



Professional indemnity section – RIBA &/or RIAS architects

AXA Business Insurance

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Professional indemnity section – RIBA &/or RIAS architects

Your schedule will show if this section is covered

Important information about this cover

This cover operates on a claims-made basis. This means that we will only provide cover for claims or claim circumstances made against you and notified to us during the period of insurance. We will not cover any claim or claim circumstances arising from an act, error or omission that occurred before the previous work date.

Conditions apply regarding when you must tell us about claims or claim circumstances and these can be found below. You should read these carefully.

Meanings of defined terms

These definitions apply to this section and are in addition to the policy definitions that have already been described in the Essential Information document. If a word or phrase has a defined meaning it will be underlined in bold print and will have the same meaning wherever it is used in this section.



Bodily injury

Any injury including death, illness, disease, sickness, psychological injury, emotional distress or nervous shock.



Claim(s)

Any verbal or written demand, notice or communication:

- 1) making an assertion for legal remedy or any other form of compensation or remedy
- 2) containing reference to, or serving notice of, intent to start legal proceedings
- 3) invoking any pre-action protocol as set under the Civil Procedure Rules
- 4) referring to arbitration, adjudication or complaint proceedings.



Claim circumstances

Any incident, occurrence, fact, matter or act that you were or are aware of that may give rise to a claim. This includes any criticism of your professional business even if you regard this as unjustifiable.



Claim costs

All costs and expenses incurred by us or by you with our written permission relating to the investigation, defence or settlement of any claim against you, which this policy covers.



Collateral warranty

Any written agreement that creates a duty of care between you and any party that is not your direct client or customer.



Court attendance costs

Compensation that we will pay to you in the event that

- 1) any principal, partner, member or director
- 2) any employee
- 3) any other relevant parties (but not expert witnesses)

are required by legal advisers to attend court or any arbitration or adjudication hearing as a witness of fact and in connection with a claim that is covered by this policy, provided that we have first given our written consent.



Criminal defence costs

Costs and expenses you incur arising from:

- 1) the Property Misdescriptions Act 1991
- 2) the Estate Agents' Act 1979
- 3) the Health and Safety at Work etc Act 1974
- 4) the Health and Safety at Work (Northern Ireland) Order 1978
- 5) the Construction (Design and Management) Regulations



Documents

Any documents, information or data, including computer records and electronic data, which are your property or are looked after by or deposited with you in the ordinary course of your professional business which you are responsible. This does not include bearer bonds, coupons, bank or currency notes and negotiable instruments.



Employee(s)

Any person working for you in connection with the professional business:

- 1) under a contract of service with you
 - 2) who is hired or lent to you
 - 3) who is self-employed
 - 4) on a voluntary basis
- and who is under your control or supervision.



Environmental audit

An investigation specifically intended to assess if any pollutant was or is present.



Limit of indemnity

The amount shown in your schedule as the limit of indemnity.

Meaning of defined terms



Loss

The amount that you are legally and personally liable to pay due to a claim, including judgements, awards of damages, awards of claimant costs and amounts that are related to settlements.



Misconduct investigation

An investigative inquiry into your conduct of your professional business, where that inquiry is conducted entirely outside the USA or Canada and is conducted by a regulatory or professional body that have powers to investigate you.



Misconduct investigation costs

The reasonable and necessary legal fees and related professional charges that you incur during your representation at a misconduct investigation where:

- 1) the misconduct investigation is first instituted during the period of insurance and
- 2) your attendance is required by the regulatory or professional body that instituted the misconduct investigation and
- 3) you have first obtained our written permission to incur those fees or charges.

We will only cover those legal fees and related professional charges where you have been notified in writing by the regulatory or professional body that it is looking into whether or not you are culpable of misconduct.



Pollutant

Any contaminant, irritant or other substance including, but not limited to asbestos, lead, smoke, vapour, water, oil, oil products, dust, fibres, soot, fumes, acids, alkalis, chemicals, or waste (including materials that have been or are intended to be recycled, reconditioned or reclaimed).



Pollution

Actual, alleged or threatened discharge, seepage, treatment, removal, disposal, dispersal, emission, release or escape of any pollutant or any regulatory order, direction or request to test for, monitor, remove, contain, treat, detoxify, or neutralise any pollutant.



Previous work date

The date from when work you performed is covered. This date is shown on your schedule.



Professional business

- 1) Services or advice undertaken
 - a) by members of the Royal Institution of Chartered Surveyors; or
 - b) that have otherwise been declared to us;and that are performed by you or on behalf of the person, firm, company or organisation shown in your schedule as the insured and within the policy territories.
- 2) Services or advice performed within the policy territories by you whilst holding an individual appointment for work connected with the business of the person, firm, company or organisation shown in your schedule as the insured, provided that:
 - a) those services are undertaken by members of the Royal Institution of Chartered Surveyors or have otherwise been declared to us and
 - b) the fee that you charged for those services or advice (if a fee was charged) is included in the income that has been disclosed to us when applying for this insurance.



Virus or similar mechanism

Program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, whether involving self replication or not, including but not limited to trojan horses, worms or logic bombs.



You / your / yourself

- 1) For professional indemnity insurance covers
 - a) The person, firm, company or organisation shown in the schedule as the insured.
 - b) Any person, firm, company or organisation shown in the schedule as an additional insured.
 - c) Any predecessor in business to any firm, company or organisation that is shown in the schedule.
 - d) Any person who is or has been or who becomes a director, partner, member, principal, employee or self employed person, but only for work undertaken for or on behalf of any person or organisation referred to in a, b, or c above.
 - e) Any consultant or former consultant appointed by the person, firm, company or organisation shown in the schedule as the insured, but only for work undertaken for or on behalf of any person or body referred to in a, b, c or d above.
 - f) Any retired partner, retired director or retired member of the firm, company or organisation shown in the schedule as the insured who remains as a consultant to any person, firm, company or organisation shown in the schedule as the insured.
 - g) The estate, heirs, executors, legal or personal representatives of any person referred to in a, b, c, d, e or f above in the event of their death or amounts that are related to settlements.

What is covered

What is covered

What is not covered

Civil liability and claim costs

We will cover you for any claim and claim costs that arise from the conduct of your professional business, where the claim is first made against you and notified to us during the period of insurance, for

- 1) any civil liability that you incur
- 2) any liability you incur as a result of a decision by an adjudicator appointed to resolve a dispute in line with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996, or an adjudication clause contained in a contract

The most we will pay for loss resulting from each claim is the limit of indemnity.

We will pay claim costs in addition to the loss. If the loss amount exceeds the limit of indemnity, the most we will pay for claim costs will be the same proportion that the amount that the limit of indemnity has to the loss amount.

Compensation for court attendance cover

In the event that any of your directors, partners, principals or employees or any other relevant parties (but not expert witnesses) are required to attend court in connection with a claim that is covered by this policy, provided that we have first given our written consent, we will pay compensation to you at £200 per day for each person required to attend. The most we will pay for all court attendance costs in any one period of insurance is £10,000

Criminal defence costs

We will pay on your behalf 80% of criminal defence costs, that you incur with our prior written consent, to defend any proceeding first made against you and notified to us during the period of insurance, but only where, in our reasonable opinion, defending that proceeding could protect you against a claim or potential claim arising from your professional business. The most we will pay for all criminal defence costs in any one period of insurance is £100,000.

What is covered

What is not covered

Cyber liability

The most we will pay for all claim or claim costs in any one period of insurance is £100,000 for any claim arising from professional business transacted via the internet, extranet or via your own website, web-address or via the transmission of email or documents by electronic means and that relates to:

- 1) defamation
- 2) malicious falsehood
- 3) unintentional false attribution or passing off
- 4) unintentional infringement of intellectual property rights
- 5) breach of confidence or infringement of any rights of privacy
- 6) unintentional misuse of any information which is either confidential or subject to statutory restrictions on its use; or
- 7) misuse by any employee of your electronic signature or external email.

Dishonesty of employees

We will only cover claims arising out of any dishonest or fraudulent act or omission that arises by reason of, and was solely and directly caused by, the actual or allegedly dishonest or fraudulent act or omission of any partner, present partner, director, member, consultant or employee (whether committed alone or in collusion with others) that cause any client of yours to suffer loss, provided that:

- 1) no cover shall be given for any claim arising out of dishonesty or fraud on the part of any person after you discover, in relation to that person, reasonable cause for suspicion of fraud or dishonesty
- 2) any dishonesty or fraud committed by people acting together will be treated as one claim.

The most we will pay for loss resulting from each claim that arises out of any dishonest or fraudulent act or omission is the limit of indemnity.

We will pay claim costs in addition to loss that arises out of any dishonest or fraudulent act or omission. If that loss amount exceeds the limit of indemnity, the most we will pay for claim costs relating to that claim will be the same proportion that the amount that the limit of indemnity has to the loss amount.

What is covered

What is not covered

Loss of documents

We will pay reasonable costs and expenses for replacing or restoring your own documents that have become lost or damaged in the conduct of the professional business provided that the loss or damage is discovered by you and notified to us during the period of insurance.

We will not pay for your own documents that are stored on a computer system unless those documents are duplicated on at least a daily basis, with the intention that the duplicate can be used to restore the documents in the event of loss or damage.

The most we will pay for replacement of your own documents during any one period of insurance is £100,000, but this will not affect the amount we will pay where a loss of or damage to documents leads to a claim under the heading 'Civil liability and claim costs'.

Misconduct investigation costs

We will pay on your behalf misconduct investigation costs.

The most we will pay for all misconduct investigation costs in any one period of insurance is £50,000.

Pollution

For any claim that arises directly or indirectly from pollution, we will only pay the costs of re-designing, re-specifying, remedying or rectifying a structure and where that pollution:

- 1) arises from your negligent design, negligent specification or failure to report a structural defect and
- 2) does not result directly or indirectly from any environmental audit carried out by you.

We will not pay for any claim or claim circumstances arising directly or indirectly from pollution except as described above.

The most we will pay for all claims and claim costs arising directly or indirectly from pollution in any one period of insurance is £250,000.

What is covered

What is not covered

Settlement and defence of claims

All claims that come from the same act, error or omission or series of acts, errors or omissions, as a result of, or arising directly or indirectly from, the same source or original cause, will be regarded as one claim. If we cover more than one person, firm, company or organisation, our liability to all, as a result of one claim, will not be more than the limit of indemnity.

We may at any time pay the limit of indemnity or relevant sub-limit described above. We will then have no further liability for that claim or claim costs except those already incurred at the date of payment of the limit of indemnity. We have the right, but not the obligation, to take control of your claim and conduct the investigation, settlement or defence in your name. If we think it is necessary we will appoint our adjuster, solicitor or other appropriate person to deal with the claim. If you ask us, we may agree to appoint your solicitor, but only on a similar fee basis as our solicitor and only for work done with our prior written approval.

Proceedings will only be defended or prosecuted if we think there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defence. If you disagree with our proposed course of action for any legal proceedings (whether defence or prosecution), then you may refer the matter to a Queen's Counsel of the English Bar to be mutually agreed between you and us. If you and we cannot agree on the Queen's Counsel to be appointed, then the Queen's Counsel will be appointed by the Chairman (at the time) of the English Bar.

The Queen's Counsel's decision on how the legal proceedings should be handled will be binding on us and you. In resolving this dispute, the Queen's Counsel will have consideration for the interests of you and us. The costs of this exercise will be allocated by the agreed or appointed party on a fair and equitable basis.

What is not covered



Asbestos exclusion

We will not cover legal liability in any way arising from or contributed to by

- 1) inhalation or ingestion of asbestos
- 2) exposure to or fear of the consequences of exposure to asbestos
- 3) the presence of asbestos in any property or on land investigating, managing, removing, controlling or remediation of asbestos



Bodily injury exclusion

We will not cover any claim arising out of bodily injury of any employee arising in the course of their employment by you



Contractual liability exclusion

We will not cover any claim that you incur in the performance of your professional business as a result of:

- 1) your acceptance of an obligation, or a guarantee you provide, of fitness for purpose where this appears as an express term
- 2) any express guarantee you give including any relating to the period of a project
- 3) any express penalty contained in a contract between you and another party
- 4) any express acceptance you give of liability for liquidated damages.

We will not cover any liability that arises as a result of any assignment of a collateral warranty or duty of care agreement to more than one party, except in the case of a collateral warranty or duty of care agreement given to a financier or funding party, but not a purchaser or tenant, where a total of two assignments is permissible. This is only applicable to contracts entered into on or after 1 October 2001.

This exclusion will not apply if you would have been liable even in the absence of any express agreement, or if:

- 1) we have approved in writing the contractual terms giving rise to the liability, or
- 2) in the case of a collateral warranty or duty of care agreement, the British Property Federation or construction Industry Council's current or former standard collateral warranty wording is used.



Controlling interest exclusion

We will not cover any claim arising from or brought by a firm, company or organisation:

- 1) with a financial interest in you
- 2) in which any of your partners, directors or principals have a controlling interest, unless the claim is brought against you by a source independent of that firm, company or organisation.



Directors liabilities exclusion

We will not cover any claim made against you or your directors, officers or trustees for breach of their duties.



Employment exclusion

We will not cover any claim arising out of any kind of employment related dispute or any kind of libel, slander, defamation, humiliation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, discrimination, harassment or similar conduct relating to any current, former or prospective employees.



Excess exclusion

We will not pay the excess shown in your schedule. The excess does not apply to claim costs, or to the optional cover for lost or damaged documents or court attendance costs.



Financial services exclusion

We will not cover any claim arising out of any Regulated Activities as defined in the Financial Services and Markets Act 2000 as amended from time to time.



Fines and penalties exclusion

We will not cover any fines, penalties, punitive, multiple, aggravated or exemplary damages where these can be identified separately within any award of a Court.



Goods supplied exclusion

We will not cover any claim arising out of the supply of any goods by you, or products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by you. This exclusion does not apply to project models.



Insolvency exclusion

We will not cover any claim arising out of or relating solely to your insolvency or bankruptcy. This exclusion will not apply to:

- 1) any claims for monies held on behalf of third parties and/or
- 2) any claim that otherwise would be covered by this policy if it were not for your insolvency or bankruptcy.

What is not covered



Market fluctuation exclusion

We will not cover any claim relating to the financial return of any investment or the depreciation or loss of investments when that financial return, depreciation or loss is caused by normal or abnormal fluctuations in any financial, stock, commodity or other markets that are outside your influence or control.

This exclusion will not apply to professional business performed in connection with the survey or valuation of any tangible property.



Previous claims exclusion

We will not cover any claim or any claim circumstances:

- 1) that has been notified under any other policy before the start of this policy
- 2) that you were aware of or should have been aware of before the start of this policy.



Previous work exclusion

We will not cover any claim arising from an act, error or omission that occurred before the previous work date.



Property ownership exclusion

We will not cover any claim arising from the ownership, possession, leasing or use of any land or building structure or any other property or goods whether mobile or immobile.



North American jurisdiction exclusion

We will not cover any claim instituted or pursued:

- 1) within the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada or in which it is contended that the laws of the United States of America or Canada should apply.
- 2) to enforce a judgment obtained in any Court of the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada.



Radioactive contamination exclusion

We will not cover you for loss of or damage or consequential loss resulting or arising from

- 1) ionising radiation or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- 2) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or its nuclear component.



Territorial limits exclusion

We will not cover any claim arising from any professional business activity performed outside the policy territories.



Terrorist act exclusion

We will not cover you for any damage cost or expense directly or indirectly caused by resulting from or in connection with a terrorist act.



Trading losses exclusion

We will not cover any claim or claim circumstances arising out of trading losses or trading liabilities incurred by you or any of your businesses.



Virus exclusion

We will not cover any claim arising out of the transmission or receipt of a virus or similar mechanism.



War risk exclusion

We will not cover

- 1) any claims caused by or happening through war, invasion, act of foreign enemy hostilities (whether war is declared or not) civil war, rebellion, revolution, insurrection or military or usurped power or Canada should apply.
- 2) confiscation, nationalisation, requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Section conditions

These conditions of cover apply only to this section

You must comply with the following conditions to have the full protection of your policy.

Conditions may specify circumstances whereby non-compliance will mean that you will not receive payment for a claim. However you will be covered and we will pay your claim if you are able to prove that the non-compliance with these conditions could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

If you are unsure about any of these conditions, please contact us



Adjudication condition

If you receive any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice relating to a contract, you must tell us within 2 working days of receipt of that notice.

You must not serve any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice relating to a contract without first obtaining our written approval unless, in your reasonable opinion, service of those notices will not lead to a claim.



Admission of liability condition

In the event of a claim or discovery of claim circumstances, you must not:

- 1) admit liability
- 2) incur any claim costs
- 3) make any offers of settlement
- 4) otherwise prejudice the conduct of defence or settlement of that claim or claim circumstances without first obtaining our written approval. This applies regardless of any complaints handling procedure or if the amount in dispute is less than your excess.



Claims notification condition

You must tell us as soon as possible within the period of insurance about any claim against you irrespective of your views as to the validity of that claim.

We will not pay your claim where you have not complied with this condition.



Claim circumstances condition

You must tell us as soon as possible within the period of insurance of claim circumstances.

If claim circumstances that relate to work you performed after the previous work date lead to a claim after the period of insurance has ended, that claim will be deemed to have been made against you during the period of insurance, provided that you told us about those claim circumstances within the period of insurance.



Claim control and co-operation condition

You must give us all information and assistance that we reasonably require and that is in your power to provide. You must co-operate with us and anyone appointed on our behalf by:

- 1) providing any information, assistance, signed statements or depositions as we may require to comply with any Civil Procedure Rules, Practice directions and Pre-Action Protocols as may be issued
- 2) assisting to present the best possible defence to a claim
- 3) ensuring access to any information that we or our representatives may require in the defence of a claim or the investigation of any claim circumstances, whether or no that information may be privileged
- 4) making payment on demand of your excess in order to comply with the terms of any settlement we have agreed
- 5) providing any information, assistance, signed statements or depositions as we may require to exercise our rights of subrogation
- 6) ensuring that all documents of any description relevant to any claim or claim circumstances are preserved and complete.



Loss of documents notification condition

You must tell us as soon as possible within the period of insurance when you discover any loss or damage to documents.