

## Professional indemnity for technology companies

### 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.

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#### Special definitions for this section

<b>Advertising</b>	Advertising, publicity, or promotion in or of <b>your</b> products or services, including online.
<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>Claim</b>	Any written assertion of liability or any written demand for financial compensation or injunctive relief first made against <b>you</b> within the <b>applicable courts</b> .
<b>Client</b>	Any person or entity with whom <b>you</b> have contracted to provide services or deliverables that expressly fall within <b>your business activity</b> .
<b>Defence costs</b>	All reasonable and necessary lawyers' and experts' fees and legal costs incurred with <b>our</b> prior written agreement in investigating, settling, defending, appealing or defending an appeal against a covered <b>claim</b> but not including any overhead costs, general business expenses, salaries, or wages incurred by <b>you</b> or any other person or entity entitled to coverage under this section.
<b>Employee</b>	An individual performing employment duties solely on <b>your</b> behalf in the ordinary course of <b>your business activity</b> and who is subject to <b>your</b> sole control and direction and to whom <b>you</b> supply the instruments and place of work necessary to perform such <b>business activity</b> . <b>You</b> and <b>your</b> independent contractors will not be treated as <b>employees</b> under this section.
<b>Liquidated damages</b>	A sum of money, or mechanism for calculating such sum, agreed between <b>you</b> and <b>your client</b> by contract as the amount payable by <b>you</b> in the event of a specified breach of such contract provided that, at the time the sum or mechanism was agreed, it represented a fair and reasonable estimate of <b>your client's</b> loss in the event of <b>your</b> breach of the contract.
<b>Loss</b>	Any financial harm caused to <b>your business</b> .
<b>Personal data</b>	Any individually identifiable information about an individual, including but not limited to such information protected by the Data Protection Act 2018 or the General Data Protection Regulation (EU) 2016/679, including any similar or successor legislation or regulation.
<b>Pollution</b>	Any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
<b>Potential claim</b>	Anything likely to lead to a <b>claim</b> covered under this section.
<b>Retroactive date</b>	The date stated as the retroactive date in the schedule. For any <b>subsidiary</b> acquired by <b>you</b> during the <b>period of insurance</b> the retroactive date will be the date of acquisition.
<b>Subsidiary</b>	An entity domiciled in the United Kingdom of Great Britain and Northern Ireland, the Channel Islands, the Isle of Man or Gibraltar: <ol style="list-style-type: none"><li>1. that has been identified in <b>your</b> proposal for this <b>policy</b> and of which <b>you</b> own more than 50% of the book value of the assets or of the outstanding voting rights as of the first day of the <b>period of insurance</b>; or</li><li>2. which <b>you</b> acquire during the <b>period of insurance</b> where the turnover at the date of acquisition is less than 20% of <b>your</b> turnover and the acquired entity's <b>business activity</b> is the same as <b>yours</b>.</li></ol>
<b>You/your</b>	Also includes:

1. any person who was, is or during the **period of insurance** becomes **your** partner, director, trustee, in-house counsel or senior manager in actual control of **your** operations; and
2. any **subsidiary**.

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## What is covered

### Claims against you

If during the **period of insurance**, and as a result of **your business activity** for **clients** or **advertising** on or after the **retroactive date** within the **geographical limits**, any party brings a **claim** against **you** for any actual or alleged:

Breach of contract and liquidated damages

1. breach of any contract between **you** and **your client**, including any service level agreement forming part of such contract, or any **claim** for **liquidated damages**, but only where such **claim** is brought by **your client**;

Intellectual property infringement

2. intellectual property infringement, including but not limited to:
  - a. infringement of copyright, trademark, patent, trade dress, publicity rights, moral rights or design rights;
  - b. cyber-squatting violations;
  - c. any act of passing-off;
  - d. misappropriation of formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork; or
  - e. misappropriation of a trade secret;

Negligence

3. negligence or breach of any duty to use reasonable care and skill, including but not limited to negligent misrepresentation or negligent loss of or damage to any third-party document, data or information for which **you** are responsible;

Breach of confidentiality

4. breach of any duty of confidence, invasion of privacy, or violation of any other legal protections for personal information;

Defamation

5. defamation, including but not limited to libel, slander, trade libel, product disparagement, or malicious falsehood;

Dishonesty

6. dishonesty of **employees** or sub-contractors or outsourcers directly contracted to **you** or under **your** supervision;

Civil liability

7. any other civil liability,

unless excluded under **What is not covered** below, **we** will pay the amount agreed by **you** and **us** through good faith negotiation, mediation or some other form of alternative dispute resolution to settle a **claim** or the amount to satisfy a judgment or arbitration award against **you** including any judgment or award ordering the payment of claimant's lawyers fees and costs.

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

Sub-contractors or outsourcers

**We** will indemnify **you** against any **claim** falling within the scope of **What is covered**, Claims against you, which is brought as a result of **business activity** undertaken on **your** behalf by any sub-contractor or outsourcer.

Network security and personal data events

**We** will also indemnify **you** if, during the **period of insurance** and as a result of **your business activity** or **advertising** on or after the **retroactive date**, a **claim** is brought against **you** for any actual or alleged:

1. transmission of malicious software including, but not limited to, a computer virus, worm, logic bomb or trojan horse;
2. denial of service attack against a third-party;
3. unauthorised acquisition, access, use, or disclosure of **personal data** or confidential corporate information that is held or transmitted in any form; or
4. prevention of authorised electronic access to any computer system, **personal data** or confidential corporate information.



#### Payments toward your outstanding fees

If:

1. **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 at the date of the refusal;
2. **your client** threatens to bring a **claim** against **you** for more than the amount owed; and
3. **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 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.

#### Pre-claims assistance

If **you** first become aware of a **potential claim**, **we** may pay reasonable and necessary fees, costs and expenses incurred with **our** prior written agreement to investigate or monitor such **potential claim**. If a **claim** is subsequently brought and which arises from the same subject matter as the **potential claim**, **our** total payment, including what **we** have already paid to investigate or monitor the **potential claim**, will not exceed the applicable limit of indemnity in the schedule.

#### 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 and under **your** supervision, where there was a clear intention to cause **you** loss or damage or to obtain a personal financial gain over and above any salary, bonus or commission, **we** will indemnify **you** against **your** direct financial loss, provided 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 in the schedule.

#### Additional cover

##### Service credits

**We** may agree to **you** providing service credits in full or partial settlement of a covered **claim** against **you**. Where **we** agree to a settlement on that basis, **we** will pay the cost to **you** of providing such service credits.

##### Key person cover

**We** will pay the reasonable and necessary costs incurred by **you** with **our** prior written agreement to engage a consultant to:

1. undertake the day-to-day work of a senior manager or director to the extent that such individual is unable to fulfil his or her usual responsibilities as a direct result of their time being diverted to the management of a **claim** covered under this section; or
2. manage **your** response to a covered **claim**, to enable a senior manager or director to fulfil his or her usual responsibilities.



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 shown 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 shown in the schedule.

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## What is not covered

- A. **We** will not make any payment for any **claim** or **loss** or part of any **claim** or **loss** directly or indirectly due to:
- Commercial disputes
    - 1. a. any liability under a contract to anyone other than a **client**; or
    - b. i. a commission or royalty, or any other term upon which any party is to be compensated in connection with doing business with **you**, or any compensation or remuneration promised or owed by **you** pursuant to those terms; or
    - ii. **your** decision to cease doing business with any partner, associate or other party, other than **your client**.
  - Repair/replace/recall
    - 2. any costs or expenses involved in the repair, upgrade, correction, recall or replacement of any software, hardware, firmware, or associated network cabling including any costs or expenses relating to **your** legal obligation to comply with an injunction.
  - Chargeback
    - 3. any chargeback, liability, or fee incurred by **you** or **your client** as a result of a merchant service provider, including any credit card company or bank, wholly or partially reversing or preventing a payment transaction.
  - Financial advice
    - 4. any activity regulated by the Financial Conduct Authority (or any successor regulator) in connection with any specified investments as defined in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (No. 2001/544), including any similar or successor legislation or regulations.
  - Injury
    - 5. any death of or any bodily or mental injury or disease suffered or alleged to be suffered by anyone.  
However this exclusion does not apply to any part of any **claim**:
      - a. seeking damages for mental anguish or distress where such damages solely stem from a covered **claim** for defamation, breach of privacy, or negligent publication; or
      - b. directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee, provided that such **claim** is first brought within the **applicable courts** but always excluding USA or Canada.
  - Property damage
    - 6. loss, damage or destruction or loss of use of any tangible property, including but not limited to bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.  
However this exclusion does not apply to any:
      - a. **claim** directly arising from designs, plans, specifications, formulae, directions or advice prepared or given by **you** for a fee, provided that such **claim** is first brought within the **applicable courts** but always excluding the USA or Canada;
      - b. **claim** for alleging or arising from damage to electronic data;
      - c. **loss** directly arising from any tangible document of **yours** which is necessary for the performance of **your business activity** and which is physically lost, damaged or destroyed while in **your** possession.
  - Infrastructure interruption
    - 7. any failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider or other infrastructure provider except to the extent **you** provide those services as part of **your business activity**.
  - Sweepstakes, gambling or lotteries
    - 8. **your** provision of any sweepstakes, gambling activities or lotteries.
  - Land, animals and vehicles
    - 9. the ownership, possession or use of any land, building, animal, aircraft (including any drone or small unmanned aerial vehicle), watercraft or motor vehicle.



- Employees 10. anyone's employment with **you** or any breach of an obligation owed by **you** as an employer.
- Directors' and officers' liability 11. any liability or breach of any duty or obligation owed to **you** or **your** shareholders by any of **your** directors, officers, trustees or board members, including but not limited to any:
- allegation of insider trading;
  - breach of any duty of corporate loyalty;
  - liability for any statement, representation or information concerning **you** or **your business** contained in **your** accounts, reports or financial statements.
- Personal liability 12. any personal liability incurred by any director, officer, trustee, or board member of **yours** when acting in that capacity or managing **your business** other than when performing a **business activity** for a **client** or **advertising**.
- Dishonest or criminal conduct 13. any fraudulent, dishonest, malicious, reckless or criminal conduct intended to cause harm to another person or business (but not in respect of a defamation **claim**), or any knowing or wilful violation of a law, whether committed by **you** or committed by another whose conduct or violation of the law **you** have ratified or actively condoned, or any act **you** knew, at the time **you** performed it, would give rise to a **claim** or **loss**.
- However, this exclusion will not apply unless:
- such conduct or wilful violation of the law has been established by a final adjudication in any judicial, administrative, or alternative dispute resolution proceeding; or
  - such conduct or wilful violation of the law has been established by **your** admission in a proceeding or otherwise; or
  - you** or **we** discover evidence of such conduct or wilful violation of the law;
- at which time **you** shall reimburse **us** for all payments made by **us** in connection with such conduct or wilful violation of the law and all of **our** duties in respect of that entire **claim** shall cease.
- Pre-existing problems 14. anything, including any **potential claim** or any actual or alleged shortcoming in **your** work, likely to lead to a **claim** or **loss**, which **you** knew or ought reasonably to have known about before **we** agreed to insure **you**.
- War, terrorism, nuclear, asbestos and pollution 15. **war, terrorism, nuclear risks, asbestos risks or pollution**.
- B. **We** will not make any payment for:
- Claims brought by a related party 1. any **claim** brought by any person or entity falling 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.
- However, 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**.
- Claims by current and former employees 2. any **claim** made against **you** by any person or entity that **you** currently employ or formerly employed, including but not limited to **employees**, sub-contractors or outsourcers.
- However, this exclusion will not apply to any part of any **claim**:
- solely based on **business activity** performed when such person or entity was not working for **you**; or
  - based on a liability to an independent third-party directly arising out of the performance of **your business activity**.
- However, this exclusion shall not apply to any otherwise covered **claim** from an **employee**, sub-contractor or outsourcer that is brought entirely independently of that party's position as **your employee**, sub-contractor or outsourcer.
- Punitive and exemplary damages 3. a. punitive or exemplary damages, unless insurable in the jurisdiction where such award was first ordered; or
- service credits, unless **we** agree to pay for such service credits as part of an agreed settlement in lieu of damages under **What is covered, Claims against you**.

However, **we** will not make payment for any service credits **you** are obliged to provide under the terms of a contract between **you** and **your client**.

Fines and penalties	4. criminal, civil, or regulatory sanctions, fines, penalties, disgorgement of profits, treble damages or multiple damages which <b>you</b> are legally obliged to pay, including but not limited to those imposed by any national, local, federal, state or foreign governmental body or any licensing organisation.
Claims outside the applicable courts	5. any <b>claim</b> , 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> .
Trading losses	6. any trading loss or trading liability including those arising from the loss of any <b>client</b> , account or business.
Patent and trade secret claims in USA / Canada	7. any <b>claim</b> , including arbitration, brought in the USA or Canada for any actual or alleged infringement, use, or disclosure of a patent, or any use, disclosure or misappropriation of a trade secret.  This also applies to any <b>claim</b> , including arbitration, brought outside of the USA or Canada to enforce, or which is based on, a judgment or award from the USA or Canada, regardless of whether such judgment or award is against <b>you</b> or a third party.

## 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 stated in the schedule. **We** will also pay for **defence costs**. However, if a payment greater than the 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.

Any amounts to be paid by **us** shall not include or be calculated based on any of **your** overhead expenses, **your** liability for debt, taxes, lost costs or profits, salaries or wages, or any future cost of doing business, including but not limited to the cost of any future licence or royalty, or costs of improving **your** security, or performing audits.

**You** must pay the relevant **excess** stated in the schedule. The **excess** will only be eroded by the covered part of the **claim**.

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.

Multiple claims from a single source

All **claims, losses** and **potential claims** which arise from the same original cause, a single source or a repeated or continuing problem in **your** work will be treated as a single **claim, loss** or **potential claim**. This includes such **claims, losses** and **potential claims** 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 <b>your</b> partners, directors, <b>employees</b> , sub-contractors or outsourcers;   |
| Property damage | 2. the physical loss or destruction of or damage to tangible property; and                                 |
| Injury          | 3. claims brought against <b>you</b> arising from the death, disease or bodily or mental injury of anyone. |

Losses from dishonesty

The most **we** will pay for the total of **your** own losses arising from the dishonesty of **your employees**, sub-contractors or outsourcers is the amount in the schedule.

Patent infringement

The most **we** will pay in total for **claims** arising from **your** infringement, use or disclosure of a patent is the amount shown in the schedule.

Trade secret misappropriation

The most **we** will pay in total for **claims** arising from **your** use, disclosure or misappropriation of a trade secret is the amount shown in the schedule.

## Service credits

Where **we** pay service credits as part of an agreed settlement, **we** will only pay the cost to **you** of providing such credits. The amount **we** pay will not include **your** profit or mark-up.



The amount **we** pay for the cost of service credits is included within, and not in addition to, the limit of indemnity.

**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**.

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## Your obligations

If a problem arises

1. **We** will not make any payment under this section unless **you** notify **us** of:
  - a. any **claim** made against **you** or any **loss** as soon as practicable and within the **period of insurance** or at the latest within 14 days after the **policy** expires for any **claim** or **loss you** first became aware of in the seven days before expiry;
  - b. **potential claims** under this section, such notification must be as soon as practicable and within the **period of insurance** or at the latest within 14 days after the **policy** expires, and must to the fullest extent possible identify the particulars of the **potential claim**, including identifying any potential claimant, the likely basis for liability, the likely demand for relief and any additional information about the **potential claim** that **we** reasonably request. If such a **potential claim** notification is made to **us** then **we** will treat any **claim** arising from the same particulars as that notification as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **period of insurance** has expired;
  - c. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any **employee** or sub-contractor or outsourcer has acted dishonestly, as soon as reasonably practicable.
2. **You** must:
  - a. ensure that **our** rights of recovery, including but not limited to any subrogated rights of recovery, against a third-party are not unduly restricted or financially limited by any term in any of **your** contracts;
  - b. 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** fail to comply with these obligations, **we** may reduce any payment **we** make under this section by an amount equal to the detriment **we** have suffered as a result.

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## Control of defence

### Defence arrangements

This is a duty to defend section. This means that **we** have the right and duty to defend **you** against any **claim** which is covered in its entirety.

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.

If a covered or partially covered **claim** is made against **you**, then **we** have the right to appoint suitably qualified legal representation to defend **you**.

**We** have no duty to defend **you** against **claims** where:

1. no part of the **claim** is covered; or
2. **we** pay **you** the limit of indemnity as described in **How much we will pay**, Paying out the limit of indemnity.

Payment of full 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**.

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