



# Professional Indemnity Insurance Accountants Policy



# Professional Indemnity Insurance Accountants 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 must 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 or promise to pay the premium, insure You, subject to the terms and conditions of this policy, against the events set out in What Is Covered in connection with Your Business during the Period of Insurance or any subsequent period for which We agree to accept payment of the premium.

This policy is to be interpreted according to 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 remains that is either prohibited or otherwise rendered of no effect by the Act, We acknowledge that Our rights shall 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** “**Act of Terrorism**” means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s) committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.
- 2.2** “**Alternate**” means any individual practitioner, partnership, limited liability partnership, Isle of Man limited liability company or company who or which is acting in connection with the arrangements to cover the incapacity or death of a sole practitioner.
- 2.3** “**Approved Minimum Wording**” shall have the meaning defined in the Professional Indemnity Insurance Regulations in force at the date of the inception of the policy and on any extension of the policy at the date of such extension.
- 2.4** “**Authorised Work**” shall have the meaning given by the Legal Services Regulations, in force at the date of the inception of this policy and on any extension of the policy at the date of such extension.
- 2.5** “**Business**” means advice, services or other business activities provided for or on behalf of others at any time anywhere in the world by You or on Your behalf or any person for whom You are alleged to be liable, irrespective of whether or not a fee is charged, but provided that if a fee is charged then that fee is taken into account in ascertaining the income of the Firm.

The above definition of Business extends to:

- (a) You whilst holding any individual personal appointment (including, but without prejudice to the generality of the foregoing, any appointment as a trustee or personal representative made or accepted in the course of Your business), but whilst holding an appointment as company secretary or registrar or Director of a company which is not a Firm it only extends to the performance of Services as defined herein; and
- (b) the provision, sale, licence, lease, amendment or adaptation by You of any computer software, hardware, solution, package or publication.



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- 2.6** “**Claim**” means any written or oral demand for compensation or damages from, or the assertion of a right against, You, and includes any complaint or reference to any Ombudsman.
- 2.7** “**Claimant**” means any person or entity which has made or may make a Claim including (without limitation) a Claim for contribution or indemnity and includes a complainant to the Ombudsman.
- 2.8** “**Computer System**” means any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet, wearable device), server, cloud or microcontroller including any similar system or any configuration of the aforementioned and including any associated input, output, data storage device, networking equipment or back up facility.
- 2.9** “**Cyber Act**” means any unauthorized, malicious or criminal act or series of related unauthorized, 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.
- 2.10** “**Data**” means any information, facts, concepts, code or any other information of any kind that is recorded or transmitted in a form to be used, accessed, processed, transmitted or stored by a Computer System.
- 2.11** “**Data Protection Law**” means 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 relating to personal data issued by any data protection regulator or governmental authority from time to time (all as amended, updated or re-enacted from time to time).
- 2.12** “**Defence Costs**” means any costs, disbursements and expenses incurred by You in:
- (a) defending any Claim or any proceedings relating to any Claim;
  - (b) conducting any proceedings for an indemnity, contribution, damages or other recovery relating to a Claim;
  - (c) investigating, reducing, avoiding or settling any actual or potential Claim; or
  - (d) investigating any circumstance which is notified to Us in accordance with the terms of this policy.
- 2.13** “**Director**” shall have the meaning given by sections 250 and 251 of the Companies Act 2006, section 2 of the Companies Act 1963 of the Republic of Ireland or section 27 of the Companies Act 1990 of the Republic of Ireland (as appropriate) or any amendment or re-enactment thereof.
- 2.14** “**Endorsement**” means any endorsement attaching and forming part of the policy.
- 2.15** “**Extended Policy Period**” means the period starting from the day immediately following the expiration of the original Period of Insurance and ending with the earliest to occur of:
- (a) the date that You obtain a replacement insurance policy that complies with the provisions of the Professional Indemnity Insurance Regulations of the Relevant Institute; or
  - (b) 30 days from receipt by the Relevant Institute and the Firm of written notice from Us of the commencement of the Extended Policy Period.
- 2.16** “**Firm**” means the firm (i.e. partnership, sole practitioner, company (limited or otherwise), limited liability partnership, Isle of Man limited liability company) and any other entity named in the Schedule, including the predecessors in business of the said firm.
- 2.17** “**Indemnity Limit**” means the limit shown on the Schedule and shall be Our total liability to pay damages, losses and Claimant’s costs, and shall not exceed the Indemnity Limit stated in the Schedule in respect of any one Claim or series of Claims arising out of one originating cause. 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



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acting together, or in which such person or persons is/are concerned or implicated, shall be deemed to be one Claim.

- 2.18** “**Insurance Distribution Work**” shall have the meaning given by the Designated Professional Body (Investment Business) Handbook of the Relevant Institute, in force at the date of the inception of this policy and on any extension of the policy at the date of such extension.
- 2.19** “**Insured / You / Your**” each and all of the following persons, each of whom shall be severally insured hereunder:
- (a) any Firm;
  - (b) Partners or Directors or Members of a Firm (or persons named as the principal where, although the trading style of the Insured is such that it appears to be a Firm, in fact the Insured is a sole practitioner) and any other person who may at any time during the Period of Insurance become a Partner or Director or Member in a Firm;
  - (c) any former Partner or Director or Member of a Firm including any such former Partner or Director or Member whilst acting as a consultant to a Firm;
  - (d) any person who is or has been under a contract of service with a Firm;
  - (e) any person who is or has been under a contract for services with a Firm, save that such person shall only be an Insured for the purpose of this policy if and insofar as any Claim or Claims arise out of Business carried on by such person for or on behalf of a Firm;
  - (f) the estates and/or legal representatives of any Insured Person noted under (b), (c), (d) or (e) hereof in the event of death, incapacity, insolvency or bankruptcy; and
  - (g) any person who is acting on behalf of a Firm as an Alternate.
- 2.20** “**Insured Person**” means any natural person insured hereunder.
- 2.21** “**Insurer / We / Us / Our**” means XS Assure Limited on behalf of Insurers listed on the Schedule.
- 2.22** “**Legal Services Regulations**” means the Legal Services Regulations of the Relevant Institute including the previous Probate Regulations where applicable.
- 2.23** “**Member**” means any member of a limited liability partnership, including, without limitation, a designated member.
- 2.24** “**Ombudsman**” means any ombudsman to whose jurisdiction You are subject by virtue of contract or law.
- 2.25** “**Partner**” shall have the meaning given by the Partnership Act 1890 or any amendment or re-enactment thereof.
- 2.26** “**Period of Insurance**” means the period shown in the Schedule.
- 2.27** “**Professional Indemnity Insurance Regulations**” means the Professional Indemnity Insurance Regulations of the Relevant Institute, in force at the date of the inception of this policy and on any extension of the policy at the date of such extension.
- 2.28** “**Qualifying Insurance**” shall have the meaning given by the Professional Indemnity Insurance Regulations.
- 2.29** “**Relevant First Party Loss**” means that part of any costs, disbursements or expenses incurred by You in investigating, reducing, avoiding or settling any potential Claim or circumstance for which there is cover under subparagraphs (c) and/or (d) of the definition of Defence Costs.
- 2.30** “**Relevant Institute**” means the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants in Ireland, as applicable.



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- 2.31** “**Schedule**” means the document entitled Schedule that relates to and forms part of this policy.
- 2.32** “**Services**” provided whilst holding the appointment of company secretary, registrar or Director as referred to in the definition of Business herein shall mean all services performed or advice given by You in connection with tax matters, secretarial work, share registration, financial advice to management, book-keeping, management accounting, financial investigation and reports, the negotiation and settlement of financial claims, company formations, investment advice, insurance and pension scheme advice and computer consultancy

## 3 Insuring Clauses (What is Covered)

### 3.1 Civil Liability

We shall indemnify You in respect of any Claim first made against You during the Period of Insurance in respect of any civil liability (including liability for Claimant’s costs, expenses and disbursements) in connection with Your Business.

### 3.2 Awards by Ombudsman

We shall indemnify You against any amounts that an Ombudsman requires to be paid by You and/or the costs of any steps that an Ombudsman directs or recommends that You take, in respect of a complaint made to the Ombudsman during the Period of Insurance.

### 3.3 Defence Costs

We shall indemnify You in respect of Defence Costs.

## 4 Extensions

The following extensions apply if shown as operative on the Schedule. Where a sublimit of indemnity is specified, this shall be in addition to any applicable Indemnity Limit.

### 4.1 Court Attendance Costs

Where the legal advisors acting for You require any Partner, Director, Member or Employee of Yours to attend Court or any arbitration or adjudication hearing as witness of fact in connection with a Claim covered under the Policy, We will pay compensation to You at the following rates for each day or part thereof on which attendance is required:

- (a) Any Partner, Director or, Member - £250.
- (b) Any Employee - £100.

Our total aggregate liability in the Period of Insurance under this Extension shall not exceed £50,000.

### 4.2 Disputed Fees

Where Your client has refused to pay for professional services provided by You in the course of Your Business and this dispute has been notified by You to Us during the Period of Insurance, We will reimburse You for that part of the disputed and unpaid fees provided Your client has expressed dissatisfaction (and has reasonable grounds to be dissatisfied) with the professional services provided by You and has threatened to bring a Claim that would be:

- (a) covered by the Policy for a greater amount than that which the client has refused to pay; and
- (b) It is reasonably likely that, by Your agreeing not to pursue Your client for the disputed amount,



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the dispute will be settled and the intimated Claim will not be made against You;

Our total aggregate liability in the Period of Insurance under this Extension shall not exceed £100,000.

You must account to Us for any recovery You may make, less any reasonable expenses of recovering the debt, in relation to the unpaid fees indemnified under this Extension.

### 4.3 Loss of Documents

We shall indemnify You for reasonable and necessary costs and expenses incurred with Our prior consent solely to replace or restore documents lost or damaged in the conduct of Business during the Period of Insurance provided that:

- (a) The loss or damage is sustained while the documents are either in transit or in the custody of You or any person to whom You have entrusted them;
- (b) Where the documents are in electronic format You can demonstrate to Our reasonable satisfaction that You had in place sufficient and proper procedures for the security and the daily back-up of documents.

This extension shall not cover:

- i) Loss or damage to documents arising directly or indirectly from the receipt or transmission of malware, malicious code or similar;
- ii) Loss or damage to documents arising directly or indirectly from any unauthorised access to a Computer System;
- iii) The costs of reconstituting or recovering lost inaccessible or damaged Data owned or controlled by You or any other person acting on Your behalf.

Our total aggregate liability in the Period of Insurance under this Extension shall not exceed £100,000.

### 4.4 Representation Costs

We shall indemnify You for reasonable and necessary legal costs and expenses incurred with Our prior consent for Your representation at any regulatory or professional inquiry or other proceeding which relates to or arises out of the same facts and matters of a Claim covered under the Policy.

Our total aggregate liability in the Period of Insurance under this Extension shall not exceed £100,000.



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## 5 Exclusions (What is Not Covered)

This policy shall not indemnify You against:

### 5.1 Bodily Injury

any Claim for death of or bodily injury to or psychological injury, emotional distress or anguish, shock, sickness or disease of any person; provided that this Exclusion shall not apply to any Claim for psychological injury, emotional distress or anguish or shock which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Business.

### 5.2 Cyber First Party Loss

Relevant First Party Loss caused by, resulting from, or arising out of:

(a) a Cyber Act; or

(b) any partial or total unavailability or failure of any Computer System;

provided the Computer System is owned or controlled by You or any other party acting on Your behalf in either case; or

(c) the receipt or transmission of malware, malicious code or similar by You or any other party acting on Your behalf.

This Exclusion shall not apply to the Loss of Documents Extension if applicable.

### 5.3 Data Protection Law First Party Loss

Relevant First Party Loss for breach of Data Protection Law in respect of Data by You or any other party acting on Your behalf.

### 5.4 Employment Claims

any Claim by any person in respect of a contract of service that such person is, has been or has made an application to be under, with You.

### 5.5 Fines Penalties and Punitive Damages

any Claim for any fine or penalty, the multiple part of any damages, exemplary, punitive or aggravated damages, provided that this Exclusion will not apply to:

(a) any Claim relating to any actual or alleged defamation arising out of Your Business; and

(b) exclude or limit any indemnity afforded by Insuring Clause 3.2, Awards by Ombudsman.

### 5.6 Fraud or Dishonesty

any Claim if the Insured seeking indemnity for such Claim has committed or condoned any dishonest or fraudulent act or omission that is material to the amounts payable as a result of such Claim, provided that:

(a) this Exclusion will not take effect unless and until such Insured admits to Us that such Insured did commit or condone such dishonest or fraudulent act or omission, or a final and unappealable judgment or adjudication establishes that such Insured committed or condoned such dishonest or fraudulent act or omission;

(b) in the event that this Exclusion does take effect, then the Insured against whom it does so take effect shall reimburse Us for any Defence Costs paid to such Insured in relation to such Claim prior to the exclusion applying;



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- (c) any monies which the Firm is entitled to retain as a result of the conduct of an Insured against whom this Exclusion takes effect, which would otherwise have been paid or payable to such Insured, shall be deducted from any amount payable under this policy to such Firm; and
- (d) for the purposes of applying this Exclusion, no dishonest or fraudulent act or omission shall be imputed to a body corporate unless it was committed or condoned by, in the case of a company, all directors of that company, or in the case of an LLP, all members of that LLP; or to a partnership unless it was committed or condoned by all of the partners.

### **5.7 Insured v Insured**

any Claim brought by one Insured against another Insured.

### **5.8 Interruption of Service**

any Claim directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:

- (a) to You or any other party acting on Your behalf by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by You;
- (b) by any utility provider, but only where such failure or interruption of service impacts a Computer System owned or controlled by You or any other party acting on Your behalf;

provided that this Exclusion shall not apply to any Claim for loss or damage which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Business.

### **5.9 Investment Returns**

any Claim arising out of the giving of any express or implied warranty or guarantee relating to the financial return of any investment or portfolio of investments

### **5.10 Jurisdiction and Geographical Limits**

Any Claim:

- (a) brought in a jurisdiction outside the jurisdictional limits as shown on the Schedule; or
- (b) arising out of work undertaken outside the geographical limits as shown on the Schedule.

### **5.11 Land and Vehicles**

any Claim arising directly or indirectly from the ownership, possession or use by You of land, buildings, aircraft, watercraft, vessels or mechanically propelled vehicles.

### **5.12 Nuclear Risks**

any Claim directly or indirectly caused by, or contributed to by, or arising from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

### **5.13 Pollution**

any Claim arising out of or relating directly or indirectly to or in consequence of seepage, pollution or contamination of any kind, save that this Exclusion will not apply to any Claim which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Business.



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### 5.14 Prior Claims

any Claim arising out of any:

- (a) Claim; or
- (b) circumstance

which has been notified under any other policy of insurance attaching prior to the inception of this policy.

### 5.15 Property Damage

any Claim for physical loss of or damage to property.

This Exclusion shall not apply to:

- (a) any Claim for loss of or damage to property which arises from any actual or alleged breach of duty in the performance of (or failure to perform) Business; or
- (b) The Loss of Documents Extension, if applicable.

### 5.16 Retroactive Date

any Claim arising out of any act or omission prior to any Retroactive Date specified in the Schedule, provided always that the Retroactive Date complies with at least the minimum required by the Professional Indemnity Insurance Regulations.

### 5.17 Sanctions

any Claim or Defence Costs, nor shall We provide any benefit under the policy, to the extent that payment of such Claim or Defence Costs, or provision of such benefit, would expose Us 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, or United States of America.

### 5.18 Supply of Goods

any Claim for defect in, lack of fitness of or failure to conform with description of goods sold or supplied by You or by any person acting for or on Your behalf, provided that this Exclusion will not apply in connection with the provision, sale, licence, lease, amendment or adaptation by You of any computer software, hardware, solution, package or publication.

### 5.19 Terrorism

any Claim arising from, directly or indirectly caused by, resulting from or in any way in connection with an Act of Terrorism.

Provided that this Exclusion does not exclude or limit any liability We may have to indemnify You against civil liability or related Defence Costs arising from any actual or alleged breach of duty in the performance of (or failure to perform) Business.

### 5.20 Trading Losses

any Claim arising out of or in connection with any trading losses or trading liabilities incurred by any business managed by or carried on by You, but this Exclusion shall not apply to any Claims made against You for negligence in the normal course of their conduct of any receivership or procedures under (as applicable) the Insolvency Act 1986, the Bankruptcy & Diligence (Scotland) Act 2007, the Insolvency (Northern Ireland) Order 1989 or in the Republic of Ireland any



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receivership or insolvency procedures under the Companies Acts 2014 or the Bankruptcy Act 1988 or any amendment or re-enactment thereof.

### 5.21 War

any Claim directly or indirectly caused by, or contributed to by, or arising from war, invasions, acts of foreign enemies, hostilities (whether war be declared or not) civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority

### 5.22 Warranty or Guarantee

any Claim arising directly from any liability assumed by You under any express warranty or guarantee unless such liability would have attached notwithstanding such express warranty, or guarantee.

## 6 Claim Conditions

### 6.1 Notification

- (a) You shall give Us notice in writing as soon as reasonably practicable of:
  - i) any Claim; or
  - ii) the discovery during the Period of Insurance of reasonable cause for suspicion of dishonesty or fraud on the part of any former or present Partner, Director, Member, employee, consultant, sub-contractor or Alternate of the Firm, whether giving rise to a Claim under this policy or not.
- (b) If, during the Period of Insurance, You become aware of any circumstance which may give rise to a Claim, You shall give notice in writing of such circumstance to Us as soon as reasonably practicable. However, such notice shall in no event be given any later than the last day of the Period of Insurance.
- (c) Cover under this policy shall be extended to a Claim against You that is made after expiry of the Period of Insurance if that Claim arises from a circumstance notified under clause (b) of this Condition or from a notification under clause (a)(ii) of this Condition, but only if You have complied with the requirements of such clause (and subject in any event to all other provisions of this policy). Any dispute about such compliance shall be resolved in accordance with General Condition 8.5 Dispute Resolution.
- (d) 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**.

### 6.2 Conduct of Claims

- (a) You shall:
  - i) not admit liability for, or settle, any Claim without Our written consent (such consent not to be unreasonably withheld or unreasonably delayed); and
  - ii) not incur any Defence Costs without Our written consent (such consent not to be unreasonably withheld or unreasonably delayed).
- (b) We shall be entitled at Our own expense at any time to take over and conduct in Your name the defence, investigation or settlement of any Claim and to conduct an investigation into circumstances notified under Claims Condition 6.1(b) and to receive at all times Your full co-operation for this purpose.
- (c) You shall be entitled to any and all information and/or documentation regarding the defence, investigation or settlement of any Claim and/or the investigation into any circumstances as You may reasonably request from Us.



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- (d) Where evidenced by You, compliance by You with any rules, requirements, directions or guidance of any Ombudsmen, regulator, law enforcement agency or other official body having authority in respect of You, or generally any rule or requirement of law, will not constitute a breach of any clause of this policy.

### 6.3 Advancement of Defence Costs

Subject to General Condition 8.2, clause (b)(ii) and General Condition 8.6, clause (b), We will indemnify You in respect of Defence Costs as and when they are incurred.

### 6.4 Kings Counsel Clause

Neither You nor Us shall be required to contest any legal proceedings unless a King's Counsel or in the Republic of Ireland a Senior Counsel (to be mutually agreed upon by You and Us or failing agreement to be appointed by the President of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland as applicable) shall advise that, taking due account of the interests of both You and Us, such proceedings should be contested.

### 6.5 General Subrogation Rights

We shall not exercise any right of subrogation against any other Insured, except in relation to an Insured against whom Exclusion 5.6 Fraud or Dishonesty, has taken effect.

## 7 Special Conditions

### 7.1 Difference in Conditions

- (a) The insurance provided by this policy shall, notwithstanding any policy wording to the contrary, be, in each and every respect and in respect of each and every claim and in the aggregate, no less favourable and provide no less protection to You than the Approved Minimum Wording. Where the Period of Insurance exceeds 18 months, the Approved Minimum Wording shall be deemed to incorporate any amendments thereof made subsequent to the inception of the policy, and any reference in Section C of the Approved Minimum Wording to minimum limits of indemnity or maximum amounts of excess shall be deemed to incorporate any amendments to such minimum limits of indemnity or maximum amounts of excess prescribed by the applicable regulations specified in Section C made subsequent to the inception of the policy.
- (b) To the extent that the terms of this policy provide coverage to You that would not be provided by Section A of the Approved Minimum Wording then, notwithstanding any policy wording to the contrary, the indemnity in respect of such coverage shall be in addition to the limit of indemnity provided by the Approved Minimum Wording.
- (c) In any dispute as to whether the insurance under this policy is in any respect or in the aggregate less favourable or gives less protection to You than the Approved Minimum Wording would do, a sole arbitrator (irrespective of the number of parties to the dispute) who shall be agreed between You and Us or failing such agreement shall be selected at the request of either You or Us by the President for the time being of the Institute of Chartered Accountants in England and Wales/of Scotland/in Ireland (as applicable) shall be appointed to resolve the dispute in accordance with the Arbitration Act 1996. The Arbitrator's decision (which will be based on English law unless the relevant Insured's principal place of business is in Scotland, Northern Ireland or the Republic of Ireland, in which case the law of Scotland, Northern Ireland or the Republic of Ireland, as the case may be, will apply), shall be binding on both Us and You.

### 7.2 Extended Policy Period

The Period of Insurance shall be extended by the Extended Policy Period where You have not, prior to the expiration of the Period of Insurance, obtained Qualifying Insurance, incepting on and with effect from the day immediately following the expiration of the Period of Insurance. This special condition shall not apply to policies of insurance issued by the Assigned Risks Pool which shall



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have the meaning given by the Professional Indemnity Insurance Regulations.

### 7.3 Non-Avoidance and Prejudice

(a) We will not:

- i) avoid this policy;
- ii) claim to be discharged from any or all liability to provide any indemnity (in whole or in part) under this policy; or (subject to clause (c) of this Special Condition and Special Condition 7.4 Non-Compliance) seek to reduce the indemnity due under this policy

on the grounds of a breach of the duty of fair presentation of the risk to Us, provided always that such breach was free of any fraudulent conduct or intent to deceive. It shall be for Us to establish that such breach resulted from any fraudulent conduct or intent to deceive.

(b) Nothing in this policy shall be construed as a warranty.

(c) In the event that any circumstance is notified to Us and You had knowledge prior to the Period of Insurance of such circumstance, and You should have notified it under any previous policy (whether with other insurers or not), We shall not seek to exclude any Claim arising out of such circumstance, but the indemnity hereunder shall be limited to the indemnity which would have been available under the earliest such previous policy if such circumstance had been properly notified.

### 7.4 Non-Compliance

Where Your breach of, or non-compliance with, any condition of this policy has resulted in prejudice to Us:

- (a) in the handling or settlement of any Claim against You; or
- (b) in the obtaining of reimbursement from any dishonest or fraudulent person as referred to in Exclusion 5.6, subparagraph (c)

and the indemnity is payable direct to the Claimant in accordance with clause General Condition 8.8, No Set-Off, We will pay the indemnity in full and You shall reimburse Us in respect of any amount (including liability for Claimant's costs, expenses and disbursements) which would not have been payable by Us in the absence of such prejudice.

### 7.5 Run-Off Cover

If a Firm ceases during or on expiration of the Period of Insurance or, if applicable, the Extended Policy Period, then We shall provide run-off cover in accordance with the Professional Indemnity Insurance Regulations for a minimum of two years from the date of cessation provided You pay an additional premium. In the event that run-off cover does not incept for reasons of non-payment, We shall give notice to the Relevant Institute within 7 days of the specified date and You shall be deemed to consent to such notification being made.



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## 8 General Conditions

### 8.1 Interpretation

In this policy:

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

### 8.2 Indemnity Limit

- (a) Unless a higher Indemnity Limit is specified in the Schedule, We shall not be liable to make any payment of indemnity under this policy (other than in respect of Defence Costs) that exceeds the following minimum amounts:
  - i) for Authorised Work, such limit on Our liability shall apply on an each and every claim basis, and shall be the minimum level of professional indemnity insurance cover required under the Legal Services Regulations;
  - ii) for Insurance Distribution Work, such limit shall be the minimum level of professional indemnity insurance cover required under the Designated Professional Body Handbook; and
  - iii) for Your Business, such limit shall be the minimum level of professional indemnity insurance cover required under the Professional Indemnity Insurance Regulations.
- (b) The Indemnity Limit under clause (a) of this General Condition is exclusive of Defence Costs. Accordingly:
  - i) Defence Costs shall be paid by Us in addition to other payments due under this policy, and regardless of the limit on Our liability under clause (a) of this General Condition; but
  - ii) if a payment in excess of the amount of indemnity available under this policy has to be made to dispose of any Claim against You, Our liability for Defence Costs shall be only that proportion that the Indemnity Limit available under this policy bears to the total amount which is required to be paid to dispose of such Claim.

### 8.3 Cancellation

- (a) Subject to General Condition 8.7, Fraudulent Claims, this policy may not be cancelled unless You and We agree mutually in writing to cancel the policy.
- (b) In the event of such agreement, We shall within 7 days of the date upon which such agreement in writing is reached, write to:
  - i) You at the address shown in the Schedule notifying You that the policy will be cancelled with effect from a date not less than 30 days after the date of such agreement; and
  - ii) the Relevant Institute, notifying it of the agreement, the effective date of cancellation and Your name.

### 8.4 Choice of Law

This policy shall be governed by and construed in accordance with the laws of the country in which the Firm has its headquarters; provided that:



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- (a) if none of the Relevant Institutes is based in that country, then the country whose laws shall apply shall instead be whichever of the countries of the Relevant Institutes that has the closest connection with the Firm; and
- (b) where the Firm is comprised of more than one entity, the headquarters or the country with the closest connection shall be determined as a single location for the Firm taken as a whole.

### 8.5 Dispute Resolution

- (a) Any dispute between You and/or Us arising out of or in connection with this policy shall be referred to arbitration before a sole arbitrator (to be mutually agreed upon by You and Us, or, failing agreement, to be appointed by the President of the Relevant Institute) whose decision shall be final and binding on the parties.
- (b) In the event of any dispute concerning liability to indemnify You (including without limitation a dispute as to the policy year under which any Claim or circumstance might fall to be dealt with between (a) Us and (b) any insurer(s) subscribing to the policy corresponding to this policy in respect of a previous period of insurance), You and We agree that We will advance Defence Costs and indemnify You in accordance with Insuring Clauses 3.1-3.3 and Claims Condition 6.3 above pending resolution of any such dispute.
- (c) To the extent that any of the provisions of this General Condition 8.5 may fail and/or for the purposes of any application under the Arbitration Act 1996, the courts of the country identified in General Condition 8.4, Choice of Law, shall have exclusive jurisdiction to hear and determine any disputes, suits, actions or proceedings that may arise out of or in connection with this policy.

### 8.6 Excess

- (a) If an amount is specified in the Schedule by way of an excess, this amount shall be borne by You at Your own risk and Our liability to indemnify You shall only be in excess of this amount.
- (b) The amount specified in the Schedule by way of an excess shall not be applicable to Defence Costs (unless the Claim arises from the conduct of Business which required authorisation by the Financial Conduct Authority or any relevant successor body).
- (c) Notwithstanding any amount specified in the Schedule the maximum amount to be borne by You at Your own risk in relation to a Claim or Claims made during the Period of Insurance shall not exceed the maximum calculated in accordance with the relevant provisions of the Professional Indemnity Insurance Regulations.

### 8.7 Fraudulent Claims

- (a) If any Insured shall make a claim for indemnity under this policy knowing the same to be false or fraudulent as regards amount or otherwise, then, in respect of that Insured only:
  - i) We shall not be liable to pay the claim;
  - ii) We may recover from the Insured making the false or fraudulent claim any sums paid by Us in respect of the claim; and
  - iii) We may by notice to the Insured treat the policy as having been terminated in respect of the Insured making the false or fraudulent claim with effect from the time of the fraudulent act.
- (b) If We do treat the policy as having been terminated in respect of the Insured making the false or fraudulent claim:
  - i) We may refuse all liability to such Insured under the policy in respect of any Claim or potential Claim notified after the time of the fraudulent act; and
  - ii) We need not return any of the premiums paid under the policy in respect of the cover for the Insured making the false or fraudulent claim.



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- (c) Treating the policy as having been terminated under this General Condition in respect of an Insured making a false or fraudulent claim does not affect the rights and obligations of the parties to the policy with respect to a Claim or potential Claim notified before the time of the fraudulent act.
- (d) The policy shall continue in full force and effect for the benefit of all other Insureds as if such false or fraudulent claim had not been made.

### **8.8 No Set-Off**

Any amount payable by Us by way of indemnity under this policy in respect of Your civil liability to a Claimant will be paid only to the Claimant. We are not entitled to set off against any sums which are payable under this policy any payment due to them from You including, without limitation, any payment of premium or any payment due to Us by way of reimbursement. This clause shall not apply where the Claimant confirms in writing that You have paid in full any civil liability direct to the Claimant, or You otherwise provide evidence to Us of such payment.

### **8.9 Other Insurance**

Our liability under this policy is not reduced or excluded by reason of the existence or availability of any other insurance. This clause does not affect any right We may have to claim contribution from any other insurer which is also liable to indemnify You.

### **8.10 Third Party Rights**

A person who is not a party to this policy has no rights under the Contracts (Rights of Third Parties) Act 1999 or any equivalent legislation in the Republic of Ireland or any amendment or re-enactment thereof to enforce any terms of this policy. This condition does not affect any right or remedy of a third party which exists or is available other than by virtue of the Contracts (Rights of Third Parties) Act 1999.

### **8.11 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](http://www.fca.org.uk) which includes a register of all the firms they regulate or by calling the FCA on 0800 111 6768.

### **8.12 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](mailto:compliance@xsassure.com)



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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](mailto: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 or address, or visit their website [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk).

### **8.13 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](http://www.fscs.org.uk).

### **8.14 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 adjustors, sub-contractors, regulators, law enforcement agencies, fraud and



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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.

### **8.15 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](mailto:compliance@xsassure.com).