

**PROFESSIONAL INDEMNITY FOR THE
MARKETING AND COMMUNICATIONS
INDUSTRY (NEGLIGENCE BASED) – MAC PI**

The General Terms and Conditions and the following terms and conditions all apply to this section.

**SPECIAL
DEFINITIONS FOR
THIS SECTION**

Business activity	The activities shown in the schedule, which you perform in the course of your business .
Defence costs	Costs incurred with our prior written agreement to investigate, settle or defend a claim against you .
You/your	Also includes any person who was, is or during the period of insurance becomes your partner or director or senior manager in actual control of your operations.

**WHAT IS
COVERED**

Claims against you

If during the **period of insurance**, and as a result of **your business activity** within the **geographical limits** for clients, any party brings a claim against **you** for:

- a. negligence or breach of a duty of care,
- b. negligent misstatement or negligent misrepresentation,
- c. infringement of intellectual property rights including copyright, patent, trademark, music rights, performance rights, broadcasting rights or moral rights or any act of passing-off,
- d. defamation,
- e. dishonesty of **your** individual partners, directors, employees or self-employed freelancers directly contracted to **you** and under **your** supervision,

we will indemnify **you** against the sums **you** have to pay as compensation.

We will pay **defence costs** but **we** will not pay costs for any part of a claim not covered by this section.

**WHAT IS
COVERED**

**Avoiding a potential
claim against you**

If **your** client has reasonable grounds for being dissatisfied with the work **you** have done, refuses to pay for any or all of it, including amounts **you** legally owe to sub-contractors at the date of the refusal, and threatens to bring a claim against **you** for more than the amount owed, it may be possible to settle the dispute with the client by **your** agreeing not to press for the disputed amount. If so, **we** will pay **you** the amount owed to **you** at that time if **we** believe that this will avoid a legitimate claim for a greater amount and **we** have given **our** prior written approval to settling in this way and for this amount.

WHAT IS COVERED

Alternatively, if it is not possible to reach agreement with the client on this basis but **we** still believe that by not pressing for the disputed amount **you** will avoid a legitimate claim or counterclaim for a greater amount, **we** will pay the amount owed to **you** at that time. If a claim is still brought, **we** will deal with it but **our** total payment, including what **we** have already paid **you** or on **your** behalf, will not exceed the applicable limit of indemnity shown in the schedule. **You** must return the amount **we** have paid if **you** eventually recover the debt less **your** reasonable expenses.

Once **we** agree to make this payment **you** will assign to **us** such rights as **you** have in relation to the amounts owed to **you**.

We will not make any payment for any part of a claim not covered by this section.

Your own losses

Potential claims capable of rectification

If while performing **your business activity you**, but not **your** client, become aware of anything covered by (a) to (d) above which is capable of being successfully rectified without leading to a claim against **you** by that client, **we** will pay the additional expenses directly incurred with **our** prior written consent in rectifying the problem. **We** will only do this if **we** agree that these expenses are less than the amount of a potential claim covered by this insurance which would have arisen if the problem was not rectified.

Loss of documents

If during the **period of insurance** any document, information, data, artwork or model of **yours** which is necessary for the performance of **your business activity** is lost, damaged or destroyed while in **your** possession, **we** will cover **you** against the cost of restoring or replacing it.

WHAT IS NOT COVERED

Matters specific to your business

- A. **We** will not make any payment for any claim or loss directly or indirectly due to:
1. any investment of, or direct advice on the investment of, client funds.
 2. the outcome or operation of any game promotion, contest or lottery.
 3. anything shown or described in any advertising, educational or promotional material which results in any adverse change in a claimant's health, lifestyle or relationship with others.
 4. the mimicking in any way by anyone of anything shown in or described in any advertising, educational or promotional material.
 5. any stunt or other activity during the making or production of any advertising, educational or promotional material.
 6. breach of confidence or misuse of any information or infringement of any right to privacy.
 7. product disparagement or breach of any comparative advertising regulations.
 8. any statement, representation or information concerning **you** or **your business** contained in **your** accounts, reports or financial statements.

**WHAT IS NOT
COVERED**

**Construction and
erection work
Matters insurable
elsewhere**

9. any obscenity, blasphemy or pornographic material.
10. any product, including alcohol, tobacco, nicotine or any pharmaceutical product, which is, or becomes, defective, dangerous or hazardous to health in any way.
11. **your** operation or administration of any pension or employee benefit scheme or trust fund, or the sale or purchase of or dealing in any stocks, shares or securities or the misuse of any information relating to them, or **your** breach of any legislation or regulation relating to these activities.
12. **your** breach of any taxation, competition, restraint of trade or anti-trust legislation or regulation.
13. any pollution or contamination, including noise, electromagnetic fields, radiation and radio waves.
14. transmission of a computer **virus**.
15. **your** liability under any contract which is greater than the liability **you** would have at law without the contract.
16. any construction or erection work.
17. the death or any bodily or mental injury or disease suffered by anyone.
18. anyone's employment with or work for **you**, or any breach of an obligation owed by **you** as an employer or any kind of discrimination, harassment or unfair treatment.
19. the ownership, possession or use of any land or building, any animal, any aircraft, watercraft or any motor vehicle.
20. the loss, damage or destruction of any tangible property. This does not apply to claims for documents in **your** care, custody or control in connection with a **business activity** for a client or to **your** own loss under the cover for loss of documents in WHAT IS COVERED.
21. the loss, damage or destruction of exposed or unexposed film, negative, prints or sound tapes or video tapes or visual images or sound held in any media or any library stock.
22. the loss or distortion of any data of **yours** held electronically.
23. the loss, damage or destruction of any bearer bonds, coupons, share certificates, stamps, money or other negotiable paper.
24. any personal liability incurred by a director or officer of **yours** when acting in that capacity or managing **your** business, or **your** breach of any fiduciary duty, or any statement, representation or information concerning **you** or **your** business contained in **your** accounts, reports or financial statements.
25. **your** supply, manufacture, sale, installation or maintenance of any product.

**WHAT IS NOT
COVERED**

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|---|-----------|---|
| | 26. | any act, breach, omission or infringement you deliberately, spitefully, dishonestly or recklessly commit, condone or ignore. This does not apply to any claim under the dishonesty cover in WHAT IS COVERED, but we will not in any event provide cover to any party who actually commits, condones or ignores any dishonesty. |
| Pre-existing problems | 27. | any shortcoming, or alleged shortcoming, in your work or your own loss which you knew about, or ought reasonably to have known about, before we agreed to insure you . |
| | 28. | any shortcoming, or alleged shortcoming, in your work or your own loss which you knew about, or ought reasonably to have known about, before we agreed to insure you . |
| Date recognition | 29. | date recognition. |
| War, terrorism and nuclear | 30. | war, terrorism or nuclear risks. |
| | 31. | asbestos risks |
| | B. | We will not make any payment for: |
| Claims brought by a related party | 1. | any claim brought by an insured within the definition of you or any party with a financial, executive or managerial interest in you , including any parent company or any party in which you have a financial, executive or managerial interest, including any subsidiary company. This does not apply to a claim based on a liability to an independent third party directly arising out of the performance of your business activity . |
| Restricted recovery rights | 2. | that part of any claim where your right of recovery is restricted by any contract. |
| Consequential loss | 3. | your lost profit, mark up or liability for VAT or its equivalent. |
| | 4. | trading loss, trading liability, management time, lost time, lost business or commissions from any other client, potential client or account. |
| Non-compensatory payments | 5. | fines and contractual penalties, aggravated, punitive or exemplary damages, and additional damages under section 97(2) of the Copyright, Designs and Patents Act 1988 or any statutory successor to that section. |
| Claims outside the applicable courts | 6. | any claim, including arbitration, brought outside the countries set out in the schedule under Applicable Courts.

This applies to proceedings in the applicable courts to enforce, or which are based on, a judgment or award from outside the applicable courts. |

**HOW MUCH WE
WILL PAY**

The most **we** will pay for the total of all claims, losses and **defence costs** is the single limit of indemnity shown in the schedule, irrespective of the number of claims. **You** must pay the **excess** shown in the schedule for each claim, including **defence costs**.

For lost, damaged or destroyed documents, information, data, artwork or models, **we** will pay the reasonable expenses **you** incur with **our** prior written consent in restoring or replacing them.

**Paying out the limit
of indemnity**

At any stage of a claim **we** can pay **you** the applicable limit of indemnity or what remains after any earlier payment from that limit. This includes **defence costs** already incurred at the date of **our** payment. **We** will then have no further liability for any claim, loss or costs.

**YOUR
OBLIGATIONS****If a problem arises**

We will not make any payment under this section:

1. unless **you** notify **us** promptly of the following within the **period of insurance** or at the latest within 14 days after it expires for any problem **you** first become aware of in the seven days before expiry:
 - a. **your** first awareness of a shortcoming in **your** work for a client which is likely to lead to a claim against **you**. This includes any criticism of **your** work even though regarded by **you** as unjustifiable.

If **we** accept **your** notification **we** will regard any subsequent claim as notified to this insurance.
 - b. any claim or threatened claim against **you**.
 - c. **your** discovery, or the existence of reasonable grounds for **your** suspicion, that any partner, director, employee or self-employed freelancer has acted dishonestly.
 - d. **your** discovery that any document, information, data, artwork or model of **yours** has been lost, damaged or destroyed.
2. if, when dealing with **your** client or a third party, **you** admit that **you** are liable for what has happened, make any offer, deal or payment, unless **you** have **our** prior written agreement. **You** must also not reveal the amount of cover available under this insurance, unless **you** had to give these details in negotiating a contract with **your** client or have **our** prior written agreement.

**CONTROL OF
DEFENCE**

We have the right, but not the obligation, to take control of and conduct in **your** name, the investigation, settlement or defence of any claim. If **we** think it necessary **we** will appoint an adjuster, solicitor or any other appropriate person to deal with the claim. **We** may appoint **your** own solicitor but on a similar fee basis as **our** solicitor and only for work done with **our** prior written approval. Proceedings will only be defended if there is a reasonable prospect of success and taking into account the commercial considerations of the costs of defence.