



TOKIO MARINE
HCC

Tokio Marine Europe S.A.

Spanish Branch

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POLICY DOCUMENT
PROFESSIONAL INDEMNITY INSURANCE FOR FINANCIAL INSTITUTIONS

PLEASE NOTE:

THIS IS A CLAIMS MADE POLICY.

THE COVER PROVIDED BY THIS POLICY IS AFFORDED SOLELY WITH RESPECT TO CLAIMS FIRST MADE DURING THE POLICY PERIOD OR DISCOVERY PERIOD (IF APPLICABLE)

THE LIMIT OF LIABILITY AVAILABLE SHALL BE REDUCED, AND MAY BE EXHAUSTED, BY THE PAYMENT OF LOSS (INCLUDING DEFENCE COSTS), INVESTIGATION COSTS OR MITIGATION AMOUNTS.

THE POLICYHOLDER IS REQUESTED TO READ THIS POLICY AND SCHEDULE CAREFULLY AND TO REVIEW THE COVERAGE WITH AN INSURANCE AGENT OR BROKER TO ENSURE THAT THE POLICYHOLDER FULLY UNDERSTANDS THE CONTENTS AND THE TERMS AND CONDITIONS OF COVER.

IF THE POLICY OR SCHEDULE IS INCORRECT PLEASE RETURN IT IMMEDIATELY FOR ALTERATION TO: TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA, TORRE DIAGONAL MAR, JOSEP PLA 2, PLANTA 10, 08019 BARCELONA, SPAIN



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SAMPLE



SCHEDULE

POLICY NUMBER:

ITEM 1. POLICYHOLDER:

- (a) Name:
- (b) Principal Address:

ITEM 2. POLICY PERIOD:

- (a) Inception Date:
- (b) Expiration Date:

both days inclusive at local standard time at the Principal Address stated in ITEM 1.

ITEM 3. LIMIT OF LIABILITY:

EUR in the aggregate, for all insurance covers combined

ITEM 4. AGGREGATE SUB-LIMIT(S):

- (a) Definition 2(N)(ii)(b) – Civil Fines and Penalties Not applicable / EUR [•]
- (b) Definition (O) – Mitigation Amounts Not applicable / EUR [•]
- (c) Extension (B) – Emergency Mitigation Amounts: EUR [•]

ITEM 5. RETENTION:

EUR [•]

ITEM 6. PREMIUM:

EUR [•] PLUS 6% IPT

ITEM 7. INSURER:

TOKIO MARINE EUROPE S.A.

ITEM 8. REQUIRED NOTICES TO BE ADDRESSED TO:

TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA
Torre Diagonal Mar
Josep Pla 2, Planta 10
08019 Barcelona, Spain
Attention: **Claims Manager**



ITEM 9. APPLICABLE LAW AND EXCLUSIVE JURISDICTION:

- (a) Applicable Law:
- (b) Exclusive Jurisdiction:
- (c) Dispute Resolution:
 - (i) Allocation disputes:
(Claims Condition 5(C)(ii))
 - (ii) Other disputes:
(General Condition 6(G))

ITEM 10. RETROACTIVE DATE:

NOT APPLICABLE / []

ITEM 11. DISCOVERY PERIOD:

(a) **Automatic Discovery Period:**

- (i) Duration: [] days after the Expiration Date
- (ii) Additional Premium: NIL

(b) **Optional Discovery Period:**

- (i) Duration: [] months after the Expiration Date
- (ii) Additional Premium: [] % of the premium stated in ITEM 6 of the SCHEDULE

ITEM 12. ENDORSEMENTS ATTACHED AT ISSUANCE:

ENDORSEMENT NO. 1:

ENDORSEMENT NO. 2:

INFORMATION FOR THE POLICYHOLDER REGARDING THE INSURER:

In accordance with Spanish Law, the **Insurer** is required to provide the **Policyholder** with the following information in written form before the conclusion of this Policy:

The risk is insured by TOKIO MARINE EUROPE S.A. having its registered office at 26, Avenue de la Liberté, L-1930, Luxembourg authorised by the Luxembourg Minister of Finance and regulated by the Commissariat aux Assurances (CAA), acting through its Spanish Branch with registered office at Torre Diagonal Mar, Josep Pla 2, Planta 10, 08019 Barcelona, Spain.

The **Policyholder** hereby confirms that it has received the foregoing information in written form before the conclusion of this Policy.

IN WITNESS WHEREOF, the **Insurer** has caused this Policy to be signed in the SCHEDULE by a duly authorised representative of the **Insurer**.



THIS IS A CLAIMS MADE POLICY. PLEASE READ IT CAREFULLY.

In consideration of the payment of the premium or agreement to pay the premium, in reliance upon the representations and statements contained in the **Proposal**, which shall be deemed to be incorporated herein and to form part of this Policy, and subject to the terms, conditions, definitions and exclusions contained in this Policy and any endorsements attached thereto, the **Insurer** and the **Policyholder** agree as follows:

1. INSURING AGREEMENTS

(A) CIVIL LIABILITY

The **Insurer** shall indemnify the **Insured** for **Loss** resulting from a **Claim** first made against such **Insured** during the **Policy Period** (or **Discovery Period**, if applicable).

(B) INVESTIGATION COSTS

The **Insurer** shall indemnify the **Insured Person** for **Investigation Costs** resulting from an **Investigation** first commenced during the **Policy Period** (or **Discovery Period**, if applicable).

(C) MITIGATION AMOUNTS

The **Insurer** shall indemnify the **Insured** for **Mitigation Amounts**.

2. DEFINITIONS

In this Policy the following words in bold shall have the definitions that follow:

(A) **Automatic Discovery Period** shall mean the period set out in ITEM 11(a) of the SCHEDULE.

(B) **Change in Control** means:

(i) the appointment of a receiver, administrator, or liquidator, or the equivalent in any jurisdiction, by or on behalf of the **Policyholder**; or

(ii) the **Policyholder** entering into any scheme of arrangement with its creditors; or

(iii) the **Policyholder** merging with or consolidating into any other company; or

(iv) any person or company other than a **Company** acting alone or in concert:

(a) acquiring ownership or control or assuming control pursuant to a written agreement with other shareholders of more than 50% of the voting rights in the **Policyholder** and/or more than 50% of the outstanding Securities representing the present right to vote for the election of the board of directors of the **Policyholder** and/or assuming the right to appoint or remove the majority of the board of directors of the **Policyholder**; or

(b) acquiring ownership of all or the majority of the assets of the **Policyholder**.



- (C) **Circumstance** means a fact, event, condition or matter which is likely to give rise to a **Claim**, deemed to be first identified at the time when the **Insured's** Risk Manager, Head of Audit, Head of Legal or a member of the Board of Directors or the equivalent first becomes aware of such circumstance.
- (D) **Claim** means any:
- (i) written demand for monetary or non-monetary relief; or
 - (ii) any civil (including arbitration and other alternative dispute resolution), criminal, regulatory or administrative proceeding;
- against an **Insured** for a **Wrongful Act**, deemed to be made upon receipt by or service upon the **Insured**, whichever is earlier, or
- (iii) solely for the purposes of INSURING AGREEMENT (B) any **Investigation**.
- If two or more **Claims** arise out of or are based upon or attributable to the same originating cause or source, they will be considered a single **Claim** and will be deemed first made at the time the earlier **Claim** was made.
- (E) **Company** means:
- (i) the **Policyholder**; or
 - (ii) any **Subsidiary**.
- (F) **Defence Costs** means all reasonable legal and other professional fees, costs and expenses, incurred with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed), for which the **Insured** is legally liable to pay resulting from investigating, adjusting, settling, defending, appealing or otherwise participating in a **Claim**, including **Investigation Costs** and the reasonable premiums but not the collateral for any appeal bond, attachment bond or similar bond for any civil proceeding, but excluding any salaries, wages, benefits, overhead expenses or internal costs of any **Insured**.
- (G) **Discovery Period** means the applicable period set out either in ITEM 11(a) or ITEM 11(b) of the SCHEDULE.
- (H) **Insured** means:
- (i) any **Company**; or
 - (ii) any **Insured Person**.
- (I) **Insured Person** means any natural person who was, is, has been or during the **Policy Period** becomes:
- (i) an employee (whether full time, part-time or temporary) under an express contract of employment with a **Company**; or
 - (ii) any director, officer, or partner of a **Company** but only while performing acts within the scope of the usual duties of an **Insured Person** as defined under (i) above,
- when acting within the scope of their duties in the performance or required performance of **Professional Services** on behalf of the **Company**.



Unless specifically agreed by the **Insurer** and endorsed to this Policy, **Insured Person** shall not include any person who is or acts on behalf of any independent:

- (1) broker; or
- (2) financial advisor; or
- (3) representative; or
- (4) agent; or
- (5) contractor,

of the **Insured** remunerated solely on a sales or commission basis.

- (J) **Insurer** means Tokio Marine Europe, S.A. as named in 7 of the SCHEDULE, having its registered office at 26, Avenue de la Liberté, L-1930, Luxembourg, acting through its Spanish Branch with registered office at Torre Diagonal Mar, Josep Pla 2, Planta 10, 08019 Barcelona, Spain.
- (K) **Investigation** means any formal or official hearing, investigation or inquiry by a government, government body, governmental or administrative agency, statutory body, official trade body, professional body, self-regulatory body, or any other regulator into the affairs of an **Insured** in their capacity as such, until such time that that a **Wrongful Act** is alleged, with respect to the performance of or failure to perform **Professional Services** by or on behalf of a **Company**.

An **Investigation** shall be deemed to commence and be first made upon receipt by the **Insured** of written documentation by the investigating authority:

- (i) that legally requires an **Insured Person** to attend such hearing, investigation or inquiry; or
- (ii) in which an **Insured** is identified by the investigating authority as a subject of such hearing, investigation or inquiry,

whichever is earlier.

Investigation shall not include routine regulatory supervision, inspection or compliance reviews or any investigation which focuses on an industry rather than an **Insured**.

- (L) **Investigation Costs** means all reasonable legal and other professional fees, costs and expenses (other than salaries, wages, benefits, overhead expenses or internal costs) incurred by or on behalf of an **Insured Person** with the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed) in preparing for, attending or participating in, or co-operating with, an **Investigation**.
- (M) **Limit of Liability** means the amount stated in ITEM 3 of the SCHEDULE.
- (N) **Loss** means:
- (i) **Defence Costs**; and
 - (ii) any amounts that an **Insured** is legally liable to pay to a third party as a result of a **Claim** upon final adjudication made by any court, tribunal, legal panel or regulator, or upon settlement entered into by such **Insured** with the prior written consent of the **Insurer**, including:



- (a) damages, settlements, pre and post judgment interest on a covered judgment or award, or awards of costs; and
- (b) any civil fine or penalty where lawfully insurable by the laws of the jurisdictions in which such civil fine or penalty is payable and in which such fine or penalty was ordered to be paid, subject to the Sub-Limit stated in ITEM 4(a) of the SCHEDULE;

Loss shall not include:

- (1) non-compensatory damages, including punitive, exemplary or aggravated damages, or the multiplied portion of any multiplied damages award; or
- (2) fines or penalties, except to the extent covered under (N)(ii)(b) above; or
- (3) taxes; or
- (4) non-monetary relief and any costs incurred in complying with any judgment, award or settlement for non-monetary relief; or
- (5) any benefits, overheads, charges or expenses paid by or to any **Insured** including but not limited to the cost of the time of any **Insured**; or
- (6) wages, salaries, remuneration or any employment-related benefits of any **Insured Person**.
- (7) any amounts which are deemed uninsurable under the laws of the jurisdictions in which such sums are payable or in which such sums were ordered to be paid.

(O) **Mitigation Amounts** means all reasonable:

- (i) external professional fees, costs and expenses (excluding **Defence Costs**) incurred by an **Insured** to avoid or mitigate the consequences of a **Wrongful Act**; and
- (ii) payments (or part thereof) by an **Insured** made to identified third parties solely and exclusively:
 - (a) as compensation for any actual loss sustained by such third parties resulting directly from a **Wrongful Act**; and
 - (b) to avoid or mitigate the consequences of such **Wrongful Act**;

provided always that the **Insurer** shall not be liable to make any payment for **Mitigation Amounts** unless:

- (1) the prior written consent of the **Insurer** (which shall not be unreasonably withheld or delayed) has been obtained to such professional fees, costs, and expenses being incurred, and/or to such payments being made; and
- (2) prior to such professional fees, costs, and expenses being incurred, and/or to such payments being made, such **Wrongful Act** has been reported as a **Circumstance** in compliance with the provisions of CLAIMS CONDITIONS (A)(ii) and (A)(iii); and



- (3) such **Insured** establishes to the reasonable satisfaction of the **Insurer** that such **Wrongful Act** would otherwise, but for the payment of the **Mitigation Amounts**, result in a covered **Loss** of an amount at least equivalent to the total sum of all such professional fees, costs and expenses and/or such payments.

Mitigation Amounts shall not include any amounts excluded under the definition of **Loss**.

Mitigation Amounts shall on no account exceed the Sub-Limit set out in ITEM 4(b) of the SCHEDULE.

- (P) **Optional Discovery Period** means the period set out in ITEM 11(b) of the SCHEDULE.
- (Q) **Policyholder** means the entity named in ITEM 1 of the SCHEDULE.
- (R) **Policy Period** means the period set out in ITEM 2 of the SCHEDULE.
- (S) **Professional Services** means any financial or professional services provided to a third party by or on behalf of a **Company**:
- (i) for a fee, commission or other compensation; or
 - (ii) in conjunction with financial or professional services provided for a fee, commission or other compensation;

and shall include all administrative, back office or other internal operations which support the provision of such financial or professional services.

- (T) **Proposal** means (i) any publicly available annual financial statements, including the annual report, of the **Policyholder**, (ii) any document, information or statement made available to the **Insurer** for the purpose of its assessment of the risk to be covered under this Policy, and (iii) any attachments, exhibits, or appendices to any of the documents referred to in (i) and (ii).
- (U) **Retention** means the amount set out at ITEM 5 of the SCHEDULE.
- (V) **Retroactive Date** means the date set out in ITEM 10 of the SCHEDULE, if applicable.
- (W) **Subsidiary** means:
- (i) any entity in which, at or before the inception of the **Policy Period**, the **Policyholder**, either directly or through one or more Subsidiaries:
 - (a) owns more than 50% of the issued and outstanding shares; or
 - (b) controls more than 50% of the voting rights; or
 - (c) controls the right to vote for the election or removal of the majority of the board of directors; and
 - (ii) by way of automatic extension, any entity acquired or created by the **Policyholder** or any **Subsidiary** during the **Policy Period** in respect to which at least one of (W)(i)(a), (W)(i)(b), or (W)(i)(c) above applies, unless such entity:
 - (a) at the date of its acquisition or creation by the **Policyholder** or **Subsidiary**:
 1. has total gross assets that exceed 15% of the total consolidated assets of the **Policyholder** as reported in its



latest audited Annual Report and Accounts (or equivalent in any other relevant jurisdiction), as calculated in accordance with the usual accounting policies, principles and practices of the **Policyholder**; or

2. derives more than 20% of its overall revenue from its operations in the United States of America its territories and possessions; or
 3. generates the majority of its gross revenue from transactions via the Internet, or from factoring, accounts receivable financing or invoice discounting; or
 4. has incurred any loss of the type covered by this Policy with a quantum greater than the **Retention** within the past 5 years of operating as the former business; or
 5. has any of its Securities traded on any securities exchange in the United States of America.
- (b) is created or acquired by the **Policyholder** or any **Subsidiary** for the purpose of acquiring assets and liabilities (that are not assets and liabilities of a **Company**), and which after such acquisition of assets or liabilities, shall fulfil any of 0 to 5 above; and
- (iii) by way of optional extension, any entity created or acquired by the **Policyholder** during the **Policy Period** whereby either (W)(ii)(a) or (W)(ii)(b) applies, but which the **Insurer** has at its sole discretion agreed, by endorsement to this Policy, to include as a **Subsidiary**, provided that coverage shall only apply in respect of such entity after the **Policyholder**:
- (a) has provided sufficient details to permit the **Insurer** to assess and evaluate the potential increase in exposure; and
 - (b) has paid any reasonable additional premium and accepted any amendment to the Policy terms required by the **Insurer**.

For the avoidance of doubt:

- (1) an entity ceases to be a **Subsidiary** when none of the provisions set out in (W)(i)(a), (b) or (c) of this DEFINITION still apply to it; and
 - (2) coverage under this Policy shall apply only to entities or to natural persons employed or appointed by such entities in respect of **Claims** for **Wrongful Acts** actually or allegedly committed, or **Investigations** in relation to events that actually or allegedly occurred or took place, during such time the said entities are or were Subsidiaries as defined above.
- (X) **Wrongful Act** means any actual or alleged act, error or omission committed individually or otherwise:
- (i) by a **Company**; or
 - (ii) on behalf of a **Company**, by an **Insured Person** or any other person for whose acts such **Company** is legally liable,

in the performance of or failure to perform **Professional Services**.



3. EXCLUSIONS

The **Insurer** will not be liable to make any payment for **Mitigation Amounts** resulting from any **Wrongful Act**, or for **Loss** resulting from any **Claim**:

(A) UNLAWFUL CONDUCT

Arising out of, based upon or attributable to:

- (i) the actual or attempted gaining by the **Insured** of any profit, remuneration or advantage to which such **Insured** was not legally entitled; or
- (ii) the committing or permitting of a dishonest or fraudulent act or omission; or
- (iii) the deliberate committing or permitting of a breach of statute or violation of law or of a criminal act.

This EXCLUSION (A) shall however only apply to that **Insured** to whom the above behaviour is established primarily or incidentally in a final adjudication by any court, tribunal, legal panel or regulator or by a written admission of such **Insured**.

(B) PRIOR MATTERS

Arising out of, based upon or attributable to:

- (i) any facts, circumstances or **Wrongful Acts** underlying, alleged in, contained in or deriving from, the same originating cause as alleged or contained in any **Claim, Circumstance** or other matter which has been reported, or with respect to which any notice has been given under, any policy of which this Policy is a renewal or replacement or which it may succeed in time; or
- (ii) **Circumstances** known to the **Insured's** Risk Manager, Head of Audit, Head of Legal or a member of the Board of Directors or the equivalent prior to the Inception Date as stated in ITEM 2(a) of the SCHEDULE; or
- (iii) any facts, circumstances or **Wrongful Acts** either alleged to be or actually occurring prior to any applicable **Retroactive Date**.

(C) CONTRACTUAL LIABILITY

Arising out of, based upon or attributable to any liability under any contract, agreement, guarantee or warranty except to the extent such liability would have attached to the **Insured** in the absence of such contract, agreement, guarantee or warranty.

(D) LENDER'S LIABILITY

Arising out of, based upon, or attributable to:

- (i) the actual or alleged granting, refusing, continuing, honouring, or extending of any loan, lease, extension of credit or similar agreement or operation by an **Insured**, whether authorised or not, except to the extent of the liability of the **Insured** resulting directly or exclusively from the administration or servicing of any existing loan, lease, extension of credit or similar agreement or operation; or
- (ii) the forfeiture, repossession or disposal of collateral in respect of any loan, lease, extension of credit or similar agreement or operation.



(E) GOVERNMENT AND REGULATOR

Arising out of, based upon, or attributable to any **Claim** brought, or in respect of **Mitigation Amounts**, any **Claim** that is threatened, contemplated or anticipated to be brought, by, on behalf of, or at the behest of any government, government body, governmental or administrative agency, statutory body, official trade body, professional body, self-regulatory body or any other regulator.

This EXCLUSION (E) shall not apply:

- (i) to the extent that such action is brought solely:
 - (a) in the capacity as a client or customer of any **Company**; or
 - (b) in the capacity as assignee of a client or customer of any **Company** as a result of indemnification and subrogation in the rights thereof; or
 - (c) on behalf or to the benefit of a client or customer of any **Company**; or
- (ii) to any **Investigation Costs**.

(F) FEES AND COMMISSIONS

Arising out of, based upon, or attributable to fees, commissions, or other compensation for the actual or alleged provision of **Professional Services** or that portion of any settlement or award in an amount equal to such fees, commissions or other compensation.

(G) INSURED VS INSURED AND SHAREHOLDER CLAIMS

Arising out of, based upon, or attributable to, any **Claim** brought, or in respect of **Mitigation Amounts**, any **Claim** that is threatened, contemplated or anticipated to be brought, by or on behalf of or in the name or right of:

- (i) any **Company**, or
- (ii) any parent, successor or assign of the **Policyholder**; or
- (iii) any entity in which an **Insured** or the management of any **Company** has an executive or controlling interest, or the parent, successor or assign of such entity; or
- (iv) any principal, partner, director or officer of any **Company**, any **Insured Person**, or any employee of any **Insured**, in their capacity as such; or
- (v) any shareholder or bondholder of any **Company**, or a holder of any similar equity, debt or obligation interest in any **Company**, in their capacity as such.

(H) INFRASTRUCTURE FAILURE

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,



except to the extent such failure results directly from a **Wrongful Act** committed in using the systems of the **Company**.

(I) INSOLVENCY

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

(J) MARKET ABUSE

Arising out of, based upon or attributable to any actual or alleged conduct which constitutes market abuse pursuant to the provisions of the Financial Services and Markets Act 2000 or any equivalent or similar legislation, regulations or rules in any jurisdiction.

(K) BUSINESS RISKS

Arising out of, based upon or attributable to any:

- (i) proprietary trading, financial or business loss of the **Company** where the **Company** acted for its own account; or
- (ii) liability under a contract of insurance or reinsurance to pay benefits or indemnity due to the capacity of a **Company** as an insurer or reinsurer; or
- (iii) transaction where the **Company** has acted as a principal or counterparty.

(L) BODILY INJURY/ PROPERTY DAMAGE

Arising out of, based upon or attributable to:

- (i) bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death howsoever caused, provided that this EXCLUSION (L)(i) shall not apply to any **Claim** for libel, slander, defamation or injurious falsehood; or
- (ii) damage to or loss of or destruction of tangible property or loss of use thereof, provided that this EXCLUSION (L)(ii) shall not apply to any documents other than currency or other negotiable instruments.

(M) POLLUTION AND NUCLEAR

Arising out of, based upon or attributable to any direction, request or effort to test for, monitor, clean up, remove, contain, treat, detoxify, neutralise, respond to or assess the effects of:

- (i) any substance, solid, liquid, gaseous, biological, radiological or thermal irritant, toxic or hazardous substance, or contaminant, including but not limited to, asbestos, asbestos products, mycota or by-products, lead, or lead containing products, smoke, vapours, dust, fibres, mould, spores, fungi, germs, soot, fumes, acids, alkalis, chemicals, air emissions, odour, waste water, oil, oil products, medical waste and waste materials (including nuclear materials) to be recycled, reconditioned or reclaimed; or
- (ii) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.



(N) TRUSTEE LIABILITY

Arising out of, based upon, or attributable to, any act or omission by or on behalf of an **Insured** as a trustee, fiduciary or administrator of any pension, profit-sharing or employee benefits programme of any **Company**, including any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA) or the Pensions Act 1995 (UK) or any equivalent or similar legislation, regulations or rules in any jurisdiction.

(O) USA INVESTMENT BANKING

Arising out of, based upon, or attributable to:

- (i) the underwriting, securitising, syndicating, promoting, or market making of any debt or equity security or other evidence of indebtedness, or any loan or other extension of credit, or any other similar investment banking activity;
- (ii) the rendering of advice or recommendations regarding any actual, attempted or threatened merger, acquisition, divestiture, tender offer, proxy contest, leveraged buy-out, privatisation, insolvency proceeding, reorganisation, capital restructuring, re-capitalisation, spin-offs, primary or secondary offerings of debt or equity securities or other evidence of indebtedness, dissolution or sale of all or substantially all of the assets or stock of a business entity or any effort to raise or furnish capital or financing for any enterprise or entity; or
- (iii) the rendering of a fairness opinion regarding the valuation of any assets or business entity not held by the **Insured** as trustee; or
- (iv) any acquisition or sale of securities by the **Insured** for their own account; or
- (v) any disclosure requirements in connection with (i), (ii) or (iii) above,

by or on behalf of an **Insured**.

This EXCLUSION (O) shall only apply if and to the extent that the **Claim** is brought and/or maintained against an **Insured** or, but for the payment of such **Mitigation Amounts**, a **Claim** would have been brought and/or maintained against an **Insured**:

- (a) before any judicial, arbitral, administrative or regulatory court, panel or authority of the United States of America or any of their territories or possessions; or
- (b) anywhere in the world in relation to the enforcement of a judicial, arbitral, administrative or regulatory decision rendered in the United States of America or any of their territories or possessions; or
- (c) in respect of any of the activities of the **Insured** listed in (i), (ii), (iii) or (iv) above in the United States of America or any of their territories or possessions.

(P) INTELLECTUAL PROPERTY

Arising out of, based upon, or attributable to:

- (i) the breach of any intellectual property license, patent, trade or service mark, copyright, any other form of registered intellectual property right; or
- (ii) any breach of a right to privacy; or



- (iii) misappropriation of a trade secret (including but not limited to any information (including a formula, compilation, pattern, programme, device, method, process, technique or know-how) that derives independent economic value, actual or potential, from not being generally known and not readily ascertainable through proper means by another person who can obtain economic advantage from its disclosure or use).

4. EXTENSIONS

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

(A) DISCOVERY PERIOD

This Policy shall be extended to cover **Claims** first made subsequent to the **Policy Period** but during any applicable **Discovery Period**, solely for acts, errors or omissions actually or allegedly committed before the Expiration Date stated in ITEM 2(b) of the SCHEDULE.

A **Discovery Period** shall be afforded under the following conditions:

- (i) If, subsequent to the expiration of the **Policy Period**, this Policy is not renewed or replaced by any other policy affording similar coverage, the **Insurer** will grant:
 - (a) an **Automatic Discovery Period** as stated in ITEM 11(a) of the SCHEDULE at no additional premium; and
 - (b) subject to written request to this effect and payment of the applicable additional premium before the Expiration Date stated in ITEM 2(b) of the SCHEDULE by the **Policyholder**, the **Optional Discovery Period** as stated in ITEM 11(b) of the SCHEDULE at the corresponding additional premium; and
 - (c) any additional premium shall be deemed to be fully earned as of the inception of the **Optional Discovery Period**.
- (ii) Any **Discovery Period** invoked shall be automatically cancelled upon the effective date or the date of execution of any other policy affording similar coverage to part or all of the **Insureds**, whichever is the earlier.
- (iii) Rights to a **Discovery Period** shall automatically lapse upon a **Change in Control**.

(B) EMERGENCY MITIGATION AMOUNTS

The **Insurer** will waive the requirement for prior written consent to the incurring or payment of **Mitigation Amounts** up to the maximum aggregate Sub-Limit stated in ITEM 4(b) of the SCHEDULE where the **Insured** subsequently demonstrates to the reasonable satisfaction of the **Insurer** that it was not reasonably practicable for the **Insured** to seek the prior consent of the **Insurer**, provided always that the **Insurer** shall have no liability under this EXTENSION (B) unless the **Insured** notifies the **Insurer** of such **Mitigation Amounts** within fourteen (14) days of first incurring such **Mitigation Amounts** or the date of first payment of such **Mitigation Amounts** (whichever is earlier).



For the avoidance of doubt, all conditions for the coverage of **Mitigation Amounts** other than the prior written consent of the **Insurer** remain applicable for the purposes of this EXTENSION (B).

(C) EXTRADITION PROCEEDINGS

This Policy shall be extended to include as **Claims** and, therefore, to cover **Loss** arising from, any proceedings against an **Insured Person** following a request or arrest warrant for deportation or extradition, including an appeal or separate proceeding to overturn a deportation, extradition or arrest order, provided such request or arrest is not issued as a consequence of such **Insured Person** being unlawfully at large in any country or jurisdiction after final adjudication by the court of another country.

Solely for the purposes of this EXTENSION (C), such **Claim** shall be deemed first made upon receipt by the **Insured Person** of an official notice in writing from the responsible government authority advising of a request for extradition being made against them, or upon execution of a warrant for arrest of such **Insured Person**, whichever is the earlier.

(D) ESTATES, HEIRS AND LEGAL REPRESENTATIVES

This Policy shall be extended to include as **Insured Persons** the estates, heirs, legal representatives or assigns of an **Insured Person** who is deceased or the legal representatives or assigns of an **Insured Person** who is incompetent, insolvent or bankrupt, to the extent that such **Insured Person** would have been covered by this Policy for **Loss** in the absence of their death, incompetence, insolvency or bankruptcy.

(E) SPOUSES AND DOMESTIC PARTNERS

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

5. CLAIMS CONDITIONS

(A) NOTICE

(i) The **Insured** shall give written notice to the **Insurer** of any **Claim** as soon as reasonably practicable within the **Policy Period** (or **Discovery Period**, if applicable), with full particulars as to dates, persons and entities involved, claimants, the actual or alleged **Wrongful Acts** and the consequences which have resulted or may result from any anticipated **Claim** and, where it has not been reasonably practicable for the **Insured** to give notice during the **Policy Period** (or **Discovery Period**, if applicable), then notice shall be given in any event no later than thirty (30) days of the date of expiration of the **Policy Period** (or **Discovery Period**, if applicable).

If written notice of a **Claim** has been given to the **Insurer** as prescribed above, then any further **Claim** arising out of, based upon or attributable to the same originating cause or source will be deemed together with the earlier **Claim** as a single **Claim** first made during the **Policy Period** and notified at the time of the original notice.

(ii) If a **Circumstance** is identified during the **Policy Period**, the **Insured** may give written notice to the **Insurer** of such **Circumstance** and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved (where known), potential claimants (where known), the actual or



potential **Wrongful Acts** and the consequences which have resulted or may result from any anticipated **Claim**, as soon as reasonably practicable upon identification and in no event later than thirty (30) days after the Expiration Date stated in ITEM 2(b) of the SCHEDULE.

Such notice having been given to the **Insurer** as prescribed above, then any **Claim** arising out of, based upon or attributable to the notified **Circumstance** will be deemed to have been first made during the **Policy Period** and notified at the time of the original notice.

- (iii) All notices of **Claims** or **Circumstances** under this CLAIMS CONDITION (A) shall be in writing, referring to the Policy Number, and be made to the address set out in ITEM 8 of the SCHEDULE.
- (iv) The **Insurer** shall be liable solely in respect of **Claims** or **Circumstances** notified in compliance with this CLAIMS CONDITION (A).

(B) DEFENCE AND SETTLEMENT OF CLAIMS AND CONSENT

- (i) It is the duty of the **Insured**, not the **Insurer**, to defend **Claims**. However, the **Insurer**, in its sole and absolute discretion, may elect 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 to participate fully in the investigation, adjustment, defence, settlement, and appeal of any **Claim**.
- (ii) An **Insured** shall not admit or assume any liability, make any offer to settle or enter into any settlement, consent to any judgment, pay any **Loss**, or otherwise incur any **Defence Costs** or **Mitigation Amounts** (unless covered under EXTENSION (B)) without the prior written consent of the **Insurer** (not to be unreasonably withheld or delayed).
- (iii) The **Insured** shall provide to the **Insurer** all information, assistance and cooperation, shall do nothing to prejudice the interests of the **Insurer** and shall assist the **Insurer** with any **Claim** or **Circumstance**.
- (iv) The **Insured** shall use due diligence and do and concur in doing all things reasonably practicable to avoid or diminish any **Loss** under this Policy.
- (v) Save for any specific request of the **Policyholder**, the **Insurer** shall be under no obligation to make any payment of **Loss** or **Mitigation Amounts** under this Policy other than to the **Policyholder**. Such payment shall constitute a full and complete release and discharge of the liability of the **Insurer** in respect of such **Loss** or **Mitigation Amounts**, whether suffered directly by the **Policyholder** or not.

(C) ALLOCATION

- (i) The **Insurer** shall pay only those amounts or portions of **Loss** or **Mitigation Amounts** relating to covered matters. If the **Insured** incurs any **Loss** or **Mitigation Amounts** that includes both matters covered and matters not covered by this Policy, or results from a **Claim** or potential **Claim** (in the case of **Mitigation Amounts**) that is made against or involves both covered and non-covered parties, the **Insured** and the **Insurer** shall use their best efforts to determine a fair and proper allocation of the **Loss** or **Mitigation Amounts** covered hereunder, taking into account the relative legal and financial exposures of the parties to the **Claim**, potential **Claim**, and the relative benefits to the relevant parties to be obtained by the resolution of the **Claim** or potential **Claim**.



- (ii) If an allocation cannot be agreed between the **Insured** and the **Insurer**, then the parties agree that it shall be determined, having regard to the principles stated in this CLAIMS CONDITION, by a legal counsel to be mutually agreed upon, who shall act as an expert and not an arbitrator and whose determination shall be based upon the written submissions of the parties. There shall be no obligation on such counsel to provide reasons unless specifically requested by the **Insured** or the **Insurer**.
- (iii) The costs of any reference to expert determination under this CLAIMS CONDITION (C) shall be borne equally by both the **Insured** and the **Insurer**.

(D) SUBROGATION AND RECOVERIES

- (i) The **Insurer** shall be subrogated to all of the rights of recovery of the **Insured** to the extent of all payments of **Loss** or **Mitigation Amounts**.

The **Insured** shall do nothing to prejudice such rights of recovery, shall provide to the **Insurer** all information, assistance and cooperation, and shall do everything necessary to secure any rights, including the execution of any documents necessary to enable the **Insurer** effectively to bring suit in the name of the **Insured** whether such acts become necessary before or after payment by the **Insurer**.

- (ii) Any recoveries, whether effected by the **Insurer** or the **Insured**, following the payment of **Loss** or **Mitigation Amounts** under this Policy and after deducting the actual cost of obtaining such recovery but excluding the own labour or establishment costs of the **Insured**, will be allocated in the following order of reimbursement:
 - (a) Initially, to reimburse the **Insured** for any **Loss** or **Mitigation Amounts** which exceed the amount of **Loss** or **Mitigation Amounts** paid under this Policy (disregarding the amount of any **Retention** applicable),
 - (b) Subsequently, to reimburse the **Insurer** for any payment made for such **Loss**, **Mitigation Amounts**, costs, fees and expenses incurred under this Policy, and
 - (c) Finally, to reimburse the **Insured** for such **Loss** or **Mitigation Amounts** sustained by the **Insured** by reason of the **Retention** applicable pursuant to ITEM 5 of the SCHEDULE.

(E) FRAUDULENT CLAIMS

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



6. GENERAL CONDITIONS

(A) CHANGE IN CONTROL AUTOMATIC RUN-OFF

In the event of a **Change in Control** during the **Policy Period**, this Policy will continue in full force and effect until the end of the **Policy Period** with respect to:

- (i) **Claims for Wrongful Acts** actually or allegedly committed,
- (ii) **Investigations** in relation to events that actually or allegedly occurred or took place, and
- (iii) **Mitigation Amounts** resulting from **Wrongful Acts** actually or allegedly committed,

before the effective date of such **Change in Control**, but coverage will cease with respect to **Claims** and **Mitigation Amounts** in respect of **Wrongful Acts** actually or allegedly committed, and **Investigations** in relation to events that actually or allegedly occurred or took place, thereafter (unless otherwise agreed to by the **Policyholder** and the **Insurer**) and the premium will be considered fully earned in consideration of the coverage provided.

The **Policyholder** shall give the **Insurer** written notice of the **Change in Control** as soon as practicable after first becoming aware thereof and in any event prior to the effective date thereof. However, no delay in notification or awareness shall prejudice the effectiveness of the above.

(B) LIMIT OF LIABILITY AND RETENTION

- (i) **Limit of Liability** and Sub-Limits:

The maximum aggregate liability of the **Insurer** under this Policy for all **Loss** or **Mitigation Amounts** shall not exceed the **Limit of Liability**, regardless of the number of **Claims**, **Wrongful Acts**, or **Insureds** who claim under this Policy.

All Sub-Limits stated in ITEM 4 of the SCHEDULE are aggregate for the whole **Policy Period** (and **Discovery Period**, if applicable) regardless of the number of **Claims** or **Wrongful Acts** or **Insureds** and are part of and not in addition to the **Limit of Liability**.

- (ii) **Retention** and Aggregation:

- (a) The **Insurer** will be liable only for the amount of **Loss** or **Mitigation Amounts** which exceeds the **Retention** stated in ITEM 5 of the SCHEDULE.

Such **Retention** is to be borne by the **Insured** and shall remain uninsured hereunder.

- (b) A single **Retention** amount will apply:

1. to each and every **Claim** in respect of INSURING AGREEMENT 0 and EXTENSIONS (A), (C), (D) and (E); and
2. to each and every **Wrongful Act** or series of related, continuous or repeated **Wrongful Acts** in respect of INSURING AGREEMENT (C) and EXTENSION (B).



- (c) In the event that covered **Mitigation Amounts** were incurred or paid to prevent or mitigate a potential **Claim** anticipated to result from a **Wrongful Act** or a series of related, continuous or repeated **Wrongful Acts**, any **Claim** resulting from the same **Wrongful Act** or series of **Wrongful Acts** will be considered a single **Claim** together with such potential **Claim** and a single **Retention** amount shall apply thereto.
- (d) In the event that one or more **Insureds** is entitled to indemnity under more than one INSURING AGREEMENT or EXTENSION then no more than one **Retention, Limit of Liability** or Sub-Limit shall apply (as the case may be). Subject to the **Limit of Liability**, the applicable **Retention** or Sub-Limit or shall, in each case, be:
 - 1. The highest one of any applicable **Retentions**;
 - 2. The highest one of any applicable Sub-Limits set out in ITEM 4 of the SCHEDULE.

(C) REPRESENTATIONS AND SEVERABILITY

- (i) The **Insured** represents that the particulars and statements contained in the **Proposal** are true, accurate and complete to the best of the knowledge and belief of the **Insured**, and agree that such particulars and statements shall be deemed material to the acceptance of the risk assumed under this Policy.
- (ii) This Policy insures severally each **Insured**.
- (iii) In case of non-disclosure, misrepresentation or breach of warranty, the **Insurer** shall not avoid or discharge this Policy provided that the **Policyholder** establishes that such non-disclosure, misrepresentation or breach of warranty was not fraudulent and was devoid of any intent to deceive and subject to the provisions of EXCLUSION (B).

(D) PAYMENT OF PREMIUM

The **Insurer** may cancel from inception any coverage under this Policy granted in consideration of the payment or the agreement to pay a premium for non-payment of premium within sixty (60) days from the Inception Date stated in **Error! Reference source not found.ITEM 2(a)** of the SCHEDULE, by sending not less than thirty (30) days' notice to the **Policyholder** at the address stated in ITEM 1(b) of the SCHEDULE or via the insurance broker.

The **Insurer** may not otherwise cancel the Policy or any coverage hereunder.

(E) NOTICES AND AUTHORITY

The **Policyholder** shall act on behalf of all **Insureds** with respect to the giving and receiving of any notice required under this Policy, the payment of all premiums, the allocation of **Loss** or **Mitigation Amounts**, the declaration of risk and execution of this Policy and any amendments thereto.

(F) INTERPRETATION

- (i) This Policy shall be governed by the substantive law of the country stated in ITEM 9(a) of the SCHEDULE.



- (ii) Any reference in this Policy to:
 - (a) the singular shall include the plural and vice versa; and
 - (b) the masculine shall include the feminine and vice versa; and
 - (c) a position or title or legal status of an individual shall include the equivalent position in any other relevant jurisdiction.
- (iii) Policy headings and titles are for reference only and shall have no interpretational value.

(G) APPLICABLE LAW AND JURISDICTION

This Policy is to be governed by, and its terms are to be construed in accordance with the applicable law stated in ITEM 9(a) of the SCHEDULE. Any dispute or difference arising under or in respect of this Policy is to be subject to and determined within the exclusive jurisdiction stated in ITEM 9(b) of the SCHEDULE.

(H) ENTIRE AGREEMENT

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

(I) ASSIGNMENT

This Policy shall not be assigned without the prior written consent of the **Insurer**, and any other purported assignment shall be null and void.

(J) OTHER INSURANCE AND OTHER INDEMNIFICATION

Unless otherwise required by law, This Policy shall always apply in excess of any other valid and collectible insurance or indemnification available to the **Insured**.

(K) TERRITORY

This Policy applies to **Wrongful Acts** actually or allegedly taking place and to **Claims** made anywhere in the world.

(L) RIGHTS OF THIRD PARTIES

Nothing in this Policy is intended to confer any directly enforceable benefit on any third party other than an **Insured**, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 of England and Wales, any equivalent or similar legislation, regulations or rules in any other jurisdiction or otherwise.

(M) TRADE SANCTIONS

This Policy does not apply to the extent any applicable trade or economic sanctions, or other laws or regulations prohibit the **Insurer** from providing insurance, including, but not limited, to the payment of **Loss**.

(N) DATA PROTECTION AND PRIVACY POLICY

The **Insurer** respects the **Insureds'** right to privacy. In our Privacy Policy (available at <https://www.tmhcc.com/en/legal/privacy-policy>) we explain who we are, how we collect, share and use personal information about the **Insureds**, and how the **Insureds** can



exercise their privacy rights. If the **Insureds** have any questions or concerns about our use of their personal information, they can contact dpo-tmelux@tmhcc.com.

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

We may disclose the **Insureds**' personal information to:

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

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

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

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

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

(O) COMPLAINTS PROCEDURE

We are dedicated to providing you with a high-quality service and we want to ensure that we maintain it at all times to the **Insurer's** clients. Should the **Named Company** or the **Insureds** not be satisfied, please write and tell us and we will do our best to resolve the problem.



For any questions or concerns about the Policy or any Claim's handling please contact:

The Compliance Officer
TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA
Torre Diagonal Mar
Josep Pla 2, Planta 10
08019 Barcelona, Spain

To request information about the **Insurer** or file a concern or complaint please do so in writing, before our independent Customer Service Department:

Customer Service Department
TOKIO MARINE EUROPE S.A. SUCURSAL EN ESPAÑA
Torre Diagonal Mar
Josep Pla 2, Planta 10
08019 Barcelona, Spain
sac@tmhcc.com

If your concerns or complaints are not addressed to your satisfaction, you may be entitled to refer the dispute to the Complaints Service of the Spanish General Directorate for Insurance and Pension Funds in the terms established in the applicable regulations, who will review your case and who may be contacted at:

General Directorate for Insurance and Pension Funds
Complaints Service
Calle Miguel Ángel, 21
28010 Madrid, Spain

Or through the webpage: www.dgsfp.mineco.es

In addition, in case of cross-border litigation, complaints may be submitted to the competent foreign system, by applying to the activation of the FIN-NET procedure.

IN WITNESS WHEREOF, the **Insurer** has caused this Policy to be executed by its authorised officers, but this Policy will not be valid unless countersigned on the SCHEDULE of this Policy by a duly authorised representative of the **Policyholder**.