



Freelance **Insure**

Professional Indemnity Policy



Specially Provided By



Underwritten By Certain Underwriters at
Lloyds of London

LLOYD'S



Mitsui Sumitomo Insurance

Professional Indemnity Insurance Policy Wording

Whereas the Assured stated in the **Schedule** having submitted a signed Application containing particulars and statements which are hereby considered to be the basis of this insurance contract and incorporated herein and having paid the premium specified in the **Schedule**, it is hereby agreed:

Insuring Clauses

The Underwriters will indemnify the Assured to the extent and in the manner detailed herein against any claim for which the Assured may become legally liable, first made against the Assured and notified to the Underwriters during the **period** of this Certificate arising out of the professional conduct of the Assured's business alleging:

1. **Neglect, Error or Omission**

any neglect, error or omission including breach of contract occasioned by same.

2. **Dishonesty of Employees**

any dishonest, fraudulent, criminal or malicious act(s) or omission(s) of any person employed at any time by the Assured.

The Assured will not be indemnified against any claim or loss, resulting from the dishonest, fraudulent, criminal or malicious act(s) or omission(s) perpetrated after the Assured could reasonably have discovered or suspected the improper conduct of the employee(s).

No indemnity shall be provided to any person committing or condoning any dishonest, fraudulent, criminal or malicious act(s) or omission(s).

3. **Intellectual Property Rights**

any claim arising from unintentional breach or infringement of or unauthorised use of confidential information, trade secrets, patents, copyrights, of the systems or programs of others.

4. **Libel and Slander**

any claim arising from the publication or utterance of a libel or slander.

5. **Loss of Documents**

Underwriters will indemnify the Assured up to the Limit of Indemnity as specified in the **Schedule** against:

- (i) legal liability which the Assured may incur by reason of any claim first made against the Assured and notified to the Underwriters during the period of the Certificate in consequence of documents having been lost, damaged, destroyed, mislaid, distorted or erased;
- (ii) all costs, charges and expenses incurred by the Assured in replacing or restoring such documents;

- (iii) all costs, charges and expenses incurred by the Underwriters or by the Assured with the written consent of the Underwriters in the defence settlement or investigation of any claim to establish liability as described in (i) above;

For the purposes of this Section the Excess shall be as defined under the **Schedule**, charges and expenses incurred by the Assured as described in (ii) and (iii) above shall be supported by bills and accounts. Indemnity is conditional upon the documents having been entrusted to or deposited with or by the Assured in the ordinary course of their business and where lost or mislaid have been the subject of diligent search by the Assured.

6. **Specialist Consultants/Sub-Contractors**

Underwriters will indemnify the Assured in respect of any liability for claims falling within the operative clause arising out of the activities of Specialist Consultants, Sub-Contractors or any other person(s) or entity acting on the Assured's behalf and for whom the Assured are responsible. Provided always that underwriters shall become subrogated to all rights of recourse of the Assured, such rights to be fully maintained by the Assured.

Policy Definitions

1. "**Assured**" shall include the following persons, but only in respect of work undertaken for and on behalf of the Assured:
 - (i) Any person who at any time is has been or may become during the period of this Certificate a partner or director.
 - (ii) Any person who is or has been employed under a contract of service including Self Employed Persons.
 - (iii) The estates and/or the legal representatives in the event of the death or incapacity of the Assured or of any of the persons defined in (i) and (ii) above.
2. "**Documents**" shall include agreements, plans, records, deeds, books, letters, certificates, documents or forms of any nature whatsoever, whether written, printed or reproduced by any other method and computer programs or information stored on data carrying media, and shall exclude any bearer bonds or coupons, stamps, bank or currency notes or other negotiable instruments.
3. "**Limit of Indemnity**" Underwriters' liability shall be limited to the sum specified in the **Schedule** and the Limit of Indemnity will include all costs and expenses incurred with Underwriters' written consent in the investigation, defence or settlement of any claim which falls to be dealt with hereunder.
4. "**Uninsured Excess**" shall mean the amount specified in the **Schedule** which shall be borne by the Assured at their own risk and the Underwriters' liability shall only be in excess of this amount except where stated otherwise and will not apply to costs and expenses incurred without the Underwriters' prior consent.
5. "**Claim**" shall mean any one claim or series of claims arising out of one occurrence or circumstance or series of occurrences or circumstances consequent upon or

attributable to one source or original cause and the Excess shall only apply once in respect of such claim or series of claims.

Exclusions

Underwriters will not provide indemnity against:

1. Any claim or loss involving death or bodily injury to any person or physical loss or damage to property (except in so far as indemnified by the Loss of Documents Extension), unless such claim or loss arises out of advice, design, specification or formula.
2. Any claim or circumstance known to the Assured prior to the inception of this Certificate and which the Assured at such time knew or should have reasonably assumed might result in a claim against the Assured.
3. Any claim or loss arising out of any circumstances or matter which has or should have been notified under any Policy or Certificate of Insurance in force prior to the inception of this Certificate.
4. Any claim or loss in respect of which the Assured is entitled to indemnity under any other Policy or Certificate of Insurance.
5. Any claim made against the Assured by any entity in which the Assured exercises a controlling interest unless such claim originates from an independent third party.
6. Any fines, penalties, punitive or exemplary damages or other non-compensatory damages of any kind, except that this exclusion shall not apply to damages for defamation which are not specifically identified by the Court to be punitive or exemplary damages.
7. Any fees claimed back by a customer of the Assured due to or allegedly due to total non-performance of the Assured's contractual obligations to that customer unless such fees form part of a compromise settlement involving a claim for damages.
8. Any claim or loss arising out of:
 - i) the sale and/or supply of hardware, other than advice given in connection therewith;
 - ii) the recommendation of any goods or products where their use is not in accordance with the manufacturer's intended specification.
9. Any claim directly or indirectly caused in whole or in part by or arising from
 - (i) ionising radiations or contaminations by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or, the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, or
 - (ii) war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
10. Any claim or claims made or actions instituted within the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada. It also being understood that Underwriters have no liability to

investigate or defend the Assured against such claim or claims or be liable to enforce a judgement obtained in any court of the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada.

11. Any claim or claims made arising from work undertaken in the United States of America or Canada or any territories which come within the jurisdiction of the United States of America or Canada.
12. Any claim arising directly or indirectly out of or in any way connected with :
 - (i) the actual, alleged or anticipated failure or inability of any computer or electronic device or component or system or embedded programming or software, whether or not owned by or in the possession of the Assured :

... correctly to assign any date to the correct day, week, month, year or century; or

... correctly to recognise or compute any date which is or is intended to be beyond 31 December,1999 ; or

... to continue to operate as it would have done had its date, the true date or any other date relevant to any function being carried out by it been prior to 1 January 1999:
 - (ii) the use of any arbitrary, ambiguous or incompletely defined date in any data, software or embedded programming, whether or not owned by or in the possession of the Assured.
 - (iii) any measures taken with the intention of averting or mitigating any of the above.

Notwithstanding this exclusion, Underwriters shall indemnify the Assured for costs and expenses incurred (with Underwriter's written consent) in the investigation, defence or settlement of any claim relating to such matters. However, in respect of such costs and expenses Underwriters' total aggregate liability shall not exceed £25,000 in all for the Period of Insurance which amount is part of and not in addition to the Limit of Indemnity stated in Item 5 of the Schedule. Furthermore, any such payments will be subject to a minimum uninsured excess of £1,000 each and every claim and in addition to this the Assured will bear 15% of the total payment made by Underwriters.

13. Any claim arising from work undertaken prior to the Date of Establishment of your company and/or as defined by the Date of Incorporation Certificate.
14. Any claim arising directly or indirectly out of the transmission or receipt of a virus, unless such virus is innocently transmitted and originates from a third party, that causes loss of or damage to any documents and/or computer system and/or prevents or impairs any computer system from performing and/or functioning accurately or properly.
15. Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes any liability for loss, damage, injury, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or

in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

- (1) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (2) any act of terrorism.
For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes any liability for loss, damage, injury cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (1) and/or (2) above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

General Conditions

1. In the event that the Assured and Underwriters fail to agree on any settlement of a claim recommended by the Underwriters and the Assured shall elect to contest or continue any legal proceedings in connection therewith then the Underwriters' liability for such claim, in addition to the costs and expenses incurred with Underwriters' consent up to the date of such failure to agree, shall not exceed the amount for which the claim could have been so settled, less the Excess and subject always to the Limit of Indemnity available under this Certificate.
2. If the Assured shall refer any claim knowing the same to be false or fraudulent as regards amount or otherwise, this Certificate shall become void and all claims hereunder shall be forfeited.
3. If any payment is made under this Certificate in respect of a claim and the Underwriters are thereupon subrogated to the Assured's rights of recovery in relation thereto, the Underwriters shall not exercise any such rights against any employee of the Assured unless the claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act(s) of such employee.
4. The statements in the written declaration and/or proposal form are the basis of this Certificate and this Certificate shall not be avoided for a non-disclosure or misrepresentation of such statements unless the non-disclosure or misrepresentation was made deliberately and knowingly by the Assured so as to induce the Underwriters to accept the insurance or to decide upon the terms thereof and the Underwriters were so induced.

In any case where the Assured should have notified under any preceding insurance circumstances which could give rise to a claim and the indemnity or cover available under this Certificate is greater or wider in scope than the indemnity to which the Assured would have been entitled under any preceding insurance (whether with other Underwriters or not) then Underwriters shall only be liable to indemnify the Assured in respect of that claim to the extent of the indemnity which would have been afforded by such preceding insurance.

Where the Assured's breach of or non-compliance with any condition of this Certificate has resulted in prejudice to the handling or settlement of any claim the indemnity afforded by this Certificate in respect of such claim shall be reduced to such sum as in Underwriters opinion would have been payable by them in the absence of such prejudice.

5. In the event of any dispute or disagreement between the Assured and Underwriters regarding the application of this Certificate such dispute or disagreement shall be referred by either party for arbitration to a Queen's Counsel (or by mutual agreement between the Assured and Underwriters a similar authority).
6. In the event that Underwriters are advised by their Solicitors that they should make payment of the Limit of Indemnity, together with costs and expenses incurred by the Assured with Underwriters' written consent in respect of any claim or circumstance notified hereunder, this shall be in exoneration and total discharge of any further liability of any kind whatsoever in connection with such claim or occurrences for which Underwriters may be liable to the Assured under this Certificate.
7. Contract (Rights of Third Parties) Act 1999 Clause.
The Assured and the Underwriters are the only parties to this insurance. No other person has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this insurance but this does not affect any right or remedy of a third party, which exists or is available apart from this Act.

Claims Procedures

1. Upon receipt by or on behalf of the Assured of notice whether written or oral of any intention to make a claim against the Assured which may be the subject of indemnity hereunder or of any allegation which might give rise to such a claim, or upon the discovery of a circumstance which may become the subject of indemnity hereunder the Assured shall notify Caunce O'Hara Co. in writing of such receipt, allegation or discovery as soon as practicable and shall provide full information in respect thereof so far as such information is in their possession or control.

If during the period hereof the Assured shall become aware of any circumstance which may subsequently be the subject of a claim under this Certificate and shall, as soon as practicable during the period hereof, give written notice to Caunce O'Hara Co. of such circumstances then such subsequent claim hereunder shall be deemed for the purposes of this Certificate to have been made during the period hereof.

2. The Assured shall not admit liability for or settle or make or promise any payment in respect of any claim which may be the subject of indemnity hereunder or incur any costs or expenses in connection therewith without the written consent of the Underwriters who, if they so wish, shall be entitled to take over and conduct in the

name of the Assured the defence and/or settlement of any such claim for which purpose the Assured shall give all information and assistance as the Underwriters may reasonably require.

Complaints Procedures

Counce O'Hara & Company Ltd (Insurance Brokers) define a complaint as any expression of dissatisfaction, whether oral or written, and whether justified or not, about a service or activity provided in connection with this insurance policy. If you have a complaint, please contact Counce O'Hara & Company Ltd in the first instance:

Chris Counce
Counce O'Hara & Company Ltd,
City Wharf,
New Bailey Street,
Manchester
M3 5ER
Telephone: 0161 833 2100

If your complaint cannot be resolved satisfactorily by Counce O'Hara, please contact:

The Compliance Officer
Mitsui Sumitomo Insurance (London Management) Ltd
71 Fenchurch Street
London EC3M 4BS

In the event that you remain dissatisfied and wish to make a complaint, it may be possible in certain circumstances for you to refer the matter to the Complaints Department at Lloyd's.

Complaints Department
Lloyd's
One Lime Street
London
EC3M 7HA

Tel No: 020 7327 5693
Fax No: 020 7327 5225
E-mail: complaints@lloyds.com

Copies of our complaints procedures are also available from this address.

If you remain dissatisfied after Lloyd's Complaints Department has considered your complaint, you may have the right to refer your complaint to Financial Ombudsman Service.

Financial Ombudsman Service,
South Quay Plaza,
183 Marsh Wall,
London
E14 9SR
Telephone: 0845 080 1800



Freelance **Insure**



City Wharf
New Bailey Street
Manchester
M3 5ER

Tel: 0161 833 2100

Fax: 0161 839 2100

The Freelance Insure Professional Indemnity Scheme is underwritten by Mitsui Sumitomo Insurance (London Management) Ltd Syndicate 3210 at Lloyds of London. Registered in England and Wales number 3904868 at 71 Fenchurch Street, London EC3M 4BS. Authorised and Regulated by the Financial Services Authority number 202554. Calls may be recorded.



Mitsui Sumitomo Insurance

LLOYD'S