

PROFESSIONAL INDEMNITY POLICY WORDING

EXCESS LAYER

April 2022



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Important information about your Policy with Aqueous

The **Policy**, Schedule and any applicable **Endorsements** are to be read together as one document and constitute the legal agreement between the Insured named on the Schedule and the **Insurer**. These documents should be examined in detail to ensure the **Insured's** requirements are met. In the event of any uncertainty, please contact your insurance adviser.

The **Insurer's** acceptance of this risk is based on the information presented to the **Insurer** in a **Proposal** being a **Fair Presentation**.

The **Insurer** will provide the insurance described in this **Policy**, for the **Period of Insurance**, and any subsequent period for which the Insured named on the Schedule shall pay, and the **Insurer** shall agree to accept, a **Premium**.

This **Policy** operates on a 'claims-made' basis. This means that the **Insurer** will only provide insurance for Claims first made against the **Insured** and notified to the **Insurer** during the **Period of Insurance**.

There are definitions throughout this **Policy** which are highlighted in bold and are used to explain what a word means. Details of the definitions that apply throughout the **Policy** can be found in the Definitions section of the Aqueous Policy Wording.

To help the **Insured** to understand the cover within the **Policy**, the **Policy** has been broken down into sections. Under the "What is Covered" section there is information on the insurance the **Policy** provides. This must be read together and in conjunction with the Policy Conditions.

Renewal Procedure

The **Insurer** does not have to offer renewal of the **Policy** and cover will cease on the expiry date of the **Period of Insurance**.

Prior to the expiry date of the **Period of Insurance** each year the **Insurers Agent** may request the **Insured** to complete a renewal declaration form. Renewal will not be considered unless a satisfactory renewal declaration is received by the **Insurers Agent** when requested prior to expiry date of the **Period of Insurance**. If the **Insured** does not submit a renewal declaration that is accepted by the **Insurer** and terms for renewal are not agreed prior to the expiry date of the **Period of Insurance**, then the **Policy** will lapse at the expiry date of the **Period of Insurance**. The **Policy** is renewable provided that the **Insurer** agrees to accept the Premium for any subsequent **Period of Insurance**.

Data Protection

The **Insurer** and the **Insurer's Agent** will process the information they hold about the **Insured**, its employees and other individuals connected to the **Insured** (including their personal data) for the purposes of providing insurance, fraud prevention, debt recovery and handling claims, as outlined in more detail in the Privacy Notice, a copy of which is available at <https://www.aqueousuw.com/privacy-notice>. This may mean providing some details to third parties involved in providing insurance cover, or maintaining fraud databases. These third parties may include law enforcement and other statutory bodies, insurance carriers, third-party claims adjusters, fraud detection and prevention services, reinsurance companies, insurance regulatory authorities and other companies that provide a service to the **Insurer**. For more detail on the way in which personal data will be processed in connection with this **Policy**, please refer to the Privacy Notice.

The **Insured** will ensure that all personal data provided to the **Insurer** and the **Insurer's Agent** has been collected and provided in compliance with all applicable laws. The **Insured** will notify data subjects of the fact that their personal data will be provided to the **Insurer** and the **Insurer's Agent** and the purposes for which their personal data will be used.

Definitions

These definitions apply to this **Policy**. If a word or phrase has a defined meaning it will be highlighted in bold and will have the same meaning wherever it is used in this **Policy**.

1 Endorsement shall mean

An amendment to the policy terms and conditions including amendments described as Endorsement in the Schedule.

2 Fair Presentation shall mean

the statutory duty upon the **Insured** more particularly described in Part 2 of the Insurance Act 2015.

3 Insured shall mean

any person or entity named on the Schedule as being entitled to an indemnity under the **Primary Policy**

3 Insurer shall mean

the Insurer or Insurers specified in the Schedule.

4 Insurers Agent shall mean

Aqueous Management Limited trading as Aqueous Underwriting (Registered in England under company number 09634781) Registered at 10th Floor, 5 Churchill Place, London, E14 5HU.

5 Limit of Indemnity shall mean

the Limit of Indemnity specified in the Schedule.

6 Policy shall mean

collectively this policy wording, the Schedule (including any issued in substitution) and any **Endorsement**.

7 Primary Policy shall mean

the policy specified in the Schedule.

8 Period of Insurance shall mean

the Period of Insurance as specified in the Schedule inclusive of both the Start date and Expiry date.

9 Premium shall mean

the sum specified in the Schedule.

10 Proposal shall mean

any proposal form, **Statement of Fact**, information provided or declaration (including at renewal) given by, or on behalf of the **Insured**, in respect of this **Policy**.

11 Statement of Fact shall mean

the document which contains:

- A) the **Insured's Fair Presentation** of the risk/all material information relevant to this **Policy**; and
- B) assumptions made by the **Insurer** about material information.

The **Insured** must inform the **Insurer** as soon as possible in the event that information or assumptions are incorrect.

12 Underlying Insurance shall mean

those policies specified on the Schedule, including the **Primary Policy**.

What is Covered (Insurance Agreement)

1 Excess Layer Insurance

Where all indemnities available to the **Insured** under any **Underlying Insurance** have been exhausted by the payment of losses under any such **Underlying Insurance**, the **Insurer** shall pay to, or on behalf of, the **Insured**, that proportion of loss which exceeds the indemnity limit under any such **Underlying Insurance** up to the **Limit of Indemnity** upon the terms conditions and limitations of the **Primary Policy**.

What is Not Covered

1 Asbestos

The **Insurer** will not be liable for any loss arising out of, based upon, attributable to or in any way involving crocidolite, amosite, chrysotile, fibrous actinolite, fibrous anthophyllite or fibrous tremolite, in any form including fibres, particles or derivatives or any material or mixture containing any of those minerals.

2 North American Jurisdiction

The **Insurer** will not be liable for any loss arising out of a claim brought within United States of America and Canada and in each case its territories and possessions and any state or political sub-division thereof.

3 Pollution

The **Insurer** will not be liable for any loss arising out of, based upon, attributable to or in any way involving any

- A) actual or alleged or threatened discharge, treatment, removal, disposal, seepage, dispersal, emission, release or escape of any solid, liquid or gaseous or thermal contaminant, irritant or pollutant or any biological agent that is a danger to human health, but not including Asbestos; or
- B) regulatory order, direction or requirement to test for, monitor, remove, contain, treat or neutralise any such substance.

4 Radioactive Contamination

The **Insurer** shall not be liable for any loss arising out of, based upon, attributable to or in any way involving any:

- A) ionising radiations or contamination by radioactivity from any nuclear fuel, waste or substance or from any nuclear waste from the combustion of nuclear fuel; or
- B) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

5 Sanctions

The **Insurer** shall not be liable for any loss arising out of, based upon, attributable to or in any way involving any situation that would expose the **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.

6 War Risks

- A) any war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not) civil war, rebellion, revolution, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, martial law; or
- B) confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public authority.

Policy Conditions

1 Alteration

No material amendment to the terms of the **Underlying Insurance** shall apply in respect of this **Policy** unless and until agreed in writing by the **Insurer**.

2 Aqueous Management Ltd trading as Aqueous Underwriting

The **Insurers Agent** is the agent of the **Insurer** and not the **Insured**. The **Insurers Agent** will act on behalf of the **Insurer** in underwriting the **Policy** and in relation to the rights and obligations of the **Insurer** under this **Policy**. Accordingly, reference to the **Insurer** is to be construed as to include the **Insurer's Agent** where appropriate.

3 Choice of Law & Disputes

Unless otherwise provided for in the Schedule, this **Policy** and any disputes arising from, or in connection with, it shall be governed in accordance with the laws of England and Wales and the **Insured** and the **Insurer** agree to submit to that jurisdiction for the determination of any such disputes.

Any dispute arising from, or in connection with, this **Policy** may be referred, by either the **Insured** or the **Insurer** to an appropriate mediation service.

4 Claim Participation

The **Insurer** shall have the right, at their sole discretion, but not the obligation to effectively associate with the **Insured** in the defence and settlement of any claim that appears to be reasonably likely to involve the **Insurer**, including, but not limited to, effectively associating in the negotiation of a settlement. Only those settlements, stipulated judgments and costs and expenses to which the **Insurer** has consented, shall be recoverable as loss under the terms of this **Policy**. The **Insurer's** consent shall not be unreasonably withheld.

The **Insured** shall give the **Insurer** full cooperation and such information as they, or their representatives, may reasonably require. The failure of the **Insured** to exercise any right under this policy condition shall not act as a waiver or limit of right of the **Insurer** to exercise such rights at any time.

Where all indemnities available to the **Insured** under any **Underlying Insurance** are exhausted with the effect that this **Policy** operates as primary insurance, the claims obligations under the **Primary Policy** shall prevail over this policy condition.

5 Depletion of Underlying Insurance

If all indemnities available to the **Insured** under any **Underlying Insurance** are:

- A) exhausted solely as a result of payment of losses thereunder, then this **Policy** shall, subject to the **Limit of Indemnity** and to the other terms, conditions and limitations of this **Policy** save for Policy Condition 4 (Claim Participation), continue for subsequent losses as primary insurance and any retention or excess specified in the **Primary Policy** shall similarly apply to this **Policy**.
- B) depleted, but not exhausted as described in A) above, then this **Policy** shall, subject to the **Limit of Indemnity** and to the other terms, conditions and limitations of this **Policy**, continue for subsequent losses, as excess insurance over the balance of any available limits of indemnity remaining under such **Underlying Insurance**.

If any **Underlying Insurance** specifically provides for a sub-limit of indemnity which is:

- C) exhausted, solely as a result of payment of losses thereunder, then this **Policy** shall not provide any coverage in respect of such sub-limit of indemnity ; or
- D) depleted, but not exhausted as described in C) above, then this **Policy** shall, subject to the **Limit of Indemnity**, and to any other terms, conditions and limitations of this **Policy**, continue for subsequent losses that would be subject to such sub-limit of indemnity but only to the extent that the amount payable under this **Policy** shall not exceed the balance of any remaining sub-limit of indemnity under any **Underlying Insurance** and shall be part of and not in addition to the **Limit of Indemnity** of this **Policy**.

Losses shall be deemed to have been paid under any **Underlying Insurance** if all or any of the insurers subscribing to it have paid, or have agreed to pay such losses, or have had their liability to pay such losses established by judgment, arbitration award or other final binding adjudication. Payment shall be deemed to have been made on the date of such payment, agreement or adjudication, whichever occurs first.

If any insurer subscribing to any **Underlying Insurance** is, or becomes, insolvent then, for the purposes of this **Policy**, the insolvent subscribing insurer shall be deemed to have paid in full the amount of their liability for losses under such **Underlying Insurance** provided that:

- A) any other insurer subscribing to the same **Underlying Insurance** pays or agrees to pay or has its liability to pay established by judgment, arbitration award or other final binding adjudication; or
- B) the **Insured** establishes that the **Insurer** would in any event be liable under this **Policy** but for that insolvency.

6 **Fraudulent Claims**

If the **Insured** shall make to the **Insurer** any claim for an indemnity knowing the same to be false or fraudulent then the **Insurer's** rights and remedies shall be as set out in s12 of the Insurance Act 2015.

7 **Inconsistent Terms**

In the event of inconsistency between the terms, conditions, endorsements of the **Underlying Insurance** and the **Policy**, the **Policy** shall prevail.

The **Policy** shall not give any wider indemnity than the **Underlying Insurance**. Any losses excluded under the **Underlying Insurance** will also apply to the **Policy**.

8 **Incorporation of the Insurance Act 2015**

The **Insurer** and **Insured** agree that the statutory provisions within the Insurance Act 2015 are to be given full effect and in the event of inconsistency between this **Policy** and the Act, the Act shall prevail.

9 **Law Applicable to this Policy**

Unless otherwise provided for in the Schedule, the construction and interpretation of this **Policy** shall be determined in accordance with the law of England and Wales.

10 **Limit of Indemnity**

The maximum amount payable by the **Insurer** under this **Policy** shall not exceed the **Limit of Indemnity** and any series or aggregation language applicable to the **Underlying Insurance** shall apply in the same terms to the **Limit of Indemnity** under this **Policy**.

Where the **Underlying Insurance** provides cover for defence costs and expenses in addition to the limits of indemnity, then, unless otherwise provided for in the Schedule to this **Policy**, then provided the **Insurer's** prior consent is obtained for the costs being incurred, the **Insurer's** liability for defence costs and expenses shall be limited to that proportion that the available **Limit of Indemnity** bears to the amount payable to dispose of the claim.

11 Notification of Claims

Where the **Primary Policy** requires or permits notice to be given to the subscribing insurers the **Insured** shall have the same obligations and rights to notify the **Insurer** under this **Policy**. Any such notice shall be made in writing to:

Aqueous Claims Team
Kennedys Law LLP
Broomhay House
Blackbrook Business Park
Taunton TA1 2PX
Email: aqueous.claims@kennedyslaw.com

The Claims Team can be contacted on the telephone: 01823 692 600

In respect of any matter notified, the **Insurer** shall be notified of all significant developments.

12 Subrogation and Recoveries

Following any payment under this **Policy**, the **Insurer** shall be subrogated to the extent of any payment made hereunder to all of the **Insured's** rights of recovery against any person or other entity, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

Any recoveries made by the **Insurer** will be distributed in the following order:

- A) the costs, disbursements and expenses reasonably and necessarily incurred in relation to such recoveries shall be paid to the parties who incurred them;
- B) to the **Insurer** in relation to any indemnity paid under this **Policy**;
- C) to the insurers subscribing to any applicable **Underlying Insurance** in relation to any payment of losses made under any such **Underlying Insurance** ; and then
- D) to the **Insured**.

13 Underlying Insurance

During the **Period of Insurance** the **Insured** shall maintain any **Underlying Insurance** in full effect and affording coverage at least as broad as the **Primary Policy**, except for any depletion of the limits of indemnity of such **Underlying Insurance**.

This **Policy** will terminate immediately upon the termination of any **Underlying Insurance**, whether cancelled by the **Insured** or subscribing insurer. Notice of cancellation or non-renewal of any such insurance given by any subscribing insurer shall be treated as due notice of the cancellation or non-renewal of this **Policy** by the **Insurer**.

Making a Complaint

The **Insurers Agent** aims to ensure that all aspects of the **Insured's** insurance are dealt with promptly, efficiently and fairly. If the **Insured** has any concerns about the **Policy** and wishes to complain, please contact the **Insurers Agent**:

Email: complaints@aqu-uw.com

If the **Insured** has a complaint about the handling of a **Claim** and wishes to complain, please contact Kennedys Law:

Post:

Kennedys Law LLP
Broomhay House
Blackbrook Business Park
Taunton
TA1 2PX

Email: aqueous.complaints@kennedyslaw.com

Where the **Insured** remains dissatisfied and where the **Insurer** is Lloyd's capacity, the **Insured** may refer the complaint to Lloyd's, who will investigate the complaint and provide a final response. Lloyd's contact details are:

Post:

Complaints
Lloyd's
Fidentia House
Walter Burke Way
Chatham Maritime
Chatham
Kent
ME4 4RN

Telephone: 020 7327 5693

Email: complaints@lloyds.com

Where the **Insured** is an Eligible Complainant as specified within the FCA's complaints handling rules, the **Insured** has the right to refer the complaint to the Financial Ombudsman Service (FOS). The Financial Ombudsman Service (FOS) is an independent body that arbitrates on complaints. This referral must be made within 6 months from the date of the final response. They can be contacted at:

Post:

Financial Ombudsman Service, Exchange Tower, London, E14 9SR

Telephone:

0800 0234567 (free from standard landlines, mobiles may be charged)
0300 1239123 (same rate as 01 or 02 numbers, on mobile phone tariffs)

Email: complaint.info@financial-ombudsman.org.uk

Website: www.financial-ombudsman.org.uk

The **Insured** has six months from the date of our final response to refer the complaint to the FOS. Please note that the FOS can only consider your complaint if you have already given us the opportunity to deal with it.

A copy of our complaint's procedure is available on request

Aqueous Underwriting is a trading name of Aqueous Management Limited (AqML), an appointed representative of Davies MGA Services Limited, a firm authorised and regulated by the Financial Conduct Authority (FCA) under Firm Reference Number (FRN) 597301 to carry on insurance distribution activities.

AqML is registered in England and Wales. Company Number 09634781.
Registered Address at 10th Floor, 5 Churchill Place, London, E14 5HU.

The above details can be checked on the Financial Services Register by visiting the FCA website and searching by FRN.



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