



Professional Indemnity Insurance
Design & Construct Policy
Aggregate costs inclusive



Professional Indemnity D&C AGG Policy

1 Introduction

This is a claims made policy and 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 What Is Covered connection with Your Business during the Period of Insurance or any subsequent period for which We agree to accept payment of premium.

This policy is to be interpreted in accordance with the Insurance Act 2015 in its entirety and nothing within this policy is intended to represent an intention on Our part to contract out of any provision within the Act. Where language nonetheless remains, that is either prohibited or otherwise rendered of no effect by the Act, We acknowledge that Our rights shall thereby be curtailed.

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.

2 Definitions

- 2.1** “**Business**” means Professional Services performed by You or on Your behalf as detailed in the Schedule.
- 2.2** “**Circumstance**” means information or facts or matters or event of which You are aware which is likely to give rise to any Claim against You which You could become legally liable to pay and which arises out of the exercise and conduct of Your Business.
- 2.3** “**Claim**” means
- 2.3.1** Any written or oral demand for monetary damages or other relief including non-pecuniary relief.
 - 2.3.2** Any civil, arbitration or adjudication proceedings including any counterclaim or appeal.
- 2.4** “**Defence Costs**” means all costs and expenses incurred in the investigation, defence or settlement of any Claim or Circumstance notified under the terms of this policy and/or the cost of representation at any inquiry or other proceedings which have a relevance to the investigation, defence or settlement of any matter notified under the terms of this policy. Any internal or overhead expenses of the Practice or the costs of any of Your time except if covered Under 4.1 is not included.
- 2.5** “**Documents**” means deeds, wills, agreements, maps, plans, letters, policies, certificates, forms and documents of any nature, whether printed, written or produced by any method including computer records and electronically stored data used in the course of Your Business but does not mean bonds or coupons, stamps, bank or currency notes, money or any negotiable instrument.
- 2.6** “**Employee**” means any person employed by the Practice under a contract of service, training or apprenticeship, as well as any sub-consultant acting on Your behalf under a written agreement and for whom the Practice is responsible, but subject always to Our right to subrogation. No-one who is or becomes during the Period of Insurance a principal, partner, member or director of the Insured shall be an Employee.
- 2.7** “**Excess**” means the amount specified in the Schedule.



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- 2.8** "**Endorsement**" means a change in the terms and conditions of this policy that can extend or restrict cover.
- 2.9** "**Indemnity Limit**" means the amount shown in the Schedule which is available to indemnify You in respect of each Claim, provided that all Claims payable under this policy will not exceed in the aggregate the Indemnity Limit shown in the Schedule.
- 2.10** "**Period of Insurance**" means the period shown in the Schedule plus any extensions to the period which may be granted by Us.
- 2.11** "**Practice**" means:
- 2.11.1 the professional practice(s) whether corporate, sole trader or partnership named as the Insured in the Schedule including any predecessors in business;
 - 2.11.2 any practice(s) or business(es) for which You are legally liable in consequence of the acquisition of such practice(s) or business(es) prior to inception of this policy provided We have been notified in writing of the existence of such other practice(s) or business(es) and We have agreed to insure such entities;
 - 2.11.3 any location of the Practice is included within the definition unless expressly stated otherwise.
- 2.12** "**Professional Services**" means the performance by You or on Your behalf of any professional:
- 2.12.1 design or specification;
 - 2.12.2 supervision of construction and installation;
 - 2.12.3 feasibility study including work in relation to applications for planning consent;
 - 2.12.4 technical information calculation;
 - 2.12.5 surveying;
 - 2.12.6 CDM co-ordination services or planning supervisory services;
 - 2.12.7 project management and project co-ordination;
- in connection with Your Business, undertaken only by or under the direction and direct control of a qualified architect, engineer, surveyor, quantity surveyor or other person having other relevant professional qualifications appropriate to the work undertaken, or having a minimum level of experience of five years in undertaking such work.
- For the avoidance of doubt, Professional Services does not include supervision of the work performed by You or Your sub-contractors' where such supervision is undertaken in Your capacity as building or engineering contractor.
- 2.13** "**Proposal**" means the written Proposal made by You to Us together with any other related particulars and statements that have been supplied to Us in writing.
- 2.14** "**Retroactive Date**" means the date specified in the Schedule.



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- 2.15** "Schedule" means the document entitled Schedule that relates to and forms part of this policy.
- 2.16** "**Virus or Similar Mechanism**" means program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, whether involving self-replication or not, including but not limited to trojan horses, worms or logic bombs.
- 2.17** "**We / Us / Our**" means XS Assure Limited on behalf of Insurers listed in the Schedule.
- 2.18** "**You / Your / Insured**" means:
- 2.18.1 the Practice;
 - 2.18.2 the present or future partners and present or future directors or present or future members of the Practice;
 - 2.18.3 former partners and former directors and former members of the Practice in respect of claims made or losses sustained during the Period of Insurance but arising out of the exercise and conduct of Your Business during the period whilst they were receiving salary or financial benefit from the Practice;
 - 2.18.4 the estate, heirs and executors of those parties mentioned in clauses 2.18.1 2.18.32.18.3.



3 Insuring Clauses (What is Covered)

3.1 Indemnity

We shall indemnify You, up to the Indemnity Limit, for the amount of any Claim first made against You and notified to Us during the Period of Insurance in respect of any legal liability arising out of:

- 3.1.1 a breach of professional duty by You or by any Employee in the course of Your Business;
- 3.1.2 any dishonest or fraudulent act or omission on the part of any Employee provided that:
 - (a) no person committing or condoning such dishonest or fraudulent act or omission shall be entitled to an indemnity;
 - (b) no indemnity shall be provided for dishonest or fraudulent acts committed by any person or, after discovery by You, of any reasonable cause for suspicion of fraud or dishonesty on the part of that person;
 - (c) in relation to this clause 3.1.2, and 6.4, Employee shall not include sub-consultants.
- 3.1.3 Your involvement in a joint venture provided the extent of the indemnity is restricted to Claims arising out of work performed by You or any Employee in the course of Your Business.
- 3.1.4 libel, slander or defamation committed without intention or malice by You or any Employee during the course of Your Business.
- 3.1.5 Your liability for an infringement of copyright provided it arises from a breach of professional duty by You or by any Employee in the course of carrying out Your Business.

3.2 Defence Costs

We shall also indemnify You for Defence Costs where such costs have been incurred with Our prior written consent. Such Defence Costs shall be included in the Indemnity Limit.



4 Extensions to Cover

4.1 Hearing and Mediation Attendance

We agree to indemnify the costs of attendance at a court hearing, mediation or arbitration by an Employee in connection with any Claim or a Circumstance notified to Us where such attendance is approved by Us. This cover is subject to Our having given prior written agreement to the attendance at a rate of GBP 350 per day and to a total limit under this clause of GBP 10,000. The Excess does not apply to this clause.

4.2 Loss of Documents

We agree to indemnify You for expenses reasonably incurred in replacing or restoring Documents which are discovered lost or damaged beyond reasonable use and for which You are legally responsible in the course of Your Business, provided that the loss of Documents is first discovered during the Period of Insurance.

For the purpose of this clause only, the maximum payable shall be GBP 100,000 which shall be part of and not in addition to the Indemnity Limit. The Excess payable by You is GBP 1,000 each and every claim.

4.3 Acquisitions

If the Practice acquires another entity, We agree that this policy will provide cover for any Claim arising from the exercise and conduct of Your Business carried out within the acquired entity after the date of completion of the acquisition and once the Practice has taken full control of the entity subject to:

- 4.3.1 the turnover or fees of the acquired entity being no greater than 10% of the Practice's turnover or fees stated in the Proposal.
- 4.3.2 the acquired entity not being listed on any stock exchange or alternative investment market and not having outside shareholders and also not being domiciled in a different territory from that of the Practice.
- 4.3.3 the acquired entity being previously and continuously insured for professional indemnity cover on similar terms to this policy.
- 4.3.4 the acquired entity undertaking a very similar professional business to that of Your Business.

4.4 Mitigation Costs

We will indemnify You against costs and expenses reasonably incurred with Our prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any action taken to mitigate a loss, or potential loss, that otherwise would be the subject of a Claim under this policy. The onus of proving such loss or potential loss, under this clause, shall be upon You and You will be obliged to give prior written notice to Us during the Period of Insurance of the intention to take action that will incur such costs and expenses.



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4.5 Adjudications

We agree to indemnify You for liability arising directly from matters covered under this policy and referred for independent adjudication under the Housing Grants Construction and Regeneration Act 1996 provided You complied with the following conditions, which are **conditions precedent** to Our liability to indemnify You under this policy:

- 4.5.1 You shall give notice to Us during the Period of Insurance and within 48 hours of, either the earlier of:
- (i) the receipt by You of any notice of intention to adjudicate (Adjudication Notice), or
 - (ii) You having reasonable grounds to believe that an Adjudication Notice may be served upon You and that in each case the subject matter of the Adjudication Notice (in whole or in part) is likely to give rise to a Claim under this policy,
- 4.5.2 You shall give Us full and prompt cooperation and comply with all Our reasonable requests including those relating to response times. This includes any subsequent challenge to the adjudicator's decision,
- 4.5.3 You agree that the adjudication shall finally determine any dispute, unless with Our prior written agreement,
- 4.5.4 If the adjudication involves both matters that are covered and matters that are not covered by this policy then We shall only be required to indemnify You in respect of that part which involves matters covered by this policy and any such Defence Costs incurred in handling the adjudication shall be settled in the same proportion as the covered part bears to the total.



5 Exclusions (What is not Covered)

We shall not indemnify You for:

5.1 **Asbestos**

any Claim directly or indirectly arising from, relating to or involving asbestos, or any materials containing asbestos, in any form or quantity.

5.2 **Associated Companies**

5.2.1 any Claim by You or on Your behalf;

5.2.2 any Claim by or on behalf of any of Your parent, subsidiary or associated companies;

5.2.3 any Claim from any other company in which You have a majority shareholding in excess of 50%;

5.2.4 any Claim from any other company in Your common control;

unless such Claim emanates from an independent third party.

5.3 **Bodily Injury**

liability in respect of any Claim directly or indirectly based upon attributable to or in consequence of bodily injury, mental injury, sickness, disease or death of any person provided that this exclusion shall not apply to any Claim incurred as a result of a breach of professional duty in the conduct of the Business.

5.4 **Computer Network and Data Corruption**

any Claim arising directly or indirectly from:

5.4.1 the corruption, erasure, theft, alteration of, or

5.4.2 the access or lack of access to, or

5.4.3 the interference with

electronically held data of or by You wholly or partly caused by any Virus by any person who is not a principal, partner, director, member or Employee of the Practice.

5.5 **Computer Records**

any Claim arising directly or indirectly out of the loss, distortion or erasure of computer records caused by:

5.5.1 defects in computer equipment or electronic storage devices, or

5.5.2 wear, tear, vermin or gradual deterioration, or

5.5.3 climatic or atmospheric conditions or extremes of temperature, or

5.5.4 use or processing whilst mounted in or on any machine unless as a result of loss or damage to the machine itself.



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5.6 **Contractual Liability and Collateral Warranties**

any Claim arising out of liability assumed by You under any contractual agreement (including any Collateral Warranty or Duty of Care agreement) in respect of:

- 5.6.1 any warranty or agreement under which You assume a standard of care greater than the standard of reasonable skill and care normally expected in Your profession;
- 5.6.2 any acceptance or guarantee of fitness for purpose;
- 5.6.3 any warranty or agreement which provides greater or longer lasting benefit than that given to the party with whom You originally contracted;
- 5.6.4 any express guarantee, contractual penalty or liquidated damages in so far as liability assumed by You exceeds the amount of Your liability in the absence of such agreement.

5.7 **Deliberate Acts and Omissions Exclusion**

any Claim arising directly or indirectly from any act, error or omission that You deliberately, spitefully or recklessly commit, condone or ignore.

5.8 **Estimates**

any Claim or loss directly or indirectly arising out of the estimates of construction costs except where such estimates are provided by professionally qualified quantity surveyors.

5.9 **Excess**

for the amount specified in the Schedule.

5.10 **Financial**

any Claim arising from, attributable to, relating to or in any way involving:

- 5.10.1 depreciation or loss of investments when the depreciation or loss is as a result of any fluctuation in any financial, stock or commodity markets when such fluctuation is outside Your influence or control;
- 5.10.2 express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments;
- 5.10.3 any failure to obtain or maintain adequate insurance;
- 5.10.4 the insolvency, bankruptcy or liquidation of You or any subcontractor or sub-consultant;
- 5.10.5 the actual or alleged over-charging or improper receipt of fees and/or commissions;
- 5.10.6 the provision of finance or advice on financial matters.

5.11 **Fines and Penalties**

fines, penalties, punitive or exemplary damages.



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5.12 **Land, Buildings, Transport**

liability incurred or alleged to have been incurred, arising directly or indirectly from Your ownership, possession or use by or on Your behalf of any land, buildings, aircraft, vessel, or motor powered or mechanically propelled vehicle.

5.13 **Liability to Employees**

liability to Employees in respect of any Claim arising from any contract of service or obligation owed by the Practice as employer and/or arising from any bodily injury, mental injury, sickness, disease or death sustained in the course of their employment by the Practice.

5.14 **Non Compliant Building Products**

the specification, use or approval of any building product or material, which, at the time of use or approval, was not in compliance with any applicable building regulations and / or building code.

5.15 **Nuclear**

any Claim arising from or attributable to:

5.15.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or

5.15.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5.16 **Other Appointments**

any Claim made against any Employee, principal, partner, member or director in their capacity as:

5.16.1 director or officer of the Practice or of any other company or arising out of the management of the Practice or of any other company; or

5.16.2 trustee of any trust or as officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or Employees of the Practice or otherwise;

5.17 **Other Insurance**

a situation where You are entitled to indemnity under any other insurance except in respect of any sum beyond the amount which would have been payable under such other insurance had this policy not been effected.

5.18 **Pollution**

any Claim of whatsoever nature directly or indirectly arising out of or in any way involving actual or alleged seepage, pollution or contamination of any kind.

5.19 **Prior Knowledge**

5.19.1 any Claim or Circumstance known to You or which in Our reasonable opinion ought to have been known prior to the Period of Insurance;

5.19.2 any Claim or Circumstance notified to any insurance policy preceding the Period of Insurance.



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5.20 **Products**

any Claim arising out of the manufacture, construction, installation, alteration, repair, workmanship, servicing or treating of any goods or products sold, supplied or distributed by or on Your behalf, even where carried out by You in conjunction with Your Business.

5.21 **Property Damage**

liability arising out of the loss or destruction of, or damage to, any property, unless arising under the Loss of Documents extension, provided that this exclusion shall not apply to any Claim incurred as a result of breach of professional duty in the conduct of the Business.

5.22 **Retroactive Date**

any Claim arising out of the exercise and conduct of Your Business carried out prior to the Retroactive Date specified in the Schedule.

5.23 **Takeovers and Mergers**

any Business performed after the date of any takeover or merger involving the sale of the Practice or a merger with or acquisition by another entity such that the Practice is not the surviving entity and no longer:

5.22.1 controls the composition of the board of directors, or

5.22.2 controls more than half the voting power, or

5.22.3 holds more than half of the issued share capital

unless you tell us about the take over or merger and We agree in writing to continue to provide indemnity.

5.24 **Trading Debts & Losses**

any Claim arising from or directly or indirectly attributable to any trading debt or trading loss incurred by You or any guarantee or undertaking given by You for a debt or performance of any other obligation by a third party or joint venture party.

5.25 **Virus**

any Claim arising out of the transmission or receipt of a Virus or Similar Mechanism.



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5.26 **War & Terrorism**

any Claim of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any cause or event contributing concurrently or in any other sequence to any Claim or Defence Costs:

5.26.1 war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or

5.26.2 any act of terrorism, including but not limited to the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, 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.

5.27 **Workmanship & Materials**

Any Claim or loss arising out of any;

5.27.1 defective workmanship; or

5.27.2 defective or deleterious materials.



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6 Claim Conditions

This Section of the policy explains Your responsibilities when making a Claim under this policy. If the conditions listed below are not followed, then such Claim may not be paid, may be reduced or may be treated as invalid. Clauses 6.1, 0, 0 and 6.4 are **conditions precedent**. No Claim will be paid unless full and complete adherence to these conditions is maintained by You.

6.1 Notification

You shall notify Us in writing, as soon as practicable, and in any event within 28 days of the receipt, awareness or discovery during the Period of Insurance of:

- 6.1.1 any Claim made against You;
- 6.1.2 any Circumstance, regardless of whether the You believe the anticipated Claim to have any merit;
- 6.1.3 the discovery or reasonable cause for suspicion of dishonesty or fraud on the part of any Employee.

Any subsequent Claim arising out of matters notified under clause 6.1.2 or 6.1.3 shall in each case be deemed to have been a Claim made during the Period of Insurance.

Notification is deemed to have been made only when received in writing by Us using the details stated in the Schedule under **Person or entity for notice of claims and circumstances**.

The notification must include full particulars, including the identity of the claimant or potential claimant, details of the allegations and potential allegations against You, identification of the project and services giving rise to the Claim or potential Claim, the potential quantum if known involved in the Claim and in the case of a Circumstance, the notification should include the reasons for the belief that a Claim is likely to be made.

As a condition to Our liability to provide an indemnity, where court proceedings are served against You, notification must be made to Us within 7 days.

6.2 Co-operation

- 6.2.1 As soon as practicable following receipt thereof, You must deliver to us any letter of claim, pre-action protocol letter, claim form, other legal procedural documents, summons, arbitration notice or other such similar correspondence and documents to those described.
- 6.2.2 You shall provide Us with all information and assistance that We and/or Our representatives may reasonably require.
- 6.2.3 You shall use due diligence and shall ensure that all reasonable and practicable steps are taken to avoid or diminish any liability which may give rise to any Claim or loss.

Compliance with this condition will be at Your own cost.



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6.3 Legal Defence and Settlement

- 6.3.1 We are entitled but not obliged to assume the legal defence of any Claim covered under this policy in Your name and We shall have full discretion in managing any negotiation or proceedings as to the resolution of such Claim.
- 6.3.2 We shall be entitled to select and appoint the lawyers that will defend and represent You in respect of any Claim.
- 6.3.3 You agree not to admit liability for or settle any Claim, make any admission, offer payment or assume any obligation in connection with any Claim, or incur any Defence Costs in connection with any Claim, without Our written consent.
- 6.3.4 If We are of the opinion that a Claim will not exceed the Excess, We may require You to conduct the defence of such Claim at Your expense.
- 6.3.5 We may at any time pay to You the Indemnity Limit (having deducted any sums already paid) or any lesser amount for which such Claim may be settled and having paid such sum We shall relinquish the control of such Claim and have no further liability in connection with such Claim.

6.4 Dishonest or Fraudulent persons

Should You suffer any loss or Claim or incur any liability insured under this policy by reason of the dishonest or fraudulent act or omission of any Employee (excluding sub-consultants):

- 6.4.1 You shall at Our request take all reasonable steps to obtain reimbursement from such person;
- 6.4.2 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 be deducted from any amount payable hereunder;
- 6.4.3 no indemnity in respect of such loss or Claim shall be afforded hereunder to any person committing or condoning such dishonest or fraudulent act or omission;
- 6.4.4 nothing herein shall preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission;
- 6.4.5 the sums payable hereunder shall be only for the balance of liability in excess of the amounts recoverable from the dishonest or fraudulent person or persons or their estates or legal representatives;
- 6.4.6 You shall bear the burden of providing satisfactory proof to substantiate such loss or Claim hereunder (including any costs incurred in such process) and We will be under no obligation to indemnify You until such time as We are satisfied that such loss or Claim has in fact been sustained.



7 General Conditions

7.1 Interpretation

In this policy:

- 7.1.1 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;
- 7.1.2 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;
- 7.1.3 the headings in this policy are for general reference only and shall not be considered when determining the meaning of this policy.

7.2 Law and Jurisdiction

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.

7.3 Related Claims

All Claims arising from one and the same act, error or omission or any series of acts, errors or omissions arising out of the same cause, or the acts, errors or omissions of any person or persons acting together, or in which such person or persons is/are concerned or implicated shall be deemed to be one Claim.

7.4 Your Right to Contest

In the event that We recommend settlement of a Claim and You do not agree to the settlement of such Claim, and You decide to contest such Claim, Our liability shall not exceed the amount for which such Claim could have been settled, or Defence Costs incurred up to the date upon which such Claim could have been settled.

7.5 Senior Counsel

- 7.5.1 We shall not require You to contest any Claim unless a Senior Counsel (agreed upon by You and Us or failing such agreement to be nominated by the Chairman for the time being of the Bar Council of England and Wales or where appropriate by a similar official of any similar body in any other applicable jurisdiction) advises that such Claim should be contested taking into account all likely Defence Costs, prospects of success and the damages and the costs likely to be recovered by the third party claimant.
- 7.5.2 The cost of Senior Counsel's advice shall be regarded as part of the Defence Costs.



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7.6 Subrogation

- 7.6.1 Where We have paid any Claim under this policy, We become entitled to any rights You have against any party in relation to the Claim to the extent of Our payment.
- 7.6.2 You must assist Us and provide information as We may reasonably require to exercise our rights of subrogation, including bringing any action or suit in Your name. This may include providing and signing statements and other documents and the giving of evidence.
- 7.6.3 Any recovery received shall be applied first against any Claim or costs insofar as it exceeds the Indemnity Limit, then against any payment made by Us, and finally against the Excess.
- 7.6.4 We will not subrogate against any Employee unless that person is found to have committed a criminal, fraudulent, malicious or dishonest act or omission.

7.7 Alteration to Risk

You must notify Us in writing as soon as practicable of any material alteration to the risk before or during the Period of Insurance including but not limited to any material change in the nature of or cessation of Your Business.

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** terms, amend the terms of Your policy or require You to pay more for Your policy. If You do not inform Us about a change, it may affect any Claim You make or could result in Your policy being invalid.

We may not cover You for any Claim if You do not notify Us in writing as soon as practicable of any material alteration to the risk.

7.8 Jurisdiction and Geographical Limits

We shall indemnify You for any Claim incurred under this policy provided such Claim is brought within the Jurisdiction and arises out of work undertaken within the Geographical Limits allowed for in the Schedule to this policy.

7.9 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.

7.10 Authorisation

The Insured named in the Schedule shall act on behalf of all those entitled to be indemnified under this policy with respect to the giving and receiving of notice under this policy, including the giving of notice of any Claim, the payment of the premium, the receipt and acceptance of any Endorsements attaching to and forming part of this policy.



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7.11 **Fraudulent Claims**

If You, or anyone acting for You, makes any fraudulent claim, We:

- 7.11.1 will not be liable to pay such claim; and
- 7.11.2 may recover from You any sums paid by Us to You in respect of such claim; and
- 7.11.3 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 7.11.3 above:

- (a) 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 any Claim, or the notification of any potential Claim), and;
- (b) We need not return any of the premium paid.

7.12 **Our Rights**

In the event that We are entitled to avoid or repudiate this policy ab initio, We may instead at Our election give notice in writing to You that We regard this policy as of full force and effect save that there shall be excluded from any indemnity afforded hereunder any Claim which has arisen or which may arise and which is related to the circumstances to which We are entitled to avoid or repudiate this policy. This policy shall then continue in full force and effect but shall be deemed to exclude such Claim.

7.13 **Third Party Rights**

No party who is not an Insured shall be entitled to enforce any term of this policy for its own benefit under the Contracts (Rights Against Third Parties) Act 1999 or otherwise.

7.14 **Regulatory Information**

XS Assure Limited is registered in England and Wales with company no. 13272441 and FRN 946504.

XS Assure Limited is an Appointed Representative of MGA Union Limited, a UK limited company which is authorised and regulated by the UK Financial Conduct Authority with FRN 560943.

Registered Office: 49 Rodwell Road, London, SE22 9LE.

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



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7.15 Cancellation

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

- (a) any failure by You to pay the premium; or
- (b) a change in risk which means We can no longer indemnify You or
- (c) non-cooperation or failure to supply any information or documentation We request, such as details of any 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 any Claim in which case the full annual premium is due.

7.16 Duty of Fair Presentation

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 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 Claim(s); 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 make any payment under this policy 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 thirty (30) days' 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 thirty (30) days' notice that You are terminating this policy.



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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.

7.17 **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 any Claim, please contact Your broker 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:

Compliance Manager
XS Assure Limited
49 Rodwell Road
London SE22 9LE

E-mail: compliance@xsassure.com

If You remain dissatisfied after We have considered Your complaint, You can refer Your complaint to the compliance officer of the Insurers as stated in the Schedule.

If You remain dissatisfied after the Insurers stated in the Schedule have considered Your complaint, 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
Telephone Number: 0300 1239 123

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

7.18 **Financial Services Compensation Scheme**

Your policy may be 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.



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7.19 **Data Protection Information Notice Who We are**

We are a “data controller” providing regulated insurance service on behalf of Insurers listed in the Schedule.

The basics

We collect and use relevant information about You to provide Our insurance mediation services to You including (as applicable) arranging the insurance cover from which You benefit or handling claims, and to meet Our legal obligations.

This information includes details such as Your name, address, and contact details and any other information that We collect about You in connection with the insurance mediation services We provide to You. This information may include more sensitive details such as information about Your health or any criminal convictions You may have.

In certain circumstances, We may need Your consent to process certain categories of information about You (including sensitive details such as information about Your health or any criminal convictions You may have). Where We need Your consent, We will ask You for it separately. You do not have to give Your consent and You may withdraw Your consent at any time. However, if You do not give Your consent, or You withdraw Your consent, this may affect Our ability to provide Our insurance mediation services to You including (as applicable) arranging the insurance cover from which You benefit and may prevent Us from providing cover for You or handling Your claims.

The way insurance works means that Your information may be shared with, and used by, a number of third parties in the insurance sector for example, insurers, agents or brokers, reinsurers, loss adjustors, sub-contractors, regulators, law enforcement agencies, fraud and crime prevention and detection agencies and compulsory insurance databases. We will only disclose Your personal information in connection with the insurance mediation services that We provide and to the extent required or permitted by law.

Other people’s details that You provide to Us

Where You provide Us or Your agent or broker with details about other people, You must provide this notice to them.

Further details

For more information about how We use Your personal information please see Our full privacy notice which is available online on Our website <https://xsassure.com> or in formats on request.

7.20 **Contacting Us and Your rights**

You have rights in relation to the information We hold about You, including the right to access Your information. If You wish to exercise Your rights, discuss how We use Your information or request a copy of Our full privacy notice, please contact Our Compliance Manager at compliance@xsassure.com.