

Pembroke
SYNDICATE 4000

2008 Excess Directors and Officers Liability Policy

Pembroke Excess Directors and Officers Liability

In consideration of the **Policyholder** having paid or having promised to pay the premium, and subject to all of the terms, conditions and limitations of this Policy, Underwriters subscribing to this Policy and named in Item 2 of the Schedule (referred to herein as "Underwriters") and the **Policyholder** agree as follows:

1. Insuring Agreement

- 1.1 Underwriters shall provide the **Insured** with insurance coverage upon the terms, conditions and limitations of the **Primary Policy** at its inception except insofar as express provision for any matter is made herein in which case, and only insofar as necessary, the terms, conditions and limitations set out herein shall prevail over the corresponding terms, conditions and limitations of the **Primary Policy**.
- 1.2 Subject to the **Limit of Liability**, Underwriters shall pay to or on behalf of the **Insured** that proportion of loss which exceeds the limit of liability of the **Underlying Insurance**. Unless and to the extent Clause 4 hereof applies, Underwriters shall have no liability hereunder unless and until all limits of liability of the **Underlying Insurance** have been exhausted by the payment of losses thereunder.
- 1.3 Losses shall be deemed to have been paid under an **Underlying Insurance** if all or any of the insurers subscribing thereto have paid, or have agreed to pay such losses, or have had their liability to pay such losses established by judgment, arbitration award or other final binding adjudication. Payment shall be deemed to have been made on the date of such payment, agreement or adjudication, whichever occurs first. Furthermore, if any insurer of an **Underlying Insurance** is or becomes insolvent then, for the purposes of this Policy, such insolvent insurer shall be deemed to have paid in full the amount of their liability for losses under such **Underlying Insurance**, but only in the event that either:
- (i) any other insurer participating on the same **Underlying Insurance** as such insolvent insurer pays or agrees to pay or has its liability to pay established by judgment, arbitration award or other final binding adjudication, whichever occurs first; or
 - (ii) the **Insured** establishes that Underwriters would be liable hereunder but for the Insolvency.

2. Definitions

"**Insured**" means those person(s) insured or otherwise entitled to indemnity under the **Primary Policy**.

"**Limit of Liability**" means the total aggregate amount stated in Item 4 of the Schedule which shall be the maximum sum Underwriters are liable to pay under this Policy.

"**Policyholder**" means the entity named in Item 1 of the Schedule.

"**Primary Policy**" means the policy identified as such in Item 5(a) of the Schedule.

"**Policy Period**" means the period of time specified in Item 3 of the Schedule.

"**Underlying Insurance**" means those policies listed under Item 5 of the Schedule or any substitute therefore.

3. Maintenance of Underlying Insurance

All **Underlying Insurance** shall be maintained during the **Policy Period** in full effect and affording coverage at least as broad as the **Primary Policy**, except for any depletion of the limits of liability of such **Underlying Insurance**. Failure to comply with the foregoing shall not invalidate this Policy but Underwriters shall not be liable to a greater extent than the most restrictive **Underlying Insurance** had it been so maintained.

4. Depletion of Underlying Limits

In the event of the exhaustion of all of the limits of liability of the **Underlying Insurance** solely as a result of payment of losses thereunder, this Policy shall subject to the **Limit of Liability** and to the other terms, conditions and limitations of this Policy save for Clause 6, continue for subsequent losses as primary insurance and any retention specified in the **Primary Policy** shall similarly apply to this Policy.

In the event that the limits of liability of the **Underlying Insurance** are depleted but not exhausted solely as a result of payment of losses thereunder, this Policy shall subject to the **Limit of Liability** and to the other terms, conditions and limitations of this Policy, continue for subsequent losses as excess insurance over the balance of the limits of liability remaining under such **Underlying Insurance**.

In the event that the **Underlying Insurance** specifically provides for a sub-limit of liability and such sub-limit of liability is:

- (a) exhausted solely as a result of payment of losses under such **Underlying Insurance**, this Policy shall not provide any coverage in respect of such sub-limit of liability; or
- (b) depleted but not exhausted solely as a result of payment of losses under such **Underlying Insurance** this Policy shall subject to the **Limit of Liability** and to the other terms, conditions and limitations of this Policy, continue for subsequent losses that would be subject to such sub-limit of liability provided that the amount payable hereunder shall not exceed the balance of the amount remaining under such sub- limit of liability and shall be part of and not in addition to the **Limit of Liability** of this Policy.

The determination of whether there has been payment of losses under and depletion or exhaustion of any **Underlying Insurance** shall be made in accordance with Clause 1.3 hereof.

5. Notification of Claims

Any notice required to be given under the terms of the **Primary Policy** shall also be required to be given to Underwriters via the person(s) stated in Item 7 of the Schedule. Notice shall be deemed to have been reported on the date and at the time of receipt by Underwriters. In respect of any matter so notified, Underwriters shall be notified of all significant developments.

6. Claim Participation

Underwriters shall have the right, at their sole discretion, but not the obligation to effectively associate with the **Insured** in the defence and settlement of any claim that appears to be reasonably likely to involve Underwriters, including but not limited to effectively associating in the negotiation of a settlement. Only those settlements, stipulated judgments and costs and expenses to which Underwriters have consented shall be recoverable as loss under the terms of this Policy. Underwriters' consent shall not be unreasonably withheld.

The **Insured** shall give Underwriters full cooperation and such information as may reasonably be required. The failure of Underwriters to exercise any right under this clause at any time shall not act as a waiver or limit the right of Underwriters in any manner to exercise such rights at any other time including the right to effectively associate in the negotiation of a settlement.

Where all of the limits of liability of the **Underlying Insurance** are exhausted with the effect that this Policy operates as primary insurance, the claims obligations under the **Primary Policy** shall prevail over this Clause 6.

7. Subrogation and Recoveries

Following any payment under this Policy, Underwriters shall be subrogated to the extent of any payment made hereunder to all of the **Insured's** rights of recovery against any person or other entity, and the **Insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

Any recoveries will be distributed in the following order to the following parties:

- (a) the costs, disbursements and expenses reasonably and necessarily incurred in relation to such recoveries shall be paid to the parties who incurred them;
- (b) any remaining balance following the application of (a) above shall be used to reimburse those (if any) who made payments in respect of the relevant claim in excess of the combined total of:
 - (i) the payment made by this Policy; and
 - (ii) all payments made by all **Underlying Insurances**; and
 - (iii) the amount of any applicable retention;
- (c) any remaining balance following the application of (a) and (b) above shall be paid to Underwriters to the extent of the payment made by this Policy;
- (d) any remaining balance following the application of (a), (b) and (c) above shall be paid to the insurers of the **Underlying Insurance**.
- (e) any remaining balance following the application of (a), (b), (c) and (d) above shall be paid to the **Insured**.

8. Alteration

No material amendment to the terms of the **Underlying Insurance** shall apply in respect of this Policy unless and until agreed in writing by Underwriters.

9. Nuclear Exclusion

Underwriters shall not be liable for any loss arising out of, based upon, attributable to or in any way involving ionizing radiations 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 component thereof.

10. Fraudulent Claims

It is a condition of this Policy that if the **Insured** shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this Policy shall become void and all claims hereunder shall be forfeited.

11. Choice of Law and Dispute Resolution

This Policy shall be governed exclusively by and construed according to the law detailed within the **Primary Policy**. Further, any dispute arising out of or in connection with this Policy shall be determined in accordance with the dispute provisions detailed within the **Primary Policy**.

NOTICE TO THE INSURED

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 148, 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
Lloyd's Syndicate 4000
2nd Floor South,
3 Minster Court,
Mincing Lane,
London EC3R 7DD

Telephone: 020 7337 4400

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 Underwriters but you are free to reject it without affecting your legal rights.

Financial Services Compensation Scheme

Underwriters covered by the Financial Services Compensation Scheme (FSCS). You may be entitled to compensation from the scheme if 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.

