

## Professional indemnity for design and construct professionals

### Policy wording

The General terms and conditions and the following terms and conditions all apply to this section. Cover under this section is given on an aggregate basis unless otherwise specified.

Please pay special attention to the Notification for adjudication section in the grey box at the end of this section.

### Special definitions for this section

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| <b>Advertising or branding</b>              | Advertising, branding, including <b>your</b> company name, trading name and any web domain name, publicity or promotion in or of those of <b>your</b> products or services that expressly fall within <b>your business activity</b> .   |
| <b>Applicable courts</b>                    | The courts of competent jurisdiction in those countries stated as the applicable courts in the schedule.  |
| <b>Business activity</b>                    | The activities stated in the schedule, which <b>you</b> perform in the course of <b>your business</b> .   |
| <b>Client</b>                               | Any person or entity with whom <b>you</b> have engaged or contracted to provide services or deliverables that expressly fall within <b>your business activity</b> .   |
| <b>Computer or digital technology</b>       | Any <b>programs</b> , computer network, hardware, software, operational technology, internet-connected device, network-connected device, electronic device, information technology, communications system, including but not limited to any internet-of-things devices, email system, intranet, extranet, website or cloud computing services.  |
| <b>Computer or digital technology error</b> | Any negligent act, error or omission by anyone in the:<br><ol style="list-style-type: none"><li>1. creation, handling, entry, modification or maintenance of; or</li><li>2. on-going operation, maintenance (including but not limited to installation, upgrading or patching) or development of.</li></ol> Any <b>computer or digital technology</b> .   |
| <b>Cyber attack</b>                         | Any digital attack or interference, whether by a <b>hacker</b> or otherwise, designed to:<br><ol style="list-style-type: none"><li>1. gain access to;</li><li>2. extract information from;</li><li>3. disrupt access to or the operation of; or</li><li>4. cause damage to:</li></ol> any data or <b>computer or digital technology</b> , including but not limited to any:<br><ol style="list-style-type: none"><li>a. <b>programs</b> designed to damage, disrupt, extract data from, or gain access to any data or <b>computer or digital technology</b> including, but not limited to, malware, wipers, worms, trojans, rootkits, spyware, dishonest adware, crimeware, ransomware, crypto-jacking and other malicious software or viruses; or</li><li>b. denial of service attack or distributed denial of service attack.</li></ol> |
| <b>Defence costs</b>                        | Costs incurred with <b>our</b> prior written agreement to investigate, settle or defend a claim against <b>you</b> .  |
| <b>Hacker</b>                               | Anyone, including an employee of <b>you</b> , who gains unauthorised access to or unauthorised use of any:<br><ol style="list-style-type: none"><li>1. <b>computer or digital technology</b>; or</li><li>2. data held electronically by <b>you</b> or on <b>your</b> behalf.</li></ol>  |
| <b>Personal data</b>                        | Any information about an individually identifiable natural person, including any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual, including but not limited to any information protected by the Data Protection Act 2018, General Data Protection Regulation (EU) 2016/679, or any related, similar or successor legislation or regulation in any jurisdiction.   |



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| <b>Pollution</b>                        | Any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.   |
| <b>Retroactive date</b>                 | The date stated as the retroactive date in the schedule.  |
| <b>Social engineering communication</b> | Any request directed to <b>you</b> or someone on <b>your</b> behalf by a person improperly seeking to obtain possession or the transfer to a third-party of virtual currency, money, securities, data or property that such person or third-party is not entitled to. |
| <b>You/your</b>                         | Also includes any person who was, is or during the <b>period of insurance</b> becomes <b>your</b> partner or director or senior manager in actual control of <b>your</b> operations.  |

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## What is covered

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| <b>Claims against you</b>                 | A.<br>If during the <b>period of insurance</b> , and as a result of <b>your business activity</b> for a <b>client</b> on or after the <b>retroactive date</b> within the <b>geographical limits</b> , any party:<br><ol style="list-style-type: none"><li>brings a claim, including any injunctive proceedings, against <b>you</b> for:<br/><ol style="list-style-type: none"><li>negligence or breach of a duty of care arising from the performance of any design or specification, feasibility study, technical information calculation or survey performed by <b>you</b> or on <b>your</b> behalf by sub-contractors;</li><li>infringement of intellectual property rights including copyright, trademark or moral rights or any act of passing-off;</li><li>breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use;</li><li>failure to warn that there is a deficiency in any design undertaken by another party; or</li></ol></li><li>refers a dispute arising directly from <b>your</b> breach of a duty of care to adjudication under the Housing Grants Construction and Regeneration Act 1996 or any similar or successor legislation.</li></ol> <p>Unless excluded under <b>What is not covered</b> below, <b>we</b> will indemnify <b>you</b> against the sums <b>you</b> have to pay as compensation, including any liability for claimants' legal costs and expenses.</p> <p><b>We</b> will also pay <b>defence costs</b> but <b>we</b> will not pay costs for any part of a claim not covered by this section.</p> |
| Negligence                                | a.   |
| Intellectual property infringement        | b.   |
| Breach of confidentiality                 | c.   |
| Deficiency in any design                  | d.   |
| Housing Grants Adjudication               | 2.   |
| Potential claims capable of rectification | If a problem arises which is capable of being rectified but which, if left, is likely to lead to a claim against <b>you</b> which would be covered by this section, <b>we</b> will pay the expenses <b>you</b> reasonably and necessarily incur with <b>our</b> prior written agreement in rectifying the problem to avoid the claim. <b>We</b> will only do this if <b>we</b> agree that these expenses are less than the amount of a potential claim. It is for <b>you</b> to satisfy <b>us</b> that <b>you</b> would be acting reasonably in seeking to rectify the problem in this way. If, following rectification, a claim is still brought against <b>you</b> , <b>we</b> will deal with it but <b>our</b> total payment, including what <b>we</b> have already paid, will not exceed the limit of indemnity stated in the schedule.  |
| Advertising claims                        | B.<br>If during the <b>period of insurance</b> , and as a result of <b>your advertising or branding</b> on or after the <b>retroactive date</b> within the <b>geographical limits</b> , any party brings a claim, including any injunctive proceedings, against <b>you</b> for:<br><ol style="list-style-type: none"><li>infringement of copyright or moral rights; or</li><li>defamation,</li></ol> <p>unless excluded under <b>What is not covered</b> below, <b>we</b> will indemnify <b>you</b> against the sums <b>you</b> have to pay as compensation, including any liability for claimants' legal costs and expenses.</p> <p><b>We</b> will also pay <b>defence costs</b> but <b>we</b> will not pay costs for any part of a claim not covered by this section.</p>  |



### Your own losses

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| Loss of documents    | If during the <b>period of insurance</b> any tangible document of <b>yours</b> which is necessary for the performance of <b>your business activity</b> is physically lost, damaged or destroyed while in <b>your</b> possession, <b>we</b> will pay the reasonable expenses <b>you</b> incur with <b>our</b> prior written agreement in restoring or replacing it. The most <b>we</b> will pay for the total of all such expenses is the relevant amount stated in the schedule. |
| Criminal proceedings | If <b>you</b> are charged with a criminal offence during the <b>period of insurance</b> under a statute or regulation that applies to <b>your business</b> , <b>we</b> will pay the reasonable costs incurred with <b>our</b> prior written agreement to defend <b>you</b> if, in <b>our</b> opinion, a successful defence may avoid a claim which would be covered by this section.   |

### Additional cover

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| Court attendance compensation | If any person within the definition of <b>you</b> , or any employee of <b>yours</b> , has to attend court as a witness in connection with a claim against <b>you</b> covered under this section, <b>we</b> will pay <b>you</b> the amount shown in the schedule as compensation for each day or part of a day that their attendance is required by <b>us</b> . The most <b>we</b> will pay for the total of all court attendances is the amount shown in the schedule. |
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### What is not covered

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|                               | A. <b>We</b> will not make any payment for any claim or part of a claim or loss directly or indirectly due to:  |
| Investments                   | 1. any investment advice, financial advice, investment of <b>client</b> funds or any activity regulated by the Financial Conduct Authority, Prudential Regulation Authority or any other similar or successor regulatory body.  |
| Design and survey             | 2. any design, specification, feasibility study, technical information calculation or survey which is not carried out by or under the direct supervision of a properly qualified engineer, architect, surveyor, quantity surveyor or other person with five years' practical experience of such activity unless notified to <b>us</b> and agreed by <b>us</b> in writing.               |
| Pension schemes               | 3. any operation or administration of any pension or employee benefit scheme or trust fund, or the sale or purchase of or dealing in any stocks, shares or securities or the misuse of any information relating to them, or any breach of any legislation or regulation related to these activities.  |
| Taxation and competition      | 4. any liability for any breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.   |
| Pollution                     | 5. <b>pollution</b> .   |
| Cyber incident                | 6. or contributed to by, resulting from or in connection with any:<br>a. <b>cyber attack</b> ;<br>b. <b>hacker</b> ;<br>c. <b>social engineering communication</b> ;<br>d. any fear or threat of 6.a. to 6.c. above;<br>e. any action taken in controlling, preventing, suppressing, responding or in any way relating to 6.a. to 6.d. above.   |
| Discrimination and harassment | 7. any discrimination, harassment or unfair treatment, unless arising directly from <b>your</b> breach of a duty of care in the performance of a <b>business activity</b> .   |
| Injury                        | 8. the death of or any bodily or mental injury or disease suffered by:<br>a. anyone employed by or working for <b>you</b> and arising out of their work for <b>you</b> ;<br>b. anyone else, unless arising directly from any design, specification, feasibility study, technical information calculation or survey performed by <b>you</b> or on <b>your</b> behalf by sub-contractors. |



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| Property damage                                   | 9. the loss, damage or destruction of any tangible property unless arising directly from any design, specification, feasibility study, technical information calculation or survey performed by <b>you</b> or on <b>your</b> behalf by a sub-contractor. This clause does not apply to <b>your</b> own loss under the Loss of documents cover in <b>What is covered</b> .   |
| Negotiable instruments                            | 10. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.  |
| Computer or digital technology error              | 11. or contributed to by, resulting from or in connection with any <b>computer or digital technology error</b> .  |
| Directors and officers' liability                 | 12. any personal liability incurred by a director or officer of <b>yours</b> when acting in that capacity or managing <b>your business</b> , or a breach of any fiduciary duty, or any statement, representation or information concerning <b>you</b> or <b>your business</b> contained in <b>your</b> accounts, reports or financial statements.   |
| Deliberate, reckless or dishonest acts            | 13. any act, breach, omission or infringement <b>you</b> deliberately, spitefully, dishonestly or recklessly commit, condone or ignore.   |
| Pre-existing problems                             | 14. anything, including any actual or alleged shortcoming in <b>your</b> work, or that of <b>your</b> sub-contractor, or any dispute in connection with a contract, likely to lead to a claim or criminal proceedings being made against <b>you</b> , which <b>you</b> knew or ought reasonably to have known about before the start of the <b>period of insurance</b> .  |
| Date recognition                                  | 15. <b>date recognition</b> .   |
| War, terrorism and nuclear                        | 16. or contributed to by, resulting from or in connection with any:<br>a. <b>terrorism</b> ;<br>b. <b>war</b> ;<br>c. <b>nuclear risks</b> ;<br>d. fear or threat of 16.a. to 16.c above; or<br>e. any action taken in controlling preventing, suppressing, responding or in any way relating to 16.a. to 16.d. above.<br><br>If there is any dispute between <b>you</b> and <b>us</b> over the application of clause 16.a. above, it will be for <b>you</b> to show that the clause does not apply.  |
| Asbestos  | 17. <b>asbestos risks</b> .   |
| Contractual liabilities and collateral warranties | 18. <b>your</b> agreement to take on any legal liability under any express agreement, warranty, indemnity, waiver or guarantee, unless:<br>a. <b>you</b> would be liable even if <b>you</b> had not given any such agreement, warranty, indemnity, waiver or guarantee; or<br>b. the liability arises from a collateral warranty or duty of care agreement.<br>In either case <b>we</b> will not indemnify <b>you</b> for any liability arising from:<br>a. any fitness for purpose guarantee;<br>b. any greater or longer lasting benefit than that given to the party with whom <b>you</b> originally contracted;<br>c. any express guarantee, contractual penalty or liquidated damages; and<br>d. <b>your</b> agreement to exercise a standard of care greater than would normally be expected in <b>your</b> profession. |
| Employees   | 19. anyone's employment with or work for <b>you</b> , or any breach of an obligation owed by <b>you</b> as an employer.   |
| Patent/trade secret                               | 20. any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret.   |
| Defective workmanship                             | 21. a. <b>your</b> or <b>your</b> sub-contractor's defective workmanship, or any defective materials <b>you</b> , <b>your</b> sub-contractor or a third-party have supplied;  |

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|   | <ul style="list-style-type: none"> <li>b. <b>you</b> or <b>your</b> sub-contractor's failure to supervise the work <b>you</b> or any sub-contractor have carried out.</li> </ul>   |
| Specialist, designer or consultant work | <p>22. any work performed by a specialist, designer or consultant working for <b>you</b> as a sub-contractor where:</p> <ul style="list-style-type: none"> <li>a. <b>you</b> have not taken reasonable steps to ensure that the sub-contractor has, and maintains, professional indemnity insurance with a reputable insurer; and</li> <li>b. there is no written contract between <b>you</b> and the sub-contractor which is subject to English or Scottish law.</li> </ul> |
| Overcharging of fees                    | 23. any overcharging of fees or commission by <b>you</b> .   |
| Failure to obtain insurance             | 24. <b>your</b> failure to obtain and maintain adequate insurance for a project.   |
| Failure to obtain financing             | 25. <b>your</b> failure to obtain and maintain adequate financing for a project.   |
| Failure to account for money            | 26. <b>your</b> failure to account for any money received.   |
| Estimates for construction costs        | 27. <b>your</b> provision of estimates for construction costs.   |
| Insolvency or financial difficulties    | 28. <b>your</b> insolvency or financial difficulties or the insolvency or financial difficulties of any sub-contractor.  |
| Joint ventures                          | 29. activities carried out in the name of a consortium, joint venture or profit-sharing scheme in which <b>you</b> are a party.  |
| Infrastructure failure                  | 30. contributed to by, resulting from or in connection with any failure or interruption of service provided by an internet service provider, telecommunications provider, utilities supplier or other infrastructure provider.   |
| Trademarks and false advertising        | <p>31. Any actual or alleged:</p> <ul style="list-style-type: none"> <li>1. act of passing-off, unauthorised use of another's trademark, name or logo; or</li> <li>2. false or misleading advertising</li> </ul> <p>in relation to <b>your advertising or branding</b>.</p> <p>B. <b>We</b> will not make any payment for:</p>   |
| Claims brought by a related party       | 1. any claim brought by an insured within the definition of <b>you</b> or any party with a financial, executive or managerial interest in <b>you</b> , including any parent company or any party in which <b>you</b> have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third-party directly arising out of the performance of <b>your business activity</b> .      |
| Restricted recovery rights              | 2. that part of any claim where <b>your</b> right of recovery is restricted by any contract.   |
| Lost profit and VAT                     | 3. <b>your</b> lost profit, mark-up or liability for VAT or its equivalent.  |
| Trading losses                          | 4. any trading loss or trading liability including those arising from the loss of any <b>client</b> , account or business.   |
| Non-compensatory payments               | 5. fines and contractual penalties, tax liabilities or debts, aggravated, punitive or exemplary damages, and also additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section.  |
| Claims outside the applicable courts    | 6. any claim, including arbitration, brought outside the <b>applicable courts</b> . This applies to proceedings in the <b>applicable courts</b> to enforce, or which are based on, a judgment or award from outside the <b>applicable courts</b> .   |
| Adjudication costs                      | <p>7. a claim referred to adjudication under the Housing Grants Construction and Regeneration Act 1996, or any similar or successor legislation, where <b>your</b> contract with <b>your client</b> failed to provide that:</p> <ul style="list-style-type: none"> <li>a. an adjudicator will be appointed to resolve any disputes under the contract;</li> </ul>  |

- b. the adjudicator is independent of the parties to the dispute;
- c. the decision of the adjudicator is not the final determination of the dispute; and
- d. the adjudicator cannot reach a decision on commercial considerations as opposed to the legal liabilities and obligations of the parties in dispute.

Criminal proceedings costs

- 8. any costs awarded against **you** as a result of criminal proceedings.

Personal data claims

- 9. any claim or loss relating to the actual or alleged processing, acquisition, storage, destruction, erasure, loss, alteration, disclosure, use of or access to **personal data**.  
However, this does not apply to any covered claim or part of a covered claim made against **you** by a **client** which arises directly from **your** performance of a **business activity** for that **client** and which is not otherwise excluded by **What is not covered, A. 6. Cyber incidents** above. The most we will pay in relation to any such covered claim(s) is the Special Limit stated in the schedule for personal data claims.

## How much we will pay

The most **we** will pay for the total of all claims, their **defence costs**, and losses is the overall limit of indemnity stated in the schedule, irrespective of the number of claims or losses, unless limited below or in the schedule. **You** must pay the relevant **excess** stated in the schedule.

Personal data claims

The most **we** will pay for the total of all claims or parts of claims against **you** by a **client** including **defence costs**, which arise directly from **your** performance of a **business activity** for that **client** relating to **personal data** is the relevant amount stated in the schedule, which is included within, and not in addition to, the overall limit of indemnity for this section.

**You** must pay the relevant **excess** stated in the schedule.

Paying out the limit of indemnity

At any stage of a claim, **we** can pay **you** the applicable limit of indemnity or what remains after any earlier payment from that limit, including payments in relation to other claims. **We** will then have no further liability for that claim or its **defence costs**.

## Your obligations

If a problem arises

1. **We** will not make any payment under this section unless:
  - a. **you** notify **us** promptly of the following within the **period of insurance** or at the latest within 14 days after it expires for any problem **you** first become aware of in the seven days before expiry:
    - i. **your** first awareness of anything, including any actual or alleged shortcoming in any work, which is likely to lead to a claim against **you**. This includes any criticism of **your** work even though regarded by **you** as unjustifiable.  
If **we** accept **your** notification **we** will regard any subsequent claim as notified to this insurance;
    - ii. any claim or threatened claim against **you**;
    - iii. **your** first awareness of any actual or threatened criminal proceedings against **you**.
  - b. during an adjudication, **you** comply with any request, direction or timetable of the adjudicator;
  - c. **you** start, at **our** expense, any court or arbitration proceedings which **we** reasonably require to challenge, re-open or stay the enforcement of an adjudication decision.
2. When dealing with **your client** or a third-party, **you** must not admit that **you** are liable for what has happened or make any offer, deal or payment, unless **you** have **our** prior written agreement. If **you** do, **we** may reduce any payment **we** make under this **policy** by an amount equal to the detriment **we** have suffered as a result.

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| <b>Control of defence</b>           | <p><b>We</b> have the right but not the obligation to take control of and conduct in <b>your</b> name, the investigation, settlement or defence of any or any part of a claim.</p> <p><b>You</b> must give <b>us</b> the information and co-operation which <b>we</b> may reasonably require and take all reasonable steps to defend any claim. <b>You</b> should not do anything which may prejudice <b>our</b> position.</p>  |
| Appointment of legal representation | <p><b>We</b> have the right, but not the obligation, to select and appoint an adjuster, lawyer or any other appropriate person of <b>our</b> choosing to deal with the claim.</p>   |
| Partially covered claims            | <p><b>We</b> will not pay any part of a claim and its associated costs which is not covered by this section. If a claim is made which is not wholly covered by this section or is brought against <b>you</b> and any other party who is not covered under this section, then at the outset of the claim, <b>we</b> and <b>you</b> agree to use best efforts to determine a fair allocation of covered and non-covered parts of any claim or associated costs, including <b>defence costs</b> on the basis of the relative legal and financial exposures.</p>  |
| Advancement of defence costs        | <p><b>We</b> will pay <b>defence costs</b> covered by this section on an ongoing basis prior to the final resolution of any claim. However, <b>we</b> will not pay any <b>defence costs</b> in connection with any claim or part of a claim which is not covered under this section. <b>You</b> must reimburse <b>us</b> for any <b>defence costs</b> paid where it is determined there is no entitlement under this section.</p>   |
| Payment of full limit of indemnity  | <p><b>We</b> have no further duty to indemnify <b>you</b> against any claim where <b>we</b> pay <b>you</b> the applicable limit of indemnity as described in <b>How much we will pay</b>, Paying out the limit of indemnity, or if the overall limit of indemnity stated in the schedule has been exhausted.</p>  |
| Payment of excess                   | <p><b>Our</b> duty to make any payment under this section arises only after the applicable <b>excess</b> is fully paid. The <b>excess</b> will only be eroded by the covered parts of a claim.</p>  |
| Disputes                            | <p>For the purposes of <b>Control of defence</b> in this section of the <b>policy</b>, <b>General condition 14</b>, Arbitration, within the <b>General terms and conditions</b> is amended to read as follows:</p> <p>Any dispute as to whether to settle or to continue the defence of a claim or as to the fair allocation of any partially covered claim and its associated costs, will be referred to a single Queen’s Counsel (or equivalent in this or any other jurisdiction) to be mutually agreed or in the absence of such agreement to be nominated by the President of the Law Society of England &amp; Wales. The opinion of such Queen’s Counsel shall be binding on <b>you</b> and <b>us</b> in relation to matters referred under this clause. The costs of such opinion shall be met by <b>us</b>.</p> |

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| <b>Notification for adjudication</b> | <p>In view of the strict timetable relating to an adjudication <b>you</b> must notify <b>us</b> by email within two (2) working days of <b>your</b> receipt of any notice of an intention to adjudicate, or of <b>your</b> intention to serve such a notice which may lead to a claim against <b>you</b> being dealt with by adjudication.</p> <p><b>You</b> should make this notification directly to <b>us</b>, and not through <b>your</b> insurance adviser if <b>you</b> use one, at <a href="mailto:hicliability.claims@hiscox.com">hicliability.claims@hiscox.com</a>.</p> <p><b>We</b> will not indemnify <b>you</b> under this insurance unless <b>you</b> comply with the above.</p> |
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