

MANAGEMENT LIABILITY PLUS

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: Insuring Clauses

Executive Liability and Company Reimbursement

1.1 We will pay Loss:

- (a) As incurred by You in respect of any Claim first made against You during the Certificate Period for a Wrongful Executive Act.
- (b) Which is paid on your behalf by the Company in respect of any Claim first made against You during the Certificate Period for a Wrongful Executive Act.

Corporate Liability

1.2 We will pay Loss as incurred by the Company in respect of any Claim first made against the Company during the Certificate Period for a Wrongful Corporate Act.

Employment Practices Liability

1.3 We will pay Loss as incurred by the Company in respect of any Claim first made against the Company during the Certificate Period for a Wrongful Employment Act.

Pension Trustee Liability

1.4 We will pay Loss:

- (a) As incurred by You in respect of any Claim first made against You during the Certificate Period for a Wrongful Pension Trustee Act.
- (b) Which is paid on your behalf by the Insured Entity in respect of any Claim first made against You during the Certificate Period for a Wrongful Pension Trustee Act.
- (c) As incurred by the Insured Entity in respect of any Claim first made against the Insured Entity during the Certificate Period for a Wrongful Pension Trustee Act.
- (d) As incurred by the Pension Fund in respect of any Document which, in the ordinary course of business, has been damaged, destroyed or lost.

Fraud Losses

1.5 We will pay all Direct Financial Loss incurred by the Insured Entity which is first discovered during the Certificate Period as a result of a Dishonest Act.

Section 2: Additional Cover

The Additional Cover set out below is only applicable to the indicated Insuring Clauses and shall only apply where You or the Company have purchased the coverage afforded by the requisite Insuring Clauses. The Additional Cover is also subject to the Deductible.

The following Additional Cover shall be applicable to Insuring Clause 1.1 (Executive Liability & Company Reimbursement) only

2.1 Corporate Manslaughter

We will pay Loss as incurred by You or which is paid by the Company on Your behalf in respect of a Claim first made against You in Your capacity as such during the Certificate Period for any Corporate Manslaughter Offence.

2.2 Bribery

We will pay Loss as incurred by You or which is paid by the Company on Your behalf in respect of a Claim first made against You in Your capacity as such during the Certificate Period for any Bribery Offence.

2.3 Extradition

We will pay Loss as incurred by You or which is paid by the Company on Your behalf in respect of any Extradition Proceeding first made against You in Your capacity as such during the Certificate Period.

2.4 Additional Limit of Liability For Non-Executive Directors

In the event that the Limit of Liability available to non-executive directors under this Certificate becomes exhausted then We agree that We will provide an additional limit as specified in Item 6 of the Schedule per non-executive director subject to the following:

- 2.4.1 this Additional Cover is only available for any subsequent Loss incurred by You in respect of any Claim first made against You in your capacity as a non-executive director of the Company for a Wrongful Executive Act that is entirely unrelated to any Claim that causes a reduction of the Limit of Liability; and

- 2.4.2 the total of *Our* aggregate liability under this Additional Cover shall not exceed a further 100% of the aggregate *Limit of Liability* applicable to Insuring Clause 1.1; and
- 2.4.3 this Additional Cover will only operate in excess of the total indemnity available under any other policies in excess of this Certificate or of any other cover available to the individual non-executive director for the *Claim* for which indemnity is sought; and
- 2.4.4 this provision shall not apply in respect of Sections 2.6, 2.14 and 2.16 of this Certificate.

2.5 *Discovery Period Options (Bilateral)*

- 2.5.1 If *We* refuse to offer to renew this Certificate, then the *Company* or *You* shall be entitled to purchase a *Discovery Period* of either:
 - (a) 12 months from the expiry of the *Certificate Period* upon payment of an additional premium of 75% of the annual or annualised equivalent of the premium stated at Item 3 of the Schedule; or
 - (b) 24 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 3 of the Schedule.
- 2.5.2 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 3 of the Schedule.
- 2.5.3 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.
- 2.5.4 The *Company* or *You* are not entitled to a *Discovery Period* in the event of a Transaction taking place as described in 8.3 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 2.17 of this Certificate.
- 2.5.5 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 of the expiry of the *Certificate Period*; and
 - (b) payment of the additional premium for a *Discovery Period* within 30 days of the expiry of the *Certificate Period*; and
 - (c) this Certificate not being replaced by any other insurance providing similar coverage (however this condition shall not apply where the *Company* purchases a *Discovery Period* in accordance with Section 2.5.2); and
 - (d) this Certificate not being cancelled in accordance with Section 8.5.
- 2.5.6 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.
- 2.5.7 If a *Discovery Period* is effected, the *Limit of Liability* shall not be increased in any way.
- 2.5.8 A *Discovery Period* may not be cancelled and the additional premium for a *Discovery Period* is not refundable.

2.6 *Outside Directorship Cover*

- (a) *We* will pay *Loss* as incurred by *You* or which is paid by the *Company* on your behalf in respect of a *Claim* first made against *You* during the *Certificate Period* in *Your* capacity as a director, officer, trustee or governor of an *Outside Entity* for a *Wrongful Executive Act*.
- (b) This cover is specifically in excess of any other insurance protecting *You* and/or in excess of any other indemnity available to *You* while holding such position. If, however, such other insurance is provided by *Us* then the total aggregate *Limit of Liability* for all *Loss* covered by this Additional Cover shall be reduced by the amount of the limit of liability of such other insurance.

The following Additional Cover shall be applicable to Insuring Clause 1.2 (Corporate Liability) only

2.7 *Corporate Manslaughter*

We will pay *Loss* as incurred by the *Company* in respect of any *Claim* first made against the *Company* during the *Certificate Period* for any *Corporate Manslaughter Offence*.

2.8 *Bribery*

We will pay *Loss* as incurred by the *Company* in respect of any *Claim* first made against the *Company* during the *Certificate Period* for any *Bribery Offence*.

The following Additional Cover shall be applicable to Insuring Clauses 1.1 (Executive Liability & Company Reimbursement) and 1.4 (Pension Trustee Liability) only

2.9 *Internal Investigation Costs*

We will pay reasonable legal fees, costs and expenses incurred by *You* (or on *Your* behalf) with *Our* prior written consent (not to be unreasonably withheld) resulting from any internal investigation, examination or inquiry first commenced against *You* during the *Certificate Period* in relation to *Your* conduct as a director, officer or trustee of the *Insured Entity* only, in direct response or as a direct consequence of any report made by the *Company* to any governmental agency or body, regulator or judicial authority in respect of *Your* conduct as a director, officer or trustee of the *Insured Entity* and following the receipt by

You of a written notice from a member of the *Company's* senior management (or external lawyers) informing you of such internal investigation and restricting or otherwise altering the scope of your duties pending completion of such investigation.

2.10 Assets and Personal Liberty Costs

We will pay any *Bond Premium* and all reasonable and necessary fees, including disbursements as incurred by *You* or on *Your* behalf in respect of *Asset and Personal Liberty Proceeding* first commenced against *You* during the *Certificate Period*, providing that *We* have given *Our* prior written consent to *You* incurring such *Bond Premium* or fees. *We* will not unreasonably withhold that consent.

2.11 Retirement Cover

If the *Company* does not renew this Certificate or replace it with any other insurance providing similar coverage and one of the *Discovery Period* Options detailed in Section 2.5 of this Certificate has not been purchased then *You* will be automatically entitled to a 72 month *Discovery Period* if you retired prior to the expiry date of the *Certificate Period*.

It is agreed, however, that this Section 2.11 will be of no effect in relation to *You* if *You* retired due to Transaction taking place as described in Sections 8.3 or 8.4 of this Certificate.

2.12 Official Investigation Costs (Pre-Wrongful Act)

We will pay reasonable legal fees, costs and expenses incurred by *You* or on *Your* behalf resulting from any legally required attendance by *You* at any official investigation, examination, inquiry or other similar proceeding ordered or commissioned by any official body or institution that is legally empowered to investigate the affairs of the *Insured Entity* provided that *We* have consented in writing to *You* incurring such *Costs* before they are incurred. It is agreed that *We* will not unreasonably withhold that consent.

If *You* believe that as a result of any such official investigation, examination, inquiry or other similar proceeding, circumstances exist which may reasonably be expected to give rise to a *Claim*, notice must be given to *Us* in accordance with Section 6 *Claim Reporting* – Condition Precedent of this Certificate.

2.13 Emergency Costs

If *Our* written consent cannot be obtained within a reasonable time before *Costs* (save for the *Costs* of a Public relations consultancy referred to below) are incurred in respect of a *Claim* then *We* will give retrospective consent to such *Costs* up to the amount specified in Item 7 of the Schedule.

2.14 Travel Costs Cover

We will pay reasonable travel costs and living expenses incurred by *You* (or family members accompanying you) when giving evidence to defend a *Claim* that is covered under this Certificate provided that *We* have consented in writing before such costs are incurred and subject to a sublimit of GBP 5,000 per individual and in the aggregate per individual (which limit shall be part of and not in addition to the *Limit of Liability*).

The following Additional Cover shall be applicable to Insuring Clauses 1.1 (Executive Liability & Company Reimbursement), 1.2 (Corporate Liability), 1.3 (Employment Practices Liability), 1.4 (Pension Trustee Liability) only

2.15 Mitigation Loss

We will pay any reasonable *Costs* incurred by *You* (or on *Your* behalf) or the *Insured Entity* or any reasonable settlement payment made by *You* (or on *Your* behalf) or the *Insured Entity* to a third party that *You* or the *Insured Entity* reasonably determine are necessary in order to prevent or mitigate any situation arising that is likely to give rise to a *Claim* or *Direct Financial Loss* that would otherwise be covered under this Certificate, providing that:

You or the *Insured Entity* provide notice to *Us* of the incurring of such *Costs* or the making of such settlement payment as soon as is reasonably practical; and

You or the *Insured Entity* shall have the burden of proof in establishing that such payment was reasonable and necessary; and

We will only be liable to pay up to a maximum of GBP 150,000 in the aggregate in respect of this Additional Cover.

2.16 Public Relations Cover

In the event that *You* or the *Insured Entity* reasonably consider that the services of a public relations consultancy are required urgently in order to prevent or minimise the impact of a *Claim* which would be covered under this Certificate, then *We* will reimburse reasonable fees and costs incurred as a result of *You* or the *Insured Entity* instructing an appropriate consultancy up to a maximum limit of GBP 50,000 in the aggregate for all such *Claims*. This limit shall be in addition to the *Limit of Liability* stated in Item 5 of the Schedule. *Your* or the *Insured Entity's* entitlement to this Additional Cover is conditional on *You* or the *Insured Entity* providing *Us* with full written details of the appropriate action taken no later than 30 days after *You* or the *Insured Entity* first become aware of any occurrence that requires the services of a public relations consultancy.

2.17 Pre-Agreed Run-Off Coverage in the case of Merger or Acquisition or Liquidation

In the event of a Transaction taking place as described in 8.3 or 8.4 of this Certificate, *You* or the *Insured Entity* shall be entitled to request from *Us* a replacement run-off Certificate. In such event *We* agree to offer a replacement run-off Certificate:

2.17.1 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 3 of the Schedule; or

2.17.2 for a period of 24 months for a premium of no more than 125% of the annual or annualised equivalent of the premium stated at Item 3 of the Schedule; or

- 2.17.3 for a period of 36 months for a premium of no more than 150% of the annual or annualised equivalent of the premium stated at Item 3 of the Schedule; or
- 2.17.4 for a period of 72 months for a premium of no more than 175% of the annual or annualised equivalent of the premium stated at Item 3 of the Schedule; or
- 2.17.5 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 *Insured Entity* have made a *Notification* or have made *Us* aware of a *Wrongful Act* 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 *Insured Entity* a replacement run-off Certificate on such terms and conditions as *We* decide are appropriate and at *Our* discretion.

If any replacement Certificate is purchased, then:

- 2.17.6 it will have effect from the effective date of the Transaction as described in Section 8.3 or 8.4 of this Certificate; and
- 2.17.7 it will only apply to *Wrongful Acts* actually or allegedly committed by *You* prior to the effective date of the Transaction as described in Section 8.3 or 8.4 of this Certificate; and
- 2.17.8 for the avoidance of doubt, it shall provide no cover under Insuring Clause 1.5 of this Certificate; and
- 2.17.9 *We* will refund the relevant proportion of the premium calculated pro rata as at the effective date of the Transaction as described in Section 8.3 or 8.4 of this Certificate (regardless of the provisions of Section 8.6 of this Certificate); and
- 2.17.10 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
- 2.17.11 it will not provide a *Discovery Period* or Retirement Cover as provided for in Additional Covers 2.5 and 2.11 (unless agreed by *Us* to the contrary).

Section 3: Definitions

- 3.1 *Asset and Personal Liberty Proceeding* means any proceedings to:
 - 3.1.1 prohibit *You* from holding the office of a director;
 - 3.1.2 deport *You* or to restrict *Your* liberty to a specified domestic property; or
 - 3.1.3 confiscate property or to suspend or freeze *Your* rights of property ownership of either real or personal property or to impose a charge over *Your* real property or personal property.
 - 3.2 *Bond Premium* means any bail bond premium or civil bond premium incurred with *Our* prior written consent in respect of any *Asset and Personal Liberty Proceeding*.
 - 3.3 *Bribery Offence* means any actual or alleged offence as provided for in the Bribery Act 2010 (or any equivalent legislation in the jurisdiction where the proceeding is brought).
 - 3.4 *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*.
 - 3.5 *Claim* means:
 - 3.5.1 any written demand for monetary damages or other relief, including non-pecuniary relief; or
 - 3.5.2 any criminal, civil or arbitration proceedings; or
 - 3.5.3 any regulatory or administrative proceedings; or
 - 3.5.4 any official investigation by a third party, including any fact-finding investigation.

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.
 - 3.6 *Company* means the organisation named in Item 1 of the Schedule and any *Subsidiary* thereof
 - 3.7 *Corporate Manslaughter Offence* means any actual or alleged breach of duty of care which results in the death or injury of another person.
 - 3.8 *Costs* means all reasonable and necessary fees, including disbursements, incurred by *You* or the *Company* or incurred on their behalf in the investigation, mitigation, defence, adjustment and appeals of any *Claim* (including the reasonable premium and cost required for a bail bond or other similar obligation) provided that *We* have given *Our* prior written consent to *You* or the *Company* incurring such *Costs*. *We* will not unreasonably withhold that consent.
- Costs* does not mean overhead or benefit expenses associated with *Your* salary, wages or fees.
- 3.9 *Deductible* means the amount(s) stated in Item 4 of the Schedule
 - 3.10 *Direct Financial Loss* means monetary loss incurred by the *Company* directly as a result of a *Dishonest Act* including any bonuses or commissions paid to an Employee in respect of a specific transaction which constituted a *Dishonest Act*.

Direct Financial Loss shall not include:

- 3.10.1 any taxes, civil, regulatory or criminal fines or penalties or any salaries, fees, commission, bonuses and similar employee benefits earned in the normal course of employment, including salary increases and promotions;
- 3.10.2 any interest which is not received or becomes payable by the *Company*;
- 3.10.3 any payment for extortion, kidnapping, hijacking or wrongful detention;
- 3.10.4 costs, fees or other expenses incurred in establishing the existence or amount of *Direct Financial Loss*, or in prosecuting any proceeding;
- 3.10.5 indirect or consequential loss of any nature;
- 3.10.6 any sum representing loss or deprivation to the *Company* of income or profits (including but not limited to interest and dividends); or
- 3.10.7 any sum arising out of, based upon or attributable to: business interruption (including loss of computer time or use), (b) mechanical, electronic or software failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, electronic data corruption, failure or breakdown or any malfunction or error in programming or errors or omissions in processing, or (c) loss of or damage to any property, office, premises or real estate, however caused.

3.11 *Discovery Period* means a period immediately following expiry of the *Certificate Period* during which written notice may be given to *Us* of a *Claim* first made against *You* in respect of any actual or alleged *Wrongful Executive Act* committed prior to expiry of the *Certificate Period*.

3.12 *Dishonest Act* means any dishonest or fraudulent act committed by an Employee of the *Insured Entity* alone or in collusion with others with the intention of obtaining improper financial gain for the Employee who committed such act or those persons the Employee was colluding with.

The term "improper financial gain" does not include salary, fees, commissions, promotions and other similar emoluments.

All *Dishonest Acts* arising out of one original cause shall constitute a single *Dishonest Act* for the purposes of this policy.

3.13 *Document* means any paper or electronic document (excluding any currency, bonds or any other negotiable instruments, whether printed or reproduced) which relate directly to the affairs of the *Pension Fund* and for which *You* are legally responsible in your capacity as a trustee of the *Pension Fund* or as an employee of the *Company* which administers the *Pension Fund*.

3.14 *Extradition Proceeding* means any proceeding (and the issuance of an arrest warrant) against *You* following a request for *Your* deportation or extradition (including any appeal or other proceedings to overturn any order made for *Your* extradition or deportation).

3.15 *Insured Entity* means the *Company* and, only where Insuring Clause 1.4 is purchased, the *Pension Fund*.

3.16 *Limit of Liability* means the amount stated in Item 5 of the Schedule.

3.17 *Loss* means (for all Insuring Clauses and Additional Covers with the exception of Insuring Clause 1.4 (d)):

- 3.17.1 damages, judgement awards, settlement awards and Costs;
- 3.17.2 punitive or exemplary damages or civil or criminal fines or penalties but only where these are legally insurable in the jurisdiction where any payment is made;
- 3.17.3 exemplary damages for libel and slander in respect of a *Claim* brought or maintained entirely outside the *USA* or *Canada*); or
- 3.17.4 in respect of Insuring Clause 1.4 (d) only, the reasonable costs incurred by or on behalf of the *Pension Fund* in restoring or replacing any *Document*, but not the value to the *Pension Fund* of the information contained in such *Document*.

Loss, however, does not mean:

- (a) taxes; or
- (b) matters which are uninsurable under the law of the jurisdiction where any payment is to be made; or
- (c) employment-related benefits, share options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; or
- (d) any liability incurred to adapt any building or property for a disabled person or any liability relating to any educational, sensitivity or other corporate programme.

3.18 *Outside Entity* means any other company, corporation or organisation in which *You* hold or held the position of director, officer, trustee or governor, provided that *You* hold or held that position at the specific request of the *Company*.

Outside Entity does not mean:

- (a) any entity that is domiciled in the *USA* or derives more than 50% of its turnover from business in the *USA*; or
- (b) any entity which has, has had, or to the knowledge of any person insured under this Certificate intends to have its securities traded in the *USA* or *Canada*.

3.19 *Non-Indemnifiable Loss* means *Your Loss* that the *Company* is unable to indemnify due to legislative probation or insolvency (as determined in accordance with Section 123 of the Insolvency Act 1986).

- 3.20 *Notification* means written notice of a *Claim* or *Direct Financial Loss* or circumstances that may give rise to a *Claim* or *Direct Financial Loss* given to the nominee shown in the Details for *Notification of Claims*.
- 3.21 *Pension Fund* means: any past, present or future employee benefit welfare, benefit or pension plan established, sponsored or administered by the *Company* for the sole benefit of its employees.
- 3.22 *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.
- 3.23 *Subsidiary* means any company which the *Company* or a *Subsidiary* controls:
- 3.23.1 through holding a majority of the voting rights; or
- 3.23.2 through having the right to appoint or remove the majority of its board of directors; or
- 3.23.3 alone, or pursuant to a written agreement with other shareholders or members, a majority of the voting rights; or
- 3.23.4 through control of the composition of the board of directors.
- Coverage is provided for any company which, prior to the date of inception of this Certificate, was a *Subsidiary* but is no longer a *Subsidiary* at the date of inception.
- Coverage will cease as at the effective date of the sale or dissolution of any *Subsidiary* for any *Wrongful Act* committed after that date.
- 3.24 *USA* means the United States of America, its territories, possessions and any state or political sub-division thereof.
- 3.25 *We* or *Us* or *Our* means the Insurers named in the Insurer Details.
- 3.26 *Wrongful Act* means *Wrongful Corporate Act*, *Wrongful Employment Act* and *Wrongful Executive Act*.
- 3.27 *Wrongful Corporate Act* means any actual or alleged act, error or omission committed by the *Company*, but not any *Wrongful Employment Act* or *Wrongful Pension Trustee Act*.
- 3.28 *Wrongful Employment Act* means any actual or alleged unfair or wrongful dismissal, termination or discharge of employment (either actual or constructive, including breach of an implied contract), employment-related misrepresentation, wrongful failure to employ or promote, failure to grant tenure, discrimination, harassment, retaliation (including lockouts), employment-related humiliation, defamation, invasion of privacy, wrongful deprivation of career opportunity, wrongful demotion or negligent employee evaluation (including the provision of negative or defamatory statements in connection with an employee reference) which relate solely to the *Company*, its past, present or prospective employees.
- 3.29 *Wrongful Executive Act* means:
- 3.29.1 any actual or alleged libel, slander, error, misstatement, misleading statement, misrepresentation, omission, neglect, breach of duty, breach of fiduciary duty, breach of trust, breach of warranty of authority or other act attempted or committed (including, in respect of derivative action, any proposed act) by *You* when acting or serving in such capacity; or
- 3.29.2 any matter claimed against *You* solely by reason of *You* acting or serving in such capacity; or
- 3.29.3 a *Wrongful Employment Act*.
- 3.30 *Wrongful Pension Trustee Act* means any actual or alleged breach of trust, breach of duty, breach of statutory provision, neglect, error or omission, misstatement, misleading statement or other act wrongfully committed with respect to any *Pension Fund*, but not any *Wrongful Corporate Act* or *Wrongful Employment Act*.
- 3.31 *You* or *Your* means:
- For the purposes of all Sections with the exception of Insuring Clause 1.4: any natural person who is, was prior to or becomes during the *Certificate Period*:
- 3.31.1 an executive director, officer, manager or trustee of the *Company* or the equivalent in any other jurisdiction; or
- 3.31.2 a non-executive director, officer or trustee of the *Company* or the equivalent in any other jurisdiction; or
- 3.31.3 a shadow director of the *Company*, as defined in Section 251 of the Companies Act 2006 or the equivalent legislation in any other jurisdiction; or
- 3.31.4 a representative or appointee of the *Company* who is not included in Section 3.31.1 to 3.31.3 but only in respect of *Loss* that is covered under Section 2.8 of this Certificate; or
- 3.31.5 a person employed by the *Company* exercising controlled functions 1 to 29, pursuant to Section 59 Financial Services & Markets Act 2000 (or any equivalent or similar statute in any jurisdiction) whilst they are performing such functions; or
- 3.31.6 an employee of the *Company* ("Employee") who:
- (a) carries out a managerial or supervisory function for the *Company*; or
- (b) is named as a defendant in a *Claim* for a *Wrongful Employment Act*; or
- (c) is joined as a party to any *Claim* against any other person defined in 3.31.1 to 3.31.5 above.

- 3.31.7 the legal representatives, heirs, assigns or estate of a person defined in another sub-paragraph of this Section in the event of that person's death, incapacity, insolvency or bankruptcy; or
- 3.31.8 the lawful spouse or domestic partner of a person defined in another sub-paragraph of this Section where recovery is sought solely because joint property is held or owned by or on behalf of the spouse or domestic partner (the spouse or domestic partner, however, is not insured under this Certificate in his or her own right).

The above definition does not include external auditors of the *Company* or any insolvency practitioner.

Only where Insuring Clause 1.4 is purchased, *You* or *Your* shall mean, for the purposes of all Sections with the exception of Insuring Clause 1.1 and Sections 2.4 and 2.6: any natural person who is, was prior to or becomes during the *Certificate Period*:

- 3.31.9 any individual person who is duly appointed as trustee of the *Pension Fund*.
- 3.31.10 any individual person who whilst in employment of the *Company* (including a director or officer of the *Company*) administers the *Pension Fund*.

Section 4: Exclusions

The following exclusions shall be applicable to Insuring Clauses 1.1 (Executive Liability & Company Reimbursement), 1.2 (Corporate Liability), 1.3 (Employment Practices Liability), 1.4 (Pension Trustee Liability), 1.5 (Fraud Losses) and Section 2 (Additional Cover) only.

4.1 Prior notified claims or circumstances

We shall not be liable for *Loss* or *Direct Financial Loss* on account of any *Claims* arising from or attributable to any claim or circumstance notified to any certificate or policy of insurance which incepted prior to the inception of this Certificate or which arise from matters substantially the same as alleged or established in such claim or circumstance.

4.2 Prior proceedings

We shall not be liable for *Loss* or *Direct Financial Loss* on account of any *Claims* arising from or attributable to 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* and continually maintained with *Us* up to the inception date of this Certificate or (iii) any prior policy of insurance providing like coverage to this Certificate continually maintained up to the inception date of this Certificate, which *Claims* arise from matters substantially the same as alleged or established in such proceedings.

4.3 Bodily injury/Property Damage

We shall not be liable for *Loss* or *Direct Financial Loss* on account of any *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. In relation to a *Claim* for an *Wrongful Employment Act* or *Wrongful Pension Trustee Act* only, this exclusion shall not, however, apply in respect of mental anguish or emotional distress or disturbance.

4.4 Insured versus Insured - USA

We shall not be liable for *Loss* or *Direct Financial Loss* on account of any *Claims* brought against *You* in the USA by, or at the instigation of, any *Insured Entity* or *Outside Entity* or any of their directors or officers, provided, however, that this exclusion shall not apply to:

- (a) Costs;
- (b) Any *Claim* for a *Wrongful Employment Act* brought against *You* by any other individual insured under this Certificate.
- (c) Any *Claim* brought against *You* by any other individual insured under this Certificate for an indemnity or contribution provided such *Claim* directly results from another *Claim* that is covered under this Policy.
- (d) Any *Claim* brought against *You* by a person who was previously a director, officer or employee of the *Company* or *Outside Entity* but no longer holds any of these positions at the time such *Claim* is made.
- (e) Any *Claim* brought, either directly or on behalf of a *Company* or *Outside Entity* by a receiver, trustee, liquidator or any insolvency practitioner of any *Company* or *Outside Entity*.

4.5 Contractual Liability

We shall not be liable for *Loss* or *Direct Financial Loss* on account of any *Claims* arising from or attributable to any actual or alleged contractual liability of the *Insured Entity* under any express or implied contract or agreement provided, however, this exclusion shall not apply to the extent *You* or the *Insured Entity* would have had such liability in the absence of such contract or agreement.

4.6 Pollution (carve out for defence costs/derivative claims)

We shall not be liable for *Loss* or *Direct Financial Loss* on account of any *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*.

It is agreed, however, that this exclusion shall not apply to:

Costs; or

Claims made against *You* by any shareholder of the *Company* either directly or derivatively provided, however, that

- (1) on or before the earlier of (i) the inception date of this Certificate or (ii) the date of the first Certificate effected with *Us* and continually maintained with *Us* up to the inception date of this Certificate or (iii) any prior policy of insurance providing like coverage to this Certificate continually maintained up to the inception date of this Certificate, the *Company*, *You* 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*; and
- (2) the incident(s) giving rise to the *Claim* occurred entirely outside the *USA* or Canada and the *Claim* is brought or maintained entirely outside the *USA* or Canada.

The following exclusion shall be applicable to Insuring Clauses 1.1 (Executive Liability & Company Reimbursement), 1.2 (Corporate Liability), 1.3 (Employment Practices Liability), 1.4 (Pension Trustee Liability) and Section 2 (Additional Cover) only.

4.7 Dishonesty

We shall not be liable for *Loss* on account of any *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* were not legally.

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

The following exclusion shall be applicable to Insuring Clauses 1.1 (Executive Liability & Company Reimbursement) and 1.2 (Corporate Liability) only

4.8 Professional Services (for language)

We shall not be liable for *Loss* on account of any *Claims* for *You*, the *Company* or any person insured under this Certificate carrying out, or failing to carry out, professional services.

4.9 Offerings of Securities

We shall not be liable for *Loss* on account of any *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*.

4.10 Pension Trustee Liability

We shall not be liable for *Loss* on account of any *Claims* arising from or attributable to any actual or alleged violation of the responsibilities, obligations or duties imposed by any retirement or pension legislation anywhere in the world.

The following exclusion shall be applicable to Insuring Clauses 1.2 (Corporate Liability) only

4.11 Intellectual Property

We shall not be liable for *Loss* on account of any *Claims* arising from or attributable to intellectual property rights, including but not limited to any actual or alleged plagiarism, misappropriation, infringement or violation of copyright, patent, trademark or trade secret.

4.12 Competition

We shall not be liable for *Loss* on account of any *Claims* arising from or attributable to any actual or alleged breach of any law, whether statutory, regulatory or common law, relating to anti-trust, business competition, unfair trade practices or tortious interference in any other party's business or contractual relationships.

The following exclusions shall be applicable to Insuring Clause 1.4 (Pension Trustee Liability) only

4.13 ERISA

We shall not be liable for *Loss* on account of any *Claims* for any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act 1974 (*USA*) (as amended), or any part thereof.

4.14 Failure to procure funds

We shall not be liable for *Loss* on account of any failure to procure funds for the *Pension Fund* in accordance with the trust deeds (or other similar document) or failure to collect contributions from any other source which is owed to the *Pension Fund* unless such claim arises solely as a result of a *Wrongful Pension Trustee Act*.

The following exclusions shall be applicable to Insuring Clause 1.5 (Fraud Losses) only

4.15 Non-payment of Loan

We shall not be liable for *Direct Financial Loss* resulting from the complete or partial non-payment of or default upon any loan, unless such *Direct Financial Loss* results directly from a *Dishonest Act*.

4.16 Directorial Acts

We shall not be liable for *Direct Financial Loss* resulting from a *Dishonest Act* committed by *You* in *Your* capacity as a director or officer of the *Company*, except where *You* are performing acts solely within the scope of the usual duties of an employee of the *Company*.

4.17 Loss after date of discovery

We shall not be liable for *Direct Financial Loss* which occurs after the date on which the *Company* discovers other *Direct Financial Loss* that is attributable to the acts of the same Employee.

Section 5: Limit of Liability

5.1 Each Insuring Clause shall have a separate *Limit of Liability*, as stated in the Schedule. This sum shall constitute the total aggregate of our liability in respect of all *Loss* or *Direct Financial Loss* in respect of all claims made during the *Certificate Period* (including any *Discovery Period*, if applicable) under each Insuring Clause, and may be eroded by payments made under Additional Covers (as set out below in 5.2.1 (a) and 5.2.2 (a)).

5.2 The *Limit of Liability* applicable to the Additional Covers (with the exception of 2.4 and 2.16) shall be calculated as follows:

5.2.1 Where *Loss* is incurred under any of the Additional Covers by or on behalf of *You*, the *Limit of Liability* applicable to Insuring Clause 1.1 shall apply, such sum being in the aggregate and:

- (a) any payments in respect of such Additional Covers shall reduce the *Limit of Liability* applicable to Insuring Clause 1.1; and
- (b) any payments made under Insuring Clause 1.1 shall reduce the *Limit of Liability* applicable to such Additional Covers that provide cover in respect of *Loss* that is incurred by *You* or on *Your* behalf.

5.2.2 Where *Loss* is incurred under any of the Additional Covers by the *Company* on its own behalf, the *Limit of Liability* applicable to Insuring Clause 1.2 shall apply, such sum being in the aggregate and:

- (a) any payments in respect of such Additional Covers shall reduce the *Limit of Liability* applicable to Insuring Clause 1.2; and
- (b) any payments made under Insuring Clause 1.2 shall reduce the *Limit of Liability* applicable to such Additional Covers that provide cover in respect of *Loss* that is incurred by the *Company* on its own behalf.

5.3 The *Limit of Liability* detailed in Section 2.4 and 2.16 shall be in addition to the *Limit of Liability* as stated in the Schedule.

5.4 The *Limit of Liability* shall be subject to any sub-limit of liability stated in the Schedule to apply in respect of any Insuring Clause or Additional Cover and such sub-limits of liability shall form part of and no way increase the *Limit of Liability*.

Section 6: Claim Reporting – Condition Precedent

6.1 As a condition precedent to our liability under this Certificate, *You* or the *Company* must provide *Notification* of a *Claim* or discovery of *Direct Financial Loss* as soon as practicable.

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

Section 7: Deductible, Defence and Settlement

7.1 We are only liable to pay *Loss* or *Direct Financial Loss* as incurred by *You* (or on *Your* behalf) or the *Insured Entity* insofar as it exceeds the amount of the *Deductible*. However if:

- 7.1.1 there is a judgment in a covered *Claim* which determines that *You* or the *Insured Entity* are not liable and all avenues of appeal have been waived or exhausted; or
- 7.1.2 there is a dismissal of the proceedings without any payment being made by *You* (or on *Your* behalf) or the *Insured Entity*,

then no *Deductible* will apply and We agree to reimburse any payments made in respect of the *Deductible* within 60 days.

7.2 The *Deductible* is not applicable to *Non-Indemnifiable Loss*. For the purposes of determining the applicable *Deductible* under Insuring Clauses 1.1 and 1.4, the *Insured Entity* shall be deemed to have indemnified *You* to the extent that it is permitted to do so under applicable law. If the *Insured Entity* is legally permitted or required to indemnify *You* but fails to do so for any reason other than insolvency then We will advance all covered *Loss* to *You* within the *Deductible* and the *Insured Entity* agrees to repay this to Us on demand.

7.3 A single *Deductible* shall apply to all *Loss* arising from any single *Claim* and all *Direct Financial Loss* arising from any single *Dishonest Act*.

- 7.4 Where payments of *Loss* or *Direct Financial Loss* give rise to cover under more than one Insuring Clause or Additional Cover then only one *Deductible* is applicable in respect of all such *Loss*, being the highest *Deductible* that is applicable under such Insuring Clauses or Additional Covers.
- 7.5 We will pay *Costs* on an as incurred basis in excess of the *Deductible* prior to final determination or final 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.
- 7.6 You and the *Insured Entity* shall have the right and duty to defend and contest any *Claim*. We shall have the right to effectively associate with You and the *Insured Entity* in the defence and settlement of any *Claim* or investigation of any *Dishonest Act* that appears reasonably likely to involve *Us*. This will include, but not be limited to, effectively associating in the negotiation of any settlement.
- 7.7 You and the *Insured Entity* shall not admit or assume any liability, enter into any settlement agreement, consent to any judgement or incur any *Costs* without our written consent as a condition precedent to our liability for *Loss* arising out of the *Claim* or *Direct Financial Loss* arising out of a *Dishonest Act*. Only those settlements, stipulated judgements and *Costs* to which We have consented shall be recoverable as *Loss* or *Direct Financial Loss* under this Certificate. Our consent shall not be unreasonably withheld provided that We shall be entitled to effectively assess the defence and negotiation of any settlement of any *Claim* in order to reach a decision as to reasonableness.
- 7.8 You and the *Insured Entity* shall (at Your and the *Insured Entity's* own cost) give *Us* full co-operation and any information that We may reasonably require as a condition precedent to our liability for *Loss* arising out of a *Claim* or *Direct Financial Loss* arising out of a *Dishonest Act*.
- 7.9 In the event that a dispute arises as to whether or not to contest any legal proceedings, neither We nor You (nor the *Insured Entity*) shall be required to contest any legal proceedings unless a Queen's Counsel or equivalent (or an equivalent or like person 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 an equivalent or like person to be mutually agreed upon).

Section 8: General Conditions

8.1 Automatic Acquisition

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

- 8.1.1 the total assets of the new *Subsidiary* do not exceed the New *Subsidiary Asset Limit* in Item 8 of the Schedule.
- 8.1.2 the new *Subsidiary* is not domiciled in the USA or Canada; and
- 8.1.3 the new *Subsidiary* has not had, does not have, nor intends to have its securities traded in the USA; and
- 8.1.4 the total gross assets of any office/offices the new *Subsidiary* has in the USA or Canada do not constitute more than 25% of the total consolidated assets of the *Company*.

In the event that such new *Subsidiary* does not satisfy the above requirements then only *Claims* for *Wrongful Acts* committed up to 30 days after the effective date of the acquisition or creation of such new *Subsidiary* will attract coverage under this Certificate. We shall, at our discretion and subject to receipt of such additional information as we may require, consider extending coverage beyond this 30 day period on such terms as We consider appropriate.

8.2 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 *Insured Entity'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 (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. 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 *Insured Entity* (whichever is appropriate) or both You and the *Insured Entity* 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 (or an equivalent or like person to be mutually agreed upon) under this clause shall be borne by *Us*.

8.3 Transaction - Company

If, during the *Certificate Period*, the *Company*:

- 8.3.1 merges, consolidates with or is acquired by another entity which thereby obtains ownership or control of 50% or more of the *Company's* share capital or securities which include the right to vote for the election of board members;
- 8.3.2 is placed into bankruptcy, liquidation, administration, receivership or administrative receivership (whether voluntary or involuntary) or any other similar form of arrangement; or
- 8.3.3 has a public offering of shares

this Certificate will only apply to a *Wrongful Act* committed or *Direct Financial Loss* discovered prior to the effective date of such transaction.

8.4 Transaction – Pension Fund

If, during the *Certificate Period*, the *Pension Fund* is wound up then this Certificate will only apply to a *Wrongful Pension Trustee Act* committed or *Direct Financial Loss* discovered prior to the effective date of such winding up.

8.5 Termination/Cancellation

The *Company* may cancel this Certificate by giving notice in writing to *Us* at any time. If the *Company* cancels this Certificate, *We* will retain the proportion of the premium calculated pro rata as at the date of cancellation plus fifteen percent (15%) of that amount.

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*.

If a trustee, administrator, liquidator, receiver or administrative receiver cancels this Certificate on behalf of the *Company* and we have not otherwise cancelled this Certificate due to non-payment of premium, it is agreed that the Certificate will remain in force until the expiry of the *Certificate Period* stated in Item 2 of the Schedule provided, however, that coverage shall only be available to *You* to the extent that *You* are a non-executive director of the *Company*.

This Certificate shall terminate at the expiry of the *Certificate Period* stated in Item 2 of the Schedule.

This Certificate may otherwise be cancelled in writing by mutual agreement of the *Company* and *Us*.

8.6 Other Insurance

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.

8.7 Governing Law and Jurisdiction

This Certificate shall be governed by and construed in accordance with the laws of the country in which the *Company* (but not any *Subsidiary*) is incorporated and it is agreed that the courts of that country shall have exclusive jurisdiction to determine any disputes which arise in relation to this Certificate.

8.8 Assignment of Certificate

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

8.9 Severability of Exclusions

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

8.10 Severability of Proposal

The Proposal for this insurance shall be construed as a separate Proposal by each 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* shall be imputed to any other person insured under this Certificate and vice versa.

8.11 Unintentional Non-Disclosure and Late Notification

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

- (a) *You* or the *Insured Entity* 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
- (b) *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*.

8.11.2 In the event that *You* or the *Insured Entity* fail to comply with the provisions of Section 6: *Claim Reporting - Condition Precedent* of this Certificate, and *We* believe that such failure has prejudiced our right to effectively associate with *You* and the *Insured Entity* 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*.

8.12 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 *Insured Entity* 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 *Insured Entity*. Any recovery received shall be applied first against any *Loss* or *Direct Financial 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 has committed a criminal or dishonest act.

8.13 Singular and Plural

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

8.14 Authorisation of the *Company*

The *Company* shall act as agent on *Your* behalf 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.

8.15 Several Liability of Insurers

The obligations of the Insurers (where there is more than one) subscribing to this contract of insurance are several and not joint and are limited solely to the extent of their 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.

8.16 Currency Equivalent

It is agreed that wherever an amount appears in this Certificate in GBP it shall be deemed to have the following words added after the amount "(or the equivalent amount in any other currency)".

8.17 Contracts (Rights of Third Parties) Act 1999 Clause

The contract evidenced by this Certificate does not, and is not intended to, confer or create any right enforceable under the Contracts (Rights of Third Parties) Act 1999 (or any equivalent or similar statute in any jurisdiction) by any person who is not a party to the contract and the parties to the contract evidenced by this Certificate reserve the right to amend or rescind the contract without giving notice to, or requiring the consent of, any third party.

Section 9: Declarations

It is understood and agreed that all statements and declarations made to *Us* have been relied upon by *Us* and are the basis of this Certificate and shall be deemed to be incorporated into and form part of this Certificate.