

Marketing, Advertising & Communications, Professional Risks Insurance

PI MAC Add IRL TMI 0923

Policy Wording

Marketing, Advertising & Communications, Ireland Professional Indemnity Insurance

Definitions applicable to this Professional Indemnity Section

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

Advertising

means **Advertising**, publicity, or promotion of the **Insured's Media business activities** and of the products and services of others.

Circumstance

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

Computer system

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

Damages

shall mean monetary relief.

Defence costs and expenses

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

Documents

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

Employee

means:

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

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

Excess

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

Financially associated person or entity

means:

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

Indemnity limit

means the **Insurer's** total liability to pay **Damages** and claimant's costs for which the **Insured** is legally liable to pay, and shall not exceed:

- in the case of any claim arising directly or indirectly from any **Virus** the sum stated in the **Schedule** or EUR 500,000 (whichever is less) in respect of any one claim or series of claims arising out of one originating cause and in total for all claims first made during the **Period of insurance**;

- b. in all other cases (except where specific sums are stated in the Insuring Clauses) the sum(s) stated in the **Schedule** in respect of any one claim or series of claims arising out of one originating cause regardless of the number of persons claiming an indemnity from the **Insurer** under the terms of this Professional Indemnity Section.

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

Insured

means any person or firm stated in the **Schedule** and includes:

- a. any of their subsidiary companies that are in existence at the inception under this Professional Indemnity Section and have been declared to **Insurers**;
- b. the current or previous partners, directors, principals, members or **Employees** of any firm or company stated in the **Schedule**; and
- c. any other person who becomes a partner, director, principal, member or **Employee** of any firm or company stated in the **Schedule**.

Insurer

means Tokio Marine Europe S.A. Irish Branch.

Jurisdiction

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

Media business services

means those services as stated in the **Schedule** under the heading "Business".

Period of insurance

means that as stated in the **Schedule**.

Schedule

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

Virus

means any unauthorised executable code uploaded to, or replicated through, a **Computer system** or network whether

termed a **Virus** or known by any other name and whether it is self-replicating or non-replicating which causes damage or loss to data or the **Computer system**.

Media Liability Insuring Clauses applicable to this Professional Indemnity Section

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

1. Indemnity

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

- a. Breach of contract or liability assumed by the **Insured** in the form of hold harmless or indemnity agreements executed with any party with whom the **Insured** has contracted to provide **Media business services** but only in respect of indemnity provided by Insuring Clauses 1 and 2;
- b. Defamation or other tort related to disparagement of character, harm to reputation or feelings of any person or organisation including libel, slander or defamation,, product disparagement and malicious falsehood, trade libel or any claim relating to outrage or emotional distress;
- c. Unintentional breach of confidentiality or other invasion, infringement or interference with rights of privacy or publicity including false light, intrusion upon a person's seclusion and the public disclosure of private facts;
- d. Unintentional infringement of intellectual property rights including copyright, title, slogan, trademark, domain name or metatag, moral rights, misappropriation of, formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork, passing off and plagiarism and commercial appropriation of name or likeness;
- e. Unintentional breach of a license to use a third party's trademarked or copyrighted material but only to the extent that use exceeds the express limitations in the license regarding territory, duration or media in which the material may be used and only when made as a part of a claim under d) above;
- f. Breach of comparative **Advertising** regulations;
- g. The loss of or damage to **Documents**;
- h. Unintentional transmission of a **Virus**;
- i. The failure to protect against unauthorised access to, unauthorised use of, a denial of service attack against the **Insured's Computer system**;
- j. Misuse of any information which is either confidential or subject to statutory restrictions;

- k. Breach of professional duty, negligent act, negligent error, negligent omission, negligent misstatement or negligent misrepresentation;
- l. Dishonest, fraudulent or malicious act or omission of any former or present **Employee** (which term, for the purpose of this clause alone, shall not include any principal, partner, member or director of the **Insured**) provided that no indemnity shall be given in the event that any principal, partner, member or director of the **Insured** conspired to commit or condoned any such dishonest, fraudulent or malicious act or omission;
- m. Any other civil liability not otherwise excluded.

2. Legal defence costs and expenses

The **Insurer** will pay in addition to any indemnity under Insuring Clause 1, all **Defence costs and expenses** provided that:

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

3. Rectification

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

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

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

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

4. Irrecoverable fees

Up to the **Indemnity limit** for amounts owed to the **Insured**, including amounts legally owed by the **Insured** to sub-contractors or suppliers, due to the refusal of the **Insured's** client to pay for work done by the **Insured** for them where such client has reasonable grounds for being dissatisfied with the work and threatens to bring a claim for more than the amount owed, and which would otherwise be covered under Insuring Clause 1, provided that such threat is first made against the **Insured** and notified to **Insurers** during the **Period of insurance**. In such circumstances, if it is possible to settle the dispute by agreeing not to pursue the outstanding amount, the **Insurer** will agree to pay the amount owed if they consider that it will avoid a legitimate claim under Insuring Clause 1 for a greater amount. If, following this, a claim under Insuring Clause 1 still arises then the amount paid under this section will be deducted from the **Indemnity limit**. If the **Insured** eventually recovers part or all of the debt then such recovered amount shall be repaid to the **Insurer** less the **Insured's** reasonable expenses of recovering the debt due.

5. Commitment to media space or print time

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

6. Data protection defence costs

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

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

7. Reputation Management

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

8. Withdrawal of Content

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

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

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

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

9. Compensation for court attendance

In the event that the **Insured** has to attend court as a witness in connection with a claim covered under Insuring Clause 1 the **Insurer** will provide compensation to the **Insured** at the following rates per day for each day on which attendance is required:

- a. any director or partner of the **Insured**: EUR 500;
- b. any **Employee** of the **Insured**: EUR 250.

10. Costs for prosecuting infringement of the **Insured's** intellectual property rights

Up to a maximum of EUR 25,000 in the aggregate in the **Period of insurance**, for the reasonable and necessary costs and expenses incurred by the **Insured**, with the **Insurer's** prior written consent, in the pursuance of any claim first made by the **Insured** against a third party during the **Period of insurance**, for infringement of intellectual property rights first discovered by the **Insured** during the **Period of insurance** where the ownership of such rights is vested in the **Insured**.

For the purposes of this Insuring Clause **Insurers** will only give prior consent where the **Insured** has provided, at their own expense, an opinion from a solicitor, barrister or suitably qualified intellectual property agent evidencing the existence of the **Insured's** intellectual property rights, the infringement of those rights, a measurable loss and a reasonable prospect of success.

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

For the avoidance of doubt the indemnity provided under Insuring Clauses 5)-10) is not additional to and shall not increase the **Indemnity limit**.

Extensions applicable to this Professional Indemnity Section

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

1. Joint ventures

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

2. Indemnity to Principals

If the **Insured** so requests, the **Insurer** will indemnify any Principal with whom the **Insured** has entered into an agreement as far as is necessary to meet the requirements of such agreement but only in respect of liability incurred to independent third parties arising directly from the **Media business services** performed by the **Insured**;

3. Mergers and acquisitions

- a. If, during the **Period of insurance** the **Insured** creates or acquires a company or companies subsequent to inception and the turnover relating to all such created or acquired companies does not exceed 20% of the estimated turnover of the companies covered under this Professional Indemnity Section at inception (less the turnover for companies sold during the **Period of insurance**), then this Professional Indemnity Section shall include as an **Insured** any such company created or acquired automatically from the date of creation or acquisition without additional premium provided that:

- i. **Media business services** carried out by such company is similar to that of the **Insured**; and
 - ii. prior to the acquisition the acquired company's directors or officers shall not have notified or be aware of any professional indemnity claims or **Circumstances**; and
 - iii. the retroactive date applicable to the **Media business services** of the new entity is deemed to be the date of acquisition;
- b. Where the **Insured** creates or acquires a company or companies subsequent to inception and the turnover relating to all such created or acquired companies exceeds 20% of the estimated turnover of the companies covered under this Professional Indemnity Section at inception (less the turnover for companies sold during the **Period of insurance**), then this Professional Indemnity Section shall include as an **Insured** any such company created or acquired automatically from the date of creation or acquisition provided that:
- i. the terms stated in 3a) i) to iii) above also apply to such created or acquired companies;
 - ii. the **Insured** notifies the **Insurer** as soon as is reasonably practicable of the creation or acquisition;
 - iii. the **Insured** accepts the revised premium and or terms applying to each and every such creation and or acquisition;
 - iv. all cover in respect of such created or acquired entities will terminate 30 days following creation or acquisition if terms cannot be agreed between the **Insured** and the **Insurer**.

Exclusions applicable to this Professional Indemnity Section

In accordance with the provisions of S.15(6) of Consumer Insurance Contracts Act 2019, the **Insurer** shall not be liable to indemnify the **Insured** against any claim:

1. Adherence to legal advice

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

2. Asbestos

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

3. Bodily injury/property damage

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

4. Claims by Employees

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

5. Claims by Financially associated persons or entities

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

6. Claims or Circumstances known at inception

arising directly or indirectly from any claim or **Circumstance** of which the **Insured** was, or ought reasonably to have been, aware prior to inception under this Professional Indemnity Section, whether notified under any other insurance or not;

7. Collection of private data without consent

arising directly or indirectly from your actual or alleged failure to obtain explicit consent from any private individual before collecting storing or sharing any of their personal information, including but not limited to internet search history and internet browsing habits. This exclusion shall not apply where private data has been collected by a third party without the knowledge of the **Insured**;

8. Collusion and conspiracy

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

9. Commercial disputes

arising from any commercial dispute between the **Insured** and their business partners or business associates, including but not limited to any joint venture partner or any other third party service providers, distributors, contributors or collaborators, but only to the extent such a claim is based upon:

- a. commission or royalty, or any other term upon which such partner or associate is to be compensated in connection with doing business with you, or any compensation or remuneration promised or owed by you pursuant to those terms; or
- b. The **Insured's** decision to cease doing business with such a partner or associate;

10. Contractual liability

arising directly or indirectly from any breach or alleged breach of any contractual duty or duty of care owed or alleged to have been owed by the **Insured** to any third party and which is more onerous than any duty that would otherwise be implied by common law or statute except as covered under Insuring Clause 1a);

11. Costs and expenses incurred without prior consent

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

12. Credit card

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

13. Deliberate acts

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

14. Dishonesty

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

15. Employee benefit schemes / stocks and shares

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

16. Employers Liability

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

17. Excess

for an amount less than the **Excess**. The **Excess** shall be deducted from each and every claim paid or settled under this Professional Indemnity Section. The **Indemnity limit** is additional to the **Excess**;

18. Fines and Penalties

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

This exclusion shall not apply to punitive, multiple or exemplary **Damages** where the law permits the **Insurer** to pay them;

19. False Advertising

arising directly or indirectly from false **Advertising** or misrepresentation in **Advertising**; this exclusion shall not apply in respect of any claim or portion of any claim relating to the alleged unauthorised use of a third party's trademark;

20. Financial advice & Mortgage advice

arising directly or indirectly from the provision by the **Insured** of any investment or financial advice or arrangements made by or on behalf of the **Insured** in respect of any finance, loan, mortgage, credit or leasing agreement;

21. Geographical limits

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

22. Insolvency/bankruptcy of Insured

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

23. Known defamatory statements

arising from statements that the **Insured** knew, or ought to have known, were defamatory at the time of publication unless the **Insured** can demonstrate that they believed there to be a good defence to any action arising from it;

24. Land buildings etc

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

25. Legal action

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

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

26. Legislation and regulation

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

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

27. License payments

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

28. Loss, damage or destruction of bearer bonds or coupons

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

29. Negatives, film, prints and electrical media

arising from damage to or loss or destruction of negatives, exposed or unexposed film, prints, library stock or magnetic or electrical media unless they have

been duplicated where such duplicate can be used to restore them to their original state;

30. Obscenity

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

31. Official action or investigation

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

32. Other appointments

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

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

33. Other insurance

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

34. Ownership and rights

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

35. Patents

notwithstanding Insuring Clause 1c), arising directly or indirectly from the infringement of any patent;

36. Products

arising out of or relating to:

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

Exclusion 36a) shall not apply where there has been a breach of duty in the sale or supply of any product but only if:

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

37. Products harmful to health

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

38. Radioactive contamination or explosive nuclear assemblies

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

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

39. Results of competitions

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

40. Restricted recovery rights

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

41. Retroactive date

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

42. Seepage and pollution

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

43. Stunts

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

44. Takeover or merger

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

45. Terrorism

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

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

46. Trading losses

arising out of :

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

47. Utility provider

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

48. Virus

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

49. War

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

50. Claims by Employees

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

51. Medical Malpractice

arising directly or indirectly out of or in connection with:

- a. the provision of or omission to provide any medical, clinical or surgical diagnosis, advice, treatment, remedy or prescription; or
- b. any breach of professional duty by any person providing counselling, therapy or similar treatment;

52. Physical, Emotional and Sexual Abuse

alleging physical, emotional or sexual abuse, sexual harassment, sexual molestation, racial discrimination or unlawful detention by any party, including but not limited to the **Insured** or any **Employee** or agent of the **Insured**;

53. Insurance advice

arising directly or indirectly from the provision by the **Insured** of insurance advice or advice on the arranging, underwriting or managing of any insurance product, whether as principal, as an agent or intermediary for another party;

54. Will writing or estate planning

arising directly or indirectly from will writing, estate planning or advice on the operation of or administration of any trust or the misuse of any information relating to them or the breach of any related legislation or regulation.

Notification And Claims Conditions applicable to this Professional Indemnity Section

1. Claim/Circumstance Notification

As conditions precedent to their right to be indemnified under this Professional Indemnity Section the **Insured**:

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

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

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

- 1.2 shall not, in respect of any of the matters specified in 1.1a) to 1.1d) above, admit liability, make any offer for or settle any claim, or incur any costs or expenses in connection with any such claim or **Circumstance**, without the prior written consent of the **Insurer**; and
- 1.3 shall, as soon as practicable given the **Circumstances**, give all such information and assistance as the **Insurer** may require and provide their full co-operation in the defence or settlement of any such claim or relating to the recovery or subrogation process of any settled claim; and
- 1.4 shall not destroy evidence, supporting information or documentation without the **Insurer's** prior consent; nor destroy any plant or other property relating to a claim under this Professional Indemnity Section;

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

2. Notifications

Any and all notifications of **Circumstances** and claims for an indemnity pursuant under this Professional Indemnity Section of insurance shall be notified to Tokio Marine Europe S.A. Irish Branch by either (a) email (b) telephone or (c) first class post.

If by email then such must be addressed to PI Claims and sent to piclaims@tmhcc.com

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

Telephone- +44 (0)20 7702 4700

If by post:

PI Claims Tokio Marine Europe S.A. Irish Branch, The St Botolph Building, 138-139 Houndsditch, London, EC3A 7BT

3. Conduct of Claims

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

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

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

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

- 3.4 The **Insurer** shall be subrogated to the **Insured's** rights of recovery against any third party (ies) and the **Insured** shall co-operate and do whatever is necessary to secure such rights. If the **Insured** does not comply with this condition the **Insurer** may deduct any associated additional costs from any payments made under this Professional Indemnity Section.

- 3.5 Duty to Defend

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

If a claim which is only partially covered is made against the **Insured**, the **Insurer** has the right and duty to

defend the **Insured** with payments for defence costs incurred in relation to any uninsured claim being deducted from the **Insurer's** contribution to any final **Damages** settlement. Irrespective of whether or not the **Insurer** makes any final **Damages** settlement, the **Insured** are liable to re-imburse the **Insurer** for defence costs incurred in relation to any uninsured portion of any claim. The defence costs incurred will be reviewed in their entirety and an appropriate allocation should be made between the covered and non-covered defence costs incurred. It is agreed that both the **Insurer** and **Insured** will use best efforts to determine a fair allocation of covered and non-covered defence costs proportions of a claim. If a fair allocation cannot be agreed the **Insurer** and the **Insured** agree to follow the dispute resolution process in General Condition 7. The **Insurer** has no duty to defend the **Insured** against - claims where:

- a. no portion of the claim is covered; or
- b. the **Insurer** pays the **Indemnity limit** under claims condition 3.2 above; or
- c. the claim is for less than the **Excess**.

General Conditions applicable to this Professional Indemnity Section

1. Cancellation

This Professional Indemnity Section may be cancelled by or on behalf of the **Insurer** by 30 days' notice given in writing to the **Insured** or in accordance with the 14 day cooling off period provided in the S.11 (1) of Consumer Insurance Contracts Act 2019.

2. Dishonest or Fraudulent Act or Omission

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

3. Fraudulent Claims

If the **Insured** shall submit any claim knowing the same to be false or fraudulent as regards amount or otherwise under this Policy shall become void and all claims hereunder shall be forfeited.

4. Invalidity

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

5. Notices

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

- a. in the case of the **Insured**, either to the **Insured's** last known address or the last known address of the **Insured's** broker;
- b. in the case of the **Insurer**, to Tokio Marine Europe S.A. Irish Branch at The St Botolph Building, 138-139 Houndsditch, London, EC3A 7BT.

6. Other parties

The **Insured** and the **Insurer** are the only parties to this contract and no other person has any rights to enforce any term under this Policy, save as is conferred upon them by Law / the operation of S.21 and S.22 of Consumer Insurance Contracts Act 2019.

7. Policy construction and disputes

Irish Law governs this Policy The Policy and the **Schedule** shall be read together as one contract and any word or expression to which a specific meaning has been attached in any part of this Policy or the **Schedule** shall bear such specific meaning wherever it may appear.

Any dispute concerning the interpretation of the terms, Conditions or Exclusions contained herein is understood and agreed by both the **Insured** and the **Insurer** to be subject to Irish Law. Each party agrees to refer any such dispute to a mediator to be agreed between the **Insured** and the **Insurer** within 14 working days of any dispute arising under the Policy.

The **Insured** and the **Insurer** agree to perform their respective continuing obligations under this Policy while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.

If any such dispute is not resolved by mediation or the **Insured** and the **Insurer** cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be submitted to the exclusive **Jurisdiction** of any court of competent **Jurisdiction** within Ireland and each party agrees to comply with all requirements necessary to give such court **Jurisdiction**. All matters arising hereunder shall be determined in accordance with the law and practice of such court.

8. Reasonable steps to avoid loss

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

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

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

9. Subscribing insurers

The **Insurers** obligations under this Professional Indemnity Section are several and not joint and are limited solely to the extent of their individual subscriptions. The **Insurers** are not responsible for the subscription of any co-subscribing **Insurer** who for any reason does not satisfy all or part of its obligations.

10. Waiver of subrogation against Employees

The **Insurer** shall not exercise any right of subrogation against any former or present **Employee**, unless the **Insurer** shall have made a payment caused or contributed to by any act or omission of the **Employee** or former **Employee** which was caused by such a person intentionally or recklessly and with knowledge that the loss would probably result.

11. International Sanctions

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

economic sanctions laws or regulations which are applicable to it.

12. Assignment

Under this Professional Indemnity Section of insurance (including any benefits it provides) are not assignable to any third party without the express approval of the **Insurer** confirmed in writing by the **Insurer**.

13. Change of control

In the event that the **Insured** merges into or consolidates with or sells all or substantially all of its assets or shares to a third party (whether a company, corporation or any other legal entity or person) or there is any acquisition of more than fifty percent (50%) of the voting share capital of the **Insured** by a third party (whether a company, corporation or any other legal entity or person) the **Insured** shall give written notice of such event prior to its execution. Upon receipt of such notice, the **Insurers** may at their absolute discretion agree to continuation of this Professional Indemnity Section of insurance, to be confirmed by way of a written endorsement to this Professional Indemnity Section. In the absence of such agreement and/or if notice is not forthcoming as required under this General Condition 13 – Change of control, the cover provided under this Professional Indemnity Section of insurance shall cease with immediate effect at the date of the change of control.

For the avoidance of doubt, the **Insured** shall not be entitled to an indemnity in respect of any claims made under this Professional Indemnity Section of insurance where notification of the claim occurs after a change in control (as referred to in this General Condition 13 – Change of control) where the change of control was not reported to **Insurers** and approved in accordance with this General Condition 13.

14. Alterations in Risk

The **Insured** is required to notify the **Insurers** of all material facts or alterations in the risk in accordance with Section 15 of the Consumer Insurance Contracts Act 2019 which come to the **Insureds** knowledge or arise during the **Period of insurance**.

15. Difference in conditions

- a. The provisions within the Consumer Insurance Contracts Act 2019 are incorporated into the terms under this Professional Indemnity Section.
- b. Paragraph a. only applies to provisions of the Consumer Insurance Contracts Act 2019 which are in force and have been commenced.

In the event of any inconsistency between the terms and conditions under this Professional Indemnity Section and the Consumer Insurance Contracts Act 2019, the provisions of the Consumer Insurance Contracts Act 2019 shall prevail.

Complaints

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

The Head of Compliance
Tokio Marine Europe S.A
26, Avenue de la Liberté,
L-1930 Luxembourg

Should the **Insurer** be unable to resolve any difficulty directly with you to your satisfaction, you may be entitled to refer the dispute to the Insurance Ombudsman at the ACA or to the Insurance Supervisory Authority In Luxembourg (Commissariat Aux Assurances – CAA) who will review your case and who may be contacted at:

ACA

Service Mediation

12, rue Erasme

L-1468 Luxembourg

Website: www.aca.lu

or

CAA

7, boulevard Joseph II

L-1840 Luxembourg

Email: commassu@commassu.lu

Website: www.caa.lu

The European Commission Online Dispute Resolution Platform (ODR)

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

Data protection notice

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

We may collect your personal information such as name, email address, postal address, telephone number, gender

and date of birth. We need the personal information to enter into and perform a contract with you. We retain personal information we collect from you where we have an ongoing legitimate business need to do so.

We may disclose your personal information to:

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

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

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

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

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

Contact Us

Tel: +44 (0)20 7702 4700
mail@tmhcc.com

tmhcc.com

Tokio Marine Europe S.A. Irish Branch Summit House, Embassy Office Park Kill, County Kildare W91 VK0T, Ireland
Tel: +353 (0)45 886993 | tmhcc.com

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