

Pembroke

SYNDICATE 4000

Investment Management Insurance

Policy Wording

In consideration of the payment of the premium stated in the schedule and in reliance upon the statements made by the **Assured** in the written proposal form bearing the date specified in the schedule, which statements are deemed to form the basis of and be incorporated in this policy, Underwriters agree as follows:

1. **INSURING CLAUSES**

1.1 *Investment Manager Professional Civil Liability Insurance*

Underwriters shall pay to or on behalf of the **Investment Manager**, **Loss** resulting from any **Claim** made against the **Investment Manager** provided such **Claim** arises out of the provision by or on behalf of the **Assured** of **Investment Management Services** and is first made during the policy period.

1.2 *Investment Manager Directors' and Officers' Liability and Reimbursement Insurance*

Underwriters shall pay **Loss** as incurred by or on behalf of an **Insured Person**, or the **Company** by way of **Reimbursement** resulting from any **Claim** which is first made against an **Insured Person** during the policy period .

1.3 *Fund Directors' & Officers' Liability and Reimbursement Insurance and Fund Professional Civil Liability Insurance*

1.3.1 Underwriters shall pay **Loss** as incurred by or on behalf of an **Insured Person**, or the **Fund** by way of **Reimbursement**, resulting from any **Claim** which is first made against an **Insured Person** during the policy period .

1.3.2 Underwriters shall pay to or on behalf of the **Fund**, **Loss** resulting from any **Claim** made against the **Fund** provided such **Claim** arises out of the provision by or on behalf of the **Fund** of **Investment Management Services** and is first made during the policy period.

1.4 *Investment Manager and Fund Crime Insurance*

Underwriters shall indemnify the **Investment Manager** or the **Fund** for any **Loss** which is **Discovered** during the policy period and which is directly caused by an **Internal Wrongful Act** or an **External Wrongful Act**.

2. AUTOMATIC EXTENSIONS:

2.1 Official Investigation Expenses (Insuring Clauses 1.1, 1.2 and 1.3 only)

Underwriters shall indemnify the **Assured** for reasonable and necessary professional fees and expenses incurred by the **Assured** in connection with any administrative or regulatory proceeding or official investigation into possible misconduct by the **Assured** once the **Assured** becomes legally compelled to attend or is identified in writing by an investigating authority as a subject of the proceeding or official investigation. Professional fees and expenses described in this extension 2.1 shall be regarded as **Loss**. Underwriters' liability under this extension 2.1 is limited to 25% of the aggregate limit of Liability stated in the schedule and shall form part of and not be in addition to the aggregate Limit of Liability.

Underwriters shall not indemnify the **Assured** for professional fees and expenses incurred in connection with routine regulatory supervision, inspections or compliance reviews or any investigation which concerns the industry in which the **Assured** is engaged as opposed to conduct by the **Assured**.

The deductible conditions specified in General Condition 2 shall apply to this extension as if the administrative or regulatory proceeding or official investigation were a **Claim**.

2.2 Spouses and Legal Representatives (Insuring Clauses 1.2 and 1.3.1only)

(a) the lawful spouse or the civil partner (as set out in the Civil Partnership Act 2004 in England and Wales, Scotland and Northern Ireland, or the equivalent status of civil partner in any other applicable jurisdiction in the world whether that status is derived by reason of the statutory law, common law or otherwise) of an **Insured Person** where recovery is sought in respect of property held jointly by the spouse or the civil partner and an **Insured Person** in respect of any **Claim** brought first against such **Insured Person**;

(b) the legal representatives, heirs and assigns of an **Insured Person** and those identified in (a) above of this automatic extension.

2.3 Retired Directors (Insuring Clauses 1.2 and 1.3.1only)

If the **Company** is unable to renew or replace this policy with any other policy providing directors' and officers' liability cover and the Extended Discovery Period is not purchased under General Condition 4.16, an Extended Discovery Period of 72 months after the date of such non-renewal shall be provided under this policy during which time written notice may be given to Underwriters of any **Claim** first made against an **Insured Person** who retired, for reasons other than disqualification from holding office as a company director, before the date of non-renewal. This extension is not available in the event of a change to the **Company** within the meaning of Condition 4.14 of this policy.

2.4 Mitigation (Insuring Clause 1.1 only)

Underwriters will indemnify the **Assured** for the cost of corrective action taken by the **Assured** to prevent, settle or compromise any potential **Claim** against the **Assured** by a third party which, had it been pursued, would have been covered under this policy, provided that:

- (a) the **Assured** has taken all reasonable action to mitigate the claim; and
- (b) the circumstances resulting in the payment are reported upon discovery immediately to Underwriters ; and
- (c) any action taken by the **Assured** is taken, where practicable, with the prior approval of the Underwriters (such approval not to be unreasonably refused or delayed) or, where applicable, in accordance with the rules of the Financial Services Authority or other regulatory authority; and
- (d) the liability of Underwriters shall not exceed that which would have existed if the claim had been pursued against the **Assured** .

The cost of corrective action described in this extension 2.4 shall be considered **Loss** and shall be part of and not in addition to the aggregate Limit of Liability stated in the Schedule.

3. DEFINITIONS

3.1 **Acceptance** means a **Bill of Exchange** upon which is signified by the drawee his assent to the order of the drawer.

3.2 **Assured** means:

- (a) With respect to Insuring Clause 1.1: the **Investment Manager** entity or entities named in the schedule.
- (b) With respect to Insuring Clause 1.2 and 1.3.1: an **Insured Person** or the **Company**.
- (c) With respect to Insuring Clause 1.3.2: a **Fund**.
- (d) With respect to Insuring Clause 1.4: the **Investment Manager** entity or entities named in the schedule or a **Fund**.

3.3 **Assured's Computer System** means:

- (a) those **Computer Systems** operated by, or used by the **Assured** as owner, lessee or authorised user; and

- (b) those **Computer Systems**:
 - (i) operated by a **Service Bureau** authorised by written agreement to perform data processing services on behalf of the **Assured**;
 - (ii) operated by or on behalf of a **Custodian**;
 - (iii) operated by or on behalf of a **Central Depository**.

3.4 Assured's Management means:

- (a) the **Assured's** past or present Chairman, Chief Executive Officer, President, Managing Director, any member of the **Assured's** Board of Directors; or
- (b) any member of an executive committee established by or under the authority of the Board of Directors; or
- (c) any member of a management or other committee or sub-committee having authority delegated by any committee described in (b) above or the Board of Directors or when an Executive Director is a member of any committee.

3.5 Bill of Exchange means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.

3.6 Central Depository means any clearing organisation where, as the direct result of an electronic clearing and transfer mechanism, entries are made on the books reducing the account to the transferor, pledgor or pledgee and increasing the account of the transferee, pledgor or pledgee, or by reducing and increasing the amount of the obligation or the number of shares or rights transferred, pledged or released.

3.7 Certificate of Deposit means a written acknowledgement by a **Financial Organisation** of a deposit of funds with a promise to pay such deposit of funds to the depositor, or to some other person, or to his order.

3.8 Cheque means a **Bill of Exchange** drawn on a **Financial Organisation** directing it to pay the sum specified on demand.

3.9 Civil Liability means:

- (a) a civil wrong or wrongdoing actionable at law as a tort or its equivalent; and / or

- (b) a breach of any statute (including any statutory provisions and /or any rules or regulations made by any regulatory body or authority thereunder) enacted within the jurisdictions stated in the schedule; and / or
- (c) a civil wrong or wrongdoing actionable as a breach of trust (including a breach of constructive trust) or a breach of fiduciary duty,

giving rise to liability on the part of the **Assured** for which the remedy is a claim for damages, or a **Restitution Order**.

3.10 **Claim or Claims** means:

With respect to Insuring Clause 1.1 and 1.3.2: a written allegation of **Civil Liability** including the service of suit or the institution of legal, arbitration, or regulatory proceedings.

With respect to Insuring Clause 1.2 and 1.3.1:

- (a) any suit or proceedings alleging a **Wrongful Act** served upon or issued against any **Insured Person**; or
- (b) any written allegation of a **Wrongful Act** communicated to any **Insured Person**; or
- (c) any administrative or regulatory proceedings or official investigation in relation to any **Wrongful Act** alleged to have been committed by any **Insured Person**; or
- (d) any criminal prosecution of an **Insured Person** which arises solely by reason of their capacity as an **Insured Person**.

3.11 **Company** means with respect to Insuring Clause 1.2 the **Investment Manager** entity named in the schedule and any **Subsidiary** thereof; or with respect to Insuring Clause 1.3.1 any **Fund**.

3.12 **Computer System** means a computer suitable for multi-use applications that is capable of directing hardware, software and data resources according to computer programs formulated and introduced to the computer's operating system by the user. All input, output, processing, storage and communication facilities including related communication or open systems networks which are physically connected to such a device, as well as the device's off-line media libraries, are deemed to be part of such computer system.

3.13 **Computer Virus** means the destruction or alteration to or damage to any electronic data upon which the **Assured** has acted or relied, and which is due to a malicious act.

- 3.14 **Crime** means the loss of **Property** by means of theft, larceny, false pretences, burglary, robbery or hold-up.
- 3.15 **Counterfeit** means an imitation such that the **Assured** is deceived on the basis of the quality of the imitation so as to believe that such imitation is the authentic original instrument. Fictitious instruments which merely contain fraudulent misrepresentations of fact are not counterfeit.
- 3.16 **Custodian** means a person or organisation with which the **Assured** has a written agreement for the provision of purchasing services, safe-keeping, registration and entitlement records for the **Assured** in connection with **Securities**.
- 3.17 **Customer Communication System** means systems which operate automated teller machines or point of sale terminals including any shared networks or facilities for such systems in which the **Assured** participates, and/or communications systems which provide third parties with direct authorised (either explicit or implied) access to the **Assured's Computer Systems**.
- 3.18 **Discovered** means the time at which any of the **Assured's** directors, partners, officers, departmental directors, senior managers, trustees or equivalent become aware of facts which would cause a reasonable person to believe that a **Loss** of the kind covered by insuring clause 1.4 has been or will be incurred, notwithstanding the fact that full details of such **Loss** and the amount involved are not known at that time.
- 3.19 **Draft** means a **Bill of Exchange** payable on demand drawn by or on behalf of a **Financial Organisation** upon itself.
- 3.20 **Defence Costs and Expenses** means all reasonable and necessary fees and expenses incurred by an **Assured**, with the prior written consent of Underwriters (which shall not be unreasonably withheld), in the defence of any **Claim**, and with respect to Insuring Clause 1.2 and 1.3.1, in challenging, resisting or defending an extradition proceeding including any appeal relating thereto, including bail bond expenses.
- 3.21 **Document** means any **Cheque, Bill of Exchange, Draft, Acceptance, Certificate of Deposit, Letter of Credit, Promissory Note**, withdrawal order or receipt for the withdrawal of funds or **Property**, money order, orders upon public treasuries or any similar instruments of value serving the same purpose.
- 3.22 **Electronic Communication System** means:
- (a) electronic communication operations such as Fedwire, Clearing House Interbank Payment System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Bankwire and similar automated interbank communication systems, including **Tested** telex, **Tested** TWX, **Tested** telefacsimile and similar **Tested** communication systems and

communication systems which provide the **Assured** with access to **Computer Systems** of central depositories or automated clearing houses;

(b) **Customer Communication System.**

3.23 **Electronic Computer Programmes** means computer programmes which include facts or statements converted to a form usable in a **Computer System** that act upon **Electronic Data**.

3.24 **Electronic Data** means facts or information converted to a form usable in a **Computer System** and which is stored on **Electronic Data Processing Media** for use by **Electronic Computer Programmes**.

3.25 **Electronic Data Processing Media** means the punched cards, magnetic tapes, faxes, magnetic discs or other bulk media on which **Electronic Data** is recorded.

3.26 **Employee** means any:

- (a) natural person engaged by the **Assured** under a contract of employment, or as a guest student or secondee, while performing acts which come within the scope of the usual duties of such employment;
- (b) natural person working under the direct supervision and control of the **Assured**;
- (c) a director of the **Assured** (other than one who is employed as a salaried officer or **Employee**) but only when performing acts which come within the scope of the usual duties of an **Employee** or while acting as a member of a committee duly elected or appointed by resolution of the board of directors of the **Assured** to perform specific, as distinguished from general, directorial acts on behalf of the **Assured**;
- (d) natural person, as described in (a), (b) or (c) of this definition who cannot be identified by name, whose act(s) has caused a **Loss** covered under this policy, provided that the **Assured** proves to Underwriters' satisfaction that such **Loss** was due as a result of the act(s) of such unnamed person.
- (e) trustee, fiduciary, administrator, or officer of any pension, employee benefit, welfare benefit, share saver or share option plan or charitable fund or foundation, existing on or before the inception date of this policy, and maintained by the **Assured** for the benefit of former, current and future employees or their respective beneficiaries.
- (f) former employee for a period not exceeding 60 days following the termination of their employment with the **Assured** except when termination is a result of an **Internal Wrongful Act**.

- 3.26 **Employment Practices Wrongful Act** means any actual or alleged:
- (a) wrongful termination of the employment of, demotion of, or failure or refusal to employ or promote any person in relation to the **Company** ; or
 - (b) discrimination or harassment affecting any employee of, or prospective employee of, the **Company** ; or
 - (c) retaliatory treatment against an employee of the **Company** because of the employee's exercise or attempted exercise of his or her legal rights,
- by an **Insured Person**.

3.27 **External Wrongful Act** means

3.27.1 the **Assured** having in good faith and in the ordinary course of business acted or relied upon any:

- (a) **Security, Document, or Instruction** which has been **Forged** or **Fraudulently Altered**, or is **Counterfeit**, or
- (b) **Security** which has been lost or stolen, or
- (c) **Counterfeit** currency or coin issued or purporting to have been issued as legal tender in any country.

Actual physical possession of such **Security**, by the **Assured**, its correspondent bank or other authorised representative is a condition precedent to liability under this insuring clause.

Any **Document, Instruction** or **Security** must be in a script with which the person acting upon such instrument is conversant. Mechanically reproduced facsimile signatures shall be treated the same as handwritten signatures.

- 3.27.2 (a) the actual or attempted fraudulent input, modification or destruction of
- (i) **Electronic Data**, or
 - (ii) computer programmes
- within, or during electronic transmission to the **Assured's Computer System** or a **Customer Communication System**;
- (b) the actual or attempted fraudulent input, modification or destruction of electronic communications, or instructions within
- (i) the **Assured's Computer System**, or

- (ii) an **Electronic Communication System**
 - (c) the damage or destruction of **Electronic Data Processing Media**, or
 - (d) the introduction of a **Computer Virus** into the **Assured's Computer System**, or
 - (e) the fraudulent transmission of **Voice Instructions** to the **Assured** by an unauthorised person via a telecommunications system capable of transmitting speech.
- 3.27.3
- (a) **Crime** committed by any natural person physically present on the **Premises**, or
 - (b) mysterious or unexplainable disappearance of **Property** on the **Premises**, or
 - (c) **Property** being damaged, destroyed or misplaced while on the **Premises**, or
 - (d) any of the perils specified in (a), (b) or (c) of Insuring Clause 2 with respect to **Property** in the possession of a customer of the **Assured**, or any representative of such customer, while on the **Premises**, or
 - (e) **Property** being lost or damaged from any cause while in transit anywhere, or
 - (f) destruction of, or damage to, **Office Contents**, or damage to an office of the **Assured** caused by criminal activity, vandalism, or malicious mischief, or
 - (g) **Loss of Security Rights**.

3.28 **Financial Organisation** means:

- (a) any bank, credit institution, financial institution, undertaking for collective investment in securities, investment firm or similar entity; or
- (b) a central depository in connection with the purchase, sale, transfer or pledge of an uncertificated security; or
- (c) any **Custodian**.

3.29 **Forged or Forgery** means the handwritten signing or endorsing of the name of another genuine person, without authority, and with intent to deceive. It does not include the signing or endorsing (either wholly or partially) by the signor or endorser of his own name, which is made with or without authority in any capacity, for any purpose.

3.30 **Fraudulently altered** means a material alteration to an instrument for a fraudulent purpose by a person other than the person who was authorised to prepare such instrument.

3.31 **Fund** means any unit trust, mutual fund, or other collective investment scheme, alternative investment scheme, or other similar entity named in the schedule.

3.32 **Internal Wrongful Act** means Any dishonest or fraudulent act committed by an **Employee** either acting alone or in collusion with others, provided that any **Loss** arising as a result of any transaction or transactions in the nature of a **Loan** or **Trading** shall only be covered if such **Loss** directly occurs because of a dishonest or fraudulent act committed by an **Employee** with the motive to obtain an improper financial gain for:

- (i) such **Employee**, or
- (ii) any person in collusion with such **Employee** provided the **Assured** establishes beyond reasonable doubt that such **Employee** intended to participate in such improper financial gain.

Improper financial gain does not include salary, fees, commissions, bonuses, profit sharing and other emoluments or benefits earned in the normal course of employment.

3.33 **Instruction** means any written instruction or advice, or **Tested** facsimile, directed to the **Assured** and authorising or acknowledging the transfer, payment, delivery or receipt of funds or **Property**.

3.34 **Insured Person** means any natural person who:

- (a) was, now is or shall become a director or officer of the **Company** including for this purpose anyone alleged to have been acting as a shadow director of the **Company** as defined in S.251 of the Companies Act 2006;
- (b) was, now is or shall become an employee of the **Company** in the event that:
 - (i) they are joined as co-defendants in any action against any past, present or future director or officer of the **Company**, or
 - (ii) they act in a managerial or supervisory capacity;

- (iii) they have received approval from the Financial Services Authority to perform one or more of controlled functions 1-20, 28 and 29 for the **Company** pursuant to S. 59 of the Financial Services and Markets Act 2000.
- (c) was, now is or shall become a director of an **Outside Entity** provided that:
 - (i) he or she has become a director of that entity at the specific request of the **Company**; or is alleged to have been acting as a shadow director of the outside entity by reason of his or her duties as a director or officer of the **Company**; and
 - (ii) they are not indemnified in respect of any **Loss** by the **Outside Entity** and are not covered by any insurance maintained by it; and
 - (iii) the **Outside Entity** does not have any of its securities listed on any exchange in the United States of America; and
 - (iv) the **Outside Entity** has a positive net worth at the time of the person's appointment as a director of it.

3.35 **Investment Management Services** means:

- (i) the formation, capitalization, operation, management, dissolution or liquidation of any **Fund**; and/or
- (ii) the investment of assets of the **Fund(s)** including but not limited to the purchasing or selling of securities, commodities, derivatives, bonds, debt or other financial products or instruments, and/or
- (iii) any other related professional services provided by the **Assured** and detailed in the proposal form.

3.36 **Investment Manager** means the entity or entities named in the schedule and which are engaged in **Investment Management Services**.

3.37 **Letter of Credit** means an engagement in writing by a **Financial Organisation** made at the request of a customer that the issuer will honour a **Draft** or other demand for payment upon compliance with the conditions specified in such **Letter of Credit**.

3.38 **Loan** means:

- (i) any loan or transaction in the nature of, or amounting to, a loan or extension of credit, including a lease, made by or obtained by or from the **Assured**; or

- (ii) any note, account, invoice, agreement or other evidence of debt, assigned or sold by or to, or discounted or otherwise acquired by the **Assured**; or
- (iii) any payments made or withdrawals from a customer's account involving an uncollected item and any similar transaction.

3.39 **Loss** means:

3.39.1 for the purposes of Insuring Clauses 1.1, 1.2 and 1.3:

- (a) the legal liability of the **Assured** to pay any damages and costs awarded against the **Assured**; and/or
- (b) any settlement agreed by Underwriters; and/or
- (c) **Restitution Order**; and/or
- (d) **Defence Costs and Expenses**.

Loss shall not mean or include:

- (a) fines, penalties, punitive or exemplary damages or multiple damages (other than a single compensatory amount of damages prior to such multiplication); or
- (b) fees, commissions, taxes or other charges paid or due to the **Assured**; or
- (c) the **Assured's** obligations as either a principal or a counterparty in any transaction(s) for the **Assured's** own account; or
- (d) any matter which is or may be deemed uninsurable under the law in respect of which this policy shall be construed.

3.39.2 for the purposes of Insuring Clause 1.4 the direct financial loss sustained by the **Assured**.

3.40 **Loss of Security Rights** means loss of subscription, redemption, conversion or deposit privileges through the misplacement, loss of or damage to, any security or electronic data representing a security, or electronic data processing media upon which such electronic data is stored or recorded.

3.41 **Market Abuse** means conduct (which may occur anywhere in the world) which constitutes market abuse pursuant to the provisions of the Financial Services and Markets Act 2000.

3.42 **Office Contents** means furnishings, fixtures, equipment (other than computers, **Computer Systems**, computer networks and peripheral equipment, computer

programs and other computer related equipment), alarms, stationery, record books, supplies or safes and vaults, either owned by the **Assured** or for which the **Assured** is liable or the personal property of **Employees** or customers while on the **Assured's Premises**.

- 3.43 **Outside Entity** means any company or organisation other than the **Assured** or a **Subsidiary**.
- 3.44 **Premises** means any building from which the **Assured** conducts its business or any recognised place of safe deposit worldwide excluding warehouses.
- 3.45 **Promissory Note** means an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.
- 3.46 **Property** means cash (i.e. currency, coins and bank notes), bullion, precious metals of all kinds and in whatsoever form and articles made therefrom, gems (including uncut gemstones), precious and semi-precious stones, cheques, certificates of stock, bonds, coupons and all other types of certificated and uncertificated securities, bills of lading, warehouse receipts, **Bills of Exchange, Acceptances, Drafts, Certificates of Deposit, Letters of Credit, Promissory Notes**, money orders, orders upon public treasuries, stamps, insurance policies, title deeds, certificates of title and all other negotiable and non-negotiable instruments or contracts representing money or other **Property** (real or personal) or interests therein, and other valuable papers, including books of account and other written records including **Electronic Data** and **Electronic Data Processing Media** used by the **Assured** in the conduct of their business and in which the **Assured** has an interest, or which are held by the **Assured** for any purpose or in any capacity and whether so held gratuitously or otherwise, and whether the **Assured** is legally liable therefore or not.
- 3.47 **Reimbursement** means the obligation of the **Company** in respect of any amounts which the **Company** may have been required or permitted to pay to or on behalf of an **Insured Person** in respect of **Loss**.
- 3.48 **Restitution Order** means an order made by a court or regulatory authority pursuant to which the **Assured** is required to pay to such regulatory authority (or any successor body) or to a third party compensation to the extent of the financial loss suffered by such third party as a result of the **Assured's** acts or omissions, provided always that:
- (i) it is the third party who has suffered the financial loss; and
 - (ii) if any amount is required to be paid to the regulatory authority (or any successor body), such authority is required to pay the said amount to such third party.

Restitution Order does not mean an order pursuant to which the **Assured** is

required to pay to any party any profits or fees or commissions or other charges which have accrued or been paid (or are owed) to the **Assured**.

3.49 **Security** means:

- (i) stock, shares, scrip, transfers, certificates, debentures, bonds, coupons and all other types of securities (including securities held in book entry form or as a **Statement of Uncertificated Security**), **Bills of Exchange**, **Promissory Notes**, **Certificates of Deposit**, **Letters of Credit**, warrants, title deeds, deeds of trust, bearer instruments, or other **Documents**;
- (ii) original (including original counterparts) negotiable or non-negotiable agreements in writing, other than as set forth in (iii) below, having value, which is in the ordinary course of business, transferable by delivery of such agreements with any necessary endorsement or assignment;
- (iii) original corporate, partnership or personal guarantees.

3.50 **Service Bureau** means a natural person, partnership or corporation authorised by written agreement to perform data processing services using a **Computer System**.

3.51 **Single Loss** means all **Loss** arising out of, based upon or attributable to, or which is causally connected to a single act, or occurrence or a related series of acts or occurrences attributable to one source or originating cause.

3.52 **Statement of Uncertificated Security** means a written statement of the issuer of an **Uncertificated Security** containing:

- (a) a description of the issue of which the **Uncertificated Security** is a part; and
- (b) the number of shares or units:
 - (i) transferred to the registered owner, or
 - (ii) pledged by the registered owner to the registered pledge, or
 - (iii) released from the pledge by the registered pledge, or
 - (iv) registered in the name of the registered owner on the date of the statement, or
 - (v) subject to pledge on the date of the statement; and
- (c) the name and address of the registered owner and registered pledge; and

- (d) a notation of any liens and restrictions of the issuer and any adverse claims to which the **Uncertificated Security** is or may be subject or a statement that there are no such liens, restriction or adverse claims; and
- (e) the date:
 - (i) the transfer of the shares or units to the new registered owner of the share or units is registered; or
 - (ii) the pledge of the registered pledge was registered; or
 - (iii) of the statement, if it is a periodic or annual statement.

3.53 **Subsidiary** means any corporate entity within the meaning of S.736 of the Companies Act 1985 during any time in which the **Company**, either directly or indirectly through one or more **Subsidiaries**:

- (a) holds the majority of the voting rights; or
- (b) has the right to appoint or remove a majority of the board of directors.

3.54 **Terrorism** means any act or acts of force or violence (whether threatened or actual) by any person or persons acting alone or on behalf of or in connection with any organisation, which is carried out for political, religious or ideological ends and is either directed towards the over-throwing or influencing of any government de jure or de facto or to put the public or any part of the public in fear.

3.55 **Tested** means a method of authenticating the contents of a communication by:

- (a) affixing thereto a valid test key which has been exchanged between the **Assured** and a customer, or automated clearing house, or central depository, or another financial institution or between offices of the **Assured**, for the purpose of protecting the integrity of the communication;
- (b) a call back to an authorised person other than the individual initiating the transmission of a communication.

3.56 **Trading** means trading or other dealings in securities, commodities, futures, options, foreign funds, currencies, foreign exchange and the like.

3.57 **Uncertificated Security** means a share, participation or other interest in property in or an enterprise of the issuer or an obligation of the issuer which:

- (a) is a type commonly dealt in upon securities exchanges or markets; and

- (b) is either one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations; and
- (c) (i) is not represented by any instrument, or
 - (ii) is part of a master or global certificate, or
 - (iii) represents a paper certificate that has been surrendered by a **Financial Organisation** and which paper certificate has been combined into a master depository note and the paper certificates are immobilised;

and such security is shown as an electronic entry on the account of the transferor, pledgor or pledgee on the books of a **Central Depository**.

3.58 **Voice Instruction** means any telephone instruction requesting the transfer of funds or property, which is **Tested** or which is subject to a call back to an authorised person other than an individual initiating the transfer.

3.59 **Wrongful Act** means actual or alleged breach of duty, breach of trust, neglect, error, omission, misstatement, misleading statement, mistreatment, breach of a fiduciary obligation, libel, slander, breach of warranty of authority, alleged wrongful trading, or other legal liability on the part of any **Insured Person**, jointly and severally, which arises solely by reason of the conduct of their duties or their capacity as **Insured Persons**.

4. CONDITIONS

4.1 Limit of Indemnity

- (a) The total liability of Underwriters for **Loss** shall not exceed the Limit of Indemnity stated in the schedule, in the aggregate. The Limit of Indemnity is shared by all Insuring Clauses and extensions. If different Limits of Indemnity apply to different Insuring Clauses, the maximum amount payable under the relevant Insuring Clause is the Limit of Indemnity applicable to that Insuring Clause and any amount paid under that Insuring Clause will reduce the total Limit of Indemnity available in respect of all Insuring Clauses.
- (b) Regardless of the number of years this Insurance has been in force or may continue to be in force and of the premiums paid or payable in respect thereof the liability of Underwriters shall not be cumulative in amount from year to year or from period to period and in no case shall exceed the Limit of Indemnity stated in the schedule.

4.2 Deductible

Subject to the Limit of Indemnity, the Underwriters shall be liable only for that part of each and every **Single Loss** which exceeds the deductible stated in the schedule.

4.3 Presumed Indemnification

The memorandum and articles of association of the **Company** shall be deemed to provide indemnification to **Insured Persons** to the fullest extent authorised and not prevented by law, or pursuant to any contract, unless the **Company** is unable to do so by reason of insolvency.

4.4 Recoveries

All recoveries from third parties for payments made under this policy shall be applied (after first deducting the costs and expenses incurred in obtaining such recovery but excluding the overhead of the **Assured**, which includes but is not limited to, the salaries, wages or benefits of any of its directors, officers, employees, in-house lawyers or other in-house professional advisers) in the following order of priority:

- (a) The **Assured** shall first be reimbursed for the amount of **Loss** which would otherwise have been paid by Underwriters under this policy but only for the fact that it is in excess of the Limit of Indemnity provided by this policy;
- (b) Underwriters shall then be reimbursed for the amount of their liability under this policy.
- (c) Any remaining sum shall be applied towards reimbursement of the deductible borne by the **Assured** under this policy.

4.5 Subrogation

In the event of payment of any **Loss** by Underwriters under this policy, Underwriters shall be subrogated to all rights, title, interests and causes of action of the **Assured** to the extent of such payment. The **Assured** shall do all things necessary to secure such rights, title, interest or causes of action, including all things necessary to enable Underwriters to bring a claim in the **Assured's** name or in their own name, where applicable.

Underwriters agree to waive any rights of subrogation against any employee except in respect of any **Loss** arising from or contributed to by any dishonest or fraudulent act or omission on the part of such employee or where and to the extent that such employee is (or would be but for the liability of the **Assured** or any coverage provided under this policy) entitled to indemnity under a separate

policy of insurance regardless of whether any amount is paid under such other policy in respect of the acts, errors or omissions complained of.

4.6 Assignment

In the event of payment of any **Loss** by Underwriters under this policy, the **Assured** shall deliver, if so requested by Underwriters, an assignment of such of the **Assured's** rights, title, interests and causes of action as it has against any person or entity to the extent of such payment and Underwriters shall be entitled to retain for their benefit all monies which may be received as a result of the enforcement of such rights, title, interests and causes of action assigned to them.

4.7 Non-admission of Liability

The **Assured** shall not admit liability for or settle any third party claim without the prior written consent of Underwriters.

4.8 Notification Provisions

4.8.1 A **Claim** is deemed to be first made when the **Assured's Management** or an **Insured Person**:

- (a) receives a **Claim**; or
- (b) becomes aware of the intention of any person to make a **Claim** against them; or
- (c) becomes aware of any fact, circumstance or event which could reasonably be anticipated to give rise to a **Claim** at any future time.

4.8.2 Written notification of any **Claim** made (or for the purposes of Insuring Clause 1.4 **Loss** which is **Discovered**) shall be given by the **Assured** at the earliest practical moment, but in any event within 30 days of the expiry date of the policy period stated in the schedule in order for there to be coverage under this policy.

Any subsequent legal proceedings for damages brought against the **Assured**, or any settlement made by Underwriters, as a direct result of any matter or matters for which written notice has been given whether such proceedings are brought, or such settlement made, during or after the expiration of the policy period, is considered to be a **Claim** first made against the **Assured** at the time the **Assured** first gave notice of such matter or matters to Underwriters.

The **Assured's** notification of any **Claim** must be in writing and include full particulars of such **Claim**, including the identity of the actual or potential claimant, the location where such actual or potential **Claim** has been or is likely to be made, the amount (or estimated amount) of such actual or potential **Claim**, the specific allegations made or anticipated to be made, and the facts, circumstances and events giving rise to such actual or potential **Claim**.

Upon receipt of written notice of any **Claim** the Underwriters shall be entitled to appoint a representative to investigate the **Claim** on their behalf and the **Assured** as a condition of coverage under this policy shall co-operate fully with any Underwriters' representative in the conduct of his enquiries, including but not limited to making available to him all necessary information and documentation as he may require together with facilities for the interviewing of all the **Assured's** personnel whom the representative may consider to be relevant to his enquiries. If Underwriters appoint a representative to report to them upon any **Claim**, then the costs so incurred by Underwriters shall not form part of the Limit of Indemnity or the deductible.

4.9 Defence of Claim

- (a) Underwriters shall not be required to assume the handling or control of the defence or settlement of any **Claim** against the **Assured** but shall have the right (but not the duty) to take over at any time the control of the defence or settlement or compromise of any **Claim** which is or might be the subject of indemnity under this policy if Underwriters in their discretion deem it appropriate to do so.
- (b) Insofar as any **Claim** fall within the limit of indemnity provided hereunder, then Underwriters shall have the discretion to negotiate a settlement thereof including an admission of liability if Underwriters deem it appropriate to do so and the deductible stated in the schedule shall apply to any such settlement provided always that prior to any settlement and/or admission of liability being made Underwriters shall consult with the **Assured** who shall not unreasonably withhold its consent to such settlement and/or admission of liability.
- (c) In the event of the **Assured** and Underwriters being unable to agree as to the proposed settlement and/or admission of liability then (at the election of either party) the dispute shall be referred to a Queen's Counsel of the English Bar to be appointed jointly by Underwriters and the **Assured** or if not so appointed within 7 days of one party so electing, by a Queen's Counsel chosen by the chairman of the Financial Services Authority (or any successor body) which Queen's Counsel shall decide the issue of whether the **Assured's** consent is being unreasonably withheld and whose decision shall be binding on Underwriters and the **Assured**.
- (d) Underwriters may at any time pay to the **Assured** in connection with any **Claim** notified hereunder the amount of the limit of indemnity as shown in the schedule (after deduction of any sum or sums already paid by Underwriters whether as costs and expenses or as compensation) or any lesser amount for which such **Claim** can be settled and upon such payment being made Underwriters shall be under no further liability in connection therewith and shall (except with respect to any subrogation action) relinquish the conduct and control of such **Claim**.

4.10 Jurisdiction

The coverage provided by this policy shall apply only to:

- (i) final judgements against the **Assured** in the courts of the country or countries stated in the schedule (provided such courts are duly constituted and internationally recognised for the purposes of due process and a right of appeal) and not to judgements obtained elsewhere nor to judgements or orders obtained in the said courts for the enforcement of judgements obtained elsewhere whether by way of reciprocal agreements or otherwise; or
- (ii) settlements agreed by Underwriters.

4.11 Representations to Underwriters

- (a) The **Assured** agrees, by acceptance of this policy, that the statements and particulars in the proposal form and any supplementary information pertaining thereto constitute representations of the **Assured** and that this policy is issued in reliance upon the truth, accuracy and completeness of such representations.
- (b) Notwithstanding 4.11 (a) above, the information so supplied shall be construed as a separate proposal by each **Insured Person**. No knowledge of or statement made by one **Insured Person** shall be imputed to any other **Insured Person** for the purposes of determining their entitlement to cover pursuant to this policy.
- (c) Underwriters agree not to exercise their right to avoid this policy where it is alleged there has been non-disclosure or mis-representation of facts, or untrue statements in the proposal form or supplementary information or failure to notify a circumstance which may give rise to a loss or claim, provided always that the **Assured** shall establish to the Underwriters' satisfaction that such alleged non-disclosure, misrepresentation, untrue statement or failure to notify a circumstance was innocent and free of any fraudulent conduct or intention to deceive.
- (d) Where the **Assured's** innocent breach or non-compliance with any condition of this policy has resulted in prejudice to the handling or settlement of any claim, the indemnity offered by this policy in respect of any such claim (including costs and expenses) shall be reduced to such sums as would have been payable by them in the absence of such prejudice.

4.12 Merger, Purchase or Acquisition

The benefit of the insurance cover provided by this policy shall extend automatically to all newly acquired or created **Subsidiaries** of the **Assured** with respect to acts or omissions alleged to have occurred only while the newly acquired or created company was a **Subsidiary** provided that such new **Subsidiary**:

- (a) does not have total assets that exceed the Acquisition Threshold stated in the schedule; or
- (b) does not have any of its securities listed on any exchange in the United States of America; or
- (c) does not have revenues or assets exceeding US\$5,000,000 in the United States of America

In all other cases if the **Assured** shall merge with or purchase or otherwise acquire all or any of the undertaking, assets or liabilities of another entity or business this policy shall not afford any coverage of any kind for any **Claim** for, arising out of, relating to, or involving, directly or indirectly all or any of such undertaking, assets or liabilities of the acquired entity or business unless and until the **Assured** has obtained Underwriters' agreement in writing to an extension of cover under the policy in relation to the same and then only upon such terms as may be stipulated by Underwriters after full disclosure of all material facts by the **Assured**.

4.13 Allocation and Advancement of Defence Costs and Expenses

- (a) With respect to Insuring Clauses 1.2 and 1.3.1, Underwriters shall have no liability to pay any costs, expenses, damages, settlement sums or other losses arising from any legal liability which the **Company** has to a claimant which is distinct or severable from any liability of an **Insured Person** to the claimant .
- (b) With respect to Insuring Clauses 1.1, 1.2 and 1.3, in the event of a **Claim** which is covered by this policy but which also involves matters not covered by this policy, the **Assured** and Underwriters agree to use their best endeavours to agree upon a reasonable allocation between them. In the event that agreement cannot be reached, the parties agree that the allocation shall be determined by an independent Queen's Counsel (whose identity shall be agreed by the parties), who shall be empowered to obtain such additional expert input as he or she thinks necessary. The costs of the Queen's Counsel, including his expenses and the fees of any third parties, shall be split between the parties in the same proportion as determined in the allocation.

- (c) With respect to Insuring Clauses 1.2 and 1.3.1 if no allocation has been agreed or determined Underwriters may at their discretion advance **Defence Costs and Expenses** on behalf of an **Insured Person**. Once a reasonable allocation has been agreed or determined in accordance with condition 4.13 (b) of this policy, it shall be applied retrospectively to all **Defence Costs and Expenses**.

4.14 Automatic Conversion to Run-Off (Insuring Clauses 1.1, 1.2 and 1.3)

In the event of there being any change in the effective ownership or control of any **Assured** whether financial or otherwise and whether occurring by operation of law, voluntary act on the part of that **Assured** or by merger, purchase or sale of assets or shares or in any other way, Underwriters shall only be liable in respect of acts or omissions which occurred prior to the date of the change in the effective ownership or control.

4.15 Termination

4.15.1 This policy shall terminate immediately:

- (i) upon receipt by Underwriters of a written request by the **Assured** to terminate the policy, in which case Underwriters shall refund any unearned premium computed at short rate but if there are any reported **Claims** the premium is deemed to be fully earned ; and / or
- (ii) upon exhaustion of the Limit of Indemnity by one or more payments made under this policy in which event the premium is deemed to be fully earned.

4.15.2 Insuring Clause 1.4 shall terminate immediately:

- (i) in the event of there being any change in the effective ownership or control of the **Assured** whether financial or otherwise and whether occurring by operation of law, voluntary act on the part of such **Assured** or by merger, purchase or sale of assets of shares or in any other way; or
- (ii) as to any **Assured** in the event of there being any change in the effective ownership or control (as set forth in (i) above) of that **Assured**

unless Underwriters, after having been furnished with all relevant particulars have offered revised terms and conditions in writing as to the continuation of cover and such terms and conditions have been accepted by the **Assured**; or

- (iii) in the event of the liquidation (voluntary or compulsory) of the **Assured**, or the appointment of a Receiver or Manager, or the entering into of any Scheme of Arrangement or composition with creditors.

Underwriters shall refund any unearned premium computed at pro rata if terminated on the occurrence of any of the events provided for in (i), (ii) or (iv) above.

Underwriters shall refund any unearned premium computed at short rate (NMA 45) if terminated at the written request of the **Assured** as described in (iii) above; or

- (v) as to any director or officer or **Employee** of the **Assured**, as soon as any director or officer or **Employee** of the **Assured** not in collusion with said person shall first learn of any dishonest or fraudulent or malicious act on the part of the director or officer or **Employee** whenever committed, whether or not such act is of a type covered as an **Internal Wrongful Act**, but in any event without prejudice to the loss of **Property** in transit in the custody of such person at the time the director or officer or **Employee** of the **Assured** shall so learn of such dishonesty or fraud.

4.16 Extended Discovery Period

If Underwriters decline a request to renew this policy the **Assured** shall have the option to purchase an extended discovery period of 12 months for 100% of the full annual premium.

To purchase the extended discovery period, the **Assured** must serve written notice on Underwriters within 15 days prior to the expiry date of the policy and must pay the additional premium within 30 days of the expiry date. The additional premium in respect of the extended discovery period is not refundable and the extended discovery period is not cancellable.

During the extended discovery period and/or any other discovery period referred to in this clause, any **Claim** (Insuring Clauses 1.1, 1.2 and 1.3) or any **Loss** (Insuring Clause 1.4) notified to Underwriters shall be deemed to have been made or **Discovered** during the policy period, but coverage will only apply to conduct which occurred prior to the end of the policy period.

4.17 Other Insurance

This policy shall not cover any **Loss** to the extent that such **Loss** is insured, or would but for the existence of this policy be insured, by any other insurance policy (irrespective of the inclusion in such other insurance policy of any similar limitation of coverage), and whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. Provided, however, that this condition shall not apply to the amount by which any **Loss** exceeds:

- (i) the limit of insurers' liability under such other insurance policy and any deductible or retention applicable under such insurance policy; or
- (ii) the deductible in the schedule herein,

whichever is the greater. If (i) above is applicable by virtue of this provision, the deductible in the schedule herein shall not be applied.

4.18 Policy Dispute Interpretation, Forum and Service of Suit

- (a) The construction, interpretation and meaning of the provisions of this policy shall be determined in accordance with English Law and in accordance with the English text as it appears in this policy.
- (b) Save in relation to the resolution of a dispute under Condition 4.13(b):
 - 1. Any dispute arising out of or in connection with this policy, including any question regarding its formation, existence, validity or termination, shall be referred to arbitration in London, England in accordance with the Arbitration Act 1996. The rules for the conduct of the arbitration shall, subject to the provisions of the Arbitration Act 1996, be in the discretion of the arbitrator.
 - 2. There shall be a sole arbitrator whose identity shall be mutually agreed upon between the Underwriters and the **Assured**. In the absence of agreement, the arbitrator shall be selected by the Chairman of the Bar Council from a list comprised of three nominations from each of the Underwriters and the **Assured**.
 - 3. The arbitrator (whether appointed by agreement or selected) shall be a present or former member of the English Commercial Bar with experience in insurance law who has attained the status of Queen's Counsel.
- (c) Any legal proceedings commenced against Underwriters arising out of this policy may be served upon the person(s) named in the schedule who are duly authorised to accept service on their behalf.
- (d) Any reference in this policy to a statute, statutory instrument, regulation or order shall include all amendments made to them. Any reference to the singular shall include the plural and vice versa. Any references to any legislation enacted in the United Kingdom shall include any equivalent legislation enacted in any territory to which the policy applies.

4.19 Fraudulent Claims

If the **Assured** shall make any claim for indemnity knowing the same to be false or fraudulent, as regards amount or otherwise, this policy shall be void in its entirety and of no effect whatsoever and all claims for indemnity hereunder shall be forfeited. However, the fraud of any one **Insured Person** shall not be imputed to any other **Insured Person**.

4.20 Third Party Rights

It is agreed that:

- (a) this policy is not intended to confer any benefits or rights on any party other than the **Assured** whether or not such other interest is noted on the policy;
- (b) Underwriters and the **Assured** shall be entitled to rescind, cancel or vary this policy in any way without the consent of any other party whether or not an interest of such other party is noted on the policy;
- (c) in the event of a claim (whether proceedings are commenced or not) by a party other than the **Assured** against Underwriters for the enforcement of any term of this policy, Underwriters shall be entitled to raise by way of defence or set-off any matter which could have been raised by them by way of defence or set-off had such claim been made by the **Assured**.

4.21 Proof of Loss (Insuring Clause 1.4)

As a condition precedent to its right to be indemnified under this policy the **Assured** shall within six months of a **Loss** being **Discovered** provide to Underwriters an affirmative proof of loss, with all relevant details.

4.22 Basis of Valuation (Insuring Clause 1.4)

In determining the amount to be paid under this policy for any **Loss**, deductions shall be made in respect of any property (including **Property**, as defined herein) received from any source whatsoever, including payments and receipt of principal, interest, dividends, commissions and the like, whenever received, in connection with any matter from which an indemnifiable **Loss** has arisen.

In no event shall Underwriters be liable for more than:

- (i) the actual market value of **Securities**, foreign funds, currencies or precious metals shall be determined by their closing market value on the

last business day prior to the date the loss was **Discovered**, or the actual cost of replacing the **Securities**, if less;

- (ii) the cost of blank books, blank pages or other materials plus the cost of labour and computer time for the actual transcription or copying of data furnished by the **Assured** in order to reproduce books of accounts and records;
- (iii) the cost of blank **Electronic Data Processing Media** and the cost of labour for the actual transcription or copying of **Electronic Data** furnished by the **Assured**, in order to reproduce such **Electronic Data**. However, if such **Electronic Data** cannot be reproduced and represents **Securities** or other financial instruments of value, then the **Loss** will be valued as indicated in paragraphs (i) and (iv) of this general provision;
- (iv) the actual cash value of other property at the time of **Loss** or the actual cost of repairing or replacing the property with property or material of like quality or value, whichever is less

4.23 Lost Securities (Insuring Clause 1.4)

In the event of a claim covered under this policy in respect of loss of **Securities** the **Assured** shall first attempt to replace the lost **Securities** by issuing a letter of indemnity. Underwriters shall, subject to all conditions of this policy, indemnify the **Assured** for such sums which the **Assured** may be required to pay either during the **Policy Period** or any time thereafter by reason of any indemnifying agreement executed by the **Assured**. The limit of liability shall be the amount remaining available for the payment of any **Loss** at the time of the execution by the **Assured** of such indemnity agreement.

If the **Assured** is unable to replace the lost **Securities** by use of a letter of indemnity, the **Assured** shall, subject to the Underwriters' prior consent, secure a lost securities bond for the purpose of obtaining duplicate **Securities**. Underwriters shall issue a counter-indemnity to the issuer of the lost instrument bond.

Underwriters shall pay the proportional cost of obtaining the lost instrument bond that its value bears to that sum which would be covered under the Insuring Clauses of this policy and which exceeds the deductible specified in item 9 of the Schedule and is within the aggregate limit of liability specified in item 8 of the Schedule remaining available for the payment of any **Loss**. The **Assured** shall bear for its own account the proportionate cost of obtaining the lost instrument bond that its value bears to the deductible stated in item 9 of the Schedule and any sum in excess of the aggregate limit of liability remaining available for the payment of **Loss**.

4.24 Legal Fees and Expenses (Insuring Clause 1.4)

Underwriters shall indemnify the **Assured** against reasonable legal fees and legal expenses incurred and paid by the **Assured** with the prior approval of Underwriters in the defence of any suit or legal proceeding brought against the **Assured**, with respect to which the **Assured** establishes that the act or acts which have been committed, or the events which have occurred, would entitle the **Assured** to recover under this policy. Legal fees and legal expenses paid by Underwriters in defending any suit or legal proceeding shall be applied to the reduction of the aggregate limit of indemnity and the sub-limit for the applicable insuring clause.

The **Assured** shall promptly give notice to Underwriters of the institution of any suit or legal proceeding referred to above and at the request of Underwriters shall furnish them with copies of all pleadings and other papers therein.

If multiple causes of action are alleged in any such suit or legal proceeding some of which causes of action, if established against the **Assured**, would not constitute a collectible loss under this policy, including without limitation claims for punitive, consequential or other non-compensatory damages then the **Assured** shall bear for its own expense the legal fees and legal expenses incurred in the defence of such alleged causes of action.

If the amount of the **Assured's Loss** is greater than the amount recoverable under this policy, or if a deductible is applicable, or both, the liability of Underwriters under this general condition is limited to the proportion of the legal fees and legal expenses incurred and paid by the **Assured** or by Underwriters that the amount recoverable under this policy bears to the total of such amount and the amount which is not so recoverable. Such pro-rated amount shall be applied in reduction of the aggregate limit of indemnity and the sub-limit for the applicable insuring clause.

Underwriters shall not be liable to indemnify the **Assured** for legal fees and legal expenses until after final judgment or settlement of any suit or legal proceeding.

Underwriters may but are not required to conduct the defence of such suit or legal proceeding referred to in the first paragraph of this general condition. At Underwriters' election the **Assured** shall permit Underwriters to conduct the defence of such suit or legal proceeding, in the **Assured's**, name, through legal representatives of Underwriters' choice. The **Assured** shall give all reasonable information and assistance that Underwriters shall deem necessary for the defence of such suit or legal proceeding.

Legal fees and legal expenses paid by Underwriters in defending any suit or legal proceeding shall be applied to the reduction of the aggregate limit of indemnity and the sub-Limit for the applicable insuring clause.

If having elected to defend Underwriters pay legal fees and legal expenses in excess of their proportionate share of such fees and expenses the **Assured** shall promptly reimburse Underwriters for such excess.

The **Assured** shall not unreasonably withhold consent to a settlement by Underwriters of any suit or legal proceeding.

5.1 EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.1 AND 1.3.2
(PROFESSIONAL CIVIL LIABILITY)

This policy shall not cover the **Assured** for **Loss** in respect of any legal liability:

- 5.1.1 Any legal liability of the **Assured** arising from any contractual undertaking or agreement to the extent that the contractual undertaking or agreement:
- (i) extends the duty and/or the standard of skill and care expected of the **Assured** beyond the duty and /or the standard that would have applied in the absence of such contractual undertaking or agreement; or
 - (ii) increases the compensation or damages for which the **Assured** is liable beyond the amount that would have been payable in the absence of such contractual undertaking or agreement.
- 5.1.2 Based on, arising out of, relating to or involving directly or indirectly:
- (c) any actual or alleged wrongful entry, trespass, eviction or invasion of the right of private occupancy; or
 - (d) any liability arising out of the **Assured** being the landlord, tenant, owner or occupier of any real property, buildings or land.
- 5.1.3 Arising from or contributed to by the **Assured** having refused to provide any financing or refused to fulfil any actual or alleged commitment to make any loan or transaction in the nature of a loan or a lease or an extension of credit, whether such commitment was authorised or unauthorised.
- 5.1.4 Based on, arising out of, relating to or involving, directly or indirectly, the financial failure, liquidation, bankruptcy, insolvency, receivership or administration of any **Assured**, or any **Assured** seeking protection under any bankruptcy laws or regulations, or any plan of reorganisation or liquidation (voluntary or otherwise), scheme of arrangement (voluntary or otherwise), or form of composition with third party creditors of such **Assured**.
- 5.1.5 Alleged against the **Assured** by or on behalf or in the name or right of an employee, a former employee or a prospective employee of the **Assured** in their capacity as such.
- 5.1.6 Based on, arising out of, relating to or in connection with, or involving, directly or indirectly, any actual or alleged money laundering or related financial crime

which any member of the **Assured's Management** knew or reasonably should have known constituted Money Laundering or Related Financial Crime.

For purposes of this Exclusion, "Money Laundering or Related Financial Crime" has the meaning given that term (or the term used for an equivalent offence) under any statute, law, rule, regulation, or international treaty, convention or accord pertaining to the movement of illicit cash or cash equivalent proceeds.

5.1.7 Based on, arising out of, relating to or involving, directly or indirectly, any Corporate or Business Policy of the **Assured**.

"Corporate or Business Policy of the **Assured**" means any activity, act or omission which any two or more members of the **Assured's Management** have committed or omitted, undertaken, directed, expressly or impliedly approved, condoned, ratified or endorsed and which could reasonably have been expected or anticipated to result in loss, legal liability or damage to a third party or to result in the assertion of a claim against the **Assured**.

Provided, however, that for the purposes of this exclusion, any director of the **Assured** who is not an employee shall not be considered part of the **Assured's Management** unless such director possessed the power or ability to control or influence the specific act, error or omission upon which liability is predicated.

5.1.8 Based on, arising out of, relating to or involving, directly or indirectly, any actual or alleged misuse, plagiarism, infringement or violation of any copyright, trademark, patent, service mark, trade name, trade secret, design rights, database rights, rights in respect of domain names, rights of confidentiality or other intellectual property rights in whatever jurisdiction they may arise and whether or not formally registered.

5.1.9 Based on, arising out of, relating to or involving, directly or indirectly:

- (i) any actual or alleged failure of or defect within or lack of access to any computer system, or any computer, or any data processing equipment or media, or any microchip or integrated circuitry or similar device, or any computer program or software, whether owned by the **Assured**, held by the **Assured** in any capacity, operated on behalf of the **Assured** or for which the **Assured** may be liable; or
- (ii) any actual or alleged loss of, or loss of the use of, or damage to, or destruction of, or modification of, or alteration of, or corruption of any Electronic Data or Electronic Record (whether in whole or in part); or
- (iii) any unauthorised access to, or appropriation, use, copying or recording of, any Electronic Data; or
- (iv) any unauthorised transmission or disclosure of Electronic Data to any third party; or

- (v) any actual or alleged transmission or impact of any Computer Virus.

For the purposes of this Exclusion, “Electronic Data” means facts, information or instructions converted into a form usable in computer systems and/or or networks and includes operating systems and computer programs and software; “Electronic Record” means Electronic Data that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; “Computer Virus” means a set of unauthorised instructions, programmatic or otherwise, that propagate themselves through any computer system and/or network or which are designed to cause a computer to perform an unauthorised or unintended function.

- 5.1.10 Based on, arising out of, relating to or involving, directly or indirectly:
 - (a) any actual or attempted merger, purchase or acquisition of another business by the **Assured**, except when the **Assured** is acting on behalf of a customer of the **Assured**; or
 - (b) any actual or attempted purchase or sale transactions in the shares of the **Assured**, the **Assured’s** parent company or any subsidiary of the **Assured** except when the **Assured** is acting on behalf of a customer of the **Assured**.
- 5.1.11 For any **Claim** brought by or on behalf of any **Assured** against another **Assured**, provided, however, this exclusion shall not apply:
 - (a) if such **Claim** is brought solely in such claimant’s capacity as a customer or client of the **Assured** and is instigated and continued totally independent of, and totally without the solicitation of, or assistance of, or active participation of, or intervention of, any other **Assured**; and
 - (b) to any **Claim** brought by an **Assured** for indemnity for a **Claim** brought by an independent third party and which would otherwise be covered by this policy.
 - (c) any **Claim** by a **Fund** provided that, on the balance of probabilities, the failure to make such **Claim** would be a breach of duty owed by the directors and officers of such **Fund**.
- 5.1.12 For any actual or alleged loss of, loss of the use of, damage to or destruction of any physical property (except documents), whether owned by the **Assured** or held by the **Assured** in any capacity or for which the **Assured** may be liable, including but not limited to property in the custody, care or control of the **Assured** or their agent or in transit; or
- 5.1.13 Arising from any guarantee or warranty provided by or on behalf of the **Assured** as to the performance of any investment products (including securities, commodities, currencies, and all forms of derivatives).

- 5.4.7 Arising from or alleging breach of any federal or state statute enacted within the United States of America except to the extent that the behaviour alleged to be in breach of such statute would give rise to liability under any other cause of action covered under this policy in the absence of such statute.
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5.2 EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.2 AND 1.3.1
(DIRECTORS' & OFFICERS' LIABILITY)

This policy shall not cover the **Assured** for **Loss** in respect of any **Claim**:

- 5.2.1 Based on or attributable to an **Insured Person** gaining any personal profit or advantage or receiving any remuneration to which they were not legally entitled, provided that this exclusion shall only apply if such profit, advantage or remuneration is established by a court, tribunal, or by admission.
- 5.2.2 Arising out of any **Insured Person's** direction, management, or administration of pensions, including any **Company** sponsored employee pension plans, trusts or programmes whether as trustees, managers, administrators, fiduciaries or otherwise.
- 5.2.3 Based on or attributable to the failure to maintain or effect insurance.
- 5.2.4 Brought by or on behalf of any person or entity who, whether directly or indirectly, owns or controls 15% or more of the voting rights in the **Company**. This exclusion shall not apply to **Claims** made on a wholly independent basis where it is proved to the Underwriters' satisfaction that the claimant had no involvement in the alleged conduct that is the subject of the **Claim**.
- 5.2.5 Brought by an **Assured** except that this exclusion shall not apply to:
- (i) any **Claim** brought outside the United States of America provided that it is proved to Underwriters' satisfaction that it is likely that a judgment will be obtained against that **Insured Person** without the voluntary (rather than legally required) intervention, assistance or participation of any **Insured Person** against whom it is brought ;
 - (ii) **Defence Costs and Expenses**;
 - (iii) Any **Claim** in respect of **Employment Practices Wrongful Acts**;
 - (iv) Any **Claim** for a contribution or indemnity in respect of a **Claim** against another **Insured Person** or the **Company** which is otherwise payable under the terms of this policy;
 - (v) Any **Claim** which is a shareholder derivative action and which has not been solicited or willingly assisted by the **Company** or an **Insured**

Person;

- (vi) the **Claim** is brought by a liquidator, administrator or administrative receiver directly or derivatively on behalf of the **Company**;
 - (vii) the **Claim** is against an **Insured Person** who is a former director or officer of the **Company** provided that the **Claim** is not that of a company which falls within the definition of a close company in S.414 of the Income and Corporation Taxes Act 1988;
 - (viii) the **Claim** is made by a former director or officer of the **Company**.
- 5.2.6 Arising directly or indirectly as a result of or in connection with any act or acts (or alleged act or acts) of **Market Abuse**. However an **Insured Person** shall be entitled to an indemnity in respect of **Defence Costs and Expenses** incurred in successfully defending an action arising out of a **Claim** alleging such conduct on his or her part.
- 5.2.7 For any actual or alleged failure to perform professional services rendered to third parties or back-office supporting services directly related thereto.

EXCLUSIONS APPLICABLE TO INSURING CLAUSE 1.4

This Policy does not cover:

- 5.3.1 Any **Loss** resulting wholly or partially from any act or omission of any director of the **Assured** except to the extent that such director is deemed to be an **Employee**.
- 5.3.2 Any **Loss** resulting from the input of **electronic data** at an authorised electronic terminal by a customer, or another person who had authorised access to the customer's authentication mechanism, unless:
 - (a) such customer was accessing the **Assured's computer system** for a purpose not pre-agreed by the **Assured** and such act was committed with the intent to cause the **Assured** to sustain a **Loss**, or
 - (b) such **Loss** is covered as an **Internal Wrongful Act**;
- 5.3.3 Costs, fees and other expenses incurred by the **Assured** in establishing, or attempting to establish, the existence of or amount of **Loss** covered by this policy;
- 5.3.4 (a) Any **Loss** resulting directly or indirectly from the complete or partial non-

payment of or default upon any **Loan**, except to the extent that such **Loss** is caused directly by any of the perils insured against by this policy.

- (b) Any **Loss** resulting wholly or partially from payments or withdrawals involving items received by the **Assured** which are not finally paid for any reason, except to the extent that such **Loss** is covered as an **Internal Wrongful Act**.
- 5.3.5 Any **Loss** resulting directly or indirectly from any dishonest, fraudulent or malicious act of any **Employee** except to the extent that such **Loss** is covered as an **Internal Wrongful Act**;
- 5.3.6 Any **Loss** resulting wholly or partially from payments or withdrawals involving funds which have been transferred, paid, delivered or otherwise credited to or by the **Assured** as a result of an error;
- 5.3.7 Any **Loss** due as a result of extortion or kidnap and ransom, except to the extent that such **Loss** is caused directly by any of the perils insured against by this policy;
- 5.3.8 Any **Loss** resulting wholly or partially from the failure of a financial or depository institution (or its receiver or liquidator)
- (a) to pay, return or deliver funds or property held by it in any capacity, or
 - (b) to reimburse the **Assured** for any **Loss** for which the financial or depository institution is liable,
- except to the extent that such **Loss** is covered as an **Internal Wrongful Act**;
- 5.3.9 Any **Loss** resulting from fraudulent features contained in **Electronic Computer Programmes** developed for sale to, or what were sold to, multiple customers at the time of their acquisition from a vendor or consultant unless:
- (a) at the time of **Loss** such fraudulent features were contained solely on the **Electronic Computer Programmes** of the **Assured** and not on those sold to any other customer, or
 - (b) such fraudulent features were inserted subsequent to the date of acquisition;
- 5.3.10 Indirect or consequential **Loss** of any nature including in particular:
- (a) any **Loss** or deprivation of income or profits, including but not limited to, interest, dividends, fees, commissions and the like;
 - (b) business interruption (including loss of computer time or use);

- (c) mechanical failure, faulty construction, error in design, latent defect, wear or tear, gradual deterioration, electrical disturbance, **Electronic Data Processing Media** failure or breakdown or any malfunction or error in programming or errors or omissions in processing;
 - (d) **Loss** of or damage to any property whatsoever by reason of wear, tear, gradual deterioration, moth or vermin.
 - (e) fines, penalties or damages of any type for which the **Assured** is legally liable, except direct compensatory damages for **Loss** covered under this policy;
- 5.3.11 Any **Loss** resulting from the **Assured** having arranged or failed to arrange a contract of insurance or reinsurance, or what purports to be a contract of insurance or reinsurance, or **Loss** arising out of the **Assured's** involvement with, whether as an agent or principal, insurance or reinsurance of any kind, except to the extent that there is a loss of premium payments or the proceeds of claims payments when such **Loss** is caused by the embezzlement of such payments by an **Employee** and is covered as an **Internal Wrongful Act**.
- 5.3.12 costs, fees and other expenses incurred by the **Assured** as a party to any proceedings, except to the extent recoverable under condition 4.24 of this policy;
- 5.3.14 Any **Loss** of or damage to any office or premises of the **Assured**, whether caused directly or indirectly by typhoon, hurricane, earthquake or subterranean fire or any ensuing **Loss** or damage by fire, flood, or looting;
- 5.3.15 Any **Loss** resulting from the use or purported use of any credit, debit, charge, access, convenience, identification or other cards, whether such cards were issued, purport to have been issued, by the **Assured** or by anyone other than the **Assured**, except to the extent that such **Loss** is covered as an **Internal Wrongful Act**.
- 5.3.16 Any loss of **Property** while in the custody of any postal service, other than **Property** sent via registered mail, recorded delivery or courier, unless such **Loss** is covered as an **Internal Wrongful Act**.
- 5.3.17 (a) Any **Loss** of or damage to cash or currency contained in customers' safe deposit boxes, or
- (b) Any **Loss** of or damage to any item (including **Property**) held by the **Assured** in safe custody on behalf of customers other than identifiable securities actually held by the **Assured** for said customers, except to the extent that such **Loss** or damage is covered as an **Internal Wrongful Act**.

- 5.3.18 Any **Loss** resulting directly or indirectly from **Trading**, except to the extent that such **Loss** is covered as an **Internal Wrongful Act** or and **External Wrongful Act** as defined at paragraph 3.27.1.
- 5.3.19 Any **Loss** resulting directly or indirectly from any items which are or purport to be, travellers cheques, bills of lading, shipping documents, warehouse receipts, trust receipts, accounts receivable or any other bill, document or receipt similar in nature or effect or serving a similar purpose, except to the extent that such **Loss** is covered as an **Internal Wrongful Act**.
- 5.3.20 **Terrorism** (including, but not limited to, contemporaneous or ensuing loss or damage resulting from fire, looting or theft). This exclusion (xii) (b) shall only apply to insuring clause 3 and shall not apply to **Loss** which results from any actual or attempted burglary, robbery, hold –up, theft or larceny by any natural person arising out of or relating to such natural person's actual or alleged involvement in **Terrorism** or connection to or association with others who are involved in or connected to **Terrorism**.

5.4 EXCLUSIONS APPLICABLE TO ALL INSURING CLAUSES

This policy shall not cover the **Assured** for **Loss**:

- 5.4.1 to the extent that it relates to any actual or alleged bodily injury, sickness, disease, death, emotional distress, anxiety, mental anguish or injury to feelings of any person (other than a claim for emotional distress forming part of a **Claim** in respect of **Employment Practices Wrongful Acts**); or
- 5.4.2.1 (a) based on, arising out of, relating to or involving directly or indirectly any fact, circumstance or event the awareness of which would cause a reasonable person to believe that it could give rise to a **Claim** against the **Assured** and of which fact, circumstance or event the **Assured's Management** or an **Insured Person** was actually aware prior to the inception date of this policy; or
- (b) based on, arising out of, relating to or involving, directly or indirectly, any fact, circumstance or act or event which occurred prior to the Retroactive Date specified in the Schedule; or
- (c) based on, arising out of, relating to or involving, directly or indirectly, any fact, circumstance or event which occurred prior to the Inception Date of this policy and which was the subject of any notice of an actual or potential **Claim** that any insurer(s) or Underwriter(s) received from the **Assured** prior to the inception of this policy.

- (d) Sustained prior to the retroactive date specified in the schedule, or involving any act, transaction or event, which occurred or commenced prior to the retroactive date, or
 - (e) **Discovered** prior to the inception date of the **Policy Period**, or
 - (f) **Discovered** subsequent to the termination of this policy, or
 - (g) notified to a prior insurer;
- 5.4.3 Directly or indirectly caused by or arising from 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.
- 5.4.4 Caused by or arising out of any actual or alleged, seepage, pollution or contamination of any kind except for
- (a) **Defence Costs and Expenses** incurred by an **Insured Person** provided that the incident giving rise to the **Claim** occurred outside the territorial jurisdiction of the United States of America and any proceedings are brought and maintained entirely outside the United States of America and such **Defence Costs and Expenses** are limited to 10% of the aggregate Limit of Liability stated in the Schedule and are part of and not in addition to the aggregate limit of liability; or
 - (b) a **Claim** by any shareholder of the **Company**, either directly or derivatively, which alleges damage to the **Company** and/or its shareholders.
- 5.4.5 Any legal liability arising directly or indirectly by reason of or in connection with war, invasion, act of foreign enemy, hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, martial law, or the act of any lawfully constituted Authority; or

NOTICE TO THE ASSURED

Data Protection Act 1998

We may store your information on a computer and use it for administration, risk assessment, research and statistical purposes, marketing purposes and for crime prevention (see further details below). We will only disclose your personal details to third parties, if it is necessary for the performance of your contract with us.

In order to assess the terms of the insurance contract or administer claims that arise, we may need to collect data that the Data Protection Act defines as sensitive, such as medical history or criminal convictions. By proceeding with this contract you will signify your consent to such information being processed by us or our agents.

We will keep your information secure at all times. In certain circumstances, for example for systems administration purposes, we may have to transfer your information to another country, which may be a country outside the European Economic Area (EEA). By proceeding with your insurance application, we will assume you are agreeable for us to transfer your information to a country outside the EEA.

Should you wish to receive a copy of the information we hold on you, please contact the Compliance Officer, Lloyd's Syndicate 4000, Box 146, Lloyd's, 1 Lime Street, London EC3M 7HA.

Complaint Procedure

Underwriters are committed to providing a first class service at all times.

If at any time there are questions or concerns regarding this policy or the handling of a claim, you should in the first instance refer to your insurance broker or intermediary, if any. If your problem cannot be resolved, any question or complaint should then be addressed to:

Director of Claims
Pembroke Managing Agency Ltd
2nd Floor South
3 Minster Court
Mincing Lane
London
EC3R 7DD

Telephone: +44 (0)20 7337 4507

If after following the above procedure your complaint has not been resolved to your satisfaction, you should write to the Chief Executive at the address above.

In the event you wish to pursue matters further, where appropriate, you can refer the matter at any time to the:

Complaints Department
Lloyd's
One Lime Street,
London EC3M 7HA
Telephone: 020 7327 5693 Fax: 020 7327 5255
E-mail: Lloyds-Regulatory-Complaints@lloyds.com

Complaints that cannot be resolved by the Complaints Department may, where appropriate, be referred to the Financial Ombudsman Service to review the case.

The address is:

Financial Ombudsman Service

South Quay Plaza
183 Marsh Wall
London E14 9SR

Telephone: 0845 080 1800

www.financial-ombudsman.org.uk

The Financial Ombudsman's Service decision is binding upon the Underwriters but you are free to reject it without affecting your legal rights.

Financial Services Compensation Scheme

Underwriters are covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if the Underwriters cannot meet their obligations. This depends on the type of business and the circumstances of the claim. Further information about compensation scheme arrangements is available from the FSCS.

Pembroke Syndicate 4000 at Lloyd's

Pembroke Syndicate 4000 at Lloyd's is managed by Pembroke Managing Agency Ltd (a managing agency authorised and regulated by the FSA).

THE SCHEDULE

1. Policy No: {Response}

2. Name of Assured:

{Response}

3. Principal Address:

{Response}

4. Policy Period:

From: {Response}

To: {Response}

both days at 12.01 a.m. Local Standard Time at the Principal Address

5. Retroactive Date:

{Response}

6. The Premium:

{Response}

7. Proposal Form Dated:

{Response}

8. Limit of Indemnity:

{Response} in the aggregate

9. Deductible:

{Response} each and every loss

10. Losses to be notified to:

{Response}

11. Persons Nominated to accept Service of Process:

{Response}

12. Territorial Limits:

{Response}

13. Amendatory Endorsements applicable at inception:

{Response}

14. Dated in London: {Response}

Pembroke