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Professional Indemnity Insurance

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Professional Indemnity Insurance Policy

Part 1: Welcome to AXA

1. Thank you for choosing AXA

“Your” “policy” will be split into more than one document and these will reflect the specific sections and covers “you” have purchased.

They will be shown in “your” “policy” schedule. Where a section or cover does not apply, “your” “policy” schedule will state that it is ‘not covered’. Please carefully read all “your” “policy” “documents” together as they form “your” “policy” wording 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”.

2. Your policy

This “policy” is a contract of insurance between “you” and “us”.

The information or any declaration which “you” or anyone on “your” behalf has provided to “us” in applying for the insurance together with “your” “policy”, forms the basis of the contract.

The “policy” describes the insurance cover for which “we” have accepted “your” premium.

Throughout this “policy”, “we” use definitions and headings. Definitions are used to what “we” mean when “we” use that word or those words. Details of the definitions that apply throughout “your” “policy” can be found under the Definitions section of this “policy”.

There will also be definitions that are specific to covers that “you” have purchased and these will be detailed in each section of “your” “policy”. Headings have been used for “your” guidance and do not form part of the “policy” wording.

To help “you” understand the cover within each section of “your” “policy” “we” have added ‘What is covered’ and ‘What is not covered’.

Under the heading ‘What is covered’ “we” give information on the scope of insurance coverage provided. This must be read with ‘What is not covered’, the “policy” conditions and the section conditions at all times.

Under the heading ‘What is not covered’ “we” draw “your” attention to what is excluded from “your” “policy”.

Part 2: What is covered under your policy?

This cover operates on a claims-made basis. This means that “we” will only provide cover for “claims” made against “you” or “circumstances” discovered by “you” and notified to “us” during the “period of insurance”. “We” will not cover any “claim” or “circumstances” arising from an act, error or omission that occurred before the “retroactive date”. Therefore acts, errors or omissions committed or alleged to have been committed by the insured before this date will not be covered under this “policy”.

1. Insuring clause

“We” will cover “you” for any civil liability “claim” and “defence costs” arising from a breach of “your” professional duty in the conduct of “your” “professional business”, provided that the “claim” is first made against “you” and notified to “us” during the “period of insurance”

2. Limit of Indemnity and Deductible

Limit of Indemnity

The most “we” will pay for “loss” and “defence costs” resulting from all “claim” is the “limit of indemnity”. “We” will not pay for any “loss” or “defence costs” beyond the “limit of indemnity”.

All “claims” 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 “loss” and/or “defence costs” up to the “limit of indemnity”, after which “we” will then have no further liability for that “claim” or “defence costs”.

For the avoidance of doubt, “defence costs” which have been incurred with “our” written consent are not payable in addition to the “limit of indemnity” but shall operate to erode the “limit of indemnity”.

Deductible

The “deductible” amount set out in the “policy” schedule shall be borne by “you” at “your” own risk and “we” shall only be liable to indemnify “you” for that part of “loss” and/or “defence costs” which exceed the “deductible”.

The “deductible” shall apply to each and every “claim” arising under this “policy”. “Related claims” shall be deemed to constitute one single “claim” under the “policy” and only one “deductible” is applicable.

Nothing in this section shall be interpreted as an increase in “limit of indemnity” insured under this “policy”.

3. Defence and settlement of claims

“You” have the duty to defend “your” “claim”. “We” have the right, but not the obligation, to take control of “your” “claim” and conduct the investigation, settlement or defence in “your” name.

If “we” think it is necessary “we” will appoint “our” adjuster or solicitor to deal with the “claim”. If “you” ask “us”, “we” may agree to appoint “your” solicitor, but only on a similar fee basis as “our” solicitor and only for work done with “our” prior written approval. For the avoidance of doubt if “our” prior written approval is not sought and obtained before “defence costs” are incurred “we” will not pay them.

After taking into account the commercial considerations of the costs of defence “we” may choose to settle a “claim” in “your” name instead of defending it.

4. Court Attendance Costs

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” within the limit specified in the schedule for each person required to attend.

The most “we” will pay for all court, mediation or arbitration attendance costs in any one “period of insurance” is up to the limit mentioned in the “policy” schedule.

This amount shall be part of and is not in addition to the maximum aggregate “limit of indemnity” as stated in the schedule.

5. Dishonesty and fraud cover for the innocent

“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:

- a) no person committing or condoning dishonest or fraudulent acts or omissions shall be entitled to cover when such act or omission is established by any admission by “you” or has been established by the judgment of a court, a court-approved settlement or by some other final determination; provided always that cover is only provided to “you” who are innocent of and have no prior knowledge of such conduct.
- b) “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.
- c) 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” and “defence costs” that arises out of that dishonest or fraudulent act or omission is the “limit of indemnity”.

6. Breach of confidentiality

“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” and relates to a civil liability, including liability for claimant’s costs and expenses, arising from an unintentional breach of confidentiality by “you” and that was a breach of “your” professional duty.

7. Defamation

“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” and relates to a civil liability, including liability for claimant’s costs and expenses, arising from defamation committed without intentional malice by “you” and that was a breach of “your” professional duty.

8. Consultants, contractors, subcontractors and agents (vicarious liability)

“We” will indemnify “you” the “loss” “you” are vicariously liable to pay from “claim”, first made against “you” and notified to “us” during the “period of insurance”, in respect of a breach of “your” professional duty committed by “your” consultant, contractor, subcontractor or agent within the territorial limits as specified in the “policy” schedule and after the “retroactive date”.

This extension does not:

- a) make any such consultant, contractor, subcontractor or agent an “insured”;
- b) affect “our” entitlement to be subrogated to “your” rights against such consultant, contractor, subcontractor or agent.

9. Loss of documents cover

We will cover “you” for any “claim” and “defence costs” that arise from the conduct of “your” “professional business”, and relates to a civil liability, including liability for claimant’s costs and expenses, arising from the destruction, loss or damage of any “documents” and/or computer records where the destruction, loss or damage occurs in the provision of “your” professional services.

Provided that:

- the destruction, loss or damage occurs whilst the “documents” are in “your” custody or control, in transit or entrusted by “you” to another party
- the “claim” is first made against “you” and notified to “us” during the “period of insurance”,
- the cost for replacing or restoring “documents” are reasonable

The most “we” will pay for loss of “documents” is the limit stated in the “policy” schedule. This amount shall be part of and is not in addition to the maximum aggregate “limit of indemnity” as stated in the schedule.

10. Continuous cover

If a “claim” should have been notified, or a circumstance could have been notified, to “us” under an earlier Professional Indemnity Insurance Policy issued by “us”, then “we” will accept the notification of such “claim” or circumstance under this “policy” provided that “we” have continuously been the insurer under a Professional Indemnity Insurance Policy between the date when such notification should have been given and the date when such notification was, in fact, given.

“We” may reduce “our” liability under the “policy” to the extent of any prejudice “we” may suffer in connection with “your” failure to notify the facts or circumstances giving rise to a “claim” prior to the “period of insurance”. This cover will only be provided where there has not been any fraudulent nondisclosure or fraudulent misrepresentation by “you”.

If the indemnity or cover available under this “policy” is greater or wider than what “you” would have been entitled to under the “policy” to which the notification should have been made, then “we” shall only be liable to indemnify “you” to the extent to which indemnity would have been afforded by the “policy” to which the notification should have been made.

11. Inquiry Costs cover

“We” will indemnify “you” the “Inquiry Costs” which “you” incur on own behalf and with the prior written consent by “us” in preparing for and attending any “inquiry” provided that the notice requiring “you” to attend the “inquiry” is first served upon “you” during “period of insurance”.

The most “we” will pay for this inquiry costs cover in any one “period of insurance” is the limit specified in the “policy” schedule and the cover provided under this extension is subject to the “deductible” mentioned in the “policy” schedule.

For the avoidance of doubt, inquiry costs which have been incurred with “our” written consent are not payable in addition to the “limit of indemnity” but shall operate to erode the “limit of indemnity”.

12. 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 provided that:

- a) the indemnity given shall only relate to “your” proportion of any liability incurred by such joint venture; and
- b) “your” income derived from participation in such joint venture shall have been included in the calculation of income furnished by “you” for the purposes of calculating premium for this “policy”.

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

13. 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 valid “claim” under this “policy”, provided always that

- a) “you” obtain “our” prior written consent before incurring these costs and expenses, and
- b) “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
- c) 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 stated in the “policy” schedule. This amount shall be part of and is not in addition to the maximum aggregate “limit of indemnity” as stated in the schedule.

For the avoidance of doubt, mitigation costs which have been incurred with “our” written consent are not payable in addition to the “limit of indemnity” but shall operate to erode the “limit of indemnity”.

14. Intellectual property extension

“We” will indemnify “you” the “loss” “you” are legally liable to pay from “claim”, first made against “you” and notified to “us” during the “period of insurance”, in respect of civil liability for unintentional breach of any intellectual property right (including copyright, trademark, registered design, plagiarism, breach of confidentiality, disclosure of confidential information or otherwise) except patent committed by “you” in connection with “your” “professional business” provided that the unintentional breach of intellectual property right is also a breach of “your” professional duty.

The most “we” will pay for intellectual property extension is the limit stated in the “policy” schedule. This amount shall be part of and is not in addition to the maximum aggregate “limit of indemnity” as stated in the schedule.

15. Subsidiary creation and acquisition cover

If, during the “period of insurance”, “you”:

- (a) 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
- (b) 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:

- a) has annual fee income or turnover, which is greater than 20% of the annual fee income “you” last declared to “us” prior to the “period of insurance”, or
- b) has revenue generated from the United States of America or Canada, or
- c) provides advice or services as part of activities which are not activities described in the definition of the “professional business”,

“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.

16. Run off Cover

If during the “period of insurance” “you” are merged into or acquired by another entity or “you” cease to exist or operate or “you” are subject to an “insolvency event”, the coverage provided under the “policy” shall continue until the end of the “period of insurance”, provided that:

- such coverage shall only apply in respect of a “claim” arising from the conduct of “your” “professional business” prior to the date “you” ceased to exist or operate or were merged into or acquired by another entity or became the subject of an “insolvency event”.

“We” may, at “our” own discretion and subject to additional terms, conditions and premium, extend the coverage to include “claims” first made against “you” within a period of 84 months from the end of the “period of insurance”, provided that:

- such coverage shall only apply in respect of a “claim” arising from the conduct of “your” “professional business” prior to the date “you” ceased to exist, operate or was merged into or acquired by another entity or became the subject of an “insolvency event”.

Part 3: What is not covered under your policy

1. Associated persons or entities exclusion

“We” will not cover any “claim” brought by:

- (a) a firm, company or organisation with a financial interest in “you”,
- (b) a firm, company or organisation in which any of “your” partners, directors or principals have a controlling interest, or
- (c) any firm, company, organisation or individual who falls with the definition of “you”,

unless the “claim” is brought against “you” by a source independent of that firm, company, and organisation or individual and which would, but for this exclusion, be covered by “your” “policy”.

2. Asbestos exclusion

“We” will not cover any “claim” directly or indirectly involving “asbestos” or allegations or concerns relating to “asbestos”.

3. Bodily Injury and property damage exclusion

“We” will not cover any “claim” arising out of “bodily injury” to or property damage suffered by any “employee” or third party.

4. Breach of patent exclusion

“We” will not cover any “claim” arising out of any breach of patent.

5. Contractual liability exclusion

“We” will not cover any “claim” arising out of any “contractual liability” or assumed liability unless “you” would in any event be legally liable in the absence of such contractual or assumed liability.

6. Cyber attack exclusion

“We” will not cover any “claim” arising out of any unauthorised access, unauthorised use, denial of service attack or receipt or transmission of a malicious code, virus or similar mechanism.

7. Deliberate acts and omissions exclusion

“We” will not cover any act, error or omission that “you” deliberately, spitefully or recklessly commit, condone or ignore.

8. Directors’ and officers’ liabilities exclusion

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

9. 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”, directors or officers.

10. Financial advice exclusion

“We” will not cover any “claim” arising out of, directly or indirectly resulting from, in consequence of any financial or investment advice provided by “you”, including but not limited to advice or recommendation as to the tax implications of any investments.

11. Fines and penalties exclusion

“We” will not cover any fines, penalties, punitive, multiple, aggravated or exemplary damages.

12. Goods supplied exclusion

“We” will not cover any “claim” arising out of any products, goods or materials “you” have supplied or used, or made arrangements to supply or use or the manufacture, repair, sale, installation or maintenance of any product by “you” or on “your” behalf.

13. Insolvency exclusion

“We” will not cover any “claim” arising out of or in connection with “your” insolvency or bankruptcy.

14. Internet activity exclusion

“We” will not cover any “claim” arising out of:

- (a) the management of financial transactions on the internet
- (b) obscene, blasphemous or pornographic material on the internet
- (c) any material which is published or posted on the internet where, prior to publishing or posting, “you” have no knowledge of either the content or source of the material

15. Jurisdiction limits exclusion

“We” will not cover

- (a) any “claims” brought by in a court of law outside of the country (s) as specified by in the “policy” schedule as jurisdiction
- (b) any “claims” or liability arising from the enforcement of any judgment, order or award obtained within, or determined pursuant to the laws outside of the country (s) as specified by in the “policy” schedule as jurisdiction

16. Owners and occupiers liability

“We” will not cover any “claim” directly or indirectly arising from the ownership, possession, leasing or use of any land or building by “you” or any other property or goods whether mobile or immobile.

17. Pollution exclusion

“We” will not cover any “claim” directly or indirectly involving “pollution” including without limitation any “claim” for financial “loss”.

18. Previous claims exclusion

“We” will not cover any “claim” or any “circumstances”:

- (a) that has been notified under any other “policy” before the start date of this “policy”
- (b) that “you” were aware of or should have been aware of before the start date of this “policy”.

19. Radioactive contamination exclusion

“We” will not cover any “claim” or “circumstances” arising directly or indirectly from:

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

20. Retroactive date exclusion

“We” will not cover any “claim” arising from the performance of “your” “professional business” that occurred before the “retroactive date” shown in “your” schedule.

21. Sanction limitation and exclusion

No insurer shall be deemed to provide cover and no insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

22. 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.

23. Territorial limits exclusion

“We” will not cover any “claim” arising from any “professional business” activity performed outside the territorial limits as specified in the “policy” schedule.

24. Trading losses exclusion

“We” will not cover any “claim” or “circumstances” based upon, arising out of, directly or indirectly resulting from trading losses or trading liabilities incurred by “you” or any of “your” businesses.

25. War risk and terrorist act exclusion

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

26. Warranty or Guarantee

"We" will not cover any "claim" for any liability from "your" promise, warranty or guarantee as to the performance or outcome of the conduct of the "professional business" except where such liability would have been imposed upon "you" in the absence of a such promise, warranty or guarantee.

27. Nuclear Energy Risk Exclusion

It is hereby declared and agreed that the "policy" shall exclude Nuclear Energy Risks:

For all purposes of this "policy" Nuclear Energy Risks shall mean all first party and/or third party insurances or reinsurances (other than Workers' Compensation and Employers' Liability) in respect of:

- I All Property, on the site of a nuclear power station.
Nuclear Reactors, reactor buildings and plant and equipment therein on any site other than a nuclear power station.
- II All Property, on any site (including but not limited to the sites referred to in I above) used or having been used for:
 - (a) The generation of nuclear energy; or
 - (b) The Production, Use or Storage of Nuclear Material.
- III Any other Property eligible for insurance by the relevant local Nuclear Insurance Pool and/or Association but only to the extent of the requirements of that local Pool and/or Association.
- IV The supply of goods and services to any of the sites, described in I to III above, unless such insurances or reinsurances shall exclude the perils of irradiation and contamination by Nuclear Material.

Except as undernoted, Nuclear Energy Risks shall not include:

- (i) Any insurance or reinsurance in respect of the construction or erection or installation or replacement or repair or maintenance or decommissioning of Property as described in I to III above (including contractors' plant and equipment);
- (ii) Any Machinery Breakdown or other Engineering insurance or reinsurance not coming within the scope of (i) above.

Provided always that such insurance or reinsurance shall exclude the perils or irradiation and contamination by Nuclear Material.

However, the above exemption shall not extend to:-

1. The provision of any insurance or reinsurance whatsoever in respect of:-
 - a) Nuclear Material;
 - b) Any Property in the High Radioactivity Zone or Area of any Nuclear Installation as from the introduction of Nuclear Material or – for reactor installations – as from fuel loading or first criticality where so agreed with the relevant local Nuclear Insurance Pool and/or Association.
2. The provision of any insurance or reinsurance for the undernoted perils:
 - Fire, lightning, explosion;
 - Earthquake;
 - Aircraft and other aerial devices or articles dropped therefrom;
 - Irradiation and radioactive contamination;
 - Any other peril insured by the relevant local Nuclear Insurance Pool and/or Association;

in respect of any other Property not specified in 1 above which directly involves the Production, Use or Storage of Nuclear Material as from the introduction of Nuclear Material into such Property.

Definitions

"Nuclear Material" means:

- (i) Nuclear fuel, other than natural uranium and depleted uranium, capable of producing energy by a self-sustaining chain process of nuclear fission outside a Nuclear Reactor, either alone or in combination with some other material; and
- (ii) Radioactive Products or Waste.

"Radioactive Products or Waste" means any radioactive material produced in, or any material made radioactive by exposure to the radiation incidental to the production or utilisation of nuclear fuel, but does not include radioisotopes which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose.

"Nuclear Installation" means:

- (i) Any Nuclear Reactor;
- (ii) Any factory using nuclear fuel for the production of Nuclear Material, or any factory for the processing of Nuclear Material, including any factory for the reprocessing of irradiated nuclear fuel; and
- (iii) Any facility where Nuclear Material is stored, other than storage incidental to the carriage of such material.

"Nuclear Reactor" means any structure containing nuclear fuel in such an arrangement that a self-sustaining chain process of nuclear fission can occur therein without an additional source of neutrons.

"Production, Use or Storage of Nuclear Material" means the production, manufacture, enrichment, conditioning, processing, reprocessing, use, storage, handling and disposal of Nuclear Material.

"Property" shall mean all land, buildings, structures, plant, equipment, vehicles, contents (including but not limited to liquids and gases) and all materials of whatever description whether fixed or not.

"High Radioactivity Zone or Area" means:

- (i) For nuclear power stations and Nuclear Reactors, the vessel or structure which immediately contains the core (including its supports and shrouding) and all the contents thereof, the fuel elements, the control rods and the irradiated fuel store; and
- (ii) For non-reactor Nuclear Installations, any area where the level of radioactivity requires the provision of a biological shield.

Part 4: Standard Conditions

These are the conditions of the cover and apply throughout “your” “policy”. These are conditions precedent to cover, if “you” do not comply with these conditions, “we” are entitled to deny any of “your” rights under “your” “policy”, including but not limited to the cover under “your” “policy” and to receive payment for a “claim”. If “you” are unsure about any of these conditions, or whether “you” need to notify “us” about any matter, please contact “us”.

1. Change in risk

“You” must notify “us” in written as soon as, and in any event no later than 30 days thereafter, there is any change to the facts, circumstances, degree or amount of risk which exist at the commencement of this “policy” or during the “period of insurance” or at any subsequent renewal date. Upon such notification, “we” may vary the terms of this “policy” and/or charge additional premium as “we” determine appropriate in the circumstances.

2. Cancellation

“You” may cancel this “policy” at any time if the business described in the schedule is sold by “you” or “you” cease trading.

“We” can cancel the “policy” by giving “you” 30 days written notice if

- a) there is a material change in “your” business
- b) the information that forms the basis of this contract changes
- c) following a survey at any of “your” premises or sites and “you” were required to make risk improvements and “you” have not completed these within a reasonable period of time, advised by “us”.

Where the “policy” is cancelled in accordance with the above provision, “we” will refund part of the premium paid, proportionate to the unexpired “period of insurance” following cancellation, provided no “claim” has been notified to “us”, paid by or is outstanding from “us” in the current “period of insurance”.

Where a “claim” has been notified to “us”, paid by or is outstanding from “us”, the annual premium remains due in full.

“We” can cancel the “policy” immediately, if the premium has not been paid. If a “claim” has been notified to “us”, paid by or is outstanding from “us” in the current “period of insurance”, the annual premium remains due in full.

Cancellation of this “policy” will not affect any “claims” or rights “you” or “we” may have before the date of cancellation.

“We” do not have to offer renewal of “your” “policy” and cover will cease on the end date.

3. Notice of Claims and Circumstances

(a) Notice of Claim

“You” shall as a condition precedent tell “us” as soon as practicable and within the “period of insurance” of any “claims”. When telling “us” about “claims”, “you” must give to “us” full written details including but not limited to:

- (i) a description of the “claims”
- (ii) the nature and grounds of the actual or alleged “wrongful act”
- (iii) the date of the facts or related to the actual or alleged “wrongful act” when “you” were informed or sued
- (iv) the nature and the estimated amount of the indemnity or damage requested
- (v) the names of the claimants and defendants, and
- (vi) any legal document received in relation to the “claim”
- (vii) any further information requested by “us”.

(b) Notice of Circumstances

If, during the “period of insurance”, “you”:

- (i) First become aware of any “wrongful act”, fact, circumstance which is likely to give rise to a “claim”; and
- (ii) Give “us” written notice of such “wrongful act”, fact or circumstance including full written details as stated above;

And request coverage under this “policy” for any subsequently resulting “claim”, then we will treat any such resulting “claim” as if it had been made during the “period of insurance”.

Notice shall be given as soon as practicable and in any event before the end of the “period of insurance” at each renewal.

(c) All notices under this Standard Condition 3(a) and 3(b) must be sent by registered mail to:

AXA General Insurance Hong Kong Limited
5/F, AXA Southside, 38 Wong Chuk Hang,
Wong Chuk Hang, Hong Kong

(d) Related Claims & single claim

All “related claims” will be treated as a single “claim” made when the earliest of such “related claims” was first made, or when the earliest of such “related claims” is treated as having been made in accordance with Standard Condition 3(b), whichever is easier.

4. Do not admit liability

In the event of a “claim” or discovery of “circumstances”, “you” must not:

- a) admit liability
- b) incur any “defence costs”
- c) make any offers of settlement
- d) otherwise prejudice the conduct of defence or settlement of that “claim” or “circumstances” without first obtaining “our” written approval. This applies regardless of any complaints handling procedure or if the amount in dispute is less than “your” “deductible”.

5. Claim control and co-operation

“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:

- a) 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
- b) assisting to present the best possible defence to a “claim”
- c) ensuring access to any information that “we” or “our” representatives may require in the defence of a “claim” or the investigation of any “circumstances”, whether or not that information may be privileged
- d) providing “us” with any and all information that will allow “us” to determine “our” liability under this “policy”
- e) making payment on demand of “your” excess in order to comply with the terms of any settlement “we” have agreed
- f) providing any information, assistance, signed statements or depositions as “we” may require to exercise “our” rights of subrogation
- g) ensuring that all “documents” of any description relevant to any “claim” or “circumstances” are preserved and complete.

6. Subrogation (our rights)

“We” will be entitled to undertake in “your” name or on “your” behalf steps to enforce rights against any other party before or after 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”.

7. Fraudulent Claim

If “you” or anyone acting on “your” behalf is in any way fraudulent in obtaining any benefit under this “policy”, “we” may deny liability in respect of such “claim”.

8. Governing Law and litigation

Unless “we” and “you” agree otherwise, Hong Kong law will apply to this “policy”.

Any disputes which arises out of “our” offer of settlement or “our” disclaiming of liability for any “claim” hereunder and which cannot be resolved by agreement between “us” and “you” shall be resolved by arbitration in Hong Kong before the Hong Kong International Arbitration Centre (HKIAC) in accordance with its rules.

If “we” shall disclaim liability to “you” for any “claim” hereunder and such “claim” shall not within 24 calendar months from the date of such disclaimer have been referred to arbitration under the provisions herein contained then the “claim” shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder.

9. Misrepresentation and non-disclosure

The contract of insurance is formed on the reliance of information which “you” provide to “us”. “You” must:

- disclose all information, including application form, relevant to this insurance
- not make any statement which is incorrect.

If “you” fail to disclose information relevant to this insurance or make any statement which is incorrect “we” will, at “our” option, either

- make the “policy” void from the date of formation of the contract, or
- refuse to pay “your” “claim”.

10. Other insurance

To the extent that “you” have any other insurance in force in respect of the liabilities covered in this “policy”, “we” shall only be liable under this “policy” for the excess beyond any amount insured by such other insurance in respect of that liability, whether or not such insurance is valid or collectible.

11. Premium Payment Warranty

- (a) Notwithstanding anything herein contained but subject to b) hereof, it is hereby agreed and declared that if the “period of insurance” is 60 days or more, any premium due must be paid and actually received in full by “us” (or the intermediary through whom this “policy” was effected) within 60 days of the:-
 - i) inception date of the coverage under the “policy”, renewal certificate, cover note; or
 - ii) effective date of each endorsement, if any, issued under the “policy”, renewal certificate, or cover note
- (b) In the event that any premium due is not paid and actually received in full by “us” (or the intermediary through whom this “policy” was effected) within the 60 day period referred to above, then:-
 - i) the cover under the “policy”, renewal certificate, cover note or endorsement is automatically terminated immediately after the expiry of the said 60 day period;
 - ii) the automatic termination of the cover shall be without prejudice to any liability incurred within the said 60 day period; and
 - iii) “we” will be entitled to a pro-rata time on risk premium subject to a minimum as stated in “policy” schedule.
- (c) If the “period of insurance” is less than 60 days, any premium due must be paid and actually received in full by “us” (or the intermediary through whom this “policy” was effected) within the “period of insurance”.

12. Contracts (Rights of Third Parties) Ordinance

Any person or entity who is not a party to this “policy” shall have no rights under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) to enforce any terms of this “policy”.

Part 5: Definitions

These meanings apply throughout “your” “policy”. If a word or phrase has a defined meaning, it will be highlighted in quotation mark (“”) and will have the same meaning wherever it is used. There may be additional defined meanings in each section of cover.

Asbestos

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

Bodily injury

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

Claim(s)

- (a) any written, statement of claim, summons, application or other originating legal process issued against or served on “you”; or
- (b) the receipt by “you” of any written or verbal notice or demand for compensation made against “you”

Circumstances

Any incident, occurrence, fact, matter or act that “you” were or are aware of that may give rise to a “claim”. This includes any criticism of “your” “professional business” even if “you” regard this as unjustifiable.

Contractual liability

Legal liability assumed by “you” under the express or intended 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.

Deductible

The first amount of any “claim” or “claims” as detailed in “your” “policy” schedule for which “you” are responsible.

Defence costs

Any reasonable and necessary costs, charges, fees and expense (other than “your” overhead expenses and any form of remuneration payable to “you” or “your” “employee”) incurred with “our” prior written consent in the adjustment, defence, investigation, settlement of a “claim” against “you” or any appeal in such “claim”.

Documents

Any documents, information or data, including computer records and electronic data, which are “your” property or are looked after by or deposited with “you” in the ordinary course of “your” “professional business” which “you” are responsible. This does not include bearer bonds, coupons, bank or currency notes and negotiable instruments.

Employee(s)

Any person working for “you” in connection with the “professional business”:

- (a) under a contract of service with “you”,
- (b) who is hired by or lent to “you”,
- (c) who is self-employed, or
- (d) on a voluntary basis,

and who is under “your” control or supervision.

Inquiry

Any formal administrative, regulatory or official investigation, examination, inquiry or hearing:

- (a) related to the “your” performance of “professional business”; and
- (b) conducted by a “Regulator”; and
- (c) which “you” are legally required to attend or legally required to provide a response to.

“Inquiry” does not include any routine supervision, inspection, compliance or similar reviews conducted by any “Regulator” or any “Inquiry” of industry-wide violations rather than a specific investigation into the affairs of “you”.

Inquiry Costs

Any legal, assessor’s, adjuster’s and expert witness costs. “Inquiry Costs” does not include the “your” salaries, wages, travel or accommodation expenses.

Insolvency Event

“You”

- (a) have a receiver, manager, administrative receiver or trustee-in-bankruptcy (as the case may be) appointed over all or a substantial part of “your” assets,
- (b) go into bankruptcy or liquidation whether compulsorily or voluntarily (otherwise than a voluntary and solvent liquidation for the purpose of reconstruction or amalgamation pursuant to a scheme),
- (c) cease or threaten to cease to carry on “your” business (otherwise than in connection with or in pursuance of a winding-up for the purpose of a reconstruction or amalgamation pursuant to a scheme),
- (d) are deemed unable to pay “your” debts as they fall due or
- (e) enter into any composition or arrangement with “your” creditors for the purpose of restructuring “your” debts.

Limit of indemnity

The amount shown in “your” “policy” schedule as the limit of indemnity.

Loss

The amount that “you” are legally and personally liable to pay due to a “claim”, including judgments, awards of damages, awards of claimant costs and amounts that are related to settlements.

Period of insurance

The period from the start date to the end date of ‘your’ ‘policy’, shown in “your” “policy” schedule.

Policy

The proposal form (if any), the policy wording in this jacket, the policy schedule and any endorsements attached or issued.

Pollutant

Any contaminant, irritant or other matter or substance including, but not limited to “asbestos”, lead, smoke, vapor, water, oil, oil products, dust, fibres, soot, fumes, toxic mold (including fungus, mildew, mold), acids, alkalis, chemicals, or waste (including materials that have been or are intended to be recycled, reconditioned or reclaimed).

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

Professional services or professional advice directly connected to the activities “you” have declared to “us” and undertaken by “you”. These activities are shown on “your” “policy” schedule.

Regulator

Any government, government body, governmental or administrative agency, official trade body, self-regulatory organisation, statutory body, professional body or similar.

Related Claims

Any “claim” for a “wrongful act” based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving the same or related facts, circumstances, situations, transactions or events or the same or related series of facts, circumstances, situations, transactions or events.

Retroactive date

The date from which the work “you” performed is covered. This date is shown on “your” “policy” schedule. For the avoidance of doubt “your” “policy” will not cover “claims” arising from a breach of professional duty prior to this date shown on “your” “policy” schedule.

Subsidiary

A company that “you” either directly or indirectly control through

- (a) holding a majority of the voting rights
- (b) the right to appoint or remove a majority of its board of directors and/or
- (c) 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.

We/us/our

AXA General Insurance Hong Kong Limited.

Wrongful act

Any actual or alleged breach of duty, act, error or omission in the course of providing “professional business”.

You/your/yourself

- (a) The person, firm, company or organisation shown in the “policy” schedule as the insured.
- (b) Any person, firm, company or organization shown in your schedule as an additional insured.
- (c) Any predecessor in business to any firm, company or organisation that is shown in the “policy” schedule.
- (d) Any person who is or has been or who becomes a director, partner, member, principal, “employee” or self-employed person, but only for work undertaken for or on behalf of any person or organisation referred to in a, or b above.
- (e) Any retired partner, retired director or retired member of the firm, company or organisation shown in the “policy” schedule as the insured who remains as a consultant to any person, firm, company or organisation shown in the “policy” schedule as the insured
- (f) any student/practitioner appointed or attached to the legal entity specified in the “schedule” during the “period of insurance” by a university or tertiary institution
- (g) The estate, heirs, executors, legal or personal representatives of any person referred to in a, b, c, or d above in the event of their death or incapacity.

Caring for Our Customers

We at AXA General Insurance Hong Kong Limited make every effort to provide a good standard of service to all our policyholders. If on any occasion our service falls below the standard You would expect Us to meet, the procedure below explains what You should do.

Your first point of contact should always be Your insurance agent or broker. Alternatively, You may submit Your feedback to the AXA Manager in charge of the matter You are raising.

If, following contact with the above, You feel that You require further assistance then please write to

Chief Executive Officer
AXA General Insurance Hong Kong Limited
5/F, AXA Southside, 38 Wong Chuk Hang Road,
Wong Chuk Hang, Hong Kong

An acknowledgement that Your complaint has been received will be sent to You within two working days following which Your complaint will be investigated. If We have Your telephone number We will call You. AXA General Insurance Hong Kong Limited is a member of the Insurance Complaints Bureau. If Your complaint concerns a claim and after following the above procedure Your claim has not been resolved to Your satisfaction, You may write to the Insurance Complaints Bureau at the following address

Insurance Complaints Bureau
29/F, Sunshine Plaza,
353 Lockhart Road,
Wanchai, Hong Kong

If the Insurance Complaints Bureau decides that our handling of Your claim has been unreasonable or technically incorrect, their decision is binding on Us by the terms of an agreement We have signed.

Important – Please remember to quote Your Policy reference in any communication.

Note: All amounts are in Hong Kong Dollars



Professional Indemnity Insurance

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