

# Dive Master INDIGO Liability Insurance Policy



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## Policy Guide

Do not wait until a claim arises before reading and understanding this **policy** – please read it now and keep it in a safe place.

In particular make sure that:

- All the details shown in the Schedule are correct. The **insured** should let their insurance broker know immediately if any changes are necessary
- You, as the **insured**, have read the conditions relation to those Sections covered including the General terms and conditions and Exclusions to insured sections A, B, C and D
- You, as the **insured**, understand the notes and how to make a complaint as stated in the Complaints section

If the **Insured** has any queries about the **policy**, does not understand any part of it or feels that it does not meet their requirements they should consult their Insurance Broker.

### **Important**

This **Policy** has been issued to the Insured based on the information supplied about the **Insured** the **Business** and the **insured's** property in the Statement of Fact or Proposal Form and other material information declared which forms the basis of the contract between yourself and the **Insurers**. It is therefore very important that the **Insured** lets their insurance broker know immediately of any changes that affect the information the **Insured** has declared to the **Insurer**. For example in respect of legal liability exposures any material alterations such as changes in the **Business** that affects the information disclosed to **Insurers**.

In the event of a general enquiry or query relating to the **Policy** the **Insured** should in the first instance contact their Insurance Broker or intermediary who arranged this insurance or contact Divemaster at the address below:

Dive Master Insurance Consultants Ltd  
1 – 23 Rectory Grove  
Leigh-on-Sea  
Essex  
SS9 2HA  
Tel: +44 (0) 1702 476902 Fax: + 44 (0) 1702 471892  
Email: [sales@divemasterinsurance.com](mailto:sales@divemasterinsurance.com)

In the event of a claim or any circumstance that is likely to result in a claim the **Insured** must immediately notify the following:

Syndicate Claims Manager  
Syndicate DTW1991  
R&Q Managing Agency Limited  
5<sup>th</sup> Floor  
Fountain House  
130 Fenchurch Street  
London  
EC3M 5DJ

Tel: +44(0) 20 7780 5850  
Fax: +44 ( ) 20 7283 9872

[newclaims@DTW1991.com](mailto:newclaims@DTW1991.com)

# 1 Our agreement in general

## 1.1 Parties to this agreement

This Dive Master Insurance Policy is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

- 1.1.1 This **policy** has been exclusively arranged by:  
Dive Master Insurance Consultants Ltd  
17-23 Rectory Grove, Leigh-on-Sea, Essex, SS9 2HA  
Tel: +44 (0) 1702 476902 Fax: +44 (0) 1702 471892  
e-mail: [sales@divemasterinsurance.com](mailto:sales@divemasterinsurance.com)

## 1.2 Words in bold

Words in bold type face used in this **policy** document, other than in the headings, such as **insured** in clause 1.1 above, have specific meanings attached to them as set out in clause 9, the General definitions and interpretation section of this document.

## 1.3 Primary purpose of the policy

By this **policy**, the **insurer** agrees, subject to the **policy's** terms, limitations, exclusions and conditions, to:

- 1.3.1 indemnify the **insured** up to the **limit of indemnity** for all sums that the **insured** becomes legally liable to pay as damages, including claimant costs recoverable from the **insured**;
- 1.3.2 pay **costs and expenses**, some of which are expressly stated to be in addition to the **limit of indemnity**;
- 1.3.3 the full extent of the insurance by this **policy** is described in each **insured section** set out in clauses 2 - 4 below and stated as insured in the **schedule**.

## 1.4 Policy structure

- 1.4.1 Clauses 2 – 4 set out the scope of main coverage of each **insured section**; additional **costs and expenses**; extra coverage and the circumstances in which the **insurer's** liability to the **insured** is limited, or may be excluded. Also, each clause sets out other terms and conditions.
- 1.4.2 Clause 5 sets out cover extensions shared by **insured sections A, B, and C**.
- 1.4.3 Clause 6 sets out limitations and exclusions shared by **insured sections A, B, C and D**.
- 1.4.4 Clauses 7-10 are applicable to all **insured sections** and set out the **insurer's** ;
- claims handling terms and conditions, including further conditions precedent,
  - general terms and conditions, including further conditions precedent,
  - definitions,
  - complaints procedure.

## 1.5 Policy period and premium

- 1.5.1 The **policy** will provide insurance as summarised in clauses 1.3 and 1.4 above for the **period of insurance** it being a condition precedent to the **insurer's** liability under this **policy** that the premium and additional charges are paid to and accepted by the **insurer**, on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges shall be payable in addition to the premium.
- 1.5.2 The premium is deemed paid and accepted upon receipt by the **insurer** or the intermediary appointed to place this insurance with the **insurer**.

- 1.5.3 If any premium (including the instalment of premium) is not paid and accepted by the **insurer** on or before its payment date stated in the **schedule**, the **insurer** can give written notice to the **insured** at its address shown on the **schedule** cancelling the **policy** with effect from the seventh (7) day after the notice has been served
- 1.5.4 Notwithstanding clause 1.5.3 above, any cancellation will be prevented from taking effect and the **policy** shall continue if the late premium instalment and all remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.
- 1.5.5 It is agreed that the **insurer** shall not give less than fifteen (15) days prior notice of cancellation to the **insured** via the broker. If the **premium** due is paid in full to the **insurer** before the notice period expires, notice of cancellation shall be automatically revoked. If not, the **policy** shall automatically terminate at the end of the notice period.

## 2 Insured section A - Public liability

### 2.1 Public liability cover

- 2.1.1 The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured**, as a result of **bodily injury** or **damage** that occurs during the **period of insurance** and arises out of and in connection with the **business**.

### 2.2 Additional public liability costs and expenses

- 2.2.1 Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses** which are payable in addition to the **limit of indemnity**, incurred in respect of any insured event under this **insured section**.

### 2.3 Public liability extensions

#### 2.3.1 Data Protection Act 1998

The **insurer** will indemnify the **insured** and if the **insured** so requires any **employee** in respect of their liability under the Data Protection Act 1998 ('DPA') to pay:

- a) compensation in respect of damage or distress under section 13 of Part II of the DPA including defence **costs and expenses**;
- b) defence costs in relation to a prosecution brought under section 21 of Part III of the DPA;

in relation to claims made by any person not being an **employee**, provided that:

- c) the **insured** has registered in accordance with the terms of the DPA;
- d) the claim arises from damage or distress occurring or prosecution commenced during the **period of insurance**;
- e) this extension will not apply in respect of:
  - i) the cost of replacing, reinstating, rectifying or erasing any personal data;
  - ii) liability caused by or arising from a deliberate or intentional act by or omission of any party entitled to indemnity by this insurance the effect of which will knowingly result in liability under the DPA;
  - iii) claims which arise out of circumstances notified to any previous insurer or known to the **insured** at inception of this **policy**;
  - iv) liability for which indemnity is provided under any other insurance.

#### 2.3.2 Defective Premises Act 1972

The insurance by this **insured section** is extended to indemnify the **insured** against any liability incurred by the **insured** by virtue of Section 3 of the Defective Premises Act, 1972 or Section 3 of the Defective Premises Measure (Northern Ireland) 1974 or any amendment thereto in connection with premises that have been disposed of by the **insured**, except that the **insurer** will not be liable to provide an indemnity for the cost of remedying any defect or alleged defect in such premises.

#### 2.3.3 Cloakrooms/Changing Rooms/Equipment Storerooms

Notwithstanding exclusion 6.36 the **insurer** will indemnify the **insured** in respect of **damage** to property deposited in any cloakroom/changing room/equipment storeroom owned or operated by the **insured** except that the insurance granted by this clause excludes and does not cover:

- a) any amount in excess of GBP10,000 for each and every loss;

- b) the first GBP250 for each and every claim;

and provided that the **insured** complies with the following conditions:

- c) an attendant shall be on duty therein throughout the whole of the time the cloakroom is in use or adequately locked if unattended.
- d) a disclaimer notice is prominently displayed in or adjacent to the cloakroom/changing room/equipment storeroom.

#### 2.3.4 **Instruction and Advice**

Notwithstanding exclusion 6.2 the **insurer** will indemnify the **insured** in respect of **bodily injury** or **damage** caused by or arising from any instruction or advice given or lack of advice given by or on behalf of the **insured** in the course of providing **recreational water sports services**.

#### 2.3.5 **Food and Drink**

The **insurer** will indemnify the **insured** or **participant** in respect of legal liability for **bodily injury** or **damage** arising out of the supply or consumption of any food or drink in connection with the **insured's business**.

#### 2.3.6 **Participant to participant**

The **insurer** will indemnify the **insured** in respect of **bodily injury** or **damage** caused to one **participant** by another **participant** in any event organised by the **insured**, provided that:

- a) such **participant** is not entitled to indemnity under any other policy; and
- b) the **insurer** will not be liable for any amount in excess of the **limit of indemnity** stated in the **schedule**.

#### 2.3.7 **Use of Manufactured Equipment and Supply of Breathing Air or Gases**

The **insurer** will indemnify the **insured** in respect of legal liability for **bodily injury** or **damage** arising out of the use of standard manufacturers diving equipment and the supply of breathing air or gases.

### 2.4 **Public liability limitations and exclusions**

In addition to the limitations and exclusions applicable to this **insured section** in clause 6, this **insured section** excludes and does not cover:

#### 2.4.1 **Consequential damage from work away**

- a) **damage** to materials, parts or equipment furnished in connection with performance of the **work away** but this limitation shall not be applied to **products** previously supplied under any previous contract; or
- b) **damage** to property that is removed, repaired, adjusted, altered, reinstated, withdrawn or disposed of in the course of and necessitated by the performance of the **work away**; or
- c) any expenditure incurred by the **insured** or others for the removal, repair, adjustment, alteration, reinstatement, withdrawal, inspection or disposal of the **work away** as a result of any defect (suspected or known) in or unsuitability for the intended purpose of the **work away**.

#### 2.4.2 **Pollution and products**

**bodily injury or damage** arising out of or from or:

- a) brought about by or contributed to by **pollution**;
- b) in connection with the **insured's products**;



## 3 Insured section B - Products liability

### 3.1 Products liability cover

- 3.1.1 The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured** as a result of **bodily injury** or **damage** that occurs during the **period of insurance** and arising out of or from or in connection with the **insured's products**.

### 3.2 Additional products liability costs and expenses

- 3.2.1 Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses** which are payable in addition to the **limit of indemnity**, incurred in respect of any insured event under this **insured section**.

### 3.3 Products liability extensions

Not applicable to this **insured section B**.

### 3.4 Products liability limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** in clause 6, this **insured section** excludes and does not cover:

#### 3.4.1 Aircraft

liability arising out of any **product** or part thereof which with the **insured's** knowledge is intended to be incorporated into the structure, machinery or controls of any aircraft or other aerial device or satellite;

#### 3.4.2 Pollution

liability arising out of or from or brought about by or contributed to by **pollution**.

## 4 Insured section C - Pollution liability

### 4.1 Pollution liability

- 4.1.1 The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured** as a result of **bodily injury** or **damage** arising out of or from **pollution** occurring during the course of **business** provided that the **pollution** is caused by a sudden, identifiable, unintended and unexpected incident that takes place in its entirety at a specific moment in time and place during the **period of insurance**.

### 4.2 Additional pollution liability costs and expenses

- 4.2.1 Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses** which are payable in addition to the **limit of indemnity**, incurred in respect of any insured event under this **insured section**.

### 4.3 Pollution liability extensions

Not applicable to this **insured section C**.

### 4.4 Pollution liability limitations and exclusions

In addition to the limitations and exclusions applicable to this **insured section** in clause 6, this **insured section** excludes and does not cover:

#### 4.4.1 Owned or previously owned premises

liability for **damage** or **denial of access** to land or **premises** (including land or water within or below the boundaries of such land or **premises**) that are presently or were at any time previously owned, leased, hired or tenanted by the **insured** or otherwise in the **insured's** care, custody or control.

#### 4.4.2 Public liability and products

**bodily injury** or **damage** arising out of or from:

- a) liability which does not arise out of **pollution** occurring during the course of the **business**;
- b) in connection with the **insured's products**.

## 5 Insured section D – Coverage extensions to insured sections A, B and C

### 5.1 Cross liabilities

For each legal entity comprising the **insured**, the **insurer** will separately indemnify each party under this **insured section** as if a separate **policy** had been issued to each but in respect of claims made or **suits** brought against any of them by any other **insured** the **insurer's** total liability to all parties, will not exceed the **limit of indemnity**. Further, where requested by the **insured**, the **insurer** will waive all rights of subrogation against a subsidiary of the **insured** or from a subsidiary against the parent (the **insured**).

### 5.2 Indemnity to other parties

5.2.1 At the request of the **insured**, the **insurer** will separately indemnify each **other insured party** provided that the:

- a) **insured** would have been entitled to indemnity by this insurance had the claim or **suit** been made against the **insured**;
- b) **other insured party** is not indemnified under any other insurance or in any other way;
- c) **insurer** has the sole conduct and control of any claim;
- d) **other insured party** agrees it will be bound by this **policy** (other than in respect of premium) as if it were the **insured**.

### 5.3 Motor liability

5.3.1 Notwithstanding exclusion 6.34 to **insured sections A, B, C and D**, the **insurer** agrees to indemnify the **insured** and any **other insured party** in respect of liability arising out of or from:

- a) the use of any mechanically propelled vehicle as a tool or plant; or
- b) the loading or unloading of any mechanically propelled vehicle or trailer when carried out beyond the limits of any carriageway or thoroughfare by a person other than the driver or attendant of any such vehicle or trailer; or
- c) the movement of any mechanically propelled vehicle not owned hired or borrowed by or leased to the **insured** or any **other insured party** on or under any **premises** occupied by the **insured** where such vehicle is causing an obstruction and interfering with the performance of the **business**; or
- d) **damage** to visitors' or **employees'** mechanically propelled vehicle (including contents and/or accessories) while parked within any car park for which the **insured** are responsible or on any **premises** occupied by the **insured** provided that:
  - i) such vehicle is not lent or hired to the **insured**; or
  - ii) the **damage** to an **employee's** vehicle does not arise out of the maintenance, operation or use of a vehicle by that **employee**;

5.3.2 except always that the indemnity provided by this clause excludes liability for which insurance is necessary to comply with the Road Traffic Act 1998 as amended by The Motor Vehicles (Compulsory Insurance) Regulations 1992 or any alteration to such regulations or any similar legislation applying to Northern Ireland, the Isle of Man or the Channel Islands or to any other territory consequent on the Third Council Directive 90/232/EEC of 14/05/1990 relating to insurance against civil liability in respect of the use of motor vehicles or similar legislation in any country outside the European Union.

## 5.4 Concessionaire or franchisee insurance check

It is a condition precedent to the **insurers** liability under this insurance that whenever any concessionaire or franchisee operating under licence or trading under the **insured's** name or brand on behalf of the **insured**, the **insured** will at all times establish, maintain and abide by an administrative procedure for obtaining and storing evidence for the **insurer's** inspection that such concessionaire or franchisee effect public liability insurance that:

- 5.4.1 covers the operations to be undertaken by the concessionaire or franchisee;
- 5.4.2 is subject to a **limit of indemnity** of not less than the **insured's** own or GBP1,000,000, whichever is the greater,
- 5.4.3 includes an 'indemnity to principals' clause,
- 5.4.4 the insurance is revalidated every twelve (12) months throughout the duration of their contract with the **insured**.

## 5.5 Contingent Risk

5.5.1 It is a condition precedent to the **insurer's** liability under these **insured sections** that adequate liability insurance is held by any **operator** which the **insured** engages which includes an indemnity to the **insured** for any liability arising from the activities of the **operator** to the **insured**.

5.5.2 If at the time of any claim under this **policy** there is any other valid and collectible insurance available to the **insured** other than insurance that is specifically stated to be in excess of this **policy**, and names the **operator** for the insurance, then the insurance afforded by this **policy** shall exclude any claim falling under the terms of such other insurance whether such claim is indemnified or not or falls within the terms and conditions of this **policy**.

### 5.5.3 Contingency cover

In the event that liability insurance held by the **operator** fails to respond to any claim and a claim is subsequently brought against the **insured** as a result of any activity of the **operator** under a service provided to the **insured**, this **policy** shall indemnify the **insured** provided such claim falls within the indemnity provided by the terms and conditions of this **policy** and the **insured** shall be subject to an **excess** of GBP1,500. No indemnity under this insurance shall be provided to the **operator**.

5.5.4 in the event that there is no liability insurance is held by the **operator** to respond to any claim and a claim is subsequently brought against the **insured** as a result of any activity of the **operator** under a service provided to the **insured**, then It is a condition precedent to the **insurer's** liability provided the **insured** can demonstrate the exercise of reasonable endeavours in checking the existence of such insurance when engaging the **operator**, the **insurer** shall upon reasonable satisfaction of such exercise of reasonable endeavours by the **insured**, indemnify the **insured** provided such claim falls within the indemnity provided by the terms and conditions of this **policy** and the **insured** shall be subject to an increased claim **excess** of GBP1,500.

No indemnity under this insurance shall be provided to the **operator**.

## 5.6 Non UK third party motor liability - Contingency Cover

5.6.1 It is a condition precedent to the **insurer's** liability under this **insured sections** that adequate other insurance is held if compulsory for any motor vehicle owned, operated or utilised by the **insured** outside of the UK, including any motor vehicle which the **insured** engages the use of from a third party motor operator and that such insurance includes an indemnity to the **insured** and the **insured's** passengers for any liability and/or passenger injury arising in the event of **bodily injury** to the **insured** or the **insured's** passengers from such motor vehicle or its use.

5.6.2 If at the time of any claim under this **policy** there is any other valid and collectible insurance available to the **insured** other than insurance that is specifically stated to be in excess of this **policy**, and names the **insured** or third party motor operator for the insurance, then the

insurance afforded by this **policy** shall exclude any claim falling under the terms of such other insurance.

- 5.6.3 The **insurer** agrees to indemnify the **insured** or **other insured party** in the event that motor liability and/or passenger injury insurance held by an **employee** or third party motor operator fails to respond to any claim and a claim is subsequently brought against the **insured** as a result of any motor vehicle driven by an **employee** or the activity of the third party motor operator under a service provided to the **insured** provided that:
- a) the **insurer** shall not be liable for any amount in excess of the **limit of indemnity** of GBP500,000; and
  - b) the **insured** shall be subject to an increased claim **excess** of GBP1,500; and
  - c) no indemnity under this insurance shall be provided to the **insured** when operating motor vehicles owned, hired or borrowed by the **insured** where the **insured** is operating and driving such vehicles; and
  - d) it is a condition precedent to the **insurer's** liability that the **insured** can demonstrate the exercise of reasonable endeavours in checking the existence of such insurance when engaging the third party motor operator, the **insurer** shall upon reasonable satisfaction of such exercise indemnify the **insured**.

- 5.6.4 The **insurer** agrees to indemnify the **insured** or **other insured party** in the event that other motor liability and/or passenger injury insurance held by an employee or third party motor operator is less than GBP1,000,000 (underlying insurance) and a claim is subsequently brought against the **insured**, then the **insurer** agrees to indemnify the **insured** for the amount in excess of the total underlying first loss and/or underlying excess insurance limit of indemnity that the **insured** shall become legally liable to pay as third party damages, including claimant costs recoverable from the **insured** as a result of loss or damage arising from the ownership, use or operation of motor vehicles insured under such underlying insurance resulting from **bodily injury** provided that:
- a) the insurers of the underlying insurance have paid or been held liable to pay or have admitted liability to pay the full amount of the total limit of indemnity of the underlying insurance;
  - b) the underlying insurance has a limit of indemnity not less than GBP500,000. Where the underlying limit of indemnity is less than GBP500,000 then the minimum amount required will be deemed to stand;
  - c) the **insurer's** liability under this extension shall not exceed a sub **limit of indemnity** of GBP1,000,000 in the aggregate in any one **period of insurance** payable in excess and only after exhaustion of the above underlying insurance.
  - d) the **insurers'** liability under this clause excludes any injury to the employee or third party motor operator.

## 5.7 Operating Watercraft and Breathing Gas Compressors

Notwithstanding exclusion 6.4 the **insurer** agrees to indemnify the **insured** in respect of liability arising out of or from:

- a) the use of any **watercraft** not exceeding fifteen (15) meters in length owned or operated by the **insured** in connection with the **insured's** provision of **recreational watersports services** in the event that the **insured** has no other available insurance in place covering the loss;
- b) the use of any breathing gas compressor owned or operated by the **insured** in connection with the **insured's** provision of **recreational watersports services** in the event that the **insured** has no other available insurance in place covering the loss;

provided that as a condition precedent to the **insurer's** liability;

- i) any such equipment under a) or b) above is regularly serviced and maintained in accordance with the manufacturer's guidelines or equivalent practices;
- ii) the **insured** has the appropriate certifications and licences to operate and use any such equipment under a) or b) above and is competent in such equipments use and operation;

This extension excludes and shall not cover liability caused by or arising directly or indirectly from;

- a) any **pollution** from any **watercraft**;
- b) the breach of any regulation or law requiring the **insured** to maintain compulsory insurance.

## 5.8 Principals

The **insurer** will indemnify any principal of the **insured**, where requested by the **insured**, but only to the extent that liability arises solely out of the work performed for the **principal** by or on behalf of the **insured** and provided that:

- a) the **principal** shall as though he were the **insured** observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity**; and
- c) the **principal** is not indemnified under any other insurance or in any other way.

## 5.9 Property in the insured's care, custody and control

5.9.1 Notwithstanding the exclusions at clauses 2.4.1. 3.4.2 or 6.36, but subject to the exclusion at clause 4.4.1 the **insurer** agrees to extend coverage under **insured sections A, B and C** to indemnify the **insured** in respect of liability arising out of or from:

- a) **damage** to personal effects (including vehicles and their contents) of the **insured's employees**, directors, officials, visitors or guests; or
- b) **damage** to **premises** including landlord's contents, fixtures and fittings not owned by the **insured** but leased or rented by them in the course of **business**, but always excluding liability which attaches by way of any contract or agreement that would not have attached in the absence of such contract or agreement; or
- c) contractual liability that arises from an agreement requiring insurance to be maintained in force in respect of loss of or **damage** to such **premises** and their fixtures and fittings;
- d) **damage** to premises or the contents thereof not belonging to or leased to or rented to the **insured** or otherwise in the **insured's** custody or control but temporarily occupied by the **insured** for **work away** therein but no indemnity is provided by this clause for **damage** to that part of the property on which the **insured** is working and which arises out of such **work away** .

## 5.10 Statutory defence costs including Health and Safety At Work, Etc. Act 1974

5.10.1 The **insurer** will, with its prior consent which consent will not be unreasonable withheld, indemnify the **insured** and at the request of the **insured** any **other insured party**, in respect of legal **costs and expenses** incurred defending:

- a) any alleged breach of statutory duty (including any prosecution brought under sections 2 to 8 of the Health and Safety at Work, etc. Act 1974, Health and Safety at Work (Northern Ireland) Order 1978 or similar legislation in the Isle of Man or the Channel Islands) or criminal proceedings brought; and / or

- b) allegations (whether under common law or statute) of manslaughter, corporate manslaughter or corporate homicide made against the **insured** or any **other insured party**;

provided that the prosecution or proceedings relate to:

- i) an offence alleged to have been committed during the **period of insurance** and in the course of **business**;
- ii) **bodily injury** to, or potential **bodily injury** to persons other than **employees**;

and, the **insurer** will also pay to the **insured**:

- iii) **costs and expenses** of appeal including appeal against improvement and prohibition notices incurred with its written consent which consent will not be unreasonably withheld;
- iv) prosecution costs awarded against the **insured**;

5.10.2 The indemnity by this clause excludes and does not cover:

- a) circumstances where the **insured** or any **other insured party** is entitled to indemnity by any other legal expenses, motor or employment protection policy;
- b) in respect of allegations of manslaughter, corporate manslaughter or corporate homicide, any amount in excess of a **limit of indemnity** of GBP1,000,000 any one claim or series of claims arising out of the same prosecution or proceedings.

5.10.3 For the avoidance of doubt the under noted statutes, whilst not exhaustive, are included within the statutes or regulations contemplated for which defence costs are insured by this clause:

- a) Health and Safety at Work, etc. Act 1974, but only sections 2 to 8,
- b) Health and Safety at Work (Northern Ireland) Order 1978,
- c) The Trade Description Act 1968
- d) Part II of the Consumer Protection Act 1987
- e) Part II of the Food Safety Act 1990.

## 6 Exclusions to insured sections A, B C and D

**Insured sections A, B C and D** exclude and do not cover:

### 6.1 Advertising injury

any loss, liability or **costs and expenses** arising out of or from advertising injury including but not limited to:

- 6.1.1 breach of contract including liability for unauthorised misappropriation of advertising ideas based upon breach or alleged breach of an implied contract;
- 6.1.2 infringement of registered trademarks, patents, registered designs, service marks or trade name including infringement of titles or slogans;
- 6.1.3 the failure of goods, products or services to conform with advertised quality or performance;
- 6.1.4 incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;
- 6.1.5 arising out of or from libel, slander or the disparagement of goods, products or services of others;
- 6.1.6 advertising activities undertaken on behalf of another party by any **insured** engaged in the business of advertising or undertaken for a fee;
- 6.1.7 the oral, broadcast, telecast or written publication of material whose first publication took place before the inception of the **period of insurance**;
- 6.1.8 an offence committed by the **insured** whose business is advertising, broadcasting, publishing or telecasting.

### 6.2 Advice, design or plans provided for a fee

any loss, liability or **costs and expenses** arising out of or from advice, design, plans, specifications, formulae, surveys, or directions prepared or given by the **insured** for a fee but this shall not exclude such advice arising in conjunction with **products** supplied.

### 6.3 AIDS and illness

**bodily injury** arising out of Acquired Immune Deficiency Syndrome (AIDS), Hepatitis C or cancer in any form, howsoever these illnesses may have been acquired or may be named.

### 6.4 Aircraft and watercraft

any loss, liability or **costs and expenses** arising out of or from the ownership, possession or use of any aircraft or other aerial device or satellite, or any watercraft.

### 6.5 Assault and Battery and Abuse

any liability of any **insured** directly or indirectly arising out of:

- a) assault, battery or any intentional or deliberate violence committed or alleged to have been committed by any **insured**;
- b) sexual assault, molestation, abuse, sexual harassment or rape.



## 6.6 Asbestos

Any loss, liability or **costs and expenses** arising out of or from or caused by any work involving the manufacture, mining, processing, use, installation, storage, removal, stripping out, demolition, disposal, distribution, inspection or testing of or exposure to asbestos, asbestos fibres, asbestos dust, or asbestos containing materials.

## 6.7 Biological or Chemical Materials

Any loss, liability or costs and expenses of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence there to.

## 6.8 Claims Jurisdiction

any loss, liability or **costs and expenses** arising out of or from any **claims** brought in the **North America** or that falls under the jurisdiction of **North America**.

## 6.9 Commercial diving

any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by **commercial diving**.

## 6.10 Construction, repair or installation work on vessels

any liability arising out of the construction, repair or installation work on vessels.

## 6.11 Contractual liability

any loss, liability or **costs and expenses** arising out of or from any contract or agreement which the **insured** has entered into unless it is proven that, and then only to the extent that, liability would have attached in the absence of such contract.

## 6.12 Costs of recall or guarantee

expenditure, whether incurred by the **insured** or others, for the withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement, reinstatement of any **product** or part thereof and/or from financial loss consequent upon the necessity for such withdrawal, recall, disposal, removal, repair, adjustment, alteration, reconditioning, replacement or reinstatement.

## 6.13 Electronic cyber liability

any loss, liability or **costs and expenses** associate with or caused by a System Failure if a System Failure forms an identifiable element in the chain of events from which the liability arises whether or not it is the proximate cause of the liability.

System Failure shall mean malfunction or non-function of any mechanical and/or electronic system (whether or not the property of the Insured) caused by:

- a) the response of a computer to any date or date change
- b) the failure of a computer to respond to any date or date change or;
- c) the loss of or denial of access to any data either your own or third party or;
- d) any loss of or damage to or change or corruption in data or software on a computer or computer system or;
- e) any computer virus or hacking into or degradation of or breach of security in of denial of access to a computer or computer system or website.

Computer includes computer hardware computer software microchip microprocessor any electronic equipment and any device which gives or processes or receives or stores electronic instructions of information

This exclusion shall not apply where the **insured** is legally liable for **bodily injury** (excluding mental injury or mental disease) or accidental **damage** which is caused as a direct result of the **insured's** negligence and is not otherwise excluded elsewhere in this **policy**.

#### **6.14 Directors' and officers' liability**

any loss, liability or **costs and expenses** arising out of or from any **insured** in their capacity as a director, officer or trustee in respect of the performance or non-performance of their duties as a director, officer or trustee.

#### **6.15 Employee accidents**

any loss, liability or **costs and expenses** arising out of or from any claim in respect of which compensation is available or would normally be available under any Employers Liability legislation or similar legislation or any obligation for which the **insured** or any company as its insurer may be held liable under any workman's compensation, unemployment compensation, or disability benefits law.

#### **6.16 Employment disputes**

any loss, liability or **costs and expenses** arising out of or from any employee, former employee or prospective employee in respect of employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.

#### **6.17 Excess**

the amount of the **excess** as applicable and stated in the **schedule**.

#### **6.18 Excluded conduct**

any loss, liability or **costs and expenses** arising out of or from:

- a) any deliberate act in violation of any law or ordinance; or
- b) any deliberate or wilful misconduct of the insured; or
- c) any dishonest, fraudulent, or criminal act of the **insured**; or
- d) any conduct of the **insured** or **employee** while under the influence of intoxicants or narcotics.

#### **6.19 Financial loss**

liability for pure financial loss not consequent upon **bodily injury** or **damage**.

#### **6.20 Fines, penalties, punitive damages, multiple damages or exemplary damages**

any fines, penalties, punitive damages, exemplary damages, aggravated damages, multiple or treble damages, or any other increase in damages resulting from the multiplication of compensatory damages.

#### **6.21 Fungus, mould, spores**

**Damage** arising out of or from:

- a) any **fungus, mould**, mildew or yeast; or
- b) any **spore** or toxins created or produced by or emanating from such **fungus, mould**, mildew or yeast; or

- c) any substance vapour gas or other emission or organic or inorganic body substance produced by or arising out of any **fungus, mould**, mildew or yeast; or
- d) any material product building component building structure or any concentration of moisture water or other liquid within such material product building component building or structure that contains harbours nurtures or acts as a medium for any **fungus, mould**, mildew, yeast or **spore** or toxins emanating therefrom;

regardless of any other cause event material product and/or building component that contributed concurrently or in any sequence to that loss, liability or **costs and expenses**.

## 6.22 Government prohibition

any loss, liability or **costs and expenses** where:

- a) non-admitted insurance is not permitted by local legislation in any country or territory; or
- b) any government embargo or sanction prohibits the **insured** from trading.

## 6.23 Insolvency of the insured

any loss, liability or **costs and expenses** arising out of or from or relating directly or indirectly to the insolvency or bankruptcy of the **insured**.

## 6.24 Landing Areas

Liability arising out of the ownership, maintenance, operation, preparation or use by or on behalf of the **insured** of any **landing area** for aircraft provided such liability arises out of such use as a **landing area**.

## 6.25 Legionella

any loss, liability or **costs and expenses** arising out of or from or alleging or attributable to the existence of **legionella**.

## 6.26 Libel and slander

liability arising from or caused by the publication or utterance by or on behalf of the **insured** of a libel or slander.

## 6.27 Limit of indemnity

liability in excess of the **limit of indemnity** stated in the **schedule**.

## 6.28 Medical Services

6.28.1 Any liability arising out of the rendering or failure to render medical services including the provision of treatment or management of illness or injury by any doctor, medically trained personnel or hyperbaric technicians other than:

- a) the rendering of first aid by any medically unqualified person; or
- b) emergency first response by a diver medic or certified first aid attendant who are **employees** of the **insured**;

provided that the **insurer** will not be liable where indemnity is provided by other insurance.

6.28.2 This policy excludes any operation or provision of medical treatment facilities including hyperbaric chambers and the like other than basic medical first aid equipment for the administration of first aid or emergency first response by a diver medic or certified first aid attendant.

## 6.29 Misuse of the Internet and Extra-net

Any liability arising directly or indirectly from the use or misuse of the Intranet Extra-net and/or caused via the Insured's own website or internet site or web address and/or via the transmission of mail plans designs photographs or other documents by electronic means.

## 6.30 North American jurisdiction

liability in respect of any judgment, award, payment, **costs and expenses** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in the world to enforce such judgment, award, payment, **costs and expenses** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**.

## 6.31 North American operations

**bodily injury or damage** including any loss or expense whatsoever resulting or arising therefore or any consequential loss in connection therewith, occurring within **North America**.

## 6.32 Nuclear risks

- 6.32.1 loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
- 6.32.2 any legal liability of whatsoever nature;
- 6.32.3 any sum which the **insured** becomes legally liable to pay or any loss or expense; directly or indirectly caused by or contributed to by or arising from or, in the case of 6.32.3 above, attributable to **nuclear hazards**.

## 6.33 Overseas domiciled operations

any loss, liability or **costs and expenses** arising from the **insured's** subsidiary companies, branch offices or representatives with power of attorney, that are domiciled outside of the **territorial limits** as stated in the **schedule**.

## 6.34 Ownership or use of mechanically propelled vehicles

any loss, liability or **costs and expenses** arising out of or from the ownership, maintenance, operation or use of any mechanically propelled vehicle by or on behalf of the **insured** other than diver propulsion vehicles.

## 6.35 Personal injury and denial of access

any loss, liability or **costs and expenses** arising out of **personal injury** or **denial of access**.

## 6.36 Property in the insured's care, custody and control

**damage** to property owned, leased, hired or held in trust by the **insured** or under hire purchase or on loan to the **insured** or held otherwise in the **insured's** care, custody or control.

## 6.37 Reasonable precautions

any loss, liability or **costs and expenses** arising out of or from the **insured's** deliberate, conscious, or intentional disregard of the need to take all reasonable precautions to prevent an insured event or loss arising or continuing.

### **6.38 Territorial limit**

any loss, liability or **costs and expenses** arising from an occurrence outside the **territorial limits** including any contract, or arising from the **business** carried out from the **insured's** own offices situated outside the **territorial limits**.

### **6.39 The product itself**

liability for **damage** to the **insured's product** or any part thereof arising from a defect or unsuitability thereof and pure financial loss arising therefrom.

### **6.40 Use of heat**

any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by use of heat.

### **6.41 Use of Spearguns**

liability arising out of the use of spearguns when used in conjunction with an aqualung.

### **6.42 War or terrorism**

any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by or contributed to by **war** or any act of **terrorism** or any action taken in controlling preventing suppressing or in any way relating to the act of **terrorism**.

If the **insurer** alleges that by reason of this exclusion any **damage** cost or expense is not covered by this policy the burden of proving the contrary shall be upon the **insured**.

In the event that any part of this exclusion is found to be invalid or unenforceable the remainder shall remain in force and effect.

## 7 Duties in the event of a claim or potential claim

The due observance and fulfilment of the provisions of clause 7 is a condition precedent to the **insurer's** liability for any claim under this **policy**. Clause 8.14 sets out consequences of a failure to comply with conditions precedent or **policy** provisions such as clause 7.

### 7.1 Claim notification

7.1.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurer**:

- a) immediately from receipt of notice of any impending inquest, fatal accident inquiry, prosecution or other legal proceedings that includes alleged **bodily injury**;
- b) as soon as practical from coming in possession of actual knowledge that notice of an Industrial Tribunal hearing includes alleged **bodily injury**;
- c) immediately on the **insured's** actual knowledge of any death or **bodily injury** to any person not being an **employee** involving a stay in hospital in excess of three (3) days;
- d) as soon as practical but in any event within thirty (30) days after any other accident, event or the coming in possession of actual knowledge of **bodily injury** or **damage** with full particulars thereof;

which may be the subject of indemnity under this **policy**.

7.1.2 Notice to the **insurer** must be given to the claims notification addresses specified in the **schedule**, but if this is not possible or practical to the **insurer** at the registered address in the **schedule**.

### 7.2 Insured's duties

7.2.1 For each every claim the **insured** and any person acting on behalf of the **insured** must:

- a) not admit responsibility, liability, make an offer or promise, nor offer payment or indemnity without the written consent of the **insurer**;
- b) not incur any expense without the consent of the **insurer** except at the **insured's** own cost;
- c) always act honestly, there being no rights to any form of payment or indemnity under the **policy** in the event that any claim is made fraudulently.
- d) give all such information, assistance and forward all documents to enable the **insurer** to investigate, settle or resist any claim as the **insurer** may require;
- e) provide such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith;
- f) not destroy evidence or supporting information or documentation without the **insurer's** prior consent; nor destroy any plant or other property relating to an occurrence, loss or **suit** that may give rise to a claim under this **policy**;

### 7.3 Claim Procedure

Unless stated otherwise all claims will be handled and overseen by the **insurer**. For each and every claim the **insured** and any person acting on behalf of the **insured** must:

7.3.1 immediately send the **insurer** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an insured event as soon as received by the **insured**. In addition the **insured** must co-operate with the **insurer** or their appointed agents to allow them to comply with such relevant practice directions and

pre-action protocols as may be issued and approved from time to time by the head of civil justice;

7.3.2 authorise the **insurer** to obtain medical records or other pertinent information upon request but only where legally permitted to do so in the event of an insured event involving **bodily injury**;

7.3.3 prove, if it is alleged that an event is not covered or that the indemnity is otherwise limited being **war** or an act of **terrorism** that the said exclusion or **limit of indemnity** does not apply, it being understood and agreed that any portion of an exclusion or **limit of indemnity** being found invalid, inapplicable or unenforceable will not in any way render the remainder of the exclusion or limit invalid, inapplicable or unenforceable.

## 7.4 Insurer's rights

7.4.1 The **insurer** will be under no obligation to investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims and will be at liberty in all cases to leave the conduct of such proceedings wholly to the **insured** upon such conditions as regards the payment of opponent's costs and with such liberty to bind the **insurer** by compromise as the **insurer** may in its absolute discretion determine.

7.4.2 The **insurer** may at any time pay the **limit of indemnity** (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability.

## 7.5 Disputed defence or appeal

If any dispute arises between the **insured** and the **insurer** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a solicitor attorney or similar legal professional with no less than 10 years experience in the **claims jurisdiction** stated in the **schedule** to be mutually agreed between the parties (or in default of agreement to be nominated by the President of the Law Society) whose decision will be final.

## 7.6 Excess

7.6.1 If the insured event forms the subject of indemnity under more than one of **insured sections A to D** the **insured's** maximum liability the **excess** will be the highest applicable **excess**.

7.6.2 If settlement of an insured event investigated or defended by the **insurer** under **insured sections A to D** does not exceed the amount of the applicable **excess** the **insured** will pay, or reimburse the **insurer** for, as applicable, any **costs and expenses** and paid damages including claimant costs recoverable from the **insured** and incurred in connection with such insured event.

## 7.7 Subrogation

7.7.1 For each and every claim the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or **suit** that may give rise to a claim under this insurance.

7.7.2 The **insured** will at the request and expense of the **insurer** do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **insurer** for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the **insurer** will be or would become entitled or subrogated upon its paying an indemnity under this **policy**, whether such acts and things will be or become necessary or required before or after their indemnification by the **insurer**.

7.7.3 In the event of any payment under this insurance, the **insurer** will act in concert with all other interested persons (including the **insured**) concerned in the exercise of any rights of recovery.

- 7.7.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) that will have paid an amount over and above any payment hereunder, will first be reimbursed up to the amount paid by them; the **insurer** is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including the **insured**) to whom this coverage is in excess shall be entitled to claim the residue, if any.
- 7.7.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned, in the ratio of their respective recoveries as finally settled.



## 8 General terms and conditions

### 8.1 Adjustment of premium

Where the premium in whole or part is provisionally based on estimates provided by the **insured**, the **insured** will keep accurate records and declare such information as the **insurer** requires within one (1) month of the expiry of the **period of insurance**. The premium will then be adjusted and any difference paid by or allowed to the **insured** as the case may be but subject to any minimum premium that may apply. The **insurer** reserves the right to request that the **insured** supplies an auditor's certificate with such calculations as are subject to adjustment attesting the accuracy thereof.

It is a condition precedent that that all adjustable premiums due to the **insurer** are paid within ninety (90) days of expiry of each **period of insurance**.

### 8.2 Applicable law

This **policy** will be governed by and interpreted in accordance with the laws of England and subject to the exclusive jurisdiction of the High Court, London.

### 8.3 Assignment

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

### 8.4 Cancellation

The **insurer** may at any time during the **period of insurance** serve written notice on the **insured** at the address shown on the **schedule** cancelling the **policy** with effect from the thirtieth (30th) day after service of the notice. Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon demand the **insurer** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy**. Without prejudice to any other forms of service, the notice of cancellation is deemed to be served on the third (3<sup>rd</sup>) day after being posted if sent by pre-paid letter post properly addressed.

### 8.5 Rights of Third Parties

This insurance does not confer or create any right enforceable (including under legislation) by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party.

### 8.6 Contribution

- 8.6.1 If at the time of any claim under **insured sections A to D** there is any other valid and collectible insurance available to the **insured** or any **other insured party** other than insurance that is specifically stated to be in excess of this **policy**, and names the **insured** for the insurance, then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance.

### 8.7 Document management

The **insurer** may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

### 8.8 Dispute resolution

- 8.8.1 All matters in dispute between the **insured**, **other insured parties** and the **insurer** arising out of or in connection with this insurance, will be referred to a mediator to be agreed by the parties within fourteen (14) working days of a written notice served on one party by the other requesting such an agreement. If a mediator is not agreed then either party may apply to

the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties shall share equally the costs of CEDR and of the mediator and that the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.

8.8.2 The parties agree to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.

8.8.3 If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be referred by either party to be determined and be subject to the exclusive jurisdiction of the High Court, London.

## 8.9 Inspection and audit

The **insurer**, or such representative as the **insurer** may designate, will be permitted but not obligated to inspect the **insured's** property and operations at any time given reasonable notice. Neither the **insurer's** right to make inspections nor the making thereof nor any report thereon will constitute an undertaking on behalf of or for the benefit of the **insured** or others, to determine or warrant that such property or operations are safe.

## 8.10 Legal action against the insurer

8.10.1 In respect of liabilities covered by this insurance, no one may bring a legal action against the **insurer** until the amount of the **insured's** liability has finally been determined or agreed.

8.10.2 No one has the right under this **policy** to bring the **insurer** into an action to determine the **insured's** liability.

## 8.11 Material alteration

8.11.1 The **insured** will give to the **insurer** written notice immediately (but in any event no later than 30 days) after the **insured** becomes aware of any material alteration to the **insured**, the risk or any material change in the nature of the **business** conducted by the **insured** during the **period of insurance**. The **insurer** reserves the right to reject or reduce **claims** connected with the material alteration or change, until accepted as such by written confirmation from the **insurer** endorsed to this **policy**, upon which the insurer may continue the **policy** on such terms as the **insurer** may determine.

8.11.2 Any material alteration or change shall not be binding on the **insurer** or the terms of this **policy** until accepted as such by written confirmation from the **insurer** endorsed to this **policy**.

## 8.12 Material inaccuracy

8.12.1 The information provided by or on behalf of the **insured** in connection with this insurance (whether at inception or otherwise) shall be materially accurate and not omit material information which is known by the **insured's** board members or equivalent and/or the **insured's** risk manager or ought to have been known by them following their reasonable enquiry.

8.12.2 Breach by fraud or dishonesty

If the **insured** or anyone acting on its behalf breaches this condition (whether at inception or otherwise) by fraud or dishonest act or omission, the **insurer** may:

- a) avoid this **policy** from inception; or
- b) impose such terms, conditions and/or additional premium as the **insurer** may in its sole discretion determine; and

any benefit which the **insured** has received under this **policy** which resulted from any such fraud or dishonest act or omission shall immediately be repaid to the **insurer**.

8.12.3 Breach by non-disclosure, misrepresentation (other than fraudulent or dishonest)

If the **insured** or anyone acting on its behalf breaches this condition (other than by fraudulent or dishonest means), the **insurer** may:

- a) impose such terms and conditions (effective at inception or otherwise) as the **insurer** would have imposed in the absence of such breach; and/or
- b) charge such additional premium (effective at inception or otherwise) as the **insurer** would have required in the absence of the breach; and
- c) apply such applicable additional premium, amended terms and conditions or both to any notified **claim** or potential **claim**; and

the **insurer** will promptly give the **insured** written notice of any applicable additional premium, amended terms and conditions or both.

8.12.4 Within fourteen (14) days of receipt of such notice, the **insured** will give the **insurer** written confirmation of:

- a) acceptance of and a promise to pay the applicable additional premium in accordance with the terms of trade applying to this insurance; or
- b) the **insured's** acceptance of the amended terms and conditions; or
- c) both as applicable.

8.12.5 If the **insurer** can show to the **insured's** reasonable satisfaction that the **insurer** would have declined to enter into this insurance at inception or to accept the proposed amendment to this insurance during the **period of insurance** on any terms, the **insurer** may avoid this **policy** from inception and, if no claims have been paid or accepted under this **policy**, the **insurer** shall promptly return to the **insured** all premiums received by the **insurer** at the date of breach; and, if the **insurer** has paid claim monies under this **policy**, the **insured** shall promptly repay all such claim monies to the **insurer**.

## 8.13 Minimisation of risk

8.13.1 The **insured** will take all reasonable steps at its own expense to prevent an insured event arising or continuing.

8.13.2 Upon the happening of an insured event and at all times thereafter, the **insured** shall act as a prudent uninsured and take all reasonable measures as are appropriate to avoid or minimise any claims which arise or may arise from that insured event. Any failure by the **insured** to take such steps shall mean the **insurer** may reject or reduce claims and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**.

## 8.14 Observance

8.14.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not already conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.

8.14.2 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach providing the **insurer** can demonstrate some prejudice.

8.14.3 In the event of a breach of any condition precedent in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach, and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**.

## 8.15 Privacy and the Data Protection Act 1998

- 8.15.1 All personal information (including sensitive personal data such as health details or criminal convictions) provided in connection with this **policy** will be processed in accordance with the Data Protection Act 1998. The **insured** consents to all personal information so provided being used for the purposes and being disclosed to the parties set out below.
- 8.15.2 Where personal information is provided about another person, the **insured** is required to inform that person of the **insurers'** identity, and why their personal information will be processed and disclosed. The **insured** is also required to obtain their written consent to the processing of their personal information in this way and provide, on request, such consent to the **insurer**.
- 8.15.3 Personal information is used:
- to administer the **policy**, including underwriting, renewal information, validation of claims history and claims handling;
  - for research, analysis, statistic creation, and customer profiling;
  - for fraud prevention and debt recovery.
- 8.15.4 Personal information may be disclosed to:
- other insurance entities interested in the risk written under this **policy**;
  - agents and service providers appointed by the **insurer** to carry out activities in connection with the **policy**;
  - credit reference and fraud databases;
  - law enforcement and other statutory bodies;
  - potential purchasers of the whole or part of the our business.
- 8.15.5 The **insurer** will not disclose the **insured's** information to anyone other than those parties mentioned in 8.15.4 (a) – (e) above except:
- Where the **insured's** permission has been obtained or;
  - Where the **insurer** is required or permitted to do so by Law or;
  - To other companies who provide a service the **insurer** or the **insured** or;
  - Where the **insured** may transfer rights and obligations under this **policy**
- 8.15.6 If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the fraud databases.
- 8.15.7 Personal information may be transferred to third parties in countries outside the European Economic Area which may not have the same standards of protection for personal information as the United Kingdom. The **insurer** will ensure that such transfers comply with the data protection law and the personal information is kept securely and protected from unauthorised access.
- 8.15.8 The **insurer** maintains protections and procedures in the storage and disclosure of personal information to keep it secure and prevent unauthorised access to or loss of such information
- 8.15.9 The **insurer** may monitor and record all communications with you for compliance and training purposes.
- 8.15.10 Should the **insured** wish to see the information held, have any queries in relation to the way such information is used or discover any inaccuracies, the **insured** should write to the

## 8.16 Rights of recourse

It is a condition precedent to the **insurers** liability under this **policy** that the **insured** maintains full rights of recourse against any manufacturer or supplier with whom the **insured** has entered into a legal contract for the provision of **products** as defined by the **policy**.

## 8.17 Representation

Any person falling within the definition of the **insured** agrees that the first named **insured** is their agent for the purpose of giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the first named **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium.

## 8.18 Sanction limitation and exclusion

- 8.18.1 The Insurer shall not be deemed to provide cover and no Insurer shall be liable to pay any claim or provide any benefit hereunder to the extent of such cover payment of such claim or provision of such benefit would expose that Insurer to any sanction prohibition or restriction under United Nations resolutions or the trade or economic sanctions laws or regulations of the European Union United Kingdom or United States of America.

## 8.19 Subscribing insurer

The **insurers'** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reason does not satisfy all or part of its obligations.

The proportion of liability under this contract underwritten by a company (or in the case of a Lloyd's syndicate the total of the proportions underwritten by all the members of the syndicate taken together) is shown in this contract.

In the case of a Lloyd's syndicate each member of the syndicate (rather than the syndicate itself) is a company. Each member has underwritten a proportion of the total shown for the syndicate (that total itself being the total of the proportions underwritten by all the members of the syndicate taken together). The liability of each member of the syndicate is several and not joint with other members. A member is liable only for that member's proportion. A member is not jointly liable for any other members' proportion. Nor is any member otherwise responsible for any liability of any other Insurer that may underwrite this contract.

## 9 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 9.1 Bodily injury

Bodily injury means death, disease, illness, physical and mental injury of or to an individual.

### 9.2 Business

The Business includes but is not limited to

- a) the ownership or occupation of premises by the **insured** including incidental repair and maintenance;
- b) the provision of canteen social sports and welfare organisations for the benefit of **employees**;
- c) fire, first aid and ambulance services;
- d) The provision of **recreational watersports services** and any first aid required as a result;
- e) the **insured's** activities declared on the certificate of insurance attached to and forming part of this **policy** and as otherwise agreed by the **insurer**.

### 9.3 Claim jurisdiction

Claim jurisdiction shall mean the jurisdiction under which a claim by a third party must be brought for indemnity to be granted the **insurer**.

### 9.4 Combined single limit

Combined single limit means the maximum the **insurer** will pay by this **policy** in the event that two or more **insured sections**, to which the combined single limit applies, provide coverage for an insured event.

### 9.5 Commercial diving

Commercial Diving means those diving practices described in the two Health and Safety Executive (HSE) Approved Code of Practice for Inshore Commercial Diving and Offshore Commercial Diving. For the purposes of this definition the Approved Codes of Practice for; Recreational Scuba Training, Underwater Scientific Diving and Underwater Film and Media Work are not considered to be commercial diving.

### 9.6 Costs and expenses

Costs and expenses means

- 9.6.1 costs and expenses (other than claimant costs recoverable from the **insured** incurred in the investigation, adjustment, appraisal, defence or settlement of an insured event, including expert, legal, appeal and defence costs;
- 9.6.2 pre-judgment interest awarded against the **insured** on that part of any judgment covered under this **policy** but where the **insurer** offers to pay the **limit of indemnity** in settlement of a claim or suit, the **insurer** will not pay any pre-judgment interest imposed or earned after the date of such offer;

- 9.6.3 all interest earned on that part of any judgment within the **limit of indemnity** after entry of the judgment and before **insurer** has paid, offered to pay, or deposited in court that part of any judgment that is within the applicable **limit of indemnity**;
- 9.6.4 the cost of attendance in court as a witness at the **insurer's** request, payable at the following rates per day on which attendance is required:
- a) any principal director or partner of the **insured** – GBP500;
  - b) any **other insured party** -GBP250;
- 9.6.5 costs and expenses of legal representation at any coroner's inquest or inquiry in respect of any death which may be the subject of indemnity under this **policy**.

## 9.7 **Damage**

Damage means:

- 9.7.1 loss of, destruction of or damage to tangible property; and/or
- 9.7.2 for **insured sections A-D** loss of use of tangible property that has been lost, destroyed or damaged.

## 9.8 **Denial of access**

Denial of access means nuisance, trespass, or interference with any easement, right of air, light, water or way.

## 9.9 **Employee**

Employee means:

- a) any person who has entered into or works under a contract of service or apprenticeship with the **insured**;
- b) any directors and/or officers of the **insured**;
- c) any labour-master and/or person supplied by such person;
- d) any person employed by a labour-only contractor;
- e) any self-employed person;
- f) any volunteer;
- g) any person who is hired to or borrowed by the **insured**;
- h) any driver or operator of plant hired to the **insured**;
- i) any person who is engaged under a work experience or youth training scheme while working for the **insured** in connection with the **business**.

## 9.10 **Excess**

The excess will form part of and be included within the **limit of indemnity** and means the first amount payable by the **insured** in respect of each and every claim, series of claims or circumstance as ascertained after the application of all other terms and conditions of this insurance but only where the award is made by a court of law. The excess will be applied to **costs and expenses**.

## 9.11 **Fungus**

Fungus(i) includes but is not limited to any plants or organisms belonging to the major group fungi lacking chlorophyll and including **moulds** rusts mildews and mushrooms.

## 9.12 **Insured**

Insured means the Dive School/ Dive Centre / Dive Store and/or where agreed by the **insurer** those engaged in Underwater Scientific/Archaeological diving or Underwater Film and media diving projects named on the Certificate of Insurance (attaching to this **policy**).

### 9.13 Insured section

Insured section means all or any individually lettered sections of this **policy** that forms part of the insurance contract but only if stated as 'insured' in the **schedule**.

### 9.14 Insurer

Insurer means the insurer as named in the **schedule**.

### 9.15 Landing area

Landing area means any part of earth's surface including water or any structure or property used for embarkation or disembarkation of people or loading or unloading of goods or where aircraft are kept, housed maintained or operated and where aircraft may take off and land.

### 9.16 Legionella

Legionella means any discharge release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like.

### 9.17 Limit of indemnity

Limit of indemnity means:

- 9.17.1 the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability for any one (1) occurrence regardless of the number of:
- a) persons or organisations bringing claims or **suits**; or
  - b) claims against the **insured** or series of claims against the **insured**, or claims or series of claims made by the **insured**;
- 9.17.2 where two (2) or more **insured sections** are subject to a **combined single limit**, then the **combined single limit** is the maximum the **insurer** will pay for any insured event to which such **insured sections** apply in combination, and;
- 9.17.3 where a limit of indemnity is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**.
- 9.17.4 Any sub-limit of indemnity applies as if it was the limit of indemnity for the **claims** for that sub-limit and is deemed to be part of and not in addition to the **limit of indemnity**.

### 9.18 Mould(s)

Mould(s) means, but is not limited to any superficial growth produced on damp or decaying organic matter or on living organisms and fungi that produced moulds.

### 9.19 North America

North America means the United States of America or its territories or possessions or Canada.

### 9.20 Nuclear hazards

Nuclear hazards means:

- 9.20.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 9.20.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;



## 9.21 Operator

Operator shall mean any third party provider, operator, manufacturer or hirer of watercraft not exceeding fifteen (15) meters in length or breathing gas compressor equipment.

## 9.22 Other insured party

Other insured party means any of the following parties:

- 9.22.1 any director, partner, **employee** or a former **employee** of the **insured**;
- 9.22.2 any officers, members' committee and/or **employee** paid and voluntary helpers of the **insured's** canteen and welfare organisations, nursery, crèche or child care facilities, sports and social organisations, in their respective capacities as such;
- 9.22.3 any officers and members of the **insured's** security, rescue, first aid, fire and ambulance services, medical organisation other than any doctor, surgeon or dentist while working in a professional capacity in their respective capacities as such;
- 9.22.4 any director or partner or executive of the **insured** in respect of private work undertaken by any **employee** for a director, partner or executive of the **insured**;
- 9.22.5 any officers or trustees of the **insured's** pension scheme(s).
- 9.22.6 any land or venue owner, firm or authority including local, County or Government authority, Minister or Ministry where permission is necessary for the holding of the **insured's** activities.

## 9.23 Participant

Participant means any person engaged in the **insured's** activities, social and/or promotional events or whilst under the active supervision or instruction of the **insured** during **recreational watersports services**.

## 9.24 Period of insurance

Period of insurance means the period shown as such on the **schedule**, which time is taken as Greenwich Mean Time unless otherwise stated.

## 9.25 Personal injury

Personal injury means harm other than **bodily injury** arising out of one or more of the following offences committed in the course of the **business**:

- 9.25.1 false arrest;
- 9.25.2 detention or imprisonment;
- 9.25.3 wrongful entry into, or eviction of a person from a room, dwelling or premises that the person occupies;
- 9.25.4 libel and slander

## 9.26 Policy

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

## 9.27 Pollutant

Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed.

## 9.28 Pollution

Pollution means the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time.

## 9.29 Premises

Premises means the buildings or land that are owned, leased, hired or tenanted by or on loan to the **insured** for the purpose of the **business**.

## 9.30 Principal

Principal means an individual, company, corporate body sports/leisure centre and/or other government, civic or educational authority providing services venues or clients to the **insured**.

## 9.31 Product

Product means any property (including packaging, containers, labels and instructions for use) after it has left the custody or control of the **insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **insured**.

## 9.32 Proposal

Proposal means any information supplied by or on behalf of the **insured**, deemed to be a completed proposal form and medical questionnaire and other relevant information that the **insurer** may require.

## 9.33 Recreational Watersports Services

Recreational watersports services means the organisation of, supervision of and or the provision of advice or instruction in recreational snorkel and/or sports diving, and free diving, and in ancillary social, recreational and promotional activities or special interest diving agreed by the **insurer** or as more specifically described in the certificate of insurance attached to and forming part of this **policy** and agreed by the **insurer**.

## 9.34 Schedule

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this standard **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the **insured**. Schedules may be re-issued from time to time where each successor overrides the earlier document.

## 9.35 Spore(s)

Spore(s) means any dormant or reproductive body produced by or arising or emanating out of any **fungus**(i) **mould**(s) mildew plants organisms or micro organisms.

## 9.36 Suit

Suit means a civil proceeding in which damages to which this insurance applies are alleged, including;

9.36.1 an arbitration proceeding in which such damages are claimed; or

9.36.2 any other alternative dispute resolution proceeding in which such damages are claimed.

## 9.37 Territorial limits

Territorial limits means such countries as stated in the **schedule**.

### **9.38 Terrorism**

Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and appears to be intended to

- 9.38.1 intimidate or coerce a civilian population, or
- 9.38.2 disrupt any segment of the economy of a government de jure or de facto, state, or country, or
- 9.38.3 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or
- 9.38.4 affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.

### **9.39 United Kingdom**

United Kingdom means Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.

### **9.40 War**

War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.

### **9.41 Watercraft**

Watercraft means any vessel, craft, vehicle or appliance made or intended to float on or in or travel on or through or under water.

### **9.42 Work away**

Work away means work, operations, installation or services performed by or on behalf of the **insured** but not on **premises**.

## 10 Complaints

### 10.1 What the insured should do

The **insurer** strives to provide an excellent service to all its customers but occasionally things can go wrong. The **insurer** takes all complaints seriously and endeavours to resolve all customers' problems promptly. If the **insured** has a question or complaint about this insurance or the conduct of its broker, they should contact that broker in the first instance.

Alternatively, if the **insured** wishes to contact the **insurer** directly to make a formal complaint the **insured** should contact the Compliance Officer at Syndicate DTW1991:

- (a) in writing (letter or email) or;
- (b) by telephone

using the contact details as specified in the **Schedule**. If the Insured should wish to speak to someone face to face please telephone Syndicate DTW1991 at the number shown in the **Schedule** and this will be arranged.

Once the Insured's complaint is received Syndicate DTW1991 shall attempt to respond within 10 working days from the date of receipt but in any event no later than the response time stipulated by any instructions received from the relevant UK regulator.

In the event the Insured is dissatisfied the Insured can refer the matter to Lloyd's. Their address and contact details are as follows:-

Policyholder and Market Assistance  
Lloyd's  
One Lime Street  
London  
EC3M 7HA

Email: [complaints@lloyds.com](mailto:complaints@lloyds.com)

Tel: +44 (0)20 7327 5693  
Fax: +44 (0)20 7327 5225

Details of Lloyd's complaints procedures are set out in a leaflet "How We Will Handle Your Complaint" available at [www.lloyds.com/complaints](http://www.lloyds.com/complaints) are also available from the above complaint.

If the **insured** remains dissatisfied after Lloyd's have considered the complaint the **insured** may have the right to refer their complaint to the Financial Ombudsman Service at the following address:

Financial Ombudsman Service  
Exchange Tower  
Harbour Exchange Square  
London  
E14 9SR

Tel 0800 0234 567

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

Website [www.financial-ombudsman.org.uk](http://www.financial-ombudsman.org.uk)

Making a complaint to the Financial Ombudsman Service (FOS) does not affect the **insured's** rights under this **policy** but if the **insured** is not an eligible complainant then the informal complaint process ceases.

A summary of the **insurer's** complaint handling procedure is available on request and will also be provided to the **insured** when acknowledging a complaint.

## 10.2 About the Financial Ombudsman Service (FOS)

10.2.1 Eligible complainants are:

- a) private individuals; and
- b) micro-enterprises.

'Micro-enterprises' will be able to bring complaints to the ombudsman as long as they have an annual turnover of under EUR2 million and fewer than ten (10) employees.

- c) charities with an annual income of less than GBP1million; or
- d) a trustee of a trust with net assets of less than GBP1million.

10.2.2 The FOS will only consider a complaint if the **insured** is an eligible complainant and if:

- a) the **insurer** has been given an opportunity to resolve it and
- b) the **insurer** has sent the **insured** a final response letter and the **insured** has referred its complaint to the FOS within six (6) months of the **insurer's** final response letter or
- c) the **insurer** has not responded to the **insured's** complaint with a decision within eight (8) weeks.

## 10.3 Financial Services Compensation Scheme

Syndicate DTW1991 is covered by the Financial Services Compensation Scheme. The **insured** may be entitled to compensation from the Scheme if the **insurer** is unable to meet its obligations under this contract.

Entitlement to compensation under the Scheme depends on the type of business and circumstances of the claim. Further information about compensation scheme arrangements is available from the Financial Services Compensation Scheme, 7<sup>th</sup> Floor, Lloyds Chambers, Portsoken Street, London, E1 8BN or from their website ([www.fscs.org.uk](http://www.fscs.org.uk)).



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