



Professional Liability Policy

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Introduction to your Professional Liability policy

This document and its attachments form your Professional Liability policy and between them set out what is and isn't covered by your policy. It is important that you read it all carefully, to make sure that the insurance covers you've bought actually provide the level of protection you need. You should bear in mind that your needs can change over time as your business develops. If they do, it's important that you let your broker, intermediary or agent know so that we can update your policy.

Insurance cover can be wide but can never cover everything. We aim to provide competitive cover at a competitive price, and to keep cover and price stable over the longer term. Sometimes, external factors make this impossible but we recognise that the key to long term and stable relationships with our customers is to offer long term and stable service in return.

We hope you don't have to claim but, if you do, we promise to deal with it promptly and fairly. When we cannot pay a claim, or pay everything asked for, we will explain why we cannot do so. In return, we ask you to familiarise yourself with the limitations and conditions of your policy at the outset and abide by the policy requirements at all times.

If you require advice on any aspect of your policy please speak to your usual insurance adviser.

IMPORTANT

You must tell us about any facts or changes which may 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 are relevant please ask your insurance adviser or contact us. If you do not tell us about relevant changes, your policy may not be valid or the policy may not cover you fully. If you fail to comply with any of the conditions precedent, we reserve our right to be completely discharged from any liability in respect of the relevant claim. If you fail to comply with any of the other terms, conditions or requirements of the policy, we additionally reserve the right to reduce our liability in relation to any claim by an amount that fairly represents the extent to which our interests have been prejudiced as a result of that failure or omission. When the act or omission giving rise to such failure could reasonably be regarded as being capable of contributing to a claim covered by this policy, we may refuse to provide cover to you in proportion to the extent to which our liability has been increased by such failure.

You should keep a written record (including copies of letters) of any information you give us, or your insurance adviser when you renew this policy.

What happens if things go wrong?

We of course aim to provide first class service – but it has to be recognised that things can sometimes go wrong. You can be assured that at Barbican we take any complaint seriously and we promise to do our best to resolve any problem promptly and fairly.

If you think that any aspect of your insurance has failed to live up to your expectations, please let us know, either directly or through your adviser. Contact the Senior Executive at Barbican Channel Islands by e-mail, fax or letter, whichever is most convenient, using the contact details shown in your Schedule; set out the problem as you see it and ask for our solution.

Here's how we handle problems:

- if you make a complaint we will acknowledge it within 2 working days of having received it
- our objective will be to resolve your complaint within 5 working days.

We usually find that things can be quickly resolved. However, from time to time complications do arise and we need more time to go into things in detail. If this happens, we will let you know and give you a date by which we expect to reach a decision. Normally this will be no later than 20 working days from the date on which we received your original complaint.

If you disagree with the decision we make after having looked into your complaint, your first step is to write to our Chief Underwriting Officer, Mark Harrington, at Barbican Insurance, No 1 Cornhill, London EC3V 3ND. If we are still unable to resolve your complaint, you can take it up with Lloyd's of London. Write to them at Policyholder & Market Assistance, Lloyd's, One Lime Street, London EC3M 7HA, e-mail them at complaints@lloyds.com or telephone them on +44 (0)20 7327 5693.

Following this complaint procedure does not affect your subsequent right to take legal action.

The basis of your Professional Liability policy

This insurance policy is a legal contract between us, Barbican Syndicate 1955, and you the Named Insured.

Under this policy, we agree to indemnify you for claims arising during the Period of Insurance, in accordance with the terms and conditions set out below and in the policy Schedule.

On behalf of Barbican Syndicate 1955



MJ Harrington, *Active Underwriter*

In order for this policy to come in to force, you must have

- completed a signed proposal which we have accepted, which includes associated documents and/or statements setting out any particulars that we may have required and
- paid the premium in accordance with the payment terms given by us in writing.

The excess

It's normal insurance practice that we ask you to pay the first part of any claim you may make; this is known as the 'excess'. The excess for your Barbican Professional Liability policy is shown in the Schedule and applies to each and every claim (including a series of claims arising from the same root cause) and may also apply to costs, which will be shown in the Schedule.

Which law applies to your Professional Liability policy?

Unless we agree otherwise in writing, the law applying to your Professional Liability policy and any disputes connected to it will be the law applying to that part of the British Islands in which you normally live or (if applicable) the first Named Insured lives. In the case of a business, it will be the law applying to that part of the British Islands where it has its principal place of business.

Should neither of the above be applicable, the law of England and Wales will apply.

Definitions

For clarity, it is important that we define what is meant by words and phrases that appear in your policy. These definitions are listed below and will have the same meaning wherever they appear throughout this policy and Schedule unless specifically stated otherwise.

Wherever the words 'you'/'your'/'yours'/'your business' appear in this policy, they refer to the Insured as defined below. Wherever the words 'we'/'us'/'our'/'ours' appear in this policy, they refer to the Underwriters as defined below.

Aggregate means the total amount payable by us for all claims made by you under this policy during the Period of Insurance.

Allegation means any written or oral accusation, threat or demand made against you alleging that you are liable to compensate the person/s or organisation/s making the allegation.

Any one claim means a claim or series of claims arising from a single common root cause.

Asbestos Asbestos, asbestos dust or fibres, or materials or products containing asbestos minerals as defined in the 'The Control of Asbestos Regulations 2006'.

Avionics means electronic control devices, their associated software and/or firmware, fitted within any aircraft, spacecraft or other aerial device and used in connection with their control or flight.

Bodily injury means physical harm, sickness, mental anguish or death of a person unintentionally caused by you or others covered by this policy.

British Islands means the Channel Islands, the United Kingdom and the Isle of Man.

Business means the business you carry out as described in the policy Schedule. Where applicable, this also includes the provision and/or management of:

- canteens, social, sports, welfare and child care facilities solely for the direct benefit of your employees, members or guests
- first aid, medical, fire and ambulance services provided by you
- any premises which as owner, tenant or trustee in possession, you use in the normal course of your business
- building maintenance services including private work carried out by anyone engaged with your agreement for that purpose for any director, executive officer, employee, partner or trustee of your business.

Business injury means bodily injury, personal injury or property damage arising directly in connection with the ordinary course of the business. It also includes direct and indirect economic loss suffered by a third party and caused by or arising from your failure to perform services.

Circumstance means any circumstance or occurrence which a reasonable person in your position would believe could lead to an allegation and/or claim under this policy.

Claim means the process of you asking us to pay out for occurrences or circumstances covered by your Professional Liability policy, following the procedures set out in the policy.

Client means any person, firm or corporation with whom or which you have a contract; this includes any licensee.

Computer virus means any computer program, including but not limited to, any file virus, boot sector virus, macro virus, hostile applet, Trojan horse program, Java virus, ActiveX virus or other executable program which contains instructions to initiate an event on the infected computer, causing modification of or damage to data, memory or data media or otherwise adversely affecting the operation of any information and communications technology system.

Contractor means a person contracted to provide goods or services to the Named Insured or contracted by you to provide goods or services to a client, where those goods or services are supplied as part of fulfilling a contract between the Named Insured and the client.

Costs means costs, charges and expenses (other than regular or overtime wages, salaries or fees of you and/or others covered by this policy) incurred (either by us or by you) in defending, investigating or monitoring any claim, circumstance or occurrence and/or proceedings and appeals connected to them.

Date recognition compliant means that neither performance nor functionality of goods or services is affected by any date and in particular, but without limitation

- (i) no value for current date will cause any interruption in operation
- (ii) date-based functionality must behave consistently
- (iii) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules
- (iv) any leap year must be recognised as a leap year.

Director means any person occupying or acting in the position of director of the Named Insured, whether or not they have been validly appointed as a director or duly authorised to act as a director; or any person whose directions or instructions to directors, employees or contractors of your business are normally followed.

Documents/Data means any documents, digitised data, microcode or information stored in written, machine-readable or any other form, excluding any bearer bonds, coupons, stamps, bank or currency notes or other negotiable instruments.

Employee means anyone you employ under a service contract or apprenticeship, any self-employed person working for you, anyone working for you to obtain work experience and/or anyone else who you have hired or borrowed, who will be treated as if under a service contract or apprenticeship. However, a contractor is not included under the definition of employee.

Excess means the amount representing the first part of any claim which we require you to pay. Each section of the policy may have its own excess, and the relevant amounts are shown in the Schedule.

Executive officer means any person, whatever their customary title or job description and whether or not they are a director of the Named Insured, who is primarily concerned with or takes part in the management of your business.

Inception date means the date on which the cover provided under this policy commences as detailed within the wording of the policy.

Insured Each of the following is an Insured under this policy, to the extent shown under each heading:

- a the Named Insured
- b any past or present director, executive officer, employee or partner of the Named Insured; or predecessors of the Named Insured
- c any office bearer or member of social or sporting clubs or welfare organisations formed with the consent of the Named Insured, in respect of any claims arising from their duties connected with the activities of the club or organisation
- d any contractor working for the Named Insured, but only in respect of the liability of the Insured for the actions of such contractor.

Intellectual property rights means statutory rights, conferred within the territory, in or to any copyright, trademark or design (including in respect of semiconductor topographies), claimed by any party other than the Insured or a client of the Insured.

Internet means the worldwide group of inter-connected networks accessible via service providers or on-line service providers using dial-up telephone service, digital subscriber lines, integrated service digital network lines, cable modem access or similar transfer mediums.

Limit of Indemnity means the maximum amount which we shall be liable to pay out under this policy as specified in the Schedule. If there is a series of claims arising from a single common root cause, only one Limit of Indemnity shall apply to the whole series.

Named Insured means the person, firm or corporation specified in the Schedule.

Occurrence means any event, including continued exposure to substantially the same harmful conditions existing at the same location, that causes bodily injury, personal injury or property damage.

Period of Insurance means the period between the inception date and expiry date of this policy as detailed within the wording of the policy.

Personal injury means discrimination or humiliation based on race, colour, religion, sex, sexual orientation, age or ethnic origin, false arrest, false imprisonment, wrongful eviction, wrongful detention or malicious prosecution. (Except where insurance of such occurrences is prohibited by law).

Pollutants means any electronic, solid, liquid, biological, gaseous or thermal irritant or contaminant including, but not limited to, electromagnetic fields, noise, radio waves, smoke, vapour, soot, fumes, water borne bacteria and diseases, acids, alkalis, chemicals and waste; waste includes material to be recycled, reconditioned or reclaimed.

Predecessors means any person, practice, entity or other firm to which the Insured has succeeded.

Products means any commodity, article or thing, including any computer software provided by you or your business.

Provided includes manufactured, supplied, sold, installed, erected, repaired, altered, treated, leased, licensed, hired or otherwise permitted to be used; any related terms shall be similarly interpreted.

Property damage means

- a physical injury to or destruction of tangible property, including the loss of its use at any time as a result of the injury or destruction
- b loss of use of tangible property which has not been physically injured or destroyed, as long as the loss of use is caused by an occurrence covered under this policy.

Schedule means the schedule attached to this policy.

Senior counsel means a QC, advocate or solicitor who in either case has more than fifteen years experience in contracts for products or services, or their equivalent in any one or more superior courts in any jurisdiction.

Services means any services provided by or advice given by you in the course of the business.

Terrorism means any act involving the use of force, violence or harm and/or the threat thereof or the use of any computer virus, denial of service attack or other attack using electronic means, against people, property (including documents/data) or infrastructure by any person, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government or other lawfully constituted authority and/or to put the public, or any section of the public, in fear.

Underwriters means Barbican Syndicate 1955.

Vehicle means any type of machine on wheels or running on tracks, which is made to be (or intended to be) propelled by methods other than manual or animal power.

Website means any collection of pages of information on products and services available to users of the World Wide Web.

World Wide Web means the system that links information on Internet computer systems that allows users access to sound, video, graphics and text.

What will we cover you for?

Your Barbican Professional Liability policy provides a wide range of business covers, under the categories of Professional Indemnity, Public Liability, Products Liability and Employers' Liability insurance. The details of each of these are set out below.

You must notify us properly of any allegation, claim or circumstance in the way described in the Notification Conditions on page 18.

This cover will not apply if the event, occurrence or circumstances leading to the claim are covered more specifically elsewhere.

For your claim to be considered, it must arise from allegations or legal actions brought within the jurisdiction, relating to events taking place within the territory described in the Schedule on or after the retroactive date (all of which are shown in the Schedule) and in the ordinary course of your business.

1 Professional Indemnity

Subject to the terms and conditions of the policy and any exclusions we have made, we will pay out up to the Limit of Indemnity specified in the Schedule for claims made during the Period of Insurance arising from the events and occurrences listed below.

We will **not** pay out for any claim where your rights of recovery from a third party are excluded or limited by an agreement to which you are a party. See page 15.

Breach of confidence

Any breach of confidence, breach of confidential duty (including any breach of data protection legislation) or misuse of information which is either confidential or subject to statutory restrictions on its use, as long as these are unintentional on your part and occur in the ordinary course of your business.

Business injury

which occurs within the territory described in the Schedule and which arises from

- a Any **negligent act, error or omission** made by you
- b **Implied statutory terms** Any unintentional breach by you of a term implied by Section 14 of the Sale of Goods Act 1979 (UK) and/or Section 13 of the Supply of Goods and Services Act 1982 (UK). This also applies to any other legislation which has a similar effect in any other country included in the territory covered and/or any part of common law which may be analogous to the terms implied in any of the above legislation
- c Any unintentional infringement by you of **intellectual property rights**
- d **Loss of third party documents/data**

This applies notwithstanding exclusion 16 shown on page 15.

The mislaying, distortion, damage, erasure, loss and/or destruction of documents/data entrusted to or deposited with you in the ordinary course of business. This includes reasonable costs you may incur in replacing or restoring such documents/data.

Computer virus transmission

We will pay out up to an aggregate of £250,000 (or the Limit of Indemnity shown in the Schedule, if this is less) for any unintentional transmission by you of any computer virus that causes loss or damage to any wholly independent third party.

We will **not** pay out for transmission of a virus that has been knowingly created, modified or adapted by you or any person who has gained access to the information and communications technology systems of your business. See page 14.

Defamation

Any defamation, malicious falsehood (including slander of title and slander of goods), false attribution of authorship or passing off, as long as these are unintentional on your part.

Dishonesty

Any dishonest, fraudulent, malicious or criminal act or omission by any director or executive officer of the Named Insured or an employee or partner.

There are some exclusions to this; they are shown on page 14.

Indemnity to Principal

Your cover is extended to include any client with whom you have entered into a contract for goods or services (including their supply) within the territory described in the Schedule, as far as is necessary to meet the requirements of that contract, but only where your liability arises out of your performance of the contract.

Internet bulletin boards, 'chat rooms', blogs and other on-line forums

The provision or use by you of any bulletin board, chat room or other on-line discussion or information forum which is part of or accessible via your internet website.

Irrecoverable fees

If you are unable to collect fees from a client as a result of an allegation they have made about you or a contractor, or legal action they have taken against you or a contractor, either of which is covered elsewhere in this policy, we will pay out for such disputed fees at our sole discretion. Our objective will be to avoid the cost arising from an allegation or legal action against you which would itself be equal to or greater than the disputed fee.

If the client continues with any threatened action against you despite our payment, the amount we have paid will be included in the Limit of Indemnity shown in the Schedule and will **not** be in addition to it.

If you subsequently recover all or any of the disputed fee from the client or any other party, this amount must be repaid to us immediately.

Rectification costs

Where you become aware that an allegation may be made against you by a client, or similar circumstances, which can be rectified without leading to legal action or other measures being taken against you by that client, we will pay the expenses directly incurred in rectifying the situation in order to avoid a claim, as long as the cost is less than that of the potential claim.

We will only pay out for any rectification costs that we have agreed in writing. However, where it is imperative that you carry out such rectification without delay and there is not time to obtain our written consent, you must satisfy us that you have carried out the works to the same level of quality as the original work and at the minimum cost necessary to achieve that same level of quality; you must give us full details in writing within three working days of the work being carried out.

We will **not** pay out for lost profit, mark-up, VAT or any equivalent tax or duty, management time, lost files, lost commissions from the client in question or any other client.

Any amounts we pay under this cover shall be part of and not in addition to the Limit of Indemnity.

2 Public Liability

Subject to the terms and conditions of the policy and any exclusions we have made, we will pay out up to the Public Liability Limit of Indemnity specified in the Schedule for compensation and costs awarded by a court for

- anybody not employed by you in any capacity suffering bodily injury, illness or disease
- loss or damage to physical property that is not yours, not in your charge nor under your control
- loss arising from trespass, nuisance or interference with any right or access to air, light, water or right of way which happens during the period when your policy is in force

occurring in the course of the business during the Period of Insurance within the territory described in the Schedule.

We will also pay the costs arising from claims against you connected to the following, even where they are shown elsewhere as things we do not cover:

Defective premises

Any liability you incur under Section 3 of the Defective Premises Act 1972 or Section 5 of The Defective Premises (Northern Ireland) Order 1975 in connection with premises which you dispose of.

This cover will remain in force for up to 7 years after such disposal. However, please note that if this cover is cancelled or has expired, we will pay no more than a maximum of £2,000,000 or the Limit of Indemnity at the time of expiry if less for all compensation payable in respect of all liability arising within 7 years of cancellation or expiry.

We will **not** pay for

- the cost of repairing, replacing, or remedying any defect or alleged defect in such premises
- premises that were not insured by this policy at the date of their disposal
- where you are entitled to indemnity from any other sources.

Employees' and visitors' personal effects

Loss or damage to employees' or visitors' personal effects including vehicles and their contents.

We will **not** pay for claims connected to:

- property hired or borrowed by you or lent to you
- property in your charge or control, or that of your employees, for work or service to be carried out
- liability for which you assume responsibility under an agreement, which would not have been your responsibility without the agreement.

Indemnity to Principal

Your cover is extended to include any client with whom you have entered into a contract for goods or services (including their supply) but only within the territory described in the Schedule, as far as is necessary to meet the requirements of that contract, and only where your liability arises out of your performance of the contract.

Personal liability overseas

This section covers your liability or that of your spouse or civil partner accompanying you whilst on your business anywhere in the world.

We will **not** pay for claims connected to the ownership or occupation of any land or building and/or any business carried on by such person or their spouse.

Liability for office requisites and refreshments

We will pay out for costs arising from any allegation or legal action against you relating to the supply of office requisites and refreshments incidental to the business.

Rented premises

Loss or damage to premises which have been hired or rented to you or their fixtures or fittings, including loss or damage caused by a vehicle.

We will **not** pay for:

- liability for which you assume responsibility under an agreement, which would not have been your responsibility without the agreement
- the first £250 of loss or damage to premises, fixtures and fittings caused by anything except fire or explosion.

What we do **not** cover

There are certain things that we do not cover under Public Liability. These include deliberate acts, vehicles, vessels and craft, professional duty and pollution or contamination. These are detailed under Exclusions on page 14 onwards; you should read these carefully and if there is anything shown for which you wish to obtain cover, please contact your broker or intermediary to discuss the possibility of doing so.

3 Products Liability

Subject to the terms and conditions of the policy and any exclusions we have made, we will pay out up to the Products Liability Limit of Indemnity specified in the Schedule for compensation and costs awarded by a court to any member of the public (not an employee or contractor) as a result of any bodily injury, illness or disease occurring as a direct result of the use of your products.

We will also pay out for loss or damage to physical property that is not yours, not in your charge or under your control which occurs away from your premises and is caused by any article or item supplied by you during the period when your policy is in force.

Products Liability cover applies only to claims occurring during the Period of Insurance as stated in the Schedule.

We will **not** pay for costs arising from any claim against you relating to injury, illness, disease, loss or damage caused by any article or thing that you have supplied, installed, or erected, where you have accepted responsibility for such liabilities under a contract or agreement, if those liabilities would not have become your responsibility without that agreement.

Indemnity to Principal

Your cover is extended to include any client with whom you have entered into a contract for goods or services (including their supply) but only within the territory described in the Schedule, as far as is necessary to meet the requirements of that contract, and only where your liability arises out of your performance of the contract.

4 Employers' Liability

We will pay out up to the Employers' Liability Limit of Indemnity for your legal liability to pay compensation to any employee, director or partner in the business, together with costs and expenses arising from bodily injury, illness or disease, the causes of which are connected to and arise from their employment by you during the period when your policy is in force.

This section also covers any member, officer or employee of your social, sports or welfare any organisations connected with your business and member of the first aid, fire or ambulance services.

Should you die, any of your personal representatives are covered for any liability defined under this policy that you have incurred.

You are covered anywhere in the world for the things shown below (However, please note the exclusions shown at right re premises and employment outside the British Islands.)

In the event of an allegation or legal action against you we will pay out for the following:

- all sums which you are legally liable to pay for compensation and claimants' costs and expenses
- legal fees that you incur with our agreement in writing in advance for your representation at proceedings
 - in any court of summary jurisdiction arising out of any alleged breach of statutory duty
 - at any Coroner's Inquest or Fatal Accident Inquiry

Under your Employers' Liability cover we will also pay the costs arising from claims against you connected to contractual liability, where you have accepted responsibility under a contract or agreement, as long as the liability would not have become your responsibility without that agreement.

Compulsory insurance and recovery of costs

Employers' Liability insurance is a legal requirement. The cover provided by this policy is in accordance with the provisions of any law relating to compulsory insurance of liability to employees in the British Islands. However, please note that you will be required to repay to us any amounts which we have paid out as a result of such law, but which we would not have been liable to pay were it not for the provisions of such law.

We will **not** pay out for any claim in connection with work in or on and travel to, from or within any offshore accommodation, exploration, drilling or production rig or platform or support vessel.

Motor vehicles: we will **not** pay any costs arising from claims relating to bodily injury, illness or disease sustained by any employee where that employee is being carried in or upon a vehicle, entering or getting on to or alighting from a vehicle or in circumstances where any road traffic legislation requires insurance or security.

We will **not** pay out for any claim connected to any business you operate from premises outside the British Islands.

Nor will we pay out for claims arising from injury, illness or disease suffered by anyone employed by you outside the British Islands in order to carry out work outside the British Islands.

We will **not** pay for any fines or penalties imposed on you following successful prosecution under Part II of the Consumer Protection Act 1987, the Health & Safety at Work Act 1974, the Health & Safety at Work (Northern Ireland) Order 1978, the Food Safety Act 1990 or any analogous legislation in any other state outside the United Kingdom.

5 Costs

We will pay out other costs, including legal costs and costs awarded against you connected with a claim under this policy, and expenses, as long as they are incurred with our consent, in connection with any claim under this policy. We will also pay out:

- the costs of legal representation for you (including the costs of the prosecution awarded against you) arising from any prosecution or an appeal against conviction for a breach or alleged breach of Part II of the Consumer Protection Act 1987, the Health & Safety at Work Act 1974, the Health & Safety at Work (Northern Ireland) Order 1978, the Food Safety Act 1990 or any analogous legislation in any other state outside the United Kingdom.
- £300 per person per day that any employee, partner or director is required by your legal advisers (acting for you with our consent) to attend court or other proceedings relating to a claim covered under this policy.

Limit of Indemnity & costs

Except if it is specifically stated elsewhere in this policy that a lower Limit applies, the Limits of Indemnity and costs specified in the Schedule apply.

- Professional Indemnity; the Limit of Indemnity and costs incurred as shown here are as stated in the Schedule.
- Public Liability; the Limit of Indemnity and costs incurred as shown here are as stated in the Schedule.
- Products Liability; the Limit of Indemnity applies in the aggregate including costs incurred as shown here.
- Employers' Liability; the Limit of Indemnity applies to any one claim and the costs incurred as shown here are included within the Limit.

Exclusions

There are certain things that we cannot cover and will not pay out for. These are known as ‘exclusions’ and are listed below. We will not pay out for:

1 Avionics

Any claim caused by or arising out of the provision of avionics technology in any form.

2 Claims covered elsewhere

Any claim recoverable under any other insurance policy unless the amount claimed is in excess of the limit of indemnity provided under such policy.

3 Computer virus transmission and tracking devices

- a any claim with respect to the transmission by any person of any computer virus knowingly transmitted, created, modified or adapted by you or by any person who has gained access including unauthorised access to your information and communications technology systems
- b claims arising out of the use or provision by you or on your behalf of any device or program incorporated into any website or electronic mail system designed, supplied, hosted or installed by you or on your behalf that can be used to monitor the activity of any user of or visitor to such website or electronic mail system elsewhere than whilst using or visiting such website.

4 Contract or activities imposing additional liability

- a liability assumed by you under any contract which imposes a greater legal liability upon you than would have otherwise been the case in the absence of such a contract
- b any claim for business injury in connection with any activity not included in the business description shown in the Schedule.

5 Date recognition compliance

Any claim directly or indirectly arising out of, attributable to, or in any way involving the failure of any products or services to be date recognition compliant.

6 Deliberate acts

Claims and/or costs arising from any allegation or legal action against you which results from your deliberate act or omission and which could reasonably have been expected by you, having regard to the nature and circumstances of such act or omission.

7 Dishonest, reckless and/or fraudulent acts

Any director, executive officer, employee or partner of your business in respect of any claim directly or indirectly caused by or arising out of any dishonest, fraudulent, malicious, reckless or criminal act or omission about which such director, executive officer, employee or partner knew or ought reasonably to have known. Nor will we pay out on any claim in connection with the liability of any person participating in, abetting or condoning any such act or omission, even if that person falls within the definition of Insured.

8 Directors’ and officers’ liability

Any claim made against any director, executive officer, employee or partner of your business alleging a breach of his duty to you and/or your business.

9 Exclusion or limitation of rights of recovery

Any claim where your rights of recovery from a third party are excluded or limited by an agreement to which you are a party.

10 Financial services

Any claim arising out of the provision of finance or any financial service or breach of applicable regulations as defined by the Financial Services Management Act 2000.

11 Fines, penalties and liquidated damages

Any liquidated damages, fines, penalties, punitive or exemplary or aggravated or multiple damages, or damages payable by virtue of Section 97(2) of the Copyright Designs and Patent Act 1988 or any other legislation of similar effect in any other country of the territory (or any legislation amending or replacing the foregoing), or any taxes, levies, imposts or duties.

12 Insolvency

Any claim arising out of your insolvency or consequent upon the appointment of a liquidator (including a provisional liquidator), receiver, or administrator to your business.

13 Known defects

Any claim caused by or arising from any act, error or omission by you, or the provision by you of services or products which you knew (or ought reasonably to have known) were deficient, ineffective or incapable of substantially meeting the purpose for which they were intended; or were unable to perform according to their specification or any warranty or guarantee, whether directly stated or implied.

14 Outside territory or jurisdiction

- a any claim caused by or arising from loss or damage sustained or alleged to have been sustained outside the territory
- b any claim adjudicated or determined otherwise than in accordance with the laws of the jurisdiction
- c any claim caused by or arising out of the registration and/or enforcement within the jurisdiction of any judgment or award first made or entered against the insured outside the jurisdiction.

15 Own property damage

Claims for property damage arising from property owned by or leased or rented to you, or property in your physical or legal control except:

- a to the extent of cover for business injury under this policy (see page 8)
- b premises which are leased or rented to you
- c employees' property
- d vehicles not belonging to or used by you or on your behalf which are in your physical or legal control, where such property damage occurs while any such vehicle is in a car park owned or operated by you, provided that you do not own or operate a car park for reward as part of your business.

16 Patent infringement

Claims arising out of or alleged to arise out of the infringement of any patent, or any other analogous or replacement right.

17 Pollution

Any claim directly or indirectly caused by or arising from:

- a pollutants and consequent pollution, or contamination of whatever nature caused by or allegedly caused by you or, in the case of contamination or pollution of land, caused by or allegedly caused by any occupier of land
- b asbestos, asbestos dust or fibres, or materials or products containing asbestos minerals as defined in the 'The Control of Asbestos Regulations 2006'
- c electromagnetic fields or other radiation alleged to have emanated from any products or telecommunications or computer equipment (including video display units).

We will pay out for such pollution or contamination where it is caused by a sudden, identifiable, unintended and unexpected incident which occurs in its entirety at a specific time and place during the Period of Insurance. All pollution or contamination which arises out of one incident will be deemed to have occurred at the time such incident takes place.

18 Pre-existing circumstances

- a any claim arising out of a circumstance or occurrence notified or notifiable by you under any insurance in force prior to the inception date.
- b any claim for bodily injury, personal injury or property damage arising out of a circumstance or occurrence caused prior to the inception date.
- c any other claim arising out of a circumstance or occurrence happening prior to the retroactive date.

19 Product recall

Any claim for costs, expenses and damages for the withdrawal, inspection, repair, modification, disposal or replacement of products (or of any property of which such products form a part) if such products or property are withdrawn from the market or from use because of any known or suspected defect or deficiency in them.

20 Professional duty

Costs arising from any claim in respect of Public Liability, Products Liability and Employers' Liability relating to any breach of professional duty or service whether of omission or commission.

21 Radiation

Any claim directly or indirectly caused by or arising from:

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

22 Related entities

- a any claim against you made by any holding company, subsidiary or related body corporate to which you are connected or by any corporation whose board of directors is subject to control by your board of directors or by any company whose board of directors control you or your business except where such claim originates from a third party who is independent of such holding company, subsidiary, related body corporate, or corporation.
- b any claim arising out of the conduct of any partnership or joint venture in which you are a partner or member and which is not designated in this policy as a Named Insured.

23 RICO/SEC/ERISA

Any claim arising from any actual or alleged violation of:

- a the Racketeer Influenced and Corrupt Organisations Act, 18 USC Sections 1961 et seq. and any amendments thereto, or any comparable US Federal or State law, or any rules or regulations promulgated thereunder
- b the Securities Act of 1933, the Securities Exchange Act 1934 or any similar US Federal or State law or any rule of the Common Law having analogous effect; or
- c the Employment Retirement Income Security Act of 1974, Public Law 93-496, commonly referred to as the Pension Reform Act of 1974, and amendments thereto, or similar provisions of any Federal, State or local statutory law or any rule of the Common Law having analogous effect.

24 Trade law violation

Any claim arising out of or attributable to any actual or alleged violation of any law governing unconscionable conduct or any antitrust or competition law or other law prohibiting unlawful restraint of trade, business or profession.

25 Trading losses

Any claim arising out of or in connection with any trading loss or trading liability incurred by the business.

26 Vehicles, vessels and craft

Claims and/or costs arising from any claim against you involving:

- any vehicle or trailer attached to it, which is licensed for road use or for which compulsory insurance or security is required by any road traffic legislation, if the vehicle is owned, leased, hired, borrowed or driven by you or by the person claiming against you
- the loading or unloading of such a vehicle or trailer
- the delivery or collection of goods in connection with such a vehicle or trailer within the limits of any carriageway or thoroughfare
- any aircraft, aerial device, hovercraft or watercraft.

Nor will we pay for claims and/or costs arising from any road traffic legislation, nor where you are entitled to indemnity from any other source.

27 War and terrorism

Any claim directly or indirectly caused by or arising from war, invasion, acts of foreign enemies, terrorism, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, rebellion, revolution, insurrection, uprising or civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, confiscation, nationalisation or requisition or destruction of, or damage to, property by or under the order of any government or public or local authority de jure or de facto, martial law, riots or strikes.

Conditions precedent

Each of the following is a condition precedent to our liability. This means that if you are in breach of any of these conditions at the time of an allegation or legal action against you or a claim, we will be entitled to – and will – deny your claim under the policy. We may, at our absolute discretion, choose not to deny you cover for a claim if we believe that your breach of the condition has not prejudiced our position, but we will be under no obligation to do so.

The following should be read in conjunction with any other conditions which may apply to particular sections of your Professional Liability policy.

1 Non-disclosure

- a If it is discovered that you have fraudulently or dishonestly misrepresented or failed to disclose any material fact that would have affected the terms or availability of this policy, we will decline any claim and will cancel the policy from the date of its inception. We will not return any premiums that have been paid and will seek to recover any amounts paid out in relation to previous claims made under the policy.
- b If it can be shown that any non-disclosure of material fact was committed in innocence as the result of a genuine oversight or inadvertent error, we will consider any claim in the normal way as set out in this policy, regardless of whether if we had known of the matter not disclosed we would have increased the premium or refused to offer cover.

2 Notification

- a You must notify us immediately of any material change in your business or its ownership or management which could be reasonably interpreted as being likely to affect the scope and circumstances of the business, or the merger or consolidation of the business or any part of it with or within another business, whether or not operated by you.
- b You must notify us immediately of the appointment to your business or to that of the contractor of a liquidator (including a provisional liquidator), receiver or administrator.
- c You must notify us in writing as soon as you are aware (and no later than within 14 days of becoming aware) of any claim, or circumstance or occurrence leading to a claim, under this policy. Any claim will be deemed to have been made at the date of such notification.
- d You must provide at your own expense all information, records, statements and any other material relating to any claim you make. You must also attend all necessary conferences and court appearances which we may require in the course of investigating or defending any claim. You must also co-operate with us in the defence of any litigation against you or in the prosecution of any recovery action which we undertake.
- e Conditions c and d above continue to be in force after the expiry, termination or cancellation of this policy.

3 Websites, bulletin boards, chat rooms, blogs and other on-line forums

- a The Named Insured must ensure that you have in place, and enforce, an internet usage policy which adheres to all relevant requirements of the law and best industry practice.
- b Where there is a bulletin board, chat room or other on-line discussion or information forum which forms part of or is accessible through your website, you must at all times use your best endeavours to ensure that you have a published written policy on the suitability of content and that this is enforced so that all material that falls outside the suitability criteria is deleted from such forum as soon as is reasonably possible.
- c Should you (or any other company which is responsible for the publication, hosting, transmission or development of your website) receive a complaint from any person or organisation that material accessible via any bulletin board, chat room or other on-line forum contained in your website is defamatory, or in any other way likely to result in a claim, you must delete the material from your website as soon as is reasonably possible.

4 Defence and settlement

- a You must not settle any allegation or legal action against you, incur any costs or otherwise assume any contractual obligation or admit any liability regarding any allegation or legal action against you without our agreement in writing (such consent not to be unreasonably withheld). We shall not be liable for any claim, settlement or costs incurred as a result of any assumed obligation or admission to which we have not agreed in writing.
- b We are entitled at any time to conduct in your name the defence or settlement of any claim.
- c Any dispute which may arise between us and you as to whether any claim should be settled or contested shall be resolved in accordance with the senior counsel clause below.

Policy conditions

1 Discharge of liability

We are entitled at any time to pay you up to the amount specified as the Limit of Indemnity in the Schedule in connection with any claim covered by this policy. We are similarly entitled to pay a lesser amount if the claim can be settled for that lesser amount. Once that payment has been made, we will have no further liability to you in connection with that claim, except where costs have been incurred (up to the date at which we pay the claim) which we have agreed and which are covered by the policy.

Where the Limit of Indemnity is an aggregate amount, this is reduced by the amounts of any claims made during the period of insurance against which we pay out. The most we will pay out against any further claims in that Period of Insurance will be no more than that reduced amount.

2 Allocation

We will only pay our direct proportion of any claim when an allegation is made or a legal action taken against you which is covered only in part by this policy and/or when such allegation or legal action is also covered by another policy or policies. This can arise when:

- a the allegation or legal action against you relates to circumstances and/or occurrences some of which are covered by the policy and some are not
- b the allegation or legal action against you may be covered by other insurances that you have in place
- c whilst the allegation or legal action is made against you, there are other persons not covered by the policy who are party to the proceedings or demand relating to the circumstances and/or occurrences. In this case, we reserve the right to pay out only in proportion to your share of the liability for total costs and damages awarded to the claimant.

If you and we are unable to agree on an allocation, then we shall proceed initially on the basis of what we believe to be covered by this policy until a different allocation is negotiated or determined by legal process. Any such negotiated or legally determined allocation will be applied retroactively to all payments made on account of such circumstance or occurrence or claim.

3 Subrogation

When we pay out against any claim under this policy, by doing so we immediately acquire all the rights of recovery from third parties in relation to that claim, and any amounts recovered after such payment will be due to us. This is known as subrogation. We will not exercise such rights against any director, executive officer, employee or partner of your business unless the claim has been brought about or contributed to by dishonest, fraudulent, malicious or criminal act or omission on their part. Our rights of subrogation continue after the expiry, termination or cancellation of this policy.

4 Merger or acquisition

If, during the Period of Insurance, your business consolidates with, is merged into, or is acquired by any other entity then we will be liable to pay out **only** for claims occurring or circumstances or occurrences notified prior to the effective date of the consolidation, merger or acquisition, unless we agree otherwise in writing.

5 Failure to comply

If you fail to comply with the conditions precedent we will be completely discharged from any liability in respect of the relevant claim. If you fail to comply with any of the other terms, conditions or requirements of the policy, we additionally reserve the right to reduce our liability in relation to any claim by an amount that fairly represents the extent to which our interests have been prejudiced as a result of that failure or omission. When the act or omission giving rise to such failure could reasonably be regarded as being capable of contributing to a circumstance or occurrence covered by this policy, we may refuse to provide cover to you in proportion to the extent to which our liability has been increased by such failure.

6 Alteration and assignment

No change in, modification of, or assignment of interest under this policy shall be effective except when made by written endorsement to this policy and signed by an authorised employee of Barbican Syndicate 1955.

7 Senior counsel clause

- a Neither you nor we shall be required to contest any allegation or legal action unless a senior counsel advises that such allegation or legal action should be contested. Senior counsel will be mutually agreed by you and us or, in the absence of such agreement, senior counsel will be appointed by the President of the Law Society of England and Wales, Bar Association or equivalent local bar authority in the jurisdiction.
- b In formulating advice, senior counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by the claimant against you, the likely costs and the prospects of successfully defending the allegation or legal action. The cost of such senior counsel's opinion shall be regarded as part of the costs.
- c In the event that senior counsel advises that the allegation or legal action should not be contested or that it should be settled, and you elect to contest or not to settle it, then our liability shall not exceed the amount for which, in the opinion of senior counsel, the allegation or legal action could have been so settled, and, where costs are covered by this policy, the costs incurred with Underwriters' written consent.

8 Third parties

A person who is not party to this contract has no right under the contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

9 Termination

If you wish to terminate the cover provided by this policy at any other time after cover has commenced you should notify your broker, intermediary or agent who arranged the policy of your wish to terminate the cover and return all documents to them. If there has been an insured event, occurrence claim or circumstance (whether reported to us or not) prior to the receipt by us of notification of your wish to terminate the policy, we shall be under no obligation to make any return of premium. In all other circumstances you shall be entitled to the return of a proportionate part of the premium corresponding to the unexpired portion of the insurance subject to our retaining our designated minimum premium for each section of the policy.

We may at any time cancel this policy or any section of it by giving 14 days notice of cancellation by registered post to you at your last known address and in such event you shall become entitled to the return of a proportionate part of the premium corresponding to the unexpired portion of the insurance.

10 Identification

The policy, application form, statement of fact and/or declaration made by you, and the Schedule, should be read together and form the contract of insurance between you, the Named Insured, and us Barbican Insurance. Any word or phrase which is not specifically defined will have its ordinary meaning.

11 Policy construction and interpretation

The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with English law, and any disputes relating thereto shall be submitted to the exclusive jurisdiction of the Courts of England and Wales.

Under this policy, the masculine includes the feminine and neuter, the singular includes the plural, and vice versa.

In granting indemnity to you under this policy we have relied upon the declarations, statements and attachments to the written application for insurance. All such declarations, statements, and attachments form the basis of indemnity and shall be deemed to be part of the proposal or application for this policy.