



Video, Film and Television Producers Liability (E&S) Policy form

This policy is claims made and defense costs are within the policy limit



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About this policy

Please note that all sums payable under this policy, including but not limited to all defense cost payments, are included within and are not in addition to the policy limit. It is also important that you understand the full extent of your and our rights and duties under this policy so we urge you to read the entire policy carefully. All words and phrases that appear in bold type (except headings) have special meaning and are defined under DEFINITIONS (Section VIII) of this policy.

I. Our promise to you

We will indemnify you for **defense costs** and **damages** incurred as a result of a **claim** that falls within WHAT HAS TO GO WRONG (Section II) under this policy, WHAT WE WILL PAY (Section IV) under this policy, and HOW MUCH WE WILL PAY (Section V) under this policy.

We will not make any payment in connection with any **claim** unless we are notified in accordance with WHAT YOU MUST NOTIFY AND WHEN (Section III) under this policy, the premium and applicable **retention** are paid, and you are in compliance with YOUR OBLIGATIONS TO US (Section VII) under this policy. Also, we will not make any payment that is excluded by WHAT WE WILL NOT PAY (Section VI) under this policy.

II. What has to go wrong

Media and personal
injury liability

The performance of **film and program production activities** by you or anyone on your behalf results in a **claim** first made against you during the **policy period** arising from the **insured production(s)** or **advertising**, and you report the **claim** to us during the **policy period**, regardless of where such **claim** is brought, for any actual or alleged:

- a. copyright infringement, trademark infringement, trademark dilution, trade dress infringement, publicity rights violations, cyber squatting violations, moral rights violations, any act of passing-off, or any misappropriation of content, formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork;
- b. breach of a license you have acquired to use a third party's trademark and/or copyrighted material, but only to the extent your use inadvertently exceeds limitations expressly set forth in the license regarding the territory, duration, or media in which the material may be used and only if such breach is asserted in conjunction with and based on the same factual allegations as a **claim** under (a) above;
- c. plagiarism, piracy, or breach of an implied-in-fact or implied-in-law contract based on your use of a third party's creative idea;
- d. defamation, including but not limited to libel, slander, trade libel, product disparagement, and injurious falsehood;
- e. infliction of emotional distress or outrage;
- f. breach of any duty of confidentiality, invasion of privacy or violation of any other legal protections for personal information, including but not limited to false light, intrusion upon a person's seclusion, public disclosure of a person's private information, misappropriation of a person's picture, name, voice or identity for commercial gain;
- g. failure to give credit or attribution of authorship in accordance with any agreement to which you are a bound signatory; and/or
- h. unfair competition, deceptive business practices, or false designation of origin, but only when asserted in conjunction with and based on the same factual allegations as a **claim** under (a), (b), (c), (d) or (e) above.

III. What you must notify and when

A. Claim

You must notify us of **claims** against you as soon as practicable and in any event within the **policy period**. Proper notification of **claims** must be sent in accordance with the instructions set forth under the Declarations.



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B. Potential claim

You may notify **us** of **potential claims** under this policy. If **you** do, such notification must be provided as soon as practicable and within the **policy period**, and must to the fullest extent possible identify the particulars of the **potential claim**, including identifying the potential claimant(s), the likely basis for liability, the likely demand for relief, and any additional information about the **potential claim** that **we** reasonably request. If such a **potential claim** notification is made to **us** then **we** will treat any **claim** arising from the same particulars as that notification as if it had first been made against **you** on the date **you** properly notified **us** of it as a **potential claim**, even if that **claim** is first made against **you** after the **policy period** has expired. Proper notification of **potential claims** must be sent in accordance with the instructions set forth under the Declarations.

IV. What we will pay

Payments toward
defense costs

We will pay covered **defense costs** as incurred by **you**.

Payments toward
claim resolution

We will pay covered **damages** as incurred by **you**.

Payments toward your own
declaratory relief actions

We will pay reasonable attorney's fees incurred by **you** to prosecute **your** own declaratory relief action if:

- a. a claimant has advised **you**, in writing, that **you** are committing copyright or trademark infringement;
- b. after that claimant has asserted such a written **claim**, and after **you** have filed a declaratory relief action directly in response to that **claim**, the claimant files a counterclaim against **you** alleging copyright or trademark infringement; and
- c. the counterclaim is covered under this policy and pending against **you** while **you** are prosecuting **your** declaratory relief action.

Payments on your behalf

We will always advance covered **defense costs**, **damages**, and payments toward **your** own declaratory relief actions as described above, in excess of the applicable **retention**, rather than require **you** to pay those sums in the first instance.

V. How much we will pay

Our maximum payment

The **policy limit** is the maximum **we** will pay under this policy for any single **claim** (inclusive of **defense costs** and **damages**) and the maximum **we** will pay for the total aggregate of all **claims** (inclusive of **defense costs** and **damages**) and all other payments expressly covered under this policy.

Upon payment of the **policy limit**, **our** obligations under this policy shall be completely fulfilled and **we** shall have no further liability of any kind under this policy. At any time, **we** can pay to **you** the remainder of the **policy limit**, after which **we** will have no further liability of any kind under this policy.

VI. What we will not pay

Exclusions

We will not make any payment, including **defense costs** and **damages**, toward any portion(s) of any **claim** for, alleging, or arising from:

- a. any infringement or use of a patent or any misappropriation, use, or disclosure of a trade secret;
- b. any merchandising unless this has been specifically endorsed to the policy.;
- c. any soundtrack album or soundtrack CD unless this has been included in the description of the **insured production(s)** as stated on the Declarations;
- d. any title of the **insured production(s)** unless a satisfactory "Title Search and Report" has



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- been received and approved by **us** and endorsed to the policy;
- e. any fraudulent or dishonest conduct or willful violation of law, whether committed by **you** or by another whose actions **you** have ratified or condoned; provided, however, that this exclusion will not apply until such conduct or violation has been established by final decision in a judicial, administrative or alternative dispute resolution proceeding, or by **your** own admission in such a proceeding or otherwise (or by the admission in such a proceeding or otherwise of the person whose actions **you** have ratified or condoned), at which time **you** shall reimburse **us** for all payments made by **us** in connection with any **claim** arising from such conduct or violation of the law and **our** obligations under this policy with respect to such **claim** shall cease;
 - f. any unfair competition; deceptive trade practices; restraint of trade or violation of any antitrust or consumer fraud statute, legislation or regulation; however, this exclusion will not apply to any covered portion of any **claim** for unfair competition, deceptive trade practices, or false designation of origin under WHAT HAS TO GO WRONG (Section II) (h);
 - g. any enforcement of any state or federal regulation, including but not limited to any regulation promulgated by the Federal Trade Commission, Federal Communications Commission, Federal Election Commission or the Securities and Exchange Commission;
 - h. any liability or breach of any duty or obligation owed by **you** due to any statement, representation (express or implied), or omission in respect of **your** financial reports or filings, or directly or indirectly arising from any fiduciary duty owed by **you** or financial advice given by **you**;
 - i. any liability or breach of any duty or obligation owed by **you** as an employer, including but not limited to any allegation of discrimination, harassment, wrongful termination, or arising from any duty or obligation owed by **you** in connection with the administration of any health, pension, or other form of employee benefit plan;
 - j. any person or entity falling within the definition of **you**; provided however, this exclusion will not apply to any **claim** solely for or arising from **film or program production activities** occurring when the claimant was not employed by or otherwise working for any of the rest of **you**;
 - k. **your** provision of any sweepstakes, gambling activities or lotteries or from any over redemption or under redemption of coupons, discounts, awards or prizes from advertisements, promotions, contests or other games of chance;
 - l. any pollution, contamination, or toxic exposure;
 - m. any bodily injury, including but not limited to death and emotional injury; however, this exclusion will not apply to any portion of a covered **claim** seeking **damages** for emotional anguish or distress;
 - n. any damage to, or destruction or loss of use of any tangible property;
 - o. any intentionally false, fraudulent, deceptive, or misleading **advertising** with respect to the **insured production(s)**; and this exclusion shall apply separately from and not be subject to any of the limitations set forth in paragraph (e) above;
 - p. any breach of any written, oral, express or implied contract or warranty; provided, however, that this exclusion will not apply to any covered liability **assumed under agreement**; to any covered portion(s) of a **claim** under WHAT HAS TO GO WRONG (Section II) (b), (c), (g) or (h); or to any legal obligation **you** would otherwise owe in the absence of such contract or warranty;
 - q. any unauthorized use of or access to **your** computer network or computer code;
 - r. any violation of:
 - i. the CAN-SPAM Act of 2003 or any subsequent amendments to that Act;
 - ii. the Telephone Consumer Protection Act (TCPA) of 1991 or any subsequent amendments to that Act; or
 - iii. any other law, regulation or statute relating to unsolicited communication, distribution, sending or transmitting of any communication via telephone or any other electronic or telecommunications device; or
 - s. any matter that prior to the first date of the **policy period** (or if this policy is a renewal then prior to the first date of the first policy issued to **you** by **us** and from which the current policy



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forms an unbroken chain of successive policies issued to **you by us**), **you** knew or reasonably ought to have known would be likely to lead to a **claim**.

VII. Your obligations to us

Your representations

You agree that all representations (whether oral or written) made by **your** board member(s), executive officer(s), in-house counsel, executive producer(s) or risk manager(s) in connection with the application for this policy and all materials submitted by them or on **your** behalf in connection with the application for this policy are true, accurate, and not misleading, and were relied upon by **us** and were material to **our** decision to issue this policy. If **we** determine that such representations or submitted materials were untrue, inaccurate, or misleading, in any material respect, then **we** are entitled to rescind this policy and treat it as if it had never existed.

In reaching this determination, only facts and knowledge possessed by **your** board member(s), executive officer(s), in-house counsel, executive producer(s) or risk manager(s) or any other person whose signature appears on the application, shall be imputed to **you**.

Notifying us of changes to your production(s)

You must promptly tell **us** if **you** materially change the content or format of the **insured production(s)**. **We** will only provide cover under this policy for such a change when **we** have given our written approval and **you** have agreed to all additional coverage terms and/or additional premium **we** may request to cover the change in risk.

Notifying us of changes to your business

You must promptly tell **us** if **you** materially change **your** business, acquire or merge with another business or if any party acquires **your** business. **We** will only provide coverage under this policy for such a change if **we** have given **our** written approval and **you** have agreed to all additional coverage terms and/or additional premium **we** may request to cover the change in risk.

Clearance procedures

You and a suitably qualified attorney must follow the clearance procedures which are attached to the application form. The clearance procedures are not exhaustive nor do they cover all situations which may arise, given the great variety of productions. **You** and **your** attorney must continually monitor to exercise diligence so that the **insured production(s)** is/are not likely to contain material which could give rise to a **claim**.

Providing us with information and assistance

You shall provide **us** with full, timely and accurate information about any **claim, potential claim** or declaratory relief action that **you** contend falls within the coverage afforded by this policy.

If **we** have accepted notice of any **claim** or **potential claim** under this policy, then **you** shall:

1. give **us**, or anyone appointed by **us**, at **your** expense, such assistance, cooperation and information as **we** reasonably require under this policy, to avoid, minimize, or resolve any **claim, or potential claim**; and
2. notify **us** as soon as practicable of all settlement offers made by a claimant in connection with any **claim** or **potential claim**; and
3. give **us** all assistance and cooperation **we** reasonably require to pursue at **our** expense any subrogated right of recovery **we** may have in connection with any **claim, potential claim** or declaratory relief action.

If **you** or anyone on **your** behalf tries to deceive **us** by deliberately giving **us** false information in connection with such a **claim** or **potential claim** then **we** will not make any payment arising out of or relating to that **claim**.

Satisfying your retention

We will not make any payment under this policy unless **you** first pay the applicable **retention**. The **retention** shall apply separately to each **claim** unless it is reasonably established that a series of **claims** against **you** directly arise from:

1. the same original cause, a single source or a repeated or continuing problem in **your film and program production activities**; or
2. a single or continuing investigation or a common set of facts or state of affairs in relation to a defamatory statement;

then all such notifications that **we** accept and agree are related will be treated as a single **claim** and **you** need only pay a single **retention** and they shall be subject to a single **policy limit**. All of



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the notifications that are related will be considered as having been made on the date of **your** first proper notification to **us**.

Any combination of **defense costs** and **damages** with respect to a **claim** may satisfy the **retention**. The **policy limit** is excess of the **retention**.

Subrogation

In the event of any payment under this policy, **we** shall be subrogated to all of **your** rights of recovery against any person or entity for such payments and **you** shall fully cooperate with **us** in asserting such rights of recovery, including executing all papers required and by permitting **us** to prosecute an action in **your** name at **our** expense if so requested, and **you** shall do nothing to prejudice such rights. **We** shall have no subrogation rights against **you**.

Any recovered amounts shall first be applied on a pro-rata basis to **you** and to **us** for sums **you** or **we** incurred to pursue the subrogation action. The remainder of any recovered amounts shall be distributed on a pro-rata basis both to **you** for payments made under the **retention** and to **us** for **our** payments made in excess of the **retention**.

VIII. Definitions

All phrases and words that appear in bold type in this policy (excluding headings), either in singular or plural form, have the meaning that is given to them below:

Additional insured

“Additional insured” means any distributor, purchaser, exhibitor, or licensee, that prepares, produces, broadcasts, exhibits, finances or distributes the **insured production(s)**, but only with respect to **media content** furnished by the **insured** or **existing subsidiary** to such “additional insured” and only if prior to the **claim** first being made against such “additional insured” the **insured** or **existing subsidiary** had contracted in writing to indemnify him/her/it for such **claim** and then only upon the **insured’s** written consent following the **insured’s** review of a **claim**;

Advertising

“Advertising” means advertising, publicity, or promotion of the **insured production(s)**.

Agent

“Agent” means any production company, director, photographer, or loan-out company, but only to the extent of their involvement in the preparation, production, broadcast, exhibition or distribution of the **insured production(s)**, and solely to the extent such “agents” are acting on the **insured’s** or **existing subsidiary’s** behalf and subject to their control and direction, and then only upon the **insured’s** written consent following the **insured’s** review of a **claim**.

Assumed under agreement

“Assumed under agreement” means any obligation assumed by the **insured** or **existing subsidiary** to hold harmless or indemnify a party against losses directly resulting from the **media content** of the **insured production(s)** supplied by the **insured**, but only if such obligation was assumed by the **insured** orally or in writing prior to any such loss being suffered.

Claim

“Claim” means any written assertion of liability or any written demand for financial compensation or injunctive relief or any request to toll or waive any applicable statute of limitations; however, “claim” does not mean any criminal proceeding of any kind.

Damages

“Damages” means any monetary amount **you** become legally obligated to pay as a result of any judgment, settlement, arbitration award or liability **assumed under agreement**, including punitive and exemplary damages if insurable under applicable law, pre-judgment interest and post-judgment interest or any judgment or award ordering payment of attorney’s fees or costs, in connection with a covered **claim** insured under this policy, but not including any:

1. civil, regulatory or criminal fines, sanctions, taxes, or penalties, including those imposed by any federal, state, or local governmental body or by ASCAP, SESAC, BMI or other similar licensing organizations;
2. the costs of complying with any injunction or other equitable order or equitable judgment;
3. the costs of recalling, correcting, producing, reproducing, or reprinting any **media content** or the costs of any services incurred in connection therewith or any overhead costs, loss of revenue, salaries, wages or any future cost of doing business;



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4. past or future royalties or license fees or any payment owed to a licensor under a license; however, this provision will not apply to any covered portion(s) of any trademark and/or copyright **claim** that results in a damage award that is measured by the amount a claimant would have received had **you** paid to license the claimant's infringed work; or
5. disgorgement of profits or restitution of sums to which **you** were not entitled.

In determining the insurability of punitive damages in connection with a **claim**, this policy shall apply to the fullest extent permitted by the law of any jurisdiction applicable to the **claim**, and it is understood and agreed that **we** will not affirmatively assert that punitive damages are uninsurable if **we** may refrain from doing so under such applicable law.

Defense costs	<p>"Defense costs" means:</p> <ol style="list-style-type: none">1. all reasonable and necessary attorneys' fees and legal costs incurred investigating, settling, defending and/or appealing a claim insured under this policy; and2. any premiums on attachment or appeal bonds as a result of a claim insured under this policy; however, we are under no obligation to apply for or furnish such bond. <p>"Defense costs" does not include any overhead expenses, general business expenses, salaries, or wages incurred by you or any other person or entity insured under this policy except with prior written consent from us.</p>
Existing subsidiary	<p>"Existing subsidiary" means any entity in which the insured directly or indirectly owns more than 50% of the assets or outstanding voting shares as of the first day of the policy period and if the revenue is included on your application for this policy.</p>
Insured	<p>"Insured" means the entity identified as "the insured" on the Declarations.</p>
Insured production(s)	<p>"Insured production(s)" means the production(s) stated as the "insured production(s)" on the Declarations.</p>
Film and program production activities	<p>"Film and program production activities" means the preparation, production, publication, release, broadcast, telecast, exhibition, licensing, sale or distribution of media content.</p>
Media content	<p>"Media content" means the substance of any communication of any kind whatsoever within the insured production(s) or advertising, regardless of the nature or form of such "media content" or the medium by which such "media content" is communicated, including but not limited to language, data, film, digitized content, facts, fiction, music, photographs, images, advertisements, artistic expression, or visual or graphical materials.</p>
Policy limit	<p>"Policy limit" means the amount stated as the "policy limit" on the Declarations.</p>
Policy period	<p>"Policy period" means the period of time stated as the "policy period" on the Declarations, unless this policy is cancelled, in which case the "policy period" ends on the effective date of cancellation.</p>
Potential claim	<p>"Potential claim" means any matter reasonably likely to lead to a claim covered under this policy.</p>
Retention	<p>"Retention" means the amount stated as the "retention" on the Declarations.</p>
We/us/our	<p>"We," "Us," and "Our," means Syndicate 33 at Lloyds, managed by Hiscox Syndicates Ltd.</p>
You/your	<p>"You" and "Your" means:</p> <ol style="list-style-type: none">1. the insured or any existing subsidiary;2. any person who was, is or becomes a director, officer, trustee, partner in, or employee of the insured or any existing subsidiary but only in respect to claims arising out of the course and scope of their duties as such and in the event of their death, incapacity or bankruptcy, any claim against their estates, heirs, legal representatives or assigns shall be considered a claim against them;3. any person or entity that takes legal control of the insured or existing subsidiary upon the insolvency or bankruptcy of the insured or existing subsidiary; and



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4. any **additional insured** or **agent**.

IX. General matters

Defense arrangements

This is a duty to pay policy, not a duty to defend policy. Therefore, **you** have the duty to defend **claims** on **your** own behalf under this policy. This means that, if a **claim** is made against **you**, **you** have the responsibility to retain counsel to defend **you**. **You** may retain counsel from the Hiscox Media Panel Counsel List. **You** may settle a **claim** on **your** own behalf and within the applicable **retention** without **our** prior consent.

We shall at all times have the right and opportunity to effectively associate with **you** and **your** counsel in the investigation, defense and settlement of any **claim** under this policy. While **we** do not have the duty to defend **you**, **we** have the right and option to assume the defense of a **claim** against **you** if **you** fail to comply with any of YOUR OBLIGATIONS TO US (Section VII) under this policy.

We will not make any payment in excess of the applicable **retention**, unless such **defense costs** or **damages** payments are incurred with **our** prior consent.

You may not admit any liability for, make any settlement offer with respect to, or settle any **claim** in excess of the applicable **retention** without **our** prior consent.

We will not make any payments of any kind on account of any portion(s) of **claims** or declaratory relief actions not covered under this policy, nor will such payments by **you** apply to satisfy any applicable **retention**. **We** and **you** agree to use best efforts to determine a fair allocation of payments (including **defense costs** and **damages**) between portion(s) of **claims** that are covered under this policy and portion(s) that are not covered under this policy. If a fair allocation cannot be agreed upon, **we** and **you** shall submit the issue to an alternative dispute resolution proceeding in accordance with the Alternative Dispute Resolution provision set forth in GENERAL MATTERS (Section IX). During the alternative dispute resolution proceeding, **we** shall be obligated to pay only that portion of any **defense costs** or **damages** that **we** in good faith believe is properly allocated to **us**.

Settlement of claims

If a situation arises where **we** have a good faith belief that a claimant's monetary offer to settle a covered **claim** is reasonable when **you** do not, then **we** will neither compel **you** to accept the settlement offer nor will **we** cease providing coverage for such a **claim** merely because **you** did not accept the offer. However, if **we** recommend that **you** do accept such an offer and **you** elect not to, then **our** maximum payment toward that particular **claim** following the rejection or expiration of that offer will be the outstanding covered **defense costs** incurred up to the date the settlement offer was rejected or expired, plus the amount of the unaccepted settlement offer, minus **your** remaining **retention** on the day the settlement offer is rejected or expires. If this amount is in excess of the **retention**, then at **your** request and subject to **our** discretion **we** will pay this amount to **you** in a lump payment in return for **you** fully releasing **us** from all liability with respect to the unsettled **claim**.

In exchange for this release, **we** will not seek reimbursement for any portion of **our claim** payment to **you**, even if the **claim** is later resolved for less than the amount **we** paid to **you**.

Other insurance

Any payment due under this policy is specifically excess of and will not contribute with any other valid insurance, regardless if the insurance is collectible or not, unless such other insurance is specifically stated to be in excess of this policy. This policy is not subject to the terms set forth in any other insurance policy.

Cancellation

The **insured** may cancel this policy at any time by mailing to **us** written notice stating when such cancellation shall be effective. Any unearned premium will be calculated in accordance with the customary short rate table and procedure.

We will only cancel this policy if the premium is not paid by the due date, or **you** intentionally make a material misrepresentation to **us** in regard to any **claim** or notice given to **us** under this policy, in which case **we** will provide to **you** notice of cancellation in accordance with applicable law. In the event of cancellation for misrepresentation, **we** will return a pro-rata amount of premium unless a



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claim has been made or is pending under this policy before such cancellation takes effect.

We are not required to renew this policy upon its expiration.

Choice of law

This policy, including its construction, application and validity, is governed by the laws of the State of New York without reference to that state's choice of law principles.

Alternative dispute resolution

We and **you** agree that any dispute arising out of or relating to this policy, including but not limited to its construction, application and validity, or any breach thereof, shall be resolved through either non-binding mediation or binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA") in effect at the time of the dispute, as amended by this policy. Either **you** or **we** may elect the type of Alternative Dispute Resolution ("ADR") to resolve a dispute under this policy. However, **you** have the right to reject **our** choice of ADR process at any time prior to its commencement, in which case **your** preferred choice of either non-binding mediation or binding arbitration shall control. If the first ADR process commenced for a particular dispute is an unsuccessful non-binding mediation, then **you** and **we** agree that such dispute shall only be resolved through binding arbitration in accordance with this provision and that such arbitration proceeding shall not be commenced until a 60-day cooling off period following the last date of the failed mediation has first elapsed.

Each party shall bear its own fees and costs in connection with any arbitration, but the costs incurred through AAA, including the fees and expenses of the arbitrator, shall be shared equally by the parties unless the arbitration award provides otherwise. No award of punitive damages shall be made in any arbitration. All arbitration proceedings shall be held only in a city where either **you** or **we** have a place of business in the United States, at the election of the party commencing arbitration. The decision of the arbitrator or arbitrators is final and binding and any award may be confirmed and enforced in any court of competent jurisdiction.

Service of suit

In the event **we** fail to pay an amount claimed under this policy, at **your** request, **we** will agree to submit to a court of competent jurisdiction within the United States. Our agreement, however, does not mean that we waive **our** rights to commence an action in any court of competent jurisdiction in the United States, remove an action to any United States District Court or seek to transfer a case to another court as permitted by the laws of the United States or of any state in the United States. **We** appoint the person named in the Declarations to accept service of process on **our** behalf.

The foregoing is not intended to conflict with or override **your** and **our** obligation to arbitrate any dispute arising out of or relating to this policy, as provided by the alternative dispute resolution provision above. This Service of Suit clause applies only to suits to enforce arbitration awards.

Bankruptcy or insolvency

Your bankruptcy or insolvency shall not relieve **us** of any of **our** obligations under this policy.

Currency

All references to dollar amounts in this policy are references to and payable in the currency of the United States of America.