



PUBLIC AND PRODUCTS LIABILITY EXCESS OF LOSS INSURANCE

IMPORTANT NOTICE TO THE INSURED

This insurance is a legal contract. Please read it carefully to ensure that it is in accordance with your requirements and that you understand its terms and conditions. The Insurance Broker or other intermediary who arranged this insurance should be contacted immediately if any correction is necessary. Your attention is particularly drawn to the notice that appears overleaf.

W.R. Berkley Insurance (Europe), Limited

Registered Office: 40 Lime Street, London EC3M 7AW
Registered in England & Wales 4681277

NOTICE TO THE INSURED – complaints procedure

It is always our intention to provide a first class standard of service. However, if you have any cause for complaint or wish to make any enquiry regarding this insurance you should, in the first instance, contact the Insurance Broker or other intermediary who arranged this insurance for you.

Alternatively you may contact us at the following address:

Compliance Officer
W.R. Berkley Insurance (Europe), Limited
2nd Floor
40 Lime Street
London
EC3M 7AW
E-mail : wrbiel_enquiries@wrberkley.com

If you are not satisfied with the way a complaint has been dealt with, you have the right to request that the Financial Ombudsman Service (“FOS”) review your case. Their address is:

Financial Ombudsman Service
South Quay Plaza
183 Marsh Wall
London
E14 9SR
Telephone Helpline: 0845 080 1800
www.financial-ombudsman.org.uk

There are, however, some circumstances in which the FOS is not empowered to consider complaints. If you contact the FOS in respect of any complaints, this will not affect any rights you have in law.

Financial Services Compensation Scheme

We are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if we cannot meet our financial obligations. This depends on the type of business and the circumstances of the claim. Further information about compensation scheme arrangements is available from the FSCS:

Financial Services Compensation Scheme
7th Floor Lloyds Chambers
Portsoken Street
London E1 8BN
Telephone: 020 7892 7300
Fax: 020 7892 7301
E-mail: enquiries@fscs.org.uk

Data Protection

Any personal data provided by you regarding yourself, your employees or your agents shall be processed by us, in compliance with the provisions of the Data Protection Act 1998 and any subsequent or amending legislation, for the purpose of providing insurance and handling claims, if any, which may necessitate providing such information to third parties.

We will keep such information secure at all times. In certain circumstances, for example for systems administration purposes, we may have to transfer information to another country, which may be a country outside the European Economic Area (EEA). By proceeding with this insurance we assume that you are agreeable to us transferring information to a country outside the EEA.

Should you wish to obtain details of the information that we hold on you please contact:

The Compliance Officer
W.R. Berkley Insurance (Europe), Limited
2nd Floor
40 Lime Street
London
EC3M 7AW

Claims Procedure

If any incident occurs which may result in a claim you must immediately contact the *Insurer* via your insurance broker or other intermediary who will be able to advise you.

You should refer to **Conditions and Claims Conditions** towards the end of the Policy for full details of the claims procedure and conditions.

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POLICY INFORMATION *(for information purposes only, does not form part of the Policy)*

This Policy has been prepared in accordance with your instructions. Please read it carefully to ensure that it meets your requirements.

This Policy consists of

- (a) the **Insuring Clause**, which explains the basis on which the cover is provided;
- (b) the **Schedule**, which shows who is the *Insured*, the *Business* being covered and other Policy particulars such as the *Period of Insurance*, the *Limit of Indemnity* and the *Underlying Limit*;
- (c) the **Definitions**;
- (d) the **Exceptions, Conditions, and Claims Conditions** which incorporate terms that apply to the Policy;
- (e) any **Endorsement(s)**, which incorporate cover amendments, extensions, additional limitations and such like.

Immediate notice should be given to the *Insurer*, via your agent, of any changes which may affect the insurance provided by this Policy.

Alterations in the cover required, after issue of the Policy, will be confirmed by separate **Endorsement(s)**, which you should file with the Policy. You should refer to these **Endorsement(s)** and the Policy to ascertain precise details of cover currently in force. Your insurance broker will be able to provide any help or information that you might require.

INSURING CLAUSE

In consideration of the payment of the *Premium*, the *Insurer* will indemnify the *Insured* for amounts which the *Insured* are legally liable to pay in respect of claims in excess of the *Underlying Limit* and which arise from an event or occurrence, as insured by the *Underlying Insurance*, happening during the *Period of Insurance* in connection with the *Business*.

The *Proposal* shall be the basis of the contract of insurance between the *Insured* and the *Insurer*.

The indemnity provided by the *Insurer* will be upon upon the same terms, conditions, exceptions and endorsements as the *Underlying Insurance*, except where amended by this Policy, or by any Endorsement to this Policy.

The Policy, the *Schedule* and any Endorsement(s) shall be read as one document.

Any word or expression which appears in this Policy in italics shall have the meaning given in the Definitions. Any other word or expression given a specific meaning in any part of this Policy, the Schedule, or any Endorsement(s), and beginning with a capital letter, shall have the same meaning throughout the Policy.

Limit of Indemnity

The liability of the *Insurer* in respect of

- (a) any one claim, or all claims arising out of any one event or occurrence, or out of all events or occurrences of a series consequent upon, or attributable to one source or original cause;
- (b) the total sum of all claims to which an aggregate limit applies in the *Underlying Insurance*;

shall not exceed the *Limit of Indemnity*.

Defence Costs

The *Insurer* will pay for *Defence Costs* incurred with their consent provided that

- (a) if the *Underlying Insurance* provides for *Defence Costs* to be payable in addition to the limit of liability or indemnity, then the *Insurer* will only pay *Defence Costs* in the same proportion that the *Insurer's* payment under

the Insuring Clause of this Policy bears to the total sum payable under all contributing insurances excluding Defence Costs;

- (b) if the *Underlying Insurance* provides for the limit of liability or indemnity to be inclusive of *Defence Costs*, the *Limit of Indemnity* under this Policy shall apply in like manner;
- (c) if any *Underlying Insurer* has exercised a right under their insurance to pay the limit of liability or indemnity of the *Underlying Insurance* and only be liable for Defence Costs for which they are responsible up to the time of payment, then the *Insurer* will not pay those costs for which that *Underlying Insurer* would have been liable but for the exercise of that right.

Exhaustion of Underlying Aggregate Limit

Where the *Underlying Limit* operates on an aggregate basis and becomes reduced or exhausted by reason of any claim or claims made upon the *Underlying Policy(ies)*

- (a) upon reduction, the indemnity provided by this Policy shall apply in excess of the reduced *Underlying Limit*;
- (b) upon exhaustion, this Policy shall continue in force in excess of the exhausted limit until expiry of the *Period of Insurance*.

This Policy shall not however operate in excess of any reduced, or exhausted aggregate *Inner Limit* applicable to an *Underlying Policy*.

DEFINITIONS

Business

means the *Insured's* business as described in the *Schedule*.

Defence Cost(s)

means costs and expenses covered by the *Underlying Insurance* and incurred in connection with any event or occurrence to which the *Underlying Insurance* applies.

Inner Limit

means a limit of liability or indemnity within an *Underlying Policy*, which is lower in amount than the full limit applicable to that policy and applicable

to a specific aspect of cover, or type of event or occurrence.

Insured

means the person(s) or corporate body(ies) named as such in the *Schedule* of this Policy.

Insurer

means W. R. Berkley Insurance (Europe), Limited.

Limit of Indemnity

means the limit as specified in the *Schedule* and is the maximum amount payable by the *Insurer*.

Period of Insurance

means the period specified in the *Schedule*, or such other period(s) as may be agreed by the *Insurer*.

Premium

means the amount payable by the *Insured* specified as such in the *Schedule* or in any *Endorsement*.

Primary Policy

means the policy which provides the first underlying limit of liability or indemnity.

Proposal

means any information provided by, or on behalf of the *Insured* in connection with this Policy, and any declaration made in connection therewith.

Schedule

means the Schedule of Insurance attaching to and forming part of this Policy.

Terrorism

means the actual or threatened

- (i) use of force or violence against persons or property, or
- (ii) commission of an act dangerous to human life or property, or
- (iii) commission of an act that interferes with or disrupts an electronic or communication system

undertaken by any person or group, whether or not acting on behalf of or in connection with any organisation, government power, authority or military force, when any of the following applies

- (iv) the reasonably apparent intent or effect is to intimidate or coerce a government or business, or to disrupt any segment of the economy, or

- (v) the reasonably apparent intent or effect is to cause alarm, fright, fear of danger or apprehension of public safety in one or more distinct segments of the general public, or to intimidate or coerce one or more such segments, or

- (vi) the reasonably apparent intent or effect is to further political, ideological, religious or cultural objectives, or to express support for (or opposition to) a philosophy, ideology, religion or culture.

Underlying Insurance

means the *Primary Policy* or, where there is more than one *Underlying Policy*, the policy providing the limit which is immediately below that provided by this Policy.

Underlying Insurer(s)

means the Insurer(s) providing the *Underlying Policy(ies)* and identified as such in the *Schedule*.

Underlying Limit

means the sum total of the limits of liability or indemnity provided by the *Underlying Policy(ies)*, which together form the amount in excess of which this Policy applies, as specified in the *Schedule*.

Underlying Policy(ies)

means the *Primary Policy* and all other policies providing insurance in excess of the *Primary Policy* up to an amount at which the indemnity provided by this Policy applies.

United Kingdom

means England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man.

EXCEPTIONS

The *Insurer* shall not indemnify the *Insured* in respect of any liability or *Defence Costs*

1 Asbestos

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

2 Inner Limit

in respect of any aspect of cover, or type of event or occurrence, which is subject to the

application of an *Inner Limit* in any *Underlying Policy*.

3 Sanctions

to the extent that doing so would expose the *Insurer* to breaching or suffering a sanction, prohibition or restriction under any United Nations resolution, or under any trade or economic sanction, law or regulation of the United Kingdom, the European Union or the United States of America.

4 Terrorism

directly or indirectly caused by, or contributed to by, or arising from or in connection with

- (a) any act of *Terrorism*, regardless of whether there is another cause which may have contributed concurrently or in any sequence;
- (b) any action taken in controlling, preventing, suppressing or in any way relating to any Act of *Terrorism*.

If the *Insurer* alleges that by reason of this Exception any liability or *Defence Cost* is not covered by this insurance, the burden of proving the contrary shall be upon the *Insured*.

CONDITIONS

1 Maintenance of Underlying Policies

It is a condition precedent to the liability of the *Insurer* under this Policy that all *Underlying Policies* are maintained in full force and effect during the currency of this Policy. This Condition shall not apply in respect of a reduction, or the exhaustion of the *Underlying Limit*, where it operates on an aggregate basis and becomes reduced, or exhausted by reason of any claim or claims made upon the *Underlying Policy(ies)*.

2 Changes to Underlying Policy Terms

No amendment or change to the terms, conditions, exceptions and endorsements of any *Underlying Policy* shall be imported into, or extend the scope of this Policy, unless agreed in writing by the *Insurer*. The *Insurer* shall not be bound to agree to an amendment

or change but, where they do agree, they have the right to charge additional premium or vary the terms of cover granted.

3 Material Change in the Risk Insured

Any change in the nature of the Business of the *Insured*, or any other change in risk, within the management or control of the *Insured*, which materially increases the exposure to risk of the *Insurer* under this Policy, shall result in the Policy being immediately void unless such change, act or omission has been agreed by the *Insurer* in writing.

4 Cancellation

The *Insurer* may cancel this Policy by giving 30 days notice by recorded delivery letter to the last known address of the *Insured* and in such case the *Insured* shall be entitled to the return of a proportionate part of the *Premium* in respect of the unexpired *Period of Insurance* (or if the *Premium* has been based wholly or partly upon estimates, the *Premium* shall be adjusted in accordance with Condition 5) except that if a claim or incident has been notified under this Policy in the current *Period of Insurance* no refund of *Premium* shall be made.

5 Premium Adjustment

Where the *Premium* is provisionally based on estimates provided by the *Insured*, the *Insured* shall keep accurate records which the *Insurer* shall be allowed to inspect and, within 90 days of the expiry of the *Period of Insurance*, declare such particulars as the *Insurer* may require. The premium shall then be adjusted and any difference paid by or allowed to the *Insured* as the case may be, subject to any minimum premium that may apply.

6 Insolvency of Underlying Insurer or the Insured

Any failure or refusal to pay any claim, liability or *Defence Costs* by an *Underlying Insurer*, or the *Insured*, whether due to insolvency, liquidation, or their affairs being subject to any legally approved scheme of administration or for any other reason whatsoever shall, for the purposes of this Policy, not operate to reduce or exhaust any

part of the *Underlying Limit*, or to increase the liability of the *Insurer*.

7 Contracts (Rights of Third Parties) Act

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999, or any amending or subsequent legislation, to enforce any term of this contract, but this does not affect any right or remedy of a third party which exists, or is available apart from that Act.

8 Choice of Law, Jurisdiction and Disputes

Unless otherwise agreed by the *Insurer* and the *Insured*, this Policy shall be subject to and construed solely in accordance with the relevant law of that part of the *United Kingdom* applicable to the registered address, or principal place of business, of the *Insured*.

Any dispute between the parties concerning this insurance, or the interpretation of the terms of this Policy, shall be resolved by the courts of that same part of the *United Kingdom*.

If there is any dispute as to which law applies, it will be the law of England and Wales.

CLAIMS CONDITIONS

1 Claim Notification and Subsequent Action

It is a condition precedent to the liability of the *Insurer* that the *Insured* shall give written notice, to the *Insurer*, as soon as they are aware of any event or occurrence which is likely to produce a claim which exceeds 50% of the *Underlying Limit* and provide all such particulars as the *Insurer* may request subsequent to such notice.

The *Insured* shall also give all information and assistance as the *Insurer* may require in connection with any resulting claim against the *Insured* for which an indemnity, or *Defence Costs* may possibly be sought under this Policy and permit the *Insurer* to consult with the *Underlying Insurer(s)*.

2 Settlement

The *Insurer* shall be under no obligation to make any payment under this Policy unless and until

(a) all *Underlying Insurers* have agreed their liability to pay the limit of liability or indemnity provided by their respective *Underlying Policies*, or

(b) the *Insured* has, by final court adjudication, been held liable to pay an amount in excess of the *Underlying Limit*

and then only after all *Underlying Insurers* have paid, or been held legally liable to pay, the full amount due from the *Underlying Policies*.

3 Discharge of Liability

The *Insurer* may at any time, at its sole discretion, pay to the *Insured* the *Limit of Liability* (less any sum or sums already paid in respect of a claim under this Policy) or any lesser sum for which the claim, or claims against the *Insured* can be settled and the *Insurer* shall not be under any further liability in respect of such claim or claims, except for other costs and expenses for which the *Insurer* may be responsible and which are incurred prior to such payment.

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