

## PROFESSIONAL INDEMNITY

### Accountants

**WHEREAS** the person or persons or partnership or Company named in the Schedule (hereinafter referred to as “the Insured”, which term shall include his/their executors or personal representatives) has/have submitted a written proposal containing particulars and statements which (together with any other information which may have been supplied) it is agreed shall be the basis of this contract and are to be considered as incorporated herein, and have paid the premium stated in the Schedule:-

## INSURING CLAUSES

Now we the Underwriters to the extent and in the manner hereinafter provided hereby agree

1. To indemnify the Insured against any claim or claims first made against the Insured and notified to the Underwriters during the Certificate period in respect of any Civil Liability (including liability for claimants' costs) incurred in connection with the conduct of any Professional Business carried on by or on behalf of the Insured
2. To indemnify the Insured for any loss which during the period of this Certificate they shall first discover they have sustained by reason of any dishonest or fraudulent acts or omissions of any persons being or having been either partners of or under a contract of service with the Insured Firm
3. Expenses incurred by the Insured in replacing or restoring documents or computer records either owned by, the responsibility of, or in the custody of the Insured, which are damaged, destroyed, lost or mislaid and which after diligent search cannot be found. In this insuring clause “Documents” means documents of any nature whatsoever other than bearer bonds coupons bank notes currency notes and negotiable instruments

## THE AMOUNT OF INDEMNITY

The amount of Underwriters' liability for indemnity under insuring clauses 1 and 2 shall not exceed the amount stated in the schedule. Under insuring clause 3 shall not exceed £50,000 in the aggregate.

- (a) under insuring clause 1. shall be in excess of the sum stated in the Schedule as the Excess, which shall be borne by the Insured.
- (b) Under insuring clause 3 shall be in excess of the sum of £50.00 which shall be borne by the Insured.

Costs and Expenses incurred by the Insured with the written consent of Underwriters in defence and/or settlement of claims under insuring clauses 1 and 2 shall be in addition to the sum Insured. However, if a payment in excess of the sum Insured has to be made to dispose of a claim under insuring clauses 1 and/or 2 then the amount of Underwriters' liability for such costs and expenses shall be that proportion which the sum Insured bears to the amount paid to dispose of that claim.

However the provision of services by partners or persons under a contract of service with the Insured to assist with the defence or settlement of claims will not be admissible.

Insuring clauses 1, 2, and 3 shall be reduced, where the Insured's breach of, or non-compliance with the terms and conditions of this certificate prejudices the settlement or handling of a loss or claim, to such sum as in Underwriters' opinion would have been payable by them without such prejudice.

## EXCLUSIONS

The Underwriters shall not indemnify the Insured against any claim or loss:

1. **OTHER INSURANCE:** If at the time any claim arises under this Certificate the Insured is or would but for the existence of this Insurance be entitled to indemnity under any other Certificate or Certificates, the Underwriters shall not be liable except in respect of any excess beyond the amount which would have been payable under such other Certificate or Certificates had this Certificate not been effected.
2. **PRIOR CLAIMS OR CIRCUMSTANCES:** known to the Insured prior to the inception of this Certificate and which the Insured at such time knew or should have reasonably assumed might result in a claim against the Insured.
3. **DISHONESTY:** arising from any act or omission of dishonesty occurring after discovery by the Insured of reasonable cause for suspicion of dishonesty of the person(s) concerned; neither shall a person committing or condoning an act or omission of dishonesty be indemnified for such.
4. **BODILY INJURY:** under insuring clause 1. arising out of civil liability for death, bodily injury, sickness (including Mental Stress) or physical loss or damage.
5. **LOSS OF DOCUMENTS:** under insuring clause 3. for damage to computer records due to wear, tear or vermin; or to the presence or loss of magnetism unless caused by lightning.
6. **TRADING LOSS:** arising from a trading loss or trading liability incurred by any business managed by or carried on by or on behalf of the Insured unless arising from a claim made against the Insured for negligence in the normal course of their conduct of a receivership or a liquidation.
7. **NON DISCLOSURE OF INCOME:** arising out of civil liability where the fee, if any, for advice given or services performed does not form part of the income of the Firm(s) specified in the Schedule.
8. **NUCLEAR/WAR:** whether directly or indirectly caused by, or contributed to by, or arising from;
  - (a) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or the radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof: or
  - (b) war invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.
9. **TERRITORIAL LIMITS:** arising out of work in connection with contracts outside the United Kingdom, Northern Ireland, The Irish Republic, Channel Islands, Isle of Man and Member Countries of the European Union.
10. **JURISDICTION LIMITS:** arising out of claims first brought in a Court outside the United Kingdom, Northern Ireland, the Irish Republic, the Channel Islands, the Isle of Man or Member Countries of the European Union.
11. **EXPRESS GUARANTEE:** arising out of the giving of any express guarantee relating to the financial return of any investment or the depreciation or loss of investments when such depreciation or loss is as a result of normal or abnormal fluctuations in any financial, stock, commodity or other markets which are outside the influence or control of the Insured.

12. **POLLUTION:**

- (a) For Personal Injury, Bodily Injury, Sickness (including Mental Stress), or loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph shall not apply to liability for Personal Injury, Bodily Injury, Sickness (including Mental Stress), loss of, physical damage to or destruction of tangible property, or loss of use of such property damaged or destroyed, where such seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Certificate Period.
- (b) For the cost of removing, nullifying or cleaning-up seeping, polluting or contaminating substances unless the seepage, pollution or contamination is caused by a sudden, unintended and unexpected happening during the Certificate Period.

13. **FINES:**

- (a) in respect of Fines, prosecution costs or penalties of any kind or,
- (b) Punitive or exemplary damages.

14. **CONTROLLING INTEREST:** arising from or brought by a firm company or organisation in whom any Partners(s)/Director(s) have a controlling interest unless such claim or claims are brought against the Insured by an independent third party source.15. **MILLENNIUM:** or liability or costs and expenses directly or indirectly caused by or contributed to or arising from or in connection with any Computer System, whether or not the property of the Insured, not being Year 2000 Compliant.

In addition this Certificate shall not indemnify the Insured in respect of any claim, loss liability or costs and expenses directly or indirectly caused by or contributed to or arising from in conjunction with any correction or any attempted correction, conversion, renovation, rewriting or replacement of any Computer System related to Year 2000 Compliance.

16. **TERRORISM:** arising from any loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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

This Certificate also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Insurance the burden of proving the contrary shall be upon the Insured.

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

17. **ASBESTOS AND TOXIC MOULD:** arising directly or indirectly out of or resulting from or in consequence of, or in any way involving:-
- a) Asbestos, or any materials containing asbestos in whatever form or quantity; or
  - b) The actual, potential, alleged or threatened formation, growth, presence, release or dispersal of any fungi, molds, spores or mycotoxins of any kind; or
  - c) Any action taken by any party in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins; or
  - d) Any governmental or regulatory order, requirement, directive, mandate or decree that any party take action in response to the actual, potential, alleged or threatened formation, growth, presence, release or dispersal of fungi, molds, spores or mycotoxins of any kind, such action to include investigating, testing for, detection of, monitoring of, treating, remediating or removing such fungi, molds, spores or mycotoxins.
18. **PATENT:** arising out of actual or alleged infringement of patent or misappropriation of trade secret

## GENERAL CONDITIONS

The Insured shall not admit liability for or settle any claim or incur any costs and expenses in connection therewith without the written consent of the Underwriters who shall be entitled at their own expense at any time to take over and conduct in the name of the Insured or the Firm(s) as the case may be the defence or the settlement of any such claim and to receive at all times the full co-operation of the Insured for this purpose. Nevertheless neither the Insured nor the Underwriters shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Underwriters) shall advise that such proceedings should be contested

1. **INSURED'S DUTIES IN THE EVENT OF CLAIM:** It is a condition precedent to Underwriters' liability under this Certificate that:-
- (a) (i) The Insured shall give to Underwriters, unless another person is so nominated in the Schedule for such purpose, notice in writing as soon as practicable or within 14 days, whichever is the earlier
    - (a) of the receipt of any claim made against them or any of them
    - (b) of the receipt of notice whether written or oral of the intention of any person or body to make a claim against them
    - (c) of the receipt of any allegation which may give rise to a claim against them
    - (d) of the discovery of any loss suffered by them or any of them
    - (e) of the discovery of reasonable cause for suspicion of dishonesty or fraud on the part of any former or present Partner, Director or Employee of the Insured
    - (f) of the discovery of any matter which may be the subject of indemnity under the terms, conditions or extensions of this policy

always provided that such notification is made during the Certificate Period, and furthermore the Insured shall provide all information in respect of the matter so notified as is in their possession at the time of notification.

- (ii) If during the Certificate Period the Insured shall become aware of any circumstance which may subsequently give rise to a claim against them or loss sustained by them the Insured shall give notice of the circumstance in writing to Underwriters, or such person nominated in the Schedule for such purpose, as soon as practicable and in any event within 30 days of their becoming aware of the circumstance. Such notice having been given, any subsequent claim made against the Insured or loss sustained by them arising out of that circumstance shall be deemed to have been first made or sustained during the Certificate Period.

**NOTE:** The Civil Procedure Rules enable the Court to impose severe costs sanctions on litigants who act unreasonably either before or after the commencement of proceedings whether or not the litigant in question is successful in its case. Pre-action Protocols will set standards by which the reasonableness of the litigant's conduct will be judged. In order to try to ensure that the requirements of the rules in any Protocol are met notifications must be made to Underwriters immediately that a claim is made and before a response is given to the claimant. As this is a condition precedent to Underwriters liability under the Certificate non-compliance with it entitles Underwriters to refuse to provide indemnity in respect of the relevant claim.

- (b) (i) The Insured shall not admit liability for or settle or make or promise any payment in respect of any claim which may be the subject of indemnity hereunder or incur any costs or expenses in connection therewith without the written consent of the Underwriters who if they so wish shall be entitled to take over and conduct in the name of the Insured the defence and/or settlement of any such claim. In doing so Underwriters may conduct the defence and/or settlement as they, in their absolute discretion, think fit. This right will include, but is not limited to, the right to commit the Insured's excess to any settlement and to make admissions in respect of the whole claim, or any part of the claim, or in respect of any issue on which the claim, or part of it, depends.
- (ii) The Insured shall at all times give to Underwriters and/or their duly appointed representatives all such information, co-operation and assistance as Underwriters may reasonably require. Insofar as the claim is subject to the Civil Procedure Rules such assistance will extend, but is not limited to the provision of signed statements or depositions as may be required to facilitate compliance with all, and any, civil procedure rules, practice directions and pre-action protocols as may be issued and approved from time to time by the Head of Civil Justice. By way of example, and without limitation, the Insured's obligations will include, inter-alia:
- (a) The provision of full and prompt information, instructions, and or assistance to Underwriters or their duly appointed representatives;
  - (b) The undertaking, by an appropriate representative of the Insured, of a reasonable search for documents required to be disclosed in any litigation, together with the provision of a signed disclosure statement in terms advised by legal representatives appointed by Underwriters;
  - (c) The provision, by an appropriate representative of the Insured, of a signed statement verifying that he or she believes the facts stated in the defence, statement of case, responses to other parties requests for information or witness statements to be true.

2. **THE INSURED SHALL AS A CONDITION PRECEDENT** to their right to be indemnified under this Certificate give to the Underwriters notice as soon as possible during the period of this Certificate as set forth in the Schedule of the discovery or reasonable cause for suspicion of dishonesty or fraud on the part of a past or present Partner Director or Employee of the Firm(s) whether giving rise to a claim or loss under this Certificate or not

3. **FRAUDULENT CLAIMS**

If the Insured shall make or refer any claim knowing the claim to be false or fraudulent, as regards amount or otherwise, this Certificate shall become void and all claims thereunder shall be forfeited

4. **THE DEFENCE AND SETTLEMENT OF CLAIMS**

The Underwriters shall be entitled to take over and conduct in the name of the Insured the defence or settlement of a claim under this certificate; and the Insured shall:

- (a) neither admit liability for nor settle a claim under this certificate nor incur costs or expenses in connection therewith without Underwriters' written consent.
- (b) not be required to contest or continue legal proceedings or to consent to a settlement recommended by Underwriters unless a Queen's Counsel agreed upon by the Insured and Underwriters shall so advise.
- (c) give Underwriters such documents and information as they may reasonably request.
- (d) take all possible action to sue for and obtain reimbursement from any person(s) as specified under Definition 1(ii) concerned in a claim or loss under this certificate due to dishonesty, or from the estate or legal representatives of such person. The Insured shall withhold money, which but for such dishonesty should be due to such Person from the Insured or any money of such Person held by the Insured, for the benefit of Underwriters, but only to the extent of such claim or loss.

5. **INTERPRETATION CLAUSE**

Notwithstanding the Jurisdiction Limits contained herein, any dispute in respect of the interpretation or application of this Certificate, or its terms, conditions and exclusions, will be subject to United Kingdom Courts.

6. **RETROACTIVE DATE**

Where a retroactive date is specified in the Schedule this Certificate will not respond in respect of any claim or loss otherwise falling for indemnity under this Certificate where the cause of such claim or loss occurred or was alleged to have occurred prior to the said retroactive date

7. **CANCELLATION CLAUSE**

This Certificate can be cancelled by or on behalf of Beazley by giving 30 days notice in writing to the Insured. A pro-rata amount of the premium will be returned unless the Insured has notified Underwriters of a claim or a circumstance prior to cancellation, in which case no premium will be returned.

8. **THIRD PARTY ACT 1999 PROVISIONS CLAUSE**

It is hereby noted and agreed that the terms of this Certificate will only be enforceable by the named Insured(s). A person who is not a named Insured has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Certificate but this does not affect any right or remedy of a third party which exists or is available apart from that act.

9. **CHOICE OF LAW**

There is a choice of law applicable to this Certificate but unless Underwriters agree otherwise English law will apply.

## DEFINITIONS

The “INSURED” are defined as:

- (a) the Firm(s) named in the Schedule or their predecessors in business, and/or
- (b) persons being or having been either partners of, or under a contract of service with, the above

in the conduct of the profession as accountants including personal appointments normally undertaken by accountants and any other activity if specified in the Schedule.

“CLAIM” shall mean claim or series of claims (whether by one or more than one claimant) arising from or in connection with or attributable to any one act, error, omission or originating cause or source or the dishonesty of any person or group of persons acting together and any such series of claims shall be deemed to be one claim for all purposes under this insurance.

“CIRCUMSTANCE” shall mean any one or more of the following

- (i) An intimation of an intention to claim against the Insured
  - (ii) Any known direct or indirect criticism or dispute whether expressed or implied relating to performance of the Insured (whether justified or not) which might give rise to third party loss or damage
- (iii) Any known direct or indirect criticism or dispute whether expressed or implied relating to performance (whether justified or not) of a party for whom and for which the Insured is responsible which might give rise to third party loss or damage
- (iv) Any awareness of the Insured of a failing or real doubt of the efficacy of their own performance or of the performance of a party for whom and for which the Insured is responsible which might give rise to third party loss or damage
- (v) Any awareness of the Insured, that materials goods, services or actions or actions specified, designed or recommended by the Insured or by a party for whom and for which the Insured is responsible have failed to meet the standard required and which might result in some third party loss or damage

which may be the subject of indemnity under this Certificate.

### “YEAR 2000 COMPLIANT/COMPLIANCE”

shall mean that neither performance nor functionality of the Computer System is affected by dates prior to, during and/or after the Year 2000. In particular:-

Rule 1 No value for current date will cause or give rise to any interruption in operation of the Computer System.

Rule 2 Date based functionality and performance of the Computer System must behave consistently for dates prior to, during and/or after the year 2000.

Rule 3 In all interfaces and data storage of the Computer System the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules.

Rule 4 The year 2000 must be recognised as a leap year by the Computer System.

**“COMPUTER SYSTEM”** shall mean any computer, data processing equipment media or part thereof, or system of data storage and retrieval, or communications system, network, protocol or part thereof, or storage device, microchip, integrated circuit, real-time clock system or similar device or any computer software (including but not limited to application software, operating systems, runtime environments or compilers), firmware or microcode used owned operated or relied upon by the Insured

**“DOCUMENTS”** shall mean deeds wills agreements maps plans records books letters Certificates Computer System Records forms and documents of whatsoever nature whether written printed or reproduced by any other method (other than bearer bonds coupons bank notes currency notes and negotiable instruments)