

Professional indemnity for consulting engineers

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 each and every claim or loss 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

Advertising or branding	Advertising, branding, including your company name, trading name and any web domain name, publicity or promotion in or of those of your products or services that expressly fall within your business activity .
Applicable courts	The courts of competent jurisdiction in those countries stated as the applicable courts in the schedule.
Business activity	The activities stated in the schedule, which you perform in the course of your business .
Client	Any person or entity with whom you have engaged or contracted to provide services or deliverables that expressly fall within your business activity .
Computer or digital technology	Any programs , 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.
Computer or digital technology error	Any negligent act, error or omission by anyone in the: <ol style="list-style-type: none">1. creation, handling, entry, modification or maintenance of; or2. on-going operation, maintenance (including but not limited to installation, upgrading or patching) or development of, any computer or digital technology .
Cyber attack	Any digital attack or interference, whether by a hacker or otherwise, designed to: <ol style="list-style-type: none">1. gain access to;2. extract information from;3. disrupt access to or the operation of; or4. cause damage to: any data or computer or digital technology , including but not limited to any: <ol style="list-style-type: none">a. programs designed to damage, disrupt, extract data from, or gain access to any data or computer or digital technology including, but not limited to, malware, wipers, worms, trojans, rootkits, spyware, dishonest adware, crimeware, ransomware, crypto-jacking and other malicious software or viruses; orb. denial of service attack or distributed denial of service attack.
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend a claim against you .
Hacker	Anyone, including an employee of yours , who gains unauthorised access to or unauthorised use of any:

1. **computer or digital technology**; or
2. data held electronically by **you** or on **your** behalf.

Personal data	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.
Pollution	Any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
Retroactive date	The date stated as the retroactive date in the schedule.
Social engineering communication	Any request directed to you or someone on your 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.
You/your	Also includes any person who was, is or during the period of insurance becomes your partner or director or senior manager in actual control of your operations.

What is covered

	A.
Claims against you	If during the period of insurance , and as a result of your business activity for a client on or after the retroactive date within the geographical limits , any party: <ol style="list-style-type: none"> 1. brings a claim, including any injunctive proceedings, against you for: <ol style="list-style-type: none"> a. negligence or breach of a duty of care; b. negligent misstatement or negligent misrepresentation; c. infringement of intellectual property rights including copyright, trademark or moral rights or any act of passing-off; d. breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use; e. defamation; f. dishonesty of your individual partners, directors or employees, or sub-contractors or outsourcers directly contracted to you and under your supervision; g. any other civil liability; or 2. refers a dispute arising directly from your breach of a duty of care to adjudication under the Housing Grants Construction and Regeneration Act 1996 or similar or successor legislation, unless excluded under What is not covered below, we will indemnify you against the sums you have to pay as compensation, including any liability for claimants' legal costs and expenses. We will also pay defence costs but we will not pay costs for any part of a claim not covered by this section.
Negligence	
Negligent misstatement	
Intellectual property infringement	
Breach of confidentiality	
Defamation	
Dishonesty	
Other civil liability	
Housing grants adjudication	
Avoiding a potential claim against you	If: <ol style="list-style-type: none"> a. your client has reasonable grounds for being dissatisfied with the work you have done or which has been done on your behalf and refuses to pay for any or all of it, including amounts you legally owe to sub-contractors or outsourcers at the date of the refusal; b. your client threatens to bring a claim against you for more than the amount owed and we are satisfied that the threatened claim has reasonable prospects of success; and c. we believe that it may be possible to settle the dispute with the client by your agreeing not to press for the disputed amount,

we may, in **our** discretion, pay **you** the amount owed to **you** over and above the **excess**. If **we** do, **you** must agree not to press **your client** for the disputed amount.

Alternatively, if it is not possible to reach agreement with the **client** on this basis but **we** still believe that by not pressing for the disputed amount **you** will avoid a legitimate claim or counterclaim for a greater amount, **we** may pay the amount owed to **you** at that time, over and above the **excess**.

If a claim is still brought, **we** will deal with it but **our** total payment, including what **we** have already paid **you** or on **your** behalf, will not exceed the applicable limit of indemnity stated in the schedule. **You** must return the amount **we** have paid if **you** eventually recover the debt, less **your** reasonable expenses.

Once **we** agree to make any payment above, **you** will assign to **us** such rights as **you** have in relation to the amounts owed to **you**.

We will not make any payment for any money owed to **you** if the claim or threatened claim, or part of the claim or threatened claim, is not covered by this section.

B.

Advertising claims

If during the **period of insurance**, and as a result of **your advertising or branding** on or after the **retroactive date** within the **geographical limits**, any party brings a claim, including any injunctive proceedings, against **you** for:

1. infringement of copyright or moral rights; or
2. defamation,

unless excluded under **What is not covered** below, **we** will indemnify **you** against the sums **you** have to pay as compensation, including any liability for claimants' legal costs and expenses.

We will also pay **defence costs** but **we** will not pay costs for any part of a claim not covered by this section.

Your own losses

Loss of documents

If during the **period of insurance** any tangible document of **yours** which is necessary for the performance of **your business activity** is physically lost, damaged or destroyed while in **your** possession, **we** will pay the reasonable expenses **you** incur with **our** prior written agreement in restoring or replacing it. The most **we** will pay for the total of all such expenses is the relevant amount stated in the schedule.

Criminal proceedings

If **you** are charged with a criminal offence during the **period of insurance** under a statute or regulation that applies to **your business activity**, **we** will pay the reasonable costs incurred with **our** prior written agreement to defend **you** if, in **our** opinion, a successful defence may avoid a claim being made against **you** which would be covered by this section.

Additional cover

Court attendance compensation

If any person within the definition of **you**, or any employee of **yours**, has to attend court as a witness in connection with a claim against **you** covered under this section, **we** will pay **you** the amount stated in the schedule as compensation for each day or part of a day that their attendance is required by **us**. The most **we** will pay for the total of all court attendances is the amount stated in the schedule.

What is not covered

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|-------------------------------|--|
| Investments | A. We will not make any payment for any claim or part of a claim or loss directly or indirectly due to: |
| Construction or erection work | 1. any investment advice, financial advice, investment of client funds or any activity regulated by the Financial Conduct Authority, Prudential Regulation Authority or any other similar or successor regulatory body. |
| | 2. any construction or erection work you undertake or for which you are responsible as a building or engineering contractor. |



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. pollution.
Cyber incident	6. or contributed to by, resulting from or in connection with any: a. cyber attack; b. hacker; c. social engineering communication; d. any fear or threat of 6.a. to 6.c. above; or 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 your breach of a duty of care in the performance of a business activity.
Injury	8. the death of or any bodily or mental injury or disease suffered by anyone, unless arising directly from your breach of a duty of care in the performance of a business activity.
Land, animals and vehicles	9. the ownership, possession or use of any land or building, any animal, any aircraft, any watercraft or any motor vehicle.
Property damage	10. the loss, damage or destruction of any tangible property unless arising directly from any design, specification, technical information calculation, survey or inspection carried out by you. This clause does not apply to your own loss under the Loss of documents cover in What is covered.
Negotiable instruments	11. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
Computer or digital technology error	12. or contributed to by, resulting from or in connection with any computer or digital technology error.
Directors and officers' liability	13. any personal liability incurred by a director or officer of yours when acting in that capacity or managing your business , or a breach of any fiduciary duty, other than when performing a business activity for a client , or any statement, representation or information concerning you or your business contained in your accounts, reports or financial statements.
Product liability	14. any supply, manufacture, sale, installation or maintenance of any product.
Defamatory statements	15. any statement you knew, or ought reasonably to have known, was defamatory at the time of publication.
Deliberate, reckless or dishonest acts	16. any act, breach, omission or infringement you deliberately, spitefully, dishonestly or recklessly commit, condone or ignore. This does not apply to any claim under the dishonesty cover in What is covered, A. Claims against you , but we will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty.
Pre-existing problems	17. anything, including any actual or alleged shortcoming in your work, likely to lead to a claim against you or your own loss, which you knew or ought reasonably to have known about before we agreed to insure you.
Date recognition	18. date recognition.
War, terrorism and nuclear	19. or contributed to by, resulting from or in connection with any:

- a. **terrorism**;
- b. **war**;
- c. **nuclear risks**;
- d. fear or threat of 19.a. to 19.c above; or
- e. any action taken in controlling preventing, suppressing, responding or in any way relating to 19.a. to 19.d. above.

If there is any dispute between **you** and **us** over the application of clause 19.a. above, it will be for **you** to show that the clause does not apply.

Asbestos	20. asbestos risks.
Collateral warranties	21. your agreement to take on any legal liability under any express agreement, warranty, indemnity, waiver or guarantee, unless: <ul style="list-style-type: none"> a. you would be liable even if you had not given any such agreement, warranty, indemnity, waiver or guarantee; or b. the liability arises from a collateral warranty or duty of care agreement, in which case we will not indemnify you for any liability arising from: <ul style="list-style-type: none"> i. any fitness for purpose guarantee; ii. any greater or longer lasting benefit than that given to the party with whom you originally contracted; iii. any express guarantee, contractual penalty or liquidated damages; iv. any assignment of the warranty or agreement to any purchaser or tenant after the first two assignments; or v. your agreement to exercise a standard of care greater than would normally be expected in your profession.
Employees	22. anyone's employment with or work for you , or any breach of an obligation owed by you as an employer.
Supplied personnel	23. the work of any personnel supplied by you to a client , unless you have breached a duty of care in supplying them.
Patent/trade secret	24. any infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret.
Project manager work	25. any work you undertake as a project manager which results in: <ul style="list-style-type: none"> a. you failing to obtain and/or maintain adequate financing; b. you failing to obtain and maintain adequate insurance; c. any party involved in the project becoming insolvent; or d. any error or omission on your part in the provision of cost estimates, including where such estimates are exceeded.
Surveys, inspections and valuations	26. any survey, inspection or valuation of real or leasehold property not carried out by a fellow or associate of the Royal Institute of British Architects, the Royal Institute of Irish Architects, the Royal Incorporation of Architects in Scotland, the Royal Society of Ulster Architects, the Royal Institution of Chartered Surveyors, or by a Registered Architect with not less than one year's relevant experience, or by any person with more than five years' relevant experience in undertaking surveys, inspections or valuations of a similar nature.
Sub-contractors	27. any acts or omissions of a specialist, designer or consultant working for you as a sub-contractor unless: <ul style="list-style-type: none"> a. you have taken reasonable steps to ensure that the sub-contractor has and maintains professional indemnity insurance with a reputable insurer; b. there is a written sub-contract between you and the sub-contractor which is subject to English law, includes an arbitration clause and provides that the sub-contractor

will indemnify **you** against any liabilities **you** incur as a result of the sub-contractor's performance of the sub-contract; and

c. **you** have disclosed the sub-contractor's fees to **us**.

Joint ventures	28. any activities carried out in the name of a consortium, joint venture or profit sharing scheme in which you are a party.
Infrastructure failure	29. 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	30. any actual or alleged: <ul style="list-style-type: none"> a. act of passing-off, unauthorised use of another's trademark, name or logo; or b. false or misleading advertising, <p>in relation to your advertising or branding.</p> <p>B. We will not make any payment for:</p>
Claims brought by a related party	1. any claim brought by an insured within the definition of you or any party with a financial, executive or managerial interest in you , including any parent company or any party in which you 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 your business activity .
Restricted recovery rights	2. that part of any claim where your right of recovery is restricted by any contract.
Lost profit and VAT	3. your 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 client , 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 applicable courts . This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts .
Adjudication costs	7. any claim referred to adjudication under the Housing Grants Construction and Regeneration Act 1996 or similar or successor legislation, where your contract with your client failed to provide that: <ul style="list-style-type: none"> a. an adjudicator will be appointed to resolve any disputes under the contract; 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.
Personal data claims	8. 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

We will pay up to the limit of indemnity for this section stated in the schedule unless limited below or otherwise in the schedule. **We** will also pay for **defence costs**. However, if a payment greater than the applicable limit of indemnity has to be made for a claim **our** liability for **defence costs** will be limited to the same proportion that the limit of indemnity bears to the amount paid.

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

All claims and losses which arise from the same original cause, a single source or a repeated or continuing shortcoming in **your** work will be regarded as one claim. This includes such claims and losses arising after, as well as during, the **period of insurance**.

Special limits

The most **we** will pay for each item below, unless otherwise stated in the schedule, is a single limit of indemnity, which is an aggregate limit, for the total of all claims (including their **defence costs**) brought against **you** arising from:

- Dishonesty 1. the dishonesty of **your** partners, directors, employees, subcontractors or outsourcers;
- Property damage 2. the physical loss or destruction of or damage to tangible property; and
- Injury 3. the death, disease or bodily or mental injury of anyone.

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. **We** will pay **defence costs** already incurred at the date of **our** payment. **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 **you** notify **us** of the following promptly and 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:
 - a. **your** first awareness of anything, including any actual or alleged shortcoming in **your** 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;
 - b. any claim or threatened claim against **you**;
 - c. **your** first awareness of any actual or threatened criminal proceedings against **you**;
 - d. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any partner, director, employee, sub-contractor or outsourcer has acted dishonestly.
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.
3. **You** must:
 - a. comply with any request, direction or timetable of the adjudicator, during an adjudication;
 - b. 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.

If **you** do not, **we** may reduce any payment **we** make under this section by an amount equal to the detriment **we** have suffered as a result of **your** failure to comply with these obligations.

Notification for adjudication

In view of the strict timetable relating to an adjudication **you** must notify **us** by email within two working days of **your** receipt of any notice of an intention to adjudicate, or of **your** intention to serve such a notice which may lead to a claim against **you** being dealt with by adjudication.

You should make this notification directly to **us**, and not through **your** insurance adviser if **you** use one, at hiscliability.claims@hiscox.com.

We will not indemnify **you** under this insurance unless **you** comply with the above.

Control of defence

We have the right, but not the obligation, to take control of and conduct in **your** name the investigation, settlement or defence of any or any part of a claim.

You must give **us** the information and co-operation which **we** may reasonably require and take all reasonable steps to defend any claim. **You** should not do anything which may prejudice **our** position.

Appointment of legal representation

We have the right, but not the obligation, to select and appoint an adjuster, lawyer or any other appropriate person of **our** choosing to deal with the claim.

Partially covered claims

We 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 **you** and any other party who is not covered under this section, then at the outset of the claim, **we** and **you** agree to use best efforts to determine a fair allocation of covered and non-covered parts of any claim or associated costs, including **defence costs** on the basis of the relative legal and financial exposures.

Advancement of defence costs

We will pay **defence costs** covered by this section on an ongoing basis prior to the final resolution of any claim. However, **we** will not pay any **defence costs** in connection with any claim or part of a claim which is not covered under this section. **You** must reimburse **us** for any **defence costs** paid where it is determined there is no entitlement under this section.

Payment of full limit of indemnity

We have no further duty to indemnify **you** against any claim where **we** pay **you** the applicable limit of indemnity as described in **How much we will pay**, Paying out the limit of indemnity.

Payment of excess

Our duty to make any payment under this section arises only after the applicable **excess** is fully paid. The **excess** will only be eroded by the covered parts of a claim.

Disputes

For the purposes of **Control of defence** in this section of the **policy**, **General condition** 14, Arbitration, within the **General terms and conditions** is amended to read as follows:

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 & Wales. The opinion of such Queen's Counsel shall be binding on **you** and **us** in relation to matters referred under this clause. The costs of such opinion shall be met by **us**.
