



Professional Indemnity Insurance
Surveyors Policy
Aggregate costs in addition



Professional Indemnity Surv Aoc Policy

1 Introduction

This policy, any Endorsements to the policy, and the Schedule hereto shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the policy, its Endorsement(s) (if any) or the Schedule shall bear the same meaning wherever it may appear.

Certain words in this policy are printed in bold. Those words have been defined in Section 2 of the policy.

Any general or specific reference to statute(s) or statutory provisions, including any bye-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions made thereunder, and any conditions attaching thereto, shall be construed as including a reference to any amendment, consolidation or re-enactment thereof for the time being in force.

2 Definitions

In this policy, headings and notes are for information purposes only and are not to be construed as part of the policy. The following words and phrases are used in this policy and in certain instances the words may be used in the plural or singular form. Wherever they appear they are deemed to have the meaning set out below.

- 2.1 “**Asbestos Surveys**” shall mean either a management survey or a refurbishment or demolition survey, as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006, or any comparable survey or inspection, whether of commercial or residential land or property.
- 2.2 “**Bodily Injury**” shall include death and injury, illness, or disease whether bodily or mental.
- 2.3 “**Circumstance(s)**” shall mean an incident, occurrence, fact, matter, act, or omission that might give rise to a **Claim**.
- 2.4 “**Claim**” shall mean:
 - 2.4.1 any demand for damages or compensation from a third party, or the assertion of a right against **You**.
 - 2.4.2 any notice of intention, whether orally or in writing, from a third party to commence legal proceedings against **You**.
 - 2.4.3 any communication from a third party with **You** in whatsoever form invoking any Pre-Action Protocols as may be issued and approved from time to time.
- 2.5 “**Collateral Warranty**” or “**Duty of Care Agreement**” shall mean any written agreement that creates a duty of care by **You** to any party other than **Your** direct client.
- 2.6 “**Computer System**” means any computer, hardware, software, communications system, electronic device (including, but not limited to, smartphones, laptops, tablets, wearable devices), 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.
- 2.7 “**Consultants**” shall mean any person undertaking business on **Your** behalf and shall include any person, whether or not expressly described as a **Consultant**, whose name and designation appear on any of **Your** business stationery, or in business communications or material of any nature issued on **Your** behalf, or who is employed by **You** in offering surveying services to the public.



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- 2.8** “**Cyber Act**” means damage to, or destruction of, computer programs, software, or other electronic data stored within a **Computer System** caused by 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**.
- 2.9** “**Defence Costs**” shall mean all legal costs and expenses incurred with the prior written and continuing consent of **Us** (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation, defence, or settlement of any **Claim** and/or **Circumstance(s)**. It does not include **Your** own costs and expenses.
- 2.10** “**Employee**” shall mean any person acting under a contract of service with **You**, whether contracting directly with **You** or through an agency, in respect of the conduct of **Professional Business** by **You**.
- 2.11** “**Environmental Audit**” shall mean an investigation which is specifically intended to assess whether there is actual **Pollution** present.
- 2.12** “**Excess**” means the amount specified in the Schedule.
- 2.13** “**Indemnity Limit**” means the amount shown in the Schedule.
- 2.14** “**Insured / You / Your**” shall mean each of the following:
- 2.14.1 the **Practice**.
 - 2.14.2 the partners and/or directors and/or members of the **Practice** during the **Period of Insurance**.
 - 2.14.3 former partners and/or former directors and/or former members of the **Practice**.
 - 2.14.4 in respect of **Professional Business** undertaken on behalf of the **Practice** only, those persons named as **Consultants** or former **Consultants** in the proposal form.
 - 2.14.5 any retired partner, director, or member of the **Practice** remaining as a **Consultant** to the **Practice**.
 - 2.14.6 in respect of **Professional Business** undertaken on behalf of the **Practice** only, any **Employee** and/or former **Employee** of the **Practice**, and any self-employed person.
 - 2.14.7 the estate, heirs, executors, and/or legal/personal representatives of those parties mentioned in 2.14.2 - 2.14.6 above in the event of their death, incapacity, insolvency, or bankruptcy.
- 2.15** “**Insurers / We / Us / Our**” shall mean XS Assure Limited on behalf of the **Insurers** listed in the Schedule.
- 2.16** “**Period of Insurance**” shall mean the period stated in the Schedule.
- 2.17** “**Pollution**” shall mean pollution or contamination by naturally occurring or man-made substances, forces, or organisms or any combination of them whether permanent or transitory and however occurring.
- 2.18** “**Practice**” shall mean the practice or practices named in the Schedule and their predecessors and any other practices that are disclosed to **Us** in the proposal form.



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- 2.19** “**Professional Business**” shall mean:
- 2.19.1 those services (including the giving of advice) provided to a third party, which are undertaken by members of the Royal Institution of Chartered Surveyors (or have otherwise been declared to **Us**) and which are performed by or on behalf of the **Practice** within the Territorial Limits (other than the completion of the EWS 1 (or as revised) unless specifically declared to and agreed by **Us**).
 - 2.19.2 services performed (including advice given) within the Territorial Limits by **You** whilst holding an individual appointment in respect of work connected with the **Practice** where:
 - a. those services are undertaken by members of the Royal Institution of Chartered Surveyors (or have otherwise been declared to **Us**), and
 - b. if a fee was charged, the fee with respect to such services or advice is taken into account in ascertaining the income of the **Practice** and has been disclosed to **Us**.
- 2.20** “**Retroactive Date**” shall mean the date (if any) stated in the Schedule.
- 2.21** “**Series of Claims**” shall mean a number of **Claims** (whether made against or involving one or more persons or entities comprising the **Insured** and whether made by the same or different claimants and whether falling under one or more insuring clauses of this policy) that arise directly or indirectly from the same originating cause.
- 2.22** “**Territorial Limits / Geographical Limits**” shall mean the United Kingdom (including the Channel Islands and the Isle of Man) or such other territorial limits as stated in the Schedule.



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3 Insuring Clauses (What is covered)

In consideration of **You** having paid the premium (other than with regard to 8.3 **Run-Off Cover**) shown in the Schedule, **We** agree, subject to the terms of this policy:

3.1 Civil Liability

3.1.1 To indemnify **You** against any **Claim** or **Claims**

- a. first made against **You**, and/or
- b. arising out of any **Circumstance(s)** which **You** shall first notify

during the **Period of Insurance** in respect of any civil liability (including but not limited to civil liability arising out of, based upon, or attributable to any dishonest, fraudulent, criminal, or malicious act) which arises in consequence of the conduct of **Professional Business** by **You** and/or by others acting for and/or on **Your** behalf.

3.1.2 The foregoing indemnity includes liability which **You** may incur in respect of any **Claim** or **Claims** first made against **You** during the **Period of Insurance** as a result of:

- a. 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.
- b. any award by an arbitrator or tribunal of arbitrators (whether under The Royal Institution of Chartered Surveyors Dispute Resolution Service or otherwise).

3.1.3 The maximum indemnity available to **You** in respect of all **Claims** shall (save as provided elsewhere in this policy) not exceed the **Indemnity Limit**.

3.2 Awards by Ombudsmen

3.2.1 To indemnify **You** against any award made by an ombudsman in respect of any case accepted by the ombudsman for review in his position as ombudsman under any recognised scheme where the **Claim**:

- a. is first made against **You**, and/or
- b. arises out of any **Circumstance(s)** which **You** shall first notify

during the **Period of Insurance** together with all legal costs and expenses incurred with **Our** prior written and continuing consent (such consent not to be unreasonably withheld or unreasonably delayed or unreasonably withdrawn) in the investigation of such **Circumstance(s)** and the investigation, conduct or settlement of any such **Claim**.

3.2.2 The maximum amount payable by **Us** under clause 3.2.1 in respect of:

- a. any single award made by any ombudsman, or
- b. any series of awards by any ombudsmen attributable to the same originating cause

shall not exceed GBP 250,000.



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3.2.3 Where an ombudsman makes an award which is rejected by the claimant who then pursues the matter through the courts, both the complaint to the ombudsman and all subsequent court proceedings shall be treated as a single **Claim** made at the date of the first **Claim** against **You**.

3.3 Defence Costs

3.3.1 To indemnify **You** for **Defence Costs** in connection with a **Claim** or **Circumstance(s)** provided that in the event that a settlement or other payment has to be made to dispose of a **Claim** which exceeds the amount of the **Indemnity Limit Our** liability in respect of **Defence Costs** shall be limited to the same proportion that the **Indemnity Limit** bears to the amount of such settlement or other payment.

3.3.2 Save as set out in clauses 3.4, 3.5, 3.6, 5.3, and 5.21, **Defence Costs** are not subject to any **Indemnity Limit**.

3.4 Court Attendance Compensation

To provide compensation to **You**, with **Our** prior written consent, in the event that the legal advisers acting on **Your** behalf require **You** or any **Employee** or any other relevant party (not including expert witnesses), to attend court or any arbitration or adjudication hearing as a witness of fact in connection with a **Claim** made against **You** for which cover is afforded under this policy at the following rates for each day or part thereof on which attendance is required:

3.4.1 any principal partner, member, or director of **You** GBP 200.

3.4.2 any **Employee** GBP 100.

3.4.3 other relevant party up to GBP 200.

The maximum amount payable by **Us** under this clause shall not exceed GBP 10,000 in the aggregate in the **Period of Insurance**.

3.5 Statutory Liabilities

To pay on behalf of **You** 80% of any reasonable costs and expenses incurred with **Our** prior written consent for the defence of any proceedings first brought against **You** and notified to **Us** during the **Period of Insurance**, under the:

- a. The Consumer Protection from Unfair Trading Regulations 2008, and/or
- b. The Business Protection from Misleading Marketing Regulations 2008, and/or
- c. Estate Agents Act 1979, and/or
- d. The Health and Safety at Work etc, Act 1974, and/or
- e. The Health and Safety at Work (Northern Ireland) Order 1978, and/or
- f. The Construction (Design and Management) Regulations 2015, and/or
- g. The Corporate Manslaughter and Corporate Homicide Act 2007, and/or
- h. The Bribery Act 2010, and/or
- i. The Data Protection Act 2018, and/or
- j. similar, prior or successor legislation to that detailed in a. to i. above



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but only where, in **Our** reasonable opinion, defending such proceedings could protect **You** against any **Claim** or potential **Claim** arising from **Professional Business** undertaken by **You**.

The maximum indemnity available to **You** in respect of this clause shall not exceed GBP 100,000 in the aggregate in the **Period of Insurance**.

3.6 Legal Representation Costs

To pay on **Your** behalf 80% of any costs and expenses:

- a. which are incurred by **You** with **Our** prior written consent for representation at properly constituted hearings, tribunals, or proceedings arising out of any:
 - i. **Claim** first made, and/or
 - ii. **Circumstance(s)** which **You** shall first notify

during the **Period of Insurance** in respect of the conduct of **Professional Business** by **You** which may be or may become the subject of indemnity under this policy, and

- b. which are not indemnified as **Defence Costs**.

The maximum amount payable by **Us** in respect of this clause shall not exceed GBP 50,000 in the aggregate in the **Period of Insurance**.

4 Excess

Subject to the terms of this policy:

- a. **We** shall be liable under clauses 3.1 and 3.2 of this policy only for that part of the loss arising from each and every **Claim** or **Series of Claims** which exceeds the **Excess** as specified in the Schedule.
- b. The **Excess** shall not apply to **Defence Costs**.



5 Exclusions (What is not covered)

Save as expressly provided in this policy specifically relating to the use of, or inability to use, a **Computer System**, no cover otherwise provided under this contract shall be restricted solely due to the use of, or inability to use, a **Computer System**.

We shall not be liable under this policy for:

5.1 Adjudication

- 5.1.1 any decision made against **You** by an adjudicator who was not independent of the parties to the dispute.
- 5.1.2 any **Claim** arising out of or related to any adjudication arising from an adjudication clause in a contract which contains timetable provisions for adjudication which are more onerous to **You** than those contained in the Scheme for Construction Contracts referred to in the Housing Grants Construction and Regeneration Act 1996.

5.2 Arbitration

any arbitration award (whether made under the Royal Institution of Chartered Surveyors Dispute Resolution Service or otherwise) made in respect of any **Claim** or counterclaim where the seat of the arbitration was located outside England, Wales, Scotland, or Northern Ireland unless that seat was agreed by **Us**.

5.3 Asbestos

any **Claim** directly or indirectly resulting from the presence or release or possible presence or possible release of asbestos or asbestos-containing materials in whatever form or quantity. Subject to the provisos below, this exclusion shall not apply to any such **Claim** caused by a negligent act, negligent error, or negligent omission in the conduct of **Professional Business**.

Provided always that

5.3.1 such **Claim** is:

- a. first made against **You**, and/or
- b. arises out of any **Circumstance(s)** which **You** shall first notify

during the **Period of Insurance**.

5.3.2 **We** shall not be liable for any such **Claim**:

- a. directly or indirectly resulting from **Asbestos Surveys** carried out by **You**
- b. arising out of or in any way involving any **Bodily Injury** or fear of suffering **Bodily Injury**.

5.3.3 the maximum amount payable in the aggregate in the **Period of Insurance** in respect of any such **Claims**, any claimant's costs, and any **Defence Costs** shall not exceed GBP 250,000 in the aggregate. This is not additional to and shall not increase the **Indemnity Limit** for **Claims**.

5.4 Computer Virus

any **Claim** directly arising from the receipt or transmission of malware, malicious code, or similar by **You** or any other party acting on behalf of **You**.



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5.5 Contractual Liability

- 5.5.1 any contractual liability incurred by **You** in the conduct of **Professional Business** carried on by **You** as a result of:
- a. the acceptance by **You** of an obligation, or the guarantee by **You**, of fitness for purpose where this appears as an express term.
 - b. any express guarantee given by **You** including any relating to the period of a project.
 - c. any express penalty contained in a contract between **You** and a third party.
 - d. any express acceptance by **You** of liability for liquidated damages.
- 5.5.2 Any liability that arises in consequence of any assignment of a **Collateral Warranty** or **Duty of Care Agreement** to more than one party except in the case of a **Collateral Warranty** or **Duty of Care Agreement** given to a financier or funding party (not a purchaser or tenant) where a total of two assignments is permissible.

These exclusions (5.5.1 and 5.5.2) shall not apply if liability would have attached to **You** in the absence of any such express agreement, or if:

- a. **We** have expressly approved the contractual terms giving rise to the said liability, or
 - b. in the case of a **Collateral Warranty** or **Duty of Care Agreement**, the British Property Federation or Construction Industry Council's current or former standard collateral warranty wording is used.
- 5.5.3 any liability incurred where **You** have relied upon the EWS 1 form (or as revised) and the valuation report does not exclude liability to the lender or any person deriving title to the mortgage for any losses or potential losses arising directly and solely from the valuation being provided in reliance upon the EWS 1 form.

This exclusion (5.5.3 above) shall only apply to all valuations undertaken on or after 1 May 2020.

5.6 Controlling Interest

any **Claim** brought by either:

- 5.6.1 any entity in which **You** exercise a controlling interest, or
- 5.6.2 any entity exercising a controlling interest over **You** by virtue of their having a financial or executive interest in **Your** operation

unless such **Claim** is made against **You** for an indemnity or contribution in respect of a **Claim** made by an independent third party.



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5.7 Cyber Act

any loss, costs, or expenses incurred by **You** to:

- 5.7.1 determine the existence, extent, and cause of a **Cyber Act**.
- 5.7.2 contain or stop a **Cyber Act** (including a privacy breach).
- 5.7.3 implement remedial action arising from or connected with the **Cyber Act**.
- 5.7.4 comply with any notification obligations, including to regulators, third parties, and/or individuals, including to notify and protect (including via credit and identity monitoring services) persons whose personal data was accessed as a result of the **Cyber Act**.

5.8 Directors' and Officers' Liability

any **Claim** against any **Insured** in their capacity as a director, officer, or trustee in respect of the performance or non-performance of their duties as a director, officer, or trustee.

5.9 Dishonesty or Fraud

any **Claim** arising out of any dishonesty or fraud of any **Insured** save to the extent that the **Claim** arises by reason of and was solely and directly caused by the (actual or allegedly) dishonest and/or fraudulent act(s) of any past or present partner, director, member, **Consultant** or **Employee** of the **Practice** (whether committed alone or in collusion with others) which cause any of **Your** client(s) to suffer loss and provided always that:

- 5.9.1 no indemnity shall be afforded in respect of any **Claim** arising out of such dishonesty or fraud on the part of any person after discovery by **You**, in relation to that person, of reasonable cause for suspicion of fraud or dishonesty.
- 5.9.2 any dishonesty and/or fraud committed by a person or persons acting in concert shall for the purposes of this policy be treated as one **Claim**.

5.10 Financial Services

any **Claim** arising out of any Regulated Activities as defined in the Financial Services and Markets Act 2000 as amended from time to time. This exclusion will not apply to mortgage mediation activity and insurance mediation activity relating to general insurance contracts only for which the **Practice** has permission pursuant to Part IV of the Financial Services and Markets Act 2000.

5.11 Fines, Penalties, Punitive, Multiple or Exemplary Damages

any fines, penalties, or punitive, multiple, or exemplary damages where such have been identified separately within any award of any court or tribunal, including but not limited to any fines or penalties for a breach of any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or government entity.



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5.12 Infrastructure

any **Claim** directly arising from:

- 5.12.1 mechanical failure.
- 5.12.2 electrical failure, including any electrical power interruption, surge, brown out or blackout.
- 5.12.3 telecommunications or satellite systems failure.
- 5.12.4 partial or total unavailability of any **Computer System**:
 - a. owned or controlled by **You**, or
 - b. any failure or interruption of service provided to **You** or any other party acting on behalf of **You** by an internet service provider, telecommunications provider, or cloud provider but not including the hosting of hardware and software owned by **You**.

This exclusion shall not apply to any **Claim** arising out of the actual or alleged breach of duty in the performance of the **Professional Business**.

5.13 Insolvency of You

any **Claim** arising out of or relating solely to **Your** insolvency or bankruptcy. This exclusion, however, shall not apply to:

- 5.13.1 any **Claims** in respect of monies held on behalf of third parties, and/or
- 5.13.2 any **Claim** that otherwise would be indemnified by this policy but for **Your** insolvency or bankruptcy.

5.14 Liability arising out of Bodily Injury

any **Claim** arising out of **Bodily Injury** of any **Employee** whilst in the course of their employment for or on behalf of **You**.

5.15 Liability arising out of employment

any **Claim** arising from any liability to any **Employee**, former **Employee**, or prospective **Employee** in respect of employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.

5.16 Liability involving transport or property owned by You

any **Claim** arising out of:

- 5.16.1 the ownership, possession, or use by or on behalf of **You** of any aircraft, watercraft, hovercraft, motor vehicle, or trailer.
- 5.16.2 the ownership or possession by or on behalf of **You** of any buildings, structures, premises, land, or property (mobile or immobile) or that part of any building leased, occupied, or rented by **You**.



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5.17 Market Fluctuation Clause

any **Claim** relating to the financial return of any investment or the depreciation or loss of investments when such financial return, depreciation, or loss is caused by normal or abnormal fluctuations in any financial, stock, commodity, or other markets which are outside **Your** influence or control. It is understood and agreed that this exclusion will not apply to **Your Professional Business** in connection with the survey or valuation of any tangible property.

5.18 Nuclear Risks

any **Claim** whether directly or indirectly caused by, contributed to by, or arising from loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom, or any legal liability of whatsoever nature directly or indirectly caused by or contributed to by, or arising from:

5.18.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel.

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

5.19 Ombudsmen

any ombudsman's award except to the extent covered under clause 3.2.

5.20 Other Policies

any **Claim** where **You** are entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such policy, had this policy not been effected.

5.21 Pollution

any **Claim** arising directly or indirectly from **Pollution**. Subject to the provisos below, this exclusion shall not apply to any such **Claim** caused by a negligent act, negligent error, or negligent omission in the conduct of **Professional Business**.

Provided always that:

5.21.1 such **Claim** is:

- a. first made against **You**, and/or
- b. arises out of any **Circumstance(s)** which **You** shall first notify
during the **Period of Insurance**.

5.21.2 **We** shall not be liable for any such **Claim** directly or indirectly resulting from **Environmental Audits** carried out by **You**.

5.21.3 save as set out in clause 0, the maximum amount payable in the aggregate in the **Period of Insurance** by **Us** in respect of any such **Claims**, any claimant's costs, and any **Defence Costs** shall not exceed the **Indemnity Limit**. This is not additional to and shall not increase the **Indemnity Limit**.



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5.21.4 where such **Claim** arises from **Your** negligent structural design or specification or failure to report a structural defect in a property and relates solely to the cost of re-designing, re-specifying, remedying, and/or rectifying the defective structure then the maximum indemnity available to **You** in respect of each **Claim** or any **Series of Claims** shall not exceed the **Indemnity Limit**.

For the purposes of this exclusion only, asbestos is deemed not to be a contaminant nor a pollutant.

5.22 Previous Claims/Circumstance(s)

any **Claim**:

5.22.1 **You** were or should have been aware of prior to the inception of this policy (including any **Claim** notified under any insurance which was in force prior to the inception of this policy and accepted as notified by the insurer of that policy),

5.22.2 arising out of any **Circumstance** which has been notified under any insurance which was in force prior to the inception of this policy and the insurers of that policy have accepted that the **Circumstance** was properly notified to that policy,

provided that clause 5.22 shall not reduce **Your** rights under (or otherwise affect the application of) 8.2 **RICS Difference in Conditions**.

5.23 Retroactive Date

any **Claim** notified under the terms of this policy that arises out of the conduct of **Professional Business** prior to the **Retroactive Date** as set out in the Schedule.

5.24 Supply of Goods

any **Claim** arising out of the supply of any goods by **You** or products manufactured, constructed, altered, repaired, treated, sold, supplied, or distributed by **You**.

This exclusion shall not apply to project models or displays.

5.25 Surveys and Valuations (qualifications and experience)

any **Claim** arising out of a survey or valuation, unless it was undertaken by:

5.25.1 anyone who is:

- a. a Fellow, a Professional Member, a Technical Member, or an Associate Member of the Royal Institution of Chartered Surveyors (RICS), or
- b. a Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA), or
- c. a Fellow or Associate of the Architects and Surveyors Institute (ASI), or
- d. a Fellow or Associate of the Faculty of Architects and Surveyors (FFAS), or
- e. a Fellow or Associate of the Royal Institute of British Architects (RIBA), or
- f. a Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS) or
- g. a RICS Registered Valuer in accordance with the RICS Valuation Standards, or



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5.25.2 anyone who has not less than five years' experience of such work, or

5.25.3 any other person delegated by **You** to execute such work subject always to:

- a. supervision of such work by a person qualified in accordance with clauses 5.25.1 or 0 above, or
- b. agreement in writing having been obtained from **Us** prior to cover being granted.

5.26 Trading Losses

any **Claim** arising out of any trading losses or trading liabilities incurred by **You** including loss of any business or custom.

5.27 USA and Canada

any **Claim** instituted or pursued in the United States of America, its territories and possessions, or Canada (whether for the enforcement of a judgment or finding of a court or tribunal of another jurisdiction or otherwise) or in which it is contended that the laws of the United States of America, its territories and/or possessions or Canada should or do apply or which involves the enforcement or attempted enforcement of a judgment or finding of a court or tribunal of the United States of America, its territories and/or possessions or Canada.

5.28 War Risks

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

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

For the purpose of this exclusion, an act of terrorism means an act, including but not limited to the use of force or violence and/or 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 or religious or similar purposes including the intention to influence any government and/or to put the public, or any sector of the public, in fear.

This exclusion also excludes any **Claim**, costs, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing, or in any way relating to any of the above.



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6 Claim Conditions

6.1 Notification of a Claim or Circumstance(s)

6.1.1 If during the **Period of Insurance You** shall receive any **Claim**, or any notice of an intention to make a **Claim**, **You** shall give written notice to **Us** as soon as reasonably practicable. All **Claims** must in any event be notified within 10 working days after the expiry of the **Period of Insurance**.

6.1.2 If during the **Period of Insurance You** become aware of any **Circumstance(s)**, **You** shall give written notice **Us** of such **Circumstance(s)** as soon as reasonably practicable with such notice supplying full particulars of the relevant **Circumstance(s)** including (where possible)

- a. the name(s) of the potential claimant:
- b. the date of the incident, occurrence, fact, matter, act, or omission which has given rise to the **Circumstance(s)**.
- c. the name(s) of the individual(s) involved in the **Circumstance(s)**.
- d. the date **You** were first aware of or discovered such **Circumstance(s)**.
- e. the estimated amount of any potential **Claim** which may arise thereafter.

In addition, **You** shall provide such further information as **We** may reasonably require.

All **Circumstance(s)** must in any event be notified prior to the expiry of the **Period of Insurance**.

We agree that any **Circumstance(s)** notified by **You** during the **Period of Insurance** which subsequently gives rise to a **Claim** after expiry of the **Period of Insurance** shall be deemed to be a **Claim** first made during the **Period of Insurance**.

6.1.3 If during the **Period of Insurance You** discover:

- a. a reasonable cause for suspicion of dishonesty or fraud on the part of a past or present partner, director, member, **Employee**, or **Consultant** of the **Practice**, or
- b. an occurrence that may require representation at a properly constituted hearing, tribunal, or proceeding

which might give rise to a **Claim**, **You** shall give written notice to **Us** of such discovery as soon as reasonably practicable but in any event prior to the expiry of the **Period of Insurance**.

We agree that any such discovery notified by **You** during the **Period of Insurance** which subsequently gives rise to a **Claim** after expiry of the **Period of Insurance** shall be deemed to be a **Claim** first made during the **Period of Insurance**.

6.1.4 Notification will be deemed to have been made to **Us** if and when made to the person or entity for notice of claims or circumstances identified in the Schedule(s).



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6.2 Adjudication

You shall as a condition precedent to **Your** right to indemnity in respect of any adjudication for which indemnity is available under this policy:

6.2.1 notify **Us** within 2 working days of receipt of any notice of intention to adjudicate, notice of adjudication, referral notice, or any adjudication notice pursuant to contract.

6.2.2 not serve any notice of intention to adjudicate, notice of adjudication, referral notice, or any adjudication notice pursuant to the contract without **Our** prior written consent unless, in **Your** reasonable opinion, service of those notices will not give rise to a **Claim**.

6.3 Ombudsmen

You shall as a condition precedent to **Your** right to indemnity under clause 3.2 give written notice to **Us** as soon as reasonably practicable after becoming aware that a case directly affecting **You** is being reviewed by any ombudsman.

6.4 No Admission of Liability

In the event of a **Claim** or the discovery of **Circumstance(s)**, **You** shall not admit liability, incur any costs or make any offers of settlement in connection therewith or otherwise prejudice the conduct or the defence or settlement of such **Claim** or **Circumstance(s)** without **Our** prior written consent (such consent not to be unreasonably withheld or unreasonably delayed), regardless of

6.4.1 the provisions of any complaints handling procedure, or

6.4.2 whether the amount in dispute is less than the **Excess**.

6.5 Conduct of Claims

Following notification of a **Claim** or notification of any **Circumstance(s)**, **We** shall be entitled to take over and conduct in **Your** name the investigation, defence, or settlement of any such matter. **You** shall cooperate with **Us** and shall give such information and assistance (as set out in clause 6.6) as **We** may reasonably require.

6.6 Claims Control and Co-operation

6.6.1 **You** shall give to **Us** all such information and assistance as **We** may reasonably require and is in **Your** power to provide.



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6.6.2 **You** shall co-operate with **Us** and **Our** appointed representatives:

- a. by providing all such information, assistance, signed statements, or depositions as may be required to facilitate compliance with all and any Civil Procedure Rules, Practice Directions, and Pre-Action Protocols as may be issued.
- b. by assisting them to present the best possible defence of a **Claim**.
- c. by ensuring access to all and any information that **We** or **Our** representatives may require in the defence of a **Claim** or in the investigation of any **Circumstance(s)**, whether or not privileged.
- d. by making payment on demand of the **Excess** in order to comply with the terms of any settlement agreed by **Us**.
- e. by providing all such information, assistance, signed statements, or depositions as may reasonably be required to permit **Us** to exercise rights of subrogation.
- f. by ensuring that all documents of any description (whether kept in paper, magnetic, or electronic form) relevant to any **Claim** and any **Circumstance(s)** are preserved in their entirety.

6.7 **Fraudulent Claims**

If **You** make any **Claim** under the policy knowing the same to be false or fraudulent, **We**:

- 6.7.1 are not liable to pay that **Claim**, and
- 6.7.2 may recover from **You** all previous payments made by **Us** in respect of that **Claim**, and
- 6.7.3 may by notice to **You** treat the policy as having been terminated with effect from the date of such false or fraudulent **Claim**. **We** shall not be liable to **You** in respect of any **Claim** made or the notification of any **Circumstance(s)** from the date of the fraudulent act. Such cancellation will not affect any liability **We** may have in respect of any **Claim** notified prior to the notification of such false or fraudulent **Claim**. **We** will not be obliged to return any premium.



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7 General Conditions

The following General Conditions apply to this policy:

7.1 Discharge of Liability

We may at any time pay to **You** in connection with any **Claim** or **Series of Claims** under this policy the **Indemnity Limit** (less any sums already paid) or any lesser sum for which such **Claims** can be settled and upon such payment **We** shall not be under any further liability in respect of such **Claims** except for **Defence Costs** incurred prior to such payment and with **Our** prior written consent.

7.2 Indemnity Limit and Excess

The **Indemnity Limit** and the **Excess** apply to all **Insureds** jointly.

7.3 Combined Claims

7.3.1 Where the same originating cause gives rise to an entitlement on **Your** part to indemnity under clause 3.1 and all or any of clauses 3.2, 3.4, 3.5 and/or 3.6 of this policy, the maximum amount payable by **Us** shall not exceed the **Indemnity Limit**.

7.3.2 Where a **Claim** is brought against more than one **Insured** it shall be deemed to be one **Claim** and **Our** liability shall be the same as if the **Claim** had been brought against one **Insured** only.

7.4 Rights of Recovery

Immediately on the notification of a **Claim** or **Circumstance(s)**, **You** grant **Us** all rights of recovery against any parties from whom a recovery may be made, and **You** will take all reasonable steps to preserve such rights and will cooperate with **Us** in accordance with clause 6.6. However, **We** agree to waive any rights of recovery against **You** unless liability has resulted in whole or in part from any act or omission which is dishonest, fraudulent, criminal or malicious.

7.5 Adjudication

You agree:

7.5.1 subject to a reasonable request by **Us**, to permit **Us** to pursue legal, arbitration, or other proceedings in the name of and on behalf of **You** to challenge, appeal, 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** will give all such assistance as **We** may reasonably require in relation to such proceedings.

7.5.2 not to accept the decision of any adjudicator as finally determining the related dispute without **Our** prior written consent (not to be unreasonably delayed or unreasonably withheld).

7.6 Contracts (Rights of Third Parties) Act 1999

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 which exists or is available other than by virtue of the Act.



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7.7 Choice of Law, Disputes, and Jurisdiction

7.7.1 This policy shall be governed by and construed in accordance with the laws of England and Wales.

7.7.2 Any dispute between **Us** and **You**:

a. as to the correct interpretation of the definition of **Professional Business** under this policy, or

b. regarding the application of the 8.2 **RICS Difference in Conditions**.

shall be referred by either party for arbitration in accordance with the law and procedure of England and Wales to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors, whose decision shall be binding on both parties.

7.7.3 If **We** and **You** cannot agree a common course of action with regard to the contesting of any legal proceedings (whether defence or prosecution), the dispute will be resolved by reference to King's Counsel of the English Bar to be mutually agreed between **You** and **Us** whose decision shall be binding. In resolving the dispute, the King's Counsel shall have due regard to the interests of both **You** and **Us**. In the event of disagreement regarding the appointment of King's Counsel, the King's Counsel shall be appointed by the Chairman for the time being of the Bar Council. The costs of such an exercise shall be allocated by the agreed or appointed party on a fair and equitable basis.

7.7.4 Save as aforesaid, the Courts of England and Wales are to have exclusive jurisdiction for hearing and determining any dispute arising out of or in connection with this policy.

7.8 Practice to act as Agent

All persons falling within the definition of **You** agree that the **Practice** is their agent for all purposes in connection with this policy. This policy may be varied or rescinded by agreement between **Us** and the **Practice** without the consent of any other person falling within the definition of **You** or otherwise.

7.9 International Trade Sanctions

The Insurer shall be deemed not to provide cover and shall not be liable to pay any **Claim** or provide any benefit under this policy to the extent that the provision of such cover, payment of such **Claim**, or provision of such benefit would expose the Insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the United Kingdom, European Union, Australia or United States of America.



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7.10 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 the:

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

Email: complaint.info@financial-ombudsman.org.uk

From within the United Kingdom

Telephone number: 0800 0234 567 or 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 at the above number, address, or visit their website www.financial-ombudsman.org.uk.

7.11 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** are 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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7.12 Data Protection Information Notice Who We are

We are a “data controller” providing a regulated insurance service on behalf of the **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, 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 adjusters, 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.

7.13 Contacting Us and Your rights

You have rights relating 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.



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8 Amendments to RICS Requirements

8.1 RICS Minimum Requirements

The primary GBP 1,000,000 of cover is designed to provide the Minimum Insurance Requirements of the Royal Institution of Chartered Surveyors as per the Approved Minimum Wording other than in respect of:

- a. Fire Safety Exclusion(s);
- b. Unlimited Aggregate Round the Clock Reinstatement basis of coverage; or
- c. **Excess** applicable to **Defence costs**.

However, for the avoidance of doubt, it is specifically understood and agreed that the cover provided by this policy shall be no less favourable and provide no less protection to **You** than the Approved Minimum Wording other than in respect of:

- a. Fire Safety Exclusion(s);
- b. Unlimited Aggregate Round the Clock Reinstatement basis of coverage; or
- c. **Excess** applicable to **Defence costs**.

Any dispute between **You** and **Us** as to whether the cover under this policy is in any respect less favourable or gives less protection to **You** than the Approved Minimum Wording would, shall be referred by either party for arbitration in accordance with English law and procedure to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors, whose decision shall be binding on both parties.

For the avoidance of doubt, it is specifically understood and agreed that the Minimum Insurance Requirements provided by this policy shall only apply to the primary GBP 1,000,000 of cover.

8.2 RICS Difference in Conditions

The Insurance Act 2015 (“the Act”) has introduced a duty on **You** that before **You** enter into a contract of insurance, **You** must make a fair presentation of the risk to **Us**. This clause varies the terms of the Act in relation to **Our** remedy for a breach of duty of fair presentation.

Where there has been a failure by **You** to comply with **Your** duty to make a fair presentation of the risk to **Us** and such failure would entitle **Us** to avoid this policy, **We** agree only to exercise **Our** right to avoid this policy if **You** have admitted, or **We** have established by way of a final adjudication in arbitration proceedings between the **Us** and **You** commenced in accordance with clause 0 of this policy (including any appeal therefrom), that **You** failed to make a fair presentation of the risk with the intention of misleading or deceiving **Us**. Until such final adjudication (including any appeal therefrom) has been concluded, **We** shall continue to honour **Our** obligations and make payment, under the policy.

Where **We** exercise **Our** right to avoid the policy under this clause, **We** may refuse all **Claims** and need not return any of the premium paid by **You**.



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In any case where there has been a failure by **You** to comply with **Your** duty to make a fair presentation of the risk to **Us** and where clause 8.1 does not apply:

8.2.1 in the case of a **Claim** first made against **You** during the **Period of Insurance** where:

- a. **You** had previous knowledge of the **Circumstance(s)** relating to such **Claim**, and
- b. **You** should have notified the same under any preceding policy but did not do so,

then, where the indemnity or cover under this policy is greater or wider in scope than that to which **You** would have been entitled under such preceding policy (whether with other insurers or not), **We** shall only be liable to afford indemnity to such amount and extent as would have been afforded to **You** by such preceding policy.

8.2.2 regardless of whether or not clause 8.2.1 applies, where **We** can demonstrate that, by reason of **Your** failure to comply with **Your** duty to make a fair presentation of the risk, **We** would not have written the policy, or would have written the policy but on different terms and conditions, then **We** shall be entitled to charge a just and equitable additional premium in light of the prejudice caused to **Our** interests by such failure to comply with that duty.

8.2.3 otherwise, save as set out in 8.2.1 and 8.2.2, **We** shall not be entitled to any remedy by reason of **Your** failure to comply with **Your** duty to make a fair presentation of the risk where such failure was neither deliberate or reckless.

Where **Your** breach of or non-compliance with any provision in clauses 6.1, 6.4, 6.5, or 6.6 of this policy has resulted in prejudice to the handling or settlement of any **Claim**, **We** shall be entitled to reduce the indemnity afforded by this policy in respect of such **Claim** (including **Defence Costs**) to such sum as is just and equitable having regard to the prejudice caused to **Our** interests by **Your** breach or non-compliance.

8.3 Run-Off Cover

In the event that the **Practice** ceases during the **Period of Insurance** and has not obtained succeeding insurance which complies with the Royal Institution of Chartered Surveyors approved minimum professional indemnity policy wording and Professional Indemnity Requirements Version 4 with effect from 1 April 2019, this policy will extend to indemnify **You** for any **Claim** or **Claims** made against **You** by any natural person acting for purposes outside their trade, business or profession and arising from errors or omission of **You** prior to the **Practice** ceasing for an additional period of six years from the day immediately following the expiry of this policy (The Run-Off Period).

The **Indemnity Limit** for 8.3 **Run-off Cover** shall be GBP 1,000,000 for any one **Claim** and in the aggregate for the Run-Off Period stated above.

Run-off cannot be cancelled for non-payment of premium.