

# MANAGEMENT LIABILITY INSURANCE

## Bronze Cover

### THIS IS A CLAIMS MADE CERTIFICATE OF INSURANCE

In consideration of the payment of premium, *We* agree to insure *You* and the *Company* in accordance with the terms of this Certificate.

#### Section 1: Insurance Covers

##### Insurance Cover - Directors and Officers Liability

###### 1.1 Cover For You

Subject to the terms and conditions of this Certificate *We* will pay *Loss* incurred by *You* in respect of any *Claim* made against *You* during the *Certificate Period* (or a *Discovery Period*, if applicable) for a *Wrongful Act*.

###### 1.2 Cover For The Company

Subject to the terms and conditions of this Certificate *We* will pay *Loss* incurred by the *Company* in respect of:

- (i) any *Claim* made against *You* during the *Certificate Period* (or a *Discovery Period*, if applicable) for a *Wrongful Act* where the *Company* pays *Loss* on *Your* behalf ; or
- (ii) any *Claim* made against the *Company* during the *Certificate Period* (or a *Discovery Period*, if applicable) for a *Wrongful Act*;

###### 1.3 Cover for Subsidiary Companies

*We* will provide *You* with cover for any *Claim* arising out of a *Wrongful Act* related to any company which, prior to the date of inception of this Certificate, was a *Subsidiary* but is not a *Subsidiary* at the date of inception. This cover is strictly in excess of any other cover obtained by such company and shall not apply in respect of any loss under Insurance Cover 4.

*We* will not cover any *Claim* against *You* arising out of or attributable to any *Wrongful Act* or any fraudulent or dishonest act occurring after such time as the relevant company ceases to fall within the definition of *Company* or *Subsidiary*.

#### Section 2: Additional Cover

##### 2.1 Additional Cover 1 - Retirement Cover

If the *Company* does not renew this Certificate or replace it with any other insurance providing coverage for directors and officers liability and the *Company* has not purchased a *Discovery Period* , *You* will be automatically entitled to a 72 month *Discovery Period* following the expiry of the *Certificate Period*, at no additional premium, provided that *You* retired from all activities in *Your Insured Capacity* prior to the expiry of the *Certificate Period* for whatever reason.

Additional Cover 1 is not available in the event of a merger or acquisition as described in section 5.4 of this Certificate.

##### 2.2 Additional Cover 2 - Outside Directorship Cover

Additional Cover 2 applies in respect of Insurance Cover 1 paragraph 1.1 and 1.2(i) only.

*We* will pay *Loss* incurred by *You* or on *Your* behalf in respect of a *Claim* made against *You* in *Your* capacity as an *Outside Director*. Any *Loss* paid will form part of the *Limit of Liability*.

Additional Cover 2 is specifically in excess of any other insurance or indemnity available to *You* in *Your* capacity as an *Outside Director*. If, however, such other insurance is provided by *Us* then the total aggregate *Limit of Liability* for all *Loss* covered by this extension shall be reduced by the amount of the limit of liability of such other insurance.

Additional Cover 2 does not apply to:

- (a) Any position *You* hold as an *Outside Director* in the *USA* or *Canada*; or in a company with offices or a registered office in *USA* or *Canada*
- (b) Any position *You* hold as an *Outside Director* in an *Outside Company* which trades, has traded, or to the knowledge of any person insured under this Certificate intends to trade, (or trade its securities) in the *USA* or *Canada*.

If *You* hold any of the positions listed at (a) and (b) above, *We* may agree, at our absolute discretion, to extend cover in return for the payment of an additional premium and/or amendments to the terms of this Certificate provided that *You* provide *Us* with full written details of the position.

### 2.3 Additional Cover 3 - Travel Costs Cover

*We* will pay reasonable travel costs and living expenses incurred by *You* when giving evidence to defend a *Claim* provided that *We* have consented in writing before such costs are incurred.

Additional Cover 3 is subject to a sublimit of GBP 5,000 per individual and in the aggregate (which limit shall be part of and not in addition to the *Limit of Liability*).

Additional Cover 3 only applies in respect of Insurance Cover 1 paragraph 1.1, 1.2(i), and Insurance Cover 2 paragraph 1.3 and 1.4(i).

### 2.4 Additional Cover 4 - Public Relations Cover

In the event that *You* or the *Company* reasonably consider that the services of a public relations consultancy are urgently required to prevent or minimise the risk of a *Claim*, *We* will reimburse reasonable fees and costs incurred as a result of *You* or the *Company* instructing an appropriate consultancy, subject to our giving prior approval of the instruction of such appropriate consultancy.

Additional Cover 4 is subject to a sublimit of GBP 50,000 any one *Claim* and in the aggregate (which limit shall be part of and not in addition to the *Limit of Liability*).

Entitlement to Additional Cover 4 is conditional on *You* or the *Company* providing *Us* with full written details of the appropriate action *You* or the *Company* reasonably consider needs to be taken to prevent or minimise the risk of a *claim* no later than 30 days after *You* or the *Company* first become aware of any occurrence that requires the services of a public relations consultancy

### 2.5 Additional Cover 5 - Discovery Period Options

If *We* refuse to offer to renew this Certificate, then the *Company* or *You* shall be entitled to purchase an extension to the *Certificate Period* (a "Discovery Period") of either:

- (a) 12 months from the expiry of the *Certificate Period* upon payment of an additional premium of 100% of the annual or annualised equivalent of the premium stated at Item 6 of the Schedule; or
- (b) 24 months from the expiry of the *Certificate Period* upon payment of an additional premium of 175% of the annual or annualised equivalent of the premium stated at Item 6 of the Schedule.

Alternatively, if the *Company* or *You* choose not to renew this Certificate, then the *Company* or *You* shall be entitled to purchase a Discovery Period of 12 months from the expiry of the *Certificate Period* upon payment of 100% of the annual or annualised equivalent of the premium stated at Item 6 of the Schedule.

If the *Company* or *You* do not purchase a Discovery Period of 12 or 24 months, then *You* shall be entitled for no additional premium to a Discovery Period of 30 days.

#### **The cover granted during a Discovery Period only extends to a Wrongful Act**

The *Company* or *You* are not entitled to a Discovery Period in the event of an occurrence taking place as described in Section 5.4 of this Certificate. In this case, however, the *Company* or *You* may be entitled to purchase a further policy from *Us* as described in Section 2.6 of this Certificate.

The provision of a Discovery Period is conditional upon:

- (a) the *Company* or *You* giving *Us* written confirmation of the Discovery Option required within 30 days after the expiry of the *Certificate Period*; and
- (b) payment of the additional premium for a Discovery Period within 30 days after the expiry of the *Certificate Period*; and
- (c) this Certificate not being replaced by any other insurance affording directors and officers liability cover (however this condition shall not apply where the *Company* purchases a Discovery Period in accordance with Section 2.6; and
- (d) this Certificate not being cancelled in accordance with Section 5.5.

Any offer by *Us* of renewal terms, conditions, limits of liability or premium different from those in this Certificate does not constitute a refusal to offer to renew.

If a Discovery Period is effected, the *Limit of Liability* shall not be increased in any way.

A Discovery Period may not be cancelled in accordance with Clause 5.5 of this policy or otherwise and the additional premium for a Discovery Period is not refundable.

## 2.6 Additional Cover 6 - Pre-Agreed Run-Off Coverage

In the event of an occurrence taking place as described in Section 5.4 the *Company* or *You* shall be entitled to request from *Us* a replacement run-off Certificate. In such event *We* agree to offer a replacement run-off Certificate:

- (a) for a period of 12 months for a premium of no more than 100% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule; or
- (b) for a period of 24 months for a premium of no more than 150% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule; or
- (c) for a period of 36 months for a premium of no more than 175% of the annual or annualised equivalent of the premium stated at Item 5 of the Schedule; or
- (d) for any other period or premium as may be mutually agreed between the *Company* and *Us*.

It is agreed, however, that if *You* or the *Company* have provided *Notification* or have made us aware of a *Wrongful Act* prior to the request for run off cover that could give rise to a *Claim* then *We* are not bound to provide a replacement run-off Certificate for the premiums stated above. In this case, however, *We* may offer the *Company* or *You* a replacement run-off Certificate on such terms and conditions as *We* decide are appropriate and at our discretion.

If any such replacement run-off Certificate is purchased, then:

- (i) it will have effect from the effective date of an occurrence as described in Section 5.4 of this Certificate; and
- (ii) it will only apply to *Wrongful Acts* actually or allegedly committed by *You* or the *Company* prior to the effective date of an occurrence as described in Section 5.4 of this Certificate; and
- (iii) *We* will refund the relevant proportion of the premium calculated pro rata as at the effective date of the merger, consolidation or acquisition (regardless of the provisions of Section 5.5 of this Certificate); and
- (iv) it may not be cancelled and the premium for it is not refundable (save that *We* may cancel it due to non-payment of premium in accordance with the terms of this Certificate by giving 30 days written notice to the *Company*); and
- (v) it will not provide Retirement Cover or a Discovery Period as provided for in Additional Cover 1 and Additional Cover 5 of this Certificate (unless agreed by *Us* to the contrary).

## 2.7 Additional Cover 7 - Automatic Acquisition

If the *Company* creates or acquires a *Subsidiary* during the *Certificate Period*, a *Wrongful Act* committed after the effective date of acquisition will automatically attract coverage under this Certificate provided that:

- (a) the total assets of the new *Subsidiary* do not exceed 20% of the total consolidated assets of the *Company* as stated in the most recent audited financial statement of the *Company* as at the inception of this Certificate; and
- (b) the new *Subsidiary* is not domiciled in the *USA* or *Canada*; and
- (c) the new *Subsidiary* does not, has never and does not intend to trade its securities in the *USA* or *Canada*; and

## 2.8 Additional Cover 8 - Automatic Reinstatement of the Limit of Liability

In the event of a reduction (in whole or in part) of the *Limit of Liability* due to payment by *Us* of *Loss*, *We* will reinstate the *Limit of Liability* by the amount which the *Limit of Liability* is reduced provided in all events that:

- (i) the reinstated *Limit of Liability* will only be available for any subsequent *Loss* that is entirely unrelated to the *Claim* or *Loss* that caused the reduction of the *Limit of Liability*; and
- (ii) the maximum amount of *Loss* paid by *Us* in respect of any number of *Claims* or *Losses* which arise out of or are attributable to or are in any way connected with a single *Wrongful Act*, or *Loss* shall not exceed the *Limit of Liability*; and
- (iii) the total amount payable by *Us* under this Certificate shall not be more than two times the *Limit of Liability*; and
- (iv) if the *Company* holds any policy or policies (at the time of the reinstatement or at the time of the claim or payment of the loss?) providing coverage in excess of this Certificate, then the reinstated amount of the *Limit of Liability* will take effect after the total exhaustion of any amounts payable under any such other policies and also after any similar reinstatement provisions as may be contained in any such other policies are effected; and

Additional cover 8 does not apply in respect of (i) Additional Cover 4.

### Section 3: Definitions applying to all Insurance Covers and Additional Covers unless otherwise stated

#### 3.1 *Certificate Period* means:

the period of time specified in Item 2 of the Schedule, or any other period agreed in writing by the *Company* and *Us*.

#### 3.2 *Claim* means:

- (a) any written demand made against *You* or the *Company* during the *Certificate Period* (or a Discovery Period if applicable) for monetary damages or other relief, including non-pecuniary relief; or
- (b) any allegation of a *Wrongful Act* communicated to *You* or the *Company* during the *Certificate Period* (or a Discovery Period if applicable); or
- (c) any criminal, civil or arbitration proceedings brought against *You* or the *Company* during the *Certificate Period* (or a Discovery Period if applicable); or
- (d) any regulatory or administrative proceedings or any other official investigation into the affairs of the *Company*, subject to the following limitations, commenced during the *Certificate Period* (or a Discovery Period if applicable). In the case of insurance cover 1 paragraph 1.2(ii) claim is restricted to Health and Safety or employment related investigations.

All *Claims* which arise out of or are attributable to or are in any way connected with a single *Wrongful Act* shall constitute a single *Claim* for the purposes of this Certificate.

#### 3.3 *Company* means:

the organisation named in Item 1 of the Schedule and any *Subsidiary* thereof.

#### 3.4 *Computer Fraud* means:

the wrongful conversion of assets owned by the *Company* under the direct or indirect control of the *Company's* computer system by means of the direct fraudulent accessing of such computer system by persons other than *Employees* and (a) the insertion of fraudulent data or instructions into such computer system; or (b) fraudulent alteration of data, programs or routines in such computer system.

#### 3.5 *Costs* means:

all reasonable and necessary costs and fees, including disbursements, incurred by *You* or the *Company* or on their behalf in the investigation, mitigation, defence, adjustment and appeals of any *Claim* incurred with *Our* prior written consent. *We* will not unreasonably withhold that consent.

*Costs* does not mean overhead of the *Company* or benefit expenses associated with *Your* salary, wages or fees.

#### 3.6 *Deductible* means:

the amount(s) stated in Item 4 of the Schedule. For the purposes of determining the applicable *Deductible* under Insurance Cover 1 paragraph 1.2, the *Company* shall be deemed to have indemnified *You* to the extent that it is permitted to do so.

#### 3.7 *Electronic Instructions* means:

electronic, telegraphic, cable, teletype, *Tested* telex, *Tested* facsimile or telephone instructions to a *Financial Institution* to debit a *Transfer Account* and to transfer, pay or deliver funds from a *Transfer Account*.

#### 3.8 *Employee* means:

any person while in the regular service of the *Company* in the ordinary course of the *Company's* business during the *Certificate Period* and whom the *Company* (a) remunerates by salary, wages and/or commissions, and (b) has the right to govern and direct in the performance of such service.

Subject to the same provisions *Employee* shall also mean any (i) *ex-Employee* for a period not exceeding thirty-one days following termination of such person's services, except for Insuring Clauses 1 and 3 where this does not apply, (ii) part-time or temporary *Employee*, (iii) student gaining work experience with the *Company*, (iv) director or trustee of the *Company* who is also employed as an *Employee* of the *Company* in some other capacity but only while performing acts coming within the scope of the usual duties of an *Employee* in that other capacity, (v) any individual assigned to perform *Employee* duties for the *Company* by any agency furnishing temporary personnel on a contingent or part-time basis; provided, however, that this Certificate does not cover any loss caused by such individual if such loss is also covered by an insurance or suretyship held by the agency furnishing such temporary personnel to the *Company*.

3.9 *Financial Institution* means:

- (a) a banking or savings institution; or
- (b) a stockbroker, fund manager or similar investment institution at which the *Company* maintains a *Transfer Account*.

3.10 *Fraudulent Transfer Instructions* means:

- (a) *Electronic Instructions*, which purport to have been issued or transmitted by the *Company* or by any person duly authorised by the *Company* to issue or transmit such instructions but which have been fraudulently issued or transmitted by any person other than an *Employee*, and
- (b) *Written Instructions*, which purport to have been duly issued, forged or altered by the *Company* but which have been fraudulently issued, forged or altered by any person other than an *Employee*.

3.11 *Insured Capacity* means *Your* capacity as:

- (a) an executive director or officer of the *Company*; or
- (b) a non-executive director or officer of the *Company*; or
- (c) a shadow director of the *Company*, as defined in S.741 (2) of the Companies Act 1985, or the equivalent legislation in any other jurisdiction.
- (d) an *Employee*

3.12 *Knowledge or Discovery* means:

Knowledge or discovery of a loss occurs when *You* or the *Company* becomes aware of facts which would cause a reasonable person to assume that a loss covered by this Certificate has been or will be incurred, even though the exact amount or details of the loss may not then be known.

3.13 *Limit of Liability* means:

The amount stated in Item 3 of the Schedule.

3.14 *Loss* means:

Damages, judgment awards, settlement awards and *Costs*.

*Loss does not mean:*

- (a) civil or criminal fines or penalties; or
- (b) taxes; or
- (c) punitive or exemplary damages (except for exemplary damages for libel and slander in respect of a *Claim* brought and maintained entirely outside the *USA* or *Canada*); or
- (d) matters which are uninsurable under the proper law of this Certificate; or
- (e) employment-related benefits, share options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; or
- (f) any liability incurred to adapt any building or property for a disabled person.

3.15 *Money* means:

currency, coins, bank notes, bullion, travellers cheques, and money orders held for sale to the public.

3.16 *Notification* means:

written notice of any *Claim* given to *Us* by *You* or the *Company* within the *Certificate Period* or during a *Discovery Period*.

3.17 *Outside Director* means:

*You* when acting in an *Insured Capacity* for an *Outside Company* at the specific request of the *Company*.

This definition applies in respect of Additional Cover 2 only.

3.18 *Outside Company* means:

Any company, corporation or organisation other than the *Company*.

This definition applies in respect of Additional Cover 2 only.

3.19 *Pollutants* means:

any substance, solid, liquid, gaseous or thermal irritant or contaminant including, but not limited to smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste materials. Waste materials include, but are not limited to, recycled, reconditioned or reclaimed materials.

3.20 *Professional Services* means:

Any service or services provided by any generally recognised profession and for which a member of such profession would be entitled to charge the person to whom such services might be provided

3.21 *Securities* means:

all negotiable and non-negotiable instruments or contracts representing either money or property and includes revenue and other stamps in current use, tokens and tickets.

*Securities* does not mean *Money*.

3.22 *Subsidiary* means:

any company which the *Company* or a *Subsidiary* controls:

- (a) through holding a majority of the voting rights; or
- (b) through having the right to appoint or remove the majority of its board of directors; or
- (c) a majority of the voting rights pursuant to a written agreement with other shareholders or members.

3.23 *Tested* means:

a method of authenticating the contents of a communication by affixing thereto a valid test key which has been exchanged between the *Company* and a *Financial Institution* for the purpose of protecting the integrity of the communication in the ordinary course of business.

3.24 *Transfer Account* means:

an account, maintained by the *Company* at a *Financial Institution*, from which the *Company* or the *Company's* authorised representatives may cause the transfer, payment or delivery of funds by means of *Electronic Instructions* or written instructions.

3.25 *USA* means:

the United States of America, its territories, possessions and any state or political sub-division thereof.

3.26 *We/Us/Our* means:

The Insurers named in Item 11 of the Schedule.

3.27 *Wrongful Act* means:

- (a) any actual or alleged libel, slander, error, misstatement, misleading statement, misrepresentation, omission, neglect, breach of duty, or breach of warranty of authority attempted or committed by *You* when acting or serving in an *Insured Capacity* or the *Company*; or
- (b) any matter claimed against *You* solely by reason of *You* acting or serving in an *Insured Capacity*;

3.28 *You* or *Your* means:

Any natural person who is, was or, during the *Certificate Period*, becomes:

- (a) an executive director or officer (or the equivalent in any other jurisdiction) of the *Company*; or

- (b) a non-executive director or officer (or the equivalent in any other jurisdiction) of the *Company*; or
- (c) a shadow director of the *Company*, as defined in S.741 (2) of the Companies Act 1985 or the equivalent legislation in any other jurisdiction.;
- (d) a representative or appointee of the *Company* who is not included in Section 3.31(a) or (b) but only in respect of *Loss* that is covered under Additional Cover 2 of this Certificate;
- (e) a person employed by the *Company* exercising controlled functions 1 to 20, as are more fully set out and described under the terms of the Financial Services & Markets Act 2000 (or any equivalent or similar statute in any jurisdiction) whilst they are performing such functions; or

*You* or *Your* also means:

- (f) *Your* lawful spouse or partner where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or partner. The spouse or partner is not insured under this Certificate in his or her own right; or
- (g) *Your* legal representatives, heirs, assignees or estate in the event of *Your* death, incapacity, insolvency or bankruptcy; or
- (h) an employee of the *Company* who carries out a managerial or supervisory function for the *Company*; or
- (i) an employee of the *Company* who is joined as a party to any *Claim* against any person defined in (a) to (i) above.

*You* does not include external auditors of the *Company*.

#### Section 4A: Exclusions applying to all Insurance Covers & Additional Covers (unless otherwise stated)

We shall not cover *Loss* arising from or attributable to:

##### 4.1 *Claims* arising from or attributable to:

- (a) the actual, alleged or threatened discharge, dispersal, release or escape of *Pollutants* into or upon land, the atmosphere or any water course or body of water, whether such discharge, dispersal, release or escape is intentional or accidental; or
- (b) any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralise *Pollutants*.

Exclusion 4.1 does not apply in respect of: (a) *Costs* up to a limit of GBP 250,000 in the aggregate for the *Certificate Period* (which limit shall be part of and not in addition to the *Limit of Liability*); and (b) *Claims* made against *You* by any shareholder of the *Company* either directly or derivatively which allege damage to the *Company* or its shareholders

provided that

- (i) *You*, the *Company* or any person insured under this Certificate did not know of nor could have reasonably foreseen that there existed any situation, circumstance or *Wrongful Act* which could give rise to a *Claim* on or before the earlier of: (a) the inception date of this Certificate; or (b) the date of the first Certificate effected with *Us* and continually maintained with *Us* without interruption,; and
- (ii) the incident(s) giving rise to the *Claim* occurred entirely outside the *USA* or *Canada*; and
- (iii) the *Claim* is brought or maintained entirely outside the *USA* or *Canada*.

##### 4.2 *Claims* for bodily injury, sickness, mental anguish or emotional distress or disturbance, disease or death of any person howsoever caused or damage to or destruction of any tangible property, including loss of use thereof.

##### 4.3 *Claims* brought in the jurisdiction of the *USA* or *Canada* or brought elsewhere to enforce a judgement of a court or tribunal of the *USA* or *Canada*, whether by way of reciprocal agreement or otherwise.

##### 4.4 *Claims* arising from or attributable to:

- (a) any public sale or public issue of any shares or other securities or similar instruments of the *Company*; or
- (b) the preparation or release of any prospectus or offering document relating to any public sale or public issue of any shares or other securities or similar instruments of the *Company*.

4.5 *Claims* directly or indirectly caused by, resulting from or in connection with any of the following, regardless of any other cause or event contributing concurrently or in sequence to *Loss*:

- (a) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
- (b) any act of terrorism.

For the purposes of this exclusion, an act of terrorism means: an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group of persons, whether acting alone or on behalf of or in connection with any organisation or government, committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This exclusion also excludes any *Loss* directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (a) and/or (b) above.

If *We* allege that by reason of this exclusion that any *Loss* is not covered by this insurance, the burden of proving the contrary shall be upon *You*, the *Company* or any person claiming cover under this Certificate.

In the event that any portion of this exclusion is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

#### Section 4B – Exclusions applying to Insurance Cover 1 and 2 and to all Additional Covers only

4.6 *Claims* arising from or attributable to:

- (a) any criminal or dishonest act or omission; or
- (b) any act or omission committed with the knowledge that it was in breach of any statute, contract, duty or other legal obligation; or
- (c) the gain of any personal profit, remuneration or advantage to which *You* or the *Company* were not legally entitled including, but not limited to, profits made from the purchase or sale of the *Company's* securities within the meaning of Section 16(b) of the Securities Exchange Act 1934 (USA) and any amendments or re-enactment.

Exclusion 4.6 shall only apply if the act, omission or profit is established by a court, tribunal or any other final adjudication or by admission.

4.7 *Claims* arising from or attributable to:

- (a) any claim or circumstance notified to any certificate or policy of insurance which incepted prior to the inception of this Certificate or any matters substantially the same as alleged or established in such prior notified claim or circumstance.
- (b) proceedings which existed prior to or were pending at the earlier of:
  - (i) the inception date of this Certificate; or
  - (ii) the date of the first Certificate effected with *Us* if cover has been continually maintained with *Us* without interruption; or
  - (iii) at the date stated in Item 5 of the Schedule

or any matters substantially the same as alleged or established in such prior or pending proceedings or any claim or circumstances of which you or the company were aware or should reasonably have been aware of prior to the inception of this policy.

4.8 *Claims* brought by or on behalf of the *Company* except for:

- (a) any *Claim* brought or maintained by a liquidator, receiver or administrative receiver on behalf of the *Company* without the instigation, assistance or participation of the *Company* or any person insured under this Certificate;
- (b) any shareholder derivative action brought or maintained by or on behalf of the *Company* by any legally empowered entity or person, which is brought without the solicitation, assistance or participation or co-operation of any person insured under this Certificate;
- (c) any *Claim* brought or maintained by or on behalf of the *Company* for contribution or indemnity if the *Claim* directly results from another *Claim* covered under this Certificate.

We will however pay the *Costs* of defending such a *Claim* against *You* or the *Company*.

- 4.9 *Claims* arising from or attributable to any allegations that *You*, the *Company* or any other person insured under this Certificate carried out, or failed to carry out, professional services.
- 4.10 *Claims* arising from or attributable to any actual or alleged contractual liability of the *Company* under any express or implied contract or agreement..
- 4.11 *Claims* brought against the *Company* arising from or attributable to:
- (a) intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret; or
  - (b) any actual or alleged breach of any law relating to anti-trust, business competition, unfair trade practices or tortious interference in any other party's business or contractual relationships;

## Section 5A: General Conditions– applying to all Insurance Covers unless otherwise stated

### 5.1 Limit of Liability

Subject to Additional Cover 8, the *Limit of Liability* is the total aggregate limit of our liability in respect of all *Loss* and in respect of all *Claims* made during the *Certificate Period* (including any *Discovery Period*, if applicable) for all Insurance Covers & Additional Covers combined (except as stated below).

### 5.2 Deductible & Other Insurance

- (a) We are only liable to pay *Loss* insofar as it exceeds the amount of the *Deductible*.
- (b) The *Deductible* only applies in respect of *Loss* paid by the *Company*. For the purposes of determining the application of the *Deductible* under Insurance Cover 1 paragraph 1.2, the *Company* shall be deemed to have indemnified *You* to the extent that it is permitted to do so.
- (c) This Certificate shall apply only in excess of any other valid insurance, with the sole exception of any Certificate written as specific excess insurance over the *Limit of Liability* provided by this Certificate.

### 5.3 Allocation

Where a *Claim* involves matters which give rise to *Loss* covered by this Certificate and matters which do not, then We will use *Our* best efforts to agree upon a fair and proper allocation of the proportion of the *Loss* covered under this Certificate. Only *Loss* incurred by *You* or the *Company*, and in the case of *Costs* those which are directly attributable to both *your* or the *Company's* defence of such *Claim*, are covered, subject always to the terms and conditions of this Certificate.

If an allocation cannot be agreed then it shall be determined by a Queen's Counsel to be mutually agreed upon or, in default of agreement, to be nominated by the then Chairperson of the Bar Council. Such determination will be based upon written submissions only and will be final and binding. Pending that determination We may at *Our* sole discretion meet the *Loss* on an interim basis. After the allocation has been determined, *You* or the *Company* (whichever is appropriate) or both *You* and the *Company* will refund to *Us* any *Loss* which We have paid that exceeds the entitlement under this Certificate.

The costs of any reference to a Queen's Counsel under this clause shall be borne by *Us*.

### 5.4 Merger/Acquisition

If the *Company* is merged, consolidated with or acquired by another entity which thereby obtains ownership or control of 50% or more of the share capital or securities which include the right to vote for the election of board members, this Certificate will only apply to a *Wrongful Act* or *Loss* committed or incurred prior to the effective date of such transaction.

### 5.5 Termination/Cancellation

- (a) The Certificate shall be deemed cancelled by *Us* at the time specified in a written notice posted to the *Company* at the address shown in the Schedule. Such effective date shall not be less than thirty days after the date of posting. The posting by *Us* or the nominee named in Item 9 of the Schedule of such notice shall amount to and be sufficient proof of notice. Delivery of such notice by *Us* or the nominee named in Item 9 of the Schedule shall be equivalent to posting.
- (b) The *Company* may cancel this Certificate by giving *Us* notice in writing at any time. If the *Company* cancels this Certificate, We will retain the proportion of the premium for the period on cover calculated pro rata as at the date of cancellation plus a further 35% of the amount so calculated. .

- (c) We may cancel this Certificate due to non-payment of premium in accordance with the terms of this Certificate by giving 30 days written notice to the *Company*.
- (d) If a liquidator, insolvency practitioner or administrative receiver cancels this Certificate on behalf of the *Company* and We have not otherwise cancelled this Certificate, it is agreed that the Certificate will remain in force for non-executive directors of the *Company*. until the expiry of the *Certificate Period*.
- (e) This Certificate automatically terminates on the expiry date of the *Certificate Period* stated in Item 2 of the Schedule.
- (f) This Certificate may be cancelled by mutual agreement of the *Company* and *Us*. Such cancellation must be in writing

#### 5.6 Proper Law and Jurisdiction

This Certificate shall be governed by and construed in accordance with the laws of England and Wales.

It is agreed that the courts of England and Wales shall have exclusive jurisdiction to determine any disputes which arise in relation to this Certificate.

#### 5.7 Assignment of Certificate

This Certificate and any rights hereunder cannot be assigned without *Our* written consent.

#### 5.8 Severability of Exclusions

For the purposes of determining the application of Exclusion 4.6, no fact pertaining to or knowledge possessed by *You* or the *Company* shall be imputed to any other *Company* or person insured under this Certificate and vice versa.

#### 5.9 Severability of Proposal

The Proposal for this Certificate shall be construed as a separate Proposal by each *Company* or person insured under this Certificate

With respect to the declarations and statements contained in the Proposal, no statement in the Proposal or knowledge possessed by *You* or the *Company* shall be imputed to any other *Company* or person insured under this Certificate and vice versa. For the avoidance of doubt this provision shall have no other effect on any term of the proposal form as to the information given therein or any basis of contract clause contained in the proposal form.

#### 5.10 Subrogation and Assignment of Rights

If any payments are made under this Certificate, *We* shall be subrogated to all rights of recovery in respect of such payments. In addition, *You* or the *Company*, shall upon request execute all documentation that may be necessary to enable *Us* to bring an action or suit in *Your* name or that of the *Company*.

Any recovery received shall be applied first against any *Loss* insofar as it exceeds the *Limit of Liability*, then against any payment made by *Us*, and finally against the *Deductible*. *We* will not subrogate against any person insured under this Certificate unless that person is found to have committed a criminal or dishonest act.

#### 5.11 Singular and Plural

Any reference in this Certificate to the singular shall include the plural and vice versa.

#### 5.12 Authorisation of the Company

The *Company* shall act as agent on behalf of *You* and all other persons or entities insured under this Certificate in respect of all matters of any nature relating to or affecting this Certificate. *We* shall be entitled to treat the *Company* as having such authority for all purposes connected with this Certificate.

#### 5.13 Several Liability of Insurers

Where there is more than one of *Us*, *Our* obligations are several and not joint and are limited solely to the extent of individual subscriptions. The subscribing 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.

### Section 5B: General Conditions– applying to Insurance Covers 1, and 2

#### 5.14 Claim Reporting

As a condition precedent to our liability under this Certificate, *You* or the *Company* must provide *Notification* as soon as practicable.

If during the *Certificate Period* *You* or the *Company* become aware of a *Wrongful Act* or first become aware of a situation that *You* or the *Company* consider may become a *Claim*, *You* or the *Company* must provide *Notification* as soon as practicable, in which case any *Claim* that is subsequently made will be treated as having been made during the *Certificate Period*.

If a *Claim* is made against *You* or the *Company* in the 7 days prior to the expiry of the *Certificate Period* or the *Discovery Period* written notice can be given to *Us* within 14 days of the *Certificate Period* expiring.

#### 5.15 Defence and Settlement

- (a) *We* will pay *Costs* on an as incurred basis prior to final determination of cover under this *Certificate* or adjudication or up until the time that a *Claim* is withdrawn. If at any time a *Claim* is deemed not to be covered under this *Certificate* or is found to be excluded then all such *Costs* must be returned to *Us* on demand. To the extent that *Loss* is paid by *Us* which is subsequently deemed not to be covered under this *Certificate* or is found to be excluded, it will be deemed to erode the *Limit of Liability* until it is repaid to *Us*.
- (b) *You* and the *Company* shall have the right and duty to defend and contest any *Claim*. *We* shall have the right to effectively associate with *You* and the *Company* in the defence and settlement of any *Claim* that appears to *Us* as being reasonably likely to exceed the *Deductible*. This will include, but not be limited to, effectively associating in the negotiation of any settlement.
- (c) *You* and the *Company* shall not admit or assume any liability, enter into any settlement agreement, stipulate to any judgment or incur any *Costs* without our written consent as a condition precedent to our liability under the *Certificate*. Only those settlements, judgments and *Costs* to which *We* have consented shall be recoverable under this *Certificate*. Our consent shall not be unreasonably withheld provided that *We* have been able to effectively assess the defence and negotiation of any settlement of any *Claim*.
- (d) *You* and the *Company* shall give *Us* full co-operation and any information that *We* may reasonably require as a condition precedent to our liability under the *Certificate*. In the event that a dispute arises as to whether or not to contest any legal proceedings, neither *We*, *You* or the *Company* shall be required to contest any legal proceedings unless a Queen's Counsel or equivalent (to be mutually agreed upon) shall advise that the proceedings should be contested. *We* will bear the cost of obtaining the advice of the Queen's Counsel or equivalent.

#### 5.16 Unintentional Non-Disclosure and Late Notification

5.16.1 In the event of non-disclosure or misrepresentation of information to *Us*, then *We* agree not to avoid this *Certificate* provided that:

- (i) *You* or the *Company* are able to establish to the satisfaction of *Us* that such non-disclosure or misrepresentation was innocent and free from any fraudulent conduct or intent to deceive; and
- (ii) *We* shall be entitled to amend the terms, conditions and premium for this *Certificate* upon review of any information that has not (but should have) been disclosed to *Us* or upon re-review of any information that has been misrepresented to *Us*.

5.16.2 In the event that *You* or the *Company* fail to comply with the provisions of Section 5.14: Claim Reporting, then *We* agree not to avoid this *Certificate* or repudiate a *Claim*. If, however, *We* believe that such failure has prejudiced our right to effectively associate with *You* and the *Company* in the defence and settlement of any *Claim*, then *We* reserve the right to deduct from any *Loss* an amount that *We* believe would not have been payable had such prejudice not occurred.

In such event, *We* agree with *You* that we shall both use our best efforts to agree upon a fair and proper amount of the proportion of any *Loss* that shall be deducted. If, however, such an amount cannot be agreed then it shall be determined by a Queen's Counsel (or an equivalent or like person to be mutually agreed upon). Such determination will be based upon written submissions only and will be final and binding.

The costs of any reference to a Queen's Counsel (or an equivalent or like person to be mutually agreed upon) under this section shall be borne by *Us*.

### Section 5C – General Conditions applying to all Insurance Covers unless otherwise stated

#### 5.18 Claim Reporting

Upon *Knowledge* or *Discovery* of *Loss* or of a circumstance which may give rise to *Loss*, the *Company* shall as condition precedent to *Our* liability under the *Certificate*:

- (a) give notice thereof as soon as practicable to *Us* and,
- (b) file detailed proof of loss (which includes but is not limited to a completed proof of loss form in the format agreed by *Us*) with *Us*, within six months after the *Knowledge or Discovery of Loss*, or within such further period as agreed to in writing by *Us*;
- (a) provide all requested information and documents and cooperate with *Us* in all matters pertaining to such *Loss* under this Insurance Cover 3.

#### 5.19 Defence and Settlement

- (a) *We* may, with the *Company's* consent, settle any claim for *Loss* of any *Money, Securities* or other property owned by any party other than the *Company* with such party. If *We* provide indemnity for any *Money, Securities* or other property, title to such *Money, Securities* or other property shall transfer to *Us*.
- (b) *We* may, at *Our* discretion, pay either (a) the actual cash value of such *Money, Securities* or other property, or (b) the cost of repair to or replacement of the *Money, Securities* or other property. If (liability being otherwise admitted) *We* cannot agree upon such cash value or such cost of repair or replacements with the *Company*, such cash value or such cost shall be determined by an arbitrator appointed by the parties in accordance with the Arbitration Act 1996 or any amendment or re-enactment thereof. Where the Certificate requires any difference to be referred to arbitration the making of an award shall be a condition precedent to any right of action against *Us*.

#### 5.20 Basis of Valuation

In no event shall *We* be liable under this Certificate for more than:

- (a) as regards *Securities*, the actual cash value thereof at the close of business on the business day next preceding the day on which the *Loss* was discovered, or for the actual cost of replacing the *Securities*, whichever is less;
- (b) the cost of blank books, pages, tapes or other blank materials to replace lost or damaged books of account or other records;
- (c) the reasonable cost of re-writing or amending the software programs or systems where such re-writing or amending is necessary to correct the programs or amend the security codes following a claim for which liability is admitted under this Certificate;
- (d) the United Kingdom sterling value of a foreign currency based on the rate of exchange published in the Financial Times on or nearest the day the *Loss* of foreign currency is discovered;
- (b) the actual cash value at the time of loss of other property (not included in the above) or for more than the actual cost of repairing or replacing the property with property of similar quality and value, whichever is less.

#### 5.21 Fraudulent Claims

If *You* or the *Company* shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, the cover afforded to *You* or the *Company* under this Certificate shall be void and all *Claims* hereunder shall be forfeited

#### 5.22 Joint *Company* Insurance

- (a) If more than one *Company* is covered under this Certificate, the first named *Company* named in the Schedule shall act for itself and for every other *Company* for all purposes of this Certificate.
- (b) Payment by *Us* of any *loss* under this Certificate to the *Company* first named in the Schedule shall fully release *Us* in respect of such *loss*.
- (c) If the *Company* first named in the Schedule ceases for any reason to be covered under this Certificate, then the *Company* next named in the Schedule shall thereafter be considered as the *Company* first named for all purposes related to this Certificate.
- (d) Knowledge possessed or discovery made by the *Company* or *You* shall constitute knowledge possessed or discovery made by every *Company* covered under this Certificate save as provided for in Paragraphs 5.8 and 5.9 above.
- (c) If, prior to the cancellation or termination of this Certificate, this Certificate or any Section hereof is cancelled or terminated as to any *Company*, *We* shall have no liability for any *Loss* sustained by such *Company* unless discovered within a Discovery Period.

## 5.23 Other Insurance

### (a) **Loss covered under prior Certificate**

Cover under this Certificate will apply to *Loss* discovered during the currency of this certificate and in accordance with the terms of this Certificate and occurring during the period of a prior Certificate held by the *Company*, if:

- (i) the *Certificate Period* or discovery period applicable to such prior Certificate has expired; and this Certificate replaces such prior Certificate; and there has been no break in cover; and
- (ii) such *Loss* is covered under this Certificate; and such *Loss* would have been covered under any such prior Certificate and
- (iii) such loss is not a loss under Insurance Cover 4 of this certificate

provided always that the coverage offered under this provision shall be part of and not in addition to the *Limit of Liability* of this Certificate and for the purposes of this Paragraph the limit of indemnity effective under this Certificate shall be the lower of the *Limit of Liability* available under this Certificate or such prior Certificate.