



TOKIO MARINE
HCC

Tokio Marine Europe S.A.

Spanish Branch

Torre Diagonal Mar, Josep Pla 2, Planta 10

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tmhcc.com

POLICY DOCUMENT
PENSION TRUSTEE LIABILITY INSURANCE

PLEASE NOTE:

THIS IS A CLAIMS MADE POLICY.

THE COVER PROVIDED BY THIS POLICY IS AFFORDED SOLELY WITH RESPECT TO CLAIMS FIRST MADE AGAINST AN INSURED DURING THE POLICY PERIOD OR ANY DISCOVERY PERIOD PURCHASED.

THE NAMED EMPLOYER COMPANY IS REQUESTED TO READ THIS POLICY AND SCHEDULE CAREFULLY. IF IT IS INCORRECT PLEASE RETURN IT IMMEDIATELY FOR ALTERATION TO:
TORRE DIAGONAL MAR, JOSEP PLA 2, PLANTA 10, 08019 BARCELONA, SPAIN



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SAMPLE



NOTICE: THIS IS A CLAIMS MADE POLICY WHICH APPLIES ONLY TO CLAIMS FOR WRONGFUL ACTS FIRST MADE AGAINST THE INSUREDS DURING THE POLICY PERIOD OR, IF APPLICABLE, THE DISCOVERY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED, AND MAY BE EXHAUSTED, BY THE PAYMENT OF DEFENCE COSTS AND INVESTIGATION COSTS. DEFENCE COSTS AND INVESTIGATION COSTS WILL BE APPLIED AGAINST THE RETENTION. THE INSURER HAS NO DUTY UNDER THE POLICY TO DEFEND ANY INSURED.

SCHEDULE

POLICY NUMBER:

ITEM 1. NAMED EMPLOYER COMPANY:

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

ITEM 2. PLAN(S):

ITEM 3. POLICY PERIOD:

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

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

ITEM 4. LIMIT OF LIABILITY:

EUR [•] in the aggregate, for all insurance covers combined

ITEM 5. AGGREGATE SUB-LIMITS

- (a) **Contribution Notice Defence Costs** - Insuring Agreement (E)
EUR [•]
- (b) Carve-back to Exclusion 3(C) - Pollution **Defence Costs**
EUR [•]
- (c) Extension 4(F) - **Investigation Costs**:
EUR [•]
- (d) Extension 4(I) – Emergency Costs:
EUR [•]
- (e) Extension 4(C) – Loss of Documents
EUR [•]

All Sub-Limits are part of and not in addition to the Limit of Liability stated in ITEM 4 of the SCHEDULE.

ITEM 6. RETENTIONS:

- (1) Insuring Agreement (A) and (E)
- (a) **Non-indemnifiable Loss**: NIL, or the minimum required under applicable law, if any.



(b) All other **Loss**: EUR [•] each and every **Claim. Loss** of any **Insured Person** which is not **Non-indemnifiable Loss** covered under INSURING AGREEMENT 1(A) or 1(E) shall be subject to a **Retention** to be repaid by the **Company** to the **Insurer** but not to be applied against the **Insured Person**.

(2) Insuring Agreement (B), (C), (D)

EUR [•] each and every **Claim**.

ITEM 7. PREMIUM: EUR plus applicable tax

ITEM 8. INSURER: TOKIO MARINE EUROPE S.A.

ITEM 9. 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 10. DISCOVERY PERIOD:

(a) Automatic **Discovery Period**:

(i) Duration: 30 days after the Expiration Date

(ii) Additional Premium: NIL

(b) Automatic **Discovery Period** for **Retired Trustees**:

(i) Duration: 120 months after the Expiration Date

(ii) Additional Premium: NIL

(c) Optional **Discovery Periods**:

Option 1:

(i) Duration: 12 months after the Expiration Date

(ii) Additional Premium: 100% of the premium stated in 0 of the SCHEDULE

Option 2:

(i) Duration: [•] months after the Expiration Date

(ii) Additional Premium: [•] % of the premium stated in 0 of the SCHEDULE



ITEM 11. APPLICABLE LAW AND EXCLUSIVE JURISDICTION:

- (a) Applicable Law:
- (b) Exclusive Jurisdiction:

ITEM 12. CONTINUITY DATE - Pending and prior litigation:

ITEM 13. POLLUTION CONTINUITY DATE:

ITEM 14. CREATED OR ACQUIRED PLANS COVERAGE - EXTENSION(B):

Assets EUR []

ITEM 15. ENDORSEMENTS ATTACHED AT ISSUANCE:

INFORMATION FOR THE NAMED COMPANY REGARDING THE INSURER:

In accordance with Spanish Law, the **Insurer** is required to provide the **Named Company** 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 **Named Company** 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 and subject to the terms and conditions of this Policy and any endorsements attached to this Policy, the **Insurer** and the **Named Employer Company** agree as follows:

1. INSURING AGREEMENTS

(A) INSURED PERSONS AND CORPORATE TRUSTEES LIABILITY

The **Insurer** shall pay to or on behalf of any **Insured Person** or **Corporate Trustee Company** any **Loss** resulting from a **Claim** first made against such **Insured Person** or **Corporate Trustee** during the **Policy Period** (or **Discovery Period**, if applicable), except to the extent that the **Company** has indemnified or advanced such **Loss** to or on behalf of such **Insured Person** or **Corporate Trustee Company**.

(B) COMPANY REIMBURSEMENT

The **Insurer** shall pay to or on behalf of any **Company** any **Loss** resulting from a **Claim** first made against an **Insured Person** or **Corporate Trustee** during the **Policy Period** (or **Discovery Period**, if applicable), if and to the extent that such **Company** has indemnified or advanced such **Loss** to or on behalf of such **Insured Person** or **Corporate Trustee Company**.

(C) COMPANY LIABILITY

The **Insurer** shall pay to or on behalf of any **Company** any **Loss** resulting from a **Claim** first made against such **Company** during the **Policy Period** (or **Discovery Period**, if applicable).

(D) EXONERATION

The **Insurer** shall pay to or on behalf of any **Company** any **Loss** resulting from a **Claim** first made against a **Trustee** or **Corporate Trustee Company** during the **Policy Period** (or **Discovery Period**, if applicable), for which the **Trustee** or the **Corporate Trustee Company** would be legally liable to pay but for the operation of an **Exoneration Clause**.

(E) CONTRIBUTION NOTICE

The **Insurer** shall pay **Defence Costs** up to the Sub-Limit stated in ITEM 5(a) of the SCHEDULE incurred by any **Insured Person** for challenging a **Contribution Notice** issued and served during the **Policy Period** (or **Discovery Period**, if applicable).

2. DEFINITIONS

(A) **Benefits** means any obligation under a **Plan** to a participant or beneficiary of a **Plan** which is a payment or transfer of money or property, or the granting of a privilege or perquisite.

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

a) the **Named Employer Company's** merger with or consolidation into any other company; or



- b) any person or company acting alone or in concert:
 - i. 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 **Named Employer Company** and/or more than 50% of the outstanding shares representing the right to vote for the election of the board of directors of the **Named Employer Company** and/or assuming the right to appoint or remove the majority of the board of directors of the **Named Employer Company**; or
 - ii. acquiring ownership of all or the majority of the **Named Employer Company's** assets; or
 - c) the appointment of any licensed insolvency practitioner, trustee in bankruptcy, receiver, administrator or liquidator or the equivalent in any jurisdiction by or on behalf of the **Named Employer Company**; or
 - d) any **Plan** becoming the subject of winding up, buyout, or transfer.
- (C) **Claim** means:
- a) any written demand for monetary or non-monetary relief or any civil (including arbitration and other alternative dispute resolution), criminal, regulatory or administrative proceeding, against an **Insured** for a **Wrongful Act**; or
 - b) any **Contribution Notice**, solely for the purposes of INSURING AGREEMENT(E);
- A **Claim** is deemed to be made upon receipt by or service upon the **Insured**, whichever is earlier.
- 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.
- (D) **Company** means:
- a) the **Named Employer Company**; or
 - b) any **Subsidiary**.
- (E) **Contribution Notice** means a notice issued by the UK Pensions Regulator pursuant to in Section 38 of the UK Pensions Act 2004 against any **Company** for a **Wrongful Act**.
- (F) **Corporate Trustee Company** means any trustee company established by the **Company** or any predecessor thereof and duly appointed to act as trustee of a **Plan**.
- (G) **Defence Costs** means reasonable and necessary 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, defending, appealing a **Claim**, but excluding salaries, wages, benefits or overhead expenses of any **Insured**.
- (H) **Discovery Period** means the relevant period stated in ITEM 10 of the SCHEDULE commencing immediately after the Expiration Date as stated in ITEM 3(b) of the SCHEDULE.



- (I) **Document** means any document, in paper or electronic version which relates to a **Plan** (excluding any bearer bonds, coupons, bank or currency notes or any other negotiable instruments whether printed or reproduced by any other method) that is the property of the **Insured** or for which the **Insured** is legally responsible.
- (J) **Exoneration Clause** means any provision in the governing trust deeds or rules of a **Plan** which relieves a **Trustee** or **Corporate Trustee Company** of the burden of blame, obligation, duty, responsibility or liability which, in the absence of such clause, would attach to such **Trustee** or **Corporate Trustee Company**.
- (K) **Insured** means:
- a) any **Insured Person** solely for the purposes of INSURING AGREEMENT(A), (B) and (E);
 - b) any **Corporate Trustee Company** solely for the purposes of INSURING AGREEMENT (A) and (B);
 - c) any **Company** solely for the purposes of INSURING AGREEMENT (C), and (D);
 - d) any other person or entity in their capacity as **Trustee** or **Corporate Trustee Company**, who is included in the definition of **Insured** by specific written endorsement approved by the **Named Employer Company** and the **Insurer** and attached to this Policy.
- (L) **Insured Person** means:
- a) any **Trustee**; or
 - b) any natural person, who was, is, or during the **Policy Period** becomes a director, officer, de facto director or officer, consultant or employee of the **Company** or the **Corporate Trustee Company** and is someone who provides administration services or other services to the **Plan**.
- Insured Person** shall not include any insolvency practitioner or external auditor.
- (M) **Insurer** means Tokio Marine Europe S.A., as named in **Error! Reference source not found.** 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.
- (N) **Investigation** means any formal or official hearing, investigation or inquiry by an **Official Body** into the affairs of an **Insured** in its capacity as such and in connection with the **Plan**, commenced by the receipt by an **Insured Person** of written documentation:
- a) that legally requires such **Insured Person** to attend such hearing, investigation or inquiry; or
 - b) in which the **Insured** is identified by an investigating authority as a subject of such hearing, investigation or inquiry.

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



- (O) **Investigation Costs** means any reasonable and necessary fees, costs and expenses (other than salary) incurred by an **Insured Person** with the **Insurer's** prior written consent (not to be unreasonably withheld or delayed) at such time when there is no allegation of a **Wrongful Act** against the **Insured Person**, in attending or participating in an **Investigation**.
- (P) **Limit of Liability** means the amount stated in ITEM 4 of the SCHEDULE.
- (Q) **Loss** means:
- a) Defence Costs; and
 - b) any amounts that an **Insured** is legally obliged to pay as a result of a **Claim** including damages, settlements, judgments, pre and post-judgment interest on a covered judgment or award, or awards of costs or other amounts.
- Loss** shall not include:
- (i) non-compensatory damages, including punitive, exemplary or aggravated damages, or the multiplied portion of any multiplied damages award; or
 - (ii) **Benefits** (or that portion of any settlement or award in an amount equal to such **Benefits**) which would have been payable in any event from the **Plan** and which would have been paid if the **Wrongful Act** had not occurred; or
 - (iii) taxes; or
 - (iv) fines or penalties except to the extent covered under EXTENSION (D); or
 - (v) remunerations or employment-related benefits which are not **Benefits**.
- (R) **Named Employer Company** means the entity named in ITEM 1 of the SCHEDULE.
- (S) **Non-Indemnifiable Loss** means **Loss** that a **Company** (i) is legally prohibited from indemnifying the **Insured Person** for, or (ii) is unable to indemnify due to its insolvency under section 123 of the Insolvency Act 1986 or under the law that governs the insolvency of such **Company**.
- (T) **Official Body** means the Pensions Ombudsman (UK), the Pensions Regulator (UK), the Pensions Regulator Tribunal (UK), the Pension Protection Fund (UK) or any similar regulator, government body or entity in any other relevant jurisdiction.
- (U) **Plan** means:
- a) any pension, benefits or welfare plan established by the **Company** for the benefit of its past, present or future employees and their respective beneficiaries on or prior the Inception Date stated in ITEM 3(a) of the SCHEDULE, and indicated in ITEM 2 of the SCHEDULE;
 - b) any pension, benefits or welfare plan which the **Company** establishes or for which the **Company** assumes responsibility for the benefit of its past, present or future employees and their respective beneficiaries during the **Policy Period** provided that such plan has total gross assets which are less than the amount specified in ITEM 14 of the SCHEDULE;

For the avoidance of doubt, coverage under this Policy shall apply only in respect of **Claims** for **Wrongful Acts** actually or allegedly committed and of **Investigations** in



relation to events that actually or allegedly occurred or took place during such time said entities are or were **Plans** as defined above.

- (V) **Policy Period** means the period set forth in ITEM 3 of the SCHEDULE.
- (W) **Retention** means any of the amounts set out at ITEM 6 of the SCHEDULE, as applicable.
- (X) **Retired Trustee** means any **Trustee** who voluntarily ceased to hold such office prior to the Expiration Date as stated in ITEM 3(b) of the SCHEDULE other than by reason of disqualification or where directly or indirectly related to or based upon or in any way attributable to a **Change in Control**.
- (Y) **Subsidiary** means:

any entity, during any time, on or before the inception of the **Policy Period**, in which the **Named Employer Company**, either directly or indirectly, through one or more other **Subsidiaries**:

- i) owns more than 50% of the issued and outstanding shares of such entity; or
- ii) controls more than 50% of the voting rights within such entity; or
- iii) controls the right to vote for the election or removal of the majority of such entity's board of directors.

For the avoidance of doubt, 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 said entities are or were **Subsidiaries** as defined above.

- (Z) **Trustee** means any natural person (including any director, officer, de facto director or officer, consultant or employee of the **Corporate Trustee Company**) who was, is, or during the **Policy Period** becomes a trustee of a **Plan** or acts as a constructive trustee of a **Plan**.
- (AA) **Wrongful Act** means any actual or alleged act, error, misstatement, misleading statement, omission, breach of warranty, breach of statute, breach of trust, or breach of duty, maladministration, administrative error by an **Insured**, solely in their capacity as such in relation to a **Plan**.

3. EXCLUSIONS

The **Insurer** will not be liable to make any payment for **Loss** resulting from:

(A) UNLAWFUL CONDUCT

Any **Claim** arising out of, based upon or attributable to:

- a) the gaining by the **Insured** of any profit or advantage to which such **Insured** was not legally entitled; or
- b) the commission by the **Insured** of any deliberately fraudulent or dishonest act.



This EXCLUSION (A) shall however only apply where the **Insured's** behaviour is established primarily or incidentally in a final adjudication by any court, tribunal, legal panel or regulator in the **Claim** or by a written admission of the **Insured**.

(B) BODILY INJURY / PROPERTY DAMAGE

Any **Claim** arising out of, based upon or attributable to:

- a) bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused; or
- b) damage to or loss of or destruction of any tangible property including loss of use thereof, except to the extent covered under EXTENSION (C);

(C) POLLUTION

Any **Claim** arising out of, based upon or attributable to the actual, alleged or threatened discharge, dispersal, release or escape of any substance whether it be solid, liquid, gaseous, biological, radiological or a thermal irritant, or a toxic or hazardous substance, or a contaminant including but not limited to asbestos or 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 to be recycled, reconditioned or reclaimed, or for any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any such substance or contaminant.

This EXCLUSION (C) shall not apply to **Defence Costs** incurred by an **Insured Person** in connection with such **Claim** up to the Sub-Limit stated in ITEM 5(b) of the SCHEDULE, unless on or before the Pollution Continuity Date stated in ITEM 13 of the SCHEDULE, any **Insured Person** with managerial responsibilities over environmental affairs, control or compliance, knew or could have reasonably foreseen that there existed any situation, circumstance or **Wrongful Act** which could have given rise to a **Claim** arising out of, based upon or attributable to environmental matters against an **Insured**.

(D) PRIOR NOTICE

Any **Claim** arising out of, based upon or attributable to facts, circumstances or **Wrongful Acts** underlying, alleged, contained in or deriving from the same originating cause or source alleged or contained, in any matter or circumstance 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.

(E) PRIOR OR PENDING LITIGATION

Any **Claim** arising out of, based upon or attributable to any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration, demand or adjudication as of the Continuity Date stated in ITEM 12 of the SCHEDULE, or alleging or derived from the same or essentially the same facts or circumstances as alleged in such pending or prior proceeding, investigation, arbitration, demand or adjudication.

(F) FAILURE TO FUND A PLAN

Any **Claim** for failure to fund a **Plan** in accordance with the **Plan** trust document or instrument or any legal, statutory, official or governmental framework applicable to the **Plan** or the failure to collect contributions owed to the **Plan**; provided, however, that this EXCLUSION (F) shall not apply:



- a) to **Defence Costs** incurred in connection with such **Claim**; or
- b) to the extent such **Claim** is covered under INSURING AGREEMENT (E).

(G) OTHER PLANS AND FUNDS

Any **Claim** arising out of, based upon or attributable to or in any way involving any act or omission by an **Insured** in his, her or its capacity as trustee of any plan, fund or programme other than a **Plan**.

(H) ERISA

Any **Claim** arising out of, based upon or attributable to or otherwise connected with any plan, employee pension plan, program, pension, trust or fund subject to any federal, state or local law of the United States of America, including but not limited to the Employee Retirement Income Security Act of 1974 (as amended) or any regulations promulgated thereunder, or for any actual or alleged violation of the foregoing.

4. EXTENSIONS

(A) DISCOVERY PERIOD

This Policy shall be extended to cover **Claims** first made, or in the case of an **Investigation**, first commenced, subsequent to the **Policy Period** but during any applicable **Discovery Period**, solely for **Wrongful Acts** actually or allegedly committed, or in the case of an **Investigation**, circumstances which occurred, before the Expiration Date stated in ITEM 3(b) of the SCHEDULE.

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

- (1) If, subsequent to the expiration of the **Policy Period**, this Policy is not renewed or replaced by any other policy affording pension trustee liability coverage, the **Insurer** will grant:
 - (i) an automatic **Discovery Period** as stated in ITEM 10(a) of the SCHEDULE at no additional premium; or
 - (ii) an automatic **Discovery Period** as stated in ITEM 10(b) of the SCHEDULE solely for **Retired Trustees** at no additional premium; or
 - (iii) subject to written request to this effect and payment of the applicable additional premium before the Expiration Date stated in ITEM 3(b) of the SCHEDULE by the **Named Employer Company**, one of the optional **Discovery Periods** as stated in ITEM 10(c) of the SCHEDULE at the corresponding additional premium;
- (2) The additional premium shall be deemed to be fully earned as of the inception of the **Discovery Period**.
- (3) 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.

Rights to a **Discovery Period** shall automatically lapse:

- a) in respect of all **Plans** upon a **Change in Control** event as indicated in a), b), c) of DEFINITION (B); or



- b) in respect of the **Plan** which is subject to a **Change in Control** event as indicated in d) of DEFINITION (B) upon occurrence of such event.

However, the **Insurer** may, at its sole discretion, quote for a run-off policy of up to seventy-two (72) months upon the written request of the **Named Employer Company** on whatever terms, conditions and limitations the **Insurer** deems appropriate.

(B) NEW PLANS PROVISIONAL COVER

This Policy shall be extended to include as a **Plan**, any pension, benefits or welfare plan with total gross assets which exceed the amount stated in ITEM 14 of the SCHEDULE as of the Inception Date of this Policy and that during the **Policy Period** the **Company** establishes or assumes responsibility for, for a period of ninety (90) days after the date of such creation or assumption of responsibility, provided that:

- a) the **Insurer** may, at its sole discretion, subsequently include such pension, benefits or welfare plan as a **Plan** upon the **Company's**:
 - (i) providing, during the above-mentioned period of ninety (90) days, sufficient details to permit the **Insurer** to properly assess and evaluate the potential increase in exposure; and
 - (ii) paying any additional premium required; and
 - (iii) accepting any additional terms, conditions and limitations which the **Insurer** may require; and
- b) in case the **Insurer** decides not to include such pension plan as a **Plan** as per a) above, the plan will be considered as never having acquired the condition of **Plan**.

(C) LOSS OF DOCUMENTS

In the event of a **Claim** covered under this Policy arising out of, based upon or attributable to **Documents** having been damaged, lost or mislaid in the course of administering a **Plan**, this Policy shall be extended to include as **Loss**, up to the Sub-Limit stated in ITEM 5(e) of the SCHEDULE, the cost reasonably incurred by any **Insured** in replacing or restoring such damaged, lost or mislaid **Documents**, but excluding the value to the **Insured** of the information or material contained in such **Documents**, provided that:

- a) the **Insured** is the owner of or is legally responsible for such **Documents**; and
- b) such **Documents** are or are believed to be in the custody of the **Insured** or in the custody of any other person to whom such **Documents** have been
- c) entrusted, lodged or deposited by the **Insured**.

(D) OFFICIAL BODY AWARDS

This Policy shall be extended to include as **Loss** any monetary award (including civil fines and penalties 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) on account of a **Claim** first made during the **Policy Period** (or **Discovery Period** if applicable), rendered against an **Insured** by an **Official Body**, provided that:



- a) the premium for this Policy shall not be paid, funded or reimbursed by a **Plan** or out of a **Plan** assets; and
- b) the **Insurer** shall not make any payment for:
 - (i) fines or penalties imposed in connection with an act for which the **Insured** has been or is prosecuted by any relevant criminal authority or on a criminal basis; or
 - (ii) **Benefits** which would have been payable in any event from the **Plan** and which would have been paid if no **Wrongful Act** had occurred or any requirement to contribute to a **Plan**; or
 - (iii) any other amount excluded from the DEFINITION (Q) of **Loss**.

(E) EXTRADITION PROCEEDINGS

This Policy shall be extended to include as **Claims** and, therefore, to cover **Loss** arising therefrom, 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** being unlawfully at large in any country or jurisdiction after final adjudication by the court of another country.

For the purposes of this EXTENSION (E) solely, such **Claim** shall be deemed first made upon receipt by the **Insured** 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.

(F) INVESTIGATION COSTS

This Policy shall be extended to cover any **Insured Person's Investigation Costs** arising out of the **Insured Person's** preparation for or attendance at any **Investigation** first commenced during the **Policy Period** (or **Discovery Period**, if applicable) relating to any matters existing prior to the Expiration Date stated in ITEM 3(b) of the SCHEDULE subject to the Sub-Limit specified in ITEM 5(c) of the SCHEDULE.

Solely for the purposes of giving effect to this EXTENSION (F), DEFINITION (C) of **Claim** is extended to include any **Investigation** and DEFINITION (G) of **Defence Costs** is extended to include **Investigation Costs**.

(G) 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 person is subject to a proceeding solely by reason of an actual or alleged **Wrongful Act** of such deceased, incompetent, insolvent or bankrupt **Insured Person** and that such **Insured Person** would have been covered by this Policy for **Loss** in the absence of their death, incompetence, insolvency or bankruptcy.

(H) SPOUSES AND DOMESTIC PARTNERS

This Policy shall be extended to include as **Insured Person** any **Insured Person's** lawful spouse or domestic partner, including same sex relationship civil partnerships, to the extent that such person is subject to a proceeding solely by reason of their



ownership interest in property which a claimant seeks as recovery in respect of a **Claim** against such **Insured Person**.

(I) EMERGENCY COSTS

The **Insurer** will waive the requirement for its prior written consent to the incurring of **Defence Costs** up to the maximum aggregate Sub-Limit stated in ITEM 5(d) of the SCHEDULE where it was not reasonably practicable for the **Insured** to seek the **Insurer's** prior written consent.

5. CLAIMS CONDITIONS

(A) NOTICE

The **Insured** shall give written notice, including full details, to the **Insurer** of any **Claim** as soon as reasonably practicable within the **Policy Period** (or **Discovery Period**, if applicable), 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 within 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** which arises out of, based upon or attributable to the same originating cause or source will be considered together with the earlier **Claim** as a single **Claim** and will be deemed to have been first noticed at the time of the original notice.

If, during the **Policy Period**, the **Insured** becomes aware of any circumstances which may reasonably be expected to give rise to a **Claim**, and gives written notice to the **Insurer** of such circumstances and the reasons for anticipating such a **Claim**, with full particulars as to dates, persons and entities involved, potential claimants and the consequences which have resulted or may result from any anticipated **Wrongful Act**, then any **Claim** subsequently arising out of, based upon or attributable to essentially the same circumstances or **Wrongful Acts** will be deemed to have been first made at the time notice was first given.

All notices under this CLAIMS CONDITION (A) shall be in writing, referring to the Policy Number, and be made to the address set out in ITEM 9 of the SCHEDULE.

The **Insurer** shall only be liable in respect of **Claims** notified in compliance with this CLAIMS CONDITION (A).

(B) DEFENCE AND SETTLEMENT OF CLAIMS AND CONSENT

It is the duty of the **Insured**, not the **Insurer**, to defend **Claims**. The **Insurer** shall be entitled to participate fully in the investigation, defence and negotiation of any settlement of any **Claim**.

An **Insured** shall not admit or assume any liability, enter into any settlement agreement, consent to any judgment, pay any **Loss**, or otherwise incur any **Defence Costs** without the **Insurer's** prior written consent, which shall not be unreasonably withheld or delayed. The **Insurer** shall not be liable to pay any settlement incurred without its prior written consent.

The **Insured** shall provide to the **Insurer** all information, assistance and cooperation with regard to a **Claim**.



The **Insurer** shall advance **Defence Costs** on an as-incurred basis in respect of covered **Claims**. If it is finally determined that any such **Defence Costs** so advanced are not covered under this Policy, the **Named Employer Company** shall repay such amounts to the **Insurer**.

(C) ALLOCATION

The **Insurer** shall pay only those amounts or portions of **Loss** allocated to covered matters claimed against the **Insured**. If the **Insured** incurs any **Loss** arising out of a **Claim** that includes both matters covered and matters not covered by this Policy, or that is made against 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 proportion of the **Loss** covered hereunder, taking into account the relative legal and financial exposures of the parties to the **Claim** and the relative benefits to be obtained by the resolution of the **Claim**.

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 (C), 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**.

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) PRIORITY OF PAYMENTS

If the **Insurer** is liable to pay **Loss** covered under more than one INSURING AGREEMENT, then it shall pay such **Loss** in the order it falls due. However, where it appears reasonably likely the **Limit of Liability** shall become exhausted by payments of **Loss**, the **Insurer** shall, subject to the **Limit of Liability** and unless compelled otherwise by law or any judicial or regulatory order, pay **Loss** in the following order:

- a) to **Insured Persons** under INSURING AGREEMENT (A) and (E) and EXTENSION (F); then
- b) to the **Corporate Trustee Company** under INSURING AGREEMENT (A); then
- c) to the **Company** under INSURING AGREEMENT (B) and (D); then
- d) to the **Company** under INSURING AGREEMENT (C)

All payments made under this clause fully release the **Insurer** from its obligations under the Policy for the considered **Claim**.

The **Named Employer Company** shall hold harmless the **Insurer** from any claim arising from or related to the above order of payments.

(E) SUBROGATION AND RECOVERIES

In the event of any payment under this Policy, the **Insurer** shall be subrogated to the extent of such payment to all of the **Insured's** rights of recovery. The **Insured** shall execute all papers required and do everything reasonably necessary to secure such rights and to enable the **Insurer** to bring any recovery action or suit as reasonably required by the **Insurer**.



Any recovery received shall first be applied against any payment made by the **Insurer** with any balance remaining thereafter being remitted to or retained by the **Insured** or the **Company**, as applicable.

The **Insurer** shall not exercise any right of subrogation against an **Insured Person** unless EXCLUSION (A) applies (or would apply) to such **Insured Person**.

6. GENERAL CONDITIONS

(A) CHANGE IN CONTROL AUTOMATIC RUN-OFF

If, during the **Policy Period**, a **Change in Control** as referred to in DEFINITION(B), a), b) or c) occurs, then coverage under this Policy will continue in full force and effect until the end of the **Policy Period** in relation to **Claims for Wrongful Acts** committed or allegedly committed, and to **Investigations** in relation to events that actually or allegedly occurred or took place, before the effective date of such **Change in Control**, but coverage will cease with respect to **Claims for Wrongful Acts** committed or allegedly committed, and to **Investigations** in relation to events that actually or allegedly occurred or took place, thereafter (unless otherwise agreed to by the **Named Employer Company** and the **Insurer**) and the premium will be considered fully earned in consideration of the coverage provided.

If, during the **Policy Period**, a **Change in Control** as referred to in DEFINITION(B) 2(B)d) occurs, then, exclusively with respect to the **Plan** subject to such **Change in Control**, coverage under this Policy will continue in full force and effect until the end of the **Policy Period** in respect of **Claims for Wrongful Acts** committed or allegedly committed, and to **Investigations** in relation to events that actually or allegedly occurred or took place, before the effective date of such **Change in Control**, but coverage will cease with respect to **Claims for Wrongful Acts** committed or allegedly committed, and to **Investigations** in relation to events that actually or allegedly occurred or took place, thereafter (unless otherwise agreed to by the **Named Employer Company** and the **Insurer**) and the premium will be considered fully earned in consideration of the coverage provided.

(B) LIMIT OF LIABILITY AND RETENTION

1) **Limit of Liability** and Sub-Limits:

- (a) The **Insurer's** maximum aggregate liability under this Policy for all **Loss** shall not exceed the **Limit of Liability**, regardless of the number of **Claims**, or **Insureds** who claim under this Policy.
- (b) All Sub-Limits stated in ITEM 5 of the SCHEDULE are aggregate for the whole **Policy Period** (and **Discovery Period**, if applicable) regardless of the number of **Claims** and are part of and not in addition to the **Limit of Liability**.

2) **Retentions:**

- (a) The **Insurer** will be liable only for the amount of **Loss** which exceeds the **Retention**. Such **Retention** is to be borne by the **Insured** and remains uninsured.
- (b) A **Retention** shall not apply to **Non-Indemnifiable Loss** of any **Insured Person** covered under INSURING AGREEMENT (A) or (E). All other **Loss** of any **Insured Person** covered under INSURING AGREEMENT (A) or (E) shall be subject to a **Retention** to be repaid



by the **Company** to the **Insurer** but not to be applied against the **Insured Person**.

- (c) In the event that a **Claim** is covered under more than one INSURING AGREEMENT, a single **Retention** amount will apply to all **Loss** resulting from such **Claim**, which shall be the highest of the applicable **Retention** amounts.

(C) OTHER INSURANCE and Other Indemnification

This Policy shall always apply in excess of any other valid and collectible insurance or indemnification available to the **Insured**.

(D) REPRESENTATIONS AND SEVERABILITY

The information, particulars and statements contained or referred to in the presentation of the risk to the **Insurer** were material to its acceptance of the risk assumed under this Policy and have been relied upon by the **Insurer**.

This Policy shall not be avoided on grounds of misrepresentation except for the deliberate misrepresentation or deliberate non-disclosure of the **Insured**, where established by final adjudication or formal written admission by or on behalf of such **Insured**.

For the purposes of determining the entitlement to cover under or avoidance of this Policy in respect of an **Insured**:

- a) no knowledge or information possessed by, or conduct of, any **Insured Person** will be imputed to any other **Insured Person**;
- b) the statements made by, information or knowledge possessed by and any conduct of any past, present or future chief executive officer or chief financial officer (or the equivalent executive or management position) of the **Named Employer Company** shall be imputed to all **Companies** and **Corporate Trustee Companies**; and
- c) the knowledge and conduct of any past, present or future chief executive officer or chief financial officer (or the equivalent executive or management position) of any other **Company** or **Corporate Trustee Company** at the Inception Date stated in ITEM 3(a) of the SCHEDULE shall be imputed to such **Company** or **Corporate Trustee Company**.

(E) PAYMENT OF PREMIUM

The **Insurer's** liability under this Policy shall be subject to full payment of the premium stated in ITEM 8 of the SCHEDULE by the **Named Employer Company**.

The **Insurer** may cancel this Policy for non-payment of premium by sending not less than thirty (30) days' notice to the **Named Employer Company** at the address stated in ITEM 1 of the SCHEDULE. The **Insurer** may not otherwise cancel this Policy.

(F) NOTICES AND AUTHORITY

The **Named Employer Company** 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**, authorisations and disclosures in respect of the personal data, the declaration of risk and execution of this Policy and any amendments thereto.



In the event of a **Claim** by the **Named Employer Company** or where, in relation to a **Claim**, the **Named Employer Company** has some other conflict of interest, an **Insured Person** may withdraw their consent to the **Named Employer Company** acting on their behalf with regard to the handling of such **Claim**, and elect to communicate directly with the **Insurer**; the **Insurer** shall have no obligation to communicate with any other **Insured** concerning such **Claim**.

(G) INTERPRETATION

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.

Policy headings and titles are for reference only and shall have no interpretational value.

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

Nothing in this Policy is intended to confer a directly enforceable benefit on any party other than the **Insured**.

(H) 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 11 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 11 of the SCHEDULE.

(I) ENTIRE AGREEMENT

By acceptance of this Policy, the **Named Employer Company** 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.

(J) TERRITORY

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

(K) 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**.

(L) 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 may also collect sensitive personal information such as data relating to the **Insureds**' physical or mental health or condition. We need the personal or sensitive personal information to enter into and perform the current contract of insurance. We retain personal information and sensitive personal information we collect from the **Insureds** where we have an ongoing legitimate business need to do so.

We may disclose the **Insureds**' personal or sensitive 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 and sensitive 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 or sensitive 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.

(M) 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.

(N) RIGHTS OF THIRD PARTIES

Nothing in this Policy is intended to confer a 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 or otherwise.

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 by a duly authorised representative of the **Insurer**.