

EXCESS LAYER PROFESSIONAL INDEMNITY CERTIFICATE

The Contract of Insurance

This **Certificate** is a contract of insurance between **You** and **Us**. In return for the premium shown in the **Schedule** that **You** have paid or agreed to pay **We** agree to insure **You** in accordance with the terms and conditions contained in or endorsed on this **Certificate**.

You should take the time to read all its terms, especially the conditions which **You** have to fulfil to ensure that **Your** insurance remains valid and what **You** have to do when making a claim.

Important

In deciding to insure **You** and in setting the terms and premium, **We** have relied on the **Proposal**. **You** must ensure that all information provided in the **Proposal** is accurate and complete. **You** must disclose every material circumstance **You** know or ought to know, and provide a fair presentation of the information required to enable **Us** to assess **Your** insurance risk, both at the commencement of the **Period of Insurance** or at the subsequent renewal of this **Certificate**.

It is important that **You**:

- check that the information **You** have given **Us** is accurate and complete
- comply with **Your** duties as set out in this **Certificate**.

If this **Certificate** does not meet **Your** requirements, or if **Your** requirements change, **You** should contact **Your** Broker at **Your** earliest opportunity.

Renewal

MUM will write to **Your** Broker at least 21 days before the **Period of Insurance** ends with renewal terms or with full details of the information that **MUM** will require in order to offer renewal terms. Please contact **Your** Broker if **You** do not want to renew this **Certificate**. Occasionally, **We** may not be able to offer to renew **Your Certificate**. If this happens, **We** will write to **Your** Broker at least 21 days before the expiry of **Your Certificate** to allow enough time for **You** to make alternative insurance arrangements.

Interpretation

- words and expressions appearing in bold type shall bear the meanings given against the word or expression in the section of this **Certificate** headed 'Definitions'.
- headings are for ease of reference only and shall not be taken into account in construing this **Certificate**.
- references to masculine include the feminine and vice versa;
- the singular includes the plural and vice versa;
- reference to any legislation, statute or statutory provision shall include any amendment or replacement;
- references to any position, title or legislation shall include their equivalent in the relevant jurisdiction.

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INSURING CLAUSE

What is covered

In return for the premium shown in the **Schedule** that **You** have paid or agreed to pay **We** shall indemnify **You** as follows:

Indemnity

for any amount in excess of the **Total Underlying Limit** and up to the **Limit of Liability** in respect of **Loss** and **Defence costs and expenses** arising from a **Claim** in respect of which **You** are entitled to be indemnified under the terms of the **Underlying Policy/ies** first made against **You** during the **Period of Insurance** and arising from the ordinary conduct of **Your Professional Business**.

EXCLUSIONS

What is not Covered

These exclusions are applicable to the entire **Certificate** unless otherwise specified.

We will not indemnify **You** under this **Certificate** against anything arising directly or indirectly from:

- 1 **Radiation, War or Terrorism**
 - 1.1 **Radiation**
 - 1.1.1 loss or destruction of or damage to any property whatsoever or any loss or expense whatsoever resulting or arising therefrom or any consequential loss, or
 - 1.1.2 any legal liability of whatsoever nature directly or indirectly caused by or contributed to by or arising from:
 - a. ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, or
 - b. the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.
 - 1.2 **War**

or happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority;
 - 1.3 **Terrorism**

or otherwise as a consequence of any act or acts of force or violence undertaken, for whatever reason, with the aim of influencing or overthrowing

of any government or public authority or with the aim of making the public fearful;

- 2 **Risks that are not professional and should be insured elsewhere**
 - 2.1 **Employers' liability**
 - 2.1.1 any actual or alleged breach of any duty that **You** may have to any **Employee** as an employer, or for any **Bodily Injury** suffered by any **Employee** or any person applying to **You** for employment;
 - 2.1.2 any breach of any obligation owed by **You** as employer to an **Employee**;
 - 2.2 **Bodily injury**

any **Bodily Injury** unless it was caused by a breach of any duty owed by **You** arising from negligent advice, design, specification or formula or other breach of professional duty in the conduct of **Your Professional Business**;
 - 2.3 **Property damage**

the damage to or destruction of any property unless it was caused by a breach of any duty owed by **You** arising from negligent advice, design, specification or formula or other breach of professional duty in the conduct of **Your Professional Business**;
 - 2.4 **Property/vehicles**

Your ownership, occupation or use of any land, building, or of any vehicle, craft or vessel for use on land, water or in the air and whether mechanically propelled or otherwise;
 - 2.5 **Directors, officers or trustees**

or brought against **You** in the capacity of

 - 2.5.1 a director or officer of **Your** firm or of any other company;
 - 2.5.2 a trustee of any trust;
 - 2.5.3 a director, officer or trustee of any pension fund or employee benefit scheme, whether for the benefit of **Your Employees** or any other entity;
 - 2.6 **Cyber Liability**
 - 2.6.1 the use or operation by **You** or by any third party, as a means for inflicting harm, of any computer, computer system, Virus or process or any other electronic system;
 - 2.6.2 the costs of notification of any data breach to any party affected by such data breach;
 - 2.6.3 the costs and expense of remedying any data breach including the containment and removal of any **Virus**;
 - 2.6.4 the costs of notification of any data breach to any regulatory authorities sand / or any party affected by such data breach;
 - 2.6.5 or caused by any **Virus**;
 - 2.7 **Environmental Liability**
 - 2.7.1 **Pollution**

or which is in any way related to or a consequence of any kind of seepage, **Pollution** or contamination;
 - 2.7.2 **Asbestos**

or which is in any way related to or a consequence of the presence of asbestos in whatever form or amount;
- 3 **Onerous contracts or contractual liabilities**
 - 3.1 any breach or alleged breach of contract and in respect of which it is claimed

- 3.1.1 that **You** duty is more onerous than would be implied by common law or statute; or
- 3.1.2 that **You** are liable for liquidated damages, penalties or for an amount due pursuant to any kind of guarantee or otherwise for damages that are greater than would be implied by common law or statute;
provided that this exclusion shall not apply in respect of any **Claim** in respect of obligations assumed by **You** under any collateral warranty, duty of care agreement or similar agreement (even if assigned to a tenant, purchaser, funder or other third party) provided always that:
 - (a) the benefit of such warranty or agreement is no greater or longer lasting than that provided to **Your** client; and
 - (b) no indemnity will be provided for
 - (i) any guarantee or warranty of fitness for purpose, satisfaction of performance specification or the period for completion of any work; or
 - (ii) any financial penalty or liquidated damages.
- 3.2 any liability assumed by **You** under any express warranty or guarantee unless such liability would have attached to **You** notwithstanding such express warranty or guarantee;

4 **Limitations on Underlying Policy/ies**

or in respect of which the indemnity provided under the terms of the **Underlying Policy/ies** is restricted because it is the subject of a sub-limit whereby the liability of the **Underlying Insurers** to indemnify **You** is for a lesser amount than it is in respect of some other type or types of claim;

5 **Underlying Policy/ies**

- 5.1 any claim or **Loss** where the **Underlying Policy/ies** have not been maintained in full force and effect throughout the **Period of Insurance**;
- 5.2 any claim or **Loss** where the **Total Underlying Limit** has been reduced because the **Underlying Insurers** have made payments in relation to any claim or claims that would not have been insured or would have been excluded under this **Certificate** had the amount of such claim or claims exceeded the **Total Underlying Limit**;

6 **Sanctions**

or to the extent that to do so would expose **Us** or **MUM** to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America or any other economic or financial sanctions and embargos legislation applicable to **Us** or **MUM**. Sanctions, prohibitions or restrictions of the United States of America shall only apply provided that they do not violate current European and / or any other law applicable **Us** or **MUM**.

CLAIMS AND HOW TO MAKE A CLAIM

If **You** need to notify us of a claim, **Loss** or **Circumstance** then please contact **MUM**. It will assist if **You** have details of **Your Certificate** and cover available.

Claims Conditions

If **You** fail to comply strictly with any of the Claims Conditions below in relation to a particular claim or **Circumstance** then **We** may be entitled to reduce the amount that **We** pay.

1 Notification

1.1 When and what to notify

You must notify **MUM** as soon as reasonably possible if **You** receive, discover or become aware of:

1.1.1 any claim made against **You**;

1.1.2 any indication that someone intends to make a claim against **You** or

1.1.3 a **Circumstance**.

in respect of which the **Maximum Possible Loss** may exceed 50% of the **Total Underlying Limit**.

Notification under this clause must be made irrespective of **Your** view on liability or the validity of the claim or potential claim.

1.2 What must be included

The notification must include full particulars, including without limitation the identity of the claimant or potential claimant, details of the allegations and potential allegations against **You**, identification of the services giving rise to the claim or **Circumstance** and, if known, the potential amount of the claim or **Circumstance**.

If **You** give **MUM** notice under paragraphs 1.1.2 and 1.1.3 above then any claim made subsequently and arising from the notification will be deemed to have been notified to **Us** during the **Period of Insurance**.

2 Conduct

Subject only to any right of the **Underlying Insurers** to exercise control, in the event that, in relation to any claim, **We** consider that any **Loss** payable is likely to exceed the **Total Underlying Limit**, **We** shall be entitled to take over the conduct of any claim and to defend or settle the claim as **We**, in **Our** sole discretion, think fit. However, **We** cannot require **You** to continue to contest any claim unless a Queen's Counsel (to be agreed upon between us) advises that the claim should be contested. The costs of such reference to Queen's Counsel are to be borne equally by **Us** and **You**.

3 Payment of Limit of Liability

At any time:

3.1 **We** may pay to **You** an amount equal to the **Limit of Liability**; or

3.2 if **We** consider that a claim may be settled for an amount exceeding the **Total Underlying Limit** but less than the **Limit of Liability** then **We** may pay to **You** that lesser amount.

If **We** make such a payment it will be in full and final settlement of any liability **We** may have to indemnify **You** under this **Certificate**. **We** will then relinquish conduct and control of the claim and have no further liability in respect of it. For the avoidance of doubt this means that **We** will not be liable for any **Defence costs and expenses** that may be incurred after the date upon which any such payment is made by **Us**.

4 **Erosion of Total Underlying Limit**

Subject always to the application of exclusion clause 3, if, because the **Underlying Insurers** have made payments in relation to any claim or claims first made during the **Period of Insurance**, the applicable **Total Underlying Limit** shall have been:

- 4.1 partially reduced then this **Certificate** shall apply in excess of the reduced amount of the **Total Underlying Limit** for the remainder of the **Period of Insurance**;
- 4.2 paid in full then **We** shall indemnify **You** on the terms contained in this **Certificate** as if **We** were the **Underlying Insurers**.

GENERAL CONDITIONS

These are the conditions of the **Certificate** that **You** or **We** need to meet or that govern how it will operate. **We** may need to reject a claim or a claim payment could be reduced if **You** do not meet these conditions. **Your Certificate** may not be valid in some circumstances.

1 **Ultimate net loss**

We shall only be liable for any **Loss** in excess of the **Total Underlying Limit** on an ultimate net loss basis, which means the sum actually paid by **You** or on **Your** behalf in settlement after deducting all sums recovered from any other party or under any other collectible policy of insurance other than the **Underlying Policy/ies**. All sums recovered after such time as **We** may have made any payment under this **Certificate** shall be applied as if they had been recovered or received before **We** made any payment.

2 **Amendment of Underlying Policy/ies**

No amendment of the terms and conditions of the **Underlying Policy/ies** made or deemed to come into effect during the **Period of Insurance** shall be binding on **Us** unless **We** agree in writing.

3 **Recoveries**

All money recovered from third parties, following any payment made by **Us** under this **Certificate**, shall be applied in the following order:

- 3.1 first, in reimbursement of all costs and expenses incurred by **Us** in obtaining such recovery;
- 3.2 secondly, in reimbursement of all **Loss** borne by **You** in the event that **Your** legal liability exceeds the **Limit of Liability**;
- 3.3 thirdly, in reimbursement of all sums paid by **Us** under this **Certificate**; and
- 3.4 fourthly, in reimbursement of the **Excess** paid by **You**.

4 **Premium payment**

You agree to pay the premium in full to **Us** within 60 days of inception of the **Period of Insurance** and that if the premium has not been so paid **We** shall have the right to cancel this **Certificate** by giving **You** 14 days' notice in writing. If **We** exercise this right then the premium payable by **You** shall be due to **Us** pro-rata for the period during which **We** have been on risk during the **Period of Insurance** unless any notification has been made in accordance with Claims Condition 1 prior to the expiry of the notice period in which case the full premium shall be due and payable.

We agree that if the premium due is paid in full to **Us** before the notice period expires, **Our** notice of cancellation shall be withdrawn automatically.

5 **Third party rights**

You and **We** are the only parties to this contract and no other person or party has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any rights under this **Certificate**, but this does not affect the ability of any third party to enforce any other right or remedy they may have.

6 **Assignment**

Assignment of interest under this **Certificate** will not bind **Us** unless and until **Our** written consent is endorsed hereon.

- 7 **Document management**
We may hold documents relating to this insurance and any claims under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.
- 8 **Invalidity**
If any provision of this **Certificate** is found to be invalid by any competent court or administrative body this will not affect the validity of any other provision in this **Certificate**.
- 9 **Governing law**
This **Certificate** is governed by English law unless, at the commencement of the **Period of Insurance**, **You** are either:
i) a resident of; or
ii) a business with its registered office or principal place of business situated in Scotland, Northern Ireland, the Channel Islands or the Isle of Man, in which case the laws of that country, crown protectorate or dependency will apply.
- In the event of any dispute between us as to the meaning, effect or validity of this **Certificate** then the dispute should be referred to a sole arbitrator who shall have exclusive jurisdiction to determine the dispute. In the event that the parties fail to agree on the appointment of a particular arbitrator then an arbitrator shall be appointed by the President for the time being of the Chartered Insurance Institute.
- 10 **Language**
The language of **Your Certificate** and any communication throughout the duration of the **Period of Insurance** will be English.
- 11 **Notices**
Any notice to be given under this **Certificate** must be sent by pre-paid first class post and shall be deemed to have been received:
15.1 by **You** if it is sent to **Your** last known address or to **Your** broker; and
15.2 by **Us** if sent to **MUM**.
- 12 **Several liability notice**
The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.
- 13 **Manchester Underwriting Management**
Manchester Underwriting Management Limited acts as **Our** agent and not for **You**.
- 14 **Termination of Certificate for specified events**
This **Certificate** will immediately and automatically be terminated in the event of any of the following:
14.1 The presentation of a petition seeking the appointment of a receiver or the making of a winding up order or the appointment of an administrator over **You** or the making of a Court order to that effect;

14.2 The passing of a resolution for the appointment of a liquidator, receiver or administrator or on the appointment of a liquidator, receiver or administrator over any of **Your** assets;

14.3 the suspension by **You** of a payment of **Your** debts or the entering into a voluntary arrangement or other scheme of composition with **Your** creditors by **You** or any equivalent court application, order, appointment or arrangement in any jurisdiction in which **You** may be domiciled.

15 **Multiple Insureds**

If more than one party is entitled to indemnity under this **Certificate** then the total amount which **We** will pay in respect of any claim will not exceed the amount which **We** would be liable to pay if there were only one party entitled to indemnity.

COMPLAINTS

If **You** have any questions or concerns about **Your Certificate** or the handling of a claim you should, in the first instance, contact **MUM** or the broker where applicable. In the event that **You** remain dissatisfied and wish to make a complaint, **You** can do so at any time. Making a complaint does not affect any of **Your** legal rights.

If **Your** complaint cannot be resolved within two weeks, or if **You** have not received a response within two weeks, **You** are entitled to refer the matter to Lloyd's. Lloyd's will then conduct a full investigation of **Your** complaint and provide **You** with a written final response.

Lloyd's contact details are:

Post: Complaints, Lloyd's, Fidentia House, Walter Burke Way, Chatham Maritime, Chatham, Kent. ME4 4RN.

Telephone: +44 (0) 20 7327 5693 Fax: +44 (0) 20 7327 5225

Email: complaints@lloyds.com

Details of Lloyd's complaints procedures are set out in a leaflet "Your Complaint – How We Can Help" available at www.lloyds.com/complaints and are also available from the above address.

If **You** remain dissatisfied after Lloyd's has considered **Your** complaint, or if **You** have not received a written final response within eight weeks from the date that **MUM** received your complaint, **You** may be entitled to refer **Your** complaint to the Financial Ombudsman Service who will independently consider **Your** complaint free of charge. Their contact details are:

Post: The Financial Ombudsman Service, Exchange Tower, London E14 9SR

Telephone: (Fixed): 0800 0234567 Tel (Mobile): 0300 1239123 Tel (Outside UK): +44 (0) 20 7964 0500 Fax: +44 (0)20 7964 1001

Email: complaint.info@financial-ombudsman.org.uk

Website: www.financial-ombudsman.org.uk

Please note:

- **You** must refer **Your** complaint to the Financial Ombudsman Service within six months of the date of the final response
- The Financial Ombudsman Service will normally only consider a complaint from a business that has an annual turnover of less than 2 million Euros and fewer than 10 employees.

COMPENSATION

(Financial Services Compensation Scheme)

We are covered by the Financial Services Compensation Scheme. **You** may be entitled to compensation from the Scheme if any of **Us** is / are unable to meet **Our** obligations to you under this **Certificate**. If **You** were to be entitled to compensation from the Scheme, the level and extent of the compensation would depend on the nature of this **Certificate**. Further information about the Scheme is available from the Financial Services Compensation Scheme, 10th Floor, Beaufort House, 15 St. Botolph Street, London EC3A 7QU and on their website www.fscs.org.uk.

DEFINITIONS

In this **Certificate** where the following words appear in bold type they shall have these meanings:

- Bodily Injury** shall mean any physical injury, sickness, disease, psychological injury or illness, emotional distress, shock or death (but excluding mental injury, mental anguish or shock arising from libel or slander or defamation)
- Certificate** shall mean this document and any accompanying **Schedule** and endorsements to it
- Circumstance** shall mean any circumstance, event or state of affairs which may reasonably be expected to give rise to a claim against **You** or a claim for **Loss** by you of a kind that may be covered under this **Certificate**. Subject to the terms of Claims Condition 1, examples of the types of matters which **You** should notify as a **Circumstance** include but are not limited to the following:
- a. any complaint from a client about work undertaken by **You** and which cannot be resolved immediately;
 - b. any series of complaints from a client about work done by **You**;
 - c. any situation by which **You** become aware of any shortcoming in work carried out for a client (whether this is known to the client or not);
 - d. any situation in which a client, following a complaint, fails to pay monies invoiced by **You**;
 - e. any threat of a claim being brought against **You**;
 - f. the discovery, or reasonable cause for suspicion, of dishonesty or fraud on the part of any current or former partner, director, member or **Employee** of **Yours**;
 - g. the receipt by **You** of any written demand for compensation or demand for other civil relief including non-pecuniary relief made by a third party against **You**;
 - h. any civil, arbitration or adjudication proceedings, application including any counterclaim or appeal served upon **You**;
 - i. the receipt by **You** of any communication invoking a Pre-Action Protocol
- Claim** shall mean any written or oral demand for monetary damages and/or notice in writing of any intention to commence legal proceedings against **You** and/or other relief including non-pecuniary relief and/or any civil arbitration or adjudication proceedings including counterclaim and appeal made by a third party against **You** in connection with **Your Professional Business**
- Defence costs and expenses** shall mean reasonable legal costs and expenses incurred by **You** or on **Your** behalf with **Our** prior written consent in connection with the investigation, defence or settlement of any claim or potential claim in respect of which **You** are entitled to an indemnity under this

Certificate

Employee	shall mean any person who is: a. Employed by You under a contract of employment; or b. Employed by You under a training contract or as an apprentice; or c. Working for You as a locum, temporary or seasonal worker including anyone supplied by an agency or contract hire company; or d. working for You as a volunteer, including anyone working on a work experience or intern scheme or placement; or self-employed and who is not working as an independent contractor but only while that person is working directly for You and is under Your direct control and supervision
Excess	shall mean the amount payable by You before the Underlying Insurers are obliged to make any payment under the Underlying Policy/ies
Limit of Liability	shall mean the amount stated in the Schedule and which shall be: (a) in any instance where the relevant Total Underlying Limit applies in the aggregate for all such claims during the Period of Insurance , the maximum amount of Our liability to pay any Loss and Defence costs and expenses in the aggregate during the Period of Insurance ; or (b) in all other instances, the maximum amount of Our liability to pay any Loss and Defence costs and expenses in respect of any one claim or series of claims arising out of one originating cause or source
Loss	shall mean a. any amount that You are liable to pay as compensation together with any liability You may have to pay the legal costs and expenses of any other party as a result of any claim made against You ; or b. any other loss suffered or cost or liability incurred by You in respect of which You may be entitled to an indemnity under this Certificate .
Maximum Possible Loss	shall mean, in relation to any claim or Circumstance , the largest possible Loss recoverable from You on the assumption that You have no defence on any aspect of liability or quantum and excluding the possibility that You may have any right of recovery from any third party
MUM	Shall mean Manchester Underwriting Management Limited whose address is Link House, St. Mary's Way, Chesham, Buckinghamshire HP5 1HR, who act as Our agent
Period of	shall mean the period stated in the Schedule

Insurance

Pollution	shall mean <ol style="list-style-type: none">all pollution or contamination of buildings or land or structures or of water or the atmosphere, andall Loss damage or Bodily Injury directly or indirectly caused by or arising from such pollution or contamination
Professional Business	shall mean the professional business of the kind ordinarily expected of a firm of the type specified in the Schedule and the Proposal
Proposal	shall mean all information supplied by You to Us by written, electronic or any other means
Retroactive Date	shall be the date referred to in the Schedule
Schedule	shall mean the schedule attached to this Certificate
Total Underlying Limit	shall mean the amount stated in the Schedule and which is the cumulative maximum amount of the liability of the Underlying Insurers to pay any Loss and Defence costs and expenses under the terms of the Underlying Policy/ies after payment by You of any applicable Excess
Underlying Insurers	shall mean the insurer or insurers subscribing to the Underlying Policy/ies
Underlying Policy/ies	shall mean the underlying policy or policies specified in the Schedule
Us/Our/We	the Insurer or Insurers stated in the Schedule of Insurers
Virus	shall mean any software or executable code that replicates itself through a computer or computer network whether called a virus, logic bomb, Trojan Horse, worm or given any other name or term
You/Your	shall mean the Insured named in the Schedule together with, individually and collectively, each of Your partners, members or directors including all former partners, members or directors, and all who may become partners, members or directors in Your firm during the Period of Insurance and any Employee .

PRIVACY NOTICE

Your information will be processed by **Us** and by **MUM** in compliance with the provisions of the Data Protection Act 1998 and will be used by **Us**, and **Our** associated companies, **MUM** and its associated companies, by reinsurers for the purposes of providing reinsurance, and by

all parties for the purposes of claims and complaints handling. It may be disclosed to third parties for these purposes and to regulatory bodies for the purposes of monitoring and/or enforcing the insurer's compliance with any regulatory rules/codes. **Your** information may also be used for and disclosed to third parties in connection with offering renewal, research and statistical purposes and crime prevention. It may be transferred to any country, including countries outside the European Economic Area, for any of these purposes and for systems administration. Where this happens, **We** will ensure that anyone to whom **We** pass **Your** information agrees to treat **Your** information with the same level of protection as if **We** were dealing with it.

For any questions or comments, or requests to see a copy of the information that **We** or **MUM** hold about **You**, please write to **Our** Group Data Protection Controller or to the Group Data Protection Controller at **MUM**, as appropriate.