



# Media Industry Consultants

## Professional Liability Policy Wording

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# General Definitions

## Applying To All Sections

### For definitions applying to section 3, please refer to section 3 'Definitions (Applicable To Section 3 Only)

The following words will have the same meaning attached each time they appear in section(s) 1, 2 and 3 in bold type face, whether with a capital first letter or not. Where the meaning of a word is defined below and the same word is defined differently under a separate section(s) of this policy, the definition provided under the separate section applies to that section only.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute or regulation will be construed to include all its amendments or replacements. All headings within the policy are included for convenience only and will not form part of this policy.

#### **Insurer**

means HCC International Insurance Company plc.

#### **Period of insurance**

is that as stated in the Schedule.

## General Definitions Applying To Sections 1 and 2 Only

For the purposes of Sections 1 and 2 of this Policy the words or terms that appear in bold will be interpreted as follows:

#### **Employee**

Is:

- a. any person employed by the **Insured** under a contract of service, training or apprenticeship; and
- b. any voluntary worker; and
- c. any locum, seasonal or temporary personnel; and
- d. any self employed person or entity acting as freelance consultant

but only if such person or entity is working under the **Insured's** direction, control and supervision.

#### **Insured**

is any person or firm stated in the Schedule and includes any current or previous partner, director, principal, member or **Employee** of any firm or company stated in the Schedule and any other person who becomes a partner, director, principal, member or **Employee** of the firm.

#### **Personal appointment**

is any individual appointment of a professional nature arising out of the ordinary professional activities of the **Insured** other than any appointment as a director or officer of a company or as a trustee.

#### **Professional business**

is the business of the **Insured** as stated in the Schedule including the holding of any **Personal appointment** but in respect of Section 1 shall mean only the professional services of the **Insured's** business.

## General Conditions Applying To All Sections

In addition to the general conditions set out immediately below, conditions specific to each section also apply and these can be found within the relevant sections and sub-sections of this policy.

If a condition is stated below and the same condition is described differently under another section of this policy, the condition provided under that section will apply to that section only.

### 1. Policy construction and disputes

Any phrase or word in this Policy and the Schedule will be interpreted in accordance with the laws of England and Wales. The Policy 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 this Policy or the Schedule shall bear such specific meaning wherever it may appear.

Any dispute concerning the interpretation of the terms, Conditions or Exclusions contained herein is understood and agreed by both the **Insured** and the **Insurer** to be subject to the laws of England and Wales. Each party agrees to refer any such dispute to a mediator to be agreed between the **Insured** and the **Insurer** within 14 working days of any dispute arising under the Policy. If a mediator is not agreed then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.

The **Insured** and the **Insurer** agree to perform their respective continuing obligations under this Policy while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations. If any such dispute is not resolved by mediation or the **Insured** and the **Insurer** cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be submitted to the exclusive jurisdiction of any court of competent jurisdiction within England and Wales and each party agrees to comply with all requirements necessary to give such court jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

## 2. Fraudulent claims

If the **Insured** shall make any claim knowing the same to be fraudulent or false as regards the amount or otherwise (including the provision of false or fraudulent documents or statements) then

The **Insurer** will:

- i. refuse to pay the whole of the claim; and
- ii. recover from the Insured any sums that it has already paid in respect of the claim.

The **Insurer** may also notify the **Insured** that it will be treating (all sections of) this policy as having terminated with effect from the date of the earliest of any of the fraudulent act. In that event the **Insured** will:

- a. have no cover under the Policy from the date of termination; and
- b. not be entitled to any refund of premium.

## 3. Contracts (Rights of Third Parties) Act 1999

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights 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.

## 4. Cancellation

This Policy may be cancelled by or on behalf of the **Insurer** by thirty days notice given in writing to the **Insured**.

## 5. Invalidity

If any provision of this Policy is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable this will not affect the other provisions of this Policy which will remain in full force and effect.

## 6. Notices

Notice shall be deemed to be duly received in the course of post if sent by pre-paid letter post properly addressed to:

- a. in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker;
- b. in the case of the **Insurer**, to HCC International Insurance Company PLC at Fitzwilliam House, 10 St Mary Axe, London EC3A 8BF.

## 7. Reasonable steps to avoid loss

Without prejudice to the Notification and Claims Conditions in this Policy, the **Insured** shall take all reasonable steps to avoid or mitigate any loss, damage or liability that may result in any claim or **Circumstance** notifiable under this Policy.

## 8. Premium Payment Clause

If the premium due under this Policy has not been so paid to **Insurers** by the 60th day from the inception of this Policy, (and, in respect of instalment premiums, by the date they are due), **Insurers** shall have the right to cancel this Policy by notifying the **Insured** via their broker in writing. In the event of cancellation, premium is due to **Insurers** on a pro rata basis for the period that **Insurers** are on risk but the full policy premium shall be payable to **Insurers** in the event of a loss or occurrence prior to the date of termination which gives rise to a valid claim under this Policy.

It is agreed that **Insurers** shall give not less than 15 days prior notice of cancellation to the **Insured** via their broker. If premium due is paid in full to **Insurers** before the notice period expires, notice of cancellation shall automatically be revoked. If not, this Policy shall automatically terminate at the end of the notice period.

If any provision of this clause is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this clause which will remain in full force and effect.

## 9. International Sanctions

The **Insurer** will not provide cover, be liable to pay any claim or provide any benefit if to do so would expose the **Insurer** (or any parent company, direct or indirect holding company of the **Insurer**) to any penalty or restriction (including extraterritorial penalties or restrictions so far as such do not contradict laws applicable to the **Insurer**), arising out of any trade and economic sanctions laws or regulations which are applicable to it.

## 10. Assignment

This policy of insurance (including any benefits it provides) are not assignable to any third party without the express approval of the **Insurer** confirmed in writing by the **Insurer**

## 11. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the **Insured** shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion agree to continuation of the policy of insurance, to be confirmed by way of a written endorsement to the policy. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 11 – Change of control, the cover provided by this policy of insurance shall cease with immediate effect at the date of the change of control.

For the avoidance of doubt, the **Insured** shall not be entitled to an indemnity in respect of any claims made under Section 1 of this policy of insurance where notification of the claim

occurs after a change in control (as referred to in this General Condition 11 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 11.

## Complaints

We are dedicated to providing you with a high quality service and we want to ensure that we maintain this at all times. If you feel that we have not offered you a first class service please write and tell us and we will do our best to resolve the problem. If you have any questions or concerns about your policy or the handling of a claim you should in the first instance contact

*Compliance Officer*  
*Tokio Marine HCC*  
*1 Aldgate*  
*London*  
*EC3N 1RE*

The Financial Ombudsman Service (FOS)

Should you be dissatisfied with the outcome of your complaint, you may have the right to refer your complaint to the Financial Ombudsman Service. The FOS is an independent service in the UK for settling disputes between consumers and businesses providing financial services. Contacting the FOS does not affect your right to take legal action.

The FOS's contact details are as follows:

Financial Ombudsman Service  
Exchange Tower  
London E14 9SR

Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk)  
Telephone: +44 (0)30 0123 9123  
Website: [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

The European Commission Online Dispute Resolution Platform (ODR)

If you were sold this product online or by other electronic means and within the European Union (EU) you may refer your complaint to the EU Online Dispute Resolution (ODR) platform. Upon receipt of your complaint the ODR will escalate your complaint to your local dispute resolution service – this process is free and conducted entirely online. You can access the ODR platform on <http://ec.europa.eu/odr>. This platform will direct insurance complaints to the Financial Ombudsman Service. However, you may contact the FOS directly if you prefer, using the details as shown above.

## Useful Information

If Tokio Marine HCC are unable to meet their liabilities to policyholders, you may be able to claim compensation from the Financial Services Compensation Scheme. The level of compensation differs depending on the type of cover:

Compulsory Insurance	Non-compulsory Insurance
100% of the claim	90% of the claim

Further information can be obtained from:  
Financial Services Compensation Scheme  
10th Floor, Beaufort House  
15 St Botolph Street  
London EC3A 7QU  
Telephone: 0800 678 1100 or 020 7741 4100 or  
[enquiries@fscs.org.uk](mailto:enquiries@fscs.org.uk) [www.fscs.org.uk](http://www.fscs.org.uk)

## Data protection notice

Tokio Marine HCC respects your right to privacy. In our Privacy Notice (available at <https://www.tmhcc.com/en/legal/privacy-policy>) we explain who we are, how we collect, share and use personal information about you, and how you can exercise your privacy rights. If you have any questions or concerns about our use of your personal information, then please contact [DPO@tmhcc.com](mailto:DPO@tmhcc.com).

We may collect your personal information such as name, email address, postal address, telephone number, gender and date of birth. We need the personal information to enter into and perform a contract with you. We retain personal information we collect from you where we have an ongoing legitimate business need to do so.

We may disclose your personal information to:

- our group companies;
- third party services providers and partners who provide data processing services to us or who otherwise process personal information for purposes that are described in our Privacy Notice or notified to you when we collect your personal information;
- any competent law enforcement body, regulatory, government agency, court or other third party where we believe disclosure is necessary (i) as a matter of applicable law or regulation, (ii) to exercise, establish or defend our legal rights, or (iii) to protect your interests or those of any other person;
- a potential buyer (and its agents and advisers) in connection with any proposed purchase, merger or acquisition of any part of our business, provided that we inform the buyer it must use your personal information only for the purposes disclosed in our Privacy Notice; or
- any other person with your consent to the disclosure.

Your personal information may be transferred to, and processed in, countries other than the country in which you are resident. These countries may have data protection laws that are different to the laws of your country. We transfer data within the Tokio Marine group of companies by virtue of our Intra Group Data Transfer Agreement, which includes the EU Standard Contractual Clauses.

We use appropriate technical and organisational measures to protect the personal information that we collect and process about you. The measures we use are designed to provide a level of security appropriate to the risk of processing your personal information.

You are entitled to know what data is held on you and to make what is referred to as a **Data Subject Access Request ('DSAR')**. You are also entitled to request that your data be **corrected** in order that we hold accurate records. In certain circumstances, you have other data protection rights such as that of **requesting deletion, objecting to processing, restricting processing** and in some cases **requesting portability**. Further information on your rights is included in our Privacy Notice.

You can **opt-out of marketing communications** we send you at any time. You can exercise this right by clicking on the "unsubscribe" or "opt-out" link in the marketing e-mails we send you. Similarly, if we have collected and processed your personal information with your consent, then you can **withdraw your consent** at any time. Withdrawing your consent will not affect the lawfulness of any processing we conducted prior to your withdrawal, nor will it affect processing of your personal information conducted in reliance on lawful processing grounds other than consent. You have the **right to complain to a data protection authority** about our collection and use of your personal information.

# Section 1 – Media Liability Insurance

## Definitions Applicable To Section 1

For the purposes of this section the words or terms that appear in **bold** will be interpreted as follows:

### Circumstance

means any circumstance, incident, occurrence, fact, matter, act, omission, state of affairs or event which is likely to give rise to a claim against the **Insured** or a claim by the **Insured** under this Section.

### Computer system

means any computer, data processing equipment, media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode, or any electronic documents utilised in the ownership, security and management of the **Insured's** electronic communications system, world-wide web site, internet site, intranet site, extranet site or web address(es).

### Damages

shall mean monetary relief.

### Defence costs and expenses

means all reasonable costs and expenses incurred, with the **Insurer's** prior written consent, in the investigation, defence and settlement of any claim first made against the **Insured** or of any **Circumstance** first notified during the **Period of insurance**. It does not include the **Insured's** own overhead costs and expenses.

### Documents

means digitised data, information recorded or stored in a format for use with a computer, microcode, deeds, wills, agreements, maps, plans, records, written or printed books, letters, certificates, written or printed documents or forms of any nature whatsoever (excluding any bearer bonds or coupons, bank or currency notes, share certificates, stamps or other negotiable paper).

### Excess

means the first amount paid in respect of each claim as stated in the **Schedule** and is not payable in respect of **Defence costs and expenses**. The **Indemnity limit** is additional to the **Excess**.

### Financially associated person or entity

means:

- a. any business controlled or managed by the **Insured** or in which the **Insured** has an executive interest;

- b. any company in which the **Insured** directly or indirectly owns or controls more than 15% of the issued share capital;
- c. any person having an executive or managerial role in the **Insured** or who would be considered to be a shadow director of the **Insured**;
- d. any company that directly or indirectly owns or controls any of the issued share capital of the **Insured** or any of whose issued share capital is directly or indirectly owned or controlled by any other company or person who directly or indirectly owns or controls any of the issued share capital of the **Insured**.

### Indemnity limit

means the **Insurer's** total liability to pay **Damages**, claimant's costs, fees and expenses, and shall not exceed:

- a. in the case of any claim arising directly or indirectly from any **Virus** the sum stated in the **Schedule** or GBP 500,000 (whichever is less) inclusive of **Defence costs and expenses** in respect of any one claim or series of claims arising out of one originating cause and in total for all claims first made during the **Period of insurance**;
- b. in all other cases (except where specific sums are stated in the Insuring Clauses) the sum(s) stated in the **Schedule** in respect of any one claim or series of claims arising out of one originating cause regardless of the number of persons claiming an indemnity from the **Insurer** under the terms of this section.

If more than one person is entitled to an indemnity under the terms of this section then the **Insurer's** total liability to all such persons shall not exceed the **Indemnity limit**. For the avoidance of doubt, **Indemnity limit a)** is not additional to and shall not increase the sum(s) stated in the **Schedule**.

### Jurisdiction

means the jurisdiction stated in the **Schedule** against Section 1. Where no jurisdiction is stated in the schedule then the **Jurisdiction** shall be Worldwide but excluding the United States of America (including its territories and /or possessions) and Canada.

### Media business services

means advertising, advertising services, public relations, direct marketing, sales promotions, marketing, communications and related activities which include the creating, publishing, broadcasting, dissemination, releasing, gathering, transmission, production, webcasting or other distribution of articles, data, text, sounds, images or similar content and as stated in the **Schedule** under the heading "Business".

### Schedule

means the document titled **Schedule** that includes the name and address of the **Insured**, the premium and other variables to this section (including endorsement clauses) and is incorporated in this section and accepted by the **Insured**. **Schedules** may be reissued from time to time and each successor overrides the earlier **Schedule**.

## Virus

means any unauthorised executable code uploaded to, or replicated through, a **Computer system** or network whether termed a virus or known by any other name and whether it is self-replicating or non-replicating which causes damage or loss to data or the **Computer system**.

## Media Liability Insuring Clauses Applicable To Section 1

In consideration of the premium having been paid to the **Insurer**, the **Insured** is indemnified as follows:

### 1. Indemnity

Up to the **Indemnity limit** for **Damages** and claimant's costs for which the **Insured** is legally liable to pay resulting from claims first made against the **Insured** during the **Period of insurance** and arising out of the ordinary course of **Media business services** in consequence of:

- a. Defamation or other tort related to disparagement of character, reputation or feelings of any person or organisation including libel, slander, product disparagement and malicious falsehood;
- b. Unintentional breach of confidentiality or other invasion, infringement or interference with rights of privacy or publicity including false light and the public disclosure of private facts and commercial appropriation of name or likeness;
- c. Unintentional infringement of intellectual property rights including copyright, title, slogan, trademark, domain name or metatag, moral rights, misappropriation of, formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork, passing off and plagiarism;
- d. Unintentional breach of a license to use a third party's trademarked or copyrighted material but only to the extent that use exceeds the express limitations in the license regarding territory, duration or media in which the material may be used and only when made as a part of a claim under c) above;
- e. Breach of comparative advertising regulations;
- f. The loss of or damage to **Documents**;
- g. Unintentional transmission of a **Virus**;
- h. The failure to protect against unauthorised access to, unauthorised use of, a denial of service attack against the **Insured's Computer system**;
- i. Misuse of any information which is either confidential or subject to statutory restrictions;
- j. Breach of professional duty, negligent act, negligent error, negligent omission, negligent misstatement or negligent misrepresentation;
- k. Dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**)

provided that no indemnity shall be given in the event that any principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission;

- I. Any other civil liability.

### 2. Legal defence costs and expenses

The **Insurer** will pay in addition to any indemnity under Insuring Clause 1, other than claims arising directly or indirectly from any **Virus**, all **Defence costs and expenses** provided that:

- a. if the amount paid or agreed to be paid by or on behalf of the **Insured** to dispose of a claim exceeds the **Indemnity limit** the **Insurer** will only be liable for that proportion of the **Defence costs and expenses** which the **Indemnity limit** bears to the amount paid or agreed to be paid;
- b. in the event that the **Insurer** elects to make a payment to the **Insured** pursuant to **Notification and Claims Condition 3.2** then the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which such payment is made.

### 3. Rectification

For additional expenses, other than those covered under Insuring Clause 8 (Withdrawal of content) directly incurred, with the prior written consent of the **Insurer**, in successfully rectifying a problem which otherwise would lead to a claim in excess of such expenses under Insuring Clause 1 of this section.

If the **Insured** is unable to get approval from the **Insurer** due to time constraints or lack of detailed information, the **Insurer** will pay such expenses provided that the **Insured** can demonstrate that:

- a. such expenses were less than the amount of a potential claim; and
- b. the amount is reasonable; and
- c. the **Insured's** client has received the same level and quality of service or deliverables that they were originally entitled to receive.

Any payment made under this Clause will exclude the **Insured's** lost profit, mark-up, or VAT or its equivalent and compensation for management time or any lost files or commissions from any other client or potential client. If a claim is later made the amount of expenses paid under this section will be deducted from the **Indemnity limit** for that claim.

### 4. Irrecoverable fees

Up to the **Indemnity limit** for amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal of the **Insured's** client to pay for work done by the **Insured** for them where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a claim for more than the amount owed, and which would otherwise be covered



under Insuring Clause 1, provided that such threat is first made against the **Insured** and notified to **Insurers** during the **Period of insurance**. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** will agree to pay the amount owed if they consider that it will avoid a legitimate claim under Insuring Clause 1 for a greater amount. If, following this, a claim under Insuring Clause 1 still arises then the amount paid under this section will be deducted from the **Indemnity limit**. If the **Insured** eventually recovers part or all of the debt then such recovered amount shall be repaid to the **Insurer** less the **Insured's** reasonable expenses of recovering the debt due.

## 5. Acting outside of authority

Up to the **Indemnity limit** for claims first notified by the **Insured**, during the **Period of insurance** relating to amounts that the **Insured** is committed to pay for media space or print time, but where the **Insured's** client refuses to pay due to allegations that the **Insured** has acted outside its authority, the **Insurer** will pay such an amount if it can be shown, by the **Insured**, that it cannot legally be recovered from the client and that all reasonable steps have been taken to reduce or avoid the loss.

## 6. Data protection defence costs

Up to a maximum of GBP 250,000 in the aggregate in the **Period of insurance**, in respect of legal costs and expenses incurred with the **Insurer's** prior written consent in the defence of any criminal proceedings brought against the **Insured**, during the **Period of insurance** under The Data Protection Act 1998 or amending or superseding legislation provided always that:

- a. the act, error or omission giving rise to the proceedings shall have been committed by the **Insured** in the ordinary course of the **Media business services**;
- b. the **Insurer** shall be entitled to appoint solicitors and counsel to act on behalf of the **Insured**;
- c. the **Insurer** shall have no liability to pay costs and expenses incurred subsequent to a plea or finding of guilt on the part of the **Insured**, or in the event that Counsel should advise that there are no reasonable prospects of successfully defending the proceedings, except for costs incurred solely for the purpose of making a plea in mitigation before sentencing or costs incurred in making an appeal if Counsel shall advise that the prospects of a successful appeal following a finding of guilt are reasonable.

## 7. Reputation Management

Following a claim under Insuring Clause 1h), up to a maximum of GBP 250,000, for all reasonable costs incurred with the **Insurers** prior written consent for a public relations and/or crisis management consultant to avert or mitigate any material damage to the **Insured's** business reputation.

## 8. Withdrawal of Content

Up to a maximum of GBP 250,000 for expenses necessarily incurred, with the prior written consent of the **Insurer**, in the withdrawal or alteration of any data, text, sounds, images or similar content as a result of or in mitigation of a claim or potential claim which would otherwise be covered under Insuring Clause 1, including as a result of a complaint made to the Advertising Standards Authority (ASA), the Office of Communications (Ofcom), Trading Standards Officers or any other regulatory or self-regulatory body.

The **Insurer** will only pay such expenses if the **Insured** can demonstrate that:

- a. such content would, if not withdrawn or altered, lead to a claim under Insuring clause 1 equal to or in excess of the expenses necessarily incurred in the withdrawal or alteration of the content; and
- b. the expenses incurred are necessary to successfully avoid such claim.

Any payment made under this Clause will exclude the **Insured's** lost profit, mark-up, or VAT or its equivalent and compensation for management time or any lost files or commissions from any other client or potential client. If a claim is later made the amount of expenses paid under this section will be deducted from the **Indemnity limit** for that claim.

For the avoidance of doubt, the **Insurer's** total liability to indemnify the **Insured** under these Insuring Clauses shall not exceed the sum stated in the **Schedule** under the heading "Indemnity limit" in respect of any one claim or series of claims arising out of one originating cause regardless of the number of Insuring Clauses that it or they might relate to.

For the avoidance of doubt the indemnity provided under Insuring Clauses 6), 7), and 8) is not additional to and shall not increase the **Indemnity limit**.

## Extensions Applicable To Section 1

In respect of indemnity provided under Insuring Clause 1 and subject otherwise to the terms and conditions the following extensions of cover apply:

### 1. Joint ventures

The **Insured** is indemnified up to the **Indemnity limit** for any claim or **Circumstance** arising from **Media business services** carried out by or in the name of a consortium of professional people or firms or other association formed of which all or any of the **Insured** form part for the purpose of undertaking any joint venture or any other profit-sharing arrangement but only in respect of the direct acts or omissions of the **Insured**;

### 2. Indemnity to Principals

If the **Insured** so requests, the **Insurer** will indemnify any Principal with whom the **Insured** has entered into an agreement as far as is necessary to meet the requirements of such agreement but only in respect of liability incurred to

independent third parties arising directly from the **Media business services** performed by this the **Insured** and subject always to the terms and conditions of this section;

### 3. Mergers and acquisitions

- a. If, during the **Period of insurance** the **Insured** creates or acquires a company or companies subsequent to inception and the turnover relating to all such created or acquired companies does not exceed 10% of the estimated turnover of the companies covered under this section at inception (less the turnover for companies sold during the **Period of insurance**), then this section shall include as an **Insured** any such company created or acquired automatically from the date of creation or acquisition without additional premium provided that:
  - i. **Media business services** carried out by such company is similar to that of the **Insured**; and
  - ii. prior to the acquisition the acquired company's directors or officers shall not have notified or be aware of any professional indemnity claims or circumstances; and
  - iii. the retroactive date applicable to the **Media business services** of the new entity is deemed to be the date of acquisition;
- b. Where the **Insured** creates or acquires a company or companies subsequent to inception and the turnover relating to all such created or acquired companies exceeds 10% of the estimated turnover of the companies covered under this section at inception (less the turnover for companies sold during the **Period of insurance**), then this section shall include as an **Insured** any such company created or acquired automatically from the date of creation or acquisition provided that:
  - i. the terms stated in 3a) i) to iii) above also apply to such created or acquired companies;
  - ii. the **Insured** notifies the **Insurer** as soon as is reasonably practicable of the creation or acquisition;
  - iii. the **Insured** accepts the revised premium and or terms applying to each and every such creation and or acquisition;
  - iv. all cover in respect of such created or acquired entities will terminate 30 days following creation or acquisition if terms cannot be agreed between the **Insured** and the **Insurer**.

## Exclusions Applicable To Section 1

The **Insurer** shall not be liable to indemnify the **Insured** against any claim:

### 1. Adherence to legal advice

arising out of or relating directly or indirectly from any failure of the **Insured** to adhere to its own legal advice with regard to clearances of any data, text, sounds, images or similar content that is intended to be, or has been, disseminated;

### 2. Asbestos

arising directly or indirectly out of or resulting from or in consequence of or in any way involving asbestos or any materials containing asbestos in whatever form or quantity;

### 3. Bodily injury/property damage

for bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any person or any loss, damage or destruction of property unless such claim arises directly from negligent publication, negligent misstatement or negligent misrepresentation contained within any data, text, sounds, images or similar content that has been created by the **Insured** as part of their **Media business services**;

### 4. Claims by financially associated persons or entities

made against the **Insured** by any **Financially associated person or entity** whether alone or jointly with any other person or entity. However, this exclusion shall not apply to any claim brought against such **Financially associated person or entity** by an independent third party which would, but for this exclusion, be covered by this section;

### 5. Claims or Circumstances known at inception

arising out of any claim or **Circumstance** of which the **Insured** was, or ought reasonably to have been, aware at inception of this section, whether notified under any other insurance not;

### 6. Contractual liability

arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party but only to the extent that such duty is more onerous than any duty that would otherwise be implied by common law or statute;

### 7. Costs and expenses incurred without prior consent

for costs and expenses incurred without the prior consent of the **Insurer**.

### 8. Credit card

arising directly or indirectly from any unauthorised or fraudulent use of any credit, debit, charge or store card;

### 9. Collusion and conspiracy

arising from any alleged collusion, conspiracy, extortion or threatened violence;

### 10. Deliberate acts

arising directly or indirectly from any deliberate or reckless breach, act, omission or infringement committed, condoned or ignored by the **Insured**, except as covered under Insuring Clause 1k);

## 11. Dishonesty

arising directly or indirectly from any dishonest, fraudulent, malicious or illegal act or omission of the **Insured** or any **Employee**, except as covered by Insuring Clauses 1k);

## 12. Employee benefit schemes / stocks and shares

arising directly or indirectly from the operation or administration of any pension or other employee benefit scheme or trust fund, or the sale or purchase or dealing in any stocks, shares or securities or the misuse of any information relating to them or the breach of any related legislation or regulation;

## 13. Employers Liability

arising directly or indirectly from bodily injury, sickness, disease, psychological injury, emotional distress, nervous shock or death sustained by any **Employee** arising out of or in the course of their employment by the **Insured**, or for any breach of any obligation owed by the **Insured** as an employer to any partner, principal or director

member or **Employee** or applicant for employment;

## 14. Excess

for the amount of or less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under this Section;

## 15. Fines and Penalties

for penalties, fines, multiple, exemplary, liquidated or other non-compensatory **Damages** awarded other than in actions brought for libel, slander or defamation in so far as they are covered by this Policy;

## 16. False advertising

arising directly or indirectly from false advertising or misrepresentation in advertising;

## 17. Financial advice

arising directly or indirectly from any investment, the provision of any finance or other financial advice;

## 18. Geographical limits

in respect of work carried out outside the Geographical Limits stated in the **Schedule**;

## 19. Insolvency/bankruptcy of Insured

arising out of or relating directly or indirectly to the insolvency, liquidation, receivership or bankruptcy of the **Insured**;

## 20. Known defamatory statements

arising from statements that the **Insured** knew, or ought to have known, were defamatory at the time of publication

unless the **Insured** can demonstrate that they believed there to be a good defence to any action arising from it;

## 21. Land buildings etc

arising directly or indirectly from the ownership, possession or use by or on behalf of the **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;

## 22. Legal action

in respect of an action for **Damages**:

- a. brought outside the **Jurisdiction** (including the enforcement within the **Jurisdiction** of a judgment or finding of another court or tribunal that is not within the **Jurisdiction**);
- b. in which it is contended that the governing law is outside the **Jurisdiction**;
- c. brought outside the **Jurisdiction** to enforce a judgment or finding of a court or other tribunal in any other jurisdiction;

## 23. Legislation and regulation

arising directly or indirectly from the breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation including but not limited to:

- a. the Employment Retirement Income Security Act 1974, Public Law 93-496, commonly referred to as the Pension Reform act of 1974, and amendments thereto, or similar provisions of any Federal State or Local Statutory Law or Common Law;
- b. the Racketeer Influenced and Corrupt Organisations Act, 18 USC Sections 1961 et seq., and any amendments thereto, or any rules or regulations promulgated thereunder;
- c. the Securities Act of 1933, the Securities Exchange Act 1934 or any similar Federal or State Law or any Common Law relating thereto;
- d. the CAN-APAM Act of 2003 or any subsequent amendments to that Act;
- e. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act;
- f. any other law, regulation or statute relating to unsolicited communications, distributions, sending or transmitting of any communication via telephone or any other electronic or telecommunications device;

## 24. License payments

arising directly or indirectly from any payment owed to a licensor under a license; however, this exclusion will not apply to any covered portion(s) of any copyright and/or trademark claim that results in a damage award that is measured by the amount a claimant would have received had the **Insured** paid for a license to use the claimant's infringed work and/or mark;

## 25. Loss, damage or destruction of bearer bonds or coupons

arising from the loss, damage or destruction of any bearer bonds, coupons, bank or currency notes, share certificates, stamps or other negotiable paper;

## 26. Negatives, film, prints and electrical media

arising from damage to or loss or destruction of negatives, exposed or unexposed film, prints, library stock or magnetic or electrical media unless they have been duplicated where such duplicate can be used to restore them to their original state;

## 27. Obscenity

arising directly or indirectly from any obscenity, blasphemy or pornographic material;

## 28. Official action or investigation

arising from any official action or investigation by or decision or order of any public, local or government body or authority except as covered by Insuring Clause 6 (Data protection defence costs);

## 29. Other appointments

made against any **Insured** in the capacity of:

- a. director or officer of the **Insured** or of any other company or arising out of the management of the **Insured** or of any other company; or
- b. trustee of any trust or as officer or employee of any pension fund or any other employee benefit scheme, whether for the benefit of members or **Employees** of the **Insured** or otherwise;

## 30. Other insurance

in respect of which the **Insured** is, or but for the existence of this Policy would be, entitled to indemnity under any other insurance except in respect of any excess beyond the amount which is payable under such other insurance;

## 31. Ownership and rights

arising out of any claim made by any former or prospective **Employee**, partner, joint venturer, co-venturer, officer or director of the **Insured** or any of the **Insured's** sub-contractors or suppliers, but only in respect of claims involving disputes over the ownership or exercise of rights in the material or services supplied by or to the **Insured**;

## 32. Patents

arising directly or indirectly from the infringement of any patent;

## 33. Products

arising out of or relating to:

- a. goods or products sold, supplied, repaired, altered, manufactured, installed or maintained unless such claim arises as a direct consequence of negligent advice, design or specification by the **Insured** in the performance of their **Media business services**; or
- b. buildings, building works or physical structures constructed, repaired, installed, erected, removed or demolished.

Exclusion 33a) shall not apply where there has been a breach of duty in the sale or supply of any product but only if:

- a. it is sold or supplied by the **Insured** in conduct of the **Insured's Media business services**; and
- b. the **Insured** has undertaken all reasonable steps which are contemporaneously and fully documented, to ensure that the product:
  - i. complies with all relevant health and safety regulations and standards in the United Kingdom or wherever the **Insured** supply to;
  - ii. is sold or supplied with any instructions which are necessary for its safe use;
  - iii. is fit and proper for its purpose; and
- c. the product was supplied by a manufacturer or sourcing agent that the **Insured** know to be reputable, reliable and solvent and with whom the **Insured** has a written contract; and
- d. the **Insured** has written indemnity from the manufacturer or sourcing agent against loss which arises from the product; and
- e. the **Insured** has effected public and products liability insurance being generally available in the London insurance market for indemnity against products liability;

## 34. Products harmful to health

arising directly or indirectly from any product that contains tobacco, nicotine, alcohol or any pharmaceutical product or any other product which is or becomes harmful, dangerous or hazardous in any way to the health of any person, animal or plant;

## 35. Radioactive contamination or explosive nuclear assemblies

directly or indirectly caused by or contributed to by or arising from:

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

## 36. Results of competitions

arising from the outcome or operation of any competition, game, contest, promotion or lottery;

### 37. Restricted recovery rights

where the **Insured's** right of recovery from any third party in respect of that claim has been restricted by the terms of any contract entered into by the **Insured**;

### 38. Retroactive date

made by or against or incurred by the **Insured** arising from any act or omission or originating cause that occurred prior to the Retroactive date stated in the **Schedule**;

### 39. Seepage and pollution

based upon, arising out of or relating directly or indirectly to, in consequence of or in any way involving seepage, pollution or contamination of any kind;

### 40. Stunts

arising directly or indirectly from any stunt or other similar activity during the making or production of any advertising, educational or promotional materials;

### 41. Takeover or merger

arising directly or indirectly by reason of acts, errors or omissions committed by the **Insured** after the date of its merger with or acquisition by another entity unless otherwise agreed by the **Insurer**;

### 42. Terrorism

arising directly or indirectly out of, happening through or in consequence of any act or acts of force or violence for political, religious or other ends directed towards the overthrowing or influencing of any government, or for the purpose of putting the public in fear by any person or persons acting alone or on behalf of or in connection with any organisation.

In the event of any dispute as to whether or not this exclusion applies the **Insured** shall have the burden of proving that this exclusion does not apply;

### 43. Trading losses

arising out of :

- a. any trading loss or trading liability incurred by any business managed or carried on by the **Insured** (including the loss of any client account or business);
- b. loss caused by the **Insured** in consequence of a share or asset sale to any prospective purchaser, associated business, merger partner, joint venture partner or similar because of any misstatement or misrepresentation made by the **Insured**;
- c. the actual or alleged over-charging or improper receipt of fees by the **Insured**;

### 44. Utility provider

arising out of the failure of the service provided by an internet service provider, any telecommunications provider or other utility provider;

### 45. Virus

arising directly or indirectly from any **Virus** provided that this exclusion shall not apply in respect of any **Claim** made for loss suffered by an independent third party as a result of the unintentional transmission of a **Virus** that was specifically targeted at the **Insured's Computer system** unless such **Virus** was created by the **Insured**;

### 46. War

arising directly or indirectly out of, happening through or in consequence of, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;

### 47. Claims by Employees

made against the **Insured** by any present or former **Employee**.

## Notification and Claims Conditions Applicable To Section 1

### 1. Claim/Circumstance Notification

As conditions precedent to their right to be indemnified under this section the **Insured**:

- 1.1 shall inform the **Insurer** as soon as possible and in any event within 28 days of the receipt, awareness or discovery during the **Period of insurance** of:
  - a. any claim made against them;
  - b. any notice of intention to make a claim against them;
  - c. any Circumstance;
  - d. the discovery of reasonable cause for suspicion of dishonesty or fraud;

provided always that such notification is received by the **Insurer** before the expiry of the **Period of insurance** or, if the **Insured** renews this section with the **Insurer**, within 7 days after its expiry.

Such notice having been given as required in b), c) or d) above, any subsequent claim made shall be deemed to have been made during the **Period of insurance**;

- 1.2 shall not, in the event of a claim, or the discovery of information which may give rise to a claim, admit liability for or settle any claim, or incur any costs or expenses in connection therewith, without the written consent of the **Insurer**;

- 1.3 shall, as soon as practicable given the circumstances, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such claim or relating to the recovery or subrogation process of any settled claim;
- 1.4 shall not destroy evidence, supporting information or documentation without the **Insurer's** prior consent; nor destroy any plant or other property relating to a claim under this section;

Every letter of claim, writ, summons or process and all documents relating thereto and any other written notification of claim shall be forwarded, unanswered, to the **Insurer** immediately they are received. The **Insured** shall at all times, in addition to their obligations set out above, afford such information to and co-operate with the **Insurer** to allow the **Insurer** to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved from time to time by the Head of Civil Justice.

## 2. Notifications

Any and all notifications of Circumstances and claims for an indemnity pursuant to the policy of insurance shall be notified to HCC International Insurance Company PLC by either (a) email (b) telephone or (c) first class post.

If by email then such must be addressed to PI Claims and sent to [mail@tmhcc.com](mailto:mail@tmhcc.com)

If by telephone, please dial the following number and ask for a PI claims underwriter:

Telephone- +44 (0) 20 7702 4700

If by post:

PI Claims  
HCC International Insurance Company PLC  
Fitzwilliam House  
10 St Mary Axe  
London EC3A 8BF.

## 3. Conduct of Claims

- 3.1 Following notification under condition 1. above the **Insurer** shall be entitled at its own expense to take over and within its sole discretion to conduct in the name of the **Insured** the defence and settlement of any such claim.

Nevertheless neither the **Insured** nor the **Insurer** shall be required to contest any legal proceedings unless a Queens Counsel (to be mutually agreed upon by the **Insured** and the **Insurer**) shall advise that such proceedings should be contested.

- 3.2 The **Insurer** may at any time in connection with any claim made, pay to the **Insured** the **Indemnity limit** (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the claim can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection

with the claim. For the avoidance of doubt the **Insurer** shall have no liability to pay **Defence costs and expenses** incurred after the date upon which any such payment is made.

- 3.3 The **Insured** shall pay the relevant **Excess** and **Insurers** shall only make a payment under this section after the applicable **Excess** has been fully paid other than in relation to a payment being made under 3.2 above.

## 4. Duty to Defend

**Insurers** have the right and duty to defend the **Insured** against any claim which is covered in its entirety. If **Insurers** think it necessary they will appoint an adjuster, solicitor or any other appropriate person to deal with the claim. **Insurers** may appoint the **Insured's** own solicitor but only on a similar fee basis to that offered by the **Insurers** solicitor and only for work done with the **Insurers** prior written approval.

If a claim which is only partially covered is made against the **Insured**, **Insurers** have the right and duty to defend the **Insured**, but amounts relating to non-covered portions of claims will be deducted from the final settlement. It is agreed that both **Insurers** and **Insured** will use best efforts to determine a fair allocation of covered and non-covered portions of claims. If a fair allocation cannot be agreed the **Insurers** and the **Insured** agree to follow the dispute resolution process in General Condition 1.

If a partially covered claim is made against the **Insured**, then **Insurers** have the right to appoint suitably qualified legal representation to defend the **Insured** but **Insurers** will only be liable for those **Defence costs and expenses** which relate solely to the covered claim.

**Insurers** have no duty to defend the **Insured** against claims where:

- no portion of the claim is covered; or
- Insurers** pay the **Limit of indemnity** under claims condition 3.2 above; or
- the claim is for less than the **Excess**.

## General Conditions Applicable To Section 1

### 1. Dishonest or Fraudulent Act or Omission

In the event of a loss or claim which involves the dishonest, fraudulent or malicious act or omission of any former or present **Employee** the **Insured** shall take all reasonable action (including legal proceedings) to obtain reimbursement from the **Employee** concerned (and from any **Employee** who may have conspired to commit or have condoned such act) or from the estate or legal representatives of such **Employee**. Any monies which but for such dishonest, fraudulent or malicious act or omission would be due to such **Employee** from the **Insured** or any monies held by the **Insured** for such **Employee** shall be deducted from any amount payable under this section.

## 2. Reasonable steps to avoid loss

Without prejudice to the Notification and Claims Conditions in this section, the **Insured** shall take all reasonable steps to avoid or mitigate any loss, damage or liability that may result in any claim or **Circumstance** notifiable under this section.

In addition, in relation to cover under Insuring clause 1h, the Insured shall protect its **Computer system** by:

- a. having **virus** protection software operating in place which is running, correctly configured and regularly or automatically updated;
- b. having a fire wall or similar configured device to control access to its **Computer system**;
- c. encrypting and controlling the access to its **Computer system** and external devices including plug-in devices networked to its **Computer system**;
- d. controlling unauthorised access to its **Computer system** by correctly configuring its wireless network;
- e. changing all passwords on information and communication assets at least every 60 days and cancel any username, password or other security protection after it knew or had reasonable grounds to suspect that it had been available to any unauthorised person;
- f. taking regular back-up copies of any data, file or programme on its **Computer system**;
- g. having an operational system for logging and monitoring user activity on its **Computer system**.

## 3. Waiver of subrogation against employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment brought about or contributed to by any act or omission of the **Employee** or former **Employee** which was dishonest, fraudulent or malicious or the **Employee** or former **Employee** conspired to commit or condoned any such dishonest, fraudulent or malicious act.

# Section 2 – Liability Insurance

## Definitions Applicable To Section 2

For the purposes of this Section the words or terms that appear in **bold** will be interpreted as follows:

### Damage

shall mean loss of possession of or damage to tangible property.

### Damages

shall mean monetary compensation capable of being awarded in civil proceedings but excluding aggravated and exemplary damages.

### Defence costs

shall mean all costs and expenses incurred by the **Insured** with the **Insurer's** prior written consent in the investigation, defence or settlement of any claim under this Section other than in respect of any actions in the United States of America or Canada and shall include legal expenses:

1. arising out of representation at any Coroner's Inquest or Fatal Accident Inquiry;
2. arising out of any criminal prosecution or proceedings relating to an offence alleged to have been committed during the **Period of insurance** and in the course of the **Professional business** in respect of matters which may form the subject of indemnity by this Section (including with the **Insurer's** prior consent **Employees**, partners or directors of the **Insured**) provided that:
  - 2.1 the **Insurer** shall not be liable for any fines or penalties imposed as a consequence of such prosecution;
  - 2.2 the **Insurer** shall not be responsible for **Defence costs** where at the **Insurer's** discretion they may require the opinion of counsel (whose appointment is at the **Insurer's** sole discretion) as to whether or not such costs should extend or continue to extend to the support of such defence and where such counsel's opinion is that there is no reasonable defence to the prosecution;
  - 2.3 the **Insurer's** liability for **Defence costs** in cases of breach or alleged breach of the United Kingdom Health & Safety at Work Act 1974 (and/or any legislation of similar effect) are limited to prosecutions under Section 33(1)(a) to (c) of the Act or similar duty imposed under legislation in Northern Ireland, the Isle of Man or the Channel Islands;
  - 2.4 the **Insurer's** liability for **Defence costs** in cases of breach or alleged breach of Part II of the Consumer Protection Act 1987 will be limited to proceedings not consequent upon a deliberate act or omission

arising out of the defence of any proceedings in a Court of Summary Jurisdiction in respect of matters which may form the subject of Indemnity by this Section.

### Excess

is the first amount paid in respect of each claim as stated in the Schedule under Section 2. The **Excess** is not payable in respect of **Defence costs**.

### Injury

shall mean death, bodily injury, illness or disease of or to any person.

### Offshore

shall mean from the time an **Employee** of the **Insured** embarks onto a conveyance at the point of final departure to an offshore rig or offshore platform until such time the **Employee** disembarks from the conveyance onto land upon return from an offshore rig or an offshore platform.

### Pollution

shall mean pollution or contamination of the atmosphere or of any water, land or other tangible property.

### Product

shall mean any property after it has left the custody or control of the **Insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **Insured**.

### Terrorism

shall mean an activity that (1) involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure or a threat thereof and (2) appears to be intended to (i) intimidate or coerce a civilian population or (ii) disrupt any segment of the economy of a government de jure or de facto state or country; or (iii) overthrow, influence or affect the conduct of policy of any government de jure or de facto by intimidation or coercion; or (iv) affect the conduct of a government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

## Indemnity Clauses

### 1. Section 2A – Employers' Liability

The **Insurer** will indemnify the **Insured** against their liability to pay **Damages** (including claimant's costs and expenses) and **Defence costs** according to the laws of Great Britain, Northern Ireland, the Isle of Man and the Channel Islands and not to judgments obtained elsewhere nor to judgments or orders obtained in the said courts for the enforcement of foreign judgments whether by way of reciprocal agreements or otherwise.



## 2. Section 2B, C and D – Public, Products and Pollution Liability

The **Insurer** will indemnify the **Insured** against their liability to pay **Damages** (including claimant's costs and expenses) and **Defence costs** in accordance with the law of any country but not in respect of any judgment, award, payment or settlement made within countries which operate under the laws of the United States of America or Canada (or to any order made anywhere in the world to enforce such judgment, award, payment or settlement either in whole or in part) unless the **Insured** has requested that there shall be no such limitation and has accepted the terms offered by the **Insurer** in granting such cover which offer and acceptance must be signified by specific endorsement to this Policy.

The indemnity applies only to such liability as defined by each insured Section of Section 2 of this Policy arising out of the **Professional business** subject always to the terms, Conditions and Exclusions of such Section and of the Policy as a whole.

### Indemnity Limits

#### In Respect of Section 2A

The **Insurer's** liability to pay **Damages** (including claimant's costs and expenses) and **Defence costs** shall not exceed the sum stated in the Schedule against Section 2A in respect of any one occurrence or series of occurrences arising out of one originating cause.

#### In Respect of Sections 2B, C and D

The **Insurer's** liability to pay **Damages** (including claimant's costs and expenses) shall not exceed the sum stated in the Schedule against each Section in respect of any one occurrence or series of occurrences arising out of one originating cause but under Section 2C and Section 2D the Indemnity Limits represent the **Insurer's** total liability in respect of all occurrences. The Indemnity Limit shall apply in addition to the **Excess**.

**Defence costs** will be payable in addition to the Indemnity Limits unless this Policy is specifically endorsed to the contrary.

In the event of any one originating cause giving rise to an occurrence or series of occurrences which form the subject of indemnity by more than one Section of Section 2, each Section shall apply separately and be subject to its own separate Indemnity Limit provided always that the total amount of the **Insurer's** liability shall be limited to the greatest Indemnity Limit available under one of the Sections affording indemnity for the occurrence or series of occurrences.

### Insuring Clauses

#### Section 2A – Employers' Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 1 but only for **Injury** to any **Employee** arising out of and in the course of their

employment with the **Insured** where such **Injury** is caused during the **Period of insurance**.

The indemnity granted by this Section is deemed to be in accordance with the provisions of any law relating to compulsory insurance of liability to **Employees** in Great Britain, Northern Ireland, the Isle of Man, the Island of Jersey, the Island of Guernsey, the Island of Alderney and offshore installations in territorial waters around Great Britain and its Continental Shelf but the **Insured** shall repay to the **Insurer** all sums paid by the **Insurer** which the **Insurer** would not have been liable to pay but for the provisions of such law, ordinance or statute.

#### Section 2B - Public Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 2 for **Injury** and/or **Damage** occurring during the **Period of insurance** but not against liability:

1. arising out of or in connection with any **Product**;
2. arising out of **Pollution**;
3. arising out of **Terrorism**.

#### Section 2C - Products Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 2 for **Injury** and/or **Damage** occurring during the **Period of insurance** but only against liability arising out of or in connection with any **Product** and not against liability arising out of **Pollution**.

#### Section 2D - Pollution Liability

The **Insured** is indemnified by this Section in accordance with INDEMNITY CLAUSE 2 for **Injury** and/or **Damage** occurring in its entirety during the **Period of insurance** and arising out of **Pollution** but only to the extent that the **Insured** can demonstrate that such **Pollution**:

1. was the direct result of a sudden, specific and identifiable event occurring during the **Period of insurance**; and
2. was not the direct result of the **Insured** failing to take reasonable precautions to prevent such **Pollution**.

### Conditions Applicable to Sections 2B, C and D

#### 1. Bona Fide Subcontractors Condition

It is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy that all bona fide subcontractors engaged by the **Insured** shall have in full force and effect throughout the duration of their contract with the **Insured**, insurances as follows:

1. Employers Liability insurance in respect of the **Insured's** liability at law for **Injury** to any **Employee**;
2. Public/Products Liability insurance in respect of the **Insured's** liability at law for:
  - a. **Injury** to any person;

- b. loss of or damage to tangible property;
- c. nuisance trespass or interference with any easement right of air light water or way

with a Limit of Indemnity of at least GBP 5,000,000 or that shown in the Schedule in respect of Section 2 (whichever is the lower) any one occurrence or series of occurrences arising out of one original cause.

and that:

- 1. such insurances contain an Indemnity to Principals Clause;
- 2. the **Insured** shall have obtained and retained a copy of written evidence of such insurances.

For the purposes of this condition the term bona fide subcontractors means any independent subcontractor engaged by the **Insured** under a contract for services.

## 2. Burning Welding and Cutting Conditions

It is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy that the following precautions shall be adhered to on each occasion where the **Insured** or persons acting on behalf of the **Insured** are using any oxy-acetylene or electric welding or cutting/grinding equipment or blow lamp or blow torch or hot air gun:

- 1. the immediate area in which the operation is to be carried out must be segregated to the greatest practicable extent by the use of screens made of metal and/or fire retardant material;
- 2. the whole of this segregated area must be adequately cleaned and freed from combustible material before operations commence;
- 3. if work is to be carried out overhead the area beneath must be similarly cleaned and combustible material removed;
- 4. combustible floors/substances in or surrounding this segregated area must be liberally covered with sand or protected by overlapping sheets of incombustible material;
- 5. where work is being carried out in any enclosed area an additional **Employee** of the **Insured** or an employee of the occupier shall be present at all times to guard against an outbreak of fire;
- 6. no work should be carried out unless specifically authorised by the occupier who should also be asked to approve the safety arrangements;
- 7. the following must be kept available for immediate use near the scene of operations
  - a. suitable and fully charged fire extinguishers and/or
  - b. a hose connected to the nearest hydrant with water turned on and controllable at the nozzle of the hose in readiness for immediate use and tested prior to the commencement of the work;
- 8. a thorough examination must be made in the vicinity of the work approximately one hour after the termination

of each operation. In the event that it is not practicable for such examination to be carried out by the **Insured's** own **Employee** then appropriate arrangements must be made with the occupier;

- 9. before "burning off" metal work built into or projecting through walls or partitions an examination must be made to confirm that the other end of the metal is not in a hazardous proximity to combustible material which may be ignited by the conduction of heat.

Furthermore where the **Insured** or persons acting on behalf of the **Insured** burns debris it is a condition precedent to the **Insured's** right to be indemnified under Section 2 of this Policy that the following precautions are adhered to on each occasion:

- 1. Fires to be in a cleared area and at a distance of at least fifteen metres from any property;
- 2. Fires not to be left unattended at any time;
- 3. A suitable and fully charged fire extinguisher to be kept available at the scene of the operations for immediate use;
- 4. Fires to be extinguished at least one hour prior to leaving site at the end of each working day.

## Exclusions

### Exclusions Applicable To Sections 2A, B, C and D

These Sections do not provide indemnity in respect of liability:

- 1. arising in connection with:
  - a. any work of demolition except demolition solely undertaken with hand held tools and of structures not exceeding 5 metres in height by **Employees** in the direct service of the **Insured** when such work forms an ancillary part of a contract for construction, alteration or repair carried out by the **Insured**;
  - b. the construction, alteration or repair of bridges, towers, steeples, chimney shafts, blast furnaces, viaducts, mines, dams or transport tunnels;
  - c. pile driving, tunnelling or quarrying;
  - d. the use of explosives for any purpose;
  - e. excavations below 3 metres in depth;
  - f. any work carried out at a height in excess of 15 metre;
  - g. ship repair/ship breaking and/or work on vessels or aircraft;
- 2. directly or indirectly 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 but as far as concerns Section 2A this Exclusion will only apply where such legal liability is:

- i. that of any principal;
  - ii. accepted under agreement and would not have attached in the absence of such agreement;
3. which forms the subject of insurance by any other Policy and this Policy shall not be drawn into contribution with such other insurance;
  4. arising directly or indirectly out of, happening through or in consequence of, war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

### Exclusions Applicable To Section 2A – Employers' Liability

1. This Section does not provide any indemnity in respect of any liability for which compulsory motor insurance or security is required under the Road Traffic Act 1988 as amended by the Motor Vehicles (Compulsory Insurance) Regulations 1992 and the Road Traffic (Northern Ireland) Order 1981 as amended by the Motor Vehicles (Compulsory Insurance) Regulations (Northern Ireland) 1993 or any other Compulsory Road Traffic Legislation.
2. This Section does not provide indemnity in respect of:
  - a. medical costs and expenses incurred by the **Insured** and/or any employee of the **Insured**
  - b. repatriation costs and expenses incurred by the **Insured** and/or any employee of the **Insured** who is injured outside Great Britain Northern Ireland the Channel Islands or the Isle of Man.

### Exclusions Applicable To Section 2B – Public Liability

This Section does not provide indemnity in respect of liability:

1. arising out of ownership, possession or use of any mechanically propelled vehicle where a Certificate of Motor Insurance or surety is required under any Road Traffic Act or similar legislation other than:
  - a. vehicles designed primarily to operate as tools of trade (which term shall be deemed to include any plant primarily designed to operate on or about a contract site);
  - b. other vehicles brought on to site for use on site.

This exclusion shall not apply in respect of the use of vehicles belonging to **Employees** or third parties in connection with the **Professional business** unless indemnity is provided:

- a. to any **Employee**;
- b. to third parties;
- c. to the **Insured** under any other insurance;

- d. in respect of loss of or damage to any vehicle of any **Employee** or third party to whom the indemnity is provided or any property conveyed therein or thereon;
2. arising out of the ownership, possession or use by or on behalf of the **Insured** of any aircraft, watercraft or hovercraft (other than watercraft not exceeding 15 metres in length and then only whilst on inland waterways);
3. for **Damage** to property owned, leased or hired by or under hire purchase or on loan to the **Insured** or otherwise in the **Insured's** care, custody or control other than:
  - a. premises (or the contents thereof) temporarily occupied by the **Insured** for work therein (but no indemnity is granted for **Damage** to that part of the property on which the **Insured** is working and which arises out of such work);
  - b. **Employees'** and visitors' clothing and personal effects including vehicles and their contents;
  - c. premises tenanted by the **Insured** to the extent that the **Insured** would be held liable in the absence of any specific agreement.

### Exclusions Applicable To Section 2C – Products Liability

This Section does not provide indemnity in respect of liability:

1. for **Damage** to any **Product** or part thereof;
2. for costs incurred in the repair, reconditioning or replacement of any **Product** or part thereof and/or any financial loss consequent upon the necessity for such repair, reconditioning or replacement;
3. arising out of the recall of any **Product** or part thereof;
4. arising out of any **Product** which with the **Insured's** knowledge is intended for incorporation into the structure, machinery or controls of any aircraft except where specifically stated to be included in the **Professional business**;
5. arising out of **Terrorism**;
6. arising out of any **Product** which is intended for incorporation into any marine equipment upon which the navigation or safety of a waterborne vessel depends except where specifically stated in the **Professional business**;
7. arising out of any **Product** which is intended for use in a motor vehicle except where especially stated to be included in the **Professional business**;
8. arising out of any **Product** which is intended for use in connection with railways or tramways except where especially stated to be included in the **Professional business**.

## Exclusions Applicable To Section 2D – Pollution Liability

This Section is subject to the Exclusions to Sections 2B and 2C and also does not provide indemnity in respect of liability:

1. for **Damage** to premises presently or at any time previously owned or tenanted by the **Insured**;
2. for **Damage** to land or water within or below the boundaries of any land or premises presently or at any time previously owned or leased by the **Insured** or otherwise in the **Insured's** care custody or control.

## Exclusions Applicable To Sections 2B, C and D – Public, Products and Pollution Liability

These Sections do not provide indemnity in respect of liability:

1. for **Injury** to any **Employee**;
2. arising out of the deliberate, conscious or intentional disregard by the **Insured's** technical or administrative management of the need to take all reasonable steps to prevent **Injury** or **Damage**;
3. arising out of liquidated damages clauses, penalty clauses or performance warranties until proven that liability would have attached in the absence of such clauses or warranties;
4. arising from exposure or alleged exposure to asbestos or materials or products containing asbestos;
5. for an amount less than the **Excess**. The **Excess** shall be deducted from each and every claim paid under the Policy;
6. arising out of or in connection with the design, sale or supply of computer software (which shall not include the media or its packaging on which such software is stored);
7. arising out of or in connection with advice, design, specification, formula or other breach of professional duty by the **Insured**;
8. for loss, damage, deterioration of or corruption (whether permanent or temporary) to computer programs or electronic data including consequential or pure financial loss;
9. arising out of work on any part of any aerodrome or airport provided for take off or landing of aircraft or the movement of aircraft or parking of aircraft including associated surface roads and ground equipment parking areas.

## Extensions to Section 2

### 1. Principals

Where the **Insured** so requests the **Insurer** agrees to indemnify any Principal of the **Insured** but only to the extent that such liability arises solely out of the work performed for the Principal by or on behalf of the **Insured** and such Principal shall be subject to and comply with the terms,

Conditions and Exclusions herein and this clause shall in no way operate to increase the Indemnity Limits as stated in the Schedule.

### 2. Indemnity To Others

At the request of the **Insured** the indemnity granted extends to:

- a. any party who enters into an agreement with the **Insured** for any purposes of the **Professional business** but only to the extent required by such agreement to grant such indemnity and subject always to Exclusion 3.c) to Section 2B and Exclusion 3. to Sections 2B, C and D;
- b. officials of the **Insured** in their business capacity arising out of the performance of the **Professional business** and/or in their private capacity arising out of their temporary engagement of the **Insured's Employees**;
- c. any person or firm arising out of the performance of a contract with the **Insured** constituting the provision of labour only;
- d. the officers, committee and members of the **Insured's** canteen, social, sports, medical, fire fighting and welfare organisations in their respective capacity as such;
- e. the personal representatives of any person indemnified by reason of this Extension in respect of liability incurred by such person;

provided always that all such persons or parties shall observe fulfil and be subject to the terms, Conditions and Exclusions of this Policy as though they were the **Insured**.

### 3. Cross Liabilities

Each person or party specified as the **Insured** in the Schedule is separately indemnified in respect of claims made against any of them by any other subject to **Insurer's** total liability not exceeding the stated Indemnity Limits.

### 4. Unsatisfied Court Judgments (applicable only to Section 2A)

The **Insurer** at the request of the **Insured** will pay to the **Employee** or the personal representatives of the **Employee** the amount of any **Damages** and awarded costs to the extent that they remain unsatisfied in whole or in part six months after the date of a judgment being obtained within any court in Great Britain, Northern Ireland, the Channel Islands or the Isle of Man:

- a. by any **Employee** or the personal representatives of any **Employee** in respect of **Injury** sustained by the **Employee** arising out of and in the course of their employment by the **Insured** in the **Professional business** and caused during the **Period of Insurance**; and
- b. against any company or individual operating from premises within Great Britain, Northern Ireland, the Channel Islands or the Isle of Man,

provided always that:

- there is no appeal outstanding against such judgment; and
- if any payment is made under the terms of this Extension the **Employee** or the personal representatives of the **Employee** shall assign the benefits of such judgment to the **Insurer**.

The liability of the **Insurer** for all amounts payable under this Extension relating to any claimant or number of claimants in respect of an occurrence or series of occurrences arising out of one originating cause shall not exceed the Indemnity Limit stated in the Schedule against section 2A.

## 5. Compensation For Court Attendance

In the event of any of the persons stated below attending court as a witness at the request of the **Insurer** in connection with a claim in respect of which the **Insured** is entitled to indemnity under these sections the **Insurer** will provide compensation to the **Insured** at the following rates per day for each day on which attendance is required:

- any director or partner of the **Insured**: GBP 250;
- any **Employee** of the **Insured**: GBP100.

## Notification and Claims Conditions Applicable To Section 2

Conditions 1,2, 3 and 4 below are conditions precedent to the **Insured's** right to be indemnified under Section 2 of this Policy.

- The **Insured** shall give written notice to the **Insurer** as soon as reasonably practicable of any occurrence that may give rise to a claim under this Policy and shall give all such additional information as the **Insurer** may require. Every letter of claim, writ, summons or process and all documents relating thereto and any other written notification of claim shall be forwarded unanswered to the **Insurer** immediately they are received.  
  
The **Insured** shall at all times, in addition to their obligations set out above, afford such information to and co-operate with the **Insurer** or their appointed agents to allow the **Insurer** to be able to comply with such relevant Practice Directions and Pre-Action Protocols as may be issued and approved from time to time by the Head of Civil Justice.
- No admission, offer, promise or payment shall be made or given by or on behalf of the **Insured** without the written consent of the **Insurer** who shall be entitled to take over and conduct in the name of the **Insured** the defence or settlement of any claim or to prosecute in the name of the **Insured** for their own benefit any claim for indemnity or **Damages** or otherwise and shall have full discretion in the conduct of any proceedings and in the settlement of any claim and the **Insured** shall give all such information and assistance as the **Insurer** may reasonably require.

- The **Insured** shall give notice, as soon as reasonably practicable, of any fact or event which materially affects the risks insured by this Policy.
- Where the premium is provisionally based on the **Insured's** estimates the **Insured** shall keep accurate records and after expiry of the **Period of insurance** declare as soon as possible such details as the **Insurer** requires. The premium shall then be adjusted and any difference paid by or allowed to the **Insured** as the case may be subject to any minimum premium that may apply. Where such estimates include remuneration to **Employees** the required declaration shall also include remuneration to persons engaged by the **Insured** to perform a contract constituting the provision of labour only.
- The **Insurer** may at any time in connection with any claim made, pay to the **Insured** the Indemnity limit (after deduction of any sums already paid) or any lesser sum for which, in the sole opinion of the **Insurer**, the claim can be settled and upon such payment being made the **Insurer** shall relinquish the conduct and control of and have no further liability in connection with the claim. For the avoidance of doubt, the **Insurer** shall have no liability to pay **Defence costs** and expenses incurred after the date upon which any such payment is made.
- Except where the Indemnity Limit is inclusive of **Defence costs** if a payment exceeding the Indemnity Limit has to be made to dispose of a claim the liability of the **Insurer** to pay all **Defence costs** in connection therewith shall be limited to such proportion of the said **Defence costs** as the Indemnity Limit bears to the amount paid to dispose of a claim.

## Employers Liability Tracing Office (ELTO)

Certain information relating to your insurance policy including, without limitation, the policy number(s), employers' names and addresses (including subsidiaries and any relevant changes of name), coverage dates, employer's reference numbers provided by HMRC and Companies House Reference Numbers (if relevant), will be provided to the Employers' Liability Tracing Office, (the "ELTO") and added to an electronic database, (the "**Database**").

This information will be made available in a specified and readily accessible form as required by the Employers' Liability Insurance: Disclosure by Insurers Instrument 2010.

The Database will assist individual consumer claimants who have suffered an employment related injury or disease arising out of their course of employment in the UK for employers carrying on, or who carried on, business in the UK and who are covered by the employers' liability insurance of their employers, (the "**Claimants**"):

- to identify which insurer (or insurers) was (or were) providing employers' liability cover during the relevant periods of employment; and
- to identify the relevant employers' liability insurance policies.

The Database and the data stored on it may be accessed and used by the Claimants, their Appointed representatives, insurers with potential liability for UK commercial lines employers' liability insurance cover and any other persons or entities permitted by law.

# Section 3 – Management Liability Insurance

This is a claims made policy.  
Please read it carefully.

In consideration of the payment of the premium or agreement to pay the premium and subject to the terms and conditions of this Section and any endorsements attached to this Section, the **Insurer** and the **Named Company** agree as follows:

## Insuring Clauses

In respect of the following Insuring Clauses, the **Insurer** shall pay up to up to the **Limit of liability** stated in the Schedule for each Insuring Clause purchased in respect of any one **Single Claim**. For the avoidance of doubt, If the Schedule states that an Insuring Clause is “Not Applicable” then there is no coverage in respect of that Insuring Clause.

### A.

#### 1. DIRECTORS' AND OFFICERS' LIABILITY

The **Insurer** shall pay to or on behalf of any **Insured Person** any **Loss** resulting from a **Claim** first made during the **Period of Insurance**, (or **Discovery Period**, if applicable), against such **Insured**, except when and to the extent that the **Company** has paid such **Loss** to or on behalf of the **Insured Person** as indemnification or an advance payment.

#### 2. COMPANY REIMBURSEMENT

The **Insurer** shall pay to or on behalf of any **Company** any **Loss** resulting from a **Claim** first made during the **Period of Insurance**, (or **Discovery Period**, if applicable) against an **Insured Person**, if the **Company** has paid such **Loss** to or on behalf of the **Insured Person** as indemnification or an advance payment.

### B. CORPORATE LIABILITY

The **Insurer** shall pay to or on behalf of any **Company** any **Loss** resulting from a **Claim** other than any **Employment Practice Claim** first made during the **Period of Insurance**, (or **Discovery Period**, if applicable), against the **Company**.

### C. COMPANY EMPLOYMENT PRACTICE LIABILITY

The **Insurer** shall pay to or on behalf of any **Company** any **Loss** resulting from an **Employment Practice Claim** brought or maintained against the **Company** in the United Kingdom and first made during the **Period of insurance** (or **Discovery Period**, if applicable).

## Definitions Applicable to Section 3 only

**Change in Control** means,

1. the appointment of a receiver, administrator, or liquidator, or the equivalent in any jurisdiction, by or on behalf of the **Named Company**; or
2. the **Named Company** entering into any scheme of arrangement with its creditors; or
3. the **Named Company** merging with or consolidating into any other company; or
4. any person or company other than a **Company** acting alone or in concert:
  - i. acquiring ownership or control or assuming control pursuant to a written agreement with other shareholders of more than 50% of the voting rights in the **Named Company** and/or more than 50% of the outstanding shares representing the present right to vote for the election of the board of directors of the **Named Company** and/or assuming the right to appoint or remove the majority of the board of directors of the **Named Company**; or
  - ii. acquiring ownership of all or the majority of the assets of the **Named Company**.

**Claim** means,

1. any written demand for monetary or non-monetary relief; or
2. any civil (including arbitration and other alternative dispute resolution), criminal, regulatory or administrative proceeding, including any **Employment Practice Claim**,

against an **Insured** for one or more **Wrongful Act(s)**, deemed to be made upon receipt by or service upon the **Insured**, whichever is earlier, or

1. for the purposes of giving effect to Extension J only, any **Investigation**.

**Company** means,

2. the **Named Company**; or
3. any **Subsidiary**

**Defence Costs** means,

1. reasonable and necessary fees, costs and expenses incurred with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed), for which the **Insured** is legally liable to pay, including the reasonable premiums but not the collateral for any appeal bond, attachment bond or similar bond for any civil proceeding, resulting from investigating, adjusting, defending, appealing or otherwise participating in a **Claim**, but excluding salaries, wages, benefits or overhead expenses of directors, officers or **Employees** of the **Company** or costs or overhead expenses of the **Company** itself; and

2. for the purposes of giving effect to Extension (J) only,  
**Investigation Costs**

**Discovery Period** means,  
the relevant period stated in the Schedule (if applicable)  
commencing immediately after the Expiration Date stated in  
the Schedule.

**Employee** means,  
any natural person

1. who is or was under a contract of employment (whether full-time, part-time or otherwise) with the **Company** and whom such **Company** compensates by way of salary, wages and / or commission
2. who is or was an independent contractor; secondee; volunteer; or student pursuing studies or gaining work experience, but only if and to the extent that;
  - i. such natural person is under the direction and supervision of the **Company**; and
  - ii. the **Company** provides indemnification to such individual in the same manner as is provided to the natural persons referred to in (i) above

**Employment Practice Claim** means,  
any **Claim** made against an **Insured** for a specified **Wrongful Employment Practice**.

**Insured** means,

1. for the purposes of Insuring Clause A, any **Insured Person**; and
2. for the purposes of Insuring Clauses B and C only, any **Company**.

**Insured Person** means,  
any past, present or future natural person who was, is or shall become:

1. Director, officer, member, manager, trustee, non-executive director or de facto director (including any shadow director) of any **Company**; or
2. an **Outside Director**; or
3. an **Employee** of the **Company** but only with respect to any:
  - i. **Claim** for a **Wrongful Employment Practice**; or
  - ii. **Claim** where and during such time the **Employee** is a co-defendant along any person listed in 1 above; or;
  - iii. **Claim** in respect of a **Wrongful Act** actually or allegedly committed in a managerial or supervisory capacity.

**Insured Person** shall not include any insolvency practitioner or external auditor appointed on behalf of a **Company**.

**Investigation** means,

any formal or official hearing, investigation or inquiry by a governmental or judicial agency into the affairs of a **Company**, an **Outside Entity** or an **Insured Person** in their capacity as such, commenced by the receipt by an **Insured Person** of written documentation by the body empowered to investigate (in the case of the United States of America, the Securities and Exchange Commission, a subpoena or a Wells Notice):

1. at such time when there is no allegation of a **Wrongful Act** against the **Insured** and relating to any matters existing prior to the Expiration Date; and
2. that legally requires such **Insured Person** to attend such hearing, investigation or inquiry; or
3. in which the **Insured** is identified by an investigating authority as a subject of such hearing, investigation or inquiry.

**Investigation** shall not include routine regulatory supervision, inspection or compliance reviews or any investigation which focuses on an industry rather than a **Company**, **Outside Entity** or **Insured Person** in their capacity as such.

An **Investigation** shall be deemed first made when the **Insured Person** is first required to participate in, or formally identified as being subject to, such **Investigation**, whichever is the earlier.

**Investigation Costs** means,

any reasonable and necessary fees, costs and expenses incurred with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed), for which the **Insured** is legally liable to pay, but excluding salaries, wages, benefits or overhead expenses of directors, officers or **Employees** of the **Company** or costs or overhead expenses of the **Company** itself, in preparing for, or being represented at, an **Investigation**.

**Limit of liability** means,

the amount stated in the Schedule.

**Loss** means,

1. **Defence Costs**; and
2. any amounts that an **Insured** is legally obliged to pay as a result of a **Claim** including:
  - i. damages including, in respect of Insuring Clauses A and C only, punitive or exemplary damages and the multiplied portion of any multiplied damage award where lawfully insurable by the laws of the jurisdictions in which such sums are payable and in which such sums were ordered to be paid; and
  - ii. settlements, judgments, pre and post-judgment interest on a covered judgment or award, or awards of costs or other amounts.



**Loss** shall not include:

1. any fines or penalties, except, to the extent covered under Extension F, Civil Fines and Penalties; or
2. taxes (except under Insuring Clause A1 to the extent that personal liability of a director or officer for non-payment of corporate taxes is established by law in the jurisdiction in which the **Claim** is made and such liability constitutes a **Non-Indemnifiable Loss**); or
3. any kind of employment-related benefits; or
4. any amounts which are deemed uninsurable under the laws of the jurisdictions in which such sums are payable or in which such sums were ordered to be paid; or
5. in respect of Insuring Clause B only, any punitive or exemplary damages, the multiplied portion of any multiplied damage award, or any non-compensatory damages; or
6. in respect of Insuring Clause C only, any:
  - i. compensation payable in respect of statutory notice period; or
  - ii. compensation earned by the claimant in the course of employment, including but not limited to unpaid wages, salaries, overtime, reimbursement of **Employee's** expenses, social security, retirement benefits or pension benefits, vacation days or sick days and any amount the **Company** would have been liable for in the absence of a **Wrongful Act**; or
  - iii. severance or redundancy pay; or
  - iv. stock options owed pursuant to any agreement or any other incentive or compensation (including deferred compensation) whose value is imputed or derived from the value of the **Securities** of the **Company**, except and to the extent that a judgment or settlement of an **Employment Practice Claim** includes a monetary component measured by the value of stock options or security which did not vest due to the actual or alleged wrongful termination of the claimant; or
  - v. amount for which the **Company** is not legally liable; or
  - vi. amounts owing under or assumed by the **Company** pursuant to any express written contract or agreement; or
  - vii. medical or insurance benefits, social security (or the equivalent thereof) to which a claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of such benefits or Insurance; or

- viii. costs associated with complying with an order, judgment or award of, or agreement to provide non-monetary relief, including costs associated with providing reasonable accommodations or more accessible building or property.

**Named Company** means,  
the entity designated as such in the Schedule.

**Non-Executive Director** means,  
any natural person serving as a non-executive director of the **Named Company**

**Non-Executive Director Extra Limit** means,  
the amount specified as such in the Schedule.

**Non-Indemnifiable Loss** means,  
**Loss** that a **Company** is (i) legally prohibited from indemnifying the **Insured Person** for, or (ii) unable to indemnify due to its insolvency under Section 123 of the Insolvency Act 1986 or under the law that governs the insolvency of the **Company**.

**Outside Director** means,  
any natural person employed by the **Company** who, at the specific request of the **Company**, serves as a director, officer, trustee, regent or governor of or in another equivalent executive position with an **Outside Entity**.

**Outside Entity** means,

1. any organisation, association or entity, run on a non-profit basis; or
2. any organisation, association, or entity in which a **Company** owns any but not more than 50% of the issued and outstanding shares representing the right to vote for the election of such **Outside Entity's** directors,

provided however, that **Outside Entity** shall not include:

- i. any organisation, association or entity incorporated, domiciled, or which derives more than 50% of its turnover in the United States of America or Canada; or
- ii. any organisation, association or entity having any of its **Securities** traded on any exchange; or
- iii. any financial institution (including any bank, depository institution, investment company, securities broker, dealer or underwriter, asset manager or insurance company),

other than such organisation, association, entity or financial institution which has with the express written consent of the **Insurer** been listed by endorsement to this Section.

**Pollutants** means,  
any substance whether it be solid, liquid, gaseous, biological, radiological or a thermal irritant, or a toxic or hazardous substance, or a contaminant including but not limited to asbestos or asbestos products, mycota or by-products, lead or lead containing products, smoke, vapours, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals, air emissions, odour, waste water, oil, oil products, medical waste, radioactive material of any kind,

and waste materials to be recycled, reconditioned or reclaimed.

**Pollution** means,  
any actual, alleged or threatened discharge, dispersal, release or escape of any **Pollutants**.

**Proposal** means,  
the proposal(s) and any document, information or statement specifically made available to the **Insurer** for the purpose of its assessment of the risk to be covered under this Section, as well as any attachments, exhibits, or appendices thereto, which shall be deemed attached to and forming part of this Section, including any materials submitted in connection with such proposal, all of which are deemed a part of the Section.

**Retaliation** means,  
an act of an **Insured** committed or allegedly committed against an **Employee** on account of such **Employee** exercising any rights in law, refusing to breach any law, opposing any unlawful practice, disclosing or threatening to disclose an alleged breach of law or assisting in, testifying in, or cooperating with a proceeding or investigation regarding an alleged breach of law.

**Retired Director** means,  
a director or officer who voluntarily ceased to hold such office prior to the Expiration Date stated in the Schedule other than a disqualified director or where directly related to a **Change in Control**.

**Securities** means,  
any of the following issued by the **Company**:

1. bonds, debentures, evidence of indebtedness, notes, shares, stocks or other equity or debt security; and
2. certificates of interest or participation in, receipts for, warrants or other rights to subscribe to or purchase, voting trust certificates relating to, certificates of deposit for, or other documentary evidence of interest in any of the securities referred to in 1. above.

**Single Claim** means,  
any one or more **Claim(s)** arising out of, based upon or attributable to the same, related or continuous or repeated **Wrongful Act**, and will be deemed first made at the time the earlier **Claim** was made. In respect of **Investigations** only, if two or more **Investigations** relate to the same or related or continuous or repeated events then they shall be regarded as a **Single Claim**.

**Subsidiary** means,

1. any entity with respect to which, at or before the inception of the **Period of Insurance**, and during such time that, the **Named Company**, either directly or indirectly, through one or more **Subsidiaries**:
  - i. owns more than 50% of the issued and outstanding shares of such entity; or
  - ii. controls more than 50% of the voting rights within such entity; or
  - iii. controls the right to vote for the election or removal of the majority of such entity's board of directors; and
2. any entity not included in (1) above but included under Extension B.

If an entity ceases to be a **Subsidiary** during the **Period of Insurance**, coverage under this Section shall only apply with respect to **Claims** for **Wrongful Acts** actually or allegedly committed, or **Investigations** in relation to events that actually or allegedly occurred or took place, during such time said entity is or was a **Subsidiary** as defined above.

**Whistleblowing** means, the protected providing of information by an **Insured** to certain public authorities as defined under Section 1514A of the United States Code (as inserted by Section 806 of the Sarbanes-Oxley Act 2002) or under any equivalent legislation in any jurisdiction.

**Wrongful Act** means,

1. For the purposes of Insuring Clause A only, any:
  - a) actual or alleged act, error, misstatement, misleading statement, omission, breach of duty, breach of statute, civil or common law; or
  - b) proposed act with respect to shareholder derivative actions only; or
  - c) **Wrongful Employment Practice**,  
  
by the **Insured Person** acting in their capacity as such or solely because of such capacity; or
2. For the purposes of giving effect to Insuring Clause B only, any actual or alleged act, error or omission by the **Company** in its capacity as such or solely because of such capacity, but not any **Wrongful Employment Practice**; or
3. For the purposes of Insuring Clause C only, any **Wrongful Employment Practice** by the **Company**.

**Wrongful Employment Practice** means,

in relation to the **Company's Employees**, any actual or alleged:

1. wrongful or unfair dismissal or discharge or termination of employment, whether actual or constructive, including a related breach of express or implied terms of any contract of employment; or
2. employment-related misrepresentation; or
3. breach of any laws concerning employment or discrimination in employment; or
4. sexual harassment or other unlawful harassment in the work place; or
5. wrongful demotion or deprivation of career opportunity or failure to employ or promote; or
6. wrongful discipline of an **Employee** or **Retaliation**; or
7. failure to provide accurate references for **Employees**; or
8. failure to adopt adequate employment policies and procedures; or
9. employment-related libel, slander, defamation, injury to feelings, humiliation or invasion of privacy; or
10. employment-related breach of the Data Protection Act 1998 in respect of the personal data of any **Employee** or any similar legislation in any other jurisdiction.

## Exclusions

### Exclusions applicable to all Insuring Clauses within Section 3 only:

Unless otherwise specifically stated elsewhere in this Section, the **Insurer** will not be liable to make any payment for **Loss** in connection with any **Claim**:

#### A. Unlawful conduct

arising out of, based upon or attributable to:

1. the gaining by the **Insured** of any profit or advantage to which such **Insured** was not legally entitled; or
2. the commission by the **Insured** of any deliberately fraudulent or dishonest act.

This exclusion shall however only apply where the **Insured's** behaviour is established primarily or incidentally in a final adjudication by any court, tribunal, legal panel or regulator in the **Claim** or by a written admission of the **Insured**.

#### B. Bodily injury / Property damage

For bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused, or damage to or loss of or destruction of any tangible property including loss of use thereof;

This exclusion shall not apply to **Claim** alleging mental anguish or emotional distress caused by a **Wrongful Employment Practice**;

#### C. Pollution

arising out of, based upon or attributable to any **Pollution** or any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**; provided, that this exclusion will not apply in respect of:

1. **Defence Costs** incurred in connection with such **Claim** up to the Sub-Limit stated in the Schedule; or
2. a **Claim** made by any **Securities** holder of the **Company**, either directly or derivatively.

#### D. Trustee Liability

arising out of, based upon or attributable to breach of trust, fiduciary duty or negligence in relation to any retirement, pension, profit sharing, welfare or employee benefit programme or scheme established by the **Company** for the benefit of its directors, officers or **Employees**, or for any breach of an **Insured Person's** responsibilities imposed by law in respect of the foregoing.

#### E. USA Insured v Insured

brought or maintained in the United States of America by, on behalf, at the instigation, or with the cooperation of, any **Company**, **Insured** or **Outside Entity**, unless such **Claim** is brought and maintained:

1. by an **Insured Person** alleging a **Wrongful Employment Practice**; or
2. by a Receiver or Manager appointed in respect of a **Company** in the framework of insolvency proceedings, directly or derivatively without the solicitation, voluntary assistance participation or co-operation of an **Insured** or an **Outside Entity's** directors or officers unless such solicitation, voluntary assistance participation or co-operation is required by law or protected as **Whistleblowing**; or
3. by an **Insured** for contribution or indemnity if the **Claim** directly results from another **Claim** covered under this Section; or
4. by way of shareholder derivative action on behalf of a **Company** or **Outside Entity**, without the solicitation, voluntary assistance, participation or co-operation of an **Insured** or an **Outside Entity's** directors or officers unless such solicitation, voluntary assistance participation or co-operation is required by law or protected as **Whistleblowing**; or
5. by a former director, officer or **Employee** of a **Company**; or
6. by an **Insured** or **Outside Entity** where if failing to do so such **Insured** or **Outside Entity** would incur legal liability

This exclusion shall not apply to **Defence Costs**.

#### F. Prior notice

arising out of, based upon or attributable to facts or circumstances underlying or alleged, or to the same or related or continuous or repeated **Wrongful Acts** alleged or contained, in any matter which has been reported, or with respect to which any notice has been given, under any policy of which this Section is a renewal or replacement or which it may succeed in time.

#### G. Prior or pending litigation

arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration, demand or adjudication as of the Continuity Date stated in the Schedule, or alleging or derived from the same or essentially the same facts or circumstances as alleged in such pending or prior proceeding, investigation, arbitration, demand or adjudication.

#### H. Professional Liability

alleging, arising out of, based upon or attributable to the **Company's** or an **Insured's** performance of or failure to perform professional services for others for a fee, or any act, error, or omission relating thereto.

This exclusion, however, shall not apply to;

1. any **Claim** made against an **Insured Person** by any **Securities** holder of the **Company**, either directly or derivatively; or
2. any **Claim** made against an **Insured Person** alleging a failure to supervise those who performed or failed to perform such professional services.

#### I. Public Offerings

arising out of, based upon or attributable to any public or private offering, solicitation or issuance by or on behalf of the **Company** of **Securities**, whether or not a prospectus has been issued, unless and to the extent the **Insurer** has given its prior written consent to the coverage of a specific transaction of this type and the **Named Company** has paid any additional premium and accepted any change in terms and conditions as required by the **Insurer**.

For the purposes of determining the applicability of the above Exclusions to **Insured Persons**, the behaviour of an **Insured Person** shall not be imputed to any other **Insured Person** except for Exclusions F and G.

**Exclusions applicable only to Insuring Clause B, Corporate Liability, and to Insuring Clause C, Company Employment Practice Liability:**

Unless otherwise specifically stated elsewhere in this Section, the **Insurer** will not be liable to make any payment for **Loss** in connection with any **Claim**:

## J. Contractual Liability

arising out of, based upon or attributable to any actual or alleged breach of express or implied contract, agreement, guarantee or warranty except to the extent such liability would have attached to the **Insured** in the absence of such contract, agreement, guarantee or warranty.

## Exclusions applicable only to Insuring Clause B, Corporate Liability.

## K. Products Liability

arising out of, based upon or attributable to the use, performance or presence of any product manufactured, sold, distributed, installed or maintained by the **Company**.

## L. Infringement of Patent and Copyright

arising out of, based upon or attributable to any actual or alleged infringement of copyright, patent, intellectual property, trademarks, trade secrets, misappropriation of ideas and/or disparagement of products.

## M. Trading losses

arising out of, based upon or attributable to any trading losses or trading liabilities incurred by the **Company**.

## N. Anti-trust

arising out of, based upon or attributable to price fixing, restraint of trade, monopolisation of unfair trade or predatory pricing.

## O. Employment related liability

arising out of, based upon or attributable to **Wrongful Employment Practice**.

## P. Documents or Data

arising out of, based upon or attributable to the repair, replacement or reconstitution cost of any document or data, directly or indirectly occasioned by any government or public or local authority action or order, or resulting from wear or tear, the action of vermin, gradual deterioration or magnetic flux or loss of magnetism (except where caused by lightning).

## Q. Information Technology

arising out of, based upon or attributable to:

1. the failure of any computer or other electronic processing device or of any program, instruction or data for use in any computer or other electronic processing device, equipment or system to function in the way expected or intended; or
2. the transmission or receipt of any virus, program or code that causes loss or damage to any computer system and/or prevents or impairs its proper function or performance.

## Exclusions applicable only to Insuring Clause C, Company Employment Practice Liability:

Unless otherwise specifically stated elsewhere in this Section, the **Insurer** will not be liable to make any payment for **Loss** in connection with any **Claim**:

## R. Wage and Hour

arising out of, based upon or attributable to any actual or alleged violation of any provision of any law or regulation of any country which regulates any minimum wages, working time, workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, pension plans, retirement benefits, social security, or any amendments thereto, or any other similar provisions of any federal, state or local statutory or common law or any laws, rules and regulations promulgated in any other relevant jurisdiction.

## S. Specific facts

arising out of, based upon or attributable to any actual or alleged violation of any provision of:

1. the United Kingdom Pensions Act 1995 and the United Kingdom Pensions Act 2004; or
2. the United Kingdom Trade Union and Labour Relations (Consolidation) Act 1992; or
3. the United Kingdom Transfer of Undertaking (Protection of Employment) Regulations 2006; or
4. the United Kingdom Health and Safety at Work Act 1974; or
5. any law or regulation of any country which regulates relations with unions, labour relations, collective and non-collective redundancy procedures, health insurance, health and safety at work or disability benefits law or any amendments thereto,

or of any other similar provisions of any federal, state or local statutory or common law or any laws, rules and regulations promulgated in any other relevant jurisdiction

## Extensions

Subject always to the other terms, conditions and exclusions of this Section (unless specified otherwise), the following extensions are added to the Section:

## Extensions applicable to all Insuring Clauses within Section 3 only:

### A. Discovery Period

This Section shall be extended to cover **Claims** first made, or in the case of an **Investigation**, first commenced, subsequent to the **Period of insurance** but during any applicable **Discovery period**, solely for **Wrongful Acts** actually or allegedly committed, or in the case of an **Investigation**, circumstances which occurred, before the Expiration Date stated in the Schedule.

1. A **Discovery period** shall be afforded under the following conditions:  
If, subsequent to the expiration of the **Period of insurance**, this Section is not renewed or replaced by any other policy affording directors' and officers' liability coverage, the **Insurer** will grant:

- i. an automatic **Discovery Period** as stated in the Schedule solely for **Retired Directors** at no additional premium; and
- ii. subject to written request to this effect and payment of the applicable additional premium before the Expiration Date stated in the Schedule by the **Named Company**, an optional **Discovery Period** as stated in the Schedule at the corresponding additional premium.

The additional premium shall be deemed to be fully earned as of the inception of the **Discovery Period**.

2. Any **Discovery Period** invoked shall be automatically cancelled upon the effective date or the date of execution of any other policy affording similar coverage to part or all of the **Insureds**, whichever is the earlier.
3. Rights to a **Discovery Period** shall automatically lapse upon a **Change in Control**.
4. There shall be no right for any **Discovery Period** in case of non-payment of premium.

#### **B. New Subsidiaries**

This Section shall be extended to include as a **Subsidiary**:

1. any entity acquired or created by the **Named Company** or any **Subsidiary** during the **Period of insurance** provided that the **Named Company** either directly or indirectly, through one or more **Subsidiaries**:
  - i. owns more than 50% of the issued and outstanding shares of such entity; or
  - ii. controls more than 50% of the voting rights within such entity; or
  - iii. controls the right to vote for the election or removal of the majority of such entity's board of directors,

unless such entity:

- a. has any assets or is domiciled in the United States of America or Canada; or
  - b. has any listings of its **Securities** on any exchange; or
  - c. has total consolidated assets (as of the latest annual report and accounts) that exceed 10% of the total consolidated assets of the **Named Company**, as calculated in accordance with the **Named Company's** usual accounting policies, principles and practices; and
2. any other entity created or acquired by the **Named Company** during the **Period of insurance** for which the **Insurer** has at its sole discretion agreed, by endorsement to this Section, to include as a **Subsidiary**, upon the **Named Company's** providing sufficient details to permit the **Insurer** to assess and evaluate the potential increase in exposure, subject to

prior payment by the **Named Company** of any reasonable additional premium and to any amendment to the Section terms required by the **Insurer**.

#### **C. Emergency costs**

The **Insurer** will waive the requirement for its prior written consent to the incurring of **Defence Costs** up to the maximum aggregate Sub-Limit stated in the Schedule where it was not reasonably practicable for the **Insured** to seek the **Insurer's** prior written consent.

**Extensions applicable only to Insuring Clause A1, Directors and Officers Liability.**

#### **D. Non-Executive Directors cover**

The **Insurer** shall pay to or on behalf of any **Non-Executive Director** any **Loss** resulting from a **Claim** first made during the **Period of insurance** up to the **Non-Executive Director Extra Limit** but only after exhaustion of:

1. the **Limit of liability**; and
2. any other available directors' and officers' or management liability cover whether written excess of the **Limit of liability** or otherwise; and
3. any other valid and collectible indemnification from any other source.

#### **E. Management Buy-Out**

If during the **Period of insurance** a **Subsidiary** ceases to be a **Subsidiary** due to a management buy-out, then upon written notification from the **Named Company** to the **Insurer** prior to such event and subject to the **Period of Insurance**, this Section shall provide coverage in respect of **Claims** for **Wrongful Acts** actually or allegedly committed, or circumstances occurring, during the 45 days immediately after the completion date of such buy-out

**Extensions applicable only to Insuring Clause A, Directors and Officers Liability and Company Reimbursement:**

#### **F. Civil Fines and Penalties**

This Section shall be extended to cover as **Loss** any civil fines or penalties it is legally obliged to pay as a result of a **Claim** where lawfully insurable by the laws of the jurisdictions in which such civil fines or penalties are payable and in which such fines or penalties were ordered to be paid

#### **G. Health and Safety Defence**

This Section shall be extended to cover **Defence Costs** incurred by any **Insured Person** in respect of any **Claim** made against such **Insured Person** for gross negligence manslaughter, or for any breach of any health and safety or equivalent legislation in any jurisdiction under which said **Insured Person** could be found liable by reason of their committing a relevant **Wrongful Act** in their capacity as a director, officer or **Employee** of the **Company**.

## H. Estates, Heirs and Legal Representatives

This Section shall be extended to include as **Insured Persons** the estates, heirs, legal representatives or assigns of an **Insured Person** who is deceased or the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt, to the extent that such person is subject to a proceeding solely by reason of an actual or alleged **Wrongful Act** of such deceased, incompetent, insolvent or bankrupt **Insured Person** and that such **Insured Person** would have been covered by this Section for **Loss** in the absence of their death, incompetence, insolvency or bankruptcy.

## I. Spouses and Domestic Partners

This Section shall be extended to include as **Insured Person** the lawful spouse or domestic partner, including same sex relationship civil partnerships, of an **Insured Person** to the extent that such person is subject to a proceeding solely by reason of their ownership interest in property which a claimant seeks as recovery in respect of a **Claim** against such **Insured Person**.

**Extensions applicable only to Insuring Clause A, Directors and Officers Liability and Company Reimbursement, and Insuring Clause B, Corporate Liability:**

## J. Investigation Costs

This Section shall be extended to cover the **Investigation Costs** of an **Insured Person** or a **Company** in respect of any **Investigation** first commenced during the **Period of insurance** (or **Discovery Period**, if applicable)

**Extensions applicable only to Insuring Clause B, Corporate Liability:**

## K. Corporate Manslaughter

This Section shall be extended to cover the **Loss** of any **Company** resulting from any **Claim** first made against such **Company** during the **Period of insurance** (or **Discovery Period**, if applicable), based upon the Corporate Manslaughter and Corporate Homicide Act 2007 of the United Kingdom or for gross negligence manslaughter, or for any breach of any health and safety or similar legislation in any jurisdiction.

## L. Corporate Bribery

This Section shall be extended to cover the **Loss** of the **Named Company** resulting from any **Claim** first made against the **Named Company** during the **Period of Insurance**, (or **Discovery Period**, if applicable), for any actual or alleged offence within the meaning specified in the 2010 UK Bribery Act or any amendment thereof committed or allegedly committed in the United Kingdom.

## Notification and Claims Conditions applicable to Section 3 only

### A. Notice

1. The **Insured** shall give written notice, including full details, to the **Insurer** of any **Claim** or any **Wrongful Employment Practice** as soon as reasonably practicable within the **Period of Insurance**, (or **Discovery Period**, if applicable), and, where it has not been reasonably practicable for the **Insured** to give notice during the **Period of Insurance**, (or **Discovery Period**, if applicable), then notice shall be given within 28 days of the date of expiration of the **Period of Insurance**, (or **Discovery Period**, if applicable).
2. If written notice of a **Claim** has been given to the **Insurer** as prescribed above, then any further **Claim** which arises out of, based upon or attributable to the same or related or continuous or repeated **Wrongful Acts** will be considered together with the earlier **Claim** as a **Single Claim** and will be deemed to have been first notified at the time of the original notice.
3. If, during the **Period of Insurance**, the **Insured** becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim**, and gives written notice to the **Insurer** of such circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, potential claimants and the consequences which have resulted or may result from any anticipated **Wrongful Act**, then any **Claim** subsequently arising out of, based upon or attributable to essentially the same circumstances or **Wrongful Acts** will be deemed to have been first made at the time notice was first given.
4. All notices under Claims condition A shall be in writing, referring to the Policy Number, and be made to the address set out in the Schedule.
5. Notification of **Claims** in compliance with this Claims Condition A is a condition precedent to the liability of the **Insurer** hereunder.

### B. Defence and settlement of claims and consent

1. It is the duty of the **Insured**, not the **Insurer**, to defend **Claims**. The **Insurer** shall be entitled to participate fully in the investigation, defence and negotiation of any settlement of any **Claim**. In respect of any **Claim** brought or maintained by, on behalf of or at the instigation of any **Insured, Outside Entity** or the latter's directors or officers, the **Insurer** shall have the right (but not the duty) to control the investigation, defence and negotiation of any settlement of such **Claim**.

In the event of any disagreement arising between the **Insurer** and an **Insured** as to whether or not to contest or settle any legal proceedings or proceed with any appeal of a decision of a Court, then the parties agree that it shall be determined by a Queen's Counsel to be mutually agreed upon, or in default of agreement to be nominated by the Chairperson of the Counsel to be

mutually agreed upon, or in default of agreement to be nominated by the Chairperson of the Bar Council. Such Queens Council shall act as an expert and not an arbitrator and their determination shall be based upon the written submissions of the parties and shall be final and binding on the parties, There shall be no obligation on the Queens Council to provide reasons unless specifically requested by the **Insured** or the **Insurer**. The costs of any reference to determination shall be deemed to form part of the **Defence Costs**.

2. An **Insured** shall not admit or assume any liability, enter into any settlement agreement, consent to any judgment, pay any **Loss**, or otherwise incur any **Defence Costs** without the **Insurer's** prior written consent, which shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable to pay any settlement incurred without its prior written consent.
3. The **Insured** shall provide to the **Insurer** all information, assistance and cooperation with regard to a **Claim**.
4. The **Insurer** shall advance **Defence Costs** on an as-incurred basis in respect of covered **Claims**. If it is finally determined that any such **Defence Costs** so advanced are not covered under this Section, the **Named Company** shall repay such amounts to the **Insurer**.

#### C. Allocation

1. The **Insurer** shall pay only those amounts or portions of **Loss** allocated to covered matters claimed against the **Insured**. If the **Insured** incurs any **Loss** arising out of a **Claim** that includes both matters covered and matters not covered by this Section, or that is made against both covered and non-covered parties, the **Insured** and the **Insurer** shall use their best efforts to determine a fair and proper allocation of the proportion of the **Loss** covered hereunder, taking into account the relative legal and financial exposures of the parties to the **Claim** and the relative benefits to be obtained by the resolution of the **Claim**.
2. If an allocation cannot be agreed between the **Insured** and the **Insurer**, then the parties agree that it shall be determined, having regard to the principles stated in this Claims Condition, by a Queen's Counsel to be mutually agreed upon, or in default of agreement to be nominated by the Chairperson of the Bar Council. Such Queen's Counsel shall act as an expert and not an arbitrator and their determination shall be based upon the written submissions of the parties and shall be final and binding on the parties. There shall be no obligation on the Queen's Counsel to provide reasons unless specifically requested by the **Insured** or the **Insurer**.
3. The costs of any reference to expert determination under this Claims Condition shall be borne equally by both the **Insured** and the **Insurer**.

#### D. Priority of payments

If the **Insurer** is liable to pay **Loss** covered under more than one Insuring Clause, then it shall pay such **Loss** in the order it falls due. However, where it appears reasonably likely the

**Limit of liability** shall become exhausted by payments of **Loss** the **Insurer** shall, subject to the **Limit of liability** and unless compelled otherwise by law or any judicial or regulatory order, pay **Loss** in the following order:

1. to or on behalf of an **Insured Person** under Insuring Clause A1; then
  2. to or on behalf of any **Company** under Insuring Clause A2; then
  3. to or on behalf of any **Company** under Insuring Clauses B and C.
- E. Subrogation and recoveries
1. In the event of any payment under this Section, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured's** rights of recovery. The **Insured** shall execute all papers required and do everything reasonably necessary to secure such rights and to enable the **Insurer** to bring any recovery action or suit as reasonably required by the **Insurer**.
  2. Any recovery received shall first be applied against any payment made by the **Insurer** with any balance remaining thereafter being remitted to or retained by the **Insured** or the **Company**, as applicable.
  3. The **Insurer** shall not exercise any right of subrogation against an **Insured Person** unless Exclusion A applies to such **Insured Person**.

## 1.1 General Conditions applicable to Section 3 only:

#### A. Change in control and automatic run-off

If, during the **Period of Insurance**, a **Change in Control** occurs, then coverage under this Section will continue in full force and effect until the end of the **Period of insurance** with respect to **Claims** for **Wrongful Acts** committed or allegedly committed, and to **Investigations** in relation to events that actually or allegedly occurred or took place, before the effective date of such **Change in Control**, but coverage will cease with respect to **Claims for Wrongful Acts** committed or allegedly committed, and to **Investigations** in relation to events that actually or allegedly occurred or took place, thereafter (unless otherwise agreed to by the **Named Company** and the **Insurer**) and the premium will be considered fully earned in consideration of the coverage provided.

#### B. Limit of liability and retention

1. **Limit of liability** and Sub-Limits:
  - a. The **Insurer's** total liability under this Section for all **Loss** shall not exceed the sum(s) stated in the Schedule for each Insuring Clause in respect of any one **Single Claim**.
  - b. Notwithstanding paragraph 1(a) above:
    - i. in respect of all claims brought or maintained in the United States of America, the **Insurer's** total liability, in the aggregate during the **Period of**



**insurance**, under this Section for all **Loss** shall not exceed the sum(s) stated in the Schedule for each Insuring Clause. Any payment of **Loss** under a Insuring Clause shall erode the applicable **Limit of liability**;

- ii. in respect of all **Claims** first notified during the **Discovery Period**, the **Insurer's** total liability, in the aggregate, under this Section for all **Loss** shall not exceed the sum(s) stated in the Schedule for each Insuring Clause. Any payment of **Loss** under an Insuring Clause shall erode the **Limit of liability**;
- iii. in respect of all payments made for **Non-Executive Director Extra Limit**, the **Insurer's** total liability, in the aggregate during the **Period of Insurance**, under this Extension for all **Loss** shall not exceed the sum(s) stated in the Schedule.

- c. The **Insurer** shall have no liability in excess of the **Limit of liability** applicable to the Insuring Clause in question, irrespective of the number of **Claims**, **Insureds** or amount of any **Loss**.
- d. All Sub-Limits stated in the Schedule are aggregate for the whole **Period of insurance** (and **Discovery Period** if applicable) regardless of the number of **Claims** and are part of and not in addition to the **Limit of liability** applicable to the relevant Insuring Clause

## 2. Retentions:

- a. The **Insurer** will be liable only for the amount of **Loss** which exceeds the Retention stated in the Schedule. Such Retention is to be borne by the **Insured** and remains uninsured.
- b. A Retention shall not apply to **Non-Indemnifiable Loss** covered under Insuring Clause A1. All other **Loss** covered under Insuring Clause A1 shall be subject to a Retention to be repaid by the **Company** to the **Insurer** but not to be applied against the **Insured Person**.
- c. In the event that a **Claim** is covered under more than one Insuring Clause, a single Retention amount will apply to all **Loss** resulting from such **Claim**, which shall be the highest of the applicable Retention amounts.

## C. Other insurance and indemnification

1. This Section shall always apply in excess of any other valid and collectible insurance or indemnification available to the **Insured**.
2. Coverage for **Claims** against an **Outside Director** will be specifically in excess of, and will not contribute with:
  - a. any insurance policy purchased by the **Outside Entity** that provides similar coverage to such **Outside Director** (if such other insurance is provided by the **Insurer**, then the **Limit of liability** for **Loss** under this Section shall be reduced by the amount paid for the benefit of the **Outside Entity** and/or the **Outside Director** under the other insurance provided by the **Insurer** to the **Outside Entity**); and

- b. any other indemnification from any other source to such **Outside Director**.

## D. Representations and severability

1. The information, particulars and statements contained or referred to in the **Proposal** were material to the acceptance by the **Insurer** of the risk assumed under this Section and have been relied upon by the **Insurer**.
2. For the purposes of determining the entitlement to cover under or avoidance of this Section in respect of an **Insured**:
  - a. With respect to Insuring Clause A, no knowledge or information possessed by, or conduct of, any **Insured Person** will be imputed to any other **Insured Person**;
  - b. With respect to Insuring Clauses B and C:
    - i. the statements made by, information or knowledge possessed by and any conduct of any chief executive officer or chief financial officer (or the equivalent executive or management position) of the **Named Company** shall be imputed to all **Companies**; and
    - ii. the knowledge and conduct of any chief executive officer or chief financial officer (or the equivalent executive or management position) of any other **Company** at the Inception Date shall be imputed to such **Company**.

## E. Notices and Authority

1. The **Named Company** shall act on behalf of all **Insureds** with respect to the giving and receiving of any notice required under this Section, the payment of all premiums, the allocation of **Loss**, authorisations and disclosures in respect of the personal data, the declaration of risk and execution of this Section and any amendments thereto.
2. In the event of a **Claim** by the **Named Company** or where, in relation to a **Claim**, the **Named Company** has some other conflict of interest, an **Insured Person** may withdraw their consent to the **Named Company** acting on their behalf with regard to the handling of such **Claim**, and elect to communicate directly with the **Insurer**; the **Insurer** shall have no obligation to communicate with any other **Insured** concerning such **Claim**.

## F. Entire Agreement

By acceptance of this Section, the **Insured** and the **Insurer** agree that this Section (including the **Proposal** and any materials submitted therewith) and any written endorsements attached hereto constitute the sole and entire agreement between the parties with respect to this insurance. Any prior agreement or understanding between the parties is therefore no longer valid.

## G. Territory

Unless prohibited by law, sanction or regulation

- i. In respect of Insuring Clause A (Directors & Officers Liability and Company Reimbursement) this Policy applies to **Wrongful Acts** actually or allegedly taking place or **Claims** made anywhere in the world
- ii. In respect of Insuring Clause B (Corporate Liability) and C (Company Employment Practices Liability) this Policy applies to **Wrongful Acts** actually or allegedly taking place or **Claims** made and **Wrongful Acts** committed in the European Union only.

## Contact us

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