



Policy Wording

Contractors Design and Professional Services Professional Liability Insurance

Form D&C 11/23



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1 Introduction

This policy is a contract between **You** and **Us**. It is arranged through **Angel** on **Our** behalf.

This policy consists of this document, the **Schedule** and **Endorsements**, if any, all of which are a single document and are to be read as one contract. In this policy, certain words or phrases are specially defined. 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**.

We will, in consideration of the payment of the **Premium**, insure **You**, subject to the terms and conditions of this policy, against the events set out in the Insuring Clauses and occurring in connection with the Business during the **Period of Insurance** or any subsequent period for which **We** agree to accept payment of premium.

Please read this policy carefully and make sure that it meets **Your** needs. If any corrections are necessary **You** should contact **Your** broker through whom 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 **We** can provide Braille, audio or large print versions of the policy and the associated documentation including the Policy Summary document. If **You** require an alternative format **You** should contact **Your Broker** through whom this policy was arranged.

1.2 Fair Processing Notice

(a) AXA XL Insurance Company UK Limited

This Privacy Notice describes how AXA XL Insurance Company UK Limited (together, “**We**”, “**Us**” or the “**insurer**”) collect and use the personal information of insureds, claimants and other parties (“**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 United Kingdom or/and 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: dataprivacy@axaxl.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 relevant Data Protection Authority.

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

Brokers, Intermediaries, Partners, Employers and Other Third Parties

If you provide us with information about someone else, we will process their personal information in line with the above. Please ensure you provide them with this notice and encourage them to read it as it describes how we collect, use, share and secure personal information when we provide our services as an insurance and reinsurance business.

(b) Angel Risk Management Limited

For information about how Angel Risk Management Limited processes **your** personal information, please see **our** full privacy notice at: <https://www.angelriskmanagement.com/privacypolicy>

1.3 Third Party Rights

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

1.4 Law and Jurisdiction

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

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

1.5 Interpretation in this policy:

- (a) reference to any Act, statute or statutory provision shall include a reference to that provision as amended, re-enacted or replaced from time to time whether before or after the date of the inception of this policy;
- (b) if any term, condition, exclusion or **Endorsement** or part thereof is found to be invalid or unenforceable the remainder shall be in full force and effect;
- (c) the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.



1.6

Cancellation and Cooling Off Period

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

You are entitled to cancel this policy by **Notifying** through **Angel** 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** through **Angel**. Cancellation will be effective from the date of such notice to cancel. 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** thirty (30) 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.

Unless **We** have agreed that the **Premium** can be paid via direct debit instalments, the **Premium** must be paid in full within forty five (45) days of the beginning of the **Period of Insurance**. If the **Premium** has not been received by the due date then **We** will have the right to cancel this policy in accordance with the provisions set out above. If **Premium** due is paid in full to **Us** before the notice period expires, notice of cancellation shall automatically be revoked. If not, the policy shall automatically terminate at the end of the notice period.

1.7

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 **Loss** 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 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; 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** notice that **You** are terminating this policy;

in accordance with the Cancellation and Cooling-Off Period Provisions.

1.8 **Changes We Need to Know About**

You must tell **Us** through **Angel** 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.

1.9 **Fraud**

If **You**, or anyone acting for **You**, makes a **Claim** which is fraudulent and/or intentionally exaggerated and/or supported by a fraudulent statement or other device, **We** will not pay any part of **Your Loss** or any other **Claim You** have made or may make under this policy. In addition, **We** will have the right to:

- (a) treat this policy as if it never existed, or at **Our** option terminate this policy, without returning any premium that **You** have paid; and
- (b) refuse any other benefit under this policy.
- (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.

1.10 **Sanctions**

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

1.11 **Complaints Procedure Sanctions**

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

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

Complaints Department
XL Catlin Services SE, UK Branch
20 Gracechurch Street
London
EC3V 0BG
United Kingdom

Telephone Number: +44 (0)20 7743 8487
E-mail: axaxlukcomplaints@axaxl.com

XL Catlin Services SE acts on **Our** behalf in the administration of complaints.

If **You** remain dissatisfied after the Complaints Department 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
United Kingdom

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

From within the United Kingdom

Telephone Number: 0800 0234 567	calls to this number are free on mobiles and landlines
Telephone Number: 0300 1239 123	calls to this number costs no more than calls to 01 and 02 numbers



From outside the United Kingdom

Telephone Number: +44(0)20 7964 0500

Fax Number: +44(0)20 7964 1001

Text Number: 07860 027 586 Call Back Service

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

1.12 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 policy. If **You** were entitled to compensation under the Scheme, the level and extent of the compensation would depend on the nature of this policy. 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.

1.13 Regulatory Information

(a) AXA XL Insurance Company UK Limited

AXA XL 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 No. 423308).

Registered office: 20 Gracechurch Street, London, EC3V 0BG.
Registered in England No. 5328622.

(b) Angel Risk Management Limited

Angel Risk Management Limited are authorised and regulated by the Financial Conduct Authority (Firm Reference No. 718451).

Registered office: 20 Gracechurch Street, London, EC3V 0BG.
Registered in England No. 2942487.

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.

(c) XL Catlin Services SE

XL Catlin Services SE acts as an agent of AXA XL Insurance Company UK Limited in connection with this policy. XL Catlin Services SE is a registered insurance intermediary authorised and regulated by the Central Bank of Ireland.

Registered Office Wolfe Tone House, Wolfe Tone Street, Dublin 1, D01HP90, Ireland.
Registered in Ireland Number 659610.

You can check this information on the Central Bank of Ireland's website at www.centralbank.ie which includes a register of all the firms they regulate.



2 Definitions

Certain words have a special meaning within this policy, where stated in bold the words will have the meaning given below.

- 2.1 **Angel** means Angel Risk Management Limited.
- 2.2 **Business** means the performance of and/or professional assistance with the following professional services in respect of activities for which **You** are qualified or technically experienced by **Professional Staff** on **Your** behalf:
- (a) design, specification, inspection, supervision of construction, feasibility study, surveying, and/or the provision of advice or technical information calculation, and/or
 - (b) such additional services as declared to and agreed by **Us**

For the avoidance of doubt **Your Business** does not include:

- (i) inspection and/or supervision by **You** of **Your** own or **Your** sub-contractors' work where such supervision is undertaken in its capacity as building or engineering contractor, or
 - (ii) the services of a clerk of works or similar person carrying out inspection and/or supervision of construction
- 2.3 **Claim** means any demand made of, or assertion of a right against, **You** which is communicated to **You** in writing, or means costs under clauses 3.3, 3.4, 3.5, 3.6 or 3.7 and shall include any decision by an Adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or an adjudication clause or rules contained in a contract.
- 2.4 **Communicable Disease** means any disease which can be transmitted by means of any substance or agent from any organism to another organism where:
- (a) the substance or agent includes, but is not limited to, a virus, bacterium, parasite or other organism or any variation thereof, whether deemed living or not, and
 - (b) the method of transmission, whether direct or indirect, includes but is not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between organisms, and
 - (c) the disease, substance or agent can cause or threaten bodily injury, illness, emotional distress, damage to human health, human welfare or property damage.
- 2.5 **Computer System** means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility, owned or operated by the **Insured** or any other party.
- 2.6 **Cyber Act** means an unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof involving access to, processing of, use of or operation of any **Computer System**.



- 2.7 **Cyber Incident** means:
- (a) any error or omission or series of related errors or omissions involving access to, processing of, use of or operation of any **Computer System**; or
 - (b) any partial or total unavailability or failure or series of related partial or total unavailability or failures to access, process, use or operate any **Computer System**.
- 2.8 **Data** means information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a **Computer System**.
- 2.9 **Data Protection Law** means all applicable data protection and privacy legislation, regulations in any country, province, state, territory or jurisdiction which governs the use, confidentiality, integrity, security and protection of personal data, and any guidance or codes of practice issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).
- 2.10 **Document or Data** means all and any records arising from **Your Business**, whether kept in paper (excluding stamps, currency, bank notes and instruments, travellers cheques, cheques, postal orders, money orders, securities and the like), magnetic or electronic form, for which **You** are legally responsible, whilst in **Your** custody, 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 **Your Business**.
- 2.11 **Employee** means any person, other than **Your** partner, principal, director or member, who has been, is or shall be under a contract of service or apprenticeship, supplied to, hired, or borrowed by **You**, or under any work experience or similar scheme, whilst employed or engaged by and under **Your** control in connection with **Your Business**.
- 2.12 **Endorsement** means a change in the terms and conditions of this policy agreed by **Us** that can extend or restrict cover.
- 2.13 **Insured/You/Your** means any firm, company or limited liability partnership named in the **Schedule**, including any of their predecessors in business; its principals, partners, directors or members (including any former partner, director or member) and their legal representatives, estate or heirs in the event of their bankruptcy, incapacity or death.
- 2.14 **Insurer/We/Us/Our** means AXA XL Insurance Company UK Limited.
- 2.15 **Notified** means that notice is sent in writing, by email or by telephone by **You** (or its insurance agent) to, and received by, **Us** through **Angel**. For the avoidance of doubt, notice is not valid if given by any third party (other than **Your** insurance agent).
- 2.16 **Period of Insurance** means the period stated in the **Schedule**.
- 2.17 **Premium** means the amount of premium stated in the **Schedule**.
- 2.18 **Professional Staff** means those persons either qualified as architects, engineers, surveyors or quantity surveyors, or having other professional qualifications appropriate to **Your Business**, or having a minimum level of experience of five years in undertaking such work.
- 2.19 **Proposal** means the written information bearing the date stated in the **Schedule** and containing particulars and statements together with any other information and documents supplied to **Us** by or on **Your** behalf. This does not include any information contained within or linked to **Your** website unless such information is specifically supplied to **Us** by or on **Your** behalf in written form.



- 2.20 **Retroactive Date** means the date (if any) specified in the **Schedule**.
- 2.21 **Schedule** means the document entitled Schedule that relates to and forms part of this policy.
- 2.22 **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.
- 2.23 **Value** means the actual money contributed or the financial cost to the participating parties of the services provided. Where such cost is unknown a reasonable estimate shall be made.
- 2.24 **Wrongful Act** means any negligent act, negligent error, negligent omission or negligent breach of duty.



3 Insuring Clauses

3.1 Legal Liability

- (a) **We** shall reimburse **You** in respect of any settlement, damages, interest and claimant's costs arising from any **Claim** first made against **You** and **Notified** during the **Period of Insurance** and which arises out of the conduct of **Your Business** by reason of:
 - (i) a **Wrongful Act** committed by **You** or by any **Employee** or any consultants, sub-contractors, specialist designers or others directly appointed by and acting for or on **Your** behalf (provided that at all times the rights of recourse against such consultants, sub-contractors and specialist designers are not waived or otherwise impaired);
 - (ii) 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.
- (b) The reimbursement herein shall apply in respect of legal liability arising out of the conduct of **Your Business** whilst a member of any joint venture or consortium but provided always that:
 - (i) the existence of any such activity and relevant fees or turnover have been declared to **Us**,
 - (ii) **You** have not, unless with **Our** prior consent, waived either by original agreement or subsequently any right of recovery or entitlement to contribution they would otherwise have against any other party to the joint venture or consortium,
 - (iii) **We** remain at all times entitled to exercise **Our** rights of subrogation,
 - (iv) no liability shall arise under this policy in respect of any **Claim** by any other party to the joint venture or consortium, unless such **Claim** emanates from a completely independent third party, and
 - (v) the reimbursement under this policy shall be limited to **Your** liability of for loss or damages arising directly from any **Wrongful Act** by **You**, irrespective of **Our** liability as a member of the joint venture or consortium, but shall in any event be no greater than any contractually agreed share of liability in the joint venture or consortium agreement, or in the absence of any such provision to such proportion as the **Value of Your** contribution to the joint venture or consortium in money and/or services bears to the total value of such contributions by all the participating parties in the joint venture or consortium.
- (c) The reimbursement under this policy shall be subject to the conditions appearing in clauses 7.1 and 7.4 of this policy, include liability arising under the decision of an adjudicator against **You** in accordance with the Scheme for Construction Contracts as contained in the Housing Grants, Construction and Regeneration Act 1996 ("the Act") or a contract containing an adjudication clause or rules in compliance with the Act.



3.2

Defence Costs and Expenses

We shall reimburse **You** for all defence costs and expenses in:

- (a) the defence, investigation or settlement of any **Claim** which falls to be dealt with under insuring clause 3.1, or
- (b) the investigation of any circumstance **Notified to Us** under condition 7.1 which may give rise to a **Claim**,

incurred by or on **Your** behalf of with **Our** prior written and continuing consent of (such consent not to be unreasonably withheld) but not including **Your** own costs and expenses or any value attributable to the time spent by **You** or any **Employee** in dealing with a **Claim** or a circumstance.

3.3

Mitigation Costs

We shall reimburse **You** in respect of any costs and expenses (excluding any element of **Your** own profit) necessarily incurred, prior to hand-over of any contract works, with **Our** prior written and continuing consent in respect of any action taken solely to mitigate a loss or potential loss that would otherwise become the subject of a **Claim** or circumstance **Notification** under condition 7.1. Such action taken to mitigate must be **Notified** during the **Period of Insurance**.

3.4

Construction (Design and Management) Regulations (CDM)

We will reimburse **You** for defence costs and expenses incurred during the **Period of Insurance** with **Our** prior written consent in the defence of any proceedings brought under the Construction (Design and Management) Regulations made under the Health and Safety at Work Act 1974, but only where **We** believe that defending such proceedings would be of benefit against any subsequent or concurrent civil action that is likely to be the subject of a **Claim** under this policy.

3.5

Criminal Prosecution

We will reimburse **You** for defence costs and expenses incurred during the **Period of Insurance** 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 legal jurisdiction stated in the **Schedule** where such alleged breach arises out of the conduct of **Your 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** reasonable belief 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 subject to the notification obligations of condition 7.1,
- (d) any appeal against the outcome of any initial proceedings shall be deemed to be "proceedings" for the purpose of this insuring clause.



3.6

Data Protection Act 1998

Notwithstanding 6.4 Cyber Exclusion, **We** shall reimburse **You** for defence costs and expenses 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 **Your 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.

3.7

Data Protection Act 2018

Notwithstanding 6.4 Cyber Exclusion and subject to the other terms, exclusions and conditions this policy, **We** shall cover **You** for legal liability in respect of any **Claim** for compensation as a result of injury and/or damage under Section 168 of the Data Protection Act 2018.

Cover in respect of such **Claims** shall be available only under the terms and conditions of this extension and nowhere else in this policy.

For the purposes of this extension non-material damage which is the subject of such **Claim** shall be considered as injury and will be treated as having occurred when the claimant first had knowledge or alleges that they had knowledge of the event giving rise to that injury.

This extension applies where **Claims** are made against **You** during the **Period of Insurance** arising from injury and/or damage occurring on or after the **Retroactive Date** specified in the **Schedule** and before the expiry date of the policy. If a circumstance occurring subsequent to the **Retroactive Date** and before the expiry date of the policy is notified to **Us** in accordance with Condition 7.1 –Notification, **We** will not deny any subsequent **Claim** arising out of that circumstance solely because the **Claim** was made after the expiry date of the policy.

Our liability under this extension shall be limited to GBP 50,000 any one occurrence and in the aggregate, inclusive of defence costs, which shall be a part of and not in addition to the Limit of Liability stated in the **Schedule**.

The deductible under this extension shall be 10% of each **Claim** subject to a minimum of GBP 1,000 and shall be applicable to defence costs.

Additional Exclusions

This extension shall not provide cover:

- (a) against liability caused by or arising from a deliberate act by or omission of any person entitled to insurance under this policy if the result could have been expected having regard to the nature and circumstances of such act or omission;
- (b) for the costs of replacing, reinstating, rectifying or erasing any Personal Data, as defined in Data Protection Act 2018;
- (c) against liability caused by or arising from the recording, processing or provision of data for reward or the determining of the financial status of a person; or
- (d) against liability which attaches by virtue of a contract or agreement but which would not have attached in the absence of such contract or agreement.

Fee Payment Condition

We shall be entitled to refuse to pay any **Claim** under this policy in its entirety if **You** have not paid any fees required to be paid by any data protection authority.



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 irrespective of the number of **Claims**, claimants, losses or number of Insureds, including all defence costs and expenses under insuring clause 3.2.

4.2 The limit of liability shall be the amount stated in the **Schedule**. In respect of insuring clauses 3.4, 3.5 and 3.6, 3.7 and clauses 6.1 and 6.33 an aggregate sub-limit of liability in the amount stated in the **Schedule** shall apply, including all defence costs and expenses under insuring clause 3.2.

All payments made by **Us** in respect of any insuring clause, or any **Endorsement** or otherwise, shall erode the limit of liability for all **Claims** in the aggregate under this policy.

4.3 All **Claims** (including costs sought under insuring clauses 3.3, 3.4, 3.5 and 3.6) 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 deemed to be one **Claim** or single application for costs under insuring clause 3.3, 3.4, 3.5 or 3.6 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.



5 Deductible

- 5.1 A separate deductible being the first part of any Claim which is payable by You before We shall have any liability to reimburse under this policy shall apply to each and every Claim. Payment of the deductible by You is an important condition under this policy.

The deductible in respect of any **Claim** shall be in the amount stated in the **Schedule**, and shall be applicable to defence costs and expenses.

6 Exclusions

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

6.1 Asbestos

any actual or alleged liability whatsoever arising out of, resulting from or in consequence of, or in any way involving or connected with asbestos, or any materials containing asbestos in whatever form or quantity.

Despite the above, where any **Claim** or circumstance arises as a direct result of a negligent act, negligent error or negligent omission committed or alleged to have been committed by **You** in the conduct of **Your Business**, this policy will provide a reimbursement to **You** to the extent that the **Claim** is:

- (a) for the cost of re-performance of **Your** work and/or rectification and/or remediation; or
- (b) made in respect of any diminution in value of buildings and/or structures (or any part of either or both of them) arising out of **Your** survey and/or valuation undertaken in accordance with RICS Practice Statements or standard market procedures relating to survey and valuations,

but provided always that:

- (i) no reimbursement shall be granted in respect of any damage to property other than that part of the building and/or structure which requires re-performance of **Your** work and/or rectification and/or remediation;
- (ii) no reimbursement shall be granted in respect of or arising out of any bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or death;
- (iii) the maximum limit of reimbursement available will be as stated in the **Schedule**, with defence costs and expenses as referred to in insuring clause 3.2 of the policy included within the limit of reimbursement.

6.2 Communicable Disease

any actual or alleged loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, directly or indirectly and regardless of any other cause contributing concurrently or in any sequence, originating from, caused by, arising out of, contributed to by, resulting from, or otherwise in connection with a **Communicable Disease** or the fear or threat (whether actual or perceived) of a **Communicable Disease**.

For the purposes of this exclusion, loss, liability, damage, compensation, injury, sickness, disease, death, medical payment, defence cost, cost, expense or any other amount, includes, but is not limited to, any cost to clean-up, detoxify, remove, monitor or test for a **Communicable Disease**.

6.3 Copyright

any passing-off or infringement of copyright, design right, registered design, trademark, trade name, patent, or any other intellectual property rights;



6.4

Cyber

- (a) any actual or alleged loss, damage, liability, claim, fine, penalty, cost (including, but not limited to, defence cost and mitigation cost) or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with:
 - (i) a **Cyber Incident**, unless subject to the provisions of paragraph 6.4(c);
 - (ii) a **Cyber Act**; or
 - (iii) a breach of **Data Protection Law** by the **Insured**, or parties acting for the **Insured**, involving access to, processing of, use of or operation of any **Computer System** or **Data**, including notification costs, crisis consultancy costs, credit monitoring expenses, replacement of actual credit or payment cards, forensic expenses, public relations expenses or legal advice and services.
- (b) Any cover for the costs of reconstituting or recovering lost or damaged documents owned or controlled by the **Insured** in this Policy shall not apply to **Data**.
- (c) Subject to all the terms, conditions, limitations and exclusions of this Policy or any endorsement thereto, sub-paragraph 6.4(a) shall not apply to any otherwise covered claim arising out of any actual or alleged breach of Professional Duty by the **Insured** involving access to, processing of, use of or operation of any **Computer System** or **Data** unless such actual or alleged breach of Professional Duty by the **Insured** is caused by, contributed to by, resulting from, arising out of or in connection with a **Cyber Act**.

6.5

Data Protection

any compensation, damages, losses, costs, expenses, fines, penalties or any other sum arising out of breach of privacy rules or legislation including the Data Protection Act 2018, whether **Your** liability arises directly or indirectly.

This exclusion does not apply to insuring clauses 3.6 Data Protection Act 1998 and the 3.7 Data Protection Act 2018.

6.6

Death or Bodily Injury

bodily injury, sickness, disease, emotional distress, mental anguish, mental stress or the death of any person, unless caused directly by a **Wrongful Act**;

6.7

Defective Workmanship

any defective workmanship or materials relating to physical works of construction;

6.8

Design Activities

any claim arising from **Your** activities where it is, has been or would be declared as material facts that **You** have no responsibilities for design or other professionally-related activities;

6.9

Director and Officer

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



6.10 **Documents or Data**

any repair, replacement or reconstruction cost of any **Document or Data** which has been lost, mislaid or destroyed

6.11 **Employers Liability**

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

6.12 **Estimates**

any estimate of probable design and/or construction costs being exceeded except where such estimate is compiled by a qualified quantity surveyor employed by or appointed on behalf of **You** to carry out those activities normally undertaken by a quantity surveyor in private practice;

6.13 **Fines and Penalties**

any regulatory or disciplinary investigations or proceedings (apart from the reimbursement provided under insuring clause 3.4) or any fines, penalties or penal, punitive, exemplary, restitutionary, non-compensatory or aggravated damages (including any additional damages under S.97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that Act), or the additional award of damages consequent upon or by reason of any multiplication of compensatory damages;

6.14 **Fraud and Dishonesty**

any **Claim** or circumstance arising from or connected with the dishonest or fraudulent act or omission of any of **Your** former or present partner, principal, director, member, **Employee**, consultant or sub-contractor;

6.15 **Goods and Services**

any contract for the provision of goods or services to **You**;

6.16 **Insolvency**

Your insolvency or bankruptcy;

6.17 **Insurance and Finance**

Your failure in connection with the effecting or maintenance of insurance and/or in connection with the provision of finance or advice on financial matters;

6.18 **Jurisdiction and Territorial Limits**

any:

- (a) legal proceedings brought in a court of law outside the jurisdictions 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 **Your Business** undertaken outside the territorial limits shown in the **Schedule**;



6.19 **Known Claim or Circumstances**

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**;

6.20 **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) or that part of any building leased, occupied or rented by **You**;

6.21 **Libel, Slander or Defamation**

libel, slander or defamation;

6.22 **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;

6.23 **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;

6.24 **Pollution and Contamination**

any pollution, seepage, discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, smoke, vapours, soot, dust, fibres, fungi, mould, fumes, acids, alkalis, chemicals and waste (including for example to material to be recycled, reconditioned or reclaimed) or contamination of any kind;

6.25 **Products**

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

6.26 **Property Damage**

any damage to or destruction or loss of any property including loss of use, unless caused directly by a **Wrongful Act**;



6.27

Radioactive Contamination, Chemical, Biological, Bio-Chemical And Electromagnetic Weapons

- (a) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- (b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
- (c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purposes
- (e) any chemical, biological, bio-chemical, or electromagnetic weapon

6.28

Related Companies

any circumstance concerning, or **Claim** brought by or on **Your** behalf, or on behalf of any of **Your** parent or subsidiary company or any person having a financial, executive or controlling interest in **You** (unless either the financial interest is less than 5%, or the **Claim** made against **You** for an reimbursement or contribution is in respect of a **Claim** made by an independent third party), 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;

6.29

Retroactive Date

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

6.30

Single Projects

any services provided by **You** in the ordinary course of **Your Business** in connection with any project where **You** have procured a professional liability insurance purporting to apply to such specific project.

6.31

Tenders

Your deliberate decision to tender for a contract at less than economic terms for commercial or goodwill reasons;

6.32

Terrorism

Terrorism (regardless of any other cause or event contributing concurrently or in any other sequence to the liability) or any action taken in controlling, preventing or suppressing **Terrorism**.

6.33

Trading Losses

any trading losses or trading liabilities incurred by **You** or any business managed by or carried on by or on behalf of **You**;



6.34

Toxic Mould

any actual or alleged liability whatsoever arising out of or resulting from or in consequence of or in any way involving: -

- (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;

Where liability arises directly from **Your** negligent act, negligent error or negligent omission and/or those of others acting on **Your** behalf and which arises out of the conduct of **Your** Business, this policy will reimburse **You** up to a maximum limit of liability stated in the **Schedule**, with defence costs and expenses as referred to in insuring clause 3.2 of the policy included within the limit of liability;

6.35

War

any of the following:

- (a) war (whether declared or not), invasion, acts of a foreign enemy, hostilities, or any similar act, condition or warlike operation, warlike action by a regular or irregular military force or other authority to hinder or defend against an actual or expected attack;
- (b) insurrection, rebellion, civil war, revolution, riot, attempt to usurp power, popular uprising, or any action taken by any governmental or martial authority in hindering or defending against any of these;
- (c) confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local;

6.36

Warranties and Guarantees

any:

- (a) contractual liability incurred by **You** in the course of **Your** Business arising from:
 - (i) **Your** acceptance or guarantee of, in any express contractual term, of fitness for purpose, or
 - (ii) any express guarantee given by **You** including as to the period of any project, or
 - (iii) any express contractual penalty made between **You** and a third party, or
 - (iv) **Your** acceptance of liability for liquidated damages



- (b) except where **Your** liability in respect of any of the above would have existed to the same extent in the absence of any such contractual term, or **We** have given **Our** prior express approval to the contractual term out of which the liability arises.
- (c) liability that arises in consequence of any assignment of a collateral warranty or duty of care agreement to more than two parties except in the case of a collateral warranty or duty of care agreement given to a financier or funding party (not a purchaser or tenant) where a total of three assignments is permissible.

6.37 **Work Performed on Load Bearing Walls**

work performed on or relating to load bearing walls unless supervised by a qualified architect or structural engineer;



7 Conditions

7.1 Claim Notification

We must be **Notified**, as detailed below, as soon as practicably possible and within the **Period of Insurance**:

- (a) Of 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; of any circumstance of which **You** shall become aware which may give rise to a **Claim**;
- (c) of any circumstance of which **You** shall become aware which may give rise to a **Claim** and in any event before the expiry of the **Period of Insurance**;
- (d) of any circumstance of which **You** shall become aware which may give rise to an entitlement to be reimbursed under this policy and in any event before the expiry of the **Period of Insurance**;
- (e) of an occurrence that may require representation at a properly constituted tribunal or proceeding, which might give rise to a **Claim** under this policy and in any event before the expiry of the Period of Insurance.

However, with respect to any adjudication, including under the provisions of the Housing Grants Construction and Regeneration Act 1996 **You** shall as an important condition under insuring clause 3.1 **Notify Us** through **Angel** at the Notification Address below as soon as practicably possible of receipt of any notice of intention to adjudicate, referral notice or any adjudication notice pursuant to contract and, further, shall not themselves serve any such notices without **Our** prior written consent unless, in **Your** reasonable opinion service of any such notice(s) will not give rise to a **Claim** against **You**.

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

Notification Address: Angel Risk Management Limited
 Marlborough House
 Victoria Road South
 Chelmsford
 Essex
 CM1 1LN

Tel No: 01245 343630

Email: claims@angelriskmanagement.com



7.2 **Duty to Cooperate**

You must as soon as practicably possible provide to **Us** through **Angel** full details concerning any **Claim** and any circumstance which may give rise to a **Claim** and any circumstance where **You** have requested to be reimbursed under this policy and provide such co-operation and assistance as **We** and **Our** representatives, legal advisers or agents may reasonably require. It is an important condition under this policy that **You** and any **Employee** (or any person, firm or company acting for or on **Your** behalf) shall ensure that all documents relevant to any **Claim** and any circumstance which may give rise to a **Claim** shall not be destroyed or otherwise disposed of.

We shall be entitled to refuse to pay, or reduce the amount **We** pay, for any claim under this policy if **You** do not comply with this condition.

7.3 **No Admission of Liability**

As an important condition under this policy **You** (or any **Employee** or any person, firm or company acting for or on **Your** behalf) shall not, without **Our** prior written approval admit liability for, compromise, settle, or make any offer or payment in respect of any **Claim** or any circumstance likely to give rise to a **Claim** or any circumstance where **You** have requested to be reimbursed under this policy.

We shall be entitled to refuse to pay, or reduce the amount **We** pay, for any claim under this policy if **You** do not comply with this condition.

7.4 **Adjudication and Decisions**

- (a) **You** agree that it will not in any circumstances, except with **Our** prior consent (such consent not to be unreasonably withheld), accept the decision of any Adjudicator as being final in the determination of the dispute under adjudication.
- (b) **You** agree that if requested by **Us** it will permit **Us** to pursue legal, arbitration or other proceedings in the name of and on behalf of **You** to challenge, appeal, open up or amend any decision, direction, award or the exercise of any power of an adjudicator or to stay the enforcement of any decision, direction, award or exercise of any power of the Adjudicator. **You** agree it will give all assistance requested of them by **Us** in relation to any such actions.
- (c) In respect of adjudication under the provisions of the Housing Grants Construction and Regeneration Act 1996 or under a contract containing an adjudication clause or rules, if **You** and **Us** cannot agree on a common course of action with regard to the pursuit of any legal proceedings (whether defence or prosecution) the dispute will be resolved by reference to King's Counsel of the English Bar, for the time being, to be mutually agreed between **Us** and **You** whose decision shall be binding. In the event of disagreement on the choice of King's Counsel the appointment shall be made by the Chairman for the time being of the Bar Council. The costs of the dispute reference shall be allocated by the agreed or appointed King's Counsel on a fair and equitable basis.



7.5

Discharge of Policy Liability

We may at **Our** absolute discretion, at any time, after deduction of such sums as **We** may already have paid, agreed to pay or be responsible for, in respect of any settlement, damages, interest and claimant's costs or costs for which **You** are liable in respect of any **Claim** or circumstance, tender to **You**:

- (a) the remaining amount of the limit of liability available under this policy, or
- (b) such lesser amount for which **We** believe the **Claim** or circumstance can be settled (to include claimants' costs and interest)

and thereafter **We** will cease to have any further liability under this policy.

7.6

Conduct of Claim

We shall be entitled, but not obliged, to take over the investigation, defence and settlement of any **Claim** and any circumstance likely to give rise to a **Claim** and any circumstance where **You** have requested to be reimbursed under this policy. **We** shall have full discretion in the handling thereof provided always that **You** shall not be obliged to defend any legal proceedings unless a King's Counsel (to be mutually decided upon by **Us** and **You**) shall advise that such proceedings can be contested with a reasonable prospect of success.

7.7

Subrogation

We shall be subrogated to all **Your** rights of recovery against any third party provided always that **We** shall not exercise any such rights against any **Employee** or former **Employee** unless the loss in respect of which reimbursement is provided under this policy was caused or contributed to by a fraudulent, dishonest or malicious act or omission by the **Employee** or former **Employee**. **You** shall, without charge, provide such assistance as **We** may reasonably require in any subrogation and shall at all times protect and preserve any rights of recovery to which **We** would become subrogated under this policy. **You** agree that at **Our** option, **We** may have the conduct of any proceedings to recover monies paid or payable by **Us**, whether or not **You** have an interest in such proceedings by reason of any uninsured losses.

7.8

Immediate 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 its creditors by **You**;

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

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



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