **claim**, with the prior written consent of **insurers**,
- d) the liability of **insurers** shall not exceed £100,000 in the aggregate in any **policy period** which shall be included in and not in addition to the **Limit of Indemnity**,
- e) The annual accounts have been prepared and/or certified by an independent accountant or auditor,
- f) The policy shall not indemnify the **insured** against **claim** of any construction materials which are either the property of or entrusted to or lodged or deposited with the **named insured(s)**.

INSURING CLAUSE 4: (LOSS OF DOCUMENTS)

To indemnify the **insured** against reasonable costs and expenses necessarily incurred by the **insured** with the prior written approval of **insurers** in replacing or restoring **documents** either the property of or entrusted to or lodged or deposited with the **named insured(s)**, having been discovered and notified to **insurers** during the **policy period** to have been physically destroyed, damaged, lost or mislaid and which after diligent search by the **insured** cannot be found provided that:

- a) in respect of any computer systems records a back- up copy has been made and stored separately off site
- b) the cover under this Insuring Clause is limited to the actual costs incurred by the **Insured** in replacing or restoring such lost **Documents** any such claim for such costs and expenses shall be supported by bills or accounts in a form approved by the **insurer**
- c) the liability of **insurers** for such costs and expenses shall not exceed £50,000 for any one **claim** and £150,000 in the aggregate during the **policy period** which shall be included and not in addition to the **limit of indemnity**.

INSURING CLAUSE 5: (DATA PROTECTION PROSECUTION DEFENCE COSTS)

To indemnify the **insured** in respect of costs and expenses incurred with the prior written consent of **insurers** in the defence of any criminal proceedings brought against the **insured** during the **policy period** arising out of any alleged offence under The Data Protection Act 2018 or similar or successor legislation provided that:

- a) such alleged offence arises out of the course of **professional business** and
- b) the liability of **insurers** for any such costs and expenses shall not exceed £100,000 in the aggregate in any **policy period** which shall be included and not in addition to the **Limit of Indemnity**.

INSURING CLAUSE 6: (PROSECUTION DEFENCE COSTS (INCLUDING UNDER THE CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2007))

To indemnify the **insured** in respect of costs and expenses incurred with the prior written consent of **insurers** in the defence of any criminal proceedings brought against the **insured** and notified to **insurers** during the **policy period** arising out of any alleged breach of any statutory regulation relating to building or construction works provided that:

- a) such alleged breach arises out of the course of **professional business** carried on by or on behalf of the **named insured(s)** and
- b) **Insurers** reasonably believe that representation could protect the **insured** against a **claim** or **claim** or assist the **insured** in the defence of any subsequent or concurrent **claim** which would otherwise be covered under the policy and
- c) the liability of **insurers** for any such costs and expenses shall not exceed £100,000 in the aggregate in any **policy period** which shall be included and not in addition to the **Limit of Indemnity**.

INSURING CLAUSE 7: (LEGAL REPRESENTATION COSTS)

To indemnify the **insured** in respect of costs and expenses incurred with the prior written consent of **insurers**, which are not otherwise indemnified as costs and expenses under insuring clause 2, for representation at any properly constituted hearing, tribunal or proceeding having the power to compel the attendance of the **insured** notified to **insurers** during the **policy period** provided that;

- a) **Insurers** reasonably believe that representation could protect the **insured** against a **claim** or **claim** or assist the **insured** in the defence of any subsequent or concurrent **claim**, which would otherwise be covered under the policy and
- b) the liability of **insurers** for any such costs and expenses shall not exceed £100,000 in the aggregate in any **policy period** which shall be included and not in addition to the **Limit of Indemnity**

INSURING CLAUSE 8: (COMPENSATION FOR COURT ATTENDANCE)

To compensate the **insured** in the event of:

- a) the legal advisers acting on behalf of the **insured** with the consent of **insurers** requiring any director partner principal or **employee** of the **insured** to attend any court tribunal arbitration adjudication mediation or other hearing as a witness or
- b) **Insurers** requesting the attendance of any director partner principal or **employee** as an interested party at any mediation in connection with a **claim** made against the **insured** and notified under this policy **insurers** will provide compensation to the **insured** at the following rates for each day on which attendance is required:

- i. Directors, partners or principals of the **insured** £250
- ii. **Employees** of the **insured** £100

II. EXTENSIONS

The following extensions do not operate unless specified in the schedule of this policy.

MITIGATION OF LOSS

- A. **Insurers** agree to indemnify the **insured** against costs and expenses reasonably and necessarily incurred in respect of any action taken to mitigate a **claim** or potential **claim** that otherwise would be the subject of a **claim** under Clause 1 of this policy. The onus of proving that this extension is applicable shall be upon the **insured** who will be obliged to give prior written notice to **insurers** during the **policy period** of the intention to take action that will incur such costs and expenses. Any costs and expenses incurred without the prior written approval of **insurers** will not be indemnified.

DUTY TO WARN

- B. **Insurers** agree to indemnify the **insured** against any **loss** arising from a **claim** first made against the **insured** during the **policy period** as a direct result of a failure by the **insured** to warn any client of the **insured** of any inadequacy or deficiency (alleged or otherwise) in any design, specification, or formula supplied by that client or those clients to the **insured** in the conduct and execution of any **professional business** carried on by the **insured**.

III. DEFINITIONS

For the purpose of this Policy the following definitions are to apply:

Words in bold typeface used in this policy, other than in the headings, have specific meanings attached to them as set out below. Also where the context requires:

- a) words in the singular will include the plural and vice versa; and
- b) words expressed in one gender shall include all genders; and
- c) references to 'a person' shall include any individual, company, partnership or any other legal entity;
- d) references to a statute, regulation or trade terms of contract will be construed to include all its amendments or replacements.

All headings within this policy are included for convenience only and will not form part of this policy.

Claim shall mean:

- a) the receipt by an **insured** of any written notice of demand for compensation made by a third party;
- b) any writ, statement of claim, claim form, summons, application or other originating legal or arbitral process, cross-claim, counterclaim or third or similar party notice served upon an **insured**;
- c) any notice of intention in writing to commence legal proceedings against an **insured** in respect of the performance of its **professional business**.

A. Computer virus

shall mean a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through the insured's **Digital Assets** or other Computer System or network of whatsoever nature.

Computer Virus includes but is not limited to 'Ransomware', 'Trojan Horses', 'worms' and 'time or logic bombs'

B. Cyber Extortion

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

- C. **Denial of Service Attack** shall mean any unlawful attempt by a party to temporarily or indefinitely interrupt or suspend service to a **Digital Asset**.

- D. Digital Assets**
shall mean any of an insured's Computer Systems, mobile devices or other electronic data processing device, equipment or system, hardware, software, programme, instruction, data, component or accessory utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing.
- E. Documents:**
shall mean deeds, wills, agreements, maps, plans, records, books, letters, policies, computer system records, forms and documents of whatsoever nature whether written, printed or reproduced by any other method (other than bearer bonds, coupons, bank or currency notes or any other negotiable instruments).
- F. Disease**
Shall mean any infection, illness, sickness or malady including but not limited to any human infectious disease which has been:
1. declared as an epidemic by a government, competent local authority or any other body with the same authority; or
 2. proclaimed as a pandemic or characterized as a pandemic by the World Health Organization (WHO)
- G. Employee** shall mean any person, including any trainee or consultant, other than a director partner or principal in the **named insured**, who is or has been under a contract of service or apprenticeship with the **named insured**, whilst employed by and under the control of the **insured** in connection with the **professional business**.
- H. Excess** shall mean the amount for which the **insured** is responsible under this policy.
- I. Fair Presentation** shall have the same meaning as found in s.3(3) Insurance Act 2015
- J. Insured** shall mean the **named insured** and any of the following:
- a) those persons named in the last completed **proposal** and any other person or persons who have subsequently become director(s)/partner(s)/principal(s) in the **named insured(s)** prior to the expiry of the **policy period**,
 - b) any former director(s)/partner(s)/principal(s) of the **named insured(s)** for services performed for and on behalf of the **named insured(s)** including director(s)/partner(s)/principal(s) remaining as consultants to the **named insured(s)**,
 - c) any **employee**
 - d) the estates and/or legal representatives of any of the persons noted under a), b) or c) hereof in the event of their death, incapacity, insolvency, or bankruptcy
- K. Insurers** shall mean the entity or entities stated in the schedule
- L. Limit of Indemnity** shall mean the amount specified in the schedule being the maximum amount payable (including costs and expenses payable under insuring clause 2) by **insurers** in the aggregate in any **policy period** irrespective of the number of **claimants** or number of **insureds**
- M. Loss** shall mean any and all damages, compensation and interest, including **claimants'** costs and expenses, payable by an **insured** whether by judgement, arbitration award or otherwise or agreed in any settlement.
- N. Named insured(s):** shall mean the **named insured(s)** specified in the schedule or the predecessors in business of the said **named insured(s)** as disclosed to **insurers** who shall be deemed the agent of the other insureds for the purposes of sending or receiving notices required by the terms and conditions of this policy, and for purposes of remitting or receiving any monies due to any party
- O. Policy Period** shall mean the period of insurance specified in the schedule.

P. Pollution shall mean actual or alleged contamination, discharge, seepage, migration, dispersal, release or escape of any artificial or natural solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste or any combination of them whether permanent or transitory and however occurring and including the monitoring, testing, clean up, removal, treatment detoxification, neutralisation or any other response to or assessment of the same

Q. Professional Business shall mean:

- a) design or specification
- b) supervision of construction
- c) Inspection of construction
- d) feasibility study
- e) technical information calculation, or
- f) surveying

undertaken only by or on behalf of the **insured** and under the direction and direct control of **Professional Staff**

For the avoidance of doubt **professional business** does not include supervision by the **insured**, or by its own specialist designers, consultants or sub-contractors of its own or its subcontractors' work where such supervision is undertaken in its capacity as a building or an engineering contractor.

R. Professional Staff

Qualified Architects, Engineers, Surveyors or other persons with professional qualification appropriate to the **professional business** or persons having not less than 5 years' experience in carrying out the **professional business** or any other person where specific agreement in writing has been obtained from **insurers** prior to cover being granted

S. Proposal shall mean all the written information supplied by the **insured** in whatever format to **insurers** and/or any **Statement of Fact** document.

IV. EXCESS CLAUSE

- a) **Insurers** shall only be liable for that part of each and every **claim** made under the policy which exceeds the **Excess**. It is understood and agreed that if any payment is incurred by **insurers** which is the responsibility of the **insured**, then such amount shall be reimbursed to **insurers** by the **insured** forth with on demand.
- b) The **Excess** shall be as specified in the schedule for insuring clauses 1 and 3. The Excess shall apply to each and every **loss** arising from a **claim** made against the **insured** in respect of insuring clause 1 and each and every **claim** in respect of insuring clause 3.
- c) Unless stated otherwise to the contrary, the **Excess** under these clauses shall be applicable to costs and expenses incurred with **insurers'** prior written consent
- d) In respect of insuring clauses 4, 5, 6 and 7 the **Excess** shall be £1000 which shall apply to each and every **claim** under insuring clause 4, each and every prosecution under insuring clauses 5 and 6 and each and every hearing, tribunal or proceeding under insuring clause 7.
- e) In respect of insuring clause 8 the **Excess** shall be nil.

V. SPECIAL CONDITIONS

A. Failure to make a fair presentation

Notwithstanding the statutory remedies available to **insurers** in the event of a qualifying breach of the duty of **Fair Presentation**, **insurers** will not rely on any qualifying breach to avoid the policy where:

- a) the qualifying breach was neither deliberate nor reckless; and
- b) the **insured** agrees to (i) pay additional premium requested by the **insurers**, if any, and (ii) any additional policy terms; and
- c) the **insured** should have notified a **claim** or circumstance which might give rise to a **claim**
 - i. to the **insurer** on risk during any period of insurance prior to this **policy period**, or
 - ii. to **insurers** during this **policy period** prior to obtaining an increase in the limit of indemnity, or other variation of terms

Insurers will indemnify the **insured** only to the extent the **insured** would have been indemnified under any more restrictive terms that would have been applied by either that **insurer** on risk prior to this **policy period**, or by **insurers** during this **policy period** prior to obtaining the increase in the limit of indemnity or variation of other terms.

In any case where there was no **insurer** on risk during a period of insurance prior to the **policy period**, no cover will be afforded under this policy in relation to the claim or circumstance referred to at c) above.

VI. WHAT WE DO NOT COVER: EXCLUSIONS

The policy shall not indemnify the **insured** against:

- A. **Other Insurance** any **claim** or **loss** where the **insured** is entitled to indemnity under any other Insurance(s) (except in respect of any excess beyond the amount which would have been payable under such Insurance had this policy not been affected), or any **claim** which should be indemnified by a more specific policy of insurance. Where any policy more specific to the matter for which indemnity is sought exists, this policy will only apply in excess of any such policy.
- B. **Prior Awareness**
 - a) any **claim** or circumstance that may give rise to a **claim** or **loss** which has been notified under any policy of insurance attaching prior to the inception of this policy, or
 - b) any circumstance that may give rise to a **claim** or **loss** which was known to the **insured** or which should have been known to the **insured** at the commencement of the **Policy Period**, but subject to the Special Condition – Failure to make a fair presentation of risk.
- C. **Assumed Duty**
any claim directly or indirectly arising out of, or in any way involving any liability, duty or obligation incurred or assumed by the insured which is not incurred or assumed in the normal conduct of the **insured's professional business**
- D. **Employment**
 - a) any **claim** or **loss** arising out of any dispute between the **insured** and any present or former **employee** or director of the **insured** or any person who has been offered employment with the **insured**, in connection with such employment, including but not limited to employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct;
 - b) any **claim** or **loss** arising out of the death of or bodily injury to or **disease** of or psychological injury to or emotional distress or anguish or shock or sickness of any **employee**

E. Death or Bodily Injury

any **claim** or **loss** arising out of the death, **disease**, or bodily or mental injury (other than emotional distress arising from any libel, slander, defamation or other reputational damage), of any person who is not an **employee**, unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **professional business** carried on by the **insured**

F. Property

- a) any **claim** or **loss** arising out of the ownership, possession, occupation, and/or control by the **insured** of any buildings, premises or land or that part of any building owned, leased, occupied or rented by the **insured**
- b) any **claim** or **loss** arising out of damage to property, unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **professional business** carried on by the **insured**

G. Controlling Interest

any **claim** brought by or on behalf of:

- a) the **insured** or
- b) a named insured, company or organisation controlling the **named insured(s)** or of which any director, partner or principal of the **named insured(s)** have control;
- c) any person who, at the time of the act, error or omission giving rise to the **claim**, is a family member unless such a person is acting without any prior or indirect solicitation or co-operation of any **insured** (family member means any spouse, domestic partner, parent, parent of a spouse or domestic partner, sibling or child);

unless such **claim** originates from an independent third party.

H. Joint Venture

- a) any **claim** or **loss** arising from any joint venture conducted with any third party other than in respect of any **claim** or **claim** arising from **professional business**
- b) any **claim** made by the other party to the joint venture unless such **claim** originates from an independent third party

I. Vehicles

any claim or loss arising out of ownership, possession or the use of any motor vehicles, aircraft, watercraft or hovercraft by the insured, or any party acting for or on behalf of the insured

J. Dishonesty &/or Fraud

any **claim** or **loss** arising out of any dishonesty &/or fraud of any person after discovery by the **insured** in relation to that person of reasonable cause for suspicion of dishonesty or fraud.

Furthermore, no indemnity shall be afforded to any person committing or condoning such dishonesty or fraud; and in the event of a **claim** or **loss** being sustained as a result of any dishonest or fraudulent act or omission, the amount of indemnity under this policy shall be reduced by an amount equal to the sum of any monies which but for such dishonesty or fraud would be due to any person from the **insured** or any monies of such person held by the **insured**, shall be deducted from any amount payable under this policy.

K. Trading Losses

any **claim** or **loss** arising out of any trading **claims** or trading liabilities incurred by any business managed or carried on by the **insured** including **claim** of any client account or business.

L. Contractual Liability and Collateral Warranties

any **claim** or **loss** arising out of liability assumed by the **insured** under any contractual agreement unless:

- a) the liability assumed by the **insured** does not exceed the amount of the **insured's** liability in the absence of such agreement; or
- b) the liability arises from a collateral warranty or duty of care agreement except that the policy shall not indemnify the **insured** against:
 - 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
 - ii) any acceptance or guarantee of fitness for purpose
 - iii) any warranty or agreement which provides greater or longer lasting benefit than that given to the party with whom the **insured** originally contracted
 - iv) any express guarantee contractual penalty or liquidated damages

Notwithstanding this exclusion **insurers** will indemnify the **insured** in respect of **claims** or costs and expenses payable under insuring clause 2 arising out of liability assumed under the standard Warranty Agreements published by the British Property Federation the Construction Industry Council or the Scottish Building Contract Committee.

M. Pollution

any **claim** or **loss** (including **claim** of value) arising directly or indirectly from **pollution**. This exclusion shall not apply where such **claim** or **loss** arises directly from negligent advice, design, specification or omission to perform a professional duty in the course of the any **professional business** carried on by or on behalf of the **insured** but cover shall only extend to that part of any **claim** or **loss** which relates to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure and shall not include the cost of remedying and/or rectifying any **claim** or damage to the land from resulting pollution.

N. Legal Jurisdiction (claims)

any legal proceedings brought against the **insured**:

- a) in the United States of America or Canada or their territories or possessions (whether for enforcement of judgement brought in another jurisdiction or otherwise) or in which it is contended that the laws of any country state or political sub- division of the United States of America or Canada or their territories and possessions Canada should apply; or
- b) outside the United States of America or Canada or their territories or possessions for the enforcement of judgement brought in the United States of America or Canada or their territories or possessions.

O. Radiation

any **claim** or **loss** whether directly or indirectly caused by, or contributed to, or arising from:

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

P. Retroactive Date

any **claim** or **loss** where the cause of such **claim** or **loss** occurred or was alleged to have occurred prior to the Retroactive Date specified in the schedule.

Q. Asbestos and Mould

liability arising directly or indirectly from

- a) the mining, processing, manufacturing, use, testing, ownership, sale or removal of asbestos, asbestos fibres, or material containing asbestos; or
- b) mould, including (but not limited to) toxic mould; or
- c) exposure to mould, including (but not limited to) toxic mould, asbestos, asbestos fibres, or material containing asbestos; or
- d) the provision of instructions, recommendations, notices, warnings, supervision or advice given, or which should have been given, in connection with mould, including (but not limited to) toxic mould, asbestos, asbestos fibres, or structures or material containing asbestos.

R. Terrorism and War

liability arising directly or indirectly from Terrorism or War Risks For the purposes of this exclusion:

- a) Terrorism means an act of any person acting on behalf of or in connection with any individual or organisation which carries out:
 - violent, unlawful or dangerous activities;
 - or damage to property or infrastructure;
 - 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;
 - a **Denial of Service Attack**

(or any threat thereof) for political, ideological, or similar purposes intended to or directed towards:

- the overthrowing or influencing by force or violence of any government de jure or de facto,
- putting the public or a segment thereof in a state of fear, intimidation or coercion;
- disruption of any segment of the economy of any country, state or region, and shall include any action taken in controlling preventing or supressing the same.

- b) War Risks means war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or acts of any military or usurped power,

If the **Insurer** alleges that by reason of this exclusion, any loss, damage, cost or expense is no covered by this **policy** the burden of proving the same shall be upon the **insured**.

In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

S. Deliberate Act

any **claim** or **loss** arising from a deliberate, reckless or malicious act of the **insured**, or any party acting for or on behalf of the insured.

T. Insurance and Finance

any **claim** or **loss** arising out of the effecting or maintenance of insurance and/or in connection with the provision of finance and/or advice on financial matters, or any arrangement fee(s), interest, or finance charges of whatsoever nature, that the **insured** may be obligated or liable to pay in connection with any bank loans, overdrafts, mortgages, or financial arrangements obtained by the **insured** for whatever reason.

U. Market Fluctuation

- a) any **claim** or **loss** relating to the financial return of any investment or the depreciation or **claim** of investments when such financial return depreciation or **claim** is as a result of normal or abnormal fluctuations in any financial stock commodity or other markets
- b) any warranty or guarantee relating to the financial return of any investment.

V. Insolvency

any **claim** or **loss** arising from or in any way connected with the insolvency of the **insured**.

W. Fines Penalties and Punitive Damages

any taxes fines penalties punitive exemplary or aggravated damages where such damages have been identified separately within any award of a court or the multiple portion of any **claim**.

X. Goods and Products

any **claim** or **loss** arising out of the supply of any goods by or on behalf of the **insured** or products manufactured constructed altered repaired treated sold supplied or distributed by or on behalf of the **insured** unless directly arising from negligent advice, design, specification or omission to perform a professional duty in the course of the any **professional business** carried on by the **insured**.

Y. Directors and Officers and Trustees Liability

any **claim** against any **insured** in their capacity as a director officer or trustee in respect of the performance or non-performance of their duties as a director officer or trustee.

Z. Virus Transmission and Hacking

any **claim** or **loss** arising out of:

- a) the transmission, receipt or impact of any **computer virus**; or
- b) the unauthorised access by any person to any of the **Insured's Digital Assets** or any other equipment or component or system or item which processes stores or retrieves data, whether an **insured's** property or not;
- c) Cyber Extortion;
- d) Denial of Service Attack;
- e) the unintentional dissemination, distribution or misuse of any information whether electronically or otherwise, which is either confidential or subject to statutory restrictions in its use;

AA. Construction Cost Estimate

any **claim** or **loss** arising out of the estimate of construction cost(s), unless undertaken by a properly qualified quantity surveyor acting on behalf of the **insured** in the performance of the **professional business**.

BB. Defective workmanship/Materials

any **claim** or **loss** arising out of any defective workmanship or materials in construction works.

CC. Patents and Trade Secrets

any **claim** or **loss** arising out of the false attribution of authorship or passing off infringement of intellectual property rights.

DD. Post takeover

any **claim** or **loss** arising directly or indirectly by reason of acts, errors or omissions committed by the **insured** after the date of any **take-over** or **merger** unless otherwise agreed by the **insurer**;

EE. Legislation ESRIA, RICO and SEC

any **claim** or **loss** arising out of the **insureds** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation including but not limited to:

- a) the Employment Retirement Income Security Act 1974 and any amendment thereto, or any rules or regulations promulgated thereunder;
- b) any actual or alleged violations of the Racketeer Influenced and Corrupt Organisation Act 18 USC Sections 1961 et seq and any amendments thereto, or any rules or regulations promulgated thereunder;
- c) any actual or alleged violation of any of the provisions of the Securities Act of 1933, the Securities Exchange Act 1934 or any similar Federal or State law or any common law relating thereto.

VII. CONDITIONS

A. The following conditions 1-6 are Conditions relating to Indemnity

If the **insured** does not comply with any part of any condition which makes payment of a claim conditional upon compliance with it, the **Insurer** will not pay for any claim, except that where the condition concerned would, if complied with, tend to reduce:

- a) losses of a particular kind;
- b) loss at a particular location;
- c) losses of a particular time.

If the **Insured** can show that non-compliance with the condition could not have increased the risk of the loss that actually occurred in the circumstances that occurred, the **Insurer** shall provide indemnity as though the noncompliance had not occurred.

1. Admission of Liability

The **insured** shall not admit liability for, or settle, any **claim** or circumstance which may give rise to a **claim**, or incur any costs or expenses in connection therewith, without the prior written consent of **insurers** who shall be entitled at any time to take over and conduct in the name of the **insured** or the said **named insured(s)** as the case may be, the defence settlement or investigation of any such **claim** or circumstance which may give rise to a **claim**. Nevertheless neither the **insured** nor **insurers** shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the **insured** and **insurers**) shall advise that such proceedings should be contested with the probability of success.

2. Notification

2.1 The **insured** shall give to **insurers** as soon as reasonably practicable during the **policy period** details in writing of:

- a) any **claim**, writ, summons and/or process relating to any **claim** or previously notified circumstance served upon them or made against them and/or
- b) the discovery of any financial loss to them which is likely to be the subject of indemnity hereunder.

2.2 The **insured** shall give to **insurers** notice in writing as soon as reasonably practicable during the **policy period** of:

- a) any circumstance of which the **insured** shall first become aware during the **policy period** which is likely to give rise to a **claim** against them or a **loss**,
- b) the discovery of a reasonable cause for suspicion of dishonesty or fraud on the part of a present or past director, partner, principal or **employee** of the **named insured(s)** whether potentially giving rise to a **claim** or **loss** under this policy or not,
- c) the receipt by the **insured** of notice of the intention to institute proceedings (including, but not limited to, legal proceedings, dispute resolution proceedings or disciplinary proceedings) against the **insured** or requiring the **insured** to attend any hearing, tribunal or proceedings.

Notice should be given to the address listed in the schedule.

Provided notice has been given in accordance with this Condition then any subsequent **claim** made against the **insured** or any subsequent **loss** discovered by the **insured** arising from the matters notified in accordance with clauses 2.2 (a) to (c) above shall be deemed to have been made or discovered during the **policy period**.

3. Housing Grants, Construction and Regeneration Act 1996 ("the Act")

3.1 Special provisions relating to Notification and Conduct

- a) The **insured** shall give notice to **insurers**, in the manner appearing below, within one working day of any of the following:
- (i) the receipt by the **insured** of any notice or intention to adjudicate ("**Adjudication Notice**");
 - (ii) the service by the **insured** of any **Adjudication Notice** on any other party;
 - (iii) upon the **insured** having reasonable grounds to believe that an **Adjudication Notice** may be served on them;

provided that, in each such case, the subject matter of the **Adjudication Notice** (or any part thereof) may, or does, give rise to a **claim** against the **insured** which is likely to be indemnified under this policy.

Notification pursuant to (i) above shall be effected only by notifying **insurers** within the specified timeframe.

- b) **Insurers** shall be entitled to appoint solicitors and/or experts to handle any adjudication on behalf of the **insured** and **insurers** shall have the conduct of all indemnifiable matters relating to any such adjudication. Subject to the provisions of Condition 3.2 below and the application of any costs-inclusive **Excess** payable by the **insured**, **insurers** shall pay all costs and expenses incurred in the appointment of such solicitors and/or experts.
- c) The **insured** shall cooperate fully with **insurers** in relation to all matters that are required to be performed or done to comply with the requirements of the adjudicator and to respond to the matters referred to in the **Adjudication Notice**. The **insured** shall permit **insurers** and/or their appointed solicitors and/or experts immediate and unfettered access to all documents in the possession of the **insured** which are relevant to the subject matter of the **Adjudication Notice**. Without prejudice to the foregoing, the **insured** shall immediately provide to **insurers** the **Adjudication Notice**, the Referral Notice and all documents served thereunder.
- d) The **insured** shall not at any time without the written consent of **insurers** agree with any other party that an adjudication shall finally determine any dispute.
- e) The **insured** shall cooperate with **insurers** and take all practicable steps to assist **insurers** to pursue legal or arbitration or any other necessary proceedings to determine finally the matters referred to in the **Adjudication Notice** (or any part thereof) and/or to challenge the validity of any adjudicator's decision and/or to provide for any stay of proceedings in relation thereto.
- f) **Insurers'** acceptance of any notification by the **insured** under these provisions and the instruction of solicitors and/or experts to handle any adjudication on the **insured's** behalf shall in all cases be without prejudice to the policy Terms and shall not be construed as a waiver by **insurers** of their rights to refuse indemnity to the **insured** in respect of any part of an adjudicator's decision which does not fall within the scope of the insuring clauses of this policy.

3.2 Mixed Awards

- a) For the purposes of the policy:
- i. "the **award**" means the sum which the **insured** become liable to pay by reason of any adjudicator's decision; and
 - ii. "the **insured part**" means that part of the Award which is covered under the policy terms and for which **insurers** are required to indemnify the **insured**
- b) If only part of the **award** is covered under the policy Terms **insurers** shall only be required to indemnify the **insured** in respect of the **insured part**.
- c) If the **insured part** exceeds 50% of the **award** **insurers** will pay all costs and expenses incurred in handling the adjudication.
- d) If the **insured part** equals or is less than 50% of the **award** **insurers** will pay only a rateable part of the costs and expenses incurred in handling the adjudication, to be calculated in the same proportion as the **insured part** bears to the total amount of the **award**.

3.3 Jurisdiction

Cover shall apply only to adjudications which take place pursuant to construction contracts entered into in the United Kingdom and which are subject to the appropriate United Kingdom law.

4. Co-operation

The **insured** shall:

- a) always act honestly, there being no right to any form of payment or indemnity under the policy in the event that any **claim** is made fraudulently; and
- b) give all such information or assistance possible and forward all documents, to enable the **insurer** to investigate, settle or resist any **claim** as the **insurer** may reasonably require; and
- c) provide such proofs and information with respect to the **claim** as may reasonably be required, together with (if demanded) a statutory declaration of the truth of the **claim** and any matters connected therewith; and
- d) not destroy evidence, supporting information or documentation without the **insurer's** prior consent; nor destroy any plant or other property relating to an occurrence, loss or suit that may give rise to a **claim** under this policy.

5. Dishonesty and Fraud

- a) the insured shall at the request and expense of insurers take all reasonable steps to obtain reimbursement from any person committing or condoning any dishonest or fraudulent act or omission or from their estates or legal representatives;
- b) If the insured shall make any **claim** under this policy fraudulently or knowing the same to be fraudulent as regards amount or otherwise, insurers will not be liable for that **claim** and may terminate the policy with effect from the date of the first fraudulent act and any payments made by insurers prior to that date in relation to that **claim** must be reimbursed to insurers.

6. Sub-contractors/Sub Consultants

The rights of recourse against sub-contractors or sub-consultants should not be waived or otherwise impaired, and the **insured** shall use reasonable endeavours to ensure that the sub-contractors or sub-consultants have in place Professional Indemnity Insurance cover to a limit of indemnity of at least a level equivalent to the **Limit of Indemnity**.

B. The following conditions are General Conditions

1. Subrogation

If any payment is made under this policy in respect of a **claim** and **insurers** are thereupon subrogated to the **insured's** rights of recovery in relation thereto it is agreed that **insurers** shall not exercise such rights against any **employee** of the **insured** unless such **claim** has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or dishonest, fraudulent, criminal or malicious omission of the **employee**.

2. Series Clause

Where a series of **claims** or losses arises from a breach of or repeated breaches of a single duty or identical duties owed and arising from a single cause all **claims** and losses within that series shall for the purpose of the **Limit of Indemnity** and the **Excess** under this policy be treated as a single **claim**.

3. Legal Jurisdiction (Policy)

The proper law for the interpretation of this policy is English Law. The Courts of England and Wales alone shall have jurisdiction for hearing and determining any litigation arising out of or in connection with the interpretation of this policy and any arbitration proceedings shall be heard and determined solely in England and in accordance with English Law and procedure.

4. Arbitration Clause

Any dispute or difference arising under the terms of this policy of Insurance between the **insured** and **insurers** shall be referred to a Queen's Counsel for the purposes of arbitration whose decision will be final and binding such Queen's Counsel to be agreed upon by both parties or, in the absence of agreement, to be nominated by the Chairman of the Bar Council from time to time. **insurers** agree to pay the costs of such referral except in those instances where indemnity has been denied and the Queen's Counsel upholds **insurers'** decision.

5. Contracts (Rights of Third Parties) Act 1999

With regard to the Contracts (Rights of Third Parties) Act 1999 the **insured** and **insurers** agree and acknowledge that:

- a) this policy does not, and is not intended to, confer any enforceable rights upon any Third Party, notwithstanding that **insurers** may, or may not, have acknowledged the interest of any Third Party,
- b) the parties to this policy are, subject to agreement between **insurers** and the **insured** at their sole discretion, entitled to alter, amend, or cancel this policy without reference to, or seeking the consent of, any Third Party, notwithstanding that **insurers** may, or may not, have acknowledged the interest of any Third Party,
- c) in the event that any Third Party seeks to enforce the provisions of this policy in proceedings, **insurers** will have available to them the same defences or right of set-off as though such proceedings had been brought by the **insured**.

6. Relinquish Control by Payment of Claim

In connection with any **claim insurers** may at any time pay to the **insured** the **limit of indemnity** less any sums already paid or any less amount for which such **claims** can be settled and thereupon **insurers** shall relinquish control of such **claims** and be under no further liability in connection therewith except for costs and expenses for which **insurers** may be responsible under this policy in respect of matters prior to the date of such payment.

7. Premium Payment

The **insured** undertakes that the premium will be paid in full to **insurers** when due or in respect of instalment premia when due in accordance with the Terms of Business Agreement. If the premium due under this policy has not been so paid to **insurers** and in respect of instalment premia by the date they are due, then **insurers** shall have the right to cancel this policy by notifying the **insured** in writing, via their broker, where applicable. In the event of cancellation, premium is due to **insurers** on a pro rata basis for the period that **insurers** are on risk but the full policy premium shall be payable to **insurers** in the event of a **claim** or occurrence prior to the date of cancellation which gives rise to a valid **claim** by the **insured** under this policy.

It is agreed that **insurers** shall give not less than 14 days prior notice of cancellation to the **insured** in writing, via their broker, where applicable. If the premium due is paid in full to **insurers** before the notice period expires, notice of cancellation shall automatically be revoked. If not, the policy shall automatically terminate and be cancelled at the end of the notice period.

8. Named Insured to act as Agent

All persons falling within the definition of the **insured** agree that the first **named insured** named in the schedule is their agent for all purposes in connection with this policy. This policy may be varied or rescinded by agreement between **insurers** and this named **insured** without the consent of any other person falling within the definition of the **insured** or otherwise.

9. Sanctions

Insurers shall not be deemed to provide cover or be liable to pay any **claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **insurers** 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.

10. Cancellation by the Insured

If this insurance is cancelled by the **insured** in writing to the broker then, provided the **insured** has not made a claim, the **insured** will be entitled to a refund of any premium paid, subject to a deduction for any time for which the

insured has been covered. This will be calculated on a proportional basis. For example, if the **Insured** has been covered for six (6) months, the deduction for the time you have been covered will be half the annual premium.

Notice of cancellation may only be made by the **Named Insured**.

No premium will be refunded where any **claims** or circumstances have been notified under this policy.

11. Minimisation of risk

The **insured** will take all reasonable steps at its own expense to prevent a **Claim** arising or continuing.

Upon the happening of a claim and at all times thereafter, the **insured** shall act as a prudent uninsured and take all reasonable measures as are appropriate to avoid or minimise any claims which arise or may arise from that circumstance. Any failure by the **insured** to take such steps shall reduce or extinguish the insurer's liability to indemnify the insured under the policy to the extent that such failure has increased the claim under the policy.

VI. Information and data protection

- 1.1.1. In order for Optio Underwriting Limited & Optio Europe Brokers Limited ('Optio') and the **Insurer** to provide their respective services, they will collect and use information about the **Insured**, such as its name and contact details, which may also include special categories of personal data (e.g. about the **Insured's** health) and information relating to criminal convictions and offences. All personal information (including any sensitive personal data) acquired by Optio and the **Insurer** is held in accordance with all applicable legislation relating to data protection and privacy including (but not limited to) the Data Protection Act 2018 and Optio and the **Insurer** maintain protections and procedures in the storage and disclosure of personal information to keep it secure and prevent unauthorised access to or loss of such information.
- 1.1.2. The **Insured** also has certain rights under the legislation. These are:
- a) the right to be provided with fair processing information which is set out in this clause and Optio's and the **Insurer's** privacy notices;
 - b) the right to obtain confirmation that the **Insured's** data is being processed and to obtain access to their personal data;
 - c) the right to have personal data rectified if it is inaccurate or incomplete and If the personal data in question has been disclosed to third parties, they must be informed of the rectification, and Optio and the **Insurer** must also inform the **Insured** of this;
 - d) the right to request the deletion or removal of personal data where there is no compelling reason for its continued processing;
 - e) the right to stop or suppress the processing of personal data;
 - f) the right to obtain and re-use the **Insured's** personal data for their own purposes across different services and to move, copy or transfer their personal data easily from one IT environment to another in a safe and secure way, without hindrance to usability;
 - g) the right to object to processing based on legitimate interests or the performance of a task in the public interest/exercise of official authority (including profiling); direct marketing (including profiling); and processing for purposes of scientific/historical research and statistics;
 - h) the right of protection against the risk that a potentially damaging decision is taken without human intervention.
- 1.1.3. The lawful basis for Optio's and the **Insurer's** processing of the **Insured's** personal data is that, provided that the processing is necessary, it is in the public interest to make available insurance products through risk based pricing, to administer and pay insurance claims and to detect fraud in the insurance process.
- 1.1.4. If the **Insured** instructs Optio and the **Insurer** to cease processing or delete their personal data, this may impact upon Optio's and the **Insurer's** ability to provide insurance or to pay claims. Optio and the **Insurer** may contact the **Insured** to advise that the cessation of processing or the deletion of their personal data is not possible because the processing of certain data is necessary and lawful as outlined above.

- 1.1.5. Optio and the **Insurer** may monitor and record all communications with the **Insured** for compliance and training purposes.
- 1.1.6. **Our** processing of special categories of personal data is necessary for Optio and the **Insurer** to provide the **Insured** with the relevant services, including:
- a) underwriting, renewal information, validation of claims history, claims handling and all other matters relating to the processing of this insurance and any claims under this Policy;
 - b) statistical analysis, management information and market research;
 - c) audits, system integrity checking and risk management.
- 1.1.7. Personal information may also be used for the prevention and detection of fraud, and the Insured consents to Optio and the **Insurer**:
- a) sharing information about the **Insured** with other organisations (including the police) for the purposes of fraud prevention and detection;
 - b) conduct searches using publicly available databases (including social media);
 - c) undertaking credit searches;
 - d) checking and sharing the **Insured's** details with fraud prevention and detection agencies.
- 1.1.8. Personal information may also be disclosed to third parties as part of the operation of Optio and the **Insurer** business:
- a) other members of their respective groups group;
 - b) other insurance entities (such as the **Insurer's** current and prospective reinsurers) who have an interest in the risk accepted under this insurance;
 - c) Optio's and the **Insurer's** auditors and regulators;
 - d) Ombudsman services as described in the complaints section in the event of a complaint;
 - e) Specialist external professional service providers who may be instructed to give professional advice to Optio or the **Insurer**;
 - f) potential purchasers of the whole or part of Optio's or the **Insurer's** business;
- If the **Insured** wishes to understand more about the entities their personal data is shared with, please contact the appropriate Data Protection Officer. However, Optio and the **Insurer** will not disclose any of your personal data to third parties except as set out in this clause and in their Privacy Notices.
- 1.1.9. If false or inaccurate information is provided and fraud is suspected, details will be passed to fraud prevention agencies and made available to other organisations that have access to their databases. Law enforcement agencies may access and use this information. This information is used by Optio and the **Insurer** and other organisations to prevent fraud and other financial crime when:
- a) checking the details made under the duty of fair presentation;
 - b) confirming claims information;
 - c) recovering outstanding debts;
 - d) checking details on applications for credit and managing credit accounts;
 - e) checking details of job applicants and employees.
- Please contact **Us** if **You** require details of the relevant fraud prevention agencies.

Please note; information from fraud prevention agencies may be accessed and used from other countries.

1.1.10. Personal information may be transferred to entities within and outside of the European Economic Area. If processing of personal data takes place in the European Economic Area but outside the United Kingdom, this will be in accordance with any local Data Protection legislation, to the extent that this varies the requirements of the General Data Protection Regulation. If there are no material variations to the General Data Protection Regulation in the country in which the processing takes place, Optio and the **Insurer** will:

- a) Process any Special Category personal data (relating to an individual's racial or ethnic origin, religious or philosophical beliefs, trade union membership, genetics and health) only if the explicit consent of the individual has been confirmed in advance
- b) Not process any personal data relating to criminal convictions.

The use of Personal Data may involve a transfer of data outside the United Kingdom and the European Economic Area to countries that have less robust data protection laws. Any such transfer will be made with appropriate safeguards in place.

1.1.11. Where personal information is provided about another person, the **Named Insured** must inform that person of Optio and the **Insurer's** identity, and why their personal information will be processed and disclosed. The **Named Insured** must also obtain their written consent to the processing of their personal information in this way and provide Optio and the **Insurer** such consent upon request.

1.1.12. If the **Insured** wish to exercise their rights under the Data Protection Act 2018 including:

- a) the right to ask for a copy of the information Optio or the **Insurer** hold about them; and
- b) to correct any information that may be inaccurate

or have any queries as on how Optio and the **Insurer** use their information please contact:

In respect of Accredited Insurance (Europe) Limited- UK Branch

Donald Morgan
 Tel: 0207 977 0834
 Email: Donald.Morgan@Accredited-eu.com

In respect of Optio Underwriting Limited – Non-EEA Business

John Mawson
 Tel: +44 20 3859 2151
 Email: John.Mawson@optiogroup.com

In respect of Optio Europe Brokers Limited – EEA Business

Carlos Nunes
 Tel: +44 20 3642 8250
 Email: Carlos.Nunes@optiogroup.com

1.1.13. Your personal data will be kept for a minimum of seven years (7) and thereafter for a period sufficient to protect **Us** in the event of needing to comply with regulation and/or to meet any potential liability claim or litigation, but no longer than is necessary.

1.1.14. For more information on the Data Protection Act or if **you** wish to make a complaint regarding the handling of **your** personal data **you** may contact the Office of the Information Commissioner at:

**Wycliffe House, Water Lane
 Wilmslow Cheshire
 SK9 5AF**

Tel: 0303 123 1113 or 01625 54 57 45
 email: mail@ico.gsi.gov.uk

VII. REGULATORY STATUS

Optio is an intermediary and not an insurer. Optio has not made any personal recommendation regarding the sale of this policy. This policy is issued in accordance with the authorisation that the **Insurer has** granted to Optio. This contract makes Optio the **Insurers'** agent and gives them the authority to perform certain acts on the **Insurer's** behalf but does not affect the **Insured's** rights to claim or make a complaint.

Optio Underwriting Limited and Optio Europe Brokers Limited are regulated by the Financial Conduct Authority (FCA) and Maltese Financial Services Authority (MFSA). These details may be checked on the Financial Conduct Authority Register website at <http://www.fca.org.uk/firms/systems-reporting/register> or by contacting the Financial Conduct Authority on Tel: 0800 111 6768 (or from outside the United Kingdom on Tel: +44 20 7066 1000).

VIII. POLICYHOLDER COMPLAINTS

1. Optio and the **Insurers** strive to provide an excellent service to all their customers but occasionally things can go wrong. Optio and the **Insurers** take all complaints seriously and endeavour to resolve all customers' problems promptly. If the **Insured** has a question about this insurance or complaint about the person or firm that sold this **Policy**, the **Insured** should contact them.
2. If the **Insured's** complaint is in relation to this insurance or a claim they should write to either: Optio Underwriting Limited, 10th Floor, 1 Minster Court, Mincing Lane, London, EC3R 7AA. or; Optio Europe Brokers Limited, The Reed Centre, Ta'Xbiex, Marina, Ta'Xbiex, XBX 1027, Malta
3. If, after making a complaint:
 - a) The **Insured** feels that the matter has not been resolved to its satisfaction; or
 - b) Optio or the **Insurers** have not responded within eight weeks of the **Insured's** original complaint to them; and
 - c) the **Insured** is an eligible complainant, it may contact The Financial Ombudsman Service whose address is:
Exchange Tower,
Exchange Square;
London E14 9SR.
Telephone 0300 123 9 123 or 0800 023 4567
Website: <http://www.financial-ombudsman.org.uk/consumer/complaints.htm>.
4. Making a complaint to the Financial Ombudsman Service (FOS) does not affect the **Insured's** rights under this **Policy** but if the **Insured** is not an eligible complainant then **it** must follow the disputes resolution process detailed in the Arbitration Clause.
5. A summary of Optio and the **Insurers** complaint handling procedure is available on request and will also be provided to the **Insured** when acknowledging a complaint.
6. The FOS will only consider a complaint if the **Insured** is an eligible complainant and if:
 - a) Optio and the **Insurers** have been given an opportunity to resolve it; and
 - b) Optio or the **Insurers** have given the **Insured** a final response letter and **it** has referred **its** complaint to the FOS within six (6) months of the final response letter; or
 - c) Optio or the **Insurers** have not responded to the complaint with a decision within eight (8) weeks.

7. Eligible complainants are:
- a) private individuals; and
 - b) a micro-enterprise;
 - i) in relation to a complaint relating wholly or partly to payment services, either at the time of the conclusion of the payment service contract or at the time the complainant refers the complaint to the respondent; or
 - ii) otherwise, at the time the complainant refers the complaint to the respondent; or
 - c) a charity which has an annual income of less than £6.5 million at the time the complainant refers the complaint to the respondent; or
 - e) a trustee of a trust which has a net asset value of less than £5 million at the time the complainant refers the complaint to the respondent; or
 - f) (in relation to CBTL business) a CBTL consumer; or
 - g) a small business at the time the complainant refers the complaint to the respondent; or a guarantor.
8. The Insured may also be able to refer your complaint to the Office of the Arbiter for Financial Services, 1st Floor St Calcedonius Square, Floriana FRN 1530 Malta, telephone (+356) 212 49245 if **it** are not satisfied with our final response or Optio or the Insurers have not responded within fifteen (15) working days. The **Insured** will have to pay EUR 25.00 at the time of making **its** complaint to the Arbiter to use this service.

About the Office of the Arbiter for Financial Services

The Office of the Arbiter for Financial Services considers that a “complaint” refers to a statement of dissatisfaction addressed to an insurance undertaking by a person relating to the insurance contract or the service he/she has been provided with. The terms “person” does not specify that this is limited to individuals and therefore any policyholder, insured person, beneficiary and injured third party (irrespective of the country of residence or where the risk in situated) is eligible to make a complaint.

For more information on the Office of the Arbiter for Financial Services and its complaints process, please visit www.financialarbiter.org.mt.

The Financial Services Compensation Scheme (FSCS)

Under the Financial Services and Markets Act 2000, should insurers be unable to meet their liabilities to policyholders, compensation may be available. Insurance advising and arranging is covered for 90% of the **claim**, without any upper limit. For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the **claim**, without any upper limit. Information can be obtained on request, or by visiting the Financial Services Compensation Scheme website at www.fscs.org.uk.