



Policy wording

# Professional indemnity Design & Construct

January 2022

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# Welcome to AXA

## Thank you for choosing AXA

Please read carefully all **your** documents together as they form **your policy** and contain the full details of **your** cover. Please keep any documents **we** have provided in a safe place.

If **you** have any questions, need anything explaining or believe this contract does not meet **your** needs, please contact **us** or **your** insurance adviser.

## Important information about this cover

This cover operates on a claims-made basis. This means that **we** will only provide cover for **claims** or **claim circumstances** made against **you** and notified to **us** during the **period of insurance**. **We** will not cover any **claim** or **claim circumstance** arising from an act, error or omission that occurred before the **retroactive date**.

Conditions apply regarding when **you** must tell **us** about **claims** or **claim circumstances** and these can be found below. **You** should read these carefully.

## Your policy

**Your policy** is a contract of insurance between **you** and **us** and **you** have a duty to make a fair presentation of the risk to **us** in accordance with the law.

In return for **you** having paid or agreed to pay the premium **we** will cover **you** subject to the terms contained in **your policy**.

**Your policy** is renewable provided that **we** agree to accept **your** premium for any subsequent **period of insurance**. **We** do not have to offer renewal of **your policy** and cover will cease on the end date. If renewal is offered and accepted by **you** a new schedule will be issued for the new **period of insurance** showing any changes to **your** cover.

Throughout this **policy**, **we** use definitions and headings. Definitions are used to explain what a word means and are highlighted in bold blue print. Details of the definitions that apply throughout **your policy** can be found on page 4.

Headings have been used for **your** guidance and do not form part of the contract. Wherever a word is used in the singular, this will also include the plural and vice versa.

To help **you** understand the cover within **your policy** **we** have included sections entitled 'What is covered' and 'What is not covered'.

Under the heading 'What is covered' **we** give information on the insurance that **your policy** provides. This must be read with 'What is not covered' and the Policy conditions at all times.

Under the heading 'What is not covered' **we** draw **your** attention to what is excluded from **your policy**.

## Telling us about a claim

If **you** need to tell **us** about a **claim** please first check **your policy** to make sure **you** are covered. **You** must then follow the Claim circumstance condition and Claim notification condition on pages 8 and 9.

Please contact **your** insurance adviser who will help **us** deal with the **claim**.

## Making a complaint

If **you** are not happy with the way a **claim** or any other matter has been dealt with, please read 'Making a complaint' at the end of this document.

## Meanings of defined terms

These definitions apply to **your policy**. If a word or phrase has a defined meaning it will be highlighted in bold blue print and will have the same meaning wherever it is used in this **policy**.

### Asbestos

Asbestos in any form, asbestos fibres or particles or derivatives of asbestos or any material containing asbestos.

### Asbestos survey

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.

### Claim(s)

Any verbal or written demand, notice or communication from a third party

- 1 making an assertion for legal remedy or any other form of compensation or remedy
- 2 containing reference to, or serving notice of, intent to start legal proceedings
- 3 invoking any pre-action protocol as set under the Civil Procedure Rules and/or
- 4 referring to arbitration, adjudication or complaint proceedings.

### Claim circumstance(s)

Any incident, occurrence, fact, matter or act that **you** become aware of that might reasonably give rise to a **claim**.

### Collateral warranty

Any written agreement that creates a duty of care between **you** and any party that is not **your** direct client or customer.

### Computer system

Any computer, hardware, software, communications system, electronic device (including, but not limited to, smart phone, laptop, tablet or 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).

### Criminal prosecution defence costs

Costs and expenses that **you** incur with **our** prior written consent to defend any criminal proceeding first made against **you** and notified to **us** during the **period of insurance** arising from the conduct of **your professional business**.

### Defence costs

All costs and expenses incurred by **us** or by **you** with **our** prior written permission relating to the investigation, defence or settlement of any **claim** against **you**, which **your policy** covers.

This does not include profit costs or remuneration or expenses paid or due to **you**.

### Documents

Any documents or information that are **your** property or are looked after by or deposited with **you** in the ordinary course of **your professional business** and for which **you** are responsible. This does not include **data**, bearer bonds, coupons, stamps, bank or currency notes or negotiable instruments.

### Employee(s)

- 1 Any person working for **you** under a contract of service with **you** or
- 2 Any person working for **you** in connection with the **professional business**
  - a who is hired or lent to **you**
  - b who is self-employed
  - c on a voluntary basis

and who is under **your** control or supervision.

### Environmental audit

An investigation specifically intended to identify, locate or treat **pollution**.

### Excess

The amount stated in **your** schedule, being the first amount of **loss** for which **you** are responsible.

### Extended liability

Legal liability assumed by **you** under the express or implied terms of any contract or agreement that restrict **your** right of recovery or increase **your** liability at law beyond that applicable in the absence of those terms.

### Injury

Any death, illness, disease or sickness or any bodily, mental, psychological or emotional injury, distress or shock.

### Limit of indemnity

The amount shown in **your** schedule as the limit of indemnity.

### Loss

The amount that **you** are legally liable to pay due to a **claim**, including awards of damages, awards of claimant costs and amounts that are pursuant to settlements, but not including **defence costs**.

### Period of insurance

Period shown in **your** schedule, inclusive of both the stated start date and end date.

### Policy

This document, any schedule and any endorsements attached or issued.

### Pollutant

Any solid, liquid or gaseous pollutant contaminant or irritant substance or any biological agent that is a danger to human health, but not including **asbestos**.

### Pollution

Actual, alleged or threatened discharge, seepage, treatment, removal, disposal, dispersal, emission, release or escape of any **pollutant** or any regulatory order, direction or request to test for, monitor, remove, contain, treat, detoxify, or neutralise any **pollutant**.

### Professional business

Performance by **you** or on **your** behalf of the following, provided such activities are undertaken by or under the supervision of a **qualified professional**

- 1 design of or specification for any building or structure
- 2 supervision of or inspection of construction works
- 3 feasibility study or other scientific study for any construction works
- 4 calculation or provision of technical information
- 5 surveying or quantity surveying
- 6 materials measurement, testing and certification
- 7 testing and commissioning
- 8 safety management
- 9 other related consultancy or provision of advice
- 10 co-ordination and integration of design
- 11 quality control
- 12 training.

### Qualified professional

Properly qualified architect, engineer or surveyor, or any person with a minimum of five years relevant practical experience of that professional activity.

### Retroactive date

The date from when work **you** performed is covered. This date is shown on **your** schedule.

### Subsidiary

A company that **you** either directly or indirectly control through

- 1 holding a majority of the voting rights
- 2 the right to appoint or remove a majority of its board of directors, and/or
- 3 sole control of, pursuant to a written agreement with other shareholders, a majority of that company's voting rights.

### Terrorist act

Any act of a person or group directed towards the overthrowing or influencing of any government, or putting any section of the public in fear by threat, force or violence or other means.

### Virus or similar mechanism

Program code, programming instruction or any set of instructions intentionally constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or operations, whether involving self replication or not, including but not limited to trojan horses, worms or logic bombs.

### We/us/our

AXA Insurance UK plc.

### You/your

- 1 The person, firm, company or organisation shown in your schedule as the insured.
- 2 Any person, firm, company or organisation shown in your schedule as an additional insured.
- 3 Any predecessor in business to any firm, company or organisation that has been disclosed to **us**.
- 4 Any person who is or has been or who becomes a director, partner, member, principal or **employee** of any firm, company or organisation referred to in **1, 2 or 3** above and only for work undertaken for or on behalf of any such firm, company or organisation.
- 5 Any retired partner, retired director or retired member of the firm, company or organisation shown in your schedule as the insured and who remains as a consultant to any person, firm, company or organisation shown in your schedule as the insured.
- 6 The estate, heirs, executors, legal or personal representatives of any person referred to in **1, 2, 3, 4 or 5** above in the event of their death or incapacity.

## Policy conditions

**You** must comply with the following conditions to have the full protection of **your policy**.

If **you** do not comply then **we** may at **our** option take one or more of the following actions:

- 1 Cancel **your policy**
- 2 Declare **your policy** void (treating **your policy** as if it had never existed)
- 3 Change the terms of **your policy**
- 4 Refuse to deal with all or part of any **claim** or reduce the amount of any **claim** payments.

### Adjudication condition

If **you** receive any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice relating to a contract, **you** must tell **us** within two working days of receipt of that notice.

**We** reserve the right to treat any notification received under this clause as a notification of a **claim circumstance**.

**You** must not serve any notice of intention to adjudicate, notice of adjudication, referral notice or any adjudication notice relating to a contract without first obtaining **our** written approval unless, in **your** reasonable opinion, service of those notices will not lead to a **claim**.

**You** must not

- 1 make any admission in respect of the dispute that is the subject of adjudication
- 2 agree to accept the decision of the adjudicator as finally determining the dispute with no further reference to legal proceedings, arbitration or alternative dispute resolution

without first obtaining **our** written approval to do so.

If **you** do not comply with this condition, **we** have the right to refuse to pay any costs, damages, penalties or other amounts that arise from the adjudication.

### Admission of liability condition

In the event of a **claim** or discovery of a **claim circumstance**, **you** must not

- 1 admit liability
- 2 incur any **defence costs**
- 3 make any offers of settlement
- 4 otherwise prejudice the conduct of defence or settlement of that **claim** or **claim circumstance**

without first obtaining **our** written approval. This applies regardless of any complaints handling procedure or if the amount in dispute is less than **your excess**.

### Breach of Claim notification condition or Claim circumstance condition

If **you** do not comply with the Claim notification condition or the Claim circumstance condition and where the **claim** or **claim circumstance** would otherwise be covered by this **policy**, **we** will not refuse to pay the **claim** provided:

- 1 **you** tell **us** in writing about the **claim** or **claim circumstance** during the **period of insurance** and;
- 2 **you** can satisfy **us** that **you** had no intention to deceive or mislead.

If, however, this affects **our** ability to handle or settle a **claim** or **claim circumstance**, **we** will reduce the amount **we** pay to the figure **we** reasonably believe would have been payable had **our** ability to handle or settle it not been affected. This does not affect any other condition in this **policy**.

If **you** do not comply with the Claim notification condition or the Claim circumstance condition and **you** disagree with **us** about what is covered or what **we** will pay, **you** may refer the matter for consideration to the professional or regulatory body to which **you** belong. If that professional or regulatory body agrees to nominate a person to intercede on **your** behalf and, after consideration of the facts, that person considers intercession by them is warranted, **we** agree **we** will give due and proper consideration to that person's intercession.

### Change in risk condition

**You** must tell **us** as soon as possible during the **period of insurance** of any change

- 1 to the **professional business**
- 2 in the person, firm, company or organisation shown in **your** schedule as the insured
- 3 to the information **you** provided to **us** previously or any new information that increases the risk of loss as insured under any section of **your policy**.

**Your policy** will come to an end from the date of the change unless **we** agree in writing to accept an alteration.

**We** do not have to accept any request to vary **your policy**. If **you** wish to make any alteration to **your policy** **you** must disclose any change to the information **you** previously provided or any new information that could affect this insurance. If **we** accept any variation to **your policy**, an increase in the premium or different terms or conditions of cover may be required by **us**.

### Claim circumstance condition

**You** must tell **us** in writing as soon as possible within the **period of insurance** about **claim circumstances**.

When telling **us** about **claim circumstances**, **you** must give to **us** full details including but not limited to

- 1 a description of the **claim circumstance**
- 2 the nature of the alleged act, error or omission leading to the **claim circumstance** and the date it was committed
- 3 the nature of the alleged damage
- 4 the names of the actual or potential claimants and defendants, and
- 5 the manner in which **you** first became aware of the **claim circumstance**.

If **claim circumstances** that relate to work **you** performed after the **retroactive date** and within the **period of insurance** lead to a **claim** after the **period of insurance** has ended, that **claim** will be deemed to have been made against **you** during the **period of insurance**, provided that **you** told **us** in accordance with the requirements of this condition.



### Claim control and co-operation condition

**You** must give **us** all information and assistance that **we** reasonably require and that is in **your** power to provide.

**You** must co-operate with **us** and anyone appointed on **our** behalf by

- 1 providing any information, assistance, signed statements or depositions as **we** may require to comply with any Civil Procedure Rules, Practice directions and Pre-Action Protocols as may be issued
- 2 assisting to present the best possible defence to a **claim**
- 3 ensuring access to any information that **we** or **our** representatives may require in the defence of a **claim** or the investigation of any **claim circumstance**, whether or not that information may be privileged
- 4 provide **us** with any and all information that will allow **us** to determine **our** liability under this **policy**
- 5 making payment on demand of **your excess** in order to comply with the terms of any settlement **we** have agreed
- 6 providing any information, assistance, signed statements or depositions as **we** may require to exercise **our** rights of subrogation
- 7 ensuring that all documents of any description relevant to any **claim** or **claim circumstance** are preserved and complete.

### Claim notification condition

**You** must tell **us** in writing as soon as possible within the **period of insurance** about any **claim** against **you** irrespective of **your** views as to the validity of such **claim**.

**We** will not pay **your claim** where **you** have not complied with this condition.

### Dishonesty and fraud condition

**You** must tell **us** as soon as possible within the **period of insurance** of the discovery of any dishonest or fraudulent act or omission or of any reasonable suspicion that an **employee** has acted dishonestly or fraudulently.

### Expiry of period of insurance condition

If **you** become aware of a **claim** or **claim circumstance** in the seven days immediately before the end of the **period of insurance** but, in **our** reasonable opinion, **you** are unable to tell **us** before the end of the **period of insurance**, **we** will allow **you** an additional seven days immediately after the **period of insurance** to tell **us**.

### Fraud condition

**You** and anyone acting for **you** must not act in a fraudulent way.

If **you** or anyone acting for **you**

- 1 knowingly makes a fraudulent or exaggerated **claim** under **your policy**,
- 2 knowingly makes a false statement in support of a **claim** (whether or not the **claim** itself is genuine) or
- 3 knowingly submit a false or forged document in support of a **claim** (whether or not the **claim** itself is genuine),

**we** will

- a refuse to pay the **claim**
- b declare the **policy** void from the date of the fraudulent act without any refund of premiums.

**We** may also inform the police of the circumstances.

### Instalments condition

If **you** fail to pay a premium instalment to **us** on the date due, this will result in **your policy** being cancelled from the date the missed instalment was due. **You** will not be entitled to any return of premium where this happens.

If a **claim** or **claim circumstance** has been notified to **us** during the current **period of insurance** the annual premium remains due in full.

### Law applicable to this policy condition

**You** and **we** can choose the law which applies to this **policy**. **We** propose that the Law of England and Wales apply. Unless **we** and **you** agree otherwise, the Law of England and Wales will apply to this **policy**.

### Misconduct investigation notification condition

If **you** discover that an investigative inquiry into **your** conduct of **your professional business** is to be undertaken within the **period of insurance**, **you** must inform **us** within 14 days.

If **you** do not comply with this condition, **we** have the right to refuse to pay any costs, damages, penalties or other amounts arising from the investigation.

### Non-disclosure and misrepresentation condition

**You** have a duty to make a fair presentation of the risk which **you** wish to insure. This applies prior to the start of **your policy**, if any variation is required during the **period of insurance** and prior to each renewal.

If **you** fail to comply with this duty then

- 1 If **we** can demonstrate that the failure to make a fair presentation of the risk was deliberate **we** can elect to make **your policy** void and keep the premium. This means treating the **policy** as if it had not existed and that **we** will not return **your** premiums, or
- 2 If the failure to make a fair presentation of the risk was not deliberate and **we** would not have provided cover or **we** would have issued cover on different terms had **you** made a fair presentation, then **we** will not use **our** right to void **your policy** or to reduce the amount **we** will pay for a **claim**, but **we** can charge a reasonable additional premium in light of any prejudice caused to **us** by **your** failure to comply with that duty. Any such additional premium will not be more than the reduction in the amount of the claim payment that the law would have entitled **us** to apply.
- 3 Where **we** elect to apply one of the above then
  - a if **we** elect to make **your policy** void, this will be from the start of the **policy**, or the date of variation or from the date of renewal
  - b **we** will apply additional premium calculated by reference to the premium that would have been charged and this

will apply from the start of the **policy**, or the date of variation or from the date of renewal

depending on when the failure to make a fair presentation occurs.

- 4 In the case of a **claim** first made against **you** during the **period of insurance** where:
  - a **you** had previous knowledge of the circumstances relating to that **claim**, and
  - b **you** should have notified that **claim** under any preceding policy but did not do so, if the indemnity or cover under **your policy** is greater or wider in scope than the preceding policy (whether insured by **us** or not), **we** will only cover **you** to the amount and extent as would have been provided by the preceding policy.

### Other insurance condition

If a **claim** is made under this **policy** and there is other insurance cover under which **you** are, or would be but for this **policy**, entitled to have a **claim** paid, **we** will not pay the **claim** or **defence costs** except for any amount over and above the amount payable by the other insurance policy or policies.

### Sanctions condition

This contract of insurance is subject to sanction, prohibition or restriction under United Nations resolutions. It is a condition of **your policy** that **we** will not provide cover, or pay any **claim** or provide any benefit under **your policy** to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose **us**, or **our** parent, subsidiary or any AXA group member company, to any trade or economic sanctions, or violate any laws or regulations of the United Kingdom, the European Union, the United States of America or any other territory.

### Subrogation (our rights) condition

**We** will be entitled to undertake in **your** name or on **your** behalf steps to enforce rights against any other party before or after any payment is made by **us**.

**We** will not exercise any right of subrogation against any present or former **employee** unless **we** have made payment brought about or contributed to by any dishonest, fraudulent or malicious act or omission of that present or former **employee** or if the present or former **employee** conspired to commit or condone any such dishonest, fraudulent or malicious act or omission.

**You** must not enter into any contract or other agreement that restricts **your** rights of recovery in respect of any **claim** that may be covered by this **policy**.

### Third party rights condition

The Contract (Rights of Third Parties) Act 1999 does not apply to this **policy**.

## ✓ What is covered

**We** will cover **you** for any **claim** and **defence costs** that arise from the conduct of **your professional business**, where the **claim** is first made against **you** and notified to **us** during the **period of insurance**, arising from

- 1 a breach of professional duty
- 2 negligent misstatement or misrepresentation
- 3 unintentional libel, slander or defamation
- 4 unintentional breach of or misuse of confidentiality or any right to privacy
- 5 unintentional infringement of intellectual property rights including any act of passing-off (but not breach of patent)
- 6 any liability **you** incur as a result of a decision by an adjudicator appointed to resolve a dispute under the Scheme for Construction Contracts as contained in the Housing Grants Construction and Regeneration Act 1996, or an adjudication clause contained in a contract, or
- 7 any other civil liability that **you** incur.

The most **we** will pay for **loss** resulting from each **claim** is the **limit of indemnity**.

**We** will pay **defence costs** in addition to the **loss**. If the amount of **loss** exceeds the **limit of indemnity**, the most **we** will pay for **defence costs** will be an amount in the same proportion that the **limit of indemnity** has to the **loss**.

### Asbestos cover

**We** will cover **you** for any **claim** or **claim circumstance** arising directly or indirectly from the actual or possible dispersal or presence of **asbestos**, **we** will only pay the costs of

- 1 rectification
- 2 redemption
- 3 decrease in value

caused by that actual or possible dispersal or presence of **asbestos** and only where that **claim** or **claim circumstance** arises from **your** negligent act, negligent error or negligent omission. Where that **claim** relates to a decrease in value, **we** will only cover the decrease that arises from a survey that **you** performed and where that survey was not an **asbestos survey**.

The most **we** will pay for all **claims** and **defence costs** arising directly or indirectly from **asbestos** in any one **period of insurance** is £250,000.

### Collateral warranties cover

**We** will cover **you** for any **claim** and **defence costs** arising from **your** performance of obligations agreed by **you** under a **collateral warranty**, provided that

- 1 the **claim** arises from the performance of **your professional business** and was first made against **you** and notified to **us** during the **period of insurance**
- 2 the benefit of such **collateral warranty** is no greater and/or longer lasting than that in the original contract to which the **collateral warranty** relates.

The most **we** will pay for Collateral warranties cover is the **limit of indemnity**.

### Court attendance costs cover

In the event that any of **your** directors, partners, members, principals or **employees** are required to attend court, mediation or arbitration in connection with a **claim** that is covered by this **policy**, provided that **we** have first given **our** written consent, **we** will pay compensation to **you** at £300 per day or part of day for each person required to attend.

The most **we** will pay for all Court attendance costs cover in any one **period of insurance** is £15,000. This is in addition to the **limit of indemnity**.

No **excess** will apply to Court attendance costs cover.

### Criminal prosecution defence costs cover

**We** will pay for **criminal prosecution defence costs** but only where, in **our** reasonable opinion, defending the criminal proceeding could protect **you** against a **claim** or potential **claim** that would be covered by this **policy**.

For any subsequent or concurrent civil action arising out of that criminal offence, notification of that action will be deemed to be notification of a **claim** or **claim circumstance**.

The most **we** will pay for all **criminal prosecution defence costs** in any one **period of insurance** is £250,000 or the **limit of indemnity**, whichever is the lower. This is part of and not in addition to the **limit of indemnity**.

### Dishonesty and fraud cover

**We** will cover **you** for any **claim** and **defence costs** arising from the conduct of **your professional business**, first made against **you** and notified to **us** during the **period of insurance**, for any civil liability including liability for claimant's costs and expenses arising from dishonest or fraudulent acts or omissions by any of **your employees** who are not a principal, partner, member or director.

In the case of any **claim** arising from any dishonest or fraudulent act or omission

- 1 no person committing or condoning dishonest or fraudulent acts or omissions shall be entitled to cover
- 2 **we** will not cover dishonest or fraudulent acts or omissions committed by any person after **you** discover, or have reasonable cause for suspicion of, dishonesty or fraud on the part of that person
- 3 in the event of the alleged fraudulent and/or dishonest party making an admission of guilt or being found guilty of that fraud and/or dishonesty, **we** will seek a full refund of any amounts paid by **us** under this section from that fraudulent party.

Any dishonesty or fraud committed by two or more **employees** who were acting together will be regarded as one **claim**.

The most **we** will pay for **loss** resulting from each **claim** that arises out of that dishonest or fraudulent act or omission is the **limit of indemnity**.

**We** will pay **defence costs** in addition to **loss** that arises out of that dishonest or fraudulent act or omission. If that **loss** amount exceeds the **limit of indemnity**, the most **we** will pay for **defence costs** will be an amount in the same proportion that the **limit of indemnity** has to the **loss** amount.

### Formal investigation costs cover

**We** will pay costs and expenses that **you** incur with **our** prior written approval at a properly constituted hearing, tribunal or proceeding that is covered under this **policy**, but that are not included under the meaning of **defence costs**, provided that the hearing, tribunal or proceeding

- 1 is first instigated against **you** and notified by **you** to **us** during the **period of insurance**, and
- 2 arises from the conduct of **your professional business**.

The most **we** will pay for Formal investigation costs cover in any one **period of insurance** is £25,000.

### Joint ventures cover

**We** will cover **you** for any **claim** and **defence costs** that arise from the conduct of **your professional business**, where the **claim** is first made against **you** and notified to **us** during the **period of insurance**, arising from a civil liability that **you** may become legally liable to pay and that arises whilst **you** are a member of a joint venture or consortium.

The most **we** will pay for Joint ventures cover is the **limit of indemnity**.

### Loss of documents cover

**We** will cover **you** for any **claim** and **defence costs** that arise from the conduct of **your professional business**, where the **claim** is first made against **you** and notified to **us** during the **period of insurance**, arising from the destruction, loss or damage of any **documents**.

**We** will pay reasonable costs and expenses for replacing or restoring **your** own **documents** that have been destroyed, lost or damaged in the conduct of **your professional business** provided that the destruction, loss or damage is discovered by **you** and notified to **us** during the **period of insurance**.

**We** will not pay for **your** own **documents** that are stored on a computer system or in any other magnetic or electronic form unless those **documents** are duplicated on at least a daily basis, with the intention that the duplicate can be used to restore the **documents** in the event of loss or damage.

The most **we** will pay for loss of **documents** is the **limit of indemnity**.

An **excess** of £500 (or the amount shown in **your** schedule if that is lower) will apply to each and every **claim** for loss of **documents**.

### Misconduct investigation costs cover

**We** will pay on **your** behalf the reasonable and necessary legal fees and related professional charges **you** incur during **your** representation at an investigative inquiry into **your** conduct of **your professional business**, provided that

- 1 the inquiry is first instituted during the **period of insurance**
- 2 the inquiry is conducted entirely outside the United States of America or Canada
- 3 the inquiry is conducted by a regulatory or professional body that have powers to investigate **you**
- 4 **you** have been notified in writing by the regulatory or professional body that it is looking into whether or not **you** are culpable of misconduct
- 5 **your** attendance is required by the regulatory or professional body that instituted the inquiry, and
- 6 **you** have first obtained **our** written permission to incur those fees or charges.

The most **we** will pay for all such legal fees and related professional charges in any one **period of insurance** is £50,000. Any amounts **we** pay for such Misconduct investigation costs are not in addition to and do not increase the **limit of indemnity**.

### Mitigation costs cover

**We** will cover **you** for reasonable costs and expenses that **you** incur for any reasonable action **you** take to mitigate a **loss** or potential **loss** that would otherwise be the subject of a **claim** under this **policy**, provided always that

- 1 **you** obtain **our** prior written consent before incurring these costs and expenses, and
- 2 **you** prove to **our** satisfaction that the amount of the costs and expenses to be incurred are less than any likely award of damages arising from the same potential **claim**, and
- 3 if a **claim** still arises from the same **loss** or potential **loss** then the amount paid under this section will be deducted from the **limit of indemnity** for that subsequent **claim**.

The most **we** will pay for Mitigation costs cover is the **limit of indemnity**.

### Pollution cover

For any **claim** or **claim circumstance** that arises directly or indirectly from **pollution**, **we** will only pay the costs of re-designing, re-specifying, remedying or rectifying a structure and will only pay where that **pollution**

- 1 arises from **your** negligent design, negligent specification or failure to report a structural defect and
- 2 does not result directly or indirectly from any **environmental audit** carried out by **you**.

The most **we** will pay for all **claims** and **defence costs** arising directly or indirectly from **pollution** in any one **period of insurance** is the **limit of indemnity**. For the purposes of this Pollution cover, **defence costs** will be inclusive of and not in addition to the **limit of indemnity**.

### Subsidiary creation and acquisition cover

If, during the **period of insurance**, **you**

- 1 acquire securities or voting rights in another organisation or create another organisation which, as a result of that acquisition or creation, becomes a **subsidiary** of **yours**, or
- 2 acquire any organisation by merger or consolidation

then that acquired or created organisation will automatically be insured under this **policy** with effect from the date of the acquisition or creation, but only with respect to the performance of **your professional business** performed after the acquisition or creation was completed.

However, if the acquired or created organisation

- 1 has annual fee income or turnover, which is greater than 10% of the annual fee income **you** last declared to **us** prior to the **period of insurance**
- 2 has assets in the USA or Canada
- 3 provides advice or services as part of activities which are not activities described in the definition of the **professional business**
- 4 has ever been fined an amount of £10,000 or more or has ever been found guilty of an offence by its regulator, or
- 5 has ever, with regard to any given 12 month period, incurred (through judgment or settlement) total losses equaling or exceeding £100,000 or 10% of the **limit of indemnity** (whichever is less) on account of **claims** made against it in that period,

**you** will give **us** written notice of that acquisition or creation as soon as possible and also provide any additional information **we** may reasonably require. **We** will have the right to amend the terms of this **policy** including but not limited to charging an additional premium. If **you** fail to give **us** written notice of the acquisition or creation then **we** will have the right to refuse to pay any **claim** or **claim circumstance** that arise directly or indirectly in connection with that acquired or created organisation.

## Defence and settlement of claims

All **claims** that come from the same act, error or omission or series of acts, errors or omissions, as a result of, or arising directly or indirectly from the same source or original cause, will be regarded as one **claim**.

If **we** cover more than one person, firm, company or organisation, **our** liability to all, as a result of one **claim**, will not be more than the **limit of indemnity**.

**We** may at any time pay the **limit of indemnity** or relevant sub-limit. **We** will then have no further liability for that **claim** or **defence costs** except those already incurred at the date of payment of the **limit of indemnity** or sub-limit.

If a **claim** has some elements that are covered by this **policy** as well as some elements that are not covered by this **policy**, any **defence costs** or settlements due will be allocated between **you** and **us** on a fair and reasonable basis taking into account the relative legal and financial exposures of the **claim**.

**We** have the right, but not the obligation, to take control of the **claim** and conduct the investigation, settlement or defence in **your** name. After taking into account the commercial considerations of the costs of defence, **we** may choose to settle a **claim** instead of defending it.

If **we** feel it is necessary, **we** will appoint **our** adjuster, solicitor or other appropriate person to deal with the **claim**. If **you** ask **us**, **we** may agree to appoint **your** solicitor, but only if **we** are satisfied that **your** solicitor has the necessary expertise to undertake this work, only on a similar fee basis as **our** solicitor and only for work done with **our** prior written approval.

If **you** disagree with **our** proposed course of action for any legal proceedings (whether defence or prosecution), then **you** may refer the matter to a Queen's Counsel of the English Bar to be mutually agreed between **you** and **us**. If **you** and **we** cannot agree on the Queen's Counsel to be appointed, then the Queen's Counsel will be appointed by the current Chairman of the English Bar or their representative. The Queen's Counsel's decision on how the legal proceedings should be handled shall be binding on **you** and **us**. In resolving this dispute, the Queen's Counsel will have consideration for the interests of **you** and **us**. The costs of this exercise will be allocated by the agreed or appointed party on a fair and equitable basis.

## **x** What is not covered

### **Adjudication exclusion**

**We** will not cover

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

### **Asbestos exclusion**

**We** will not cover any **claim** directly or indirectly involving **asbestos** or allegations or concerns relating to **asbestos** other than as stated in the Asbestos cover on page 11.

### **Associated persons or entities exclusion**

**We** will not cover any **claim** brought by

- 1** a firm, company or organisation with a financial interest in **you**
- 2** a firm, company or organisation in which any of **your** partners, directors or principals have a controlling interest
- 3** any firm, company, organisation or individual who fails within the definition of **you** above

unless the **claim** originates from a source independent of that firm, organisation or individual.

### **Contractual liability exclusion**

**We** will not cover **extended liability** other than as stated in the Collateral warranties cover on page 11.

However, in respect of any liability **you** incur under a **collateral warranty**, **we** will not cover any **claim** that arises from

- 1** any guarantee or warrant of fitness for purpose, satisfaction of performance specification or period of project works
- 2** any financial penalty or liquidated damages.

**We** will not cover any **claim** arising from the acceptance or guarantee by **you** of any fitness for purpose obligation whether this appears as an express term or is an implied term of any contract.

### **Cyber and data protection law exclusion**

- 1** **We** will not cover any **claim**, loss, damage, liability costs, expenses, fines, penalties, mitigation costs or any other amount
  - a** 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** where the **computer system** is owned or controlled by **you** or any party acting on **your** behalf, or
  - b** directly or indirectly caused by, directly or indirectly resulting from or directly or indirectly arising out of the receipt or transmission of malware, malicious code or a **virus or similar mechanism** by **you** or any party acting on **your** behalf.
- 2** **We** will not cover any **claim**, loss, damage, 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
  - a** to **you** or any party acting on **your** behalf by an internet service provider, telecommunications provider or cloud provider but not including the hosting of hardware and software owned by **you**
  - b** by any utility provider, but only where such failure or interruption of service impacts a **computer system** owned or controlled by **you** or any party acting on **your** behalf.
- 3** **We** will not cover any **claim**, loss, damage, liability costs, expenses, fines, penalties, mitigation costs or any other amount for actual or alleged breach of **data protection law** by **you** or any party acting on **your** behalf.

- 4 Any cover provided by **your policy** in respect of the costs of reconstituting or recovering lost, inaccessible or damaged **documents** owned or controlled by **you** or any party acting on **your** behalf will not apply to **data**.

Other than as stated within this exclusion or by other restrictions in **your policy** specifically relating to the use of, or inability to use, a **computer system**, no cover otherwise provided by **your policy** will be restricted solely due to the use of, or inability to use, a **computer system**.

#### **Defective workmanship or materials exclusion**

**We** will not cover any **claim** arising directly or indirectly from defective workmanship or defective materials or the failure by **you** to supervise or inspect any work. This exclusion will not apply if the failure to supervise or inspect was the responsibility of a **qualified professional**.

#### **Deliberate acts and omissions exclusion**

**We** will not cover any **claim** arising directly or indirectly from any act, error or omission that **you** deliberately, spitefully or recklessly commit, condone or ignore.

#### **Directors' and officers' liabilities exclusion**

**We** will not cover any **claim** made against **you** or **your** directors, officers or trustees for breach of their duties as director, officer or trustee.

#### **Dishonesty and fraud exclusion**

**We** will not cover any **claim** directly or indirectly involving dishonesty or fraud committed by **you** other than as stated in the Dishonesty and fraud cover on page 12.

#### **Distorted computer records exclusion**

**We** will not cover any costs and expenses **you** incur as a result of the loss or distortion of computer records caused by

- 1 defects in computer equipment or electronic storage devices
- 2 wear, tear, vermin or gradual deterioration
- 3 climatic or atmospheric conditions or extremes of temperature

- 4 use or processing whilst mounted in or on any machine unless as a result of loss of or damage to the machine itself.

The exclusion will not apply to the Loss of documents cover.

#### **Employment exclusion**

**We** will not cover any **claim** arising out of any kind of employment related dispute or any kind of defamation, discrimination, harassment or unfair treatment relating to any current, former or prospective **employees**.

#### **Excess exclusion**

**We** will not pay the **excess** shown in **your** schedule.

The **excess** does not apply to **defence costs**, Formal investigations cover or Court attendance costs cover.

The **excess** applicable to Loss of documents cover is as stated under the Loss of documents cover on page 12.

#### **Financial services exclusion**

**We** will not cover any **claim** arising out of any Regulated Activities as defined in the Financial Services and Markets Act 2000 as amended from time to time.

#### **Fines and penalties exclusion**

**We** will not cover any fines, penalties, punitive, multiple, aggravated or exemplary damages awarded against **you**.

#### **Fitness for purpose exclusion**

**We** will not cover any **claim** arising from any fitness for purpose obligation that **you** are subject to in respect of **your professional business**.

#### **Injury exclusion**

**We** will not cover any **claim** for **injury**

- 1 to any **employee**
- 2 to any person who is not an **employee** unless directly arising from a breach of duty through a negligent act, error or omission by **you** in the course of **your professional business**.



### Insolvency exclusion

We will not cover any **claim** arising out of or in connection with **your** insolvency, bankruptcy or any **claim** made by **your** liquidator, provisional liquidator or administrator.

### Insurance or finance arrangement exclusion

We will not cover any **claim** arising from **your** failure to arrange and/or maintain insurance and/or finance.

### Insured vs insured exclusion

We will not cover any **claim** brought by or on behalf of any person who may be insured by this **policy**.

### Internet activity exclusion

We will not cover any **claim** arising out of

- 1 the management of financial transactions
- 2 obscene, blasphemous or pornographic materials

on the internet.

### Market fluctuation exclusion

We will not cover any **claim** relating to the financial return of any investment or the depreciation or loss of investments when that financial return, depreciation or loss is caused by normal or abnormal fluctuations in any financial, stock, commodity or other markets that are outside **your** influence or control.

### North American jurisdiction exclusion

We will not cover any **claim** instituted or pursued

- 1 within the USA or Canada or any territories which come within the jurisdiction of the USA or Canada or in which it is contended that the laws of the USA or Canada should apply
- 2 to enforce a judgment obtained in any Court of the USA or Canada or any territories which come within the jurisdiction of the USA or Canada.

### North American territorial exclusion

We will not cover any **claim** arising from the conduct of **professional business** carried out from offices or premises located within the USA or Canada or any territories which come within the jurisdiction of the USA or Canada.

### Patent exclusion

We will not cover any **claim** arising directly or indirectly from the infringement of any patent.

### Pollution exclusion

We will not cover any **claim** directly or indirectly involving **pollution** other than as stated in the Pollution cover on page 13.

### Previous claims exclusion

We will not cover any **claim**

- 1 that has been notified under any other policy before the start of this **policy**
- 2 that **you** were aware of or should have been aware of before the start of this **policy**.

### Products exclusion

We will not cover any **claim** arising from products or goods manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by **you**. This exclusion will not apply to project models.

### Property damage exclusion

We will not cover any **claim** for loss of or damage to property unless arising directly from a breach of duty through a negligent act, error or omission by **you** in the course of **your professional business**.

### Property ownership or use exclusion

We will not cover any **claim** arising from the ownership, possession, leasing or use of any land or building structure or any other property or goods whether mobile or immobile.

### Radioactive contamination exclusion

We will not cover any **claim** arising directly or indirectly from

- 1 ionising radiation or contamination by radioactivity from any irradiated nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel

- 2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its nuclear component.

### Retroactive date exclusion

We will not cover any **claim** arising from the performance of **your professional business** carried out before the **retroactive date** as shown in **your** schedule.

### Surveys exclusion

We will not cover any **claim** arising out of a survey, unless it was undertaken by

- 1 anyone who is
  - a a Fellow or Associate of the Royal Institute of British Architects (RIBA) or
  - b a Fellow or Associate of the Royal Incorporation of Architects in Scotland (RIAS) or
  - c a Fellow, Professional member, Technical Member or Associate Member of the Royal Institution of Chartered Surveyors (RICS) or
  - d a Fellow or Associate of the Architects and Surveyors Institute (ASI) or
  - e a Fellow or Associate of the Faculty of Architects and Surveyors (FFAS) or
- 2 anyone who has not less than five years' experience of survey work or
- 3 any other person delegated by the person, firm, company or organisation shown in **your** schedule as the insured to undertake survey work, but only if
  - a supervision of that work is provided by a person qualified in line with **a** or **b** above or
  - b **we** have first provided written agreement.

### Taxation, competition or restraint of trade exclusion

We will not cover any **claim** arising directly or indirectly from the breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.

### Tender at less than economic terms exclusion

We will not cover any **claim** arising from a deliberate decision by **you** to tender for a contract at less than economic terms.

### Terrorist act exclusion

We will not cover any **claim** directly or indirectly involving any **terrorist act**.

### Trading losses exclusion

We will not cover any **claim** arising out of trading losses or trading liabilities incurred by **you** or any of **your** businesses.

### Unqualified professionals exclusion

We will not cover any **claim** arising directly or indirectly from the performance of **your professional business** by any person who is not a **qualified professional**.

### Valuation exclusion

We will not cover any **claim** arising from any valuation report prepared by **you** or on **your** behalf except where the purpose of the report is for certification of payments to contractors or for measuring quantities.

### War risk exclusion

We will not cover any **claim** arising from or happening through war, invasion, act of foreign enemy, hostilities whether war is declared or not, civil war, rebellion, revolution, insurrection or military or usurped power.

## Making a complaint

AXA Insurance aims to provide the highest standard of service to every customer.

If **our** service does not meet **your** expectations **we** want to hear about it so **we** can try to put things right.

All complaints **we** receive are taken seriously. Following the steps below will help **us** understand **your** concerns and give **you** a fair response.

### Making your complaint

The majority of complaints can be resolved quickly and satisfactorily by the department **you** are dealing with. If **your** complaint relates to a **claim** on **your policy**, please contact the department dealing with **your claim**. If **your** complaint relates to anything else, please contact the agent or AXA office where **your policy** was purchased. Telephone contact is often the most effective way to resolve complaints quickly.

Alternatively **you** can write to **us** at

#### AXA Insurance complaints:



AXA Insurance  
Commercial complaints  
AXA House  
4 Parklands  
Lostock  
Bolton  
BL6 4SD

#### All claims complaints:



Telephone: **01204 815359**



Email: **commercial.complaints@axa-insurance.co.uk**

When **you** make contact please tell **us** the following information:

- Name address and postcode, telephone number and e-mail address (if **you** have one).
- **Your policy** and/or **claim** number, and the type of **policy you** hold.
- The name of **your** insurance agent/firm (if applicable).
- The reason for **your** complaint.

Any written correspondence should be headed 'COMPLAINT' and **you** may include copies of supporting material.

### Beyond AXA

Should **you** remain dissatisfied following **our** final written response, **you** may be eligible to refer **your** case to the Financial Ombudsman Service (FOS).

The FOS is an independent body that arbitrates on complaints about general insurance products. The FOS can only consider **your** complaint if **we** have given **you our** final decision.

**You** have six months from the date of **our** final response to refer **your** complaint to the FOS. This does not affect **your** right to take legal action.

#### The Financial Ombudsman Service



Financial Ombudsman Service  
Exchange Tower  
Harbour Exchange Square  
London  
E14 9SR



Telephone: **0800 023 4567\***  
or **0300 123 9123\*\***  
Fax: **0207 964 1001**



Email: **complaint.info@financial-ombudsman.org.uk**  
  
Website: **www.financial-ombudsman.org.uk**

\* free for people phoning from a 'fixed line' (for example, a landline at home)

\*\* (free for mobile phone users who pay a monthly charge for calls to numbers starting 01 or 02)

## Our promise to you

### We will

- Acknowledge written complaints promptly.
- Investigate **your** complaint quickly and thoroughly.
- Keep **you** informed of progress of **your** complaint.
- Do everything possible to resolve **your** complaint.
- Acknowledge when **we** have made a mistake and learn from them.
- Use the information from complaints to continuously improve **our** service.

## Financial Services Compensation Scheme (FSCS)

AXA Insurance UK plc are covered by the Financial Services Compensation Scheme (FSCS). **You** may be entitled to compensation in the unlikely event **we** cannot meet **our** obligations to **you**. This depends on the type of insurance, size of the business and the circumstances of the **claim**. Further information about the compensation scheme arrangements is available from the FSCS ([www.fscs.org.uk](http://www.fscs.org.uk)).

**This document is available in  
other formats.**

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or audio version, please contact your  
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**[www.axa.co.uk](http://www.axa.co.uk)**

