

Commercial ATE Insurance Policy

Definitions

“**Appeal**” means an appeal brought against an order or judgment or award in the **Dispute**.

Committee means the claimant committee as defined in the **Representative’s** CFA with the **Insured**

“**Contingent Premium**” means the amount specified in the **Schedule** including **IPT** that is payable by the **Insured** in the event of a **Successful Outcome** being achieved, in accordance with the priorities agreement entered into on or about the date of this **Policy**.

“**Conclusion of the Dispute**” means the date of the final settlement, judgment or decision which makes provision for the costs of the **Dispute**.

“**Costs**” includes fees, charges, disbursements, expenses and any uplift under a conditional fee agreement but does not include any interest incurred.

Counsel’s fees means the **Insured’s** liability for their own barrister’s fees payable in accordance with the retainer disclosed in the **Proposal** but excluding any success fee and/or uplift included in any conditional fee agreement.

“**Counterclaim**” means any claim brought against the **Insured** in the **Dispute** or any related proceedings.

“**Court or Tribunal**” means the court or tribunal specified in the **Schedule** before which the **Dispute** is being pursued and any appellate court or tribunal which may hear an **Appeal**.

“**CPR**” means the Civil Procedure Rules applicable to the **Dispute** and any supporting Practice Directions.

“**Deed of Indemnity**” means a deed of indemnity or other instrument acceptable to the **Court or Tribunal**, or agreed with the Opponent, given by the **Insurer** in favour of the **Opponent** in respect of the **Insured’s** liability to meet a security for costs order or threat thereof.

“**Deposit Premium**” means the amount specified in the **Schedule** including **IPT** that the **Insured** is required to pay to the **Insurer** at the **Policy Commencement Date**. This **Deposit Premium** is not contingent upon a **Successful Outcome** being achieved and is non-refundable.

“**Dispute**” means the proceedings specified in the **Schedule** including any steps taken before the commencement of those proceedings under or following a pre-action protocol or letter before action.

“**IPT**” means insurance premium tax at the rate for the time being in force at the date of payment of the **Deposit Premium** and **Contingent Premium**.

“**Insured**” shall have the meaning set out in the **Schedule**.

“**Insured Liability**” means the **Insured’s** legal obligation to pay any **Opponent’s Costs, Own Disbursements** and **Own Solicitor’s Fees** in connection with the **Dispute** which the **Insurer** has agreed to indemnify up to the **Limit of Indemnity** specified in the **Schedule**.

“**Insurer**” means the participating insurers referred to in the **Schedule**

“**Insurer’s Approval**” means permission granted pursuant to clause 3.10 of this **Policy** to pursue the course of action set out in the approval request.

“**Limit of Indemnity**” means the maximum amount specified in the **Schedule** that the **Insurer** will be liable to pay under this **Policy**, less any sum paid to the **Opponent** by the **Insurer** pursuant to a **Deed of Indemnity**.

“**Mediation**” means any recognised formal process of dispute resolution.

“**Opponent**” means the person specified in the **Schedule** from whom the **Insured** is claiming compensation and/or other relief in the **Dispute**.

“**Opponent’s Costs**” means **Costs** which the **Insured** is ordered to pay or agrees to pay with **Insurer’s Approval** to the **Opponent**.

“**Own Disbursements**” means the **Insured’s** liability for the legal expenses (excluding own **Counsel’s fees** and **Own Solicitor’s Fees**, unless stated otherwise) which are reasonably incurred in order to prosecute the **Dispute**.

“**Own Solicitor’s Fees**” means the **Insured’s** liability for the **Representative’s** fees payable in accordance with the retainer disclosed in the **Proposal** but excluding any success fee and/or uplift included in any conditional fee agreement.

“**Policy**” means this policy and the **Schedule**.

“**Policy Commencement Date**” means the date specified in the **Schedule**.

“**Premium**” means the amount specified in the **Schedule** as the **Deposit Premium** and the **Contingent Premium** including **IPT**.

“**Proposal**” means the proposal form submitted to the **Insurer** by the **Insured** or on the **Insured’s** behalf together with all material and documents submitted to the **Insurer** before the **Policy Commencement Date** in connection with the **Dispute**.

“**Representative**” means the law firm and/or solicitor specified in the **Schedule** (or any replacement appointed with the prior written consent of the **Insurer**) who will act for the **Insured** in the **Dispute**.

“**Schedule**” means the schedule forming part of this **Policy**.

“**Successful Outcome**” means the **Dispute** has been resolved by the **Insured** reaching a negotiated settlement with the **Opponent**, or has received a court judgment in their favour, unless otherwise specified in the **Schedule**.

In this **Policy**:

1. Reference to any statute or statutory provision and orders or regulations thereunder shall include a reference to that provision, order or regulation as amended, re-enacted or replaced from time to time whether before or after the **Policy Commencement Date**.
2. Words importing the singular shall include the plural and vice versa and references to persons include bodies corporate or unincorporated. Words importing any gender shall include all genders.
3. If any term, condition, exclusion or endorsement or part thereof is found to be invalid or unenforceable the remainder shall remain in full force and effect.

The headings in this **Policy** are for reference only and shall not be considered when determining the meaning of this **Policy**.

The **Insurer** agrees to provide the insurance in accordance with the terms, conditions, limitations and exclusions specified in this **Policy**.

1 The Insurance

- 1.1 The **Insurer** shall indemnify the **Insured** for the **Insured Liability** in the **Dispute**, up to the **Limit of Indemnity** in respect of **Opponent's Costs, Own Disbursements and Own Solicitor's Fees** as specified in the **Schedule**.

2 Exclusions

- 2.1 The **Insurer** shall not, unless stated otherwise in this **Policy**, pay any claim under this **Policy** directly caused by or attributable to
- 2.1.1 The **Committee's** failure to co-operate with or to follow the advice of the **Representative**;
 - 2.1.2 any delay or default on the **Committee's** or the **Representative's** part;
 - 2.1.3 any failure by the **Committee** or the **Representative** to comply with an order of the **Court** or the **CPR** or any equivalent procedural rule that may apply during the **Dispute**;
 - 2.1.4 any interim application made or resisted without **Insurer's Approval**;
 - 2.1.5 the **Committee's** decision to abandon or discontinue the **Dispute** without **Insurer's Approval**;
 - 2.1.6 the **Committee's** decision to conclude a settlement with the **Opponent** or any other party to the **Dispute** (including as to **Opponent's Costs**) without **Insurer's Approval**;
 - 2.1.7 the **Committee's** decision to reject an offer of settlement without **Insurer's Approval**;
 - 2.1.8 the **Committee's** decision to continue the **Dispute** after the **Insurer** has informed the **Representative** that in their view the **Insured** is more likely than not to lose the **Dispute**, without **Insurer's Approval**;
 - 2.1.9 any liability for costs arising under **CPR** Part 44.11 or any equivalent procedural rule that may apply or the **Insured's** liability for fines or penalties;
 - 2.1.10 an **Appeal** brought by the **Committee** without **Insurer's** approval;
 - 2.1.11 any element of VAT where otherwise reclaimable;
 - 2.1.12 any **Counterclaim** unless otherwise stated in the **Schedule**;
 - 2.1.13 the **Representative's** failure to devote such resources of finance and manpower to the **Dispute** as are necessary to conduct the **Dispute** efficiently.
 - 2.1.14 The **Representative's** inability to continue funding **Own Solicitor's Fees**, to obtain additional third party funding or to obtain additional ATE insurance cover as required.

3 General Conditions

Conduct of the Litigation

- 3.1 The **Insured** agrees that throughout the **Dispute** the **Insurer** shall be allowed direct access to the **Representative** and that the **Committee** will instruct the **Representative** to:
- 3.1.1 report all material developments in the **Dispute** to the **Insurer**;
 - 3.1.2 report as soon as reasonably practicable all settlement offers made by the **Opponent** to the **Insurer**;

- 3.1.3 comply with all requests by the **Insurer** for information and documents reasonably required by **Insurer** in connection with the **Dispute**;
- 3.1.4 afford the **Insurer** the opportunity to attend all meetings, conferences and consultations with the **Insured's** barrister and the **Insured's** expert witness;
- 3.1.5 afford the **Insurer** the opportunity to attend any **Mediation** or without prejudice meeting in respect of the **Dispute**;
- 3.1.6 inform the **Insurer** as soon as reasonably practicable of any change in the **Representative's** appraisal of the **Insured's** prospects of success in the **Dispute**;
- 3.1.7 hold all sums recovered from **the Opponent** subject to a lien for the **Insured's** liability to the **Insurer** for any amounts due to the **Insurer** under this **Policy**.
- 3.1.8 Inform the **Insurer** of any difficulty in obtaining the **Committee's** instructions or the **Committee's** resisting the advice given by the **Representative**
- 3.2 Each **Insured** must comply with the instructions of the **Committee** and advice of the **Representative**
- 3.3 The **Committee** will:
 - 3.3.1 instruct the **Representative** to conduct the **Dispute** reasonably and with regard to the Overriding Objective set out in **CPR** Part 1.1 or any equivalent procedural rule that may apply;
 - 3.3.2 instruct the **Representative** to take all reasonable steps throughout the **Dispute** to avoid or minimise **Opponent's Costs**;
 - 3.3.3 instruct the **Representative** to comply with all orders made by the **Court or Tribunal** in the **Dispute** and to comply with the **CPR** or any equivalent procedural rule that may apply throughout the **Dispute**;
 - 3.3.4 throughout the **Dispute**, provide all information, evidence and documents requested by the **Representative** to comply with these instructions and deal promptly and diligently with all requests by the **Representative** to provide statements of truth, witness statements and to search for disclosable documents;
 - 3.3.5 comply with all advice given by the **Representative**;
 - 3.3.6 co-operate generally with the **Representative** throughout the **Dispute** in the conduct of the **Dispute**;
 - 3.3.7 instruct the **Representative** to keep any estimates of **Costs** produced under regular review and keep the **Insurer** informed of any material changes;
 - 3.3.8 instruct the **Representative** to keep the **Insurer** appraised of any actual or likely increase to the estimate of the ongoing **Opponent's Costs**. Any request for additional insurance cover must be

submitted at this stage together with an updated assessment on the prospects of a **Successful Outcome**

3.3.9 instruct the **Representative** to report to the **Insurer** at quarterly intervals following the **Policy Commencement Date** setting out the **Costs** incurred to date on the **Insured's** behalf in connection with the **Dispute**; and

3.3.10 not change the **Representative** without the prior written consent of **Insurer**.

3.4 Throughout the **Dispute** the **Committee** may agree to **Mediation** with the **Opponent** or any other party to the **Dispute**. The **Insurer** may attend the **Mediation**. The **Insurer** will deal with any request for **Insurer's Approval** that the **Representative** may make during the **Mediation**. Before a **Mediation**, the **Representative** will, and the **Committee** will instruct the **Representative** to, co-operate with the **Insurer** to agree a strategy for the **Mediation** and the arrangements for keeping the **Insurer** informed of developments during the **Mediation**.

Prospects of Success

3.5 If the **Representative** informs the **Insurer** that a material number of all the **Insureds** is more likely than not to lose the **Dispute** or that their appraisal of **those Insureds'** chances of success in the **Dispute** has deteriorated materially and the **Committee** nevertheless wishes to continue the **Dispute** in respect of **those Insureds**, the **Committee** must obtain **Insurer's Approval** to do so.

3.6 If the **Insurer** reasonably forms the view that a material number of all the **Insureds** is more likely than not to lose the **Dispute** it shall inform the **Representative** and provide reasons for its view. If, following receipt of that opinion from **Insurer** the **Committee** wants to continue the **Dispute** in respect of the relevant **Insureds**, the **Committee** must obtain **Insurer's Approval** to do so.

Applications for Costs

3.7 The **Committee** will:

3.7.1 instruct the **Representative** to resist any application by the **Opponent** for the summary assessment of **Opponent's Costs** except where required by the **CPR** or applicable procedural rules. If **Opponent's Costs** are summarily assessed, the **Committee** must tell the **Insurer** as soon as reasonably practicable and provide the **Representative** with appropriate instructions so as to allow the **Insurer** to take over all rights to challenge the summary assessment.

3.7.2 instruct the **Representative** to resist any application by the **Opponent** for **Opponent's Costs** unless the **Committee** has **Insurer's Approval** not to do so.

3.7.3 tell the **Insurer** as soon as reasonably practicable if any **Insured** becomes liable for **Opponent's Costs** and provide the **Representative** with appropriate instructions so as to allow the **Insurer** to take over all rights in the assessment of the **Opponent's Costs** including, without

limitation, the right to appoint a costs draftsman to deal with the detailed assessment and all stages leading up to it.

- 3.8 The **Committee** must inform the **Insurer** as soon as reasonably practicable of all offers made by the **Opponent** to settle their claims for **Opponent's Costs**, interest on those costs and the costs of the detailed assessment.
- 3.9 The **Committee** will notify the **Insurer** as soon as reasonably practicable if any matters come to the **Committee's** attention which would have had a material impact on the **Insurer's** decision to provide cover under this **Policy** or the terms on which the **Insurer** would have provided cover under this **Policy**.
- 3.10 Applying for **Insurer's Approval**
- 3.10.1 The **Committee** may make an application for **Insurer's Approval** at any time but the **Committee** should always try to make the application at least ten working days in advance of when a decision is required.
- 3.10.2 The **Committee** must apply for **Insurer's Approval** in writing, setting out details of the **Insurer's Approval** sought. The **Insurer** may seek and must be given the opportunity to review any information or evidence on which the **Insured** relies in support of the **Committee's** application. The **Committee** must comply with any requests by the **Insurer** for further information in connection with the **Committee's** application.
- 3.10.3 The basis on which the **Insurer** will decide the **Committee's** application (and whether or not to grant **Insurer's Approval**) will be whether a reasonably prudent and commercial uninsured litigant would pursue the course of action for which the **Committee** seeks **Insurer's Approval**.
- 3.10.4 The **Insurer** will generally provide their written decision on the **Committee's** application within five working days of the date on which they receive the **Committee's** application. Where it is necessary to obtain **Insurer's Approval** within a shorter timeframe, **Insurer** will use their best endeavours to provide **Insurer's Approval** within the required timeframe.
- 3.10.5 The **Insurer** will:
- (a) grant **Insurer's Approval**; or
 - (b) refuse **Insurer's Approval**; or
 - (c) grant **Insurer's Approval** subject to the terms and conditions set out in their written decision.
- 3.10.6 Despite the above, during a **Court or Tribunal** hearing or **Mediation** the **Committee** may seek **Insurer's Approval** orally and the **Insurer** will use reasonable endeavours to provide an oral decision during the **Mediation** or **Court or Tribunal** hearing which will be confirmed in writing subsequently.
- 3.10.7 The **Committee** may apply for a review of the **Insurer's** decision if the **Insured** disagrees with the **Insurer's** refusal to grant **Insurer's Approval** or the terms and conditions on which **Insurer's Approval** has been granted. The review will be conducted by a Queen's Counsel to be mutually agreed upon by both the **Insurer** and the **Committee** or, failing agreement, to be appointed by the Chairman of the Bar. The **Insurer's** decision shall be final unless the Queen's Counsel advises that **Insurer's Approval** should be granted or should be granted subject to the conditions specified by the Queen's Counsel. In making his decision the Queen's Counsel shall

apply the test set out in clause 3.10.3 above. The Queen's Counsel's fee for conducting the review shall be payable in equal proportions by the **Insurer** and the **Representative**.

Appeal by the Insured

- 3.11 If a **Successful Outcome** in the **Dispute** is not achieved and the **Committee** wishes to **Appeal** the decision of the **Court or Tribunal**, the **Insurer** is under no obligation to provide cover for such an **Appeal**. A request to cover an **Appeal** by the **Committee** should be made in accordance with applying for **Insurer's Approval** in clause 3.10 above.

Appeal by the Opponent

- 3.12 If a **Successful Outcome** in the **Dispute** is achieved and the **Opponent Appeals** the decision of the **Court or Tribunal**, the **Insurer** is under no obligation to provide cover for such an Appeal. A request to cover an **Appeal** by the **Opponent** should be made in accordance with applying for **Insurer's Approval** in clause 3.10 above.

Reimbursement and offset

- 3.13 **The Insured** agrees that in the event of a **Successful Outcome** the **Insured** shall:
- 3.13.1 reimburse the **Insurer** in respect of any sums paid by the **Insurer** under the terms of this **Policy** or a **Deed of Indemnity** out of any sums recovered from the **Opponent**. For this purpose the **Representative** agrees to hold on trust all sums which the **Insured** recovers from the **Opponent** to the **Insurer's** order pending such reimbursement; and
- 3.13.2 offset all sums recovered from the **Opponent** against any claim due in respect of the **Insured Liability**.

Non-disclosure of the Policy

- 3.14 The **Representative** will not disclose this **Policy** to the **Opponent** or anyone on the **Opponent's** behalf without the **Insurer's Approval** save to the extent the **Insured** is required to do so by the **Court or Tribunal**, by the relevant legislation, and the regulations made thereunder.

Duty to act as a prudent uninsured litigant

- 3.15 The **Committee** must act as a reasonably prudent uninsured litigant throughout the **Dispute**.

4 Termination of Cover

- 4.1 The **Insurer** may cancel this **Policy** with immediate effect if:
- 4.1.1 The **Committee** or **Representative** fails without good reason to meet any one or more of the obligations under Section 3 or
- 4.1.2 The **Representative** advises that the **Insured** does not have reasonable prospects of succeeding in the **Dispute** and the **Insured** or the **Committee** continues the **Dispute** without **Insurer's Approval**; or
- 4.1.3 The **Representative** advises the **Committee** to make a settlement with the **Opponent** and the **Insured** refuses to follow that advice without **Insurer's Approval**.
- 4.2 If the **Insurer** cancels this **Policy** pursuant to clause 4.1 and the breach has materially affected the **Insurer**, the **Insurer** will not pay the **Insured Liability**. If the breach does not have a material effect on the **Insurer**, the **Insurer** will pay the **Insured Liability** up to the date of cancellation and the **Insured** will be liable to pay the **Premium** in accordance with clause 5 should a **Successful Outcome** be achieved.

For the avoidance of doubt the **Premium** payable in such circumstances will be calculated in accordance with clause 5.3 as if a **Successful Outcome** had been achieved at the date of cancellation.

- 4.3 The **Insured** has the right to cancel within 14 days of receiving this **Policy**. To exercise the right to cancel the **Insured** must give written notice to **Insurer** and the **Policy** will be cancelled from the outset. The **Insured** may not cancel once this 14 day period has expired without the **Insurer's** prior written agreement. The **Insured's** right to cancel will be deemed to be irrevocably waived by the **Insured** in the event that the **Insured** makes or notifies the **Insurer** of any claim or potential claim under this **Policy** within the applicable 14 day period.
- 4.4 If an individual **Insured** is in breach of any **Policy** condition or policy exclusion, the breach will affect the coverage of that **Insured** only and not the coverage of the remaining **Insureds**.

5 Premium

- 5.1 The **Insured**, or the **Representative** on their behalf, agrees to pay to the **Insurer** the **Deposit Premium** plus **IPT** within fourteen (14) days of the **Policy Commencement Date**. The **Deposit Premium** is non-refundable irrespective of the outcome of the **Dispute**.
- 5.2 Subject to clause 5.3 below, the **Insured** agrees to pay the **Insurer** the **Contingent Premium** plus **IPT** within twenty (20) working days of the date of receipt of any sum recovered from the **Opponent** or monetary equivalent upon a **Successful Outcome**. No part of the **Contingent Premium** shall become payable until the date of a **Successful Outcome** and no **Contingent Premium** or part thereof shall be payable if the **Insured** does not achieve a **Successful Outcome**.
- 5.3 The amount of the **Contingent Premium** payable will be determined by the stage in the **Dispute** at which a **Successful Outcome** is achieved in accordance with paragraph 8 of the **Schedule**.
- 5.4 The **Representative** agrees to hold all sums which the **Insured** recovers from the **Opponent** to the **Insurer's** order pending payment of the **Contingent Premium** (or the relevant proportion thereof).
- 5.5 If the **Contingent Premium** (or the relevant proportion thereof set) payable by the **Insured** is larger than the total of all sums which the **Insured** recovers from the **Opponent**, the **Insured** shall only be obliged to pay such sum in respect of the **Contingent Premium** as is equivalent to the sum or sums which the **Insured** recovers (following any reimbursement or offset pursuant to clause 3.13 above).

6 Notices

- 6.1 All notices, applications for **Insurer's Approval** or consent to change the **Representative** and other communications shall be sent by post, by email or by hand to the **Insurer** at the address stated in the **Schedule**. Proof of transmission does not constitute proof of delivery.
- 6.2 All notices, **Insurer's Approvals**, decisions and other communications shall be deemed to have been received by the **Committee** if they are sent by post, by hand, by email or by fax to the **Representative**.

7 Subrogation

- 7.1 If the **Insurer** makes a payment under this **Policy**, the **Insurer** will be subrogated to any and all of the **Insured's** rights in connection with such payment. The **Insured** also agrees to give the **Insurer** as much assistance as the **Insurer** may reasonably require in relation to the exercise by the **Insurer** of the **Insurer's** subrogated rights.
- 7.2 In the event that the **Insurer** makes any payment whatsoever pursuant to the terms of a **Deed of Indemnity** or non-avoidance endorsement in circumstances in which the **Insurer** would not have been obliged to make such payment pursuant to the terms of the **Policy** then the **Insured** shall indemnify the **Insurer** in respect of such payment and the **Insurer** shall be entitled to recover such payment from the **Insured**.

8 Contracts (Rights of Third Parties) Act

- 8.1 A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available other than by virtue of this Act.

9 Duty of fair presentation

- 9.1 The **Representative** and/or the **Insured** must make a fair presentation of the risk in proposing for, or proposing to vary, this **Policy**.
- 9.2 If the **Insured** or anyone acting on its behalf breaches the **Insured's** duty of fair presentation then the **Insurer's** remedies shall be as follows:
- 9.2.1 if such breach is deliberate or reckless, the **Insurer** may treat this **Policy** as having been terminated from its inception and retain the **Premium**;
- 9.2.2 if such a breach is not deliberate or reckless and the **Insurer** would not have entered into the **Policy** but for the breach, the **Insurer** may by notice to the **Insured** treat this **Policy** as having been terminated from its inception in which case the **Insurer** shall return the **Premium** less any payments which the **Insurer** may have made under this **Policy** up to the date of termination; and
- 9.2.3 in all other cases if, but for the said breach, the **Insurer** would have entered into this **Policy** but on different terms then the **Insurer** may require that this **Policy** is treated as if it had been entered into on those different terms from the outset, or, if the **Insurer** would have charged a higher **Premium**, the **Insurer** may reduce proportionately the amount to be paid on a claim (and, if applicable, the amount already paid on prior claims). In the latter circumstances, the **Insurer** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$.
- 9.3 If the **Insured** or anyone acting on its behalf breaches the **Insured's** duty of fair presentation in relation to a variation of this **Policy**, the **Insurer's** remedies shall be as follows:
- 9.3.1 if such breach is deliberate or reckless, the **Insurer** may by notice to the **Insured** treat this **Policy** as having been terminated from the time when the variation was concluded and retain the **Premium**;
- 9.3.2 if such breach is not deliberate or reckless, and the **Insurer** would not have entered into the variation but for the breach, the **Insurer** may treat this **Policy** as if the variation was never made, in which case the **Insurer** shall return any additional **Premium** relating to the variation; and
- 9.3.3 in all other cases if, but for the said breach, the **Insurer** would have entered into the variation but on different terms then the **Insurer** may require that the variation is treated as if it had been entered into on those different terms, or, if the if the **Insurer** would have charged a higher **Premium**, the **Insurer** may reduce proportionately the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **Insurer** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{premium actually charged/higher premium}) \times 100$, or, if in the **Insurer** would not have reduced the premium by as much as it did or at all, the **Insurer** may reduce proportionality the amount to be paid on a claim arising out of events after the variation. In those circumstances, the **Insurer** shall pay only X% of what it would otherwise have been required to pay, where $X = (\text{reduced or non-increased premium actually charged/premium which insurer would have charged}) \times 100$.

10 Fraudulent claims

- 10.1 If the **Insured** or anyone acting on its behalf makes a fraudulent claim under this **Policy**, the **Insurer**:

- 10.1.1 is not liable to pay the claim;
 - 10.1.2 may recover any part of the claim already paid from the **Insured**; and
 - 10.1.3 may by notice to the **Insured** treat this **Policy** as having been terminated with effect from the time of the first fraudulent act, in which case the **Insurer** is not liable to the **Insured** in respect of a relevant event occurring after that time and may retain any **Premium**.
- 10.2 Where more than one **Insured** is insured under this **Policy** for separate interests, the remedies set out in clause 10.1 shall not be available against any **Insured** who or which was not implicated in the fraud.

11 Material changes during the policy period

- 11.1 The **Committee** must notify the **Insurer** within thirty (30) days of any material change to the **Insured**, its business or the risk insured if indemnity under this **Policy** is sought in relation to any such change.
- 11.2 The **Insurer** shall not indemnify the **Insured** for any liability arising out of a material change for which indemnity would otherwise have been available under this **Policy** unless the **Insurer** has provided valid confirmation of cover, whether by an express term of this **Policy**, endorsement, written confirmation or otherwise.

12 Assignment

- 12.1 Neither party shall assign its rights under this **Policy** without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

13 The governing law of this Policy

- 13.1 This Policy shall be construed in accordance with English Law. The parties agree to submit any dispute arising out of or in connection with this Policy to the exclusive jurisdiction of the Courts of England and Wales.

14 Sanction limitation and exclusion clause

- 14.1 The **Insurer** shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the **Insurer** or any member of the **Insurer's** group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any country to whose jurisdiction the **Insurer** is subject.

Service Standards and Complaints Procedure

The **Insurer** is committed to providing a first class service at all times. If, the **Insured** is not happy with any part of the service the **Insured** has received then the **Insured** should initially contact the **Insurer's** Head of Legal and Compliance at the address below.

Customer Service Department
Litica Ltd
87-91 Newman Street
London
W1T 3EY

Email: steve.ruffle@litica.co.uk

The Insured should quote the **Policy Number** and the name and address of the **Representative**.

If the **Insured's** complaint cannot be successfully resolved immediately or by the end of the following working day, the **Insurer** will send the **Insured** an acknowledgement and let the **Insured** know who is handling the complaint. If the **Insurer** is not able to provide the **Insured** with a final response within 4 weeks of the date on which the **Insurer** received the complaint, the **Insurer** will explain why and let the **Insured** know when they can expect a response.

If the **Insurer** cannot resolve the **Insured's** complaint, or if the **Insured** has not received a final response from the **Insurer** within 8 weeks of the date on which the **Insurer** received the complaint, the **Insured** may request that the Financial Ombudsman Service review the case provided that the complaint falls within its jurisdiction.

In respect of Hamilton Insurance DAC's ("**HIDAC**") participation:

HIDAC strives to provide an excellent service to all its customers but occasionally things can go wrong. **HIDAC** 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 **HIDAC** directly the **Insured** should write to the Compliance Manager at Quantum Legal Costs Cover Limited, 4th Floor, 8 Waterloo Place, London, SW1Y 4BE.

If, after making a complaint, the **Insured** feels that the matter has not been resolved to its satisfaction, then if the **Insured** is an eligible complainant, the **Insured** may contact: The Financial Ombudsman Service, Exchange Tower, London E14 9SR. Telephone 0300 123 9 123 or 0800 023 4567, Website: <http://www.financial-ombudsman.org.uk/consumer/complaints.htm>.

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 **HIDAC's** complaint handling procedure is available on request and will also be provided to the **Insured** when acknowledging a complaint.

About the Financial Ombudsman Service

(FOS) Eligible complainants are:

- (a) private individuals;
- (b) micro-enterprises (these enterprises have an annual turnover of under EUR2 million and fewer than ten (10) employees)
- (a) charities with an annual income of less than GBP1million; or
- (b) a trustee of a trust with net assets of less than GBP1million.

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

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

Financial Services Compensation Scheme

The Company Market and Lloyd's underwriters are covered by the Financial Services Compensation Scheme. The **Insured** may be entitled to compensation from the Scheme if **HIDAC** 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 the compensation scheme arrangements is available from the FSCS via their website at www.fscs.org.uk or can be contacted on 020 7892 7300.

The Financial Ombudsman Service can normally deal with complaints from private individuals and small businesses with an annual turnover of less than €2 million (for a group of companies, this means a group annual turnover of less than €2 million) and having fewer than 10 employees. The Financial Ombudsman Service can also help with complaints from charities with an annual income of less than €2 million, and from trusts with a net asset value of less than €2 million.

The address is:

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

Telephone: 0800 023 4567

www.financial-ombudsman.org.uk

The Financial Services Ombudsman decision is binding upon the **Insurer**, but the **Insured** is free to reject it without affecting the **Insured's** legal rights.

Financial Services Compensation Scheme

The **Insurer** is covered by the Financial Services Compensation Scheme ("FSCS"). The **Insured** may be entitled to compensation from the scheme if the **Insurer** cannot meet its obligations. This depends on the type of business and the circumstances of the claim. Further information about compensation scheme arrangements is available from the FSCS who can be contacted at 10th Floor, Beaufort House, 15 Botolph Street, London, EC3A 7QU.

HIDAC Data protection notice:

HIDAC as Data Controller under current EU and UK data protection legislation will process personal data (if it receives any) for the purpose of providing insurance under this **Policy** to the **Insured**, handling claims, and to meet legal or regulatory obligations. Personal data may be disclosed to third parties who perform services on **HIDAC's** behalf, its group companies, and as may be required by law. **HIDAC** may transfer personal data outside the European Economic Area, and will ensure that it is treated in accordance with the current EU and UK data protection legislation. Data subjects have various rights, including to see a copy of the personal information held about them and to lodge a complaint with the local data protection authority. Personal data will be retained in line with **HIDAC's** data retention policy. For more information as to how **HIDAC** will process personal data, please visit www.hamiltongroup.com.

The **Insured** understands that any information it provides to **HIDAC** shall be processed by **HIDAC**, in compliance with applicable data protection legislation, for the purpose of providing insurance and handling claims or complaints, if any, which may necessitate providing information other parties.

SCHEDULE

1. **Policy Number:** 880QICC2020.01.072020
2. **Insured:** The claimants in the **Dispute**
3. **Dispute:** The consumer group action against the **Opponent** referred to in the **Proposal**
4. **Court or Tribunal:** High Court of England & Wales
5. **Opponent:** Mercedes-Benz AG and Daimler AG
6. **Policy Commencement Date:** 14 July 2020
7. **Limit of Indemnity:** GBP 5,000,000 for **Opponent's Costs**
8. **Premium:** As set out in the table below:

Stage 1	Deposit Premium	GBP 950,000 plus IPT
Stage 2	Contingent Premium	15.9% (inclusive of IPT) of the Total Fee as referred to in the priorities agreement between the Representative , the Insured's funder, and the participating Insurers .

9. **Representative:** Leigh Day
10. **Representative's address:** Priory House, 25 St John's Lane, London, EC1M 4LB
11. **Successful Outcome:** The recovery by the **Insured** at the **Conclusion of the Dispute** of any sum of money or monetary equivalent from the **Opponent** regardless of any description which may be attributed to it by the **Insured**, the **Opponent** or anyone else.
12. **Endorsements:** One

Several Liability Notice

The liability of a participating **Insurer** under this **Policy** is several and not joint with any other participating **Insurer** party to this **Policy**. A participating **Insurer** is liable only for the proportion of liability it has underwritten. A participating **Insurer** is not jointly liable for the proportion of liability underwritten by any other insurer or any other participating **Insurer**. Nor is a participating **Insurer** otherwise responsible for any liability of any other insurer that may underwrite this **Policy**.

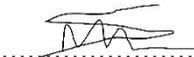
Each participating **Insurer** named hereon binds itself for its own part and not for one another. Each participating **Insurer's** liability under the **Policy** shall not exceed that percentage or amount of the risk shown against that participating **Insurer's** name.

Insurer Subscriptions

It is understood and agreed that **Insurers** individual liabilities and entitlements to **Deposit Premium** and **Contingent Premium** are subject to the following subscriptions on a co-insurance basis:

Participating Insurers:

Insurer	Reference	Subscription	Limit of Indemnity
Litica Ltd, authorised under a binding authority agreement to administer this Policy on behalf of AXA Insurance UK PLC (company no.00078950)	LIT/2020/017	40%	£2,000,000
Litica Ltd, authorised under a binding authority agreement to administer this Policy on behalf of Hiscox Insurance Company Limited (company no. 00070234)	LIT/2020/017	10%	£500,000
Harbour Underwriting Limited (trading as "Quantum Legal Costs Cover" and "QLCC"), authorised to administer this Policy on behalf of Hamilton Insurance DAC	880QICC2020.01.072020	50%	£2,500,000
Total:		100%	£5,000,000

Signature: 
Underwriter Name: Steve Ruffle
Underwriter Title: Director – Litica Ltd

Date:... 14 July 2020

Signed: 
Rocco Pirozzolo, Underwriting Director of Harbour Underwriting Limited (trading as "Quantum Legal Costs Cover" and "QLCC") for and on behalf of Hamilton Insurance DAC

Date: 14 July 2020