



# Professional Liability Town Planners



# Contents

## **Important Note**

## **Preamble**

## **Important phone numbers**

### **Section 1 - Professional Indemnity**

Part 1.1 – Scope of Cover

Part 1.2 – Extensions

Part 1.3 - Conditions

Part 1.4 – Limitations and Exclusions

### **Section 2 - Public/Product Liability**

Part 2.1 – Scope of Cover

Part 2.2 – Extensions

Part 2.3 - Conditions

Part 2.4 – Limitations and Exclusions

### **Section 3 - Employers Liability**

Part 3.1 – Scope of Cover

Part 3.2 – Extensions

Part 3.3 - Conditions

Part 3.4 – Limitations and Exclusions

### **Section 4 - Keeping the Insurer informed**

Part 1 – Notification

Part 2 – Special Conditions relating to the handling of insured matters

### **Section 5 - General Conditions applicable to all Sections**

### **Section 6 - Complaints procedures**

### **Section 7 - Definitions**

## Important Note

It is important to state at the outset that, on entering into this policy, *You* will be deemed to understand and accept all of the terms and conditions contained within it. It is therefore vitally important that *You* read the terms and conditions of this policy in detail and that *You* contact *Your* insurance broker immediately if *You* have any doubts about any of the obligations arising or terminology used.

It is also important to note that this policy is a contract between *You* and the *Insurer*. Victor Insurance are not themselves a party to this insurance contract. Victor Insurance will, however, continue to be involved in dealing with any matters that may arise against this policy, and further information on this is provided in Section 4 "Keeping the Insurer informed" below.

Thank you for obtaining *Your* Professional Indemnity Insurance cover via Victor Insurance.

## Preamble

As part of the process of obtaining this insurance contract, *You* have made a *Proposal* to the *Insurer* and this *Proposal* has been relied upon by the *Insurer* in deciding whether or not to enter into this policy and on what terms, including premium amount.

This policy and any schedule and endorsements should all be read as if they were one document. In the event of any conflict between the various documents, the words used in any endorsements and schedule will override the words used in this policy. Any term that is defined outside of Section 7 will override any contradictory definition that may be contained within that section.

Any reference in this policy to the singular will also include the plural and vice versa. Also, any reference to a statute or statutory instrument will include any modifications to (or re-enactment of) them.

This policy will be subject to the law of England and Wales and, on entering into it, *You* agree to submit to the exclusive jurisdiction of the English courts.

Various words and phrases have a standardised meaning within this policy and such words and phrases are italicised throughout this policy and are defined in Section 7. Headings and notes are for information purposes only and are not intended to affect the meaning of this policy.

# Important phone numbers

## Employment advice helpline

**020 7280 8888**

**victoreah@dwf.co.uk**

This number gives *You* access to a complimentary employment advice telephone helpline provided by solicitors, DWF LLP. The service offers advice in relation to all areas of employment law subject to the following:

- a) DWF LLP will provide up to one hour of free legal advice to *You* per month for matters not requiring detailed examination of documentation;
- b) the telephone helpline will be available 9.30am to 5.30pm Monday to Friday (excluding Bank and Public holidays)

For a reduced rate of GBP175 per hour, DWF LLP will provide a review of the Contracts of Employment and Internal Employment Policies and Procedures used by *Your* practice for employees in *Your* own business, including advice as to whether these comply with current employment law.

For a reduced rate of GBP195 per hour, DWF LLP will provide *You* with a legal service for any other employment law related matters, including litigation and other dispute resolution.

Please quote *Your* policy number when *You* call / email.

# Section 1 – Professional Indemnity

## Part 1.1

### Scope of Cover

#### Insuring clause

In consideration of the premium that *You* have agreed to pay (as shown in the *Schedule*), the *Insurer* agrees, subject to the terms, conditions and exclusions of this Section 1, to indemnify *You*:

- a) For any *Claim* (including claimant's costs and expenses) first made against *You* and/or any of *Your* present or former *Partners, Directors, Members* or *Employees* or any other person or party acting or having acted for *You* or on *Your* behalf in connection with *Your Professional Business* during the *Policy Period* in respect of which *You* may incur a civil liability;
- b) For any *Loss* which, during the *Policy Period*, *You* first discover *You* have sustained by reason of any dishonest or fraudulent act(s) or omission(s) of any of *Your* present or former *Partners, Directors, Members* or *Employees*;
- c) For any *Claim* (including claimant's costs and expenses) first made against any of *Your* present or former *Partners, Directors, Members* or *Employees* during the *Policy Period* in their capacities as a director or officer of any *Third Party* company or trustee of any *Third Party* trust where such directorships, officerships or trusteeships are held by reason of *Your Professional Business*, provided that the *Claim* relates to services ordinarily undertaken by *Your Professional Business*.

The *Insurer's* total liability under this Insuring clause in respect of any one *Loss* or *Claim* (excluding *Defence Costs*) shall not exceed the *Limit of Indemnity*.

#### Defence costs in addition

The *Insurer* will also indemnify *You* for *Defence Costs* where such costs have been incurred with the *Insurer's* consent. *Defence Costs* are payable in addition to the *Limit of Indemnity*.

In the event that a settlement of a *Claim* is made with any party in excess of the amount of the *Limit of Indemnity*, the *Insurer's* liability in respect of *Defence Costs* shall be reduced to the proportion that the *Limit of Indemnity* bears to the amount at which the settlement is made.

## Part 1.2

### Extensions

Subject to the applicable terms and conditions elsewhere in this policy, the following extensions to this Section 1 are given:

#### Acquisitions

The definition of “*You*” is extended to include any subsidiary which *You* may acquire or create during the *Policy Period*. Such cover shall only apply in respect of any *Loss*, *Claim* or *Circumstance* arising from any *Professional Business* undertaken by the subsidiary on or after the date of acquisition or creation. However, if the newly acquired or created subsidiary:

- a) Has total gross income which exceeds 10% of *Your* total income for the last completed financial year; or
- b) has any *Losses*, *Claims* or *Circumstances* paid or reserved against it

then the *Insurer* will be entitled to amend terms and conditions of this Section 1 and charge a reasonable additional premium to include the newly acquired or created subsidiary.

#### Court attendance

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* in the event that the *Insurer* or their solicitors require *You* or any other relevant party (not including expert witnesses) to attend court or any arbitration or adjudication hearing as a witness of fact or in connection with a *Claim* made against *You* or any of *Your* present or former *Partners*, *Directors*, *Members* or *Employees* during the *Policy Period* at the following rates for each day or part day on which attendance is required:

- a) Any of *Your Partners*, *Directors* or *Members* – GBP500
- b) Any of *Your Employees* – GBP250
- c) Any other relevant party – up to GBP500

The *Insurer's* liability under this extension is limited to GBP50,000 each claim.

This extension is not subject to an *Excess*.

#### Inadvertent failure to make a *Fair Presentation* before Section 1 commenced

In order to take advantage of this particular extension, *You* must establish to the *Insurer's* satisfaction that the event(s) referred to in a) to d) below were innocent and free of any fraudulent conduct or intent to deceive.

Subject to what appears above and in addition to the *Insurer's* obligations under the Insurance Act 2015, the *Insurer* will not exercise its right to avoid this Section 1 or avoid any *Loss* or *Claim* under this Section 1 where, before the start of the *Policy Period*, there was (or it is asserted that there was):

- a) A failure to disclose (or a misrepresentation of) material facts to the *Insurer*; and/or
- b) Provision of incorrect particulars or statements to the *Insurer*; and/or
- c) A failure to disclose to the *Insurer* that a *Loss* has been (or is likely to be) suffered or that a *Claim* has been (or is likely to be) made; and/or
- d) A failure to disclose to the *Insurer* that a *Claim* has been (or is likely to be) intimated.

In any case where *You* could have notified matters falling within c) or d) above to a previous insurance policy, if the previous policy had a lower limit of indemnity than the *Limit of Indemnity* under this Section 1,

the *Insurer* will only be liable to indemnify *You* in respect of those matters to the extent of the indemnity that would have been provided under the previous policy.

Where the alleged event in a) to d) above has resulted in prejudice to the handling or settlement of any *Claim* or *Circumstance*, or mitigation of any *Loss*, the indemnity afforded by this Section 1 in respect of that *Loss*, *Claim* or *Circumstance* (including *Defence Costs*) will be reduced to a sum which, in the *Insurer's* reasonable opinion, would have been payable by them if the prejudice had not occurred.

#### **Inadvertent breach of Section 1 conditions after policy has commenced**

In order to take advantage of this particular extension, *You* must establish to the *Insurer's* satisfaction that the event(s) referred to in a) to d) below were innocent and free of any fraudulent conduct or intent to deceive.

Subject to what appears above and in addition to the *Insurer's* obligations under the Insurance Act 2015, the *Insurer* will not exercise its right to avoid this Section 1 or avoid any *Loss* or *Claim* under Section 1 where, during the *Policy Period*, there has been (or it is alleged that there has been) in respect of Section 1:

- a) A breach of any of the conditions contained within Part 1.3 or Sections 4 or 5 of this policy (or of any extensions or endorsements attaching to this Section 1); and/or
- b) A breach of any implied conditions (including, but not limited to, the duty to make a *Fair Presentation*); and/or
- c) A misrepresentation of material facts to the *Insurer*; and/or
- d) Provision of incorrect particulars or statements to the *Insurer*.

Where the alleged event in a) to d) above has resulted in prejudice to the handling or settlement of any *Claim* or *Circumstance*, or mitigation of any *Loss*, the indemnity afforded by this Section 1 in respect of that *Loss*, *Claim* or *Circumstance* (including *Defence Costs*) will be reduced to a sum which, in the *Insurer's* reasonable opinion, would have been payable by them if the prejudice had not occurred.

#### **Legal defence**

For the purposes of this extension *You* shall mean *You* and *Your* present or former *Partners*, *Directors*, *Members* or *Employees*

The *Insurer* will indemnify *You* for:

- a) Any award of costs and/or expenses against *You* at any proceedings before any court, tribunal or enquiry having the like power to compel attendance of witnesses at which *You*, in the opinion of the *Insurer*, should be represented (whether because of any conduct which might give rise (or has given rise) to a *Claim* against *You* under this Section 1, or by reason of any prejudice which might otherwise be caused to *Your* professional reputation).
- b) All costs and expenses of legal representation that *You* might incur in accordance with a) above and which are not otherwise covered by this Section 1;

Provided that:

- i) This extension will only indemnify *You* in relation to matters that have been notified to the *Insurer* during the *Policy Period* in accordance with Section 4 below;
- ii) Costs and expenses incurred under b) above are payable in addition to the *Limit of Indemnity* and are not subject to an *Excess*;
- iii) Only those costs and expenses that have been incurred with the consent of the *Insurer* (such consent not to be reasonably withheld) will be payable under this extension;



- iv) The *Insurer* will not be liable to pay any penalty or fine made against *You*;
- v) The *Insurer* will be entitled if it so decides to nominate a solicitor (and, if appropriate, a barrister) of its own choosing to represent *You*;
- vi) The *Insurer's* liability under this extension is limited to GBP250,000 each claim;
- vii) *You* will bear 10% of the total amount payable under this extension or GBP500 (whichever is the greater) in respect of each claim;
- viii) Save as provided in vii) above, this extension is not subject to an *Excess*.

### **Loss of documents**

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* for any reasonable and necessary costs and expenses that are incurred by *You* in replacing, restoring or reconstituting any *Document* which suffers either physical loss or damage during the *Policy Period*, provided that the *Document* either belongs to *You* or is in *Your* care, custody or control or is one for which *You* are responsible. However, excluded from this extension is any loss of or damage to *Documents* arising directly or indirectly from the transmission or impact of any virus or unauthorised access to a system.

The *Insurer's* liability under this extension is limited to the *Limit of Indemnity*.

This extension is not subject to an *Excess*.

### **Mitigation**

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* for any reasonable costs and expenses that are incurred by *You* seeking to mitigate, minimise or avert a *Claim* or *Loss* but only if it is agreed that these costs and expenses are likely to be less than the amount of a potential *Claim* or *Loss*.

The *Insurer's* liability under this extension is limited to the *Limit of Indemnity*.

### **Pollution**

Subject to the limitations below, the *Insurer* will indemnify *You* in respect of any *Claim* involving *Pollution*.

This extension is subject to the following limitations:

- a) This extension will only indemnify *You* in relation to *Claims* that arise in the course of *Your Professional Business*;
- b) This extension will only indemnify *You* in relation to *Claims* that have been notified to the *Insurer* during the *Policy Period* in accordance with Section 4 below;
- c) The *Insurer* shall not be liable for that part of any *Claim* that either directly or indirectly results from any environmental audit or any other form of inspection carried out by *You* or on *Your* behalf whose sole or primary purpose is to identify, locate or treat *Pollution*;
- d) The *Insurer* shall not be liable for that part of any *Claim* that arises out of or in any way involves any *Bodily Injury* or fear of suffering *Bodily Injury* caused by or in any way attributable to *Pollution*;
- e) The maximum amount payable in the aggregate over the course of the *Policy Period* by the *Insurer* in respect of *Pollution* (including any claimant's costs and any *Defence Costs*) shall not exceed the *Limit of Indemnity*. This indemnity limit for *Pollution* is not additional to and shall not increase the *Limit of Indemnity* for *Claims*; and
- f) An *Excess* will apply to each *Claim* arising under this extension.

If a *Claim* involves *Your* negligent structural design or specification or failure to report a structural defect in a property, then the following further limitations will apply in addition to those above:

- i) The *Insurer* shall only be liable for that part of any *Claim* which relates to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure;
- ii) Clause e) above will be disapplied and the following will apply in its place: "The *Insurer's* liability under this extension is limited to the *Limit of Indemnity*."

#### **Ombudsman awards**

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* for:

- a) All sums payable; and
- b) The cost of taking such steps as *You* are directed to take

in respect of any award or determination of an official Ombudsman body against *You*, provided that the matter is duly notified to the *Insurer* as a *Claim* in accordance with the provisions of Section 4 below.

#### **Run off cover**

If *You* cease to practice during or on expiry of the *Policy Period* and *You* have not obtained succeeding insurance in compliance with the Professional Bodies' minimum requirements, the *Insurer* will automatically provide run-off cover on the same terms and conditions of this policy for a period of six years ending on the sixth anniversary of the date upon which, but for this run-off condition, it would have ended.

Provided that:

- a) this condition will not operate if a successor firm to *You* has insurance complying with the Professional Bodies' minimum requirements for the ceased firm;
- b) the *Limit of Indemnity* shall be limited to GBP 1,500,000 or the amount stated in the *Schedule* for any one *Loss* or *Claim*, whichever is the lesser;
- c) this condition will not operate if *You* ceased to practice as a direct or indirect result of dishonest or fraudulent acts or omissions committed by any *Partners, Directors, Members* or *Employees*;
- d) there are no *Losses, Claims* or *Circumstances* paid or reserved against *You*
- e) the premium for the period of run-off cover will be calculated at 225% of the average of *Your* annual premium over the three years prior to *Your* cessation; and
- f) *You* pay the premium

If run-off cover is activated in accordance with this condition but *You* subsequently restart practicing, the *Insurer* may cancel such run-off cover provided that:

- a) *You* have insurance in force complying with the Professional Bodies' minimum requirements in relation to the re-started firm;
- b) the qualifying insurer providing such insurance confirms in writing to *You* and the *Insurer* that:
  - i) it is providing insurance in compliance with the Professional Bodies' minimum requirements; and
  - ii) it is doing so on the basis that the firm is regarded as a continuation of *Your* firm prior to cessation and that accordingly it is liable for any *Claim* arising from incidents, occurrences, facts, matters acts of omissions which occurred prior to cessation.

## Part 1.3

### Conditions

This Section 1 is subject to the following conditions:

#### **General Conditions**

*You* must comply with the general conditions set out in Section 5 below

#### **Notification**

*You* must notify the *Insurer* of all *Losses, Claims, Circumstances* or the receipt of any *Adjudication Notice* which may give rise to a liability under this Section 1 in accordance with Section 4 below.

#### **Adjudication**

*You* shall not without prior written consent of the *Insurer*:

- a) make any admission in respect of the dispute being referred to Adjudication; or
- b) agree to accept the decision of the Adjudicator as finally determining the dispute with no further reference to legal Proceedings, Arbitration or Alternative Dispute Resolution.

#### **Minimum terms**

The cover provided by this Section 1 is intended to be no less favourable and provide *You* with no less protection than the approved policy wording issued by the Royal Town Planning Institute in force at the start of the *Policy Period*.

In any dispute as to whether the cover provided by this Section 1 is in any respect (or in the aggregate) less favourable to *You* than would be the case under the approved policy wording, the cover provided by the approved wording will take precedence.

## Part 1.4

### Limitations and Exclusions

This Section 1 excludes and does not cover:

#### **Asbestos**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* directly or indirectly resulting from the actual or possible presence or release of *Asbestos* or *Asbestos Containing Materials* in whatever form or quantity. Except that this exclusion shall not apply where the *Claim, Loss*, liability, expenses, costs or *Defence Costs* arise from any act, error or omission in the course of *Your Professional Business*, subject to the following:

- a) such *Loss* or *Claim* is first made against *You* and /or arises out of any *Circumstance* which *You* shall first notify during the *Policy Period*; and/or
- b) the *Insurer* shall not be liable for any such *Loss* or *Claim* directly or indirectly resulting from *Asbestos Inspections* carried out by *You* or arising out of or in any way involving any *Bodily Injury* or fear of suffering *Bodily Injury*; and/or
- c) The maximum amount payable in the aggregate in the *Policy Period* by the *Insurer* in respect of any such *Claim, Loss*, liability, expenses, costs or *Defence Costs* shall not exceed GBP250,000. This amount is not in addition to and shall not increase the *Limit of Indemnity*.

#### **Associated company**

any *Loss*, liability, expenses, costs or *Defence Costs* that *You* may incur as a result of any action brought or maintained by or on behalf of:

- a) *You* or any of *Your* subsidiaries; or
- b) any firm, partnership or entity in which *You* or any of *Your Partners, Directors* or *Members* has a financial or executive interest,

provided that this exclusion shall not apply to any such *Loss*, liability, expenses, costs or *Defence Costs* that originate from a *Claim* against *You* by a *Third Party*.

#### **Bodily injury**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* for actual or alleged *Bodily Injury* whether the person concerned has any connection with *You* or otherwise, except that this exclusion shall not apply where the *Bodily Injury*:

- a) Occurs to a *Third Party*;
- b) Arises out of an act, error or omission by *You* or on *Your* behalf in the course of *Your Professional Business*; and
- c) Is attributable to anything other than *Pollution*.

#### **Breach of company legislation/regulations**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* arising out of the breach by *You* or on *Your* behalf of any competition, restraint of trade or antitrust legislation or regulation.

#### **Collateral warranty and contractual liability**

any liability arising from

- a) the acceptance or guarantee by *You* of fitness for purpose where this appears as an

- express term; or
- b) any express guarantee given by *You* including any relating to the period of a project; or
- c) any express contractual penalty made between *You* and a *Third Party*; or
- d) any acceptance by *You* of liability for liquidated damages

provided that this exclusion shall not apply if:

- a) *You* would have been liable even if there had not been any such express warranty, guarantee, contractual promise, indemnity, waiver, express agreement, penalty clause or liquidated ascertained damages clause; or
- b) the liability arises from a *Collateral Warranty* or *Duty of Care Agreement* in which case the *Insurer* will not indemnify *You* for liability arising from any greater or longer lasting benefit, obligation or duty than that given to the party with whom *You* originally contracted.

### **Construction costs**

any liability arising out of any negligent act error or omission by *You* or on *Your* behalf in connection with the estimate of construction costs, except where such estimates are compiled by professionally qualified Quantity Surveyors.

For the avoidance of doubt a professionally qualified Quantity Surveyor for the purposes of this exclusion means:

- i) an individual with a minimum of five years' relevant experience, or
- ii) a Fellow or Associate of the Royal Institute of British Architects, the Royal Institution of Chartered Surveyors or the Chartered Institute of Builders, or
- iii) a Chartered Engineer

### **Directors, officers and trustees**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* arising out of or connected with *Your* present or former *Partners, Directors, Members* or *Employees* in their capacities as *Your* directors, officers or trustees.

### **Disputes referred to arbitration**

any dispute referred to arbitration under the Surveyors and Valuers Arbitration Scheme 1998 unless the law applied by the arbitrator is that of England and Wales, Scotland or Northern Ireland.

### **Distorted computer records**

any costs or expenses incurred by *You* as a result of loss or distortion of computer records due to:

- a) The presence of magnetic flux;
- b) Defects in computer tapes;
- c) Wear, tear, vermin or gradual deterioration;
- d) Climatic or atmospheric conditions or extremes of temperature unless recoverable under a standard fire certificate;
- e) Use or processing whilst mounted in or on any machine unless as a result of loss of or damage to the machine itself.

**Employers' liability**

employers' liability, public liability or product liability matters, these being covered under Sections 2 and 3 of this policy (where operative).

**Excess**

the amount of the *Excess* stated in the *Schedule*.

**Fines, penalties, punitive, multiple or exemplary damages**

any fines, penalties or punitive, multiple or exemplary damages where these have been identified separately within any award of any court or tribunal.

**Fraud or dishonesty**

any

- a) *Partner, Director, Member, Employee* or any other person or party acting or having acted for *You* or on *Your* behalf committing, condoning or contributing to any dishonest or fraudulent act or omission; and
- b) Dishonest or fraudulent acts or omissions committed by any person after discovery by *You* of such person's fraud or dishonesty or of reasonable cause for suspicion by *You* of fraud or dishonesty on the part of such person.

**Geographical limits**

any

- a) Legal proceedings brought outside the *Jurisdiction* (or brought within the *Jurisdiction* to enforce a judgment or order made outside the *Jurisdiction*); and
- b) Any act, error, or omission occurring outside the *Territorial Limits*.

**Insolvency**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* arising out of, based upon or attributable to *Your* insolvency, liquidation, administration or receivership.

**Insurance or financial matters**

any liability arising out of any negligent act, error or omission by *You* or on *Your* behalf in connection with the effecting or maintenance of insurance or in connection with the provision of finance or advice on financial matters. However, this exclusion will not apply to mortgage mediation activity and insurance mediation activity relating to general insurance contracts only for which *You* have permission pursuant to Part IV of the Financial Services & Markets Act 2000.

**Investment advice**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* directly or indirectly arising out of, or in any way involving the sale of investment products including but not limited to life assurance, pensions and investment activities as more fully described in the Financial Services Act 1986 and/or Financial Services and Markets Act 2000 and subsequent re-enactment. However, this exclusion will not apply to mortgage mediation activity and insurance mediation activity relating to general insurance contracts only for which *You* have permission pursuant to Part IV of the Financial Services & Markets Act 2000.

**Limit of indemnity**

any liability for any one or *Loss* or *Claim* (excluding *Defence Costs*) in excess of the *Limit of Indemnity* stated in the *Schedule*.

**Market fluctuation**

any *Loss* or *Claim* relating to the financial return of any investment or the depreciation of investments when such financial return or depreciation is as a result of normal or abnormal fluctuations in any

financial, stock, commodity or other markets which are outside of *Your* influence or control. This exclusion will not apply to *Your Professional Business* in connection with the following:

- a) Survey and/or valuation of any tangible property for the purpose of any sale, proposed sale, purchase or proposed purchase; and
- b) Survey and/or valuation of any tangible property for insurance or stock valuation purposes.

#### **Nuclear risks**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* directly or indirectly attributable to, caused or contributed to by:

- a) Ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) The radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

#### **Other insurance**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* where *You* are entitled to indemnity under any other policy or elsewhere within this policy, except in respect of any amount beyond the sum which would have been payable elsewhere had this Section 1 not been effected.

#### **Pensions / employee benefits**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* arising out of *Your* liability (or the liability of any of *Your Partners, Directors, Members* or *Employees*) in their capacity as a trustee or administrator of *Your* occupational pension scheme or *Your* employment benefit programme.

#### **Pollution**

subject to the extension in Part 1.2 above, any *Claim, Loss*, liability, expenses, costs or *Defence Costs* arising from or connected with *Pollution*.

#### **Pre-existing claims**

any *Claim, Loss*, liability, expenses, costs or *Defence Costs* in respect of this Section 1 from:

- a) Any *Loss* or *Claim* which has been disclosed by *You* to any insurer before this Section 1 commenced;
- b) Any *Loss* or *Claim* arising out of any *Circumstance* which has been disclosed by *You* to any insurer before this Section 1 commenced;
- c) Any *Claim* or *Circumstance* which was known (or ought reasonably to have been known) to *You* before the *Policy Period*; and/or
- d) Any *Claim* or *Circumstance* disclosed on the *Proposal* made to the *Insurer* and forming part of this Section 1.

#### **Property damage**

Any *Claim* for *Loss* or damage to property except:

- a) As provided for in Insuring clause b) in Part 1.1 of this Section 1 and the Loss of Documents extension to this Section 1
- b) In connection with any civil liability incurred in respect of loss of or damage to *Documents*



except that this exclusion shall not apply where the *Claim*, liability, expenses, costs or *Defence Costs* arise from any act, error or omission in the course of *Your Professional Business*.

#### **Restricted recovery rights**

that part of any *Claim* where *Your* right of recovery is restricted by any contract.

#### **Retroactive date**

any *Claim*, *Loss*, liability, expenses, costs or *Defence Costs* arising from any act committed or omitted prior to the retroactive date stated in the *Schedule*.

#### **Surveys**

any *Claim*, *Loss*, liability, expenses, costs or *Defence Costs* arising out of or in any way involving any survey and/or valuation report carried out by *You* or on *Your* behalf, unless:

- a) the report is made in writing; and
- b) the survey and/or valuation is made by:
  - i) a *Partner*, *Member*, *Director* or an *Employee* who is a Fellow or Professional Associate of the Royal Institute of British Architects, Royal Institution of Chartered Surveyors, Architects and Surveyors Institute, Faculty of Architects and Surveyors, Incorporated Society of Valuers and Auctioneers, Royal Incorporation of Architects in Scotland who has not less than one year's experience in undertaking surveys and/or valuation work which is related to the subject matter of the report; or
  - ii) a *Partner*, *Member*, *Director* or an *Employee* who has not less than five years' experience in undertaking surveys and/or valuation work which is related to the subject matter of the report.

#### **Trading debts**

any *Claim*, *Loss*, liability, expenses, costs or *Defence Costs* directly or indirectly arising out of, or in any way involving any trading debt incurred by *You* or any guarantee or undertaking given by *You* for a debt or performance of any other obligation by a third party.

#### **Vehicles or buildings**

any *Claim*, *Loss*, liability, expenses, costs or *Defence Costs* arising directly or indirectly from:

- a) the ownership, possession or use by *You* or on *Your* behalf of any aircraft, watercraft or mechanically propelled vehicle; or
- b) the ownership or possession by *You* or on *Your* behalf of any buildings, structures, premises, land or property (mobile or immobile) or that part of any building leased, occupied or rented by *You* or on *Your* behalf.

#### **War and terrorism**

any *Claim*, *Loss*, liability, expenses, costs or *Defence Costs* directly or indirectly caused by, resulting from, or in connection with acts of war or *Terrorism* regardless of any other cause or event contributing concurrently or in any other sequence to the *Claim*, *Loss*, liability, expenses, costs or *Defence Costs*.

This exclusion also excludes any *Claim*, *Loss*, liability, expenses, costs or *Defence Costs* directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing or in any way relating to war or *Terrorism*.



# Section 2 – Public/Product Liability

## Part 2.1

### Scope of Cover

This Section 2 will only apply if stated as being operative in the *Schedule*

#### **Insuring clause**

In consideration of the premium that *You* have agreed to pay (as shown in the *Schedule*), the *Insurer* agrees, subject to the terms, conditions and exclusions of this Section 2, to indemnify *You* for *Damages* and *Costs* and *Expenses* in respect of:

#### Public liability:

- a) Accidental:
  - i) *Bodily Injury* to any person other than an *Employee*;
  - ii) damage to *Property*;
  - iii) obstruction, loss of amenity, trespass or nuisance; or
- b) wrongful arrest, detention or false imprisonment of any person

occurring during the *Policy Period* within the *Territorial Limits* and in connection with *Your Professional Business*.

#### Product liability:

- c) Accidental:
  - i) *Bodily Injury* to any person other than an *Employee*;
  - ii) damage to *Property*;

occurring during the *Policy Period* within the *Territorial Limits* and in connection with *Products*.

The *Insurer's* total liability under this Insuring clause in respect of any one claim (excluding *Costs* and *Expenses* incurred by or on *Your* behalf) shall not exceed the *Limit of Indemnity*.

## Part 2.2

### Extensions

Subject to the applicable terms and conditions elsewhere in this policy, the following extensions to this Section 2 are given:

#### **Car Park and Cloakroom Liability**

Where vehicles or personal effects of persons other than *You* are held in trust by or in *Your* custody or control the *Insurer* will provide indemnity against legal liability in respect of loss of or damage to such *Property* provided that such *Property*

- a) is not being stored by *You* for a fee or other consideration and
- b) is not held in trust by *You* or in *Your* custody or control for the purposes of work being carried out on such *Property*.

#### **Consumer Protection Act and Food Safety Act**

The *Insurer* will indemnify *You* (and, at *Your* request, any of *Your Partners, Directors, Members* or *Employees*) in respect of *Costs* and *Expenses* incurred in the defence of any criminal proceedings brought in respect of a breach of Part II of the Consumer Protection Act 1987 and Sections 7 and 8 of the Food Safety Act 1990 including such *Costs* and *Expenses* as are incurred in an appeal against conviction arising from such proceedings.

Provided that:

- a) This extension will only indemnify *You* in relation to matters that have been notified to the *Insurer* during the *Policy Period* in accordance with Section 4 of this policy;
- b) The proceedings relate to an offence alleged to have been committed during the *Policy Period* and in the course of *Your Professional Business*
- c) The *Insurer* will not indemnify *You* for:
  - i) any penalty or fine to be paid by *You*;
  - ii) any proceedings arising from circumstances for which indemnity is provided by any other insurance or elsewhere within this policy
  - iii) any proceedings arising directly or indirectly from a deliberate act or omission of any person entitled to indemnity under this extension if the outcome could reasonably have been expected having regard to the nature and circumstances of such act or omission
  - iv) proceedings which arise out of any activity or risk excluded from this Section 2
- d) the *Partners, Directors, Members* or *Employees* shall as though they were *You* be subject to the terms extensions and exclusions of this Section 2 insofar as they can apply.

#### **Court attendance**

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* in the event that the *Insurer* or their solicitors require *You* or any of *Your Employees* to attend court or any arbitration or adjudication hearing as a witness of fact in connection with any claim in respect of which *You* are entitled to an indemnity under this Section 2 at the following rates for each day on which attendance is required:

- a) Any of *Your Partners, Directors* or *Members* – GBP500
- b) Any of *Your Employees* – GBP250

- c) Any other relevant party – up to GBP500

The *Insurer's* liability under this extension is limited to GBP50,000 each claim and this extension is not subject to an *Excess*.

### **Cross Liabilities**

Where this Section 2 is issued for the benefit of more than one party it will indemnify each party in the same manner as if a separate policy had been issued to each of them.

### **Data Protection Act 1998**

The *Insurer* will indemnify *You*, and if *You* so request any of *Your Partners, Directors, Members* or *Employees* against legal liability to pay *Damages* and *Costs* and *Expenses* in respect of damage or distress as described in Section 13 of the Data Protection Act 1998 (the “Act”) provided that *You* are registered in accordance with the terms of the Act or have applied for such registration which has not been refused or withdrawn and have taken all reasonable care to comply with the requirements of the Act.

The *Insurer* will not indemnify *You* for:

- a) any penalty or fine to be paid by *You*;
- b) the costs of replacing reinstating rectifying erasing blocking or destroying any personal *Data*
- c) liability arising from or caused by a deliberate or intentional act by or omission of any person eligible for indemnity by this extension if the result could reasonably have been expected by *You* or any other person having regard to the nature and circumstances of such act or omission
- d) matters which arise out of occurrences notified to previous insurers or known to *You* at inception of this policy
- e) legal liability where indemnity is provided by any other insurance or elsewhere within this policy.

### **Defective Premises Act**

Where it is alleged within the *Policy Period* that *You* should be legally liable for accidental *Bodily Injury* or loss of or damage to *Property* by virtue of the Defective Premises Act 1972 or the Defective Premises (Northern Ireland) Order 1975 in connection with any premises which have been disposed of by *You* and which prior to disposal were owned by *You*, the *Insurer* will indemnify *You* against any resulting legal liability up to the *Limit of Indemnity* and will pay *Costs* and *Expenses* in defence of any such allegations.

### **Indemnity to Principals**

The *Insurer* will indemnify any of *Your Principals* to the extent that they incur any legal liability arising out of work carried out by *You* under contract or agreement.

Provided that this extension shall only operate to the extent that the liability attaching to the *Principal* would have been covered under this Section 2 had it attached to *You*.

### **Legal Defence**

The *Insurer* will indemnify *You* for:

- a) Any award of costs and/or expenses against *You* at any proceedings before any court, tribunal, inquest or enquiry having the like power to compel attendance of witnesses at which *You*, in the reasonable opinion of the *Insurer*, should be represented (whether because of any conduct which might give rise (or has given rise) to a claim for *Damages* against *You* under this Section 2, or otherwise);

- b) All costs and expenses of legal representation that *You* might reasonably incur in accordance with a) above and which are not otherwise covered by this Section 2.

Provided that:

- i) The proceedings relate to a matter capable of falling for indemnity under this Section 2;
- ii) Costs and expenses incurred under b) above are payable in addition to the *Limit of Indemnity*;
- iii) Only those costs and expenses that have been incurred with the consent of the *Insurer* will be payable under this extension;
- iv) The *Insurer* will not be liable to pay any penalty or fine awarded or made against *You*;
- v) The *Insurer* will be entitled if it so decides to nominate a solicitor (and, if appropriate, a barrister) of its own choosing to represent *You*; and
- vi) The *Insurer's* liability under a) is limited to GBP250,000 each claim;
- vii) *You* will bear 10% of the total amount payable under a) above or GBP500 (whichever is the greater) in respect of each claim;
- viii) Save as provided in vii) above, this extension is not subject to an *Excess*.
- ix) The *Insurer's* liability under b) above is limited to GBP1,000,000 in the aggregate during the *Policy Period* in respect of any criminal proceedings involving allegations of manslaughter corporate manslaughter corporate homicide or culpable homicide.

#### **Mechanical plant as tool of trade**

The *Insurer* will indemnify *You* in respect of liability arising out of ownership or use of mechanically propelled plant whilst such plant is being used as a tool of trade within the *Territorial Limits* but not in respect of any liability

- a) in connection with any watercraft, hovercraft or aircraft;
- b) for which an indemnity is provided by any other insurance or elsewhere in this policy;
- c) which is required to be insured under any road traffic legislation or is the subject of other security.

#### **Motor Contingent Liability**

The *Insurer* will indemnify *You* in respect of liability for *Bodily Injury* or damage to *Property* caused by or arising from any motor vehicle, trailer or mechanical plant not belonging to or provided by *You* being used by an *Employee* in the course of *Your Professional Business* provided that the *Insurer* shall not provide indemnity against liability:

- a) in respect of damage to any such vehicle or trailer or *Property* carried within or on it;
- b) for which indemnity is provided by any other insurance or elsewhere within this policy;
- c) caused or arising whilst such vehicle, plant or trailer is engaged in racing pace-making reliability trials or speed testing or;
- d) being driven with *Your* general consent by any person who to *Your* knowledge does not hold a licence to drive such vehicle unless such person has held and is not disqualified from holding or obtaining such a licence or;
- e) incurred outside the *Territorial Limits*.

### Overseas Personal Liability

The *Insurer* will indemnify:

- a) *You*
- b) at *Your* request
  - i) any of *Your Partners, Directors* or *Members*
  - ii) any spouse or child of the persons stated in a) or b (i) above who are accompanying such persons

in respect of liability incurred in a personal capacity in connection with an event occurring in a country outside of the *Territorial Limits* whilst on a temporary visit to such country in connection with *Your Professional Business* provided that:

- a) any person entitled to indemnity under this extension shall be subject to the terms exclusions and extensions of this Section 2 as though they were *You*;
- b) nothing in this extension shall increase *Your* liability to pay any amount exceeding the *Limit of Indemnity* regardless of the number of persons claiming to be indemnified;
- c) in respect of claims brought against *You* within the jurisdiction of the United States of America or Canada, or in any country or territory which operates under the laws of the United States of America or Canada, or in respect of any order made anywhere in the World to enforce a judgment, award or settlement in respect of any such claim
  - i) the *Limit of Indemnity* shall be inclusive of *Costs and Expenses*
  - ii) no indemnity will be provided in respect of liability arising from pollution or contamination or for the cost of removing nullifying or cleaning up seeping, polluting or contaminating substances;
- d) The *Insurer* shall not provide indemnity against
  - i) contractual liability
  - ii) liability for which indemnity is provided by any other insurance or elsewhere within this policy
  - iii) liability in respect of damage to *Property* belonging to or in the custody or under the control of any person entitled to indemnity under this extension
  - iv) liability in respect of *Bodily Injury* to any person entitled to indemnity under this extension
  - v) liability caused by or arising from
    - (1) the ownership or occupation of land or buildings
    - (2) the carrying on of any business profession trade or employment
    - (3) the ownership possession or use of animals other than domestic dogs or cats.

### **Tenant's Liability for Hired or Rented Premises**

Where *You* are legally liable for loss of or damage to premises (or fixtures or fittings thereof) hired or rented to *You* for the purpose of occupancy by *You*, the *Insurer* will provide indemnity against such legal liability.

This indemnity will not apply to:

- a) the first GBP100 of such loss or damage caused other than by fire or explosion
- b) loss or damage caused by fire or any other peril against which a tenancy or other agreement stipulates that insurance shall be effected by *You* or on *Your* behalf.

## Part 2.3

### Conditions

This Section 2 is subject to the following conditions:

#### **General Conditions**

*You* must comply with the general conditions set out in Section 5 below

#### **Notification**

*You* must notify the *Insurer* of any matter which may give rise to a liability under this Section 2 in accordance with Section 4 below.

#### **Reasonable Precautions**

*You* will (at *Your* own expense) take all reasonable precautions to prevent or cease any activity which may give rise to a liability under this Section 2 to maintain all buildings furnishings ways works machinery plant and vehicles in a sound condition. As soon as possible after discovery of any defect or danger that may give rise to a liability under this Section 2, *You* will also cause such defect or danger to be made good or remedied and in the meantime will cause such additional precautions to be taken as the circumstances may require.

## Part 2.4

### Limitations and Exclusions

This Section 2 excludes and does not cover:

#### **Asbestos**

liability arising from exposure or alleged exposure to *Asbestos*, *Asbestos Dust* or *Asbestos Containing Materials*

#### **Fear of Asbestos**

mental injury or fear of suffering bodily injury death disease or illness arising out of actual or suspected exposure to *Asbestos*, *Asbestos Dust*, or *Asbestos Containing Materials*.

#### **Asbestos Removal Costs**

the costs of management (including those of any persons under any statutory duty to manage), removal, repair, alteration, recall, replacement, or reinstatement of any property or part thereof arising out of the presence of *Asbestos*, *Asbestos Dust* or *Asbestos Containing Materials*.

#### **Aviation Product**

liability arising out of any *Product* which with *Your* knowledge is intended for incorporation into the structure, machinery or controls of any aircraft.

#### **Craft and cranes**

liability arising out of the ownership, possession or use, by *You* or on *Your* behalf of

- a) any railway, or craft designed to travel in, through or on water (other than hand-propelled boats), air or space
- b) any crane not situated at *Your Premises*

#### **Defective goods**

the cost of repairing or replacing materials or goods sold or supplied or of rectifying defective workmanship

#### **Employers liability**

employers' liability matters, these being covered under Section 3 of this policy (where operative).

#### **Excess**

the amount of the *Excess* stated in the *Schedule*.

#### **Fines, penalties, punitive, multiple or exemplary damages**

any fines, penalties or punitive, multiple or exemplary damages where these have been identified separately within any award of any court or tribunal.

#### **Geographical limits**

any

- a) legal proceedings brought outside the *Jurisdiction* (or brought within the *Jurisdiction* to enforce a judgment or order made outside the *Jurisdiction*); and
- b) liability in respect of events that took place outside the *Territorial Limits*.



### **Guarantees and warranties**

any liability arising directly or indirectly from any guarantee, warranty, penalty clause or liquidated damages clause unless such liability would have attached to *You* in the absence of such express warranty, guarantee or clause.

### **Other insurance**

liabilities in respect of which *You* are entitled to indemnity under any other insurance.

Notwithstanding the above, this Section 2 shall operate in excess of such other insurance, provided always that if such other insurance is also provided by the *Insurer* the *Limit of Indemnity* under this Section 2 shall be reduced by the amount payable under such other insurance.

### **Pollution**

liability in respect of pollution or contamination including the cost of removing, nullifying or cleaning up polluting or contaminating or seeping substances or remediation unless directly caused by a sudden identifiable unintended and unexpected occurrence which takes place in its entirety at a specific time and place during the *Policy Period* provided that

- a) all pollution or contamination which arises out of one occurrence will be deemed to have occurred at the time such occurrence takes place;
- b) the *Insurer's* total liability (for both *Damages* and *Costs and Expenses*) in respect of all incidences of pollution or contamination which are deemed to have occurred during the *Policy Period* shall not exceed in the aggregate the *Limit of Indemnity* stated in the *Schedule* but in no event shall this Section 2 cover any liability in respect of pollution or contamination including the cost of removing, nullifying or cleaning up polluting or contaminating or seeping substances or remediation outside of the *Territorial Limits*.

### **Product Performance**

the cost or consequences of replacing, reinstating, rectifying, recalling or guaranteeing the performance of any *Products*

### **Professional Risks**

Professional indemnity matters, these being covered under Section 1 of this policy (where operative).

### **Property Damage**

liability for damage to *Property*

- a) owned by *You*
- b) held in trust by *You* or in *Your* custody or control other than *Employees'* personal effects (including motor vehicles) and personal effects of other persons while visiting *Your* premises
- c) located at premises leased, let, rented or hired to *You* in connection with *Your Professional Business*

### **Radioactive Contamination**

any liability of whatever nature directly or indirectly caused by or contributed to by or arising from

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component

where such liability is

- i) attributable to *You*, and
- ii) accepted by *You* under any agreement and would not have attached in the absence of such agreement.

**Trading debts**

any liability directly or indirectly arising out of, or in any way involving any trading debt incurred by *You* or any guarantee or undertaking given by *You* for a debt or performance of any other obligation by a third party.

**War and terrorism**

any liability of whatever nature directly or indirectly caused by, resulting from, or in connection with acts of war or *Terrorism* regardless of any other cause or event contributing concurrently or in any other sequence to the liability.

This exclusion also excludes any liability of whatever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing or in any way relating to war or *Terrorism*.

# Section 3 – Employers' Liability

## Part 3.1

### Scope of Cover

This Section 3 will only apply if stated as being operative in the *Schedule*

#### **Insuring clause**

In consideration of the premium that *You* have agreed to pay (as shown in the *Schedule*), the *Insurer* agrees, subject to the terms, conditions and exclusions of this Section 3, to indemnify *You*:

- a) For *Damages* in respect of *Bodily Injury* sustained during the *Policy Period* by any *Employee* arising out of their employment by *You* in the course of *Your Professional Business* and within the *Territorial Limits*.
- b) For *Costs and Expenses*.

The *Insurer's* total liability under this Insuring clause in respect of any one claim (including *Costs and Expenses* incurred by *You* or on *Your* behalf) shall not exceed (i) the *Limit of Indemnity*; or (ii) GBP5,000,000 if the claim arises out of or involves *Terrorism* or *Asbestos*

## Part 3.2

### Extensions

Subject to the applicable terms and conditions elsewhere in this policy, the following extensions to this Section 3 are given:

#### Court attendance

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* in the event that the *Insurer* or their solicitors require *You* or any of *Your Employees* to attend court or any arbitration or adjudication hearing as a witness of fact in connection with any claim in respect of which *You* are entitled to an indemnity under this Section 3 at the following rates for each day on which attendance is required:

- a) Any of *Your Partners, Directors* or *Members* – GBP500
- b) Any of *Your Employees* – GBP250
- c) Any other relevant party – up to GBP500

The *Insurer's* liability under this extension is limited to GBP50,000 each claim and this extension is not subject to an *Excess*.

#### Indemnity to Principals

The *Insurer* will indemnify any of *Your Principals* to the extent that they incur any legal liability arising out of work carried out by *You* under contract or agreement.

Provided that this extension shall only operate to the extent that the liability attaching to the *Principal* would have been covered under this Section 3 had it attached to *You*.

#### Legal Defence

The *Insurer* will indemnify *You* for:

- a) Any award of costs and/or expenses against *You* at any proceedings before any court, tribunal, inquest or enquiry having the like power to compel attendance of witnesses at which *You*, in the reasonable opinion of the *Insurer*, should be represented (whether because of any conduct which might give rise (or has given rise) to a claim for *Damages* against *You* under this Section 3, or otherwise);
- b) All costs and expenses of legal representation that *You* might reasonably incur in accordance with a) above and which are not otherwise covered by this Section 3.

Provided that:

- i) The proceedings relate to the health, safety and/or welfare of one or more of *Your Employees*.
- ii) Costs and expenses incurred under b) above are payable within the *Limit of Indemnity* and are not subject to an *Excess*.
- iii) Only those costs and expenses that have been incurred with the consent of the *Insurer* will be payable under this extension.
- iv) The *Insurer* will not be liable to pay any penalty or fine awarded or made against *You*;
- v) The *Insurer* will be entitled if it so decides to nominate a solicitor (and, if appropriate, a barrister) of its own choosing to represent *You*;
- vi) The *Insurer's* liability under a) is limited to GBP250,000 each claim;

- vii) The *Insurer's* liability under b) above is limited to GBP1,000,000 in the aggregate during the *Policy Period* in respect of any criminal proceedings involving allegations of manslaughter corporate manslaughter corporate homicide or culpable homicide.

### **Unsatisfied court judgments**

Where a judgment has been obtained by any *Employee* or the legal personal representatives of any *Employee* arising out of and in the course of employment by *You* in respect of *Bodily Injury* sustained by the *Employee*

- a) In the course of *Your Professional Business*; or
- b) Against any company or individual operating from or resident in premises within the *Territorial Limits* in any court situated within the *Territorial Limits*

and such judgment remains unsatisfied in whole or in part six months after the date of judgment then at *Your* request the *Insurer* will pay to the *Employee* or the said legal personal representatives the amount of any damages and any awarded costs due under the judgment, to the extent that they remain unsatisfied

Provided that

- i) The *Bodily Injury* occurred during the *Policy Period*
- ii) There is no appeal outstanding
- iii) If any payment is made by the *Insurer* the *Employee* or the said legal personal representatives shall assign the benefit of the judgment to the *Insurer*
- iv) The liability of the *Insurer* under this extension shall not exceed the *Limit of Indemnity*.

## Part 3.3

### Conditions

This Section 3 is subject to the following conditions:

#### **General Conditions**

*You* must comply with the general conditions set out in Section 5 below

#### **Notification**

*You* must notify the *Insurer* of any matter which may give rise to a liability under this Section 3 in accordance with Section 4 below.

#### **Reasonable Precautions**

*You* will (at *Your* own expense) take all reasonable precautions to prevent or cease any activity which may give rise to a liability under this Section 3 to maintain all buildings furnishings ways works machinery plant and vehicles in a sound condition. As soon as possible after discovery of any defect or danger that may give rise to a liability under this Section 3, *You* will also cause such defect or danger to be made good or remedied and in the meantime will cause such additional precautions to be taken as the circumstances may require.

## Part 3.4

### Limitations and Exclusions

This Section 3 excludes and does not cover:

#### **Excess**

the amount of the *Excess* stated in the *Schedule*.

#### **Fines, penalties, punitive, multiple or exemplary damages**

any fines, penalties or punitive, multiple or exemplary damages where these have been identified separately within any award of any court or tribunal.

#### **Geographical limits**

any

- a) legal proceedings brought outside the *Jurisdiction* (or brought within the *Jurisdiction* to enforce a judgment or order made outside the *Jurisdiction*); and
- b) liability in respect of events that took place outside the *Territorial Limits*.

#### **Offshore**

liability arising out of any work undertaken and/or visit *Offshore*

#### **Other insurance**

liabilities in respect of which *You* are entitled to indemnity under any other insurance.

Notwithstanding the above, this Section 3 shall operate in excess of such other insurance, provided always that if such other insurance is also provided by the *Insurer* the *Limit of Indemnity* under this Section 3 shall be reduced by the amount payable under such other insurance.

#### **Passenger liability**

compensation to an *Employee* for *Bodily Injury* sustained when the *Employee* is carried in or on a vehicle, or entering or getting onto or alighting from a vehicle in circumstances where any road traffic legislation requires compulsory insurance or security covering that risk.

#### **Professional Risks, Public and Products liability**

Professional indemnity, public and products liability matters, these being covered under Sections 1 and 2 of this policy (where operative).

#### **Radioactive Contamination**

any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

- a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- b) the radioactive toxic explosive or other hazardous properties or any explosive nuclear assembly or nuclear component

where such liability is

- i) attributable to *You*, and
- ii) accepted by *You* under any agreement and would not have attached in the absence of such agreement.

**War**

any liability of whatever nature directly or indirectly caused by, resulting from, or in connection with acts of war regardless of any other cause or event contributing concurrently or in any other sequence to the liability.

This exclusion also excludes any liability of whatever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing or in any way relating to war.



# Section 4

## Keeping the Insurer informed

### **Part 1 - Notification**

You must give written notice to the *Insurer* of any matter that might reasonably fall for cover under this policy as soon as practicable but in any event within the *Policy Period*. All notifications must be in writing to:

Victor Insurance Claims Department  
20 Fenchurch Street  
London  
EC3M 3AG

or by email to [victorclaims@victorinsurance.uk.com](mailto:victorclaims@victorinsurance.uk.com) or fax to 020 7280 8899

Notice to the *Insurer* under this Section 4 will be deemed to have been properly made if received in writing by Victor Insurance and the date of posting/fax/email will constitute the date that notice was given under this Section 4.

All notifications must include at least the following:

- a) A statement that it is intended to serve as a notice of a matter of which *You* have become aware which may give rise to a *Loss* or *Claim* against *You* under Section 1 of this policy or a claim for *Damages* under Sections 2 and/or 3 of this policy;
- b) The reasons for anticipating that a *Loss* may be suffered by *You* or a *Claim* or assertion of a right to *Damages* may be made against *You* (including full particulars as to the nature of the allegations to be faced);
- c) The identity of any potential claimant(s);
- d) The identity of the present or former *Partner, Director, Member* or *Employee* (or such other person or party acting or having acted for *You* or on *Your* behalf) involved in the matter; and
- e) The date on which (and manner in which) *You* first became aware of the matter.

Provided that notice has been given in accordance with the requirements of this Section 4, any later *Loss* suffered by *You* or *Claim* or assertion of a right to *Damages* against *You* that arises out of the matter that has been notified will be deemed to have been made at the date when the matter was notified in accordance with the procedure above.

### **Adjudication** (applicable to Section 1 of this policy only)

You must give written notice within 48 hours, directly to the *Insurer*, when any of *Your* present *Partners, Directors* or *Members* first become aware:

- a) of receipt of an *Adjudication Notice* in which *You* are named as respondent; or
- b) that a dispute is likely to be referred to Adjudication in which *You* are likely to be named as respondent.

You must deliver directly to the *Insurer*, within 48 hours of first awareness of a) or b) above full written details of the matter(s) notified under (a) &/or (b) above, including any subsequent correspondence or notices received.

## **Part 2 – Special conditions relating to the handling of insured matters**

### **Allocation**

In the event that any matter falling for indemnity under this policy involves both covered matters and matters or persons not covered under this policy, a fair and proper allocation of any amounts paid shall be made between *You* and the *Insurer* at the conclusion of the matter, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

### **Contesting a claim**

*You* will not be required to contest any legal proceedings unless a Queen's Counsel advises that such proceedings could be contested, with the probability of success. The procedure for appointing such Queen's Counsel is set out in Section 5 below under the heading "Disputes".

### **Consent to settle**

Subject to receiving *Your* consent, the *Insurer* may make any settlement it deems expedient of any matter falling for indemnity under this policy.

Where *You* do not consent, the *Insurer* may elect to pay *You* the amount at which the *Insurer* reasonably believes the matter ought to be settled (less the appropriate *Excess*). Upon such payment being made, *You* may use the payment as *You* see fit, but the *Insurer* will play no further part in the matter (whether in relation to paying further *Defence Costs*, *Costs* and *Expenses*, paying towards the ultimate settlement or otherwise).

*You* must not admit or assume any liability towards any claimant, enter into any settlement agreement, or consent to any judgment without the prior consent of the *Insurer*.

### **Co-operation**

*You* will at *Your* own cost:

- a) Render all reasonable assistance to the *Insurer* and co-operate in the investigation and defence of any matter falling for indemnity under this policy; and
- b) Use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any *Claim* against *You* or any of *Your* present or former *Partners*, *Directors*, *Members* or *Employees* under Section 1 of this policy or a claim for *Damages* under Sections 2 and/or 3 of this policy; and
- c) Give such information and assistance to the *Insurer* as may reasonably be required to enable the *Insurer* to determine its liability under this policy in respect of any matter falling for indemnity.

### **Defence**

The *Insurer* will be entitled, if it so desires, to take over and conduct in *Your* name the investigation, representation, defence and/or settlement of any matter falling for indemnity under this policy and shall have full discretion in such conduct. In the event that the *Insurer* decides that representation by a solicitor is necessary (such decision to be at the sole discretion of the *Insurer*) then the *Insurer* may select a solicitor of its choosing to provide such legal representation at the *Insurer's* cost.

### **Subrogation**

The *Insurer* will be entitled, if it so desires, to pursue in *Your* name legal, arbitration or other proceedings so as to challenge, appeal or amend any decision, direction or award of any court or tribunal against *You* arising from any matter falling for indemnity under this policy. In the event of any payment being made by the *Insurer* under this policy, the *Insurer* shall be subrogated to the extent of such payment to all *Your* rights of recovery and will be entitled to exercise those rights in *Your* name against any third party that it sees fit. *You* will execute all papers required and will do everything reasonably necessary to secure and preserve *Your* rights of recovery, and will give to the *Insurer* all reasonable assistance in their exercise of those rights, in accordance with the obligations under the heading "Co-operation" above.



The *Insurer* will not exercise its right of subrogation against any of *Your* present or former *Partners, Directors, Members* or *Employees*, save where that person has committed a dishonest or fraudulent act or omission and such act or omission has resulted in the *Insurer* making a payment under Insuring clause b) in Part 1.1 of Section 1.

# Section 5

## General Conditions

All Sections of this policy are subject to the following general conditions:

### Alteration to risk

Subject to the *Acquisitions* extension within Section 1, *You* will give to the *Insurer* written notice as soon as reasonably practicable during the *Policy Period* of any material alteration to the information supplied in the *Proposal*.

Upon receipt of such notice, the *Insurer* will be entitled to continue the relevant Section(s) of this policy on such new terms and conditions as it may consider appropriate.

### Connected matters

All matters notified in accordance with Section 4 above that result from:

- a) One occurrence, act, error or omission; or
- b) A series of occurrences, acts errors or omissions arising out of or attributable to the same originating cause, source or event; or
- c) The acts, errors or omissions of one person or persons acting together or in which such person or persons is/are concerned or implicated

will jointly constitute one claim (*Loss* or *Claim* if under Section 1) under the appropriate Section of this policy, and only one applicable *Excess* will apply in respect of such claim (*Loss* or *Claim* if under Section 1).

### Disputes

All disputes which may arise out of or in relation to this policy can, at either *Your* or the *Insurer's* election, be referred to Queen's Counsel practising at the English Bar for determination. The appointment of Queen's Counsel is to be mutually agreed between *You* and the *Insurer*, their decision on the issue(s) in dispute will be final and binding on both the *Insurer* and *You*, and the cost of their involvement will be borne by the *Insurer*.

### Excess

Save as stated elsewhere in the appropriate Section of this policy, the *Insurer* will only ever pay any amount in respect of any matter falling for indemnity under this policy that is over and above the amount stated as the *Excess* in the *Schedule*. The *Excess* does not apply to *Defence Costs* (Section 1) or to those *Costs and Expenses* incurred by *You* or on *Your* behalf (Sections 2 and 3). Subject to the 'Connected matters' condition above, the *Excess* is payable by *You* in respect of each and every matter falling for indemnity under this policy.

### Fraudulent claims

If *You* make any request for payment in respect of any matter falling for indemnity under this policy knowing the same to be false or fraudulent, as regards amount or otherwise, the Section of this policy against which such request for payment was made will become void and *Your* entitlements under that Section will be forfeited.

### Termination

Any Section (or Sections) of this policy may be terminated by or on behalf of the *Insurer*:

- a) by immediate notice given in writing to *You* at *Your* last known address or registered office (if a company) 14 days after the due date for the premium payment if such payment is not made. If any Section (or Sections) is/are terminated by reason of non-

payment of premium, cover will cease on the due date of the unpaid premium payment; or

- b) by 30 days' notice given in writing to *You* at *Your* last known address or registered office (if a company), in which case the premium shall be adjusted on a pro-rata basis. However, if a matter has been notified that falls for indemnity under this policy prior to the termination the *Insurer* will reserve their right to offer a return of the appropriate premium.

### **Third party rights**

No-one other than *You* is entitled to enforce any term of this policy for its own benefit, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

In the event of proceedings being brought by a *Third Party* against the *Insurer* for the enforcement of a term of this policy, the *Insurer* will have available to it all rights of defence and set-off as would have been available if the proceedings had been brought by *You*.

# Section 6

## Complaints

### How to make a complaint

Victor Insurance's aim is to ensure that all aspects of *Your* insurance are dealt with promptly, efficiently and fairly. At all times Victor Insurance is committed to providing *You* with the highest standard of service.

If *You* have any questions or concerns about *Your* policy or the handling of a *Claim You* should, in the first instance, contact Victor Insurance or the broker where applicable. In the event that *You* remain dissatisfied and wish to make a complaint, *You* can do so at any time. Making a complaint does not affect any of *Your* legal rights. Please contact:

Chief Underwriting Officer, Victor Insurance, 1 Tower Place West, Tower Place, London, EC3R 5BU.

If *You* remain dissatisfied after Victor Insurance has considered *Your* complaint or if *You* have not received a written final response within eight weeks from the date Victor Insurance received *Your* complaint, *You* may be entitled to refer *Your* complaint to the Financial Ombudsman Service who will independently consider *Your* complaint free of charge. Their contact details are:

**Post:** The Financial Ombudsman Service, Exchange Tower, London E14 9SR

**Telephone:** (Fixed): 0800 0234567 (Mobile): 0300 1239123 (Outside UK): +44 (0) 20 7964 0500

**Fax:** +44 (0)20 7964 1001

**Email:** [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)

**Website:** [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

Please note:

*You* must refer *Your* complaint to the Financial Ombudsman Service within six months of the date of the final response

The Financial Ombudsman Service will normally only consider a complaint from private individuals, from a business that has an annual turnover of less than 2 million Euros and fewer than 10 employees or from trustees of a trust with net asset value of less than £1m.

### The Financial Services Compensation Scheme (FSCS)

Under the Financial Services and Markets Act 2000, should we be unable to meet our liabilities to policyholders, compensation may be available. Insurance advising and arranging is covered for 90% of the claim, without any upper limit. For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit. Information can be obtained on request, or by visiting the Financial Services Compensation Scheme website at [www.fscs.org.uk](http://www.fscs.org.uk).

# Section 7

## Definitions

### *Adjudication Notice*

means a notice of intention to adjudicate, notice of adjudication or referral notice, as more particularly defined in the Housing (Urban Housing Grants, Construction and Regeneration) Act 1996.

### *Asbestos*

means crocidolite amosite chrysotile fibrous actinolite fibrous anthophyllite or fibrous tremolite or any mixture containing any of those minerals

### *Asbestos Containing Materials*

means any material containing *Asbestos* or *Asbestos Dust*

### *Asbestos Dust*

means fibres or particles of *Asbestos*

### *Asbestos Inspections*

Shall mean Type 1, 2 or 3 inspections as set out in MDHS 100 published by the Health and Safety Executive in connection with regulation 4 of the Control of Asbestos at Work Regulations 2002 (CAWR), or any other comparable inspection, whether of commercial or residential land or property.

### *Bodily Injury*

means:

- a) (In respect of Sections 1 and 2 of this policy) physical injury, sickness, disease or death of a natural person; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury; or
- b) (In respect of Section 3 of this policy) bodily injury, death, disease or illness.

### *Circumstance*

means any matter which *You* become aware of during the *Policy Period* which may give rise to a *Loss* or *Claim* under Section 1 of this policy.

### *Claim*

means (in respect of Section 1 of this policy) any:

- a) Written demand for compensation and/or *Damages* in respect of an alleged *Wrongful Act* committed by *You* or any of *Your* present or former *Partners, Directors, Members* or *Employees*; or
- b) Civil, regulatory or administrative proceedings whereby it is alleged that *You* or any of *Your* present or former *Partners, Directors, Members* or *Employees* have committed a *Wrongful Act*.

### *Collateral Warranty/Duty of Care Agreement*

means any agreement which acknowledges or accepts that *You* owe a duty of care to or are responsible for the losses of any party other than *Your* direct client to who services are being provided.

### *Costs and Expenses*

means (in connection with any event which is or may be the subject of indemnity under Sections 2 or 3 of this policy):

- a) any legal costs and expenses for which *You* become legally liable; and

- b) all costs and expenses incurred by *You* or on *Your* behalf with the *Insurer's* prior written consent, such costs and expenses being paid by the *Insurer*
  - i) in addition to the *Limit of Indemnity* (if the matter concerned falls within Section 2 of this policy);
  - ii) within the *Limit of Indemnity* (if the matter concerned falls within Section 3 of this policy).

#### *Damages*

means any amount that *You* shall be legally liable to pay either to a *Third Party* (in respect of matters falling within Section 1 of this policy) or generally (in respect of matters falling within Sections 2 and/or 3 of this policy) in respect of judgments or arbitral awards rendered against *You*, or for settlements negotiated by the *Insurer* with *Your* consent.

#### *Data*

means information represented or stored electronically including but not limited to code or series of instructions operating systems software programs and firmware

#### *Defence Costs*

means reasonable fees, costs and expenses incurred by *You* or on *Your* behalf, with the prior consent of the *Insurer*, in the investigation, defence, adjustment, settlement or appeal of any *Claim*. It shall not include any element of *Your* own time costs or lost profits incurred in dealing with a *Claim*.

#### *Director*

shall have the meaning given by section 741(1) of the Companies Act 1985 and shall include *Your* present and former *Directors*, their estates, heirs and executors.

#### *Document*

means all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

#### *Employee*

means

- a) (In respect of Section 1 of this policy) any natural person (including their estates, heirs and executors) who is, has been or during the *Policy Period* becomes expressly engaged under a contract of employment with *You*.
- b) (In respect of Sections 2 and 3 of this policy)
  - i) any person under a contract of service or apprenticeship with *You*; or
  - ii) any person who is hired to or borrowed by *You*; or
  - iii) any person engaged by *You* in connection with a work experience or training scheme; or
  - iv) any labour master or person supplied by the labour master; or
  - v) any person engaged by labour only sub-contractors; or
  - vi) any self-employed person working on a labour only basis under *Your* control or supervision; or
  - vii) any voluntary helper;
  - viii) any person that falls within one of the categories i)-vii) above on a temporary basis



while working for *You* in connection with *Your Professional Business*.

*Excess*

means the amount specified as such under the appropriate Section in the *Schedule*

*Fair Presentation*

means *Your* duty to provide a fair presentation of the risk as described in Part 2 of the Insurance Act 2015.

*Insurer*

means the party specified as such in the *Schedule*.

*Jurisdiction*

means the jurisdiction stated under the appropriate Section in the *Schedule*.

*Limit of Indemnity*

means the amount specified as such under the appropriate Section in the *Schedule*.

*Loss*

means (in respect of Section 1 of this policy) monetary losses suffered by *You* that are not connected with the trading activities of *Your Professional Business*. However *Loss* shall not include and Section 1 shall not cover any:

- a) Taxes; or
- b) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages; or
- c) fines or penalties; or
- d) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief; or
- e) fees or commissions, for any professional services rendered or required to be rendered by *You* or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation; or
- f) any matters which may be deemed uninsurable under the law governing Section 1 or the jurisdiction in which a *Claim* is brought.

*Member*

means, if *You* are a Limited Liability Partnership, any member of that Limited Liability Partnership (including their estates, heirs and executors).

*Offshore*

means embarkation on to a vessel or aircraft for conveyance to an offshore rig or platform until disembarkation from the conveyance onto land upon return from such offshore rig or platform.

*Partner*

shall have the meaning given by the Partnership Act 1890 and shall include, in the case of any of *Your Partners*, their estates, heirs and executors.

*Policy Period*

means the period of time during which this policy will operate, as specified in the *Schedule*.

*Pollution*

means the release, emission, discharge, dispersal or escape of any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including (but not limited to) solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, fungus, mould, mildew or yeast and any noise.

*Premises*

means the premises stated as Address in the *Schedule*

*Principal*

means any public authority, government or corporate body, organisation or person for whom *You* are acting in the course of *Your Professional Business*

*Products*

means any commodities or goods or any thing (including packaging, containers and labels) sold, supplied, hired out, manufactured, constructed, erected, installed, treated, cleaned, repaired, serviced, altered, processed, stored, handled, transported or disposed of by *You* or on *Your* behalf or any structure constructed, erected, installed or contract work executed by *You* or on *Your* behalf in the course of *Your Professional Business*

*Professional Business*

means the business stated as such on the *Schedule*, when carried out by *You* or on *Your* behalf.

*Property*

means material property but shall not include *Data*

*Proposal*

means any proposal or application form, statement of fact, declaration or other information provided by *You* or on *Your* behalf in connection with this policy.

*Schedule*

means the Schedule attached to this policy.

*Terrorism*

means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

*Territorial Limits*

means the territorial limits stated under the appropriate Section in the *Schedule*.

*Third Party*

means any entity or natural person except:

- a) *You* or any of *Your* present or former *Partners, Directors, Members* or *Employees*; or
- b) any other entity or natural person having a financial interest or executive role in *You* or any of *Your Subsidiaries*.

*Wrongful Act*

means any actual or alleged act, error or omission committed solely in the carrying out or failure to carry out *Your Professional Business*.

*You/Your*

means:

- a) Any person or firm for whom indemnity has been requested in the *Proposal*;
- b) The person or firm named as the "Insured" on the *Schedule*



**[www.victorinsurance.co.uk](http://www.victorinsurance.co.uk)**

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