

Liberty Mutual Insurance

**MARSH OMEGA MANAGEMENT LIABILITY  
INSURANCE POLICY**



## **Marsh Omega Management Liability Policy**

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### **THE POLICY**

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Here is your new Insurance Policy. Please read this Policy carefully to ensure that it is in accordance with your requirements and that you understand its terms, conditions and exclusions. If it is incorrect, please tell us and return it to us immediately.

This is a claims made policy. Subject to its terms, it provides an indemnity in relation to Claims first made against the Insured during the Policy Period.

Signed on behalf of Liberty Mutual Insurance Europe SE and other insurers



**Philip Hobbs**  
**Deputy Managing Director**  
**Liberty Mutual Insurance Europe SE**

Liberty Mutual Insurance Europe SE  
Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority (reference number 202205)  
Registered in England and Wales at 20 Fenchurch Street, London EC3M 3AW  
Registered Number: SE000115  
Tel: +44 (0)20 3758 0000

## Marsh Omega Management Liability Policy

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### EXECUTIVES POLICY

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#### 1 INSURING CLAUSES

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The **Insurer** agrees, subject to all applicable terms, conditions and exclusions of the Policy, that:

##### 1.1.1 Cover for Individual Executives

the Insurer will pay any:

- (a) Executive's Loss, Professional Costs and Civil Fine or Penalty arising from:
  - i) a Claim, including an Employment Claim, made against him in his capacity as an Executive;
  - ii) a Claim, including an Employment Claim, made against him in his capacity as a director, officer, trustee, governor or equivalent of an Outside Entity; and
  - iii) any request for his extradition, arrest or any proceedings under the provisions of the Extradition Act 2003, or other equivalent legislation, including associated appeals.
- (b) Executive's Professional Costs incurred with respect to preparing for (including the preparation of any requested written notice or reports), responding to and attending any:
  - i) Pre-Investigation; or
  - ii) Investigation.

##### 1.1.2 Reimbursement to the Company for sums paid to Executives

the Insurer will pay to the Company any sums that the Company has paid to the Executive by way of an indemnity or advancement in relation to the Executive's Loss, Professional Costs and Civil Fine or Penalty covered under Insuring Clause 1.1.1.

#### 2 EXTENSIONS

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##### 2.1 Extra Protection for Executives

When the Executives' Limit of Liability is exhausted by payments made under this Policy, the Insurer agrees to provide an indemnity under Insuring Clause 1.1.1 to each director of the Policyholder or each non executive director of a Subsidiary up to the separate Executives' Extra Limit of Liability per Executive specified in the Schedule provided that:

- (a) any relevant limits of liability of all policies operating in excess of this Policy are also exhausted, and
- (b) the Company and any Outside Entity are unable to provide an indemnity by reason of applicable law; their articles of association, charter, bylaws, contract or similar documents; or their financial insolvency.

##### 2.2 Extended Periods of Cover – for Retired Executives (Bi-lateral)

In the event this Policy is not renewed and not replaced with similar cover for the benefit of a Retired Executive or an Extended Reporting Period is no longer provided for a Retired Executive and an Extended Reporting Period is not invoked then such Retired Executive will automatically be provided an unlimited Extended Reporting Period at no additional premium. The Insurer will have no liability under this extension arising from Wrongful Acts committed or alleged to have been committed after the date on which the relevant Executive became a Retired Executive (other than as provided for by Clause 6.4).

##### 2.3 Extended Periods of Cover – for Executives and the Company (Bi-lateral)

The Company or any Executive may purchase within 90 days of expiry of the Policy Period, on its and the Executives' behalf, an Extended Reporting Period for 12 months for an additional premium of 50% of the annual premium. To purchase this Extended Reporting Period, the Company or Executive must notify the Insurer in writing of its election to do so and pay the additional premium in accord with the usual terms of trade for this policy. Unless otherwise agreed, this right is not exercisable after a Change in Control. The

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Insurer will have no liability under this extension arising from Wrongful Acts committed or alleged to have been committed after the expiry of the Policy Period (other than as provided for by Clause 6.4).

### 2.4 Extended Periods of Cover – Change of Control

In the event of a Change in Control during the Policy Period the Company or any Executive may purchase, on its and the Executives' behalf, an Extended Reporting Period for:

- (a) 72 months for an additional premium of 150% of the annual premium;
- (b) 36 months for an additional premium of 125% of the annual premium; or
- (c) 12 months for an additional premium of 100% of the annual premium.

Provided that the Insurer will only be liable for Loss, Professional Costs and Civil Fines or Penalties that arise from Wrongful Acts committed or alleged to have been committed prior to the date of such Change in Control (other than as provided for by Clause 6.4).

### 2.5 Legal Helpline and Circumstance Investigation Costs

The Insurer has arranged a Legal Helpline with national law firm, RPC LLP.

This helpline relates to Professional Costs incurred by RPC in investigating any Wrongful Act that may give rise to a Claim that has been notified to the Insurer during the Policy Period and in advising the Executive on his legal position and the steps he ought to take that might avert or minimise the risk of a Claim.

Insurers have agreed to pay such Professional Costs up to the sub-limit of liability specified in the Schedule, but only where it has given its prior and continuing consent to the incurring of such costs, not to be unreasonably refused. It is agreed that it would not be reasonable for the Insurer to pay or to continue to pay such Professional Costs where the anticipated Claim would not be covered by this Policy.

Where the sub-limit of liability becomes exhausted or where the Insurer reasonably withholds its consent to the incurring of such Professional Costs, Insurers have agreed with RPC that it will continue to advise the Executive at a concessionary rate of £215 per hour plus VAT.

RPC will not advise the Executive or the Company on any issues that are or may be contrary to the interests of the Insurer, including any issues concerning the validity of the policy, or any policy coverage issues. Also, the use of the Helpline does not constitute notification to Insurers.

If you wish to use the Helpline you should contact RPC for all queries on:

Telephone No: 020 3060 6393

Email: [omegahelpline@rpc.co.uk](mailto:omegahelpline@rpc.co.uk)

### 2.6 New Subsidiaries

Cover under this Policy is extended to any Subsidiary and its Executives which the Company acquires or creates after the inception of this Policy, but only in respect of Wrongful Acts committed or allegedly committed after the date of its acquisition or creation.

However, if the acquired or created Subsidiary is domiciled in the United States of America the Company will provide the Insurer with full underwriting information within 45 days of the acquisition or creation of the new Subsidiary. The Insurer may then charge a reasonable additional premium to cover the new Subsidiary or reasonably amend the terms and conditions of the Policy.

### 2.7 Court Attendance Costs

The Insurer will pay the Company the following sums in respect of any Executive who is required to attend any court or tribunal in connection with any covered Claim;

For each Executive: £350 for each day or part of a day.

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Each and every payment in respect of this extension will erode the Executives Limit of Liability or the Executives' Extra Limit of Liability whichever is applicable. Only one amount will be paid per person under this extension and any equivalent extension under a Marsh Omega Management Liability Corporate Policy issued by the Insurer to the Policyholder in respect of any such person attending a court or tribunal.

### **2.8 Tax Extension**

The Insurer will pay taxes demanded during the Policy Period where and to the extent that it is established that they are a personal liability of an Executive for non-payment of corporate taxes although this extension will not cover any sums that the Company has paid to any Executive by way of an indemnity or advancement.

### **2.9 Prosecution Costs**

The Insurer will pay the Prosecution Costs of each Executive.

### **2.10 Management Buyout Extension**

In the event of a Subsidiary of the Company ceasing to be owned by the Company as a result of a buy-out by existing management the Insurer agrees to maintain this Policy in respect of such Subsidiary for a period of 45 days from the date of the buy-out for Wrongful Acts committed subsequent to the buy-out. This Extension will not apply in circumstances where there is other insurance in force which provides cover in respect of such Wrongful Acts.

### **2.11 Difference in Conditions Extension**

If:

- (a) the Company had directors and officers or equivalent cover prior to the date a Marsh Omega Management Liability Executives Policy was first issued to the Policyholder and the cover given by this Policy is less favourable to the Executives and Company than the expiring policy in force immediately before such date; or
- (b) the Insurer has made available a replacement Marsh Omega Management Liability Executives Policy during the Policy Period that is more favourable to the Executives and Company than this Policy,

then the Insurer will cover the Executives and Company on the same basis as that aspect of the expiring or replacement policy. This does not apply to any cover that could be provided by a Marsh Omega Management Liability Corporate Policy, the retention, the premium, any subsequent amendments made to this Policy, or services provided by agreement between the Insurer of the expiring policy and specific service providers.

Notwithstanding the above, this policy is not extended to provide cover for Kidnap and Extortion Expenses, Kidnap Response Costs or equivalent costs.

### **2.12 Indemnity for Shareholder Costs**

The Insurer will indemnify the Company for any costs, charges and expenses incurred by any shareholder of the Company in pursuing a Claim against any Executive derivatively on behalf of the Company and first made in the Policy Period to the extent that the Company is legally liable to pay such costs, charges and expenses pursuant to a court order.

## **3 RETENTIONS**

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The Insurer will only be liable to make a payment to the Company under Insuring Clause 1.1.2 for Loss, Professional Costs or Civil Fines or Penalties for a US Claim in excess of the amount specified as the Retention in the Schedule. This retention will apply once only to all Loss, Professional Costs or Civil Fines or Penalties that arise out of a Single Claim. In the event that more than one retention applies to a Single Claim only the highest retention will apply. The Retention as specified in the Schedule will not apply in the event of:

- (a) a determination of no liability made in any Executive's favour; or

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- (b) a dismissal or stipulation to dismiss any Claim without prejudice.

### 4 LIMITS OF LIABILITY

- (a) In respect of each Single Claim, the Insurer's liability for all and any payments under this Policy will be limited to the Limit of Liability specified as the Executives Limit of Liability in the Schedule.
- (b) In the event that Extension 2.1 applies, then each and every further payment to the Executives will erode the Executives' Extra Limit of Liability. Once the Executives' Extra Limit of Liability is reduced to nil, the Insurer will have no further liability to that Executive under Extension 2.1.
- (c) Each sub-limit of liability is specified in the Schedule and will apply to each and every Single Claim. Any such sub-limits will form part of, and not in addition to, the Executives Limit of Liability or Executives' Extra Limit of Liability for that Single Claim.

### 5 EXCLUSIONS

The Insurer will not have any liability under this Policy, including any endorsements, for that part of any Loss:

#### 5.1 arising out of, based upon or attributable to:

- (a) a Single Wrongful Act or similar related acts, contained in any claim which has been reported or in any circumstance of which notice has been given and accepted under any policy of which this Policy is a renewal or replacement; or
- (b) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration or adjudication as of the Continuity Date, or alleging or deriving from the same or essentially the same facts as alleged in such actions.

#### 5.2

- (a) for an Executive gaining a personal profit or financial advantage; or
- (b) arising from an Executive committing any deliberate criminally dishonest or deliberate fraudulent act or omission material to the Claim.

This exclusion will only apply to such Executive:

- i) who is guilty of the above conduct, as established through a final non-appealable adjudication by any a court or tribunal; or
- ii) who makes a formal written admission of the above conduct,
- in the underlying action.

#### 5.3 arising out of the initial public offering of equity securities of the Company, by means of a prospectus, after the inception of this Policy. This exclusion will not apply:

- (a) to the failure to make or complete an intended offering of equity securities;
- (b) to any formal presentations, negotiations, discussions or decisions in connection with the initial public offering that occurred prior to issuance of the securities concerned; or
- (c) if the total value of equity securities issued outside of the United States of America is less than the value shown as the Offering of Equity Securities Limit specified in the Schedule.

#### 5.4 for a US Claim brought by the Company against an Executive. This exclusion will not apply to:

- (a) Professional Costs; or
- (b) any Claim brought in the name of the Company:
- i) that is a derivative action;
- ii) by a trustee in bankruptcy for the Company or equivalent; or

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- iii) as a claim for contribution or indemnity in relation to a separate claim brought by a third party.

### 6 CLAIMS PROVISIONS AND PAYMENT OF PROFESSIONAL COSTS

**6.1** The Insurer will not have any liability under this Policy unless the Notifiable Event is first made during the Policy Period or the Extended Period of Cover (if applicable).

**6.2** The Company or Executive will give notice in writing to the Insurer of the Notifiable Event as soon as reasonably practicable after a Responsible Person first becomes aware of it.

If notice is given to the Insurer but not in accordance with this Clause, then the Executives' and the Company's rights to cover under this Policy for such matter will be prejudiced only to the extent that the Insurer establishes that it was actually, substantially and materially prejudiced as a consequence of such non compliance.

**6.3** An Executive or the Company may give notice in writing to the Insurer during the Policy Period, the Extended Reporting Period (if applicable) or within 30 days after either such period of circumstances or a Wrongful Act of which they first become aware during such period and which may give rise to a Notifiable Event.

In addition if a Responsible Person first becomes aware of a circumstance or Wrongful Act which may give rise to a Notifiable Event during the 90 days after expiry of the Policy that arises from a Wrongful Act committed before the expiry of the Policy, an Executive or the Company may give notice in writing to the Insurer of such Notifiable Event.

Such notice should contain where possible the following information:

- (a) a description of the circumstance, or the nature and details of the Wrongful Act;
- (b) the nature and amount of the alleged or potential Loss;
- (c) the names of the actual or potential claimants; and
- (d) the manner in which the Executive or Company first became aware of the circumstance or Wrongful Act.

**6.4** Any subsequent Notifiable Event which:

- (a) arises out of, is based upon or attributable to the facts alleged in the circumstances, Wrongful Act or Notifiable Event notified in accordance with Clauses 6.2 or 6.3; or
- (b) alleges a Wrongful Act which together with any Wrongful Act alleged or contained in the previous Notifiable Event, will constitute a Single Wrongful Act;

will be deemed to have been first made and reported during the Policy Period or the Extended Reporting Period, if applicable.

**6.5** Any notice given in accordance with Clause 6.2 or 6.3 shall be given in writing to the Insurer. Such notice should be sent to:

Email: [omega@rpc.co.uk](mailto:omega@rpc.co.uk)  
Omega Claims Team  
RPC  
Temple Circus  
Temple Way  
Bristol  
BS1 6LW



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**6.6** The Executives and the Company will use best endeavours to provide such information and assistance to the Insurer as reasonably required to allow any Notifiable Event to be effectively investigated, defended and/or resolved. Within 21 working days of the receipt of such information the Insurer will provide a written and reasoned statement of their position relating to cover.

**6.7** An Executive or the Company will have the obligation to defend and contest any Claim made against them. The Insurer will be entitled to participate effectively in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the Insurer.

**6.8** Where an Executive or the Company has appointed its own lawyers, the Insurer will not have any liability to pay Professional Costs unless it has given its prior and continuing consent to such costs being incurred. In order for the Insurer to provide its consent, the Executive and/ or the Company or its lawyers shall provide to the Insurer a cost budget for approval. The Insurer shall respond within 5 working days of that request, indicating whether or not it provides its consent to the costs described in that estimate. The Insurer shall not unreasonably withhold, delay or deny such consent.

Where an Executive or the Company appoints lawyers from the Insurer's approved panel, then such consent will be deemed to have been given.

Where an Executive or the Company incurs Professional Costs but cannot reasonably obtain the Insurer's prior written consent, then the Insurer will be deemed to consent to, and pay such costs, up to a sub-limit of 15% of the Executives Limit of Liability specified in the Schedule, as if the Executive or the Company had sought its consent in advance and provided that the Executive or the Company would otherwise be entitled to an indemnity for those costs under this Policy.

The use of separate lawyers for Executives will be accepted as reasonable where there is an actual or perceived material conflict of interest between Executives.

**6.9** An Executive will not make an admission of liability, offer or agree to settle in relation to a Claim against such Executive without the Insurer's consent, such consent not to be unreasonably withheld, delayed or denied. The reporting of matters to an official body by an Executive or the Company, whether pursuant to law or regulation or otherwise, including any reporting preceding a Pre-Investigation, will not constitute a contravention of this provision by such Executive or the Company.

**6.10** The Insurer will advance Professional Costs on behalf of an Executive or the Company, including which the Company fails to indemnify or advance. Professional Costs will be advanced by the Insurers within 21 days of suitably detailed invoices being provided. These will be repayable by the applicable Executive or the Company to the Insurer in the event it is determined that the Insurer was not liable for such advanced costs under the terms of this Policy.

**6.11** If there is a dispute between the Insurer and an Executive and/or the Company about whether to agree to a proposed settlement or whether a Claim should continue to be defended the dispute may be referred to a Queen's Counsel (to be mutually agreed upon) to decide the issue, taking into account whether on the balance of probabilities the Claim is likely to be defended and the possibilities for settling the Claim. The decision will be binding on the parties.

**6.12** The Insurer will first pay Loss, Professional Costs and Civil Fines or Penalties under Insuring Clause 1.1.1 then pay Loss, Professional Costs and Civil Fines or Penalties under Insuring Clause 1.1.2.

## **7 GENERAL CONDITIONS**

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**7.1** In the event that not all of the Loss, Professional Costs or Civil Fines or Penalties are covered under this Policy, the Insurer and the relevant Executive and the Company (as appropriate) will negotiate



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in good faith to agree a fair and proper basis for allocation of that part of the Loss, Professional Costs or Civil Fines or Penalties that should be paid under the Policy, taking into account the essential nature of, and reasons for the claim and the proportion to which the Loss, Professional Costs and Civil Fines or Penalties are not covered under the Policy. In the event that the various parties cannot agree between themselves, they may submit the issue to a Queen's Counsel (to be mutually agreed upon) to determine a fair and proper basis for allocation on the above basis, and that decision will be binding on the parties.

**7.2** In the event of a Change in Control, the Insurer will only be liable for Loss, Professional Costs and Civil Fines or Penalties that arise from Wrongful Acts committed or alleged to have been committed prior to the date of such Change in Control (other than as provided for by Clause 6.4).

**7.3** With respect to Subsidiaries, the Insurer will only be liable for Loss, Professional Costs and Civil Fines or Penalties that arise from Wrongful Acts committed or alleged to have been committed after the effective date that the Subsidiary became a Subsidiary and prior to the date the Subsidiary ceases to be a Subsidiary.

**7.4** Where the Insurer makes any payment under this Policy it will be subrogated to the rights of recovery of the Executives or the Company, as the case may be. The Executive or Company will provide such co-operation and assistance as the Insurer may reasonably require in order to exercise its subrogation rights. The Insurer will not exercise rights of subrogation against an Executive or the Company.

**7.5** Where the Insurer makes a recovery of any amount following a payment being made to an Insured by the Insurer under this Policy, the recovery will proportionately reduce the impairment of the Executives' Limit of Liability or Executives' Extra Limit of Liability less the Insurer's reasonable costs of making the recovery.

**7.6** A person who is not a party to this Policy or an Executive or the Company, may not enforce any of its terms under the Contracts (Rights of Third Parties Act) 1999.

**7.7** This Policy and any rights hereunder cannot be assigned without the written consent of the Insurer.

**7.8** The Insurer's liability under this Policy will be several and not joint and will be solely to the extent of its individual subscription.

**7.9** The Policyholder agrees to act on behalf of all Executives with respect to the giving and receiving of notices under this Policy. The Executives agree that the Policyholder may act on their behalf in this way.

### **7.10 Separate interests in Policy, Waiver of Remedies for Breach of the Duty of Fair Presentation and No Warranties**

- (a) The Proposal will be construed as a separate application for insurance by each of the Executives and the Company. Each of the Executives and the Company has a severable interest in the Policy.
- (b) In determining coverage for a particular Executive or the Company, the Insurer will only take into account the admission of, statements made by, knowledge possessed by, or the acts, omissions or conduct of, that particular Executive or the Company.
- (c) The Insurer agrees to waive any right it may have in determining the coverage provided for a particular Executive or the Company in relation to a particular claim to take into account any breach of the Claims Provision 6.2 - 6.9 by a person other than such Executive or the Company.
- (d) Since the Company can only act through its Executives, the admissions, statements made by, knowledge possessed by, or the acts, omissions or conduct on the part of, any two out of the Policyholder's chairman of the board, managing director, finance director, chief legal officer or their equivalents will be deemed to be imputed or attributed to the Company.
- (e) In the event of a fraudulent breach of the duty of fair presentation by an Executive or Company where such fraudulent breach is established by a Final Adjudication:

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- i) if the breach is before the contract of insurance is entered into, the Insurer may avoid the contract and refuse all claims, and need not return any of the premiums paid, in respect of such Executive or Company.
- ii) if the breach is in relation to a variation of the contract of insurance, the Insurer may treat the contract as if the variation was never made and need not return any of the premiums paid in respect of the variation, in respect of such Executive or Company.

It is agreed that in the event of a breach of the duty of fair presentation by an Executive or Company, which is not established to be fraudulent by Final Adjudication, the insurer irrevocably waives all and any rights and remedies it has/may have as a result of the breach of the duty of fair presentation including, for the avoidance of doubt, any remedy that would have been available under the Insurance Act 2015.

For the purposes of this clause, the phrase "duty of fair presentation" shall have the same meaning as given to it in the Insurance Act 2015.

For the purpose of this clause "Final Adjudication" means, in respect of any conviction, judgment, or refusal of relief by a court or judicial or arbitral tribunal, from a factual adjudication that the Executive or Company committed the relevant acts:

- i) if not appealed against, when the period in which an appeal must be brought has expired; or
  - ii) if appealed against, when such appeal has been determined, and no further appeal or review is available, abandoned or otherwise ceased.
- (f) It is agreed that no clause in this policy will be construed as a warranty unless expressly stated as such.

### 7.11 If another Insurance Policy or Indemnity applies

- (a) If in relation to any Loss, Professional Costs or Civil Fines or Penalties an Executive or the Company would be entitled, but for the existence of this Policy, to indemnification from any other valid and collectable policy of insurance then this Policy will apply only in excess of the amount of that indemnity available from such other source to the relevant Executive or the Company. This Clause will not apply if such other insurance is written only as specific excess insurance over the Executives' Limit of Liability or Executives' Extra Limit of Liability covered under this Policy.
- (b) In relation to Insuring Clause 1.1.1(a) ii) this Policy will apply in excess of the amount of any indemnity provided by an Outside Entity to an Executive.

### 7.12 Governing Law and Disputes

- (a) In the event that any dispute should arise out of or in connection with the Policy, including any question regarding existence, validity or termination that cannot be resolved by agreement, then such dispute may first be referred to a mutually agreed mediator. If, following mediation, such dispute is still unresolved then it may be referred to and finally resolved by arbitration administered by ARIAS (UK) under the ARIAS Arbitration Rules.
- (b) The governing law in relation to this Policy will be the law of England and Wales. Where the Policyholder is domiciled in Scotland, Northern Ireland or the Channel Islands, then the proper law will be the law of Scotland, Northern Ireland or the Channel Island respectively.

### 7.13 Premium Payment and Cancellation

- (a) The consideration for this Policy is the agreement to pay the premium stated in the Schedule (or, in respect of instalment premiums or any additional premiums, when due).
- (b) The consideration for the Extended Reporting Period is the agreement to pay the additional premium, if due.
- (c) This Policy is non-cancellable unless the premium or additional premium (if applicable) has not been so paid, in which case the Insurer will have the right to cancel this Policy by giving written notice to the Policyholder. The Insurer will give a notice period of at least 14 days and if the premium or additional premium (if applicable) is paid in full in this period then the notice of

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cancellation will be revoked automatically. If not, the Policy will be automatically cancelled at the end of the notice period.

### 7.14 Policy Interpretation

In this Policy:

- (a) reference to any regulator, Act, statute or statutory provision or other legislation will include reference to that provision as amended, re-enacted or replaced from time to time or the equivalent in another jurisdiction;
- (b) reference to Executives or Queens Counsel will include the equivalent in any other jurisdiction;
- (c) if any term, condition, exclusion or endorsement or part thereof of this Policy is found to be invalid or unenforceable, then the remainder will be in full force and effect;
- (d) reference to the masculine will include a reference to the feminine or neuter, and reference to the singular will include reference to the plural, and in each case vice versa;
- (e) the headings in this Policy are for general reference only and will not be considered when determining the meaning of this Policy;
- (f) where consent by the Insurer is required, such consent will not be unreasonably delayed or withheld; and
- (g) reference to including will be interpreted as including but not limited to.

**7.15** The Marsh Omega Management Liability Executives Policy and the Marsh Omega Management Liability Corporate Policy are separate policies of Insurance and each is entered into without reference to or reliance on the other policy.

This Policy wording, in its entirety, is the policy wording of the Insurer and is to be interpreted as drafted by the Insurer, notwithstanding that the policy wording may have been proposed to the Insurer by or on behalf of the Policyholder.

**7.16** The liability of each of the Insurers, as defined, shall be limited to the percentage set against its name or such other proportion as may be substituted hereafter by endorsement. The obligations under this Policy of each of these Insurers are several and not joint and are limited solely to the extent of that Insurer's individual subscription. The subscribing 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.

## 8 DEFINITIONS

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**8.1** **Approved Person** means any person who has been approved by the FCA or PRA to perform one or more controlled functions as specified, under section 59 of the Financial Services and Markets Act 2000.

**8.2** **Bail Bond Costs** means costs incurred with the prior written agreement of the Insurer to pay for a bond or other financial instrument to guarantee an Executive's bail or equivalent in any other jurisdiction.

**8.3** **Change in Control** means an event whereby the Policyholder consolidates or merges into, or sells all of its assets to, any person, entity or group of persons or entities acting in concert, or becomes a subsidiary of, or controlled by, another unconnected entity.

**8.4** **Civil Fine or Penalty** means a civil fine or penalty made by a regulator, government agency or official body to an Executive as a direct result of such person acting in their capacity as an Executive unless that civil fine or penalty is deemed uninsurable under the applicable law of the Policy.

**8.5** **Claim** means:

- (a) a written demand for monetary relief or non monetary relief;
- (b) any mediation, arbitration or civil proceedings;

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- (c) criminal prosecution (including an HSE Prosecution or a prosecution under the Bribery Act 2010);
- (d) any formal administrative or regulatory proceeding;

alleging any Wrongful Act.

**8.6 Company** means the Policyholder and any Subsidiary.

**8.7 Contamination** means the actual, alleged or threatened discharge, release, escape, dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that a Executive or the Company test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants.

**8.8 Contamination Clean Up Costs** means the costs involved in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing Contamination.

**8.9 Continuity Date** means the date specified in the Schedule.

**8.10 Employee** means any natural person who, by the expiry of the Policy Period, is or has been:

- (a) in the service of the Company whether temporary, permanent, full-time, part-time or seasonal, including a volunteer, student, secondee or intern; or
- (b) a director or officer of the Company.

**8.11 Employment Claim** means a claim made by an Employee or prospective Employee of the Company or an Outside Entity or any independent person seconded to the Company or an Outside Entity alleging:

- (a) the wrongful discharge or termination of employment;
- (b) unfair or wrongful dismissal, including constructive dismissal;
- (c) refusal or failure to employ or promote;
- (d) wrongful demotion, denial of tenure or deprivation of career opportunity;
- (e) discrimination, harassment, wrongful segregation, wrongful classification, wrongful discipline or bullying;
- (f) wrongful change in employment terms or conditions;
- (g) employment related misrepresentation, breach of privacy, breach of data protection law or regulation, defamation, libel, slander, or malicious falsehood;
- (h) negligent evaluation, reference, supervision, training or hiring;
- (i) breach of any written, oral or implied contract of employment;
- (j) retaliatory treatment on account of the employee's exercise or attempted exercise of his legal rights;
- (k) infliction of emotional distress, mental anguish or humiliation;
- (l) failure to provide or enforce corporate policies or procedures; or
- (m) for the avoidance of doubt, any other claim pursuant to the Equal Pay Act 1970 and the Employment Rights Act 1996.

**8.12 Executive** means any natural person who, by the expiry of the Policy Period, is or has been:

- (a) a director or officer of the Company, including a non-executive director, a shadow director, a de facto director, or any in-house legal counsel; or
- (b) an Employee of the Company:
  - i) who acts in a managerial or supervisory capacity;
  - ii) in relation to an Employment Claim;
  - iii) who is a full time and salaried lawyer;
  - iv) who is joined in an action with a natural person who is otherwise an Executive;
  - v) who is an Approved Person;
  - vi) who is a director, officer, trustee or governor or executive of an Outside Entity; or
  - vii) who does not fall into i) to vi) above, at the request of the Company,

but not while acting in the capacity of providing Professional Services.

## Marsh Omega Management Liability Policy

**Executive** will include:

- (a) an Executive's (as defined above) lawful spouse or domestic partner (which will include civil partnerships that are recognised by law in their country of domicile) in relation to enforcement proceedings brought against joint property held or owned by or on behalf of the spouse to enforce a court judgment against the Executive that would otherwise be insured under this Policy; or
- (b) the estate, heirs and legal representatives of an Executive (as defined above) in the event of his death, incapacity, insolvency or bankruptcy, but only in respect of a Claim that would otherwise be covered under this Policy.

For the avoidance of doubt, an Executive will not include the external or statutory auditor of the Company.

**8.13 Executives' Extra Limit of Liability** means the amount specified in the Schedule.

**8.14 Executives' Limit of Liability** means the amount specified in the Schedule.

**8.15 Extended Reporting Period** means the period immediately following the expiry of the Policy Period. This period will be for the applicable period shown in Extension 2.2, 2.3 and 2.4.

**8.16 HSE Investigation** means any formal examination, investigation or enquiry conducted by any enforcing authority under the Health and Safety at Work Act 1974.

**8.17 HSE Prosecution** means any formal proceedings initiated by the Crown Prosecution Service or other enforcing agency under the Health and Safety at Work Act 1974.

**8.18 Insurer** means the following insurers, each of whom is subscribed to this insurance in the percentage set against its name:

Liberty Mutual Insurance Europe SE	100%
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**8.19 Investigation** means any formal examination, enquiry or investigation conducted by a regulator, government agency, official body or voluntary industry regulator (including an HSE Investigation) into:

- (a) the affairs of the Company or an Outside Entity; or
- (b) conduct as an Executive or director, officer, trustee, governor or equivalent of an Outside Entity.

**8.20 Judicial Order** means:

- (a) an interim or interlocutory judicial order; or
- (b) any judicial order solely in respect of any proceeding concerning deportation of any Executive;

made against any Executive in connection with a Claim against such Executive that is covered under this Policy.

**8.21 Loss** means the amounts an Executive or the Company is legally liability to pay including damages (including punitive and exemplary damages) as a result of a judgment or award made by a competent court or tribunal, or a settlement. Loss will not include:

- (a) taxes (other than in relation to extension 2.9);
- (b) any matters (including criminal fines and penalties) deemed uninsurable under the applicable law of this Policy; or
- (c) Contamination Clean Up Costs.

## Marsh Omega Management Liability Policy

**8.22 Notifiable Event** means a Claim, Employment Claim, Investigation, Pre Investigation, request for extradition, or a demand for an Executive to pay corporate taxes under Extension 2.8. The Notifiable Event is first made when the Responsible Person first receives notice of it.

**8.23 Outside Entity** means any entity including a not for profit organisation or a trade association to which an Executive is appointed as a director, officer, trustee, governor or equivalent at the specific request or direction of the Company, provided such entity has no securities listed in the USA. Outside Entity also means a joint venture or similar where the Company does not exercise effective management control.

**8.24 Policy Period** means the period specified in the Schedule.

**8.25 Policyholder** means the entity specified in the Schedule.

**8.26 Pre-Investigation** means:

- (a) a raid or on-site visit to the Company by a regulator, government agency, official body or voluntary industry regulator first occurring during the Policy Period that involves the production, review, copying or confiscation of records or interviews of any Executive; or
- (b) a formal notification by the Company to a regulator, government agency, official body or voluntary industry regulator first given during the Policy Period where the Company reasonably considers that:
  - i) a material breach of the Company's legal or regulatory duty has occurred, may have occurred or may occur in the foreseeable future; or
  - ii) an event has occurred which the Company reasonably considers is an event of which the regulator, government agency, official body or voluntary industry regulator expects notice as set out in the body's rules and regulations.

**8.27 Professional Costs** means reasonable legal or other professional fees, costs, charges and expenses incurred by or on behalf of an Executive.

In addition Professional Costs will include the following additional fees and expenses:

- (a) the reasonable premium for any appeal bond, attachment bond or similar bond;
- (b) Bail Bond Costs;
- (c) Public Relations Expenses;
- (d) Reputation Protection Expenses;
- (e) the reasonable legal fees to interpret any advice received from legal advisers in another jurisdiction for a Claim, Investigation or Pre-Investigation in that jurisdiction, including the reasonable costs of translation;
- (f) the reasonable travel costs and living expenses, including hotel accommodation:
  - i) incurred by an Executive, up to the sub-limit for Travel Costs and Living Expenses Executive specified in the Schedule, when giving evidence in relation to a Claim, Investigation or Pre-investigation; or
  - ii) incurred by an Executive's immediate family, up to the sub-limit for Travel Costs and Living Expenses Executives Family specified in the Schedule, to be near such Executive during extradition proceedings, prosecution, trial Investigation or Pre-Investigation against the Executive in a jurisdiction in which such Executive is not based; or
- (g) expenses up to the sub-limit for Deprivation of Assets specified in the Schedule incurred by an Executive for schooling, housing, utilities and personal insurance, which the Insurer will pay directly to the service provider, where there is an interim or interlocutory order in a Claim against such Executive preventing or limiting the ability of such Executive to pay such costs and any personal allowance directed by the court to meet such payments has been exhausted.

For the avoidance of doubt, Professional Costs will not include the Company's own costs, including management costs, salaries and expenses, or Contamination Clean Up Costs.



## Marsh Omega Management Liability Policy

**8.28 Professional Services** means the provision of any professional advice or professional service by or on behalf of the Company for a third party under a separate contract for a separate fee.

**8.29 Proposal** means the information supplied by the Company or Executives to the Insurer (whether written, electronic or any other means).

**8.30 Prosecution Costs** mean costs incurred with the Insurer's prior written agreement to bring or defend an action or to fund an appeal to seek to obtain the discharge or revocation of a Judicial Order entered during the Policy Period imposing:

- (a) confiscation, assumption of ownership and control, suspension or freezing of rights of ownership of real property or personal assets of any Executive;
- (b) a charge over real property or personal assets of any Executive;
- (c) a temporary or permanent prohibition on any Executive from holding the office or performing the function of an Executive;
- (d) restriction of an Executive's liberty to a specified domestic residence or official detention; or
- (e) deportation of any Executive following revocation of otherwise proper, current and valid immigration status for any reason other than such Executive's conviction of a crime.

**8.31 Public Relation Expenses** means the reasonable fees and related costs, charges and expenses up to the sub-limit for Public Relations Expenses specified in the Schedule of a public relations firm or consultant, crisis management firm or law firm, which an Executive or the Company may engage with the written consent of the Insurer, in order to prevent or limit adverse effects or negative publicity or media attention which it is anticipated may arise from any Claim, Investigation or Pre-Investigation.

**8.32 Reputation Protection Expenses** means the reasonable fees and related costs, charges and expenses up to the sub-limit for Reputation Protection Expenses specified in the Schedule of a public relations firm or consultant which an Executive or the Company may engage in order to disseminate the findings of a final adjudication in favour of such Executive, arising from a Claim. Such fees and expenses will only be incurred with the written consent of the Insurer.

**8.33 Responsible Person** means the company secretary of the Policyholder or the Executive responsible for arranging this insurance for the Policyholder.

**8.34 Retired Executive** means an Executive who has voluntarily ceased to hold such office during the Policy Period.

**8.35 Schedule** means the document entitled Schedule that attaches to and forming part of this Policy.

**8.36 Single Claim** means any one or more Claims, Employment Claims, Investigations and Pre-Investigations to the extent that such Claims, Employment Claims, Investigations or Pre-Investigations arise out of, are based upon or are otherwise attributable to a Single Wrongful Act. All such Claims, Employment Claims, Investigations and Pre-Investigations will be regarded as a Single Claim regardless of whether such Claims, Employment Claims, Investigations or Pre-Investigations involve the same or different claimants, insureds or legal causes of action.

**8.37 Single Wrongful Act** means one or more Wrongful Acts that arise out of, are based upon or are otherwise attributable to the same originating cause or source.

**8.38 Subsidiary** means any entity in which the Company, (either directly or indirectly):

- (a) controls the majority of the voting rights; or
- (b) controls the right to appoint or remove a majority of the board of Executives; or
- (c) holds more than half of the issued share capital.



## **Marsh Omega Management Liability Policy**

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Subsidiary also means a joint venture or similar entity where a Company exercises effective management control.

**8.39 US Claim** means any Claim, Employment Claim, Investigation or Pre- Investigation (but not a request for extradition) that is brought, or subject to the jurisdiction of the courts in, the United States of America its territories and/or possessions.

**8.40 Wrongful Act** means any actual, alleged or proposed act, error, neglect, misstatement, omission, defamation, wrongful trading, breach of trust, breach of warranty of authority or breach of duty or any matter claimed against an Executive by reason of their capacity as an Executive or director, officer, trustee, governor or equivalent of an Outside Entity.

Wrongful Act also means, other than for the definition of Claim, matters that are the subject of an Investigation, Pre Investigation, request for extradition or Employment Claim.

## Marsh Omega Management Liability Policy

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### CORPORATE POLICY

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#### 1 INSURING CLAUSES

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The **Insurer** agrees, subject to all applicable terms, conditions and exclusions of the Policy, that:

##### 1.2 Corporate Legal Liability

the Insurer will pay:

- (a) the Company's Loss and Professional Costs arising from:
  - i) a Claim in connection with Corporate Legal Liability; or
  - ii) a direct or derivative Claim by a security holder, in their capacity as such, of the Company including arising out of Contamination; or
  - iii) a Claim by a third party to enforce a contract or agreement entered into with another person fraudulently representing themselves as a Company, up to a sub-limit of £25,000.
- (b) the Company's Professional Costs incurred in:
  - i) defending a Claim in connection with an alleged breach by the Company of an express contract or express agreement (written or oral), up to the Breach of Contract sub-limit specified in the Schedule;
  - ii) preparing for (including the preparation of any requested written notice or reports), responding to and attending any Investigation including arising out of Contamination;
  - iii) defending a Claim that arises out of Contamination that is not covered by 1.2 (a)ii) above; or
  - iv) defending it in a criminal prosecution, against it (including an HSE Prosecution, or proceedings under the Corporate Manslaughter and Corporate Homicide Act 2007 or Bribery Act 2010).

##### 1.3 Professional Indemnity

Not Insured.

##### 1.4 Employment Practices Liability

the Insurer will pay:

- (a) the Company's Loss and Professional Costs arising from an Employment Claim made against it;
- (b) the Loss and Professional Costs of a director, officer or employee of the Company arising from an Employment Claim made against him in his capacity as an employee of an Outside Entity; and
- (c) the Company's Professional Costs preparing for (including the preparation of any requested written notice or reports), responding to and attending any formal examination, enquiry or investigation conducted in relation to the employment practices of the Company by any equality or human rights commission or other regulator, government agency or official body with the responsibility to enforce employment law (including the US Equal Employment Opportunities Commission).

##### 1.5 Crime

the Insurer will pay:

###### 1.5.1 Financial Loss

Financial Loss sustained by an Insured Organisation and resulting from a Crime first Discovered during the Policy Period;

###### 1.5.2 Expenses

Expenses incurred by an Insured Organisation and resulting from a Crime first Discovered during the Policy Period.

## Marsh Omega Management Liability Policy

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### 1.6 Pension Trustee Liability

the Insurer will pay:

- (a) the Trustees and Employees Loss and Professional Costs arising from a Pensions Claim made against him in his capacity as a Trustee or Employee;
- (b) to the Company, Corporate Trustee Company and Plan any sums that it has paid to a Trustee or Employee by way of an indemnity or advancement in relation to the Loss or Professional Costs covered under Insuring Clause 1.6(a);
- (c) the Company, Plan and Corporate Trustee Company Loss and Professional Costs arising from a Pensions Claim;
- (d) the Plan any Pension Exonerated Loss;
- (e) the Trustees, Employees, Company, Corporate Trustee Company, and Plan all Pension Investigation Expenses in respect of a Pension Investigation; and
- (f) the Trustees, Employees, Company, Corporate Trustee Company, and Plan any Pension Mitigation Expenses.

## 2 EXTENSIONS

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### EXTENSIONS APPLICABLE TO INSURING CLAUSES 1.2-1.6

#### 2.1 New Subsidiaries

Cover under this Policy is extended in respect of any Subsidiary which the Company acquires or creates after the inception of this Policy, but only in respect of:

- (a) Wrongful Acts committed or alleged to have been committed; or
- (b) Events for a Claim under Insuring Clause 1.5 (Crime) only,

after the date of its acquisition or creation by the Company.

However, if the acquired or created Subsidiary is domiciled in the United States of America the Company will provide the Insurer with full underwriting information within 45 days of the acquisition or creation of the new Subsidiary. The Insurer may then charge a reasonable additional premium to cover the new Subsidiary or reasonably amend the terms and conditions of the Policy.

#### 2.2 Difference in Conditions Extension

If:

- (a) the Company had Corporate Legal Liability, Employment Practices Liability, Crime or Pension Trustee Liability or equivalent cover prior to the date a Marsh Omega Management Liability Corporate Policy was first issued to the Policyholder and the cover given by this Policy is less favourable to the Company than the expiring policy in force immediately before such date; or
- (b) the Insurer has made available a replacement Marsh Omega Management Liability Corporate Policy during the Policy Period that is more favourable to the Company than this Policy,

then the Insurer will provide cover to the Company on the same basis as the expiring or replacement policy in respect of the relevant section or sections of the Policy. This does not apply to the retention, the premium, any subsequent amendments made to this Policy, or services provided by agreement between the Insurer of the expiring policy and specific service providers.

## Marsh Omega Management Liability Policy

Notwithstanding the above, this policy is not extended to provide cover for Kidnap and Extortion Expenses, Kidnap Response Costs or equivalent costs.

### 2.3 Free Legal Helpline

The Insurer has arranged a free legal helpline with national law firm RPC LLP. The helpline is available during office hours for legal advice on problems potentially giving rise to a liability under the Policy. Advice on the helpline is free for the first hour.

Insurers have agreed with RPC for you to pay a concessionary rate of £215 per hour plus VAT for advice after the free legal helpline time limit has expired.

Advice given will not include whether or not there might be a notifiable circumstance or claim under the policy, any issues concerning the validity of the policy, or any policy coverage issues. Please note that the use of the helpline does not constitute notification to Insurers.

If you wish to use the helpline you should contact RPC for all queries on:

Telephone No: 020 3060 6393

Email: [omegahelpline@rpc.co.uk](mailto:omegahelpline@rpc.co.uk)

### EXTENSIONS APPLICABLE TO INSURING CLAUSES 1.2, 1.3, 1.4, AND 1.6

### 2.4 Extended Periods of Cover (Bi-lateral)

In the event any Insuring Clause of this Policy is not renewed or replaced with similar cover, the Company may within 90 days of expiry of the Policy Period purchase an Extended Reporting Period for 12 months for an additional premium of 50% of the annual premium. To purchase this Extended Reporting Period, the Company must notify the Insurer in writing of its election to do so and pay the additional premium in accord with the usual terms of trade for this policy. Unless otherwise agreed, this right is not exercisable after a Change in Control. The Insurer will have no liability under this extension arising from Wrongful Acts committed or alleged to have been committed after the expiry of the Policy Period (other than as provided for by Clause 6.4).

### 2.5 Extended Periods of Cover – Change in Control

In the event of a Change in Control during the Policy Period the Company may purchase an Extended Reporting Period for:

- (a) 72 months for an additional premium of 150% of the annual premium;
- (b) 36 months for an additional premium of 125% of the annual premium; or
- (c) 12 months for an additional premium of 100% of the annual premium.

Provided that the Insurer will only be liable for Loss and Professional Costs that arise from Wrongful Acts committed or alleged to have been committed prior to the date of such Change in Control (other than as provided for by Clause 6.4).

### 2.6 Circumstance Investigation Costs

Where the Company has notified a circumstance or Wrongful Act in accordance with Clause 6.3 below, the Insurer may in its absolute discretion instruct lawyers to investigate that circumstance or Wrongful Act and to advise on how the Company could avert or minimise the risk of a Notifiable Event. In this case Insurers will pay such Professional Costs without applying any policy retention. Any payments under this extension shall erode the applicable Limit of Liability.

### 2.7 Court Attendance Costs

The Insurer will pay the Company the following sums in respect of any director, officer or employee of the Company, Corporate Trustee Company, Trustee or Employee who is required to attend any court or tribunal in connection with any covered Claim, Employment Claim or Pension Claim;

For each natural person: GBP 350 for each day or part of a day.

## Marsh Omega Management Liability Policy

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Each and every payment in respect of this extension will erode the applicable Limit of Liability. Only one amount will be paid per person under this extension and any equivalent extension under Marsh Omega Management Liability Executives Policy issued by the Insurer to the Policyholder in respect of such person attending a court or tribunal.

### EXTENSIONS APPLICABLE TO INSURING CLAUSE 1.2 ONLY

#### 2.8 Privacy Breach Event Reimbursement Cover

The Insurer will pay the Company up to the sub-limit for Privacy Breach Event specified in the Schedule, for any Privacy Breach Expenses paid by the Company in connection with a Privacy Breach that first occurs during the Policy Period, regardless of whether or not a Claim is made against the Company as a result of such Privacy Breach. The Insurer will have no liability whatsoever for fines, penalties, assessments of costs or other financial awards associated with any such Privacy Breach unless such fines, penalties, assessments of costs or other financial awards are otherwise covered under this Policy.

#### 2.9 Social Media Extension

The Insurer will pay up to the sub-limit for Social Media specified in the Schedule the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an Insured may, in the reasonable exercise of its discretion, engage with the written consent of the Insurer, to mitigate the adverse effect or potential adverse effect on the Company's reputation, of the posting on internet based social media platforms or websites of information regarding actual or alleged business practices of the Company or Plan.

#### 2.10 Crisis Event Extension

The Insurer will pay up to the sub-limit for Crisis Event specified in the Schedule the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, which an Insured may, engage with the written consent of the Insurer, to mitigate the adverse effect or potential adverse effect on the Company's reputation with respect to a Crisis Event.

### EXTENSIONS APPLICABLE TO INSURING CLAUSE 1.5 ONLY

#### 2.11 Data Reproduction Expenses Extension

The Insurer will pay up to the sub-limit for Data Reproduction Expenses specified in the Schedule, for any Data Reproduction Expenses incurred by an Insured Organisation and resulting from a Computer Violation first Discovered during the Policy Period.

#### 2.12 Extended Period of Cover

In the event Insuring Clause 1.5 (Crime) is not renewed or replaced with similar cover, the Company will automatically have an Extended Reporting Period for 90 days for no additional premium. Unless otherwise agreed, this right is not provided after a Change in Control or if the Policyholder has become Insolvent. If an Insured Organisation other than the Policyholder becomes Insolvent they will not be covered by the Extended Reporting Period. The Insurer will have no liability in relation to this extension arising from Events after the expiry of the Policy Period.

### EXTENSIONS APPLICABLE TO INSURING CLAUSE 1.6 ONLY

#### 2.13 Civil Fines and Penalties

The Insurer will pay civil fines and penalties (to the extent that such civil fines and penalties are insurable under the law of this Policy) made against a Trustee, Employee, the Company, Corporate Trustee Company, or Plan either by the Pensions Ombudsman, the Pensions Regulator, the Pensions Regulator Tribunal, the Pension Protection Fund or an officially recognised independent regulatory authority, arising from any Pension Claim first made or Pension Investigation instigated in respect of an Insured during the Policy Period, provided that:

- (a) the premium for this extension is paid by the Trustees or Company without recourse or reimbursement from the Plan or any of its assets; and

## Marsh Omega Management Liability Policy

- (b) the Insurer will not make any payment for fines, penalties or punitive damages imposed in connection with any criminal act for which an Insured has been or is to be prosecuted.

### 2.14 Indemnity for Beneficiaries Cover

The Insurer will indemnify the Plan for any costs, charges and expenses incurred by any beneficiary of a Plan in pursuing a Claim against any Trustee or Corporate Trustee on behalf of the Beneficiaries and first made in the Policy Period to the extent that the Plan is legally liable to pay such costs, charges and expenses pursuant to a court order. The Insurer is liable to make the payment to the Plan in excess of the retention specified in the Schedule.

### 2.15 Court Application Costs

The Insurer will pay to the Plan or a Trustee any Court Application Costs up to the sub-limit for Court Application Costs specified in the Schedule in any actual or proposed Court or arbitral proceedings, or in connection with any complaint made or dispute referred to the Pensions Ombudsman, or any appeal therefrom to which a Trustee:

- (a) is made a party; or
- (b) commences or applies to join; and

in which the Company or beneficiary of the Plan (including a person who claims to be or entitled to be a beneficiary) is party; and which concerns or involves the Trustee in relation to the Plan.

Provided that:

- i) in relation to (a) above within the Policy Period, or Extended Reporting Period if applicable, the Trustee first receives written or verbal notice that another party proposes to join them or has joined them as a party to such proceedings; and
- ii) in relation to (b) above the Trustee is first aware of the circumstances requiring the proceedings during the Policy Period, or Extended Reporting Period if applicable, and as soon as practicable thereafter gives written notice to the Insurer and before commencing or applying to join the proceedings obtains Insurer Approval.

For the purposes of this extension, Insurer Approval means the reasonable decision of the Insurer, taking account of all relevant factors, but assuming for this purpose that the Trustee does not have the benefit of this Policy, that, in order to act as a proper Trustee, the Trustee should commence or apply to be joined to legal or arbitral proceedings or a complaint or dispute referred to the Pensions Ombudsman, or an appeal therefrom, in circumstances where some or all of the costs of those proceedings would or might fall to be paid out of the Plan. In the event that the Trustees do not agree with the Insurer decision, the Insurer will pay for the dispute to be referred to a Queen's Counsel agreed by the Trustee and the Insurer.

### 2.16 Loss of Pension Documents

The Insurer will pay up to the sub-limit for Loss of Pension Documents specified in the Schedule for all costs reasonably incurred by an Insured in replacing or restoring Pension Documents, which are discovered during the Policy Period or Extended Reporting Period if applicable to have been lost, damaged, destroyed or mislaid (and after diligent search cannot be found), provided that:

- (a) such loss, damage or destruction is sustained while the Pension Documents are either in transit or in the care, custody or control of an Insured or of any person to whom an Insured has entrusted them;
- (b) such costs are incurred with the consent of the Insurer; and
- (c) such costs are not available from any other source of insurance or indemnification other than as advancement or indemnity under applicable trusts, indemnity laws or agreements.

The cover provided under this extension excludes any loss, damage or destruction arising out of wear or tear, gradual deterioration, moth or vermin, and in respect of Pension Documents comprising computer records excludes any loss, damage or destruction unless there is physical loss, damage or destruction of the media on which the records were stored.

## Marsh Omega Management Liability Policy

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### **2.17 Extended Periods of Cover – for Retired Trustees (Bi-lateral)**

In the event this Policy is not renewed and not replaced with similar cover for the benefit of a Retired Trustee, cover is no longer included for Retired Trustees or an Extended Reporting Period is no longer provided for a Retired Trustee and an Extended Reporting Period is not invoked then each Retired Trustee will automatically have an Extended Reporting Period of twelve years at no additional premium. The Insurer will have no liability arising from Wrongful Acts committed or alleged to have been committed after the date on which the relevant Trustee became a Retired Trustee (other than as provided for by Clause 6.4).

### **2.18 Pension Third Party Service Provider Pursuit Costs**

The Insurer will pay fees, costs and expenses incurred by the Trustees or Corporate Trustees up to the sub-limit for Pension Third Party Service Provider Pursuit Costs specified in the Schedule in the pursuit of legal proceedings against a Pension Third Party Service Provider for the purpose of establishing a breach of professional duty of care, provided that:

- (a) the Trustee or Corporate Trustee is first aware of the circumstances requiring the proceedings during the Policy Period, or Extended Reporting Period (if applicable), and as soon as practicable thereafter gives written notice to the Insurer and demonstrates to the Insurer that they have reasonable grounds to pursue the proceedings;
- (b) such costs are incurred with the consent of the Insurer; and
- (c) such costs are not available from any other source of insurance or indemnification other than as advancement or indemnity under applicable trusts, indemnity laws or agreements.

In the event of any dispute as to whether the Trustee or Corporate Trustee has reasonable grounds to pursue proceedings or whether the Insurer has unreasonably withheld consent to incur costs, the dispute will be referred to a Queen's Counsel agreed by the Trustee or Corporate Trustee and the Insurer.

## **3 RETENTIONS**

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**3.1** The Insurer will only be liable to make a payment to the Company for Loss or Professional Costs (other than for Crime Loss or Data Reproduction Expenses) in excess of the amount specified as the Retention in the Schedule. This retention will apply once only to all Loss or Professional Costs that arise out of a Single Claim. In the event that more than one retention applies to a Single Claim only the highest retention will apply.

**3.2** The Insurer will only be liable to make a payment to an Insured Organisation for Crime Loss which exceeds the total of:

- (a) the retention specified in the Schedule; and
- (b) the amount of recoveries made prior to the Insurer making payment.

This retention will apply once only to all Crime Loss that arises out of a Single Crime.

**3.3** In respect of each single Computer Violation the Insurer will only be liable for the amount of Data Reproduction Expenses which exceeds the total of:

- (a) £10,000 each Single Crime; and
- (b) the amount of recoveries made prior to the Insurer making payment.

**3.4** The retention as shown in the Schedule will not apply in the event of:

- (a) a determination of no liability made in the Company's or any natural person covered by this Policy's favour, other than for Crime Loss or Data Reproduction Expenses;
- (b) a dismissal or stipulation to dismiss any Claim without prejudice, other than for Crime Loss or Data Reproduction Expenses; or



## Marsh Omega Management Liability Policy

- (c) Crime Loss or Data Reproduction Expenses for any Plan.

**3.5** If the Company or an Insured Organisation receives payment under another policy or bond after application of retentions for a matter also covered by this Policy, the retention specified in the Schedule will, in respect of that matter, be reduced by that retention applied under the other policy or bond.

**3.6** All Crimes or Computer Violations caused by the same person:

- (a) whether alone or in collusion with other persons;
- (b) whether as a result of one single act or a number of acts; or
- (c) whether such act or acts occurred before or during the Policy Period,

will be treated as a single Crime or Computer Violation respectively, first Discovered on the date when the first of such Crimes or Computer Violations was first Discovered.

## 4 LIMITS OF LIABILITY

- (a) In respect of each Single Claim the Insurer's liability under Insuring Clause 1.2 (Corporate Legal Liability), or any extensions or endorsements to it, will be limited to the Corporate Legal Liability Limit of Liability stated in the Schedule.
- (b) In respect of each Single Claim the Insurer's liability under Insuring Clause 1.3 (Professional Indemnity), or any extensions or endorsements to it, will be limited to the Professional Indemnity Limit of Liability stated in the Schedule.
- (c) In respect of each Single Claim the Insurer's liability under Insuring Clause 1.4 (Employment Practices Liability), or any extensions or endorsements to it, will be limited to the Employment Practices Limit of Liability stated in the Schedule.
- (d) In respect of each Crime the Insurer's liability under Insuring Clause 1.5.1 will be limited to the Financial Loss Limit of Liability stated in the Schedule.
- (e) The Insurer's liability under Insuring Clause 1.5.2 will be limited to the Expenses Limit of Liability stated in the Schedule, which limit is in addition to, and not a part of, the Financial Loss Limit of Liability stated in the Schedule.
- (f) In respect of each Single Claim the Insurer's liability under Insuring Clause 1.6 (Pension Trustee Liability), or any extensions or endorsements to it, will be limited to the Pension Trustee Limit of Liability stated in the Schedule.
- (g) Where any Insuring Clause is stated to be subject to a sub-limit of liability, then any such sub-limits are themselves each Single Claim sub-limits and unless otherwise stated will form part of (and not in addition to) the Limit of Liability for each Single Claim. In respect of each Computer Violation the Insurer's liability for all Data Reproduction Expenses will be limited to the Data Reproduction Expenses Sub-Limit stated in the Schedule, which is in addition to, and not a part of, the Financial Loss Limit of Liability.
- (h) Where a Crime Loss is as a result of a Crime, as defined either in part (c) or (d) of the definition of Crime, whereby such Crime has been committed in collusion with an employee or employees of a Client, then, subject to all other terms and conditions of the Policy, the Insurer will not be liable to indemnify the Insured Organisation for the proportion of the loss that was committed by the Client's employee(s). This proportion will be allocated according to the relative participation in such Crime of the Insured Organisation's Employee(s), the Third Party and the Client's employee(s). Where this Clause applies, the Insurer will pay up to a maximum limit of 50 percent of the Crime Loss.

## Marsh Omega Management Liability Policy

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### 5 EXCLUSIONS

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The Insurer will not have any liability under this Policy (including any endorsements) for that part of any Loss that is:

**5.1** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability), 1.4 (Employment Practices Liability) or 1.6 (Pension Trustee Liability) arising out of any prior or pending litigation against an Insured at or before the Continuity Date;

**5.2** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability), 1.4 (Employment Practices Liability) or 1.6 (Pension Trustee Liability):

- (a) for an Insured gaining a profit or financial advantage to which it is not legally entitled; or
- (b) arising from an Insured committing any deliberate criminally dishonest or deliberate fraudulent act or omission material to the Claim;

This exclusion will only apply where an Insured:

- (a) is guilty of the above conduct, as established through a final non-appealable adjudication by any a court or tribunal; or
- (b) makes a formal written admission of the above conduct,

in the underlying action;

**5.3** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability), arising out of the initial public offering of equity securities of the Company, by means of a prospectus, after the inception of this Policy. This exclusion will not apply:

- (a) to the failure to make or complete an intended offering of equity securities;
- (b) to any formal presentations, negotiations, discussions or decisions in connection with the initial public offering that occurred prior to issuance of the securities concerned; or
- (c) if the total value of equity securities issued outside the United States of America is less than the value shown as the Offering of Equity Securities Limit specified in the Schedule;

**5.4** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability) arising out of any Contamination, unless it is specifically provided for under Insuring Clauses 1.2(a)(ii), 1.2(b)(ii) or (iii) provided no other exclusions apply;

**5.5** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability) for the provision of, or failure to provide, any professional advice or professional service by or on behalf of the Company under a separate contract for a separate fee;

**5.6** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability), 1.4 (Employment Practices Liability) or 1.6 (Pension Trustee Liability) for damage to or destruction of any tangible property or the loss of use thereof other than for a Pension Document;

**5.7** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability), or 1.4 (Employment Practices Liability) by a natural person for bodily injury, sickness, disease, (other than for mental or emotional distress) or death, although this exclusion will not apply for a Claim under Insuring Clause 1.2 (Corporate Legal Liability) for proceedings under the Corporate Manslaughter and Corporate Homicide Act 2007 or (for the avoidance of doubt) an HSE Investigation or an HSE Prosecution or other similar investigatory, regulatory or criminal proceedings;

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**5.8** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability) arising out of actual or alleged, plagiarism, misappropriation, infringement or violation of copyright, patent, trademark, trade secret or any other intellectual property rights;

**5.9** for a Claim under Insuring Clause 1.2 (Corporate Legal Liability) arising out of actual or alleged violation of any law, whether statutory, regulatory or common law, with respect to anti-trust, business competition, unfair trade practices or tortious interference in another's business or contractual relationships;

**5.10** for an Employment Claim under Insuring Clause 1.4 (Employment Practices Liability) arising out of one or more of the acts that form the basis for an Employment Claim as described in Definition 8.27 Employment Claim which was committed or allegedly committed prior to the Retroactive Date;

**5.11** for an Employment Claim under Insuring Clause 1.4 (Employment Practices Liability) for:

- (a) any liability or costs incurred by the Company to modify any building or property in order to make such building or property more accessible or accommodating to any disabled persons;
- (b) an Employment Claim brought in the United States of America for any obligation pursuant to the following laws and amendments to such laws or similar provision of any law, regulation, decree or ordinance of any county, state or municipality: The Workers Adjustment and Retraining Notification Act Public Law 100-379 (1988) (WARN); The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA); The Occupational Safety and Health Act;
- (c) any act, omission, responsibilities, obligations or duties imposed by the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended);

**5.12** for a Pensions Claim under Insuring Clause 1.6 (Pension Trustee Liability) for the failure to fund or procure funds to the Plan in accordance with the law or the trust deeds (or other similar provisions) or failure to collect contributions which are owed to the Plan from the Company or any other source. However this exclusion will not apply to:

- (a) Professional Costs; or
- (b) Loss resulting from a Claim against a Trustee or Employee alleging that such failure to fund or procure funds or to collect contributions arises from, is attributable to, or is based upon the negligence, error or omission of a Trustee or Employee.

The Insurer will not have any liability under this Policy (including any endorsements) for a Claim under Insuring Clause 1.5 (Crime) for that part of any Crime Loss:

**5.13** resulting from the loss of Intellectual Property, except to the extent that such Intellectual Property has been used to make possible a Crime covered by this Policy;

**5.14** resulting from an Event caused by or involving any person controlling at any time more than 15% of the issued share capital of the Policyholder. However, if the value of the Crime Loss exceeds the Value of Controlled Shares of that person, the Insurer will pay so much of the Loss that would otherwise have been covered by the Policy that is in excess of that Value of Controlled Shares;

**5.15** sustained by one Insured Organisation to the advantage of any other Insured Organisation;

**5.16** for profits, interest (except Expenses), gains or other income;

**5.17** for any kind of consequential loss, except for Expenses;

**5.18** caused by an Employee, after a director, or Insurance Representative of an Insured Organisation became aware of:

## Marsh Omega Management Liability Policy

- (a) a Crime Loss, Computer Violation or any fraud or dishonesty on the part of that Employee whilst employed by an Insured Organisation; or
- (b) fraud or dishonesty caused by that Employee, in relation to an amount exceeding £25,000;

**5.19** whereby an Insured Organisation has knowingly surrendered or given Money, Securities or Property to a Third Party as consideration in a transaction, not in collusion with an Employee. This exclusion will not apply if the Loss is as a direct result of a Crime or Computer Violation;

**5.20** as a result of extortion. This exclusion will not apply to Crime Loss resulting from Robbery or Extortion By Detention;

**5.21** resulting directly or indirectly from any trading of Money, Securities or Property, whether authorised or unauthorised, whether or not in the name of an Insured Organisation and whether in a genuine or fictitious account. This exclusion will not apply where such Crime Loss is Financial Loss which results from a Crime and which results in an Employee or another person, as the result of intentional acts or omissions on the part of an Employee, making improper financial gain. For the avoidance of doubt, improper financial gain does not include salary, commissions, fees or other contractual payments made by an Insured Organisation to an Employee;

**5.22** resulting from Crime committed by any person or organisation to whom the Policyholder has entrusted Money, Securities or Property or has provided the means to obtain access to the Policyholder's Money, Securities or Property. This exclusion will not apply where such person or organisation is one to whom the Insured Organisation Outsource, or such person or organisation is acting in collusion with an Employee;

**5.23** resulting from Crime that was sustained, committed or allegedly committed prior to the earliest of:

- (a) the inception date of the first Omega Management Liability Corporate Policy issued to the Policyholder; or
- (b) the retroactive date of the Crime liability cover in favour of the Policyholder that was in force immediately before the inception date of the first Marsh Omega Corporate Liability Policy issued to the Policyholder; or
- (c) the Crime Retroactive Date stated in the Schedule.

**5.24** under Insuring Clause 1.5.2 for Crime Expenses or Extension 2.11 Data Reproduction Expenses:

- (a) to reproduce Data recorded on magnetic media, optical media or flash memory. This exclusion will not apply if the Insured Organisation maintains, on its own premises, or premises elsewhere, an analysis file, specification or backup of that Data in a manner which is wholly separate from and independent of any Computer System which is used by the Insured Organisation in the day to day conduct of its business;
- (b) to restore or replace Data, where the Policyholder uses illegal or unlicensed copies of software, programmes or processes;
- (c) to make information usable by the replacement of processing equipment;
- (d) to design, update or improve software or programmes or to optimise their operation or performance;
- (e) caused by an alteration in or damage to Data held on magnetic media, optical media or flash memory caused by to their incorrect use, the effect of magnetic fields or the obsolescence of a computer or its facilities; or
- (f) incurred by a Client.

## Marsh Omega Management Liability Policy

### 6 CLAIMS PROVISIONS AND PAYMENT OF PROFESSIONAL COSTS

**6.1** The Insurer will not have any liability under this Policy unless:

- (a) the Notifiable Event is first made during the Policy Period or the Extended Period of Cover, (if applicable); or
- (b) in relation to Insuring Clause 1.5 (Crime) the Event is first Discovered and notified to the Insurer during the Policy Period or Extended Period of Cover (if applicable).

**6.2** The Insured will give notice in writing to the Insurer of:

- (a) the Notifiable Event as soon as reasonably practicable after a Responsible Person first becomes aware of it; or
- (b) in relation to Insuring Clause 1.5 (Crime) the Event as soon as reasonably practicable after it is first Discovered but in any event no later than 90 days after it is first Discovered.

In relation to Insuring Clause 1.5 (Crime) within 6 months after an Event is first Discovered, the Company will provide a proof of loss, with full particulars, to the Insurer.

If notice is given to the Insurer but not in accordance with this Clause, then the Insured's rights to cover under this Policy for such matter will be prejudiced only to the extent that the Insurer establishes that it was actually, substantially and materially prejudiced as a consequence of such non compliance.

**6.3** An Insured may give notice in writing to the Insurer during the Policy Period, the Extended Reporting Period (if applicable) or within 30 days after either such period of circumstances or a Wrongful Act of which they first become aware during such period and which may give rise to a Notifiable Event.

In addition if a Responsible Person first becomes aware of the circumstance or Wrongful Act during the 90 days after expiry of the Policy that arises from a Wrongful Act committed before the expiry of the Policy and which may give rise to a Notifiable Event, the Insured may give notice in writing to the Insurer of such Notifiable Event.

Such notice should contain where possible the following information:

- (a) a description of the circumstance, or the nature and details of the Wrongful Act;
- (b) the nature and amount of the alleged or potential Loss;
- (c) the names of the actual or potential claimants; and
- (d) the manner in which the Insured first became aware of the circumstance or Wrongful Act.

**6.4** Any subsequent Notifiable Event which:

- (a) arises out of, is based upon or attributable to the facts alleged in the circumstances, Wrongful Act or Notifiable Event notified in accordance with Clauses 6.2 or 6.3; or
- (b) alleges a Wrongful Act which together with any Wrongful Act alleged or contained in the previous Notifiable Event, will constitute a Single Wrongful Act,

will be deemed to have been first made and reported during the Policy Period or the Extended Period of Cover, if applicable.

**6.5** Any notice given in accordance with Clause 6.2 and 6.3 shall be given in writing to the Insurer. Such notice should be sent to:

Email: [omega@rpc.co.uk](mailto:omega@rpc.co.uk)  
Omega Claims Team  
RPC  
Temple Circus  
Temple Way

## Marsh Omega Management Liability Policy

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Bristol  
BS1 6LW

**6.6** The Insured will use best endeavours to provide such information and assistance to the Insurer as reasonably required to allow any Notifiable Event or Event to be effectively investigated, defended and/or resolved. Within 21 working days of the receipt of such information the Insurer will provide a written and reasoned statement of their position relating to cover.

In relation to a claim under Insuring Clause 1.5 (Crime) only:

- (a) reasonable information and assistance will include but not be limited to submitting to examination under oath at the Insurer's request, the provision of internal reports and investigations, the provision of all pertinent records to the fullest extent legally permissible at such times and places as the Insurer will reasonably require;
- (b) to prove the amount of Financial Loss, the Policyholder may offer a comparison between an Insured Organisation's inventory records and an actual physical count of its inventory. The Company must prove that the Insured Organisation has sustained Financial Loss, notwithstanding any such comparison being made.

**6.7** The Insured will have the obligation to defend and contest any Claim made against it. The Insurer will be entitled to participate effectively in the defence and in the negotiation of any settlement that involves or appears reasonably likely to involve the Insurer.

**6.8** Where the Company has appointed its own lawyers, the Insurer will not have any liability to pay Professional Costs unless it has given its prior and continuing consent to such costs being incurred. In order for the Insurer to provide its consent, the Company or its lawyers shall provide to the Insurer a cost budget for approval. The Insurer shall respond within 5 working days of that request, indicating whether or not it provides its consent to the costs described in that estimate. The Insurer shall not unreasonably withhold or deny such consent.

Where the Company appoints lawyers from the Insurer's approved panel, then such consent will be deemed to have been given.

Where an Insured incurs Professional Costs but cannot reasonably obtain the Insurer's prior written consent, then the Insurer will be deemed to consent to, and pay, such costs up to a sub-limit of 15% of the relevant Limit of Liability specified in the Schedule, as if the Insured had sought its consent in advance and provided that the Insured would otherwise be entitled to an indemnity for those costs under this Policy.

The use of separate lawyers for Insured's will be accepted as reasonable where there is an actual or perceived material conflict of interest between such Insureds.

**6.9** An Insured will not make an admission of liability, offer or agree to settle in relation to a Claim against such Insured without the Insurer's consent, such consent not to be unreasonably withheld, delayed or denied. The reporting of matters to an official body by an Insured, whether pursuant to law or regulation or otherwise will not constitute a contravention of this provision by such Insured.

**6.10** The Insurer will advance Professional Costs on behalf of the Insured, including which the Company fails to indemnify or advance. Professional Costs will be advanced by the Insurers within 21 days of suitably detailed invoices being provided. These will be repayable by the applicable Insured to the Insurer in the event it is determined that the Insurer was not liable for such advances costs under the terms of this Policy.

**6.11** If there is a dispute between the Insurer and an Insured about whether to agree to a proposed settlement or whether a Claim should continue to be defended the dispute may be referred to a Queen's Counsel (to be mutually agreed upon) to decide the issue, taking into account whether on the balance of probabilities the claim is likely to be defended and the possibilities for settling the claim. The decision will be binding on the parties.



## Marsh Omega Management Liability Policy

**6.12** The following will apply when establishing the valuation of the amount of Financial Loss payable by the Insurer:

- (a) for Securities, the lesser of:
  - i) the market price of the Securities on the close of the business day immediately preceding the day on which the Crime is first Discovered;
  - ii) the cost of replacing the Securities, including the value of any subscription, conversion, redemption or similar privileges valued as the closing market value of such privileges immediately preceding the expiration thereof; and
  - iii) the premium for issuing a lost instrument bond;
- (b) for material or means for storing information, including but not limited to paper, microfilm, tapes, disks and computers, the cost of such material or means as if blank and not the value of whatever is recorded on or in such material of means;
- (c) for Property, the lesser of:
  - i) the price paid by the Insured Organisation for the Property;
  - ii) the cash value of the Property at the time the Crime is first Discovered;
  - iii) the cost of repairing or replacing it with Property or material of similar value or quality; and
- (d) for foreign currency, the Pound Sterling value of that currency based on the rate of exchange published in The Financial Times on the day the Crime is first Discovered.

## 7 GENERAL CONDITIONS

**7.1** In the event that not all of the Loss or Professional Costs are covered under this Policy, the Insurer and the relevant Insured (as appropriate) will negotiate in good faith to agree a fair and proper basis for allocation of that part of the Loss or Professional Costs that should be paid under the Policy, taking into account the essential nature of, and reasons for the Claim and the proportion to which the Loss and Professional Costs are not covered under the Policy. In the event that the various parties cannot agree between themselves, they may submit the issue to a Queen's Counsel (to be mutually agreed upon) to determine a fair and proper basis for allocation on the above basis, and that decision will be binding on the parties.

**7.2** In the event of a Change in Control, the Insurer will only be liable for:

- (a) Loss and Professional Costs that arise from Wrongful Acts committed or alleged to have been committed (other than as provide by Clause 6.4); or
- (b) Crime Loss under Insuring Clause 1.5 (Crime) that arise from Events,

prior to the date of such Change in Control.

**7.3** In respect of Insuring Clause 1.5 (Crime) only:

- (a) if the Policyholder becomes Insolvent, cover under this Policy will continue but not for Events occurring after the Date of Insolvency; or
- (b) if a Subsidiary or Associated Company becomes Insolvent, cover for that Subsidiary or Associated Company will continue, but not for Events occurring after the Date of Insolvency.

**7.4** With respect to Subsidiaries, the Insurer will only be liable for;

- (a) Loss and Professional Costs that arise from Wrongful Acts committed or allegedly committed; or
- (b) Crime Loss under Insuring Clause 1.5 (Crime) only that arise from Events;

after the effective date that the Subsidiary became a Subsidiary and prior to the date the Subsidiary ceases to be a Subsidiary.



## Marsh Omega Management Liability Policy

**7.5** Where the Insurer makes any payment under this Policy it will be subrogated to the rights of recovery of the Insured. The Insured will provide such co-operation and assistance as the Insurer may reasonably require in order to exercise its subrogation rights. The Insurer will not exercise rights of subrogation against an Insured.

**7.6** In relation to Insuring Clause 1.5 (Crime) if a recovery is made, whether effected by the Insurer or by an Insured Organisation, the proceeds, less the cost of making the recovery, will be distributed in the following order:

- (a) first, to the Company for the amount of Crime Loss otherwise covered but in excess of the Insurer's limits of liability less any applicable retention;
- (b) second, to the Insurer for the amount paid to the Company for covered Crime Loss;
- (c) third, to the Company for the applicable retention; and
- (d) fourth, to the Company for Loss specifically excluded by this Policy.

For the avoidance of doubt, a recovery from any reinsurance of or indemnity to, the Insurer will not be regarded as a recovery.

**7.7** Where the Insurer makes a recovery of any amount following a payment being made to an Insured by the Insurer under this Policy, the recovery will proportionately reduce the impairment of the Limit of Liability less the Insurer's reasonable costs of making the recovery.

**7.8** A person who is not a party to this Policy or a natural person covered by this Policy may not enforce any of its terms under the Contracts (Rights of Third Parties Act) 1999.

**7.9** This Policy and any rights hereunder cannot be assigned without the written consent of the Insurer.

**7.10** The Insurer's liability under this Policy will be several and not joint and will be solely to the extent of its individual subscription.

The Policyholder agrees to act on behalf of all natural persons covered by this Policy with respect to the giving and receiving of notices under this Policy. The Insureds agree that the Policyholder may act on their behalf in this way.

### **7.11 Separate interests in Policy, Waiver of Remedies for Breach of the Duty of Fair Presentation and No Warranties**

- (a) The Proposal will be construed as a separate application for insurance by each Insured. Each Insured has a severable interest in the Policy.
- (b) In determining coverage for a particular Insured, the Insurer will only take into account the admission of, statements made by, knowledge possessed by, or the acts, omissions or conduct of, that particular Insured.
- (c) The Insurer agrees to waive any right it may have in determining the coverage provided for a particular Insured in relation to a particular claim to take into account any breach of any Claims Provision 6.1 - 6.9 by a person other than such Insured.
- (d) Since the Company can only act through its executives, the admissions, statements made by, knowledge possessed by, or the acts, omissions or conduct on the part of, any two out of the Policyholders chairman of the board, managing director, finance director, chief legal officer or their equivalents will be deemed to be imputed or attributed to the Company.
- (e) In the event of a fraudulent breach of the duty of fair presentation by an Insured where such fraudulent breach is established by a Final Adjudication:
  - i) if the breach is before the contract of insurance is entered into, the Insurer may avoid the contract and refuse all claims, and need not return any of the premiums paid, in respect of such Insured.

## Marsh Omega Management Liability Policy

- ii) if the breach is in relation to a variation of the contract of insurance, the Insurer may treat the contract as if the variation was never made and need not return any of the premiums paid in respect of the variation, in respect of such Insured.

It is agreed that in the event of a breach of the duty of fair presentation by an Insured, which is not established to be fraudulent by Final Adjudication, the insurer irrevocably waives all and any rights and remedies it has/may have as a result of the breach of the duty of fair presentation including, for the avoidance of doubt, any remedy that would have been available under the Insurance Act 2015.

For the purposes of this clause, the phrase "duty of fair presentation" shall have the same meaning as given to it in the Insurance Act 2015.

For the purpose of this clause "Final Adjudication" means, in respect of any conviction, judgment, or refusal of relief by a court or judicial or arbitral tribunal, from a factual adjudication that the Insured committed the relevant acts:

- i) if not appealed against, when the period in which an appeal must be brought has expired; or
  - ii) if appealed against, when such appeal has been determined, and no further appeal or review is available, abandoned or otherwise ceased.
- (f) It is agreed that no clause in this policy will be construed as a warranty unless expressly stated as such.
- (g) In relation to Insuring Clause 1.5 (Crime) only:
- i) the Policyholder will act for itself and on behalf of all Insured Organisations with respect to the giving and receiving of notice of Events or termination, the payment of premiums and the receiving of any return premiums that may become due under this Policy, the negotiation, agreement to and acceptance of endorsements, and the giving or receiving of any notice provided for in this Policy, and the Insured Organisations agree that the Policyholder will so act on their behalf;
  - ii) only the Policyholder can:
    - a) give notice of an Event or provide proof of loss in accordance with Section 6 above; or
    - b) make a claim under this Policy or adjust, receive or enforce payment of any Loss;
  - iii) regardless of which Insured Organisation sustains or incurs Crime Loss, the Insurer will only be obliged to pay Crime Loss to the Policyholder, although the Insurer may, if it wishes, pay to the Insured Organisation which sustains or incurs the Crime Loss;
  - iv) each Insured Organisation is deemed for all purposes of this Policy to be insured jointly and not separately for their several interests; and
  - v) only the Policyholder may bring legal proceedings to enforce this Policy.

### 7.12 If another Insurance Policy or Indemnity applies

- (a) If, in relation to any Loss or Professional Costs, the Insured would be entitled, but for the existence of this Policy, to indemnification from any other valid and collectable policy of insurance then this Policy will apply only in excess of the amount of that indemnity available from such other source to the relevant Insured.
- (b) If, in respect of any Crime Loss, any Insured Organisation is entitled to indemnification or reimbursement from any other source including any other valid and collectible policy of insurance or would be entitled, but for the existence of this Policy, then this Policy will apply only in excess of the amount of that indemnity available from such other source.

This Clause will not apply if such other insurance is written only as specific excess insurance over the Insurer's Limit of Liability covered under this Policy.

## Marsh Omega Management Liability Policy

### 7.13 Governing Law and Disputes

- (a) In the event that any dispute should arise out of or in connection with the Policy, including any question regarding existence, validity or termination that cannot be resolved by agreement, then such dispute may first be referred to a mutually agreed mediator. If, following mediation, such dispute is still unresolved then it may be referred to and finally resolved by arbitration administered by ARIAS (UK) under the ARIAS Arbitration Rules.
- (b) The governing law in relation to this Policy will be the law of England and Wales. Where the Policyholder is domiciled in Scotland, Northern Ireland or the Channel Islands, then the proper law will be the law of Scotland, Northern Ireland or the Channel Island respectively.

### 7.14 Premium Payment and Cancellation

- (a) The consideration for this Policy is the agreement to pay the premium stated in the Schedule (or, in respect of instalment premiums or any additional premiums, when due).
- (b) The consideration for the Extended Reporting Period is the agreement to pay the additional premium, if due.
- (c) This Policy is non-cancellable unless the premium or additional premium (if applicable) has not been so paid, in which case the Insurer will have the right to cancel this Policy by giving written notice to the Policyholder. The Insurer will give a notice period of at least 14 days and if the premium or additional premium (if applicable) is paid in full in this period then the notice of cancellation will be revoked automatically. If not, the Policy will be automatically cancelled at the end of the notice period.

### 7.15 Policy Interpretation

In this Policy:

- (a) reference to any regulator, Act, statute or statutory provision or other legislation will include reference to that provision as amended, re-enacted or replaced from time to time or the equivalent in another jurisdiction;
- (b) reference to Queens Counsel and titles or positions will include the equivalent in any other jurisdiction;
- (c) if any term, condition, exclusion or endorsement or part thereof of this Policy is found to be invalid or unenforceable, then the remainder will be in full force and effect;
- (d) reference to the masculine will include a reference to the feminine or neuter, and reference to the singular will include reference to the plural, and in each case vice versa;
- (e) the headings in this Policy are for general reference only and will not be considered when determining the meaning of this Policy;
- (f) the word 'person' refers to any legal or natural person unless otherwise specified by the Policy;
- (g) where consent by the Insurer is required, such consent will not be unreasonably delayed or withheld; and
- (h) reference to including will be interpreted as including but not limited to.

**7.16** The Marsh Omega Management Liability Executives Policy and the Marsh Omega Management Liability Corporate Policy are separate policies of Insurance and each is entered into without reference to or reliance on the other Policy.

This policy wording, in its entirety, is the policy wording of the Insurer and is to be interpreted as drafted by the Insurer, notwithstanding that the policy wording may have been proposed to the Insurer by or on behalf of the Policyholder.

**7.17** The liability of each of the insurers, as defined, shall be limited to the percentage set against its name or such other proportion as may be substituted hereafter by endorsement. The obligations under this policy of each of these insurers are several and not joint and are limited solely to the extent of that insurer's individual subscription. The subscribing 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.

## 8 DEFINITIONS

## Marsh Omega Management Liability Policy

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**8.1 Account** means an account held with:

- (a) a bank or building society;
- (b) a person carrying on a business in course of which money received by way of deposit is lent to others, in respect of which any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit; or
- (c) an issuer of electronic money.

**8.2 Associated Company** means a company which is not a Subsidiary and:

- (a) in which the Policyholder or a Subsidiary directly holds any issued shares;
- (b) the Policyholder or a Subsidiary direct its policies and procedures for security and internal controls; and
- (c) the Policyholder or a Subsidiary has the right to control its day-to-day management.

**8.3 Bail Bond Costs** means costs incurred with the prior written agreement of the Insurer to pay for a bond or other financial instrument to guarantee any natural person Insured's bail or equivalent in any other jurisdiction.

**8.4 Change in Control** means an event whereby the Policyholder consolidates or merges into, or sells all of its assets to, any person, entity or group of persons or entities acting in concert, or becomes a subsidiary of, or controlled by, another unconnected entity.

**8.5 Claim** means

- (a) a written demand for monetary relief or non monetary relief;
- (b) any mediation, arbitration or civil proceedings; or
- (c) any formal administrative or regulatory proceeding,

alleging any Wrongful Act.

**8.6 Client** means a customer of the Company to whom goods or services are provided by the Company under written or electronic contract or for a fee or other consideration.

**8.7 Company** means the Policyholder and any Subsidiary.

**8.8 Company's Limit of Liability** means the amount specified in the Schedule

**8.9 Computer System** means a computer and all electronic input, output, processing, storage (including off-line media libraries), intranets and communication facilities including related communication of open systems networks and extranets which are connected directly or indirectly to such a device.

**8.10 Computer Violation** means an intentional, unauthorised and malicious:

- (a) entry or deletion of data into or from a Computer System or its facilities;
- (b) change to data elements or software which is kept in machine readable format; or
- (c) introduction of Malicious Code into a Computer System or its facilities.

**8.11 Contamination** means the actual, alleged or threatened discharge, release, escape, dispersal or disposal of pollutants or contamination of whatever kind or any direction or request that the Company test for, monitor, clean up, remove, contain, treat, detoxify or neutralise pollutants.

**8.12 Contamination Clean Up Costs** means the costs involved in testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing Contamination.

## Marsh Omega Management Liability Policy

**8.13 Continuity Date** means the date specified in the Schedule.

**8.14 Corporate Legal Liability** means any liability arising from any Wrongful Act of the Company, other than a liability that arises from:

- (a) an express contract or express agreement (written or oral); or
- (b) an Employment Claim or Pensions Claim.

**8.15 Corporate Trustee Company** means a company established by the Company or any predecessor thereof and duly appointed solely to act as Trustee of the Plan.

**8.16 Court Application Costs** means all reasonable legal and other professional charges, costs and expenses incurred by an Insured in and for the purpose of any actual or proposed Court or arbitral proceedings, or in connection with any complaint made or dispute referred to the Pensions Ombudsman, and which the Insured has incurred or been ordered to pay.

**8.17 Crime** means:

- (a) the criminal or fraudulent appropriation or taking by any person of Money, Securities or Property to the deprivation of an Insured Organisation;
- (b) the physical destruction, loss of or damage to, or disappearance of Money or Securities:
  - i) within or from the inside of a building occupied by the Policyholder for conducting its business;
  - ii) while in the custody of an Employee; or
  - iii) while in the custody of a person, including a financial institution, expressly authorised by the Policyholder to have custody of such Money or Securities and who has insurance, or provides indemnity, for such loss,

caused by a criminal or fraudulent act of any person;

- (c) the criminal or fraudulent appropriation or taking of Money, Securities or Property to the deprivation of a Client, by an Employee, whether or not in collusion with any employee of that Client; or
- (d) the criminal or fraudulent appropriation or taking by a Third Party, to the deprivation of a Client and whether or not in collusion with any employee of that Client, of Money, Securities or Property in the custody, care or control of an Insured Organisation and for which that Insured Organisation is legally liable.

**8.18 Crime Loss** means Financial Loss and Expenses.

**8.19 Crisis Event** means any of the following unforeseen events occurring during the Policy Period where, in the reasonable opinion of the chief executive officer of the Policyholder, the event has the potential to make a significant impact on the consolidated annual revenues or the reputation of the Company if left unmanaged:

- (a) the sudden, unexpected death or disability of any executive or officer;
- (b) the criminal conviction of any executive or officer;
- (c) the public disgrace of any executive or officer;
- (d) loss of a major customer, contract or credit facility;
- (e) employee workplace violence;
- (f) the first apparent unauthorized intrusion into any Company's computer facilities;
- (g) a recall or boycott of any product;
- (h) a man-made disaster;
- (i) any criminal or fraud investigation;
- (j) any Claim, Employment Claim, Pension Claim or any claim under a directors and officers or similar policy; or

## Marsh Omega Management Liability Policy

- (k) any threat to post on internet based social media platforms or websites information regarding actual or alleged business practices.

Crisis Event does not include an event that affects the Company's industry in general; rather than the Company, specifically.

**8.20 Data** means information contained in a manuscript, record, account, microfilm, tape, disk, flash memory or other record, whether or not contained in a computer or its facilities.

**8.21 Data Reproduction Expenses** means reasonable expenses, other than an Insured Organisation's internal corporate costs, incurred by an Insured Organisation with the Insurer's prior written consent to reproduce or verify or reconstitute Data or programs.

**8.22 Date of Insolvency** means the date of the entry or appointment, whereby an organisation enters into winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or if a receiver or holder of a similar position is appointed over any of its assets.

**8.23 Discovered** and **Discovery** have different meanings for the purposes of different Insuring Clauses:

- (a) for the purposes of Insuring Clauses 1.5.1 and 1.5.2 **Discovered** means learnt of, and **Discovery** means the learning of, by a director, trustee or Insurance Representative of an Insured Organisation that there has been a Crime, including but not limited to a Crime:
  - i) which occurred prior to or during the Policy Period;
  - ii) which results in Crime Loss totalling less than the applicable Retention specified in the Schedule; or
  - iii) where the exact amount and details of the Financial Loss are unknown; and
- (b) for the purposes of 2.11 **Data Reproduction Expenses Extension** **Discovered** means learnt of, and **Discovery** means the learning of, by a director, trustee or Insurance Representative of the Policyholder that there has been a Computer Violation, including but not limited to a Computer Violation which occurred prior to the Policy Period.

The time when a director, trustee or Insurance Representative of the Policyholder first suspects that there may have been a Crime or a Computer Violation will be deemed to be the time when that director, trustee or Insurance Representative learns of that Crime or Computer Violation.

**8.24 Documentary Instrument** means any and all of the following:

- (a) a written order to the issuer of an Electronic Security signed by the registered owner, the registered pledgee or a person acting in a fiduciary capacity for the registered owner requesting that the transfer, pledge or release from pledge of the Electronic Security specified therein be registered; or
- (b) an assignment, transfer, power of attorney, stock power, or guarantee presented in connection with the transfer, pledge, or release from pledge of an Electronic Security and which transfers or pledges or releases from pledge or purports to transfer, pledge or release from pledge such Electronic Security.

**8.25 Electronic Security** means a share, participation or other interest in property of an enterprise of the issuer or an obligation of the issuer which:

- (a) is a type commonly dealt in upon securities exchanges and markets; and
- (b) is either one of a class or series or by its terms is divisible into a class or series of shares, participation, interest or obligations; and
- (c)
  - i) is not represented by an instrument; or
  - ii) is part of a master or global certificate; or



## Marsh Omega Management Liability Policy

- iii) represents a paper certificate which has been surrendered and combined into a master depository note in respect of which the underlying paper certificates have been superseded; and
- (d) which is shown on the account of the transferor, pledgor or pledgee in the records of a central depository, custodian or register of securities.

**8.26 Employee** means any natural person who, by the expiry of the Policy Period, is or has been:

- (a) for Insuring Clause 1.4 (Employment Practices Liability) only:
  - i) in the service of the Company whether temporary, permanent, full-time, part-time or seasonal, including a volunteer, student, secondee or intern; or
  - ii) a director officer trustee or governor or similar executive of the Company; or
- (b) for Insuring Clause 1.5 (Crime) only :
  - i) A) in the service of an Insured Organisation in the ordinary course of its business, whether temporary, permanent, full-time, part-time or seasonal;  
B) governed and directed by, and reporting directly to, an Insured Organisation in the performance of such service and;  
C) compensated by an Insured Organisation through salary, wages or commissions or is a volunteer, student, secondee or intern; or
  - ii) a director officer trustee or governor or similar executive of an Insured Organisation; or
  - iii) a person to whom, or an employee of an organisation to which, the Insured Organisation Outsource; and
- (c) for Insuring Clause 1.6 (Pension Trustee Liability) only in the service of or holding an appointment or office with the Trustees, Company, Corporate Trustee Company, Trustee or Plan and who provides services in relation to the Plan.

**8.27 Employment Claim** means a written demand for relief or non monetary relief, or any mediation, arbitration or civil proceedings made or instigated by an Employee or prospective Employee of the Company or an Outside Entity or any independent person seconded to the Company or an Outside Entity alleging:

- (a) the wrongful discharge or termination of employment;
- (b) unfair or wrongful dismissal, including constructive dismissal;
- (c) refusal or failure to employ or promote;
- (d) demotion, denial of tenure or deprivation of career opportunity;
- (e) discrimination, harassment, wrongful segregation, wrongful classification, wrongful discipline or bullying;
- (f) wrongful change in employment terms or conditions;
- (g) employment related misrepresentation, breach of privacy, data protection, defamation, libel, slander, or malicious falsehood;
- (h) negligent evaluation, reference, supervision, training or hiring;
- (i) breach of any written, oral or implied contract of employment;
- (j) retaliatory treatment on account of the employee's exercise or attempted exercise of his legal rights;
- (k) infliction of emotional distress, mental anguish or humiliation;
- (l) failure to provide or enforce corporate policies or procedures; or
- (m) for the avoidance of doubt, any other claim pursuant to the Equal Pay Act 1970 and the Employment Rights Act 1996.

Employment Claim in addition includes a written demand for relief or non monetary relief, or any mediation, arbitration or civil proceedings made by any customer(s), client(s), supplier(s), distributor(s), or any other individual or group of individuals, other than an employee or prospective employee of the



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Company alleging discrimination, harassment or violation of an individual's civil rights relating to such discrimination or harassment, whether direct, indirect, intentional or unintentional.

**8.28 Employment Practices Limit of Liability** means the amount specified in the Schedule

**8.29 Event** means a Crime or Computer Violation.

**8.30 Expenses** means:

- (a) reasonable expenses (other than an Insured Organisation's internal corporate costs) incurred by an Insured Organisation with the Insurer's prior written consent;
  - i) to establish the existence and amount of any covered Financial Loss payable by the Insurer in excess of the retention specified in the Schedule;
  - ii) to repair or replace to a substantially similar standard a safe or vault, security system or other physical defences, damaged as a result of a Crime; or
  - iii) to enable an Insured Organisation to resume its business operations to a substantially similar standard as that immediately before a Crime or a Computer Violation;
- (b) in the event of Forgery, or alteration of a Financial Instrument, reasonable court costs and lawyers' fees incurred and paid with the Insurer's prior written consent in defending the an Insured Organisation's bank in any legal proceeding brought against it to enforce payment of that Financial Instrument;
- (c) the amount, not including damages for breach of contract, which the Policyholder is contractually required to pay to its Client wholly as a result of a Crime (as defined in (c) or (d) in the definition of Crime) first discovered during the Policy Period;
- (d) in respect of Money lost as a result of a Crime (as defined in (a) or (b) of the definition of Crime) and covered by this Policy, interest on that Money for the period between when the Crime occurred and when it was first Discovered, calculated at the London Inter Bank Offer Rate as published in The Financial Times on the date the Crime was first Discovered; or
- (e) Data Reproduction Expenses.

**8.31 Extended Reporting Period** means the period immediately following the expiry of the Policy Period. For Retired Trustees, this period will be twelve years but in all other cases it will be for the applicable period shown in Extensions 2.4, 2.5 and 2.17.

**8.32 Extortion By Detention** means:

- (a) a wrongful detention of an Employee or an Employee's Relative, against their will or by deception, by a person making a demand to that Employee that they surrender (in exchange for the release of that Employee or Relative) Money, Securities or Property located on premises occupied by an Insured Organisation for conducting its business; or
- (b) a claim made to an Employee by a person making such a demand, to have carried out such a detention of a Relative of that Employee,

not involving any dishonesty by that Employee.

**8.33 Financial Instrument** means a cheque, draft or similar written promise, order or direction to pay a sum certain in money, that is made, drawn by or drawn upon an Insured Organisation or by anyone acting as an Insured Organisation's agent, or that is purported to have been so made or drawn.

**8.34 Financial Loss** means direct financial loss, except where the loss sustained by an Insured Organisation arises from a Crime which falls within part (c) or part (d) of the Definition of Crime set out above.

**8.35 Forgery** means the signing by hand of another natural person's name with the intent to deceive, but does not mean the signing of one's own name, with or without authority, in any capacity for any purpose. Mechanically or electronically produced or reproduced signatures will be treated as hand-written signatures.

## Marsh Omega Management Liability Policy

**8.36 Fund** means a credit or debit balance which is maintained in an Account in the name of or for the benefit of an Insured Organisation, and is capable of being transferred. For the purposes of this Policy, Funds are deemed to be the property of an Insured Organisation.

**8.37 HSE Investigation** means any formal investigation or enquiry conducted by any enforcing authority under the Health and Safety at Work Act 1974.

**8.38 HSE Prosecution** means any formal proceedings initiated by the Crown Prosecution Service or other enforcing agency under the Health and Safety at Work Act 1974.

**8.39 Investigation** means any formal examination, enquiry or investigation conducted by a regulator, government agency, official body or voluntary industry regulator (including an HSE Investigation) into the affairs of the Company or an Outside Entity or conduct of a director, officer employee or equivalent of the Company or director, officer, trustee, governor or equivalent of an Outside Entity.

**8.40 Insolvent** means where an organisation enters into winding up of any kind, administration, voluntary arrangement or any other insolvency procedure or if a receiver or holder of a similar position is appointed over any of its assets.

**8.41 Insurance Representative** means an Employee designated to represent an Insured Organisation for the purpose of effecting and maintaining insurance.

**8.42 Insured** means the Company, Corporate Trustee Company, Employee, Plan and Trustee.

**8.43 Insured Organisation** means the Policyholder, a Subsidiary, an Associated Company or a Plan.

**8.44 Insurer** means the following insurers, each of whom is subscribed to this insurance in the percentage set against its name:

Liberty Mutual Insurance Europe SE	100%
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**8.45 Intellectual Property** means trade secrets, confidential processing methods or other confidential information of any kind.

**8.46 Loss** means amounts an Insured is legally liable to pay including damages (including punitive and exemplary damages) as a result of a judgment or award made by a competent court or tribunal, or a settlement. Loss will not include:

- (a) taxes;
- (b) any matters deemed uninsurable under the applicable law of the Policy;
- (c) fines and penalties (other than in relation to extension 2.13);
- (d) in relation to cover under Insuring Clause 1.4 employee remuneration, employee benefits, stock options or severance payments;
- (e) Contamination Clean Up Costs; or
- (f) Pension Benefits, except as provided below

In relation to a Pension Trustee Claim where Loss, or part of the Loss, is in respect of Pension Benefits:

- i) such Loss will include Pension Benefits if it is a personal obligation of a natural person Trustee or Employee; or
- ii) such Loss will be calculated as being the amount which the Trustees or Corporate Trustees of the Plan has paid or becomes liable to pay out of the Plan in Pension Benefits as a direct consequence of a Pension Wrongful Act, after deduction of the amount the Plan would have paid or would have been liable to pay in Pension Benefits under the trust deed and rules of the Plan if the Pensions Wrongful Act had not occurred.

## Marsh Omega Management Liability Policy

**8.47 Malicious Code** means any unauthorised, corrupting or harmful software code, including but not limited to computer viruses, trojan horses, keystroke loggers, spyware, adware, worms and logic bombs.

**8.48 Money** means currency, coin, bank notes, bullion, cheques, travellers' cheques, registered cheques, postal orders money orders held for sale to the public, and Funds.

**8.49 Notifiable Event** means the Claim, Employment Claim, Investigation or criminal prosecution as described in the Insuring Clauses. The Notifiable Event is first made when the Company first receives notice of it.

**8.50 Outside Entity** means any entity including a not for profit organisation or a trade association to which the director, officer or employee of the Company is serving as an employee at the specific request of the Company, provided such entity is domiciled outside USA.

**8.51 Outsource** means the retention and authorisation by an Insured Organisation of a person or an organisation to perform or provide administrative support functions (including but not limited to property management services, the services of a Service Bureau, record keeping, payroll, cleaning and guard services) on behalf of the Insured Organisation, provided that:

- (a) such function is performed under a written or electronically recorded agreement;
- (b) the Insured Organisation retains the right to audit the performance of such function; and
- (c) the Insured Organisation can demonstrate that it has vetted the person or organisation for competency and financial stability prior to the retention of such person or organisation by the Insured Organisation.

**8.52 Pension Benefit** means any obligation under a Plan to a participant or beneficiary, which is a payment of money or property (including a transfer payment to another scheme), or the grant of a privilege or perquisite.

**8.53 Pension Claim** means:

- (a) a written demand for relief or non monetary relief;
- (b) any mediation, arbitration or civil proceedings; or
- (c) any formal administrative or regulatory proceeding,

alleging any Pensions Wrongful Act or a contribution notice as issued by the Pensions Regulator under Section 38 of the Pensions Act 2004 arising from a Pensions Wrongful Act.

**8.54 Pension Court Application Costs** means all reasonable legal and other professional charges, costs and expenses incurred by an Insured in and for the purpose of any actual or proposed Court or arbitral proceedings, or in connection with any complaint made or dispute referred to the Pensions Ombudsman, and which the Insured has incurred or been ordered to pay.

**8.55 Pension Document** means all documents and computer record systems but excluding any bearer bonds, coupons, bank or currency notes or other negotiable instruments whether printed or reproduced by any other method, which are the property of the Insured or for which the Insured is legally responsible and which relate to a Plan.

**8.56 Pension Exonerated Loss** means the amount which the Plan has paid or become liable to pay in Pension Benefits or mistaken Pension Benefits as a direct consequence of the Pension Wrongful Act, after deduction of the amount which the Plan would have paid or would have been liable to pay in Pension Benefits under the trust deed and rules of the Plan if the Pensions Wrongful Act had not occurred.

**8.57 Pension Investigation** means an investigation or proceeding connected with the Plan, outside of the United States of America, by the Pensions Advisory Service, the Pensions Ombudsman, the Pensions

## Marsh Omega Management Liability Policy

Regulator (including the determinations panel established by the Pension Regulator), the Pensions Regulator Tribunal, the Pension Protection Fund, the Equality and Human Rights Commission, the FCA or PRA or equivalent body or entity, instigated during the Policy Period or Extended Reporting Period if applicable, and having the power to require the Insured to provide evidence or documents.

**8.58 Pension Investigation Expenses** means the reasonable legal costs and related professional fees incurred by an Insured up to the sub-limit shown in the Schedule with the prior written consent of the Insurer, in relation to a Pension Investigation; provided that such costs are not available from any other source of insurance or indemnification other than as advancement or indemnity under applicable trusts, indemnity laws or agreements.

**8.59 Pension Mitigation Expenses** means the costs and expenses, up to the sub-limit for Pension Mitigation Expenses specified in the Schedule, of measures taken by or on behalf of an Insured which are reasonably required to prevent, limit or mitigate the Insured's exposure to Pension Loss to an actual or potential Pension Claim for a Pension Wrongful Act, insofar as this loss, if it occurred, would be covered by this Policy, and which are incurred with the written consent of the Insurer. Where Pension Mitigation Expenses include the payment of Benefits, they will be calculated as being the amount of such Benefits which are a direct consequence of a Pension Wrongful Act, after deduction of the amount the Plan would have paid or would have been liable to pay in Pension Benefits under the trust deed and rules of the Plan if the Pension Wrongful Act had not occurred.

**8.60 Pension Third Party Service Provider** means those persons appointed by the Trustee, Corporate Trustee, Plan or Company to provide services in relation to the Plan and who where necessary are licensed or regulated in that regard by statute or any relevant recognised professional body or institution.

**8.61 Pension Wrongful Act** means:

- (a) any actual or alleged breach of trust, breach of duty, breach of statutory provision, maladministration, neglect, administrative error or wrongful omission, misstatement, misleading statement or any other act committed or allegedly committed by a Trustees, Employees, Company, Corporate Trustee Company or Plan (including to or against a missing beneficiary) in relation to a Plan;
- (b) any actual or alleged failure by a Trustee, an Employee, Company, Corporate Trustee Company, Plan:
  - i) to provide the Company's employees with access to a Stakeholder Pension Plan;
  - ii) to collect contributions of the Company's employees to a Stakeholder Pension Plan; or
  - iii) to pay contributions of the Company's employees into a Stakeholder Pension Plan; and
- (c) any matter claimed against a Trustee, Corporate Trustee or Employee solely by reason of their capacity as Trustee, Corporate Trustee or Employee.

**8.62 Policyholder** means the entity specified in the Schedule.

**8.63 Policy Period** means the period specified in the Schedule.

**8.64 Plan** means any plan, programme, trust or scheme which has been, now is or will become established, maintained or sponsored by the Company or Insured Organisation primarily for the benefit of the Company's or for Insuring Clause 1.5 (Crime) only an Associated Company's employees, their families or beneficiaries of the following nature: pension, superannuation, profit-sharing, employee share ownership, education, training, holiday, medical, accident, sickness, disability, death, hardship, day care, or unemployment or other benefits.

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Plan will include any plan, programme, trust or scheme that during the Policy Period or prior to the inception date of this Policy:

- (a) has been merged into or consolidated with a plan that is covered under this Policy; or
- (b) was transferred, spun-off or terminated solely with respect to Pensions Wrongful Acts committed prior to the date of such transfer or spin-off, or in the case of a terminated plan, prior to the final date of asset distribution of such plan;

For Insuring Clause 1.6 (Pension Trustee Liability) only Plan does not include any plan, programme, trust or scheme established or maintained wholly in the United States of America.

**8.65 Privacy Breach** means any failure by an Insured to maintain the confidentiality of non-public, medical or financial personally identifiable information which is in the care, custody and control of the Company.

**8.66 Privacy Breach Expenses** means:

- (a) reasonable fees and costs of attorneys, experts and consultants, including third-party media consultants, incurred in the management or investigation of an actual or alleged Privacy Breach;
- (b) reasonable fees and costs incurred in connection with notification of a Privacy Breach to those individuals whose information has been accessed, released or used;
- (c) reasonable fees and costs of providing credit monitoring services to those individuals whose information has been accessed, released or used in connection with a Privacy Breach; and
- (d) reasonable costs incurred in the management of public relations with respect to a Privacy Breach;

provided, that Privacy Breach Expenses do not include: (a) any remuneration, salaries, overhead, fees, loss of earning reimbursement or benefit expenses of any Insured; or (b) any fees, costs, charges or expenses incurred in defending any Claim resulting from a Privacy Breach Event

**8.67 Professional Costs** means reasonable legal or other professional fees, costs, charges and expenses incurred by or on behalf of an Insured.

In addition, Professional Costs will include the following additional fees and expense:

- (a) the reasonable premium for any appeal bond, attachment bond or similar bond;
- (b) Bail Bond Costs;
- (c) Public Relations Expenses;
- (d) Reputation Protection Expenses;
- (e) the reasonable legal fees to interpret any advice received from legal advisers in another jurisdiction for a Claim or Investigation in that jurisdiction, including the reasonable costs of translation; and
- (f) the reasonable travel costs and living expenses, including hotel accommodation incurred by the director, officer or employee of the Company or Corporate Trustee Company, Trustee or Employee, up to the sub-limit for Travel Costs and Living Expenses specified in the Schedule, when giving evidence in relation to a Claim or Investigation.

For the avoidance of doubt, Professional Costs will not include the Company's own costs, including management costs, salaries and expenses, or Contamination Clean Up Costs.

**8.68 Property** means tangible property other than Money and Securities.

**8.69 Proposal** means the information supplied by the Insured to the Insurer (whether written, electronic or any other means).

**8.70 Public Relation Expenses** means the reasonable fees and related expenses of a public relations firm or consultant, crisis management firm or law firm, up to the sub-limit for Public Relations Expenses which an Insured may engage with the written consent of the Insurer, in order to prevent or limit adverse

## Marsh Omega Management Liability Policy

effects or negative publicity or media attention which it is anticipated may arise from any Claim or Investigation.

**8.71 Relative** means a person who is, in relation to an Employee, a spouse (which will include civil partnerships that are recognised by law in their country of domicile), sibling, ancestor, spouse's ancestor, lineal descendant or lineal descendant's spouse. Lineal descendants include adopted children, foster children and stepchildren. Lineal ancestors include adoptive parents and stepparents.

**8.72 Reputation Protection Expenses** means the reasonable fees and related expenses up to the sub-limit for Reputation Protection Expenses of a public relations firm or consultant which an Insured may engage in order to disseminate the findings of a final adjudication in favour of such Insured, arising from a Claim. Such fees and expenses will only be incurred with the written consent of the Insurer.

**8.73 Responsible Person** means the company secretary of the Policyholder or the Executive responsible for arranging this Insurance for the Policyholder.

**8.74 Retired Trustee** means a Trustee or Employee who has voluntarily ceased to hold such office during the Policy Period.

**8.75 Retroactive Date** means the date specified in the Schedule.

**8.76 Robbery** means the criminal taking of Money, Securities or Property by violence or threat of violence from the custody of an Employee, or from the custody of a person who is expressly authorised by an Insured Organisation to have custody of such Money, Securities or Property and who has insurance, or provides indemnity, for such loss.

**8.77 Schedule** means the document entitled Schedule that attaches to and forms part of this Policy.

**8.78 Securities** means negotiable and non-negotiable instruments or written contracts representing either Money or other property, and includes: (1) notes, stocks, bonds, debentures, evidences of indebtedness or liability, share certificates and evidences of other equity or debt security; and (2) Documentary Instruments and Electronic Securities; but does not include Money.

**8.79 Service Bureau** means a natural person, partnership or corporation authorised by written or electronically recorded agreement with the Insured to perform Data processing services using a Computer System.

**8.80 Single Claim** means any one or more Claims or Pension Claims or Employment Claims to the extent that such Claims or Pension Claims or Employment Claims arise out of, are based upon or are otherwise attributable to a Single Wrongful Act. All such Claims or Pension Claims or Employment Claims will be regarded as a Single Claim regardless of whether such Claims or Pension Claims or Employment Claims involve the same or different claimants, insureds or legal causes of action.

**8.81 Single Wrongful Act** means one or more Wrongful Acts or Pension Wrongful Acts to the extent that such Wrongful Acts or Pension Wrongful Acts arise out of, are based upon or are otherwise attributable to the same originating cause or source.

**8.82 Stakeholder Pension Plan** means a pension scheme which is a stakeholder pension scheme for the purposes of Part 1 of the Welfare Reform and Pensions Act 1999.

**8.83 Subsidiary** means any entity in which the Company, (either directly or indirectly):-

- (a) controls the majority of the voting rights; or
- (b) controls the right to appoint or remove a majority of the board of directors; or
- (c) holds more than half of the issued share capital.



## Marsh Omega Management Liability Policy

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Subsidiary also means a joint venture or similar entity where the Company exercises effective management control.

**8.84 Third Party** means a person other than an Insured Organisation or an Employee.

**8.85 Trustee** means any natural person who is, will be or has been appointed as trustee of a Plan or a director or officer of a Corporate Trustee Company (including a trustee, director or officer who has ceased to hold such office) or acts or acted as a constructive trustee of the Plan in accordance with the provisions of the Plan or by Court Order. In addition Trustee also includes any other person who is will be or has been (including directors and officers of an entity), a trustee or representative of a trustee in their capacity as a Trustee or representative of a Trustee of the Plan.

Trustee will not include any natural person who ceases or ceased to act as a trustee due to disqualification by the Pensions Regulator or equivalent body or entity for any act committed after the date of such disqualification (other than as provided by Clause 6.4).

**8.86 US Claim** means any Claim, Employment Claim, formal investigation, criminal prosecution or regulatory proceeding that is brought in, or that is subject to the jurisdiction of the courts within, the United States of America its territories and/or possessions.

**8.87 Value of Controlled Shares** means the total value of the shares controlled by the person in question on the date immediately preceding the date of Discovery of the Event.

**8.88 Wrongful Act** means any

- (a) actual, alleged or proposed act, error, neglect, misstatement, omission, breach of duty by an Insured in that capacity;
- (b) breach of the Data Protection Act 1998 or its equivalent in any other jurisdiction; or
- (c) the Company's failure to comply with taxation regulations including PAYE, VAT and customs.

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### COMPLAINTS PROCEDURE

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Liberty Mutual Insurance Europe SE strives to provide a high quality service to all its customers. If you feel that we have not offered you this standard and you have any questions about your contract or the handling of a claim, then in first instance you should contact your insurance broker or intermediary who arranged this insurance for you or the branch that issued the Policy.

If you are still not satisfied with the service then please write to: Compliance Officer, Liberty Mutual Insurance Europe SE, 20 Fenchurch Street, London EC3M 3AW, quoting your Policy and/or claim number.

If after making a complaint and you are still not satisfied you may be entitled to refer the dispute to the Financial Ombudsman Service (FOS), who may be contacted at: South Quay Plaza, 183 Marsh Wall, London, E14 9SR.

Email: [enquiries@financial-ombudsman.org.uk](mailto:enquiries@financial-ombudsman.org.uk)

Eligible complainants are: (a) Private policyholders; or (b) commercial policyholder or charity with a turnover under £1m.

### CORPORATE INFORMATION

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#### PRIVACY NOTICE

##### How Liberty Specialty Markets uses your personal data

Liberty Specialty Markets takes the protection of your personal data seriously and is committed to protecting your privacy. There are a number of different companies within our group. The specific company within Liberty Specialty Markets which acts as the "data controller" of your personal data will be the organisation providing your policy as set out in the documentation that is provided to you. If you are unsure you can also contact us at any time by e-mailing us at [dataprotectionofficer@libertyglobalgroup.com](mailto:dataprotectionofficer@libertyglobalgroup.com) or by post at Data Protection Officer, Liberty Specialty Markets, 20 Fenchurch Street, London EC3M 3AW, UK. Where you provide us or your agent or broker with details about other people, you must provide this notice to them.

In order for us to deliver our insurance services, deal with any claims or complaints that might arise and prevent and detect fraud, we need to collect and process personal data. The type of personal data that we collect will depend on our relationship with you: for example as a policyholder, third party claimant or witness to an incident. Your information will also be used for business and management activities such as financial management and analysis. This may involve sharing your information with, and obtaining information about you from, our group companies and third parties such as brokers, credit reference agencies, reinsurers, claims handlers and loss adjusters, professional advisors, our regulators or fraud prevention agencies. We also collect personal data about our suppliers and business partners (such as brokers) for the purposes of business management and relationship development.

Please see the full privacy notice available at [www.libertyspecialtymarkets.com/privacy-cookies](http://www.libertyspecialtymarkets.com/privacy-cookies) for further information on how your personal data is used and the rights that you have in relation to the personal data we hold about you. Please contact us using the details above if you wish to see the privacy notice in hard copy.

## **Marsh Omega Management Liability Policy**

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