



MANAGEMENT &
PROFESSIONAL RISKS

Professional Indemnity Insurance for Technology Companies

Policy

To be solid, insurance must be flexible.

Professional Indemnity Insurance for Technology Companies

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In consideration of the payment of the premium, or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

1. Insuring Clauses & Definitions

Insuring Clause 1: Civil Liability

The **Insurer** shall pay, on behalf of each **Insured**, **Loss** on account of a **Civil Claim** first made during the **Policy Period** alleging civil liability on the part of that **Insured** arising from the conduct of the **Business Activity** by:

- (a) that **Insured**;
- (b) any person, partnership, firm or company acting on behalf of an **Insured Organisation**; or
- (c) any predecessor in business of an **Insured Organisation**,

including, but not limited to, civil liability for:

- (i) libel, slander or any other form of defamation;
- (ii) infringement or misappropriation of copyright, trade mark, service mark, design right, know-how, database right, ideas under implied contract or any other intellectual property but not of patent or trade secret
- (iii) breach of a confidentiality obligation or of data protection legislation;
- (iv) unintentional **Breach of Contract** (including **Liquidated Damages**);
- (v) breach of duty, or negligence in relation to failing to prevent a party from:
 - a) unauthorised access to, use of, tampering with or introduction of malicious code into data or systems, or
 - b) repetitively accessing a website under the control or the responsibility of any **Insured** with the intent to deny others access to such website or with the intent to cause such website's functionality to fail, including but not limited to denial of access or denial of service attacks;
- (vi) dishonesty of an **Employee**; or
- (vi) loss, damage or destruction of **Documents**.

Insuring Clause 2: Mitigation Costs

The **Insurer** shall pay, on behalf of each **Insured**, **Mitigation Costs**.

Insuring Clause 3: Criminal Defence Costs

The **Insurer** shall pay, on behalf of each **Insured**, **Defence Costs** incurred with the prior written consent of the **Insurer** in defending a **Criminal Proceeding** first made during the **Policy Period**.

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Insuring Clause 4: Investigation Costs

The **Insurer** shall pay, on behalf of each **Insured**, **Investigation Costs**, incurred with the prior written consent of the **Insurer**.

Insuring Clause 5: Document Replacement Costs

The **Insurer** shall pay, on behalf of each **Insured**, the reasonable costs and expenses of replacing or restoring **Documents** whose loss, damage or destruction is first discovered by that **Insured** during the **Policy Period**.

Insuring Clause 6: Court Attendance Costs

With regard to each **Civil Claim** or **Criminal Proceeding**, **Loss** on account of which is covered by this Policy:

- (a) the **Insurer** shall, if a principal, partner, **Member**, director or **Employee** of an **Insured Organisation** attends a court or arbitration hearing as a witness, compensate for that person being so occupied, by paying £250 for each day on which that person attends as a witness;
- (b) the **Insurer** shall, if a principal, partner, **Member**, director or **Employee** of an **Insured Organisation** attends a court or arbitration hearing as observer, compensate the **Policyholder** by paying £150 per day for that person's attendance as an observer, but the **Insurer** will only pay for one observer per day.

Compensation provided for by this Insuring Clause is only payable where that attendance is in connection with defending, not prosecuting, a **Civil Claim** or **Criminal Proceeding**, and the **Insurer** shall pay the costs to the **Policyholder**

Definitions

In this Policy the word 'person(s)', wherever it appears, means legal or natural person(s) or partnership unless otherwise specified. When used in bold type in this Policy:

Application means:

- (a) all proposal forms and documents provided to the **Insurer** by or on behalf of the **Policyholder** or any other **Insured**, or to which the **Insurer** was referred by or on behalf of the **Policyholder** or any other **Insured**, in the process of applying for this Policy; and
- (b) all representations to the **Insurer** by or on behalf of the **Policyholder** or any other **Insured**, in the process of applying for this Policy.

Attendance Compensation means compensation provided for by Insuring Clause 6.

Breach of Contract means breach of a written contract to design, produce or supply **Technology Professional Services** or **Deliverables** by reason of:

- (a) failing materially to conform with any written specification, including delivery with agreed timescales, that forms part of the relevant contract, or
- (b) failing to meet any implied statutory term concerning quality, safety or fitness for purpose;

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Business Activity means the provision of **Technology Professional Services** or **Deliverables**, as part of the activities of an **Insured Organisation**, and any other services or activities stated in Item 2 of the Schedule.

Civil Claim means:

- (a) a written demand, whether or not containing a demand for monetary compensation; or
- (b) a civil proceeding,

made against an **Insured** by a **Third Party** and arising from **Business Activity**.

Claim means:

- (a) for the purposes of Insuring Clause 1, a **Civil Claim**;
- (b) for the purposes of Insuring Clause 3, a **Criminal Proceeding**; and
- (c) for the purposes of Insuring Clause 4, an **Investigation**.

Criminal Proceeding means a criminal prosecution against an **Insured** and which the **Insurer** is satisfied that defending it would protect an **Insured** against a **Civil Claim** or potential **Civil Claim, Loss** on account of which would be covered by Insuring Clause 1.

Defence Costs means that part of **Loss** consisting of reasonable costs, expenses, charges and fees (including but not limited to lawyers' and experts' fees) incurred in defending or investigating a **Civil Claim** or **Criminal Proceeding** first made during the **Policy Period** (other than internal expenses of an **Insured Organisation**).

Deliverables means any software, hardware, firmware, cabling, technology, data, documentation or electronic equipment.

Documents means documents (other than bearer bonds, coupons, shares, bank notes, currency notes, stamps and other negotiable instruments) whether in physical or electronic format for which an **Insured** is, in connection with **Business Activity**, legally responsible to a **Third Party**.

Employee means a natural person under a contract of service, or apprenticeship, with an **Insured Organisation**.

Insured means a person who is an **Insured Organisation** or an **Insured Person**.

Insured Organisation means an organisation or sole practitioner which is:

- (a) the **Policyholder**;
- (b) an organisation listed in Item 5 of the Schedule; or
- (c) an organisation which becomes an **Insured** pursuant to Section 2.1 below.

Insured Person means a natural person who has been, now is, or shall become a principal, partner, **Member**, director or **Employee** of an **Insured Organisation**, provided that such person shall only be covered under this Policy in respect of **Wrongful Acts** occurring, or alleged to have occurred, while that person is such principal, partner, **Member**, director or **Employee**. Solely for such **Wrongful Acts** of such person, **Insured Person** includes such person's:

- (a) lawful spouse, civil partner (as defined in the Civil Partnership Act 2004) or domestic partner, if named as co-defendant solely because of their spousal relationship or relationship as civil partner or domestic partner; or

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- (b) estate, heirs, legal representatives or assigns if such person is deceased or declared incompetent, insolvent or bankrupt.

Insurer means MPR Underwriting Ltd.

Investigation means a formal investigative inquiry which is into an **Insured's** conduct of **Business Activity** by a regulatory or professional body with powers to investigate that **Insured**.

Wherever in this Policy there is a reference to when a **Claim** is first made or deemed to be first made, that reference, as applied to an **Investigation**, means when the **Investigation** is first instituted or deemed to be first instituted.

Investigation Costs means that part of **Loss** which consists of reasonable legal fees and related professional charges which an **Insured** incurs in that **Insured's** representation at an **Investigation**:

- (a) which is first instituted during the **Policy Period**; and
- (b) at which that **Insured's** attendance is required by the body which instituted the **Investigation**,

but which are only incurred after that **Insured** has been notified in writing by that body that it is considering whether or not that **Insured** is culpable of misconduct.

Loss means the amount which an **Insured** is legally and personally liable to pay on account of a **Claim** first made during the **Policy Period**, including:

- (a) **Defence Costs**;
- (b) **Investigation Costs**; and
- (c) awards of damages, judgments,, awards of claimant's costs and sums payable pursuant to settlements.

Liquidated Damages means a sum of money or mechanism used to determine a genuine pre-estimate of loss and damage attributable to a specified **Breach of Contract** on the part of the **Insured**, provided that at the time the sum or mechanism was created, and agreed between the parties to the contract, as being representative of a fair, reasonable and justifiable reflection of the loss occasioned by the breach. Such sum of money or mechanism cannot be above any amount that would be recoverable had the **Claim** been made and determined as a common law claim for **Breach of Contract**.

Member means a member of a limited liability partnership which is part of the **Insured Organisation**.

Mitigation Costs means costs and expenses reasonably and necessarily incurred with the prior written consent of the **Insurer** in order to:

- (a) rectify the consequences of any **Wrongful Act** which is first discovered by an **Insured** during the **Policy Period** and which the **Insurer** is satisfied would, if not rectified, give rise to a **Claim, Loss** on account of which would be covered by Insuring Clause 1 and would amount to more than the costs and expenses necessary to rectify the consequences of the **Wrongful Act**;
- (b) settle a fee dispute with a client of the **Insured** which arises from a **Wrongful Act** which is first discovered by an **Insured** during the **Policy Period** and which the **Insurer** is satisfied would, if not settled (by the **Insured** agreeing not to press for the disputed amount and the **Insurer** paying the amount owed to the **Insured** at that time), give rise to a **Claim, Loss** on account of which would be covered by Insuring Clause 1 and would amount to more than the disputed amount.

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Personal Injury means bodily injury, mental illness, emotional distress, sickness, disease or death of any natural person.

Policyholder means the organisation or sole practitioner stated in Item 1 of the Schedule

Policy Period means the period of time stated in Item 6 of the Schedule but subject to prior termination when cover terminates in accordance with Section 5.9 below.

Pollutants means any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products, electromagnetic fields and any noise.

Pollution means:

- (a) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any **Pollutants**;
- (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any **Pollutants**, or any action taken in contemplation or anticipation of any such regulation, order, direction or request; or
- (c) any actual or alleged breach of duty in any way connected to any **Pollutants**.

Previous Policy means the professional indemnity policy issued to the **Policyholder** by an insurer other than the **Insurer** for the policy period ending the day before the start of the **Policy Period** and which this Policy directly replaces.

Property Damage means physical damage to or destruction or loss of use of any tangible property.

Subsidiary means a company which an **Insured Organisation** either directly or indirectly controls through:

- (a) holding a majority of the voting rights;
- (b) the right to appoint or remove a majority of its board of directors; or
- (c) controlling alone, pursuant to a written agreement with other shareholders, a majority of the voting rights therein.

Substitutable Cover Terms means those terms of the **Previous Policy** which are the **Previous Policy's** equivalents to the terms of this policy.

Technology Professional Services means, with respect to any electronic or computer based system or network:

- (a) Analysis, design, programming or integration of information systems;
- (b) Data processing;
- (c) Information technology consulting;
- (d) Development and licensing of computer software;
- (e) Marketing, selling, distributing, installing, maintaining of and training in the use of electronic or computer related hardware or software;

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- (f) Website and web application design, programming, maintenance, hosting or access services.

Technology Professional Services do not include the development, use or maintenance of any computer system for the management of financial transactions, including but not limited to the transfer or money or the trading of any equities or derivatives.

Third Party means any person other than an **Insured**.

USA means the United States of America, its territories and possessions and any state or political subdivision thereof.

Wrongful Act means:

- (a) any actual or alleged conduct or omission by:
- (i) an **Insured**
 - (ii) a person, partnership, firm or company acting on behalf of an **Insured Organisation**;
or
 - (iii) a predecessor in business of an **Insured Organisation**,
- and which gives rise, or is alleged to give rise, to civil liability on the part of an **Insured**;
- (b) any actual or alleged offence which is the subject of a **Criminal Proceeding**; or
- (c) any actual or alleged loss, damage or destruction of **Documents**.

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2. Additional Policy Features

Acquisition or Creation of Another Organisation

2.1 If, during the **Policy Period**, an **Insured Organisation**:

- (a) acquires securities or voting rights in another organisation which as a result of such acquisition becomes a **Subsidiary**;
- (b) creates an organisation which as a result of such creation becomes a **Subsidiary**; or
- (c) acquires any organisation by merger into or consolidation with an **Insured Organisation**,

then that organisation and its **Insured Persons** shall automatically become **Insureds** under this Policy with effect from the date of such acquisition or creation, but only with respect to **Wrongful Acts** after, and **Investigations** into conduct after, such acquisition or creation (although, if requested by the **Policyholder**, the **Insurer** may agree to provide cover for prior **Wrongful Acts** and prior conduct, following the receipt of any information the **Insurer** may require).

However, if such acquired or created organisation:

- (i) has annual fee income or turnover which is greater than 25% of the **Insured Organisations** annual fee income last declared to the **Insurer** prior to the **Policy Period**;
- (ii) has assets in the **USA**;
- (iii) provides advice, products or services as part of activities which are not activities listed in the definition of **Business Activity**;
- (iv) has ever been fined an amount of £10,000 or more or has ever been found guilty of an offence by its regulator; or
- (v) has ever, with regard to any given 12 month period, incurred (through judgment or settlement) total losses equalling or exceeding £10,000 on account of the claims made against it in that period,

for that organisation and its **Insured Persons** to become **Insureds** under this Policy, the **Policyholder** must give written notice of that acquisition, and such information as the **Insurer** may require, to the **Insurer**. The **Insurer** shall have the right to amend the terms of this Policy including charging an additional premium.

Insolvency of Policyholder or Other Insured Organisation

2.2 If, during the **Policy Period**:

- (a) the **Policyholder** enters into bankruptcy, winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or a receiver or holder of a similar position is appointed over any of its assets, cover for the **Insured Organisations** and their **Insured Persons** shall continue until the end of the **Policy Period**, but that cover shall not be for **Wrongful Acts** after, or (as concerns **Investigations**) conduct after, the date of such entry or appointment.
- (b) an **Insured Organisation** other than the **Policyholder** enters into bankruptcy, winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or a receiver or holder of a similar position is appointed over any of its assets, cover for that **Insured Organisation** and its **Insured Persons** shall continue until the end of the **Policy Period**, but that cover shall not be for **Wrongful Acts** after, or (as concerns **Investigations**) conduct after, such cessation, entry or appointment.

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Non-avoidance and Severability

2.3 In respect of the **Application**, no statements made or information possessed by any **Insured** shall be imputed to any **Insured Person** for any reason.

In the event of a fraudulent or dishonest breach of the duty of fair presentation by any **Insured** determined by admission, final non-appealable judgment or adjudication:

- (i) if the breach occurs prior to the inception date of the Policy, the **Insurer** may avoid the contract and refuse all claims, and need not return any of the premiums paid, in respect of such **Insured**;
- (ii) if the breach is in relation to a variation of the Policy, the **Insurer** may treat the Policy as if the variation was never made and need not return any of the premiums paid in respect of the variation, in respect of such **Insured**.

It is agreed that in the event of a breach of the duty of fair presentation by an **Insured**, which is not fraudulent or dishonest, the **Insurer** irrevocably waives all and any rights and remedies it may have because of such breach, including any remedy that would have been available under the UK Insurance Act 2015. For the purposes of this clause, the phrase "duty of fair presentation" shall have the same meaning as given to it in the UK Insurance Act 2015.

Option for Previous Policy Cover

2.4 The provisions of this Section 2.4 shall only be effective if the **Policyholder** provides to the **Insurer**, before the start of the **Policy Period**, a complete and accurate copy of the **Previous Policy** including all schedules and endorsements thereto and variations thereof, and the **Insurer** confirms in writing that the provisions of this section 2.4 are effective.

Within 30 days of the **Insurer** being given written notice of a **Claim** in accordance with Section 5.1, the **Policyholder** may give to the **Insurer** a written notice requesting coverage conversion, whereupon all the **Substitutable Cover Terms** shall apply to that **Claim**, and all **Claims** deemed with it to be a single **Claim**.

Any matter which is not within a definition of **Claim** but would be if it was defined in the same way as an equivalent definition in the **Previous Policy's** equivalent cover, shall be regarded as within this Policy's definition of **Claim** for the purposes of allowing the **Policyholder** to report it in accordance with Section 5.1 and of requesting coverage conversion such that, if it is reported and coverage conversion is requested in accordance with this Section it shall be deemed a **Claim** to be dealt with under the terms of this Policy but with all the **Substitutable Cover Terms** in place of all the equivalent terms of this Policy.

No term of the **Previous Policy** which stipulates a deductible, excess or retention, a main policy period limit of liability, a main any one claim or any one loss or any one event limit of liability or a limit of liability in addition to any aforementioned main limit, wherever in the **Previous Policy** such term may appear (whether in a schedule, a limits of liability clause, an insuring clause, an endorsement or otherwise), shall be a **Substitutable Cover Term** and all sublimits of liability stipulated in the **Previous Policy** (other than one which is greater in amount than an applicable **Policy Period Limit**) shall be **Substitutable Cover Terms**.

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3. Exclusions and Sanctions

Exclusions

- 3.1 The **Insurer** shall not be liable for **Loss**, costs or expenses on account of any **Claim**, or on account of any loss, damage or destruction of **Documents**:
- (a) based upon, arising from or in consequence of any fact or **Wrongful Act** forming part of circumstances or of a **Claim** of which written notice has been accepted under any policy which this Policy renews, replaces or follows in whole or in part;
 - (b) based upon, arising from, or in consequence of any **Wrongful Act** prior to the date stated in Item 7 of the Schedule;
 - (c) based upon, arising from or in consequence of a **Wrongful Act**:
 - (i) of, or in respect of, an organisation listed in Item 5 of the Schedule; or
 - (ii) of, or in respect of, an **Insured Person** of such an organisation, prior to the date stated against that organisation in Item 5 of the Schedule;
 - (d) to the extent that that **Loss** consists of fines or penalties or the multiple portion of any multiplied damages award;
 - (e) to the extent that that **Loss** consists of punitive, exemplary or aggravated damages other than damages awarded for libel, slander or defamation;
 - (f) based upon, arising from or in consequence of any actual or alleged **Personal Injury** of an **Insured Person**;
 - (g) based upon, arising from or in consequence of **Personal Injury** unless directly arising from breach of duty through negligent advice, design, specification or formula by an **Insured** in the course of **Business Activity**;
 - (h) based upon, arising from or in consequence of **Property Damage** unless directly arising from breach of duty through negligent advice, design, specification or formula by an **Insured** in the course of **Business Activity**;
 - (i) based upon, arising from or in consequence of **Pollution**;
 - (j) based upon, arising from or in consequence of:
 - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
 - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
 - (k) based upon, arising from or in consequence of the ownership, occupation, possession or use by or on behalf of an **Insured** of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle;
 - (l) where the **Loss** is an **Insured Person's** and the **Claim** is based upon, arises from or is in consequence of any dishonest or fraudulent act or omission or any intentional breach of law committed or condoned by that **Insured Person**;

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- (m) based upon, arising from or in consequence of any dishonest or fraudulent act or omission or any intentional breach of law by any principal, partner, **Member** or director of an **Insured Organisation**;
- (n) based upon, arising from or in consequence of any breach of, or alleging liability under, any express warranty, guarantee or contractual term beyond that referred to in Insuring Clause 1 (iv) or such amount of **Loss** as the **Insured** would be legally and personally liable to pay in the absence of such warranty, guarantee or term;
- (o) based upon, arising from or in consequence of any **Insured** acting as a director or officer of any organisation;
- (p) by or on behalf of a parent, **Subsidiary**, affiliate or associate of an **Insured Organisation** except a **Claim** for contribution or indemnity which results solely from a claim against such parent, **Subsidiary**, affiliate or associate by a **Third Party**;
- (q) to the extent that that **Loss** consists of sums relating to any trading losses or trading liabilities incurred in connection with any business managed or carried on by an **Insured** on behalf of a client;
- (r) based upon, arising from or in consequence of any of the following which any **Insured** commits intentionally or recklessly: libel, slander or other form of defamation; infringement or misappropriation of copyright, trade mark, service mark, design right, know-how or any other intellectual property; intrusion upon, interference with or infringement of privacy, family life, a person's home or correspondence; breach of a confidentiality obligation or of data protection legislation; introduction into or transmission to a third party's software or computer system of any code which is intended, designed or calculated to disrupt degrade or corrupt the software or system and/or the performance of the software or system and/or destroy data;
- (s) based upon, arising from or in consequence of any actual or alleged infringement or misappropriation of patent or trade secret;
- (t) based upon, arising from or in consequence of any malfunction or defect of any **Deliverables**, but this exclusion will not apply where the malfunction, defect or failure to supply is the result of a **Wrongful Act** in the course of **Business Activity**;
- (u) based upon, arising from or in consequence of any malfunction or defect in any third party **Deliverables**, or any failure by a third party to supply any service or product. This exclusion will not apply where the malfunction, defect or failure to supply is the result of a **Wrongful Act** in the course of **Business Activity**;
- (v) based upon, arising from or in consequence of any recall, withdrawal, inspection, repair, modification or replacement of any **Deliverables** that is withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
- (w) based upon, arising from or in consequence of any actual or alleged false advertising which any **Insured** commits intentionally or recklessly, or any actual or alleged unfair or deceptive trade practices, with respect to the advertising or sale of an **Insured's** own publications, products or services;
- (x) based upon, arising from or in consequence of any actual or alleged failure or interruption of service provided by an internet service provider, telecommunications provider, utility provider or other infrastructure provider except to the extent those services are provided in the course of **Business Activity**;
- (y) based upon, arising from or in consequence of any unauthorised collection, use or dissemination of internet user information;

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- (z) based upon, arising from or in consequence of any **Wrongful Act** in connection with any contest, lottery, promotional game or game of chance, including but not limited to the printing of, or over-redemption of, tickets, coupons or prizes for any of the foregoing; however, this exclusion shall not apply to the extent that the **Claim** alleges:
 - (i) libel, slander or any other form of defamation (whether of person or products);
 - (ii) infringement or misappropriation of copyright, trade mark, service mark, design right, know-how or any other intellectual property, but not of patent or trade secret;
 - (iii) intrusion upon, interference with or infringement of privacy, family life or a person's home or correspondence; or
 - (iv) breach of a confidentiality obligation or of data protection legislation.

Sanctions

- 3.3 No cover or benefit shall be provided and no sum shall be payable under this Policy to the extent that providing or paying it would directly or indirectly put the **Insurer** in breach of any applicable economic or trade sanction laws or regulations.

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4. Limits of Liability and Payment of Loss

Limits of Liability

- 4.1 (a) On account of any one **Civil Claim** brought and maintained entirely outside the **USA**:
- (i) the **Insurer's** maximum liability for **Loss** other than **Defence Costs**, whether the **Civil Claim** involves one or any number of **Insureds**, shall not exceed the **Civil Claim Limit**; and
 - (ii) the **Insurer's** liability for **Defence Costs** shall be in addition to the **Civil Claim Limit**, but the **Insurer** shall only be liable for **Defence Costs** in proportion to the amount which the **Civil Claim Limit** bears to the total amount of **Loss**, other than **Defence Costs**, on account of that **Civil Claim**.
- (b) The **Insurer's** maximum aggregate liability for all **Loss** on account of all **Civil Claims** brought or maintained in whole or in part in the **USA** and first made during the **Policy Period**, whether involving one or any number of **Insureds**, shall not exceed the **Civil Claim Limit**.
- (c) The **Insurer's** maximum aggregate liability for all **Mitigation Costs**, **Criminal Defence Costs**, **Investigation Costs**, **Document Replacement** and **Attendance Compensation** shall not exceed the individual limits stated in Item 3 of the Schedule. Sublimits are part of and not in addition to the maximum liabilities of the **Insurer** referred to in this section and detailed in Item 3 of the Schedule.

Amounts stated for limits and sublimits are maximum liabilities of the **Insurer** for all **Insureds** together, not maximum liabilities per **Insured**.

Deductible

- 4.2 With regard to each and every **Claim** which is not an **Investigation**, the **Insurer** shall only be liable for that part of **Loss** which is in excess of the applicable **Claims** Deductible stated in Item 4 of the Schedule. No Deductible shall apply to **Defence Costs**.

With regard to **Mitigation Costs**, the **Insurer** shall pay that part of **Mitigation Costs** which is in excess of the applicable **Claims** Deductible stated in Item 4 of the Schedule.

Related Claims

- 4.3 All **Claims** arising out of the same **Wrongful Act** or conduct and/or arising out of causally connected **Wrongful Acts** and/or conduct, whether by one or any number of **Insureds**, shall be deemed to be a single **Claim** first made on the earliest of:
- (a) the date when the first of such **Claims** was first made;
 - (b) the earliest date one of such **Claims** is deemed first made by this Policy or any policy which this Policy renews, replaces or follows in whole or in part,

regardless of whether that date is before or during the **Policy Period**.

Other Insurance

- 4.4 This policy shall always apply excess over any other more specific valid and collectable insurance policy or indemnification available to the **Insured**, other than any insurance specifically written to apply excess of this policy.

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5. General Terms

Reporting

- 5.1 The Insured shall give the Insurer written notice of any Claim as soon as practicable but in no event more than 60 days after the earlier of the following dates:
- (i) the date on which any **Insured Organisation's** Chairman, Chief Executive, Managing Director, Finance Director, General Counsel, Risk Manager, Information Technology Manager or holder of an equivalent position to any of the foregoing, first becomes aware that the **Claim** has been made; and
 - (ii) if this Policy is not renewed, the termination date of the **Policy Period**.

Each **Insured** shall give to the **Insurer** all such information and co-operation as the **Insurer** may reasonably require, including but not limited to a description of the **Claim**, the nature of the alleged **Wrongful Act** and the date it was committed, the nature of the alleged damage, the names of the claimants and defendants and the manner in which the **Insured** first became aware of the **Claim**.

If, during the **Policy Period** an **Insured**:

- (i) becomes aware of circumstances which are likely to give rise to a **Claim**, and gives written notice of such circumstances to the **Insurer**; or
- (ii) receives a written request to waive application of a limitation period to, or to suspend the running of time towards expiry of a limitation period for the commencement of, a civil proceeding against an **Insured** alleging a **Wrongful Act** before or during the **Policy Period** and gives written notice of such request and of such alleged **Wrongful Act** to the **Insurer**,

then any **Claims** subsequently arising from such circumstances or following on from such request shall be deemed to have been first made during the **Policy Period**. Circumstances shall not be regarded as notified unless the written notice expressly identifies the **Wrongful Act** and the date it was committed, the potential damage, the potential claimants and defendants and the manner in which the **Insured** first became aware of the circumstances.

The **Insurer** shall not rely on breach of any of the **Insureds'** obligations in this Section to deny liability for any **Loss**. However, in the case of such breach, the **Insurer** shall not be liable for **Loss** which the **Insurer**, believes would not have been incurred if the breach had not occurred.

Notice

- 5.2 Written notices to the **Insurer** required by Section 5.1 above shall be sent by email to mprclaims@axiscapital.com or by post to the Claims Department at the **Insurer's** postal address

The **Insurer's** postal address is:

MPR Underwriting Limited
10th Floor Chancery Place, 50 Brown Street,
Manchester M2 2JG.

Notice shall be effective on the date of receipt by the **Insurer** by email or at the postal address.

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Defence and Settlement

- 5.3 The **Insurer** shall have the right, but not the duty, to take over and conduct at any time the defence of **Claims**, including to appoint lawyers or other representatives or advisers for that purpose.

Each **Insured** agrees not to settle or offer to settle any **Claim**, incur any **Defence Costs**, **Investigation Costs** or **Mitigation Costs**, or otherwise assume any contractual obligation or admit any liability with respect to any **Claim**, without the **Insurer's** prior written consent which shall not be unreasonably withheld.

The **Insurer** shall pay covered **Defence Costs**, covered **Investigation Costs**, covered **Mitigation Costs** and covered costs and expenses of replacing or restoring **Documents** promptly upon the **Insurer's** receipt of suppliers' invoices.

Territory

- 5.4 Unless otherwise provided elsewhere in this Policy, cover under this Policy shall extend worldwide.

Subrogation

- 5.5 The **Insurer** shall be subrogated to the extent of any payment under this Policy to each **Insured's** rights of recovery, and each **Insured** shall execute all papers required and shall do everything necessary to secure and preserve such rights and to enable the **Insurer** to bring proceedings in the name of that **Insured**.

Authorisation Clause

- 5.6 The **Policyholder** hereby agrees to act on behalf of all **Insureds** with respect to the giving and receiving of notice of **Claims** or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy, and the **Insureds** agree that the **Policyholder** shall so act on their behalf.

Alteration and Assignment

- 5.7 No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy duly executed on behalf of the **Insurer**.

Rights of Action

- 5.8 No person shall have any rights under or in connection with this Policy by virtue of the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof. The **Policyholder** may not assign to any other person any right or cause of action against the **Insurer** under or in connection with this Policy.

Termination

- 5.9 Cover under this Policy shall terminate at the earliest of the following times:
- (a) 7 days after the receipt by the **Policyholder** of a written notice of termination from the **Insurer** for non-payment of premium;
 - (b) expiration of the **Policy Period**;

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- (c) receipt by the **Insurer** of written notice of termination from the **Policyholder**; and
- (d) such other time as may be agreed upon by the **Insurer** and the **Policyholder** in writing.

If, at the time of termination of cover under this Policy, no **Insured** has given notice of a **Claim** or of circumstances which are likely to give rise to a **Claim**, the **Insurer** shall refund the unearned premium:

- (i) computed at customary short rates, if cover under this Policy is terminated by the **Policyholder**; or
- (ii) computed pro-rata, if cover under this Policy is terminated other than by the **Policyholder**.

Choice of Law and Forum

- 5.10 The construction of the terms, and the validity and effect, of this Policy are governed by English law. Any dispute or difference arising under or in respect of this Policy shall be subject to and determined within the exclusive jurisdiction of the courts of England and Wales.

Regulatory Information

- 5.11 This insurance is underwritten by MPR Underwriting Limited, Chancery Place, 50 Brown Street, Manchester, M2 2JG, on behalf of AXIS Specialty London, a UK branch of AXIS Specialty Europe SE, authorised and regulated by the Central Bank of Ireland and regulated by the Prudential Regulation Authority and Financial Conduct Authority in respect of UK business. AXIS Specialty Europe SE Registered Office: Mount Herbert Court, 34 Upper Mount Street, Dublin 2, Ireland: Registration No. 353402SE

Complaints

- 5.12 MPR Underwriting are committed to first class service. If you have any complaints about the service you have received, please contact your insurance broker or agent or MPR Underwriting Ltd at the address shown below:

10th Floor, Chancery Place, 50 Brown Street, Manchester, M2 2JG.

If your complaint relates to a claim on your policy, or any other matter, please contact Axis Specialty Europe SE at the address shown below:

Compliance Officer, AXIS Europe SE, 3rd floor, 71 Fenchurch Street, London, EC3M 4BS.

If you are dissatisfied with the final response to your complaint the Financial Ombudsman Service (FOS) may be approached for assistance in certain circumstances. A leaflet explaining their procedure is available on request. The FOS's contact details are:

The Financial Ombudsman Service, Exchange Tower, Harbour Exchange Square, London E14 9SR

Phone: 0800 023 4567

Email: complaint.info@financial-ombudsman.org.uk

This complaint procedure does not affect your rights to take legal proceedings.