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## PREAMBLE

Underwriters having received a Proposal which shall form the basis of and be incorporated in this contract and in consideration of the Premium having been paid to Underwriters, We agree to pay or indemnify to the extent and in the manner herein provided subject to the terms, limitations, exclusions and conditions of this Certificate.

An Insuring Clause is only operative if stated as such in the Schedule.

The headings of each Insuring Clause, Addendum, Exclusion or Condition are for ease of identification only.

The General Definitions, General Exclusions, Claims Conditions and General Conditions of the Certificate apply to all Insuring Clauses in addition to the Definitions, Exclusions and Conditions applicable under each individual Insuring Clause, unless endorsed hereon to the contrary.

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# GENERAL DEFINITIONS (Applicable to the Certificate as a whole)

'**Assured/You/Your/Yours**' shall (for the purpose of the General Exclusions, Claims Conditions, General Conditions and all other General Definitions) have the same meaning as that given in the applicable Insuring Clause under which payment or indemnity is being sought.

'**Business**' shall mean the activities, profession or occupation declared to and accepted by Underwriters.

'**Claim**' shall mean

- (i) any claim form, writ or summons or other application of any description whatsoever or counter claim issued against or served upon You, or
- (ii) any communication or allegation communicated to You

which might result in a Loss.

'**Computer Equipment**' shall mean any computer or other electronic data processing device, equipment or system, any hardware, software programme instruction, data or component utilised or intended to be utilised in/or by any such item.

'**Computer Virus**' shall mean a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagates themselves through a computer system or network of whatsoever nature including (but not limited to) 'Trojan Horses', 'worms' and 'time or logic bombs'.

'**Contamination**' shall mean the contamination, poisoning or preventing and/or limitation of use of objects due to the effects of chemical and/or biological substances.

'**Costs and Expenses**' shall mean all legal costs and expenses reasonably incurred by Us or by You with Our written consent (such consent not to be unreasonably withheld) other than

- (i) damages and costs awarded against You
- (ii) remuneration of whatsoever nature due to You.

'**Electronic Data**' shall mean facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

'**Employment Wrongful Act**' shall mean any actual or alleged

- (i) act or omission resulting in a dispute concerning the employment of the Employee or any prospective Employee, or
- (ii) Retaliatory Treatment

committed or allegedly committed or attempted by You.

'**Jurisdiction**' shall mean those territories stated in the Schedule in respect of the Insuring Clause under which payment or indemnity is being sought.

'**Mould**' shall mean any permanent or transient fungus (not being 'dry rot'), mould, mildew or mycotoxin, or any of the spores, scents or by-products resulting therefrom that exist, emanate from or move anywhere indoors or outdoors, regardless of whether they are proved to cause disease, injury or damage.

'**Mould Event**' shall mean any actual, alleged or threat of contact with, exposure to, or inhalation, ingestion, absorption, discharge, dispersal, seepage, migration, release, escape, presence, growth or reproduction of Mould.

'**Our / Us / We**' shall mean the Underwriters.

'**Policyholder**' shall mean the person named in the Schedule.

'**Pollution**' shall mean the discharge, dispersal, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant including (but not limited to) smoke, vapours, soot, fumes, acids, alkalis, chemicals and waste (including, but not limited to, material to be recycled, reconditioned or reclaimed).

'**Premium**' shall mean the amount stated in the Schedule.

'**Proposal**' shall mean all information supplied to Us (whether by written, electronic or any other means) for the purpose of effecting this contract of insurance.

'**Retaliatory Treatment**' shall mean action taken against an Employee on account of such Employee exercising or attempting to exercise his or her rights under law.

'**Terrorism**' shall mean any act of terrorism, including but not limited to the use or threat of force or violence, 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 or overthrow any government de jure or de facto and/or put the public or any section of the public in fear.

'**United Kingdom**' shall mean England, Scotland, Wales, Northern Ireland, the Isle of Man and the Channel Islands.

'**Unlawful Association**' shall mean any organisation which is engaged in Terrorism and includes any organisation which at any relevant time is a proscribed organisation within the meaning of The Terrorism Act 2000 or any amendment or re-enactment thereof.

'**War**' shall mean war, invasion, act 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, mutiny or usurped power.

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# INSURING CLAUSE 1 – PROFESSIONAL LIABILITY

## (Civil Liability)

*N.B. This Insuring Clause is on a 'claims made' basis which provides cover for claims which are **made and notified to Us during the Period of Insurance***

We agree to indemnify You against Loss, arising from any Claim made against You during the Period of Insurance in respect of a Wrongful Act in or about the conduct of the Professional Services.

### LIMIT AND EXCESS

Our liability under this Insuring Clause for Loss (other than Costs and Expenses) shall not exceed the Limit of Indemnity.

In the event that Loss (other than Costs and Expenses) exceeds the Limit of Indemnity Our Liability for such Costs and Expenses shall not exceed the proportion of such Loss (exclusive of such Costs and Expenses) as is represented by the Limit of Indemnity.

Our liability for Loss resulting directly or indirectly from Pollution not herein excluded shall not exceed the Limit of Indemnity.

We shall only be liable for that part of each Loss which exceeds the Excess.

### ADDENDA APPLICABLE TO INSURING CLAUSE 1

#### (1) Loss of Documents

The indemnity provided by this Insuring Clause is extended to include expenditure incurred by You in the replacement or restoration of any Document which has been physically destroyed or damaged, lost or mislaid and which after diligent search cannot be found.

Provided always that

- (a) Insuring Clause 7 (Property Damage) is inoperative
- (b) such destruction, damage, loss or misplacement is reported to Us during the Period of Insurance
- (c) the total amount payable under this Addendum in the Period of Insurance shall not exceed £10,000
- (d) notwithstanding the Definition of 'Excess' we shall only be liable for that part of each and every occurrence of such destruction, damage, loss or misplacement which exceeds £100
- (e) We shall not be liable to pay or indemnify You in respect of expenditure incurred by You in the replacement or restoration of any Document arising directly or indirectly from the failure or inefficacy of any programme, instruction or data for use in any computer or other electronic data processing device, equipment or system occasioned other than through its physical destruction or damage

#### (2) Compensation for Court Attendance

In the event of any director or partner of Yours or any Employee attending court at Our request as a witness in connection with any claim in respect of which You are entitled to indemnity under this Insuring Clause We will provide compensation to You at the following rates for each day on which attendance is required

- (a) any director or partner      £250 per day
- (b) any Employee                      £150 per day

### DEFINITIONS APPLICABLE TO INSURING CLAUSE 1

'Assured/You/Your/Yours' shall mean the person, persons, firm and all partners and former partners in the firm (or in the event of the death, incompetency, incapacity, bankruptcy or insolvency of any of the foregoing, their estate, heirs, legal representatives or assigns), limited liability partnership, trust or company named as the Policyholder in the Schedule.

In addition, if You so require, We will indemnify any director or member of Yours or any Employee in like manner to You, provided always that such persons shall, as though they were the Assured, observe, fulfil and be subject to the terms, conditions and exclusions of this Certificate in so far as they can apply.

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**'Document'** shall mean

- (i) all documents excluding stamps, currency, coins, bank notes and bullion, travellers cheques, cheques, postal orders, money orders, securities, negotiable instruments and the like,
  - (ii) separable programme, instruction or data for physical incorporation into any computer system,
- belonging to You or for which You are legally responsible, whilst in Your custody or in the custody of any person to or with whom they have been entrusted, lodged or deposited by You in the ordinary course of Your Professional Services.

**'Employee'** shall mean any person, other than a director of Yours, who was or is or may hereafter be

- (i) under a contract of service or apprenticeship with You or the Company, or
- (ii) under any work experience or similar scheme, or
- (iii) supplied to or hired in or borrowed by You, or
- (iv) self-employed persons

working for You under Your direct control in connection with the Professional Services.

**'Excess'** shall mean the amount stated in the Schedule in respect of this Insuring Clause.

**'Injury'** shall mean bodily injury, mental injury, emotional distress, shock, sickness, disease or death.

**'Jurisdiction'** shall mean those territories stated in the Schedule in respect of this Insuring Clause.

**'Limit of Indemnity'** shall mean the amount stated in the Schedule in respect of this Insuring Clause.

**'Loss'** shall mean

- (i) Your legal liability for damages and costs awarded against You
- (ii) Costs and Expenses

resulting from or attributable to the same originating cause

**'Period of Insurance'** shall mean the period stated in the Schedule and in the event that

- (i) We refuse to renew the cover afforded by this Insuring Clause for reasons other than non-payment of premium to Us or Your failure to comply with or observe the terms, provisions and Conditions of this Certificate, or
- (ii) You and/or any natural person with effective control of the Assured decline to accept the renewal terms offered by Us in so far as they relate to this Insuring Clause

a further single period of thirty days from the expiry date of the period stated in the Schedule but only in respect of Loss arising from a Wrongful Act committed or allegedly committed prior to the expiry of the period stated in the Schedule.

The further period referred to in this Definition is not applicable to the extent that other insurance policies have been purchased with the intention of providing equivalent cover for any part of such period.

**'Product'** shall mean any goods or products (including their containers, labelling and instructions provided in connection therewith), sold, supplied, processed, installed, serviced, repaired, altered, treated or renovated by You or any person, firm, limited liability partnership or company acting on Your behalf.

**'Professional Services'** shall mean those professional services performed by You or on Your behalf in connection with Your Business and which have been declared to and accepted by Underwriters.

**'Retroactive Date'** shall mean the date which this Insuring Clause was first incepted, or where equivalent cover to that provided under this Insuring Clause has continuously been maintained in full force and effect immediately prior to the inception of this Insuring Clause, the date which applied to such equivalent cover.

**'Wrongful Act'** shall mean any actual or alleged wrongful act or omission resulting in a civil liability.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1**

We shall not be liable to pay or indemnify You against Loss

### **(1) OTHER INSURANCE**

in respect of which You are entitled to indemnity under any other insurance.

Notwithstanding the above, this Insuring Clause shall contribute in excess of such other insurance, provided always that if such other insurance is also provided by Us the Limit of Indemnity under this Insuring Clause shall be deemed reduced by any amount payable under such other insurance.



**(2) LEGAL ACTION**

- (a) where the Claim is brought in a court of law outside the Jurisdiction, and/or
- (b) where action is brought in a court of law within the Jurisdiction to enforce a foreign judgment, whether by way of reciprocal agreement or otherwise.

**(3) EMPLOYERS LIABILITY**

which results

- (a) directly or indirectly from Injury sustained by any Employee arising out of and in the course of his/her employment by You, or
- (b) for any breach of any obligation owed by You as an employer to any Employee or prospective Employee.

**(4) PROPERTY**

which results directly or indirectly from the ownership, possession or use by You or on Your behalf of any land, buildings, aircraft, watercraft, vessel or mechanically propelled vehicle.

**(5) DISHONEST AND MALICIOUS ACTS**

which result from any dishonest, fraudulent, criminal or malicious act or omission committed by any person after the discovery of reasonable cause for suspicion of such act or omission in relation to that person.

Furthermore,

- (a) no person shall be entitled to payment or indemnity under this Certificate in respect of any Loss resulting from their dishonest, fraudulent, criminal or malicious act or omission or from condoning such an act or omission
- (b) the following shall be deducted from any amount payable by Us
  - (i) any monies which but for such act would be due from You to the person committing or condoning such act
  - (ii) any monies held by You and belonging to such person
  - (iii) any monies recovered following action in accordance with General Condition 2 of this Certificate.

**(6) CONTRACTUAL LIABILITY**

resulting from any agreement entered into by You to pay penalties or liquidated damages in so far as liability under such agreement exceeds that which would be implied by statute or common law.

**(7) CONSORTIA AND JOINT VENTURES**

resulting from Your association with others whilst acting in consortia or joint ventures, other than in respect of Loss arising from Your own acts or omissions.

**(8) CIRCUMSTANCES KNOWN AT INCEPTION**

brought about by, or contributed to, or consequent upon any circumstances existing prior to the date when this Insuring Clause became operative and which You ought reasonably to have known might give rise to a Loss.

**(9) RETROACTIVE DATE**

arising from the carrying out of Your Professional Services, prior to the Retroactive Date.

**(10) POLLUTION**

based upon, arising out of or relating directly or indirectly from, in consequence of or in any way involving Pollution.

**(11) INJURY/PROPERTY DAMAGE**

arising from any Claim or Claims

- (a) for Injury sustained by any person (other than emotional distress arising from any libel, slander or defamation), or
- (b) for any loss, damage or destruction of property including loss of use thereof (other than as provided by Addendum 1 of this Insuring Clause)

unless the basis of such Claim is a Wrongful Act in the provision of Professional Services.

**(12) PRODUCTS**

arising from any Claim caused by or through or in connection with any Product.

**(13) INSOLVENCY/BANKRUPTCY**

as a result of or relating directly or indirectly from Your insolvency or bankruptcy.

**(14) FINANCIAL INTEREST**

arising from any Claim made against You by

- (a) any parent company, ultimate holding company or subsidiary company, or

(b) any person or entity having a financial, executive or controlling interest in Your operation, o

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(c) any company or entity in which You or any director, member or partner of Yours has a financial, executive or controlling interest

unless such Claim or Claims are for an indemnity or contribution in respect of a Claim made by an independent third party against such company, person or entity.

**(15) TRADING LOSSES**

as a result of, or in connection with, any trading losses or liabilities or any debts incurred by any business managed by or carried on by You.

**(16) DIRECTORS AND OFFICERS**

as a result of or in connection with the performance or non-performance by You, any director or member of Yours or any Employee, of any duties as a director or officer of any company.

**(17) ASBESTOS**

resulting directly from, in consequence of or in any way involving the manufacture, mining, processing, distribution, testing, remediation, removal, storage disposal, sale, use of or exposure to asbestos or materials or products containing asbestos.

**(18) INTELLECTUAL PROPERTY RIGHTS**

arising from any Claim alleging infringement of copyright, patent, registered design, trade mark or passing off and/or any other intellectual property rights (other than unintentional breach of confidentiality and/or unintentional breach of copyright).

# INSURING CLAUSE 2 – GENERAL LIABILITY

## (a) PUBLIC LIABILITY

We agree to indemnify You against Loss arising from any Claim in respect of a Wrongful Act happening in connection with Your Business and occurring during the Period of Insurance within the European Union other than any Loss caused by or through or in connection with any Product.

## (b) PRODUCTS LIABILITY

We agree to indemnify You against Loss arising from any Claim in respect of a Wrongful Act happening in connection with Your Business and occurring during the Period of Insurance anywhere in the world, caused by or through or in connection with any Product initially sold or supplied by You from within the United Kingdom.

## LIMIT AND EXCESS

Our liability under Insuring Clause 2(a) (Public Liability) for Loss (other than Costs and Expenses) shall not exceed the Limit of Indemnity.

Our total aggregate liability under Insuring Clause 2(b) (Products Liability) in the Period of Insurance in respect of all Loss (other than Costs and Expenses) shall not exceed the Limit of Indemnity.

In the event that Loss (other than Costs and Expenses) exceeds the Limit of Indemnity, Our liability for such Costs and Expenses shall not exceed the proportion of such Loss (exclusive of such Costs and Expenses) as is represented by the Limit of Indemnity.

Under Insuring Clause 2(a) (Public Liability) We shall only be liable for that part of each Loss resulting from loss of or damage to Property which exceeds the Excess.

## ADDENDA APPLICABLE TO INSURING CLAUSE 2

### (1) Compensation for Court Attendance

In the event of any director or partner of Yours or any Employee attending court at Our request as a witness in connection with any claim in respect of which You are entitled to indemnity under this Insuring Clause We will provide compensation to You at the following rates for each day on which attendance is required

- (a) any director or partner      £250 per day
- (b) any Employee                      £150 per day

### (2) Health and Safety at Work

The indemnity provided by this Insuring Clause is extended to include Costs and Expenses in the defence of any criminal proceedings (including a charge of manslaughter) brought for a breach of the Health and Safety at Work Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 or any amendment or re-enactment thereof, committed or alleged to have been committed in the course of Your Business during the Period of Insurance, including Costs and Expenses in an appeal against conviction and/or prosecution costs awarded against You arising from such proceedings.

Provided always that

- (a) the proceedings relate to the health, safety and welfare of any person other than an Employee.
- (b) The total amount payable under this Addendum shall not exceed £250,000 in any one Period of Insurance.

### (3) Consumer Protection and Food Safety

The indemnity provided by Insuring Clause 2(b) (Products Liability) is extended to include Costs and Expenses in the defence of any Claim brought for a breach of

- (a) Part II of the Consumer Protection Act 1987 or any amendment or re-enactment thereof, or
- (b) Section(s) 7, 8, 14 and/or 15 of the Food Safety Act 1990 or any amendment or re-enactment thereof

committed or alleged to have been committed in the course of Your Business during the Period of Insurance including Costs and Expenses in an appeal against conviction arising from such proceedings.

Provided always that We shall not be liable to pay or indemnify You where the Claim arises out of Your wanton, wilful, reckless or intentional disregard of Your duties under these Acts.

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**(4) Damage to Hired or Rented Premises**

Notwithstanding Exclusion 3(b) of this Insuring Clause the indemnity provided by Insuring Clause 2(a) (Public Liability) is extended to include Loss arising from loss of or damage to premises (and/or fixtures and fittings of such premises) hired or rented by You for the purposes of Your Business.

Provided always that We shall not be liable to pay or indemnify You

- (a) against Loss resulting from any tenancy or other agreement entered into by You in so far as liability under such agreement exceeds that which would have attached to You in the absence of such agreement
- (b) for the first £100 of such Loss unless the loss or damage results from fire or explosion.

**(5) Defective Premises Act 1972**

The indemnity provided by Insuring Clause 2(a) (Public Liability) is extended to include Loss arising from any Claim made against You by reason of breach of Section 3 of the Defective Premises Act 1972 or any amendment or re-enactment thereof or Section 5 of the Defective Premises (Northern Ireland) Order 1975 or any amendment or re-enactment thereof in connection with premises which have been disposed of by You.

Provided always that We shall not be liable to pay or indemnify You for the cost of rectifying any damage or defect in the premises disposed of.

**(6) Motor Contingent Liability**

Notwithstanding Exclusion 4(a) of this Insuring Clause, the indemnity provided by Insuring Clause 2(a) (Public Liability) is extended to include Loss arising out of the use of any motor vehicle which is not Your property nor provided by You being used for the purposes of Your Business.

Provided always that We shall not be liable to pay or indemnify You

- (a) for loss of or damage to any such vehicle or to the property therein.
- (b) against Loss which results from such vehicle being driven by the Assured other than an Employee.
- (c) against Loss arising from the use of such vehicle outside the United Kingdom.

**(7) Product to Product Liability**

Notwithstanding Exclusion 11 of this Insuring Clause, the indemnity provided by Insuring Clause 2(b) (Products Liability) is extended to include Loss arising from loss or damage to a Product after it has left Your charge or control

- (a) caused by another Product supplied, installed or fitted by You or on Your behalf under a separate contract or
- (b) when You are engaged in any operation not connected with the supply, installation or fitting of the original Product.

**(8) Overseas Liability**

The indemnity provided by Insuring Clause 2(a) (Public Liability) is extended to include Loss incurred by You

- (a) elsewhere in the world in respect of non-manual work
- (b) in a personal capacity whilst temporarily outside the United Kingdom in connection with Your Business by reason of Injury to any person and/or loss of or damage to Property.

Provided always that

- (i) notwithstanding Exclusion 9 of this Insuring Clause, where action for damages is brought in a court of law within the jurisdiction of the United States of America or Canada Our liability for such Loss (including Costs and Expenses) shall not exceed the Limit of Indemnity.
- (ii) We shall not be liable to pay or indemnify You against Loss arising out of the ownership of any land or building(s).

**(9) Cross Liabilities**

If the Assured comprise more than one party, Insuring Clause 2(a)(Public Liability) shall be construed as though separate Certificates had been issued to each.

Provided always that nothing in this Addendum will operate to increase Our liability beyond the amount for which We would have been liable had this Addendum not applied.

**(10) Member to Member Liability**

In respect of members of Your canteen, social, sports welfare, first aid, fire, medical and security activities, if any action for damages is brought against any such member by any other member and the action is such that if it were brought against You, You would be entitled to indemnity under Insuring Clause 2(a) (Public Liability) We will indemnify such member in like manner to You.

Provided always that

- (a) We shall not be liable to pay or indemnify such member against Loss in respect of which such member is entitled to indemnity under any other insurance

(b) such member shall, as though he were the Assured, observe, fulfil and be subject to the terms, conditions, limitations and exclusions of this Certificate so far as they can apply.

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(c) for the purpose of this Addendum, guests and voluntary helpers shall be deemed to be members.

**(11) Data Protection Act**

The indemnity provided by Insuring Clause 2(a) (Public Liability) is extended to include Loss arising from any Claim made against You by reason of breach of Section 13 of the Data Protection Act 1998 or any amendment or re-enactment thereof arising in connection with Your Business during the Period of Insurance.

Provided always that

- (a) You have been accepted and remain registered by the Data Protection Registrar.
- (b) Your Business is not that of a computer bureau.
- (c) We shall not be liable to pay or indemnify such member against Loss
  - (i) which results from any deliberate act or omission by You the result of which could reasonably have been anticipated having regard to the nature and circumstances of such act or omission.
  - (ii) which results from any act of fraud or dishonesty.
  - (iii) to the extent of any costs and expenses of rectifying, rewriting or erasing data.
  - (iv) arising from the recording, processing or provision of data for reward or to determine the financial status of any person.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 2

**'Assured/You/Your/Yours'** shall mean

- (i) the person, persons, firm and all partners and former partners (or in the event of the death, incompetency, incapacity, bankruptcy or insolvency of any of the foregoing, their estate, heirs, legal representatives or assigns), limited liability partnership, trust or company named as the Policyholder in the Schedule.
- (ii) and, in respect of Insuring Clause 2(a)(Public Liability) any principal to whom an indemnity is required to be provided under a contract for the performance of work by You in connection with Your Business but only to the extent required by such contract.

In addition, if You so require, We will indemnify

- (iii) any director or officer of Yours or any Employee in like manner to You
- (iv) in respect of Insuring Clause 2(a) (Public Liability), any officer or member of Your canteen, social, sports or welfare and other facilities and organisations or ambulance, first aid, fire, medical or security services in their respective capacity as such.

Provided always that such persons shall, as though they were the Assured, observe, fulfil and be subject to the terms, conditions and exclusions of this Certificate in so far as they can apply.

**'Business'** shall, in addition to the meaning given in General Definitions, include the following

- (i) Your ownership, occupation and maintenance of land or buildings
- (ii) the provision and management of canteen, social, sports, welfare and other facilities and organisations, including (but not limited to) first aid and medical services for the benefit of Employees
- (iii) the provision and operation of fire and security services for the protection of premises owned or occupied by You.
- (iv) private duties undertaken by an Employee for You or, with Your consent, for any director or partner of Yours or any Employee.

**'Employee'** shall mean any person, other than a director of Yours, who was or is or may hereafter be

- (i) under a contract of service or apprenticeship with You, or
- (ii) under a work experience or similar scheme, or
- (iii) supplied to or hired in or borrowed by You, or
- (iv) self-employed persons

working for You and under Your direct control in connection with Your Business and normally resident in the United Kingdom.

**'Excess'** shall mean, in respect of Insuring Clause 2(a) (Public Liability), £250.

**'Injury'** shall mean bodily injury, mental injury, emotional distress, shock, sickness, disease or death.

**'Limit of Indemnity'** shall mean the amount stated in the Schedule in respect of this Insuring Clause.

**'Loss'** shall mean

- (i) Your legal liability for damages and costs awarded against You,
- (ii) Costs and Expenses



(iii) costs of legal representation at

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- (a) any coroner's inquest or fatal injury inquiry
- (b) proceedings in any court of summary jurisdiction arising out of any alleged breach of statutory duty reasonably incurred with Our written consent in connection with any matter which may be the subject of indemnity under this Insuring Clause

resulting from or attributable to the same originating cause.

**'Period of Insurance'** shall mean the period stated in the Schedule.

**'Product'** shall mean any goods or products (including their containers, labelling and instructions provided in connection therewith), sold, supplied, processed, installed, serviced, repaired, altered, treated or renovated by You or any person, firm, limited liability partnership or company acting on Your behalf.

**'Property'** shall mean material and tangible property.

**'Vessel or Craft'** shall mean any vessel or craft or object made or intended to float on or in or travel on or through water or air.

**'Wrongful Act'** shall mean

- (i) Injury to any person
  - (ii) loss of or damage to Property
- and, in respect of Insuring Clause 2(a) (Public Liability)
- (iii) libel, slander or defamation
  - (iv) wrongful arrest, imprisonment or eviction of any person or wrongful accusation of shoplifting
  - (v) trespass, nuisance or any interference with right of way, by foot, air or water.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 2**

We shall not be liable to pay or indemnify You against Loss

### **(1) EMPLOYERS LIABILITY**

which results

- (a) directly or indirectly from Injury sustained by any Employee arising out of and in the course of their employment by You.
- (b) from any breach of any obligation owed by You as an employer to any Employee or prospective Employee.

### **(2) OTHER INSURANCE**

in respect of which You are entitled to indemnity under any other insurance other than Insuring Clause 3 (Directors and Officers Liability) of this Certificate of Insurance.

Notwithstanding the above, this Insuring Clause shall contribute in excess of such other insurance, provided always that if such other insurance is also provided by Us the Limit of Indemnity under this Insuring Clause shall be deemed reduced by any amount payable under such other insurance.

### **(3) PROPERTY DAMAGE**

which results directly or indirectly from loss of or damage to Property

- (a) belonging to You
- (b) in Your charge, custody or control or in the charge, custody or control of any Employee, other than
  - (i) personal property (including motor vehicles) of Your directors, partners, visitors or Employees
  - (ii) premises (including fixtures, fittings and contents) not owned, hired or rented by You but temporarily occupied by You for the purpose of Your Business
- (c) or to that part of any Property on which You or Your agent are or have been working where the loss or damage occurs as a direct result of such work.

### **(4) MOTOR VEHICLES OR VESSELS**

which results directly or indirectly from the ownership, possession or use by You or on Your behalf of

- (a) any mechanically propelled vehicle for which insurance or security is required under road traffic legislation but this exclusion shall not apply
  - (i) while such vehicle is being used as a tool of trade (other than in respect of liability which is compulsorily insurable under road traffic legislation).
  - (ii) in respect of the loading or unloading of such vehicle or the delivery or collection of goods to or from such vehicle.

(iii) in respect of the movement of any such vehicle not belonging to You which is interfering with the performance of Your Business except where more specifically insured in whole or in part by any other insurance policy or certificate.

(b) any Vessel or Craft, other than hand propelled watercraft not exceeding 8 metres in length and in use on inland waters.

**(5) PROFESSIONAL SERVICES**

resulting directly or indirectly from remedial or professional or other treatment given, administered or omitted by You or on Your behalf for which a fee is or would normally be charged.

**(6) 21.2.1. INSURANCE**

resulting from loss of or damage to Property in respect of which You are required to effect insurance under the terms of clause 21.2.1 of the 1980 edition of the Joint Contracts Tribunal conditions of contract (or any subsequent revision or substitution) or under the terms of any other contract requiring insurance of like kind.

**(7) POLLUTION**

directly or indirectly caused by Pollution including the cost of removing or nullifying or cleaning up the Pollution

(a) occurring in Canada and/or the United States of America or any dependency or trust territory

(b) occurring elsewhere in the world unless caused by a sudden identifiable unintended and unexpected incident which takes place in its entirety at a specific time and place during the Period of Insurance provided always that

(i) all Pollution which arises out of such incident shall be deemed to have occurred at the time such incident takes place and shall be deemed to be one incident irrespective of the number of Periods of Insurance over which such Pollution occurs

(ii) Our liability for all damages payable arising out of all Pollution which is deemed to have occurred during any one Period of Insurance shall not exceed in the aggregate the Limit of Indemnity.

**(8) ASBESTOS**

resulting directly from, in consequence of or in any way involving the manufacture, mining, processing, distribution, testing, remediation, removal, storage, disposal, sale, use of or exposure to asbestos or materials or products containing asbestos

**(9) LEGAL ACTION**

(a) where the Claim is brought in a court of law outside the Jurisdiction of the United Kingdom, and/or

(b) where action is brought in a court of law within the Jurisdiction of the United Kingdom to enforce a foreign judgment, whether by way of reciprocal agreement or otherwise.

**(10) CONSORTIA AND JOINT VENTURES**

resulting from Your association with others whilst acting in consortia or joint ventures, other than in respect of Loss arising from Your own acts or omissions.

**(11) PRODUCTS**

under Insuring Clause 2(b) (Products Liability)

(a) arising from any Claim for the cost of repair, alteration, removal, recall or replacement of any Product or for the cost of or reduction in the contract value of any Product.

(b) arising out of any Product which with Your knowledge is

(i) incorporated in any aircraft or aerial device and which could affect the safety, navigation or propulsion of such aircraft or aerial device.

(ii) used in the petrochemical industry in direct connection with manufacture, processing or storage.

(iii) exported to Canada or the United States of America or any dependency or trust territory.

**(12) CONTRACTUAL LIABILITY**

(a) under Insuring Clause 2(a) (Public Liability) resulting from any agreement entered into by You unless the conduct and control of Claims is vested in Us

(b) under Insuring Clause 2(b) (Products Liability) resulting from any agreement entered into by You, other than liability arising out of a condition of warranty of goods implied by law

in so far as liability under such agreement exceeds that which would be implied by statute or common law.

# INSURING CLAUSE 3 – DIRECTORS AND OFFICERS LIABILITY

*N.B. This Insuring Clause is on a 'claims made' basis which provides cover for claims which are **made and notified to us during the Period of Insurance***

## (a) DIRECTORS AND OFFICERS LIABILITY

We agree to pay on Your behalf and as incurred Loss arising from

- (i) any Claim made against You during the Period of Insurance by reason of a Wrongful Act committed by You in Your capacity of a Director or Officer
  - (a) of the Company, or
  - (b) of any Associated Company or of any Other Concern when You hold such position at the request, order or direction of the Company
- (ii)
  - (a) Disqualification Proceedings which are first ordered or commissioned during the Period of Insurance
  - (b) an Investigation which is first ordered or commissioned during the Period of Insurance
  - (c) Environmental Proceedings which are first ordered or commissioned during the Period of Insurance
  - (d) Extradition Proceedings

except to the extent that such Loss is recoverable by You from the Company under Insuring Clause 3(b).

## (b) COMPANY REIMBURSEMENT

We agree to pay on behalf of the Company and as incurred Loss arising from

- (i) any Claim made against You during the Period of Insurance by reason of a Wrongful Act committed by You in Your capacity of a Director or Officer of the Company
- (ii)
  - (a) Disqualification Proceedings which are first ordered or commissioned during the Period of Insurance
  - (b) You attending an Investigation which is first ordered or commissioned during the Period of Insurance
  - (c) You attending any Environmental Proceedings which are first ordered or commissioned during the Period of Insurance
  - (d) Extradition Proceedings

but only if and to the extent that the Company shall be required or permitted to indemnify You pursuant to the law or by reason of any indemnity clause in the Memorandum or Articles of Association, trust deed, constitution or charter of the Company.

## LIMIT AND EXCESS

Our total aggregate liability under this Insuring Clause in the Period of Insurance in respect of all Loss shall not exceed the Limit of Indemnity.

We shall only be liable for that part of each Loss which exceeds the Excess.

## ADDENDA APPLICABLE TO INSURING CLAUSE 3

### (1) Public Relations Crisis Management

In the event of a Crisis We shall, at Your request and subject to Our prior agreement, pay

- (a) costs incurred by You in utilising the services of the Crisis Response Service
- (b) other related and reasonable costs agreed with Us

For the purpose of this Addendum

- (i) 'Crisis' shall mean

(a) the allegation of a Wrongful Act committed by You during the Period of Insurance

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- (b) the successful defence of an allegation of a Wrongful Act originally alleged to have been committed by You during the Period of Insurance

where, in Our opinion, there is a risk to Your livelihood as a consequence of adverse press, publicity or media attention.

- (ii) 'Crisis Response Service' shall mean public relations specialist services provided by Us or on Our behalf

Provided always that

- 1 the total amount payable under this Addendum shall not exceed £25,000 in any one Period of Insurance, which amount shall be in addition to the Limit of Indemnity.
- 2 You shall immediately notify Us of any event or circumstance which might result in You seeking payment or indemnity under this Addendum and comply with Our recommendations or the recommendations of Our public relations specialist as directed.
- 3 You take all reasonable and practical measures to avoid or mitigate costs relating to Crisis.

(2) **Non-Executive Directors**

In the event that the Limit of Indemnity under this Insuring Clause and any indemnity to which You are entitled under any one other insurance is exhausted, We will deem the Limit of Indemnity to be increased by a further 10% but only in respect of Costs and Expenses incurred in Your capacity as a non-executive director of the Company.

(3) **Emergency Costs and Expenses**

In the event that You are unable to reasonably obtain Our prior written consent to incur Costs and Expenses, We will retrospectively approve such Costs and Expenses provided always that they do not exceed 10% of the Limit of Indemnity.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 3

**'Associated Company'** shall mean any body corporate which

- (i) at the time of the Wrongful Act gives rise to the Claim, or
- (ii) at the time of the receipt by You of any intention to instigate Disqualification Proceedings, an Investigation, Environmental Proceedings or Extradition Proceedings

is not a Subsidiary Company or a company domiciled, registered or incorporated in the United States of America.

**'Claim'** shall, in addition to the meaning given in General Definitions, include criminal proceedings which might result in a Loss.

**'Company'** shall mean the limited liability partnership or company named as the Policyholder in the Schedule and the Subsidiary Company.

**'Director or Officer'** shall mean any natural person who was or is or may hereafter be

- (i) a director or officer of the Company, or
- (ii) acting at the request, order or direction of the Company as a director, officer or trustee of, or in any managerial or supervisory capacity in, the Associated Company or Other Concern, or
- (iii) a Shadow Director, or
- (iv) an Employee
  - (a) acting in a managerial or supervisory capacity in the Company, or
  - (b) against whom a Claim is made based upon or arising out of any Employment Wrongful Act, or
  - (c) named in a Claim as co-defendant with a Director or Officer as defined in (i) to (iii) above (other than in any capacity as external auditor, liquidator, receiver, administrator or administrative receiver), or
- (v) the lawful spouse or civil partner of any person defined in (i) to (iv) above but only in respect of Loss payable under this Insuring Clause in relation to such person which is by operation of law imputed or transferred to that spouse, or
- (vi) the estate, heirs, legal representatives or assigns of any of the foregoing in the event of the death, incompetency, incapacity, bankruptcy or insolvency of that person.

**'Disqualification Proceedings'** shall mean legal action against You pursuant to which You are liable to be disqualified from continuing to be a director or officer of the Company.

**'Employee'** shall mean any person other than an independent agent, consultant, sub-contractor or professional advisor who was or is

- (i) under a contract of service or apprenticeship with the Company, or
- (ii) under a work experience or similar scheme, or
- (iii) supplied to or hired or borrowed by the Company, or

whilst employed or engaged by and under the direct control of the Company in connection with the Business.

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**'Environmental Proceedings'** shall mean any prosecution, official investigation, examination, inquiry or other proceedings by any official body or institution that is empowered to investigate the affairs of the Company and/or the Associated Company and/or the Other Concern, arising from any actual or alleged Pollution.

**'Excess'** shall mean the amount stated in the Schedule in respect of this Insuring Clause which amount shall only apply in respect of Insuring Clause 3(b) (Company Reimbursement) where

- (i) action for damages is brought in a court of law of, or Costs and Expenses arise within, the United States of America, or
- (ii) action is brought in a court of law elsewhere to enforce a judgment of a court of law of the United States of America whether by way of reciprocal agreement or otherwise.

**'Extradition Proceedings'** shall mean proceedings brought against You under the Extradition Act 2003, or any amendment or re-enactment thereof, including any appeal relating thereto.

**'Injury'** shall mean bodily injury, mental injury, emotional distress, shock, sickness, disease or death.

**'Investigation'** shall mean any official investigation or examination, inquiry or other proceedings, other than when arising from any actual or alleged Pollution, by any official body or institution that is empowered to investigate the affairs of the Company and/or the Associated Company and/or the Other Concern.

**'Jurisdiction'** shall mean those territories stated in the Schedule in respect of this Insuring Clause.

**'Limit of Indemnity'** shall mean the amount stated in the Schedule in respect of this Insuring Clause which amount is inclusive of all Loss under Insuring Clause 3(a)(ii)(c) and 3(b)(ii)(c) for which Our total aggregate liability in the Period of Insurance shall not exceed £250,000.

**'Loss'** shall mean

- (i) for the purpose of Insuring Clauses 3(a)(i) and 3(b)(i)
  - (a) Your legal liability for damages, legal costs, charges or expenses awarded against You
  - (b) Costs and Expenses, it being understood that in the event of a Claim being made against both You and the Company by reason of the same Wrongful Act, and such Wrongful Act not being an Employment Wrongful Act committed in the United States of America, We will pay the Costs and Expenses on Your behalf in full irrespective of whether such Costs and Expenses incidentally benefit the Company
  - (c) punitive or exemplary damages awarded against You for which indemnity can be lawfully provided under this Certificate
  - (d) the premium paid by You or on Your behalf for insurance instruments or bonds which, in certain jurisdictions, are required in order to institute an appeal
- (ii) for the purpose of Insuring Clauses 3(a)(ii) and 3(b)(ii), Costs and Expenses resulting from or attributable to the same originating cause.

**'Other Concern'** shall mean

- (i) any registered charity and/or any trade, research, promotional, training or similar association or organisation (whether incorporated or not) existing for any non-profit making purpose, not domiciled, registered or incorporated in the United States of America.
- (ii) any profit-sharing or share option committee, sports, social or similar association or organisation, (whether incorporated or not), established or conducted for Your or Your family's and dependant's benefit or the benefit of any Employee and their families and dependants.

**'Period of Insurance'** shall mean the period stated in the Schedule and in the event that

- (i) (a) We refuse to renew the cover afforded by this Insuring Clause for reasons other than non-payment of premium to Us or the failure by You or the Company to comply with or observe the terms, provisions and Conditions of this Certificate, or
- (b) You and the Company and/or any natural person with effective control of the Company decline to accept the renewal terms offered by Us in so far as they relate to this Insuring Clause.

You and/or the Company shall have the right to a further single period of either

- (c) 30 days from the expiry date of the period stated in the Schedule, or
  - (d) 90 days from the expiry date of the period stated in the Schedule subject to an immediate payment to Underwriters or an additional 25% of the Premium, or
  - (e) 180 days from the expiry date of the period stated in the Schedule subject to an immediate payment to Underwriters of an additional 50% of the Premium, or
  - (f) 12 calendar months from the expiry date of the period stated in the Schedule subject to an immediate payment to Underwriters of an additional 100% of the Premium
- (ii) either We or You or the Company refuse to renew the cover afforded by this Insuring Clause, a Retired Director or Officer shall be automatically entitled to a further single period of seventy-two calendar months from the expiry date of the period stated in the Schedule

but only in respect of Loss arising from



(iii) a Wrongful Act committed or allegedly committed, and/or

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- (iv) Disqualification Proceedings which are first ordered or commissioned, and/or
  - (v) an Investigation which is first ordered or commissioned, and/or
  - (vi) Environmental Proceedings which are first ordered or commissioned, and/or
  - (vii) Extradition Proceedings which are first ordered or commenced
- prior to the expiry of the period stated in the Schedule.

Provided always that

- (viii) the right provided by (i) above
  - (a) is exercised within 30 days of the expiry of the period stated in the Schedule, and
  - (b) can only be exercised once
- (ix) in the event that further periods are provided by both (i) and (ii) above such periods shall run concurrently
- (x) the further periods referred to in this Definition are not applicable to the extent that other insurance policies have been purchased with the intention of providing equivalent cover for any part of such period.

**'Retired Director or Officer'** shall mean any natural person who voluntarily ceased to be a Director or Officer prior to the expiry of the period stated in the Schedule and who does not subsequent resume a position of Director or Officer.

**'Shadow Director'** shall mean a person who is deemed to be a shadow director (within the meaning given by section 741(2) of the Companies Act 1985 (UK) or any amendment or re-enactment thereof) of any company solely by reason of any activity of the Company.

**'Subsidiary Company'** shall mean any body corporate in respect of which the Company or any other subsidiary company of the Company controls, at the time of the Wrongful Act which gives rise to the Claim or Claims or at the time of the receipt by the Director or Officer concerned of notice of any intention to institute, request, order, commission or bring, Disqualification Proceedings, an Investigation, Environmental Proceedings or Extradition Proceedings

- (i) the composition of the board of directors, or
- (ii) more than half of the voting power, or
- (iii) more than half of the voting issued share capital

other than a body corporate (unless agreed by Us in writing) acquired or created subsequent to the inception date of this Certificate which is domiciled, registered or incorporated in the United States of America.

**'Wrongful Act'** shall mean any actual or alleged wrongful act committed or attempted by You or any matter claimed against You solely by reason of You serving in the capacity of Director or Officer.

Related or continuous or repeated or causally connected Wrongful Acts shall constitute a single Wrongful Act.

**'You/Your/Yours'** shall mean the Director or Officer.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 3**

We shall not be liable to pay or indemnify You or the Company against Loss

### **(1) OTHER INSURANCE**

in respect of which You are entitled to indemnity under any other insurance.

Notwithstanding the above this Certificate shall contribute in excess of such other insurance, provided always that if such other insurance is also provided by Us the Limit of Indemnity under this Insuring Clause shall be deemed reduced by any amount payable under such other insurance.

### **(2) LEGAL ACTION**

- (a) where the Claim is brought in a court of law outside the Jurisdiction, and/or
- (b) where action is brought in a court of law within the Jurisdiction to enforce a foreign judgment, whether by way or reciprocal agreement or otherwise, and/or
- (c) where Disqualification Proceedings, Investigation, Environmental Proceedings or Extradition Proceedings are ordered or commissioned outside the Jurisdiction.

### **(3) EMPLOYMENT DISPUTES**

resulting from

- (a) an Employment Wrongful Act
- (b) an Investigation in respect of

(i) employment discrimination

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- (ii) health and safety

if the Company is an unincorporated body or if Insuring Clause 6 (Employment Law Protection) is stated as being operative in the Schedule.

**(4) DISHONEST AND MALICIOUS ACTS**

arising out of Your dishonest, fraudulent or malicious conduct

Provided always that

- (a) such conduct, breach, gain, profit or advantage is either admitted by You or established in a judgment or other final adjudication
- (b) this Exclusion shall not apply to any Loss resulting from any Claim brought by any shareholder or bondholder of the Company, (which are made without any solicitation by, or assistance or participation of any Director or Officer), due solely to any actual or alleged loss in value of the share capital of the Company consequent upon the foregoing.

**(5) REMUNERATION**

to the extent of remuneration of whatsoever nature due to You or any Employee.

**(6) PRIOR AND PENDING LITIGATION**

based upon, arising out of or resulting directly or indirectly from

- (a) any claim form, writ, demand, suit or other proceeding pending, or order, decree or judgment entered against You prior to the date when this Insuring Clause became operative, or the same or any substantially similar fact, circumstance or situation underlying or alleged in such pending or prior proceeding, or
- (b) any Claim or circumstance which have been reported or notified under any contract of insurance which this Insuring Clause renews or replaces.

**(7) POLLUTION**

other than in respect of Insuring Clauses 3(a)(ii)(c) and 3(b)(ii)(c), based upon, arising out of or resulting directly or indirectly from, in consequence of or in any way involving Pollution

Provided always that this Exclusion shall not apply to any Loss resulting from any Claim brought by any shareholder or bondholder of the Company, (which are made without any solicitation by, or assistance or participation of any Director or Officer), due solely to any actual or alleged loss in value of the share capital of the Company consequent upon Pollution.

**(8) INJURY/PROPERTY DAMAGE**

arising from any Claim

- (a) for Injury sustained by any person, other than
  - (i) emotional distress arising from
    - (a) any libel, slander, defamation, or
    - (b) where Insuring Clause 6 (Employment Law Protection) is inoperative, Employment Wrongful Act,
  - (ii) Your criminal prosecution for manslaughter in relation to the activities of the Company
- (b) for any loss, damage or destruction of property, including loss of use thereof.

Provided always that this Exclusion shall not apply to any Loss resulting from any Claim brought by any shareholder or bondholder of the Company, (which are made without any solicitation by, or assistance or participation of any Director or Officer), due solely to any actual or alleged loss in value of the share capital of the Company consequent upon the foregoing.

**(9) PENSION FUNDS**

resulting directly from You acting in the capacity as trustee or administrator of any pension, retirement or superannuation scheme or programme created for Your benefit or the benefit of any Employee.

**(10) TAKEOVER OR MERGER**

resulting from

- (a) any Wrongful Act of Yours occurring
- (b) any Disqualification Proceedings, Investigation, Environmental Proceedings or Extradition Proceedings instigated subsequent to the effective date of the takeover or merger of the Company by or with any other person.

**(11) PROFESSIONAL DUTY TO THIRD PARTIES**

arising from any Claim made by any third party for any breach of any professional duty owed to such third party,

Provided always that this Exclusion shall not apply to any Loss resulting from any Claim brought by any shareholder or bondholder of the Company, (which are made without any solicitation by, or assistance or participation of any Director or Officer), due solely to any actual or alleged loss in value of the share capital of the Company consequent upon such breach.

**(12) ASSOCIATED COMPANY v. ASSURED**

arising from any Claim made against You by or on behalf of

- (a) any Associated Company or any Other Concern and/or any other director, officer or trustee of such Associated Company or Other Concern

provided, however, that We shall pay

- (i) Loss arising from any Claim in respect of any Employment Wrongful Act concerning the employment of the director, officer or trustee by the Associated Company or Other Concern
- (ii) Loss resulting from any Claim brought by any shareholder or bondholder of any Associated Company or of any Other Concern, (which are made without the solicitation by, or assistance or participation of any director, officer or trustee), due solely to any actual or alleged loss in value of the share capital of the Associated Company or Other Concern
- (iii) Costs and Expenses incurred by or on Your behalf in the defence of such Claim
- (iv) Loss arising from any Claim brought or maintained by any director, officer or trustee for contribution or indemnity if such Claim directly results from the payment of any other Loss under this Certificate
- (v) Loss arising from any Claim brought or maintained by a person who is no longer a director or officer of the Associated Company or Other Concern
- (vi) Loss arising from any Claim brought or maintained by or on behalf of a liquidator, receiver or administrative receiver due to the insolvency of the Associated Company or Other Concern.

- (b) any person who controls more than 15% of the issued share capital of any Associated Company or Other Concern.

**(13) PUNITIVE AND EXEMPLARY DAMAGES (EMPLOYMENT)**

to the extent of any punitive or exemplary damages awarded in relation to any Claim based upon or arising out of any Employment Wrongful Act (other than exemplary damages in respect of employment related libel, slander or defamation).

**and, where the Jurisdiction includes the United States of America**

**(14) 'ASSURED V. ASSURED' (USA)**

arising from any Claim made against the Director or Officer which is brought in a court of law within the jurisdiction of the United States of America or elsewhere in the world to enforce a judgment therein whether by way of reciprocal agreement or otherwise by or on behalf of

- (a) the Company or any present or former holding company thereof, or
- (b) any Associated Company or of any Other Concern of which the Director or Officer is a director, officer or trustee, or
- (c) any other Director or Officer

provided however that We shall pay

- (i) Loss arising from any Claim in respect of any Employment Wrongful Act concerning the employment of the Director or Officer by the Company
- (ii) Loss resulting from any Claim brought by any shareholder or bondholder of the Company, (which are made without the solicitation by, or assistance or participation of any Director or Officer), due solely to any actual or alleged loss in value of the share capital of the Company
- (iii) Costs and Expenses incurred by or on behalf of the Director or Officer in the defence of such Claim
- (iv) Loss arising from any Claim brought or maintained by any Director or Officer for contribution or indemnity if such Claim directly results from the payment of any other Loss under this Certificate
- (v) Loss arising from any Claim brought or maintained by a person who is no longer a Director or Officer
- (vi) Loss arising from any Claim brought or maintained by or on behalf of a liquidator, receiver or administrative receiver due to the insolvency of the Company.

**(15) UNITED STATES OF AMERICA**

resulting directly from or attributable to, or in any way involving

- (a) profits in fact made from the purchase or sale of securities of the Company or the Associated Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934 (USA), any amendment or re-enactment thereof, or any similar provision in any state statutory law enacted in the United States of America, or
- (b) any actual or alleged violation of any responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA) or any amendment or re-enactment thereof.

## **CONDITIONS APPLICABLE TO INSURING CLAUSE 3**

### **(1) UNINTENTIONAL NON-DISCLOSURE CLAUSE**

- (a) In the event of non-disclosure or misrepresentation of information to Us, We will waive Our rights to avoid Insuring Clause 3 (Directors or Officers), provided that
- (i) You are able to establish Our satisfaction that such non-disclosure or misrepresentation was innocent and free from any fraudulent conduct or intent to deceive
  - (ii) the Premium and terms and conditions shall be adjusted at Our discretion to those which would have applied had such information been disclosed
  - (iii) where You or the Company should have notified during a preceding Period of Insurance a Claim or the instigation of Disqualification Proceedings, an Investigation, Environmental Proceedings or Extradition Proceedings and the cover to which You or the Company would have been entitled was in any way more restrictive than that provided at the date of notification We shall only be liable to the extent available during such preceding Period of Insurance
  - (iv) where You or the Company have prejudiced the handling or settlement of any Loss, Disqualification Proceedings, an Investigation, Environmental Proceedings or Extradition Proceedings the amount payable in respect of such Loss, Disqualification Proceedings, Investigation, Environmental Proceedings or Extradition Proceedings shall be reduced to such sum as in Our opinion would have been payable in the absence of such prejudice.
- (b) We shall not deny payment or indemnity on the grounds of the breach of Claims Conditions 1 or 2 of this Certificate subject to provisos (a)(iii) and (a)(iv) of this clause.

### **(2) INSTRUCTIONS**

Neither You nor the Company shall have any right to require cancellation of Insuring Clause 3 (Directors and Officers Liability) or any material reduction in the cover afforded hereunder, and any such cancellation or reduction sought shall be granted only at and to the extent of Our absolute discretion and shall not be effected unless and until We are reasonably satisfied that such cancellation or reduction has been sanctioned by all Directors or Officers whose rights under this Insuring Clause at that time are or may be affected thereby.

### **(3) OFFERING**

If during the Period of Insurance the Company decides to make a public or private offering of its shares or other equity interest, the Company shall provide Us with any prospectus, offering statement or other relevant information to enable Us to amend the terms, limitations, exclusions and/or conditions of this Insuring Clause and/or charge an additional premium, if so required.

### **(4) SEVERABILITY**

Nothing in the Proposal or otherwise known or done by any Director or Officer shall be imputed to any other person in determining any right or obligation of the Director or Officer under this Insuring Clause. In no case shall a Director or Officer be prevented from pursuing any point in his or her defence only because it is inimical to the interests of any other Director or Officer.

# INSURING CLAUSE 4 – ENTITY DEFENCE

*N.B. This Insuring Clause is on a 'claims made' basis which provides cover for claims which are **made and notified to Us during the Period of Insurance***

(a) **Public Relations Crisis Management**

We agree to indemnify You against Loss arising from a Crisis occurring during the Period of Insurance

(b) **Identity Fraud**

We agree to indemnify You against Loss arising from Identity Fraud first discovered during the Period of Insurance.

(c) **Investigations**

We agree to indemnify You against Loss arising from an Investigation first ordered or commissioned during the Period of Insurance

(d) **Corporate Manslaughter**

We agree to indemnify You against Loss arising from Your prosecution during the Period of Insurance under the Corporate Manslaughter and Corporate Homicide Act 2007 or any amendment or re-enactment thereof.

(e) **Breach of Contract**

We agree to indemnify You against Loss arising from any Claim made against You during the Period of Insurance in respect of alleged breach of Contract

(f) **Pollution**

We agree to indemnify You against Loss arising from

(i) a Claim made against You during the Period of Insurance by reason of a Wrongful Act committed by a Director or Officer, in or about the conduct of Your Business, which results in Pollution

(ii) Environmental Proceedings first ordered or commissioned during the Period of Insurance

(g) **Taxation**

We agree to indemnify You against Loss arising from a Tax Investigation by HM Revenue and Customs Instigated during the Period of Insurance.

(h) **Data Protection**

We agree to indemnify You against Loss arising from any Claim made against You during the Period of Insurance by reason of a breach or alleged breach of the Data Protection Act 1998 or any amendment or re-enactment thereof in connection with Your Business.

## LIMIT AND EXCESS

Our total aggregate liability under this Insuring Clause in the Period of Insurance shall not exceed the Limit of Indemnity.

We shall only be liable for that part of each Loss under Insuring Clause 4(c) (Investigations) which exceeds the Excess.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 4

'Assured/You/Your/Yours' shall mean the Entity.

'Appeal' shall mean,

- (i) in respect of Insuring Clause 4(g) (Taxation), appeal proceedings
  - (a) in respect of a Full Enquiry, and/or
  - (b) in a dispute concerning Your compliance with Pay As You Earn or Social Security Regulations, and/or
  - (c) following an assessment for Value Added Tax due
- (ii) in respect of Insuring Clause 4(h) (Data Protection), an appeal against
  - (a) the refusal of Your application for registration by the Data Protection Commissioner
  - (b) the refusal of an application for alteration of registered particulars by the Data Protection Commissioner

- (c) an enforcement notice
- (d) a de-registration notice
- (e) a transfer prohibition notice

**'Aspect Enquiry'** shall mean an examination by HM Revenue & Customs which considers one or more specific aspects of Your self assessment and/or corporation tax return.

**'Contract'** shall mean any express written contract or agreement between You and Your customer for the provision of goods or services in connection with Your Business.

**'Crisis'** shall mean

- (i) allegations of fraud or corruption
- (ii) serious injury to Employees or members of the public
- (iii) dismissal or resignation of members of Your main board of directors
- (iv) investigation by any official body or institution that is empowered to investigate Your affairs

where in Our opinion there is a risk to Your Business as a consequence of adverse press, publicity or media attention within the United Kingdom.

**'Crisis Response Service'** shall mean public relations specialist services provided by Us or on Our behalf

**'Director or Officer'** shall mean any natural person who was or is or may hereafter be

- (i) a director or officer of Yours, or
- (ii) an Employee
- (iii) a Shadow Director.

**'Employee'** shall mean any person other than an independent agent, consultant, sub-contractor or professional advisor who was or is

- (i) under a contract of service or apprenticeship with You, or
- (ii) under a work experience or similar scheme, or
- (iii) supplied to or hired or borrowed by You,

whilst employed or engaged by and under Your direct control in connection with the Business.

**'Entity'** shall mean the person stated in the Schedule as the Policyholder and any Subsidiary Company.

**'Environmental Proceedings'** shall mean any prosecution, official investigation, examination, inquiry or other proceedings by any official body or institution that is empowered to investigate Your affairs within the United Kingdom arising from any actual or alleged Pollution.

**'Excess'** shall mean £1,000.

**'Full Enquiry'** shall mean a fundamental challenge to and an extensive examination of Your tax affairs by HM Revenue & Customs.

**'Identity Fraud'** shall mean an agreement with a third party entered into by anyone (other than a Director or Officer) who fraudulently represents themselves as You.

Provided always that such representation

- (i) is in connection with Your Business, and
- (ii) is made within the United Kingdom.

**'Instigated'** shall mean

- (i) in respect of a Full Enquiry, the date HM Revenue & Customs first notifies You in writing of their intention to make enquiries.
- (ii) in respect of disputes concerning Your compliance with Pay As You Earn or Social Security Regulations or Your liability to pay Value Added Tax, the date when HM Revenue & Customs sends You an assessment or written decision.

**'Investigation'** shall mean any official investigation, examination, inquiry or other proceedings instigated against +You by any official body or institution, other than HM Revenue & Customs, that is empowered to investigate Your affairs within the United Kingdom.

**'Limit of Indemnity'** shall mean the amount stated in the Schedule which amount is inclusive of all Loss under Insuring Clause 4(a) (Public Relations Crisis Management) for which Our total aggregate liability in the Period of Insurance shall not exceed £25,000.

**'Loss'** shall mean

- (i) in respect of Insuring Clause 4(a), (Public Relations Crisis Management)
  - (a) costs incurred by You in utilising the services of the Crisis Response Service



- (b) other related and reasonable costs agreed by Us
- (ii) in respect of Insuring Clause 4(b) (Identity Fraud), Costs and Expenses in establishing that Identity Fraud has occurred following the attempted enforcement within the United Kingdom of an agreement by a third party

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- (iii) in respect of Insuring Clause 4(c) (Investigations), Costs and Expenses
- (iv) in respect of Insuring Clause 4(d) (Corporate Manslaughter), Costs and Expenses
- (v) in respect of Insuring Clause 4(e) (Breach of Contract), Costs and Expenses in defending a Claim
- (vi) (a) in respect of Insuring Clause 4(f) (i) (Pollution), Costs and Expenses in defending a Claim
  - (b) in respect of Insuring Clause 4(f) (ii) (Pollution), Costs and Expenses
- (vii) in respect of Insuring Clause 4(g) (Taxation), Costs and Expenses in negotiating on Your behalf and in an Appeal
- (viii) in respect of Insuring Clause 4(h) (Data Protection), Costs and Expenses in defending a Claim and in an Appeal resulting from or attributable to the same originating cause.

**'Period of Insurance'** shall mean the period stated in the Schedule and in the event that

- (i) We refuse to renew the cover afforded by this Insuring Clause for reasons other than non-payment of premium to Us or Your failure to comply with or observe the terms, provisions and Conditions of this Certificate, or
- (ii) You and/or any natural person with effective control of the Assured decline to accept the renewal terms offered by Us in so far as they relate to this Insuring Clause

a further single period of thirty days from the expiry date of the period stated in the Schedule but only in respect of

- (a) a Crisis occurring, or
- (b) Identity Fraud committed, or
- (c) an Investigation, Environmental Proceedings or Tax Investigation Instigated, ordered or commissioned, or
- (d) Corporate Manslaughter proceedings brought, or
- (e) a breach of Contract occurring, or
- (f) a Wrongful Act committed or allegedly committed, or
- (g) a breach or alleged breach of the Data Protection Act occurring

prior to the expiry of the period stated in the Schedule.

The further period referred to in this Definition is not applicable to the extent that other insurance policies have been purchased with the intention of providing equivalent cover for any part of such period.

**'Shadow Director'** shall mean a person who is deemed to be a shadow director (within the meaning given by section 741(2) of the Companies Act 1985 (UK) or any amendment or re-enactment thereof) of any company solely by reason of any activity of Yours.

**'Subsidiary Company'** shall mean any body corporate in respect of which the Entity or any other subsidiary company of the Entity controls,

- (i) at the time of the Crisis occurring, or
- (ii) at the time Identity Fraud is first discovered, or
- (iii) at the time of receipt of notice of any intention to Instigate, order or commission an Investigation, Environmental Proceedings or a Tax Investigation, or
- (iv) at the time Corporate Manslaughter proceedings brought, or
- (v) at the time of the alleged breach of Contract, or
- (vi) at the time of the Wrongful Act which gives rise to a Claim, or
- (vii) at the time of the breach or alleged breach of the Data Protection Act

either

- (a) the composition of the board of directors, or
- (b) more than half of the voting power, or
- (c) more than half of the voting issued share capital

other than a body corporate (unless agreed by Us in writing) acquired or created subsequent to the inception date of this Certificate which is domiciled, registered or incorporated in the United States of America.

**'Tax Investigation'** shall mean

- (i) a Full Enquiry, and/or
- (ii) a dispute concerning Your compliance with Pay as You Earn or Social Security Regulations, and/or
- (iii) a dispute concerning Your liability for Value Added Tax

following a review or assessment by HM Revenue & Customs.

**'Wrongful Act'** shall mean any actual or alleged act committed or attempted by You, or any matter claimed against You solely by reason of You serving in the capacity of Director or Officer.

Related or continuous or repeated or causally connected Wrongful Acts shall constitute a single Wrongful Act.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 4**

We shall not be liable to pay or indemnify You

(1) **OTHER INSURANCE**

against Loss in respect of which You are entitled to indemnity under any other insurance.

Notwithstanding the above, this Insuring Clause shall contribute in excess of such other insurance, provided always that if such other insurance is also provided by Us the Limit of Indemnity under this Insuring Clause shall be deemed reduced by any amount payable under such other insurance.

(2) **CIRCUMSTANCES KNOWN AT INCEPTION**

against Loss brought about by, or contributed to, or consequent upon any circumstances existing prior to the date when this Insuring Clause became operative and which You ought reasonably to have known might give rise to a Loss.

(3) **DISHONEST AND MALICIOUS ACTS**

for Loss arising out of Your dishonest, fraudulent or malicious conduct

Provided always that such conduct, breach, gain, profit or advantage is either admitted by You or established in a judgment or other final adjudication

(4) **KNOWN ACTS**

for Loss arising from something You did knowing it to be wrongful or ignoring that possibility.

(5) **DISPUTES BETWEEN ASSURED**

for Loss arising out of any dispute between You and any other Assured in relation to Your common partnership, trust or committee.

(6) **TAKEOVER OR MERGER**

for Loss resulting from

- (a) any Crisis occurring
- (b) any Identity Fraud discovered
- (c) any Investigation, Tax Investigation or Environmental Proceedings instigated
- (d) Corporate Manslaughter proceedings brought, or
- (e) any Claim made against You
- (f) an Appeal made subsequent to
  - (i) the effective date of Your takeover or merger by or with any other person
  - (ii) the appointment of a liquidator, trustee, receiver or any other similar official.

(7) **THIRD PARTY & FUNDS TRANSFER FRAUD**

for Loss under Insuring Clause 4(b) for which payment or indemnity is provided under Insuring Clause 11(b) (Third Party Computer and Funds Transfer Fraud) or would be

- (a) if such Insuring clause were operative, or
- (b) but for the operation of the Excess or any Conditions applicable to such Insuring Clause

(8) **EMPLOYMENT DISCRIMINATION OR HEALTH AND SAFETY INVESTIGATIONS**

any Investigation in respect of employment discrimination and/or health and safety under Insuring Clause 4(c) if Insuring Clause 6 (Employment Law Protection) is operative.

(9) **CONTRACT**

under Insuring Clause 4(e), for Loss arising from any Claim

- (a) where the Entity, or the Entity's parent or ultimate holding company, is
  - (i) a non-departmental public body, or

(ii) a government-owned corporation, state-owned enterprise, or governmental business enterprise.

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or where Government or any government agency is a majority shareholder in the Entity or the Entity's parent or ultimate holding company.

- (b) alleging infringement of copyright, patent, registered design, trademark, merchandise marks or any other intellectual property rights
- (c) alleging breach of any secrecy and/or confidentiality agreements
- (d) relating to any licence or franchise agreements
- (e) involving an Employment Wrongful Act
- (f) involving the ownership, possession, hiring or use of a motor vehicle, aircraft or water craft.
- (g)
  - (i) involving the ownership, occupation or use of any land or building
  - (ii) relating to the tenancy or letting of property
  - (iii) relating to the construction, extension, alteration, demolition, repair, renovation or refurbishment of any property
- (h) involving the provision of insurance
- (i) relating to modified proprietary and/or bespoke software and/or hardware/hardware systems
- (j) involving an amount less than £5,000.

**(10) TAXATION**

under Insuring Clause 4(g)

- (a) for Loss resulting from an Aspect Enquiry
- (b) in respect of any Tax Investigation arising from a tax avoidance scheme
- (c) in respect of any Tax Investigation caused by Your failure to register for Value Added Tax
- (d) for any Loss after a Tax Investigation first becomes referred to or dealt with by Special Civil Investigations or Civil Investigations of Fraud Units of HM Revenue & Customs
- (e) in respect of any Tax Investigation or enquiry into alleged dishonesty or alleged criminal offences
- (f) in respect of an application for judicial review
- (g) to the extent of the cost of undertaking anything which You would necessarily deal with in the absence of a Tax Investigation.

**(11) LEGAL ACTION**

against Loss

- (a) where the Claim is brought in a court of law outside the jurisdiction of the United Kingdom, and/or
- (b) where action is brought in a court of law within the jurisdiction of the United Kingdom to enforce a foreign judgement whether by way of reciprocal agreement or otherwise.

# INSURING CLAUSE 5 – EMPLOYERS LIABILITY

*The indemnity provided by this Insuring Clause is deemed to be in accordance with the provisions of any law relating to compulsory insurance of liability to Employees in the United Kingdom*

We agree to indemnify You against Loss arising from any Claim made against You by reason of Injury sustained by any Employee while employed in or temporarily outside the United Kingdom caused during the Period of Insurance and arising out of and in the course of their employment by You in Your Business.

Provided always that an action for damages is brought against You under the Jurisdiction of a court within the United Kingdom.

## LIMIT

Our liability under this Insuring Clause for Loss shall not exceed the Limit of Indemnity.

## ADDENDA APPLICABLE TO INSURING CLAUSE 5

### (1) Compensation for Court Attendance

In the event of any director or partner of Yours or any Employee attending court at Our request as a witness in connection with any claim in respect of which You are entitled to indemnity under this Insuring Clause, We will provide compensation to You at the following rates for each day on which attendance is required

- (a) any director or partner      £250 per day
- (b) any Employee                      £150 per day

### (2) Health and Safety at Work

The indemnity provided by this Insuring Clause is extended to include Costs and Expenses in the defence of any criminal proceedings (including a charge of manslaughter) brought for a breach of the Health and Safety at Work Act 1974 or the Health and Safety at Work (Northern Ireland) Order 1978 or any amendment or re-enactment thereof, committed or alleged to have been committed in the course of Your Business during the Period of Insurance, including Costs and Expenses in an appeal against conviction and/or prosecution costs awarded against You arising from such proceedings.

Provided always that

- (a) the proceedings relate to the health, safety and welfare of Employees.
- (b) the total amount payable under this Addendum shall not exceed £250,000 in any one Period of Insurance.

### (3) Unsatisfied Court Judgments

In the event of a judgment for damages being obtained in any court in the United Kingdom

- (a) by an Employee or the personal representatives of such Employee, in respect of Injury to the Employee caused during the Period of Insurance and arising out of and in the course of employment by You in Your Business, against any company or person operating from premises within the United Kingdom and
- (b) remaining unsatisfied in whole or in part six months after the date of such judgment

We will, at Your request, pay to the Employee or the personal representatives of the Employee the amount of such damages and awarded costs to the extent that they remain unsatisfied.

Provided always that

- (i) there is no appeal outstanding.
- (ii) the Employee or personal representatives of the Employee shall assign the judgment to Us in the event of any payment being made under the terms of this Addendum.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 5

'Assured/You/Your/Yours' shall mean

- (i) the person, persons, firm and all partners and former partners in the firm (or in the event of the death, incompetency, incapacity, bankruptcy or insolvency of any of the foregoing, their estate, heirs, legal representatives or assigns), limited liability partnership, or company named as the Policyholder in the Schedule.
- (ii) any principal to whom an indemnity is required to be provided under a contract for the performance of work by You in connection with Your Business but only to the extent required by such contract.

In addition, if You so require, we will indemnify

- (iii) any director or member of Yours or any Employee in like manner to You
- (iv) any officer or member of Your canteen, social, sports or welfare and other facilities and organisations or ambulance, first aid, fire, medical or security services in their respective capacity as such.

Provided always that such persons shall, as though they were the Assured, observe, fulfil and be subject to the terms, conditions and exclusions of this Certificate in so far as they can apply.

'Business' shall, in addition to the General Definition of 'Business', include

- (i) Your ownership, occupation and maintenance of land or buildings
- (ii) the provision and management of canteen, social, sports, welfare and other facilities and organisations including, but not limited to, first aid and medical services for the benefit of Employees
- (iii) the provision and operation of fire and security services for the protection of premises occupied by You
- (iv) private duties undertaken by an Employee for You or, with Your consent, for any director or partner of Yours or any Employee.

'Employee' shall mean any person who was or is or may hereafter be

- (i) under a contract of service or apprenticeship with You, or
- (ii) under a work experience or similar scheme, or
- (iii) supplied to or hired in or borrowed by You, or
- (iv) self-employed persons

working for You under Your direct control in connection with Your Business and normally resident in the United Kingdom.

'Injury' shall mean bodily injury, mental injury, emotional distress, shock, sickness, disease or death.

'Limit of Indemnity' shall mean the amount stated in the Schedule in respect of this Insuring Clause.

'Loss' shall mean

- (i) Your legal liability for damages and costs awarded against You
- (ii) Costs and Expenses
- (iii) costs of legal representation at
  - (a) any coroner's inquest or fatal injury inquiry
  - (b) proceedings in any court of summary jurisdiction arising out of any alleged breach of statutory dutyreasonably incurred with Our written consent in connection with any matter which may be the subject of indemnity under this Insuring Clause

resulting from or attributable to the same originating cause.

'Period of Insurance' shall mean the Period stated in the Schedule.

## EXCLUSIONS APPLICABLE TO INSURING CLAUSE 5

We shall not be liable to pay or indemnify You against Loss

### (1) OFFSHORE

for Injury from the time of embarkation by the Employee upon a conveyance at the point of final departure to an offshore rig or offshore platform until disembarkation from the conveyance onto land upon their return from such offshore rig or platform.

**(2) OTHER INSURANCE**

in respect of which You are entitled to indemnity under any other insurance.

Notwithstanding the above, this Insuring Clause shall contribute in excess of such other insurance, provided always that if such other insurance is also provided by Us the Limit of Indemnity under this Insuring Clause shall be deemed reduced by any amount payable under such other insurance.

**CONDITIONS APPLICABLE TO INSURING CLAUSE 5**

**(1) CERTIFICATE OF EMPLOYERS LIABILITY**

If the insurance cover provided by Insuring Clause 5 is cancelled by You or Us, any certificate of Employers Liability insurance issued hereunder is similarly cancelled from the same date.

Specimen



# INSURING CLAUSE 6 – EMPLOYMENT LAW PROTECTION

*N.B. This Insuring Clause is on a 'claims made' basis which provides cover for claims which are **made and notified to us during the Period of Insurance***

## (a) EMPLOYMENT DISPUTES

We agree to pay on Your behalf and as incurred Loss arising from any Claim made against You during the Period of Insurance by reason of an Employment Wrongful Act.

## (b) INVESTIGATIONS

We agree to pay on Your behalf and as incurred Loss arising from Your or Your representative's attendance at an Investigation which is first ordered or commissioned during the Period of Insurance.

## LIMIT AND EXCESS

Our total aggregate liability under this Insuring Clause in the Period of Insurance in respect of all Loss shall not exceed the Limit of Indemnity.

We shall only be liable for that part of each Loss which exceeds the Excess. Such Excess shall be applied to each Claim made against You by or on behalf of each Employee.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 6

'Assured/You/Your/Yours' shall mean

- (i) the Entity,
- (ii) any natural person who is or was or may become a partner, director, officer, trustee, governor or council member of the Entity or any Employee, but only in their capacity as such
- (iii) any natural person who is or was or may become a director, officer, trustee, governor or council member of any Other Concern, where such position is held at the request, order or direction of the Entity, but only in their capacity as such, or
- (iv) the lawful spouse of any person defined in (ii) or (iii) above but only in respect of Loss payable under this Insuring Clause in relation to such person which is by operation of law imputed or transferred to that spouse, or
- (v) the estate, heirs, legal representatives or assigns of any of the foregoing in the event of the death, incompetency, incapacity, bankruptcy or insolvency of that person.

'Benefit Scheme' shall mean any

- (i) superannuation or pension scheme, programme or plan
- (ii) profit sharing, share option or share purchase scheme
- (iii) health and welfare or other Employee benefit plan or trust

established or conducted for the benefit of any Employee and their families and dependants.

'Employee' shall mean any natural person who was or is or may become subject to a contract of service or apprenticeship with the Entity including any person held to be an employee of Yours by an Employment Tribunal or the Employment Appeals Tribunal.

'Entity' shall mean the person stated in the Schedule as the Policyholder and any Subsidiary Company.

'Excess' shall mean

- (i) in respect of any Loss based upon, arising out of or relating directly or indirectly from, in consequence of or in any way involving the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) or any amendment or re-enactment thereof
    - (a) £10,000
  - or
  - (b) the amount stated in the Schedule in respect of this Insuring Clause
- whichever is the greater

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(ii) in respect of any other Loss, the amount stated in the Schedule in respect of this Insuring Clause.

**'Injury'** shall mean bodily injury, mental injury, emotional distress, shock, sickness, disease or death.

**'Investigation'** shall mean any official investigation, examination, inquiry or other proceedings instigated against You by any official body or institution that is empowered to investigate Your affairs in respect of

(i) employment discrimination

(ii) health and safety.

**'Jurisdiction'** shall mean England, Wales and Scotland.

**'Limit of Indemnity'** shall mean the amount stated in the Schedule in respect of this Insuring Clause.

**'Loss'** shall mean

(i) in respect of Insuring Clause 6(a)

(a) Your legal liability for damages or judgments awarded against You

(b) Your legal liability for legal costs, charges or expenses awarded against You

(c) the premium paid for insurance instruments or bonds which, in certain jurisdictions, are required in order to institute an appeal

(d) Costs and Expenses

(ii) in respect of Insuring Clause 6(b), Costs and Expenses

resulting from or attributable to the same originating cause.

**'Market Employer Helpline'** shall mean employer helpline specialist services provided by Us or on Our behalf.

**'Period of Insurance'** shall mean the period stated in the Schedule and in the event that

(i) We refuse to renew the cover afforded by this Insuring Clause for reasons other than non-payment of premium to Us or Your failure to comply with or observe the terms, provisions and Conditions of this Certificate, or

(ii) the Entity and/or any natural person with effective control of the Entity decline to accept the renewal terms offered by Us in so far as they relate to this Insuring Clause

a further single period of thirty days from the expiry date of the period stated in the Schedule but only in respect of Loss arising from

(iii) an Employment Wrongful Act committed or allegedly committed or attempted, and/or

(iv) an Investigation which is first ordered or commissioned

prior to the expiry of the period stated in the Schedule.

The further period referred to in this Definition is not applicable to the extent that other insurance policies have been purchased with the intention of providing equivalent cover for any part of such period.

**'Subsidiary Company'** shall mean any body corporate in respect of which the Entity or any other subsidiary company the Entity controls, at the time of the Employment Wrongful Act which gives rise to the Claim or at the time when an Investigation is first ordered or commissioned,

(i) the composition of the board of directors, or

(ii) more than half of the voting power, or

(iii) more than half of the voting issued share capital

Provided always that (unless agreed to the contrary by Us in writing) in respect of a body corporate acquired or created subsequent to the date when this Insuring Clause became operative where the Entity's total number of Employee's subsequent to such acquisition or creation has increased by more than 10% compared with the number at the inception of the Period of Insurance

(a) You shall notify Us in writing of such acquisition or creation within thirty days thereof, and

(b) provide such additional information that We may require, and

(c) agree to such terms and/or additional premiums as We may require.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 6**

We shall not be liable to pay or indemnify You against Loss

### **(1) OTHER INSURANCE**

in respect of which You are entitled to indemnity under any other insurance.

Notwithstanding the above this Certificate shall contribute in excess of such other insurance, provided always that if such other insurance is also provided by Us the Limit of Indemnity under this Insuring Clause shall be deemed reduced by any amount payable under such other insurance.

### **(2) LEGAL ACTION**

(a) where the Claim is brought in a court of law outside the Jurisdiction, and/or

(b) where action is brought in a court of law within the Jurisdiction to enforce a foreign judgment, whether by way of reciprocal agreement or otherwise.

### **(3) DISHONEST OR FRAUDULENT CONDUCT**

arising out of Your dishonest, fraudulent or malicious conduct.

Provided always that such conduct, breach, gain, profit or advantage is either admitted by You or established in a judgment or other final adjudication.

### **(4) DELIBERATE ACTS**

resulting from Your wanton, wilful, reckless or intentional disregard of any employment legislation.

Provided always that the wanton, wilful, reckless or intentional disregard of one Assured shall not be imputed to another Assured.

### **(5) VOLUNTARY ASSUMPTION OF LIABILITY**

based upon, arising out of or resulting directly or indirectly from Your voluntary assumption of liability for any act or omission of whatsoever nature of any other person.

### **(6) CIRCUMSTANCES KNOWN AT INCEPTION**

brought about by, or contributed to, or consequent upon any circumstances existing prior to the date when this Insuring Clause became operative and which You ought reasonably to have known might give rise to a Loss.

### **(7) INJURY/PROPERTY DAMAGE**

arising from any Claim

(a) for Injury sustained by any person (other than emotional distress arising from any libel, slander, defamation or Employment Wrongful Act), or

(b) for any loss, damage or destruction of property, including loss of use thereof.

### **(8) TAKEOVER, MERGER OR LIQUIDATION**

resulting from any Employment Wrongful Act occurring or Investigation instigated subsequent to

(a) the effective date of Your takeover or merger by or with any other person

(b) the appointment of a liquidator, trustee, receiver or any other similar officer.

### **(9) FAILURE TO ADAPT PREMISES OR WORKING METHODS**

other than in respect of Costs and Expenses, based upon, arising out of or resulting directly or indirectly from any obligation to adjust or adapt any premises or working methods to meet the needs of a person with a disability.

### **(10) REMUNERATION, REDUNDANCY AND BENEFITS**

to the extent of any payment due to the Employee by You in accordance with

(a) any law governing health and safety, worker's compensation, unemployment insurance, social security, disability benefits, redundancy, remuneration or any similar law whether common or statutory, including any regulations promulgated thereunder, of any country, state or jurisdiction

(b) the Employee's contract of employment with You

(c) any Benefit Scheme or the failure to contribute to, fund, reimburse or make payment in connection with such Benefit Scheme.

### **(11) NON-PECUNIARY RELIEF**

other than in respect of Costs and Expenses, resulting directly or indirectly from the cost of compliance with any order for, grant of or agreement to provide injunctive or non-pecuniary relief.

### **(12) DISPUTES BETWEEN ASSURED**

arising from a dispute concerning the dissolution of any partnership agreement between any two or more Assureds.

## **CONDITIONS APPLICABLE TO INSURING CLAUSE 6**

### **(1) SEVERABILITY**

Nothing in the Proposal or otherwise known or done by any Assured who is a natural person shall be imputed to any other natural person in determining any right or obligation of the Assured under this Insuring Clause. In no case shall an Assured who is a natural person be prevented from pursuing any point in his or her defence only because it is inimical to the interest of any other Assured.

### **(2) TUPE**

As a condition precedent to Your right to payment or indemnity under this Insuring Clause You shall, in any matter to which the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) or any amendment or re-enactment thereof apply, consult and follow the advice of the Market Employer Helpline.

Specimen

# INSURING CLAUSE 7 – PROPERTY DAMAGE

If the Property, or any part of such Property, shall sustain Damage during the Period of Insurance We agree to pay You the value of the Property at the time of Damage or, at Our option, repair, reinstate or replace the Property or any part of such Property.

## LIMIT AND EXCESS

Our total liability under this Insuring Clause in the Period of Insurance shall not exceed

- (a) in respect of Property, the Sum Insured for such Property
- (b) in respect of all Damage, the Overall Total Sums Insured.

We shall only be liable for that part of each and every occurrence of Damage at each separate Premises which exceeds the Excess.

## ADDENDA APPLICABLE TO INSURING CLAUSE 7

### (1) Designation Clause

For the purpose of determining, where necessary, the heading under which any Property is insured, We agree to accept the designation under which the Property has been entered in Your books.

### (2) Professional Fees

Unless more specifically insured the indemnity provided by this Insuring Clause in respect of Buildings and Office Contents includes an amount for architects', surveyors', consulting engineers', legal and other professional fees necessarily and reasonably incurred in the reinstatement of the Property consequent upon Damage but not for preparing any request for payment or indemnity.

### (3) Automatic Increase in Sum Insured

Notwithstanding the 'Limit and Excess' clause and/or Condition 1 (Average), the indemnity provided by this Insuring Clause extends to include

- (a) newly erected buildings, extensions and alterations
- (b) newly acquired Office Contents
- (c) newly acquired Computer Equipment
- (d) inflationary increases in the value of the Buildings, Office Contents and/or Computer Equipment

for an amount not exceeding

- (i) in respect of Buildings, 25% of the Sum Insured on Buildings or £50,000 whichever is the least, and/or
- (ii) in respect of
  - (a) Office Contents
  - (b) Computer Equipment

15% of the respective Sum Insured or £10,000 in total whichever is the least

(which amount shall be in addition to the total amount otherwise payable under this Insuring Clause)

Provided always that the Sum Insured of the Property at the commencement of the Period of Insurance is not less than the value of the Property.

### (4) Grounds of the Premises

The indemnity provided by this Insuring Clause extends to include, with Our consent, the costs incurred in making good the grounds of the Premises damaged by the fire brigade or any other emergency service(s) following Damage to the Property

Provided always that

- (a) payment shall have been made or liability admitted for the Damage under this Insuring Clause or would have been but for the operation of the Excess
- (b) the total amount payable under this Addendum during the Period of Insurance shall not exceed £5,000.

**(5) Non-Invalidation**

The indemnity provided by this Insuring Clause shall not be invalidated by reason of anything being done or omitted to be done in respect of any portion of the Premises not occupied by You, whether constituting an increase in risk or not, provided that immediately You become aware thereof You inform Us of such alteration or omission and pay the reasonable additional premium We may require.

**(6) Debris removal**

Unless more specifically insured, the indemnity provided by this Insuring Clause in respect of Buildings, Office Contents and Computer Equipment includes costs and expenses necessarily incurred by You with Our consent, in

- (a) removing debris
- (b) the dismantling and/or demolishing
- (c) shoring up or propping

of the portion(s) of the Property sustaining Damage not herein excluded other than costs or expenses

- (i) incurred in removing debris other than from the site of such Property and the area immediately adjacent thereto
- (ii) arising from Pollution or contamination of property not insured by this Insuring Clause.

**(7) Reinstatement of Loss**

Notwithstanding the clause headed 'Limit and Excess', in the event of Damage insured by this Insuring Clause, the Sum(s) Insured will be automatically reinstated in full from the date of such Damage provided that You

- (a) pay any additional premium We may require
- (b) comply with any reasonable recommendations We may make to prevent further Damage.

**(8) Temporary Removal**

The indemnity provided by this Insuring Clause is extended to include Property whilst temporarily removed for cleaning, renovation, repair or other similar purposes

- (a) elsewhere on the same Premises
- (b) to any other location not occupied by You and whilst in transit to and from such location by road, rail or inland waterway in the United Kingdom.

Provided always that

- (i) in the event of Damage occurring elsewhere than the Premises the amount payable under this Addendum shall not exceed 15% of the Sum Insured
- (ii) We shall not be liable to pay or indemnify You for Damage to Property in the open or in transit caused by storm or flood.

**(9) Loss of Documents**

The indemnity provided by this Insuring Clause extends to include Damage or, notwithstanding Exclusion 23 of this Insuring Clause, the mislaying of any Document which after diligent search cannot be found.

Provided always that

- (a) for the purpose of this Addendum 'Document' shall mean
  - (i) all documents excluding stamps, currency, coins, bank notes and bullion, travellers cheques, postal orders, money orders, securities, negotiable instruments and the like
  - (ii) separable programmes, instructions or data for physical incorporation into any computer system belonging to You or for which You are legally responsible, whilst in Your custody or in the custody of any person to or with whom they have been entrusted, lodged or deposited by You in the ordinary course of Your Business.
- (b) the total amount payable under this Addendum in the Period of Insurance shall not exceed £10,000.
- (c) Notwithstanding the definition of 'Excess', We shall only be liable for that part of each and every occurrence of Damage and/or mislaying of such Documents which exceeds £100.
- (d) We shall not be liable to pay or indemnify You in respect of expenditure incurred by You in the replacement or restoration of any Document arising directly or indirectly from the failure or inefficacy of any programme, instruction or data for use in any computer or other electronic data processing device, equipment or system occasioned other than through its physical destruction or damage.

**(10) Temporary Removal of Computer System Records**

The indemnity provided by this Insuring Clause extends to include computer system records for an amount not exceeding £1,000 whilst temporarily removed to any other location not occupied by You and whilst in transit to or from such location by road, rail or inland waterway in the United Kingdom.

Provided always that We shall not be liable to pay or indemnify You for Damage to property in the open or in transit caused by storm or flood.

Specimen



**(11) Interested Parties**

The interest of Mortgagors of the Buildings or those supplying Property to You under a hiring, leasing or similar agreement is noted, provided always that in the event of Damage to such Property You will disclose to Us the nature and extent of such interest.

**(12) Additional Metered Water Charges**

The indemnity provided by this Insuring Clause extends to include additional metered water charges incurred by You and for which You are responsible as a result of the accidental escape of water from water tanks, apparatus or pipes at the Premises.

Provided always that

- (a) You maintain a record of readings from the water company meter at intervals of not more than 7 days.
- (b) the amount payable hereunder shall be calculated by comparing the charge made by the water company for the period during which the loss of metered water occurred, with the charges for the previous period adjusted for any relevant factors affecting Your normal consumption of water during the periods concerned.
- (c) this Addendum does not provide an indemnity where the water tanks, apparatus or pipes are within a Building which is Unoccupied.
- (d) the total amount payable under this Addendum in the Period of Insurance shall not exceed £5,000.

**(13) Public Authorities**

The indemnity provided by this Insuring Clause in respect of Buildings and Office Contents extends to include such additional cost of reinstatement of the Damaged Property as may be incurred solely by reason of the necessity to comply with statutory regulations or local authority bye-laws;

Provided always that

- (a) this Addendum does not provide an indemnity for
  - (i) the cost incurred in complying with any statutory regulations or bye-laws
    - (1) notice of which has been served upon You prior to the happening of the Damage
    - (2) in respect of undamaged Property or undamaged portions of Property other than foundations (unless foundations are specifically excluded from the insurance by this Insuring Clause)
  - (ii) the amount of any rate, tax, duty, development or other charge or assessment arising out of capital appreciation which may be payable in respect of the Property or by the owner thereof by reason of compliance with any of the statutory regulations or bye-laws.
- (b) The work of reinstatement must be commenced and carried out with reasonable despatch and in any case completed within 12 months after the Damage or within such further time as We may agree in writing.
- (c) The work of reinstatement may be carried out wholly or partially upon another site (if the statutory regulations or bye-laws so necessitate) subject to Our liability under this Addenda not being increased.

**(14) Computer Breakdown**

Notwithstanding Exclusion (5)(b)(ii) of this Insuring Clause, the indemnity provided by this Insuring Clause extends to include breakdown of Your Computer Equipment for an amount not exceeding £5,000, provided always that

- (a) such Computer Equipment is subject to a manufacturer's guarantee and/or a maintenance contract providing free parts and labour in the event of breakdown
- (b) We will not be liable to pay or indemnify You for
  - (i) gradual deterioration, wear and tear or inherent defect
  - (ii) Computer Equipment that is more than 10 years old from the date of manufacture.

**(15) Exhibitions**

The indemnity provided by this Insuring Clause extends to include Damage to the Property whilst at any exhibition including whilst being erected or dismantled anywhere in the United Kingdom other than whilst in any premises owned or occupied by You.

Provided always that

- (a) the total amount payable under this Addendum in respect of Damage to Property at any one exhibition shall not exceed £5,000
- (b) the total amount payable under this Addendum in respect of Damage to any one item shall not exceed £1,000
- (c) We will not provide an indemnity under this Addendum in respect of Damage for which an indemnity is provided under any other contract of insurance.

## (16) Replacement of Locks

Notwithstanding Exclusion 8 (Theft) of this Insuring Clause, the indemnity provided by this Insuring Clause extends to include the costs incurred in necessarily replacing locks of the Building following theft of keys from

- (a) the Building, or
- (b) Your home, or
- (c) the home of any director or partner of Yours or of any Employee

Provided always that

- (i) the amount payable under this Addendum shall not exceed £1,000 in respect of any one occurrence of theft of such keys
- (ii) notwithstanding the definition of 'Excess' We shall only be liable for that part of such costs which exceed £25.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 7

'Assured/You/Your/Yours' shall mean the person named as the Policyholder in the Schedule.

'Buildings' shall mean the buildings at the Premises owned or occupied solely or in part by You in connection with Your Business and/or as a private dwelling or offices which shall unless stated otherwise be constructed of brick, stone or concrete and roofed with slates, tiles, metal, concrete, asphalt, asbestos or other non-combustible materials.

Furthermore such buildings shall include landlord's fixtures and fittings in or on the buildings and, other than for the application of Exclusions 8(a) and 18 of this Insuring Clause,

- (i) walls, gates and fences, car parks, yards, private roads, pavements and paths all on the same Premises.
- (ii) small outside buildings, annexes, loading bays, conveniences, external fire escapes, staircases, gangways and pedestrian ways attaching or belonging to the buildings.
- (iii) services, which shall mean lowering and loading apparatus, water and fuel tanks and ancillary equipment, service pipes, trunking, piping, ducting, cables, wires and their associated control gear and accessories extending from the buildings to the public mains all for which You are responsible and so far as they are not otherwise insured.

'Computer Equipment' shall mean Computer Equipment as defined in General Definitions within the Buildings other than any item which is insured under Insuring Clause 10 (Specified All Risks) or which would be insured under that clause but for the operation of any Limit of Indemnity, Excess, Exclusion or Condition.

'Damage' shall mean accidental loss, destruction or damage.

'Defined Peril(s)' shall mean fire, lightning, explosion, earthquake, subterranean fire, riot, civil commotion, strikers, locked-out workers, persons taking part in labour disturbances, malicious persons (other than thieves), aircraft or other aerial devices or articles dropped therefrom, storm, flood, escape of water from any tank, apparatus or pipe and impact by any road vehicle or animal.

'Employee' shall mean any person, other than a director of Yours, who was or is or may hereafter be

- (i) under a contract of service or apprenticeship with You, or
- (ii) under a work experience or similar scheme, or
- (iii) supplied to or hired in or borrowed by You, or
- (iv) self-employed persons

working for You under Your direct control in connection with Your Business and normally resident in the United Kingdom.

'Excess' shall mean

- (i) £1,000 in respect of Damage caused by Subsidence
- (ii) £ 250 in respect of all other Damage.

'Office Contents' shall mean

- (i) stationery and office furniture and machinery
- (ii) tenants' improvements and decorations for which You are responsible

within the Buildings at the Premises other than any item which is insured under Insuring Clause 10 (Specified All Risks) or which would be insured under that clause but for the operation of any Limit of Indemnity, Excess, Exclusion or Condition

and, in so far as they are not otherwise or more specifically insured

- (iii) money and stamps (other than National Insurance Stamps) for an amount not exceeding £1,000 (but this is limited to £500 following theft other than from a locked safe or strongroom).

(iv) National Insurance Stamps including stamps affixed to cards.

Specimen

- (v) documents, manuscripts and business books but only for the value of the materials as stationery together with the cost of clerical labour expended in writing up and not for the value to You of the information contained therein.
- (vi) computer systems records, but only for the value of the materials together with the cost of clerical labour and computer time expended in reproducing such records (excluding any expenses in connection with the production of information to be recorded therein) and not for the value to You of the information contained therein, for an amount not exceeding £10,000.
- (vii) patterns, models, moulds, plans and designs.
- (viii) Employees', directors', partners', customers' and visitors' pedal cycles, tools and other personal effects for an amount not exceeding £500 in respect of any one person.
- (ix) wines, spirits, cigarettes and tobacco goods kept for entertainment purposes only (and not for sale) but not for more than £500 in total in respect of loss or damage by theft (if insured).

but excluding

- (x) landlords fixtures and fittings.
- (xi) vehicles licensed for road use including their accessories and equipment.
- (xii) property more specifically insured.

'**Overall Sum Insured**' shall mean the amount stated in the Schedule.

'**Period of Insurance**' shall mean the period stated in the Schedule.

'**Premises**' shall mean the premises stated in the Schedule.

'**Property**' shall mean the property specified in the Schedule in respect of this Insuring Clause.

'**Subsidence**' shall mean subsidence, ground heave or landslip.

'**Sum(s) Insured**' shall mean the amount(s) stated in the Schedule in respect of this Insuring Clause.

'**Unoccupied**' shall mean untenanted, empty or not in use.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 7**

We shall not be liable to pay or indemnify You for

### **(1) OTHER INSURANCE**

more than Our rateable proportion of any Damage where You are entitled to payment or indemnity under any other insurance for such Damage.

### **(2) WEAR AND TEAR**

Damage caused by or consisting of

- (a) inherent vice, latent defect, gradual deterioration, wear and tear, frost, change in water table level, faulty or defective design or materials
- (b) the bursting of a boiler (other than a boiler used for domestic purposes only), economiser or other vessel, machine or apparatus, belonging to You or under Your control, in which internal pressure is due to steam only

other than subsequent Damage which itself results from a cause not otherwise excluded.

### **(3) DEFECTIVE WORKMANSHIP**

Damage caused by or consisting of faulty or defective workmanship, operational error or omission, by You or on the part of any of Your Employees, other than subsequent Damage resulting from another cause.

### **(4) FRAUD OR DISHONESTY OF EMPLOYEES**

Damage by or consisting of acts of fraud or dishonesty by Your Employees other than subsequent Damage resulting from a Defined Peril.

### **(5) LEAKAGE, MECHANICAL / ELECTRICAL BREAKDOWN ETC**

- (a) Damage caused by or consisting of corrosion, rust, wet or dry rot, shrinkage, evaporation, loss of weight, dampness, dryness, change in temperature, colour, flavour, texture or finish, marring, scratching, vermin or insects
- (b) Damage consisting of
  - (i) joint leakage, failure of welds, cracking, fracturing, collapse or overheating of boilers, economisers, superheaters, pressure vessels or any range of steam and feed piping in connection therewith
  - (ii) mechanical or electrical breakdown or derangement

other than subsequent Damage resulting from another cause.

**(6) POLLUTION**

Damage caused by Pollution other than Damage caused by

- (a) Pollution which results from a Defined Peril
- (b) a Defined Peril which results from Pollution.

**(7) SETTLEMENT AND BEDDING DOWN**

(a) Damage caused by or consisting of Subsidence

- (i) to yards, car parks, roads, pavements, walls, gates or fences at the Premises unless the buildings at the Premises are Damaged by the same cause at the same time
- (ii) which itself results from
  - (a) demolition, construction, structural alteration or repair of any property, or
  - (b) groundworks or excavations at the Premises.

- (b) (i) the normal settlement or bedding down of new structures
- (ii) the settlement or movement of made up ground
- (iii) coastal or river erosion.

**(8) THEFT**

Damage caused by theft or any attempted theft

- (a) (i) by any person lawfully on the premises
- (ii) by deception
- (iii) from any outbuilding

unless such theft or attempted theft involved entry to or exit from the Buildings by forcible and violent means

- (b) to Property in any yard, car park, open space or open sided building
- (c) whilst the Buildings are Unoccupied

other than Damage consequent upon and in connection with assault or violence or threat thereof to You or any of Your Employees

- (d) expedited or in any way brought about by You, any member of Your family, or any director, partner of Yours or any Employee unless resulting from assault or violence or threat thereof to such persons

Provided always that this Exclusion shall not apply to any subsequent Damage resulting from a Defined Peril.

**(9) COLLAPSE**

Damage to the Building caused by its own collapse or cracking unless resulting from a Defined Peril.

**(10) DAMAGE TO FENCES, GATES AND MOVEABLE PROPERTY**

Damage to fences, gates and moveable property in the open caused by wind, rain, hail, sleet, snow, flood and dust.

**(11) DAMAGE TO ROADS, PATHS AND PAVEMENTS ETC**

Damage of or to any yard, car park, road, pavement or path caused by weight, vibration or vehicle.

**(12) UNOCCUPIED PREMISES**

Damage to Unoccupied Buildings caused by

- (a) freezing
- (b) the escape of water from any tank, apparatus or pipe, or escape of oil from any heating installation
- (c) malicious persons not acting on behalf of or in connection with any political organisation, other than by fire or explosion.

**(13) FIXED GLASS AND SANITARY WARE**

Damage to fixed glass and fixed sanitary ware

- (a) which is broken or damaged at the commencement of this insurance.
- (b) in respect of an Unoccupied Building.

**(14) VALUABLE AND FRAGILE PROPERTY**

Damage to

- (a) (i) jewellery, precious stones, precious metals, bullion, furs, curiosities, works of art or rare books
- (ii) property in transit

(iii) money, cheques, stamps, bonds or credit cards

Specimen

other than Damage caused by a Defined Peril.

- (b) securities of any description unless stated otherwise in this Insuring Clause or the Schedule.
- (c) glass (not being fixed glass), china, earthenware (not being fixed sanitary ware), marble or other fragile or brittle objects other than Damage caused by a Defined Peril or theft or any attempted theft.

**(15) VEHICLES**

Damage to vehicles and their accessories and equipment, caravans, trailers, railway locomotives, rolling stock, watercraft or aircraft unless stated otherwise in this Insuring Clause or the Schedule.

**(16) CONTRACT WORKS**

Damage to

- (a) the permanent and/or temporary works forming part of any contract for the maintenance, repair, renovation, refurbishment, alteration, rebuilding (or the like) of the Buildings and/or
- (b) materials for incorporation within such permanent and/or temporary works.

**(17) LAND, ROADS, PAVEMENTS ETC**

Damage to land, roads, pavements, piers, jetties, bridges, culverts or excavations unless stated otherwise in this Insuring Clause or the Schedule.

**(18) LIVESTOCK, CROPS AND PLANTS**

Damage to livestock, growing crops, trees, shrubs plants or lawns other than Damage to trees, shrubs and plants used for ornamental purposes only.

Provided always that, such trees, shrubs and plants used for ornamental purposes

- (a) are contained within the structure of the Building, and
- (b) they do not form part of Your Office Contents unless stated otherwise in this Insuring Clause or the Schedule, and
- (c) the Damage is caused by a Defined Peril.

**(19) MARINE INSURANCE**

Property which at the time of the Damage is insured (or would be but for the existence of Insuring Clause 7 (Property Damage)), by any marine insurance policy or certificate other than in respect of any excess beyond the amount which would have been payable under the marine insurance policy or certificate had this insurance not been effected.

**(20) PROPERTY MORE SPECIFICALLY INSURED**

any Property more specifically insured by You or on Your behalf.

**(21) CONSEQUENTIAL LOSS**

consequential loss of any kind or description.

**(22) RENT**

loss of rent.

**(23) UNEXPLAINED SHORTAGES**

Damage caused by or consisting of unexplained disappearance or inventory shortage, misfiling or misplacing of information.

**(24) FALSE PRETENCE**

Damage caused by the voluntary parting with title or possession of any Property insured if induced by any fraudulent scheme, trick, device or false pretence.

**(25) SUBSIDENCE**

Damage caused by Subsidence to any Property situated within the Isle of Wight.

**(26) COMPONENT SELF IGNITION**

Damage of the component part of any dynamo, electric motor or other electrical plant installation, apparatus or conductor caused by its own self-heating or self-ignition.

**(27) FLAT ROOFS**

Damage to or resulting directly or indirectly from flat roof sections of the Property where the flat roof

- (a) has not been adequately maintained, or
- (b) is greater than 10 years old

## **CONDITIONS APPLICABLE TO INSURING CLAUSE 7**

### **(1) AVERAGE**

Other than in respect of rent, debris removal and professional fees where specifically insured, the Sum Insured for each Property of this Insuring Clause is separately subject to the following:

If at the commencement of any Damage the Sum Insured of the Property is less than the value of the Property, the amount payable by Us in respect of such Damage shall be proportionately reduced.

### **(2) REINSTATEMENT BASIS OF SETTLEMENT**

In the event of Damage to the Property the basis upon which the amount We shall pay You is calculated shall be the Reinstatement of the Damaged Property.

Notwithstanding the Definition of 'Property', for the purpose of this Addendum 'Property' shall mean the property specified in the Schedule other than

- (a) Stock, rent, motor vehicles (including their accessories and equipment).
- (b) debris removal and professional fees specifically insured under this Insuring Clause.
- (c) employee's, director's, partner's, customer's and visitor's pedal cycles, tools and other personal effects.

For the purpose of this Addendum 'Reinstatement' shall mean the carrying out of the following work

- (i) where the Property is lost or destroyed
  - (a) the rebuilding of the Property if a building, or
  - (b) in respect of other Property, its replacement by similar property in a condition equal to but not better or more extensive than its condition when new.
- (ii) where Property is damaged, the repair of the damage and the restoration of the damaged portion of the Property to a condition substantially the same as but not better or more extensive than its condition when new.

Provided always that

- (i) the work or Reinstatement must be commenced and carried out with reasonable despatch.
- (ii) where the work or Reinstatement is carried out at another site and/or in any manner suitable to your requirements Our liability to pay You shall not thereby be increased.
- (iii) in respect of any Property which is Damaged in part only, Our liability to pay You shall not exceed the amount we would have paid for Reinstatement if such Property had been wholly destroyed.
- (iv) no payment beyond the amount which would have been payable had this Addendum not been incorporated herein shall be made until the cost of reinstatement shall have been actually incurred.
- (v) Notwithstanding Condition (1) of this Insuring Clause, Average, if at the time of Damage the Sum Insured of the Property represents less than 85% of the full cost of Reinstatement of the Property We shall only pay for that proportion of the Damage which the Sum Insured bears to the full cost of Reinstatement.
- (vi) unless any other contract of insurance effected by You or on Your behalf in respect of the Property is subject to an identical basis of Reinstatement We shall not pay You any amount beyond that which We would have paid under this Insuring Clause had this Addendum not been incorporated therein.

### **(3) UNOCCUPIED BUILDINGS**

You must notify Us, in writing, as soon as reasonably possible when You become aware that

- (a) a Building or any part of a Building is or is to become Unoccupied
- (b) an Unoccupied Building or part of a Building has or is due to become occupied, giving Us full details of the purposes for which it is to be used

and pay the reasonable additional premium We may require.

### **(4) EXPLOSION**

It is a condition precedent to Your right to payment or indemnity under this Insuring Clause for Damage to any vessel, machinery or apparatus (or the contents therein) belonging to You or under Your control caused by an explosion originating therein that where such vessel, machinery or apparatus is required to be examined to comply with any statutory regulations such compliance is observed.

### **(5) SECURITY PROTECTIONS**

As a condition precedent to Your right to payment or indemnity under this Insuring Clause You shall ensure that the following security protections (and/or any subsequently installed or fitted at Our request) shall be in full and proper use at all times when the Premises are closed for business or left unattended and shall be maintained in proper working order throughout the currency of this insurance



- (a) all external doors (and any internal doors leading to any part of the Buildings not in Your sole occupation) to be secured with either

Specimen

- (i) if an aluminium door: a cylinder mortice deadlock, or
- (ii) if an armoured plate door: the door manufacturer's locks as supplied, or
- (iii) if a UPVC door: a multi-point locking system incorporating a minimum of 3 deadbolts
- (iv) if any other type of single leaf door
  - (1) where the door thickness is at least 4.5 cm: a five lever mortice deadlock to at least British Standard 3621 together with a 17.5 cm boxed steel striking plate
  - (2) where the door is less than 4.5 cm thick: a deadlocking rim latch keyed into the deadlock position or a mortice deadlock and two key operated security bolts engaging with the door frame and with internal operation only
- (v) if double leaf doors:
  - (1) the standing leaf secured with internal surface mounted key operated security bolts or concealed flush bolts sited top and bottom engaging with the door frame and the floor, and
  - (2) the final closing leaf secured with either a lock fitted as above dependent on door type or both leaves fitted with a coach-bolted locking bar secured with a close shackle padlock (or, if the locking bar is sited internally, either a close or open shackle padlock) having at least five levers
- (vi) if a designated fire door: either
  - (1) a panic bar locking system incorporating bolts which engage both the head and sill of the door frame, or
  - (2) a mortice lock having specific application for emergency exit doors and which is operated from the inside by means of a conventional handle and/or thumb turn mechanism.
- (b) all external ground floor and accessible windows and/or skylights are secured with key operated window locks or screwed shut.

# INSURING CLAUSE 8 – BUSINESS INTERRUPTION

If, during the Period of Insurance, an Insured Event occurs and in consequence the Business carried on by You at the Premises is interrupted or interfered with then We agree to pay You

**(a) Loss of Revenue**

the amount of loss of Revenue due to reduction in Income and/or increase in cost of working resulting from such interruption or interference.

**(b) Additional Cost of Working**

the Additional Cost of Working resulting from such interruption or interference

Provided always that

- (i) Insuring Clauses 8 (a) (Loss of Revenue) and 8(b) (Additional Cost of Working) are only operative if a Sum Insured is shown for such clauses in the Schedule and only in respect of the Premises stated against such Sum Insured
- (ii) in respect of Damage occurring at the Premises payment shall have been made or liability admitted for the Damage under Insuring Clause 7 (Property Damage) or would have been made but for the operation of the Excess.

## LIMIT

Our total liability under this Insuring Clause in the Period of Insurance shall not exceed the Sum Insured.

Provided always that

- (a) the amount payable under Insuring Clause 8(a) (Loss of Revenue) in respect of
  - (i) reduction in Revenue shall be the amount by which the Revenue during the Indemnity Period shall, in consequence of the Insured Event, fall short of the Standard Revenue.
  - (ii) increase in cost of working shall be the additional expenditure, subject to the provisions of Condition 5 (Savings) of this Insuring Clause, necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Revenue which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Insured Event, but not exceeding the loss of Revenue thereby avoided.
- (b) the amount payable under Insuring Clause 8(b) (Additional Cost of Working) shall be the Additional Cost of Working necessarily and reasonably incurred or payable for the purpose of avoiding or diminishing the reduction in Revenue which but for that expenditure, would have taken place during the Indemnity Period in consequence of the Insured Event.

## ADDENDA APPLICABLE TO INSURING CLAUSE 8

**(1) Alternative Trading**

If, during the Indemnity Period, goods shall be sold, accommodation provided or services shall be rendered elsewhere than at the Premises for the benefit of your Business, either by You or by others on Your behalf the money paid or payable in respect of such sales, accommodation or services shall be brought into account in arriving at the Revenue or rent receivable during the Indemnity Period.

**(2) Professional Accountant's Charges**

We will pay the reasonable charges payable by You to Your professional accountants for producing any particulars or details or any other proofs, information or evidence, as may be required by Us under the terms of this Insuring Clause, and reporting that such particulars or details are in accordance with Your books of accounts or other Business books or documents.

**(3) Reinstatement of Loss**

In the event of Damage insured by this Insuring Clause, the Sum(s) Insured will be automatically reinstated in full from the date of such Damage provided that You

- (a) pay any additional Premium We may require.
- (b) comply with any reasonable recommendations We may make to prevent further Damage.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 8

'**Assured/You/Your/Yours**' shall mean the person named as the Policyholder in the Schedule.

'**Additional Cost of Working**' shall mean additional expenditure, including but not limited to

- (i) the cost of moving to and from temporary premises and the additional rent, rates and taxes thereon
- (ii) expenses incurred in equipping temporary premises and the additional rent, rates and taxes thereon
- (iii) additional costs in respect of lighting, heating and water
- (iv) additional costs in respect of additional staff and overtime and allowances to existing staff.

'**Annual Revenue**' shall mean the Revenue during the twelve months immediately before the commencement of the Insured Event.

Providing always that adjustments shall be made, as may be necessary, to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Damage or which would have affected Your Business had the Damage not occurred, so that the figures thus adjusted shall represent, as nearly as may be reasonably practicable, the results which but for the Damage would have been obtained during the relevant period after the Damage.

'**Damage**' shall mean accidental loss, destruction or damage.

'**Indemnity Period**' shall mean the period beginning with the occurrence of the Damage and ending not later than the Maximum Indemnity Period thereafter during which the results of Your Business shall be affected in consequence of the Damage.

'**Insured Event**' shall mean

- (i) Damage occurs at the Premises to property used by You for the purpose of Your Business, or
- (ii) Damage occurs at or to property in the vicinity of the Premises preventing or hindering You from using or accessing Your Premises for the purpose of the Business, or
- (iii) Damage occurs at or to property at Your suppliers' premises within the United Kingdom
- (iv) accidental failure occurs to Your supply of electricity, gas, water or telecommunications services.

'**Maximum Indemnity Period**' shall mean the Maximum Indemnity Period stated in the Schedule.

'**Period of Insurance**' shall mean the period stated in the Schedule.

'**Premises**' shall mean the premises stated in the Schedule.

'**Revenue**' shall mean the money paid or payable to You in respect of work done and services rendered in the course of Your Business at the Premises.

'**Standard Revenue**' shall mean the Revenue during that period in the twelve months immediately before the commencement of the Damage which corresponds with the Indemnity Period.

Providing always that adjustments shall be made, as may be necessary, to provide for the trend of Your Business and for variations in or other circumstances affecting Your Business either before or after the Damage or which would have affected Your Business had the Damage not occurred, so that the figures thus adjusted shall represent, as nearly as may be reasonably practicable, the results which but for the Damage would have been obtained during the relevant period after the Damage.

'**Sum(s) Insured**' shall mean the amount(s) stated in the Schedule in respect of this Insuring Clause, which amount is inclusive of all payment under Insuring Clause 8(a) (Loss of Revenue)

- (i) consequent upon Damage occurring at or to property at Your suppliers' premises within the United Kingdom for which Our total aggregate liability in the Period of Insurance shall not exceed £100,000.
- (ii) consequent upon the breakdown of Your Computer Equipment for which Our total aggregate liability in the Period of Insurance shall not exceed £5,000.

## EXCLUSIONS APPLICABLE TO INSURING CLAUSE 8

We shall not be liable to pay or indemnify You for loss of Revenue or increase in cost of working

### (1) OTHER INSURANCE

more than Our rateable proportion where You are entitled to payment or indemnity under any other insurance for such loss of Revenue or increase in cost of working.

### (2) FAILURE OF SUPPLY

consequent upon Damage caused by

- (a) the deliberate act of a supply undertaking in withholding the supply of water, gas, electricity, fuel or telecommunication services (unless such discontinuation is due to a deliberate act of the supply authority for the sole purpose of safeguarding

life or protecting any part of the supply system or a scheme of rationing due to Damage to the supply authority's premises), other than loss resulting from subsequent Damage which itself results from a cause not otherwise excluded

Specimen

- (b) the accidental failure of Your supply of electricity, gas, water or telecommunications
  - (i) which does not involve a cessation of supply for at least twenty-four consecutive hours
  - (ii) caused by
    - (a) strikes of any labour or trade disputes
    - (b) drought.

## **CONDITIONS APPLICABLE TO INSURING CLAUSE 8**

### **(1) AVERAGE**

If at the commencement of Damage the Sum Insured is less than the Annual Revenue, or a proportionately increased multiple thereof where the Maximum Indemnity Period exceeds 12 months, the amount payable by Us shall be proportionally reduced.

### **(2) VALUE ADDED TAX CLAUSE**

To the extent that You are accountable to the tax authorities for Value Added Tax all terms shall be exclusive of such tax.

### **(3) CURRENT COST ACCOUNTING**

Any adjustment implemented in current cost accounting shall be disregarded.

### **(4) PROFESSIONAL ACCOUNTANTS**

Any particulars or details contained in Your books of account or other Business books or documents which may be required by Us under the Conditions of this Certificate for the purpose of investigating or verifying any claim may be produced by professional accountants, if at the time they are regularly acting as such for You, and their report shall be prima facie evidence of the particulars and details to which such report relates.

### **(5) SAVINGS**

If any of the charges or expenses of the Business cease or reduce in consequence of Damage the amount of such savings during the Indemnity Period shall be deducted from the amount payable.

# INSURING CLAUSE 9 – MONEY AND PERSONAL ASSAULT

## (a) MONEY

We agree to indemnify You against loss of Money occurring during the Period of Insurance within the United Kingdom whilst the Money is

- (i) in transit
- (ii) in the custody of collectors for 24 hours from the time of receipt or until the next working day
- (iii) in the Premises
- (iv) in any Private Residence
- (v) on contract or exhibition sites whilst Employees are working thereat
- (vi) in the night safe at a bank.

## LIMIT AND EXCESS

Our total liability under Insuring Clause 9(a) (Money) in respect of any one loss shall not exceed:

- (a) £5,000 for loss of Negotiable Money, other than for loss
  - (i) from the Premises out of Working Hours where such loss is not from a locked safe or strongroom
  - (ii) from the custody of any one collector
  - (iii) from any Private Residence whilst not in a locked safe or strongroom
  - (iv) of any one package in transit by registered post when the total amount payable shall not exceed £500, or
  - (v) a locked safe or strongroom at the Premises when the total amount payable shall not exceed £2,500
  - (vi) from any Private Residence whilst in a locked safe or strongroom when the total amount payable shall not exceed £1,000.
- (b) (i) £1,000 per card in any one Period of Insurance for loss resulting from the fraudulent use of any company credit or debit card issued for use in connection with Your Business
- (ii) £250,000 in respect of all other Non-Negotiable Money.
- (c) The cost of repair or reinstatement of any safe, strongroom, cash register, cash carrying case, bag or security waistcoat or franking machine lost or damaged by theft or attempted theft of Money

Provided always that We shall only be liable for that part of each and every loss which exceeds the Excess.

## (b) PERSONAL ASSAULT

If the Assured Person suffers Injury, or loss of or damage to clothing and personal effects during the Period of Insurance as a direct result of robbery or attempted robbery in the course of the Business We agree to pay You the appropriate benefit as set out in the Scale of Benefits.

## SCALE OF BENEFITS

The amount payable for each person under Insuring Clause 9(b) (Personal Assault) shall be

- |  |  |
|--|--|
| (a) in respect of Death  | £10,000  |
| (b) in respect of Loss of Limbs  | £10,000  |
| (c) in respect of Loss of Sight or Speech or Hearing   | £10,000  |
| (d) in respect of Permanent Total Disablement  | £10,000  |
| (e) in respect of Temporary Total Disablement  | £ 100 for each week of disablement                       |
| (f) in respect of loss of, or damage to, clothing and personal effects belonging to an insured person. | The amount of the loss or damage up to a maximum of £500 |

(g) Medical Expenses

Incurred costs up to a maximum of £250 per Injury

Provided always that:

- (1) We shall pay benefit for only one of items (a) to (d) inclusive for any one Assured Person.
- (2) Permanent Total Disablement must commence within 104 weeks of suffering the Injury.
- (3) benefit (d) shall not be payable until 104 weeks after the date of suffering the Injury.
- (4) to qualify for benefit (e) the injured person must have received medical attention from and continued under the care of a qualified medical practitioner.
- (5) benefit (e) is payable for a maximum of 104 weeks from the date of suffering the Injury.
- (6) benefit (e) is no longer payable once benefit (a), (b) or (c) becomes claimable.

## ADDENDA APPLICABLE TO INSURING CLAUSE 9

### (1) Business Visits Abroad

The indemnity provided by Insuring Clause 9(a) (Money) extends to include loss of Money occurring outside of the United Kingdom and arising out of visits in connection with Your Business by You or any director or partner of Yours or any Employee.

Provided always that the total amount payable shall not exceed £500 in respect of any one loss.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 9

**'Assured/You/Your/Yours'** shall mean the person named as the Policyholder in the Schedule.

**'Assured Person'** shall mean any principal, partner, director, officer or Employee of Yours or any member of their family.

**'Death'** shall mean death resulting solely and directly from, and within 104 weeks of sustaining, the Injury.

**'Employee'** shall mean any person, other than a director of Yours, who was or is or may hereafter be

- (i) under a contract of service or apprenticeship with You, or
- (ii) under a work experience or similar scheme, or
- (iii) supplied to or hired in or borrowed by You, or
- (iv) self-employed persons

working for You under Your direct control in connection with Your Business and normally resident in the United Kingdom.

**'Excess'** shall mean £250.

**'Injury'** shall mean bodily injury caused solely and directly by violent, external and visible means.

**'Loss of Limbs'** shall mean total loss of use of one or more hands or feet resulting solely and directly from, and within 104 weeks of suffering, the Injury.

**'Loss of Sight or Speech or Hearing'** shall mean total and irrecoverable loss of

- (i) all sight in one or both eyes, or
- (ii) the power of speech, or
- (iii) the sense of hearing

resulting solely and directly from, and within 104 weeks of suffering, the Injury.

**'Medical Expenses'** shall mean reasonably incurred costs of surgical or other remedial attention, treatment or appliances given or prescribed by a qualified member of the medical profession together with hospital, nursing home and ambulance charges following Injury for which a benefit is payable under this Insuring Clause.

**'Money'** shall mean Negotiable Money and Non-Negotiable Money for which You are responsible and used for the purposes of Your Business.

**'Negotiable Money'** shall mean current coin, bank and currency notes, uncrossed cheques, uncrossed postal and money orders, unused postage stamps, unused National Insurance Stamps, National Savings Stamps and Certificates, unexpired units in franking machines, luncheon and customer redemption vouchers, trading stamps, holiday with pay stamps, telephone cards and travel tickets (solely for Your personal use, or use by any director or partner of Yours or any Employee).



**'Non-Negotiable Money'** shall mean crossed cheques (including crossed giro cheques and drafts but excluding pre-signed blank cheques), crossed bankers' drafts, crossed postal and money orders, crossed warrants, used National Insurance Stamps, VAT purchase invoices, company credit and/or debit cards, credit and debit card sales vouchers and Premium Bonds.

**'Period of Insurance'** shall mean the period stated in the Schedule.

**'Permanent Total Disablement'** shall mean permanent total disablement (other than Loss of Limb or Loss of Sight or Speech or Hearing) resulting solely and directly from Injury which necessarily and continuously prevents the insured person from attending to business or occupation of any description and, having lasted for 104 weeks from the date of suffering the Injury, is beyond hope of improvement.

**'Premises'** shall mean the premises stated in the Schedule.

**'Private Residence'** shall mean the private residence, away from the Premises, where You or any director or partner of Yours or any Employee or Your authorised representative (who is entrusted with money) permanently reside.

**'Temporary Total Disablement'** shall mean total disablement resulting solely and directly from Injury which necessarily prevents the injured person from attending to his/her usual business or occupation or, if the injured person has no occupation, necessarily confines the person to a private dwelling or other location where he/she is under treatment.

**'Working Hours'** shall mean Your normal working hours including overtime, during which You or any Employees who are entrusted with money are

- (i) in that portion of the Premises used solely for the purpose of Your Business
- (ii) for contract or exhibition sites, on the contract or exhibition site.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 9**

We shall not be liable to pay or indemnify You

(1) **OTHER INSURANCE**

for more than Our rateable proportion of any loss of Money, Injury, loss or damage where You are entitled to payment or indemnity under any other insurance for such loss of Money, Injury, loss or damage.

(2) **GAMING MACHINES**

for loss of Money in gaming, amusement, change giving or vending machines.

(3) **FRAUD OR DISHONESTY**

for loss due to fraud or dishonesty of Employees unless the loss is discovered within 30 days of it occurring.

(4) **SHORTAGES**

for shortages due to mysterious disappearance, unexplained shortage or shortages, accounting or clerical error or omission.

(5) **UNATTENDED MOTOR VEHICLES**

for loss of Money from unattended motor vehicles.

(6) **DEPRECIATION / COUNTERFEIT MONEY**

for consequential loss of any kind or description or loss due to depreciation in value or to the use of counterfeit Money.

(7) **FALSIFICATION OF ACCOUNTS**

for loss due to falsification of accounts.

(8) **FIDELITY GUARANTEE**

for loss of Money where You are entitled to indemnity under a Fidelity Guarantee or similar insurance policy or certificate.

(9) **UNREGISTERED POST**

for loss of Money in transit sent in unregistered post.

(10) **CREDIT CARDS**

for loss due to the use of any company credit or debit card if the provisions, conditions and other terms under which such cards have been issued have not been fully complied with.

(11) **CHILDBIRTH AND AGE**

- (a) for Injury in so far as it is directly or indirectly due to, or prolonged by, pregnancy or childbirth.
- (b) to any Assured Person under the age of 16 years or over the age of 70 years.
- (c) in respect of property belonging to any Assured Person under the age of 16 years or over the age of 70 years.

## **CONDITIONS APPLICABLE TO INSURING CLAUSE 9**

### **(1) RECORD OF MONEY**

As a condition precedent to Your right to payment of indemnity under this Insuring Clause You shall ensure that a complete record is kept of

- (a) Money in transit
- (b) Money in any Premises at which Money is covered under this Insuring Clause

and that such record is deposited in some place other than in any safe or strongroom containing Money.

### **(2) KEYS AND COMBINATION CODES**

As a condition precedent to Your right to payment or indemnity under this Insuring Clause You shall ensure that no keys or combination codes of any safe or strongroom containing Money are in the Premises out of Working Hours unless they or any director or partner of theirs or any Employee (who is entrusted with Money) permanently reside at the Premises, and/or no keys or combination codes of any safe or strongroom containing Money shall, out of Working Hours, be

- (a) in the Business portion of the Premises.
- (b) in or about that particular portion of the Premises in which such safe or strongroom is kept or situated.

### **(3) ESCORTED MONEY**

As a condition precedent to Your right to payment or indemnity under this Insuring Clause You shall ensure that each single transit of Negotiable Money above £2,500 is escorted by at least 2 responsible able-bodied adults.

# INSURING CLAUSE 10 – SPECIFIED ALL RISKS

If the Property or any part of such Property, shall sustain Damage during the Period of Insurance We agree to pay You the value of the Property at the time of Damage or, at Our option, reinstate or replace the Property or any part of the Property.

## LIMIT AND EXCESS

Our total liability under this Insuring Clause during the Period of Insurance in respect of Property shall not exceed the Sum Insured for such Property.

We shall only be liable for that part of each and every occurrence of Damage which exceeds the Excess.

## ADDENDA APPLICABLE TO INSURING CLAUSE 10

### (1) Reinstatement of Loss

In the event of Damage insured by this Insuring Clause, the Sum(s) Insured will be automatically reinstated in full from the date of said Damage provided that You

- (a) pay any additional premium We may require
- (b) comply with any reasonable recommendations We may make to prevent further Damage.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 10

'Assured/You/Your/Yours' shall mean the person named as the Policyholder in the Schedule.

'Damage' shall mean accidental loss, destruction or damage.

'Excess' shall mean £250.

'Period of Insurance' shall mean the period stated in the Schedule.

'Property' shall mean portable equipment owned by You or for which You are responsible used in connection with Your Business (including but not limited to computer equipment, photographic equipment, mobile telephones), other than

- (i) equipment whilst fitted to a vehicle
- (ii) works of art, items of gold, silver or other precious metals, or personal effects (including but not limited to jewellery and watches).

'Sum Insured' shall mean the amount stated in the Schedule in respect of this Insuring Clause.

## EXCLUSIONS APPLICABLE TO INSURING CLAUSE 10

We shall not be liable to pay or indemnify You for

### (1) OTHER INSURANCE

more than Our rateable proportion of any Damage where You are entitled to payment or indemnity under any other insurance for such Damage.

### (2) WEAR AND TEAR

Damage caused by or consisting of wear and tear, depreciation, gradual deterioration, vermin, moth or insects, fungus, condensation, any gradually operating cause or any process of cleaning, dyeing, repairing or renovation.

### (3) UNEXPLAINED SHORTAGES

Damage caused by or consisting of unexplained disappearance or inventory shortage.

**(4) UNATTENDED PROPERTY**

Damage to Property caused by or consisting of

- (a) unexplained shortage or disappearance
- (b) theft or attempted theft whilst the Property is left unattended, other than
  - (i) theft or attempted theft of Property from an unattended vehicle or
  - (ii) theft of Property where the vehicle is stolen at the same time

Provided always that

- (iii) the Property is concealed in a locked boot or stowage area within the vehicle; and
- (iv) all points of access to the vehicle are securely locked and security devices put in full and proper operation; and
- (v) force is used to gain entry to the vehicle and such entry causes external and visible damage to the vehicle.

**(5) MECHANICAL / ELECTRICAL BREAKDOWN**

Damage caused by or consisting of mechanical or electrical breakdown or derangement of the Property unless caused by accidental damage to the exterior of the Property.

**(6) CONSEQUENTIAL LOSS**

Consequential loss of any kind or description.

**(7) FALSE PRETENCE**

Damage caused by the voluntary parting with title or possession of any Property insured if induced by any fraudulent scheme trick, device or false pretence.

**CONDITIONS APPLICABLE TO INSURING CLAUSE 10**

**(1) AVERAGE**

If at the commencement of the Damage the Sum Insured of the Property is less than the value of the Property, the amount payable by Us in respect of such Damage shall be proportionately reduced.

**(2) REINSTATEMENT BASIS OF SETTLEMENT**

In the event of Damage to the Property the basis upon which the amount We shall pay You is calculated shall be the Reinstatement of the Damaged Property.

For the purpose of this Addendum 'Reinstatement' shall mean the carrying out of the following work:

- (a) where the Property is lost or destroyed its replacement by similar property in a condition equal to but not better or more extensive than its condition when new.
- (b) where Property is damaged, the repair of the damage and the restoration of the damaged portion of the Property to a condition substantially the same as but not better or more extensive than its condition when new.

# INSURING CLAUSE 11 – FIDELITY

*N.B. This Insuring Clause is on a 'claims made' basis which provides cover for claims which are **made and notified to us during the Period of Insurance***

We agree to indemnify You against Loss which You shall, during the Period of Insurance, first discover you have sustained.

## (a) EMPLOYEE DISHONESTY

in consequence of any fraudulent or dishonest act committed by an Employee or Employees Acting in Collusion with the manifest intent to

- (i) cause You to sustain such Loss, or
- (ii) obtain improper personal gain for such Employee or for any other party intended by such Employee to receive such gain.

## (b) THIRD PARTY COMPUTER AND FUNDS TRANSFER FRAUD

through

- (i) Computer Fraud, or
- (ii) Fraudulent Transfer Instructions

by anyone other than You and/or an Employee.

## LIMIT AND EXCESS

Our total aggregate liability under this Insuring Clause in the Period of Insurance in respect of all Loss shall not exceed the Limit of Indemnity.

We shall only be liable for that part of each Loss which exceeds the Excess.

## DEFINITIONS APPLICABLE TO INSURING CLAUSE 11

'**Assured/You/Your/Yours**' shall mean the person named as the Policyholder in the Schedule and the Subsidiary Company.

'**Acting in Collusion**' shall mean all circumstances where two or more Employees are involved or implicated together or assist each other materially in committing acts of fraud or dishonesty.

'**Auditor's Fees**' shall mean the costs of any special professional audit necessarily incurred with Our written consent solely to formulate the amount of loss of Money or Goods.

'**Computer Fraud**' shall mean Theft effected by means of accessing a computer system or by the introduction, alteration or deletion of any data, program or instruction in relation to a computer system.

'**Employee**' shall mean any person (not being a partner or former partner of Yours) who was or is or may hereafter be

- (i) a governor, director, council member, officer or trustee of Yours, or
- (ii) under a contract of service or apprenticeship with You, or
- (iii) under a work experience or similar schemes, or
- (iv) supplied to or hired in or borrowed by You, or
- (v) volunteers

working for You under Your direct control in connection with Your Business.

'**Excess**' shall mean the amount stated in the Schedule.

'**Financial Institution**' shall mean

- (i) a banking or saving institution, or
- (ii) a stockbroker or similar investment institution at which You maintain a Transfer Account.

**'Fraudulent Transfer Instructions'** shall mean

- (i) electronic, telegraphic, cable, teletype or telephone instructions to a Financial Institution to debit a Transfer Account and to transfer, pay or deliver funds from such account, which instructions purport to have been transmitted by You but which have been fraudulently transmitted by another, or
- (ii) written instructions to a Financial Institution to debit a Transfer Account and to transfer, pay or deliver funds from such account through an electronic funds transfer system at specified times or under specified conditions, which written instructions purport to have been duly issued by You but which have been fraudulently issued, forged or altered by another.

**'Limit of Indemnity'** shall mean the amount stated in the Schedule in respect of this Insuring Clause which amount is inclusive of all Auditors Fees for which Our total aggregate liability under this Certificate during the Period of Insurance shall not exceed £25,000.

**'Loss'** shall mean

- (i) in respect of Insuring Clause 11(a) (Employee Dishonesty), loss of Money or Goods
- (ii) in respect of Insuring Clause 11(b) (Third Party Computer and Funds Transfer Fraud),
  - (a) loss of property through Computer Fraud
  - (b) loss of funds from Your Transfer Account at a Financial Institution through Fraudulent Transfer Instructions communicated to such Financial Institution
  - (c) the cost of reinstating electronic data destroyed, erased or stolen as a consequence of (a) or (b) above.
- (iii) Auditor's Fees

resulting from or attributable to the same originating cause.

**'Money or Goods'** shall mean stamps, currency, coins, bank notes and bullion, travellers cheques, cheques, postal orders, money orders, securities and the like and tangible property belonging to You or for which You are legally liable.

**'Period of Insurance'** shall mean the period stated in the Schedule and in the event that

- (i) We refuse to renew the cover afforded by this Insuring Clause for reasons other than non-payment of premium to Us or Your failure to comply with or observe the terms, provisions and Conditions of this Certificate, or
- (ii) You and/or any natural person with effective control of the Assured decline to accept the renewal terms offered by Us in so far as they relate to this Insuring Clause

a further single period of thirty days from the expiry date of the period stated in the Schedule but only in respect of Loss arising from a fraudulent or dishonest act committed prior to the expiry of the period stated in the Schedule.

The further period referred to in this Definition is not applicable to the extent that other insurance policies have been purchased with the intention of providing equivalent cover for any part of such period.

**'Retroactive Date'** shall mean the date which this Insuring Clause was first incepted, or where equivalent cover to that provided under this Insuring Clause has continuously been maintained in full force and effect immediately prior to the inception of this Insuring Clause, the date which applied to such equivalent cover.

**'Subsidiary Company'** shall mean any company in respect of which You or any other subsidiary company of Yours controls, as at the date when this Insuring Clause became operative

- (i) the composition of the board of directors, or
- (ii) more than half of the voting power, or
- (iii) more than half of the issued share capital

and any such company which is subsequently acquired or created and included with Our written consent.

**'Theft'** shall mean

- (i) the dishonest appropriation of property with the intention of permanently depriving You of it, or
- (ii) the taking of property without lawful authority.

**'Transfer Account'** shall mean an account, maintained by You with the Financial Institution to or from which You or Your authorised representative may cause the transfer, payment or delivery of funds by means of

- (i) electronic, telegraphic, cable, teletype or telephone instructions (whether communicated directly or through a cash management service or funds transfer system), or
- (ii) written instructions establishing the conditions under which such transfers are to be initiated by such Financial Institution through an electronic funds transfer system.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 11**

We shall not be liable to pay or indemnify You against Loss

### **(1) CONSEQUENTIAL LOSS**

for or arising from loss of interest, loss of profits or any kind of consequential loss.

### **(2) UNEXPLAINED SHORTAGES**

dependent solely upon a mysterious disappearance or unexplained shortage or shortages.

### **(3) DISHONEST AND MALICIOUS ACTS**

- (a) in consequence of any fraudulent or dishonest act committed by an Employee whose shareholding or financial interest exceeds 5% of Your equity
- (b) which result from any fraudulent or dishonest act or omission committed by any person after the discovery of reasonable cause for suspicion of such act or omission in relation to that person

Furthermore, the following shall be deducted from any amount payable by Us

- (c) any monies which but for such act would be due from You to the person committing or condoning such act
- (d) any monies held by You and belonging to such person
- (e) any monies recovered following action in accordance with General Condition 2 (Subrogation) of this Certificate.

### **(4) BREACH OF WARRANTY/CONDITION**

which is rejected under any other insurance effected by You or on Your behalf due to Your breach of a warranty, term or condition thereunder.

### **(5) CIRCUMSTANCES KNOWN AT INCEPTION**

brought about by or contributed to or consequent upon any circumstances existing prior to the date when this Insuring Clause became operative and which You ought reasonably to have known might give rise to a Loss.

### **(6) TERRITORIAL LIMITS**

arising elsewhere than in the United Kingdom.

### **(7) TAKEOVER AND MERGER**

resulting from a fraudulent or dishonest act committed subsequent to

- (a) the effective date of Your takeover or merger by or with any other person
- (b) the appointment of a liquidator, trustee, receiver or any other similar officer.

### **(8) RETROACTIVE DATE**

resulting from a fraudulent or dishonest act or Computer Fraud or Fraudulent Transfer Instructions committed prior to the Retroactive Date.

### **(9) COMPUTER FRAUD AND FUNDS TRANSFER FRAUD**

under Insuring Clause 11(b) (Third Party Computer and Funds Transfer Fraud) arising from

- (a) loss of interest, loss of profits or any kind of consequential loss
- (b) loss of computer time or use
- (c) the voluntary giving or lending of property or its surrender in a franchise or exchange whether legitimate or fraudulent
- (d) the fraudulent or dishonest act of an Employee whether acting alone or Acting in Collusion.

## **CONDITIONS APPLICABLE TO INSURING CLAUSE 11**

### **(1) RECOVERY**

We shall apply any recovery of Loss under Insuring Clause 11 (Fidelity) in the following order

- (a) any Loss incurred by You over and above the relevant Limit of Indemnity which would otherwise have fallen within the terms and conditions of this Insuring Clause.
- (b) the total Loss paid by Us.
- (c) any Excess borne by You.

The total amount recovered is to be applied, as far as it will go, to items (a), (b) and (c) in that order, and You and We shall make whatever settlement is necessary between ourselves to reflect this.

(2) **DEDUCTION FROM LOSS**

All monies which but for the fraud or dishonesty of the Employee would become payable to him by You and any monies recovered from the Employee by You shall be deducted from the Loss.

Specimen



# INSURING CLAUSE 12 – CYBER and DATA RISKS

*N.B. Insuring Clauses (a)(ii) (Data Liability) and (b)(ii) (Cyber Liability) are on a 'claims made' basis which provides cover for claims which are made and notified to Us during the Period of Insurance*

## (a) DATA PROTECTION

### (i) DATA LOSS

We will indemnify You against Loss arising from a Data Breach in or about the course of Your Business first discovered by You during the Period of Insurance

### (ii) DATA LIABILITY

We will indemnify You against Loss arising from any Claim made against You during the Period of Insurance in respect of a Data Breach in or about the conduct of Your Business.

## (b) CYBER RISK

### (i) CYBER LOSS

We will indemnify You against Loss arising from

- (1) Your Computer Equipment being subject to a Cyber Attack, or
- (2) Data Extortion

in or about the course of Your Business first discovered by You during the Period of Insurance

### (ii) CYBER LIABILITY

We will indemnify You against Loss arising from any Claim made against You during the Period of Insurance in respect of

- (1) Your negligent transmission of a Computer Virus that has emanated from or passed through Your Computer Equipment, or
- (2) a Cyber Attack, or
- (3) an E-Media Incident

in or about the conduct of Your Business.

## (c) NETWORK INTERRUPTION

We will indemnify You against Loss incurred during the Indemnity Period arising from Your Computer Equipment being subject to a Cyber Attack, first discovered by You during the Period of Insurance.

## LIMIT AND EXCESS

Our total aggregate liability under this Insuring Clause in the Period of Insurance in respect of all Loss shall not exceed the Limit of Indemnity.

We shall only be liable under Insuring Clauses 12 (a) (Data Protection) and 12 (b) (Cyber Risk) for that part of each Loss which exceeds the Excess.

We shall not be liable under Insuring Clause 12 (c) (Network Interruption) for that part of each Loss occurring during the Time Retention.

## ADDENDA APPLICABLE TO INSURING CLAUSE 12

### (1) Compensation for Court Attendance

In the event of any director or partner of Yours or any Employee attending court at Our request as a witness in connection with any Claim in respect of which You are entitled to indemnity under this Insuring Clause We will provide compensation to You at the following rates for each day on which attendance is required

- |                             |              |
|-----------------------------|--------------|
| (a) any director or partner | £250 per day |
|-----------------------------|--------------|

(b) any Employee

£150 per day

Specimen

## **(2) Public Relations Crisis Management**

In the event of a Crisis occurring during the Period of Insurance We shall, at Your request and subject to Our prior agreement, pay

- (a) costs incurred by You in utilising the services of the Crisis Response Service
- (b) other related and reasonable costs agreed by Us

For the purpose of this Addendum:

- (i) 'Crisis' shall mean a Data Breach or any event which could result in a Loss under this Insuring Clause and where in Our opinion there is a risk to Your Business as a consequence of adverse press, publicity or media attention
- (ii) 'Crisis Response Services' shall mean public relations specialist services provided by Us or on Our behalf

Provided always that

1. the total amount payable under this Addendum in any one Period of Insurance shall not exceed £25,000, or the Limit of Indemnity whichever is the least.
2. You shall immediately notify Us of any event or circumstance which might result in You seeking payment or indemnity under this Addendum and comply with Our recommendations or the recommendations of Our public relations specialist as directed.
3. You take all reasonable and practical measures to avoid or mitigate costs relating to the Crisis.

## **(3) Regulatory Investigations/Fines**

Notwithstanding Exclusion 7 (Contractual Liability) of this Insuring Clause and General Exclusion 1 (Fines and Penalties), the indemnity provided by this policy is extended to include

- (a) costs of legal representation at any investigation or proceedings instigated by the United Kingdom Information Commissioner's Office incurred with Our written consent in connection with any matter which may be the subject of indemnity under this Insuring Clause,
- (b) any PCI Fines, penalty, fine or award made against You

Provided always that

- (c) such penalty, fine or award is legally insurable
- (d) the total amount payable under this Addendum in any one Period of Insurance shall not exceed £100,000, or the Limit of Indemnity whichever is the least.

## **DEFINITIONS APPLICABLE TO INSURING CLAUSE 12**

**'Assured/You/Your/Yours'** shall mean the person, persons, firm and all partners and former partners in the firm (or in the event of the death, incompetency, incapacity, bankruptcy or insolvency of any of the foregoing, their estate, heirs, legal representatives or assigns), limited liability partnership, trust or company named as the Policyholder in the Schedule.

In addition, if You so require, We will indemnify any director or member of Yours or any Employee in like manner to You, provided always that such persons shall, as though they were the Assured, observe, fulfil and be subject to the terms, conditions and exclusions of this Insuring Clause in so far as they can apply.

**'Cyber Attack'** shall mean

- (a) a Hacking Incident, or
- (b) a Denial of Service Attack.

**'Cyber Response Service'** shall mean IT security specialist services provided by Us or on Our behalf.

**'Data Breach'** shall mean

- (a) in respect of Insuring Clause 12 a(i) (Data Loss), the loss of, unlawful or unauthorised alteration of, inappropriate publication of, or theft of data
  - (i) residing on Your Computer Equipment
  - (ii) held by You in a non-electronic format.
- (b) in respect of all other Insuring Clauses and Addenda, the loss of, unlawful or unauthorised alteration of, inappropriate publication of, or theft of either electronic or non-electronic data

**'Data Extortion'** shall mean a demand made against You by a third party who threatens to introduce, initiate or continue a Data Breach which would result in You suffering a financial loss if such demand is not met.

**'Denial of Service Attack'** shall mean any unlawful or unauthorised attempt specifically targeted at You alone by a third party to overload, hinder, interrupt or suspend service to Your Computer Equipment, via the internet.

**'E-Media Incident'** shall mean

- (a) libel, slander or defamation, or
- (b) unintentional infringement of intellectual property rights or any unintentional act of passing off

solely occasioned through Your website content, Your social media presence (including comments made by third parties for which You may be held legally responsible) or Your other online mediums.

**'Employee'** shall mean any person, other than a director of Yours, who was or is or may hereafter be

- (i) under a contract of service or apprenticeship with You or the Company, or
- (ii) under any work experience or similar scheme, or
- (iii) supplied to or hired in or borrowed by You, or

working for You under Your direct control in connection with Your Business.

**'Excess'** shall mean the amount stated in the Schedule.

**'Hacking Incident'** shall mean an electronic attack of a malicious or unauthorised nature specifically targeted at You alone, initiated by a third party or Employee with the intention of damaging, destroying, altering, encrypting, overloading or interfering with Your computer systems or records.

**'Geographical Limits'** shall mean the United Kingdom.

**'Indemnity Period'** shall mean the period commencing immediately following the expiry of the Time Retention and ending not later than 720 hours thereafter.

**'Jurisdiction'** shall mean the United Kingdom.

**'Limit of Indemnity'** shall mean the amount stated in the Schedule which amount is inclusive of all Loss

- (a) under Insuring Clause 12 (c) (Network Interruption) for which Our total aggregate liability in the Period of Insurance shall not exceed £50,000
- (b) under Insuring Clause 12 (b)(i)(2) (Data Extortion) for which Our total aggregate liability in the Period of Insurance shall not exceed £25,000

or the amount stated in the Schedule, whichever is the least.

**'Loss'** shall mean

**(Insuring Clause 12 (a)(i) Data Loss)**

- (a) in respect of Insuring Clause 12 (a)(i) (Data Loss), costs reasonably incurred by You, with Our prior written consent, in the 90 days immediately following Your first discovery of a Data Breach to
  - (i) utilise the services of the Cyber Response Service to
    - (1) contain, recover and assess the Data Breach
    - (2) to comply with any United Kingdom legal requirements to establish a credit monitoring, identity theft and/or similar mitigation service
  - (ii) comply with United Kingdom legal requirements to notify third parties and/or Employees of an actual or suspected Data Breach
  - (iii) notify third parties and/or Employees of an actual or suspected Data Breach where no legal requirement exists but where such notification will effectively mitigate or avoid a Loss for which You would have been entitled to indemnity under Insuring Clause 12 (a)(ii) (Data Liability)

resulting from or attributable to the same originating cause.

**(Insuring Clause 12 (a)(ii) Data Liability)**

- (b) in respect of Insuring Clause 12 (a)(ii) (Data Liability)
  - (i) Your legal liability for damages and costs awarded against You
  - (ii) Costs and Expenses

resulting from or attributable to the same originating cause.

**(Insuring Clause 12 (b)(i) Cyber Loss)**

- (c) in respect of Insuring Clause 12 (b)(i) (Cyber Loss)
  - (i) under Insuring Clause 12 (b)(i)(1) (Cyber Attack), costs reasonably incurred with Our prior written consent to restore, replace, rebuild, replicate or reinstate Your Computer Equipment

- (ii) under Insuring Clause 12 (b)(i)(2) (Data Extortion), costs incurred by You with Our prior written consent (such consent not to be unreasonably withheld) to contain, mitigate and/or pay a ransom demand

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resulting from or attributable to the same originating cause.

**(Insuring Clause 12 (b)(ii) Cyber Liability)**

- (d) in respect of Insuring Clause 12 (b)(ii) (Cyber Liability),
- (i) Your legal liability for damages and costs awarded against You
  - (ii) Costs and Expenses

resulting from or attributable to the same originating cause.

**(Insuring Clause 12 (c) Network Interruption)**

- (e) in respect of Insuring Clause 12 (c) (Network Interruption), the reduction in Your net profit (before taxes) and/or increase in cost of working, provided always that:
- (i) the amount payable in respect of
    - (1) the reduction in net profit shall be determined by taking into account
      - (a) Your net profit in the months preceding the Cyber Attack
      - (b) Your probable net profit during the Indemnity Period had the Cyber Attack not occurred
      - (c) seasonal variations and influences
      - (d) changes in market and/or economic conditionsbut shall not include
      - (e) any increase in net profit You would likely have attained as a result of an increase in volume of business due to favourable business conditions caused by the impact of a similar event on other businesses
    - (2) increase in cost of working shall be the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in Your net profit which, but for that expenditure, would have taken place during the Indemnity Period in consequence of the Cyber Attack, but not exceeding the reduction in net profit thereby avoided
  - (ii) if any of the charges or expenses of the Business cease or reduce in consequence of a Cyber Attack the amount of such savings during the Indemnity Period shall be deducted from the amount payable

resulting from or attributable to the same originating cause.

**'PCI Fines'** shall mean those fines levied against You due to a breach of the PCI Data Security Standard, but only as a result of Data Breach.

**'Period of Insurance'** shall mean

- (i) in respect of Insuring Clauses 12 (a)(i) (Data Loss), (b)(i) (Cyber Loss) and (c) (Network interruption), the period stated in the Schedule
- (ii) in respect of Insuring Clauses 12 (a)(ii) (Data Liability) and (b)(ii) (Cyber Liability), the period stated in the Schedule and, in the event that
  - (a) We refuse to renew the cover afforded by this Insuring Clause for reasons other than non-payment of premium to Us or Your failure to comply with or observe the terms, provisions and Conditions of this Insuring Clause, or
  - (b) You and/or any natural person with effective control of the Assured decline to accept the renewal terms offered by Usa further single period of thirty days from the expiry date of the period stated in the Schedule but only in respect of Loss arising from a Data Breach, Cyber Attack, Computer Virus or E-Media Incident occurring or a Data Extortion demand made prior to the expiry of the period stated in the Schedule.

The further period referred to in this Definition is not applicable to the extent that other insurance policies have been purchased with the intention of providing equivalent cover for any part of such period.

**'Retroactive Date'** shall mean the date which this Insuring Clause was first incepted, or where equivalent cover to that provided under this Insuring Clause has continuously been maintained in full force and effect immediately prior to the inception of this Insuring Clause, the date which applied to such equivalent cover.

**'Time Retention'** shall mean 24 hours commencing from the time of Your first discovery of a Cyber Attack.

## **EXCLUSIONS APPLICABLE TO INSURING CLAUSE 12**

We shall not be liable to pay or indemnify You against Loss

### **(1) OTHER INSURANCE**

in respect of which You are entitled to indemnity under any other insurance.

Notwithstanding the above, this Insuring Clause shall contribute in excess of such other insurance, provided always that if such other insurance is also provided by Us the Limit of Indemnity under this Insuring Clause shall be deemed reduced by any amount payable under such other insurance.

### **(2) BETTERMENT**

to the extent that Your Computer Equipment or Your financial position are in a better or improved position compared to their position in the absence of such Loss.

### **(3) LEGAL ACTION**

under Insuring Clauses 12 (a)(ii) (Data Liability) or 12 (b)(ii) (Cyber Liability),

- (a) where the Claim is brought in a court of law outside the Jurisdiction, and/or
- (b) where action is brought in a court of law within the Jurisdiction to enforce a foreign judgment, whether by way of reciprocal agreement or otherwise.

### **(4) GEOGRAPHICAL LIMITS**

arising from the conduct of Your Business outside the Geographical Limits other than whilst a director or Employee of Yours is temporarily outside the Geographical Limits in connection with Your Business.

### **(5) EMPLOYERS LIABILITY**

which results

- (a) directly or indirectly from bodily injury, mental injury, emotional distress, shock, sickness, disease or death (other than emotional distress arising from Data Breach) sustained by any Employee arising out of and in the course of his/her employment by You, or
- (b) for any breach of any obligation owed by You as an employer to any Employee or prospective Employee.

### **(6) DISHONEST AND MALICIOUS ACTS**

which result from

- (a) any dishonest, fraudulent, criminal, malicious, wilful or reckless act or omission committed by any board director, trustee, governor, council member, committee member, partner or member of Yours or Your in-house lawyers, risk managers, chief operating officers, chief technology officers, chief information officers, chief privacy officers, self-employed persons working for You, or any other person acting in a similar capacity
- (b) any dishonest, fraudulent, criminal or malicious act or omission committed by any other person after the discovery of reasonable cause for suspicion of such act or omission in relation to that person.

Furthermore,

- (c) no person shall be entitled to payment or indemnity under this Insuring Clause in respect of any Loss resulting from their dishonest, fraudulent, criminal or malicious act or omission or from condoning such an act or omission
- (d) the following shall be deducted from any amount payable by Us
  - (i) any monies which but for such act would be due from You to the person committing or condoning such act
  - (ii) any monies held by You and belonging to such person
  - (iii) any monies recovered following action in accordance with General Condition 2 of this Insuring Clause.

### **(7) CONTRACTUAL LIABILITY**

resulting from any agreement entered into by You in so far as liability under such agreement exceeds that which would be implied by statute or common law.

### **(8) CONSORTIA AND JOINT VENTURES**

resulting from Your association with others whilst acting in consortia or joint ventures, other than in respect of Loss arising from Your own acts or omissions.

### **(9) CIRCUMSTANCES KNOWN AT INCEPTION**

brought about by, or contributed to, or consequent upon any circumstances existing prior to the date when this Insuring Clause became operative and which You ought reasonably to have known might give rise to a Loss.

### **(10) RETROACTIVE DATE**

under Insuring Clauses 12 (a)(ii) (Data Liability) or 12 (b)(ii) (Cyber Liability), arising from the carrying out of Your Business prior to the Retroactive Date.

**(11) INJURY/PROPERTY DAMAGE**

arising from any Claim or Claims

- (a) for bodily injury, mental injury, emotional distress, shock, sickness, disease or death sustained by any person (other than emotional distress arising from any libel, slander, defamation or Data Breach), or
- (b) for any loss, damage or destruction of property including loss of use thereof (other than in respect of Computer Equipment)

**(12) INSOLVENCY/BANKRUPTCY**

as a result of or relating directly or indirectly from Your insolvency or bankruptcy or the insolvency or bankruptcy of your suppliers, subcontractors or service providers.

**(13) FINANCIAL INTEREST**

under Insuring Clauses 12 (a)(ii) (Data Liability) or 12 (b)(ii) (Cyber Liability), arising from any Claim made against You by

- (a) any parent company, ultimate holding company or subsidiary company, or
- (b) any person or entity having a financial, executive or controlling interest in Your operation, or
- (c) any company or entity in which You or any director, member or partner of Yours has a financial, executive or controlling interest

unless such Claim or Claims are for an indemnity or contribution in respect of a Claim made by an independent third party against such company, person or entity.

**(14) TRADING LOSSES**

other than under Insuring Clause 12 (c) (Network Interruption), as a result of, or in connection with, any trading losses or liabilities or any debts incurred by any business managed by or carried on by You.

**(15) PATENTS**

arising from any actual or alleged infringement of any patent.

**(16) DIRECTORS AND OFFICERS**

as a result of or in connection with the performance or non-performance by You, any director or member of Yours or any Employee, of any duties as a director or officer of any company.

**(17) TAXATION, COMPETITION, RESTRAINT OF TRADE AND ANTI-TRUST**

arising from any breach of any regulation or legislation governing taxation, competition, restraint of trade or anti-trust provisions.

**(18) ELECTROMAGNETIC OR ELECTRICAL DISTURBANCES**

resulting from

- (a) electromagnetic fields, electromagnetic radiation, electromagnetic pulses, electromagnetism, solar flares and storms, or any other type of radiation
- (b) any alleged or actual electrical or mechanical failures and/or interruption including, but not limited to, electrical disturbance, surge or spike.

**(19) INFRASTRUCTURE FAILURES**

arising from any failure of the provision of Your infrastructure and utilities including (but not limited to) the provision of gas, water, electricity, telecommunications or internet service.

**(20) INSUFFICIENT IT INFRASTRUCTURE CAPACITY**

arising from You having insufficient capacity allocated, planned or created within Computer Equipment solely because the demand upon such Computer Equipment is larger than they are designed to process, unless the reason for such levels of demand is due to a Denial of Service Attack.

**(21) DATA EXTORTION**

under Insuring Clause 12 (b)(i)(2) (Data Extortion), arising from Data Extortion by an Employee or a self-employed person working for you or anyone acting in collusion with an Employee or such person.

**(22) UNPROVEN OR ILLEGAL SOFTWARE**

arising directly or indirectly from

- (a) Your use of programs, applications or software that have not been successfully tested in a real working environment
- (b) Your knowing or reckless use of illegal or unlicensed programs, applications or software.



## CONDITIONS APPLICABLE TO INSURING CLAUSE 12

### (1) DATA EXTORTION

As a condition precedent to Your right to payment or indemnity under Insuring Clause 12 (b)(i)(2) (Data Extortion)

- (i) You shall not disclose the existence of the indemnity provided under such Insuring Clause to anyone.
- (ii) You shall advise, or allow Us to advise, the police of the Data Extortion.

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# GENERAL EXCLUSIONS (Applicable to the Certificate as a whole)

We shall not be liable to pay or indemnify You or the Company

## (1) FINES AND PENALTIES

other than as provided by Addendum 3 (Regulatory Investigations/Fines) of Insuring Clause 12 (Cyber and Data Risks) and (in respect of (b) below) other than in respect of Insuring Clause 3 (Directors and Officers Liability):

to the extent of any

- (a) fine or penalty
- (b) non-compensatory damages.

## (2) RADIOACTIVE CONTAMINATION AND SONIC BANGS ETC

against any Loss, loss of Revenue, Additional Cost of Working and/or increase in cost of working or any loss or destruction of or damage to property directly or indirectly caused by or contributed to by or arising from

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
- (b) the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof
- (c) pressure waves caused by aircraft and other aerial devices travelling at sonic or supersonic speeds and in Northern Ireland and the Republic of Ireland only
- (d) riot, civil commotion, strikers, labour or political disturbances, vandals or malicious persons.

## (3) WAR RISKS AND TERRORISM

against any Loss, Injury, loss of Revenue, Additional Cost of Working and/or increase in cost of working or any loss or destruction of or damage to property based upon, arising out of or relating directly or indirectly from, in consequence of or in any way involving

- (a) War and/or Terrorism
- (b) any action taken in controlling, preventing or suppressing War and/or Terrorism
- (c) any unlawful, wanton or malicious act committed maliciously by a person or persons acting on behalf of or in connection with any Unlawful Association

regardless of any other cause or event contributing concurrently or in any other sequence to such Loss, expense, consequential loss, destruction or damage.

- (d) Contamination due to Terrorism

Provided always that

- (i) if We allege that by reason of this Exclusion, any Loss, expense, consequential loss or any loss, destruction of, or damage to property is not covered by this Certificate the burden proving the contrary shall be upon You and/or the Company.
- (ii) 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.
- (iii) in respect of Insuring Clause 12 (Cyber and Data Risks), this Exclusion does not apply in the context of a Hacking Incident or Computer Virus initiated for the sole purpose of exacting malice against or commercial gain from You.

## (4) CONFISCATION ETC

other than under Insuring Clauses 1 (Professional Liability), 3 (Directors and Officers Liability) and 6 (Employment Law Protection), against Loss, Damage, loss of Money, Injury or loss of Revenue, Additional Cost of Working and/or increase in cost of working that is directly caused by, contributed to by or arising from

- (i) confiscation, requisition, nationalisation, seizure, detention or destruction by any government, public, local or customs authority, and
- (ii) under Insuring Clause 12 (Cyber and Data Risks), access by any government, public, local or customs authority or any order by such authority to take down, deactivate or block access to Your Computer Equipment .

## (5) ELECTRONIC DATA

other than under Insuring Clauses 1 (Professional Liability), 3 (Directors and Officers Liability) and 6 (Employment Law Protection) against loss, destruction, damage, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever

nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to such loss, destruction, damage, distortion, erasure, corruption or alteration.

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Provided always that, this Exclusion shall not exclude physical loss, destruction, damage, distortion, erasure, corruption or alteration directly caused by fire or explosion.

**(6) COMPUTER DATE RECOGNITION**

- (a) under Insuring Clauses 1 (Professional Liability), 2 (General Liability), 3 (Directors and Officers Liability), 4 (Entity Defence), 6 (Employment Law Protection) and 11 (Fidelity), against Loss brought about by or consequent upon any failure of any computer or other electronic data processing device, equipment or system, any hardware, software, programme, instruction, data or component utilised or intended to be utilised therein or thereby, or any actual or intended function of or process performed by any of the foregoing, (by whomsoever owned or operated), to recognise or respond to, correctly and effectively, any particular date or period of time (continuous or otherwise).
- (b) under all other Insuring Clauses, against any Damage, loss of Money, Injury or loss of Revenue, Additional Cost of Working and/or increase in cost of working directly or indirectly caused by or consisting of or arising from the failure of any computer system, hardware, programme or software or any microchip, integrated circuit or similar device in computer or non-computer equipment, whether Your property or not, and whether occurring before, during or after the year 2000,
- (i) to correctly recognise any date as its true calendar date
  - (ii) to capture, save or retain and/or correctly to manipulate, interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date
  - (iii) to capture, save, retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data on or after any date

but this shall not exclude

- (iv) any ensuing physical loss or damage to property insured resulting from a Defined Peril (other than subterranean fire) or theft not otherwise excluded

or

- (v) any consequential loss which may arise from such ensuing physical loss or damage and which is otherwise covered under this insurance,

Provided always that nothing in this exclusion or any other provision, Addendum or extension of this insurance shall be construed to extend Our liability to cover any costs and expenses, whether preventative, remedial or otherwise arising out of or relating to change, alteration or modification of any computer system, hardware, programme or software or any microchip, integrated circuit or similar device in computer or non-computer equipment, whether Your property or not.

**(7) MOULD**

against any Loss, Damage, loss of Money, Injury or loss of Revenue, Additional Cost of Working and/or increase in cost of working directly or indirectly caused by or contributed to by or arising from Mould or a Mould Event.

**(8) SANCTIONS**

to the extent that the provision of such payment or indemnity would expose Us to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanction, laws or regulations of the European Union, United Kingdom or United States of America

# CLAIMS CONDITIONS (Applicable to the Certificate as a whole)

## (1) NOTIFICATION OF CLAIMS

You or the Company shall, as a condition precedent to Your right to payment or indemnity, give Us immediate notice in writing (or within 7 days for riot Damage) **and**, in respect of Insuring Clauses 1 (Professional Liability), 3 (Directors and Officers Liability), 4 (Entity Defence), 6 (Employment Law Protection), 11 (Fidelity) and 12 (Cyber and Data Risks) within the Period of Insurance, of

- (i) any Claim made against You or the Company,
- (ii) the receipt of any notice of an intention to make a Claim against You or the Company,
- (iii) the discovery of any act of fraud or dishonesty by any Employee or any reasonable cause for suspicion of fraud or dishonesty by an Employee
- (iv) any circumstances of which You or the Company shall become aware which is likely to give rise to
  - (a) a Claim against You or the Company, or
  - (b) the instigation of Disqualification Proceedings, Investigation, Environmental Proceedings or Tax Investigation, or
  - (c) the seeking by You or the Company of any payment or indemnity under this Certificate,

giving reasons for the anticipation of such Claim, Disqualification Proceedings, Investigation, Environmental Proceedings or Tax Investigation or request for payment or indemnity, together with full particulars as to dates and persons involved.

Such notice having been given as required by (ii), (iii) or (iv) above, any subsequent Claim made, or any Disqualification Proceedings, Investigation, Environmental Proceedings, Tax Investigation instigated, or request for payment or indemnity shall be deemed to have been made or instigated during the Period of Insurance.

## (2) GENERAL CLAIMS HANDLING

You or the Company shall, as a condition precedent to Your right to payment or indemnity under this Certificate

- (i) give Us such information and co-operation as We may reasonably require,
- (ii) take no action which might prejudice Us,
- (iii) take all reasonable steps to prevent further Loss, Damage or interruption of or interference with Your Business
- (iv) neither admit liability for or settle any Claim or incur any Costs or Expenses in connection therewith or in connection with any Disqualification Proceedings, Investigation, Environmental Proceedings or Tax Investigation without Our written consent
- (v) tell the police as soon as reasonably possible of any Damage or Loss involving theft or any attempted theft, malicious damage or vandalism or any loss of Money.

**and**

- (vi) in respect of Insuring Clauses 4(a) (Public Relations Crisis Management), 12(a)(i) (Data Loss) and Addendum 2 (Public Relations Crisis Management) of Insuring Clause 12 (Cyber and Data Risks),
  - (a) comply with Our recommendations or the recommendations of Our public relations specialist and/or Our IT security specialist as directed
  - (b) take all reasonable and practical measures to avoid or mitigate costs relating to the Crisis or Data Breach.

## (3) DEFENCE OF CLAIMS

- (i) We shall be entitled to take over and conduct in Your name the defence or settlement of any Claim or Loss
- (ii) in respect of Insuring Clauses 1 (Professional Liability) and 6 (Employment Law Protection), You shall not be required to contest any legal proceedings unless a mutually agreed counsel shall advise that such proceedings should be contested.
- (iii) You shall be entitled at your own risk to contest any Claim or legal proceedings which in Our opinion should be compromised or settled provided that We shall not be liable for any Loss incurred directly or indirectly as a result of Your refusal to compromise or settle such Claim or legal proceedings.
- (iv) In respect of Insuring Clause 3 (Directors and Officers Liability):
  - (a) it is Your or the Company's duty to defend any Claim, Disqualification Proceedings, Investigation or Environmental Proceedings. We have the right, but not the obligation, to actively associate with You or the Company in the settlement or handling of any Claim, Disqualification Proceedings, Investigation or Environmental Proceedings.
  - (b) subject to Our written consent You have the right to appoint any appropriately qualified legal representative to deal with any Claim notified to Us in accordance with Claims Condition 1.

**(4) BUSINESS INTERRUPTION**

As a condition precedent to Your right to payment or indemnity under Insuring Clause 8 (Business Interruption) of this Certificate You shall

- (i) at Your expense within one month after the expiry of the Indemnity Period or within such further time as We may allow, deliver to Us in writing particulars of Your request for payment or indemnity.
- (ii) at Your expense deliver to Us such books of account and other business books, vouchers, invoices, balance sheets and other documents, proofs, information, explanation and other evidence that We may reasonably ask for together with, (if We ask), a statutory declaration of the truth of the claim and of any matters connected with it.

**(5) FIDELITY LOSSES**

As a condition precedent to Your right to payment under Insuring Clause 11 (Fidelity) You shall:

at Your own expense, supply us with full written details of Your Loss and all such proof of the correctness of Your request for indemnity as we may require within three months (or such other period as We may agree in writing) of the discovery of any act of fraud or dishonesty by any Employee or any reasonable cause for suspicion of fraud or dishonesty by an Employee.

**(6) SALVAGE**

We may enter any Building in which Damage has occurred and deal with the salvage. However no property may be abandoned to Us.

**(7) PAYMENT OF INDEMNITY LIMIT**

In respect of Insuring Clauses 1 (Professional Liability), 2 (General Liability), 3 (Directors and Officers Liability), 4 (Entity Defence), 5 (Employers Liability), 6 (Employment Law Protection), 11 (Fidelity) and 12 (Cyber and Data Risks):

We shall be entitled at any time to pay to You or the Company the Limit of Indemnity (or as much of it as remains available), or any lesser sum for which any Loss can be settled, whereupon We shall be under no further liability to You or the Company in respect of such Loss.

**(8) ELECTRONIC DATA PROCESSING MEDIA VALUATION**

Notwithstanding any provision relating to the basis of settlement of any request for payment or indemnity under this Certificate, should electronic data processing media insured by this Certificate suffer physical Damage insured by this Certificate then the basis of valuation shall be the cost of the blank media plus the cost of copying the Electronic Data from back-up or from originals of a previous generation.

If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media.

Such costs will not include

- (i) research and engineering nor any costs of recreating, gathering or assembling such Electronic Data.
- (ii) any amount pertaining to the value of such Electronic Data to You or any other party even if the Electronic Data cannot be recreated, gathered or assembled.

**(9) MEDICAL EXAMINATIONS**

As a condition precedent to Your right to payment under Insuring Clause 9(b) (Personal Assault) the Assured Person must agree to any medical examination which We may require at Our expense. In the event of Death We may arrange a post-mortem examination at Our expense.

**(10) LOSS OF DOCUMENTS**

Any payment or indemnity for expenditure under Addendum 1 of Insuring Clause 1 (Professional Liability) or Addendum 9 of Insuring Clause 7 (Property Damage) incurred by You in replacing or restoring Documents shall be supported by bills or accounts which shall be subject to Our approval.

# GENERAL CONDITIONS (Applicable to the Certificate as a whole)

## (1) CANCELLATION

Other than in respect of Insuring Clause 3 (Directors and Officers Liability) this Certificate may be cancelled by Us or on Our behalf by giving You 30 days' written notice and the Premium hereon shall be adjusted on the basis that We receive or retain pro rata premium.

(If the Premium for the Certificate is paid by instalments, please read carefully General Condition (3)).

## (2) SUBROGATION

We shall be subrogated to all Your or the Company's rights of recovery against any person before or after any payment or indemnity under this Certificate.

You or the Company shall give all such assistance in the exercise of rights of recovery as We may reasonably require, and

(a) Under Insuring Clauses 1 (Professional Liability) and 12 (Cyber and Data Risks):

We agree not to exercise any such rights against any director or member of Yours or any Employee unless the Claim is brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the director, member or Employee.

(b) Other than in respect of Insuring Clauses 1 (Professional Liability), 2 (General Liability), 3 (Directors and Officers Liability), 5 (Employers Liability) and 6 (Employment Law Protection):

We agree not to exercise any such rights against any company standing in relation of subsidiary to parent or parent to subsidiary to You in each case as defined by current legislation.

## (3) PREMIUM PAYMENT

When premium payment has been arranged on a deferred basis with a premium finance company which has entered into a contractual agreement with Markel (UK) Limited to provide premium credit facilities and notwithstanding any other conditions in relation to cancellation it is hereby understood and agreed that

(i) in the event of payment of any instalment to such premium finance company being overdue, Markel (UK) Limited may, in accordance with the authority granted to the premium finance company by You under the terms of the signed and dated Credit Agreement, accept cancellation instructions from the premium finance company and will allow a return pro-rata premium to the premium finance company provided there have been no claims or circumstances known or reported to Us during the Period of Insurance

(ii) all premiums due or returned shall be processed by the premium finance company in accordance with the signed and dated Credit Agreement.

## (4) FRAUDULENT CLAIMS

If You or the Company makes any request for payment or indemnity under this Certificate knowing it to be false or fraudulent in any respect, this Certificate shall be void and all payment and/or indemnity hereunder shall be forfeited. However, in respect of Insuring Clause 3 (Directors and Officers Liability), such forfeiture shall only apply to the Director or Officer or Company making such false or fraudulent request for payment or indemnity.

## (5) LAW OF CONTRACT

The contract of insurance evidenced by this Certificate shall be governed by the law of England and Wales or the law of Scotland and subject to the exclusive jurisdiction of such English and Welsh or Scottish courts.

## (6) NOTICE

Notice under this Certificate shall be deemed duly given

(a) by any person to Us if sent by first class prepaid post or fax to Markel (UK) Limited, at the address specified in the NOTICE of this Certificate, or such other address as has been notified to that person for the purpose from time to time,

(b) to You or the Company if sent by post to the last known address thereof.

## (7) CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this contract has no right under the Contracts (Rights of Third Parties) Act 1999 or any amendment or re-enactment thereof to enforce any term of this contract but this does not affect any right or remedy of a third party which exists or is available other than by virtue of this Act.

## (8) ALTERATION

No payment or indemnity will be provided under this Certificate if, after the commencement of this insurance, there is any alteration which results in

(a) the risk of Loss, Damage, loss of Money or Injury being increased

(b) Your interest ceasing other than by a will or the operation of the law

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(c) Your Business being wound up, carried on by a liquidator or receiver or permanently discontinued unless We are notified and agree to such alteration.

**(9) MULTIPLE ASSUREDS**

Our liability under each Insuring Clause shall be the liability specified therein which shall not be varied or deemed varied by virtue of the number or type of Assureds or claims thereunder.

**(10) CALIBRATION PROCEDURES & MAINTENANCE**

Other than in respect of Insuring Clause 5 (Employers Liability) You shall, as a condition precedent to Your right to payment or indemnity, ensure that all equipment utilised for the purpose of Your Business and/or Professional Services is calibrated and/or maintained in accordance with the manufacturer's recommendations.

**(11) MAINTENANCE OF RIGHTS AND REMEDIES**

As a condition precedent to Your right to payment or indemnity under this Certificate You shall ensure that You maintain all Your rights and remedies against all service providers, designers, consultants or contractors engaged by You.

**(12) NON-AGGREGATION**

If payment or indemnity is available under more than one Insuring Clause the total amount payable under any one Insuring Clause shall be reduced by any amount payable under any other Insuring Clause.

# NOTICE

## COMPLAINTS

If at any time You have any query or complaint regarding Your contract of insurance, You should in the first instance refer to Your Insurance Broker or other intermediary or advisor, if any.

If Your problem cannot be resolved in this way, please write to Markel (UK) Limited, Verity House, 6 Canal Wharf, Leeds, LS11 5AS quoting Your Certificate Number.

If You are unable to resolve the situation and wish to make a complaint You can do so at any time by referring the matter to Markel International Insurance Company Limited, 20 Fenchurch Street, London EC3M 3AZ.

Complaints that cannot be resolved in this way may be referred to the Financial Ombudsman Service. Further details will be provided at the appropriate stage of the complaints process.

Specimen