

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

<b>Advertising</b>	Advertising, publicity or promotion in or of <b>your</b> products or services.
<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>Computer system</b>	Any computer network, hardware, software, information technology and communications system, including any email, intranet, extranet or website.
<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>	Any third party, other than an employee of <b>yours</b> , who maliciously targets <b>you</b> and gains unauthorised access to or unauthorised use of <b>your computer system</b> or data held electronically by <b>you</b> or on <b>your</b> behalf.
<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>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.

### What is covered

<b>Claims against you</b>	<p>If during the <b>period of insurance</b>, and as a result of <b>your business activity</b> or <b>advertising</b> on or after the <b>retroactive date</b> within the <b>geographical limits</b>, any party:</p> <ol style="list-style-type: none"> <li>brings a claim, including any injunctive proceedings, against <b>you</b> for: <ol style="list-style-type: none"> <li>negligence or breach of a duty of care;</li> <li>negligent misstatement or negligent misrepresentation;</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>defamation;</li> <li>dishonesty of <b>your</b> individual partners, directors or employees, or sub-contractors or outsourcers directly contracted to <b>you</b> and under <b>your</b> supervision;</li> <li>any other civil liability; 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 similar or successor legislation 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.</li> </ol> <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. negligence or breach of a duty of care;
Negligent misstatement	b. negligent misstatement or negligent misrepresentation;
Intellectual property infringement	c. infringement of intellectual property rights including copyright, trademark or moral rights or any act of passing-off;
Breach of confidentiality	d. breach of confidence or misuse of any information, which is either confidential or subject to statutory restrictions on its use;
Defamation	e. defamation;
Dishonesty	f. dishonesty of <b>your</b> individual partners, directors or employees, or sub-contractors or outsourcers directly contracted to <b>you</b> and under <b>your</b> supervision;
Other civil liability	g. any other civil liability; or
Housing Grants Adjudication	2. 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 similar or successor legislation 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.

## Professional indemnity for consulting engineers

### Policy wording

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.

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#### What is not covered

Investments

A. **We** will not make any payment for any claim or part of a claim or loss directly or indirectly due to:

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.

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>
Virus	6. transmission of a <b>virus.</b>
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 anyone, unless arising directly from <b>your</b> breach of a duty of care in the performance of a <b>business activity.</b>
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 <b>your</b> own loss under the Loss of documents cover in <b>What is covered.</b>
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 <b>hacker.</b>
Directors and officers' liability	13. 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, other than when performing a <b>business activity</b> for a client, 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.
Product liability	14. any supply, manufacture, sale, installation or maintenance of any product.
Defamatory statements	15. any statement <b>you</b> 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 <b>you</b> deliberately, spitefully, dishonestly or recklessly commit, condone or ignore. This does not apply to any claim under the dishonesty cover in <b>What is covered, Claims against you</b> , but <b>we</b> 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 <b>your</b> work, likely to lead to a claim against <b>you</b> or <b>your</b> own loss, which <b>you</b> knew or ought reasonably to have known about before <b>we</b> agreed to insure <b>you.</b>
Date recognition	18. <b>date recognition.</b>
War, terrorism and nuclear	19. <b>war, terrorism or nuclear risks.</b>
Asbestos	20. <b>asbestos risks.</b>
Collateral warranties	21. <b>your</b> agreement to take on any legal liability under any express agreement, warranty, indemnity, waiver or guarantee, unless: <ol style="list-style-type: none"> <li>a. <b>you</b> would be liable even if <b>you</b> had not given any such agreement, warranty, indemnity, waiver or guarantee; or</li> <li>b. the liability arises from a collateral warranty or duty of care agreement, in which case <b>we</b> will not indemnify <b>you</b> for any liability arising from:           <ol style="list-style-type: none"> <li>i. any fitness for purpose guarantee;</li> </ol> </li> </ol>

## Professional indemnity for consulting engineers

### Policy wording

- 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.

- 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:
- an adjudicator will be appointed to resolve any disputes under the contract;
  - the adjudicator is independent of the parties to the dispute;
  - the decision of the adjudicator is not the final determination of the dispute; and
  - the adjudicator cannot reach a decision on commercial considerations as opposed to the legal liabilities and obligations of the parties in dispute.

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### 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**.

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### Your obligations

If a problem arises

- 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:
  - 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;
  - any claim or threatened claim against **you**;
  - your** first awareness of any actual or threatened criminal proceedings against **you**;
  - your** discovery, or the existence of reasonable grounds for **your** suspicion, that any partner, director, employee, sub-contractor or outsourcer has acted dishonestly.
- 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.
- You** must:
  - comply with any request, direction or timetable of the adjudicator, during an adjudication;
  - 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.

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### 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](mailto:hicliability.claims@hiscox.com).

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

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### 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.