

## PROFESSIONAL INDEMNITY INSURANCE POLICY WORDING

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### IMPORTANT: This is a “claims made” Policy

This Policy only covers Claims first made and reported to Insurers during the Period of Insurance

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### 1. INSURING CLAUSE

- 1.1 The Insured having made a proposal and declaration and having paid or agreed to pay the Premium, The Insurer will indemnify the Insured to extent stated herein against any Claim made within the Geographical Limits for which the Insured may become legally liable, first made against the Insured and notified to the Insurer during the Period of Insurance arising out of the professional conduct of the Insured’s Business Activity alleging:
- a) negligence or breach of duty of care;
  - b) negligent misstatement or negligent misrepresentation;
  - c) unintentional infringement of intellectual property rights including copyright, patent, trademark or moral rights or any act of passing off;
  - d) unintentional breach of confidence or misuse of information, which is either confidential or subject to statutory restrictions on its use;
  - e) unintentional defamation;
  - f) loss of Documents;
  - g) dishonesty of employees excluding any claim or loss resulting from the dishonest, fraudulent, criminal or malicious acts or omissions committed after the Insured could reasonably have discovered or suspected improper conduct by the employee. No indemnity will be provided to any person committing or condoning any dishonest, fraudulent, malicious or criminal acts or omissions;
  - h) any other civil liability;
- Unless excluded under Section 4 below.
- 1.2 The Insurer will also indemnify the Insured for Defence Costs where such costs have been incurred with the Insurer’s prior written consent.
- 1.3 The Insurer will indemnify the Insured against any Claim falling within the Insuring Clause which is brought as a direct result of Business Activity undertaken on behalf of the Insured by any sub-contractor or outsourcer, provided that rights of recovery are not waived or otherwise impaired.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Policy, unless the context otherwise requires, the following words and expressions shall bear the meaning set out below:

**Broker** means Trafalgar Risk Management Ltd, The Lloyds Building, 12 Leadenhall Street, London EC3V 1LP.

**Business Activity** means the activity(ies) shown in the Schedule, which the Insured performs in the ordinary course of business and for which the Insured is remunerated.

**Circumstance** means information or facts or matters of which the Insured is aware which are likely, when considered objectively, to give rise to a Claim against the Insured.

**Claim** means any one claim or series of claims arising from a Circumstance or occurrence or a series of Circumstances or occurrences consequent upon or attributable to one source or original cause.

**Defence Costs** means costs and expenses incurred by or on behalf of the Insured with the Insurer’s consent and agreement to investigate, settle or defend a Claim against the Insured.

**Document** means agreements, plans, records, deeds, books, letters, certificates, documents or forms of any description whether written, printed or reproduced by any other method or means excluding bearer bonds or coupons, stamps, bank or currency notes or other negotiable instruments.

**Excess** means the amount stated in the Schedule, which the Insured must bear before the Insurer is liable to make any payment under this Policy.

**Geographical Limits** means worldwide excluding USA and Canada their Dominions or Protectorates or as varied or excluded in the Schedule.

**Inception Date** means the date on which the Insured's insurance cover commences as specified in the Schedule.

**Insured** means the individual person, partner, company, firm or organisation (and any subsidiary company or other associated organisation) named in the Schedule including all directors, partners and employees engaged in the Insured's Business Activity.

**Insurer** means Trafalgar Insurance Company Ltd, Normandie House, Rue a Chiens, St. Sampson, Guernsey, GY2 4AE.

**Limit of Indemnity** means the maximum amount recoverable under this Policy as stated in the Schedule. The Limit of Indemnity shall include all Defence Costs unless stated otherwise in the Schedule.

**Period of Insurance** means from the Inception Date to the date on which insurance cover ceases as stated in the Schedule.

**Policy** means this policy of insurance between the Insurer and Insured together with the Schedule and Proposal and any attaching endorsement issued by the Insurer. The parties agree that policies, endorsements, schedules and proposals may be submitted and issued in electronic format.

**Premium** means the amount payable by the Insured for this Policy together with Insurance Premium Tax (IPT) as stated in the Schedule.

**Proposal** means the proposal for insurance provided under this Policy including any documentation or information submitted in support by the Insured to the Insurer.

**Schedule** means the schedule of insurance issued by the Insurer specifying inter alia the Policy number, Premium, the Insured's name, the Insured's Business Activity, the Limit of Indemnity, Defence Costs and the Period of Insurance.

- 2.2 This Policy and Schedule and any attaching endorsements shall be read together.
- 2.3 References to any statute, statutory provision, Order or Rule include a reference to that legislation or those Rules as amended, extended, consolidated or replaced from time to time (whether before, on or after the Inception Date of this Policy) and include any former legislation or Rules which it re-enacts, consolidates or replaces and any order, regulation, instrument or other subordinate legislation made under the relevant legislation or rules.
- 2.4 Unless the context otherwise requires, words denoting the singular shall include the plural and vice-versa, references to any gender shall include all other genders.

### 3. OBSERVANCE OF TERMS

- 3.1 The Insured must observe and comply with the terms and conditions of this Policy. Any term or condition of this Policy insofar as it relates to anything to be done or complied with by the Insured shall be conditions precedent to the Insurer's liability to make any payment under this Policy.
- 3.2 The Insurer shall only be liable to bear VAT to the extent that VAT is irrecoverable by the Insured. For the avoidance of doubt, any element of VAT, which the Insurer is obliged to pay, shall be encompassed within the Limit of Indemnity.
- 3.3 If the Insured is adjudged bankrupt or deemed insolvent during the Period of Insurance, the Insurer reserves the right to withdraw cover under the Policy in which case the Insurer shall have no liability to make any payment in respect of any Claim and/or Defence Costs notified after the date of Insured is adjudged bankrupt or deemed insolvent.

#### 4. EXCLUSIONS

This Policy shall not cover and the Insurers will not provide indemnity and or Defence Costs and will not make any payment for any of the following:

- 4.1 Any Claim or loss involving death, bodily injury, mental injury or disease to any person or physical loss or damage to property unless arising directly from your negligent advice or breach of duty of care in the performance of Business Activity.
- 4.2 Any Claim, potential Claim or Circumstance known to the Insured prior to inception of this Policy and which the Insured knew or ought reasonably to have known might result in a Claim against the Insured.
- 4.3 Any Claim, potential Claim or Circumstance which has or ought to have been notified under any other policy of insurance prior to the Inception Date.
- 4.4 Any Claim made against the Insured from an entity in which the Insured exercises a financial or managerial interest.
- 4.5 Any Claim made against any Insured by any other Insured.
- 4.6 Any Claim arising from the Insured's insolvency or impecuniosity or lack of financial resources.
- 4.7 Any fines, penalties, punitive or exemplary damages or other non-compensatory damages the Insured is ordered to pay by a Court or other official body.
- 4.8 Any fees claimed back or withheld by a customer of the Insured arising from non-performance of the Insured's contractual obligations unless such fees form part of a compromise settlement of a Claim.
- 4.9 Any Claim arising out of the Insured's contractual liability unless such liability would have existed and/or attached in the absence of such contract or agreement.
- 4.10 Any Claim arising from the Insured's appointment to the position of Registered Auditor or Licensed Insolvency Practitioner.
- 4.11 Any Claim arising from the investment of, or direct advice on the investment of, client funds.
- 4.12 Any Claim arising from the sale or purchase of or dealing in any stocks, shares, securities or any other form of investment business or the provision of legal advice or legal services.
- 4.13 Any Claim arising from the administration, management or operation of any pension, employee benefits scheme, trust fund or collective investment scheme.
- 4.14 Any Claim arising from breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
- 4.15 Any Claim arising from any express or implied warranty or guarantee concerning the performance of any investment or portfolio of investments.
- 4.16 Any Claim in connection with the estimate of construction costs, except where such estimates are compiled by professionally qualified Quantity Surveyors.
- 4.17 Any Claim arising out of fungus, mildew or mould.
- 4.18 Any Claim arising from the trading liabilities of any business the Insured has managed or carried on unless such Claim arises from the Insured's alleged negligence whilst acting in any receivership or liquidation in pursuance of the Insured's Business Activity.
- 4.19 Any Claim arising from date recognition failure.
- 4.20 Any Claim arising from the Insured's loss or distortion of electronically held data.
- 4.21 Any Claim arising from transmission of a computer virus, worm, logic bomb or trojan horse.
- 4.22 Any inherent or latent defect in any software, hardware, firmware, cabling or electronic equipment supplied by the Insured directly or via a third party.
- 4.23 Any supply, manufacture, sale, installation or maintenance of any product.
- 4.24 Any Claim arising from any survey or valuation of physical property or any construction or erection work.

- 4.25 Any claim arising from the Insured's ownership, possession or use of any land or building, any animal, any aircraft, any watercraft or any motor vehicle.
- 4.26 Any liability arising from anyone's employment with or work for the Insured, or any breach of an obligation owed by the Insured as an Employer, or any kind of discrimination, harassment or unfair treatment.
- 4.27 Any personal liability incurred by a director or officer of the Insured when acting in that capacity or managing the business.
- 4.28 Any Claim, potential Claim or circumstance in respect of which the Insured is, or would be but for the existence of this Policy, entitled to indemnity under any other policy of insurance.
- 4.29 Any Claim arising from obscenity, blasphemy or pornographic material, or from any statement the Insured knew, or ought reasonably to have known, was defamatory at the time of publication.
- 4.30 Any pollution or contamination (including any removal, neutralising or cleaning up costs).
- 4.31 Any Claim involving asbestos.
- 4.32 Any Claim directly or indirectly caused by or contributed to, by, or arising from:
- i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
  - ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
- 4.33 War, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, 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, any act or acts of terrorism, force of violence for political, religious or other ends directed towards the overthrowing or influencing of the 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. The burden of proving that a Claim does not fall within this exclusion shall be upon the Insured.
- 4.34 Any contract where the Insured has failed to take reasonable steps, either before or during the contract, to ensure they could meet the requirements of the contract having regard to the resources and skills available to them.
- 4.35 Any Claim arising from any contract where the Insured does not either exclude or limit their liability in respect of loss of data, software, profits, turnover, revenue, sales or any other consequential loss, where it was reasonable for them to do so.
- 4.36 Any Claim, including arbitration, brought outside the countries set out in the Schedule under Applicable Courts. This applies to proceedings in the applicable courts to enforce, or which are based on, a judgement or award from outside the applicable courts.

## 5. CLAIMS CONDITIONS

- 5.1 It is a condition precedent to the Insurer's liability to indemnify the Insured that the Insurer is notified in writing as soon as reasonably practicable:
- i) of any Claim, writ, demand for compensation or damages or Circumstance
  - ii) of the discovery, or the existence of reasonable grounds for the Insured's suspicion, that any employee has acted dishonestly
- In any event, such notification must be made during the Period of Insurance.
- 5.2 The Insured shall not admit liability or attempt to compromise, settle or defend a Claim without the Insurer's prior written consent.
- 5.3 The Insurer reserves the right, but not the obligation, to take control of and conduct the investigation, settlement or defence of any Claim in the Insured's name.
- 5.4 Legal proceedings against the Insured will only be defended if in the opinion of the Insurer there is a reasonable prospect of success after taking account of the commercial considerations and economics of defending such Proceedings.

- 5.5 If a covered or partially covered claim is brought against the Insured, the Insurer has the right to appoint suitably qualified legal representation to defend. At the Insurer's discretion this may be the Insured's choice of solicitor but on a similar fee basis as the Insurers solicitor and only for work done with prior written approval.
- 5.6 The Insurer has no duty to defend the Insured against any claim where the Insurer has paid the applicable Limit of Indemnity under the policy.
- 5.7 It is a condition precedent to the Insurer's liability to indemnify the Insured that the Insured shall at all times assist and cooperate with the Insurer at the Insured's cost in defence on any and all claims and the provision of information.
- 5.8 If the Insured receives or has knowledge of a 'Letter of Claim' or a threat of legal action or notification of legal action or the intent to take legal action then they must advise the Insurer within seven days.

## **6. SUBROGATION**

- 6.1 The Insurer shall be subrogated to the Insured's rights of recovery in relation to any claim or loss paid or payable under this Policy. The Insured shall co-operate fully with the Insurer in connection with any action which may be necessary to enforce any rights, remedies, relief or indemnity from other parties arising from the Insurer's rights of subrogation.

## **7. NON-DISCLOSURES AND MISREPRESENTATION**

- 7.1 For the avoidance of doubt The Insurer shall be entitled to void the Policy ab initio where there has been any non-disclosure of material facts or untrue statements made by the Insured prior to or at inception or at any time during the Period of Insurance.

## **8. ASSIGNMENT**

- 8.1 The Insured shall not be entitled to assign the benefit of this Policy without the Insurer's prior written consent.
- 8.2 This Policy shall be for the exclusive benefit of the Insured and that in no event shall anyone other than the Insured have any right of action under this Policy.

## **9. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 9.1 Unless expressly stated nothing in this Policy will create rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in favour of anyone other than the parties to this Policy.

## **10. CANCELLATION**

- 10.1 This Policy may be cancelled by the Insurer or on its behalf on 30 days written notice of cancellation to the Insured with an adjustment of Premium such that the Insurer receives or retains pro-rata Premium.
- 10.2 This Policy may be cancelled by the Insured on giving written notice to the Insurer. The Insurer will then pay the insured a return premium based on the gross premium less any commission or fees payable or paid by the insurer to the broker, and then based on a pro-rata return of the remaining net premium. The cancellation date will be the date the written communication was received by Insurers and the return of policy documentation will not be required.
- 10.3 No return of Premium will be made to the Insured where a Claim or potential claim has been notified during that Period of Insurance.

## **11. COMMUNICATIONS**

- 11.1 All communications and notices to the Insurer shall be deemed duly given if sent by first class post or email. All communications and notices to the Insured, shall be deemed to have been duly given if sent by first class post to the Insured at his last known address or the email address provided on their application for insurance.

## 12. GOVERNING LAW

12.1 Whilst this insurance contract has been entered into and formed under the law of Guernsey the parties agree that as regards interpretation and any dispute this Policy shall be subject to and construed in accordance with the laws of England and Wales and the Parties agree to be subject to the jurisdiction of the English and Welsh courts.

## IMPORTANT INFORMATION

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## 13. CLAIMS NOTIFICATION

Initial notification of a Claim or Circumstance in accordance with clause 5.1 must be made by the Insured in writing to the Insurer at:

**Trafalgar Insurance Company Ltd, Normandie House, Rue a Chiens, St. Sampson, Guernsey, GY2 4AE**

**Tel: 01481 210313 Fax: 01481 257852 E-mail: [claims@trafalgarinsurance.gg](mailto:claims@trafalgarinsurance.gg)**

## 14. TRAFALGAR INSURANCE COMPANY LIMITED

Trafalgar Insurance Company Limited is a company limited and registered in Guernsey under number 54460 and our registered office is Normandie House, Rue a Chiens, St Sampson, Guernsey, GY2 4E.

As an Insurer we are licensed and regulated by the Guernsey Financial Services Commission under the Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended, to write and insure international general insurance business. Our license reference is 2021810.

Details are available on the Regulated Entities section of the GFSC web site: [www.gfsc.gg](http://www.gfsc.gg)

Trafalgar Insurance Company Ltd is not covered by the Financial Services Compensation Service (FSCS).

## 14. COMPLAINTS PROCEDURE

We aim to provide a first class service at all times. If you have a complaint concerning the service you have received, then you are free to make a complaint and we will try to deal with that complaint fairly with the aim of achieving an early resolution if that is appropriate. Whatever is the outcome we will provide you with our final response within 8 weeks or a full reason why we cannot respond at that time.

To avoid undue delay as an Insured you should try to make your complaint against the appropriate party. If your complaint is about how the Policy was arranged, how the policy was sold to you or any services provided by the Broker then it is more likely that your complaint should be addressed to the broker.

If you feel that your complaint refers to the policy wording, the policy summary or how claims were handled then it is more likely that your complaint should be addressed to the Insurer.

If you are in doubt you are free to address your complaint to both Insurer and Broker at the same time.

If you wish to address your complaint to the Insurer then please address correspondence to:

**The Complaints Director  
Trafalgar Insurance Company Ltd  
Normandie House  
Rue a Chiens  
St Sampson  
Guernsey  
GY2 4AE**

Upon receipt we will provide you with an acknowledgement, a complaint reference, the name of the person who will be handling your complaint and the next steps that we will be taking.