

Your Policy

Professional Indemnity Insurance for Surveyors, Estate Agents

Introduction

Thank You for choosing Norwich Union Insurance as Your insurer.

This is Your Professional Indemnity policy setting out Your insurance protection in detail.

Please read it carefully to make sure it meets Your requirements and that the details on the policy Schedule are correct.

Your premium has been based upon the information shown in the policy Schedule.

If after reading Your policy You have any questions, please contact Your insurance adviser.

Contents - a guide to Your policy

This policy is made up of individual sections. This policy should be read together with Your current Schedule for precise details of Your insurance protection.

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The Contract of Insurance

Your policy is a contract between Us, Norwich Union Insurance, and You, the Policyholder. The Proposal provided by You will be the basis of the contract.

In return for You having paid or agreed to pay the premium, We will indemnify You subject to the terms contained in or endorsed on the policy.

On behalf of Norwich Union Insurance



Patrick Snowball
Chief Executive, Norwich Union Insurance

IMPORTANT

This policy is a legal contract. You must tell Us about any facts or changes which affect Your insurance and which have occurred either since the policy started or since the last renewal date.

If You are not sure whether certain facts or changes are relevant please ask Your insurance adviser or local Norwich Union Insurance office. If You do not tell Us about relevant facts or changes, Your policy may not be valid in whole or in part.

You should keep a written record (including copies of letters) of any information You give Us, or Your insurance adviser .



**NORWICH
UNION**

an AVIVA company

Aviva Insurance Limited
Registered in Scotland No. 2116
Registered Office: Pitheavlis, Perth, Scotland PH2 0NH
A member of the Aviva group. Authorised and regulated by the Financial Services Authority.

Our Service To You

Our goal is to give excellent service to all Our customers but We recognise that things do go wrong occasionally. We take all complaints We receive seriously and aim to resolve all of Our customers problems promptly. To ensure that We provide the kind of service You expect, We welcome Your feedback. We will record and analyse Your comments to make sure We continually improve the service We offer.

What will happen if You complain?

- 1 We will acknowledge Your complaint within 2 working days of receipt.
- 2 We aim to resolve complaints within 5 working days.
- 3 Once an assessment and full investigation of Your concerns has been made, We will respond with a decision.

Most of Our customers' concerns can be resolved quickly but occasionally more detailed enquiries are needed. If this is likely, We will contact You with an update and give You an expected date of response. This will not be beyond 20 working days from when You first made Your complaint.

If You remain unhappy with the decision You receive from the local branch, You may write to the Chief Executive. If You are dissatisfied with Our final decision, You can refer the matter to the Financial Ombudsman Service (FOS).

The FOS will only consider Your complaint if You have given Us the opportunity to resolve it and You are a business with a group turnover of less than £1 million, a charity with an annual income of less than £1 million or a trustee of a trust with a net asset value of less than £1 million. If however, We do not resolve Your complaint within 40 working days, the FOS will accept a direct referral. Please follow the steps below.

Whilst We are bound by the decision of the FOS, You are not. Following the complaint procedure does not affect Your right to take legal action.

What should You do?

The steps You should take if dissatisfied

- Step 1** **Seek resolution by Your insurance adviser or usual Norwich Union point of contact.**

If You are disappointed with any aspect of the handling of Your insurance We would encourage You, in the first instance, to contact the manager concerned. You can write or telephone, whichever suits You, and ask Your contact to review the problem.

Step 2 **Refer Your complaint to Our Chief Executive.**

If You remain unhappy with the decision You receive, please write with full details including policy number and/or claim number, to:

The Chief Executive
Norwich Union Insurance
Surrey Street
Norwich
NR1 3NS

A review of the matter will then be carried out at a senior level and a final decision given.

Step 3 **Refer Your complaint to the Financial Ombudsman Service.**

If after making a complaint to Us You are still unhappy and You feel the matter has not been resolved to Your satisfaction, please contact the FOS at:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR

Compensation Scheme

We are covered by the Financial Services Compensation Scheme (FSCS). If we cannot meet our obligations, you may be entitled to compensation from this scheme, depending on the type of insurance and the circumstances of the claim.

You are covered for 100% of the first £2,000 and 90% of the remainder of the claim without any upper limit. However, for compulsory classes of insurance, you are covered for 100% of the claim without any upper limit.

Further information about compensation scheme arrangements is available from the FSCS.

Definitions

Each time We use one of the words or phrases listed below, it will have the same meaning wherever it appears in Your policy unless We state otherwise. In this policy the singular includes the plural and vice versa. A defined word or phrase will start with a capital letter each time it appears in the policy, except for headings and titles.

Approved Person

- (1) A Fellow or Professional Member of the Royal Institution of Chartered Surveyors (RICS),
- (2) A Fellow or Associate of the Incorporated Society of Valuers and Auctioneers (ISVA),
- (3) A Fellow or Associate of the Architecture and Surveying Institute (ASI),
- (4) A Fellow or Associate of the Faculty of Architects and Surveyors (FFAS),
- (5) A Fellow or Associate of the Royal Institute of British Architects (RIBA),
- (6) A Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS),
- (7) Anyone who has at least 5 years experience of such work,
- (8) Any other person delegated by You to execute work as part of their training subject always to
 - (i) supervision to be provided by a person qualified in accordance with (1) to (6) above,
 - (ii) agreement in writing having been obtained from Us prior to cover being granted.

Bodily Injury

Bodily injury including death, illness, disease, sickness, psychological injury, emotional distress or nervous shock.

Business

- (1) The provision of advice or services by You or on Your behalf which are normally undertaken by members of the Royal Institution of Chartered Surveyors as declared to Us in Your Proposal or as shown in the Schedule as the Business
- (2) Any individual personal appointment held by You but only in respect of advice or services shown in (1) above.

Claim

Demand made against You consisting of or arising from any

- (1) demand, whether oral or in writing, for damages or compensation,
- (2) notice of intention, whether oral or in writing, to commence legal proceedings,
- (3) communication invoking any pre action protocols,
- (4) notification of arbitration or adjudication proceedings.

Collateral Warranty or Duty of Care Agreement

Any contractual agreement which acknowledges or accepts that You owe a duty of care to, or are or may be responsible for, the losses of any party other than Your direct client to whom You are contracted to provide services.

Computer System

Any

- (1) computer, data processing equipment, media or part thereof,
- (2) system of data storage and retrieval, or communications system, network, protocol or part thereof,
- (3) storage device, microchip integrated circuit, real time clock system or similar device,

Definitions (continued)

- (4) computer software (including but not restricted to application software, operating systems, runtime environments or compilers), firmware or microcode,
- (5) electronic documents utilised in the ownership, security and management of Your electronic communication system, world wide web site, internet site, intranet site, extranet site, or web address.

Documents

Any

- (1) project models or displays,
- (2) deeds, wills or agreements,
- (3) maps, plans, records, photographs, negatives, calculations or drawings,
- (4) written or printed books, letters, certificates, documents or forms of any nature whatsoever,
- (5) computer software, files, documents and systems records,

which are Your property or are under Your custody or control.

This definition shall not include bearer bonds, evidence of share ownership (whether in electronic or other form), coupons, bank or currency notes and other negotiable paper.

Employee

- (1) Any person who is or has been under a contract of service or apprenticeship with You.
- (2) Any person who is or has been
 - (a) self employed,
 - (b) a voluntary helper,
 - (c) engaged under a work experience or training scheme,
 - (d) seasonal or temporary personnel,
 - (e) agency staff,

while working under Your control in connection with the Business.

Excess

That first part of each and every payment in relation to a Claim which is payable by You rather than Us. The amount of the Excess is stated in the Schedule.

The Excess shall only apply once where a series of Claim settlements arise from one source or originating cause.

The Excess does not apply to the Additional Clauses section.

Limit of Indemnity

The maximum amount, stated in the Schedule, which We will pay in respect of any one Claim.

However, in respect of any Claim arising directly or indirectly from or caused by or contributed to or aggravated by asbestos, the maximum amount We will pay in respect of any one Claim and in total for all Claims (including claimants costs and expenses and Other Costs) first made during any one Period of Insurance shall not exceed £250,000.

But note that all Claims arising directly or indirectly from one source or originating cause shall be treated for all purposes as a single Claim.

Any dishonesty or fraud committed by a person or persons acting in concert shall be treated as one Claim.

Other Costs

All costs and expenses incurred in the investigation, defence or settlement of any Claim in so far as those costs and expenses have been incurred with Our written consent.

Period of Insurance

From the effective date until the expiry date shown in the Schedule.

Definitions (continued)

Pollution

Any pollution or contamination by naturally occurring or man-made substances, forces or organisms or any combination of them, whether permanent or transitory and however occurring.

This definition shall not include pollution or contamination by asbestos.

Proposal

Any signed proposal form, renewal declaration, statement of fact and any additional information supplied to Us by You or on Your behalf.

Schedule

The document which specifies Your details and details of the Excess, Limit of Indemnity and endorsements applying to this policy.

Territorial Limits

The United Kingdom (including the Channel Islands and the Isle of Man) and any other EU member country.

Terrorism

Any act or acts including but not limited to

- (a) the use or threat of force and/or violence and/or,
- (b) harm or damage to life or to property (or the threat of such harm or damage) including but not limited to harm or damage by nuclear and/or chemical and/or biological and/or radiological means,

caused or occasioned by any person(s) or group(s) of persons, or so claimed, in whole or in part for political, religious, ideological or similar purposes.

We/Us/Our/Norwich Union Insurance

Aviva Insurance Limited.

You/Your/The Policyholder/The Insured

- (1) Any individual, partnership, limited liability partnership, company or limited company named in the Schedule or any predecessor in business of such individual, partnership, limited liability partnership, company or limited company as declared to Us.
- (2) Any person named in the Proposal as consultant or former consultant of any person or body referred to in (1) above but only in respect of work undertaken for or on behalf of any person or body referred to in (1) above.
- (3) Any person who is or has been or who becomes a director, partner, member, principal or Employee of any person or body referred to in (1) above but only in respect of work undertaken for or on behalf of any person or body referred to in (1) above.
- (4) The estate, heirs, executors, legal or personal representatives of any person or body referred to in (1), (2) or (3) above in the event of their death, incapacity, insolvency or bankruptcy.

Cover

We will indemnify You

- (1) in respect of any Claim arising out of the conduct of Your Business, first made against You and notified to Us during the Period of Insurance, for any civil liability including claimants costs and expenses.
- (2) for any award made under the Ombudsman for Estate Agents Scheme in respect of any case to be formally reviewed, as defined in the Terms of Reference for the Ombudsman for Estate Agents Scheme.

Provided that notice of such referral is first made to You and notified to Us during the Period of Insurance.

We shall not provide indemnity for any costs or expenses associated with the investigation, conduct or settlement of any case connected with the award or original complaint.

Our liability under this clause shall not exceed £25,000 in respect of any single award made by the Ombudsman or in respect of a series of awards attributable to the same original cause.

- (3) for any awards made under the Surveyors and Valuers Arbitration Scheme, arising from any Claim or complaint made against You, as defined in the Terms of Reference for the Surveyors and Valuers Arbitration Scheme.

We will not provide indemnity

- (a) unless such Claim or complaint would have fallen to be dealt with under the terms of this policy notwithstanding its referral to the arbitrator,
- (b) unless the arbitration is conducted under the prescribed Arbitration Scheme rules, as determined from time to time by the Chartered Institute of Arbitrators and agreed by Us and the Royal Institution of Chartered Surveyors.

- (4) subject to the terms and conditions of this policy, for any decision made against You by an adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction and Regeneration as contained in the Housing Grants Construction and Regeneration Act 1996.

Our total liability under this policy shall not, save in the circumstances stated under the Additional Clauses section, exceed the Limit of Indemnity.

- (1) We will not provide indemnity
 - (a) in respect of any defamation unless You can show that it was committed by You in good faith,
 - (b) to any person committing or conspiring to commit or condoning any dishonest or fraudulent act or omission,
 - (c) for any Claim arising from any dishonest or fraudulent act or omission committed by any person after the discovery, by You, in relation to that person, of reasonable cause for suspicion of any dishonest or fraudulent act or omission.
- (2) We will not provide indemnity for any Claim arising from any dishonest or fraudulent act or omission unless
 - (a) at Our request, You shall take all reasonable steps to effect recovery from the person committing or condoning such dishonest or fraudulent act or omission or from the personal representatives of such person,
 - (b) Your annual accounts are prepared or certified by an independent and properly qualified accountant or auditor.
- (3) The following will be deducted from any amount payable
 - (a) any monies which but for such dishonest or fraudulent act would be due from You to the person committing or condoning such act,
 - (b) any monies held by You and belonging to such person,
 - (c) any monies recovered following action as described in 2(a) above.

Cover (continued)

- (4) We shall not be liable for the amount of the Excess or any lesser amount for which a Claim may be settled.
- (5) We will not provide indemnity where Your Business is conducted outwith the Territorial Limits.

Additional Clauses

In addition to the Limit of Indemnity

(1) Documents

We will pay all reasonable costs and expenses incurred by You in replacing, restoring or reconstituting Documents, lost or damaged in the conduct of Your Business provided the loss or damage is suffered and first discovered by You and notified to Us during the Period of Insurance.

Our total liability under this clause shall not exceed £50,000 for any one occurrence and £150,000 in all in any one Period of Insurance.

We will not provide indemnity in respect of any loss or damage to Documents which are stored on a Computer System, unless such Documents are duplicated with the intention that in the event of loss or damage the duplicate can be used as the basis for restoring the Documents to their original status.

(2) Fidelity

We will indemnify You for any loss of Your own money or property (other than Employee's money or property) as a result of any dishonest or fraudulent act committed by any Employee acting alone or in collusion with others.

Provided that any loss is first discovered by You and notified to Us during the Period of Insurance.

Our total liability under this clause shall not exceed £250,000 in all in any one Period of Insurance.

We will not provide indemnity

- (1) unless You prove to Our satisfaction that any dishonest or fraudulent act was committed with the intent of causing You loss,
- (2) to any person committing or conspiring to commit or condoning any such loss,

- (3) for any loss arising from any dishonest or fraudulent act committed by any Employee after the discovery, by You, in relation to that Employee, of reasonable cause for suspicion of any dishonest or fraudulent act,
- (4) for any loss of a consequential nature, including but not limited to, potential income, interest or dividends, not realised by You,
- (5) for any loss of or damage to, proprietary information, trade secrets, confidential processing methods, intellectual property or confidential information of any kind,
- (6) for any costs, fees and expenses incurred by You in establishing either the existence or amount of any loss unless Our prior written consent is obtained,
- (7) unless Your annual accounts are prepared or certified by an independent and properly qualified accountant or auditor.

(3) Legal Costs

We will pay on Your behalf any reasonable costs and expenses incurred with Our prior written consent in dealing with an investigation and the defence of any proceedings first brought against You and notified to Us during the Period of Insurance under

- (a) The Health & Safety at Work etc Act 1974,
- (b) The Health & Safety at Work (Northern Ireland) Order 1978,
- (c) The Estate Agents Act 1979,
- (d) The Construction (Design & Management) Regulations 1994,
- (e) Any similar safety legislation.

Our total liability under this clause shall not exceed £100,000 in all in any one Period of Insurance.

Additional Clauses (continued)

We will not provide indemnity

- (1) unless We believe that defending such proceedings could protect You against any concurrent or subsequent Claim arising from Your Business,
- (2) in respect of any criminal penalties or fines.

(4) Other Costs

We will pay Other Costs.

Provided that if the amount paid to dispose of a Claim exceeds the Limit of Indemnity, Our liability for Other Costs will only be the proportion which the Limit of Indemnity bears to the total amount paid to dispose of such Claim.

(5) Payment for Court Attendance

We will compensate You, subject to Our prior written consent, if You are attending court as a witness in connection with a Claim for which You are entitled to indemnity under this policy.

The maximum We will pay is £200 per person per day. Our total liability, under this clause, shall not exceed £10,000 in all in any one Period of Insurance.

(6) Representation Costs

We will pay on Your behalf any reasonable costs and expenses incurred by You for representation at properly constituted hearings, tribunals or proceedings provided that

- (a) such costs and expenses are incurred with Our prior written consent,
- (b) the subject of the hearing, tribunal or proceeding may become a Claim under this policy.

Our total liability under this clause shall not exceed £10,000 in all in any one Period of Insurance.

Exceptions

We will not provide indemnity in respect of

- (1) any Claim arising directly or indirectly from or caused by any dispute between You and any present or former Employee or any person who has applied for or been offered employment with You.
- (2) any Claim arising directly or indirectly from or caused by
 - (a) any Bodily Injury of any Employee whilst in the course of their employment with You,
 - (b) any other Bodily Injury or loss of or damage to property unless arising from any actual or alleged breach of duty in the performance of Your Business.
- (3) any Claim arising out of or caused by any
 - (a) acceptance of or guarantee of fitness for purpose where this appears as an express term,
 - (b) express guarantee,
 - (c) express contractual penalty,
 - (d) acceptance of liability for liquidated damages,
 - (e) assignment of a Collateral Warranty or Duty of Care Agreement to more than two parties except in the case of a funding party (not a purchaser or tenant) where no restriction on the number of assignments shall apply,unless such liability would have attached to You in the absence of the features listed above.
- (4) any fines or penalties or any punitive, multiple, aggravated or exemplary damages where such can be identified separately within any award of any court.
- (5) any Claim arising directly or indirectly from or caused by the supply of any goods by You or any products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by You.

This exception does not apply to project models or displays.

- (6) any Claim brought by any entity
 - (a) in which You exercise a controlling interest,
 - (b) which exercises a controlling interest over Your business by virtue of having a financial or executive interest in You,unless such Claim arises from or is caused by a claim made against such entity by an independent third party.
- (7) any Claim made against You in Your capacity as a director, officer or trustee unless arising out of the professional conduct of Your Business.
- (8) any Claim arising directly or indirectly from any
 - (a) pension or Employee scheme,
 - (b) trust fund,
 - (c) stocks, shares or securities,established or maintained to provide benefits to You or your Employees.
- (9) any trading losses or trading liabilities incurred by any business managed by or carried on by You.
- (10) any Claim arising directly or indirectly from or caused by Your insolvency or bankruptcy.
- (11) any Claim arising directly or indirectly from or caused by the ownership, possession or use, by You or on Your behalf, of any aircraft, watercraft, hovercraft, motor vehicle or trailer.
- (12) any Claim arising directly or indirectly from or caused by the ownership, possession or use, by You or on Your behalf, of any buildings, structures, premises or land or that part of any building leased, occupied or rented by, or licenced to, You or any property (mobile or immobile) of Yours.
- (13) any Claim where You are entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such insurance had this policy not been effected.

Exceptions (continued)

(14) any Claim or circumstance that might give rise to a Claim which

- (a) has been notified to and accepted under any other insurance attaching prior to the inception of this policy,
- (b) You were or should after reasonable enquiry have been aware of prior to the inception of this policy.

(15) any Claim

- (a) instituted or pursued in the United States of America, its territories and/or possessions or Canada (including without limitation the enforcement of a judgement or finding of a court or tribunal of another jurisdiction or otherwise),
- (b) in which it is contended that the laws of the United States of America, its territories and/or possessions or Canada should or do apply,
- (c) which involves the enforcement or attempted enforcement of a judgement or finding of a court or tribunal of the United States of America, its territories and/or possessions or Canada.

(16) any Claim arising directly or indirectly from or caused by Pollution.

This exception shall not apply where any Claim or loss arises from Your negligent

- (a) structural design,
- (b) structural specification,
- (c) failure to report a structural defect in a property,

provided that the indemnity shall apply only to that part of any Claim which relates to the cost of re-designing, re-specifying, remedying or rectifying the defective structure but shall not apply to any cost of remedying or rectifying loss of or damage to the environment or any loss of value.

(17) any Claim arising directly or indirectly from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity whether alleged or actual.

This exception shall not apply to any Claim arising as a direct result of a negligent act, error or omission committed or alleged to have been committed by You in the conduct of Your Business to the extent the Claim is

- (a) for the cost of re-performance of Your work or rectification or remediation
- (b) made in respect of any diminution in value of buildings or structures (or any part of either or both of them) arising out of a survey or valuation by You undertaken in accordance with RICS practice statements or standard market procedures relating to survey and valuations.

Provided always that no indemnity shall be granted in respect of

- (i) or arising out of any Bodily Injury
- (ii) any damage to property other than that part of the building or structure which required re-performance of Your work or rectification or remediation.

(18) any Claim arising directly or indirectly from or caused by any survey or valuation unless it was undertaken by an Approved Person.

(19) any Claim arising directly or indirectly from or caused by the transmission or receipt of a computer virus, program or code that causes loss of or damage to any Documents or Computer System or prevents any Computer System from performing or functioning accurately or properly.

(20) any Claim of whatsoever nature arising directly or indirectly from or caused by the failure or inability or any alleged failure or inability of any Computer System, whether Your property or not, at any time to achieve any or all of the purposes and consequential effects intended by the use of any number, symbol or word to denote a date, including without limitation, the failure or inability to recognise, capture, save, retain or restore and/or correctly to manipulate, interpret, transmit, return, calculate or process any date, data, information, command, logic or instruction as a result of

Exceptions (continued)

- (a) recognising, using or adopting any date, day of the week or period of time, other than the true or correct date, day of the week or period of time,
 - (b) the operation of any command or logic which has been programmed or incorporated into any Computer System.
- (21) any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from
- (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.
- (22) any Claim or consequence whatsoever resulting directly or indirectly from or in connection with any of the following regardless of any other contributory cause or event
- (a) war, invasion, act of foreign enemy hostilities or a warlike operation or operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of, or amounting to, a military uprising or usurped power,
 - (b) Terrorism,
 - (c) any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.
- In any action, suit or other proceedings, where We allege that by reason of this definition any consequence whatsoever resulting directly or indirectly from or in connection with (a) and/or (b) above regardless of any other contributory cause or event is not covered by this policy, the burden of proving that any consequence whatsoever resulting directly or indirectly from or in connection with (a) and/or (b) above regardless of any other contributory cause or event is covered shall be upon You.

- (23) any Claim arising out of any activities which are regulated by the Financial Services Authority and which relate to investments of the kind formerly described in Part 1 of Schedule 1 to the Financial Services Act 1986.

This exception will not, however, apply to investments which were not previously included in Part 1 of Schedule 1 to the Financial Services Act 1986 but which are included in any legislation which replaces or succeeds the Financial Services Act 1986 or any replacement or re-enactment.

Conditions

Claims Conditions

If in relation to any Claim or loss You fail to fulfil or observe the requirements imposed upon You by conditions (1), (2), (3) or (4) You will lose Your right to indemnity or payment for that Claim or loss.

- (1) If during the Period of Insurance, regardless of any Excess, You
 - (a) receive any Claim, You shall give written notice to Us as soon as practicable save in the case of Claims concerning adjudications under the Housing Grants Construction and Regeneration Act 1996, the special provisions concerning which are set out at condition (4) below,
 - (b) become aware of any circumstance that might give rise to a Claim or loss, You shall give written notice to Us of such circumstance as soon as practicable. Any Claim or loss subsequently arising from any circumstance notified to Us shall be deemed to have been made during the Period of Insurance in which the notice of such circumstance was first received by Us,
 - (c) discover a reasonable cause for suspicion of any dishonesty or fraud on the part of any past or present director, partner or Employee of Yours, whether giving rise to a Claim or loss or not, You shall give written notice to Us of such discovery as soon as practicable,
 - (d) discover any loss of or damage to Documents, You shall give written notice to Us of such discovery as soon as practicable,

provided always that any such written notice under any part of this condition (1) is received by Us during the Period of Insurance.

Any written notice should be sent to:

**The Claims Manager,
Norwich Union Professional Risks,
PO Box 196
Technology Park
DUNDEE DD1 9QL**

**Tel. 01382 593634
Fax. 01382 561460**

- (2) In the event of a Claim or the discovery of a circumstance that might give rise to a Claim, You must not admit liability for or settle any Claim or incur any related costs or expenses without Our written consent.
- (3) In the event of a Claim or loss or the discovery of a circumstance that might give rise to a Claim, We will be entitled, at Our own expense at any time, to take over and conduct in Your name the defence or settlement of any such Claim or loss.

If We do take over and conduct the defence or settlement of any such Claim or loss You shall give Us all such information and assistance as We may reasonably require and that is in Your power to provide.

Without prejudice to the generality of the above, Your duty to assist Us includes

- (a) providing all such information, assistance, signed statements or depositions as may be required to facilitate compliance with any civil procedure rules, practice directions and pre-action protocols as may be issued,
 - (b) allowing Us to present the best possible defence of a Claim within the time constraints available,
 - (c) ensuring ready access to all and any information that We may require in the defence of a Claim or investigation of a loss,
 - (d) ensuring the payment, on demand, of the Excess in conjunction with the terms of any settlement agreed by Us.
- (4) As regards Claims concerning adjudications under the Housing Grants Construction and Regeneration Act 1996, We will not provide indemnity unless You notify Us within 72 hours of
 - (a) receipt of any notice of adjudication,
 - (b) the service by You of any notice of adjudication,
 - (c) You becoming aware of any circumstance which may give rise to a notice of adjudication being served on You.

Conditions (continued)

General Conditions

- (5) If You make any claim for indemnity under this policy knowing the same to be false or fraudulent as regards to the amount or otherwise, this policy shall become void and You shall forfeit all benefit hereunder.
- (6) In connection with any Claim, We may at any time pay You the amount of the Limit of Indemnity (after deduction of any sums already paid as damages or claimant's costs and expenses in respect of such Claim) or any lesser amount for which We believe that such Claim can be settled and thereupon We shall relinquish the control of such Claim and be under no further liability in connection therewith except for costs and expenses incurred prior to the date of such payment and for which We may be responsible under this policy.
- (7) The Limit of Indemnity and the Excess apply to all of You jointly. If more than one insured is named in the Schedule the total amount We will pay will not exceed the amount We would be liable to pay to any one of You.
- (8) If any settlement is made by Us to You under the terms of this policy, You grant to us all rights of recovery that You would have had against any parties from whom a recovery may be made and You will take all reasonable steps to preserve and not to prejudice such rights.
- (9) A person or company who is not a party to this policy has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this policy but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- (10) This policy is governed by the law of England and Wales and the courts of England and Wales are to have exclusive jurisdiction for hearing and determining any litigation arising out of or in connection with the interpretation of this policy.
- (11) This policy, its endorsements and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the policy, endorsements or the Schedule shall bear the same meaning wherever it may appear unless the contrary is indicated.
- (12) You shall not be required
- (a) to contest any legal proceedings,
 - (b) to take steps to effect recovery from any person committing or conspiring to commit or condoning any dishonest or fraudulent act (or from the personal representatives of such person) including the taking of legal proceedings against such person,
- unless a senior barrister (to be mutually agreed upon between You and Us) shall advise that such action has a reasonable prospect of success.

Special Conditions

Special Conditions (1) and (2) only apply if You are a member of the Royal Institution of Chartered Surveyors.

- (1) Where there has been non-disclosure or misrepresentation of facts or untrue statements in the Proposal and provided always that You establish to Our reasonable satisfaction that such alleged non-disclosure, misrepresentation of facts or untrue statements were free of any fraudulent conduct or intent to deceive, We shall not exercise Our right to avoid this policy.

Where such non-disclosure or misrepresentation has prejudiced Our consideration of terms under this policy, We shall be entitled to charge an appropriate additional premium in light of such prejudice.

However, in any case of a Claim first made against You during the Period of Insurance where

- (a) You had previous knowledge of the circumstance which might give rise to such Claim

and

- (b) You should have notified the same under any preceding insurance

then where the indemnity or cover under this policy is greater or wider in scope than that to which You would have been entitled under such preceding insurance We will only be liable to afford indemnity to such amount and extent as would have been afforded to You by such preceding insurance.

Where Your breach of or non-compliance with any condition of this policy has resulted in prejudice to the handling or settlement of any Claim or loss, We shall be entitled to reduce the indemnity afforded by this policy in respect of such Claim or loss (including Other Costs) to such sum as in Our reasonable opinion would have been payable by Us in the absence of such prejudice.

For the avoidance of doubt, this Special Condition shall not apply to any Claim or loss known to You prior to the inception of this policy.

In the event of any dispute or disagreement between You and Us regarding the application of this Special Condition, such dispute or disagreement shall be referred by either party for arbitration to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors whose decision shall be binding on both parties.

- (2) Any dispute or disagreement between You and Us as to the correct interpretation of the Business under this policy shall be referred by either party for arbitration in accordance with English law and procedure to any person nominated by the President for the time being of the Royal Institution of Chartered Surveyors whose decision shall be binding on both parties.