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# Members Professional Protection Policy Wording



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Northampton Saints

## Members Professional Protection Policy Wording

Please see your schedule for levels of cover.

In consideration of payment of the premium and subject to the terms of this Policy, the Company and the Policyholder agree as follows:

### Insuring Clauses

#### ***Insuring Clause 1: Liability***

- 1** The Company shall pay, on behalf of each Insured, any Miscellaneous Financial Loss on account of a Claim alleging:
- (a)** a failure to perform, or negligent act, error or omission in the performance of, treatment or services which are, or if performed would be, within the Business Activity, by:
    - (i)** that Insured;
    - (ii)** any person, partnership, firm or company acting on behalf of an Insured; or
    - (iii)** any predecessor in business of an Insured;
  - (b)** libel, slander or any other form of defamation by that Insured;
  - (c)** Subject to specific acceptance by the Insurer Claims arising out of research undertaken by that Insured other than as a result of publication
  - (d)** Breach of confidentiality
  - (d)** dishonesty of an Employee; or
  - (e)** Miscellaneous Financial Loss, damage or destruction of Documents including case notes.

#### ***Insuring Clause 2: Formal Investigation Expenses***

- 2** The Company shall pay, on behalf of each Insured, Formal Investigation Expenses.

#### ***Insuring Clause 3: Document Replacement Costs***

- 3** The Company shall pay, on behalf of each Insured, the reasonable costs and expenses of replacing or restoring Documents whose Miscellaneous Financial Loss, damage or destruction is first discovered by that Insured during the Policy Period, up to a maximum liability for the Policy Period of £100,000.

#### **Insuring Clause 4: Compensation for Court Attendance and Staff Disruption**

- 4** With regard to each Claim, other than a Formal Investigation, Miscellaneous Financial Loss on account of which is covered by this Policy:
- (a)** the Company shall, if a principal, partner, director or Employee of an Insured attends a court or arbitration hearing as a witness, compensate for that person being so occupied, by paying £250 for each day on which that person attends as a witness;
  - (b)** the Company shall, if a principal, partner, director or Employee of an Insured is interviewed by the lawyers conducting the defence of the Claim for the purpose of composing a witness statement, compensate for that person being so occupied, by paying £50 per hour in respect of the time certified by the lawyers as time being interviewed;
  - (c)** the Company shall, if a principal, partner, director or Employee of an Insured is reasonably needed to attend a Conference or Consultation with Counsel (as that expression is used by the Bar of England And Wales), compensate for that person being so occupied, by paying £50 per hour in respect of the time certified by the lawyers conducting the defence of the Claim as time spent in such Conference or Consultation;
  - (d)** the Company shall, if a principal, partner, director or Employee of an Insured attends a court or arbitration hearing as observer, compensate for that person being so occupied, by paying £50 for each day on which that person attends as observer, provided that the Company shall only be liable to compensate for the occupation of one observer for all Insured together per day.

Compensation payable by the Company pursuant to this Section shall be paid to the Insured against which the Claim is made, or, if there is more than one such Insured, to whichever of such Insured as the Company shall choose. If the Claim is not made against an Insured, the Company shall pay the compensation to an Insured of the Company's choice.

Compensation provided for by this Section in respect of a person's attendance shall only be payable where that attendance is in connection with defending, not prosecuting, a Claim.

### **Definitions**

- 5** In this Policy the word 'person(s)', wherever it appears, means legal or natural person(s) or partnership unless otherwise specified. When used in bold type in this Policy:

Business Activity means the provision of advice or services, as part of the activities of an Insured, stated in Item 2 of the Declarations.

#### **Claim means:**

- (a)** with respect to Insuring Clause 1 only:
  - (i)** a written demand, whether or not containing a demand for monetary compensation; or
  - (ii)** a civil proceeding; arising from Business Activity and first made during the Policy Period by a Third Party against an Insured.
- (b)** with respect to Insuring Clause 2 only, a Formal Investigation.

**Defence Costs** means that part of Miscellaneous Financial Loss consisting of reasonable and necessary costs, expenses, charges and fees (including but not limited to lawyers' and experts' fees) incurred in defending or investigating a Claim (other than internal expenses of an Insured).

**Documents** means documents (other than bearer bonds, coupons, shares, bank notes, currency notes, stamps and other negotiable instruments) whether in physical or electronic format for which an Insured is, in connection with Business Activity, legally responsible to a Third Party.

**Employee** means a natural person under a contract of service with an Insured.

**Formal Investigation** means a formal investigative inquiry brought and maintained entirely outside the U.S.A. into an Insured's conduct of Business Activity and first instituted during the Policy Period by a regulatory or professional body with powers to investigate that Insured.

**Formal Investigation Expenses** means that part of Miscellaneous Financial Loss which consists of reasonable and necessary legal fees and related professional charges which an Insured incurs in that Insured's representation at a Formal Investigation at which that Insured's attendance is required by the body which instituted the Formal Investigation, but which are only incurred after that Insured has been notified in writing by that body that it is looking into whether or not that Insured is culpable of misconduct.

**Insured** means a person who is an Insured Person.

**Insured Person** means a natural person who has been, now is, or shall become a principal, partner, director or Employee of an Insured, provided that such person shall only be covered under this Policy in respect of Wrongful Acts committed while that person is such principal, partner, director or Employee. Solely for such Wrongful Acts of such person, Insured Person includes such person's:

- (a) lawful spouse, if named as co-defendant solely because of their spousal relationship; or
- (b) estate, heirs, legal representatives or assigns if such person is deceased or declared incompetent, insolvent or bankrupt.

Miscellaneous Financial Loss means the amount which an Insured is legally and personally liable to pay on account of a Claim, including:

- (a) Defence Costs;
- (b) Formal Investigation Expenses; and
- (c) awards of damages, judgements, awards of claimant's costs and sums payable pursuant to settlements.

**Personal Injury** means bodily injury, mental illness, emotional distress, sickness, disease or death.

**Property Damage** means physical damage to or destruction or loss of use of any tangible property.

**Policyholder** means the sole practitioner stated in Item 1 of the Declarations.

**Policy Period** means the period of time stated in Item 6 of the Declarations but subject to prior termination when cover terminates in accordance with Section 19 below.

**Pollutants** means any substance exhibiting any characteristic hazardous to the environment or having an adverse impact on the environment, including but not limited to solids, liquids, gaseous or thermal irritants, contaminants or smoke, vapour, soot, fumes, acids, alkalis, soil, chemicals and waste materials, air emissions, odour, waste water, oil, oil products, infectious or medical waste, asbestos, asbestos products and any noise.

**Pollution means:**

- (a) any actual, alleged or threatened exposure to, or generation, storage, transportation, discharge, emission, release, dispersal, escape, treatment, removal or disposal of, any Pollutants;
- (b) any regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise any Pollutants, or any action taken in contemplation or anticipation of any such regulation, order, direction or request; or
- (c) any actual or alleged breach of duty in any way connected to any Pollutants.

**Subsidiary** means a company which an Insured either directly or indirectly controls through:

- (a) holding a majority of the voting rights;
- (b) the right to appoint or remove a majority of its board of directors; or
- (c) controlling alone, pursuant to a written agreement with other shareholders, a majority of the voting rights therein.

**Third Party** means any person other than an Insured.

**U.S.A.** means the United States of America, its territories and possessions and any state or political subdivision thereof.

**Wrongful Act** means any actual or alleged matter described in Insuring Clause 1 or Insuring Clause 3 above which is an actual or alleged: failure to perform; negligent act, error or omission; libel, slander or any other form of defamation; dishonesty of an Employee; or Miscellaneous Financial Loss, damage or destruction of Documents.

**Exclusions**

- 6** The Company shall not be liable for Miscellaneous Financial Loss, costs or expenses on account of any Claim or on account of any Miscellaneous Financial Loss, damage or destruction of Documents:
- (a) based upon, arising from or in consequence of any circumstance which, as at the start of the Policy Period, could give rise to a Claim and which an Insured knew of, or ought to have known of, at that time;
  - (b) based upon, arising from, or in consequence of any Wrongful Act prior to the date stated in Item 7 of the Declarations;
  - (c) to the extent that that Miscellaneous Financial Loss consists of fines or penalties or the multiple portion of any multiplied damages award;
  - (d) to the extent that that Miscellaneous Financial Loss consists of punitive, exemplary or aggravated damages other than damages awarded for libel, slander or defamation;
  - (e) based upon, arising from or in consequence of a Wrongful Act of an insured listed in Item 5 of the Declarations, or of an Insured Person, prior to the date stated against that insured in Item 5 of the Declarations;
  - (f) based upon, arising from or in consequence of any actual or alleged Personal Injury of an Insured Person;
  - (g) for Personal Injury which does not arise from breach of duty through a negligent act, error or omission by an Insured in the course of Business Activity;
  - (h) for Property Damage which does not arise from breach of duty through a negligent act, error or omission by an Insured in the course of Business Activity;
  - (i) based upon, arising from or in consequence of Pollution;

- (j)** based upon, arising from or in consequence of:
  - (i)** ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
  - (ii)** the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (k)** based upon, arising from or in consequence of the ownership, occupation, possession or use by or on behalf of an Insured of any land, buildings, aircraft, watercraft, vessel or mechanically-propelled vehicle;
- (l)** based upon, arising from or in consequence of the sale, supply, distribution, manufacture, construction, installation, alteration, maintenance or repair, servicing or treatment of any goods or products by an Insured;
- (m)** where the Miscellaneous Financial Loss is an Insured Person's and the Claim is based upon, arises from or is in consequence of any dishonest or fraudulent act or omission or any intentional breach of law committed or condoned by that Insured Person;
- (n)** based upon, arising from or in consequence of any dishonest or fraudulent act or omission or any intentional breach of law by any principal, partner or director of an Insured;
- (o)** for breach of, or alleging liability under, any express warranty, guarantee or contractual term except for such amount of Miscellaneous Financial Loss as the Insured would be legally and personally liable to pay in the absence of such warranty, guarantee or term;
- (p)** based upon, arising from or in consequence of any Insured acting as a director or officer of any organisation;
- (q)** by or on behalf of a parent, Subsidiary, affiliate or associate of an Insured except a Claim for contribution or indemnity which results solely from a claim against such parent, Subsidiary, affiliate or associate by a Third Party;
- (r)** to the extent that that Miscellaneous Financial Loss consists of sums relating to any trading Miscellaneous Financial Losses or trading liabilities incurred in connection with any business managed or carried on by an Insured on behalf of a client;
- (s)** based upon, arising from or in consequence of the insolvency of any Insured;
- (t)** based upon, arising from or in consequence of any libel, slander or other form of defamation which any Insured commits intentionally or recklessly.

### Limits of Liability and Contribution

- 7** On account of any one Claim, other than a Formal Investigation, brought and maintained entirely outside the U.S.A.:
  - (a)** the Company's maximum liability for Miscellaneous Financial Loss other than Defence Costs, whether the Claim is against one or any number of Insureds, shall not exceed the Limit of Liability stated in Item 3(A) of the Declarations; and
  - (b)** the Company's liability for Defence Costs shall be in addition to the Limit of Liability stated in Item 3(A) of the Declarations, but the Company shall only be liable for Defence Costs in proportion to the amount which the Limit of Liability in Item 3(A) of the Declarations bears to the total amount of Miscellaneous Financial Loss, other than Defence Costs, on account of that Claim.

The Company's maximum aggregate liability for all Miscellaneous Financial Loss on account of all Claims brought or maintained in whole or in part in the U.S.A., whether against one or any number of Insureds, shall not exceed the Limit of Liability stated in Item 3(A) of the Declarations.

The Company's liability for Formal Investigation Expenses shall be in addition to the Limit of Liability stated in Item 3(A) of the Declarations. However, the Company's maximum aggregate liability for all Formal Investigation Expenses on account of all Formal Investigations, whether into the conduct of one or any number of Insureds, shall not exceed the Limit for Formal Investigation Expenses stated in Item 3(B) of the Declarations.

The Company's liability for costs and expenses of replacing or restoring Documents shall be in addition to the Limit of Liability stated in Item 3(A) of the Declarations. However, the Company's maximum aggregate liability for all such costs and expenses on account of all occasions of Miscellaneous Financial Loss, damage or destruction of Documents, whether lost, damaged or destroyed by one or any number of Insureds, shall not exceed the Limit for Document replacement stated in Item 3(C) of the Declarations.

The Company's liability for compensation provided for by Insuring Clause 4 shall be in addition to the Limit of Liability stated in Item 3(A) of the Declarations. However, the Company's maximum aggregate liability for all such compensation on account of all Claims, whether against one or any number of Insureds, shall not exceed the Court Attendance and Staff Disruption Limit stated in Item 3(D) of the Declarations.

All Claims, whether against one or any number of Insureds, arising out of the same Wrongful Act and/or arising out of causally connected Wrongful Acts shall be deemed to be a single Claim first made when the first of such Claims is first made. For the purposes of this paragraph, demands, proceedings and investigative inquiries not first made or instituted during the Policy Period but which would otherwise be Claims shall be deemed to be Claims.

With regard to each and every Claim which is not a Formal Investigation, the Company shall only be liable for that part of Miscellaneous Financial Loss which is in excess of the applicable Contribution stated in Item 4 of the Declarations.

Any Defence Costs within the Contribution which would otherwise be covered and which are funded by an Insured on account of a Claim shall be reimbursed by the Company, if a final adjudication exonerates all Insureds in such Claim from liability.

Amounts stated for Limits and Sublimits are maximum liabilities of the Company for all Insureds together, not maximum liabilities per Insured.

## Reporting and Notice

- 8 It is a condition precedent to the Company's liability under this Policy for a Claim that the Company is given written notice as soon as practicable of such Claim.

If this Policy is not renewed, the Company shall not be liable for any Claim of which it is not given written notice within 30 days of the end of the Policy Period.

If, during the Policy Period, any Insured becomes aware of circumstances which could give rise to a Claim, the Company must, as a condition precedent to its liability for Claims arising out of those circumstances, be given written notice of those circumstances as soon as practicable and within the Policy Period. Provided that this is done, any Claim subsequently arising from those circumstances shall be deemed to have been made during the Policy Period. Circumstances shall not be regarded as notified unless the written notice expressly identifies the Wrongful Act and the date it was committed, the potential damage, the potential claimants and defendants and the manner in which the Insured first became aware of the circumstances.

Each Insured shall, as a condition precedent to the Company's liability under this Policy for a Claim, give to the Company such information and co-operation as the Company may reasonably require, including but not limited to a description of the Claim, the nature of the alleged Wrongful Act and the date it was committed, the nature of the alleged damage, the names of the claimants and defendants and the manner in which the Insured first became aware of the Claim.

Each Insured shall, as a condition precedent to the Company's liability under this Policy for costs and expenses of replacing or restoring Documents, give the Company written notice as soon as practicable of the Documents' Miscellaneous Financial Loss, damage or destruction and give to the Company such information and co-operation as the Company may reasonably require.

Notice to the Company under this Policy shall be given in writing addressed to:

Notice of claim or circumstances: Claims Department

Other requests: Executive Protection Department

Elite Insurance Company Ltd  
1st Floor  
Centennium House  
100 Lower Thames Street  
EC3R 6DL

Notice shall be effective on the date of receipt by the Company at such address.

## Defence and Settlement

- 9** The Company shall have the right, but not the duty, to take over and conduct at any time the defence of Claims, including to appoint lawyers or other representatives or advisers for that purpose.

With respect to any Claim, the Company may at any time pay to the Insured the amount of the Limit of Liability stated in Item 3(A) of the Declarations which remains uneroded, the amount of any applicable sublimit which remains uneroded or the amount for which the Claim can be settled whichever is the lowest. Such payment shall immediately discharge all liability of the Company in respect of the Claim including liability for further Defence Costs and liability for further compensation under Insuring Clause 4.

Each Insured agrees not to settle or offer to settle any Claim, incur any Defence Costs or Formal Investigation Expenses or otherwise assume any contractual obligation or admit any liability with respect to any Claim without the Company's prior written consent which shall not be unreasonably withheld. The Company shall not be liable for any settlement, Defence Costs, Formal Investigation Expenses, assumed obligation or admission to which it has not consented in writing.

If the Company and an Insured disagree on whether a Claim against that Insured should be defended then:

- (a)** if the Claim is brought in England or Wales, they shall refer the question to a Queen's Counsel, or barrister of at least ten years' call, of the Bar of England and Wales to be mutually agreed between them (or, if they cannot agree on the Queen's Counsel or barrister, to be appointed by the Chairman for the time being of the Bar Council); or
- (b)** if the Claim is brought in another jurisdiction, they shall refer the question to a lawyer qualified in the law of that jurisdiction of equivalent standing to a Queen's Counsel or barrister of ten years' call (or, if they cannot agree on the lawyer, to be appointed by such procedure in that jurisdiction as is similar to appointment by the Chairman of the Bar Council), and such Queen's Counsel's, barrister's or lawyer's decision that the Claim should be defended or that it should be settled shall be implemented by the Company and that Insured. The fees charged by the Queen's Counsel, barrister or lawyer shall be deemed to be Defence Costs. The Queen's Counsel, barrister or other lawyer shall act as expert not arbitrator.

Each Insured undertakes not to prejudice the Company's interests or its potential or actual rights of recovery and to give to the Company such information and co-operation as the Company may require.



## Other Insurance

- 10** If Miscellaneous Financial Loss (or Miscellaneous Financial Loss, damage or destruction of Documents) is insured under any other valid policy, then this Policy shall cover such Miscellaneous Financial Loss (or Miscellaneous Financial Loss, damage or destruction of Documents) subject to its terms, only to the extent that the amount of such Miscellaneous Financial Loss (or of the costs and expenses of replacing or restoring the Documents) is in excess of the amount of payment from such other insurance whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise, unless such other insurance is written only as specific excess insurance over the Limit of Liability provided in this Policy (or, in the case of Documents, written only as specific excess insurance over the Company's maximum liability for the Policy Period for costs and expenses of replacing or restoring Documents).

## Representations

- 11** In issuing this Policy the Company has relied upon the material declarations and statements in the written application for this Policy and upon any material declarations and statements in the original written application submitted to another insurer with respect to any prior policy. All such material declarations and statements are the basis of cover and are incorporated into and constitute part of this Policy.

## Territory

- 12** Unless otherwise provided in any Section, cover under this Policy shall extend worldwide.

## Valuation and Foreign Currency

- 13** Miscellaneous Financial Loss which is not in the currency stated in Item 3(A) of the Declarations of this Policy or any endorsements thereto shall be converted to and paid in the currency of this Policy or any endorsements thereto based upon the rate of exchange published in The Financial Times on the date the final judgement is reached, the amount of the settlement is agreed upon or Defence Costs or any other element of Miscellaneous Financial Loss is due, respectively.

## Subrogation

- 14** The Company shall be subrogated to the extent of any payment under this Policy to each Insured's rights of recovery, and each Insured shall execute all papers required and shall do everything necessary to secure and preserve such rights and to enable the Company to bring proceedings in the name of that Insured.

The Company shall not exercise an Insured's rights of recovery against an Employee unless a dishonest, fraudulent or malicious act or omission by the Employee or an intentional breach of law by the Employee is a cause of the Claim in respect of which the Company seeks to exercise those rights of recovery or is a cause of Miscellaneous Financial Loss on account of that Claim.

## Authorisation

- 15** The Policyholder hereby agrees to act on behalf of all Insureds with respect to the giving and receiving of notice of Claims 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 Insureds agree that the Policyholder shall so act on their behalf.

## Alteration & Assignment

- 16** No change in, modification of, or assignment of interest under this Policy shall be effective except when made by written endorsement to this Policy duly executed on behalf of the Company.

## Contracting Parties and Rights of Action

- 17** No person shall have any rights under or in connection with this Policy by virtue of the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof. The Policyholder may not assign to any other person any right or cause of action against the Company under or in connection with this Policy.

## Termination

- 18** Cover under this Policy shall terminate at the earliest of the following times:
- (a)** seven days after the receipt by the Policyholder of a written notice of termination from the Company for non-payment of premium;
  - (b)** expiration of the Policy Period;
  - (c)** such other time as may be agreed upon by the Company and the Policyholder in writing.

## Choice of Law and Forum

- 19** The construction of the terms, and the validity and effect, of this Policy are governed by English law. Any dispute or difference arising under or in respect of this Policy shall be subject to and determined within the exclusive jurisdiction of the courts of England and Wales.



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