



Professional Liability D&C (AOC)



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Important Note

It is important to state at the outset that, on entering into this policy, *You* will be deemed to understand and accept all of the terms and conditions contained within it. It is therefore vitally important that *You* read the terms and conditions of this policy in detail and that *You* contact *Your* insurance broker immediately if *You* have any doubts about any of the obligations arising or terminology used.

It is also important to note that this policy is a contract between *You* and the *Insurer*. Victor Insurance are not themselves a party to this insurance contract. Victor Insurance will, however, continue to be involved in dealing with any matters that may arise against this policy (particularly as regards any *Claims* that may arise), and further information on this is provided in Section 3.

Thank you for obtaining *Your* Professional Indemnity insurance cover via Victor Insurance.

Preamble

As part of the process of obtaining this insurance contract, *You* have made a *Proposal* to the *Insurer* and this *Proposal* has been relied upon by the *Insurer* in deciding whether or not to enter into this policy and on what terms, including premium amount.

This policy and any schedule and endorsements should all be read as if they were one document. In the event of any conflict between the various documents, the words used in any endorsements and schedule will override the words used in this policy. Any term that is defined outside of Section 7 will override any contradictory definition that may be contained within Section 7.

Any reference in this policy to the singular will also include the plural and vice versa. Also, any reference to a statute or statutory instrument will include any modifications to (or re-enactment of) them.

This policy will be subject to the law of England and Wales and, on entering into it, *You* agree to submit to the exclusive jurisdiction of the English courts.

Various words and phrases have a standardised meaning within this policy and such words and phrases are italicised throughout this policy and are defined in Section 7. Headings and notes are for information purposes only and are not intended to affect the meaning of this policy.

Important phone numbers

Construction documentation and collateral warranty service

020 7280 8948

This is a free service provided by solicitors, DWF LLP offering advice in relation to whether the terms of prospective appointments, collateral warranties or novation agreements may give rise to issues impacting on *Your* insurance policy.

For an additional contribution of between GBP125 and GBP195 per hour, DWF LLP will also provide the following:

- a) More extensive coverage advice where detailed examination of other contractual documentation is required, i.e. building contracts, lease agreements etc;
- b) More general commercial legal advice as to the terms of any such documentation referred to above.

The appropriate level of contribution will be dependent upon the project and the complexity of the documentation and will be determined and agreed with *You* prior to any fees being incurred.

Please contact DWF LLP quoting that you have an enquiry under the Victor Insurance Legal Advisory Service. Please have *Your* policy number and *Schedule* to hand, *You* will be asked to submit a copy of the Schedule to DWF LLP when making an enquiry. Their contact details are as follows:

DWF LLP
20 Fenchurch Street
London EC3M 3AG
Email: victorcwreview@dwf.co.uk
Fax: 020 7280 8899

DWF LLP are the *Insurer's* solicitors and if *You* use any of these services, any and all information and/or documents *You* provide to DWF LLP and any advice given may be shared with *Your Insurer*. *You* should note that the *Insurer* may seek to rely upon such information in the event of a subsequent *Claim* or potential *Claim* being notified under *Your* policy.

Employment advice helpline

020 7280 8888

victoreah@dwf.co.uk

This number gives *You* access to a complimentary employment advice telephone helpline provided by solicitors, DWF LLP. The service offers advice in relation to all areas of employment law subject to the following:

- a) DWF LLP will provide up to one hour of free legal advice to *You* per month for matters not requiring detailed examination of documentation;
- b) the telephone helpline will be available 9.30am to 5.30pm Monday to Friday (excluding Bank and Public holidays)

For a reduced rate of GBP175 per hour, DWF LLP will provide a review of the Contracts of Employment and Internal Employment Policies and Procedures used by *Your* practice for employees in *Your* own business, including advice as to whether these comply with current employment law.

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For a reduced rate of GBP195 per hour, DWF LLP will provide *You* with a legal service for any other employment law related matters, including litigation and other dispute resolution.

Please quote *Your* policy number when *You* call / email.

Section 1

Scope of Cover

Insuring clause

In consideration of the premium that *You* have agreed to pay (as shown in the *Schedule*), the *Insurer* agrees, subject to the terms, conditions and exclusions of this Section 1, to indemnify *You*:

- a) For any *Claim* (including claimant's costs and expenses) against:
 - i) *You*; and/or
 - ii) Any of *Your* present or former *Partners, Directors, Members* or *Employees*; and/or
 - iii) *You* for work undertaken by any specialist sub-contractor and/or sub-consultant acting or having acted for *You* or on *Your* behalf under a written agreement and for whom *You* are responsible (provided that the rights of recourse against such specialist sub-contractors and/or sub-consultants have not been waived or otherwise impaired),

provided that such *Claim* is first made and notified during the *Policy Period*, arises out of *Your Professional Business* and would, if successful, result in *You* incurring a civil liability;
- b) For any *Claim* (including claimant's costs and expenses) first made against any of *Your* present or former *Partners, Directors, Members* or *Employees* during the *Policy Period* in their capacities as a director or officer of any *Third Party* company or trustee of any *Third Party* trust where such directorships, officerships or trusteeships are held by reason of *Your Professional Business*, provided that the *Claim* relates to services ordinarily undertaken by *Your Professional Business*.

The *Insurer's* total liability under this policy in respect of any one *Claim* (including *Defence Costs*) shall not exceed the *Limit of Indemnity*.

Section 2

Extensions

Subject to the terms and conditions elsewhere in this policy, the following extensions are given:

Acquisitions

The definition of “*You*” is extended to include any subsidiary which *You* may acquire or create during the *Policy Period*. Such cover shall only apply in respect of any *Claim* or *Circumstance* arising from any *Professional Business* undertaken by the subsidiary on or after the date of acquisition or creation. However, if the newly acquired or created subsidiary:

- a) Has total gross income which exceeds 10% of *Your* total income for the last completed financial year; or
- b) has any *Claims* or *Circumstances* paid or reserved against it

then the *Insurer* will be entitled to amend the policy terms and conditions and charge a reasonable additional premium to include the newly acquired or created subsidiary.

Court attendance

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* in the event that the *Insurer* or their solicitors require *You* or any other relevant party (not including expert witnesses) to attend court or any arbitration or adjudication hearing as a witness of fact or in connection with a *Claim* made against *You* or any of *Your* present or former *Partners, Directors, Members* or *Employees* during the *Policy Period* at the following rates for each day or part day on which attendance is required:

- a) Any of *Your Partners, Directors* or *Members* – GBP500
- b) Any of *Your Employees* – GBP250
- c) Any other relevant party – up to GBP500

The *Insurer's* liability under this extension is limited to GBP50,000 each claim.

This extension is not subject to an *Excess*.

Inadvertent failure to make a *Fair Presentation* before policy commenced

In order to take advantage of this particular extension, *You* must establish to the *Insurer's* satisfaction that the event(s) referred to in a) to d) below were innocent and free of any fraudulent conduct or intent to deceive.

Subject to what appears above and in addition to the *Insurer's* obligations under the Insurance Act 2015, the *Insurer* will not exercise its right to avoid this policy or avoid any *Claim* where, before the start of the *Policy Period*, there was (or it is asserted that there was):

- a) A failure to disclose (or a misrepresentation of) material facts to the *Insurer*, and/or
- b) Provision of incorrect particulars or statements to the *Insurer*, and/or
- c) A failure to disclose to the *Insurer* that a *Claim* has been (or is likely to be) made; and/or
- d) A failure to disclose to the *Insurer* that a *Claim* has been (or is likely to be) intimated.

In any case where *You* could have notified matters falling within c) or d) above to a previous insurance policy, if the previous policy had a lower limit of indemnity than the *Limit of Indemnity* under this policy,

the *Insurer* will only be liable to indemnify *You* in respect of those matters to the extent of the indemnity that would have been provided under the previous policy.

Where the alleged event in a) to d) above has resulted in prejudice to the handling or settlement of any *Claim or Circumstance*, the indemnity afforded by this policy in respect of that *Claim or Circumstance* (including *Defence Costs*) will be reduced to a sum which, in the *Insurer's* reasonable opinion, would have been payable by them if the prejudice had not occurred.

Inadvertent breach of policy conditions after policy has commenced

In order to take advantage of this particular extension, *You* must establish to the *Insurer's* satisfaction that the event(s) referred to in a) to d) below were innocent and free of any fraudulent conduct or intent to deceive.

Subject to what appears above and in addition to the *Insurer's* obligations under the Insurance Act 2015, the *Insurer* will not exercise its right to avoid this policy or avoid any *Claim* where, during the *Policy Period*, there has been (or it is alleged that there has been):

- a) A breach of any of the conditions contained within Section 3 of this policy (or of any extensions or endorsements attaching to this policy); and/or
- b) A breach of any implied policy conditions (including, but not limited to, the duty to make a *Fair Presentation*); and/or
- c) A misrepresentation of material facts to the *Insurer*; and/or
- d) Provision of incorrect particulars or statements to the *Insurer*.

Where the alleged event in a) to d) above has resulted in prejudice to the handling or settlement of any *Claim or Circumstance*, the indemnity afforded by this policy in respect of that *Claim or Circumstance* (including *Defence Costs*) will be reduced to a sum which, in the *Insurer's* reasonable opinion, would have been payable by them if the prejudice had not occurred.

Joint Ventures / Consortia

The *Insurer* will indemnify *You* for any *Claim* first made against *You* during the *Policy Period* and notified in accordance with section 3 below which arises out of the conduct of *Your Professional Business* whilst a member of a joint venture or consortium. Provided that:

- a) the *Insurer* will only indemnify *You* for *Your* share of the total liability of the joint venture or consortium; and
- b) *You* shall not, without the *Insurer's* prior written consent, waive any right of recovery against any joint venture or consortium partner or any claim for contribution against such partner; and
- c) the *Insurer* will retain all rights against *Your* joint venture or consortium partners to which they may become subrogated.

Legal defence

For the purposes of this extension *You* shall mean *You* and *Your* present or former *Partners, Directors, Members or Employees*

The *Insurer* will indemnify *You* for:

- a) Any award of costs and/or expenses against *You* at any proceedings (including criminal proceedings) before any court, tribunal or enquiry having the like power to compel attendance of witnesses at which *You*, in the opinion of the *Insurer*, should be represented (whether because of any conduct which might give rise (or has given rise) to a *Claim* against *You* under this policy, or by reason of any prejudice which might otherwise be caused to *Your* professional reputation). For the avoidance of doubt, this extension will apply to any proceedings brought against *You* under a prevailing listed

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building, building regulation or health and safety legislation including the Construction (Design and Management) Regulations 1994, the Planning (Hazardous Substances) Act 1990, the Occupiers Liability Act 1957 and the Health and Safety at Work Act 1974 and any applicable statutory instruments, orders or regulations or any applicable codes of practice or procedures issued by the Health and Safety Executive or the Health and Safety Commission;

- b) All costs and expenses of legal representation that *You* might incur in accordance with a) above and which are not otherwise covered by this policy;

Provided that:

- i) This extension will only indemnify *You* in relation to matters that have been notified to the *Insurer* during the *Policy Period* in accordance with Section 3 below;
- ii) Costs and expenses incurred under b) above are payable as part of and not in addition to the *Limit of Indemnity*;
- iii) Only those costs and expenses that have been incurred with the consent of the *Insurer* will be payable under this extension;
- iv) The *Insurer* will not be liable to pay any penalty or fine made against *You*;
- v) The *Insurer* will be entitled if it so decides to nominate a solicitor (and, if appropriate, a barrister) of its own choosing to represent *You*;
- vi) The *Insurer's* liability under this extension is limited to GBP250,000 each claim;
- vii) *You* will bear 10% of the total amount payable under this extension or GBP500 (whichever is the greater) in respect of each claim;
- viii) Save as provided in vii) above, this extension is not subject to an *Excess*.

Loss of documents

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* for any reasonable and necessary costs and expenses that are incurred by *You* in replacing, restoring or reconstituting any *Document* which suffers either physical loss or damage during the *Policy Period*, provided that the *Document* either belongs to *You* or is in *Your* care, custody or control or is one for which *You* are responsible. However, excluded from this extension is any loss of or damage to *Documents* arising directly or indirectly from the transmission or impact of any virus or unauthorised access to a system.

The *Insurer's* liability under this extension is limited to the *Limit of Indemnity*.

This extension is not subject to an *Excess*.

Mitigation

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* for any reasonable costs and expenses that are incurred by *You* seeking to mitigate, minimise or avert a *Claim* but only if it is agreed that these costs and expenses are less than the amount of a potential *Claim*.

The *Insurer's* liability under this extension is limited to the *Limit of Indemnity*.

Pollution

Subject to the limitations below, the *Insurer* will indemnify *You* in respect of any *Claim* involving *Pollution*.

This extension is subject to the following limitations:

- a) This extension will only indemnify *You* in relation to *Claims* that arise in the course of *Your Professional Business*;

- b) This extension will only indemnify *You* in relation to *Claims* that have been notified to the *Insurer* during the *Policy Period* in accordance with Section 3 below;
- c) The *Insurer* shall not be liable for that part of any *Claim* that either directly or indirectly results from any environmental audit or any other form of inspection carried out by *You* or on *Your* behalf whose sole or primary purpose is to identify, locate or treat *Pollution*;
- d) The *Insurer* shall not be liable for that part of any *Claim* that arises out of or in any way involves any *Bodily Injury* or fear of suffering *Bodily Injury* caused by or in any way attributable to *Pollution*;
- e) The maximum amount payable in the aggregate over the course of the *Policy Period* by the *Insurer* in respect of *Pollution* (including any claimant's costs and any *Defence Costs*) shall not exceed the *Limit of Indemnity*. This indemnity limit for *Pollution* is not additional to and shall not increase the *Limit of Indemnity* for *Claims*; and
- f) An *Excess* will apply to each *Claim* arising under this extension.

If a *Claim* involves allegations of negligent structural design or specification or failure to report a structural defect in a property, then the following further limitations will apply in addition to those above:

- i) The *Insurer* shall only be liable for that part of any *Claim* which relates to the cost of re-designing, re-specifying, remedying and/or rectifying the defective structure;
- ii) Clause e) above will be disapplied and the following will apply in its place: "The *Insurer's* liability under this extension is limited to the *Limit of Indemnity*."

Ombudsman awards

Subject to prior written consent having been obtained, the *Insurer* will compensate *You* for:

- a) All sums payable; and
- b) The cost of taking such steps as *You* are directed to take

in respect of any award or determination of an official Ombudsman body against *You*, provided that the matter is duly notified to the *Insurer* as a *Claim* in accordance with the provisions of Section 3 below.

Section 3

Dealing with Claims

Part 1 - Notification

Claims

You must give written notice to the *Insurer* of any *Claim* that is made against *You* or any of *Your* present or former *Partners, Directors, Members or Employees* as soon as practicable but in any event within the *Policy Period*. All notifications must be in writing to:

Victor Insurance Claims Department
20 Fenchurch Street
London
EC3M 3AG

or by email to victorclaims@victorinsurance.uk.com or fax to 020 7280 8899

Notice to the *Insurer* under this policy will be deemed to have been properly made if received in writing by Victor Insurance and the date of posting/fax/email will constitute the date that notice was given under this policy.

Circumstances

You must give written notice to the *Insurer* of any *Circumstance* as soon as practicable but in any event within the *Policy Period*. All notifications must be in writing to the address/fax number provided in the "Claims notifications" section above.

All notifications must include at least the following:

- a) A statement that it is intended to serve as a notice of a *Circumstance* of which *You* have become aware which may give rise to a *Claim* against *You*;
- b) The reasons for anticipating that a *Claim* may be made against *You* (including full particulars as to the nature and date(s) of the alleged *Wrongful Act(s)*);
- c) The identity of any potential claimant(s);
- d) The identity of the present or former *Partner, Director, Member or Employee* (or such other person or party acting or having acted for *You* or on *Your* behalf) involved in the *Circumstance*; and
- e) The date on which (and manner in which) *You* first became aware of the *Circumstance*.

Provided that notice has been given in accordance with the requirements of this Section, any later *Claim* made against *You* that arises out of the *Circumstance* that has been notified will be deemed to have been made at the date when the *Circumstance* was notified in accordance with the procedure above.

Adjudication

You must give written notice within 48 hours, directly to the *Insurer*, when any of *Your* present *Partners, Directors or Members* first become aware:

- a) of receipt of an *Adjudication Notice* in which *You* are named as respondent; or
- b) that a dispute is likely to be referred to Adjudication in which *You* are likely to be named

as respondent.

You must deliver directly to the *Insurer*, within 48 hours of first awareness of a) and/or b) above full written details of the matter(s) notified under a) and/or b) above, including any subsequent correspondence or notices received.

Part 2 – Special conditions relating to the handling of Claims/Circumstances

Allocation

In the event that any *Claim* involves both covered matters and matters or persons not covered under this policy, a fair and proper allocation of any *Defence Costs*, *Damages* or settlements shall be made between *You* and the *Insurer* at the conclusion of the matter, taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this policy.

Contesting a claim

You will not be required to contest any legal proceedings unless a Queen's Counsel advises that such proceedings could be contested, with the probability of success. The procedure for appointing such Queen's Counsel is set out in Section 5 below under the heading "Disputes".

Consent to settle

Subject to receiving *Your* consent, the *Insurer* may make any settlement it deems expedient of any *Circumstance* or *Claim* against *You* or any of *Your* present or former *Partners*, *Directors*, *Members* or *Employees*.

Where *You* do not consent, the *Insurer* may elect to pay *You* the amount at which the *Insurer* reasonably believes the *Claim* or *Circumstance* ought to be settled (less the *Excess*). Upon such payment being made, *You* may use the payment as *You* see fit, but the *Insurer* will play no further part in the *Claim* or *Circumstance* (whether in relation to paying further *Defence Costs*, paying towards the ultimate settlement or otherwise).

You must not admit or assume any liability towards any claimant, enter into any settlement agreement, or consent to any judgment without the prior consent of the *Insurer*.

Co-operation

You will at *Your* own cost:

- a) Render all reasonable assistance to the *Insurer* and co-operate in the investigation and defence of any *Claim*; and
- b) Use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any *Claim* against *You* or any of *Your* present or former *Partners*, *Directors*, *Members* or *Employees*; and
- c) Give such information and assistance to the *Insurer* as may reasonably be required to enable the *Insurer* to determine its liability under this policy.

You will also use all reasonable endeavours to ensure that any relevant specialist sub-contractor and/or sub-consultant acting or having acted for *You* or on *Your* behalf complies with a)-c) above, at their own cost.

Defence

The *Insurer* will be entitled, if it so desires, to take over and conduct in *Your* name the investigation, representation, defence and/or settlement of any *Claim* or *Circumstance* and shall have full discretion in such conduct. In the event that the *Insurer* decides that representation by a solicitor is necessary (such decision to be at the sole discretion of the *Insurer*) then the *Insurer* may select a solicitor of its choosing to provide such legal representation at the *Insurer's* cost.

Subrogation

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The *Insurer* will be entitled, if it so desires, to pursue in *Your* name legal, arbitration or other proceedings so as to challenge, appeal or amend any decision, direction or award of any court or tribunal against *You* arising from any *Claim* under this policy.

In the event of any payment being made by the *Insurer* under this policy, the *Insurer* shall be subrogated to the extent of such payment to all *Your* rights of recovery and will be entitled to exercise those rights in *Your* name against any third party that it sees fit. *You* will execute all papers required and will do everything reasonably necessary to secure and preserve *Your* rights of recovery, and will give to the *Insurer* all reasonable assistance in their exercise of those rights, in accordance with the obligations under the heading "Co-operation" above.

The *Insurer* will not exercise its right of subrogation against any of *Your* present or former *Partners, Directors, Members or Employees*, save where that person has committed a dishonest or fraudulent act or omission.

Section 4

General Conditions

This policy is subject to the following general conditions:

Adjudication

You shall not without prior written consent of the *Insurer*:

- a) make any admission in respect of the dispute being referred to Adjudication; or
- b) agree to accept the decision of the Adjudicator as finally determining the dispute with no further reference to legal Proceedings, Arbitration or Alternative Dispute Resolution.

Alteration to risk

Subject to the *Acquisitions* extension on page 7 of this policy, *You* will give to the *Insurer* written notice as soon as reasonably practicable during the *Policy Period* of any material alteration to the information supplied in the *Proposal*.

Upon receipt of such notice, the *Insurer* will be entitled to continue this policy on such new terms and conditions as it may consider appropriate.

Connected claims

All *Claims* resulting from:

- a) One act, error or omission; or
- b) A series of acts errors or omissions arising out of or attributable to the same originating cause, source or event; or
- c) The acts, errors or omissions of one person or persons acting together or in which such person or persons is/are concerned or implicated

will jointly constitute one *Claim* under this policy, and only one *Excess* will apply in respect of such *Claim*.

Disputes

All disputes which may arise out of or in relation to this policy can, at either *Your* or the *Insurer's* election, be referred to Queen's Counsel practising at the English Bar for determination. The appointment of Queen's Counsel is to be mutually agreed between *You* and the *Insurer*, their decision on the issue(s) in dispute will be final and binding on both the *Insurer* and *You*, and the cost of their involvement will be borne by the *Insurer*.

Excess

Save as stated elsewhere in this policy, the *Insurer* will only ever pay any amount in respect of any *Claim* over and above the amount stated as the *Excess* in the *Schedule*. The *Excess* will apply to *Defence Costs* and is payable by *You* in respect of each and every *Claim* covered by sections 1 and 2 of this policy.

Fraudulent claims

If *You* make any request for payment in respect of any *Claim* knowing the same to be false or fraudulent, as regards amount or otherwise, this policy will become void and all entitlements to payment in respect of any *Claim* will be forfeited.

Termination

This insurance may only be terminated by or on behalf of the *Insurer*.

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- a) by immediate notice given in writing to *You* at *Your* last known address or registered office (if a company) 14 days after the due date for the premium payment if such payment is not made; or
- b) by 30 days' notice given in writing to *You* at *Your* last known address or registered office (if a company), in which case the premium shall be adjusted on a pro-rata basis. However, if a *Claim* has been made or a *Circumstance* notified prior to the termination the *Insurer* will reserve their rights to offer a return premium.

Third party rights

No-one other than *You* is entitled to enforce any term of this policy for its own benefit, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

In the event of proceedings being brought by a *Third Party* against the *Insurer* for the enforcement of a term of this policy, the *Insurer* will have available to it all rights of defence and set-off as would have been available if the proceedings had been brought by *You*.

Section 5

Limitations and Exclusions

This policy excludes and does not cover:

Asbestos

any *Claim*, liability, expenses, costs or *Defence Costs* directly or indirectly resulting from the actual or possible presence or release of asbestos or asbestos containing materials in whatever form or quantity. Except that this exclusion shall not apply where the *Claim*, liability, expenses, costs or *Defence Costs* arise from any act, error or omission in the course of *Your Professional Business*, subject to the following:

- a) such *Claim* is first made against You and /or arises out of any *Circumstance* which You shall first notify during the *Policy Period*; and/or
- b) the *Insurer* shall not be liable for any such *Claim* directly or indirectly resulting from *Asbestos Inspections* carried out by You or arising out of or in any way involving any *Bodily Injury* or fear of suffering *Bodily Injury*; and/or
- c) The maximum amount payable in the aggregate in the *Policy Period* by the *Insurer* in respect of any such *Claim*, liability, expenses, costs or *Defence Costs* shall not exceed GBP250,000. This amount is not in addition to and shall not increase the *Limit of Indemnity*.

Associated company

any liability, expenses, costs or *Defence Costs* that You may incur as a result of any action brought or maintained by or on behalf of:

- a) You or any of Your subsidiaries; or
- b) any firm, partnership or entity in which You or any of Your Partners, Directors or Members has a financial or executive interest,

provided that this exclusion shall not apply to any such liability, expenses, costs or *Defence Costs* that originate from a *Claim* against You by a *Third Party*.

Bodily injury

any *Claim*, liability, expenses, costs or *Defence Costs* for actual or alleged *Bodily Injury* whether the person concerned has any connection with You or otherwise, except that this exclusion shall not apply where the *Bodily Injury*:

- a) Occurs to a *Third Party*;
- b) Arises out of an act, error or omission by You or on Your behalf in the course of Your *Professional Business*; and
- c) Is attributable to anything other than *Pollution*.

Breach of company legislation/regulations

any *Claim*, liability, expenses, costs or *Defence Costs* arising out of the breach by You or on Your behalf of any taxation, competition, restraint of trade or antitrust legislation or regulation.

Collateral warranty and contractual liability

any liability arising from

- a) the acceptance or guarantee by You of fitness for purpose where this appears as an

express term; or

- b) any express guarantee given by *You* including any relating to the period of a project; or
- c) any express contractual penalty made between *You* and a *Third Party*; or
- d) any acceptance by *You* of liability for liquidated damages

provided that this exclusion shall not apply if:

- a) *You* would have been liable even if there had not been any such express warranty, guarantee, contractual promise, indemnity, waiver, express agreement, penalty clause or liquidated ascertained damages clause; or
- b) the liability arises from a *Collateral Warranty* or *Duty of Care Agreement* in which case the *Insurer* will not indemnify *You* for liability arising from any greater or longer lasting benefit, obligation or duty than that given to the party with whom *You* originally contracted.

Construction costs

any liability arising out of any negligent act error or omission by *You* or on *Your* behalf in connection with the estimate of construction costs, except where such estimates are compiled by professionally qualified Quantity Surveyors.

For the avoidance of doubt a professionally qualified Quantity Surveyor for the purposes of this exclusion means:

- i) an individual with a minimum of five years' relevant experience, or
- ii) a Fellow or Associate of the Royal Institute of British Architects, the Royal Institution of Chartered Surveyors or the Chartered Institute of Builders, or
- iii) a Chartered Engineer

Defective workmanship

any *Claim*, liability, expenses, costs or *Defence Costs* arising out of or connected with defective workmanship or defective materials or the failure by *You* to supervise or inspect work carried out. Provided that any *Claim* in respect of failure to supervise or inspect work will not fall foul of this exclusion if such supervision or inspection was carried out by a qualified architect.

Directors, officers and trustees

any *Claim*, liability, expenses, costs or *Defence Costs* arising out of or connected with *Your* present or former *Partners, Directors, Members* or *Employees* in their capacities as *Your* directors, officers or trustees.

Disputes referred to arbitration

any dispute referred to arbitration under the Surveyors and Valuers Arbitration Scheme 1998 unless the law applied by the arbitrator is that of England and Wales, Scotland or Northern Ireland.

Distorted computer records

any costs or expenses incurred by *You* as a result of loss or distortion of computer records due to:

- a) The presence of magnetic flux;
- b) Defects in computer tapes;
- c) Wear, tear, vermin or gradual deterioration;
- d) Climatic or atmospheric conditions or extremes of temperature unless recoverable under a standard fire certificate;
- e) Use or processing whilst mounted in or on any machine unless as a result of loss of or

damage to the machine itself.

Employers' liability

any *Claim*, liability, expenses, costs or *Defence Costs* arising from any liability *You* may suffer towards any of *Your* present, former or prospective *Partners, Directors, Members* or *Employees* in respect of *Bodily Injury*, 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.

Excess

the amount of the *Excess* stated in the *Schedule*.

Fines, penalties, punitive, multiple or exemplary damages

any fines, penalties or punitive, multiple or exemplary damages where these have been identified separately within any award of any court or tribunal.

Fraud or dishonesty

any

- a) Of *Your Partners, Directors, Members, Employees* or any other persons or parties who commit, condone or contribute to any dishonest or fraudulent act or omission;
- b) Dishonest or fraudulent acts or omissions committed by any person after discovery by *You* of such person's fraud or dishonesty or of reasonable cause for suspicion by *You* of fraud or dishonesty on the part of such person; and
- c) Losses suffered by *You* arising out of fraud or dishonesty.

Geographical limits

any

- a) Legal proceedings brought outside the *Jurisdiction* (or brought within the *Jurisdiction* to enforce a judgment or order made outside the *Jurisdiction*); and
- b) Any act, error, or omission occurring outside the *Territorial Limits*.

Insolvency

any *Claim*, liability, expenses, costs or *Defence Costs* arising out of, based upon or attributable to *Your* insolvency, liquidation, administration or receivership.

Insurance or financial matters

any liability arising out of any negligent act, error or omission by *You* or on *Your* behalf in connection with the effecting or maintenance of insurance or in connection with the provision of finance or advice on financial matters.

Investment advice

any *Claim*, liability, expenses, costs or *Defence Costs* directly or indirectly arising out of, or in any way involving the sale of investment products including but not limited to life assurance, pensions and investment activities as more fully described in the Financial Services Act 1986 and/or Financial Services and Markets Act 2000 and subsequent re-enactment.

Limit of indemnity

any liability for any one *Claim* (excluding *Defence Costs*) in excess of the *Limit of Indemnity* stated in the *Schedule*.

Nuclear risks

any *Claim*, liability, expenses, costs or *Defence Costs* directly or indirectly attributable to, caused or contributed to by:

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

Other insurance

any *Claim*, liability, expenses, costs or *Defence Costs* where *You* are entitled to indemnity under any other policy, except in respect of any amount beyond the sum which would have been payable under such policy had this policy not been effected.

Pensions / employee benefits

any *Claim*, liability, expenses, costs or *Defence Costs* arising out of *Your* liability (or the liability of any of *Your Partners, Directors, Members* or *Employees*) in their capacity as a trustee or administrator of *Your* occupational pension scheme or *Your* employment benefit programme.

Pollution

subject to the extension in section 2 above, any *Claim*, liability, expenses, costs or *Defence Costs* arising from or connected with *Pollution*.

Pre-existing claims

any *Claim*, liability, expenses, costs or *Defence Costs* from:

- a) Any *Claim* which has been disclosed by *You* to any insurer before this policy commenced;
- b) Any *Claim* arising out of any *Circumstance* which has been disclosed by *You* to any insurer before this policy commenced;
- c) Any *Claim* or *Circumstance* which was known (or ought reasonably to have been known) to *You* before the *Policy Period*; and/or
- d) Any *Claim* or *Circumstance* disclosed on the *Proposal* made to the *Insurer* and forming part of this policy.

Property damage

any *Claim*, liability, expenses, costs or *Defence Costs* for *Damages* to property except:

- a) As provided for in the Loss of Documents extension;
- b) In connection with any civil liability incurred in respect of loss of or damage to *Documents*

except that this exclusion shall not apply where the *Claim*, liability, expenses, costs or *Defence Costs* arise from any act, error or omission in the course of *Your Professional Business*.

Restricted recovery rights

that part of any *Claim* where *Your* right of recovery is restricted by any contract.

Retroactive date

any *Claim*, liability, expenses, costs or *Defence Costs* arising from any act committed or omitted prior to the retroactive date stated in the *Schedule*.

Trading debts

any *Claim*, liability, expenses, costs or *Defence Costs* directly or indirectly arising out of, or in any way involving any trading debt incurred by *You* or any guarantee or undertaking given by *You* for a debt or performance of any other obligation by a third party.

Tender at less than economic terms

any *Claim*, liability, expenses, costs or *Defence Costs* arising out of a deliberate decision by *You* to tender for a contract at less than economic terms for commercial or goodwill reasons.

Vehicles or buildings

any *Claim*, liability, expenses, costs or *Defence Costs* arising directly or indirectly from:

- a) the ownership, possession or use by *You* or on *Your* behalf of any aircraft, watercraft or mechanically propelled vehicle; or
- b) the ownership or possession by *You* or on *Your* behalf of any buildings, structures, premises, land or property (mobile or immobile) or that part of any building leased, occupied or rented by *You* or on *Your* behalf.

War and terrorism

any *Claim*, liability, expenses, costs or *Defence Costs* directly or indirectly caused by, resulting from, or in connection with acts of war or *Terrorism* regardless of any other cause or event contributing concurrently or in any other sequence to the *Claim*, liability, expenses, costs or *Defence Costs*.

This exclusion also excludes any *Claim*, liability, expenses, costs or *Defence Costs* directly or indirectly caused by, resulting from, or in connection with any action taken in controlling, preventing, suppressing or in any way relating to war or *Terrorism*.

Section 6

Complaints

How to make a complaint

Victor Insurance's aim is to ensure that all aspects of *Your* insurance are dealt with promptly, efficiently and fairly. At all times Victor Insurance is committed to providing *You* with the highest standard of service.

If *You* have any questions or concerns about *Your* policy or the handling of a *Claim You* should, in the first instance, contact Victor Insurance or the broker where applicable. In the event that *You* remain dissatisfied and wish to make a complaint, *You* can do so at any time. Making a complaint does not affect any of *Your* legal rights. Please contact:

Chief Underwriting Officer, Victor Insurance, 1 Tower Place West, Tower Place, London, EC3R 5BU.

If *You* remain dissatisfied after Victor Insurance has considered *Your* complaint or if *You* have not received a written final response within eight weeks from the date Victor Insurance received *Your* complaint, *You* may be entitled to refer *Your* complaint to the Financial Ombudsman Service who will independently consider *Your* complaint free of charge. Their contact details are:

Post: The Financial Ombudsman Service, Exchange Tower, London E14 9SR

Telephone: (Fixed): 0800 0234567 (Mobile): 0300 1239123 (Outside UK): +44 (0) 20 7964 0500

Fax: +44 (0)20 7964 1001

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

Website: www.financial-ombudsman.org.uk

Please note:

You must refer *Your* complaint to the Financial Ombudsman Service within six months of the date of the final response

The Financial Ombudsman Service will normally only consider a complaint from private individuals, from a business that has an annual turnover of less than 2 million Euros and fewer than 10 employees or from trustees of a trust with net asset value of less than £1m.

The Financial Services Compensation Scheme (FSCS)

Under the Financial Services and Markets Act 2000, should we be unable to meet our liabilities to policyholders, compensation may be available. Insurance advising and arranging is covered for 90% of the claim, without any upper limit. For compulsory classes of insurance, insurance advising and arranging is covered for 100% of the claim, without any upper limit. Information can be obtained on request, or by visiting the Financial Services Compensation Scheme website at www.fscs.org.uk.

Section 7

Definitions

Adjudication Notice

means a notice of intention to adjudicate, notice of adjudication or referral notice, as more particularly defined in the Housing (Urban Housing Grants, Construction and Regeneration) Act 1996.

Asbestos Inspections

shall mean Type 1, 2 or 3 inspections as set out in MDHS 100 published by the Health and Safety Executive in connection with regulation 4 of the Control of Asbestos at Work Regulations 2002 (CAWR), or any other comparable inspection, whether of commercial or residential land or property.

Bodily Injury

means physical injury, sickness, disease or death of a natural person; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

Circumstance

means any matter which *You* become aware of during the *Policy Period* which may give rise to a *Claim*.

Claim

means any:

- a) Written demand for compensation and/or *Damages* in respect of an alleged *Wrongful Act*; or
- b) Civil, regulatory or administrative proceedings whereby it is alleged a *Wrongful Act* has been committed.

Collateral Warranty/Duty of Care Agreement

means any agreement which acknowledges or accepts that *You* owe a duty of care to or are responsible for the losses of any party other than *Your* direct client to who services are being provided.

Damages

means any amount that *You* shall be legally liable to pay to a *Third Party* in respect of judgments or arbitral awards rendered against *You*, or for settlements negotiated by the *Insurer* with *Your* consent.

Defence Costs

means reasonable fees, costs and expenses incurred by *You* or on *Your* behalf, with the prior consent of the *Insurer*, in the investigation, defence, adjustment, settlement or appeal of any *Claim*. It shall not include any element of *Your* own time costs or lost profits incurred in dealing with a *Claim*, nor shall it include any element of time costs or lost profits of any specialist sub-contractor and/or sub-consultant acting or having acted for *You* or on *Your* behalf.

Director

shall have the meaning given by section 741(1) of the Companies Act 1985 and shall include *Your* present and former *Directors*, their estates, heirs and executors.

Document

means all documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

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Employee

means any natural person (including their estates, heirs and executors) who is, has been or during the *Policy Period* becomes expressly engaged under a contract of employment with *You*.

Excess

means the amount specified as such in the *Schedule*.

Fair Presentation

means *Your* duty to provide a fair presentation of the risk as described in Part 2 of the Insurance Act 2015.

Insurer

means the party specified as such in the *Schedule*.

Jurisdiction

means the jurisdiction stated in the *Schedule*.

Limit of Indemnity

means the amount specified as such in the *Schedule*.

Member

means, if *You* are a Limited Liability Partnership, any member of that Limited Liability Partnership (including their estates, heirs and executors).

Partner

shall have the meaning given by the Partnership Act 1890 and shall include, in the case of any of *Your Partners*, their estates, heirs and executors.

Policy Period

means the period of time during which this policy will operate, as specified in the *Schedule*.

Pollution

means the release, emission, discharge, dispersal or escape of any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including (but not limited to) solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, fungus, mould, mildew or yeast and any noise.

Professional Business

means the business stated as such on the *Schedule* when carried out by *You* or on *Your* behalf, but restricted to:

- a) Design;
- b) Specification;
- c) Inspection of construction;
- d) Feasibility and/or other scientific studies;
- e) Technical information calculation;
- f) Surveying (including quantity surveying);
- g) Procurement;
- h) Quality control (but not including Clerk of Works activities);
- i) Materials measurement, testing and certification;
- j) Testing and commissioning;

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- k) Safety management;
- l) General consultancy and giving of advice to a *Third Party*;

Provided such activities are undertaken by or under the supervision of a professionally qualified architect, engineer or surveyor or a person having not less than five years technical experience relevant to the particular activity, or any other person where specific agreement in writing has been obtained from the *Insurer* for that person to undertake the particular activity.

For the avoidance of doubt, *Professional Business* does not include the day to day supervision or inspection of labour and construction work usually undertaken by building or engineering contractors, but it will include periodic inspection of works where carried out by qualified architects as part of their contractual responsibilities.

Proposal

means any proposal or application form, statement of fact, declaration or other information provided by *You* or on *Your* behalf in connection with this policy.

Schedule

means the Schedule attached to this policy.

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.

Territorial Limits

means the territorial limits stated in the *Schedule*.

Third Party

means any entity or natural person except:

- a) *You*
- b) Any of *Your* present or former *Partners, Directors, Members* or *Employees*;
- c) Any specialist sub-contractor and/or sub-consultant acting or having acted for *You* or on *Your* behalf under a written agreement and for whom *You* are responsible; or
- d) Any other entity or natural person having a financial interest or executive role in *You* or any of *Your Subsidiaries*.

Wrongful Act

means any actual or alleged act, error or omission committed solely in the carrying out or failure to carry out *Your Professional Business*.

You/Your

means:

- a) Any person or firm for whom indemnity has been requested in the *Proposal*;
- b) The person or firm named as the "Insured" on the *Schedule*.



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