

Professional Indemnity for Design and Construction

Policy document



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How to make a claim



Write to us
Zurich Insurance, Specialty Claims
Department, 70 Mark Lane, London,
EC3R 7NQ



Email us
[professionalandfinancial.lines.
newclaims@uk.zurich.com](mailto:professionalandfinancial.lines.newclaims@uk.zurich.com)

Data protection statement

Zurich takes the privacy and security of your personal information seriously. We collect, use and share your personal information so that we can provide policies and services that meet your insurance needs, in accordance with applicable data protection laws.

The type of personal information we will collect includes: basic personal information (i.e. name, address and date of birth), occupation and financial details, health and family information, claims and convictions information and where you have requested other individuals be included in the arrangement, personal information about those individuals.

We and our selected third parties will only collect and use personal information (i) where the processing is necessary in connection with providing a quotation and/or contract of insurance; (ii) to meet our legal or regulatory obligations; (iii) where you have provided the appropriate consent; (iv) for our 'legitimate interests'.

It is in our legitimate interests to collect personal information as it provides us with the information that we need to provide our services more effectively including providing information about our products and services. We will always ensure that we keep the amount of information collected and the extent of any processing to the absolute minimum to meet this legitimate interest.

A full copy of our data protection statement can be viewed via www.zurich.co.uk/dataprotection

How you can contact us

If you have any questions or queries about how we use your data, or require a paper copy of the statement, you can contact us via gbz.general.data.protection@uk.zurich.com or alternatively contact our Data Protection Officer at Zurich Insurance, Unity Place, 1 Carfax Close, Swindon, SN1 1AP.

Important notes

Fraud prevention and detection

In order to prevent and detect fraud we may at any time:

- check your personal data against counter fraud systems
- use your information to search against various publicly available and third party resources
- use industry fraud tools including undertaking credit searches and to review your claims history
- share information about you with other organisations including but not limited to the police, the Insurance Fraud Bureau (IFB), other insurers and other interested parties.

If you provide false or inaccurate information and fraud is identified, the matter will be investigated and appropriate action taken. This may result in your case being referred to the Insurance Fraud Enforcement Department (IFED) or other police forces and fraud prevention agencies. You may face fines or criminal prosecution. In addition, Zurich may register your name on the Insurance Fraud Register, an industry-wide fraud database.

Claims history

We may pass information relating to claims or potential claims to any relevant database.

We and other insurers may search these databases when you apply for insurance, when claims or potential claims are notified to us or at time of renewal to validate your claims history or that of any other person or property likely to be involved in the policy or claim.

This helps to check information provided and prevent fraudulent claims.

Our complaints procedure

Our commitment to customer service

We are committed to providing a high level of customer service. If you feel we have not delivered this, we would welcome the opportunity to put things right for you.

Who to contact in the first instance

Many concerns can be resolved straight away. Therefore in the first instance, please get in touch with your usual contact at Zurich or your broker or insurance intermediary, as they will generally be able to provide you with a prompt response to your satisfaction.

Contact details will be provided on correspondence that we or our representatives have sent you.

Many complaints can be resolved within a few days of receipt

If we can resolve your complaint to your satisfaction within the first few days of receipt, we will do so. Otherwise, we will keep you updated with progress and will provide you with our decision as quickly as possible.

Next steps if you are still unhappy

If you are not happy with the outcome of your complaint, you may be able to ask the Financial Ombudsman Service to review your case.

We will let you know if we believe the ombudsman service can consider your complaint when we provide you with our decision. The service they provide is free and impartial, but you would need to contact them within 6 months of the date of our decision.

More information about the ombudsman and the type of complaints they can review is available via their website www.financial-ombudsman.org.uk.

You can also contact them as follows:

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

Telephone: 08000 234567 (free on mobile phones and landlines)

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

If the Financial Ombudsman Service is unable to consider your complaint, you may wish to obtain advice from the Citizens Advice Bureau or seek legal advice.

The Financial Services Compensation Scheme (FSCS)

We are covered by the Financial Services Compensation Scheme (FSCS) which means that you may be entitled to compensation if we are unable to meet our obligations to you. Further information is available on www.fscs.org.uk or by contacting the FSCS directly on 0800 678 1100.

Helpline Services

The following services are provided by ARAG Legal Expenses Insurance Company Limited. The legal advice service is provided by ARAG Law Limited and/or a preferred law firm on behalf of ARAG Legal Expenses Insurance Company Limited.

ARAG Helplines, Employment Manual and ARAGbusinesslaw

You can contact **our** UK-based call centre 24 hours a day, seven days a week during the **period of insurance**. However, **we** may need to arrange to call **you** back depending on the enquiry. To help **us** check and improve **our** service standards, **we** may record all calls. When phoning, please quote **your** policy number and the name of the insurance provider who sold the policy.

Meaning of words

The following words have these meanings wherever they appear in this section in **bold**:

Appointed representative

The **preferred law firm**, law firm, tax consultancy, accountant or other suitably qualified person **we** appoint to act on the **insured person's** behalf.

ARAG Standard Terms of Appointment

The terms and conditions (including the amount **we** will pay to an **appointed representative**) that apply to the relevant type of claim. Where a law firm is acting on **your** behalf the amount **we** will pay is currently £100 per hour. This amount may vary from time to time.

Business

The business declared to **us** and covered by the commercial policy to which this section attaches.

Insured person

- a) **You** and the directors, partners, managers, employees and any other individuals declared to **us** by **you**.
- b) A person contracted to work for **you** who works for **you** on the same basis as **your** employees, and performs that work under **your** supervision and direction.

Period of insurance

The period for which **we** have agreed to cover the **insured person** and for which **we** have accepted the premium.

Preferred law firm

A law firm, barrister or tax expert **we** choose to provide legal or other services.

These specialists are chosen as they have the proven expertise to deal with the **insured person's** claim and must comply with **our** agreed service standard levels, which **we** audit regularly. They are appointed according to the **ARAG Standard Terms of Appointment**.

We, us, our, ARAG

- a) In respect of the legal advice helpline: ARAG Law Limited and/or a **preferred law firm** on behalf of ARAG Legal Expenses Insurance Company Limited.
- b) In respect of the other services: ARAG Legal Expenses Insurance Company Limited.

You, your

The **business** that has taken out the commercial policy to which this section attaches.

Legal advice – Call 0344 893 0859

Advice can be provided on any commercial legal problem affecting **your business** under the laws of the United Kingdom of Great Britain and Northern Ireland, any European Union country, the Isle of Man, the Channel Islands, Switzerland and Norway.

Wherever possible the Legal Advice helpline aims to provide immediate advice from a qualified legal adviser. However, if this is not possible they will arrange to call **you** back at a time to suit **you**.

Advice on the laws of England and Wales can be provided 24 hours a day, 365 days a year. Beyond this jurisdiction, or for very specialist legal matters, **we** will refer **you** to one of **our** specialist advisers.

Specialist advice is provided 9am-5pm, Monday to Friday, excluding public and bank holidays. If calls are received outside of these times, **we** will arrange to call **you** back.

Tax advice – Call 0344 893 0859

Advice can be provided on any tax matters affecting the **business**, under UK law.

This service is provided 9am-5pm, Monday to Friday, excluding public and bank holidays. If calls are made outside these times, we will arrange to call you back.

Counselling service – Call 0344 893 9012

We will provide the **insured person** (and any members of their immediate family who permanently live with them) with a confidential counselling service over the phone if they are aged 18 or over (or aged between 16 and 18 and in full-time employment). This includes, where appropriate, onward referral to relevant voluntary and/or professional services. Any costs arising from the use of these referral services will not be paid by **us** or Zurich Insurance Company Ltd.

The counselling service helpline is open 24 hours a day, seven days a week.

Employment Manual – Visit www.arag.co.uk/customer/business-legal-expenses-insurance/employment-manual

The ARAG Employment Manual offers comprehensive, up to date guidance on employment law. To view it, please visit www.arag.co.uk/customer/business-legal-expenses-insurance/employment-manual

If **you**'d like notifications of when updates are made to the Employment Manual, please email **us** at employmentmanual@arag.co.uk

ARAGbusinesslaw – Visit www.aragbusinesslaw.co.uk

Visit www.aragbusinesslaw.co.uk to access the free online law guide and download legal documents to help **your business**.

Developed by solicitors and tailored by **you** using **our** smart document builders **you** can create ready-to-sign contracts, agreements and letters in minutes. **You** can also buy legal documents from the site, ranging from simple debt recovery letters to employment contracts.

Register using the voucher code **DAS472301** to gain access to a range of free documents.

In using these services **you** acknowledge that all rights and obligations relating to the provision of these services rest with **ARAG** and that **you** will have no recourse to Zurich Insurance Company Ltd in this regard.

We will not accept responsibility if the above services are unavailable for reasons **we** cannot control.

Data protection

To comply with data protection regulations **we** are committed to processing personal information fairly and transparently. Please refer to www.arag.co.uk/privacy for ARAG's privacy notice and details of **your** rights.

Your Professional Indemnity policy for Design and Construction

This policy is a contract between **you** and **us**.

This policy and any schedule and endorsement should be read as if they are one document.

We will insure **you** during any period of insurance for which **we** have accepted **your** premium provided always that all the terms and conditions of this policy are complied with. **Our** liability will in no case exceed the limit of indemnity stated in this policy, the schedule or any endorsement to this policy.

Any reference to the singular will include the plural and vice versa.

Any reference to any statute or statutory instrument will include any amendments thereto or re-enactment thereof.

Any heading in this policy is for ease of reference only and does not affect its interpretation.

Law applicable to this contract

In the UK the law allows both **you** and **us** to choose the law applicable to this contract. This contract will be subject to the relevant law of England and Wales, Scotland, Northern Ireland, the Isle of Man or the Channel Islands depending upon **your** address stated in the schedule. If there is any dispute as to which law applies it will be English law. The parties agree to submit to the exclusive jurisdiction of the English courts.

This is a legal document and should be kept in a safe place.

Please read this policy and any schedule and endorsement carefully and if they do not meet **your** needs contact **us** or **your** broker or insurance intermediary.

Section 1 – Definitions

Certain words in this policy have special meanings. These meanings are given below and apply where the words appear in bold.

Asbestos Surveys

A management survey or a refurbishment or demolition survey as described in HSG264 published by the Health and Safety Executive in connection with Regulation 4 of the Control of Asbestos Regulations 2006 or any comparable survey or inspection whether of commercial or residential land or property.

Business Partner

Any person in business with **you** under the terms of a partnership agreement whether express or implied under legislation.

Circumstance

Incident, occurrence, fact, matter, act or omission that may give rise to a **claim**.

Cladding Claims

Any damage, loss, cost or expense or any other liability directly or indirectly arising from or in any way connected to the combustibility of any composite panels, cladding or facades or buildings or structures and/or internal or external wall systems and any associated core/filler/insulation material and/or any fixing systems.

Claim

- a) A demand for or an assertion of a right to civil compensation or civil damages or an intimation of an intention to seek such compensation or damages
 - b) any notice of intention to commence legal proceedings against **you**
 - c) any communication with **you** invoking any Pre-Action Protocol
- which may be the subject of indemnity under this policy.

Computer System

Computer, hardware, software, communication 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.

Cyber Act

An unauthorised, malicious or criminal act or series of related unauthorised, malicious or criminal acts, regardless of time and place, or the threat or hoax thereof, involving access to, processing of, use of or operation of any **computer system**.

Data

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**.

Data Protection Law

Any applicable data protection and privacy legislation or regulations in any country, province, state, territory or jurisdiction which govern the use, confidentiality, integrity, security and protection of personal data or any guidance or codes of practice relating to personal data issued by any data protection regulator or authority from time to time (all as amended, updated or re-enacted from time to time).

Defence Costs

Reasonable costs and expenses necessarily incurred with **our** written consent in the investigation, defence or settlement of any **claim** or investigation into any **circumstance** which may be the subject of indemnity under this policy.

Employee

Any natural person who is:

- a) under a contract of service or apprenticeship with **you**
- b) a labour master or labour only subcontractor or persons supplied by any of them
- c) self-employed
- d) under a work experience or similar scheme
- e) hired or borrowed by **you** from another employer

and working for **you** in connection with the **professional services** while under **your** direct control or supervision.

Environmental Audit

Any investigation specifically intended to assess whether there is actual **pollution or contamination** present.

Excess

The amount stated in this policy, the schedule or any endorsement in respect of each and every **claim** for which **you** will be responsible.

Fire Safety Claims

Any damage, loss, cost or expense or any other liability arising from or in any way related to the fire safety, fire performance or combustibility of a building or structure, or any part of such building or structure.

Insured

You and **your** predecessors including:

- a) any current or former **business partner**, director, **member** or principal or any person who becomes a **business partner**, director, **member** or principal during the period of insurance
- b) any current or former **employee** or any person who becomes an **employee** during the period of insurance
- c) the personal representative of any **business partner**, director, **member**, principal or **employee** in the event of their death, incapacity, insolvency or bankruptcy
- d) any retired **business partner**, retired director or retired **member** whilst acting as a consultant to the insured.

Member

A member of **your** limited liability partnership as defined in the Limited Liability Partnerships Act 2000.

Nuclear Installation

Any installation of such class or description as may be prescribed by regulations made by the relevant Secretary of State from time to time by statutory instrument being an installation designed or adapted for:

- a) the production or use of atomic energy
- b) the carrying out of any process which is preparatory or ancillary to the production or use of atomic energy and which involves or is capable of causing the emission of ionising radiation
- c) the storage, processing or disposal of nuclear fuel or of bulk quantities of other radioactive matter being matter which has been produced or irradiated in the production or use of nuclear fuel.

Nuclear Reactor

Any plant including any machinery, equipment or appliance whether affixed to land or not designed or adapted for the production of atomic energy by a fission process in which a controlled chain reaction can be maintained without an additional source of neutrons.

Pollution or Contamination

Pollution or contamination of buildings or other structures or of water or land or the atmosphere.

Professional Services

The performance by the **insured** of any:

- a) design or specification
- b) co-ordination of design and or integration of design
- c) feasibility studies including work in relation to applications for planning consent
- d) technical information calculation
- e) surveying
- f) Principal designer role as defined under the Construction (Design and Management) Regulations 2015
- g) duty to warn of defects in the professional services of others.

Provided always that they are undertaken only by or under the direction and direct control of a qualified architect, engineer or surveyor or other person having other relevant professional qualifications or five years experience appropriate to the work undertaken.

Related Entity

Any individual or entity or its subcontractors or assignees:

- a) which wholly or partially own, operate or manage **you**
- b) in which **you** have an ownership interest in excess of 20%
- c) which is controlled, operated or managed by **you**.

Territorial Limits

Worldwide excluding:

- a) the United States of America
- b) Canada

and any territories under their jurisdiction.

We, Us, Our or Ours

Zurich Insurance Company Ltd.

You, Your, Yours or Yourselves

The person, people (either acting in partnership or on behalf of an unincorporated organisation) or the company stated in the schedule as the policyholder.

Section 2 – The Cover

We will indemnify any **insured** in respect of any **claim** first made against any **insured** and notified to **us** during the period of insurance including liability for claimants' costs and expenses arising out of the provision of the **professional services** within the **territorial limits** for:

- a) any breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed by any **insured** or by any specialist designers, consultants or subcontractors directly appointed by and acting on behalf of any **insured**. Provided always that any rights of recourse against any specialist designer, consultant or sub contractor directly appointed by and acting on behalf of any insured have not been waived or otherwise impaired
- b) any breach of professional duty due to any negligent act, error or omission of any specialist designer, consultant or sub contractor in the provision of any **professional services** for whom the **insured** has assumed liability under a novation agreement.

Provided always that:

- i) **we** will only indemnify the **insured** if their rights of recourse against any specialist designer, consultant or sub contractor have not been waived or otherwise impaired
- ii) no indemnity will be provided in relation to any **claim** arising out of any circumstances which the **insured** knew or in **our** reasonable opinion ought to have been reasonably aware of at the time such liability was assumed
- c) any act of libel or slander committed or uttered in good faith by any **insured**
- d) unintentional infringement of any intellectual property right, design right, registered design or trademark committed by any **insured**
- e) unintentional breach of confidence by any **insured**
- f) the consequence of any loss of or damage to records associated with the provision of **professional services** including computer systems records held by **you** or for which **you** are legally responsible but excluding negotiable instruments of whatsoever nature. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **us** and such backed up records are held at a separate location.

The limit of indemnity will include **defence costs**.

Defence costs will not be subject to any excess.

2.1 Adjudication

We will also indemnify any **insured** in respect of any decision by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996 or the Scheme for Construction Contracts Regulations (NI) 1997 which may otherwise be the subject of indemnity under this policy.

Provided always that the adjudication provisions in the contract:

- a) provide that the adjudicator must be independent of the parties to the dispute; and
- b) does not allow for the adjudicator's decision to finally determine the dispute; and
- c) does not allow the adjudicator to disregard the legal entitlements of the parties in order to reach a decision based on commercial or other considerations; and
- d) does not place any conditions upon the timing of commencement of legal or arbitration proceedings excluding adjudication proceedings.

It is a condition precedent to **our** liability under this clause that **you**:

- i) notify **us** within 2 working days and during the period of insurance of:
 - 1) the receipt of any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice pursuant to contract; and
 - 2) any matters of which you become aware which might reasonably be expected to give rise to a claim against **you** being referred to an adjudicator; and
- ii) promptly supply **us** with all details relating to any reference to adjudication including copies of all documentation made available to **you** or subsequently by **you** to the adjudicator; and
- iii) allow **us** to appoint advisers; and

- iv) co-operate with **us** and any advisers **we** may appoint in the conduct of the adjudication; and
- v) meet any request, direction or timetable of the adjudicator; and
- vi) must not agree to accept the decision of the adjudicator as finally determining the dispute without **our** prior written consent.

We will be entitled to pursue legal proceedings, arbitration or other proceedings in the name of and on behalf of **you** to challenge, appeal, re-open or amend any decision, direction, award or exercise of any power of the adjudicator or to stay the enforcement of any such decision, direction, award or exercise of power. **You** will give all such assistance as **we** may reasonably require in relation to such proceedings or arbitration.

2.2 Costs of Criminal Proceedings

We will also indemnify **you** against reasonable legal costs and expenses necessarily incurred with **our** prior consent in the defence of any criminal proceedings first made against **you** and notified to **us** during the period of insurance under:

- a) the Bribery Act 2010
- b) the Construction (Design and Management) Regulations 2015
- c) the Corporate Manslaughter and Corporate Homicide Act 2007
- d) the Health and Safety at Work etc. Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978
- e) any statutory or secondary legislation implementing the Council Directive 92/57/EEC or similar legislation enacted elsewhere in the world.

Provided always that:

- i) the criminal proceedings arise out of the provision of **professional services**; and
- ii) the circumstances giving rise to such criminal proceedings may otherwise give rise to an indemnity under this policy; and
- iii) in **our** reasonable belief the defence of such criminal proceedings would assist in the defence of any **claim** against the **insured**.

Any subsequent or concurrent civil action arising out of criminal proceedings notified hereunder will be deemed to be notified in accordance with condition 4 - Claims Procedures.

For the purpose of this clause the **excess** will be £2,500 or the **excess** stated in the schedule whichever is the lesser.

Our liability will not exceed £1,000,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

2.3 Court Attendance Costs

We will also pay **you** the daily rates stated below if any of these people are required to attend court as a witness at **our** request:

- a) any **business partner**, director, **member** or principal £500
- b) any **employee** £250

Our liability will not exceed £25,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

2.4 First Party Copyright Infringement

We will also pay any reasonable costs and expenses necessarily incurred in the issue of any proceedings notified to **us** during the period of insurance for any injunction or for damages for infringement of any copyright vested in **you** provided always that **we** will not be required to incur any obligation to meet such costs where **your** cause of action is not one that is reasonable to pursue. In the event of any dispute arising between **you** and **us** as to the reasonableness of pursuing any such cause of action the opinion of a King's Counsel the appointment of whom will be mutually agreed between **you** and **us** will be obtained and their decision will be binding.

If **you** and **we** cannot agree on the appointment of a King's Counsel the chairman of the Bar Council will appoint one.

Our liability will not exceed £25,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

2.5 Loss of Documents

We will also pay reasonable costs necessarily incurred by **you** with **our** prior consent for the restoration or replacement of records associated with the provision of **professional services** including computer systems records which have been accidentally lost or damaged. Provided always that any computer systems records are backed up no less frequently than once every 7 days or as otherwise agreed by **us** and such backed up records are held at a separate location. This clause does not apply to negotiable instruments of whatsoever nature.

Our liability will not exceed £250,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

2.6 Mitigation Costs

We will also indemnify **you** with **our** prior written consent against any reasonable costs and expenses necessarily incurred in respect of rectifying prior to practical completion, takeover certificate or defects period any part of the works constructed by the **insured**. Provided always that the onus is upon the **insured** to prove that the need for such rectification is due to the negligent act, error or omission in the provision of the **professional services** that would otherwise be the subject of a **claim** under this policy.

2.7 Representation Costs

We will also pay reasonable costs and expenses necessarily incurred by **you** with **our** written consent for representation at any official examination, inquiry, investigation or other proceedings ordered or commissioned by a body legally empowered to investigate **your** affairs that is first instigated against **you** and notified to **us** during the period of insurance and which may give rise to a **claim** under this policy.

Our liability will not exceed £25,000 in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule.

Section 3 – Exclusions

Save as expressly provided in this policy, or by other restrictions in this policy specifically relating to the use of, or inability to use a **computer system**, no cover otherwise provided under this policy will be restricted solely due to the use of a **computer system**.

This policy does not cover:

1. Asbestos

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of any asbestos, asbestos fibres or any derivatives of asbestos including any product containing any asbestos fibres or derivatives unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed in the provision of the **professional services**.

Provided always that:

- a) this policy will not cover liability for:
 - i) **asbestos surveys**
 - ii) death, bodily injury, mental injury, sickness, disease, mental anguish, shock or the fear of suffering thereof sustained by any person
- b) **our** liability including **defence costs** will not exceed £250,000 in the aggregate or the limit of indemnity in the aggregate stated in the schedule whichever is the lesser during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule

2. Bodily Injury and Property Damage

liability for:

- a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock sustained by any person other than emotional distress arising from libel or slander
- b) loss of or damage to property

unless arising out of a breach of professional duty from the provision of **professional services** due to any negligent act, error or omission committed or alleged to have been committed by any **insured** or on **your** behalf

3. Cladding and Fire Safety

any liability, loss, cost or expense caused by, contributed to or arising out of **cladding claims** and/or **fire safety claims**

4. Claims by Related Entities

any **claim** brought by any **insured** or any **related entity** unless such **claim** emanates from an independent third party

5. Collateral Warranty and Contractual Liability

liability arising from any express warranty, guarantee, contractual promise, indemnity, waiver, express agreement given by **you** or any express acceptance by **you** of liability for liquidated damages unless:

- a) **you** would have been liable even if there had not been any such express warranty, guarantee, contractual promise, indemnity, waiver, express agreement by **you** or any express acceptance by **you** of liability for liquidated damages
- b) the liability arises from a collateral warranty or duty of care agreement in which case **we** will not indemnify **you** for liability arising from:
 - i) any fitness for purpose guarantee
 - ii) any greater or longer lasting benefit than that given to the party with whom **you** originally contracted
 - iii) any express guarantee including any relating to performance or the period of a project
 - iv) **your** agreement to exercise a standard of care greater than would normally be implied by common law or statute

6. Cost Estimates

liability arising out of any estimate provided for construction or design costs unless provided by a chartered quantity surveyor

7. Courts Jurisdiction

any **claim** made or brought:

- a) in the United States of America or Canada or territories under their jurisdiction
- b) under or in consequence of any judgment or order in or under the laws of the United States of America or Canada or territories under their jurisdiction

8. Criminal or Malicious Acts

liability arising out of any criminal, dishonest, fraudulent or malicious act, error or omission committed by any **insured** or on the direction of any **business partner**, director, **member** or principal

9. Cyber and Data Protection Law

- a) any **claim**, loss, damage, liability, costs, expenses, fines, penalties, mitigation costs or any other amount directly caused by, directly resulting from or directly arising out of:

- i) a **cyber act**
- ii) any partial or total unavailability or failure of any **computer system**.

Provided the **computer system** is owned or controlled by the **insured** or any other party acting for and on behalf of the **insured**

- iii) the receipt or transmission of malware, malicious code or similar by the **insured** or any other party acting on behalf of the **insured**
- b) any **claim**, loss, damage, consequential loss, liability, costs, expenses, fines, penalties, mitigation costs or any other amount directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of any failure or interruption of service provided:
 - i) to the **insured** or any other party acting on behalf of the **insured** by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by the **insured**
 - ii) by any utility provider but only where such failure or interruption of service impacts a **computer system** owned or controlled by the **insured** or any other party acting on behalf of the **insured**
- c) any **claim**, loss, damage, consequential loss, liability, costs, expenses, fines, penalties, mitigation costs or any other amount for a breach of **data protection law** by the **insured** or any other party acting on their behalf.

Any cover provided under this policy for costs of reconstituting or recovering lost, inaccessible or damaged documents owned or controlled by the **insured** or any other party acting on behalf of the **insured** will not apply to **data**

10. Deliberate or Reckless Acts

liability, loss or expense directly or indirectly caused by, contributed to by or arising out of any deliberate or reckless act, error or omission committed or condoned by any **insured**

11. Directors' and Officers' and Trustee Liability

liability while any **insured** is carrying out the duties of:

- a) a director or officer of **you** or any other body corporate
- b) a trustee of any pension fund or any other employee benefit scheme

12. Employment

liability arising out of:

- a) death, bodily injury, mental injury, sickness, disease, mental anguish or shock of any **business partner**, director, **member**, principal or **employee** while in the course of their employment with **you**
- b) any obligation owed by **you** as an employer or potential employer to any director or **employee** or applicant for employment
- c) any express or implied terms of a partnership agreement or membership agreement

13. Failure to Effect or Maintain Insurance

liability arising out of the advising, requiring, obtaining or maintaining of any form of insurance, suretyship or bond or the failure to do so

14. Financial Investment

liability arising out of any activities regulated by the Financial Conduct Authority or any advice or services relating to the financing or investment for any project, scheme or venture

15. Insolvency

liability arising out of **your** insolvency or bankruptcy or awareness of financial difficulties or that of any of **your** subcontractors. However this exclusion will not apply to any **circumstance** or **claim** that may be covered under this policy but for the insolvency, bankruptcy or awareness of financial difficulties of **you** or **your** subcontractors

16. Joint Ventures

liability arising out of **your** involvement in any joint venture, consortium or other profit sharing scheme unless a **claim** emanates from **your** acts or omissions provided always that **we** will not be liable for any **claim** made by any associated party within the joint venture, consortium or other profit sharing scheme unless such **claim** emanates from an independent third party

17. Market Fluctuation

liability arising out of any:

- a) depreciation or loss of investment when such depreciation or loss arises from fluctuations in any financial stock or commodity or other markets
- b) express or implied warranty or guarantee relating to the financial return of any investment

18. Patents and Trade Secrets

liability, loss or expense directly or indirectly caused by, contributed to by or arising out of:

- a) invalidity, infringement, violation, breach or misappropriation of any patent; or
- b) misappropriation of any trade secret

19. Pollution or Contamination

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of:

- a) **pollution or contamination** unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed in the provision of **professional services**
- b) any **environmental audit**.

Our liability including **defence costs** will not exceed the limit of indemnity in the aggregate during the period of insurance and this limit will form part of and not be in addition to the limit of indemnity stated in the schedule

20. Prior Circumstances and Claims

liability arising from:

- a) any **circumstance** that:
 - i) **you** knew or that in **our** reasonable opinion **you** ought to have known prior to inception of this policy which may give rise to a **claim** against any **insured**
 - ii) was notified by **you** under any other insurance policy prior to inception of this policy
 - iii) was disclosed or in **our** reasonable opinion ought to have been disclosed on **your** latest proposal to **us**
- b) any **claim** made against any **insured** prior to inception of this policy

21. Products and Buildings

liability arising out of any:

- a) supply, repair, alteration, manufacture, installation or maintenance of goods, materials or products
- b) construction, repair, installation, erection, removal or demolition of buildings, building works or physical structures by any **insured**, **your** subcontractor or any **related entity** unless such **claim** is the direct consequence of any negligent act, error or omission arising out of the provision of **professional services**.
- c) defective materials or goods or equipment or products any **insured**, **your** subcontractor or a third party have supplied, manufactured, sold or distributed

22. Project Specific Insurance

liability arising out of any project that is insured under a project specific insurance policy provided always that this exclusion will not apply where cover has been provided with **our** prior written consent and **your** liability is in excess of the limit of indemnity under such project specific insurance

23. Property and Transport

liability arising out of the ownership, possession or use by **you** or on **your** behalf of any land, building, aircraft, watercraft, mechanically propelled vehicle or trailer

24. Punitive Damages or Fines

any amount in respect of:

- a) penalties or fines
- b) punitive or exemplary damages unless arising out of libel or slander committed or uttered in good faith

25. Retroactive Date

liability for any **claim** arising from the provision of the **professional services** prior to the retroactive date stated in the schedule

26. Supervision of Construction Work

liability arising out of any supervision by any **insured** of their own work, **your** subcontractors' work or the work of any **related entity** where such supervision is undertaken in their capacity as building or engineering contractor

27. Terrorism

loss, damage, consequential loss, cost or expense directly or indirectly caused by, contributed to by, resulting from or arising out of or in connection with:

- a) any act or preparation in respect of action or threat of action designed to influence the government de jure or de facto of any nation or any political division thereof or in pursuit of political, religious, ideological or similar purposes to intimidate the public or a section of the public of any nation by any person or group whether acting alone or on behalf of or in connection with any organisation or government de jure or de facto and which:
 - i) involves violence against one or more persons
 - ii) involves damage to property
 - iii) endangers life other than that of the person committing the action
 - iv) creates a risk to health or safety of the public or a section of the public
 - v) is designed to interfere with or to disrupt an electronic system
- b) any action in controlling, preventing, suppressing, retaliating against or responding to any act or preparation in respect of action or threat of action described in a) above.

In any action or suit or other proceedings where **we** allege that by reason of this exclusion cover is not provided under this policy the burden of proving that cover is provided under this policy will be upon **you**

28. Uncontrollable Events

liability, loss, cost or expense directly or indirectly caused by, contributed to by or arising out of:

- a) civil unrest, including but not limited to protests, striking **employees** and riots
- b) war, terrorism, invasion, act of foreign enemy, hostilities or warlike operations (whether war has been declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportion of or amounting to a popular uprising, military or usurped power, martial law, riot or the act of any lawfully constituted authority
- c) emergency governmental actions, including but not limited to embargos, quarantines, lockdowns, travel restrictions, and curfews unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed by an **insured**
- d) fire, smoke, explosion, lightning, wind, flood, earthquake, volcanic eruption, tidal wave, landslide, hail, pandemic, epidemic, or act of God, or any other similar event however caused unless arising out of a breach of professional duty due to any negligent act, error or omission committed or alleged to have been committed by an **insured**
- e) ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel
- f) the radioactive, toxic, explosive or other hazardous or contaminating properties of any **nuclear installation**, **nuclear reactor** or other nuclear assembly or nuclear component thereof

- g) any weapon employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
- h) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter but this exclusion h) will not apply to radioactive isotopes other than nuclear fuel when such isotopes are being prepared, carried, stored or used for commercial, agricultural, medical, scientific or other peaceful purposes
- i) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds

29. Valuation Reports

any valuation report prepared by any **insured** or by any other person, firm or company directly appointed by and acting on behalf of any **insured** unless for the purpose of measuring quantities or certifying payments due to contractors.

Section 4 – Provisions

1. Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this policy is not enforceable by any third party.

2. Discharge of Liability

We may at any time pay in connection with any **claim** the maximum amount payable under this policy after deduction of any sum already paid during the period of insurance or any lower amount for which the **claim** can be settled and then relinquish the conduct and control and be under no further liability in respect of the **claim**.

3. Joint Liabilities

If the **insured** comprises more than one party **we** will indemnify each party as though a separate policy had been issued to each of them provided always that the total amount of indemnity to all such parties will not exceed the amount payable if the **insured** comprised only one party and in any event will not exceed the limit of indemnity stated in the schedule.

4. King's Counsel

You will not be required to contest any legal proceedings unless a King's Counsel or similar authority agreed upon by **you** and **us** advises that on the facts of the case such **claim** may be contested with a reasonable prospect of success.

If **you** and **we** cannot agree on the appointment of a King's Counsel the chairman of the Bar Council will appoint one.

5. Limit of Indemnity

The limit of indemnity stated in the schedule is **our** monetary limit and applies in the aggregate to all **claims** including **defence costs** made in any one period of insurance.

6. Sanctions

Notwithstanding any other terms of this policy **we** will be deemed not to provide cover nor will **we** make any payment or provide any service or benefit to **you** or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of **yours** would violate any applicable trade or economic sanctions law or regulation.

Section 5 – Conditions

1. Arbitration

If **we** admit liability for a **claim** but there is a dispute as to the amount to be paid the dispute will be referred to an arbitrator. The arbitrator will be appointed jointly by **you** and **us** in accordance with the law at the time. **You** may not take any legal action against **us** over the dispute before the arbitrator has reached a decision.

2. Cancellation

We may cancel this policy by giving 30 days notice in writing by special delivery mail to **you** at **your** last known address and in such event **you** will be entitled to a return of premium in respect of the unexpired portion of the period of insurance.

3. Change in Circumstances

You must notify **us** as soon as possible during the period of insurance if there is any change in circumstances which materially increases the risk of accident, injury, loss, damage or liability.

Upon notification of any such change **we** will be entitled to vary the premium and terms for the rest of the period of insurance. If the changes make the risk unacceptable to **us** then **we** may no longer be able to provide **you** with cover.

If **you** do not notify **us** of any such change this policy may be affected in one or more of the following ways depending on what **we** would have done had **we** known about the change in circumstances:

- a) if **we** would not have continued to provide **you** with any cover **we** may treat this policy as if it did not exist from the date of the change in circumstances; or
- b) if **we** would have applied different terms to the cover **we** may treat this policy as if those different terms applied from the date of the change in circumstances; and/or
- c) if **we** would have charged **you** a higher premium for providing the cover **we** will charge **you** the additional premium which **you** must pay in full.

4. Claims Procedures

a) Your Responsibilities

It is agreed that:

- i) when **you** first become aware of any **circumstance** or receive verbal or written notice of any **claim** **you** will:
 - 1) as soon as reasonably possible give notice to **us**; and
 - 2) as soon as reasonably possible forward to **us** any **claim**, writ or summons received by any **insured** or any notice of prosecution, inquest or fatal inquiry; and
 - 3) at **your** own expense and as soon as reasonably possible supply full details of the **claim** in writing to **us** together with any evidence and information that may be reasonably required by **us** for the purpose of investigating or verifying the **claim** and keep **us** up to date with any future evidence and information received by **you** or reasonably required by **us**; and
 - 4) in the case of notification of a **circumstance** supply full particulars including all material facts, dates and persons involved and the reasons for anticipating that it is a **circumstance** as defined in this policy
- ii) no settlement, admission of liability, payment or promise of payment will be made to a third party without **our** written consent.

b) Our Rights

We will:

- i) be entitled to conduct the defence or settlement of any **claim** made against any **insured** and they will give all assistance as may be reasonably required by **us**; and
- ii) be entitled to appoint legal counsel; and
- iii) be entitled to take the benefit of any rights of any **insured** against any other party before or after any **insured** has received indemnification under this policy and they will give all assistance as may be reasonably required by **us**; and
- iv) treat any **circumstance** notified during the period of insurance which subsequently gives rise to a **claim** after the period of insurance as a **claim** first made during the period of insurance.

c) Prejudice

Where in **our** opinion any **insured** has prejudiced the handling of or the settlement of any **claim** the amount payable in respect of such **claim** including **defence costs** will be reduced to such an amount as in **our** opinion would have been payable in the absence of such prejudice.

5. Contractual Right of Renewal (Tacit)

If **you** pay the premium to **us** using **our** Direct Debit instalment scheme **we** will have the right (which **we** may choose not to exercise) to renew this policy each year and continue to collect premiums using this method. **We** may vary the terms of this policy (including the premium) at renewal. If **you** decide that **you** do not want **us** to renew this policy provided **you** tell **us** or **your** broker or insurance intermediary before the next renewal date **we** will not renew it.

6. Fair Presentation of the Risk

- a) At inception and renewal of this policy and also whenever changes are made to it at **your** request **you** must:
- i) disclose to **us** all material facts in a clear and accessible manner; and
 - ii) not misrepresent any material facts.
- b) If **you** do not comply with clause a) of this condition and the non-disclosure or misrepresentation by **you** is proven by **us** to be deliberate or reckless **we** may from the relevant date specified in clause d):
- i) treat this policy as if it had not existed; and
 - ii) not return the premium paid by **you**.
- c) If **you** do not comply with clause a) of this condition and the non-disclosure or misrepresentation is not deliberate or reckless the cover, meaning this policy or the changes made to it, may be affected from the relevant date in clause d) in one or more of the following ways depending on what **we** would have done if **we** had known about the facts which **you** failed to disclose or misrepresented:
- i) if **we** would not have provided **you** with the cover **we** will have the option to treat the cover as if it had not existed and repay the premium paid for such cover; or
 - ii) if **we** would have applied different terms to the cover **we** will have the option to treat this policy as if those different terms apply; and/or
 - iii) if **we** would have charged **you** a higher premium for providing the cover **we** will charge **you** the additional premium which **you** must pay in full.
- d) Clauses b) and c) apply with effect from inception, renewal or the date of the changes, depending on when the non-compliance occurred. **We** may also recover any claims payments which have already been made to the extent that the cover under which such payments were made is being treated as if it did not exist or as if it had been subject to different terms under which the claim would not have been payable.

7. Fraudulent Claims

If **you** or anyone acting on **your** behalf:

- a) makes a fraudulent or exaggerated claim under this policy; or
- b) uses fraudulent means or devices including the submission of false or forged documents in support of a claim whether or not the claim is itself genuine; or
- c) makes a false statement in support of a claim whether or not the claim is itself genuine; or
- d) submits a claim under this policy for loss or damage which **you** or anyone acting on **your** behalf or in connivance with **you** deliberately caused; or
- e) realises after submitting what **you** reasonably believed was a genuine claim under this policy and then fails to tell **us** that **you** have not suffered any loss or damage; or
- f) suppresses information which **you** know would otherwise enable **us** to refuse to pay a claim under this policy

we will be entitled to refuse to pay the whole of the claim and recover any sums that **we** have already paid in respect of the claim.

We may also notify **you** that **we** will be treating this policy as having terminated with effect from the date of any of the acts or omissions set out in clauses a) to f) of this condition.

If **we** terminate this policy under this condition **you** will have no cover under this policy from the date of termination and not be entitled to any refund of premium.

If any fraud is perpetrated by or on behalf of an **insured** and not on behalf of **you** this condition should be read as if it applies only to that **insured's** claim and references to this policy should be read as if they were references to the cover effected for that person alone and not to the policy as a whole.

8. Other Insurances

If at the time any **claim** arises under this policy the **insured** is or would be but for the existence of this policy be entitled to indemnity under any other policy or policies **we** will not be liable except in respect of any excess beyond the amount which would have been payable under such other policy or policies had this policy not been effected.

9. Payment by Instalments

Reference to the payment of premium includes payment by monthly instalments. If **you** pay by this method this policy remains an annual contract.

10. Professional Indemnity Requirements of Subcontractors

As a condition precedent to **our** liability where **you** have engaged any person, firm or company to provide **professional services** **you** will ensure that at the time of engagement such person, firm or company has taken out and agrees to maintain in force for a period of 6 years from completion of the relevant project their own professional indemnity insurance policy with a minimum limit of indemnity as stated in the schedule or as agreed by **us**.

11. Sole Agent

It is agreed that:

- a) if the **insured** comprises more than one party then **you** will act for **yourself** and be deemed to act as the sole agent for the **insured**. All parties comprising the **insured** are deemed to have consented and agreed that rights of action under this policy are not assignable except with **our** prior written consent
- b) **you** have the sole right to file notice or proof of loss or make a **claim**
- c) **you** have the sole right to bring legal proceedings arising under or in connection with this policy
- d) knowledge possessed or discovery made by any person, company or entity forming part of **you** or by any **business partner**, director, **member**, principal or officer, departmental head or other senior manager or the equivalent thereof will be deemed to constitute knowledge possessed or discovery made by all other persons, companies or other entities forming part of **you**.

ARAG Head and Registered Office:

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Registered in England and Wales | Company Number 103274
Website: www.arag.co.uk

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