

*Your Policy*

*Professional Indemnity insurance for Estate Agents, Letting  
and Management Agents and Chartered Surveyors*

# Professional Indemnity insurance for Estate Agents, Letting and Management Agents and Chartered Surveyors

## Introduction

Welcome to your policy. For more than a quarter of a century NFOPP has worked closely with the team at Giles to design a wide range of insurance products which are exclusive to members of the Federation, competitively priced and relevant to their needs.

This has been achieved by combining the buying power of the NFOPP with the expertise of the team at Giles. We continue to review and develop insurance products which add real benefit to members of the Federation.

Thank you for choosing Aviva as your Insurer. This is your Professional Indemnity insurance policy setting out your insurance protection in detail.

This is a Professional Indemnity insurance policy which meets the demands and needs of estate agents, lettings and management agents and chartered surveyors.

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

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

If, after reading your policy, you have any questions, please contact Us.

**Giles Insurance Brokers Ltd**  
**Ibex House**  
**42-47 Minories**  
**London**  
**EC3N 1DY**

**Tel: 020 7709 1689**  
**Fax: 0870 191 6758**

**E-mail: [crm@gilesinsurance.co.uk](mailto:crm@gilesinsurance.co.uk)**  
**Web: [www.giles-property.co.uk](http://www.giles-property.co.uk)**

Giles Insurance Brokers Ltd is authorised and regulated by the Financial Services Authority. The Financial Services Authority does not regulate all forms of the products and services we provide.



# Contents - a guide to Your policy

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# Services

The following additional benefits are automatically included with Your policy cover.

## **Legal and tax Helpline**

You have automatic access to our 24 hour legal and tax Helpline on 0845 300 1899\*. Our consultants will give you confidential advice over the phone on any legal or tax matter affecting your business under the laws of the United Kingdom. They will tell you what your legal rights are, what courses of action are available to you and whether you need to consult with your legal adviser. There are no consultation fees; you only pay for the cost of the call.

## **Counselling Services - Tel: 0117 934 0105**

A counselling service is available for your staff to help them deal with situations such as bereavement, divorce, the threat of violence in the workplace and bullying at work.

## **Aviva Risk Management Helpline**

The Aviva risk management Helpline aims to provide you with unlimited competent advice on risk management, compliance, security and health and safety issues, all at the end of a phone. Staffed by qualified advisers, backed up with specialists and extensive library resources on many aspects of business risk, we can answer the majority of queries on the phone. Also included is access to our 'Hardfacts' series of risk management advice sheets, which provide guidance on issues of relevance to the sector you trade in.

The Aviva risk management Helpline is available between 9.00am and 5.00pm Monday to Friday on 0845 366 66 66\* (with an answering service outside these times).

## **Preferred Supplier Scheme**

Offers a range of discounted products and services to help you manage the risk to your business.

Products include:

- Intruder and Fire alarms
- Sprinkler systems
- Fire extinguishers and fire safety signs
- Locks, bars, grilles and shutters

Every one of the preferred suppliers meets Aviva's own exacting standards of quality, service and commitment to customer satisfaction, so you know the products you get are the best for your business. We are able to offer substantial discounts by using our bulk purchasing power, passing on all of the savings to you.

In all cases quote your policy number

\*For our joint protection telephone calls may be recorded and/or monitored

## The Contract Of Insurance

The policy, the application form and/or declaration made by You and the Schedule should be read together and form the basis of the contract of insurance between You, The Policyholder and Us, Aviva.

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

On behalf of Aviva



**Chief Executive, UK Insurance**



Aviva Insurance Limited  
Registered in Scotland No. SC002116  
Registered Office: Pitheavlis, Perth, Scotland PH2 0NH  
Authorised and regulated by the Financial Services Authority.

### **IMPORTANT NOTICE**

**All material facts must be disclosed. Failure to do so could invalidate the policy. A material fact is**

**one that is likely to influence an insurer in the acceptance and assessment of this application. If You are in any doubt as to whether a fact is material then it should be disclosed to the insurer. If any changes in circumstances arise during the Period of Insurance please provide Your Insurance adviser with details.**

**A specimen copy of the policy wording is available on request. We recommend You keep a record (including copies of letters) of all information provided to the insurer for Your future reference. A copy of the completed application form will be supplied on request within a period of three months after its completion.**

### **Use of Language**

Unless otherwise agreed, the contractual terms and conditions and other information relating to this contact will be in English.

# The Contract Of Insurance

## **Choice of Law**

The appropriate law as set out below will apply unless You and We agree otherwise

(1) the law applying in that part of the United Kingdom, Channel Islands or Isle of Man in which you normally live or (if applicable) the first named policyholder normally lives or

(2) in the case of a business, the law applying in that part of the United Kingdom, Channel Islands or Isle of Man where it has its principal place of business or

(3) should neither of the above be applicable, the law of England and Wales will apply.

## **Customers with Disabilities**

This policy and other associated documentation is also available in large print, audio and Braille. If You require any of these formats please contact Your local Insurance Adviser.

## Our Service To You

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

### What will happen if You complain?

- (1) We will acknowledge Your complaint within two working days of receipt
- (2) We aim to resolve complaints, following assessment and investigation as quickly as possible.

Most of Our customers' concerns can be resolved quickly but occasionally more detailed enquiries are needed. If this is likely, We will contact You with an update within 10 working days of receipt and give You an expected date of response.

### What to do should You be dissatisfied

If You are dissatisfied with any aspect of the handling of Your insurance We would encourage You, in the first instance, to seek resolution by contacting Your insurance adviser or usual Aviva point of contact.

You can write to Aviva UK Insurance, Professional Indemnity, Pitheavlis, Perth PH2 0NH whichever suits You and ask Your contact to review the problem.

If You remain unhappy with the decision You receive, You may write to the Chief Executive at Aviva UK Insurance, Surrey Street, Norwich, Norfolk, NR1 3NS.

If You are dissatisfied with our final decision (from the Chief Executive Officer), You can refer the matter to the Financial Ombudsman Service (FOS).

Full contact details of both Our Chief Executive and the FOS will be provided when We write in response to Your complaint. Note that the FOS will only consider Your complaint if You have given Us the opportunity to resolve it and You are a private policyholder, a business with a group annual turnover of less than £1 million, a charity with an annual income of less than £1 million or a trustee of a trust with a net asset value of less than £1 million. If, however, We do not resolve Your complaint within 40 working days, the FOS will accept a direct referral.

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

### Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme "FSCS". You may be entitled to compensation from the scheme if we cannot meet our obligations. This depends on the type of business and the circumstances of the claim.

Insurance advising and arranging is covered for 100% of the first £2,000 and 90% of the remainder of the claim, without any further limit.

Further information about compensation scheme arrangements is available from the FSCS website [www.fscs.org.uk](http://www.fscs.org.uk) or write to Financial Services Compensation Scheme, 7th Floor, Lloyds Chambers, Portsoken Street, London, E1 8BN.

### Your Cancellation Rights

There are no statutory cancellation rights under this policy.

# Section A - Professional Indemnity

## Section Definitions

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

### Approved Person

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

### Approved Wording

The Royal Institution of Chartered Surveyors' approved wording in force at the beginning of the Period of Insurance.

### Asbestos Inspection

Any Type 1, 2 or 3 inspection as set out in MDHS 100 published by the Health and Safety Executive, or any other comparable inspection, whether of commercial or residential land or property.

### Bodily Injury

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

### Business

(1) The provision, within the Territorial Limits, of professional advice or professional services by You or on Your behalf including those which are normally undertaken by members of the Royal Institution of Chartered Surveyors, and directly connected to the activities declared to Us in Your Proposal or as otherwise notified to Us.

(2) Any individual personal appointment held by You but only in respect of professional advice or professional services shown in (1) above.

### Claim

Demand made against You consisting of or arising from any

(1) demand, whether oral or in writing, for damages or compensation,

(2) notice of intention, whether oral or in writing, to commence legal proceedings,

(3) communication invoking any pre action protocols,

(4) notification of arbitration, ombudsman or adjudication proceedings.

### **Collateral Warranty or Duty of Care Agreement**

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

### **Computer System**

Any

(1) computer, data processing equipment, media or part thereof,

(2) electronic system of data storage and retrieval, or electronic communications system, network, protocol or part thereof,

(3) electronic storage device, microchip integrated circuit, real time clock system or similar device,

(4) computer software (including but not restricted to application software, operating systems, runtime environments or compilers), firmware or microcode,

(5) electronic documents utilised in the ownership, security and management of Your electronic communication system, worldwide web site, internet site, intranet site, extranet site, or web address.

### **Documents**

Any

(1) project models or displays,

(2) deeds, wills or agreements,

(3) maps, plans, records, photographs, negatives, calculations or drawings,

(4) written or printed books, letters, certificates, documents or forms of any nature whatsoever,

(5) computer software, files, documents and systems records, which are Your property or are under Your custody or control.

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

### **Employee**

(1) Any person who is or has been under a contract of service or apprenticeship with You.

(2) Any person who is or has been

(a) self employed,

(b) a voluntary helper,

(c) engaged under a work experience or training scheme,

(d) seasonal or temporary personnel,

(e) agency staff,

while working under Your control in connection with the Business.

### **Environmental Audit**

An investigation specifically intended to assess whether or not there is Pollution present carried out by You.

### **Excess**

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

**The Excess does not apply to Other Costs or the Additional Cover section.**

### **Financial Services**

The

(1) buying or selling, subscribing for or underwriting of, or offering to do so, either as principal or agent,

(2) giving or offering to give advice or information about,

(3) inducement to invest in,

(4) managing or offering to manage, any savings, investment, insurance or pension product or scheme.

**This definition does not include:**

**(1) the provision of advice or information about and the placing or arranging of any general insurance contract (as defined in the Financial Services Authority Handbook)**

**and**

**(2) the provision of advice or information about and the placing or arranging of any loan secured upon residential property by a first legal mortgage unless the borrower enters into any investment or pension product associated with repayment of the loan.**

**Improper Gain**

Improper financial benefit

(1) to the Employee, or

(2) to any other person or organisation intended by that Employee to receive such benefit.

**This definition does not include salaries, commission, fees or other benefits earned or paid in the normal course of employment or service.**

**Limit of Indemnity**

In respect of any Claim arising directly or indirectly from Pollution

• the maximum amount stated in the Schedule We will pay in respect of any one Claim and in total for all Claims (including claimants costs and Other Costs) first made during any one Period of Insurance. Where such Claim arises from Your negligent structural design, negligent specification or failure to report a structural defect in a property and relates solely to the cost of re-designing, re-specifying, remedying or

rectifying the defective structure, the definition in respect of all other Claims below will apply instead.

In respect of all other Claims:

• the maximum amount, stated in the Schedule, which We will pay in respect of any one Claim or loss or series of Claims or losses arising directly or indirectly from any one source or originating cause.

Any dishonesty or fraud committed by a person acting alone or in collusion with others shall be treated as one Claim or loss.

**Other Costs**

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

**Period of Insurance**

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

**Pollution**

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

**This definition does not include pollution or contamination by asbestos.**

**Proposal**

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

**Schedule**

The document which specifies Your details and details of the Business, Excess, Limit of Indemnity, Period of Insurance, other limits and any endorsements applying to this policy.

## **Territorial Limits**

Worldwide excluding the United States of America, its territories and possessions or Canada.

## **Terrorism**

Any act or acts including but not limited to

(1) the use or threat of force and/or violence and/or,

(2) harm or damage to life or to property (or the threat of such harm or damage) including but not limited to harm or damage by nuclear and/or chemical and/or biological and/or radiological means,

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

## **We/Us/Our/Aviva**

Aviva Insurance Limited.

## **You/Your/The Policyholder/The Insured**

(1) Any individual, partnership, limited liability partnership, company or limited

company named in the Schedule or any predecessor in business of such individual, partnership, limited liability partnership, company or limited company as declared to Us.

(2) Any person named in the Proposal as consultant or former consultant of any person or body referred to in (1) above but only in respect of work undertaken for or on behalf of any person or body referred to in (1) above.

(3) Any person who is or has been or who becomes a director, partner, member, principal or Employee of any person or body referred to in (1) above but only in respect of work undertaken for or on behalf of any person or body referred to in (1) above.

(4) The estate, heirs, executors, legal or personal representatives of any person or body referred to in (1), (2) or (3) above in the event of their death, incapacity, insolvency or bankruptcy.

(5) Any person who is or has been or becomes an appointed representative (as defined in the FSA Handbook of Rules and Guidance) but only in respect of work undertaken for or on behalf of any person or body referred to in (1) above.

## Section A - Cover

(1) We will indemnify You

- (a) in respect of any Claim arising out of the conduct of Your Business, first made against You and notified to Us during the Period of Insurance, for any civil liability including claimants costs and expenses.
- (b) for any awards, made against You by an ombudsman (including the The Property Ombudsman) who has accepted a case for review in his position as ombudsman under any recognised scheme where the Claim is first made against You and notified to Us during the Period of Insurance.

**We will not provide indemnity under this clause for any case which has not been accepted for formal review in accordance with the defined terms of reference of any recognised ombudsman scheme.**

Our liability under this clause (b) shall not exceed £250,000 in respect of any single award or in respect of a series of awards attributable to the same original cause.

If an award is rejected by the claimant who then pursues the matter through the courts, both the complaint to the ombudsman and all subsequent court proceedings shall be treated as a single Claim.

- (c) for any award by an arbitrator (including an arbitrator appointed under the prescribed rules of the Surveyors and Valuers Arbitration Scheme), arising from any Claim or complaint made against You which would have fallen to be dealt with under the terms of this policy.

**We will not be liable for any award made in respect of any**

**Claim where the seat of arbitration is located outside the United Kingdom unless We have specifically agreed otherwise.**

- (d) for any decision by an independent adjudicator appointed to resolve a dispute in accordance with the Scheme for Construction and Regeneration as contained in the Housing Grants Construction and Regeneration Act 1996 or The Independent Property Codes Adjudication Scheme (IPCAS)

**We will not provide indemnity unless such award arose from a Claim or complaint made against You which would otherwise have fallen to be dealt with under the terms of this policy, notwithstanding its referral to the adjudicator.**

**We will not provide indemnity under this policy in respect of any Claim**

- (a) related to, in consequence of, contributed to or aggravated by asbestos other than as specifically stated in clause (2) below.
- (b) arising directly or indirectly from Pollution other than as specifically stated in clause (3) below.

**In respect of any Claim or loss We will not provide indemnity to any person committing or conspiring to commit or condoning any dishonest or fraudulent act or omission.**

- (2) We will indemnify You in respect of any Claim arising directly or indirectly from asbestos first made against You and notified to Us during the Period of Insurance solely arising from a negligent act, negligent error or negligent omission committed by You in the conduct of Your Business.

**We will not provide indemnity in respect of any Claim arising directly or indirectly**

- (a) from any Asbestos Inspection carried out by You,**
- (b) out of or in any way involving Bodily Injury or fear of Bodily Injury related to, in consequence of, contributed to or aggravated by asbestos.**

Our total liability under this clause (2), which is part of and not in addition to the Limit of Indemnity, in respect of any one Claim and in total for all Claims (including claimant's costs and expenses and Other Costs) is £250,000 during any one Period of Insurance.

(3) We will indemnify You in respect of any Claim arising directly or indirectly from Pollution first made against You and notified to Us during the Period of Insurance solely arising from a negligent act, negligent error or negligent omission committed by You in the conduct of Your Business.

**We will not provide indemnity in respect of any Claim arising directly or indirectly from any Environmental Audit.**

**Our total liability under this Cover clause shall not exceed the Limit of Indemnity and Other Costs.**

**If the amount paid to dispose of a Claim or loss exceeds the Limit of Indemnity, Our liability for Other Costs will only be the proportion which the Limit of Indemnity bears to the total amount paid to dispose of such Claim or loss.**

**We shall not be liable for the Excess or any lesser amount for which a Claim or loss may be settled.**

## Cover Exceptions

We will not provide indemnity in respect of

(1) any Claim arising directly or indirectly from or caused by any dispute between You and any present or former Employee or any person who has applied for or been offered employment with You.

(2) any Claim or loss arising directly or indirectly from or caused by

(a) any Bodily Injury of any Employee whilst in the course of their employment with You,

(b) any other Bodily Injury or loss of or damage to property unless arising from an alleged breach of professional duty in the conduct of Your Business.

(3) any fines or penalties or any punitive, multiple, aggravated or exemplary damages where such can be identified separately within any award of any court or tribunal.

(4) any Claim brought by any entity

(a) in which You exercise a controlling interest,

(b) which exercises a controlling interest over Your business by virtue of having a financial or executive interest in You, unless such Claim arises from or is caused by a claim made against such entity by an independent third party.

(5) any Claim made against You in Your capacity as a director, officer or trustee unless arising from an alleged breach of professional duty in the conduct of Your Business.

(6) any Claim or loss arising from any plan, programme or scheme established or maintained to provide benefits to You or any Employee.

(7) any Claim arising directly or indirectly from or caused by the ownership, possession or use, by You or on Your

behalf, of any aircraft, watercraft, hovercraft, motor vehicle or trailer.

(8) any Claim arising directly or indirectly from or caused by

(a) the ownership, possession or use, by You or on Your behalf, of any buildings, structures, premises or land or

(b) that part of any building leased, occupied or rented by You or

(c) any other property (mobile or immobile) belonging to You.

(9) any person committing or conspiring to commit or condoning any dishonest or fraudulent act or omission.

(10) any Claim or loss arising from any dishonest or fraudulent act or omission committed by any person after the discovery, in relation to that person, of reasonable cause for suspicion of any dishonest or fraudulent act or omission.

(11) any Claim or loss arising from any dishonest or fraudulent act or omission unless Your annual accounts have been prepared or certified by an independent and properly qualified accountant or auditor. If you are regulated by The Royal Institution of Chartered Surveyors' this must be in accordance with the RICS Rules of Conduct and the client accounts, where applicable, have been kept in accordance with those rules.

(12) any defamation unless You can show that it was committed by You in good faith.

(13) any Claim arising out of liability assumed by You under any contractual agreement, Collateral Warranty or Duty of Care Agreement

(a) where You assume a standard of care greater than that reasonably expected of Your profession,

- (b) by which You warranted or guaranteed a particular outcome,
- (c) by which You agreed to pay a contractual penalty or liquidated damages in the event of breach,
- (d) which provides greater benefit or longer lasting benefit than that given to the party with whom You originally contracted,

unless such liability would have attached to You in the absence of the features listed above.

For the avoidance of doubt this exception does not apply to liabilities assumed by You because of, and to the extent required by, any applicable professional design standard such as the Eurocodes or British Standards series.

(14) any liability arising from the supply of any goods by You or products manufactured, constructed, altered, repaired, treated, sold, supplied or distributed by You.

This exception shall not apply to project models or displays.

(15) any Claim or loss arising from any trading losses or trading liabilities incurred by any business managed by or carried on by You.

(16) any Claim arising directly or indirectly from or caused by Your insolvency or bankruptcy.

This exception shall not apply to any Claim

- (a) in respect of monies held on behalf of third parties or
- (b) that otherwise would be indemnified by this policy but for Your insolvency or bankruptcy.

(17) any Claim arising directly or indirectly from the provision of Financial Services.

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

(19) any Claim or loss arising from the financial return of any investment or the depreciation or loss of investments when such financial return, depreciation or loss is as a result of normal or abnormal fluctuations in any financial, stock, commodity or other markets, which are outside Your influence or control.

This exception does not apply to Your Business in connection with the following:

- (a) survey or valuation of any tangible property for the purpose of any sale, proposed sale, purchase or proposed purchase,
- (b) survey or valuation of any tangible property for insurance or stock.

(20) any Claim or loss arising directly or indirectly from or caused by any work undertaken by You or on Your behalf prior to any Retroactive Date stated on the Schedule.

## Additional Cover

The following are extensions to cover and are in addition to the Limit of Indemnity.

### (1) Documents

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

Our total liability under this clause shall not exceed £50,000 per occurrence, subject to a maximum of £200,000 in any one Period of Insurance.

**We will not provide indemnity for loss or damage to Documents stored on a Computer System unless such Documents are backed up with the intention that in the event of loss or damage the back up can be used as the basis for restoring the Documents to their original status.**

### (2) Fidelity

We will indemnify You for

- (a) any loss of money or property owned by You (other than Employees' money or property) as a result of any dishonest or fraudulent act committed by any Employee acting alone or in collusion with others, with the intent to cause You to sustain the loss and to obtain Improper Gain, first discovered by You and notified to Us during the Period of Insurance

and

- (b) any investigation costs incurred with Our prior written consent to substantiate the amount of such loss including professional fees but not salaries, wages or any similar expenditure.

Our total liability under clause (a) above shall not exceed £250,000 in any one Period of Insurance or the amount stated in the Schedule as the Limit of Indemnity, whichever is the lesser.

Our total liability under clause (b) above shall not exceed £15,000 in any one Period of Insurance

#### **We will not provide indemnity:**

**(i) for any loss caused by any Employee who You do not have the right to supervise or direct.**

**(ii) to any person committing or conspiring to commit or condoning any such loss.**

**(iii) for any loss arising from any dishonest or fraudulent act committed by any Employee after the discovery, by You, of reasonable cause for suspicion of any dishonest or fraudulent act by that Employee.**

**(iv) for any loss of a consequential nature including but not limited to, potential income, profit, interest or dividends, not realised by You.**

**(v) for any loss of or damage to, proprietary information, trade secrets, confidential processing methods, intellectual property or confidential information of any kind.**

**(vi) for any costs, fees and expenses incurred by You in establishing either the existence or amount of any loss other than as specifically indemnified under clause (b).**

**(vii) in respect of any loss caused by any Employee or in which any Employee colluded whose normal place of employment or service is outside the United Kingdom (including the Channel Islands and the Isle of Man).**

**(viii) unless Your annual accounts have been prepared or certified by an independent and properly qualified accountant or auditor. If you are**

**regulated by The Royal Institution of Chartered Surveyors' this must be in accordance with the RICS Rules of Conduct and the client accounts, where applicable, have been kept in accordance with those rules.**

**(ix) in respect of the first £500, or any lesser amount for which a loss may be settled under this clause**

### **(3) Legal Costs**

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

- (a) The Property Misdescriptions Act 1991,
- (b) The Estate Agents Act 1979,
- (c) The Health & Safety at Work etc Act 1974,
- (d) The Health & Safety at Work (Northern Ireland) Order 1978,
- (e) The Construction (Design & Management) Regulations 1994,
- (f) Any similar or successor legislation.

Our total liability under this clause shall not exceed £150,000 in any one Period of Insurance

### **We will not provide indemnity**

**(i) unless We believe that defending such proceedings could protect You against any concurrent or subsequent Claim arising from the Business and in respect of which We may be obliged to provide an indemnity under the terms of this policy,**

**(ii) in respect of any criminal penalties or fines.**

### **(4) Payment for Court Attendance**

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

Our total liability under this clause shall not exceed £300 per person per day, subject to a maximum of £15,000 in any one Period of Insurance.

### **(5) Representation Costs**

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

- (a) such costs and expenses are incurred with Our prior written consent,
- and
- (b) the subject of the hearing, tribunal or proceeding may become a Claim under this policy and in respect of which We may be obliged to provide an indemnity under the terms of this policy.

Our total liability under this clause shall not exceed £15,000 in any one Period of Insurance.

## General Exceptions

We will not provide indemnity in respect of:

(1) any Claim where You are entitled to indemnity under any other policy except in respect of any excess beyond the amount which would have been payable under such insurance had this policy not been effected.

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

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

(3) any Claim

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

(4) any Claim arising directly or indirectly from or caused by the transmission or receipt of any computer virus or any other computer program or code designed to produce unexpected, unauthorised or undesirable effects or operations.

(5) any Claim of whatsoever nature arising directly or indirectly from or caused by the

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

- (a) recognising, using or adopting any date, day of the week or period of time, other than the true or correct date, day of the week or period of time,
- (b) the operation of any command or logic which has been programmed or incorporated into any Computer System.

(6) any liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from

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

(7) any Claim or consequence whatsoever resulting directly or indirectly from or in connection with any of the following regardless of any other contributory cause or event

- (a) war, invasion, act of foreign enemy hostilities or a warlike operation or operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of, or amounting to, a military uprising or usurped power,
- (b) Terrorism,

- (c) any action taken in controlling preventing suppressing or in anyway relating to (a) and/or (b) above.

In any action, suit or other proceedings, where We allege that by reason of this exception any consequence whatsoever resulting directly or indirectly from or in connection with (a) and/or (b) above regardless of any other contributory cause or event is not covered by this policy, the burden of proving that any consequence whatsoever resulting directly or indirectly from or in connection with (a) and/or (b) above regardless of any other contributory cause or event is covered shall be upon You.

# Conditions

## Claims Conditions

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

(1) If during the Period of Insurance, regardless of any Excess, You

- (a) receive any Claim, You shall give written notice to Us as soon as practicable save in the case of Claims concerning adjudications, the special provisions concerning which are set out at condition (4) below.

All Claims must, in any event, be notified to Us within 10 working days after the expiry of the Period of Insurance.

- (b) become aware of any circumstance that might give rise to a Claim, You shall give written notice to Us of such circumstance as soon as practicable. Any Claim subsequently arising from any circumstance notified to Us shall be deemed to have been made during the Period of Insurance in which the notice of such circumstance was first received by us provided always that such written notice is received by Us during the Period of Insurance.
- (c) discover a reasonable cause for suspicion of any dishonesty or fraud on the part of any past or present director, partner or Employee of Yours, whether giving rise to a Claim or not, You shall give written notice to Us of such discovery as soon as practicable provided always that such written notice is received by Us during the Period of Insurance.
- (d) discover any loss of or damage to Documents, You shall give written notice to Us of such discovery as soon as practicable provided always

that such written notice is received by Us during the Period of Insurance.

### **Any written notice should be sent to:**

Giles Insurance Brokers Ltd  
Claims Department  
12 Poverest Road  
Orpington  
Kent  
BR5 2TP  
Tel. 01689 877 800  
Fax. 01689 877 789

(2) In the event of a Claim or loss or the discovery of a circumstance that might give rise to a Claim or loss You must not admit liability for or settle any Claim or incur any related costs or expenses without Our written consent.

(3) In the event of a Claim or loss or the discovery of a circumstance that might give rise to a Claim or loss, We will be entitled, at Our own expense at any time, to take over and conduct in Your name the defence or settlement of any such Claim or loss.

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

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

- (a) providing all such information, assistance, signed statements or depositions as may be required to facilitate compliance with any civil procedure rules, practice directions and pre action protocols as may be issued,
- (b) allowing Us to present the best possible defence of a Claim within the time constraints available,
- (c) ensuring ready access to all and any information that We may require

in the defence of a Claim or investigation of a loss,

- (d) ensuring the payment, on demand, of the Excess, in conjunction with the terms of any settlement agreed by Us.

(4) As regards Claims concerning adjudications under the Housing Grants Construction and Regeneration Act 1996 or The Independent Property Codes Adjudication Scheme (IPCAS), We will not provide indemnity unless You notify Us within 72 hours of

- (a) receipt of any notice of adjudication,
- (b) the service by You of any notice of adjudication,
- (c) You becoming aware of any circumstance which may give rise to a notice of adjudication being served on You.

### **General Conditions**

(1) In connection with any Claim, We may at any time pay You the amount of the Limit of Indemnity (after deduction of any sums already paid as damages or claimant's costs and expenses in respect of such Claim) or any lesser amount for which We believe that such Claim can be settled and thereupon We shall relinquish the control of such Claim and be under no further liability in connection therewith except for costs and expenses incurred prior to the date of such payment and for which We may be responsible under this policy.

(2) The Limit of Indemnity and the Excess apply to all of You jointly. If more than one Insured is named in the Schedule, the total amount We will pay will not exceed the amount We would be liable to pay to any one of You.

(3) If any payment is made by Us to You under the terms of this policy, You grant to Us all rights of recovery that You would have had against any parties from whom a recovery may be made and You will take all reasonable steps to preserve and not to prejudice such rights.

(4) If You make any claim for indemnity under this policy knowing the same to be false or fraudulent as regards to the amount or otherwise, this policy shall become void and You shall forfeit all benefit hereunder.

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

(6) This policy is governed by the law of England and Wales or the courts of Scotland and Northern Ireland and the courts of England and Wales or the courts of Scotland and Northern Ireland are to have exclusive jurisdiction for hearing and determining any litigation arising out of or in connection with the interpretation of this policy.

(7) This policy, its endorsements and the Schedule shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of the policy, endorsements or the Schedule shall bear the same meaning wherever it may appear unless the contrary is indicated. In the event that there is any conflict between the terms of this policy and the Schedule, the terms of the Schedule shall prevail.

(8) Where a Claim or loss involves the dishonest or fraudulent act or omission of any former or present partner, director, member, consultant or Employee,

- (a) You shall at Our request and expense take all reasonable steps to obtain reimbursement from such person,
- (b) any monies which but for the dishonest or fraudulent act or omission would be due to such persons from You or any monies of such persons held by You shall be deducted from any amount payable under this policy,
- (c) no indemnity in respect of such Claim or loss shall be afforded to

any person committing or condoning such dishonest or fraudulent act or omission,

- (d) nothing herein shall preclude Us from exercising any right of subrogation against any person committing or condoning such dishonest or fraudulent act or omission.

(9) You shall not be required to contest any legal proceedings unless a senior barrister (to be mutually agreed upon between You and Us) shall advise that such action has a reasonable prospect of success.

## Special Conditions

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

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

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

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

and

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

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

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

In the event of any dispute or disagreement between You and Us regarding the application of this Special Condition, such dispute or disagreement shall be referred by

either party for arbitration to any person nominated by the Chief Executive for the time being of the National Federation of Property Professionals or the President of the Royal Institution of Chartered Surveyors whose decision shall be binding on both parties.

(2) In the event of any dispute or disagreement between You and Us as to the correct interpretation of the Business under this policy shall be referred by either party for arbitration to any person nominated by the Chief Executive for the time being of the National Federation of Property Professionals or the President of the Royal

Institution of Chartered Surveyors whose decision shall be binding on both parties.

(3) Applies to RICS members only:

In any dispute in connection with the cover, conditions, exceptions or limits of this policy, it is specifically understood and agreed that the cover, conditions, exceptions and limits of the Approved Wording shall take precedence over any cover, conditions, exceptions or limits contained herein which are less favourable to You.

**Section B – Legal Expenses  
(for Property Misdemeanors  
Act 1991, Money Laundering  
Regulations 2003 and The  
Housing Act 2004)**

## Section Cover and Definitions

For the avoidance of doubt it has hereby been agreed by Underwriters that the cover provided for under Section B of the Policy provides Legal Expenses to the insured to defend them from claims brought against them under the Property Misdescriptions Act 1991, the Money Laundering Regulations 2003 (Incorporating Proceeds of Crime Act 2002 and Anti—Terrorism, Crime and Security Act 2001, and The Housing Act 2004).

Subject otherwise to the terms limits conditions and exceptions of the Policy.

## Definitions

The following definitions apply to this section of the Policy and shall keep the same meaning wherever they appear in bold italics in this section of the Policy only

**Appointed Representative** shall mean the lawyer or other suitably qualified person who has been appointed to act for **You** in accordance with the terms of this section of the Policy

**Costs and Expenses** shall mean

a) Legal Costs

i) All reasonable and necessary costs chargeable by the **Appointed Representative** on a standard basis

ii) The costs incurred by opponents in civil cases if **You** have been ordered to pay them or pay them with **Our** agreement

b) Attendance Expenses

Your salary or wages for the time that **You** are off work

i) to attend a court or tribunal hearing at the request of the **Appointed Representative**

ii) as a defendant or while attending jury service

**We** will pay for each half or whole day that the

i) court

ii) tribunal

iii) **Your** employer

will not pay for

a) the time **You** are off work including the time it takes to travel to and from the court or tribunal. This will be calculated to the nearest half day assuming that a whole day is eight hours

b) if **You**

i) work full time wages for each whole day equals 1/250th of **Your** annual wages

ii) work part time the wages will be a proportion of the **Your** weekly wages

**Date of Occurrence** shall mean

1) civil cases - when the cause of action accrued

2) criminal cases - when **You** broke or are alleged to have broken the criminal law in question

**Limit of Indemnity** shall mean the maximum amount **We** will pay for **Costs and Expenses** in respect of any or all claims arising out of one cause is £100,000.

**Period of Insurance** shall mean from the effective date until the expiry date shown in the Schedule.

**Territorial Limits** shall mean

For Legal Defence (other than Item 4)

The European Union the Isle of Man the Channel Islands Albania Andorra Bosnia Herzegovina Croatia Gibraltar Iceland Liechtenstein Macedonia Monaco Montenegro Norway San Marino Serbia Switzerland and Turkey (West of the Bosphorus)

For Legal Defence Item 4

Great Britain Northern Ireland the Isle of Man and the Channel Islands

**We/Us/Our/Aviva**  
Aviva Insurance Ltd

**You/Your/The Policyholder/The Insured**  
shall mean

- 1) the insured
- 2) any director of the insured or partner or proprietor of the business
- 3) any employee under a contract of employment with the insured

## Cover

**We** will indemnify **You** provided that

- 1) the incident occurs within the **Territorial Limits** and **Date of Occurrence** is within the **Period of Insurance**
- 2) any legal proceedings will be dealt with by a court or other body which **We** agree to within the **Territorial Limits**
- 3) in civil claims it is always more likely than not that **You** will recover damages (or obtain any other legal remedy to which **We** have agreed) or make a successful defence

**We** will help in appealing or defending an appeal provided that **You** tell **Us** within the time limits that **You** want **Us** to appeal. Before **We** pay any **Costs and Expenses** for appeals **We** must agree that it is always more likely that the appeal will be successful.

The maximum **We** will pay is the **Limit of Indemnity**.

### Legal Defence

At **Your** request **We** will

- 1) defend **Your** legal rights
  - a) prior to the issue of legal proceedings with the police and/or the Trading Standards Office where it is alleged that **You** have committed a criminal offence  
  
and/or
  - b) following an event which leads to **You** being prosecuted in a court of criminal jurisdiction  
  
and/or
  - c) following civil action taken against **You** for compensation under

Section 13 of the Data Protection Act 1998 (**We** will also pay any compensation award made against **You** under section 13 of the Data Protection Act 1998).

2) defend **Your** legal rights following civil action taken against **You** for wrongful arrest in respect of an accusation of theft alleged to have been carried out during the **Period of Insurance**.

3) defend the legal rights of any director, partner or proprietor of **Yours** or employee under a contract of employment with **You** if

a) an event arising from their work as a director, partner, proprietor or employee leads to civil action being taken against them under legislation for unlawful discrimination on the grounds of

- i) sex
- ii) race
- iii) disability
- iv) religious belief
- v) age
- vi) sexual orientation
- vii) political opinion

## Section Exceptions

1) **We** will not provide indemnity in respect of:

a) any claim reported to **Us** more than 180 days after the date **You** should have known about the claim

b) any **Costs and Expenses** incurred before the written acceptance by **Us** of the claim

c) fines penalties compensation or damages which **You** are ordered to pay by a court of other authority other than compensation awards covered by this section of the Policy

d) any claim deliberately or intentionally caused by **You**

e) a dispute with **Us** or the **Appointed Representative** not catered for in Condition 7

f) an application for judicial review

g) any legal action **You** take which **We** or the **Appointed Representative** have not agreed to

and/or

where **You** do anything that hinders **Us** or the **Appointed Representative**

2) **We** will not provide indemnity in respect of a claim notified under this section of the Policy when either at the start of or during the course of the claim **You**

i) are bankrupt

ii) have filed a bankruptcy petition or winding up petition

iii) have made an arrangement with creditors

iv) have entered into a deed or arrangement

v) are in liquidation

vi) are or part of or all of **Your** affairs or property are in the care or control of a receiver or administrator

3) **We** will not provide indemnity in respect of any claim which leads to **You** being prosecuted for infringement of road traffic laws or regulations in connection with the

ownership driving or use of any motor vehicle.

## Section Conditions

### Conditions

1) **You** must

a) keep to the terms and conditions of this section of the Policy

b) notify **Us** immediately of any alteration which may materially affect **Our** assessment of the risk

c) take reasonable steps to keep any amount **We** have to pay as low as possible

d) try to prevent anything happening that may cause a claim

e) send everything **We** ask for in writing

f) give the **Us** full details of any claim as soon as possible and give **Us** any information **We** need

2)

a) **We** can take over and conduct any claim or legal proceedings in **Your** name at any time

**We** can negotiate any claim on **Your** behalf

b) If **We** agree to start legal proceedings and it becomes mandatory for **You** to be represented by a lawyer or if there is a conflict of interest **You** can choose an appointed representative by sending **Us** the suitably qualified person's name and address.

**We** may choose not to accept the choice of representative but only in exceptional circumstances.

If there is a disagreement over the choice of appointed representative another suitably qualified person can be appointed to decide the matter.

c) Before **You** choose a lawyer **We** can appoint an **Appointed Representative**

d) An **Appointed Representative** will be appointed by **Us** and represent **You** according to **Our** standard terms of appointment.

The appointed representative must cooperate fully with **Us** at all times.

e) **We** will have direct contact with the **Appointed Representative**

f) **You** must co-operate fully with **Us** and the **Appointed Representative** and must keep **Us** up to date with the progress of the claim

g) **You** must give the **Appointed Representative** any instructions that **We** require

3.

a) **You** must tell **Us** if anyone offers to settle a claim

b) If **You** do not accept a reasonable offer to settle a claim **We** may refuse to pay any further **Costs and Expenses**

c) **We** may decide to pay **You** the amount of damages **You** are claiming or is being claimed against **You** instead of starting or continuing legal proceedings

4.

a) If **We** ask **You** must tell the **Appointed Representative** to have **Costs and Expenses**

- i) taxed
- ii) assessed
- iii) audited

b) **You** must take every step to recover **Costs and Expenses** that **We** have to pay and must pay **Us** any **Costs and Expenses** that are recovered

5) If an **Appointed Representative** refuses to continue acting for **You** or **You** dismiss an **Appointed Representative** the cover **We** provide will end at once unless **We** agree to appoint another **Appointed Representative**

6) If **You**

- a) settle a claim
- b) withdraw a claim without **Our** agreement
- c) do not give suitable instructions to an **Appointed Representative**

the cover the **We** provide will end at once and **We** will be entitled to reclaim any **Costs and Expenses** paid by **Us**

7) In any dispute between **You** and **Us** about

a) the choice of **Appointed Representative**

and/or

b) the handling of a claim

together **We** and **You** can choose another suitably qualified person to decide the matter.

**We** and **You** must both agree to this in writing.

If **We** cannot agree with **You** about the choice of the second suitably qualified person **We** will ask the president of a relevant national law society to choose a suitably qualified person.

Whoever loses the disagreement will have to pay the costs of settling it.

8) **We** may at **Our** discretion require **You** to obtain an opinion from counsel at the **Your** expense as to the merits of a claim or proceedings

If counsel's opinion indicates that there are reasonable grounds for the pursuit or defence of a claim or proceeding the cost of obtaining the opinion will be paid by **Us**

9) All acts of Parliament within this Policy wording will include equivalent legislation in Scotland, Northern Ireland, the Isle of Man or the Channel Islands as the case may be

## How do I make a claim?

For claims under Section B please call us on the following number and quote your Policy number

Claims (0845 300 5576)

## Section General Exceptions

**We** will not be liable in respect of

- 1) any claim where **You** are entitled to indemnity under any other insurance except in respect of any excess beyond the amount which would have been payable under such insurance had this Policy not been effected
- 2) any circumstance or occurrence which has been notified to any Insurance Intermediary or Insurer under any other Policy or Certificate of Insurance attaching prior to the inception of this Policy or disclosed on the proposal that forms the basis of this contract
- 3) any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from
  - iii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
  - iv) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof
- 4) any loss arising as a consequence of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion revolution insurrection or military requisition or destruction of or damage to property by or under the order of any Government or Public or Local Authority.