

Professional Liability Policy



Miscellaneous Professions

1 Introduction

This policy is a contract between **You** and **Us**. It is arranged through **Touchstone Underwriting** on **Our** behalf in accordance with the authority granted under the Contract Number stated in the **Schedule**.

This policy consists of the Insuring Clauses, Definitions, Exclusions and Conditions, the **Schedule** and **Endorsements**, if any, all of which are a single document and are to be read as one contract. In deciding to accept this policy and in setting the terms and premium **We** have relied on the information which **You** have provided to **Us**.

Please read this policy carefully and make sure that it meets **Your** needs. If any corrections are necessary **You** should contact **Your** Insurance Broker through who this policy was arranged.

Please keep this policy in a safe place – **You** may need to refer to it if **You** have to make a **Claim**.

1.1 Accessibility

Upon request **Touchstone Underwriting** can provide Braille, audio or large print versions of this policy and the associated documentation including the Key Facts document. If **You** require an alternative format **You** should contact **Touchstone Underwriting** through whom this policy was arranged.

1.2 Third Party Rights

A person who is not a party to this contract of insurance has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract of insurance but this does not affect any right or remedy of a third party that exists or is available apart from that Act.

1.3 Law and Jurisdiction

The parties are free to choose the law applicable to this contract of insurance. Unless specifically agreed to the contrary this contract of insurance shall be governed by English law and subject to the exclusive jurisdiction of the courts of England and Wales.

The language of this contract of insurance and all communications relating to it will be in English.

1.4 Cancellation and Cooling Off Period

(a) Your Right to Cancel during the Cooling-Off Period

You are entitled to cancel this policy by notifying **Us** through **Touchstone Underwriting** within fourteen (14) days of either:

- (i) the date **You** receive this policy; or
- (ii) the start of **Your Period of Insurance**;

whichever is the later.

A full refund of any premium paid will be made unless **You** have made a **Claim** in which case the full annual premium is due.

(b) Your Right to Cancel after the Cooling-Off Period

You are entitled to cancel this policy after the cooling-off period by notifying **Us** through **Touchstone Underwriting**. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the policy has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

(c) **Our Right to Cancel**

We are entitled to cancel this policy, if there is a valid reason to do so, including for example:

- (i) any failure by **You** to pay the premium; or
- (ii) a change in risk which means **We** can no longer provide **You** with insurance cover; or
- (iii) non-cooperation or failure to supply any information or documentation **We** request, such as details of a **Claim**;

by giving **You** fourteen (14) days' notice in writing. Any return of premium due to **You** will be calculated at a proportional daily rate depending on how long the policy has been in force unless **You** have made a **Claim** in which case the full annual premium is due.

1.5 **Information You Have Given Us**

In deciding to accept this policy and in setting the terms including premium **We** have relied on the information which **You** have provided to **Us**. **You** must take care when answering any questions **We** ask by ensuring that any information provided is accurate and complete.

If **We** establish that **You** deliberately or recklessly provided **Us** with untrue or misleading information **We** will have the right to:

- (a) treat this policy as if it never existed;
- (b) decline all **Claims**; and
- (c) retain the premium.

If **We** establish that **You** carelessly provided **Us** with untrue or misleading information **We** will have the right to:

- (i) treat this policy as if it never existed, refuse to pay any **Claim** and return the premium **You** have paid, if **We** would not have provided **You** with cover;
- (ii) treat this policy as if it had been entered into on different terms from those agreed, if **We** would have provided **You** with cover on different terms;
- (iii) reduce the amount **We** pay on any **Claim** in the proportion that the premium **You** have paid bears to the premium **We** would have charged **You**, if **We** would have charged **You** more.

We will notify **You** in writing if (i), (ii) and/or (iii) apply.

If there is no outstanding **Claim** and (ii) and/or (iii) apply, **We** will have the right to:

- (1) give **You** notice that **We** are terminating this policy in accordance with the Cancellation and Cooling-Off Provisions; or
- (2) give **You** notice that **We** will treat this policy and any future **Claim** in accordance with (ii) and/or (iii), in which case **You** may then give **Us** thirty (30) days' notice that **You** are terminating this policy.

If this policy is terminated in accordance with (1) or (2), **We** will refund any premium due to **You** in respect of the balance of the **Period of Insurance**.

1.6 **Changes We Need to Know About**

You must tell **Us** as soon as practicably possible of any change in the information **You** have provided to **Us** which happens before or during any **Period of Insurance**.

When **We** are **Notified** of a change **We** will tell **You** if this affects **Your** policy. For example **We** may cancel **Your** policy in accordance with the Cancellation and Cooling-Off Provisions, amend the terms of **Your** policy or require **You** to pay more for **Your** insurance. If **You** do not inform **Us** about a change it may affect any **Claim You** make or could result in **Your** insurance being invalid.

1.7 **Fraud**

If **You**, or anyone acting for **You**, makes a fraudulent **Claim**, for example a loss which is fraudulently caused and/or exaggerated and/or supported by a fraudulent statement or other device, **We**:

- (a) will not be liable to pay the **Claim**; and
- (b) may recover from **You** any sums paid by **Us** to **You** in respect of the **Claim**; and
- (c) may by notice to **You** treat this **Policy** as having been terminated with effect from the time of the fraudulent act.

If **We** exercise **Our** right under (c) above:

- (i) **We** shall not be liable to **You** in respect of a relevant event occurring after the time of the fraudulent act. A relevant event is whatever gives rise to **Our** liability under this **Policy** (such as the occurrence of a loss, the making of a **Claim**, or the notification of a potential **Claim**); and.
- (ii) **We** need not return any of the premium paid.

1.8 **Sanctions**

We shall not provide any benefit under this policy to the extent of providing cover, payment of any **Claim** or the provision of any benefit where doing so would breach any sanction, prohibition or restriction imposed by law or regulation.

1.9 **Complaints Procedure**

We are dedicated to providing a high quality service and **We** want to ensure that **We** maintain this at all times.

If **You** have any questions or concerns about the policy or the handling of a **Claim** please contact **Touchstone Underwriting** through whom this policy was arranged.

If **You** wish to make a complaint **You** can do so at any time by referring the matter to:

Complaints Manager
XL Catlin Insurance Company UK Limited
20 Gracechurch Street
London
EC3V 0BG

Telephone Number: 020 7743 8487
E-mail: xlcatlinukcomplaints@xlcatlin.com

If **You** remain dissatisfied after the Complaints Manager has considered **Your** complaint, or **You** have not received a final decision within eight (8) weeks, **You** can refer **Your** complaint to the Financial Ombudsman Service at:

Exchange Tower
London
E14 9SR

E-mail: complaint.info@financial-ombudsman.org.uk

From within the United Kingdom

Telephone Number: 0800 0234 567 (free for people phoning from a “fixed line”, for example, a landline at home)

Telephone Number: 0300 1239 123 (free for mobile-phone users who pay a monthly charge for calls to numbers starting 01 or 02)

From outside the United Kingdom

Telephone Number: +44(0)20 7964 1000

Fax Number: +44(0)20 7964 1001

The Financial Ombudsman Service can look into most complaints from consumers and small businesses. For more information contact them on the above number or address, or view their website: www.financial-ombudsman.org.uk

The European Commission also provides an on-line dispute resolution (ODR) platform that allows consumers to submit their complaint through a central site, which will forward the complaint to the right Alternative Dispute Resolution (ADR) scheme. The ADR scheme for XL Catlin Insurance Company UK Limited is the Financial Ombudsman Service, which can be contacted directly using the contact details above. For more information about ODR please visit <http://ec.europa.eu/odr>

1.10 **Financial Services Compensation Scheme**

We are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the Scheme if **We** are unable to meet **Our** obligations under this contract of insurance. If **You** were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this contract of insurance. Further information about the Scheme is available from the Financial Services Compensation Scheme (PO Box 300, Mitcheldean, GL17 1DY) and on their website: www.fscs.org.uk.

1.11 **Regulatory Information**

(a) **XL Catlin Insurance Company UK Limited**

XL Catlin Insurance Company UK Limited is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (Firm Reference Number 423308.)

Registered Office: 20 Gracechurch Street, London, EC3V 0BG

Registered in England: Company Number 5328622.

(b) **Touchstone Underwriting Ltd.**

Touchstone Underwriting Ltd. is authorised and regulated by the Financial Conduct Authority (Firm Reference Number 474614.)

Registered Office: 156 South Street, Dorking, Surrey RH4 2HF

Registered in England: Company Number 2264985

You can check this out on the FCA's website at www.fca.org.uk which includes a register of all the firms they regulate or by calling the FCA on 0800 111 6768.

1.12 **Fair Processing Notice**

This Privacy Notice describes how XL Catlin Insurance Company UK Limited (for the purpose of this notice "we", "us" or the "Insurer") collect and use the personal information of insureds, claimants and other parties (for the purpose of this notice "you") when we are providing our insurance and reinsurance services.

The information provided to the Insurer, together with medical and any other information obtained from you or from other parties about you in connection with this policy, will be used by the Insurer for the purposes of determining your application, the operation of insurance (which includes the process of underwriting, administration, claims management, analytics relevant to insurance, rehabilitation and customer concerns handling) and fraud prevention and detection. We may be required by law to collect certain personal information about you, or as a consequence of any contractual relationship we have with you. Failure to provide this information may prevent or delay the fulfilment of these obligations.

Information will be shared by the Insurer for these purposes with group companies and third party insurers, reinsurers, insurance intermediaries and service providers. Such parties may become data controllers in respect of your personal information. Because we operate as part of a global business, we may transfer your personal information outside the European Economic Area for these purposes.

You have certain rights regarding your personal information, subject to local law. These include the rights to request access, rectification, erasure, restriction, objection and receipt of your personal information in a usable electronic format and to transmit it to a third party (right to portability).

If you have questions or concerns regarding the way in which your personal information has been used, please contact: compliance@xcatlin.com.

We are committed to working with you to obtain a fair resolution of any complaint or concern about privacy. If, however, you believe that we have not been able to assist with your complaint or concern, you have the right to make a complaint to the UK Information Commissioner's Office.

For more information about how we process your personal information, please see our full privacy notice at: <http://xlgroup.com/footer/privacy-and-cookies>.

2 Insuring Clauses

We will, in consideration of the payment of the premium, cover **You**, as detailed below, against any **Claim** made against **You** in the Covered Jurisdictions stated in the **Schedule**, subject to all the terms and conditions of this policy:

2.1 Civil Liability

We shall reimburse **You** in respect of any settlement, damages, interest and claimant's costs arising from any **Claim** first made against the **Insured** and **Notified** during the **Period of Insurance** and which arises out of the conduct of the **Business** by reason of:

- (a) a **Wrongful Act** committed by **You** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (b) any dishonest or fraudulent act or omission on the part of any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (c) libel or slander committed unintentionally by **You** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (d) any unintentional breach of confidentiality committed by **You** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (e) any passing-off or infringement of copyright, design right, registered design, trademark or patent committed unintentionally and in good faith by **You** or by any **Employee**, or by any other person, firm or company directly appointed by and acting for or on **Your** behalf;
- (f) any other civil liability unless excluded herein.

2.2 Loss of Documents

We shall reimburse **You** for:

- (a) costs, incurred with **Our** prior written consent, of repair, replacement or reconstitution of, and
- (b) any settlement, damages, interest and claimant's costs arising from a **Wrongful Act** involving;

any **Document** which has been unintentionally destroyed, damaged, lost or mislaid during the **Period of Insurance** (and which after diligent search cannot be found) the occurrence of which has been **Notified** during the **Period of Insurance**.

2.3 Data Protection

We shall reimburse **You** for **Defence Costs** resulting from any prosecution first brought against **You** and/or any **Employee** and **Notified** during the **Period of Insurance** which arises out of the conduct of the **Business** in respect of any offences or alleged offences under sections 21(1), 21(2), 22(6) or 47(1) of the Data Protection Act 1998.

2.4 Criminal Proceedings

We will reimburse **You** for **Defence Costs** incurred with **Our** prior written consent in the defence of any criminal proceedings against **You** or any of **Your Employees** which arises from the alleged breach of any statutory regulation in any Covered Jurisdiction stated in the **Schedule** where such alleged breach arises out of the conduct of the **Business**.

Provided always that:

- (a) the proceedings are likely to give rise to a **Claim** against **You** that would be reimbursable under this policy,
- (b) in **Our** opinion the defence of such proceedings would assist in the defence of any **Claim** against **You** arising from such proceedings that would be reimbursable under this policy,
- (c) any subsequent or concurrent **Claim** that would be reimbursable under this policy and that arises out of any proceedings **Notified** under this Insuring Clause, shall be **Notified** in accordance with Clause 7.3 – Claim Notification,
- (d) any appeal against the outcome of any initial proceedings shall be treated as being "proceedings" for the purpose of this Insuring Clause.

2.5 **Cover for Principals**

We shall reimburse any principal of **Yours** for any loss which they become liable to pay as a result of a **Claim** made against the principal by any person or entity (other than **You**) which results directly from **Your** act, error or omission or that of any **Employee** in the conduct of the **Business**.

2.6 **Payment of Outstanding Fees**

We shall reimburse **You** in respect of any **Claim** first **Notified** by the **You** during the **Period of Insurance** relating to amounts owed to **You**, including amounts legally owed by **You** to sub-contractors or suppliers, due to the refusal by a client to pay for work undertaken by **You** where such client has grounds for being dissatisfied with the work and threatens to bring a **Claim** in excess of the amount owed. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, **We** agree to pay the amount owed if, at **Our** sole discretion, **We** consider that a legitimate **Claim** for a greater amount will be avoided. If a **Claim** subsequently arises then the amount paid under this Insuring Clause will be deducted from the Limit of Liability. If **You** eventually recover the amount owed then the amount paid by **Us** must be repaid less **Your** expenses incurred in such recovery.

2.7 **Witness Attendance**

We will pay to or reimburse **You** the cost of attendance at any Court, Arbitration or Adjudication hearing by **You**, including any **Employee** or any other relevant party (but not including expert witnesses) in the event that the legal advisers acting on **Your** behalf require such attendance, provided that **We** have given **Our** prior written consent to such attendance, as a witness of fact in connection with a **Claim** made against **You** for which cover is afforded under this policy at the following rates for each day or part thereof on which such attendance is required:

- (a) **Your** principal, partner, member or director GBP 200
- (b) any **Employee** GBP 100
- (c) any other relevant party up to GBP 200

2.8 **Defence Costs**

We shall reimburse **You** for all **Defence Costs** incurred in:

- (a) respect of any **Claim** which falls to be dealt with under Insuring Clauses 2.1, 2.2(b), 2.5 or 2.6; or
- (b) the investigation of any circumstance **Notified** to **Us** under Clause 7.3 – Claim Notification which may give rise to a **Claim**.

3 Definitions

- 3.1 "**Business**" means the business stated in the **Schedule** and conducted by **You** at or from **Your** premises.
- 3.2 "**Claim**" means any demand made of, or assertion of a right against, **You** which is communicated to **You** in writing, or costs under Insuring Clauses 2.2(a), 2.3 or 2.4.
- 3.3 "**Defence Costs**" means costs, fees and expenses incurred by **You** or on **Your** behalf with the **Our** written consent in the investigation, defence or settlement of any **Claim**, suit or proceedings which are or would, if successful, be covered under this policy.

Defence Costs do not include **Your** or **Your Employee's** own costs, fees or expenses (including salaries) or value attributable to the time spent in dealing with a **Claim** or a circumstance

- 3.4 "**Document**" means records arising from the **Business**, whether kept in paper, magnetic or electronic form, for which **You** are legally responsible, whilst in the custody of the **Insured** or in the custody of any person other than the owner to or with whom they have been entrusted, lodged or deposited by **You** in the ordinary course of the **Business**.

Document does not include stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like.

- 3.5 "**Employee**" means any:
- (a) person under a contract of service or apprenticeship with **You**;
 - (b) labour only sub-contractor and persons supplied by them;
 - (c) person employed by labour only sub-contractors;
 - (d) self-employed person;
 - (e) person hired to or borrowed by **You**; or
 - (f) person undertaking study or work experience, voluntary work or a youth training scheme with **You**;

working for **You** and under **Your** control in connection with the **Business**.

- 3.6 "**Endorsement**" means a change in the terms and conditions of this policy that can extend or restrict cover.
- 3.7 "**Excess**" means the first part of each and every **Claim**, for which **You** are responsible as stated in the **Schedule**.
- 3.8 "**Extranet**" means a restricted-access group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.9 "**Internet**" means the worldwide group of inter-connected networks accessible via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.
- 3.10 "**Intranet**" means one or more inter-connected networks with restricted access to **You** via service providers or online service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

- 3.11 "**Notified**" means that notice is given by **You** to, and received by, **Us** through **Touchstone Underwriting** using the contact details stated in the **Schedule**. For the avoidance of doubt, notice is not valid if given by any third party (other than **Touchstone Underwriting**).
- 3.12 "**Period of Insurance**" means the period stated in the **Schedule**.
- 3.13 "**Pollution**" means any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including for example smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including for example material to be recycled, reconditioned or reclaimed) or contamination of any kind of the atmosphere or of any water, land, buildings or other tangible property.
- 3.14 "**Schedule**" means the document entitled **Schedule** that relates to and forms part of this policy.
- 3.15 "**Terrorism**" means an act, including for example 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.
- 3.16 "**Touchstone Underwriting**" means Touchstone Underwriting Ltd.
- 3.17 "**United Kingdom**" means England, Wales, Scotland, Northern Ireland, the Isle of Man and the Channel Islands.
- 3.18 "**We / Us / Our**" means XL Catlin Insurance Company UK Limited.
- 3.19 "**Wrongful Act**" means any negligent act, negligent error, negligent omission or negligent breach of duty.
- 3.20 "**You / Your**" means any firm, company or limited liability partnership named as the Insured in the **Schedule**, including any of their predecessors in business; their principals, partners, directors or member (including any former principal, partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death.

4 Limit of Liability

- 4.1 The Limit of Liability of this policy is the maximum amount **We** shall be called upon to pay under this policy in respect of any one **Claim** under Insuring Clauses 2.1, 2.2(b), 2.5, 2.6 and 2.7 and the aggregate of all **Claims** under Insuring Clauses 2.2(a), 2.3 and 2.4, but with defence costs and expenses under Insuring Clause 2.8 in addition.
- 4.2 The Limit of Liability shall be as stated in the **Schedule**. In respect of Insuring Clauses 2.2(a), 2.3 and 2.4 an aggregate sub-limit in the amount stated in the **Schedule** shall apply.
- 4.3 All payments made by **Us** in respect of any Insuring Clause, or any **Endorsement** or otherwise (except for the payment under Insuring Clause 2.8 of defence costs and expenses) relating to the same **Claim** (as ascertained under clause 4.5 below) shall erode the Limit of Liability in respect of any one **Claim** under this policy.
- 4.4 It is agreed by **You** that if a payment is required or made in settlement of any **Claim** or circumstance which exceeds the Limit of Liability available under this policy, **Our** liability for **Defence Costs** shall be limited to such proportion as the amount of the Limit of Liability available in respect of such **Claim** or circumstance bears to the amount required or paid in settlement and **You** hereby agree to make any consequent repayment due to the **Us** immediately upon demand, failing which **We** will be entitled to deduct the amount of repayment from any **Claim** settlement monies due from them under this policy.

4.5 All **Claims** (including costs sought under Insuring Clause 2.2(a), 2.3 or 2.4) whether made against or sought by one or more insured, wholly or substantially arising from or having any connection with or relation to:

- (a) the same event, occurrence, act, error, omission or breach of duty or having the same originating or underlying cause; or
- (b) a series of events, occurrences, acts, errors, omissions or breaches of duty having the same originating or underlying cause; or
- (c) the acts, errors, omissions or breaches of a single person or persons acting together or in which such person or persons is or are concerned or implicated;

shall be treated as being one **Claim** or single application for costs under Insuring Clause 2.2(a), 2.3 or 2.4 for the purposes of deciding the applicable Limit of Liability and the application of the deductible under this policy. **We** shall be the sole judge as to whether the provisions of this sub-clause shall operate in relation to any **Claim** or application for costs under Insuring Clause 2.2(a), 2.3 or 2.4.

5 Deductible

5.1 A separate deductible being the first part of any **Claim** which is payable by **You** before the **We** shall have any liability to reimburse under this policy shall apply to each and every **Claim**. Payment of such deductible by **You** must be made prior to any reimbursement by **Us**.

5.2 The deductible in respect of any **Claim** shall be in the amount stated in the **Schedule**, and shall not be applicable to **Defence Costs**

6 Exclusions

This policy does not apply to or include cover for or arising out of or relating to:

6.1 Asbestos

the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos whether or not there is another cause of loss which may have contributed concurrently or in any sequence to a loss or in respect of that part of any property insured by this policy which consists of asbestos.

6.2 Death or Bodily Injury

bodily injury, sickness, disease, emotional distress (other than emotional distress arising from any libel or slander), mental anguish, mental stress or the death of any person.

6.3 Deliberate Acts

any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by **You**.

6.4 Director and Officer

Your liability as a director, officer and/or trustee in their respective capacities as a director, officer and/or trustee.

6.5 Documents

any repair, replacement or reconstitution cost of any **Document** occasioned by any government or public or local authority action or order, or resulting from wear and tear being a reduction in value through age, natural deterioration, ordinary use, depreciation due to use, damage by exposure to the light, lack of maintenance or damage which happens gradually over a period of time, the action of vermin, or magnetic flux or loss of magnetism (except where caused by lightning).

6.6 Employers Liability

any breach of any obligation owed by **You** as an employer to any **Employee** or former **Employee** or applicant for employment.

6.7 Fines and Penalties

any regulatory or disciplinary investigations or proceedings (apart from reimbursement provided under Insuring Clause 2.3 or 2.4) or any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages, or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages

6.8 Fraud and Dishonesty

any **Claim** or circumstance arising from or connected with **Your** dishonest or fraudulent act or omission or that of any of **Your** former or present partners, principals, directors, members, consultants or sub-contractor:

- (a) in respect of any person committing or condoning such dishonest or fraudulent act or omission, or
- (b) in the amount recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives, or
- (c) arising after the discovery of reasonable cause for suspicion of dishonesty or fraud by the dishonest or fraudulent person or persons, or
- (d) in the amount equivalent to:
 - (i) any monies owed by **You** to any person committing, condoning or contributing to the dishonest or fraudulent act or omission; and
 - (ii) any monies held by **You** and belonging to such person;
 - (iii) any monies recovered in accordance with Clause 7.5 – Dishonest or Fraudulent Claim Recovery.

6.9 Goods and Services

any contract for the provision of goods or services to **You**; or any goods or products sold, supplied, made, constructed, installed, maintained, repaired, altered or treated by **You** or on **Your** behalf, unless such **Claim** or circumstance is a direct result of **Your** negligent design and/or negligent specification or that of any **Employee** or any other person firm or company directly appointed by and acting for **You** or on **Your** behalf.

6.10 **Information Technology**

any of the following:

- (a) the failure of any computer or other electronic processing device (except as provided under Insuring Clause 2.2(b)) or of any program, instruction or data for use in any computer or other electronic processing device, equipment or system to function in the way expected or intended; or
- (b) the transmission or receipt of any virus, program or code that causes loss or damage to any computer system and/or prevents or impairs its proper function or performance; or
- (c) business conducted and/or transacted via the **Internet, Intranet, Extranet** and/or via the **Your** own website, **Internet** site, web-address and/or via the transmission of electronic mail or documents by electronic means. This exclusion shall not apply if the liability to **You** would have attached in the absence of the fact that the business was conducted and/or transacted via the **Internet, Intranet, Extranet** and/or via **Your** own website, **Internet** site, web-address and/or via the transmission of electronic mail or documents by electronic means.

6.11 **Infringement of Intellectual Property Rights**

any passing-off or infringement of trade secret.

6.12 **Insolvency**

Your insolvency or bankruptcy.

6.13 **Joint Venture**

any association or joint venture conducted with any third party other than in respect of any **Claim** or circumstance arising from the **Business**, provided that such **Claim** or circumstance emanates from a wholly independent third party.

6.14 **Jurisdiction and Territorial Limits**

any:

- (a) legal proceedings brought in a court of law outside the Covered Jurisdiction stated in the **Schedule** or brought in a court of law within the stated jurisdictions to enforce a judgement or order made in any court of law outside those jurisdictions; or
- (b) liability arising from the **Business** undertaken outside the Territorial Limits stated in the **Schedule**.

6.15 **Known Claim or Circumstance**

any **Claim** or circumstance which may give rise to a **Claim** which was or ought to have been known to **You** prior to the **Period of Insurance**.

6.16 **Land and Vehicles**

the ownership, possession or use of any aircraft, watercraft, hovercraft, motor vehicle, trailer, or other means of transport, or any buildings, structures, premises or land or any property (mobile or immobile).

6.17 **Market Fluctuation**

any depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets, and any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments, or in connection with any investment advice given or services performed which have not been authorised where such authorisation is required under any statutory regulation by an appropriate statutory authority.

6.18 **Medical Malpractice**

medical malpractice, including for example the rendering of or failure to render medical advice, diagnosis or treatment.

6.19 **Molestation**

any actual or alleged sexual harassment and/or sexual molestation and/or sexual and/or racial discrimination

6.20 **Other Insurance**

any matter in respect of which **You** are (or but for the existence of this policy would be) entitled to reimbursement under any other contract of insurance, except where such other insurance is written as specific excess insurance to this policy; in any event this policy shall only apply to the extent of such part of the Limit of Liability as exceeds the limit of the other policy.

6.21 **Pollution**

any **Pollution**.

6.22 **Property Damage**

any damage to or destruction or loss of any property (except as provided under Insuring Clause 2.2(a)) including loss of use, unless caused directly by a **Wrongful Act**.

6.23 **Punitive Damages**

any award of punitive or exemplary damages including fines, penalties, multiplication of compensatory awards or damages or in any other form whatsoever.

6.24 **Radioactive Contamination**

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

6.25 **Related Companies**

any circumstance concerning, or **Claim** brought by or on behalf of, **You** or any parent or subsidiary company of **Yours**, or any person having a financial, executive or controlling interest in **You** (unless the financial interest is less than 5%), or by or on behalf of any entity controlled or managed by **You** or where **You** have greater than a 5% financial interest, or where **You** have accepted a financial interest, irrespective of the amount, in any entity in exchange for fees incurred.

6.26 **Retroactive Date**

any act error or omission committed, or any loss suffered, or costs incurred, or any liability arising prior to the Retroactive Date stated in the **Schedule**.

6.27 **Terrorism**

any act of **Terrorism** regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

This exclusion also applies to any action taken in controlling, preventing, suppressing or in any way relating to any act of **Terrorism**.

In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

6.28 **Toxic Mould**

- (a) the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, moulds, spores or mycotoxins of any kind; or
- (b) any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins; or
- (c) any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, moulds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, moulds, spores or mycotoxins.

6.29 **Trading Losses**

any trading losses or trading liabilities incurred by **You** or any business managed by or carried on by **You** or on **Your** behalf.

6.30 **War**

war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power.

6.31 **Warranties and Guarantees**

any performance warranty, guarantee, penalty clause, liquidated damages clause or similar provision unless **Your** liability would have existed to the same extent in the absence of such warranty, guarantee or clause or similar provision.

7 Conditions

7.1 **Assistance and Co-operation**

You and any person insured must provide **Us** with such information, assistance and co-operation as **We** and/or **Our** representative may request. **We** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if **You** or any person insured fails to do so.

7.2 Cancellation

This policy will immediately and automatically be cancelled in the event of any of the following:

- (a) the presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over **You** or the making of any court order to that effect;
- (b) the passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver or administrator over any of **Your** assets;
- (c) the suspension by **You** of payment of **Your** debts or any threat by **You** to do so or the entering into of a voluntary arrangement or other scheme of composition with **Your** creditors;

or the equivalent court application, order, appointment or arrangement in any jurisdiction in which **You** may be domiciled or any territory within the specified territory or territories.

For the purpose of this condition, **You** shall mean only the firm or company named in the **Schedule**.

In such cases, **You** shall be entitled to the return of a proportionate part of the premium in respect of the unexpired **Period of Insurance**.

7.3 Claim Notification

You must give **Us** as soon as practicably possible notice of:

- (a) any **Claim** made against **You** or any person insured which is likely to fall within the scope of this policy;
- (b) regardless of any previous notice, of receipt of any Claim Form, Particulars of Claim, Arbitration Notice or any other formal document commencing legal proceedings, copies of all such documents being provided with such notification;
- (c) any circumstances of which **You** or any person insured shall become aware which are likely to give rise to a **Claim** being made against **You**.

In the event that **We** are **Notified** during the **Period of Insurance** of any circumstance which in **Our** opinion may give rise to a **Claim** then any subsequent **Claim** which arises directly from the circumstance so **Notified** shall be treated as having been made during the **Period of Insurance**.

We shall be entitled to refuse to pay any **Claim** under this policy in its entirety if such notice is not received.

7.4 Difference in Conditions

In the event that there is any difference between the terms, conditions and exclusions of this policy and those of the certificate or policy wording by which **You** were provided with Professional Liability insurance for the period immediately prior to the **Period of Insurance**, and provided that a copy of the previous policy has been lodged with **Us**, then those terms, conditions and exclusions contained in the previous policy shall take precedence over any terms, conditions and exclusions contained in this policy which are less favourable to **You**, provided always that the provisions contained in this policy relating to:

- (a) the limit of liability;
- (b) the deductible; or

- (c) the premium

shall prevail over those contained in the previous policy in any event and provided that no Liability shall prevail over the terms and conditions of this policy.

7.5 Dishonest or Fraudulent Claim Recovery

Where a **Claim** or circumstance against **You** involves the dishonest or fraudulent act or omission of any of **Your Employees**:

- (a) **You** shall at **Our** request and expense take all practical steps to obtain reimbursement from such person;
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from **You** or any monies of such persons held by **You** shall not be repaid;
- (c) nothing in this policy shall preclude **Us** from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;
- (d) no payment shall be made by **Us** under this policy until after the final ascertainment of the amount of any recovery from the dishonest or fraudulent person or persons or their estates or legal representatives.

7.6 Documents Relevant to a Claim

You or any person insured must ensure that all documents relevant to any **Claim** and any circumstance which is likely to give rise to a **Claim** are not destroyed or otherwise disposed of. **We** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if the **You** or any person insured fails to do so.

7.7 Entitlement to Defend

We are entitled, but not obliged, to take over and conduct in the **Your** name or any person insured the defence or settlement of any **Claim** or to prosecute in **Your** name or any person insured for its own benefit any **Claim** for reimbursement or damages or otherwise. **We** shall have full discretion in the conduct of any proceedings and in the settlement of any **Claim**. **You** shall be entitled to any and all information and/or documentation regarding the defence, investigation or settlement of any **Claim** and/or the investigation into any circumstances as **You** may request from **Us**

7.8 Non-Admission of Liability

No admission, offer, promise or payment is to be made or given by **You** or on **Your** behalf or any person insured without **Our** written consent. **We** shall be entitled to refuse to pay any **Claim** under this policy in its entirety if any such admission, offer, promise or payment is made.

7.9 Payment in Full

We may at any time pay to **You** in connection with any **Claim** or series of **Claims** under this policy to which a Limit of Liability applies the amount of such Limit after deduction of any sums already paid or any lesser amount for which such **Claims** can be settled. Upon such payment being made **We** shall relinquish the conduct and control of and be under no further liability in connection with such **Claims** except for the payment of **Defence Costs** incurred prior to the date of such payment where such **Defence Costs** are stated as being payable in addition to the Limit of Liability.

7.10 **Premium Adjustment**

Where the premium is provisionally based on **Your** estimates, **You** shall keep accurate records and within ninety (90) days of expiry of the **Period of Insurance** declare such details as **We** require. The premium shall then be adjusted and any difference paid or allowed to **You** as the case may be. Failure to declare such details to **Us** will entitle **Us** to make **Our** own estimate and adjust the premium accordingly.

7.11 **Subrogation**

In the event of any payment by **Us** under this policy, **We** shall be subrogated up to the amount of such payment to all **Your** rights of recovery or any person insured against any third party, provided always that they shall not exercise any such rights against any **Employee** or former **Employee** unless the loss was caused or contributed to by a fraudulent, dishonest or malicious act or omission by said person.

You and any person insured shall, without charge, provide such assistance as the **Insurer** may require in any subrogation and shall at all times protect and preserve any rights of recovery to which they would become subrogated under this policy. **We**, at **Our** option, may have the conduct of any proceedings to recover monies paid or payable by them, whether or not **You** or person insured has an interest in such proceedings by reason of any uninsured losses.