



## Excess Public / Products Liability Insurance

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## **Excess Public / Products Liability Policy**

Whereas the Insured named in the Schedule hereto has paid or agreed to pay to Chartis Insurance UK Limited, (hereinafter called "the Insurer" in respect of the risk which it is insuring under this Policy) the Premium specified in the Schedule as consideration for the following insurance.

For the avoidance of doubt in no circumstances shall the liability of Chartis Insurance UK Limited exceed the amount(s) as specified as the Limit of Liability in the Schedule.

### **1. Insurance Cover**

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The INSURER hereby agree to indemnify the Insured to the extent of the Limit of Liability as specified in the Schedule hereof in respect of all sums which the Insured shall become legally liable to pay as damages consequent upon bodily injury and loss of or damage to property occurring during the Period of Insurance and arising out of the Business all as more fully described in the Primary Policies (hereinafter called "the Primary Policy").

#### **PROVIDED ALWAYS THAT**

- A:** No liability shall attach to the Insurer hereunder unless and until the Primary Insurer have paid or have been held liable to pay the full amount of their ultimate net loss liability as specified in the Schedule (hereinafter called "the excess any one loss").
- B:** The liability of the Insurer hereunder shall not exceed the amount(s) as specified in the Schedule.

## 2. Conditions

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- 2.1 It shall be a condition precedent to any liability of the Insurer in respect of any claim under this Policy that the Insured shall have provided the Insurer with a full copy of the Primary Policy (including without limitation any endorsements, memoranda, and all attachments thereto) and the Insurer shall have had a reasonable opportunity being not less than 30 days to review the same and advise the Insured whether any additional terms or conditions or additional premium should apply under this Policy in the light of such review. Any review or investigation or negotiation of any claim by the Insurer prior to receipt of a copy of the Primary Policy shall be without prejudice to the fact that the Insurer shall have no liability to make any payment under the Policy in relation to that claim (including without limitation in respect of defence costs and expenses) unless and until a copy of the Primary Policy is provided to the Insurer and Insurer have had a reasonable opportunity to review the same as aforesaid.
- 2.2 It is the intention of this Policy that in respect of coverage provided under the Schedule hereto Insurer shall only be bound under the terms of this Policy to "follow the form" of the Primary Policy in the manner described in Condition 2.8
- (a) to the extent that a copy of that Primary Policy has been provided to the Insurer prior to the Insurer's acceptance of the risk under this Policy; or
- (b) if the Primary Policy has not been so provided to the extent that the Insurer ought reasonably to have been aware at that time and without specific enquiry of the terms of that Primary Policy.
- 2.3 Without prejudice to Conditions 2.1 or 2.2 above and/or any other of the Insurer's rights howsoever arising if a copy of the Primary Policy is only provided to the Insurer after the date of inception of risk under this Policy the Insurer's liability in respect of any claim under this Policy shall be no greater or wider in scope than would have been the case if the terms of the Primary Policy had been no wider than that contemplated under 2.2(b) above and notwithstanding that the actual terms of that Primary Policy may contain any terms that would otherwise have increased or widened the scope of the Insurer's liability under this Policy.
- 2.4 The term "ultimate net loss" shall be understood to mean the sum actually paid in the settlement of losses for which the Insured are liable after making proper deductions for all recoveries, salvages and other insurances (other than the Primary Policies as stated in the Schedule) whether recovered or not and shall exclude all costs and expenses.
- 2.5 In the event of a claim occurring likely to exceed "the excess any one loss" no costs shall be incurred without the consent of the Insurer who shall be given the opportunity of co-operating in the settlement of claims in which they are interested. Should the claim become adjustable prior to going into Court or judgement be entered for a sum of not more than "the excess any one loss" then no costs shall be payable by the Insurer under this Policy.
- 2.6 Should the sum for which the said claim may be so adjustable exceed "the excess any one loss" then the Insurer hereunder if they consent to proceedings continuing shall contribute to the costs in the ratio that their

proportion of the liability for the judgement rendered bears to the whole amount of the said judgement.

- 2.7 In the event that the Insured having the right to appeal a judgement in excess of "the excess any one loss" elect not to appeal such judgement then the Insurer may elect to conduct such appeal at their own cost and expense and shall be liable for the costs and interest incidental thereto but in no event shall the liability of the Insurer exceed the sum(s) as specified in the Schedule.
- 2.8 It is understood and agreed that subject to the provisions of Conditions 2.1, 2.2, 2.3 and of any Endorsements attached to this Policy, this Policy is subject to the same warranties terms and conditions (except as regards the premium and amount and limit of liability and the renewal agreement if any and except as otherwise provided herein) as are contained in or as may be added to the Primary Policy. No amendment to the Primary Policy during the period of this Policy shall be effective in extending the scope of this Policy until agreed in writing by the Insurer.
- 2.9 It is a condition of this Insurance that the Primary Policy as specified in the Schedule shall be maintained in full force and effect during the Period of Insurance except for any reduction of the aggregate limits (if any) contained in the said Primary Policy solely by payment of claims in respect of losses occurring during the Period of Insurance.
- 2.10 The Insured shall give written notice to the Insurer as soon as practical of any occurrence which could on the basis of bodily injury and loss of or damage to property sustained reasonably be anticipated to involve an amount in excess of 75% of the Primary Policy limit where the Insured is liable for such bodily injury and loss of or damage to property. Solely for the purpose of reporting occurrences the Insured shall in all instances be considered legally liable for such bodily injury and loss of or damage to property.
- 2.11 If the Primary Insurer exercise a right under their policy to pay the limit of indemnity there under and only be liable for costs incurred up to the time of such payment then the Insurer under this Policy shall have the right to contest any claim against the Insured in the name of the Insured provided always that in this event the Insurer shall pay all legal costs and expenses incurred with their written consent after the date upon which the Primary Insurer shall have exercised the aforementioned right.
- 2.12 If by reason of the payment of any claim or claims by the Insurer of any Primary Policy as described in the Schedule during the Period of Insurance the amount of indemnity provided by such Primary Policy is
  - (a) partially reduced then this Policy shall apply in excess of the reduced amount of the Primary Policy for the remainder of the Period of Insurance
  - (b) totally exhausted then this Policy shall continue in force as Primary Policy until expiry hereof.

- 2.13 Premium designated as Deposit Premium is a deposit premium only which shall be credited to the amount of earned premium due at expiration of this Policy. When the final earned premium is computed at expiration and upon notice thereof to the Insured the Insured shall pay to the Insurer such final earned premium. If the total earned premium is less than the premium previously paid the Insurer shall return to the Insured the unearned portion paid by the Insured. The Insured shall maintain records of such information as is necessary for premium computation and shall send copies of such records to the Insurer at the end of the Period of Insurance and at such times during the Period of Insurance as the Insurer may direct. Premium designated as Minimum Premium shall represent the minimum amount of premium due to the Insurer for the Period of Insurance of this Policy.
- 2.14 The Insurer may cancel this Policy by giving 60 days notice by recorded delivery to the Insured or his agent and in such circumstances the Insured shall then become entitled to the return of a proportionate part of the premium corresponding to the unexpired Period of Insurance.
- 2.15 The proper law of this Policy shall be English law (or Scottish law where the Insured's Head Office is in Scotland) and the Courts of England (or Scotland where the proper law of the contract is Scottish) shall have exclusive jurisdiction in all disputes connected with this Policy.
- 2.16 The Insured shall notify the Insurer in writing of any material changes to the Business or risk. The Insurer reserves the right to accept or deny coverage at the time of such notification and to charge a separate rate and Premium for any such coverage.
- 2.17 No party other than the Insured shall be entitled to enforce any term of the Policy for its own benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

### 3. Extension

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#### Crisis Containment Management

- 3.1. The Insurer will reimburse the Insured on the basis detailed herein as a direct result of a *Crisis* commencing during the Period of Insurance and reported to the Insurer in accordance with this Extension.

Any *Crisis* arising out of, based upon or attributable to related, continuous or repeated *Insured Events* shall be considered a single *Crisis* for the purposes of this Extension.

The maximum amount payable by the Insurer under this Extension will be £100,000 any one *Crisis* and in the annual aggregate.

- 3.2. Subject to the Requirements set out in paragraph 3.6 of this Extension, for the purpose of this Extension only, the Insurer shall reimburse the Insured for *Crisis Consultant* fees and costs. Such fees and costs shall be approved and paid by the Insured and submitted to the Insurer for approval and reimbursement under this Policy. *Crisis Consultant* costs are limited to fees or costs incurred within the *Crisis Coverage Period*.

#### 3.3. Exclusions specific to this Extension:

The Insurer are not liable for the payment of any loss directly or indirectly caused by or resulting from:

- (a) circumstances that affect the industry in which the Insured conducts its business activities;
- (b) governmental regulations which affect another country or the industry in which the Insured conducts its business activities;
- (c) changes in population, customer tastes, economic conditions, seasonal sales variations, or competitive environment;
- (d) any fraudulent act committed by any of the Insured's senior executives.

#### 3.4. Definitions specific to this Extension:

- (a) *Adverse Publicity* means any negative reporting of an *Insured Event* in local, regional or national media (including but not limited to radio, television, newspaper and/or magazines) which has potential to cause a *Material Interruption*.
- (b) **Crisis** means any decisive, unstable or crucial time in the Insured's affairs or business resulting from an *Insured Event* that:
  - (i) has directly caused a *Material Interruption*; or
  - (ii) has the potential to cause:
    - (A) imminent *Financial Loss*; or
    - (B) *Adverse Publicity*;for the Insured if left unmanaged.
- (c) **Crisis Consultants** means the independent crisis consultants previously approved by the Insurer for use by the Insured in connection with a *Crisis*.

- (d) **Crisis Coverage Period** means the period of time commencing when the *Crisis* is first reported to the Insurer and ending not later than 30 days thereafter.
- (e) **Financial Loss** means:
  - (i) within a 48 hour period, the price per share of the Insured's common stock decreases by 10% net of the change in the Standard & Poor's Composite Index or any other comparable index used to measure the stock exchange in which the Insured lists its common stock; or
  - (ii) a decrease greater than 20% in the consolidated revenues of the Insured.
- (f) **Insured Event** means an occurrence that in the good faith opinion of the Insured comprises of an event or circumstance which in the absence of crisis containment management could potentially give rise to a claim under this Policy.
- (g) **Material Interruption** means a disruption or break in the continuity of the Insured's normal business operations, which:
  - (i) requires the direct involvement of all of the Insured's board of directors or senior executives and diverts their concentration from their normal operating duties; and
  - (ii) is likely to have a significant negative impact on the Insured's revenues, earnings or net worth.

### 3.5. Additional General Provisions applicable to this Extension

#### Changes in risk during the Period of Insurance

If during the Period of Insurance:

- (i) the Insured consolidates with or merges into, or sells all or substantially all of its assets to any other person or entity or group of persons and/or entities acting in concert; or
- (ii) any person or entity, whether individually or together with any other person or persons, entity or entities acquires an amount of the outstanding shares representing more than 50% of the voting power for the election of directors of the Insured, or acquires the voting rights of such an amount of such shares;

(either of the above events herein referred to as the "*Transaction*"),

then the cover provided under this Extension is amended so as to apply only to *Crisis* committed prior to the effective date of the *Transaction*.

The Insured shall give the Insurer written notice of the *Transaction* as soon as practicable but not later than 30 days after the effective date of the *Transaction*.

### 3.6. Requirements

Subject to the specific requirements set out in the paragraph below the Insured will, as a condition precedent to the obligations of the Insurer under this Extension of the Policy, give immediate notice to the Insurer of any *Crisis* by telephoning the CRISIS CENTRE HOTLINE available globally twenty-four hours a day, seven days a week at the following numbers:

UK / Europe / Rest of World: (free phone)	<b>001-713-260-5500</b>
USA / Canada: (toll free)	<b>1-866-926-8457</b>

Any event that meets the following conditions will be reported to the Insurer in the time period indicated:

- (i) any event that results in regional or national media coverage (print, radio or television) and relates to an *Insured Event*, must be reported to the Insurer within 24 hours of the media coverage, if the Insurer has not previously been notified of the event by the Insured;
- (ii) any event that results in the filing of a claim or litigation against the Insured and relates to an *Insured Event*, must be reported to the Insurer within 48 hours of the claim/litigation filing, if the Insurer has not previously been notified of the event by the Insured.

Reporting of an event does not guarantee that it will be considered an *Insured Event*. In all cases, when the initial reporting of the event under this Policy is made verbally, written notification containing a complete description of the event must be submitted, when requested by the Insurer, by writing to The Contingency Claims Manager, Chartis Insurance UK Limited, 2-8 Altyre Road, Croydon CR9 2LG.

## COMPLAINTS

If you have any questions or concerns about your policy or the handling of a claim you should, in the first instance, contact your broker who is your agent in this regard.

If you would like to comment directly upon the service we are providing we would like to hear from you. Please write to:-

**XSPL.CO.UK LTD**  
Little Braxted Hall  
Little Braxted  
Witham  
Essex CM8 3EU

If you would like to comment directly upon the service the **insurer** is providing, please note the following:

Every effort is made to ensure you receive a high standard of service. If you are not satisfied with the service you have received, you should contact:-

Customer Relations Manager  
Chartis Insurance UK Limited  
2-8 Altyre Road  
Croydon  
CR9 2LG  
Email: [uk.customer.relations@chartisinsurance.com](mailto:uk.customer.relations@chartisinsurance.com)

To help us to deal with your comments quickly, please quote your Policy/Claim Number and Policyholder/Insured Name

We will do our best to resolve any difficulty directly with you, but if we are unable to do this to your satisfaction you may be entitled to refer any dispute to the Financial Ombudsman Service who will review your case. The address is:

Financial Ombudsman Service  
South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR

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## **INSURER DETAILS**

**Insurer:                   Chartis Insurance UK Limited**

This insurance is underwritten by Chartis Insurance UK Limited which is authorised and regulated by the Financial Services Authority (FSA number 202628). This information can be checked by visiting the FSA website ([www.fsa.gov.uk/register](http://www.fsa.gov.uk/register)). Chartis Insurance UK Limited is a member of the Association of British Insurers and a member company of American International Group, Inc. Registered in England: company number 1486260. Registered address: The Chartis Insurance Building, 58 Fenchurch Street, London, EC3M 4AB.