

Professional Indemnity Insurance Section (Technology & Telecommunications)

Definitions

Operative Wording

The operative wording applicable to this **Section** as specified in the **Schedule**.

NB This wording is only operative when the reference **AGCSPITECH010309** is specified in the Professional Indemnity section of the **Schedule**.

Bodily Injury

Physical injury, sickness, disease or death of a natural person; and if arising out of the foregoing, nervous shock, emotional distress, mental anguish or mental injury.

Claim

Any:

- a) written demand for compensation in respect of a **Wrongful Act** of an **Insured**; or
- b) civil, regulatory or administrative proceedings whereby a **Wrongful Act** of an **Insured** is alleged.

Company

The **Policyholder** or any **Subsidiary** (including any predecessor business).

Damages

Any amount that an **Insured** shall be legally liable to pay to a **Third Party** in respect of judgments or arbitral awards rendered against an **Insured**, or for settlements negotiated by the **Insurer** with the consent of the **Policyholder**.

Data

Electronically stored digital or digitised information and media.

Defence Costs

Reasonable fees, costs and expenses incurred by or on behalf of an **Insured**, with the prior written consent of the **Insurer**, in the investigation, defence, adjustment, settlement or appeal of any **Claim**. It shall not include any element of an **Insured's** own time costs or lost profits incurred in dealing with a **Claim**.

Disputed Fees

The amount owed to the **Insured**, which has been disputed by the client due to having reasonable grounds of refusal of payment from being dissatisfied with the **Professional Services** performed by the **Insured**.

Documents

All documents of any nature whatsoever including computer records and electronic or digitised data; but does not include any currency, negotiable instruments or records thereof.

Employee

Any natural person who is, has been or during the period of insurance becomes expressly engaged under a contract of employment with the **Company**.

Employee shall not include any principal, partner, director or **Member** of any **Insured** in their capacity as such.

Fraud/Dishonesty

Fraudulent or dishonest conduct:

- a) not condoned, expressly or implicitly by any principal, partner, director or **Member** of the **Company**; and
- b) that results in liability of the **Company** to any **Third Party**.

Insured

The **Company** or any **Insured Person**.

Insured Person

- a) any natural person, who is or has been a principal, partner, director or **Member** of the **Company** in their capacity as such;
- b) any **Employee**;
- c) any natural person employed by the **Company** to whom the Financial Conduct Authority has given its approval to perform Controlled Function 30 for the **Company** pursuant to Section 59 of the Financial Services and Markets Act 2000 or any re-enactment thereof;
- d) any spouse, civil partner, estate or legal representative of any **Insured Person** for **Loss** arising from a **Claim** for a **Wrongful Act** of such an **Insured Person** listed in a), b), c) above;
- e) the administrator, heirs, legal representatives or executor of a deceased, incompetent, insolvent or bankrupt **Insured Person's** estate for **Loss** arising from a **Claim** for a **Wrongful Act** of such **Insured Person** listed in a), b), c) above.

Legal Panel

The firms of solicitors appointed from time to time by the **Insurer** to provide representation on behalf of an **Insured** under this **Section**.

Limit of Liability

The amount specified as such in the **Schedule**.

Limited Liability Partnership

A partnership as determined by the Limited Liability Partnerships Act 2000 and any subsequent amendments thereto.

Loss

Damages or **Defence Costs**, however **Loss** shall not include and this **Section** shall not cover any:

- a) taxes;
- b) non-compensatory damages, including punitive, multiple, exemplary or liquidated damages;

- c) fines or penalties unless insurable by law;
- d) the costs and expenses of complying with any order for, grant of or agreement to provide injunctive or other non-monetary relief;
- e) benefits or overheads of, or charges or expenses incurred by any **Insured** including but not limited to the cost of any **Insured's** time;
- f) fees or commissions, for any **Professional Services** rendered or required to be rendered by an **Insured** or that portion of any settlement or award in an amount equal to such fees, commissions, or other compensation; or
- g) matters which may be deemed uninsurable under the law governing this **Section** or the jurisdiction in which a **Claim** is brought.
- h) any loss of profit, revenue, customer, contract, reputation or interest, whether direct or consequential, where it was reasonable for the **Insured** to exclude liability for such losses in its contract with a client.

Member

A member of a **Limited Liability Partnership**.

Policyholder

The entity specified as such in the **Schedule**.

Pollutants

Any solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including but not limited to, asbestos, lead, smoke, vapour, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals and waste. Such waste includes, but is not limited to, materials to be recycled, reconditioned or reclaimed and nuclear materials.

Professional Services

Any:

- (i) software services
- (ii) **Data** services;
- (iii) services that facilitate access to or the use of data or software via the Internet; or
- (iv) any computer hardware or firmware:
 - (a) sold, leased or otherwise supplied;
 - (b) licensed; or
 - (c) installed, modified or serviced;
 - by any **Insured**;
- (v) voice or Data transmission services of the **Policyholder** and any **Subsidiary**.

Property Damage

Damage to or loss of or destruction of tangible property or loss of use thereof.

Related Claim

Any **Claims** alleging, arising out of, based upon or attributable to the same facts or alleged facts, or circumstances or the same **Wrongful Act**, or a continuous repeated or related **Wrongful Act**.

Retention

The amount specified as such in the **Schedule**

Retroactive Date

The date specified as such in the **Schedule**.

Settlement Value

In respect of any **Claim** covered under this **Section**:

- a) the full amount claimed; or
- b) any settlement offer from the claimant(s) which is capable of acceptance.

Where the claimant(s)' costs, if applicable, are not quantified by the claimant, the **Insurer** will also pay a reasonable sum to an **Insured** to represent these costs.

Submission

- a) each and every signed proposal form, the statements, warranties, and representations therein, its attachments;
 - b) the financial statements of any **Company**; and
 - c) other documents of any **Company** filed with a regulator and all other material information;
- submitted to the **Insurer** in connection with this **Section** or the **Policy**.

Subsidiary

Any entity in which the **Company**, either directly or indirectly through one or more entities;

- a) controls the composition of the board of directors;
- b) controls more than half of the voting power; or
- c) holds more than half of the issued share capital;

on or before the inception date of this **Section**.

For any **Subsidiary** or any **Insured** thereof, cover under this **Section** shall only apply to **Wrongful Acts** committed while such entity is a **Subsidiary** of the **Company**.

Terrorism

An act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public or any section of the public in fear.

Third Party

Any entity or natural person except (i) any **Insured**; or (ii) any other entity or natural person having a financial interest or executive role in the operation of the **Company**.

Trade Secrets

Information that derives independent economic value, actual or potential, from not being generally known and not being readily ascertainable through proper means by other persons who can obtain economic advantage from its disclosure or use.

Transaction

Any one of the following events:

- a) the **Company** consolidates with or merges into or sells all or a majority of its assets to any other person or entity or group of persons and/or entities acting in concert;
- b) an administrator, liquidator or receiver is appointed to the **Company**.

Wrongful Act

any actual or alleged:

- a) unintentional breach of a written contract with a client;
- b) negligence;
- c) misrepresentation which causes a client to enter into a contract with the **Insured**;
- d) unauthorised disclosure by the **Insured**, or a third party on behalf of the **Insured**, of any personal data during the **Policy Period** giving rise to any actual or alleged breach of any data protection legislation;
- e) unauthorised disclosure by the **Insured** of confidential information belonging to a third party
- f) libel, slander or defamation;
- g) infringement or misappropriation of any intellectual property;
- h) invasion, infringement or interference with an individuals rights of privacy;
- i) release of any electronic virus;
- j) failure to prevent any unauthorised access;
- k) failure to enable access to a third party to the **Insured's** computer system or network where there is a written contract requiring the **Insured** to do so; or
- l) unintentional loss, erasure, destruction or corruption of any data for which the **Insured** is legally responsible under a written contract,

arising out of the provision of Professional Services by or on behalf of the **Insured**

Cover

A Professional Liability Coverage

The **Insurer** will pay on behalf of an **Insured** all **Loss** resulting from any **Claim** first made against an **Insured** during the **Period of Insurance** and notified to the **Insurer** as required by this **Section** for a civil liability arising from an **Insured's Professional Services**.

B Automatic Acquisition

If during the **Period of Insurance** the **Policyholder** obtains, either directly or indirectly:

- a) control of the composition of the board of directors;
- b) control of more than half of the voting power; or
- c) a holding of more than half of the issued share capital;

of another entity then the definition of **Subsidiary** shall be extended to include such entity provided that:

- i) the entity has annual revenue for the last complete accounting period prior to the acquisition, of less than 10% of the total annual revenue of the **Company** declared in the latest Annual Report and Accounts as at inception;
- ii) the entity is not incorporated, domiciled or providing **Professional Services** in the United States of America or Canada or any of their territories;
- iii) the entity is not regulated by the US Securities and Exchange Commission;
- iv) the entity is not aware of any claims (either paid or notified) or circumstances within the preceding five years of a type which may have been covered had they been notified under a professional liability policy similar in scope and breadth of coverage to the cover afforded hereunder;
- v) the business activities of the entity fall within the definition of **Professional Services**

In all other circumstances, the **Policyholder** may request an extension of this **Section** for such entity. The **Insurer** shall have the right but not the duty to offer cover for such entity and the **Policyholder** shall give the **Insurer** sufficient details to permit the **Insurer** to assess and evaluate the potential increase in exposure. In the event that coverage is provided, the **Insurer** shall be entitled to amend the terms and conditions of this **Section**, during the **Period of Insurance**, including but not limited to, the charging of a reasonable additional premium.

C Court Attendance

For any person described in i) and ii) below who actually attends a court or an arbitration or an adjudication hearing as a witness in connection with a **Claim** notified under and covered by this **Section**, the **Insurer** will pay the following rates per day for each day on which attendance in court has been required:

- i) for any principal, partner, director or **Member** of an **Insured**: £300
- ii) for any **Employee**: £150

No **Retention** shall apply to this Cover.

D Disputed Fees

At the sole discretion of the **Insurer**, the **Insurer** will compensate the **Insured** for the **Disputed Fees** where the **Insured** agrees not to contest any outstanding fees and where at the sole discretion of the **Insurer**, the **Insurer** decides that by not contesting any outstanding fees that this will prevent a **Claim**.

E Fraud and Dishonesty

The **Insurer** will pay on behalf of any **Insured**, who is not the actual perpetrator, all **Loss** resulting from any **Claim** first made against any **Insured** during the **Period of Insurance** and notified to the **Insurer** as required by this **Section** for **Fraud/Dishonesty** of any **Employee(s)** of the **Company** provided that the relevant fraudulent or dishonest conduct occurred before the date of discovery by any principal, partner, director or **Member** of a **Company** of reasonable cause of suspicion of **Fraud/ Dishonesty** on the part of the **Employee(s)**, whether or not it is possible at that date to identify the **Employee(s)** involved in the **Fraud/Dishonesty**.

F Joint Ventures

The **Insurer** will pay on behalf of any **Insured** all **Loss** resulting from any **Claim** first made against any **Insured** during the **Period of Insurance** and notified to the **Insurer** as required by this **Section** where liability results directly from a **Wrongful Act** of an **Insured** arising out of the **Professional Services** carried out by an **Insured** for and in the name of any joint venture of which an **Insured** forms part, provided that an **Insured** has declared in the **Submission** all fees/turnover received from any joint venture.

The liability of the **Insurer** shall be proportionate to the lowest of:

- i) the percentage of the share capital of the joint venture owned by an **Insured**; or
- ii) the percentage of the voting control of the joint venture exercised by an **Insured**;

unless the **Insurer's** written agreement has been first obtained to an alternative proportion and an endorsement made upon this **Section**.

This Cover shall apply to an **Insured** only. No other participant in such joint venture, and no other **Third Party**, shall have any rights under this **Section**, and neither shall the **Insurer** be liable to pay a contribution to any insurer of any other participant in such joint venture.

G Lost Documents

The **Insurer** shall indemnify an **Insured** for costs and expenses reasonably incurred with the **Insurer's** prior written consent in replacing or restoring any **Documents** which are the property of an **Insured** and which during the **Period of Insurance** have been destroyed, damaged, lost, distorted, erased or mislaid provided that:

- i) such loss or damage is sustained while the **Documents** are either: (1) in transit; or (2) in the custody of an **Insured** or of any person to whom an **Insured** has entrusted them in the ordinary course of their **Professional Services**;
- ii) the **Documents** have been the subject of a diligent search by or on behalf of an **Insured**;
- iii) the amount of any claim for such costs and expenses shall be supported by evidence of expenditure that shall be subject to approval by a competent person to be nominated by the **Insurer** with the consent of the **Policyholder**; and
- iv) the **Insurer** shall not be liable for any costs and expenses arising out of wear, tear and/or gradual deterioration, moth and vermin.

This cover will be subject to a Sub-limit of Liability of £100,000 in the aggregate during the **Period of Insurance**. A **Retention** of £250 each and every claim shall apply to this Cover.

H Mitigation

Where the **Insured** first makes a determination during the **Period of Insurance** that it has committed a **Wrongful Act** requiring remediation or mitigation, the **Insurer** will pay the reasonable and direct cost of any remediation or mitigation, provided that:

- i) the **Insurer** shall during the **Period of Insurance** have been informed in writing of the **Wrongful Act** and the work that is required to rectify it or mitigate its consequences;
- ii) the **Insurer** shall be reasonably satisfied that an **Insured** has committed a **Wrongful Act** requiring remediation or mitigation and that such costs are necessary to prevent or reduce the amount of a **Claim** covered under Cover A, and that the amount of **Damages** prevented or reduced would be greater than the cost of the work;
- iii) such costs are supported by evidence of expenditure which shall be subject to approval by a competent person to be nominated by the **Policyholder** with the consent of the **Insurer**;
- iv) such costs shall not include any element of profit or loss of profit, nor any element of overheads, staff remuneration, standing idle time or management time of an **Insured**; and
- v) the **Insurer** has consented in writing to the payment of such costs before work is carried out, such consent not to be unreasonably withheld, however whilst awaiting the **Insurers** consent, the **Insurers** will indemnify an **Insured** for such expense incurred over a period not exceeding 14 days beginning from the time mitigation was undertaken by an **Insured** subject to condition ii) above, being satisfied otherwise all pre approval costs will be borne by an **Insured**.

I Specialist Consultants

The **Insurer** will pay on behalf of an **Insured** all **Loss** resulting from any **Claim** first made against an **Insured** during the **Period of Insurance** and notified to the **Insurer** as required by this **Section** for any **Wrongful Act** of specialist consultants, designers or sub-contractors of an **Insured** who are engaged in the performance of an **Insured's Professional Services**.

The **Insurer** will only pay **Loss** to the extent that an **Insured** has not waived or otherwise impaired any rights of recourse against such specialist designers, consultants or sub-contractors.

Limit and Retention

Limit of Liability

- A. the total amount payable by the **Insurer** under this **Section** (excluding **Defence Costs**) for any one **Claim**, or cover provided under the Disputed Fees or Mitigation clauses for any one **Wrongful Act**, during the **Period of Insurance** shall not exceed the **Limit of Liability**.
- B. Sub-limits of liability are part of and not payable in addition to the **Limit of Liability**.
- C. **Defence Costs** are payable in addition to the **Limit of Liability**. In the event that the amount paid by or on behalf of any **Insured** to dispose of a **Claim** exceeds the **Limit of Liability** for any one **Claim**, then this **Section** shall only cover the same proportion of **Defence Costs** as the **Limit of Liability** for any one **Claim** bears to the total amount paid to dispose of the **Claim** (exclusive of **Defence Costs**).
- D. Where a **Claim** is made against more than one **Insured** under this **Section**, this shall not operate to increase the total amount payable by the **Insurer** for any one **Claim** under this **Section**.
- E. The **Limit of Liability** is the total sum payable by the **Insurer** for any one **Claim**. Any **Damages** paid by the **Insurer** under this **Section** in respect of a **Claim** shall erode the **Limit of Liability** for that **Claim**. In no circumstances shall the liability of the **Insurer** for any one **Claim** exceed the **Limit of Liability**.

Other Insurance / Indemnification

Unless otherwise required by law, cover under this **Section** is provided only as excess over any self-insurance or other valid and applicable insurance, unless such other insurance is written only as specific excess insurance over the **Limit of Liability**. This **Section** or **Policy** shall not cover **Defence Costs** of any **Claim** where another insurance policy imposes upon another insurer a duty to defend such **Claim**.

Retention

The **Insurer** shall be liable only for **Loss**, or cover under the Disputed Fees or Mitigation Cover, which exceeds the **Retention**. For the avoidance of doubt, the **Retention** does not apply to **Defence Costs**. It is to be borne by an **Insured** and shall remain uninsured. The **Retention** is not part of the **Limit of Liability**. A single **Retention** shall apply per **Claim**.

Section Exclusions

This **Section** shall not cover **Loss** in connection with any **Claim**:

1. Bodily Injury/ Property Damage

arising out of, based upon or attributable to **Bodily Injury** or **Property Damage** unless arising from an actual or alleged failure to achieve the legally required standard of care, diligence and expertise in performing **Professional Services**.

2. Conduct

arising out of, based upon or attributable to any actual or alleged dishonest, fraudulent or criminal conduct of an **Insured**.

This exclusion shall not apply to Cover E Fraud and Dishonesty.

3. Contractual Liability

arising out of, based upon or attributable to any: liability assumed or accepted by an Insured under any contract or agreement or any guarantee, warranty or indemnity except;

- (i) the **Insured's** warranty; to its client to perform services with reasonable skill and care; or
- (ii) the **Insured's** warranty to its client to supply goods that are of satisfactory quality or fit for their intended purpose; or
- (iii) the **Insured's** warranty to its client that its goods or services will materially conform to an agreed written specification forming part of the contract with its client; or
- (iv) the **Insured's** indemnity to its client that goods or services will not infringe the intellectual property rights of a third party or breach a duty of confidentiality; or
- (v) the **Insured's** agreement in writing with a client to pay liquidated damages as the sole remedy for a breach of contract by the **Insured**, provided that the **Insured** can demonstrate to the **Insurer's** reasonable satisfaction that the liquidated damages are a genuine pre-estimate of the loss likely to be suffered by the client as a direct result of the breach of contract by the **Insured**.

4. Correcting Problems

If the **Insured** failed to take reasonable steps to correct, at its own expense, any defect in its goods or services prior to acceptance by the client or within 6 months after acceptance by the client or any longer period contractually agreed with the client. A failure to correct defects as a result of a failure to retain, where the **Insured** is permitted to do so, source code or backups of software will be considered a failure to take reasonable steps.

5. Costs Assessment

arising out of, based upon or attributable to any failure by any **Insured** or other party acting for an **Insured** to make an accurate pre-assessment of the cost of performing **Professional Services**.

6. Counterfeit Goods

arising out of, based upon or attributable to counterfeit goods, unless obtained from a source approved by the originator of the goods.

7. Directors' and Officers' Liability

arising out of, based upon or attributable to any Claim made against an Insured in their capacity as a director, officer, trustee, Member or partner of the Company in respect of the performance or non - performance of their duties as a director, officer, trustee, Member or partner of the Company.

8 Employers Liability

by any person for bodily injury, sickness, disease or death incurred, contracted or occurring whilst under a contract of service or apprenticeship with an Insured or for any breach of any obligation owed by an Insured as an employer.

9. Employment Practice Violation

arising out of, based upon or attributable to any act, error or omission with respect to any employment or prospective employment of any past, present, future or prospective employee or Insured Person of any Company.

10. Infrastructure

arising out of, based upon or attributable to:

- i) software or mechanical failure;
- ii) electrical failure, including any electrical power interruption, surge, brown out or black out; or
- iii) telecommunications or satellite systems failure;

outside the direct control of an **Insured**.

11. Inherent Defects

arising out of, based upon or attributable to any inherent defect in any goods which originate from a **Third Party**.

12. Insolvency

arising out of, based upon or attributable to the insolvency, liquidation, administration or receivership of the **Company**.

13. Manufacturing Liability

arising out of, based upon or attributable to any manufacturing defect in any computer hardware or firmware.

14. Onerous Contracts

arising out of, based upon or attributable to

- (i) the **Insured's** failure to take reasonable steps, before entering into a contract or varying a contract with a client, to ensure that it has sufficient human resources, technical resources, financial resources and expertise to provide the agreed deliverables or service in accordance with the contract and any representations made by or on behalf of the Insured; or
- (ii) the **Insured** agreeing in its contract with a client to use more than reasonable skill and care or to supply something that is more than reasonably fit for its intended purpose or to assume a greater financial responsibility for any claim covered by this insurance than would otherwise be the case in the absence of the agreement.

15. Patents and Trade Secrets

arising out of, based upon or attributable to the breach of licences concerning the infringement or misappropriation of any patents **Trade Secrets**.

16. Pollution

arising out of, based upon or attributable to any direction, request or effort to: (a) test for, monitor, clean up, remove, contain, treat, detoxify or neutralise **Pollutants**, or (b) respond to or assess the effects of **Pollutants**.

17. Prior Claims/Circumstances

made prior to the inception of this **Section** including any **Related Claims** thereto, or arising out of, based upon or attributable to a circumstance which has been properly notified under any other policy or certificate of insurance attaching prior to the inception of this **Section** including any **Related Claims** thereto.

18. Prior Acts

arising out of, based upon, attributable to or in any way involving any **Wrongful Act** which first takes place before the **Retroactive Date**.

19. Recovery

to the extent that the **Insured's** right of recovery of such **Loss** from a **Third Party** is restricted by contract.

20. Trade Debts

arising out of, based upon or attributable to any: (i) trading debt incurred by an **Insured** or (ii) guarantee given by an **Insured** for a debt.

21. U.S.A./Canada

made or pending within or to enforce a judgment obtained in the United States of America, Canada, or any of their territories or possessions.

22. War/Terrorism

arising out of, based upon or attributable to any war (declared or otherwise), **Terrorism**, warlike, military, terrorist or guerrilla activity, sabotage, force of arms, hostilities (declared or undeclared), rebellion, revolution, civil disorder, insurrection, usurped power, confiscation, nationalisation or destruction of or damage to property by or under the order of, any governmental, public or local authority or any other political or terrorist organisation.

Section Claim Conditions

1 Claim Allocation

In the event that any **Claim** involves both covered matters and matters or persons not covered under this **Section**, a fair and proper allocation of any cost of defence, damages, judgments and/or settlements shall be made between each **Insured** and the **Insurer** taking into account the relative legal and financial exposures attributable to covered matters and matters not covered under this **Section**.

2 Circumstances

The **Policyholder** shall as soon as reasonably practicable during the **Period of Insurance** notify the **Insurer** at the address listed in the Section Claim Notification Condition of any circumstance of which any **Insured** becomes aware during the **Period of Insurance** which is reasonably expected to give rise to a **Claim**. The notice must include at least the following:

- i) a statement that it is intended to serve as a notice of a circumstance of which an **Insured** has become aware which is reasonably expected to give rise to a **Claim**;
- ii) the reasons for anticipating that **Claim** (including full particulars as to the nature and date(s) of the potential **Wrongful Act(s)**);
- iii) the identity of any potential claimant(s);
- iv) the identity of any **Insured** involved in such circumstance; and
- v) the date on and manner in which an **Insured** first became aware of such circumstance.

Provided that notice of any such circumstance has been given in accordance with the requirements of this Condition, any later **Claim** arising out of such notified circumstance (and any **Related Claims**) shall be deemed to be made at the date when the circumstance was first notified to the **Insurer**.

3 Claim Notification

The **Policyholder** shall give written notice to the **Insurer** of any **Claim** first made against an **Insured** as soon as practicable and during the **Period of Insurance**. All notifications must be in writing to:

Claims Division
Allianz Insurance plc
500 Avebury Boulevard
Milton Keynes
MK9 2XX

or by telephone to 0344 893 9500
Lines are open from 9am to 5pm Monday to Friday

If posted, the date of posting shall constitute the date that notice was given, and proof of posting shall be sufficient proof of notice.

4 Cooperation

An **Insured** will at their own cost:

- i) render all reasonable assistance to the **Insurer** and co-operate in the defence of any **Claim** and the assertion of indemnification and contribution rights;
- ii) use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** under this **Section**; and
- iii) give such information and assistance to the **Insurer** as the **Insurer** may reasonably require to enable it to investigate any **Loss** or determine the **Insurer's** liability under this **Section**.

5 Claim Defence

The **Insurer** does not assume any duty to defend, and an **Insured** shall defend and contest any **Claim** made against them unless the **Insurer**, in its sole and absolute discretion, elects in writing to take over and conduct the defence and settlement of any **Claim**. If the **Insurer** does not so elect, it shall be entitled, but not required, to participate fully in such defence and the negotiation of any settlement that involves or appears reasonably likely to involve the **Insurer**. In the event that the **Insurer** decides that representation by a solicitor is necessary (such decision to be at the sole discretion of the **Insurer**) then an **Insured** shall select one of the **Legal Panel** to provide such legal representation.

6 Insured's Consent

The **Insurer** may make any settlement it deems expedient of any **Claim** against any **Insured**, subject to such **Insured's** written consent. Where an **Insured** does not consent the **Insurer** may elect to pay to an **Insured** the **Settlement Value** less the applicable **Retention** that the **Insurer** wishes to accept. Upon such payment being made there is no further cover available under this **Section** for that **Claim**.

7 Insurer's Consent

No **Insured** shall admit or assume any liability, enter into any settlement agreement, or consent to any judgment without the prior written consent of the **Insurer**, other than where provided for under the terms of the Mitigation Cover.

8 Fraudulent Claims

If any **Insured** shall give any notice or claim cover for any **Loss** under this **Section** of the **Policy** knowing such notice or claim to be false or fraudulent as regards amounts or otherwise, such **Loss** shall be excluded from cover under this **Section** of the **Policy**, and the **Insurer** shall have the right, in its sole and absolute discretion, to avoid its obligations under or void this **Section** and the **Policy** in its entirety, and in such case, all cover for **Loss** under this **Section** and the **Policy** shall be forfeited, all premium shall be deemed fully earned and non-refundable and the **Policyholder** shall reimburse the **Insurer** for any payments made under this **Section** and the **Policy**.

9 Payment of Defence Costs

The **Insurer** shall pay **Defence Costs** covered by this **Section** promptly after sufficiently detailed invoices for those costs are received by the **Insurer**. The **Policyholder** shall reimburse the **Insurer** for any payments which are ultimately determined not to be covered by this **Section**.

10 Related Claims

If during the **Period of Insurance** a **Claim** is made or a circumstance is notified in accordance with the requirements of this **Section** any **Related Claim** made after expiry of the **Period of Insurance** will be accepted by the **Insurer** as having been:

- i) made at the same time as the notified **Claim** was made or the relevant circumstance was notified, and
- ii) notified at the same time as the notified **Claim** or circumstance.

All **Related Claims** shall be deemed to be one single **Claim** and deemed to be made at the date of the first **Claim** of the series or at the first circumstance notified, whichever is first.

11 Claim Settlement

The **Insurer** shall be under no obligation (save where requested by the **Policyholder**) to make any payment to an **Insured** other than the **Policyholder** and shall unless otherwise requested by the **Policyholder** make payment of all losses insured hereunder to the **Policyholder** and such payment shall constitute a full and complete release and discharge of the **Insurer's** liabilities in respect of all and any such loss whether suffered directly by the **Policyholder** or not.

Section General Conditions

1 Assignment

This **Section** and any rights under or in respect of it cannot be assigned by an **Insured** without the prior written consent of the **Insurer**.

2 Cancellation

This **Section** may be cancelled:

- (i) by the **Insurer** pursuant to the Premium Payment Condition for non-payment of premium; or
- (ii) if no notice of a **Claim** or circumstance which is reasonably expected to give rise to a **Claim** has been provided to the **Insurer** under this **Section**, by the **Policyholder** with effect immediately upon the **Insurer's** receipt of written notice of such cancellation; the **Insurer** shall retain the customary short rate proportion (unexpired portion of premium less handling charges) of the premium. If notice of a **Claim** or circumstance which is reasonably expected to give rise to a **Claim** has been provided to the **Insurer** under this **Section**, the premium shall not be returnable and shall be deemed fully earned at cancellation;
- (iii) by mutual agreement between the **Insurer** and the **Policyholder**.

3 Change of Control

The **Insurer** shall not be liable to make any payment or to provide any services in connection with any **Claim** arising out of, based upon or attributable to a **Wrongful Act** committed after the occurrence of a **Transaction**.

If during the **Period of Insurance** an administrator, liquidator or receiver is appointed to a **Subsidiary**, then the cover provided under this **Section** with respect to such **Subsidiary** is amended to apply only to **Wrongful Acts** committed prior to the date of such appointment.

4 Contract Rights

Nothing in this **Section** is intended to confer an enforceable benefit on any **Third Party**, whether pursuant to the Contract (Rights of Third Parties) Act 1999 or otherwise

5 Dispute Resolution

Where, following receipt by the **Insurer** of all information reasonably required to provide such decision;

- (i) a final decision has been given by the **Insurer** regarding any aspect of this **Section** of the **Policy** or any matter relating to cover thereunder;
- (ii) that decision is disputed between the **Insurer** and an **Insured**; and
- (iii) such dispute can not be resolved within 14 days of the date on which such decision is communicated to the **Policyholder** or its insurance broker,

the dispute shall be referred to arbitration under The Insurance & Reinsurance Arbitration Society ("A.R.I.A.S (UK)") Arbitration Rules.

The Arbitration Tribunal (the "Tribunal") shall consist of three arbitrators, one to be appointed by an **Insured** party involved in the arbitration, one to be appointed by the **Insurer** and the third to be appointed by the two appointed arbitrators. The third member of the Tribunal shall be appointed as soon as practicable (and no later than 28 days) after the appointment of the two party-appointed arbitrators. The Tribunal shall be constituted upon the appointment of the third arbitrator.

The arbitrators shall be persons (including those who have retired) with not less than ten years' experience of insurance or reinsurance within the industry or as lawyers or other professional advisers serving the industry.

Where a party fails to appoint an arbitrator within 14 days of being called upon to do so or where the two party-appointed arbitrators fail to appoint a third within 28 days of their appointment, then upon application, A.R.I.A.S (UK) will appoint an arbitrator to fill the vacancy. At any time prior to the appointment by A.R.I.A.S (UK) the party or arbitrators in default may make such appointment.

The Tribunal may at its sole discretion make such orders and directions as it considers necessary for the final determination of the matters in dispute. The Tribunal shall have the widest discretion permitted under the law governing the arbitral procedure when making such orders or directions. The seat of arbitration shall be London, England and the law governing the arbitration shall be under the law of England & Wales.

6 Plurals, Headings and Titles

The descriptions in the headings and titles of this **Section** are solely for reference and convenience and do not lend any meaning to this contract. Words and expressions in the singular shall include the plural and vice versa. In this **Section**, words in bold typeface have special meaning and are defined. Words that are not specifically defined in this **Section** or the **Policy** have the meaning normally attributed to them.

7 Premium Payment

The **Policyholder** undertakes that the premium (including mid-term amendment premium) shall be paid to the **Insurer** on request (or, in respect of instalment premiums, when they are due). The **Policyholder** shall have the burden of establishing that such payment has been made.

If the premium (including mid-term amendment premium) has not been paid to the **Insurer** as requested (and, in respect of instalment premiums, by the date they are due) the **Insurer** shall have the right to cancel this **Section** of the **Policy** by notifying the **Policyholder** in writing direct or via the insurance broker as appropriate. In the event of cancellation by the **Insurer** pursuant to this Condition, premium is due to the **Insurer** on a pro-rata basis for the period that the **Insurer** was on risk but the full premium is due to the **Insurer** in the event that prior to the date of termination a **Claim** is made, or a circumstance is notified in accordance with the requirements of this **Section** of the **Policy**.

It is agreed that the **Insurer** shall give not more than 7 days prior notice of cancellation under this Condition to the **Policyholder** in writing direct or via the insurance broker as appropriate. If the premium due is paid in full to the **Insurer** before the notice period expires, notice of cancellation shall automatically be revoked. If not, this **Section** of the **Policy** shall automatically terminate and be of no effect at the end of the notice period.

8 Scope and Governing Law

Where legally permissible and subject to all terms and conditions of this **Section**, this **Section** shall apply to any **Claim** made against any **Insured** anywhere in the world. Any interpretation of this **Section** of the **Policy** relating to its construction, validity or operation shall be made exclusively in accordance with the laws of England and Wales and in accordance with the English text as it appears in this **Section** and the **Policy**.

9 Subrogation

An **Insured** shall take all steps necessary or such steps as are required by the **Insurer** before or after any payment by the **Insurer** under this **Section** to preserve the rights and remedies which an **Insured** may have to recover the **Loss**. If any payment is to be made under this **Section** in respect of a **Claim**, the **Insurer** shall be subrogated to all rights of recovery of an **Insured** whether or not payment has in fact been made and whether or not an **Insured** has been fully compensated for its actual **Loss**. The **Insurer** shall be entitled to pursue and enforce such rights in the name of an **Insured**, who, both before and after payment under this **Section**, shall provide the **Insurer** with all reasonable assistance and co-operation in doing so, including the execution of any necessary instruments and papers. An **Insured** shall do nothing to prejudice the **Insurer's** rights under this Subrogation Condition.

The **Insurer** agrees not to exercise any such rights of recovery against any **Employee** unless the **Claim** is brought about or contributed to by the dishonest, fraudulent, intentional criminal or malicious act or omission of the **Employee**. In its sole discretion, the **Insurer** may, in writing, waive any of its rights set forth in this Subrogation Condition.

Any amounts recovered in accordance with this Condition shall be applied in the following order:

- (i) to compensate the **Insurer** and an **Insured** for the costs incurred in making the recovery (such payment to be allocated between the **Insurer** and an **Insured** in the same proportions as they have borne the costs thereof); and
- (ii) to the **Insurer** up to the amount of the **Loss** paid by the **Insurer**; and
- (iii) to an **Insured** in respect of any uninsured element of the **Claim** (including the **Retention** under this **Section**).

10 Innocent Non Disclosure

In granting cover to an **Insured**, the **Insurer** has relied upon the material statements and particulars in the **Submission** together with its attachments and other information supplied. These statements, attachments and information are the basis of cover and shall be considered incorporated into and constitute part of this **Section** and the **Policy**.

The **Insurer** will not exercise its right to avoid this **Section** or the **Policy** on the grounds of any alleged non-disclosure or misrepresentation of facts or alleged untrue statements in any information supplied to it, provided that an **Insured** shall establish to the **Insurer's** reasonable satisfaction that such alleged non - disclosure, misrepresentation or untrue statement was free of any fraudulent conduct or intent to deceive. Where such non - disclosure, misrepresentation or untrue statement has prejudiced the **Insurer's** consideration of terms under this **Section** or the **Policy**, the **Insurer** shall be entitled to charge a reasonable additional premium and/or amend **Section** or **Policy** terms and conditions in light of such prejudice.

Should an **Insured** have failed to inform the **Insurer** before inception of this **Section** or the **Policy** or increase in cover or other variation of its terms of any circumstance of which an **Insured** was aware which might give rise to a **Claim** or payment of **Loss** hereunder, and such failure is accepted by the **Insurer** as having been free of any fraudulent conduct or intent to deceive, the **Insurer's** liability under this **Section** or the **Policy** shall not extend beyond that which would have been owed pursuant to the earliest such previous insurance under which the circumstance could have been notified or that which was available prior to any increase in cover or variation of terms. Furthermore, where such failure to notify a circumstance, as described above, results in prejudice to the handling or settlement of any **Claim** under this **Section** or the **Policy**, the **Insurer** shall be entitled to reduce the indemnity afforded under this **Section** or the **Policy** in respect of such **Claim** (including **Defence Costs**) to such sum as in the **Insurer's** reasonable opinion would have been payable by them in the absence of such prejudice.

11 Administration

The **Policyholder** shall act on behalf of each and every insured party with respect to:

- i) negotiating the terms and conditions of and binding cover; and
- ii) the exercise of all rights of **Insured's** under this **Section** or the **Policy**; and
- iii) all notices; and
- iv) premiums; and
- v) endorsements to this **Section** or the **Policy**; and
- vi) the appointment of a member of the **Legal Panel** to defend a **Claim**; and
- vii) dispute resolution; and
- viii) the receipt of all amounts payable to an **Insured** by the **Insurer** under this **Section**.

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