



## MANAGEMENT RISKS POLICY



## POLICY WORDING



ARRANGED BY



UNDERWRITTEN BY



## PREAMBLE

*This Certificate of Insurance is on a 'claims made' basis which provides cover for claims which are **made and notified to Us during the Period of Insurance***

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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)

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**"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.

**"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 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 an 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 – DIRECTORS AND OFFICERS LIABILITY

## (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 1(b) (Company Reimbursement).

## (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 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 1

### (1) 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 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
  - (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 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 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 of 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.

### (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 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 1

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

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

- (i) at the time of the Wrongful Act which 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 a 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 civil partner, 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 whilst employed or engaged by and under the direct control of the Company in connection with the Company's activities.

**"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 1(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, 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 1(a)(ii)(c) and 1(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 1(a)(i) and 1(b)(i),
  - (a) Your legal liability for damages, legal costs, charges, expenses or judgments 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 1(a)(ii) and 1(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 Us of an additional 25% of the Premium applicable to this Insuring Clause, or
  - (e) 180 days from the expiry date of the period stated in the Schedule subject to an immediate payment to Us of an additional 50% of the Premium applicable to this Insuring Clause, or
  - (f) 12 calendar months from the expiry date of the period stated in the Schedule subject to an immediate payment to Us of an additional 100% of the Premium applicable to this Insuring Clause.
- (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 or attempted, and/or
- (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 commissioned

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.

**“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.

**“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 subsequently 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 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 act committed or attempted by a Director or Officer in their capacity as such.

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

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

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 of 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
  - (ii) health and safety

if the Company is an unincorporated body or if Insuring Clause 3 (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 dishonest, fraudulent or malicious conduct 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 1(a)(ii)(c) and 1(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 3 (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.

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**(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 and/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 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.

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## **CONDITIONS APPLICABLE TO INSURING CLAUSE 1**

### **(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 1 (Directors and Officers Liability), provided that
- (i) You are able to establish to 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 1 (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.

## INSURING CLAUSE 2 – ENTITY DEFENCE

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(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 2(c) (Investigations) which exceeds the Excess.

### DEFINITIONS APPLICABLE TO INSURING CLAUSE 2

**“Assured/You/Your/Yours”** shall mean the Entity.

**“Appeal”** shall mean

- (i) in respect of Insuring Clause 2(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 2(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.

**“Business”** shall mean the normal business activities of the Entity.

**“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 2(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 2(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 2(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
- (iii) in respect of Insuring Clause 2(c) (Investigations), Costs and Expenses
- (iv) in respect of Insuring Clause 2(d) (Corporate Manslaughter), Costs and Expenses
- (v) in respect of Insuring Clause 2(e) (Breach of Contract), Costs and Expenses in defending a Claim
- (vi) (a) in respect of Insuring Clause 2(f) (i) (Pollution), Costs and Expenses in defending a Claim
- (b) in respect of Insuring Clause 2(f) (ii) (Pollution), Costs and Expenses
- (vii) in respect of Insuring Clause 2(g) (Taxation), Costs and Expenses in negotiating on Your behalf and in an Appeal
- (viii) in respect of Insuring Clause 2(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 2

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 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) 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 dishonest, fraudulent or malicious conduct 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) EMPLOYMENT DISCRIMINATION OR HEALTH AND SAFETY INVESTIGATIONS**

any investigation in respect of employment discrimination and/or health and safety under Insuring Clause 2(c) if Insuring Clause 3 (Employment Law Protection) is operative.

**(8) CONTRACT**

under Insuring Clause 2(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.

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.

**(9) TAXATION**

under Insuring Clause 2(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 Investigation 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.

**(10) 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 judgment whether by way of reciprocal agreement or otherwise.

# INSURING CLAUSE 3 – EMPLOYMENT LAW PROTECTION

## (a) EMPLOYMENT DISPUTES

We agree to pay on Your behalf and as incurred Loss arising from any Claim or Claims 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 3

**"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 or civil partner 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) £10,000or
  - (b) the amount stated in the Schedule in respect of this Insuring Clausewhichever is the greater
- (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 3(a) (Employment Disputes)

- (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 3(b) (Investigations), Costs and Expenses
- resulting from or attributable to the same originating cause.

**"Markel 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 Claims 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 You shall

- (iv) notify Us in writing of such acquisition or creation within thirty days thereof, and
- (v) provide such additional information that We may require, and

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

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 for 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 or Claims

- (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 ASSUREDS**

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

**CONDITIONS APPLICABLE TO INSURING  
CLAUSE 3**

**(1) 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.

# GENERAL EXCLUSIONS

## (Applicable to the Certificate as a whole)

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

**(1) FINES AND PENALTIES**

to the extent of any

- (a) fine or penalty
- (b) other than in respect of Insuring Clause 1 (Directors and Officers Liability), non-compensatory damages.

**(2) RADIOACTIVE CONTAMINATION AND SONIC BANGS ETC**

against any Loss, expense, consequential loss, 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, expense, consequential loss, 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.

**(4) CONFISCATION ETC**

other than under Insuring Clauses 1 (Directors and Officers Liability) and 3 (Employment Law Protection), against Loss that is directly caused by, contributed to by or arising from confiscation, requisition, nationalisation, seizure, detention or destruction by any government, public, local or customs authority.

**(5) ELECTRONIC DATA**

other than under Insuring Clauses 1 (Directors and Officers Liability) and 3 (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.

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**

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).

**(7) MOULD**

against any Loss directly or indirectly caused by or contributed to by or arising from Mould or a Mould Event.

# CLAIMS CONDITIONS

## (Applicable to the Certificate as a whole)

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### (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 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) 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) or (iii) 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,
- (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

**and**

- (v) in respect of Insuring Clause 2(a) (Public Relations Crisis Management),
  - (a) comply with Our recommendations or the recommendations of Our public relations specialist as directed
  - (b) take all reasonable and practical measures to avoid or mitigate costs relating to the Crisis.

### (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 Clause 3 (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 1 (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) PAYMENT OF INDEMNITY LIMIT

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.

# GENERAL CONDITIONS

## (Applicable to the Certificate as a whole)

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### (1) CANCELLATION

Other than in respect of Insuring Clause 1 (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 (4)).

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.

### (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 other than in respect of Insuring Clauses 1 (Directors and Officers Liability) and 3 (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.

### (5) 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 1 (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.

### (3) SEVERABILITY

Nothing in the Proposal or otherwise known or done by

- (a) any Director or Officer, or
- (b) in respect of Insuring Clause 3 (Employment Law Protection), an Assured who is a natural person

shall be imputed to any other natural person in determining any right or obligation of an Assured or the Director or Officer under this Certificate. In no case shall

- (c) a Director or Officer, or
- (d) in respect of Insuring Clause 3 (Employment Law Protection), an Assured

be prevented from pursuing any point in his or her defence only because it is inimical to the interests of

- (e) any other Director or Officer, or
- (f) in respect of Insuring Clause 3 (Employment Law Protection), an Assured who is a natural person.

### (6) 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.

### (7) 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.

### (4) 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 or the Company under the terms of the signed and dated Credit Agreement, accept cancellation

### (8) 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.

### (9) MULTIPLE ASSURED

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) NON-AGGREGATION**

If payment or indemnity for Damage to Property 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.

COPY

# NOTICE

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## 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, 8th Floor, Riverside West, Whitehall Road, Leeds LS1 4AW 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, The Markel Building, 49 Leadenhall Street, London EC3A 2EA.

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.

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