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 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

Advertising
Advertising, publicity or promotion in or of your products or services.

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.

Computer system
Any computer network, hardware, software, information technology and communications system, including any email, intranet, extranet or website.

Defence costs
Costs incurred with our prior written agreement to investigate, settle or defend a claim against you.

Hacker
Any third party, other than an employee of yours, who maliciously targets you and gains unauthorised access to or unauthorised use of your computer system or data held electronically by you or on your behalf.

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.

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

Claims against you
If during the period of insurance, and as a result of your business activity or advertising on or after the retroactive date within the geographical limits, any party:

1. brings a claim, including any injunctive proceedings, against you for:
   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

Housing Grants Adjudication
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.
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Avoiding a potential claim against you

If:
  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
  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 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.

Your own losses

Losses from dishonesty

If during the period of insurance, and in the performance of your business activity within the geographical limits, you discover a loss from the dishonesty of your employees or sub-contractors or outsourcers directly contracted to you and under your supervision, where there was a clear intention to cause you loss or damage and to obtain a personal financial gain over and above any salary, bonus or commission, we will indemnify you against your direct financial loss provided that the loss was suffered on or after the retroactive date.

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

A. We 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 client funds or any activity regulated by the Financial Conduct Authority, Prudential Regulation Authority or any other similar or successor regulatory body.

  Construction or erection work
  2. any construction or erection work you undertake or for which you are responsible as a building or engineering contractor.
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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.

Virus 6. transmission of a virus.

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.

Hacker 12. the loss, copying or distortion of any data by a hacker.

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, 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. war, terrorism or nuclear risks.

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:
   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:
      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:
   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:
   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.

B. We will not make any payment for:

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.
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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:
   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.

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.

When we settle a loss under Your own losses, Losses from dishonesty, we will deduct any sums you owe or the value of any property you hold belonging to the perpetrator.

Special limits
Losses from dishonesty
The most we will pay for the total of your own losses arising from the dishonesty of your employees, sub-contractors and outsourcers 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 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 hicliability.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 the claim or part of the claim.

Appointment of legal representation

If we think it necessary we will appoint an adjuster, solicitor or any other appropriate person to deal with the claim. We may appoint your own solicitor but on a similar fee basis as our solicitor and only for work done with our prior written approval. Proceedings will only be defended taking into account the commercial considerations of the costs of defence.

Partially covered claims

If a claim which is only partially covered by this section is brought against you, amounts relating to the non-covered parts of the claim will be deducted from our final settlement. We and you agree to use best efforts to determine a fair allocation of covered and non-covered parts of any claim. If you and we cannot agree on a fair allocation, you and we agree to refer any such dispute to a single arbitrator in accordance with the Arbitration Act then in force.

Payment of full limit of indemnity

We will not defend 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, or if the overall limit of indemnity stated in the schedule has been exhausted.

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.