

Dive Master Sports Diver Insurance Policy



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1 Our agreement in general

1.1 Parties to this agreement

1.1.1 This Dive Master Sport Diver Insurance Policy is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

1.1.2 This **policy** has been exclusively arranged by:

Dive Master Insurance Consultants Ltd
17-23 Rectory Grove, Leigh-on-Sea, Essex, SS9 2HA

Tel: +44 (0) 1702 476902 Fax: +44 (0) 1702 471892
e-mail: sales@dive-master.net

1.2 Words in bold

Words in bold type face used in this **policy** document, other than in the headings, such as **insured** in clause 1.1 above, have specific meanings attached to them as set out in clause 5, the General definitions and interpretation section of this document.

1.3 Primary purpose of the policy

By this **policy**, the **insurer** agrees, subject to the **policy's** terms, limitations, exclusions and conditions, to: indemnify the **insured** up to the **limit of indemnity** for all sums that the **insured** becomes legally liable to pay as damages, including claimant costs recoverable from the **insured**;

1.3.2 pay **costs and expenses**, some of which are expressly stated to be in addition to the **limit of indemnity**;

1.3.3 the full extent of the insurance by this **policy** is described in **insured section A** as set out in clauses 2 below.

1.4 Policy structure

1.4.1 Clause 2 sets out the schedule of limits and excesses applicable;

1.4.2 Clause 3 sets out the scope of main coverage of **insured section A**; additional **costs and expenses**; extra coverage and the circumstances in which the **insurer's** liability to the **insured** is limited, or may be excluded. Also, each clause sets out other terms and conditions.

1.4.3 Clauses 4 - 7 set out the **insurer's** ;

- a) claims handling terms and conditions, including further conditions precedent,
- b) general terms and conditions, including further conditions precedent,
- c) definitions,
- d) complaints procedure.

1.5 Policy period and premium

1.5.1 The **policy** will provide insurance as described herein for the **period of insurance** provided the premium(s) and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the premium.

1.5.2 The premium is deemed paid and accepted on receipt by the **insurer** or the broker appointed to place this insurance with the **insurer**.

1.5.3 If any premium (including a premium instalment) is not paid and accepted by the **insurer** on or before its payment date shown in the **schedule** the **insurer** can give written notice to the **insured** at its address shown on the **schedule**, cancelling the **policy** with effect from the seventh (7th) day after the notice has been served. Cancellation will be prevented from taking effect and the **policy** will continue if the late premium instalment and any other remaining premium instalments are paid and accepted before the cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed to be served on the third (3rd) day after being posted if sent by pre-paid letter post properly addressed.

1.6 Confirmation of Coverage

This policy shall only provide coverage to an **insured** if they have paid the appropriate premium, and that they have a true and valid e-certificate or validation card confirming the coverage terms.

1.7 Signature

1.7.1 In evidence of the **insurer's** intention to be bound by this insurance, it prints the signature of its Chief Executive Officer.



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Schedule of Limits

Risk Detail

Insured section	Cover	Limit of Indemnity
A - Public liability	Insured	£2,000,000 any one occurrence with costs and expenses in addition.

Excesses

A - Public liability		£250 any one claim
Claim Jurisdiction:		Worldwide but excluding North America
Territorial Limits:		Worldwide but excluding North America

3 Insured section A - Public liability

3.1 Public liability cover

3.1.1 The **insurer** agrees to indemnify the **insured** by the terms of this **insured section** against legal liability to pay damages, including claimant costs recoverable from the **insured**, as a result of **bodily injury** or **damage** that occurs during the **period of insurance** and arises out of and in connection with **recreational water sports**.

3.2 Additional public liability costs and expenses

3.2.1 Following any event which is or may be the subject of indemnity under this **insured section** the **insurer** agrees to indemnify the **insured** for **costs and expenses** which are payable in addition to the **limit of indemnity**, incurred in respect of any insured event under this **insured section**.

3.3 Public liability extensions

3.3.1 Principals

The **insurer** will indemnify any **principal** of the **insured**, where requested by the **insured**, but only to the extent that liability arises solely out of **recreational water sports** for the **principal** by or on behalf of the **insured** and provided that:

- a) the **principal** shall as though he were the **insured** observe, fulfil and be subject to the terms and conditions of this **policy** in so far as they can apply; and
- b) the **insurer's** liability under this clause shall in no way operate to increase the **limit of indemnity**; and
- c) the **principal** is not indemnified under any other insurance or in any other way.

3.3.2 Instruction and advice extension

Notwithstanding exclusion 3.4.1 the **insurer** will indemnify the **insured** in respect of **bodily injury** or damage caused by or arising from any instruction or advice given or lack of advice given by or on behalf of the **insured** in the course of providing **recreational water sports** services.

3.4 Public liability limitations and exclusions

This **insured section** excludes and does not cover:

3.4.1 Advice, design or plans provided for a fee

any loss, liability or **costs and expenses** arising out of or from advice, design, plans, specifications, formulae, surveys, or directions prepared or given by the **insured** for a fee.

3.4.2 AIDS and illness

bodily injury arising out of Acquired Immune Deficiency Syndrome (AIDS), Hepatitis C or cancer in any form, howsoever these illnesses may have been acquired or may be named.

3.4.3 Aircraft and watercraft

any loss, liability or **costs and expenses** arising out of or from the ownership, possession or use of any aircraft or other aerial device or satellite, or any watercraft.

3.4.4 Asbestos

any loss, liability or **costs and expenses** arising out of or from or caused by any work involving the manufacture, mining, processing, use, installation, storage, removal, stripping out, demolition, disposal, distribution, inspection or testing of or exposure to asbestos, asbestos fibres, asbestos dust, or asbestos containing materials.

3.4.5 Assault and battery and abuse

any liability of any **insured** directly or indirectly arising out of:

- a) assault, battery or any intentional or deliberate violence committed or alleged to have been committed by any **insured**;
- b) sexual assault, molestation, abuse, sexual harassment or rape.

3.4.6 Claims Jurisdiction

any loss, liability or **costs and expenses** arising out of or from any **claims** brought in the **North America** or that falls under the jurisdiction of **North America**.

3.4.7 Commercial diving

any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by **commercial diving**.

3.4.8 Construction, repair or installation work on vessels

any liability arising out of the construction, repair or installation work on vessels.

3.4.9 Electronic data

any loss, liability or **costs and expenses**;

- a) arising from loss, alteration or impairment of, or damage to, information and/or data in electronic form,
 - b) arising from malicious acts of any person carried out by electronic means,
 - c) for defamation or harassment carried out by electronic means,
- but this exclusion shall not apply in respect of liability for any ensuing accidental **bodily injury** (save for mental injury or mental disease) or accidental **damage** which is not otherwise excluded.

- 3.4.10 **Employee accidents**
any loss, liability or **costs and expenses** arising out of or from any claim in respect of which compensation is available or would normally be available under any Employers Liability legislation or similar legislation or any obligation for which the **insured** or any company as its insurer may be held liable under any workman's compensation, unemployment compensation, or disability benefits law.
- 3.4.11 **Employment disputes**
any loss, liability or **costs and expenses** arising out of or from any employee, former employee or prospective employee in respect of employment-related libel, slander, humiliation or defamation, unfair or wrongful dismissal, repudiation or breach of any employment contract or arrangement, termination of a training contract or contract of apprenticeship, harassment, discrimination or like conduct.
- 3.4.12 **Excess**
the amount of the **excess** as applicable and stated in the **schedule**.
- 3.4.13 **Excluded conduct**
any loss, liability or **costs and expenses** arising out of or from:
a) any deliberate act in violation of any law or ordinance; or
b) any deliberate or wilful misconduct of the insured; or
c) any dishonest, fraudulent, or criminal act of the **insured**; or
d) any conduct of the **insured** or **employee** while under the influence of intoxicants or narcotics.
- 3.4.14 **Financial loss**
liability for pure financial loss not consequent upon **bodily injury** or **damage**.
- 3.4.15 **Fines, penalties, punitive damages, multiple damages or exemplary damages**
any fines, penalties, punitive damages, exemplary damages, aggravated damages, multiple or treble damages, or any other increase in damages resulting from the multiplication of compensatory damages.
- 3.4.16 **Fungus, mould, spores**
Damage arising out of or from:
a) any **fungus, mould**, mildew or yeast; or
b) any **spore** or toxins created or produced by or emanating from such **fungus, mould**, mildew or yeast; or
c) any substance vapour gas or other emission or organic or inorganic body substance produced by or arising out of any **fungus, mould**, mildew or yeast; or
d) any material product building component building structure or any concentration of moisture water or other liquid within such material product building component building or structure that contains harbours natures or acts as a medium for any **fungus, mould**, mildew, yeast or **spore** or toxins emanating therefrom;
regardless of any other cause event material product and/or building component that contributed concurrently or in any sequence to that loss, liability or **costs and expenses**.
- 3.4.17 **Government prohibition**
any loss, liability or **costs and expenses** where:
a) non-admitted insurance is not permitted by local legislation in any country or territory; or
b) any government embargo or sanction prohibits the **insured** from trading.
- 3.4.18 **Landing Areas**
liability arising out of the ownership, maintenance, operation, preparation or use by or on behalf of the **insured** of any **landing area** for aircraft provided such liability arises out of such use as a **landing area**.
- 3.4.19 **Legionella**
any loss, liability or **costs and expenses** arising out of or from or alleging or attributable to the existence of **Legionella**.
- 3.4.20 **Libel and slander**
liability arising from or caused by the publication or utterance by or on behalf of the **insured** of a libel or slander.
- 3.4.21 **Limit of indemnity**
liability in excess of the **limit of indemnity** stated in the **schedule**.
- 3.4.22 **Medical Services**
Any liability arising out of the rendering or failure to render medical services including the provision of treatment or management of illness or injury by any doctor, medically trained personnel or hyperbaric technicians other than:
a) the rendering of first aid by any medically unqualified person; or
b) emergency first response by a diver medic or certified first aid attendant.
provided that the **insurer** will not be liable where indemnity is provided by other insurance.
- 3.4.23 **North American jurisdiction**
liability in respect of any judgment, award, payment, **costs and expenses** or settlement delivered, made or incurred within countries which operate under the laws of **North America** (or to any order made anywhere in

the world to enforce such judgment, award, payment, **costs and expenses** or settlement either in whole or in part) unless otherwise stipulated in the **schedule**.

- 3.4.24 **North American operations**
bodily injury or **damage** including any loss or expense whatsoever resulting or arising therefore or any consequential loss in connection therewith, occurring within **North America**.
- 3.4.25 **Nuclear risks**
a) loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss;
b) any legal liability of whatsoever nature;
c) any sum which the **insured** becomes legally liable to pay or any loss or expense; directly or indirectly caused by or contributed to by or arising from or, in the case of 3.4.27 c) above, attributable to **nuclear hazards**.
- 3.4.26 **Ownership or use of mechanically propelled vehicles**
any loss, liability or **costs and expenses** arising out of or from the ownership, maintenance, operation or use of any mechanically propelled vehicle by or on behalf of the **insured** other than diver propulsion vehicles.
- 3.4.27 **Personal injury and denial of access**
any loss, liability or **costs and expenses** arising out of **personal injury** or **denial of access**.
- 3.4.28 **Property in the insured's care, custody and control**
damage to property owned, leased, hired or held in trust by the **insured** or under hire purchase or on loan to the **insured** or held otherwise in the **insured's** care, custody or control.
- 3.4.29 **Pollution and products**
bodily injury or **damage** arising out of or from or:
a) brought about by or contributed to by **pollution**;
b) in connection with the **insured's products**.
- 3.4.30 **Products or goods sold**
any loss, liability or **costs and expenses** arising out of any **products** or goods sold by the **insured**.
- 3.4.31 **Reasonable precautions**
any loss, liability or **costs and expenses** arising out of or from the **insured's** deliberate, conscious, or intentional disregard of the need to take all reasonable precautions to prevent an insured event or loss arising or continuing.
- 3.4.32 **Solo Diving**
any loss, liability or **costs and expenses** arising out of or from solo diving unless in accordance with the recommendations of the **insured's** certifying association.
- 3.4.33 **Territorial limit**
any loss, liability or **costs and expenses** arising from an occurrence outside the **territorial limits**.
- 3.4.34 **Use of heat**
any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by use of heat.
- 3.4.35 **Use of Spearguns**
liability arising out of the use of spearguns when used in conjunction with an aqualung.
- 3.4.36 **War or terrorism**
any loss, liability or **costs and expenses** arising out of or from or directly or indirectly caused by or contributed to by **war** or any act of **terrorism**.

4 Duties in the event of a claim or potential claim

The due observance and fulfilment of the provisions of clause 4 is a condition precedent to the **insurer's** liability for any claim under this **policy**. Clause 5.15 sets out consequences of a failure to comply with conditions precedent or **policy** provisions such as clause 4.

4.1 Claim notification

4.1.1 The **insured** will give notice in writing or by an agreed electronic medium, to the **insurer**:

- a) as soon as practical but in any event within thirty (30) days from receipt of notice of any impending inquest, fatal accident inquiry, prosecution or other legal proceedings that includes alleged **bodily injury**;
- b) as soon as practical but in any event within thirty (30) days on the **insured's** actual knowledge of any death or **bodily injury** to any person.
- c) as soon as practical but in any event within thirty (30) days after any other accident, event or the coming in possession of actual knowledge of **bodily injury** or **damage** with full particulars thereof;

which may be the subject of indemnity under this **policy**.

4.1.2 Notice to the **insurer** must be given to the claims notification addresses specified in the **schedule**, but if this is not possible or practical to the **insurer** at the registered address in the **schedule**.

4.2 Insured's duties

4.2.1 For each every claim the **insured** and any person acting on behalf of the **insured** must:

- a) not admit responsibility, liability, make an offer or promise, nor offer payment or indemnity without the written consent of the **insurer**;
- b) not incur any expense without the consent of the **insurer** except at the **insured's** own cost;
- c) always act honestly, there being no rights to any form of payment or indemnity under the **policy** in the event that any claim is made fraudulently.
- d) give all such information, assistance and forward all documents to enable the **insurer** to investigate, settle or resist any claim as the **insurer** may require;
- e) provide such proofs and information with respect to the claim as may reasonably be required together with (if demanded) a statutory declaration of the truth of the claim and any matters connected therewith;
- f) not destroy evidence or supporting information or documentation without the **insurer's** prior consent; nor destroy any plant or other property relating to an occurrence, loss or **suit** that may give rise to a claim under this **policy**.

4.3 Claim Procedure

Unless stated otherwise all claims will be handled and overseen by the **insurer**. For each and every claim the **insured** and any person acting on behalf of the **insured** must:

4.3.1 immediately send the **insurer** copies of any request, demand, order, notice, summons, legal paper and all documents relating thereto in connection with an insured event as soon as received by the **insured**. In addition the **insured** must co-operate with the **insurer** or their appointed agents to allow them to comply with such relevant practice directions and pre-action protocols as may be issued and approved from time to time by the head of civil justice;

4.3.2 authorise the **insurer** to obtain medical records or other pertinent information upon request but only where legally permitted to do so in the event of an insured event involving **bodily injury**;

4.3.3 prove, if it is alleged that an event is not covered or that the indemnity is otherwise limited being **war** or an act of **terrorism** that the said exclusion or **limit of indemnity** does not apply, it being understood and agreed that any portion of an exclusion or **limit of indemnity** being found invalid, inapplicable or unenforceable will not in any way render the remainder of the exclusion or limit invalid, inapplicable or unenforceable.

4.4 Insurer's rights

4.4.1 The **insurer** will be under no obligation to investigate any potential claims or to undertake the conduct of any proceedings in connection with such claims and will be at liberty in all cases to leave the conduct of such proceedings wholly to the **insured** upon such conditions as regards the payment of opponent's costs and with such liberty to bind the **insurer** by compromise as the **insurer** may in its absolute discretion determine.

4.4.2 The insurer may at any time pay the limit of indemnity (after deduction of any sums already paid) or such lesser sum for which the claim can be settled and will relinquish the conduct and control of the claim and be under no further liability.

4.5 Disputed defence or appeal

If any dispute arises between the **insured** and the **insurer** as to whether a prosecution should be defended or an appeal made, such dispute will be referred to a solicitor attorney or similar legal professional with no less than 10 years experience in the **claims jurisdiction** stated in the **schedule** to be mutually agreed between the parties (or in default of agreement to be nominated by the President of the Law Society) whose decision will be final.

4.6 Excess

4.6.1 If settlement of an insured event investigated or defended by the **insurer** under **insured section A** does not exceed the amount of the applicable **excess** the **insured** will pay, or reimburse the **insurer** for, as applicable, any **costs and expenses** and paid damages including claimant costs recoverable from the **insured** and incurred in connection with such insured event.

4.7 Subrogation

4.7.1 For each and every claim the **insured** and any person acting on behalf of the **insured** must not waive any rights of recourse or recovery against any other person relating to an occurrence, loss or **suit** that may give rise to a claim under this insurance.

- 4.7.2 The **insured** will at the request and expense of the **insurer** do and concur in doing and permit to be done all such acts and things as may be necessary or reasonably required by the **insurer** for the purpose of enforcing any rights and remedies or of obtaining relief or indemnity from other parties to which the **insurer** will be or would become entitled or subrogated upon its paying an indemnity under this **policy**, whether such acts and things will be or become necessary or required before or after their indemnification by the **insurer**.
- 4.7.3 In the event of any payment under this insurance, the **insurer** will act in concert with all other interested persons (including the **insured**) concerned in the exercise of any rights of recovery.
- 4.7.4 The apportioning of any amounts which may be so recovered will follow the principle that any interested persons (including the **insured**) that will have paid an amount over and above any payment hereunder, will first be reimbursed up to the amount paid by them; the **insurer** is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interested persons (including the **insured**) to whom this coverage is in excess shall be entitled to claim the residue, if any.
- 4.7.5 Expenses necessary to the recovery of any such amounts will be apportioned between the interested parties concerned, in the ratio of their respective recoveries as finally settled.

5 General terms and conditions

- 5.1 Applicable law**
This **policy** will be governed by and interpreted in accordance with the laws of England and subject to the exclusive jurisdiction of the High Court, London.
- 5.2 Assignment**
Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.
- 5.3 Cancellation**
The **insurer** may at any time during the **period of insurance** serve written notice on the **insured** at the address shown on the **schedule** cancelling the **policy** with effect from the thirtieth (30th) day after service of the notice. Such cancellation shall not affect the coverage or premium attributable under this insurance to the period prior to cancellation. Upon demand the **insurer** will return to the **insured** a part of any premium paid in excess of that proportionate to the pre-cancelled portion of the **policy**. Without prejudice to any other forms of service, the notice of cancellation is deemed to be served on the third (3rd) day after being posted if sent by pre-paid letter post properly addressed.
- 5.4 Rights of Third Parties**
This insurance does not confer or create any right enforceable (including under legislation) by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party.
- 5.5 Contribution**
- 5.5.1 If at the time of any claim under **insured section A** there is any other valid and collectible insurance available to the **insured** or any **other insured party** other than insurance that is specifically stated to be in excess of this **policy**, and names the **insured** for the insurance, then the insurance afforded by this **policy** will be in excess of and will not contribute with such other insurance.
- 5.6 Document management**
The **insurer** may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.
- 5.7 Dispute resolution**
- 5.7.1 All matters in dispute between the **insured, other insured parties** and the **insurer** arising out of or in connection with this insurance, will be referred to a mediator to be agreed by the parties within fourteen (14) working days of a written notice served on one party by the other requesting such an agreement. If a mediator is not agreed then either party may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The parties shall share equally the costs of CEDR and of the mediator and that the reference, conduct and any settlement of the dispute at mediation will be conducted in confidence.
- 5.7.2 The parties agree to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.
- 5.7.3 If any such dispute is not resolved by mediation or the parties cannot agree upon the appointment of a mediator or the form that the mediation will take the dispute will be referred by either party to be determined and be subject to the exclusive jurisdiction of the High Court, London.
- 5.8 Legal action against the insurer**
- 5.8.1 In respect of liabilities covered by this insurance, no one may bring a legal action against the **insurer** until the amount of the **insured's** liability has finally been determined or agreed.
- 5.8.2 No one has the right under this **policy** to bring the **insurer** into an action to determine the **insured's** liability.
- 5.9 Material alteration**
- 5.9.1 The **insured** will give to the **insurer** written notice immediately (but in any event no later than 30 days) after the **insured** becomes aware of any material alteration to the **insured**, the risk or any material change in the nature of the **business** conducted by the **insured** during the **period of insurance**. The **insurer** reserves the right to reject or reduce **claims** connected with the material alteration or change, until accepted as such by written confirmation from the **insurer** endorsed to this **policy**, upon which the insurer may continue the **policy** on such terms as the **insurer** may determine.
- 5.9.2 Any material alteration or change shall not be binding on the **insurer** or the terms of this **policy** until accepted as such by written confirmation from the **insurer** endorsed to this **policy**.
- 5.10 Material inaccuracy**
- 5.10.1 The information provided by or on behalf of the **insured** in connection with this insurance (whether at inception or otherwise) shall be materially accurate and not omit material information which is known by the **insured's** board members or equivalent and/or the **insured's** risk manager or ought to have been known by them following their reasonable enquiry.
- 5.10.2 Breach by fraud or dishonesty
If the **insured** or anyone acting on its behalf breaches this condition (whether at inception or otherwise) by fraud or dishonest act or omission, the **insurer** may:
- avoid this **policy** from inception; or
 - impose such terms, conditions and/or additional premium as the **insurer** may in its sole discretion determine; and

- any benefit which the **insured** has received under this **policy** which resulted from any such fraud or dishonest act or omission shall immediately be repaid to the **insurer**.
- 5.10.3 Breach by non-disclosure, misrepresentation (other than fraudulent or dishonest)
If the **insured** or anyone acting on its behalf breaches this condition (other than by fraudulent or dishonest means), the **insurer** may:
- impose such terms and conditions (effective at inception or otherwise) as the **insurer** would have imposed in the absence of such breach; and/or
 - charge such additional premium (effective at inception or otherwise) as the **insurer** would have required in the absence of the breach; and
 - apply such applicable additional premium, amended terms and conditions or both to any notified **claim** or potential **claim**; and
- the **insurer** will promptly give the **insured** written notice of any applicable additional premium, amended terms and conditions or both.
- 5.10.4 Within fourteen (14) days of receipt of such notice, the **insured** will give the **insurer** written confirmation of:
- acceptance of and a promise to pay the applicable additional premium in accordance with the terms of trade applying to this insurance; or
 - the **insured's** acceptance of the amended terms and conditions; or
 - both as applicable.
- 5.10.5 If the **insurer** can show to the **insured's** reasonable satisfaction that the **insurer** would have declined to enter into this insurance at inception or to accept the proposed amendment to this insurance during the **period of insurance** on any terms, the **insurer** may avoid this **policy** from inception and, if no claims have been paid or accepted under this **policy**, the **insurer** shall promptly return to the **insured** all premiums received by the **insurer** at the date of breach; and, if the **insurer** has paid claim monies under this **policy**, the **insured** shall promptly repay all such claim monies to the **insurer**.
- 5.11 Minimisation of risk**
- 5.11.1 The **insured** will take all reasonable steps at its own expense to prevent an insured event arising or continuing.
- 5.11.2 Upon the happening of an insured event and at all times thereafter, the **insured** shall act as a prudent uninsured and take all reasonable measures as are appropriate to avoid or minimise any claims which arise or may arise from that insured event. Any failure by the **insured** to take such steps shall mean the **insurer** may reject or reduce claims and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**.
- 5.12 Observance**
- 5.12.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not already conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.
- 5.12.2 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach providing the **insurer** can demonstrate some prejudice.
- 5.12.3 In the event of a breach of any condition precedent in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce claims connected with the breach, and continue the **policy** on such terms as the **insurer** may determine and if any payment on account of any such claim has already been made the **insured** will repay forthwith all payments on account to the **insurer**.
- 5.13 Privacy and the Data Protection Act 1998**
- 5.13.1 All personal information (including sensitive personal data such as health details or criminal convictions) provided in connection with this **policy** will be processed in accordance with the Data Protection Act 1998. The **insured** consents to all personal information so provided being used for the purposes and being disclosed to the parties set out below.
- 5.13.2 Where personal information is provided about another person, the **insured** is required to inform that person of the **insurers'** identity, and why their personal information will be processed and disclosed. The **insured** is also required to obtain their written consent to the processing of their personal information in this way and provide, on request, such consent to the **insurer**.
- 5.13.3 Personal information is used:
- to administer the **policy**, including underwriting, renewal information, validation of claims history and claims handling;
 - for research, analysis, statistic creation, and customer profiling;
 - for fraud prevention and debt recovery.
- 5.13.4 Personal information may be disclosed to:

- a) other members of the QBE Insurance Group;
 - b) other insurance entities interested in the risk written under this **policy**;
 - c) agents and service providers appointed by the **insurer** to carry out activities in connection with the **policy**;
 - d) credit reference and fraud databases;
 - e) law enforcement and other statutory bodies;
 - f) potential purchasers of the whole or part of the our business.
- 5.13.5 If false or inaccurate information is provided and fraud is suspected this fact will be recorded and the information will be available to other organisations that have access to the fraud databases.
- 5.13.6 Personal information may be transferred to third parties in countries outside the European Economic Area which may not have the same standards of protection for personal information as the United Kingdom. The **insurer** will ensure that such transfers comply with the data protection law and the personal information is kept securely and protected from unauthorised access.
- 5.13.7 The **insurer** maintains protections and procedures in the storage and disclosure of personal information to keep it secure and prevent unauthorised access to or loss of such information.
- 5.13.8 The **insurer** may monitor and record all communications with you for compliance and training purposes.
- 5.13.9 Should the insured wish to see the information held, have any queries in relation to the way such information is used or discover any inaccuracies, the insured should write to the Data Protection Officer at QBE Insurance (Europe) Limited, Plantation Place, 30 Fenchurch Street, London EC3M 3BD.
- 5.14 Representation**
Any person falling within the definition of the **insured** agrees that the first named **insured** is their agent for the purpose of giving and receiving of any notices from the **insurer** or their representatives including any notice of cancellation. The payment to the first named **insured** of any return premium that may be payable under this **policy** will satisfy the **insurer's** obligations to return premium.
- 5.15 Sanction limitation and exclusion**
- 5.15.1 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.
- 5.16 Subscribing insurer**
The **insurers'** obligations under this **policy** are several and not joint and are limited solely to the extent of their individual subscriptions. The **insurers** are not responsible for the subscription of any co-subscribing **insurer** who for any reason does not satisfy all or part of its obligations.

6 General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in **bold** type face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'a person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

6.1 Bodily injury

Bodily injury means death, disease, illness, physical and mental injury of or to an individual.

6.2 Claim jurisdiction

Claim jurisdiction shall mean the jurisdiction under which a claim by a third party must be brought for indemnity to be granted the **insurer**.

6.3 Claims notification address

Claims notification address means: the Head Office and registered address of:

Dive Master Insurance Consultants Ltd

17-23 Rectory Grove, Leigh-on-Sea, Essex SS9 2HA

Tel: +44 (0) 1702 476902, Fax: +44 (0)20 7105 4019 claims@dive-master.net

6.4 Commercial diving

Commercial Diving means those diving practices described in the two Health and Safety Executive (HSE) Approved Code of Practice for Inshore Commercial Diving and Offshore Commercial Diving. For the purposes of this definition the Approved Codes of Practice for; Recreational Scuba Training, Underwater Scientific Diving and Underwater Film and Media Work are not considered to be commercial diving.

6.5 Costs and expenses

Costs and expenses means

6.5.1 costs and expenses (other than claimant costs recoverable from the **insured** incurred in the investigation, adjustment, appraisal, defence or settlement of an insured event, including expert, legal, appeal and defence costs;

6.5.2 pre-judgment interest awarded against the **insured** on that part of any judgment covered under this **policy** but where the **insurer** offers to pay the **limit of indemnity** in settlement of a claim or **suit**, the **insurer** will not pay any pre-judgment interest imposed or earned after the date of such offer;

6.5.3 all interest earned on that part of any judgment within the **limit of indemnity** after entry of the judgment and before **insurer** has paid, offered to pay, or deposited in court that part of any judgment that is within the applicable **limit of indemnity**;

6.5.4 costs and expenses of legal representation at any coroner's inquest or inquiry in respect of any death which may be the subject of indemnity under this **policy**.

6.6 Damage

Damage means:

6.6.1 loss of, destruction of or damage to tangible property; and/or

6.6.2 loss of use of tangible property that has been lost, destroyed or damaged.

6.7 Denial of access

Denial of access means nuisance, trespass, or interference with any easement, right of air, light, water or way.

6.8 Employee

Employee means:

a) any person who has entered into or works under a contract of service or apprenticeship with the **insured**;

b) any labour-master and/or person supplied by such person;

c) any person employed by a labour-only contractor;

d) any self-employed person;

e) any volunteer;

f) any person who is hired to or borrowed by the **insured**;

g) any driver or operator of plant hired to the **insured**;

h) any person who is engaged under a work experience or youth training scheme while working for the **insured** in connection with the any **recreational water sports**.

6.9 Excess

The excess will form part of and be included within the **limit of indemnity** and means the first amount payable by the **insured** in respect of each and every claim, series of claims or circumstance as ascertained after the application of all other terms and conditions of this insurance. The excess will be applied to **costs and expenses**.

6.10 Fungus

Fungus(i) includes but is not limited to any plants or organisms belonging to the major group fungi lacking chlorophyll and including **moulds** rusts mildews and mushrooms.

- 6.11 Insured**
Insured means the individual named on the application form, e-certificate and on the validation card.
- 6.12 Insurer**
Insurer means:
QBE Casualty Syndicate 386 managed by QBE Underwriting Limited (company number 01035198, Home State - United Kingdom authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority registration number 204858). Plantation Place, 30 Fenchurch Street, London, EC3M 3BD, tel: 020 7105 4000 fax: 020 7105 4019. Details may be found by visiting the Financial Services Register (<http://www.fsa.gov.uk/register/home.do>).
- 6.13 Landing area**
Landing area means any part of earth's surface including water or any structure or property used for embarkation or disembarkation of people or loading or unloading of goods or where aircraft are kept, housed maintained or operated and where aircraft may take off and land.
- 6.14 Legionella**
Legionella means any discharge release or escape of legionella or other airborne pathogens from water tanks, water systems, air-conditioning plants, cooling towers and the like.
- 6.15 Limit of indemnity**
Limit of indemnity means:
- 6.15.1 the amount stated in the **schedule** or validation card which is the maximum amount of the **insurer's** liability for any one (1) occurrence regardless of the number of:
- a) persons or organisations bringing claims or **suits**; or
 - b) claims against the **insured** or series of claims against the **insured**, or claims or series of claims made by the **insured**;
- 6.15.2 where a limit of indemnity is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**.
- 6.15.3 Any sub-limit of indemnity applies as if it was the limit of indemnity for the **claims** for that sub-limit and is deemed to be part of and not in addition to the **limit of indemnity**.
- 6.16 Mould(s)**
Mould(s) means, but is not limited to any superficial growth produced on damp or decaying organic matter or on living organisms and fungi that produced moulds.
- 6.17 North America**
North America means the United States of America or its territories or possessions or Canada.
- 6.18 Nuclear hazards**
Nuclear hazards means:
- 6.18.1 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- 6.18.2 the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- 6.19 Period of insurance**
Period of insurance means the period shown as such on the e-certificate and validation card, which time is taken as Greenwich Mean Time unless otherwise stated.
- 6.20 Personal injury**
Personal injury means harm other than **bodily injury** arising out of one or more of the following offences committed in the course of **recreational water sports**.
- 6.20.1 false arrest;
- 6.20.2 detention or imprisonment;
- 6.20.3 wrongful entry into, or eviction of a person from a room, dwelling or premises that the person occupies;
- 6.20.4 libel and slander.
- 6.21 Policy**
Policy means this document, the **schedule** (including any **schedules** issued in substitution), e-certificate and validation card and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.
- 6.22 Pollutant**
Pollutant means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, alkalis, chemicals or waste. Waste is deemed to include materials to be recycled, reconditioned or reclaimed.
- 6.23 Pollution**
Pollution means the actual, alleged or threatened discharge, seepage, migration, dispersal, release or escape of **pollutants** at any time.

- 6.24 Principal**
Principal means an individual, company, corporate body sports/leisure centre and/or other government, civic or educational authority providing services or venues to the **Insured**.
- 6.25 Product**
Product means any property (including packaging, containers, labels and instructions for use) after it has left the custody or control of the **insured** which has been designed, specified, formulated, manufactured, constructed, installed, sold, supplied, distributed, treated, serviced, altered or repaired by or on behalf of the **insured**.
- 6.26 Proposal**
Proposal means any information supplied by or on behalf of the **insured**, deemed to be a completed proposal form or other relevant information that the **insurer** may require.
- 6.27 Recreational Water Sports**
Recreational water sports means recreational snorkelling, free diving or sports diving. Participation in underwater scientific projects and underwater film and media projects as an unpaid volunteer.
- 6.28 Schedule**
Schedule means the schedule of limits set out under clause 2 of this **policy**.
- 6.29 Spore(s)**
Spore(s) means any dormant or reproductive body produced by or arising or emanating out of any **fungus(i) mould(s)** mildew plants organisms or micro organisms.
- 6.30 Suit**
Suit means a civil proceeding in which damages to which this insurance applies are alleged, including;
6.30.1 an arbitration proceeding in which such damages are claimed; or
6.30.2 any other alternative dispute resolution proceeding in which such damages are claimed.
- 6.31 Territorial limits**
Territorial limits means such countries as stated in the **schedule**.
- 6.32 Terrorism**
Terrorism means an activity that involves a violent act or the unlawful use of force or an unlawful act dangerous to human life, tangible or intangible property or infrastructure, or a threat thereof; and appears to be intended to intimidate or coerce a civilian population, or
6.32.1 disrupt any segment of the economy of a government de jure or de facto, state, or country, or
6.32.2 overthrow, influence, or affect the conduct or policy of any government de jure or de facto by intimidation or coercion, or
6.32.4 affect the conduct or policy of any government de jure or de facto by mass destruction, assassination, kidnapping or hostage-taking.
- 6.33 United Kingdom**
United Kingdom means Great Britain, Northern Ireland, the Channel Islands or the Isle of Man.
- 6.34 War**
War means war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, revolution, rebellion, insurrection, uprising, military or usurped power or confiscation by order of any public authority or government de jure or de facto or martial law but not including **terrorism**.
- 6.35 Watercraft**
Watercraft means any vessel, craft, vehicle or appliance made or intended to float on or in or travel on or through or under water.

7 Complaints

7.1 What the insured should do

The **insurer** strives to provide an excellent service to all its customers but occasionally things can go wrong. The **insurer** 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 the **insurer** directly the **insured** should either:

- a) write to the complaints address shown in the **schedule**, or
- b) where the **insurer** is or includes a Lloyd's syndicate, write to the Policyholder and Market Assistance Department at Lloyd's, Fidentia House, Walter Burke Way, Chatham Maritime, Kent ME4 4RN, telephone 020 7327 5693, e-mail complaints@lloyds.com,

quoting the policy or claim reference applicable.

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, South Quay Plaza 2, 183 Marsh Wall, 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 the **insurer's** complaint handling procedure is available on request and will also be provided to the **insured** when acknowledging a complaint.

7.2 About the Financial Ombudsman Service (FOS)

7.2.1 Eligible complainants are:

- a) private individuals; and
- b) micro-enterprises.

'Micro-enterprises' will be able to bring complaints to the ombudsman as long as they have an annual turnover of under EUR2 million and fewer than ten (10) employees.

- c) charities with an annual income of less than GBP1million; or
- d) a trustee of a trust with net assets of less than GBP1million.

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

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

7.3 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 the **insurer** 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 compensation scheme arrangements is available from the Financial Services Compensation Scheme 10th Floor, Beaufort House, 15 St Botolph Street, London EC3A 7QU or from their website (www.fscs.org.uk).

QBE European Operations

Plantation Place

30 Fenchurch Street

London

EC3M 3BD

tel +44 (0)20 7105 4000

fax +44 (0)20 7105 4019

enquiries@uk.qbe.com

www.QBEurope.com

