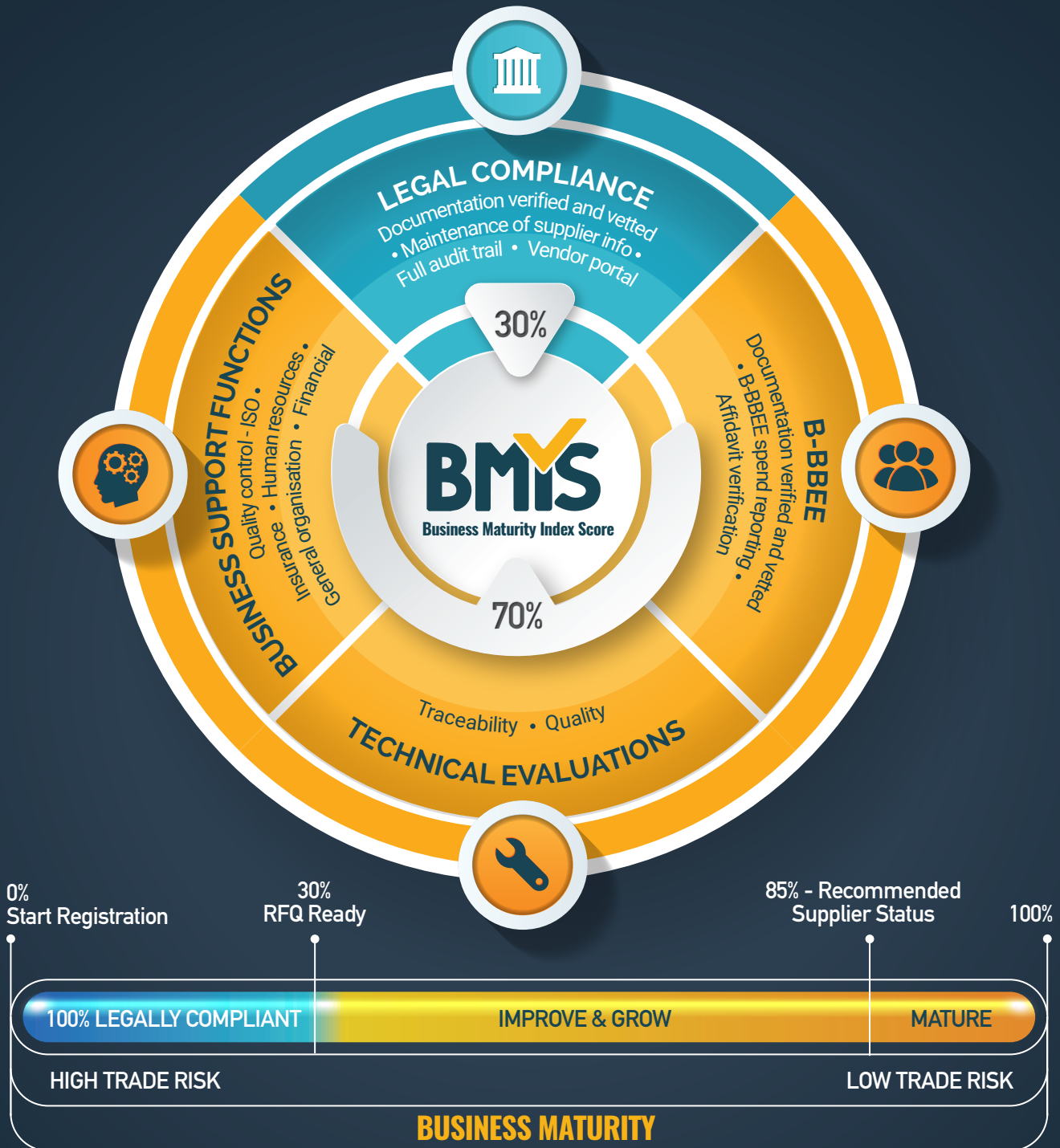


# VENDOR COMPLIANCE MANAGEMENT

COMPLIANCE THAT IS **USER-FRIENDLY** AND EXTENSIVELY **AUTHENTICATED**,  
ALLOWING YOU TO **FOCUS ON BUSINESS** WITH **CONFIDENCE**.



## WHAT IS BMiS?

The BMiS is a score which is achieved by measuring the four distinctive compliance elements of a business.

## HOW DOES IT WORK?

Suppliers are ranked in terms of their BMiS achieved.

## WHY IS IT IMPORTANT?

Companies can compare suppliers. The higher the BMiS, the lower the trading risk is to the company.





# Vendor Compliance Management - General Terms and Conditions and End-User Licence Agreement

## PART 1: GENERAL TERMS AND CONDITIONS

### 1. General

1.1 These General Terms and Conditions (“**Terms and Conditions**”) shall apply to all suppliers that wish to register on Prochain Best Practice Supply Chain Solutions Proprietary Limited (“**Prochain**”)’s Vendor Compliance Management system (“**VCM**”). The purpose of VCM is to establish suppliers’ legal compliance. By accepting these Terms and Conditions, the supplier acknowledges, accepts and agrees that, in light of the purpose of VCM, if a supplier is found to be non-compliant in terms of Prochain’s vetting process, such supplier will not be made visible to Prochain’s clients.

### 2. Governing Law

The law which is to apply to these Terms and Conditions, and according to which these Terms and Conditions are to be interpreted, shall be the law of the Republic of South Africa.

### 3. Interpretation

3.1 In these Terms and Conditions, except where the context requires otherwise:

3.1.1 words indicating the singular also include the plural and vice versa;

3.1.2 a person includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;

3.1.3 a party or any other person includes its successors in title, permitted assigns and permitted transferees;

3.1.4 “written” or “in writing” means hand-written, typewritten, printed or electronically made, and resulting in a permanent record; and

3.1.5 any Act or regulations shall refer to such Act or regulation, as amended from time to time and shall include any subordinate legislation promulgated thereunder, as amended from time to time.

3.2 In these Terms and Conditions, the headings to the clauses are for convenience only and shall not, in any way, affect the interpretation of these Terms and Conditions.

3.3 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or where the last day falls on a day that is not a business day, the next succeeding business day.

3.4 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the content indicates the contrary intention.

3.5 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation thereof, must not apply in the interpretation of these Terms and Conditions.

3.6 The use of the word “including” followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples.

3.7 Unless the contrary intention appears a reference to any amount of money to be paid by either Party in terms of this Contract shall be exclusive of VAT.

3.8 The expiration or termination of these Terms and Conditions shall not affect the provisions of these Terms and Conditions as expressly provided that they will operate after such expiration or termination of which necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

3.9 The supplier acknowledges and agrees that it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all the provisions of these Terms and Conditions and that it has either taken such independent advice or has dispensed with the necessity of doing so, and that all the provisions of these Terms and Conditions and the restrictions herein contained, are fair and reasonable as between the parties in all the circumstances and are in accordance with the supplier’s intentions.

### 4. Communications

4.1 All electronic communications received by Prochain from the supplier or vice versa shall be deemed legally binding and enforceable by law as provided in Chapter 3, section 11(1) – 11(3) of the Electronic Communications and Transactions Act 25 of 2002, provided that the electronic communication have been sent by a person duly authorised to commit the party in accordance with the provisions of these Terms and Conditions.

4.2 The information contained in any electronic communication shall be deemed as confidential, legally privileged and protected by law. Any electronic communication shall be deemed solely for the use of the intended recipient to whom it is addressed. The unauthorised use of any such electronic communication

or any attachments thereto, by any person other than the intended recipient is strictly prohibited.

## 5. Cession or Assignment

5.1 The supplier shall not be entitled to cede, assign or delegate any of its rights and/or obligations without having obtained the prior written consent of Prochain.

5.2 Prochain may cede any of its rights and/or delegate any of its obligations under these Terms and Conditions to a third party, by giving 5 (five) business days' written notice thereof to the supplier.

## 6. Concession not to Constitute Waivers

No grant by either party to the other of any concession, waiver, condonation or allowance shall, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of these Terms and Conditions or estoppel of the grantor's right to enforce the provisions of these Terms and Conditions.

## 7. Terms of Payment

7.1 In order to become a supplier and thus be 'active' as well as be made visible to Prochain's clients also subscribed to VCM, a supplier will be required to pay the subscription fee as set out in the registration process and will need to be found legally compliant in terms of Prochain's vetting process.

7.2 The annual subscription fee will be payable each year on the birthday of the initial registration date.

7.3 Should a supplier fail to pay the required subscription fee; the supplier will not be granted access to VCM and will subsequently not be visible to any of Prochain's clients.

7.4 Where a supplier wishes to remove or delete its profile from VCM and no longer wishes to make use thereof, any fees paid by such supplier will not be refundable.

7.5 Regardless of whether a supplier is found to be compliant or not, the subscription fee paid will not be refundable under any circumstances.

## 8. No Guarantees/Warranties

The supplier acknowledges and agrees that Prochain does not in any way guarantee or warrant that the supplier will obtain new business by virtue of registering on VCM.

## 9. Protection of Private Information

9.1 In order to promote compliance in terms of the Protection of Private Information Act 4 of 2013 ("POPI Act"), the below provisions are specifically brought to the attention of the supplier. Prochain will collect personal information from the supplier, which shall include but is not limited to:

9.2.1 BEE documentation, including BEE certificates or Affidavits and letter from the accountant confirming turnover;

9.2.2 Financial information, including VAT certificate, tax clearance certificate, banking details, financial statements;

9.2.3 Contact details, including telephone number, physical address, e-mail address;

9.2.4 Any other personal information as provided by the supplier.

9.3 The source(s) from which the personal information will be collected include:

9.3.1 The supplier itself; and

9.3.2 Publicly accessible platforms.

9.4 The personal information will be collected by Prochain by way of direct uploading thereof to VCM by the supplier.

9.4.1 Prochain's offices are situated at:  
Route 21 Corporate Park  
Building B  
5 Regency Drive  
Irene, 0062.

9.5 The purposes for which the supplier's personal information will be collected and processed are as follows:

9.5.1 To enable the establishment of a national supplier database;

9.5.2 To ensure that the personal information and documentation of all suppliers on VCM are verified and vetted to promote compliance and thus prevent corrupt business activities;

9.5.3 To enable Prochain's clients to issue requests for quotations and purchase orders to compliant, vetted suppliers; and

9.5.4 To create a database to promote competitive sourcing.

9.6 The provision of a supplier's personal information is required for the supplier to obtain the full benefit of VCM.

9.7 Failure of a supplier to provide its personal information will prevent a supplier to reap the full benefits of VCM.

9.8 The personal information will be received by Prochain and will be visible to the supplier and to any Prochain clients which subscribe to VCM.

9.9 A supplier's personal information as collected and vetted by Prochain may at times leave South Africa due to the reason that Prochain's client base is not limited to the Republic of South Africa alone.

9.9.1 To ensure that a supplier's personal information is protected to the extent required, all international clients who register to become part of VCM will be required to adhere to the POPI Act's requirements, irrespective of where such clients are located.

9.10 The supplier has the right to access its personal information and the obligation to rectify any incorrect details and to maintain and keep such personal information updated.

9.11 The personal information collected by Prochain will be retained by it for up to a maximum of 5 (five) years for the purpose of legislative reporting.

9.12 Should there be a breach of the confidentiality of a supplier's personal information, Prochain will take all reasonable steps to ensure that the supplier is notified promptly of such breach. Prochain does not, however, accept any liability for the unauthorised use of a supplier's personal information by any client.

9.13 The supplier has the right to lodge a complaint to the Information Regulator where the supplier is of the view that its rights in terms of the POPI Act have been breached. The contact details of the Information Regulator are as follows:

Telephone number: 012 406 4818

Fax number: 086 500 3351

E-mail address: [inforeg@justice.gov.za](mailto:inforeg@justice.gov.za)

9.14 The supplier acknowledges that it has been made aware of its rights in terms of the POPI Act and agrees that acceptance of these Terms and Conditions constitutes permission to collect and process the personal information of such supplier as required by VCM and for the purpose(s) as set out in these Terms and Conditions.

9.15 The supplier acknowledges and agrees that Prochain may use its personal information for purposes of requesting quotations, requesting information, issuing a purchase order, drafting and/or amending a contract and BEE reporting.

## 10. Confidentiality

10.1 For the purposes of these Terms and Conditions, all information furnished by Prochain to the supplier, and vice versa, shall be deemed confidential information and shall include, but not be limited to:

10.1.1 all information marked (in any legible form) confidential, restricted or proprietary by either of the parties; or

10.1.2 either party's know-how, data, documentation, sketches or diagrams, reports, systems, technical specifications, techniques, manufacturing processes, reports and monitoring results, inventions, patents, tenders and contracts; or

10.1.3 any other commercially sensitive information, such as rates, names of suppliers, customers, manufacturing processes, business strategies and any other proprietary information deemed confidential by the disclosing party.

10.2 The parties shall hold in confidence all confidential information received from one another and shall not divulge the confidential information to any person including employees, save for the employees or agents directly involved with the execution of the scope of work, and in such case, the disclosure of the confidential information to such employees or agents shall only be to the extent required for the execution of the scope of work.

10.3 Each party will ensure that its employees, agents or other third parties, who may require to be exposed to the confidential information, will have signed a confidentiality agreement which contains no less favourable terms than those set out herein.

10.4 With respect to all confidential information provided by either party, the parties will use the same care and diligence to prevent disclosure to third parties of such confidential information, as it employs to avoid disclosure, publication or dissemination of its own confidential information.

10.5 The parties will not publicly disclose the terms of these Terms and Conditions, or any other agreement between them, without the prior written consent of the other party.

10.6 Notwithstanding the foregoing, this clause will not apply to any information, to which the parties can demonstrate the following:

10.6.1 at the time of disclosure, such information was known in the public domain;

10.6.2 after disclosure, such information became published or otherwise, becomes part of the public domain through no fault of the receiving party;

10.6.3 such information was already in the possession of the receiving party at the time of disclosure by the disclosing party;

10.6.4 the receiving party also received such information, after disclosure by the disclosing party, from a third party who had a lawful right to disclose such information to it; or

10.6.5 the receiving party independently developed additional information, without reference to any confidential information received by it from the disclosing party.

10.7 At the request of either party, at any time, the parties shall promptly deliver to the requesting party all written, printed, electronically stored and copied confidential information of whatever nature disclosed to it without retaining any copies thereof and shall either so deliver or destroy any written material based on the confidential information.

10.8 The parties agree to use the confidential information for the sole purpose of these Terms and Conditions and the execution of the scope of work.

10.9 Should there be a dispute between the parties as to whether either party complied with the provisions of this clause or not, the onus shall be on the alleged defaulting party to show that it took all reasonable steps to comply with the provisions of this clause and further, the aggrieved party shall take all reasonable steps to assist the alleged defaulting party in establishing the source from which such confidential information was made known.

10.10 The provisions of this clause 10 (*Confidentiality*) shall survive the fulfilment, cancellation or termination of these Terms and Conditions for any reason whatsoever and remain binding on the parties in perpetuity.

## 11. Termination, Blacklisting and Breach

11.1 Either party may terminate the agreement entered into between the parties, as contemplated in clause 1 (*General*), as a whole or in part, immediately at any given time by written notice thereof to the other party. The supplier will, however, not be entitled to the return of any payments made by it prior to termination.

11.2 Termination of the agreement may take place in the following ways:

11.2.1 Upon the supplier's request for termination;



11.2.2 Automatically upon non-payment of the subscription fee by the supplier; or

11.2.3 Automatically, where the supplier provides false information or commits any fraudulent act in relation to the provision of information.

11.3 Prochain shall be entitled to, in addition to terminating the agreement between the parties, blacklist any supplier where such supplier commits any fraudulent act in relation to the information provided to Prochain, including the intentional provision of false information. Such supplier may therefore be prevented from accessing VCM and may be prohibited from ever registering for VCM again.

11.4 Where a party is in breach or default of these Terms and Conditions or of the provisions of the agreement entered into between the parties, as contemplated in clause 1 (*General*), the defaulting party shall be notified in writing within 7 (seven) calendar days of the aggrieved party's dissatisfaction with regard to performance or non-conformance and shall be provided with the opportunity to respond in writing and take corrective action within 7 (seven) calendar days after being issued with the notice. Record shall be kept of all communication in this regard.

## 12. Dispute Resolution

Any disagreement or dispute arising between the parties relating to or arising out of these Terms and Conditions or the agreement entered between the parties, as contemplated in clause 1 (*General*), shall in the first instance be referred to the parties' respective Chief Executive Officers (or their designated nominees) for resolution. In the event of the dispute not having been resolved within 15 (fifteen) business days of such referral, or such longer period as the parties' respective Chief Executive Officers (or their designated nominees) may agree in writing, the dispute or difference will be referred to arbitration.

## 13. Limitation of Liability

13.1 Neither Party shall be liable towards the other Party for any indirect or consequential losses or damages.

13.2 Prochain's liability towards the supplier for loss of, or damage to the supplier's property shall be limited to all direct losses or damages capped at the amount recoverable in terms of Prochain's liability insurance cover, provided that such damages be limited to proven damages only.

13.3 Prochain's total liability to the supplier, for all matters arising under or in connection with this agreement, other than the excluded matters, shall be limited to all direct losses or damages capped at the amount recoverable in terms of Prochain's liability insurance cover, provided that such damages are limited to proven damages only.

## 14. Support and Good Faith

14.1 The Parties undertake always to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the

performance of all such actions and the taking of all such steps as may be necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of these Terms and Conditions.

14.2 The parties shall always during the continuance of this agreement observe the principles of good faith towards one another in the performance of their obligations in terms of the Terms and Conditions. This implies, without limiting the generality of the foregoing, that they shall:

14.2.1 always during the term of the relationship act reasonably, honestly and in good faith; and

14.2.2 perform their obligations arising from the Terms and Conditions diligently and with reasonable care.

## PART 2: END-USER LICENCE AGREEMENT FOR VCM AND THE E-PROCUREMENT FUNCTIONALITY

**IMPORTANT:** Please read the terms and conditions of this license agreement carefully before continuing with this program installation:

1. Prochain's End-User License Agreement ("**EULA**") is a legal and binding agreement between the supplier (either an individual or a single entity) and Prochain for the Prochain software product(s), namely the Vendor Compliance Management system ("**VCM**") and e-procurement functionality which may include associated software components, media, printed materials, and "online" or electronic documentation ("**Software Product**"). By installing, copying or otherwise using the Software Product, the supplier agrees to be bound by the terms of this EULA. This license agreement represents the entire agreement concerning the program between the supplier and Prochain (referred to as "**licenser**"), and it supersedes any prior proposal, representation, or understanding between the parties in this regard. If the supplier does not agree to the terms of this EULA, the supplier must not install or use the Software Product.

2. The Software Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software Product is licensed, not sold.

### 3. Grant of License

3.1 The Software Product is licensed as follows:

#### 3.1.1 Installation and Use

Prochain grants the supplier the right to use the Software Product on its computer running a validly licensed copy of the operating system and internet browser for which the Software Product was designed [Windows XP, Windows Vista, Windows 7].

### 4. Description of Other Rights and Limitations

#### 4.1 Maintenance of Copyright Notices

The supplier may not remove or alter any copyright notices on any and all copies of the Software Product.

#### 4.2 Distribution

The supplier may not distribute registered or unregistered copies of the Software Product to third parties.

#### 4.3 Prohibition on Reverse Engineering, Decompilation and Disassembly

The supplier may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

#### 4.4 Rental

The supplier may not rent, lease or lend the Software Product.

#### 4.5 Support Services

Prochain may provide the supplier with support services related to the Software Product ("**Support Services**"). Any supplemental software code provided to the supplier as part of the Support Services shall be considered part of the Software Product and subject to the terms and conditions of this EULA.

#### 4.6 Compliance with Applicable Laws

The supplier must comply with all applicable laws regarding use of the Software Product.

### 5. Termination

Without prejudice to any other rights, Prochain may terminate this EULA if the supplier fails to comply with the terms and conditions of this EULA. In such event, the supplier must destroy all copies of the Software Product in its possession.

### 6. Copyright

All title, including but not limited to copyrights, in and to the Software Product and any copies thereof are owned by Prochain. All title and intellectual property rights in and to the content which may be accessed through use of the Software Product is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This EULA grants the supplier no right to use such content. All rights not expressly granted are reserved by Prochain.

### 7. No Warranties

Prochain expressly disclaims any warranty for the Software Product. The Software Product is provided "As Is" without any express or implied warranty of any kind, including but not limited to any warranties of merchantability, non-infringement, or fitness of a particular purpose. Prochain does not warrant or assume responsibility for the accuracy or completeness of any information, text, graphics, links or other items contained within the Software Product. Prochain makes no warranties in respect of any harm that may be caused by the transmission of a computer virus, worm, time bomb, logic bomb or other such computer program. Prochain further expressly disclaims any warranty or representation to Authorised Users or to any third party.

### 8. Limitation of Liability

In no event shall Prochain be liable for any damages (including, without limitation, lost profits, business interruption, or lost information) arising out of Authorised Users' use of or inability to use the Software Product, even if Prochain has been advised of the possibility of such damages. In no event will Prochain be liable for loss of data or for indirect, special, incidental, consequential (including lost profit), or other damages based in contract, delict or otherwise. Prochain shall have no liability with respect to the content of the Software Product or any part thereof, including but not limited to errors or omissions contained therein, libel, infringements of rights of publicity, privacy, trademark rights, business interruption, personal injury, loss of privacy, moral rights or the disclosure of confidential information.