

PROFESSIONAL INDEMNITY

Insurance Intermediaries

WHEREAS the person or persons firm or company named in the Schedule hereto (hereinafter called “the Insured”) have made to the Underwriters a written proposal (hereinafter called “the proposal”) bearing the date stated in the Schedule and containing particulars and statements which it is hereby agreed are the basis of this contract and are to be considered as incorporated herein and have paid the premium stated in the Schedule

INSURING CLAUSES

The Underwriters agree to the extent and in the manner hereinafter provided and subject to the limits contained in the Schedule to indemnify the Insured against any losses arising from any claim or claims for breach of duty which may be first made against the Insured and notified to the Underwriters during the Certificate period:-

1. As Insurance Intermediaries, Insurance Agents, Insurance Consultants, Claims Adjusters, Mortgage Brokers, Building Society Agents, Trustees of the Insured's own pension or superannuation fund or Other Activities (if any) specified in the Schedule (hereinafter called “Other Activities”)
 - (a) By reason of any negligent act error or omission whenever or wherever committed or alleged to have been committed on the part of:-
 - (i) the Insured
 - (ii) any Employee or former Employee of the Insured and arising out of their employment in the Insured's business in the above capacities
 - (iii) any person who has been disclosed in writing to Underwriters as an Appointed Representative
 - (b) By reason of any dishonest or fraudulent act or omission on the part of any person within (i) and (ii) of paragraph I(a) above

Provided always that in the event of Underwriters having to meet any claim under paragraph I (b) above and arising out of such an act by any person being the Insured personally or any past or present Partner or Director of the Insured then such person and his successors in title or assigns shall be liable to reimburse the Underwriters the amount of any monies so paid by them

2. As Insurance Intermediaries, Insurance Agents, Insurance Consultants, Claims Adjusters, Mortgage Brokers, Building Society Agents, Trustees of the Insured's own pension or superannuation fund or Other Activities by reason of negligent act error or omission committed by any other firm or company of Insurance Brokers, Insurance Agents, Insurance Consultants, Claims Adjusters, Mortgage Brokers or Building Society Agents (including any Partner, Director or Employee thereof) with whom the Insured is or was acting jointly and arising out of the conduct of their business in the aforesaid capacities

3. This Certificate shall further indemnify the Insured against any loss of money or other property whatsoever:
- (a) belonging to the Insured
 - (b) or for which the Insured is legally liable

in their capacity as, Insurance Intermediaries, Insurance Agents, Insurance Consultants, Claims Adjusters, Mortgage Brokers, Building Society Agents, Trustees of the Insured's own pension or superannuation fund or Other Activities which they shall during the currency of the Certificate discover that they have sustained in consequence of any dishonest or fraudulent act or omission of any past or present Director, Partner or Employee of the Insured but subject to the conditions within this Certificate.

4. If during the currency of this Certificate the Insured shall discover that any Documents (as hereinafter defined) the property of or entrusted to the Insured which may now or hereafter be or supposed to be in the custody of the Insured or in the custody of any other person to or with whom such Documents have been entrusted lodged or deposited by the Insured in the ordinary course of business have been destroyed, damaged, lost or mislaid and after diligent search cannot be found, the Underwriters will indemnify the Insured against:-
- (a) legal liability of whatsoever nature which the Insured may incur to any other person in consequence of such Documents having been so destroyed, damaged, lost or mislaid; and
 - (b) the reasonable costs and expenses of whatsoever nature which shall be shown to the Underwriters reasonable satisfaction to have been incurred by the Insured in replacing or restoring such Documents

In this paragraph (4) "Documents" means documents of any nature whatsoever, other than: bearer bonds, coupons, bank notes, currency notes and negotiable instruments

Special Exclusions to this paragraph (4):

- (1) This Certificate shall not indemnify the Insured against any liability costs or expenses directly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power
 - (2) This Certificate shall not indemnify the Insured against any costs or expenses incurred by the Insured as a result of loss or distortion of computer tapes due to:
 - (a) the presence of magnetic flux
 - (b) defects in the computer tapes
 - (c) use or processing whilst mounted in or on any machine unless as a result of loss or damage to the machine itself
5. This Certificate shall further indemnify the Insured against claims arising from libel or slander (or in Scotland defamation) committed by:
- (a) the Insured
 - (b) any person at any time employed by the Insured in the course of its business as, Insurance Intermediaries, Insurance Agents, Insurance Consultants, Claims Adjusters, Mortgage Brokers, or Building Society Agents, Trustees of the Insured's own pension or superannuation fund or Other Activities

6. This Certificate shall further indemnify the Insured (including any employee thereof) in respect of legal costs and expenses incurred in their defence at any hearing before any domestic or disciplinary body of any Institute or Association at which the Insured in the opinion of Underwriters should be represented by reason of any conduct on their part which might give rise to or has given rise to a claim hereunder except it is understood and agreed that:-
- (a) this indemnity will only extend to circumstances notified to Underwriters during the Certificate period stated in the Schedule and
 - (b) Underwriters shall not be liable to pay any penalty fine or award of costs made against the Insured and
 - (c) That no costs charges and expenses of any kind other than those incurred with the written consent of the Underwriters shall be payable hereunder
7. In accordance with and subject to the terms, conditions, exclusions, limitations and provisions contained in the Certificate, the Underwriters agree to indemnify the Insured in respect of their liability to meet any award made against them by the Ombudsman appointed by the FSA, subject to such Ombudsman operating within the compulsory jurisdiction rules (a copy of which has been lodged with Underwriters),

EXCLUSIONS

This Certificate shall not indemnify the Insured in respect of any claim or loss

1. **INSOLVENCY:**
 - (a) arising out of or in connection with the insolvency of any Insurer/Underwriter or Building Society
 - (b) by any Insurer and/or Underwriter by reason of any negligent act error or omission committed in the course of their activities as Agent of such Insurer or as Claims Adjusters unless such Insurer and/or Underwriter has obtained a judgement in any court against the Insured in respect of such claim or loss
 - (c) arising out of the failure to account for monies except as provided for in Insuring Clause I(b)
2. **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.
3. **BODILY INJURY:** arising out of death, bodily injury, sickness (including mental stress) or damage to property unless arising from neglect error or omission to perform a professional duty
4. **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.

5. **OTHER INSURANCE:** if at the time any claim arises under this Certificate the Insured is or would but for the existence of this Certificate 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.
6. **USA/CANADA:** arising out of
- (a) work carried out in the United States of America or Canada
 - (b) or actions instituted within the United States of America or Canada or any other territory coming within the jurisdiction of the Courts of the United States of America or Canada
7. **POLLUTION:**
- (a) for Personal Injury, Bodily Injury, Sickness (including Mental Stress), loss of, damage to, or loss of use of property directly or indirectly caused by seepage, pollution or contamination, provided always that this paragraph (a) 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.
8. **FINES:** arising out of
- (a) fines, prosecution costs or penalties of any kind
 - (b) punitive or exemplary damages
9. **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.
10. **CONTROLLING INTEREST:** arising out of 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.

11. **TERRORISM:** arising out of 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.

12. **ASBESTOS & TOXIC MOULD:** any loss 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.

13. **PATENT:** actual or alleged infringement of patent or misappropriation of trade secret

CONDITIONS

1. **INSURED'S DUTIES IN THE EVENT OF CLAIM OR CIRCUMSTANCE** : 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. **EXCESS:** In respect of any one claim the amount of the Excess specified in the Schedule shall be borne by the Insured at their own risk and the Underwriters shall only be liable to indemnify the Insured in excess of such amount.
3. **LIMIT OF INDEMNITY:** The liability of the Underwriters under this Certificate including any agreed extension thereof in respect of any one claim shall not exceed the Limit of Indemnity as stated in the Schedule of this Certificate except that (subject to the provisions hereof) the Underwriters will in addition pay the costs and expenses incurred in the defence or settlement of any claim incurred with their written consent but not otherwise.
4. **CLAIMS SETTLEMENT:** The Underwriters shall not settle any claim without the consent of the Insured. If however the Insured shall refuse to consent to any settlement recommended by the Underwriters and shall elect to contest or continue any legal proceedings in connection with such a claim then the Underwriters liability for the claim shall not exceed the amount for which the claim could have been so settled plus the costs and expenses incurred with their consent up to the date of such refusal and then only up to the amount stated under Condition 3 hereunder.
5. **CLAIMS COSTS:** If a payment in excess of the amount of indemnity available under this Certificate has to be made by the Insured to dispose of a claim made against them the Underwriters liability for the costs and expenses incurred with their consent shall be such proportion thereof as the amount of indemnity available under this Certificate bears to the amount paid to dispose of the claim.

6. **SUBROGATION:** If any payment is made under this Certificate in respect of a claim the Underwriters shall be subrogated to all the Insured's rights of recovery in relation thereto. The Underwriters shall not however exercise any such rights against the Insured's employees unless the claim or claims have been brought about or contributed to by the dishonest or fraudulent act or omission of such employee.
7. **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 insurance shall become void and all claims thereunder shall be forfeited.
8. **DISCLAIMER OF LIABILITY BY UNDERWRITERS:** Should circumstances arise which would entitle Underwriters to avoid liability under this Certificate by reason of any misrepresentation mis-statement or non-disclosure contained in the proposal form the Underwriters may in their sole discretion as an alternative to avoiding this Certificate give notice in writing to the Insured that they regard the cover afforded hereunder as continuing in full force and effect save that there shall be excluded from the indemnity afforded hereunder any claim which has arisen or which may arise and which is related to circumstances involving such mis-statement misrepresentation or non-disclosure whereupon this Certificate shall continue in full force and effect but shall be deemed to exclude as if the same had been specifically endorsed the particular or possible claim referred to in such written notice.
9. **OBSERVANCE OF CERTIFICATE CONDITIONS:** Without limiting the scope of any of the specific conditions of this Certificate it shall be a condition precedent to Underwriter's liability that the Insured duly observe and fulfil the terms, conditions and endorsements of this Certificate in so far as they relate to anything required to be done.
10. **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.
11. **RETROACTIVE DATE:** Where a retroactive date is specified in the Schedule this Certificate will not respond in respect of any claim or loss arising from contracts commenced or work carried out prior to the said retroactive date.
12. **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.
13. **TAX:** The Insured will pay any tax due on the premium in accordance with current legislation.
14. **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**” shall mean:-

- (a) the person or persons firm (and in Scotland the partnership in addition to the members thereof) or company or the Directors thereof named in the Proposal any past Partner or Director thereof any other person or persons who may at any time during the currency of this Certificate become a Partner or Director thereof;
- (b) the predecessors in business of the Insured disclosed in writing to Underwriters prior to the inception of the insurance;
- (c) the Estate or Personal Representatives or Trustees Liquidator or Trustee or Assignee in Bankruptcy of any person mentioned above

For the purpose of determining the extent of the Insured's liability under Condition 2 and the extent of Underwriters liability under Condition 3 “**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 Certificate

Reference in this Certificate to the singular includes a reference to the plural and vice versa, reference to any gender includes a reference to all other genders

“**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 Certificate.

“**CIRCUMSTANCE**” is understood to include but not restricted to the following

- (a) An intimation of an intention to claim against the Insured
- (b) 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
- (c) 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
- (d) 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
- (e) 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.

“LEGAL COSTS AND EXPENSES” under Condition 3 shall mean:-

legal fees, costs and disbursements reasonably and properly incurred with Underwriters written consent by Solicitors, Counsel and Witnesses, including persons who may be empowered to represent others. It shall also include costs incurred by other parties for which the Insured are held liable to pay or become liable to pay

“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.